



Superannuation Legislation Amendment Act 1990

No. 40 of 1990

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Superannuation Legislation Amendment Act 1990

No. 40 of 1990

An Act to amend certain Acts relating to superannuation

[Assented to 7 June 1990]

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

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Superannuation Legislation Amendment Act 1990*.

Commencement

2. (1) The following provisions:

- (a) Parts 1 and 2, sections 6, 69, 70, 71, 94 and 98 and Part 5, of this Act;
- (b) section 43 and Part XIII of the *Superannuation Act 1976* inserted by this Act;

commence on the day on which this Act receives the Royal Assent.

(2) Section 48 of this Act is taken to have commenced on 1 May 1987.

(3) The remaining provisions of this Act commence on 1 July 1990.

PART 2—AMENDMENTS OF THE SUPERANNUATION ACT 1922

Principal Act

3. In this Part, “Principal Act” means the *Superannuation Act 1922*¹.

Repeal of section 55

4. Section 55 of the Principal Act is repealed.

Payment to person other than pensioner

5. Section 62 of the Principal Act is amended by inserting “, for any reason (including the reason that the pensioner or beneficiary is insane or undergoing imprisonment or is otherwise under a disability),” after “should”.

PART 3—AMENDMENTS OF THE SUPERANNUATION ACT 1976

Principal Act

6. In this Part, “Principal Act” means the *Superannuation Act 1976*².

Long Title

7. The title of the Principal Act is amended by adding at the end “, and for other purposes”.

Interpretation

8. (1) Section 3 of the Principal Act is amended:

- (a) by omitting from the definition of “accumulated basic contributions” in subsection (1) “, in accordance with the regulations,”;
- (b) by omitting from the definition of “accumulated supplementary contributions” in subsection (1) “, in accordance with the regulations,”;
- (c) by omitting from paragraph (a) of the definition of “approved authority” in subsection (1) “specified in the regulations as an approved authority for the purposes of this Act, being—” and substituting “declared by the Minister to be an approved authority for the purposes of this Act and is:”;
- (d) by adding at the end of each of subparagraphs (a) (i) and (ii) of the definition of “approved authority” in subsection (1) “or”;

- (e) by adding at the end of paragraph (a) of the definition of “approved authority” in subsection (1) the following subparagraph:
 - “(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), 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”;
- (f) by adding at the end of each of paragraphs (h) and (j) of the definition of “eligible employee” in subsection (1) “or”;
- (g) by adding at the end of the definition of “eligible employee” in subsection (1) the following word and paragraph:
 - “or (m) a person who, under section 15A, is excluded from this definition.”;
- (h) by omitting from the definition of “Fund” or “Superannuation Fund” in subsection (1) “Superannuation Fund” and substituting “Commonwealth Superannuation Fund No. 2”;
- (j) by omitting from the definition of “period of contributory service” in subsection (1) “(less any period during that period when the person was on leave of absence without pay and in respect of which sub-section 51 (1) applies or was absent from duty and in respect of which sub-section 51A (1) applies)” and substituting the following words and paragraphs:
 - “(less any period during that period 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) as in force before 1 July 1990 applies to the person; or
 - (c) a period that is taken, under subsection 51A (5) as in force on and after 1 July 1990, to be a non-contributory period of service for the person;)”;
- (k) by inserting in subsection (1) the following definitions:
 - “**‘accumulated employer contributions’** has the meaning given by section 110Q;
 - ‘approved medical practitioner’** means a medical practitioner approved by the Commissioner for the purposes of this Act;
 - ‘asking a question’** includes making a request (whether oral or in writing) for information;

'Board' means the Commonwealth Superannuation Board established under section 27A;

'Chief Executive Officer' means the Chief Executive Officer of the Trust appointed under section 44AA;

'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;

'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 of the deceased person other than:
 - (i) an eligible child; or
 - (ii) (where the deceased person was a retirement pensioner at the time of his or her death) a child who, by virtue of section 9, is deemed not to be a partially dependent child for the purposes of this Act; 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
 - (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;

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

'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;

'Superannuation (1990) Scheme' means the Superannuation Scheme established by deed under the *Superannuation Act 1990*."

(2) Regulations made for the purposes of the definition of “approved authority” in subsection 3 (1) of the Principal Act and in force immediately before 1 July 1990:

- (a) remain in force on and after that date; and
- (b) are taken to be declarations made by the Minister for the purposes of that definition as in force on and after that date; and
- (c) may be amended or repealed by such declarations.

(3) On and after 1 July 1990, an approval that, immediately before that date, was in force for the purposes of the definition of “approved medical practitioner” in subsection 16 (1) of the Principal Act has effect as if it were an approval under the definition of “approved medical practitioner” in subsection 3 (1) of the Principal Act as amended by this Act.

9. After section 4 of the Principal Act the following sections are inserted:

Definition of “approved authority”—declaration for purposes of paragraph (a)

“4A. (1) Subject to subsection (2), a declaration for the purposes of paragraph (a) of the definition of ‘approved authority’ in subsection 3 (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

“(2) A declaration referred to in subsection (1) is a Statutory Rule for the purposes of the *Statutory Rules Publication Act 1903*.

“(3) A declaration referred to in subsection (1) may be expressed to have taken effect from and including a day not earlier than 12 months before the making of the declaration.

Meaning of “re-employed former contributor with preserved rights”

“4B. For the purposes of this Act, a person is a re-employed former contributor with preserved rights if:

- (a) the person:
 - (i) ceased, or last ceased, to be a contributor under the superseded Act before 1 July 1976; or
 - (ii) ceased, or last ceased, to be an eligible employee before 1 July 1990; 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 scheme established under this Act); and
- (c) on or after 1 July 1990, the person becomes:

- (i) a permanent employee; or
 - (ii) a temporary employee; or
 - (iii) the holder of a statutory office (including the office of Commissioner); or
 - (iv) a person to whom section 14A 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).".

Retirement on ground of invalidity

10. Section 7 of the Principal Act is amended:

- (a) by omitting from subsection (2) "Commissioner" (wherever occurring) and substituting "Board";
- (b) by inserting in subsection (2) "invalidity because of" after "on the ground of" (last occurring).

Accumulated basic and supplementary contributions—additional amounts

11. Section 7A of the Principal Act is amended by omitting from subsections (1), (2), (3) and (4) "in accordance with the regulations," (wherever occurring).

Children of deceased retirement pensioners

12. Section 9 of the Principal Act is amended by inserting in each of subsections (1), (2), (3), (4) and (5) "or a partially dependent child" after "eligible child".

Temporary employees likely to be continued in employment

13. Section 11 of the Principal Act is amended by omitting subsections (1), (2) and (3) and substituting the following subsection:

"(1) Where a person who is a temporary employee requests the Commissioner to direct, under this section, that the person be treated as an eligible employee for the purposes of this Act, the Commissioner 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.".

Repeal of section 12

14. Section 12 of the Principal Act is repealed.

Temporary employees employed under contract

15. Section 13 of the Principal Act is amended by omitting from paragraph (1) (a) “for a term of not less than 1 year”.

16. After section 13 of the Principal Act the following section is inserted:

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

“13A. 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 the superseded Act; or
 - (ii) deferred benefits were applicable to him or her under this Act; or
- (b) the person became or becomes, by virtue of his or her being so employed, a re-employed former contributor with preserved rights.”.

Statutory office holders

17. Section 14 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (a) “to which he has been appointed for a term of not less than 1 year”;
- (b) by adding at the end the following subsection:

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

Persons to whom Division 2 or 3 of Part IV of the Public Service Act applies

18. Section 14A of the Principal Act is amended:

- (a) by omitting from subsection (1) “This” and substituting “Subject to subsection (1A), this”;

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- (b) by omitting from paragraph (1)(c) “section 87Q” and substituting “section 87M or 87Q”;
- (c) by omitting from paragraph (1)(d) “section 87Q” and substituting “section 87M or 87Q”;
- (d) by inserting after subsection (1) the following subsections:

“(1A) This section does not apply to a person who becomes, on or after 1 July 1990, a person referred to in paragraph (1)(a), (b), (c) or (d) unless the person had been an eligible employee:

- (a) in the case of a person referred to in paragraph (1)(a) or (b)—immediately before becoming such a person; or
- (b) in the case of a person referred to in paragraph (1)(c) or (d)—immediately before the person ceased to be employed in his or her previous relevant employment.

“(1B) In subsection (1A):

‘previous relevant employment’, in relation to a person referred to in paragraph (1)(c) or (d), means:

- (a) if the person:
 - (i) after being dismissed or deemed to have been retired from the Australian Public Service, was re-appointed to that Service under section 63F, 63G or 66B of the Public Service Act (as the case may be); or
 - (ii) after being dismissed or retired from employment other than employment in the Australian Public Service, was re-appointed or re-employed in circumstances similar to circumstances in which a person could have been re-appointed to that Service under section 63F, 63G or 66B of the Public Service Act;

the office held by the person, or the employment in which the person was employed, immediately before his or her dismissal or retirement; or

- (b) if the person:
 - (i) is deemed to have been re-appointed to the Australian Public Service under section 87M or 87Q of the Public Service Act; or
 - (ii) not being a person to whom subparagraph (i) applies, is re-appointed, or re-employed, by a previous employer in circumstances similar to the circumstances in which a person could have been deemed to have been re-appointed to the Australian Public Service under section 87M or 87Q of the Public Service Act;

the office last held by the person, or the employment in which the person was last employed, in the Australian Public Service, or the employment in which the person was last employed by that employer, before his or her re-appointment or re-employment.”;

- (e) by omitting from paragraph (6) (a) “section 87Q” (wherever occurring) and substituting “section 87M or 87Q”.

19. After section 15 of the Principal Act the following section is inserted:

Persons excluded from definition of “eligible employee”

“15A. (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) Where, on or after 1 July 1990:

- (a) a person (other than a person to whom subsection (1) applies) becomes a permanent employee; or
- (b) a person is appointed as Commissioner;

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 the superseded Act; or
 - (iii) deferred benefits were applicable to him or her under this Act; or
- (d) the person becomes, by virtue of his or her employment or appointment, a re-employed former contributor with preserved rights.”.

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

20. (1) Section 16 of the Principal Act is amended:

- (a) by omitting subsection (1);
- (b) by omitting subsections (9) to (14), inclusive, and substituting the following subsection:

“(9) Where, under subsection (8), the Commissioner 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.”.

(2) In spite of subsection (1), subsections 16 (11B) and (11C) of the Principal Act (as in force before the commencement of this section) continue to apply in relation to a certificate revoked or issued under subsection 16 (11) of that Act.

(3) Where, before the commencement of this section, the Administrative Appeals Tribunal or the Federal Court of Australia made a decision or order setting aside or varying a decision by the Commissioner to issue a benefit classification certificate in respect of a person under subsection 16 (11) of the Principal Act as then in force, then in spite of subsection (1) of this section and section 21:

- (a) subsections 16 (11) to (11C), inclusive, of the Principal Act (as in force before the commencement of this section) continue to apply in relation to:
 - (i) a requirement on the basis of which; and
 - (ii) information on the basis of the giving of which; the Commissioner decided to issue the certificate or to specify in it a particular physical or mental condition; and
- (b) section 16AC of the Principal Act as amended by this Act does not apply in relation to:
 - (i) a question the asking of which constituted, or formed part of, such a requirement; or
 - (ii) such information.

(4) In subsection (3):

“information” includes information allegedly given;

“requirement” means a requirement, or an alleged requirement, to give information;

“set aside” includes quash.

21. (1) After section 16 of the Principal Act the following sections are inserted:

Benefit event happening before section 16 procedures completed

“16AA. (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 the Commissioner 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 the Commissioner has not yet decided that the person should not be required under subsection 16 (2) to undergo a further examination; or
- (c) the Commissioner 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) the Commissioner 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) the Commissioner has decided so to issue such a certificate but has not yet issued it.

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

- (a) the Commissioner required the person under subsection 16 (2) to undergo; or
- (b) the Commissioner is satisfied he or she 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 the Commissioner'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), the Commissioner must consider such information and other matters as he or she 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.

“(6) Unless paragraph (2) (e) applies, the Commissioner must consider the report material and any other matters (other than matters excluded by subsection (7)) that he or she 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, he or she 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 the Commissioner 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 the Commissioner 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 the Commissioner 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 the Commissioner 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, the Commissioner must issue in respect of the person the benefit classification certificate that the Commissioner would have so issued but for the benefit event.

“(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.

Condition coming into existence after person became eligible employee

“16AB. (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 the Commissioner 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 the Commissioner for the certificate to be revoked under this section.

“(3) If an application is made under subsection (2) and the employee is living, the Commissioner may, for the purposes of the application, require him or her to undergo within a specified period such medical examination or examinations by an approved medical practitioner or practitioners as the Commissioner 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 the Commissioner.

“(5) On an application under subsection (2), the Commissioner must consider each report (if any) given to the Commissioner under subsection (4), and such other matters (if any) as he or she thinks relevant, and must:

- (a) if he or she is satisfied that a physical or mental condition or

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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.

“(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).

Issue of benefit classification certificate where duty of disclosure breached

“16AC. (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

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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:

- (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 the Commissioner 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 the Commissioner 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

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the person, a person (in this section called the ‘non-discloser’), being:

- (i) the relevant person; or
 - (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, the Commissioner 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, the Commissioner 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 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 the Commissioner 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

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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
 - (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.

Service of certificates and of related notices

“16AD. (1) The Commissioner 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 the Commissioner 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 the Commissioner of an application made under subsection 16AB (2);

the applicant.

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

- (a) the person’s personal representative; or
- (b) such other person or persons as the Commissioner, in his or her discretion, determines.

Application of certain provisions to the Commissioner

“16AE. In the application of section 16, 16AA, 16AB, 16AC, 16AD or 184 in relation to a person who is an eligible employee because of paragraph (g) of the definition of ‘eligible employee’ in subsection 3 (1), a reference in that section to the Commissioner is taken to be a reference to the Secretary to the Department.”.

(2) Section 16AA of the Principal Act as amended by this Act applies in relation to a benefit event within the meaning of that section that happens on or after the commencement of this section.

(3) Subject to subsection 20 (3), section 16AC of the Principal Act as amended by this Act applies in relation to a question asked of a person, or information given, whether before or after the commencement of this section.

Commissioner for Superannuation

22. Section 17 of the Principal Act is amended by omitting from subsection (2) “, other than Parts III and XA,” and substituting “(other than Parts IIA, III and IVA and section 154A)”.

23. After Part II of the Principal Act the following Part is inserted:

“PART IIA—COMMONWEALTH SUPERANNUATION BOARD

“Division 1—Establishment, Functions and Powers of Board

Establishment of Board

“27A. There is established by this section a board called the Commonwealth Superannuation Board.

Incorporation etc.

“27B. (1) The Board:

- (a) is a body corporate with perpetual succession; and
- (b) has a common seal; and
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

“(2) The common seal of the Board is to be kept in such custody as the Board directs and is to be used only as authorised by the Board.

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“(3) All courts, judges and persons acting judicially must take judicial notice of the common seal of the Board and must presume that it was duly affixed.

Functions

“27C. The functions of the Board are:

- (a) to give certificates for the purposes of section 54C; and
- (b) to make, and reconsider, decisions, in respect of the retirement of eligible employees on the ground of invalidity as provided by Part IVA; and
- (c) to make determinations in respect of interest as provided by section 154A.

Powers

“27D. Subject to this Act, the Board has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

“Division 2—Constitution, meetings and business of Board

Definitions

“27E. In this Division:

‘**appointed member**’ means a member appointed under paragraph 27F (1) (b);

‘**CSB No. 1**’ means the Commonwealth Superannuation Board of Trustees No. 1 established by Part 6 of the *Superannuation Act 1990*.

Membership of Board

“27F. (1) The Board is to consist of:

- (a) the persons who for the time being are members, or acting as members, of CSB No. 1; and
- (b) 2 part-time members appointed by the Minister.

“(2) One of the members referred to in paragraph (1) (b) must have experience in, and knowledge of, the administration of one or more bodies or authorities established for a public purpose by or under a law or laws of the Commonwealth.

“(3) The other member referred to in paragraph (1) (b) must be a person nominated by the Australian Council of Trade Unions.

“(4) Before nominating a person, the Council must consult with organisations, each of which is:

- (a) an organisation:
 - (i) a substantial number of whose members are eligible employees; and
 - (ii) whose principal purpose is to protect and promote the

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interests of its members in matters concerning their employment; or

- (b) an organisation having as one of its principal purposes the protection and promotion of beneficiaries under this Act in matters concerning their entitlements as beneficiaries.

“(5) The member referred to in subsection (2) holds office at the Minister’s pleasure.

“(6) The member referred to in subsection (3) holds office for the period, not exceeding 3 years, specified in the instrument of appointment.

“(7) A member appointed under this section:

- (a) holds office on such terms and conditions (in respect of matters not provided for by this Act) as are determined by the Minister; and
- (b) is eligible for re-appointment.

Chairperson of Board

“27G. The Chairperson of CSB No. 1 is to be the Chairperson of the Board.

Acting appointments

“27H. (1) The Minister may appoint a person to act as an appointed member:

- (a) during a vacancy in the office of that member, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when that member is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

“(2) A person appointed to act during a vacancy must not continue so to act for a continuous period of more than 12 months.

“(3) Subsections 27F (2), (3) and (4) apply to the appointment of a person under this section in the same way as they apply to the appointment of the member in whose place the person is to act.

Remuneration

“27J. A member of the Board is to be paid remuneration and allowances as determined by the Remuneration Tribunal, but, if no such determination is in operation, is to be paid remuneration and allowances as determined by the Minister.

Leave of absence

“27K. The Minister may grant leave of absence to a member of the Board on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

Resignation of appointed members

“27L. An appointed member may resign office by writing signed by the member and delivered to the Minister.

Termination of appointment of appointed members

“27M. (1) The Minister may terminate the appointment of an appointed member for:

- (a) misbehaviour or physical or mental incapacity; or
- (b) inefficiency or incompetence.

“(2) If an appointed member:

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member’s creditors or makes an assignment of the member’s remuneration for their benefit; or
- (b) fails, without reasonable excuse, to comply with section 27P; or
- (c) is absent, except on leave granted by the Minister, from 3 consecutive meetings of the Board of which the member has had notice;

the Minister may terminate the appointment of the member.

Meetings

“27N. (1) The Board is to hold such meetings as are necessary for the performance of its functions.

“(2) The Chairperson of the Board:

- (a) may convene a meeting at any time; and
- (b) must convene a meeting within 30 days after receiving a written request signed by another member of the Board.

“(3) The Chairperson of the Board is to preside at all meetings at which he or she is present.

“(4) If the Chairperson of the Board is not present at a meeting:

- (a) a member nominated by him or her is to preside; or
- (b) if no member is so nominated—the members present are to elect one of their number to preside.

“(5) At a meeting, 5 members form a quorum.

“(6) Decisions at a meeting must be affirmed by at least 5 votes of members present at the meeting.

“(7) The Board must keep accurate records of all its meetings.

“(8) In this section:

‘**Chairperson of the Board**’ includes a person who is acting as Chairperson of CSB No. 1;

'member' includes a person who is acting as an appointed member or as a member of CSB No. 1.

Disclosure of interests

"27P. (1) Each member of the Board must:

- (a) as soon as practicable after, but in any case not later than 60 days after, becoming a member of the Board; and
- (b) as soon as practicable after, but in any case not later than 60 days after, each anniversary of becoming a member of the Board;

present to a meeting of the Board a statement in writing setting out particulars of those interests, whether pecuniary or otherwise and whether direct or indirect, of the member as at the day of becoming a member of the Board or as at that anniversary, as the case requires, that could reasonably be expected to conflict with the proper performance of the member's duties as a member.

"(2) If:

- (a) a member of the Board acquires an interest, whether pecuniary or otherwise and whether direct or indirect, that could reasonably be expected to conflict with the proper performance of the member's duties as a member; and
- (b) a statement containing particulars of the interest has not been given to a meeting of the Board under subsection (1);

the member must, as soon as possible after acquiring the interest, present to a meeting of the Board a statement in writing setting out particulars of the interest.

"(3) A statement presented to a meeting under subsection (1) or (2) must be incorporated in the minutes of the meeting.

"(4) A member of the Board who has a direct or indirect pecuniary interest in a matter being considered by the Board must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

"(5) A disclosure under subsection (4) must be recorded in the minutes of the meeting and the member must not, unless the Board or the Minister otherwise determines:

- (a) be present during any deliberation of the Board with respect to that matter; or
- (b) take part in any decision of the Board with respect to that matter.

"(6) For the purpose of making a determination by the Board under subsection (5), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Board for the purpose of making the determination; or

(b) take part in making the determination.

“(7) Subsection (4) applies whether or not particulars of the interest in question have been disclosed under subsection (1) or (2).

Delegation by Board

“27Q. The Board may delegate to:

- (a) a member of the Board; or
- (b) the Commissioner; or
- (c) a member of the staff referred to in section 26;

all or any of its powers under this Act or the regulations except its power to reconsider its own decisions or decisions made by its delegates.

Indemnification of members of the Board

“27R. (1) Any matter or thing done, or omitted to be done, in good faith by:

- (a) a member of the Board in the performance of functions under this Act; or
- (b) a delegate of the Board in the performance of functions under this Act;

does not subject him or her to any action, liability, claim or demand.

“(2) Subsection (1) does not preclude the Board from being liable to any action, liability, claim or demand.

Vacancies not to invalidate actions of Board

“27S. An act done by the Board is not invalid merely because of a vacancy or vacancies in the membership of the Board.

Defective appointment not invalid etc.

“27T. (1) The appointment of a person as an appointed member is not invalid because of a defect or irregularity in or in connection with the appointment.

“(2) Anything done by or in relation to a person purporting to act under an appointment under section 27H is not invalid merely because:

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in or in connection with the appointment; or
- (c) the occasion for the person to act had not arisen or had ceased; or
- (d) the appointment had ceased to have effect.

“(3) Subsection 24 (2) of the *Superannuation Act 1990* extends to anything done for the purposes of this Act.

Staffing

“27U. (1) The Commissioner is responsible for the provision of administrative services to the Board in the performance of its functions.

“(2) In the discharge of functions under this section, the Commissioner must act in accordance with any policies determined, and any directions given, by the Board.

“(3) Anything done by the Commissioner in the name of, or on behalf of, the Board is to be taken to have been done by the Board.”.

Objective and duties of Trust

24. Section 29A of the Principal Act is amended:

(a) by inserting after subsection (1) the following subsections:

“(1A) In addition to its functions under subsection (1), the Trust may:

(a) give advice with respect to the management, the investment, or the management of the investment, of:

(i) any funds of a Commonwealth or Territory body;
or

(ii) any funds held in trust for the benefit of a Commonwealth or Territory body; or

(iii) any funds held in trust for the purposes of a superannuation scheme established by a person or body for the benefit of persons employed by the Commonwealth or by a Commonwealth or Territory body; or

(iv) any funds of, or any funds held in trust for the benefit of, any other person or body; or

(b) undertake, as an investment manager, to invest, and manage the investment of:

(i) any funds mentioned in subparagraph (a) (i), (ii) or (iii); or

(ii) any funds mentioned in subparagraph (a) (iv); or

(c) in the course of, or for the purposes of:

(i) trade and commerce with other countries; or

(ii) trade and commerce among the States; or

(iii) trade and commerce between a State and a Territory or between Territories; or

(iv) trade and commerce within a Territory;

give advice of a kind mentioned in paragraph (a), or do any of the things mentioned in paragraph (b), in relation to any funds; or

(d) for the purpose of assisting corporations (being foreign corporations, or trading or financial corporations, to

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which paragraph 51 (xx) of the Constitution applies), give advice of a kind mentioned in paragraph (a), or do any of the things mentioned in paragraph (b), in relation to any funds.

“(1B) In subsection (1A):

‘Commonwealth or Territory body’ means:

- (a) a body corporate incorporated for a public purpose by an Act or regulations made under an Act or by a law of a Territory; or
- (b) an authority or body, not being a body corporate, established for a public purpose by, or under, an Act or regulations made under an Act or by or under a law of a Territory; or
- (c) a company or other body corporate incorporated under an Act or a law of a State or Territory, being a company or body corporate in which the Commonwealth has a controlling interest; or
- (d) a company or other body corporate incorporated under an Act or a law of a State or Territory, being a company or body corporate in which:
 - (i) an authority or body referred to in paragraph (a), (b) or (c) has; or
 - (ii) the Commonwealth and one, or more than one, such authority or body together have; or
 - (iii) 2 or more such authorities or bodies together have; a controlling interest.

“(1C) The Trust must not perform any of its functions otherwise than for a purpose in respect of which the Parliament has power to make laws.

“(1D) In spite of subsection (1C), it is the intention of the Parliament that, where a State law confers a power or function on the Trust, the Trust may, with the written approval of the Minister, exercise that power or perform that function, as the case may be.”;

- (b) by inserting at the end of paragraphs (2) (e) and (f) “and any other services provided by the Trust”.

25. (1) Sections 30, 30A and 31 of the Principal Act are repealed and the following section is substituted:

Membership of Trust

“30. (1) The Trust consists of the following members:

- (a) the Chairperson;
- (b) the Chief Executive Officer;

(c) not less than 3, and not more than 5, other members.

“(2) The members referred to in paragraphs (1) (a) and (c):

(a) are part-time members; and

(b) are appointed by the Governor-General.

“(3) A part-time member:

(a) holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment; and

(b) is eligible for re-appointment.

“(4) The appointment of a part-time member is not invalid because of a defect or irregularity in connection with the member’s appointment.

“(5) A part-time member holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.”.

(2) The persons who, immediately before 1 July 1990, were members of the Trust cease on that day to be such members.

Remuneration and allowances

26. Section 32 of the Principal Act is amended by omitting from subsections (1) and (2) “Chairperson and the”.

Leave of absence

27. Section 33 of the Principal Act is amended by inserting “part-time” before “member”.

Resignation

28. Section 34 of the Principal Act is amended by inserting “part-time” before “member” (first occurring).

Disclosure of interests

29. Section 34A of the Principal Act is amended:

(a) by omitting from paragraph (1) (a) “appointment as” and substituting “becoming”;

(b) by omitting from paragraph (1) (b) “the member’s appointment as” and substituting “becoming”;

(c) by omitting from subsection (1) “appointment” and substituting “becoming a member of the Trust”.

Termination of appointment

30. Section 35 of the Principal Act is amended:

(a) by inserting in subsection (1) “part-time” before “member”;

(b) by omitting from subsection (2) “If—” and paragraphs (a), (b) and (c) and substituting the following words and paragraphs:

“If a part-time member of the Trust:

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- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit; or
- (b) fails, without reasonable excuse, to comply with the member's obligations under section 34A; or
- (c) is absent, except on leave granted by the Minister, from 3 consecutive meetings of the Trust of which the member has had notice;"

Acting appointments

31. Section 36 of the Principal Act is amended:

- (a) by inserting in subsection (2) "(other than the Chairperson)" after "Trust" (first occurring);
- (b) by inserting in paragraphs (2) (a) and (b) "such" before "a part-time member";
- (c) by omitting from paragraph (2) (b) "that" and substituting "his or her";
- (d) by omitting subsections (3), (4), (6), (7), (8) and (9).

Meetings of Trust

32. Section 37 of the Principal Act is amended by omitting subsections (4) and (5) and substituting the following subsections:

"(4) If the Chairperson is not present at a meeting of the Trust, the members present must appoint one of their number to preside at the meeting.

"(5) At a meeting of the Trust, a quorum is constituted if the number of members present exceeds half of the number of members for the time being holding office."

Repeal of section 39

33. Section 39 of the Principal Act is repealed.

Establishment of Fund

34. Section 40 of the Principal Act is amended by omitting from subsection (1) "Superannuation Fund" and substituting "Commonwealth Superannuation Fund No. 2".

35. After section 42 of the Principal Act the following section, Division and heading are inserted:

Certain documents not liable to stamp duty etc.

"43. An instrument or document that has been made, executed or given in the course of, or for a purpose connected with or arising out of, the exercise by the Trust of its power to invest moneys of the Fund

is not liable to stamp duty or other tax under a law of the Commonwealth, of a State or of a Territory.

“Division 2A—Provisions relating to certain services provided by Trust

Powers of Trust as investment manager etc.

“43A. (1) Where the Trust provides services under subsection 29A (1A), the Trust has, subject to any agreement entered into between the Trust and the person or body requesting the services, power to do, in Australia or elsewhere, all things necessary or convenient to be done for or in connection with, or as incidental to, the provision of those services and, in particular, has power to do any of the following:

- (a) to give guarantees;
- (b) to underwrite or sub-underwrite any form of investment;
- (c) to establish unit trusts, including pooled superannuation trusts (within the meaning of Part IX of the *Income Tax Assessment Act 1936*);
- (d) to establish approved deposit funds (within the meaning of the *Occupational Superannuation Standards Act 1987*);
- (e) to appoint agents or attorneys;
- (f) to act as agents for other persons;
- (g) to engage consultants and investment managers;
- (h) to open and maintain bank accounts.

“(2) Without limiting the generality of subsection (1), the power given to the Trust to do all things necessary or convenient to be done as incidental to the provision of services includes, where the services consist of or include the investment, or the management of the investment, of any funds, the power to take action to control or manage, or to enhance or protect the value of, any investment made out of those funds or to enhance or protect the return of any such investment.

“(3) Funds that the Trust has undertaken to invest under subsection 29A (1A) may be invested in any manner and, in particular, may be invested by the Trust jointly with another person or other persons.

Trust may charge

“43B. (1) The Trust may charge for services provided under subsection 29A (1A).

“(2) The following amounts must be paid into the Fund:

- (a) amounts received by the Trust for services provided under subsection 29A (1A);
- (b) amounts received by the Trust for services provided in connection with the exercise of a power, or the performance of a function, referred to in subsection 29A (1D).

Costs

“43C. The costs of, and incidental to, the provision of any services referred to in subsection 43B (2) must be paid out of the Fund.

“Division 2B—Accounts and Records.”.

Trust to keep accounts and records

36. Section 44 of the Principal Act is amended:

- (a) by omitting from subsection (1) “the Fund” and substituting “its operations”;
- (b) by adding at the end of subsection (2) “in respect of the Fund”;
- (c) by omitting from subsection (3) “into or out of the Fund” and substituting “by the Trust”.

37. After section 44 of the Principal Act the following Division is inserted:

“Division 2C—The Chief Executive Officer

Chief Executive Officer

“44AA. (1) There shall be a Chief Executive Officer of the Trust.

“(2) The Chief Executive Officer is appointed by the Governor-General.

“(3) A person who is 65 years old may not be appointed as Chief Executive Officer and a person may not be appointed as Chief Executive Officer for a period that ends after the day on which the person reaches the age of 65 years.

“(4) A person appointed as Chief Executive Officer holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment of the person.

“(5) The Chief Executive Officer holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

“(6) The appointment of a person as Chief Executive Officer is not invalid because of a defect or irregularity in connection with the person’s appointment.

Duties of Chief Executive Officer

“44AAB. (1) The Chief Executive Officer manages the affairs of the Trust subject to the directions of, and in accordance with policies determined by, the Trust.

“(2) All acts and things done in the name of, or on behalf of, the Trust by the Chief Executive Officer are taken to have been done by the Trust.

Chief Executive Officer not to engage in other paid employment

“44AAC. The Chief Executive Officer must not engage in paid employment outside the duties of his or her office except with the approval of the Minister.

Remuneration and allowances

“44AAD. (1) The Chief Executive Officer is to be paid such remuneration as is determined by the Remuneration Tribunal, but if no determination of that remuneration by the Tribunal is in operation, the Chief Executive Officer is to be paid such remuneration as is prescribed.

“(2) The Chief Executive Officer is to be paid such allowances as are prescribed.

“(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Leave of absence

“44AAE. The Minister may grant leave of absence to the Chief Executive Officer on such terms and conditions as to remuneration or otherwise as the Minister determines.

Resignation

“44AAF. The Chief Executive Officer may resign office by writing signed by him or her and delivered to the Governor-General.

Termination of appointment

“44AAG. (1) The Governor-General may terminate the appointment of the Chief Executive Officer for:

- (a) misbehaviour or physical or mental incapacity; or
- (b) inefficiency or incompetence.

“(2) If the Chief Executive Officer:

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (b) fails, without reasonable excuse, to comply with his or her obligations under section 34A; or
- (c) without the approval of the Minister, engages in paid employment outside the duties of his or her office; or
- (d) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any 12 months;

the Governor-General must, by notice published in the *Gazette*, declare that the office of the Chief Executive Officer is vacant, and thereupon the office becomes vacant.

Acting Chief Executive Officer

“44AAH. (1) The Minister may appoint a person (not being a part-time member of the Trust) to act as Chief Executive Officer:

- (a) during a vacancy in the office of Chief Executive Officer (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Chief Executive Officer is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office;

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

“(2) Anything done by or in relation to a person purporting to act under this section is not invalid on the grounds that:

- (a) the occasion for the person’s appointment had not arisen; or
- (b) there is a defect or irregularity in connection with the person’s appointment; or
- (c) the person’s appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Delegations

“44AAJ. The Chief Executive Officer may, by signed instrument, delegate to an officer or employee of the Trust all or any of the powers of the Chief Executive Officer under this Act.”.

Basic contributions

38. Section 45 of the Principal Act is amended by inserting “, 51B” after “51A”.

Decreases in salary

39. Section 47 of the Principal Act is amended:

- (a) by omitting from subsection (1) “to be that highest rate” and substituting the following words and paragraphs:

“to be:

- (a) where paragraph (b) does not apply—that highest rate; or

- (b) where, if:

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

- (ii) account were taken of any increase in salary that he would have received during that period other than an increase resulting from his progressing to

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a higher level of salary within a graduated range of salaries applicable to the office held by him or the employment in which he was employed;

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.”;

- (b) by omitting from subsection (3) “to be that highest rate” and substituting the following words and paragraphs:

“to be:

- (c) where paragraph (d) does not apply—that highest rate;
or

- (d) where, if:

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

- (ii) account were taken of any increase in salary that he would have received during that period other than an increase resulting from his progressing to a higher level of salary within a graduated range of salaries applicable to the office held by him or the employment in which he was employed;

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 salary—that imputed annual rate of salary.”.

40. Section 51A of the Principal Act is repealed and the following sections are substituted:

Maternity and parental leave

“51A. (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 of the person; or
(ii) the termination (otherwise than by child-birth) of a pregnancy of the person; or
(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 the Commissioner, 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 by the person on that day.

“(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:
 - (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.

Election to cease making contributions

“51B. (1) This section applies to a person:

- (a) who is an eligible employee; and
- (b) whose period of contributory service, if the person were to cease to be an eligible employee, would exceed 40 years.

“(2) A person to whom this section applies may elect in writing addressed to the Commissioner, to cease paying contributions.

“(3) Where a person makes an election under this section, the person is not required or permitted to make contributions on any contribution day occurring while the election has effect.

“(4) A person who has made an election under this section may, by writing addressed to the Commissioner, revoke the election.

“(5) An election ceases to have effect at the end of the day on which it is revoked.”.

41. After Part IV of the Principal Act the following Part is inserted:

“PART IVA—RETIREMENT ON GROUND OF INVALIDITY

“Division 1—Preliminary

Interpretation

“54A. In this Part, unless the contrary intention appears:

‘Comcare’ means the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees established under the *Commonwealth Employees’ 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 *Commonwealth Employees’ Rehabilitation and Compensation Act 1988* applies in relation to the eligible employee—compensation is payable under section 19 or 22 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.

Meaning of “totally and permanently incapacitated”

“54B. 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:

- (a) is reasonably qualified by education, training or experience; or
- (b) could become reasonably qualified after retraining.

“Division 2—Certification by Board

Eligible employee not to be retired on ground of invalidity without certificate from Board

“54C. (1) In spite of anything contained in any Act, award, determination or contract of employment, an eligible employee who has not reached his or her maximum retirement 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 the Board 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) The Board must not give a certificate in respect of an eligible employee under subsection (1) unless the Board 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.

“Division 3—Assessment process

Interpretation

“54D. In this Division:

‘retirement’ means retirement on the ground of invalidity.

Request for approval of retirement

“54E. A request to the Board 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.

Assessment panel

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

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

“(3) The Board:

- (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 the Board, 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 the Board 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 the Board 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 the Board.

Board to seek recommendations of Comcare

“54G. If the request to the Board was made in relation to a condition in respect of which the eligible employee is entitled to receive compensation under the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*, the Board must, subject to subsection 54H (1), also ascertain whether or not Comcare recommends that the eligible employee be retired because he or she is totally and permanently incapacitated.

Board to decide whether to approve retirement

“54H. (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;

the Board is satisfied that, because of his or her mental or physical condition, the eligible employee is totally and permanently incapacitated, the Board 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 under section 54G.

“(2) If subsection (1) does not apply, the Board, after:

- (a) taking into consideration the recommendations made to the Board under subsection 54F (4) and section 54G; 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 education, training or experience or could become reasonably qualified after retraining;

must decide whether or not to approve the retirement of the eligible employee.

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

Eligible employee etc. to be informed of decision of Board

“54J. The Board 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
- (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 the Board in making its decision—a copy of the recommendations of the panel.

“Division 4—Pre-assessment payments and rehabilitation

Determination of requests, payments and rehabilitation programs to be in accordance with the Rules for the administration of the Superannuation (1990) Scheme

“54K. Divisions 2 and 3 of Part 12 of the Rules for the administration of the Superannuation (1990) Scheme apply in relation to a person to whom a request under section 54E relates as if:

- (a) any reference in those Divisions to the Board were a reference to the Board established under section 27A 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
- (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.

Making of payments

“54L. (1) Payments to a person under Division 2 of Part 12 of the Rules for the administration of the Superannuation (1990) 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 out of the Consolidated Revenue Fund, which is appropriated accordingly.

“Division 5—Reconsideration of Decisions

“Subdivision A—Preliminary

Interpretation

“54M. In this Division, unless the contrary intention appears:
‘Committee’ means a Reconsideration Advisory Committee established under section 54N;
‘decision’ means a decision made under this Part.

“Subdivision B—Reconsideration Advisory Committees

Establishment

“54N. The Board must establish such number of Reconsideration Advisory Committees as the Board considers necessary.

Membership of Committee

“54P. (1) A Committee comprises such number of persons as the Board determines.

“(2) The qualifications of each member are such as the Board determines.

Functions of Committee

“54Q. (1) The functions of a Committee are:

- (a) to review any decision referred to it under this Division; and
- (b) to make recommendations to the Board in relation to the decision.

“(2) When reviewing a decision, a Committee:

- (a) must take into account any evidence relevant to the decision that is submitted to it; and

- (b) may also take steps to obtain any other evidence that it considers necessary for a proper review of the decision.

Proceedings of Committee

“54R. Subject to any directions given by the Board, a Committee may regulate its proceedings as the Committee thinks fit.

“Subdivision C—Reconsideration of decision made by delegate

Application to Board

“54S. (1) A person affected by a decision made by a delegate of the Board may apply to the Board for reconsideration of the decision.

“(2) An application may be:

- (a) in writing addressed to the Board and setting out the particulars of the decision that the person wishes to be reconsidered; or
- (b) in any other form that is acceptable to the Board.

Decision to be referred to Committee

“54T. (1) The Board must refer the decision to which an application relates to a Committee.

“(2) The Board may also, on its own motion, refer a decision of a delegate to a Committee.

Determination by Board

“54U. (1) After taking into account, in relation to a decision referred to a Committee:

- (a) the recommendations of the Committee; and
- (b) any other matter that the Board considers relevant;

the Board must, by instrument in writing setting out the reasons for so doing, affirm or vary the decision or set it aside and substitute another decision for it.

“(2) The Board must make a copy of an instrument referred to in subsection (1) available to the applicant.

“Subdivision D—Reconsideration of decision made by Board

Application to Board

“54V. (1) A person affected by a decision made by the Board (including a decision under section 54U) may apply to the Board for a reconsideration of that decision.

“(2) An application must:

- (a) be in writing addressed to the Board; and
- (b) set out the particulars of the decision that the person wishes to be reconsidered; and

(c) specify the grounds for reconsideration of those particulars.

Payment of fees

“54W. (1) Such fees as are prescribed are payable to the Board by a person who makes an application under section 54V.

“(2) Any fees received by the Board under subsection (1) are to be paid into the Consolidated Revenue Fund.

“(3) The regulations may make provision for and in relation to the refund of any fees paid under subsection (1).

Decision to be reconsidered only on basis of new evidence

“54X. (1) A decision is to be reconsidered only if there is evidence relevant to the decision that was not previously taken into account by the Board in making the decision.

“(2) If an application is not supported by evidence in accordance with subsection (1), the Board must dismiss the application.

“(3) The dismissal of an application in respect of a decision does not preclude the applicant from subsequently submitting another application in respect of the decision.

Decision to be referred to Committee

“54Y. (1) If the Board does not dismiss an application under section 54X, the Board must refer the decision to which the application relates to a Committee.

“(2) The Board may also, on its own motion, refer any of its decisions to a Committee.

Determination by Board

“54Z. (1) After taking into account, in relation to a decision referred to a Committee:

(a) the recommendations of the Committee; and

(b) any other matter that the Board considers relevant;

the Board must, by instrument in writing setting out the reasons for so doing, affirm or vary the decision or set it aside and substitute another decision for it.

“(2) The Board must make a copy of an instrument referred to in subsection (1) available to the applicant.

“Division 6—Administrative costs

Costs to be paid from Consolidated Revenue Fund

“54ZA. The following costs:

(a) any cost incurred in relation to a panel of persons appointed under subsection 54F (1);

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- (b) the cost of any medical examination that an eligible employee is required to undergo under subsection 54F (3);
- (c) the cost of any rehabilitation program met by the Board under Division 3 of Part 12 of the Rules for the administration of the Superannuation (1990) Scheme as made applicable in relation to the person by section 54K;

are payable from the Consolidated Revenue Fund, which is appropriated accordingly.”.

Entitlement to age retirement benefit

42. Section 55 of the Principal Act is amended:

- (a) by inserting in subsection (1) “if the person does not make an election under section 62 and” after “then,”;
- (b) by inserting in subsection (2) “if the person does not make an election under section 62 and” after “then,”.

Rate of standard age retirement pension

43. Section 56 of the Principal Act is amended:

- (a) by omitting subsection (2) and substituting the following subsection:

“(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;

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 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.”;

- (b) by omitting from subsection (3) all words from and including “the annual rate of that pension” and substituting the following words and paragraphs:

“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:

P₁ is the percentage referred to in paragraph (c); and

D is the number of days included in that part of a year; and

P₂ 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.”;

- (c) by omitting from subsection (4) all words from and including “the annual rate of that pension” and substituting the following words and paragraph:

“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."

Early retirement—voluntary or involuntary retirement

44. Section 58 of the Principal Act is amended:

(a) by omitting from subsection (3) "Where, before a person who is an eligible employee attains the age of 60 years, he ceases to be an eligible employee by reason that—" and substituting "Where a person ceases to be an eligible employee because:";

(b) by omitting paragraph (3)(a) and substituting the following paragraph:

"(a) if the person has attained his or her minimum retiring age—the person is retired, otherwise than at his or her own request;"

Entitlement to early retirement benefit

45. Section 59 of the Principal Act is amended by inserting "who has not attained the age of 60" after "Where a person".

Rate of standard early retirement pension

46. Section 60 of the Principal Act is amended by omitting "4 per centum" and substituting "3½ per centum".

Election for lump sum benefit in case of involuntary retirement

47. Section 62 of the Principal Act is amended:

(a) by inserting in subsection (1) "55 or" after "payable under section";

(b) by inserting in subsection (2) "55 or" after "entitled under section".

Lump sum benefit payable on commutation

48. Section 65 of the Principal Act is amended by adding at the end the following subsection:

“(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.”.

Entitlement to invalidity pension

49. Section 66 of the Principal Act is amended by omitting from subsection (3) “as if” and substituting “, as if”.

Invalidity benefit where pension not reduced on medical grounds and election not made under section 68 or 69

50. Section 67 of the Principal Act is amended:

- (a) by omitting subsection (3) and substituting the following subsection:

“(3) Where the period of contributory service of a person to whom this section applies exceeds 30 years, 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:

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:

$$P + \frac{D \times 0.25}{365},$$

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where:

P is the percentage referred to in paragraph (b); and

D is the number of days included in that part of a year.”;

- (b) by omitting from subsection (4) all words from and including “is such percentage” and substituting the following word and paragraphs:

“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:

P₁ is the percentage referred to in paragraph (a); and

D is the number of days included in that part of a year; and

P₂ 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.”.

Election where benefit not reduced on medical grounds

51. Section 68 of the Principal Act is amended:

- (a) by omitting subsection (3) and substituting the following subsection:

“(3) Where a person makes an election under subsection (1) and the period of contributory service of the person exceeds 30 years, 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:

$$50 + \frac{D \times 0.25}{365},$$

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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.”;

- (b) by omitting from subsection (4) all words from and including “is such percentage” and substituting the following word and paragraphs:

“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 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:

P₁ is the percentage referred to in paragraph (a); and

D is the number of days included in that part of a year;
and

P₂ 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.”.

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

52. Section 70 of the Principal Act is amended:

- (a) by omitting from subsection (2) all words from and including “is such percentage” and substituting the following word and paragraphs:

“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:

$$P + \frac{D \times 3.5}{365};$$

where:

P is the percentage referred to in paragraph (a); and

D is the number of days in that part of a year;”;

- (b) by omitting paragraphs (3)(a) and (b) and substituting the following paragraphs and words:

“(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:

$$P + \frac{D_1 \times 1.4}{365}; \text{ and}$$

- (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:

$$F + \frac{D_2 \times 0.05}{365};$$

where:

P is the percentage referred to in subparagraph (a) (i); and

D₁ 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

D₂ is the number of days in the part of a year referred to in subparagraph (b) (ii).”;

- (c) by omitting from subsection (4) all words from and including “is such percentage” and substituting the following word and paragraphs:

“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.”.

Election where benefit reduced on medical grounds, period of contributory service not less than 8 years

53. Section 71 of the Principal Act is amended:

- (a) by omitting from subsection (2) all words from and including

“is such percentage” and substituting the following word and paragraphs:

“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:

$$P + \frac{D \times 2.5}{365};$$

where:

P is the percentage referred to in paragraph (a); and

D is the number of days in that part of a year;”;

- (b) by omitting paragraphs (3) (a) and (b) and substituting the following paragraphs and words:

“(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:

$$P + \frac{D_1 \times 1}{365}; \text{ and}$$

- (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,

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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:

$$F + \frac{D_2 \times 0.05}{365};$$

where:

P is the percentage referred to in subparagraph (a) (i); and

D₁ 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

D₂ is the number of days in the part of a year referred to in subparagraph (b) (ii).";

- (c) by omitting from subsection (4) all words from and including "is such percentage" and substituting the following word and paragraphs:

"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

D is the number of days in the part of a year included in the person's period of contributory service.".

Rate of spouse's standard pension on death of age or early retirement pensioner

54. Section 94 of the Principal Act is amended by adding at the end the following subsection:

"(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 (1), spouse's standard pension is payable to the spouse of the deceased pensioner at the same 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.”.

Rate of spouse’s additional pension on death of age or early retirement pensioner

55. Section 95 of the Principal Act is amended by adding at the end the following subsection:

“(2) In spite of subsection (1), on each of the 7 pension pay days immediately following the death of a pensioner referred to in subsection 93 (1) who did not make an election under section 64, spouse’s additional pension is payable to the spouse of the deceased pensioner at the same 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.”.

Rate of spouse’s pension on death of invalidity pensioner

56. Section 96 of the Principal Act is amended by adding at the end the following subsection:

“(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.”.

57. After section 96 of the Principal Act the following section is inserted in Division 3 of Part VI:

Set off against pension in certain circumstances

“96A. 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, credit union or building society (in this section called the ‘**financial institution**’); and
- (c) the financial institution 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 financial institution 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 financial institution 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)."

58. After Division 3 of Part VI of the Principal Act the following Division is inserted:

"Division 3A—Spouse's benefit attributable to partially dependent children

Extra spouse's pension

"96B. (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 section 94 or 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), 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, 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, 90, 94 or 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 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, then, for the purposes of subsection (2), the applicable percentage is:

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- (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.”.

59. Before section 97 of the Principal Act the following section is inserted in Division 4 of Part VI:

Interpretation

“96C. In this Division, a reference to an eligible child includes a reference to a partially dependent child.”.

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

60. Section 99 of the Principal Act is amended:

- (a) by omitting from subsection (2) “Where” and substituting “Subject to subsection (3), where”;
- (b) by adding at the end the following subsection:

“(3) Where:

- (a) the Commissioner 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 the Commissioner, 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

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in respect of the deceased eligible employee under Part VIA.”.

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

61. Section 101 of the Principal Act is amended:

- (a) by omitting from subsection (2) “Where” and substituting “Subject to subsection (3), where”;
- (b) by adding at the end the following subsection:

“(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
- (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 the Commissioner, 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.”.

62. After section 109 of the Principal Act the following section is inserted in Division 4 of Part VI:

Orphan pension—when there are partially dependent children

“109A. (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:
 - (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.”.

Eligible employee or retirement pensioner survived by more than one spouse

63. Section 110 of the Principal Act is amended:

- (a) by inserting in paragraph (7) (b) “or a partially dependent child” and “or partially dependent children” after “eligible child” and “eligible children” respectively;
- (b) by omitting from paragraph (8) (e) “an eligible child or eligible children” and substituting “a child or children”;
- (c) by omitting from subsection (9) “eligible”.

64. After section 110 of the Principal Act the following Part is inserted:

“PART VIA—PRODUCTIVITY SUPERANNUATION

Interpretation

“110A. In this Part, unless the contrary intention appears:

‘Department’ means:

- (a) a Department of State; or
- (b) a Department of the Parliament; or
- (c) a branch or part of the Australian Public Service in relation to which a person has, under an Act, the powers of, or exercisable

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by, the Secretary of a Department of the Australian Public Service;

‘designated employer’, in relation to a productivity 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 by 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;

‘notional interim benefit’, in relation to a person, has the same meaning as in section 8A of the *Superannuation (Productivity Benefit) Act 1988*;

‘preservation fund’ means a fund, any productivity benefits or productivity related benefits that are transferred to which are preserved in accordance with standards prescribed by regulations under the *Occupational Superannuation Standards Act 1987*;

‘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;

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'productivity related benefit' means a benefit not payable under this Act that consists of, or includes, an amount like the amount described in paragraph 110Q (1) (a).

Rate of salary

"110B. For the purposes of section 110C, the fortnightly rate of salary of a productivity employee is taken to be 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.

Productivity contributions

"110C. (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

| <i>Fortnightly rate of salary</i> | <i>Fortnightly productivity contribution</i> |
|---------------------------------------|---|
| 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 the Minister 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.

Variation of Table

"110D. The Minister may, before the commencement of a period (which may be a period commencing on 1 July 1990), 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).

Exclusion of certain employees

"110E. (1) The Minister may declare that a specified class of eligible employees are not to be productivity employees for the purposes of this Part.

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“(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.

Inclusion of certain employees

“110F. (1) The Minister may declare an eligible employee described in subparagraph (a) (i), (ii) or (iii) of the 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.

Declarations

“110G. Declarations under section 110D, 110E or 110F are:

- (a) statutory rules for the purposes of the *Statutory Rules Publication Act 1903*; and
- (b) disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Payments of productivity contributions to Commissioner

“110H. (1) Subject to subsection (3), a designated employer of a productivity employee is to pay to the Commissioner:

- (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 (2)—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 for a fortnight is payable on the contribution day on which the basic contribution for the fortnight is payable by the employee.

“(3) Where the Commissioner 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;

the Commissioner 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.

Source of productivity contributions

“110J. 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.

Repayments of interim benefits

“110K. (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 the Commissioner 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 may be transferred , or paid, to the Commissioner; 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 the Commissioner the amount received.

“(2) A payment to the Commissioner may only be made within the period of 3 months commencing on 1 July 1990 or such longer period as the Commissioner allows for the particular payment.

Payments of certain benefits to Fund by new productivity employees

“110L. (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 the Commissioner 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 may be transferred, or paid, to the Commissioner; 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 the Commissioner the amount received.

“(2) A payment to the Commissioner 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 the Commissioner allows for the particular payment.

Payments of certain benefits to Fund by productivity employees

“110M. (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 the Commissioner all or part of the amount.

“(2) A payment to the Commissioner 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 the Commissioner allows for the particular payment.

Commissioner to pay Fund

“110N. (1) The Commissioner must pay to the Fund all amounts received by him or her under section 110H, 110K, 110L or 110M.

“(2) Where a productivity employee pays an amount to the Commissioner under section 110K, 110L or 110M, being an amount that:

- (a) before the payment, has neither been preserved in a fund nor used to buy a deferred annuity; and
- (b) is not required by a law or industrial award to be preserved in a fund or used to buy a deferred annuity;

the amount is, for the purposes of this Act, taken to be an amount of supplementary contributions paid by the employee under this Act.

Productivity benefit

“110P. 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, equal to the accumulated employer contributions in respect of the person, becomes payable in respect of the person.

Accumulated employer contributions

“110Q. (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 sum of the productivity contributions paid or payable in respect of the person; and
- (b) interest on that amount; and
- (c) where the person was an eligible employee on, and at all times after, 30 June 1990—an amount equal to his or her notional interim benefit; and
- (d) interest on the amount referred to in paragraph (c); and

- (e) where an amount has been paid or transferred to the Commissioner under section 110K, 110L or 110M in respect of the employee, other than an amount to which subsection 110N (2) applies—the amount paid or transferred; and
- (f) interest on the paid or transferred amount referred to in paragraph (e).

“(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.

Payment of productivity benefit

“110R. (1) Subject to subsection (2), where a productivity benefit becomes payable in respect of a person:

- (a) because the person:
 - (i) retired on or after attaining his or her maximum retirement age; or
 - (ii) retired or resigned on or after attaining the age of 60 years but before attaining his or her maximum retirement age; or
 - (iii) where the person has attained the age of 55 years—is deemed, under subsection 58 (2), to have retired voluntarily; or
 - (iv) where the person has attained the age of 55 years and has not made an election under section 137—is deemed, under subsection 58 (3), to have retired involuntarily; or
- (b) because of the person’s retirement on the ground of invalidity; the benefit is payable to the person.

“(2) Where:

- (a) subparagraph (1) (a) applies; 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 or 61 (whichever is applicable) being greater than the maximum amount within the meaning of section 57 or 61 (whichever is applicable).

“(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

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benefit applied for the provision of the additional pension is taken to be accumulated contributions.

“(4) Subject to subsections (5), (6), (7) and (9), where:

- (a) productivity benefit becomes payable in respect of a person because the person, before attaining the age of 55 years, has retired involuntarily; and
- (b) the person has not elected to preserve his or her superannuation rights under section 137;

the benefit:

- (c) where the amount of the benefit is less than \$500—is payable to the person; or
- (d) where the amount of the benefit is \$500 or more—must, in accordance with a nomination made by the person:
 - (i) be preserved in a preservation fund nominated by the person; or
 - (ii) be applied to the purchase of a deferred annuity nominated by the person.

“(5) Where paragraph (4) (c) applies, the person may elect to have some or all of the benefit:

- (a) preserved in a preservation fund nominated by the person; or
- (b) applied to the purchase of a deferred annuity.

“(6) Subject to subsection (7), where paragraph (4) (d) applies but the person fails, within 2 months after the benefit becomes payable, to make a nomination, the benefit must be preserved in a preservation fund nominated by the Commissioner.

“(7) Where:

- (a) paragraph (4) (d) applies; and
- (b) the Commissioner is, and declares that he or she is, satisfied that the conditions referred to in paragraphs 6.1.1. (e) and (f) of the Rules for the administration of the Superannuation (1990) Scheme apply;

the benefit may be paid to the person.

“(8) Subject to section 110S, where a productivity benefit becomes payable in respect of a productivity employee otherwise than in the circumstances referred to in subsection (1) or (4) and the person:

- (a) has not elected to preserve his or her superannuation rights under section 137; and
- (b) is not a person to whom section 110S applies;

then subsections (4), (5), (6) and (7) apply as if the benefit had become payable because of the involuntary retirement of the person before attaining the age of 55 years.

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“(9) In this section, ‘**deferred annuity**’ means an annuity that cannot be surrendered or assigned by the person in respect of whom it was purchased until that person attains the age of 55 years and under which benefits are payable to the person only in one of the following circumstances:

- (a) the attainment by the person of an age of not less than 55 years;
- (b) the retirement of the person from the workforce before attaining the age of 55 years on the ground of permanent invalidity;
- (c) the death of the person;
- (d) the permanent departure of the person from Australia;
- (e) such other circumstances as the Insurance and Superannuation Commissioner within the meaning of the *Occupational Superannuation Standards Act 1987* approves.

Productivity benefits payable to spouses etc.

“110S. (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 personal representatives or to such person or persons (if any) as the Commissioner determines.”.

Payment of accumulated contributions where no other benefit payable etc.

65. Section 111 of the Principal Act is amended by adding at the end the following subsection:

“(8) In subsection (2), a reference to accumulated contributions includes a reference to accumulated employer contributions.”.

Payments into and out of Consolidated Revenue Fund

66. Section 112 of the Principal Act is amended:

(a) by inserting after subsection (1) the following subsection:

“(1A) Where a productivity benefit within the meaning of Part VIA becomes payable under section 110P in respect of a person, the amount of the Fund accumulated employer contributions in respect of the employee must be paid out of the Superannuation Fund into the Consolidated Revenue Fund.”;

(b) by omitting from subsection (5) all the words after “ceasing to be” and substituting “an eligible employee, less an amount equal to the sum of:

(a) the amount of the person’s accumulated supplementary contributions upon the person last ceasing to be an eligible employee; and

(b) the amount of the person’s Fund accumulated employer contributions upon the person last ceasing to be an eligible employee;

must be paid to the Superannuation Fund out of the Consolidated Revenue Fund, which is appropriated accordingly.”;

(c) by inserting in subsection (6) “and Fund accumulated employer contributions” after “contributions”;

(d) by omitting from subsection (9) all the words after “becoming payable” (first occurring) and substituting “to the person, less an amount equal to the sum of:

(c) the amount of the person’s accumulated supplementary contributions upon that deferred benefit becoming payable to the person; and

(d) the amount of the person’s Fund accumulated employer contributions upon that deferred benefit becoming payable to the person;

must be paid to the Superannuation Fund out of the Consolidated Revenue Fund, which is appropriated accordingly.”;

(e) by inserting in subsection (10) “and Fund accumulated employer contributions” after “contributions”.

Payment of part of spouse’s pension etc. attributable to children

67. Section 114 of the Principal Act is amended:

(a) by omitting from subsection (1) all words to and including “should,” and substituting the following words and paragraphs:

“Where, in the opinion of the Commissioner, payment of:

(a) the part, or any portion of the part, of an instalment of

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spouse's pension attributable to an eligible child or eligible children or to an eligible child or eligible children and a partially dependent child or partially dependent children; or

- (b) an instalment, or any portion of an instalment, of extra spouse's pension attributable to a partially dependent child or partially dependent children or to an eligible child or eligible children and a partially dependent child or partially dependent children;

should,";

- (b) by omitting from subsection (2) "spouse's pension attributable to an eligible child" and substituting "pension";
- (c) by adding at the end the following subsection:

"(3) For the purposes of this section, where there is one, or more than one, child of a deceased eligible employee or pensioner who is a partially dependent child:

- (a) the part (if any) of an instalment of spouse's pension that, but for this subsection, would be attributable to an eligible child or eligible children of the deceased eligible employee or pensioner is taken to be attributable to that eligible child or those eligible children and the partially dependent child or partially dependent children; and
- (b) an instalment of extra spouse's pension is taken to be attributable to the eligible child or eligible children (if any) of the deceased eligible employee or pensioner and the partially dependent child or partially dependent children."

Payment of orphan benefit

68. Section 115 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

"(4) In this section:

'eligible child' has the same meaning as in Division 4 of Part VI;

'orphan benefit' means orphan pension or a lump sum benefit payable under Division 4 of Part VI."

Persons to whom Part applies

69. Section 120 of the Principal Act is amended by omitting "1 month" and substituting "6 months".

Interpretation

70. Section 125 of the Principal Act is amended by omitting from subsection (1) the definition of "employment".

Payment of transfer values to Commissioner

71. Section 128 of the Principal Act is amended by adding at the end the following subsection:

“(7) Where the Commissioner gives under subsection 157(3) a direction to cancel an election made by an eligible employee under subsection (1) of this section:

- (a) there must be paid to the Commissioner out of the Superannuation Fund:
 - (i) an amount equal to so much of the transferred amount in relation to the eligible employee as was paid by the Commissioner into that Fund under paragraph (2)(a) of this section; and
 - (ii) the amount of any interest that is payable in respect of the first-mentioned amount; and
- (b) there must be paid to the Commissioner out of the Consolidated Revenue Fund (which is appropriated accordingly) an amount equal to so much of the transferred amount in relation to the eligible employee as was paid by the Commissioner into that Fund under paragraph (2)(b) of this section;

and the Commissioner must pay to the eligible employee an amount equal to the sum of those amounts.”.

Exemption of certain eligible employees from medical examination

72. Section 130 of the Principal Act is amended:

- (a) by omitting from subsections (3) and (4) “section 16 does” and substituting “sections 16 to 16AE, inclusive, do”;
- (b) by omitting from subsection (5) “section 16 applies in relation to him, but, in the application of that section in relation to him” and substituting “sections 16 to 16AE, inclusive, apply in relation to the eligible employee to the same extent (if any) as they would apart from this section, but, for the purposes of those sections as so applying”.

Interpretation

73. Section 131 of the Principal Act is amended by adding at the end the following subsection:

“(4) In this Division:

‘former eligible employee with benefits from previous employment’ means:

- (a) a person:
 - (i) who has ceased to be an eligible employee; and
 - (ii) who was immediately before so ceasing, a person referred to in paragraph (a) of the definition of ‘eligible employee’ in subsection 3(1); and
 - (iii) in relation to whom sections 119H and 119J of the

superseded Act applied on or after his or her becoming an employee for the purposes of that Act or, if the person became such an employee on more than one occasion, on or after his or her last becoming such an employee; or

(b) a person:

- (i) who has ceased to be an eligible employee; and
- (ii) who was immediately before so ceasing, a person referred to in paragraph (a) of the definition of 'eligible employee' in subsection 3 (1); and
- (iii) in relation to whom a non-contributory unit of pension was applicable on 30 June 1976; or

(c) a person:

- (i) who has ceased to be an eligible employee; and
- (ii) to whom, immediately before becoming an eligible employee, an invalidity pension was, or would, but for a suspension of payment, have been, payable under the superseded Act; and
- (iii) in relation to whom a non-contributory unit of pension was applicable immediately before the invalidity pension became payable; or

(d) a person:

- (i) who has ceased to be an eligible employee; and
- (ii) in relation to whom section 128 has effect.”.

Transfer value

74. Section 135 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

“(1) Subject to subsection (1A), the amount of any transfer value payable under this Division to or in respect of a person who has ceased to be an eligible employee is an amount equal to the sum of:

- (a) 3½ times the amount of the person’s accumulated basic contributions; and
- (b) the amount of the person’s accumulated employer contributions (if any); and
- (c) the amount of the person’s accumulated supplementary contributions (if any).

“(1A) The amount of any transfer value payable under this Division to, or in respect of, a person who is a former eligible employee with benefits from previous employment is such amount as is determined by the Commissioner having regard to:

- (a) the amount that would be payable to the person under subsection (1) if this subsection did not apply to the person; and
- (b) the amount of any transfer value paid by, or in respect of, the

person to the Superannuation Board or the Commissioner for Superannuation under the superseded Act; and

- (c) the number of non-contributory units (if any) that were, under the superseded Act, applicable in relation to the person on 30 June 1976 or immediately before the person became entitled to invalidity pension (as the case may be) and the contributions that would have been paid by the person in respect of those units if they had been contributory units of pension in respect of which the person had contributed at rates based on a retiring age of 65; and
- (d) the amount of any transfer value paid by, or in respect of, the person to the Commissioner under this Act.”.

Deferred benefits

75. Section 136 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

“(2) Where a deferred benefit by way of age retirement benefit, early retirement benefit or invalidity benefit is payable to a person other than a former eligible employee with benefits from previous employment, the amount of the benefit is calculated in accordance with the following provisions:

(a) if:

- (i) a deferred benefit by way of standard age retirement pension is payable to the person in accordance with subsection 56 (1), (2), (3) or (4); or
- (ii) a deferred benefit by way of standard early retirement pension is payable to the person in accordance with section 60;

the annual rate of that pension is an amount per annum equal to the amount calculated in accordance with the formula:

$$2.5 \times F_1 \times ABC;$$

(b) if:

- (i) a deferred benefit by way of additional age retirement pension is payable to the person in accordance with subsection 57 (1); or
- (ii) a deferred benefit by way of additional early retirement pension is payable to the person in accordance with subsection 61 (1);

the annual rate of that pension is an amount per annum equal to the amount calculated in accordance with the formula:

$$F_1 \times (AC + AEC);$$

- (c) if a deferred benefit by way of a lump sum benefit is payable to the person in accordance with section 65, the lump sum benefit is an amount equal to the sum of the person's

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accumulated contributions and the person's accumulated employer contributions (if any);

- (d) if a deferred benefit by way of invalidity pension is payable to the person in accordance with section 67 or 70, the annual rate of that pension is an amount per annum equal to the amount calculated in accordance with the formula:

$$3.5 \times F_2 \times ABC;$$

- (e) if a deferred benefit by way of a lump sum benefit is payable to the person in accordance with section 67 or 70, the lump sum benefit is an amount equal to the sum of the person's accumulated employer contributions (if any) and the person's accumulated supplementary contributions;

- (f) if a deferred benefit by way of invalidity pension is payable to the person in accordance with section 68 or 71, the annual rate of that pension is an amount per annum equal to the amount calculated in accordance with the formula:

$$2.5 \times F_2 \times ABC;$$

- (g) if a deferred benefit by way of a lump sum benefit is payable to the person in accordance with section 68 or 71, the lump sum benefit is an amount equal to the sum of the person's accumulated contributions and the person's accumulated employer contributions (if any);

- (h) if a deferred benefit of a lump sum benefit is payable to the person in accordance with section 69, 72 or 73, the lump sum benefit is an amount equal to the sum of:

- (i) $3\frac{1}{2}$ times the person's accumulated basic contributions;
and
- (ii) the person's accumulated employer contributions (if any);
and
- (iii) the person's accumulated supplementary contributions (if any);

where:

F₁ is such factor as, having regard to the age of the person on the day on which the deferred benefits become payable, is applicable in accordance with Table 1 in Schedule 11; and

F₂ is such factor as, having regard to the age of the person on the day on which the deferred benefits become payable, is applicable in accordance with Table 2 in Schedule 11; and

ABC is the amount of the person's accumulated basic contributions;
and

AC is the amount of the person's accumulated contributions; and

AEC is the amount of the person's accumulated employer contributions.

“(2A) Where a deferred benefit by way of age retirement benefit, early retirement benefit or invalidity benefit is payable to a person who is a former eligible employee with benefits from previous employment,

the amount of any pension or lump sum benefit constituting that benefit is determined by the Commissioner having regard to:

- (a) the amount of any pension or lump sum benefit that would be payable to the person under subsection (2) if the person was not a former eligible employee with benefits from previous employment; and
- (b) the amount of any transfer value paid by, or in respect of, the person to the Superannuation Board or the Commissioner for Superannuation under the superseded Act; and
- (c) the number of non-contributory units (if any) that were, under the superseded Act, applicable in relation to the person on 30 June 1976 or immediately before the person became entitled to invalidity pension (as the case may be) and the contributions that would have been paid by the person in respect of those units if they had been contributory units of pension in respect of which the person had contributed at rates based on a retiring age of 65; and
- (d) the amount of any transfer value paid by, or in respect of, the person to the Commissioner under this Act.

“(2B) Where a deferred benefit by way of spouse’s benefit or orphan benefit is payable in respect of a person other than a former eligible employee with benefits from previous employment and no child of the person is a partially dependent child, the amount of the benefit is calculated in accordance with the following provisions:

- (a) if a deferred benefit by way of spouse’s pension is payable in respect of the person in accordance with section 82 or 85, the annual rate of that pension is the applicable percentage of the annual rate of the pension to which the person would have been entitled under paragraph (2) (d) if he or she had not died but had, on the day immediately following his or her death, become entitled to the deferred benefit referred to in that paragraph;
- (b) if a deferred benefit by way of a lump sum benefit is payable in respect of the person in accordance with section 82 or 85, the lump sum benefit is an amount equal to the sum of the person’s accumulated employer contributions (if any) and the person’s accumulated supplementary contributions;
- (c) if a deferred benefit by way of spouse’s pension is payable in respect of the person in accordance with section 83 or 86, the annual rate of that pension is the applicable percentage of the annual rate of the pension that would be payable to the person under paragraph (2) (f) if he or she had not died but had, on the day immediately following his or her death, become entitled to the deferred benefit referred to in that paragraph;
- (d) if a deferred benefit by way of a lump sum benefit is payable in respect of the person in accordance with section 83 or 86,

the lump sum benefit is an amount equal to the sum of the person's accumulated contributions and the person's accumulated employer contributions (if any);

- (e) if a deferred benefit by way of a lump sum benefit is payable in respect of the person in accordance with section 84, 87 or 88, the lump sum benefit is an amount equal to the sum of:
 - (i) $3\frac{1}{2}$ times the person's accumulated basic contributions; and
 - (ii) the person's accumulated employer contributions (if any); and
 - (iii) the person's accumulated supplementary contributions (if any);
 - (f) if a deferred benefit by way of spouse's standard pension is payable in respect of the person in accordance with section 90, the annual rate of that pension is the applicable percentage of the annual rate of the pension that would be payable to the person under paragraph (2)(a) if he or she had not died but had, on the day immediately following his or her death, become entitled to the deferred benefit referred to in that paragraph;
 - (g) if a deferred benefit by way of spouse's additional pension is payable in respect of the person in accordance with subsection 91(1), the annual rate of that pension is, at the election of the person's spouse:
 - (i) an amount per annum equal to the amount calculated in accordance with the formula:
$$F_3 \times AC; \text{ or}$$
 - (ii) an amount per annum equal to the amount calculated in accordance with the formula:
$$F_3 \times (AC + AEC);$$
- where:
- F_3 is such factor as, having regard to the age of the person's spouse at the time of the person's death, is applicable in accordance with Table 3 in Schedule 11; and
- AC is the amount of the person's accumulated contributions; and
- AEC is the amount of the person's accumulated employer contributions;
- (h) if a deferred benefit by way of a lump sum benefit is payable in respect of the person in accordance with section 92, the lump sum benefit is an amount equal to the sum of the person's accumulated contributions and the person's accumulated employer contributions (if any);
 - (j) if a deferred benefit by way of spouse's standard pension is payable in respect of the person in accordance with section 94, the annual rate of that pension is the applicable percentage of

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the annual rate of the pension that was payable to the person in accordance with paragraph (2) (a) immediately before his or her death;

- (k) if a deferred benefit by way of spouse's additional pension is payable in respect of the person in accordance with section 95, the annual rate of that pension is 67 per centum of the annual rate of the pension that was payable to the person in accordance with paragraph (2) (b) immediately before his or her death;
- (m) if a deferred benefit by way of spouse's pension is payable in respect of the person in accordance with section 96, the annual rate of that pension is the applicable percentage of the annual rate of the pension that was payable to the person in accordance with paragraph (2) (d) or (f) (as the case may be) immediately before his or her death;
- (n) if a deferred benefit by way of orphan pension is payable in respect of the person in accordance with section 97, the annual rate of that pension is the applicable percentage of the annual rate of the pension that would be payable to the person in accordance with paragraph (2) (a) if he or she had not died but had, on the day immediately following his or her death, become entitled to the deferred benefit referred to in that paragraph;
- (p) if a deferred benefit by way of a lump sum benefit is payable in respect of the person in accordance with section 97, the lump sum benefit is an amount equal to the sum of the person's accumulated contributions and the person's accumulated employer contributions (if any);
- (q) if a deferred benefit by way of orphan pension is payable in respect of the person in accordance with section 98 or 100, the annual rate of that pension is:
 - (i) where a lump sum benefit of an amount equal to the person's accumulated contributions has been paid out of the Fund under subsection 111 (1) or where, if the person had not died, he or she would have been entitled to invalidity benefit as provided by subsection 66 (3) or (3A)—the applicable percentage of the annual rate of the pension that would be payable to the person in accordance with paragraph (2) (f) if he or she had not died but had, on the day immediately following his or her death, become entitled to the deferred benefit referred to in that paragraph; or
 - (ii) where subparagraph (i) does not apply—the applicable percentage of the annual rate of the pension that would be payable to the person in accordance with paragraph (2) (d) if he or she had not died but had, on the day immediately following his or her death, become entitled to the deferred benefit referred to in that paragraph;

- (r) if a deferred benefit by way of lump sum benefit is payable in respect of the person in accordance with section 98 or 100, the lump sum benefit is:
 - (i) except where subparagraph (ii) applies—an amount equal to the sum of the person's accumulated employer contributions (if any) and the person's accumulated supplementary contributions; or
 - (ii) where, if the person had not died, he or she would have been entitled to invalidity benefit as provided by subsection 66 (3) or (3A)—an amount equal to the sum of the person's accumulated contributions and the person's accumulated employer contributions (if any);
- (s) if a deferred benefit by way of lump sum benefit is payable in respect of the person in accordance with section 99 or 101, the lump sum benefit is an amount equal to the sum of:
 - (i) 3½ times the person's accumulated basic contributions; and
 - (ii) the person's accumulated employer contributions (if any); and
 - (iii) the person's accumulated supplementary contributions (if any);
- (t) if a deferred benefit by way of orphan pension is payable in respect of the person in accordance with section 102, the annual rate of that pension is the applicable percentage of the annual rate of the pension that would be payable to the person in accordance with paragraph (2) (a) on the day on which deferred benefits by way of spouse's benefits ceased to be payable in respect of the person if he or she had not died but had, on the day immediately following his or her death, become entitled to the deferred benefit referred to in that paragraph;
- (u) if a deferred benefit by way of orphan pension is payable in respect of the person in accordance with section 103 or 104, the annual rate of that pension is:
 - (i) except where subparagraph (ii) applies—the applicable percentage of the annual rate of pension that would be payable to the person in accordance with paragraph (2) (d) if he or she had not died but had, on the day immediately following his or her death, become entitled to the deferred benefit referred to in that paragraph; or
 - (ii) where the spouse of a person had made an election under section 83 or 86 (whichever was applicable in relation to the spouse)—the applicable percentage of the annual rate of pension that would be payable to the person in accordance with paragraph (2) (f) if he or she had not died but had, on the day immediately following his or

her death, become entitled to the deferred benefit referred to in that paragraph;

- (w) if a deferred benefit by way of orphan pension is payable in respect of the person in accordance with section 105, the annual rate of that pension is the applicable percentage of the annual rate of the pension that was payable in accordance with paragraph (2) (a) to the person immediately before his or her death;
- (y) if a deferred benefit by way of orphan pension is payable in respect of the person in accordance with section 106, the annual rate of that pension is the applicable percentage of the annual rate of a pension that was payable to the person in accordance with paragraph (2) (d) or (f) (whichever was applicable) immediately before his or her death;
- (z) if a deferred benefit by way of orphan pension is payable in respect of the person in accordance with section 107, the annual rate of that pension is the applicable percentage of the annual rate of the pension that would be payable to the person in accordance with paragraph (2) (a) if he or she had not died but had continued to receive, and were receiving on the day on which his or her spouse died, the deferred benefit referred to in that paragraph;
- (za) if a deferred benefit by way of orphan pension is payable in respect of the person in accordance with section 108, the annual rate of that pension is the applicable percentage of the annual rate of pension that would be payable to the person in accordance with paragraph (2) (d) or (f) (whichever is applicable) if he or she had not died but had continued to receive, and were receiving on the day on which his or her spouse died, the deferred benefit referred to in that paragraph.

“(2C) Where:

- (a) a deferred benefit by way of spouse’s additional pension is payable in respect of a person other than a former eligible employee with benefits from previous employment in accordance with subsection 91 (1); and
- (b) the amount of that pension is an amount calculated in accordance with subparagraph (2B) (g) (i);

there is also payable in respect of the person a deferred benefit by way of a lump sum benefit equal to the person’s accumulated employer contributions.

“(2D) Where:

- (a) at any time a deferred benefit by way of spouse’s benefit is payable in respect of a person other than a former eligible employee with benefits from previous employment; and

- (b) at that time there is one, or more than one, child of the person who is a partially dependent child;

the amount of any pension or lump sum benefit constituting that benefit is determined by the Commissioner having regard to:

- (c) the amount of pension or lump sum benefit that would be payable to the person under subsection (2B) if that subsection applied at that time to the person; and
- (d) the amount of extra spouse's pension that would be payable to the spouse of the person under section 96B if deferred benefits had not become applicable in respect of the person and the spouse were, at that time, entitled to extra spouse's pension under that section.

“(2E) Where:

- (a) at any time a deferred benefit by way of orphan benefit is payable in respect of a person other than a former eligible employee with benefits from previous employment; and
- (b) at that time, there is one, or more than one, child of the person who is a partially dependent child;

the amount of any pension or lump sum benefit constituting that benefit is such amount as is determined by the Commissioner having regard to:

- (c) if a deferred benefit by way of a lump sum benefit is payable in accordance with section 99 or 101—the amount of the lump sum benefit that would be payable in respect of the eligible child or eligible children of the person under that section if deferred benefits had not become applicable in respect of the person and the eligible child or eligible children were entitled to lump sum benefit under that section; or
- (d) if a deferred benefit by way of orphan pension is payable in accordance with a provision of Division 4 of Part VI—the amount of orphan pension that would be payable in respect of the person under subsection (2B) if:
 - (i) at that time that subsection applied to the person; and
 - (ii) that subsection so applied subject to section 109A; and
 - (iii) in its application in relation to that deferred benefit for the purposes of subparagraph (ii), section 109A had effect as if any reference in that section to orphan pension were a reference to that deferred benefit.

“(2F) Where a deferred benefit by way of spouse's benefit or orphan benefit is payable in respect of a former eligible employee with benefits from previous employment, the amount of any pension or lump sum benefit constituting that benefit is determined by the Commissioner having regard to:

- (a) the amount of any pension or lump sum benefit that would be payable to the person under this section if the person was not

- a former eligible employee with benefits from previous employment; and
- (b) the amount of any transfer value paid by, or in respect of, the person to the Superannuation Board or the Commissioner for Superannuation under the superseded Act; and
- (c) the number of non-contributory units (if any) that were, under the superseded Act, applicable in relation to the person on 30 June 1976 or immediately before the person became entitled to invalidity pension (as the case may be) and the contributions that would have been paid by the person in respect of those units if they had been contributory units of pension in respect of which the person had contributed at rates based on a retiring age of 65; and
- (d) the amount of any transfer value paid by, or in respect of, the person to the Commissioner under this Act.

“(2G) Where, at any time, a deferred benefit by way of spouse’s pension or spouse’s additional pension is payable in respect of a person, then, for the purposes of paragraph (2B) (a), (c), (f), (j) or (m), as the case requires, the applicable percentage is:

- (a) if paragraphs (b), (c) and (d) do not apply—67 per centum; or
- (b) if at that time one child of the person is an eligible child—78 per centum; or
- (c) if at that time 2 children of the person are eligible children—89 per centum; or
- (d) if at that time more than 2 children of the person are eligible children—100 per centum.

“(2H) Where, at any time, a deferred benefit by way of orphan’s pension is payable in respect of a person, then, for the purposes of paragraph (2B) (n), (q), (t), (u), (w), (y), (z) or (za), as the case requires, the applicable percentage is:

- (a) if at that time one child of the person is an eligible child—45 per centum; or
- (b) if at that time 2 children of the person are eligible children—80 per centum; or
- (c) if at that time 3 children of the person are eligible children—90 per centum; or
- (d) if at that time more than 3 children of the person are eligible children—100 per centum.”.

Election that Division apply

76. Section 137 of the Principal Act is amended by omitting subsections (4) and (5) and substituting the following subsection:

- “(4) Subsection (3) does not apply:
- (a) if a person entitled to make an election under this section dies

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without making such an election and the election is made by another person under subsection 157 (2A); or

- (b) if a person who has made an election under this section dies, without giving notice under that subsection, before the end of the period for the giving of the notice by the person.”.

Circumstances in which person entitled to deferred benefits

77. Section 139 of the Principal Act is amended:

- (a) by inserting in paragraph (1)(a) “is employed in public employment or” after “he”;
- (b) by inserting in paragraph (1)(b) “is not employed in public employment and” after “he” (first occurring).

Election for transfer value by persons in relation to whom deferred benefits are applicable

78. Section 139A of the Principal Act is amended:

- (a) by omitting from subsection (1) “Where” and substituting “Subject to subsection (1A), where”;
- (b) by inserting after subsection (1) the following subsection:

“(1A) Except where the Minister otherwise directs, a person:

- (a) to whom deferred benefits are applicable under subsection 139 (1); and
- (b) who is a member of an eligible superannuation scheme that is applicable to persons employed in the public employment in which he or she is employed;

may not make an election under subsection (1) if the person ceased to be an eligible employee on his or her becoming a member of that superannuation scheme.”.

Person who is entitled to rights under Division not entitled to rights under other provisions of Act

79. Section 140 of the Principal Act is amended:

- (a) by inserting in subparagraph (2) (a) (i) “or Part VIA” after “80”;
- (b) by omitting from subparagraph (2) (a) (ii) “59” and substituting “55 or 59 or Part VIA”;
- (c) by inserting in subparagraph (2) (a) (ii) “or Part VIA” after “62”.

Special provisions affecting certain former contributors under certain superannuation schemes

80. Section 145 of the Principal Act is amended by omitting from subparagraphs (7) (d) (i), (8) (a) (i) and (9) (a) (i) “, in accordance with the regulations,”.

81. After section 154 of the Principal Act the following section is inserted:

Determinations with respect to interest

“154A. (1) Where, under any provision of this Act, interest is payable in respect of an amount, the interest must be calculated, and is payable, in accordance with a determination made by the Board for the purposes of that provision.

“(2) A determination by the Board under subsection (1) 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*.

“(3) Subsection (4) applies in relation to the following provisions of this Act as in force before 1 July 1990:

- (a) the definitions of ‘accumulated basic contributions’ and ‘accumulated supplementary contributions’ in subsection 3 (1);
- (b) subsections 7A (1), (2), (3) and (4);
- (c) subparagraphs 145 (7) (d) (i), (8) (a) (i) and (9) (a) (i).

“(4) Regulations in force immediately before 1 July 1990 and making provision in relation to interest for the purposes of any of the provisions in relation to which this subsection applies:

- (a) remain in force on and after that date; and
- (b) are taken, for the purposes of those provisions as in force on and after that date, to be determinations made by the Board; and
- (c) may be amended or repealed by such determinations.”.

82. After section 155A of the Principal Act the following section is inserted:

Modification of Act in relation to persons who cease to be eligible employees in certain circumstances

“155B. (1) This section applies to a person who:

- (a) ceases to be an eligible employee because his or her position or office ceases to exist as a result of the sale or transfer of an organisation, business, service or asset, or the transfer of a function; and
- (b) before so ceasing to be an eligible employee, was offered equivalent employment by or with the purchaser or transferee.

“(2) 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 or in respect of a person to whom this section applies.

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“(3) The modifications may include, for example, modifications providing for benefits in substitution for benefits provided for by this Act.”.

General provisions applicable to elections under Act

83. Section 157 of the Principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) Where a person who is entitled to make an election under a provision of this Act, or a declaration under section 244, dies, without making such an election or declaration, before the end of the period (in this subsection called the ‘given period’) within which the election could have been made:

- (a) if the person is survived by a spouse—the spouse may make such an election within the given period or such longer period as the Commissioner allows; or
- (b) if:
 - (i) the person is not survived by a spouse; or
 - (ii) the person is survived by a spouse but the spouse dies without making such an election or declaration;and the person is survived by an eligible child or eligible children—a person authorised by the Commissioner for the purposes of this subsection may make such an election or declaration within the given period or such longer period as the Commissioner allows;

and, in that case, this Act has effect as if the election or declaration had been made by the first-mentioned person.”.

84. Section 159 of the Principal Act is repealed and the following section is substituted:

Payment by approved authorities etc. to the Commonwealth in respect of eligible employees

“159. (1) This section applies to:

- (a) an approved authority; and
- (b) any other authority or body:
 - (i) whose staff consists of persons appointed or employed under the *Public Service Act 1922*; and
 - (ii) that has been declared by the Minister to be an authority or body to which this section applies.

“(2) If the Minister so determines, an authority or body to which this section applies must make payments to the Commonwealth in respect of any person who:

- (a) is, or was at any time:
 - (i) in the case of an approved authority—employed by that authority; or

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- (ii) in the case of an authority or body referred to in paragraph (1) (b)—a member of the staff of the authority or body; and
 - (b) is an eligible employee, or was an eligible employee during the period when the person was employed by, or was a member of the staff of, the authority or body.
- “(3) Payments that an authority or body is required to make in respect of a person under subsection (2) are to be made:
- (a) at such times as the Minister determines; and
 - (b) in such amounts, or at such rates, as the Minister determines, having regard to the benefits that are or may become payable, or have been paid, to or in respect of the person.
- “(4) An authority or body that is required to make a payment under subsection (2) may apply for that purpose any money under its control.
- “(5) For the purposes of this section, the holder of a statutory office whose remuneration is paid by an authority or body is taken to be employed by that authority or body.”.

Cost of administration of, and of medical examinations under, Act etc.

85. Section 160 of the Principal Act is amended is amended by omitting subsections (3), (4) and (5) and substituting the following subsections:

“(3) Subject to subsection (4), the cost of a medical examination carried out for the purposes of section 16 or 16AB is part of the cost of the administration of this Act.

“(4) Where a person who:

- (a) proposes to become, becomes or is employed by an approved authority or a declared authority; or
- (b) is the proposed appointee to, or the holder of, a statutory office whose remuneration is paid by an approved authority or declared authority;

is required to undergo a medical examination under section 16 or 16AB, the cost of the examination is to be paid by the approved authority or declared authority (as the case may be).

“(5) For the purposes of subsection (6), the Minister may prepare an estimate of the costs referred to in subsection (1) that are likely to be incurred in respect of a financial year.

“(6) The Minister may direct an authority or body that is or was, during the period specified in the direction, being a period that is included in, or is, a financial year in respect of which an estimate has been prepared under subsection (5):

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- (a) an approved authority that employs or employed eligible employees; or
- (b) a declared authority whose staff includes or included eligible employees;

to pay to the Commonwealth such part of the costs estimated by the Minister in respect of that period as:

- (c) is determined by the Minister having regard to such matters (if any) as are prescribed; and
- (b) is specified in the direction.

“(7) An authority or body that is required to make a payment under subsection (4) or (6) may apply for that purpose any money under its control.

“(8) In this section:

‘**declared authority**’ means an authority (other than an approved authority) or a body:

- (a) whose staff consists of persons appointed or employed under the *Public Service Act 1922*; and
- (b) that has been declared by the Minister to be an authority or body to which this section applies.”.

Annual report of Trust

86. Section 161 of the Principal Act is amended:

- (a) by inserting in subsection (1) “, and on the provision of other services by the Trust,” after “Trust” (second occurring);
- (b) by adding at the end of subsection (3) “in so far as they relate to the management of the Fund by the Trust;
- (c) by omitting from subsection (4) “a report on the management of the Fund by the Trust during the relevant year, together with” and substituting “an interim report and”.

87. After section 161 of the Principal Act the following section is inserted:

Annual report of Commonwealth Superannuation Board

“161A. (1) The Board must, as soon as practicable after each 30 June, prepare and furnish to the Minister a report on the operations of the Board during the year ended on that day.

“(2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after receipt of the report by the Minister.”.

Minister may request the supply of information

88. Section 163 of the Principal Act is amended:

- (a) by inserting in subsection (2) “, or to the provision of other services by the Trust,” after “Trust” (second occurring);

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(b) by adding at the end the following subsection:

“(3) The Board shall furnish to the Minister such information relating to the performance of its functions as the Minister may from time to time require.”.

Making false statements to Commissioner etc.

89. Section 167 of the Principal Act is amended by adding at the end of subsection (2) “or 16AB”.

Regulations

90. Section 168 of the Principal Act is amended by adding at the end the following subsection:

“(9) Regulations made within a period of 12 months after the commencement of this subsection by virtue of section 5, 14A, 76, 126, 136, 144, 155A, 180 or 183 may be expressed to have taken effect from and including a day not earlier than 1 July 1990.”.

Medical examinations and benefit classification certificates

91. (1) Section 184 of the Principal Act is amended:

- (a) by omitting from paragraph (5) (a) “give information that the person was required to give” and substituting “answer properly a question asked of him or her”;
- (b) by omitting from paragraph (5) (b) “not failed to give the information the person was required to give” and substituting “answered the question properly”;
- (c) by omitting from subsection (6) all the words after “satisfied” and substituting the following:

“that the Commissioner would not have been of that opinion but for the fact that:

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

the person failed to answer properly a question asked of the person or gave false or misleading information.”;
- (d) by omitting from paragraph (7) (c) all the words after “Commissioner is satisfied” and substituting the following:

“that the Board would not have been so satisfied but for the fact that, at or in connection with that medical examination, the person failed to answer properly a question asked of the person or gave false or misleading information.”;
- (e) by adding at the end the following subsection:

“(8) For the purposes of determining, for the purposes of

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this section, whether or not a person answered a question properly, subsections 16AC (9) and (10) apply as if:

- (a) the provisions of this section were provisions of section 16AC; and
- (b) the following subparagraph were inserted before subparagraph (b) (i) of the definition of 'relevant matters' in subsection 16AC (10):
 - '(ia) at or in connection with a medical examination that the person underwent for the purposes of the superseded Act; or'."

(2) Subject to subsection (3), subsection 184 (6) of the Principal Act as amended by this Act applies in relation to a question asked of a person, or information given, whether before or after the commencement of this section.

(3) Where, before the commencement of this section, the Administrative Appeals Tribunal or the Federal Court of Australia made a decision or order setting aside or varying a decision by the Commissioner to issue a benefit classification certificate in respect of a person under subsection 184 (5) of the Principal Act as then in force, then, in spite of subsection (1):

- (a) subsections 184 (5) to (7), inclusive, of the Principal Act (as in force before the commencement of this section) continue to apply in relation to:
 - (i) a requirement on the basis of which; and
 - (ii) information on the basis of the giving of which;the Commissioner decided to issue the certificate or to specify in it a particular physical or mental condition; and
- (b) subsections 184 (5) to (8), inclusive, of the Principal Act as amended by this Act do not apply in relation to:
 - (i) a question the asking of which constituted, or formed part of, such a requirement; or
 - (ii) such information.

(4) In subsection (3):

"information" includes information allegedly given;

"requirement" means a requirement, or an alleged requirement, to give information;

"set aside" includes quash.

92. After Part XII of the Principal Act the following Parts are inserted:

“PART XIII—TRANSFERS TO APPROVED SUPERANNUATION SCHEMES

Interpretation

“237. In this Part, unless the contrary intention appears:

‘approved superannuation scheme’ means a superannuation scheme approved by the Minister under section 239;

‘assets’ has the same meaning as it has in Division 2 of Part XII;

‘Board No. 1’ means the Commonwealth Superannuation Board of Trustees No. 1 established by Part 6 of the *Superannuation Act 1990*;

‘investment assets of the Fund’ means the assets of the Fund or of the Trust arising out of, or otherwise connected with, the exercise or proposed exercise by the Trust of its power to invest moneys of the Fund;

‘investment liabilities of the Fund’ means liabilities of the Fund or of the Trust arising out of, or otherwise connected with, the exercise or proposed exercise by the Trust of its power to invest moneys of the Fund;

‘liabilities’ has the same meaning as it has in Division 2 of Part XII.

Loss of entitlement to benefits—eligible employee transferring to an approved superannuation scheme

“238. (1) Where a person who:

(a) is an eligible employee; and

(b) is employed by, or is a member of the staff of, an authority or body;

ceases, within such period as is determined by the Minister in relation to the person, to be an eligible employee because the person becomes a member of an approved superannuation scheme, the person is not entitled to be paid any benefits under this Act.

“(2) A determination of the Minister for the purposes of subsection (1) is a disallowable instrument.

Approval of superannuation schemes

“239. The Minister may approve, in writing, for the purposes of this Part, a superannuation scheme that provides benefits for persons who are employed by, or are members of the staff of, an authority or body.

Transfer of assets etc. to approved superannuation schemes

“240. (1) The Trust must, at such times as the Minister determines, transfer to the person or body administering an approved superannuation scheme:

(a) such assets of the Fund (including investment assets of the Fund) as are determined by the Minister to be assets that fairly

and equitably represent the accumulated contributions and accumulated employer contributions of those persons who:

- (i) have become members of the approved superannuation scheme; and
 - (ii) were, immediately before becoming such members, eligible employees who were employed by, or were members of the staff of, the authority or body that established the scheme; and
- (b) such liabilities (if any) (including investment liabilities of the Fund) as are determined by the Minister to be liabilities relating to those assets.

“(2) A determination of the Minister for the purposes of subsection (1) is a disallowable instrument.

Payments from Consolidated Revenue Fund

“241. (1) There must be paid to the person or body administering an approved superannuation scheme, at such times as the Minister determines, such amounts (if any) as are determined by the Minister having regard to:

- (a) the amount of the payments (if any) made under section 159 by the authority or body that established the scheme in respect of the persons referred to in paragraph 240 (1) (a); and
- (b) the amount of the accumulated basic contributions of those persons; and
- (c) the method of calculating transfer values under Division 3 of Part IX; and
- (d) any relevant actuarial advice obtained by the Minister; and
- (e) any other matters that the Minister considers relevant.

“(2) Payments under subsection (1) are to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

“(3) A determination of the Minister for the purposes of subsection (1) is a disallowable instrument.

Exemption from tax etc.

“242. No tax or charge is payable under any law of the Commonwealth (other than the *Income Tax Assessment Act 1936*) or any law of a State or of a Territory in respect of a transfer of assets or liabilities under section 240.

“PART XIV—TRANSFERS TO SUPERANNUATION (1990) SCHEME

Interpretation

“243. In this Part, unless the contrary intention appears: ‘assets’, ‘Board No. 1’, ‘investment assets of the Fund’, ‘investment liabilities of the Fund’ and ‘liabilities’ have the same meaning as in Part XIII.

Election to join Superannuation (1990) Scheme

“244. (1) Subject to this section, an eligible employee who is not precluded by a provision (other than paragraph 6 (2) (a)) of the *Superannuation Act 1990* from being a member of the Superannuation (1990) Scheme may, in writing addressed to the Commissioner:

- (a) declare that he or she wishes to become a member of that scheme; and
- (b) elect to cease to be an eligible employee.

“(2) An eligible employee may not make an election and declaration under subsection (1) during any period when the eligible employee:

- (a) is absent from duty on leave of absence without pay; or
- (b) is deemed, under section 87C of the Public Service Act, to be absent from duty on leave of absence without pay.

“(3) An eligible employee may not make an election and declaration under subsection (1):

- (a) if the eligible employee was, until 1 April 1991 or any later day, precluded by a provision (other than paragraph 6 (2) (a)) of the *Superannuation Act 1990* from being a member of the Superannuation (1990) Scheme—after the period of 3 months commencing on the day on which the eligible employee ceased to be so precluded; or
- (b) if the person becomes an eligible employee after 1 April 1991 and paragraph (a) does not apply—after the period of 3 months commencing on the day on which the person becomes an eligible employee; or
- (c) if the eligible employee is precluded under subsection (2) from making the election and declaration during a period that ends after 1 April 1991—after the period of 3 months commencing immediately after the termination of that period; or
- (d) in any other case—after 30 June 1991.

Effect of election

“245. A person who makes a declaration and election under section 244 is taken to have ceased to be an eligible employee at the end of the day on which the declaration and election are made.

Loss of entitlement to benefits

“246. A person who ceases to be an eligible employee under section 245 is not entitled to be paid any benefits under this Act.

Revocation of election in certain cases

“247. Where, for the purposes of rule 1.3.30 of the Rules for the administration of the Superannuation (1990) Scheme in its application to a person who has ceased to be an eligible employee under section 245, the CSS average salary of the person has been ascertained by

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reference to an amount other than the amount referred to in paragraph (a) or (b) of the definition of 'CSS average salary' in that rule:

- (a) the person may, within 3 months after the person has been informed that his or her CSS average salary has been so ascertained, by writing addressed to the Commissioner, revoke the declaration and election by virtue of which the person had so ceased to be an eligible employee; and
- (b) on the making of the revocation, this Act has effect as if the declaration and election had not been made.

Transfer of assets etc. to Superannuation (1990) Scheme

"248. (1) The Trust must, at such times after 30 June 1991 as the Minister determines in writing, transfer to Board No. 1:

- (a) such assets of the Fund (including investment assets of the Fund) as are determined by the Minister to be assets that fairly and equitably represent the accumulated contributions and accumulated employer contributions of those persons who have ceased to be eligible employees under section 245; and
- (b) such liabilities (if any) (including investment liabilities of the Fund) as are determined by the Minister to be liabilities relating to those assets.

"(2) A determination of the Minister for the purposes of paragraph (1) (a) or (b) is a disallowable instrument.

Advances in respect of assets to be transferred

"249. The Trust may, at such times, and in such amounts, as are agreed between the Trust and Board No. 1, make to Board No. 1 advances in respect of the assets that are to be transferred to Board No. 1 under section 248.

Exemption from tax etc.

"250. No tax or charge is payable under any law of the Commonwealth (other than the *Income Tax Assessment Act 1936*) or any law of a State or of a Territory in respect of a transfer of assets or liabilities under section 248."

New Schedule

93. The Principal Act is amended by adding at the end the following Schedule:

"SCHEDULE 11

Section 136

DEFERRED BENEFITS

TABLE 1

Subsection 136 (2)

**FACTORS APPLICABLE WHERE BENEFITS PAYABLE IN
ACCORDANCE WITH SECTION 56, 57, 60 OR 61**

| Column 1 | Column 2 |
|---|----------|
| Age on day on which benefits become payable | Factor |
| 65 | .110 |
| 64 | .108 |
| 63 | .106 |
| 62 | .104 |
| 61 | .102 |
| 60 | .100 |
| 59 | .0985 |
| 58 | .0970 |
| 57 | .0955 |
| 56 | .0940 |
| 55 | .0925 |
| 54 | .0910 |
| 53 | .0895 |
| 52 | .0880 |
| 51 | .0865 |
| 50 | .0850 |

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TABLE 2

Subsection 136 (2)

**FACTORS APPLICABLE WHERE BENEFITS APPLICABLE IN
ACCORDANCE WITH SECTION 67, 68, 70 OR 71**

| Column 1 | Column 2 |
|---|----------|
| Age on day on which benefits become payable | Factor |
| 64 | .120 |
| 63 | .118 |
| 62 | .116 |
| 61 | .114 |
| 60 | .112 |
| 59 | .1105 |
| 58 | .1090 |
| 57 | .1075 |
| 56 | .1060 |
| 55 | .1045 |
| 54 | .1030 |
| 53 | .1015 |
| 52 | .1000 |
| 51 | .0985 |
| 50 | .0970 |
| 49 | .0962 |
| 48 | .0955 |
| 47 | .0947 |
| 46 | .0940 |
| 45 | .0932 |
| 44 | .0925 |
| 43 | .0917 |
| 42 | .0910 |
| 41 | .0902 |
| 40 | .0895 |
| 39 | .0887 |
| 38 | .0880 |
| 37 | .0872 |
| 36 | .0865 |
| 35 | .0857 |
| 34 | .0850 |
| 33 | .0842 |
| 32 | .0835 |
| 31 | .0827 |
| 30 | .0820 |
| 29 | .0812 |
| 28 | .0805 |
| 27 | .0797 |
| 26 | .0790 |
| 25 | .0782 |
| 24 | .0775 |
| 23 | .0767 |
| 22 | .0760 |
| 21 | .0752 |
| 20 | .0745 |

TABLE 3
FACTORS APPLICABLE IN RELATION TO SPOUSE OF
DECEASED FORMER ELIGIBLE EMPLOYEE

Paragraph (2B) (g)

| Column 1 Age of spouse at date of death of former eligible employee | Column 2 Factor (male spouse) | Column 3 Factor (female spouse) |
|---|--|--|
| 40 or under | .100 | .090 |
| 41 | .101 | .091 |
| 42 | .102 | .092 |
| 43 | .103 | .093 |
| 44 | .104 | .094 |
| 45 | .105 | .095 |
| 46 | .106 | .096 |
| 47 | .107 | .097 |
| 48 | .108 | .098 |
| 49 | .109 | .099 |
| 50 | .110 | .100 |
| 51 | .111 | .101 |
| 52 | .112 | .102 |
| 53 | .113 | .103 |
| 54 | .114 | .104 |
| 55 | .115 | .105 |
| 56 | .116 | .106 |
| 57 | .117 | .107 |
| 58 | .118 | .108 |
| 59 | .119 | .109 |
| 60 | .120 | .110 |
| 61 | .122 | .112 |
| 62 | .124 | .114 |
| 63 | .126 | .116 |
| 64 | .128 | .118 |
| 65 | .130 | .120 |
| 66 | .134 | .124 |
| 67 | .138 | .128 |
| 68 | .142 | .132 |
| 69 | .146 | .136 |
| 70 | .150 | .140 |
| 71 | .154 | .144 |
| 72 | .158 | .148 |
| 73 | .162 | .152 |
| 74 | .166 | .156 |
| 75 | .170 | .160 |
| 76 | .174 | .164 |
| 77 | .178 | .168 |
| 78 | .182 | .172 |
| 79 | .186 | .176 |
| 80 or over | .190 | .180 |

**PART 4—AMENDMENTS OF SUPERANNUATION BENEFIT
(INTERIM ARRANGEMENT) ACT 1988**

Principal Act

94. In this Part, “**Principal Act**” means the *Superannuation Benefit (Interim Arrangement) Act 1988*³.

Long title

95. The title of the Principal Act is amended by omitting “**an interim superannuation benefit**” and substituting “**superannuation benefits**”.

Short title

96. Section 1 of the Principal Act is amended by omitting “*Benefit (Interim Arrangement)*” and substituting “*(Productivity Benefit)*”.

Interpretation

97. Section 3 of the Principal Act is amended:

- (a) by omitting “for the purposes of the Superannuation Act” from paragraph (d) of the definition of “qualified employee” in subsection (1);
- (b) by omitting “for the purposes of that Act” from paragraph (e) of that definition;
- (c) by inserting “or a declaration under subsection 3F (1)” after “regulations” in paragraph (g) of that definition;
- (d) by inserting “and declarations” after “regulations” (third occurring) in that definition;
- (e) by inserting “or a declaration under subsection 3F (2)” after “regulations” in paragraph (p) of that definition;
- (f) by inserting in subsection (1) the following definitions:

“**‘anniversary of birth’** has the same meaning as in the Superannuation Act;

‘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 fund’ means a superannuation fund that is an approved fund because of a declaration in force under section 4C;

‘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;

‘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) a Department of State; or
- (b) a Department of the Parliament; or
- (c) a branch or part of the Australian Public Service in relation to which a person has, under an Act, the powers of, or exercisable by, the Secretary of a Department of the Australian Public Service;

'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;

'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;

'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;

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‘permanent employee’ means:

- (a) a person who is an officer for the purposes of the *Public Service Act 1922*; and
- (b) any other person employed in a permanent capacity by the Commonwealth or by an approved authority;

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

‘remainder employee’ means a qualified employee who is neither:

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

‘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*;

‘temporary employee’ means:

- (a) a person who is an employee for the purposes of the *Public Service Act 1922*; and
- (b) any other person employed, otherwise than in a permanent capacity, by the Commonwealth or by an approved authority;

but does not include a person engaged or appointed for employment outside Australia only (other than such a person who is declared by the Minister to be a person to whom this definition applies);”;

- (g) by omitting subsection (6) and substituting the following subsection:

“(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*.”.

98. After section 3 of the Principal Act the following section is inserted:

Only one benefit in respect of a day of employment

“3A. (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.”.

99. After section 3A of the Principal Act the following sections are inserted:

Rates of salary

“3B. (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

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- (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.

“(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.

Continuing contributions

“3C. (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 $2\frac{1}{2}$; 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.

“(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.

Variation of Table

“3D. The Minister may, 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).

Interest factors

“3E. (1) For the purposes of section 8A, the Minister, before each financial year, is to declare:

- (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.

Qualified employees

“3F. (1) The Minister may declare that a specified class of persons is a class of persons who are qualified employees.

“(2) The Minister may 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.”.

100. After section 4 of the Principal Act the following sections are inserted:

Arrangements for certain employees

“4A. (1) The Minister may declare that a specified class of qualified employees, not being scheme employees, is a class of employees who are neither fund employees nor interim arrangement employees.

“(2) The Minister may 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.

Nominated fund

“4B. (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.

Approved funds

“4C. (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.

Nominated and approved superannuation funds to comply with standards

“4D. The Minister is not to declare a superannuation fund to be the nominated fund or an approved fund unless the fund is a complying fund within the meaning of Part IX of the *Income Tax Assessment Act 1936*.

Payments of equivalent benefit to declared funds

“4E. 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.

Payments of continuing contributions to declared funds

“4F. (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
- (b) where a contribution is not paid on 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 continuing contribution in respect of a fund employee payable to a fund for a pay period is payable on:

- (a) where there are arrangements between the employer and the trustees of the fund fixing a day for payment—that day; or
- (b) in any other case—the day on which salary for that pay period is payable.

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“(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.

Interest

“4G. 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.

Certain employees to become members of nominated fund

“4H. (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.”.

When benefit payable

101. Section 6 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(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.”.

Amount of interim benefit before 1 July 1990

102. Section 8 of the Principal Act is amended:

- (a) by omitting from subsection (1) “the year commencing on 1 January 1988 or a subsequent year” and substituting “a year commencing on 1 January 1988, 1 January 1989 or 1 January 1990”;
- (b) by inserting in subsection (2) “and before 1 July 1990” after “year” (first occurring).

103. The Principal Act is amended by inserting after section 8 the following section:

Amount of interim benefit from 1 July 1990

“8A. (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 continuing contributions for the employee in respect of the employee’s pay periods 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

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

104. After section 9 of the Principal Act the following sections are inserted:

Declarations

“9A. Declarations, and determinations, under this Act by the Minister are to be in writing signed by the Minister.

Certain declarations disallowable etc.

“9B. Declarations under sections 3D, 3E, 3F, 4A and 4G are:

- (a) statutory rules for the purposes of the *Statutory Rules Publication Act 1903*; and
- (b) disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Delegation by Minister

“9C. 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 Department of Finance.

Minister to comply with Standards Act

“9D. 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 Standards Act or regulations made under that Act.

Source of payments

“9E. 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.

Employers to ensure membership of funds

“9F. 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.”.

Schedule

105. The Principal Act is amended by adding at the end the following Schedule:

“SCHEDULE

Section 3C

TABLE OF CONTINUING CONTRIBUTIONS

| <i>Pay period rate of salary</i> | <i>Pay period contribution</i> |
|-----------------------------------|---|
| 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”. |

Consequential amendments

106. The Principal Act is further amended as follows:

Subsection 3 (1) (definition of “pay period”):

Omit “or wages”.

Subsection 3 (1) (paragraph (a) of “qualifying pay period”):

Omit “or wages”.

Subsection 3 (1) (definition of “qualifying pay period value”):

Omit “or wages” (wherever occurring).

Subsection 3 (1) (definition of “reduced salary or wages”):

Omit the definition, substitute the following definition:
“ ‘**reduced salary**’ means reduced salary during a period of sick leave or long service leave;”.

Paragraph 5 (2) (c):

Omit “or wages”.

Section 7:

Before “employer” insert “designated”.

**PART 5—AMENDMENTS OF THE PAPUA NEW GUINEA
(STAFFING ASSISTANCE) ACT 1973**

Principal Act

107. In this Part, “**Principal Act**” means the *Papua New Guinea (Staffing Assistance) Act 1973*⁴.

Interpretation

108. Section 3 of the Principal Act is amended:

- (a) by omitting from subsection (1) the definitions of “appropriate Board”, “Benefits Board” and “Benefits Fund”;

- (b) by omitting from the definition of “Board” in subsection (1) “the Benefits Board or” and “, as the case requires”.

Commissioner to administer Part V

109. Section 20 of the Principal Act is amended by omitting “Parts V and VI” and substituting “Part V”.

Annual reports

110. Section 21 of the Principal Act is amended by omitting from subsection (1) “, VI”.

Repeal of Part VI

111. Part VI of the Principal Act is repealed.

Arrangements for reimbursement of Commonwealth by certain authorities

112. Section 58 of the Principal Act is amended:

- (a) by omitting “or VI”;
- (b) by omitting “, the Provident Account or the Benefits Fund” and substituting “or the Provident Account”.

No assignment of benefits

113. Section 60 of the Principal Act is amended:

- (a) by omitting “or VI”;
- (b) by omitting “, the Reserve Units of Pension Account or the Benefits Fund” and substituting “or the Reserve Units of Pension Account”.

NOTES

1. No. 33, 1922, as amended. For previous amendments, see No. 45, 1924; No. 22, 1930; No. 10, 1931; No. 45, 1934; No. 28, 1937; No. 53, 1942; No. 18, 1943; Nos. 15 and 30, 1945; No. 2, 1946; Nos. 1 and 35, 1947; No. 19, 1948; No. 76, 1950; Nos. 49 and 62, 1951; No. 92, 1952; No. 11, 1954; No. 27, 1955; Nos. 19 and 112, 1956; No. 94, 1957; No. 45, 1958; No. 102, 1959; No. 102, 1963; Nos. 97 and 154, 1965; Nos. 69 and 86, 1966; No. 52, 1967; Nos. 49 and 57, 1968; Nos. 14 and 26, 1969; No. 46, 1971; Nos. 46, 83 and 135, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 59, 1974; Nos. 32 and 37, 1976; No. 17, 1978; No. 92, 1981; No. 63, 1984; Nos. 80, 93 and 151, 1986; and No. 125, 1989.
2. No. 31, 1976, as amended. For previous amendments, see No. 51, 1976; No. 80, 1977; Nos. 17, 134, 169 and 170, 1978; Nos. 52 and 155, 1979; No. 177, 1980; No. 92, 1981; No. 92, 1983; No. 165, 1984; Nos. 80, 93, 151 and 153, 1986; No. 141, 1987; Nos. 38 and 130, 1988; and Nos. 71, 97 and 125, 1989.
3. No. 70, 1988.
4. No. 70, 1973, as amended. For previous amendments, see No. 100, 1975; Nos. 37 and 69, 1976; and No. 36, 1978.

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*[Minister's second reading speech made in—
House of Representatives on 16 May 1990
Senate on 28 May 1990]*