



CFM Sale Act 1996

No. 58, 1996

**An Act relating to the sale of Commonwealth
Funds Management Limited, and for related
purposes**

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CFM Sale Act 1996

No. 58, 1996

An Act relating to the sale of Commonwealth Funds Management Limited, and for related purposes

[Assented to 20 November 1996]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *CFM Sale Act 1996*.

Section 2

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Items 3 and 4 of Schedule 1 are taken to have commenced immediately after the commencement of Part 2 of the *Commonwealth Funds Management Limited Act 1990*.
- (3) Subject to subsection (4), items 1, 2, 5, 6, 7, 8, 9 and 11 of Schedule 1 commence on a day or days to be fixed by Proclamation.
- (4) If an item of Schedule 1 does not commence under subsection (3) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.
- (5) If this Act commences before the commencement of the *Legislative Instruments Act 1996*, item 1 of Schedule 2 commences immediately after the commencement of the *Legislative Instruments Act 1996*.

3 Definitions

- (1) In this Act, unless the contrary intention appears:
 - CFM** means the body corporate known before the day declared under section 25 as Commonwealth Funds Management Limited:
 - (a) by whatever name called from time to time; and
 - (b) in whatever form that body corporate takes from time to time.
 - CFM body** means CFM or a transferred body.
 - CFM subsidiary** means a body corporate that is a subsidiary of CFM.
 - related body** means:
 - (a) in relation to CFM—a body corporate that is related to CFM; or
 - (b) in relation to a transferred body—a body corporate that is related to the transferred body.
 - sale day** means:
 - (a) in relation to CFM—the day declared under section 25 to be the sale day for CFM; or
 - (b) in relation to a transferred body—the day declared under section 26 to be the sale day for that body.

share, in relation to a body corporate, means a share in the body's share capital.

subsidiary has the meaning given by subsection (2).

transferred body means a body corporate that was a CFM subsidiary all of the shares in which were transferred by CFM to the Commonwealth in accordance with the Minister's direction under section 7.

transferred employee means a person whose employment is transferred in accordance with a declaration under section 9.

transfer time, in relation to an employee, has the meaning given by section 9.

voting share has the same meaning as in the Corporations Law.

- (2) For the purposes of this Act, the question whether a body corporate is a subsidiary of another body corporate is to be determined in the same manner as that question is determined under the Corporations Law.
- (3) For the purposes of this Act, the question whether a body corporate is related to another body corporate is to be determined in the same manner as that question is determined under the Corporations Law.

4 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Section 5

Part 2—Transfer of CFM subsidiaries to the Commonwealth

5 What this Part is about

This Part is about the transfer of CFM subsidiaries from CFM to the Commonwealth so that they may be sold under Part 3.

Division 1—Subsidiaries

6 Subsidiaries to be established

The Minister may, in writing, direct CFM to establish subsidiaries.

7 CFM to transfer shares in subsidiaries to the Commonwealth

The Minister may, in writing, direct CFM to transfer from CFM to the Commonwealth all of the shares in a CFM subsidiary, including a subsidiary that existed before the commencement of this Act.

8 Exemption from stamp duty and other taxes

Stamp duty or other tax is not payable under a law of the Commonwealth, a State or a Territory in respect of:

- (a) the transfer of shares in a CFM subsidiary by CFM to the Commonwealth; or
- (b) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, the transfer.

Division 2—Staff

9 Transfer of staff from CFM

- (1) The Minister may, by written instrument, declare that a specified employee of CFM on a specified day:
 - (a) ceases to be employed by CFM; and
 - (b) is taken to have been engaged by a specified CFM subsidiary or a specified transferred body as an employee of that subsidiary or body.
- (2) The declaration has effect accordingly.
- (3) The employee's *transfer time* occurs immediately after the beginning of the day specified in the declaration.

10 Terms and conditions of transferred employees

- (1) A person who is a transferred employee is taken:
 - (a) to have been engaged by the CFM subsidiary or the transferred body on the same terms and conditions as those that applied to the person, immediately before the employee's transfer time, as an employee of CFM; and
 - (b) to have accrued an entitlement to benefits, in connection with that engagement by the CFM subsidiary or the transferred body, that is equivalent to the entitlement that the person had accrued, as an employee of CFM, immediately before the employee's transfer time.
- (2) The service of a transferred employee as an employee of the CFM subsidiary or the transferred body is taken, for all purposes, to have been continuous with the service of the employee, immediately before the employee's transfer time, as an employee of CFM.
- (3) A transferred employee is not entitled to receive any payment or any other benefit merely because he or she stopped being an employee of CFM as a result of this Division.

11 Variation of terms and conditions of employment

- (1) This Division does not prevent the terms and conditions of a transferred employee's employment after the employee's transfer time from being varied:
 - (a) in accordance with those terms and conditions; or
 - (b) by or under a law, award, determination or agreement.

Section 12

- (2) In this section:
vary, in relation to terms and conditions, includes:
 (a) omitting any of those terms and conditions; or
 (b) adding to those terms and conditions; or
 (c) substituting new terms or conditions for any of those terms and conditions.

12 Statement of accrued benefits

- (1) Before the employment of an employee of CFM is transferred under section 9, CFM must give the employee a written statement setting out the particulars of the benefits to which the employee has accrued an entitlement.
- (2) In any proceedings relating to paragraph 9(1)(b), the statement is *prima facie* evidence of the matters set out in the statement.
- (3) A failure by CFM to comply with subsection (1) does not affect the validity of the transfer of the employment of the employee.

Division 3—Application of the Commonwealth Funds Management Limited Act 1990

13 Application of the *Commonwealth Funds Management Limited Act 1990*

The *Commonwealth Funds Management Limited Act 1990* applies to a transferred body to the extent, and in the manner, set out in this Division.

14 Application of section 4

Section 4 of the *Commonwealth Funds Management Limited Act 1990* applies in relation to a transferred body as if a reference to a protected body were a reference to the transferred body or a wholly-owned subsidiary of the transferred body.

15 Application of section 15

Section 15 of the *Commonwealth Funds Management Limited Act 1990* applies in relation to a transferred body as if:

- (a) a reference to the Company were a reference to the transferred body; and
- (b) a reference to the commencement of Part 3 of that Act were a reference to the transfer of all of the shares in the CFM subsidiary in question by CFM to the Commonwealth.

16 Application of Part 4

Part 4 of the *Commonwealth Funds Management Limited Act 1990* applies in relation to a transferred body as if:

- (a) a reference to a protected body were a reference to the transferred body or a wholly-owned subsidiary of the transferred body; and
- (b) a reference to a protected company name were a reference to the transferred body's name or a wholly-owned subsidiary's name; and
- (c) a reference to a protected business name were a reference to the transferred body's name or a wholly-owned subsidiary's name; and
- (d) a reference to the Company were a reference to the transferred body.

Section 17

17 Application of section 33

Section 33 of the *Commonwealth Funds Management Limited Act 1990* applies in relation to a transferred employee of a transferred body as if:

- (a) a reference to a staff member were a reference to the transferred employee; and
- (b) a reference to the Company were a reference to the transferred body; and
- (c) a reference to the transition were a reference to the transfer of all of the shares in the CFM subsidiary in question by CFM to the Commonwealth.

18 Application of section 34

- (1) This section applies to a person if:
 - (a) the person is a transferred employee; and
 - (b) immediately before the person's transfer time:
 - (i) the person was a staff member of CFM; and
 - (ii) section 34 of the *Commonwealth Funds Management Limited Act 1990* applied in relation to the person.
- (2) Section 34 of the *Commonwealth Funds Management Limited Act 1990*, as in force immediately before the person's transfer time, continues to apply, on and after that time, in relation to the person as if the person were a staff member of CFM for so long as the person continues to be employed by a transferred body or a CFM subsidiary.

19 Application of Part 8

Part 8 of the *Commonwealth Funds Management Limited Act 1990* (other than sections 44, 46 and 47) applies in relation to a transferred body as if:

- (a) a reference to the Company were a reference to the transferred body; and
- (b) a reference to the transition were a reference to the transfer of all of the shares in the CFM subsidiary in question by CFM to the Commonwealth.

Division 4—Application of other legislation

20 Approved authority—*Superannuation Act 1976*

- (1) A transferred body is taken to be an approved authority for the purposes of the *Superannuation Act 1976*.
- (2) The transferred body ceases to be an approved authority for the purposes of that Act on the body's sale day.

21 Approved authority—*Superannuation Act 1990*

- (1) A transferred body is taken to be an approved authority for the purposes of the *Superannuation Act 1990*.
- (2) The transferred body ceases to be an approved authority for the purposes of that Act on the body's sale day.

22 Commonwealth authority—*Safety, Rehabilitation and Compensation Act 1988*

- (1) A transferred body is taken to be a Commonwealth authority for the purposes of the *Safety, Rehabilitation and Compensation Act 1988*.
- (2) The transferred body ceases to be a Commonwealth authority for the purposes of that Act on the body's sale day.

23 Public authority of the Commonwealth—*Long Service Leave (Commonwealth Employees) Act 1976*

- (1) A transferred body is taken to be a public authority of the Commonwealth for the purposes of the *Long Service Leave (Commonwealth Employees) Act 1976*.
- (2) The transferred body ceases to be a public authority of the Commonwealth for the purposes of that Act on the body's sale day.

Part 3—Sale of CFM bodies

24 What this Part is about

This Part is about the sale of CFM and transferred bodies by the Commonwealth. The sales are to be effected by selling the shares in CFM and the transferred bodies on the same or different days.

Division 1—Preliminary

25 Sale day for CFM

- (1) If, in the opinion of the Minister, a particular day is the first day after the commencement of this Part on which a majority of the voting shares in CFM are or were acquired by a person, or persons, other than:
 - (a) the Commonwealth; or
 - (b) a nominee of the Commonwealth;the Minister must, by notice in the *Gazette*, declare the day to be the sale day for CFM.
- (2) The declaration has effect accordingly.
- (3) The notice must be published within 21 days after the sale day.
- (4) For the purposes of the memorandum of association and articles of association of CFM, this section is taken to constitute the kind of amendment to the *Commonwealth Funds Management Limited Act 1990* referred to in the memorandum and the definition of “Overriding Principle” in article 1 of the articles.

26 Sale day for transferred body

- (1) If, in the opinion of the Minister, a particular day is the first day after the commencement of this Part on which a majority of the voting shares in a transferred body are or were acquired by a person, or persons, other than:
 - (a) the Commonwealth; or
 - (b) a nominee of the Commonwealth;the Minister must, by notice in the *Gazette*, declare the day to be the sale day for that body.
- (2) The declaration has effect accordingly.
- (3) The notice must be published within 21 days after the body's sale day.

Division 2—Long service leave

27 What this Division is about

This Division (other than Subdivision 2F) is about the long service leave that may be granted to an employee of a CFM body who had less than 10 years service when the body was sold and who continued, after the sale, as an employee of that body or a related body. Subdivision 2F deals with employees who had at least 10 years service.

Subdivision 2A—Preliminary

28 Definitions

- (1) Unless the contrary intention appears, expressions used in this Division that are also used in the Long Service Leave Act have the same meanings as in that Act.
- (2) In this Division:
 - combined service period**, in relation to an employee of a CFM body, means the total of:
 - (a) the period that was, immediately before the body's sale day, the employee's period of service for the purposes of the Long Service Leave Act; and
 - (b) the period starting on the body's sale day during which the employee continues to be an employee of that body or a related body.

law means:

- (a) a law of the Commonwealth, a State or a Territory; or
- (b) regulations or any other instrument (other than an award, determination or industrial agreement) made under such a law.

post-sale long service leave rights, in relation to an employee of a CFM body, means any long service leave rights that the employee acquires under an award, determination, industrial agreement or law (other than this Act) on or after the body's sale day.

29 References to Long Service Leave Act

For the purposes of the application of this Part to a particular employee of a CFM body, a reference in this Division to the Long Service Leave Act is a reference to the *Long Service Leave*

Section 30

(Commonwealth Employees) Act 1976 as in force immediately before the body's sale day.

30 Division not to affect an employee's post-sale long service leave rights

To avoid doubt, it is declared that this Division does not affect an employee's post-sale long service leave rights.

Subdivision 2B—Long service leave for employees who attain at least 10 years service

31 What this Subdivision is about

This Subdivision is about the long service leave that may be granted to an employee of a CFM body or a related body who attains at least 10 years service. It also deals with employees who reach minimum retiring age or are retrenched.

32 Employees who attain 10 years service

- (1) A CFM body or a related body may grant an employee long service leave on full salary for a period up to the employee's long service leave credit under subsection 43(1) if:
 - (a) the employee was an employee of the CFM body immediately before the body's sale day; and
 - (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years; and
 - (c) from and after the body's sale day, the employee continued to be employed by the CFM body or a related body until his or her combined service period was at least 10 years.
- (2) The CFM body or related body (as the case requires) may, if the employee asks in writing, grant the employee long service leave on half salary for a period not exceeding twice the period that could have been granted to the employee on full salary.

33 Employees reaching minimum retiring age or being retrenched

- (1) A CFM body or a related body may grant an employee long service leave on full salary for a period up to the employee's long service leave credit under subsection 43(1) if:
 - (a) the employee was an employee of the CFM body immediately before the body's sale day; and

- (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years; and
 - (c) from and after the body's sale day, the employee continued to be employed by the CFM body or a related body; and
 - (d) the employee stopped being an employee of the CFM body or a related body, on or after reaching the minimum retiring age, or because of retrenchment; and
 - (e) the employee's combined service period at the time when he or she stopped being an employee of the CFM body or a related body was at least one year.
- (2) Long service leave granted under this section is to be taken so as to end immediately before the employee stopped being an employee.
- (3) The CFM body or related body (as the case requires) may, if the employee asks in writing, grant the employee long service leave on half salary for a period not exceeding twice the period that could have been granted to the employee on full salary.

34 Rate of salary

For the purposes of sections 32 and 33, the rate of salary to be used in working out the full salary of an employee is the rate that would be applicable to the employee under section 20 of the Long Service Leave Act if:

- (a) that section applied to the employee; and
- (b) for the expression "section 16 or 17" in that section there were substituted the expression "section 32 or 33 of the *CFM Sale Act 1996*".

Subdivision 2C—Payments in lieu of long service leave

35 What this Subdivision is about

This Subdivision is about payments in respect of long service leave to an employee of a CFM body or a related body who has not used all of his or her long service leave credit by taking long service leave under Subdivision 2B.

36 Employees who attain 10 years service

Subject to section 39, a CFM body or a related body must pay an employee an amount equal to full salary in respect of his or her long service leave credit under subsection 43(2) if:

Section 37

- (a) the employee was an employee of the CFM body immediately before the body's sale day; and
- (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years; and
- (c) from and after the body's sale day, the employee continued to be employed by the CFM body or a related body; and
- (d) the employee stopped being an employee of the CFM body or a related body on or after the day on which his or her combined service period reached 10 years.

37 Employees reaching minimum retiring age or being retrenched

Subject to section 39, a CFM body or a related body must pay an employee an amount equal to full salary in respect of his or her long service leave credit under subsection 43(2) if:

- (a) the employee was an employee of the CFM body immediately before the body's sale day; and
- (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years; and
- (c) from and after the body's sale day, the employee continued to be employed by the CFM body or a related body; and
- (d) the employee stopped being an employee of the CFM body or a related body, on or after reaching the minimum retiring age, or because of retrenchment; and
- (e) the employee's combined service period at the time when he or she stopped being an employee of the CFM body or a related body was at least one year.

38 Employee stops employment because of ill-health

Subject to section 39, a CFM body or a related body must pay an employee an amount equal to full salary in respect of his or her long service leave credit under subsection 43(2) if:

- (a) the employee was an employee of the CFM body immediately before the body's sale day; and
- (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years; and
- (c) from and after the body's sale day, the employee continued to be employed by the CFM body or a related body; and

- (d) the employee stopped being an employee of the CFM body or a related body; and
- (e) the CFM body or related body was satisfied that the employee left the body because of ill-health that justified his or her so leaving; and
- (f) when the employee left, his or her combined service period was at least one year.

39 Employee may request non-payment or reduced payment

- (1) An employee may, by written notice given to a CFM body or a related body before the employee stops being an employee of the body:
 - (a) request the body not to make a payment to the employee under section 36, 37 or 38; or
 - (b) request the body to make a payment under that section of a specified amount that is less than the amount that would otherwise be payable under that section.
- (2) The CFM body or the related body must comply with the request.

40 Rate of salary

For the purposes of this Subdivision, the rate of salary to be used in working out the full salary of an employee is the rate that would be applicable to the employee under section 21 of the Long Service Leave Act if:

- (a) that section applied to the employee; and
- (b) for the expression “sections 16 and 17” in that section there were substituted the expression “sections 36, 37 and 38 of the *CFM Sale Act 1996*”.

Subdivision 2D—Payments on the death of an employee

41 What this Subdivision is about

This Subdivision is about payments in respect of long service leave to the dependants or the legal personal representative of an employee of a CFM body or a related body who has died.

42 Payments on death of an employee

- (1) A CFM body or a related body must make a payment to a dependant or to 2 or more dependants of an employee if:

Section 42

- (a) the employee was an employee of the CFM body immediately before the body's sale day; and
 - (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years; and
 - (c) from and after the body's sale day, the employee continued to be employed by the CFM body or a related body; and
 - (d) on or after the body's sale day, the employee died and immediately before his or her death:
 - (i) the employee was an employee of the CFM body or a related body; and
 - (ii) the employee's combined service period was at least one year; and
 - (iii) the employee had one or more dependants.
- (2) A CFM body or a related body must make a payment to the legal personal representative of an employee if:
 - (a) the employee was an employee of the CFM body immediately before the body's sale day; and
 - (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years; and
 - (c) from and after the body's sale day, the employee continued to be employed by the CFM body or a related body; and
 - (d) on or after the body's sale day, the employee died and immediately before his or her death:
 - (i) the employee was an employee of the CFM body or a related body; and
 - (ii) the employee's combined service period was at least one year; and
 - (iii) the employee did not have any dependants.
- (3) The total amount of the payment or payments is the amount that would have been payable to the employee under section 37 if, on the day of his or her death, the employee had stopped being an employee of the CFM body or the related body on or after reaching the minimum retiring age.
- (4) If subsection (1) or (2) applies, section 23 of the Long Service Leave Act has effect as if:
 - (a) that section applied to the employee; and
 - (b) a reference in that section to the approving authority were a reference to the CFM body or the related body; and

- (c) for the expression “this Act” in that section there were substituted the expression “section 42 of the *CFM Sale Act 1996*”; and
- (d) for the expression “subsection 16(7) or 17(5)” in that section there were substituted the expression “section 42 of the *CFM Sale Act 1996*”.

Subdivision 2E—Long service leave credit

43 Employee’s long service leave credit for the purposes of Subdivisions 2B and 2C

- (1) For the purposes of sections 32 and 33, the long service leave credit of an employee is equal to the long service leave credit that the employee would have under the Long Service Leave Act for the period:
 - (a) starting when the employee started his or her period of service; and
 - (b) ending on:
 - (i) where the employee was employed by CFM immediately before CFM’s sale day—CFM’s sale day; or
 - (ii) where the employee was employed by a transferred body immediately before the body’s sale day—that body’s sale day;if the employee had been retrenched on that sale day.
- (2) For the purposes of sections 36, 37 and 38, an employee’s long service leave credit is the employee’s long service leave credit worked out under subsection (1), reduced by any long service leave credit used under section 32 or 33.

Subdivision 2F—Saving: Long Service Leave Act

44 Saving—Accrued rights under the Long Service Leave Act

- (1) Even though an employee of a CFM body ceases to be employed in Government Service for the purposes of the Long Service Leave Act, the employee’s accrued rights under that Act continue while the employee continues to be employed by the CFM body or a related body if:
 - (a) the employee was an employee of the CFM body immediately before the body’s sale day; and

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- (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was at least 10 years.

However, the employee is not entitled to receive any payment because he or she ceases to be in Government Service.

- (2) The Long Service Leave Act has effect after the CFM body's sale day as if:
 - (a) where the employee continues to be employed by that body—that body were an approving authority for the purposes of that Act; or
 - (b) where the employee continues to be employed by a related body—that related body were an approving authority for the purposes of that Act.

Division 3—Superannuation

45 What this Division is about

This Division is about how certain legislation dealing with superannuation continues to operate in relation to a CFM body after it is sold.

46 Deferred benefits under the *Defence Force Retirement and Death Benefits Act 1973*

- (1) For the purposes of Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973*, an employee of a CFM body:
 - (a) to whom, immediately before the body's sale day, deferred benefits were applicable under section 78 of that Act; and
 - (b) who continues to be employed by the CFM body or a related body after that day;is taken to continue in public employment, on or after that day, while he or she continues to be so employed.
- (2) Subsection (1) is subject to Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973*.

47 Period of eligible employment for the purposes of Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973*

- (1) A period of employment of a person by a CFM body continues to be a period of eligible employment for the purposes of Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973* if, immediately before the body's sale day, the period was a period of eligible employment for the purposes of that Division.
- (2) Subsection (1) applies even if employment by the body ceases to be eligible employment for the purposes of that Division on the body's sale day.

48 Continuing application of the *Crimes (Superannuation Benefits) Act 1989*

Continuing application of Act

- (1) Subject to subsection (2), the *Crimes (Superannuation Benefits) Act 1989* continues to apply, on and after the sale day of a CFM body, in relation to a person who committed a corruption offence

Section 48

before that day while an employee of the body, as if the body continued to be a Commonwealth authority.

Limitation on superannuation orders

- (2) A superannuation order may not be made under the *Crimes (Superannuation Benefits) Act 1989* in relation to employer contributions or benefits paid or payable to a superannuation scheme by a CFM body on or after the body's sale day.

Superannuation schemes

- (3) A superannuation scheme in relation to which employer contributions or benefits are paid or payable by a CFM body on or after the body's sale day is not a superannuation scheme for the purposes of the application of the *Crimes (Superannuation Benefits) Act 1989* to a corruption offence committed by a person after the body's sale day.

Paragraph 19(3)(d) orders

- (4) Despite paragraph 19(3)(d) of the *Crimes (Superannuation Benefits) Act 1989*, an order made under that paragraph on or after the body's sale day may only specify that an amount paid into the Consolidated Revenue Fund before the body's sale day by or on behalf of the body belongs to the Commonwealth.

Paragraph 19(4)(b) orders

- (5) If:
- (a) a person who was an employee of a CFM body before the body's sale day committed a corruption offence while such an employee; and
 - (b) the person was paid benefits before, on or after the body's sale day out of the Consolidated Revenue Fund;
- then, despite paragraph 19(4)(b) of the *Crimes (Superannuation Benefits) Act 1989*, an order made under that paragraph on or after the body's sale day may only specify that an amount equal to the total benefits paid out of the Consolidated Revenue Fund be paid to the Commonwealth.

Interpretation

- (6) Unless the contrary intention appears, an expression used in this section that is also used in the *Crimes (Superannuation Benefits) Act 1989* has the same meaning in this section as it has in that Act.

Division 4—Safety, Rehabilitation and Compensation Act 1988

49 What this Division is about

This Division is about how the Safety, Rehabilitation and Compensation Act continues to operate in relation to a CFM body after it is sold.

50 Definitions

Unless the contrary intention appears, expressions used in this Division that are also used in the *Safety, Rehabilitation and Compensation Act 1988* have the same meanings as in that Act.

51 Continued application of the *Safety, Rehabilitation and Compensation Act 1988*

If a CFM body ceases to be a Commonwealth authority for the purposes of the *Safety, Rehabilitation and Compensation Act 1988*, that Act continues to apply in relation to the CFM body to the extent, and in the manner, set out in this Division.

52 Continued application to certain employees

- (1) The *Safety, Rehabilitation and Compensation Act 1988* continues to apply, on and after the sale day of a CFM body, in relation to:
 - (a) injuries suffered by an employee of the body before its sale day; and
 - (b) loss of, or damage to, property incurred by the employee before the body's sale day;if the employee was an employee of the body immediately before its sale day.
- (2) For the purposes of subsection (1), the *Safety, Rehabilitation and Compensation Act 1988* continues to apply as if:
 - (a) the CFM body continued to be a Commonwealth authority; and
 - (b) the Chief Executive Officer of the CFM body (however described) continued to be the Principal Officer of a Commonwealth authority.

Section 53

53 Transitional provisions relating to Division 4A of Part VII

- (1) On and after the sale day of a CFM body, Division 4A of Part VII of the *Safety, Rehabilitation and Compensation Act 1988* applies to the CFM body as if:
 - (a) the CFM body continues to be a Commonwealth authority; and
 - (b) the CFM body is not required to pay a premium under that Division in respect of the part of a financial year that occurs after the sale day; and
 - (c) the following word and paragraph were added at the end of subsection 96H(1):

; or (f) in the case of an authority—the authority is not required to pay a premium under this Division in respect of part of a financial year.
- (2) If, 60 days after the sale day of a CFM body, an amount of premium payable by the body to Comcare in respect of the period before the sale day remains unpaid, the amount is a debt due to the Commonwealth by the CFM body and payable to Comcare.

54 Relevant employer and co-operation with the Commonwealth

- (1) On and after the sale day of a CFM body, the body is taken to be the relevant employer of the employee for the purposes of section 40 of the *Safety, Rehabilitation and Compensation Act 1988*.
- (2) On and after the sale day of a CFM body, the body must provide such reasonable co-operation and assistance as the Commonwealth requires to enable the Commonwealth to fulfil its obligations under sections 36, 37, 38, 39, 41 and 41A of the *Safety, Rehabilitation and Compensation Act 1988*.

55 Notification of amount of salary paid to employees of a CFM body

- (1) The Chief Executive Officer (however described) of a CFM body that was a Commonwealth authority immediately before the body's sale day must notify Comcare, within 28 days after the sale day, of the amount of salary, wages or pay paid to employees of the CFM body in the pre-sale day period.

(2) In this section:

pre-sale day period means the period starting on 1 July in the financial year in which a CFM body's sale day occurs and ending on the day before the sale day.

Section 56

**Division 5—Occupational Health and Safety
(Commonwealth Employment) Act 1991**

56 Refund of contribution paid under the *Occupational Health and Safety (Commonwealth Employment) Act 1991*

- (1) A CFM body is entitled to be paid the amount worked out using the formula set out below if the CFM body has paid a contribution to the cost of the administration of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* under section 67H of that Act in respect of the financial year in which the body's sale day occurs.

$$\text{Contribution} \times \frac{\text{No. of refund days}}{365}$$

contribution means the contribution paid by the CFM body in respect of that financial year.

no. of refund days means the total number of days in the period beginning on the sale day and ending on the last day of the financial year in which the sale day occurs.

- (2) An amount to which a CFM body is entitled under subsection (1) must be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

Division 6—Mobility rights

57 Cessation of mobility rights

- (1) Division 2 or 3 of Part IV of the *Public Service Act 1922* stops applying to an employee of a CFM body on the body's sale day if that Division applied to the employee of the body immediately before the body's sale day.
- (2) If Division 4 of Part IV of the *Public Service Act 1922* applied to an employee of a CFM body immediately before the body's sale day:
 - (a) the *Officers' Rights Declaration Act 1928*; and
 - (b) Division 4 of Part IV of the *Public Service Act 1922*;stop applying to the employee on the body's sale day.

Section 58

Division 7—Prosecutions

58 Continuing application of the *Director of Public Prosecutions Act 1983*

- (1) Even though the *Director of Public Prosecutions Act 1983* ceases to apply to certain acts, omissions or proceedings in connection with a CFM body because the body ceases to be an authority of the Commonwealth for the purposes of that Act, that Act continues on and after the body's sale day to apply in relation to:
 - (a) acts or omissions that occurred in relation to the CFM body before the body's sale day; and
 - (b) civil remedies in respect of relevant matters relating to acts or omissions referred to in paragraph (a).
- (2) In this section:
relevant matter has the same meaning as in the *Director of Public Prosecutions Act 1983*.

Division 8—Imputation

59 Franking account surpluses reduced to nil

- (1) Subject to subsection (3), if, immediately before CFM's sale day, CFM had a class A franking surplus, a class B franking surplus or a class C franking surplus, then CFM's class A franking surplus, class B franking surplus or class C franking surplus (as the case requires) is reduced to nil at the beginning of CFM's sale day.
- (2) Subject to subsection (3), if:
 - (a) at any time on or after CFM's sale day, there arises a franking credit or a franking debit of CFM; and
 - (b) the franking credit or franking debit is to any extent attributable to a period, or to an event taking place, before CFM's sale day;the franking credit or franking debit is to that extent taken not to have arisen.
- (3) If:
 - (a) a class A franking debit, class B franking debit or class C franking debit, that arises on or after CFM's sale day, of CFM is to an extent (the amount of which is the *pre-sale component of the debit*) attributable to a period, or to an event taking place, before the sale day; and
 - (b) immediately before the sale day, CFM had a class A franking surplus, class B franking surplus or class C franking surplus, that was less than the corresponding pre-sale component of the debit;then subsection (1) does not apply to the surplus and subsection (2) does not apply to the debit.
- (4) In this section the following expressions have the same meanings as in Part IIIAA of the *Income Tax Assessment Act 1936*:
 - class A franking debit*
 - class A franking surplus*
 - class B franking debit*
 - class B franking surplus*
 - class C franking debit*
 - class C franking surplus*
 - franking credit*
 - franking debit*

Division 9—Miscellaneous

60 CFM body not to be an agency of the Commonwealth etc.

- (1) On and after a CFM body's sale day, the body is not taken, for the purposes of a law, to be:
 - (a) a Commonwealth authority; or
 - (b) established for the public purpose or for a purpose of the Commonwealth; or
 - (c) a public authority or an agency or instrumentality of the Crown;unless a law expressly provides otherwise.
- (2) In subsection (1):

law means:

 - (a) an Act of the Commonwealth or of a State or Territory; or
 - (b) regulations or any other instrument made under such an Act.

61 Regulations connected with the sale of a CFM body

- (1) Subsection 48(2) of the *Acts Interpretation Act 1901* does not apply to regulations made under any Act that:
 - (a) are connected with the sale of a CFM body; and
 - (b) include a declaration that the Governor-General is satisfied that they are connected with the sale of a CFM body; and
 - (c) are expressed to take effect on the body's sale day.
- (2) Regulations covered by subsection (1) take effect on the body's sale day.

62 Certain provisions of the *Commonwealth Funds Management Limited Act 1990* cease to apply to CFM bodies

- (1) The following sections and Parts of the *Commonwealth Funds Management Limited Act 1990* cease to apply to CFM on CFM's sale day:
 - (a) sections 4, 15, 33, 34, 39, 41, 42, 43, 44 and 46;
 - (b) Parts 4, 5 and 7.

- (2) The following sections and Part of the *Commonwealth Funds Management Limited Act 1990* cease to apply to a transferred body on the transferred body's sale day:
- (a) sections 4, 15, 33, 34, 39, 41, 42 and 43;
 - (b) Part 4.

Note: Division 3 of Part 2 of this Act sets out how the provisions listed in subsection (2) are to apply to a transferred body before they cease to so apply.

Section 63

Part 4—Transfer of assets, liabilities, rights and obligations of CFM bodies

63 What this Part is about

This Part is about the transfer of assets, liabilities, rights and obligations of CFM bodies. The transfers are to be effected by way of Ministerial declaration.

Division 1—Preliminary

64 Definitions

In this Part, unless the contrary intention appears:

asset means:

- (a) any legal or equitable estate or interest in real or personal property, including a contingent or prospective one; and
- (b) any right, privilege or immunity, including a contingent or prospective one.

contract includes:

- (a) a deed; and
- (b) a deed poll.

instrument includes a document.

liability means a liability or duty, including a contingent or prospective one.

specified transferee means:

- (a) in relation to an asset to which a declaration under subsection 65(1) relates—the Commonwealth, a CFM subsidiary or a transferred body, whichever is specified in the declaration as the body in which the asset vests; or
- (b) in relation to a right or obligation to which a declaration under subsection 68(1) relates—the Commonwealth, a CFM subsidiary or a transferred body, whichever is specified in the declaration as the body to which the right or obligation is to be transferred; or
- (c) in relation to a liability to which a declaration under subsection 71(1) relates—the Commonwealth, a CFM subsidiary or a transferred body, whichever is specified in the declaration as the body to which the liability is to be transferred.

Division 2—Transfer of assets

65 Transfer of assets

- (1) The Minister may, by written instrument, declare that a specified asset of a CFM body (other than shares in the CFM body) vests in a specified transferee on a specified day without any conveyance, transfer or assignment.
- (2) The declaration has effect accordingly.
- (3) The Minister must as soon as practicable, but no later than 21 days after making the declaration, publish the declaration in the *Gazette*.
- (4) Any consideration payable for the transfer of an asset under this section is payable to the Commonwealth instead of to the CFM body.

Note: An asset or instrument may be specified by name, by inclusion in a specified class or in any other way.

66 References to CFM body in instruments relating to transferred assets

An instrument relating to an asset of a CFM body specified in a declaration continues to have effect after the asset vests in the specified transferee as if a reference in the instrument to the CFM body were a reference to the specified transferee.

67 Transferees are successors in law of CFM body

Immediately after an asset vests in the specified transferee under a declaration, the specified transferee becomes the CFM body's successor in law in relation to the asset.

Section 68

Division 3—Transfer of rights and obligations

68 Transfer of rights and obligations

- (1) The Minister may, by written instrument, declare that the rights and obligations of a CFM body under a specified contract on a specified day:
 - (a) cease to be rights and obligations of the CFM body; and
 - (b) become rights and obligations of the specified transferee.
- (2) The declaration has effect accordingly.
- (3) A Minister must as soon as practicable, but no later than 21 days after making the declaration, publish the declaration in the *Gazette*.

Note: A contract or instrument may be specified by name, by inclusion in a specified class or in any other way.

69 References to CFM body in instruments relating to transferred rights and obligations

An instrument relating to a contract specified in a declaration continues to have effect after the rights and obligations of a CFM body under the contract become rights and obligations of the specified transferee as if a reference in the instrument to the CFM body were a reference to the specified transferee.

70 Transferees are successors in law of CFM body

Immediately after rights and obligations become rights and obligations of the specified transferee under a declaration, the specified transferee becomes the CFM body's successor in law in relation to those rights and obligations.

Division 4—Transfer of liabilities

71 Transfer of liabilities

- (1) The Minister may, by written instrument, declare that a specified liability of a CFM body (other than a liability under a contract) on a specified day:
 - (a) ceases to be a liability of the CFM body; and
 - (b) becomes a liability of a specified transferee.
- (2) The declaration has effect accordingly.
- (3) The Minister must as soon as practicable, but no later than 21 days after making the declaration, publish the declaration in the *Gazette*.

Note: A liability or instrument may be specified by name, by inclusion in a specified class or in any other way.

72 References to CFM body in instruments relating to transferred liabilities

An instrument relating to a liability of a CFM body specified in a declaration continues to have effect after the liability becomes a liability of the specified transferee as if a reference in the instrument to the CFM body were a reference to the specified transferee.

73 Transferees are successors in law of CFM body

Immediately after a liability becomes a liability of the specified transferee under a declaration, the specified transferee becomes the CFM body's successor in law in relation to the liability.

Section 74

Division 5—Tax exemption and income tax treatment

74 Exemption from stamp duty and other taxes

- (1) Stamp duty or other tax is not payable under a law of the Commonwealth, a State or a Territory in respect of:
 - (a) an exempt matter; or
 - (b) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, an exempt matter.
- (2) In this section:
exempt matter means:
 - (a) the transfer of an asset under section 65; or
 - (b) the transfer of rights and obligations under section 68; or
 - (c) the transfer of a liability under section 71.

75 Application of the *Income Tax Assessment Act 1936* in relation to certain transfers

- (1) This section applies if an asset, liability, right or obligation is transferred from a CFM body to a specified transferee under this Part or by another means:
 - (a) in the case of a transferred body—after the day on which all of the shares in the CFM subsidiary in question are transferred by CFM to the Commonwealth in accordance with the Minister's direction under section 7, but on or before the body's sale day; or
 - (b) in the case of CFM—after the day on which all of the shares in Total Risk Management Pty. Limited are transferred by CFM to the Commonwealth in accordance with the Minister's direction under section 7, but on or before CFM's sale day.

Note: Total Risk Management Pty. Limited was a subsidiary of CFM when this Act received the Royal Assent.

- (2) The *Income Tax Assessment Act 1936* applies to the CFM body and the specified transferee as if:
 - (a) the specified transferee had acquired the asset, liability, right or obligation at the time when, and in the circumstances in which, the CFM body acquired the asset, liability, right or obligation; and

- (b) the specified transferee had treated and dealt with the asset, liability, right or obligation in the way that the CFM body treated and dealt with the asset, liability, right or obligation; and
 - (c) the CFM body had never acquired or disposed of the asset, liability, right or obligation.
- (3) Subsection (2) does not affect the application of the *Income Tax Assessment Act 1936* in relation to anything that happened in relation to the asset, liability, right or obligation before it was transferred from the CFM body to the specified transferee.
- (4) Subsection (2) does not affect the nature or effect of the transfer for a purpose other than a purpose of the *Income Tax Assessment Act 1936*.

Section 76

Division 6—Miscellaneous

76 Transfers of CFM land may be registered

- (1) This section applies if:
 - (a) any right, title or interest in particular land vests in a specified transferee under section 65; and
 - (b) there is lodged with a land registration official a certificate that:
 - (i) is signed by the Minister, or a person authorised by the Minister, in writing, for the purposes of this section; and
 - (ii) identifies the land, whether by reference to a map or otherwise; and
 - (iii) states that the right, title or interest has become vested in the specified transferee under section 65.
- (2) The land registration official may:
 - (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
 - (b) deal with, and give effect to, the certificate.
- (3) A document that appears to be a certificate under subsection (1) is taken to be such a certificate, and to have been properly given, unless the contrary is established.
- (4) In this section:
land registration official, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

77 *Lands Acquisition Act 1989* does not apply to this Part

The *Lands Acquisition Act 1989* does not apply in relation to anything done under this Part.

78 Certificates in relation to assets other than land

- (1) This section applies if:
 - (a) an asset other than land vests in a specified transferee under section 65; and
 - (b) there is lodged with an assets official a certificate that:
 - (i) is signed by the Minister, or a person authorised by the Minister, in writing, for the purposes of this section; and

- (ii) identifies the asset; and
 - (iii) states that the asset has become vested in the specified transferee under section 65.
- (2) The assets official may:
 - (a) deal with, and give effect to, the certificate as if the certificate were a proper and appropriate instrument for transactions in relation to assets of that kind; and
 - (b) make such entries in the register as are necessary having regard to the effect of section 65.
- (3) A document that appears to be a certificate under subsection (1) is taken to be such a certificate and to have been properly given unless the contrary is established.
- (4) In this section:
assets official means the person or authority who, under a law of the Commonwealth, a State or a Territory, has responsibility for keeping a register in relation to assets of the kind concerned.

Part 5—Miscellaneous

79 Compensation—constitutional safety net

- (1) If:
- (a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and
 - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;
- the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.
- (3) Any damages or compensation recovered, or other remedy given, in a proceeding begun otherwise than under this section must be taken into account in assessing compensation payable in a proceeding begun under this section and arising out of the same event or transaction.
- (4) In this section:
- acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.
- just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

80 Operation of this Act does not place a person in breach of contract etc.

To avoid doubt, the operation of this Act is not to be regarded as:

- (a) placing a person in breach of contract or confidence; or
- (b) otherwise making a person guilty of a civil wrong; or
- (c) placing a person in breach of any contractual provision prohibiting, restricting or regulating:
 - (i) the assignment or transfer of any asset, liability, right or obligation; or
 - (ii) the disclosure of any information; or

- (d) releasing any surety from any of the surety's obligations in relation to a liability or obligation that is transferred under a declaration made under Part 4.

81 Commonwealth records

- (1) This Act does not authorise a Commonwealth record (within the meaning of the *Archives Act 1983*) to be transferred or otherwise dealt with except in accordance with the provisions of that Act.
- (2) A Commonwealth record (within the meaning of the *Archives Act 1983*) must not be transferred to the purchaser of a CFM body under Part 3 of this Act in connection with the operation of this Act in relation to the CFM body unless the Australian Archives has given permission under paragraph 24(2)(b) of the *Archives Act 1983*.

82 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1—Amendment of the Commonwealth Funds Management Limited Act 1990

1 Subsection 3(1) (definitions of *group company*, *operate*, *protected body*, *protected business name*, *protected company name*, *protected name*, *protection time* and *registered*)

Repeal the definitions.

2 Section 4

Repeal the section.

3 Subsection 7(1)

Omit “a”, substitute, “an authorised and issued”.

4 Subsection 7(2)

Before “share”, insert “issued”.

5 Section 15

Repeal the section.

6 Parts 4 and 5

Repeal the Parts.

7 Sections 33 and 34

Repeal the sections.

8 Part 7

Repeal the Part.

9 Sections 39, 41, 42, 43, 44 and 46

Repeal the sections.

10 Section 47

Repeal the section.

11 Subsection 48(2)

Repeal the subsection.

Schedule 2—Amendment of other Acts

Legislative Instruments Act 1996

1 Schedule 3

Omit “Commonwealth Funds Management Limited”.

Military Superannuation and Benefits Act 1991

2 Section 41

Repeal the section.

Superannuation Act 1976

3 Subsection 42(3)

Omit “Subject to subsection (4), the”, substitute “The”.

4 Subsection 42(4)

Repeal the subsection.

5 Subsection 42(4A)

Omit “Commonwealth Funds Management Limited and”.

Superannuation Act 1990

6 Section 33

Repeal the section.

[*Minister’s second reading speech made in—
House of Representatives on 19 September 1996
Senate on 5 November 1996*]