



# **Military Superannuation and Benefits Trust Deed**

**as amended**

made under section 4 of the

*Military Superannuation and Benefits Act 1991*

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Amendment Trust Deed 2007 (No. 3)*

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THIS DEED is made on this eighteenth day of September 1991

BY THE COMMONWEALTH OF AUSTRALIA (in this Deed called *the Commonwealth*)

WHEREAS section 4 of the *Military Superannuation and Benefits Act 1991* (in this Deed called *the Act*) provides that the Minister, for and on behalf of the Commonwealth, must, within 30 days after the commencement of the Act, by Deed establish an occupational superannuation scheme in order to provide benefits for members of the Defence Force.

NOW THIS DEED WITNESSES as follows:

## 1 Interpretation

- (1) In this Deed, where the context requires or admits, a reference to the Deed shall include a reference to the Rules, as set out in the Schedule (in this Deed called *the rules*), and the Rules shall form part of the Deed. In the case of an inconsistency between the provisions of the Deed and the Rules, the provisions of the Deed shall prevail.
- (2) In this Deed, where the context requires or admits, words and expressions defined in the Act or the Rules have the same meanings when used in the Deed. The headings in this Deed and the Rules are for the convenience of reference only and shall not affect their interpretation.
- (3) In this Deed *Minister* means:
  - (a) the Commonwealth Minister of State for Defence;
  - (b) if 2 or more Commonwealth Ministers administer Departments which have functions in relation to the administration of matters to which the Deed relates, the Minister who administers the Department which has the function in relation to each of those matters; or
  - (c) a member of the Executive Council acting for the time being for and on behalf of any of those Ministers.

## 2 Establishment of the Superannuation Scheme and the Fund

- (1) There is hereby established an occupational superannuation scheme to be known as the Military Superannuation and Benefits Scheme (in this Deed called *the Superannuation Scheme*) to come into force on 1 October 1991 for the benefit of:
  - (i) members of the Permanent Forces; and
  - (ii) members of the Emergency Forces and the Reserve Forces, to be administered in accordance with the Deed by the Military Superannuation and Benefits Board of Trustees No. 1 established by the Act (in this Deed called *the Board*).
- (2) For the purposes of the Superannuation Scheme there is hereby established and vested in the Board a fund to be known as the Military Superannuation and Benefits Fund No. 1 (in this Deed called *the Fund*).

**3 Functions and powers of the Board**

- (1) The functions of the Board are to administer the Superannuation Scheme and to manage and invest the Fund in accordance with the provisions of the Act and this Deed including, without limiting the generality of the foregoing, the following functions:
  - (a) to pay benefits to or in respect of members, and to make payments to and receive payments from the Commonwealth, as provided for in the Act;
  - (b) to provide advice to the Minister on proposed changes to the Act and the Deed;
  - (c) to determine interest rates for the purposes of the Superannuation Scheme;
  - (d) after 30 June 2002, to determine, from time to time, the issue price and withdrawal price of a unit in an Investment Division of the Fund.
- (2) The Board has power in Australia and elsewhere to do all things necessary or convenient to be done for, or in connection with, the performance of its functions and, in particular, may:
  - (a) give guarantees;
  - (b) underwrite or sub-underwrite any form of investment including the underwriting or sub-underwriting of the issue of shares, debentures or units in a unit trust;
  - (c) borrow moneys and give security over the whole or any part of the assets of the Fund;
  - (d) appoint agents and attorneys;
  - (e) act as agent for other persons;
  - (f) engage consultants and investment managers;
  - (g) establish an Incapacity Classification Committee to determine members' incapacity classifications under the Rules;
  - (h) establish 1, or more than 1, Reconsideration Committee:
    - (i) to examine and report on decisions of the Board and its delegates under the Rules relating to members' entitlements to benefits; and
    - (ii) to reconsider decisions of the Board and its delegates under the Rules relating to members' entitlements and benefits;
  - (i) take action to control or manage, or to enhance or protect, the value of, any investment made out of the Fund, or to enhance or protect, the return on any such investment.
- (3) Subject to the SIS Act, in exercising its functions and powers the Board must have regard to:
  - (a) the interests of members and the Commonwealth; and
  - (b) any statement of policy of the Commonwealth Government on any matter that is relevant to the performance of the functions, duties and powers of the Board by the Minister with a request that the Board consider that policy.

#### 4 Appointment of Trustees

- (1) Four of the 5 Trustees constituting the Board shall be appointed by the Minister having regard to the following:
  - (a) 2 of the Trustees shall be persons with experience in, and knowledge of, the formulation of government policy and public administration; and
  - (b) 2 of the Trustees shall be members of the Defence Force nominated by the Chief of the Defence Force, one being an officer and the other being a member, other than an officer.
- (2) The 5th Trustee, who will also be the Chairperson of the Board, shall also be appointed by the Minister.
- (3) A Trustee shall be appointed for such period, not exceeding 3 years, as the Minister specifies in the instrument of appointment.
- (4) A Trustee shall be eligible for re-appointment.
- (5) A Trustee shall hold office on such terms and conditions as are determined by the Minister.
- (6) The performance of the functions, or the exercise of the powers, of the Board shall not be affected by reason of there being a vacancy in the membership of the Board.
- (7) The Trustees shall be paid such remuneration and allowances as are determined by the Remuneration Tribunal but, if no determination of that remuneration or allowances by the Tribunal is in operation, they shall be paid such remuneration and allowances as are determined by the Minister.
- (8) The Minister may grant leave of absence to a Trustee on such terms and conditions as to remuneration or otherwise as the Minister determines.
- (9) A Trustee may resign office by writing signed by the Trustee and delivered to the Minister.

#### 5 Termination of Appointment

- (1) The Minister may terminate the appointment of a Trustee for:
  - (a) misbehaviour or physical or mental incapacity; or
  - (b) inefficiency or incompetence.
- (2) If a Trustee:
  - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the Trustee's creditors or makes an assignment of the Trustee's remuneration for their benefit; or
  - (b) fails, without reasonable excuse, to comply with the Trustee's obligations under clause 7; or
  - (c) is absent, except on leave granted by the Minister, from 3 consecutive meetings of the Board of which the Trustee has had notice;the Minister may terminate the appointment of the Trustee.

## **6 Acting Appointments**

- (1) The Minister may appoint a person to act as Chairperson:
  - (a) during a vacancy in the office of Chairperson; or
  - (b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office of Chairperson.
- (2) The Minister may appoint a person to act as a Trustee:
  - (a) during a vacancy in the office of a Trustee; or
  - (b) during any period, or during all periods, when a Trustee is acting as Chairperson, is absent from Australia or is, for any reason, unable to perform the duties of that office.
- (3) The Minister shall only appoint a person to act as Trustee who meets the same criteria, as set out in subclauses 4 (1) (a) or (b), as the Trustee in whose place the Trustee is to act.
- (4) An appointment under subclause (1) or (2) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (5) While a person is acting as Chairperson or as a Trustee, the person has and may exercise all the powers, and shall perform all the duties, of the Chairperson or the Trustee as the case may be.
- (6) The Minister may:
  - (a) determine the terms and conditions of appointment, including remuneration and allowances of a person appointed to act in an office under subclause (1) or (2); and
  - (b) terminate such an appointment at any time.
- (7) A person appointed to act in an office under subclause (1) or (2) may resign the appointment by writing signed by the person and delivered to the Minister.

## **7 Disclosure of Interests**

- (1) Each Trustee shall:
  - (a) as soon as possible after, but in any case not later than 60 days after, appointment as a Trustee; and
  - (b) as soon as possible after, but in any case not later than 60 days after, each anniversary of the Trustee's appointment as a Trustee, 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 Trustees as at the day of appointment or as to that anniversary, as the case requires, that could reasonably be expected to conflict with the proper performance by the Trustee of the Trustee's duties as a Trustee.
- (2) A statement presented by a Trustee to a meeting of the Board in pursuance of subclause (1) shall be incorporated into the minutes of the meeting.

- (3) Where a Trustee acquires an interest, whether pecuniary or otherwise and whether direct or indirect, that could reasonably be expected to conflict with the proper performance by the Trustee of the Trustee's duties as a Trustee and a statement containing particulars of the interest has not been given to a meeting of the Board in accordance with subclause (1), the Trustee shall, as soon as possible after acquiring that interest, present to a meeting of the Board a statement in writing setting out particulars of the interest and the statement shall be incorporated in the minutes of the meeting.
- (4) A Trustee who has a direct or indirect pecuniary interest in a matter being considered by the Board shall, as soon as possible after the relevant facts have come to the Trustee's knowledge, disclose the nature of the Trustee's interest at a meeting of the Board.
- (5) A disclosure under subclause (4) shall be recorded in the minutes of the meeting of the Board and the Trustee shall 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 the making of a determination by the Board under subclause (5) in relation to a Trustee who has made a disclosure under subclause (4), a Trustee who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not:
  - (a) be present during any deliberation of the Board for the purpose of making the determination; or
  - (b) take part in the making by the Board of the determination.
- (7) Where a Trustee is obliged by subclause (4) to disclose the nature of an interest at a meeting with the Board, the fact that the Trustee has presented to a meeting of the Board a statement under subclause (1) or (3) that includes particulars of that interest does not relieve the Trustee of the Trustee's obligations under subclause (4).

## **8 Meetings of the Board of Trustees**

- (1) The Board shall hold such meetings as are necessary for the conduct of its affairs.
- (2) The Chairperson may at any time convene a meeting of the Board and shall, when so requested in writing by another Trustee, convene a meeting of the Board within 30 days of receiving such notice.
- (3) The Chairperson shall preside at all meetings of the Board at which the Chairperson is present. If the Chairperson is not present at a meeting of the Board, the Chairperson may nominate one of the Trustees to be Chairperson for the meeting. In the absence of such nomination, the Trustees shall elect one of the Trustees present at the meeting as a Chairperson for the meeting.
- (4) At a meeting of the Board 4 Trustees, or acting Trustees, shall constitute a quorum and all decisions of the Board shall require a majority of 4 votes of the Trustees, or acting Trustees, present in person and voting.

- (5) The Board shall keep accurate records of all meetings held by the Board.

## **9 Operation of the Fund**

- (1) All contributions and other moneys paid to the Board, or as directed by the Board, shall be held in trust by the Board in the Fund. The Fund shall be managed and invested by the Board in accordance with the Act and the Deed.
- (2) The Fund shall comprise:
- (a) contributions made by members;
  - (b) contributions made by the Commonwealth pursuant to the Act and the Deed;
  - (c) any other moneys paid or transferred to the Board pursuant to the Act and the Deed or which become subject to the trusts of the Deed;
  - (d) the income arising from investments; and
  - (e) any accretions to or profits on realisation of investments.
- (3) The Fund shall be used by the Board to pay benefits to or in respect of members, to make payments to the Commonwealth in respect of members' benefits as provided for in the Act and to pay the costs and expenses of the management and investment of the Fund.

## **10 Investment of the Fund**

- (1) For the purposes of this clause:
- (a) *invest* means expend moneys with a view to obtaining a present or future financial return (whether by way of income, profit or otherwise); and
  - (b) *profit* includes capital profit.
- (2) Moneys standing to the credit of the Fund which the Board, after consultation with its investment manager, is of the opinion are moneys that are not for the time being required for the purpose of making payments out of the Fund under the Act and the Deed shall, so far as is practicable, be invested by the Board in accordance with the Act and the Deed, but the Board shall so manage the Fund that moneys that are from time to time required to pay benefits that are payable out of the Fund are available for that purpose.
- (3) Moneys that, by virtue of subclause (2), are required to be invested by the Board may be invested in any manner and, without limiting the generality of the foregoing, may be invested by the Board jointly with another person or other persons.
- (4) The Board must:
- (a) establish at least 1 Investment Division of the Fund as the means of investing the Fund; and
  - (b) establish an investment strategy for each Investment Division; and
  - (c) regularly review the effectiveness of each Investment Division and investment strategy; and

- (d) maintain records to identify the assets, liabilities and income of each Investment Division; and
  - (e) maintain records to identify payments made from each Investment Division.
- (4A) The Board may:
- (a) create an Investment Division; or
  - (b) refuse to issue further units for an Investment Division; or
  - (c) wind up an Investment Division; or
  - (d) merge 2 or more Investment Divisions; or
  - (e) divide an Investment Division into 2 or more Investment Divisions;
- if the Board decides that it is necessary or desirable to do so.
- (4B) In acting under subclause (4A), the Board may consult any person or body.
- (4C) If the Board decides to act under subclause (4A), the Board must give the unitised members who would be affected by the action reasonable notice of the action before the action takes effect.
- (5) The Board shall invest moneys standing to the credit of the Fund that are available for investment only through an investment manager or managers who undertake to invest, and manage the investment of, those funds on behalf of the Board.
- (6) The Board shall ensure that any investment manager:
- (a) operates within the investment powers of the Board and the investment strategy and policy as determined for the time being by the Board; and
  - (b) reports to the Board on the state of the Board's investments and the investment market at such times and in such manner as the Board determines.

## **10A Unitisation of Investment Divisions**

The Board must:

- (a) divide each Investment Division of the Fund into units; and
- (b) issue units to each unitised member that represent the member's beneficial interest in the fund; and
- (c) record the issue, withdrawal and transfer of the units of each member in a unit record system maintained by the Board for the Fund.

## **11 Requests by Minister for Information**

The Board shall furnish to the Minister such information relating to the general administration and operation of the Superannuation Scheme and the Fund as the Minister may from time to time require.

**12 Delegation by the Board**

The Board may by instrument under its seal delegate all or any of its powers under the Deed to any person, including the Commissioner for Superannuation or a Trustee, other than its powers under Part 9 of the Rules and this power of delegation.

IN WITNESS whereof the Honourable Gordon Neil Bilney, Minister for Defence Science and Personnel, has hereunto set the name of the Commonwealth of Australia and affixed his own seal the day and year first above written.

SIGNED, SEALED AND DELIVERED	)	
by the Honourable GORDON NEIL	)	
BILNEY, Minister for Defence	)	
Science and Personnel, for and	)	Gordon Bilney
on behalf of THE COMMONWEALTH OF	)	
AUSTRALIA, in the presence of:	)	
Elizabeth Cowan	)	
Parliament House	)	Elizabeth Cowan
Departmental Liaison Officer	)	



# Schedule Military Superannuation and Benefits Rules

## Part 1 Preliminary

### 1 Citation

These Rules may be cited as the Military Superannuation and Benefits Rules.

### 2 Definitions and interpretation

- (1) The following expressions are defined or interpreted, for the purposes of these Rules, in the Glossary in Schedule 1. Unless otherwise stated, the expressions are in Part 1 of the Schedule.

Actuary	financial year
allocation	flying allowance
allowance	foreign service member
ancillary	Fund
ancillary benefit	funded employer benefit
associate	higher duties allowance
associate A benefit	interim benefit
associate B benefit	interim salary fortnight
associate pension	contribution
bank	invalidity
Board	invalidity pension
calendar month	invalidity pensioner
carry over value	invalidity retiree
child	Investment Division
classification	investment nomination
Committee	issue price
contribution	lump sum maximum benefit
contributory service	limit
default Investment Division	marital relationship (see
Department	Part 1A)
Determination No. 6 of 1992	MBL member
DFRDB member	member
eligible child	member benefit
eligible service	member funded account
Emergency Forces	member unfunded account
employer benefit	membership
employer funded account	month
final average salary	net asset value

## Rule 2

Parliamentary Candidates	spouse who survives a
Act	deceased person (see
pension	Part 5)
pension maximum benefit	spouse's pension
limit	Statistician
Permanent Forces	submarine service allowance
prescribed fee	surcharge debt account
prescribed half-year	surcharge deduction amount
prescribed year	total benefit
preservation age	transfer
previous contributions	transfer application
previous legislation	transferred person
Q & S component	transferred (former
regulated superannuation	recipient) person
fund	transferred (refunded
relevant percentage	contributions) person
relevant period	transfer value
relevant provision	unfunded preserved benefit
Reserve Forces	unitised member
resign to contest an election	unit value
(see Part 2)	withdrawal price
retirement (see Part 3)	1948 Act
retirement on completion of	1973 Act
limited tenure employment	1973 Scheme
(see Part 3A)	1973 Scheme (deferred
retirement pensioner	benefit) re-entrant
retiring age (see Part 4)	1973 Scheme (invalidity
salary	pay) re-entrant
Scheme	1973 Scheme re-entrant
service	1973 Scheme (refunded
service allowance	contributions) re-entrant
service offence	1973 Scheme (retirement
SIS preservation threshold	pay) re-entrant
amount	1973 Scheme retirement
SIS Regulations	pensioner
special action forces	1991 Scheme
allowance	1991 Scheme re-entrant
specialist operations	
allowance	

- (2) Interpretations of the following matters, for the purposes of these Rules, are provided in Parts 6 to 9 of Schedule 1:

Part 6	Parts of speech and grammatical forms
Part 7	Number
Part 8	Reckoning of time
Part 9	Attainment of particular age

## Part 2 Contributions

### 3 Contributions by members

- (1) A member is required to pay a contribution each fortnight in accordance with this Division.
- (2) Where contributions by a member fall due during a period when he or she is on leave without pay, the member, or a person acting on his or her behalf, is to pay those contributions:
  - (a) each fortnight; or
  - (b) in such instalments and at such times as the Board approves; or
  - (c) with the approval of the Board, in a lump sum.

### 4 Amount of contributions

- (1) Subject to subrule (2), the amount of the contribution payable by a member in a fortnight is an amount equal to the relevant percentage of the amount of the salary paid to the member in that fortnight.
- (1A) Where the first salary fortnight in relation to which the first election under this rule by a member (being a transferred person) can be applied in the ordinary course of business is not the first salary fortnight occurring in whole or in part after the person became a member, then, despite subrules (1) and (10), the amount of the contribution payable by the member in respect of any salary fortnight (in this subrule called *interim salary fortnight*) occurring in whole or in part after the person became a member and before the first-mentioned salary fortnight is the amount of contribution which would have been payable by the member under the previous legislation in respect of the interim salary fortnight, or respective interim salary fortnight, if the person had not ceased to be an eligible member of the Defence Force within the meaning of the 1973 Act.
- (2) Where a member elects under subrule (10) to vary the amount of the contribution payable by him or her, that election has effect in relation to the first salary fortnight in relation to which it can be applied in the ordinary course of business.
- (3) Where a member makes an election under subrule (10), the member is not entitled to make a further election until the expiration of a period of three months after the day on which the earlier election was made.
- (4) For the purposes of subrule (1), salary is taken not to be paid to a member in respect of a day included in a period that, in accordance with Schedule 2, is a prescribed period.
- (5) Where:
  - (a) the salary of a member in respect of a period is forfeited, in whole or in part, under regulations made under the *Defence Act 1903*; and

## Rule 5

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- (b) the period does not exceed 21 consecutive days;  
the amounts of the contributions payable by the member in respect of that period are to be calculated as if the member were on full pay.
- (6) Subject to subrule (7), where a member who is granted:
  - (a) long service leave on half pay; or
  - (b) leave without pay for a period not exceeding 21 days;  
the amounts of the contributions payable by the member in respect of that period are to be calculated as if the member were on full pay.
- (7) In a case to which paragraph (6) (b) applies, the member's salary for the purpose of calculating the contribution payable by the member is taken not to include an allowance unless:
  - (a) the allowance was payable to the member on the day immediately preceding the commencement of the period; and
  - (b) an appropriate authority of the Defence Force has notified the Board that, but for the member's absence on leave without pay, the allowance would have been payable to the member in respect of the whole of the period of his or her absence on that leave.
- (8) In calculating the amount of a contribution payable by a member, the calculation is to be made as if no deductions were made from the member's salary.
- (9) Where the amount of a contribution payable by a member includes a fraction of a cent:
  - (a) if the fraction is less than one-half of a cent — the contribution is taken to be reduced by the amount of the fraction; or
  - (b) if the fraction is one-half of a cent or more — the contribution is taken to be increased by treating the fraction as one cent.
- (10) In this rule:
  - relevant percentage***, in relation to a member, means:
    - (a) the percentage, being a whole number that is not less than 5 and not more than 10, elected by the member; or
    - (b) if the member has not made an election — 5 per centum.

## 5 Cessation of contributions on reaching maximum benefit limit

- (1) A member is not entitled to pay contributions after he or she has been notified that his or her total benefit has equalled or exceeded his or her pension maximum benefit limit.
- (2) At any time after a member is notified that his or her total benefit has equalled or exceeded his or her lump sum maximum benefit limit, he or she may elect to cease paying contributions.
- (3) This rule applies in spite of anything in this Part.

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**Rule 7**

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- (4) This rule does not apply to benefits payable under Part 12 or Part 13 or contributions made under Part 14.

**6 Contributions while on leave without pay in connection with birth of child etc**

A member who is on leave without pay for a period exceeding 21 days which was granted to him or her in connection with:

- (a) the birth of a child of the member; or
- (b) other termination of the pregnancy of the member; or
- (c) the adoption of a child by the member;

may, before the expiration of the period of leave without pay, elect to pay contributions, calculated as if the member were on full pay, in respect of so much of that period, not exceeding 9 months, as is specified in the election.

**7 Contributions while on other leave without pay**

- (1) This rule does not apply to a period of leave without pay to which rule 6 applies.

- (2) Where a member who is on leave without pay for a period exceeding 21 days which was granted to him or her:

- (a) for the purpose of the member:
  - (i) engaging, with the approval of the appropriate authority of the Defence Force, in full time employment; or
  - (ii) undertaking further education; or
  - (iii) undergoing training; or
  - (iv) engaging in some other activity;

and, in the case of subparagraph (ii), (iii) or (iv), an appropriate authority of the Defence Force has notified the Board that the education, training or other activity is relevant to the requirements of the Defence Force; or

- (b) because the member was for the time being physically or mentally incapable of performing his or her duties;

the member may, with the approval of the Board, before the expiration of the period of leave without pay, elect to pay contributions, calculated as if the member were on full pay, in respect of so much of the period as is specified in the election.

- (2A) If a member is granted, on compassionate grounds, leave without pay for a period exceeding 21 days, the member may, with the approval of the Board, before the end of the period of leave without pay, elect to pay contributions, calculated as if the member were on full pay, in respect of so much of the period, not exceeding 2 years, as is specified in the election.

## Rule 8

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(3) Where:

- (a) leave without pay is granted to a member (in this subrule called the *inactive member*) whose spouse (in this subrule called the *active member*):

- (i) is also a member; or  
(ii) is an eligible member of the Defence Force within the meaning of the 1973 Act; and

- (b) the active member is posted to a locality to which the inactive member is unable to obtain a posting; and

- (c) the inactive member is granted the leave without pay in order not to be separated from the active member;

the inactive member may elect to pay contributions, calculated as if the member were on full pay, in respect of so much of that period, not exceeding 2 years, as is specified in the election.

- (3A) An election under subrule (3) must be made before the expiration of the period specified in the election.

## 8 General conditions applicable to contributions under rules 6 and 7

- (1) The provisions of rule 4 apply to an election made under rule 6 or 7 as if:

- (a) the reference in that rule to the amount of salary paid to the member in a fortnight were a reference to the amount of salary that would have been paid to the member in that fortnight if the member had been on full pay; and

- (b) the salary so assumed to be paid did not include an allowance unless:

- (i) the allowance was payable to the member on the day immediately before the commencement of the period; and  
(ii) an appropriate authority of the Defence Force has notified the Board that, but for the member's absence on leave without pay, the allowance would have been payable to the member in respect of the whole of the period of his or her absence on that leave.

- (2) A member who has made an election under rule 6 or 7 may revoke the election at any time after the expiration of a period of 3 months after the election was made.

- (3) A revocation under subrule (2) has effect in relation to the first salary fortnight in relation to which it can be applied in the ordinary course of business.

## 9 Member contributions to be paid to Board

- (1) Contributions payable by a member, other than an interim salary fortnight contribution, are to be paid to the Board by or on behalf of the member.

- (2) An interim salary fortnight contribution by a member is to be paid to the Commonwealth on behalf of the member.

**Rule 10**

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**10 Liability of Department to pay employer contributions**

- (1) The Department must, on each salary pay-day on which a member pays contributions, pay to the Board an employer contribution in relation to the member.

- (1AA) To avoid doubt, the Department's obligation to pay an employer contribution in relation to a member continues even if:

- (a) the member has not provided his or her tax file number to the Board; or
- (b) the Board returns a contribution of the member under rule 11QA.

- (1A) Subrule (1) does not apply in relation to:

- (a) an interim salary fortnight contribution; and
- (b) a contribution made under Part 14.

- (2) In spite of a member paying contributions during a period of leave without pay to which rule 7 applies, subrule (1) does not apply:

- (a) in the case of any part of a period of leave without pay referred to in subparagraph 7 (2) (a) (i) in respect of which no amount is paid under a prescribed arrangement; or
- (aa) in the case of a period of leave without pay referred to in subparagraph 7 (2) (a) (ii), (iii) or (iv) or paragraph 7 (2) (b) that exceeds 12 months — to any part of the excess period; or
- (ab) in the case of a period of leave without pay referred to in subrule 7 (2A); or
- (b) in the case of a period of leave without pay referred to in subrule 7 (3).

- (3) The amount of an employer contribution payable by the Department in relation to a member is an amount that is 3 per centum of the amount of the salary payable to the member in respect of the relevant fortnight.

- (4) In this rule:

***member's employer***, in relation to a member who is engaged in employment referred to in subparagraph 7 (2) (a) (i), means the person who is the employer of the member in respect of that employment.

***prescribed arrangement***, in relation to a member who is engaged in employment referred to in subparagraph 7 (2) (a) (i), means an arrangement between the Commonwealth and the member's employer under which the employer agrees to pay to the Commonwealth, in relation to a member, a contribution:

- (a) in respect of each salary fortnight:
  - (i) in the period of that employment; or
  - (ii) in a specified part of that period;as the case may be, in respect of which the member pays a contribution under this Part; and
- (b) of an amount equivalent to the amount that would be payable by the Commonwealth, as employer, in respect of the period referred to in subparagraph (a) (i) or (a) (ii), as the case may be, if the Scheme were

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**Rule 11**

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fully funded within the meaning of that expression in Division 9.5 of the SIS Regulations.

**11 Payment of contributions into Fund**

The Board must pay all member and employer contributions received by it into the Fund.

**Part 2A Unitisation of the Fund on 1 July 2002**

**11A Establishment of primary Investment Division**

- (1) The Board must establish and name an Investment Division that takes effect on 1 July 2002.
- (2) The Investment Division must comprise the whole of the Fund as it exists immediately before 1 July 2002.
- (3) As soon as practicable, the Board must divide the beneficial interest in the net assets of the Investment Division into units in the Division in accordance with Division 2 of Part 2B.

**11B Establishment of unitised accounts for members**

As soon as practicable, the Board must:

- (a) establish accounts in accordance with Division 3 of Part 2B for each person who is a unitised member of the Fund immediately after 30 June; and
- (b) for each of those persons:
  - (i) determine the funded component of the member benefit as at the end of 30 June 2002; and
  - (ii) credit the member funded account with units to the value of the funded component of the member benefit; and
  - (iii) determine the funded component of the employer benefit as at the end of 30 June 2002; and
  - (iv) credit the employer funded account with units to the value of the funded component of the employer benefit; and
- (c) in addition, for each of those persons who is a transferred person:
  - (i) determine the transfer value (if any) and the carryover value (if any) for the person as at the end of 30 June 2002; and
  - (ii) credit the member unfunded account with units to the value of the transfer value and the carryover value determined under subparagraph (i).

*Note* The Board may make additional arrangements for Investment Divisions at any time, in accordance with Part 2B.



## **Part 2B                      Administration of unitised Fund**

### **Division 1                      Arrangements for Investment Divisions**

#### **11C              Investment Divisions — general**

- (1) The Board may establish an Investment Division of the Fund at any time on or after 1 July 2002.
- (2) The Board may, at any time on or after 1 July 2002:
  - (a) refuse to issue further units for an Investment Division; or
  - (b) wind up an Investment Division; or
  - (c) merge 2 or more Investment Divisions; or
  - (d) divide an Investment Division into 2 or more Investment Divisions.
- (3) The Board:
  - (a) must name each Investment Division that it establishes (including an Investment Division established after a merger or division); and
  - (b) may change the name of an Investment Division.
- (4) There must be at least 1 Investment Division in existence at all times.
- (5) To avoid doubt, this rule applies in relation to the Investment Division mentioned in rule 11A.

#### **11D              Default Investment Division**

- (1) If the Fund has a single Investment Division in existence, that Division is the *default Investment Division*.
- (2) If the Fund has more than one Investment Division, the Board must designate one of them as the *default Investment Division*.
- (3) The Board may, at a later time, designate another Investment Division as the default Investment Division.

#### **11E              Winding up of Investment Division**

- (1) This rule applies if the Board decides to wind up an Investment Division.
- (2) Before winding up the Investment Division, the Board must:
  - (a) decide on the how units in the Investment Division held in accounts of a unitised member will be transferred to other Investment Divisions in the absence of a transfer application from the member; and
  - (b) give each unitised member notice under rule 11ZB; and
  - (c) if no transfer application is received by the member before the Investment Division is wound up, transfer the units in accordance with the decision under paragraph (a).

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**Rule 11F**

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- (3) The Board must:
- (a) sell the assets of the Investment Division, make the necessary deductions from the proceeds of the sale to pay the debts of the Investment Division and transfer the remainder of the proceeds to another Investment Division; or
  - (b) reallocate the assets of the Investment Division to another Investment Division in accordance with Division 4.

**11F Net asset value**

- (1) The *net asset value* of an Investment Division is the amount determined by the Board to be the total value of the assets of the Investment Division, less any amount representing liabilities of the Investment Division.
- (2) The Board may include in the assessment of net asset value an amount representing the Board's assessment of:
  - (a) actual or anticipated income tax liability; or
  - (b) an actual or anticipated benefit.
- (3) The Board may determine a net asset value from time to time, including more than once on a particular day.
- (4) The Board may require an asset of an Investment Division to be valued at any time, including more than once on a particular day.

**Division 2 Unitisation procedure****11G Unitisation of an Investment Division**

- (1) The Board must determine the net asset value of an Investment Division that the Board establishes.
- (2) The Board may determine, from time to time, the method of determining the net asset value of a Fund Investment Division.
- (3) The Board must:
  - (a) divide the beneficial interest in the assets of an Investment Division into a number of units in the Division; and
  - (b) work out, for each day, the price of the units in accordance with rules 11J and 11K.
- (4) A unit does not confer an interest in any particular part of:
  - (a) the beneficial interest in the net assets of the Investment Division; or
  - (b) the assets of the Investment Division; or
  - (c) the Investment Division.
- (5) Subject to the terms on which the units are issued to a unitised member, each unit in a class of units of an Investment Division is of equal rank within the class.

- (6) The Board must make and keep unit records for each Investment Division, including:
- (a) the name and contact details of each unitised member who has a unit in the Investment Division; and
  - (b) the number of units in the Investment Division held by each unitised member; and
  - (c) the aggregate value of those units.

#### **11H Classes of units**

- (1) The Board may divide the units in an Investment Division into 2 or more classes.
- (2) The unit value of units in 1 class may be different from the unit value of units in another class.

#### **11I Unit value**

- (1) Subject to these Rules, the *unit value* of a unit in a class of units held in an Investment Division in relation to member funded accounts and employer funded accounts for a particular day (the *valuation day*) that is a working day is the amount worked out using the formula:

net asset value for the class ÷ total number of units in the class

where:

*net asset value for the class* means the net asset value of the Investment Division attributed to the class as at the end of the valuation day.

*total number of units in the class* means the total number of units in the class held in relation to member funded accounts and employer funded accounts.

- (2) However, if the valuation day is not a working day, the unit value of the unit is the unit value for the last working day before the valuation day unless the Board calculates the net asset value for the valuation day.
- (3) The unit value of a unit in the class of units held in the Investment Division in relation to a member unfunded account for a particular day is the same as the unit value for a unit mentioned in subrule (1) for that day.
- (4) In this rule:  
*working day* means a day on which the Australian Stock Exchange is open for business.

#### **11J Issue price**

- (1) Subject to subrule (2), the *issue price* of a unit for a particular day is the amount worked out using the following formula:

unit value + estimate of acquisition costs

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**Rule 11K**

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where:

*estimate of acquisition costs* means the Board's estimate of the costs associated with the acquisition of the assets underlying the unit that will be incurred by the Board on that day.

*unit value* means the unit value for the day.

- (2) The Board may, if it is satisfied that it is reasonable in the circumstances, set the issue price of a unit for a transaction as the unit value for the day.

**11K Withdrawal price**

- (1) Subject to subrule (2), the *withdrawal price* of a unit for a particular day is the amount worked out using the following formula:

$$\text{unit value} - \text{estimate of disposal costs}$$

where:

*estimate of disposal costs* means the Board's estimate of the costs associated with the disposal of the assets underlying the unit that will be incurred by the Board on that day.

*unit value* means the unit value of the unit for the day.

- (2) The Board may, if it is satisfied that it is reasonable in the circumstances, set the withdrawal price of a unit for a transaction as the unit value for the day.

**11L Division or consolidation of units**

- (1) The Board may decide to divide or consolidate the units in an Investment Division.
- (2) If the Board decides to divide or consolidate units, the Board must:
  - (a) give each unitised member with units in the Investment Division notice of the division or consolidation; and
  - (b) ensure that the member's member funded account, member unfunded account and employer funded account are amended as appropriate to reflect the consolidation or division.

**Division 3 Arrangements for unitised members****11M Establishment and operation of unitised accounts**

- (1) As soon as practicable after 1 July 2002, the Board must establish and maintain the following accounts for each person who becomes a unitised member after 30 June 2002:
  - (a) a member funded account;
  - (b) an employer funded account.

**Rule 11P**

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- (2) The Board must also establish and maintain a member unfunded account for each of those persons who is a transferred person on 1 July 2002.
- (3) An account established under subrule (1) or (2) is an account of units in Investment Divisions of the Fund that are held for the member.
- (4) The Board must credit a unitised member's member funded account with units representing the contributions made by the member after 30 June 2002, allocated to Investment Divisions in accordance with any current investment nomination by the member.
- (5) The Board must credit a unitised member's employer funded account with units representing the contributions made by the Department after 30 June 2002, allocated to Investment Divisions in accordance with rule 11P.
- (6) The Board may debit a unitised member's member funded account or employer funded account to pay amounts owed to the Board or the Commissioner of Taxation.

**11N Annual statement**

As soon as practicable after the end of a financial year, the Board must give to each unitised member, to each ancillary and to each associate a statement of the beneficial interest that the member, ancillary or associate holds in the Fund, including:

- (a) the number of units held in each Investment Division as at the date on which the statement was issued; and
- (b) the aggregate value of those units as at that date.

**Division 4 Allocation of contributions to Investment Divisions**

**11O How contributions are allocated to an Investment Division**

For these Rules, a reference to the *allocation* of contributions to an Investment Division is a reference to the issue of units in the Investment Division to the value of the contribution at the issue price of the Investment Division on the day of issue.

**11P Allocation of employer contributions**

- (1) The Board must allocate contributions made by the Department to a unitised member's employer funded account to the default Investment Division.
- (2) Subject to rule 11R, a contribution to be allocated in accordance with this rule must be allocated as at the day that the contribution is received.

## **Rule 11Q**

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### **11Q Allocation of member contributions**

- (1) If the Fund has, or will have, more than one Investment Division, a unitised member may nominate to the Board the Investment Division or Investment Divisions to which contributions by the member should be allocated, from the day specified in the nomination.
- (3) Subject to rule 11QA, the Board must, as far as possible, comply with a unitised member's investment nomination.
- (4) A unitised member may change an investment nomination at any time.
- (5) If the Board:
  - (a) has not received an investment nomination from a unitised member; or
  - (b) cannot comply with an investment nomination in relation to all or part of a member's contribution because the nomination is defective, or because 1 or more of the Investment Divisions have changed;the Board must allocate the member's contributions, or the part of the member's contributions, to the default Investment Division.
- (6) Subject to rule 11R, a contribution to be allocated to an Investment Division in accordance with this rule must be allocated to the Investment Division as at the day that the contribution is received.

### **11QA Treatment of contributions where no tax file number has been provided**

- (1) Subject to subrule (2), if the Board receives a contribution from, or on behalf of, a member in a manner that is inconsistent with subregulation 7.04 (2) of the *Superannuation Industry (Supervision) Regulations 1994*, the Board:
  - (a) must allocate the contribution to the Investment Division or Investment Divisions nominated by the member; but
  - (b) must not allocate the contribution to the member's account.
- (2) If, within 30 days after the Board receives the contribution, the member's tax file number is provided to the Board, the Board must allocate the contribution to the member's account with effect from the day the tax file number is provided to the Board.
- (3) If, at the end of 30 days after the Board receives the contribution, the member's tax file number has not been provided to the Board, the Board must return the contribution to the member or, if the contribution was paid to the Board by another person on behalf of the member, to that person for the benefit of the member.

### **11R Suspension of allocations**

- (1) The Board may suspend the allocation to an Investment Division of contributions made to the Fund for a period if, during the period:

- (a) because of an event that is beyond the control of the Board, the Board is unable to calculate the unit value for the Investment Division; or
  - (b) the Board is satisfied on reasonable grounds that it is in the interests of members to suspend the allocation.
- (2) If the Board suspends the allocation of contributions for a period under subrule (1), the Board must allocate the contributions on the first day after the period ends.

## **Division 5                      Transferring units from one Investment Division to another**

### **11S            How units are transferred from one Investment Division to another**

For these Rules, a reference to a *transfer* of units from one Investment Division to a second Investment Division on a day is a reference to:

- (a) the withdrawal of the units from the first Investment Division, at the withdrawal price for the Investment Division on the day; and
- (b) the issue of units to the same value from the second Investment Division, at the issue price for the second Investment Division on the day.

### **11T            Transfer of units in employer accounts on change of default Investment Division**

If there is a change in the default Investment Division, the Board must transfer the units in each member's employer funded account from the default Investment Division before the change to the default Investment Division after the change.

### **11U            Unitised member may apply for transfer of units**

- (1) A unitised member may apply to the Board to transfer some or all of the units in the member's member funded account or member unfunded account to another Investment Division or Investment Divisions (in this Division called *the new Investment Division*).
- (2) For these Rules, the application is a *transfer application*.

### **11V            Transfer applications — day of transfer**

- (1) This rule applies if a unitised member makes a transfer application.
- (2) If the Board approves a transfer application, the Board must effect the transfer on:
  - (a) if the application is complete — the day on which the Board receives the application, or a later day specified in the application; and

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**Rule 11W**

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- (b) if the application is incomplete — the day on which the Board receives the information from the member that is necessary to make the application complete, or a later day specified in the application.

**11W Limits applicable to transfers**

- (1) The Board may limit the number of times a unitised member may make transfer applications.
- (2) The Board may determine a minimum withdrawal amount and a minimum investment amount for a transfer application.

**11X Grounds for refusing transfer application**

The Board may refuse to approve a transfer application if:

- (a) the aggregate value of the units that would otherwise be issued in the new Investment Division in accordance with rule 11V is less than the minimum investment amount; or
- (b) the aggregate value of the units that would otherwise be withdrawn from the old Investment Division in accordance with that rule is less than the minimum withdrawal amount.

**11Y Suspension of transfers**

- (1) The Board may suspend transfers of units from one Investment Division to a second Investment Division for a period if, during the period:
  - (a) because of an event that is beyond the control of the Board, the Board is unable to calculate the unit value for either Investment Division; or
  - (b) the Board is satisfied on reasonable grounds that it is in the interests of members to suspend the withdrawal of units of the first Investment Division or the issue of units of the second Investment Division.
- (2) If the Board suspends the transfer of units for a period under subrule (1), the Board must effect any approved transfers on the first day after the period ends.
- (3) A transfer application may be withdrawn during the suspension period.

**11Z Fees for transfers**

- (1) The Board may charge a fee for transferring a unitised member's beneficial interest under this Division.
- (2) The Board must not approve a transfer application unless the Board is satisfied that:
  - (a) the member is aware that a fee may be charged for the transfer; and
  - (b) the member has agreed to pay the fee.



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**11ZA Closed or wound up Investment Division**

- (1) The Board may refuse to approve a transfer application if, before the application is processed, the Board decides:
  - (a) to merge an Investment Division nominated by the member with another Investment Division; or
  - (b) to refuse to issue further units for the Investment Division; or
  - (c) to wind up the Investment Division.
- (2) If the Board refuses to approve the transfer application, the Board must ask the member to nominate another Investment Division, or Investment Divisions, to which his or her beneficial interest may be allocated.
- (3) The Board may temporarily transfer the units to an Investment Division determined by the Board until the Board is able to transfer the units to an Investment Division nominated by the member.

**Division 6 Notice of proposed changes to Investment Divisions**

**11ZB Members to be informed about proposed changes to Investment Divisions**

- (1) If it is proposed to make a change to the Investment Divisions of the Fund, the Board must, not less than 1 month before the day of the proposed change, give each unitised member a notice that includes:
  - (a) general information; and
  - (b) information about the proposed change; and
  - (c) information about the effect of the change on the unitised member.
- (2) The general information for paragraph (1) (a) is information about:
  - (a) the unitisation of the Fund and Investment Divisions; and
  - (b) the range of investment options available to unitised members; and
  - (c) the terms on which investments may be made; and
  - (d) the operation of the default Investment Division; and
  - (e) how to make an investment nomination under this Division; and
  - (f) how to make a transfer application; and
  - (g) the operation of Division 5.
- (3) The information about the proposed changes for paragraph (1) (b) is information about:
  - (a) the Investment Divisions and their investment strategies before and after the change; and
  - (b) when the change will be made; and
  - (c) how the change will operate by dividing, merging, creating or winding up Investment Divisions, or closing Investment Divisions to further contributions; and

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**Rule 11ZC**

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- (d) if the change includes a change in the default Investment Division, how that will affect unitised members.
- (4) The information about the effect of the change on the unitised member for paragraph (1) (c) is information about:
  - (a) any units held in an account of the member that are affected by the change; and
  - (b) how the units will be dealt with by the Board after the change if the Board does not receive a transfer application in relation to them; and
  - (c) any current investment nomination by the member that is affected by the change; and
  - (d) how the Board will allocate contributions of the member if the Board does not receive a new investment nomination.

## **Division 7                      Withdrawal of beneficial interest**

### **11ZC      Payment of benefits**

- (1) This rule applies if a person requests the Board to withdraw some or all of the units that are held in an Investment Division, or Investment Divisions, for the benefit of the person to make a payment of a benefit that is payable under these Rules in relation to the person.
- (2) The withdrawal price of the units is:
  - (a) if the request is received by the Board after the day on which the person ceases to be a member — the withdrawal price of the units for the day when the Board receives the application; and
  - (b) if the request is received by the Board before the end of the day on which the person ceases to be a member — the withdrawal price of the units for the day after the person ceases to be a member.
- (3) However, the Board may:
  - (a) refuse the request if it would be contrary to a law of the Commonwealth, a State or a Territory to act in accordance with the request; or
  - (b) suspend the withdrawal of units in accordance with rule 11ZD.

### **11ZD      Suspension of withdrawals**

- (1) The Board may suspend withdrawals of units for rule 11Y that include withdrawals from a particular Investment Division for a period if, during the period:
  - (a) because of an event that is beyond the control of the Board, the Board is unable to calculate the unit value for the Investment Division; or
  - (b) the Board is satisfied on reasonable grounds that it is in the interests of members to suspend the withdrawal of units from the Investment Division.

- (2) If the Board suspends the withdrawal of units for a period under subrule (1), the Board must effect the withdrawals on the first day after the period ends.

## **Part 3 Members' benefits**

*Note* The amount of a member benefit may have been affected by a family law superannuation payment split under Part 13.

### **Division 1 Benefits other than Invalidity Benefits**

#### **12 Benefits on retirement before reaching 55 years of age or earlier retiring age, otherwise than for redundancy or retrenchment etc**

- (1) This rule applies to a member who retires:
- (a) in the case of a member whose retiring age is less than 55 years — before reaching his or her retiring age; or
  - (b) in any other case — before reaching the age of 55 years; not being a member who is:
  - (c) retired on the ground of redundancy or retrenchment; or
  - (d) entitled to an invalidity pension.
- (2) Subject to Part 10, in the case of a person to whom this rule applies:
- (a) his or her member benefit is payable to him or her as a lump sum, in accordance with Part 11; and
  - (b) there is applicable to him or her a preserved benefit of the amount of his or her employer benefit.
- (3) A person who is entitled to be paid a member benefit under paragraph (2) (a) may elect that, instead of that benefit being paid to him or her, there be applicable to him or her a preserved benefit of the amount of the member benefit and if he or she so elects:
- (a) the member benefit is not payable to him or her as a lump sum; and
  - (b) there is applicable to him or her a preserved benefit of that amount.
- (4) If a person who is entitled to be paid a member benefit under paragraph 2 (a):
- (a) does not request that the benefit be paid to him or her as a lump sum; and
  - (b) does not make an election under subrule (3);
- within the period of 3 months after becoming entitled to the benefit, there is applicable to him or her a preserved benefit of the amount of that benefit.

## Rule 13

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### **13 Benefits on retirement for redundancy or retrenchment or on completion of limited tenure appointment or on attaining retiring age of less than 55 years**

- (1) Where a member is retired on the ground of redundancy or retrenchment or on completion of a limited tenure appointment and he or she is not entitled to an invalidity pension:
  - (a) subject to Part 10, his or her member benefit is payable to him or her as a lump sum, in accordance with Part 11; and
  - (b) there is applicable to him or her a preserved benefit of the amount of his or her employer benefit.
- (2) Where a member retires and, on that retirement:
  - (a) he or she has reached his or her retiring age; and
  - (b) that retiring age is less than 55 years; and
  - (c) he or she is not entitled to an invalidity pension;
 then:
  - (d) subject to Part 10, his or her member benefit is payable to him or her as a lump sum, in accordance with Part 11; and
  - (e) there is applicable to him or her a preserved benefit of the amount of his or her employer benefit.
- (3) A person who is entitled to be paid a member benefit under paragraph (1) (a) or (2) (d) may elect that, instead of that benefit being paid to him or her, there be applicable to him or her a preserved benefit of the amount of the member benefit and if he or she so elects:
  - (a) the member benefit is not payable to him or her as a lump sum; and
  - (b) there is applicable to him or her a preserved benefit of that amount.
- (4) A person to whom a preserved benefit is applicable under paragraph (1) (b) or (2) (e) may elect that, instead of that benefit being so preserved, it be converted into a pension payable to him or her and if he or she so elects:
  - (a) a preserved benefit of the amount of the benefit is not applicable to him or her; and
  - (b) subject to Part 10, the benefit is converted into a pension payable to him or her.
- (5) Where:
  - (a) a member retired and, on that retirement, subrule (2) applied to him or her; and
  - (b) he or she again became a member and again retires; and
  - (c) on the last-mentioned retirement the member is not entitled to an invalidity pension;
 then, for the purposes of these Rules, the person is taken to be a person to whom subrule (2) applies.

- (6) If a person who is entitled to be paid a member benefit under paragraph 1 (a) or 2 (d):
- (a) does not request that the benefit be paid to him or her as a lump sum; and
  - (b) does not make an election under subrule (3);
- within the period of 3 months after becoming entitled to the benefit, there is applicable to him or her a preserved benefit of the amount of that benefit.

## **14 Benefits on retirement on or after attaining age of 55 years**

- (1) If a member:
- (a) retires on or after turning 55; and
  - (b) is not entitled to an invalidity pension;
- the following benefits are payable to him or her as a lump sum, in accordance with Part 11:
- (c) subject to Part 10, his or her member benefit; and
  - (d) subject to Part 10, his or her employer benefit.
- (2) A person who is entitled to be paid a member benefit under subrule (1) may elect that, instead of that benefit being paid to him or her, there be applicable to him or her a preserved benefit of the amount of the member benefit and if he or she so elects:
- (a) the member benefit is not payable to him or her as a lump sum; and
  - (b) there is applicable to him or her a preserved benefit of that amount.
- (3) If a person is entitled to be paid an employer benefit under subrule (1):
- (a) the person may elect that, instead of that benefit being paid to him or her, there be applicable to him or her a preserved benefit of the amount of the employer benefit and, if he or she so elects:
    - (i) the employer benefit is not payable to him or her as a lump sum; and
    - (ii) there is applicable to him or her a preserved benefit of that amount; or
  - (b) the person may elect that, instead of his or her employer benefit being paid to him or her, it be converted into a pension payable to him or her and, subject to Part 10, if he or she so elects, that benefit is so converted; or
  - (c) the person may elect that, instead of his or her employer benefit being paid in full to him or her, a specified part of that benefit, being not less than one-half of the benefit, be converted into a pension payable to him or her and, subject to Part 10, if he or she so elects:
    - (i) that part of the employer benefit is so converted; and
    - (ii) the balance of the employer benefit is payable to him or her as a lump sum.
- (4) Paragraphs (3) (b) and (c) do not apply to a person whose employer benefit is less than the amount prescribed in rule 65B.

## Rule 16

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- (5) If a person who is entitled to be paid a member benefit under subrule (1):
- (a) does not request that the benefit be paid to him or her as a lump sum; and
  - (b) does not make an election under subrule (2);
- within the period of 3 months after becoming entitled to the benefit, there is applicable to him or her a preserved benefit of the amount of that benefit.

### 16 Limitation on certain benefits in case of certain transferees who retire before completing 731 days' service after 30 September 1991

- (1) Where a person who transferred from the 1973 Scheme before 1 October 1992 retires before completing 731 days of contributory service after 30 September 1991 otherwise than:
- (a) on reaching his or her retiring age; or
  - (b) on the ground of invalidity, redundancy or retrenchment; or
  - (c) on completion of a limited tenure appointment;
- the amount of member benefit which he or she would, but for this rule, be entitled to be paid is reduced by an amount equal to the difference between the person's pre-commencement notional interest and an amount calculated in accordance with the formula:

$$\text{Pre-commencement notional interest} \times \frac{\text{Number of days of contributory service}}{731}$$

where:

***Number of days of contributory service*** means the number of days of contributory service by the person after 30 September 1991; and

***Pre-commencement notional interest*** means the amount of interest which would have accrued before 1 October 1991 in respect of contributions and additional contributions (within the meaning of the 1973 Act) made by the person before that date under the previous legislation if those contributions had been earning interest at the annual rates applicable in accordance with Schedule 11.

- (2) Where the amount by which a person's member benefit is reduced under subrule (1) exceeds the member benefit, the person is liable to pay to the Commonwealth an amount equal to the excess.
- (3) A reference in this rule to a person who retires on the ground of invalidity is taken not to include a reference to a person who, by reason of rule 32, 33 or 34, is not entitled to invalidity benefits.
- (4) In this rule:
- contributory service*** in relation to a person, includes service by the person after 30 September 1991 in respect of which the person was not paying contributions under these Rules or under the 1973 Act by reason only of the operation of rule 5 or of section 18A of the 1973 Act, as the case may be.

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## **Division 2                      Invalidity Benefits**

### **Subdivision A                      Incapacity Classification**

#### **17                      Incapacity Classification Committee**

An Incapacity Classification Committee established under paragraph 3 (2) (g) of the Trust Deed is constituted under, has the functions set out in, and must operate in accordance with, this Division.

#### **18                      Membership of Committee**

- (1) The Committee comprises such number of persons as the Board determines.
- (2) The qualifications or other requirement, which are or is a prerequisite to the appointment of each member of the Committee, are such as the Board determines.
- (3) If a member of the Committee ceases to hold the relevant qualifications or to comply with the relevant requirement, applicable under subrule (2), his or her membership of the Committee is thereupon taken to be terminated.

#### **19                      Functions of Committee**

- (1) The functions of the Committee are to exercise, at the request of the Board and subject to any directions given by the Board, the powers and functions under rules 22, 22A, 23, 32, 33 and 34.
- (2) When determining the classification of, or reclassifying, an invalidity retiree, the Committee:
  - (a) must take into account any evidence relating to that retiree that is made available or submitted to it; and
  - (b) may take steps to obtain any other evidence that it considers necessary to properly determine the classification.
- (3) The Board must make available to the Committee any medical or other evidence that it has concerning the invalidity retiree whose classification or reclassification is being considered and that is relevant to his or her classification.

#### **20                      Proceedings of Committee**

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

#### **21                      Decisions by Committee**

The Committee must notify the Board of its decision as to the classification or reclassification of an invalidity retiree, giving reasons for its decision.

**Rule 22**

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**22 Classification in respect of incapacity**

- (1) Subject to rule 22A, where a member is, or is about to be, retired on the ground of invalidity, the Board or the Committee must determine the percentage of incapacity in relation to civil employment of the invalidity retiree and must classify the retiree according to the percentage of incapacity as follows:

Percentage of Incapacity	Class
60% or more	A
30% or more but less than 60%	B
Less than 30%	C

- (2) In determining, for the purposes of subrule (1), the percentage of incapacity in relation to civil employment of an invalidity retiree, the Board or the Committee must have regard to the following matters only:
- (a) the vocational, trade and professional skills, qualifications and experience of the retiree;
  - (b) the kinds of civil employment which a person with the skills, qualifications and experience referred to in paragraph (a) might reasonably undertake;
  - (c) the degree to which the physical or mental impairment of the retiree that is the cause of the invalidity by reason of which he or she has been, or is to be, retired has diminished his or her capacity to undertake the kinds of civil employment referred to in paragraph (b).
- (3) The death of a person after he or she has been retired on the ground of invalidity does not prevent the classifying of the person under subrule (1).
- (4) This rule does not apply to a person who, by reason of rule 32, 33 or 34, is not entitled to invalidity benefits.

**22A Interim classification**

- (1) Where a member is, or is about to be, retired on the ground of invalidity and the Board or the Committee:
- (a) is satisfied that the percentage of incapacity in relation to civil employment of the invalidity retiree is not less than 30%; and
  - (b) requires further information in order to determine whether the person is to be classified as Class A or Class B;
- the Board or the Committee may make an interim classification of the person as Class B.
- (2) Where an invalidity retiree has an interim classification, the Board or the Committee must review the classification not later than 3 months after the classification was made or the classification was last reviewed, whichever is the later.



- (3) When the Board or the Committee is satisfied that it has received sufficient information to enable it to classify under rule 22 an invalidity retiree who has an interim classification, it must cancel the interim classification and classify the person under that rule.
- (4) This rule does not apply to a person who, by reason of rule 32, 33 or 34, is not entitled to invalidity benefits.

## **23      Reclassification in respect of incapacity**

- (1) Where the Board or the Committee, at any time, is satisfied that there has been such a change in the percentage of incapacity in relation to civil employment of an invalidity pensioner that his or her classification should be altered, the Board or the Committee may reclassify him or her in the appropriate classification set out in rule 22 according to the percentage of his or her incapacity in relation to civil employment.
- (2) Where an invalidity pensioner has attained the age of 55 years and the invalidity pensioner is classified:
  - (a) as Class A — subrule (1) does not apply to him or her; or
  - (b) as Class B — subrule (1) is taken not to empower the Board to reclassify him or her as Class C.
- (3) In determining, for the purposes of subrule (1), the percentage of incapacity in relation to civil employment of an invalidity pensioner, the Board or the Committee must have regard to the following matters only:
  - (a) the vocational, trade and professional skills, qualifications and experience of the pensioner;
  - (b) the kinds of civil employment which a person with skills, qualifications and experience referred to in paragraph (a) might reasonably undertake;
  - (c) the degree to which any physical or mental impairment of the pensioner, being a prescribed physical or mental impairment, has diminished his or her capacity to undertake the kinds of civil employment referred to in paragraph (b).
- (4) Where the Board or the Committee reclassifies a person under this rule, the Board or the Committee must specify the date from which the reclassification has effect and, on and after that date, the person is, for the purposes of these Rules, taken to be classified under rule 22 accordingly.
- (5) Where the Board or the Committee reclassifies a person under this rule, the date specified by the Board or the Committee as the date from which the reclassification has effect is not to be a date earlier than the date on which the Board or the Committee reclassifies the member unless:
  - (a) the person is reclassified as Class A or, having been classified as Class C, is reclassified as Class B; and
  - (b) the Board or the Committee is satisfied that special circumstances exist that justify an earlier date being so specified.

## Rule 23

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- (6) Where a person who was retired otherwise than on the ground of invalidity is, by virtue of rule 30, treated as if he or she had been retired on the ground of invalidity, the Board or the Committee may, despite subrule (5), on the same day on which it classifies him or her under rule 22, reclassify him or her under this rule with effect from a date after the date of his or her retirement but before the date on which the Board or the Committee makes the reclassification.
- (7) The death of a person after he or she has been classified under rule 22 or reclassified under this rule does not prevent the reclassifying of the person under subrule (1).
- (8) For the purposes of this rule, a person who:
- (a) is classified as Class C; and
  - (b) immediately before being so classified was an invalidity pensioner other than an invalidity pensioner who had an interim classification made under rule 22A;
- is taken to be an invalidity pensioner.
- (8A) This rule does not apply to a person who:
- (a) is classified as Class C; and
  - (b) immediately before being so classified was an invalidity pensioner; and who either:
  - (c) has, under paragraph 51 (1) (c), (d), (e) or (f), been paid the whole of the employer benefit included in his or her preserved benefit; or
  - (d) has attained the age of 55 years and:
    - (i) has been paid the employer benefit included in his or her preserved benefit; or
    - (ii) has elected to have all or part of that employer benefit converted into a pension and has been paid the balance (if any) of the employer benefit.
- (9) This rule does not apply to a person who has attained the age of 65 years.
- (10) In this rule:
- prescribed physical or mental impairment***, in relation to an invalidity pensioner or a deceased person who was, immediately before his or her death, an invalidity pensioner, means:
- (a) a physical or mental impairment of the pensioner that was the cause, or one of the causes, of the invalidity by reason of which he or she was retired, whether or not that impairment changed, for better or worse, after that retirement; or
  - (b) any other physical or mental impairment of the pensioner causally connected with a physical or mental impairment referred to in paragraph (a).

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**24 Decision as to classification or reclassification to be notified to invalidity retiree**

The Board must notify an invalidity retiree in writing of any decision under rule 22, 22A or 23 as to the classification or reclassification of the retiree and the reasons for that decision.

**25 Power of Board to require persons to be medically examined etc**

- (1) The Board may, by notice in writing given to a person in receipt of an invalidity pension, require him or her:
  - (a) to submit himself or herself for medical examination by a legally qualified medical practitioner at a time and place specified in the notice; or
  - (b) to furnish in writing to the Board, within such period as is specified in the notice, such information as is required by the notice with respect to any employment (whether as an employee or on his or her own account) in which he or she has been engaged during such period as is specified in the notice.
- (2) A notice under subrule (1) must set out the effect of subrule (3).
- (3) Where a person fails to comply with a notice given under subrule (1) and the Board is not satisfied that there was a reasonable excuse for the failure, the Board may, by notice in writing given to the person, suspend the person's invalidity pension with effect from a day determined by the Board, being a day not earlier than:
  - (a) in a case where the first-mentioned notice required the person to submit to a medical examination on a day specified in the notice — the day next following that day; or
  - (b) in a case where the first-mentioned notice required the person to furnish information within a period specified in the notice — the day next following the end of that period.
- (4) A notice to a person under subrule (3) must set out the effect of subrules (7), (9) and (10).
- (5) An invalidity pension is not payable in respect of a period during which a suspension under subrule (3) is in force.
- (6) Where:
  - (a) the invalidity pension of a person is suspended under subrule (3); and
  - (b) the Board, having regard to such matters as it considers relevant, is of the opinion that the suspension should be revoked;the Board may, by notice in writing given to the person, revoke the suspension with effect from a day determined by the Board, being a day not later than the day on which the notice is given.

## Rule 25

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- (7) Without limiting subrule (6), where the invalidity pension of a person is suspended under subrule (3), the person may, by notice in writing given to the Board, request the Board to revoke the suspension and, where such a request is made, the Board must, by notice in writing given to the person:
- (a) if the invalidity pension has been suspended by virtue of the relevant person's having failed to comply with a notice requiring the person to submit to a medical examination — require the person to submit to a medical examination by a medical practitioner at a time and place specified in the second-mentioned notice; or
  - (b) if the invalidity pension has been suspended by virtue of the person's having failed to comply with a notice requiring the person to give information to the Board (in this paragraph called *the original notice*) — require the person to give in writing to the Board, within such period as is specified in the second-mentioned notice, such information as was required by the original notice to be given.
- (8) A notice given by the Board under subrule (7) must set out the effect of subrules (9) and (10).
- (9) Where:
- (a) because of a request having been made to revoke the suspension of the invalidity pension of a person, a notice under subrule (7) is given to the person; and
  - (b) either:
    - (i) the person complies with the notice; or
    - (ii) the person fails to comply with the notice but the Board is satisfied that there was a reasonable excuse for the failure;
- the Board must, by notice in writing given to the person, revoke the suspension with effect from a day determined by the Board, being a day not later than:
- (c) in a case to which subparagraph (b) (i) applies — the day on which the person so complied with the notice; or
  - (d) in a case to which subparagraph (b) (ii) applies:
    - (i) the day on which the Board became so satisfied; or
    - (ii) if the Board is satisfied that it would be equitable in the circumstances of the case for the revocation to have effect from an earlier day — from that earlier day.
- (10) Where:
- (a) because of a request having been made to revoke the suspension of the invalidity pension of a person, a notice under subrule (7) is given to the person; and
  - (b) the person fails to comply with the notice and the Board is not satisfied that there was a reasonable excuse for the failure;
- the Board must, by notice in writing given to the person, refuse to revoke the suspension.

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- (11) A notice required or permitted to be given:
- (a) to a person by the Board under subrule (6), (7), (9) or (10) may be given to a person acting on his or her behalf; or
  - (b) to the Board by a person under this rule may be given by a person acting on his or her behalf.
- (12) Where the Board is required by this rule to give a person a notice, the notice is taken to have been given to the person if:
- (a) the notice is served on the person personally; or
  - (b) the notice is sent to the person by pre-paid post as a letter and the person acknowledges receipt of the letter; or
  - (c) where the Board has caused all reasonable steps to be taken to ascertain a reliable address of the person, the notice is sent to the person by pre-paid post to:
    - (i) in a case where the Board is satisfied that at least one reliable address of the person has been ascertained — that address or one of those addresses; or
    - (ii) in any other case — the last address of the person known to the Board.
- (13) A reference in subrule (12) to a reliable address of a person is a reference to an address where, if a letter were sent to the person by pre-paid post to the address, the person would probably receive the letter.

## **Subdivision B      Invalidity Benefits**

### **26      Entitlement to invalidity benefits**

A person who is classified as Class A or Class B under rule 22 (whether on his or her retirement or by reason of his or her having been reclassified under rule 23) or has an interim classification made under rule 22A is entitled to invalidity benefits in accordance with this Division.

### **27      Invalidity benefits for person classified as Class A**

- (1) Where a person who is entitled to invalidity benefits is classified as Class A:
  - (a) subject to Part 10, his or her member benefit is payable to him or her as a lump sum, in accordance with Part 11; and
  - (b) subject to Part 10, his or her employer benefit is converted into a pension payable to him or her.
- (2) A person who is entitled to be paid a member benefit under subrule (1) may elect that, instead of that benefit being paid to him or her, there be applicable to him or her a preserved benefit of the amount of the benefit and if he or she so elects:
  - (a) the member benefit is not payable to him or her as a lump sum; and
  - (b) there is applicable to him or her a preserved benefit of that amount.

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**Rule 28**

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- (3) If a person who is entitled to be paid a member benefit under subrule (1):
  - (a) does not request that the benefit be paid to him or her as a lump sum; and
  - (b) does not make an election under subrule (2);within the period of 3 months after becoming entitled to the benefit, there is applicable to him or her a preserved benefit of the amount of that benefit.

**28 Invalidity benefits for person classified as Class B**

- (1) Where a person who is entitled to invalidity benefits is classified as Class B:
  - (a) subject to Part 10, his or her member benefit is payable to him or her as a lump sum, in accordance with Part 11; and
  - (b) subject to Part 10, a pension is payable to him or her at an annual rate equal to:
    - (i) half the rate of the pension which would have been payable to him or her if he or she had been classified as Class A; or
    - (ii) the rate of the pension which would have been payable to him or her if he or she:
      - (A) had been retired otherwise than on the ground of invalidity; and
      - (B) were entitled to elect to convert his or her employer benefit into a pension and had elected to do so;whichever is the greater.
- (2) A person who is entitled to be paid a member benefit under subrule (1) may elect that, instead of that benefit being paid to him or her, there be applicable to him or her a preserved benefit of the amount of the benefit and if he or she so elects:
  - (a) the member benefit is not payable to him or her as a lump sum; and
  - (b) there is applicable to him or her a preserved benefit of that amount.
- (3) If a person who is entitled to be paid a member benefit under subrule (1):
  - (a) does not request that the benefit be paid to him or her as a lump sum; and
  - (b) does not make an election under subrule (2);within the period of 3 months after becoming entitled to the benefit, there is applicable to him or her a preserved benefit of the amount of that benefit.

**29 Effect of change of invalidity classification on pension and preserved benefit**

- (1) Where a person who is classified as Class A or Class B is reclassified as Class C:
  - (a) the pension payable to him or her under rule 27 or 28 is cancelled; and
  - (b) there is applicable to him or her a preserved benefit of the amount of his or her employer benefit.

**Rule 31**

- (2) If a person referred to in subrule (1) is subsequently reclassified as Class A or Class B:
  - (a) the preserved benefit referred to in that subrule ceases to be applicable to him or her; and
  - (b) a pension is payable to him or her in accordance with rule 27 or 28, as the case may be, from the date specified under rule 23 by the Board or the Committee, as the case may be, as the date from which the classification has effect.
- (3) Where a person referred to in subrule (2) was, while classified as Class C, paid, under paragraph 51 (1) (e) or (f), part of the employer benefit included in his or her preserved benefit, the rate of pension payable to the person in accordance with that subrule is reduced in such manner as the Board approves, having regard to the amount of employer benefit so paid to the person.

**30 Person may be treated as having been retired on ground of invalidity**

- (1) Where a person has been retired otherwise than on the ground of invalidity but, after his or her retirement, the Board is satisfied that, at the time the person was retired, grounds existed on which he or she could have been retired on the ground of invalidity, the Board may, for the purposes of these Rules, treat the person as if he or she had been retired on the last-mentioned ground.
- (2) Where, because of action taken under subrule (1), a person is classified as Class A or Class B under rule 22 or has an interim classification made under rule 22A:
  - (a) so much of the preserved benefit applicable to him or her under rule 12, 13 or 14 as consists of employer benefit ceases to be applicable to him or her; and
  - (b) a pension is payable to him or her in accordance with rule 27 or 28, as the case may be.
- (3) This rule does not apply to a person to whom a preserved employer benefit is not applicable.

**Subdivision C Invalidity Benefits not Payable**

**31 Person classified as Class C**

A person who is classified as Class C is not entitled to invalidity benefits under this Division.

## Rule 32

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### 32 Pre-existing condition

(1) Where:

- (a) a member other than a transferred person is, or is about to be, retired on the ground of invalidity within a period of 2 years after becoming a member; and
- (b) the Board or the Committee is satisfied that:
  - (i) the invalidity was caused, or was substantially contributed to, by a physical or mental condition that existed at the time when he or she became a member; and
  - (ii) the condition was not materially aggravated by his or her service after becoming a member;

the person is not entitled to invalidity benefits under this Division.

(1A) Where:

- (a) a transferred person is, or is about to be, retired on the ground of invalidity within a period of 12 months after becoming an eligible member; and
- (b) the Board or the Committee is satisfied that:
  - (i) the invalidity was caused, or was substantially contributed to, by a physical or mental condition that existed at the time when he or she became an eligible member; and
  - (ii) the condition was not materially aggravated by his or her service after he or she became an eligible member;

the person is not entitled to invalidity benefits under this Division.

(2) Where:

- (a) a person who has retired again becomes a member after a break in the continuity of his or her service; and
  - (b) he or she is not a person who again became a member pursuant to the Parliamentary Candidates Act; and
  - (c) he or she is subsequently retired on the ground of invalidity;
- the person is, for the purposes of subrule (1), treated as if he or she had first become a member at the time when he or she again became a member.

(3) In this rule:

***eligible member*** means an eligible member of the Defence Force within the meaning of the 1973 Act.

### 33 Invalidity due to intentional act

(1) Where:

- (a) a member is, or is about to be, retired on the ground of invalidity; and
- (b) the Board or the Committee is satisfied that the invalidity was due to an intentional act on his or her part for the purpose of obtaining invalidity benefits under this Division;

he or she is not entitled to invalidity benefits under this Division.



- (2) Subrule (1) does not apply in a case where the Board or the Committee is of the opinion:
- (a) that the condition which formed the ground on which the person is, or is about to be, retired was not wholly due to the intentional act of the person; or
  - (b) that the action of the person was caused by his or her physical or mental condition.

**34 Invalidity arising during absence without leave exceeding 21 days**

- (1) Where:
- (a) a member is, or is about to be, retired on the ground of invalidity; and
  - (b) the Board or the Committee is satisfied that the invalidity was caused, or was substantially contributed to, by an occurrence that happened at a time when he or she was absent without leave and had been so absent for a period exceeding 21 consecutive days; and
  - (c) the salary of the member in respect of the period was forfeited under regulations made under the *Defence Act 1903*, and an amount equal to the amount of the salary so forfeited was not subsequently paid, and is not payable, under those regulations to him or her;
- he or she is not entitled to invalidity benefits under this Division.
- (2) This rule does not apply in a case where the Board or the Committee is satisfied that the absence of the member was due to sufficiently mitigating circumstances.

**Division 3 Person rejoining the scheme**

**35 Suspension of pension of retirement pensioner other than invalidity retiree**

Where a person who is in receipt of a pension under Division 1 or rule 52 again becomes a member, the pension is suspended for the duration of his or her membership and is not payable while it is suspended.

**36 Cancellation of pension etc of invalidity retiree**

Where a person, who was a member and was retired on the ground of invalidity, again becomes a member:

- (a) any determination of his or her incapacity in relation to civil employment and consequent classification or reclassification, under rule 22 or 23, is cancelled; and
- (b) if he or she was, immediately before again becoming a member, a person to whom an invalidity pension was payable, his or her entitlement to that pension is cancelled and there is applicable to him or her a preserved benefit of the amount of his or her employer benefit; and

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**Rule 37**

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- (c) when the person again retires, he or she is not treated as having been retired on the ground of invalidity only by reason of his or her retirement on that ground from his or her earlier period of service.

**37 Continuation of previous election to cease paying contributions**

Where:

- (a) immediately before a person ceased to be a member, the person was, in consequence of an election made by him or her under subrule 5 (2), not paying contributions; and
  - (b) the person again becomes a member;
- that election is taken to be again in force in relation to the member as if it had been made after the member again became a member.

**Part 4 Spouses' and children's benefits****Division 1 Death of a Member****38 Applicability of benefits**

Where a member dies and is survived by a spouse or spouses or an eligible child or children, benefits are payable in accordance with this Division.

**39 Payment of deceased member's member benefit**

Subject to Part 10, a deceased member's member benefit is payable as a lump sum as follows:

- (a) if the deceased member is survived by a spouse, the benefit is payable to the spouse;
- (b) if the deceased member is not survived by a spouse but is survived by an eligible child or children, the benefit is payable to, or for the benefit of, the child or children;
- (ba) if the deceased person is survived by more than 1 spouse, the benefit is payable to the spouses;
- (bb) if the deceased person is survived by:
  - (i) a spouse or spouses; and
  - (ii) an eligible child or children;the benefit is payable to, or for the benefit of, the spouse or spouses and the child or children;
- (c) if the deceased member is not survived by a spouse or an eligible child and he or she had notified the Board in writing that:
  - (i) he or she had a person or persons dependent on him or her who would not be eligible to receive benefits as a spouse or eligible child; and

- (ii) he or she had made provision for that person or those persons in his or her will;
- the benefit is payable to, or for the benefit of, the person or persons;
- (d) in any other case the benefit is payable to the deceased member's personal representative.

#### **40 Payment of deceased member's employer benefit**

- (1) Subject to Part 10, a deceased member's employer benefit or a pension is payable as follows:
  - (a) if the deceased member is survived by a spouse with or without an eligible child or children, the employer benefit is payable to the spouse as a lump sum;
  - (b) if the deceased member is not survived by a spouse but is survived by an eligible child or children, a pension is payable to, or for the benefit of, the child or children at an annual rate equal to the relevant percentage in Table 2 in Schedule 4 of the deceased member's notional invalidity pension;
  - (c) if the deceased member is not survived by a spouse or an eligible child and he or she had notified the Board in writing that:
    - (i) he or she had a person or persons dependent on him or her who would not be eligible to receive benefits as a spouse or eligible child; and
    - (ii) he or she had made provision for that person or those persons in his or her will;the employer benefit is payable to, or for the benefit of, the person or persons as a lump sum;
  - (d) in any other case the employer benefit is payable to the deceased member's personal representative as a lump sum.
- (2) A spouse who is entitled to be paid an employer benefit under paragraph (1) (a) may elect that:
  - (a) instead of that employer benefit being paid to him or her, it be converted into a pension payable to him or her at an annual rate equal to the relevant percentage in Table 1 in Schedule 4 of the deceased member's notional invalidity pension and if he or she so elects the benefit is so converted; or
  - (b) instead of that employer benefit being paid in full to him or her, a specified part of that benefit, being not less than one-half of the benefit, be converted into a pension payable to him or her at an annual rate equal to the relevant percentage in Table 1 in Schedule 4 of the deceased member's reduced notional invalidity pension and if he or she so elects:
    - (i) that part of the benefit is so converted; and
    - (ii) the balance of the benefit is payable to him or her as a lump sum.

#### Rule 41

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- (3) An employer benefits payable under subrule (1) is calculated as if, on the date of the death of the deceased member, he or she had become entitled to invalidity benefits under Division 2 of Part 3 and had been classified as Class A under rule 22.
- (4) Subrule (3) does not apply where:
- (a) a member dies and, at the time of his or her death, he or she was absent without leave and had been so absent for a period that exceeds 21 consecutive days; and
  - (b) the salary of the deceased member in respect of the period of absence without leave was forfeited under regulations made under the *Defence Act 1903*, and an amount equal to the amount of the salary forfeited was not subsequently paid, and is not payable, under those regulations to the deceased member's personal representative;
- unless the Board is satisfied that the absence of the member was due to sufficiently mitigating circumstances.
- (5) In this rule:
- notional invalidity pension*, in relation to a deceased member, means the invalidity pension that would have been payable to the deceased member if, on the date of his or her death, he or she had become entitled to invalidity benefits under Division 2 of Part 3 and had been classified as Class A under rule 22.
- reduced notional invalidity pension*, in relation to a deceased member, means the invalidity pension that would have been payable to the deceased member if, on the date of his or her death:
- (a) he or she had become entitled to invalidity benefits under Division 2 of Part 3; and
  - (b) he or she had been classified as Class A under rule 22; and
  - (c) the amount of his or her employer benefit were the amount which his or her spouse elected under paragraph (2) (b) to convert into a pension.

## Division 2                      Death of retirement pensioner

### 41                      Applicability of benefits

Where a retirement pensioner dies and is survived by a spouse or spouses or an eligible child or children, benefits are payable in accordance with this Division.

### 42                      Pensions payable

- (1) Where a deceased retirement pensioner is survived by a spouse with or without eligible children, a pension is payable to the spouse at an annual rate equal to the relevant percentage in Table 1 in Schedule 4 of the deceased retirement pensioner's pension.

**Rule 43**

- (2) In spite of subrule (1), on each of the 7 pension paydays immediately following the death of a retirement pensioner referred to in that subrule, the rate at which pension is payable to the spouse of the deceased retirement pensioner is the rate at which pension would have been payable to the deceased retirement pensioner on that day if he or she had not died.
- (3) Where a deceased retirement pensioner is not survived by a spouse but is survived by an eligible child or children, a pension is payable to, or for the benefit of, the child or children at an annual rate equal to the relevant percentage in Table 2 in Schedule 4 of the deceased retirement pensioner's pension.
- (4) In this rule:  
*deceased retirement pensioner's pension*, in relation to a deceased retirement pensioner, means the pension that was payable to the deceased retirement pensioner immediately before his or her death.

**43 Final benefit payable in relation to deceased retirement pensioner**

- (1) Where a retirement pensioner dies not later than 10 years after his or her pension became payable to him or her and he or she is not survived by a spouse or eligible child to whom, or for the benefit of whom, benefits are payable under this Division, an amount equal to:
    - (a) where the deceased retirement pensioner was an invalidity pensioner:
      - (i) the amount (if any) by which the deceased invalidity pensioner's employer benefit exceeds the amount of pension paid to the deceased invalidity pensioner since he or she last ceased to be a member; or
      - (ii) the amount of pension which would have been paid to the invalidity pensioner (if he or she had not died) from the date of his or her death until the expiration of a period of 10 years after the invalidity pensioner's pension became payable to him or her;whichever is the less; or
  - (b) in any other case — the amount (if any) by which the deceased retirement pensioner's funded employer benefit exceeds the amount of pension paid to the deceased retirement pensioner since he or she last ceased to be a member;
- is payable as a lump sum as follows:
- (c) if the deceased member had notified the Board in writing that:
    - (i) he or she had a person or persons dependent on him or her who would not be eligible to receive benefits as a spouse or eligible child; and
    - (ii) he or she had made provision for that person or those persons in his or her will;

the employer benefit is payable to, or for the benefit of, the person or persons;

#### **Rule 44**

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- (d) in any other case the employer benefit is payable to the deceased member's personal representative.
- (2) Where a retirement pensioner dies and
  - (a) he or she is survived by a spouse to whom a pension is payable under this Division; and
  - (b) the spouse dies not later than 10 years after the retirement pensioner's pension became payable to him or her and is not survived by an eligible child;
 there is payable to the deceased spouse's personal representative as a lump sum an amount equal to:
  - (c) where the deceased retirement pensioner was an invalidity pensioner — the amount (if any) by which the deceased invalidity pensioner's employer benefit exceeds the total of the amounts of pension paid to the deceased invalidity pensioner and his or her spouse, and to, or for the benefit of, his or her child or children, since he or she last ceased to be a member; or
  - (d) in any other case — the amount (if any) by which the deceased retirement pensioner's funded employer benefit exceeds the total of the amounts of pension paid to the deceased retirement pensioner and his or her spouse and to, or for the benefit of, his or her child or children, since he or she last ceased to be a member.
- (3) In calculating for the purposes of this rule the period after a pension became payable to a person, any period during which the pension was not payable to the person is disregarded.
- (4) This rule does not apply in relation to a deceased retirement pensioner who elected under rule 65A not to have his or her funded employer benefit included in the employer benefit that was converted into his or her pension.

#### **44 Death in certain cases due to retirement disabilities**

Where a person who:

- (a) is classified as Class B; or
- (ab) has an interim classification made under rule 22A; or
- (b) is classified as Class C as a result of a reclassification under rule 23; dies, and the Board is satisfied that his or her death was due to:
- (c) the physical condition that was the cause of his or her retirement on the ground of invalidity; or
- (d) a physical condition that was causally connected with that condition; he or she is taken, for the purposes of this Division, to have been, immediately before his or her death, an invalidity pensioner classified as Class A and in receipt of pension at a rate calculated accordingly.

**45 Effect of death of invalidity pensioner while pension suspended**

Where a person whose invalidity pension has been suspended under rule 25 dies before the invalidity pension again becomes payable, he or she is taken, for the purposes of this Division, to have been an invalidity pensioner in receipt of pension immediately before his or her death.

**Division 3 Death of Spouse**

**46 Child's benefit upon death of spouse**

- (1) Where a spouse of a deceased member, being a spouse who:
  - (a) is in receipt of a spouse's pension; and
  - (b) has an eligible child or children;dies, a pension is payable to, or for the benefit of, the child or children at an annual rate equal to the relevant percentage in Table 2 of Schedule 4 of the deceased person's notional pension.
- (2) In this rule:

*deceased person* has the same meaning as in paragraph 8 of Schedule 1.

*deceased person's notional pension* means:

  - (a) where the spouse was in receipt of a pension under paragraph 40 (2) — the deceased person's notional invalidity pension, or reduced notional invalidity pension on the date of the member's death; or
  - (b) where the spouse was in receipt of a pension under subrule 42 (1) — the deceased person's pension on the date of the member's death:

as if the rate of that pension had been increased from time to time in accordance with Division 2 of Part 6;

*notional invalidity pension* and *reduced notional invalidity pension* have the same respective meanings as in rule 40.

**Division 4 Miscellaneous**

**47 Entitlements where two spouses**

- (1) In spite of anything in this Part, where a deceased member or retirement pensioner is survived by 2 spouses, the amount of member benefit (if any) and the amount of employer benefit payable to each spouse is to be determined by the Board but so that not less than 37.5 per centum of the member benefit (if any) and 37.5 per centum of the employer benefit is payable to each spouse.
- (2) The total amount of member benefit (if any) and the total amount of employer benefit determined under subrule (1) is not to exceed the amount of the deceased person's member benefit (if any) or employer benefit, respectively.

## Rule 48

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- (3) Where, under a provision of this Part, a spouse is entitled to make an election in relation to a benefit, then, in a case where a deceased person is survived by 2 spouses, each of those spouses is entitled to make such an election in relation to so much of the benefit as is applicable to him or her.

### **48 Payment of balance of benefit where pension becomes payable to child in certain cases**

- (1) Where a pension becomes payable to, or for the benefit of, an eligible child or children of a deceased member under paragraph 40 (1) (b) or a deceased former member under paragraph 54 (2) (b), an amount equal to the amount (if any) by which the employer benefit of the deceased member or deceased former member (as the case may be) exceeds the amount that the Board determines to be the capital value of the pension payable to, or for the benefit of, the child or children is payable in accordance with subrule (4).

(1A) Where:

- (a) a pension becomes payable to, or for the benefit of, an eligible child of a deceased member or deceased former member under rule 46; and
- (b) the deceased spouse's pension was payable under paragraph 40 (1) (a) or 54 (2) (a); and
- (c) the employer benefit converted into that pension included all or part of the funded employer benefit;

an amount equal to the amount (if any) by which the funded employer benefit of the deceased member or deceased former member (as the case may be) exceeds an amount equal to the sum of:

- (d) the amounts of pension paid to the spouse of the deceased member or deceased former member and to, or for the benefit of, his or her child or children, since he or she last ceased to be a member; and
- (e) the amount of the funded employer benefit (if any) paid to the deceased spouse as a lump sum; and
- (f) the amount that the Board determines to be the capital value of the pension payable to, or for the benefit of, the child or children;

is payable to the deceased spouse's personal representative.

- (2) Where a pension becomes payable to, or for the benefit of, an eligible child or children of a deceased retirement pensioner (other than an invalidity pensioner) under subrule 42 (3), an amount equal to the amount (if any) by which the funded employer benefit of the deceased retirement pensioner exceeds an amount equal to the sum of:

- (a) the amounts of pension paid to the deceased retirement pensioner and his or her spouse, and to, or for the benefit of, his or her child or children, since he or she last ceased to be a member; and
- (b) the amount that the Board determines to be the capital value of the pension payable to, or for the benefit of, the child or children;

is payable in accordance with subrule(4).



(2A) Where:

- (a) a pension becomes payable to, or for the benefit of, an eligible child of a deceased retirement pensioner (other than an invalidity pensioner) under rule 46; and
  - (b) the deceased spouse's pension was payable under subrule 42 (1); and
  - (c) the employer benefit converted into the deceased retirement pensioner's pension included all or part of the funded employer benefit; an amount equal to the amount (if any) by which the funded employer benefit of the deceased retirement pensioner exceeds an amount equal to the sum of:
  - (d) the amounts of pension paid to the deceased retirement pensioner, to his or her spouse and to, or for the benefit of, his or her child or children, since he or she last ceased to be a member; and
  - (e) the amount of the funded employer benefit (if any) paid to the deceased retirement pensioner as a lump sum; and
  - (f) the amount that the Board determines to be the capital value of the pension payable to, or for the benefit of, the child or children;
- is payable to the deceased spouse's personal representative.

(3) Where a pension becomes payable to, or for the benefit of, an eligible child or children of a deceased invalidity pensioner under subrule 42 (3), an amount equal to the amount (if any) by which the employer benefit of the deceased pensioner exceeds an amount equal to the sum of:

- (a) the amounts of pension paid to the deceased invalidity pensioner and his or her spouse, and to, or for the benefit of, his or her child or children, since he or she last ceased to be a member; and
- (b) the amount that the Board determines to be the capital value of the pension payable to, or for the benefit of, the child or children;

is payable in accordance with subrule (4).

(3A) Where a pension becomes payable to, or for the benefit of, an eligible child of a deceased invalidity pensioner under rule 46, an amount equal to the amount (if any) by which the employer benefit of the deceased invalidity pensioner exceeds an amount equal to the sum of:

- (a) the amounts of pension paid to the deceased invalidity pensioner, to his or her spouse and to, or for the benefit of, his or her child or children, since he or she last ceased to be a member; and
- (b) the amount that the Board determines to be the capital value of the pension to be payable to, or for the benefit of, the child or children;

is payable to the deceased spouses's personal representative.

(4) Where an amount is payable under subrule (1), (2) or (3):

- (a) if the deceased person had notified the Board in writing that:
  - (i) he or she had a person or persons dependent on him or her who would not be eligible to receive benefits as a spouse or eligible child; and

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**Rule 48A**

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- (ii) he or she had made provision for that person or those persons in his or her will;
  - the amount is payable to, or for the benefit of the person or persons as a lump sum; or
  - (b) in any other case, the amount is payable to the deceased person's personal representative as a lump sum.
- (5) In determining the capital value of a pension under this rule, the Board must obtain, and have regard to, the advice of an actuary.

## **Part 5                      Payment of preserved benefits**

### **48A            Preserved benefits subject to family law payment split**

This Part does not apply to benefits that are subject to a payment split under Part 13 until after the payment split has been given effect.

### **49             Drawing on member benefit included in preserved benefit**

- (1) Subject to subrule (2) and Part 10, where a preserved benefit is applicable to a person and the preserved benefit includes an amount of member benefit, he or she may, at any time, elect to have the whole or a part of that member benefit paid to him or her as a lump sum, in accordance with Part 11 and:
- (a) if he or she elects to have the whole of the member benefit paid — the whole of the member benefit is payable to him or her; or
  - (b) if he or she elects to have part of the member benefit paid — the amount specified in the election is payable to him or her;
- and the amount of the preserved benefit applicable to the person is reduced by a corresponding amount.
- (2) Where a person elects under this rule to have part of the member benefit paid:
- (a) that part must be an amount of \$10,000 or a whole number multiple of that amount; and
  - (b) he or she is not permitted, except with the approval of the Board, to make another election under this rule until 6 months has elapsed since the last election made by him or her.

### **50             Fee for payment of part of person's member benefit**

- (1) Where a person elects under rule 49 to have part of his or her member benefit paid to him or her, there is payable to the Board by the person a fee determined by the Board but not exceeding the administrative costs incurred by the Board in relation to that payment.
- (2) A fee is not payable in respect of the first payment of part of a person's member benefit.

**Rule 51**

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**51 Certain benefits included in preserved benefits**

- (1) Subject to Part 10, if, in relation to a person:
  - (a) to whom a preserved benefit applies; and
  - (b) who has not attained the age of 55 years;one of the following paragraphs applies, the employer benefit and member benefit included in that preserved benefit becomes payable to him or her as a lump sum on the date specified in that paragraph:
  - (c) the Board decides that by reason of the person's physical or mental incapacity, the person has become unlikely ever to be able to work again in employment for which he or she is reasonably qualified by education, training or experience or for which the person could reasonably be qualified after retraining — the date on which the Board so decided;
  - (d) the person notifies the Board before 1 July 1998 that he or she intends to leave Australia permanently before 1 July 1998 and the Board is satisfied that that intention will be carried out — the date on which the Board became so satisfied;
  - (e) the Australian Prudential Regulation Authority determines that the person satisfies a condition of release on a compassionate ground under subregulation 6.19A (2) of the SIS Regulations — the date of approval;
  - (f) the Board is satisfied that the person is in severe financial hardship within the meaning of subregulation 6.01 (5) of the SIS Regulations — the date when the Board became so satisfied.
- (1A) An amount that becomes payable under paragraph (1) (e) or (f) is limited to so much of the benefit as is necessary to meet the expenses that give rise to the compassionate grounds or are necessary to alleviate financial hardship.
- (1B) If only part of a benefit payable under subrule (1) is payable because of subrule (1A), that part may be reduced by part of the surcharge deduction amount before it is paid as a lump sum if the Board considers that there may be insufficient benefit remaining unpaid to pay the surcharge deduction amount.
- (2) Where a person who is entitled to be paid an employer benefit under subrule (1) is a person to whom paragraph (1) (c) applies, the person may:
  - (a) instead of the employer benefit included in the preserved benefit being paid to him or her, elect that it be converted into a pension payable to him or her and if he or she so elects:
    - (i) the employer benefit is so converted; and
    - (ii) the member benefit (if any) included in the preserved benefit is payable to the person as a lump sum; or
  - (b) instead of the employer benefit being paid in full to him or her, elect that a specified part of the employer benefit, being not less than one-half of the employer benefit, be converted into a pension payable to him or her and if he or she so elects:
    - (i) that part of the employer benefit is so converted; and

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**Rule 52**

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- (ii) the balance of the preserved benefit is payable to him or her as a lump sum.
- (3) Subrule (2) does not apply to a person whose employer benefit is less than the amount prescribed in rule 65B.

**52 Payment of employer benefit included in preserved benefit to person who has attained 55 years of age**

- (1) Subject to subrules (2) and (3) and Part 10, if employer benefit is included in a preserved benefit that applies to a person aged 55 years or more, he or she may, at any time:
  - (a) elect to have that employer benefit paid to him or her as a lump sum in accordance with Part 11 and if he or she so elects the employer benefit is payable to him or her; or
  - (b) instead of the employer benefit being paid to him or her, elect that it be converted into a pension payable to him or her and if he or she so elects the benefit is so converted; or
  - (c) in the case of a person to whom subrule 51 (1A) does not apply — instead of the employer benefit being paid in full to him or her, elect that a specified part of the employer benefit, being not less than one-half of the employer benefit, be converted into a pension payable to him or her and if he or she so elects:
    - (i) that part of the employer benefit is so converted; and
    - (ii) the balance of the employer benefit is payable to him or her as a lump sum in accordance with Part 11; or
  - (d) in the case of a person to whom subrule 51 (1A) applies — instead of the residual employer benefit being paid in full to him or her, elect that a specified part of the residual employer benefit, being:
    - (i) if the residual employer benefit does not exceed the notional employer benefit — not less than one-half of the notional employer benefit; or
    - (ii) if the residual employer benefit exceeds the notional employer benefit — not less than one-half of an amount calculated to be the sum of the amount of the residual employer benefit and the amount of benefit that was paid to the person under subrule 51 (1A);be converted into a pension payable to him or her, and if he or she so elects:
    - (iii) that part of the residual employer benefit is so converted; and
    - (iv) the balance of the residual employer benefit is payable to him or her as a lump sum in accordance with Part 11.
- (2) Paragraphs (1) (b) and (c) do not apply to a person whose employer benefit is less than the amount prescribed in rule 65B.

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**Rule 53A**

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- (3) Paragraphs (1) (b) and (d) do not apply to a person:
- (a) whose residual employer benefit is less than one-half of his or her notional employer benefit; or
  - (b) whose notional employer benefit is less than the amount prescribed in rule 65B.

- (4) In this rule:

*employer benefit*, in the case of a person to whom subrule 51 (1A) applies, means the residual employer benefit applicable to the person.

*notional employer benefit* means the benefit applicable to a person calculated, in accordance with Schedule 4A, at the date of the person's election to convert his or her residual employer benefit into a pension under paragraph (1) (b) or (d).

*residual employer benefit* means the part of the employer benefit included in a preserved benefit applicable to a person that, at the date of the person's election under paragraph (1) (a), (b) or (d), has not been paid as a lump sum under subrule 51 (1A).

### **53 Compulsory payment of preserved benefit**

- (1) Subject to Part 10, if a person in relation to whom a preserved benefit is applicable does not make an election under paragraph 52 (1) (b) or (c) on or before attaining the age of 65 years, the preserved benefit is payable to the person as a lump sum.
- (2) Subject to Part 10, if:
- (a) a preserved benefit is applicable to a person; and
  - (b) the preserved benefit consists wholly of a member benefit and is an amount that is less than the SIS preservation threshold amount;
- the preserved benefit is payable to the person as a lump sum.

### **53A Payment of deceased retirement pensioner's member benefit included in preserved benefit**

Where a retirement pensioner dies and, immediately before his or her death, a member benefit was included in a preserved benefit which was applicable to him or her, the member benefit is payable as follows:

- (a) if the deceased pensioner is survived by a spouse, the benefit is payable to the spouse;
- (b) if the deceased pensioner is not survived by a spouse but is survived by an eligible child or children, the benefit is payable to, or for the benefit of, the child or children;
- (c) if the deceased pensioner is not survived by a spouse or an eligible child and he or she had notified the Board in writing that:
  - (i) he or she had a person or persons dependent on him or her who would not be eligible to receive benefits as a spouse or eligible child; and

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**Rule 54**

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- (ii) he or she had made provision for that person or those persons in his or her will;
- the benefit is payable to, or for the benefit of, the person or persons;
- (d) in any other case the benefit is payable to the deceased pensioner's personal representative.

**54 Payment of deceased former member's preserved benefit**

- (1) Upon the death of a person who had been a member but at the time of his or her death was not a member or a retirement pensioner (in this rule called a *deceased former member*), his or her preserved benefit or a pension is payable in accordance with this rule.
- (2) Subject to Part 10, a deceased former member's preserved benefit or a pension is payable as follows:
  - (a) if the deceased former member is survived by a spouse, the preserved benefit is payable to the spouse as a lump sum;
  - (b) if the deceased former member is not survived by a spouse but is survived by an eligible child or children, a pension is payable to, or for the benefit of, the child or children at an annual rate equal to the relevant percentage in Table 2 in Schedule 4 of the deceased former member's notional pension;
  - (c) if the deceased former member is not survived by a spouse or an eligible child and he or she had notified the Board in writing that:
    - (i) he or she had a person or persons dependent on him or her who would not be eligible to receive benefits as a spouse or eligible child; and
    - (ii) he or she had made provision for that person or those persons in his or her will;the preserved benefit is payable to, or for the benefit of, the person or persons as a lump sum;
  - (d) in any other case, the preserved benefit is payable to the deceased member's personal representatives as a lump sum.
- (3) Subject to Part 10, if a pension becomes payable under paragraph (2) (b), the member benefit (if any) included in the preserved benefit is payable, as a lump sum, to, or for the benefit of, the eligible child or children.
- (4) Subject to Part 10, a spouse who is entitled to be paid an employer benefit under paragraph (2) (a) may elect that:
  - (a) instead of that employer benefit being paid to him or her, it be converted into a pension payable to him or her at an annual rate equal to the relevant percentage in Table 1 in Schedule 4 of the deceased member's notional pension and if he or she so elects the benefit is so converted; or

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**Rule 54A**

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- (b) instead of that employer benefit being paid in full to him or her, a specified part of that benefit, being not less than one-half of the benefit, be converted into a pension payable to him or her at an annual rate equal to the relevant percentage in Table 1 in Schedule 4 of the deceased member's reduced notional pension and if he or she so elects:
  - (i) that part of the employer benefit is so converted; and
  - (ii) the balance of the preserved benefit is payable to him or her as a lump sum.
- (5) In this rule:
  - notional pension*, in relation to a deceased former member, means the pension that would have been payable to the deceased former member if, on the date of his or her death, he or she had become entitled, under Division 1 of Part 3, to elect to have his or her employer benefit converted into a pension and had elected to do so.
  - reduced notional pension*, in relation to a deceased former member, means the pension that would have been payable to the deceased former member if, on the date of his or her death, he or she:
    - (a) had become entitled, under Division 1 of Part 3, to elect to have part of his or her employer benefit converted into a pension; and
    - (b) had elected to convert into a pension the same amount of his or her employer benefit as his or her spouse elected under paragraph (4) (b) to convert into a pension.

**54A Aggregation of benefits**

- (1) Where, under a provision of these Rules:
  - (a) an employer benefit which is not included in a preserved benefit becomes payable to a person; and
  - (b) there is applicable to that person a preserved benefit which includes an employer benefit;then, for the purposes of these Rules, those employer benefits are aggregated.
- (2) Where, under these Rules, a preserved benefit becomes applicable to a person to whom a preserved benefit is, or preserved benefits are, already applicable, then, for the purposes of these Rules:
  - (a) those preserved benefits are aggregated; and
  - (b) if there is more than 1 member benefit, those member benefits are aggregated; and
  - (c) if there is more than 1 employer benefit, those employer benefits are aggregated.

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Division 1	Increases in maximum benefit limits
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## Part 6                      **Increases in maximum benefit limits, pensions and certain unfunded preserved benefits**

### Division 1                **Increases in maximum benefit limits**

#### **55                Increases in maximum benefit limits**

- (1) This rule is to have effect, on 1 July 1991 and each subsequent 1 July, as if there were substituted for:
  - (aa) each amount referred to in subparagraph 1 (a) or 3 (a) of Schedule 3; and
  - (a) each amount referred to in the definition of ***lump sum maximum benefit multiple*** in Schedule 3; and
  - (b) each amount referred to in the definition of ***pension maximum benefit multiple*** in Schedule 3;
 or for the amount last substituted for that amount under this rule (in this rule referred to as the ***base amount***) a new amount calculated by:
  - (c) multiplying the base amount by the index number for the March quarter immediately preceding that 1 July; and
  - (d) dividing the product by the index number for the previous March quarter.
- (2) Subject to subrule (3), if at any time, whether before or after the commencement of these Rules, the Statistician publishes an index number in respect of a particular March quarter in substitution for an index number previously published, that later index number is to be disregarded for the purposes of this rule.
- (3) If any time the Statistician changes the reference base for the index numbers, regard is to be had, for the purposes of the operation of this rule after the change took place, only to index numbers published in terms of the new reference base.
- (4) Where an amount to be substituted under this rule is not a whole number multiple of \$10, it is to be increased to the nearest whole number multiple of \$10.
- (5) In this rule:
 

***index number***, in relation to a quarter, means the amount of the full-time adult average weekly ordinary time earnings first published by the Statistician for the middle month of that quarter.



## **Division 2                      Increases in pensions and associate pensions**

### **56                      Increases in pensions and associate pensions**

- (1) Subject to this Division, if the all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the March quarter or September quarter of the half-year immediately preceding a prescribed half-year exceeds the highest all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the March quarter or September quarter of any earlier half-year, not being a half-year earlier than the half-year that commenced on 1 July 1989, then a person (in this section called the *pensioner*) who was in receipt of a pension or an associate pension immediately before the commencement of that prescribed half-year is entitled to an increase in the rate at which the pension or associate pension was payable immediately before the commencement of that prescribed half-year.
- (2) The increase provided for by subrule (1) in the rate at which a pension or associate pension was payable to a person immediately before the commencement of a prescribed half-year, is the percentage of that rate or amount that represents  $A - B$  expressed as a percentage of  $B$ , where:

$A$  is the all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the March quarter or September quarter of the half-year immediately preceding the prescribed half-year; and

$B$  is the highest all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the March quarter or September quarter of any half-year earlier than the half-year immediately preceding the prescribed half-year but not being earlier than the half-year that commenced on 1 July 1990.
- (3) Where, by reason of the death on 30 June or 31 December in the year immediately preceding a prescribed half-year of a person in receipt of a pension, a pension becomes payable on the following day to another person, that other person is entitled to such an increase in the rate of that pension as he or she would have been entitled to had the pension become payable to him or her on that 30 June or 31 December.

### **57                      Application of increase to suspended pension**

Where a pension would, but for its suspension under rule 25 or 35, be payable to a person immediately before the commencement of a prescribed half-year, that pension is, for the purposes of this Division, taken to have been payable to that person immediately before the commencement of that prescribed half-year but any increase in the rate of that pension by virtue of this Division does not take effect until the day on which the pension again becomes payable.

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## Rule 58

### 58 Proportionate increase for part of a year

- (1) This rule applies to a pension or associate pension if:
- (a) the person to whom the pension or associate pension is payable would, but for this rule, be entitled to an increase, in accordance with rule 56, in the rate at which the pension or associate pension was payable to him or her immediately before the commencement of the prescribed half-year; and
  - (b) the person is:
    - (i) a retirement pensioner and the pension became payable to him or her during the preceding half-year; or
    - (ii) the spouse of, or eligible child in relation to, a deceased person who was a member immediately before his or her death and the pension became payable to the spouse or child, as the case may be, during the preceding half-year; or
    - (iii) the spouse of, or eligible child in relation to, a deceased person who was a retirement pensioner immediately before his or her death and the deceased person's pension became payable to the deceased person during the preceding half-year; or
    - (iv) a person who receives an associate pension in relation to a member spouse's pension or associate pension and the member spouse's pension or associate pension became payable to the member spouse during the preceding half-year.
- (2) If:
- (a) the pension; or
  - (b) where subparagraph (1) (b) (iii) applies — the pension that was payable to the deceased person in relation to whom the person was a spouse or eligible child; or
- became payable after 16 June or 16 December in the preceding half-year, the person is not entitled to the increase.
- (c) where subparagraph (1) (b) (iv) applies — the pension or associate pension that was payable to the member spouse;
- (3) If:
- (a) the pension or associate pension; or
  - (b) where subparagraph (1) (b) (iii) applies — the pension that was payable to the deceased person in relation to whom the person was a spouse or eligible child; or
  - (c) where subparagraph (1) (b) (iv) applies — the pension or associate pension that was payable to the member spouse;
- became payable on or before 16 June or 16 December in the preceding half-year, the amount of the increase is an amount calculated in accordance with the formula:

$$\text{Full increase} \times \frac{\text{Number of months in period}}{6}$$

where:

**full increase** means the amount of the increase that would have been applicable but for this subrule.

**number of months in period** means the number of months in the period that began on the day on which the pension or associate pension referred to in paragraph (a), (b) or (c) became payable and ended on 30 June or 31 December in the preceding half-year.

- (4) If the period referred to in subrule (3) is less than 1 month, that period is treated as 1 month.
- (5) If the period referred to in subrule (3) consists of a number of whole months and a part of a month:
  - (a) where the number of days in that part of that month is less than one-half of the number of days in that month — that part is disregarded; and
  - (b) where the number of days in that part of that month is more than one-half of the number of days in that month — that part is treated as a whole month.

- (7) In this rule:

**preceding half-year**, in relation to a pension or associate pension to which this rule applies, means the half-year immediately preceding the prescribed half-year.

## **59 Adjustment in connection with invalidity reclassification**

- (1) Where:
  - (a) a person to whom an invalidity pension is payable is reclassified from Class A to Class B or vice versa under rule 23 during a prescribed half-year; and
  - (b) the person became entitled at the beginning of that half-year to an increase under this Division in the rate at which that invalidity pension was payable to him or her immediately before the beginning of that half-year;

the rate at which the pension is payable to him or her on and after the date from which the reclassification has effect is the rate at which the pension would have been payable to him or her at the beginning of the half-year if his or her classification, on and after the date on which he or she became entitled to the pension, had been in accordance with the reclassification.

- (2) Where:
  - (a) a person to whom an invalidity pension was payable ceased to be entitled to an invalidity pension because of his or her reclassification under rule 23; and
  - (b) in consequence of a further reclassification under that rule he or she again becomes entitled to an invalidity pension;

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the rate at which the pension is payable to him or her on and after the date from which the latter reclassification has effect is the rate at which the pension would have been payable to him or her if:

- (c) he or she had not ceased to be entitled to an invalidity pension in consequence of the first mentioned reclassification; and
- (d) his or her classification, on and after the date on which he or she first became entitled to an invalidity pension, had been in accordance with the further reclassification.

(3) Where:

- (a) a person to whom an invalidity pension was payable ceased to be entitled to an invalidity pension because of his or her reclassification under rule 23; and
- (b) in consequence of a further reclassification under that rule after his or her death he or she would, had he or she not died, have again become entitled to an invalidity pension;

then, for the purpose of calculating benefits for any surviving spouse or eligible child of the invalidity pensioner, the invalidity pensioner is to be taken to have been, immediately before his or her death, in receipt of an invalidity pension at the rate at which that pension would have been payable to him or her if:

- (c) he or she had not ceased to be entitled to invalidity pension in consequence of the first-mentioned reclassification; and
- (d) his or her classification, on and after the date on which he or she first became entitled to an invalidity pension, had been in accordance with the further reclassification.

## **60 Date of effect of increase**

An increase by virtue of this Division in the rate of a pension or associate pension that:

- (a) was payable; or
- (b) under subrule 56 (3) is treated as having been payable;

to a person on 30 June or 31 December in a half-year applies in relation to the instalment of pension or associate pension falling due on the first pension or associate pension pay-day occurring after that day and in relation to all subsequent instalments.

## **61 Interpretation**

- (1) Subject to subrule (2), if at any time, whether before or after the commencement of these Rules, the Statistician has published or publishes in respect of a particular March quarter or September quarter an all groups consumer price index number for the weighted average of the 8 capital cities in substitution for an index number previously published by him or her in respect of that quarter, the publication of the later index number is disregarded for the purposes of this Division.

- (2) If at any time, whether before or after the commencement of these Rules, the Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this Division after the change took place or takes place, regard is to be had only to index numbers published in terms of the new reference base.
- (3) If the percentage for the purposes of rule 56 is or includes a fraction of one tenth of 1 per centum:
  - (a) where that fraction is less than one half of one tenth — that fraction is to be disregarded; and
  - (b) where that fraction is not less than one half of one tenth — that fraction is to be treated as one tenth.

### **Division 3                      Increases in certain unfunded preserved benefits**

#### **61A            Increases in pensions and certain unfunded preserved benefits**

- (1) Subject to this Division, if the all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the March quarter of the year immediately preceding a prescribed year exceeds the highest all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the March quarter of any earlier year, not being a year earlier than the year that commenced on 1 July 1989, then where, immediately before the commencement of that prescribed year, a preserved benefit is applicable to a person, or has become payable in respect of a deceased person but has not been paid, the amount of the unfunded preserved benefit in relation to that person immediately before the commencement of that year is increased.
- (2) The increase provided for by subrule (1) in the amount of the unfunded preserved benefit in relation to a person, immediately before the commencement of a prescribed year (in this rule called a ***relevant prescribed year***), is the percentage of that rate or amount that represents **A – B** expressed as a percentage of **B**, where:

**A** is the all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the March quarter of the year immediately preceding the prescribed year; and

**B** is the highest all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the March quarter of any year earlier than the year that commenced on 1 July 1990.

#### **61B            Proportionate increase for part of a year**

Where a preserved benefit:

- (a) became applicable to a person; or

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- (b) became payable or was converted into a pension; during the most recent prescribed year, that part of the preserved benefit that is an unfunded employer benefit is increased to the extent determined by the Board, consistent with the principle of subrule 61A (2).

#### **61C Adjustment in connection with invalidity reclassification**

Upon a preserved benefit becoming applicable to a person under subrule 29 (1), the unfunded employer benefit included in that preserved benefit is increased as if:

- (a) that preserved benefit had become applicable to the person on the person's retirement; and
- (b) this Division had applied, since that retirement, to the unfunded employer benefit included in the preserved benefit.

#### **61D Date of effect of increase**

An increase by virtue of this Division in the amount of an unfunded preserved benefit applies with effect from:

- (a) in the case of an increase under subrule 61B — the date on which the preserved benefit became payable; or
- (b) in any other case — 1 July of the prescribed year.

#### **61E Interpretation**

- (1) Subject to subrule (2), if at any time, whether before or after the commencement of these Rules, the Statistician has published or publishes in respect of a particular March quarter an all groups consumer price index number for the weighted average of the 8 capital cities in substitution for an index number previously published by him or her in respect of that quarter, the publication of the later index number is disregarded for the purposes of this Division.
- (2) If at any time, whether before or after the commencement of these Rules, the Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this Part after the change took place or takes place, regard is to be had only to index numbers published in terms of the new reference base.
- (3) If the percentage for the purposes of rule 61A is or includes a fraction of one tenth of 1 per centum:
  - (a) where that fraction is less than one half of one tenth — that fraction is to be disregarded; and
  - (b) where that fraction is not less than one half of one tenth — that fraction is to be treated as one tenth.

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## **Part 7                      Candidates at parliamentary elections**

### **62            Re-instated member**

- (1) Where a person who resigned to contest an election:
- (a) again becomes a member; and
  - (b) is a person referred to in a relevant provision of the Parliamentary Candidates Act; and
  - (c) repays to the Board, before the expiration of 60 days after the day on which he or she again became a member, the amount of any benefit paid to him or her under these Rules upon him or her resigning to contest the election;
- the person is taken for the purposes of these Rules:
- (d) to have been a member; and
  - (e) despite the operation of the relevant provision, not to have been absent on leave without pay;
- during the relevant period.
- (2) Where subrule (1) applies to a person:
- (a) any benefit that became payable to him or her under these Rules upon him or her ceasing to be a member is taken not to have been payable; and
  - (b) the fortnightly contributions that the person is required to make in respect of the relevant period are in accordance with the election by him or her that was in force immediately before the beginning of that period.

### **63            Death or physical or mental incapacity of person**

When a person who resigned to contest an election:

- (a) dies; or
  - (b) in the opinion of the Board, becomes physically or mentally incapacitated to the extent that he or she would have been retired on the ground of invalidity if he or she had remained a member;
- he or she is, where considered appropriate by the Board, taken not to have ceased to be a member but to have died or retired on the ground of invalidity while a member at a time determined by the Board.

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## **Part 8                      General provisions applicable to contributions and benefits**

### **64                      Provisions applicable to elections under the Rules**

- (1) An election under these Rules is to be in writing.
- (2) Where a person is about to become, or has become, entitled:
  - (a) to benefits under Part 3 or Part 5; and
  - (b) to make an election in relation to the nature of those benefits;he or she may make that election not earlier than 3 months before he or she is due to become entitled to the benefits and not later than 3 months after becoming entitled to the benefits.
- (2A) If a person is allowed to make an election under Part 10, he or she may make the election in the same way as an election mentioned in subrule (2).
- (3) Where an election under these Rules is made by a person after the expiration of the period allowed for the making of the election and the Board is satisfied that, in all the circumstances of the case, it is desirable that the election be recognised, the Board may direct that the election be allowed and if it does so these Rules have effect as if the election had been made within the period allowed.
- (4) Where a person who is entitled to make an election under these Rules is, by reason of physical or mental incapacity, unable to make that election, the Board may allow such other person as it thinks appropriate to make the election within such period as the Board allows and if it does so and the other person so makes the election these Rules have effect as if the election had been made by the first-mentioned person within the period allowed.
- (5) Where:
  - (a) an election under Part 3, 4 or 5 is made by the person entitled to make the election or, in accordance with subrule (3), by another person on behalf of the first-mentioned person; and
  - (b) the person who made the election makes an application to the Board not later than 3 months after the day on which the election is made or within such further period as the Board, in special circumstances, allows requesting that the Board cancel the election; and
  - (c) the Board, having regard to such matters as it considers relevant, is satisfied that the election should be cancelled;the Board may direct that the election is cancelled and if it does so these Rules have effect as if the election had not been made.
- (6) Where a person who is, or has been, a member is entitled to make an election under Part 3 or 5 and dies without making such an election:
  - (a) if the person is survived by a spouse — the spouse may make the election within 3 months after the person's death; or



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- (b) if the person is not survived by a spouse, or is survived by a spouse but the spouse dies without making such an election, but the person is survived by an eligible child — the election may be made within that period by such person as the Board permits;

and if the spouse, or the person permitted by the Board, does so, these Rules have effect as if the election had been made by the first-mentioned person.

**65 Rate of pension where lump sum converted into pension**

Where a person is entitled under these Rules to have an amount of his or her employer benefit converted into a pension, the annual rate of that pension is calculated in accordance with Schedule 5.

**65A Employer benefit converted into pension to include funded employer benefit unless person elects otherwise**

Where, under these Rules, a person elects to have a part of his or her employer benefit converted into a pension payable to him or her, the employer benefit so converted includes the funded employer benefit unless the person elects otherwise.

**65B Prescribed minimum amount for conversion of lump sum to pension**

For the purposes of subrules 14 (4), 51 (2), 52 (2) and 52 (3), the prescribed amount is an amount equal to 25 times the SIS preservation threshold amount.

**66 Benefits in unusual or exceptional circumstances**

Where, in a particular case, the Board is of the opinion that:

- (a) the operation of these Rules, other than this rule, with regard to a point at issue produces a result in relation to a person that is not in the spirit of the Rules; and
- (b) the relevant circumstances of the case are unusual or exceptional;
- the Board may, in relation to that case, having regard to the circumstances of the case, the principles in these Rules and the need to maintain equity between members, determine the point at issue in favour of that person.

**67 Instalments of pensions and associate pensions**

- (1) Pensions and associate pensions are to be paid in fortnightly instalments on pension pay-days.
- (2) The amount of a fortnightly instalment of pension or associate pension is an amount ascertained by dividing the amount per annum of the pension or associate pension by 26.
- (3) Where the amount of a fortnightly instalment of pension or associate pension includes a fraction of a cent:

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- (a) if the fraction is less than one-half of a cent — the amount of the instalment is taken to be reduced by the amount of the fraction; or
  - (b) if the fraction is one-half of a cent or more — the amount of the instalment is taken to be increased by treating the fraction as 1 cent.
- (4) The amount of pension payable in respect of a day is one-fourteenth of the amount of the fortnightly instalment of the pension or associate pension.

**68 Set off against pension in certain cases**

Where:

- (a) the spouse of a deceased pensioner to whom retirement pension or invalidity pension (in this rule called the *primary pension*) was payable is entitled to spouse's pension in accordance with subrule 42 (2); 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 pension is payable in accordance with that subrule, is paid into an account with a bank; and
- (c) the bank pays, out of that account, to the spouse of the deceased pensioner an amount not exceeding the amount so paid into the account;

the Board may make arrangements under which the amount so paid to the spouse may be offset against any amount of pension payable to the spouse in accordance with subrule 42 (2).

**69 Interest payable where payment of benefit delayed**

- (1) Where a benefit is payable as a lump sum to a person and the payment of the benefit is delayed, the Board may, in accordance with this rule, approve an increase, by an amount of interest, in the amount of the benefit payable to the person.
- (2) Where a pension or associate pension is payable to, or for the benefit of a person and the commencement of the payment of that pension or associate pension is delayed, the Board may, in accordance with this rule, approve an increase, by an amount of interest, in the rate of the pension or associate pension payable to the person for such period as the Board determines.
- (3) A pension or associate pension is not to be increased under subrule (2) if the Board is of the opinion that the amount of the increase would not be significant.
- (4) Interest applicable under this rule is calculated in such manner as the Board determines:
  - (a) in the case of a lump sum payment — in respect of the period of the delay; and
  - (b) in the case of a pension or associate pension — in respect of:
    - (i) each instalment of the pension or associate pension delayed; and
    - (ii) the period of delay of that instalment.

**Rule 70**

- (5) In this rule:

*benefit* means ancillary benefit, associate A benefit, associate B benefit, employer benefit or member benefit.

**70 Payment of benefit otherwise than to person entitled**

- (1) Where, in the opinion of the Board, the part of:
- (a) an instalment of spouse's pension; or
  - (b) a spouse's lump sum payment;
- attributable to an eligible child or eligible children, or any portion of that part, should, by reason of the child or children not being in the custody, care and control of the spouse, or for any other reason which the Board thinks proper, be paid to a person other than the spouse, the Board may authorise payment of that part, or a portion of the part, to the other person and if the Board does so payment is to be made to the other person accordingly.
- (2) For the purposes of subrule (1), the part of a spouse's lump sum payment attributable to that eligible child or those eligible children is taken to be the amount obtained by multiplying the spouse's lump sum payment by the percentage applicable in respect of an eligible child or children under rule 42 in relation to a pension.
- (3) Where, in the opinion of the Board:
- (a) an instalment, or part of an instalment, of a pension or associate pension; or
  - (b) an amount of any other benefit;
- should:
- (c) by reason of the person who, but for this rule, would be entitled to the payment being a child, or being a person who is of unsound mind or undergoing imprisonment or otherwise being under a disability; or
  - (d) for any other reason which the Board thinks proper;
- be paid to a person other than the person who would be so entitled to the payment, the Board may authorise payment to the other person and if the Board does so payment is to be made to the other person accordingly.
- (4) It is the intention of this rule that a payment of:
- (a) the part, or a portion of the part, of an instalment of spouse's pension attributable to an eligible child that, by virtue of subrule (1), is paid to a person other than the child to which that part or portion is attributable; or
  - (b) an instalment of pension payable to a child that, by virtue of subrule (3), is paid to a person other than the child;
- be applied for the maintenance, education or other benefit of the child.

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**Rule 71**

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**71 Withholding payment of benefit where required information not provided**

The Board may withhold payment of the whole, or a part, of a benefit in relation to a person where that person does not provide, or arrange to be provided, to the Board information required by the Board in connection with the determination of the person's entitlement to benefits under these Rules or the determination of the amount of those benefits.

**Part 9 Reconsideration of decisions**

**72 Reconsideration Committees**

A Reconsideration Committee established under paragraph 3 (2) (h) of the Trust Deed is constituted under, has the functions set out in, and must operate in accordance with, this Part.

**73 Membership of Committee**

- (1) A Committee comprises such number of persons as the Board determines.
- (2) Subject to subrule (2A), the qualifications or other requirement, which are or is a prerequisite to the appointment of each member of the Committee, are such as the Board determines.
- (2A) One member of the Committee must be a retirement pensioner.
- (2B) If a member of the Committee ceases to hold the relevant qualifications or to comply with the relevant requirement, applicable under subrule (2) or (2A), his or her membership of the Committee is thereupon taken to be terminated.
- (3) A person who is a member of the Board is not disqualified by reason of that fact from being appointed to a Committee.

**74 Functions of Committee**

- (1) The functions of a Committee are:
  - (a) to review a decision referred to it by the Board under this Part; and
  - (b) in accordance with a request of the Board, either:
    - (i) to make recommendations to the Board in relation to the decision; or
    - (ii) to affirm or vary the decision, or to set the decision aside and substitute another decision for it.
- (2) As part of performing its functions, the Committee:
  - (a) must take into account any evidence, relevant to the decision, that is made available, or submitted, to the Committee; and
  - (b) may also take steps to obtain any other evidence that the Committee considers necessary for a proper reconsideration of the decision.

**Rule 76**

**75 Proceedings of Committee**

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

**76 Reconsideration of decisions made by delegates**

- (1) A person who is affected by a decision of a delegate of the Board may apply to the Board for reconsideration of the decision within:
  - (a) a period of 30 days after the day on which the person was notified of the decision; or
  - (b) a longer period that, because of special circumstances, the Board allows, either during or after the 30 days period.
- (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.
- (3) The Board must refer the decision to which an application relates to a Committee.
- (4) The Board may also, on its own motion, refer a decision of a delegate to a Committee.
- (5) If the Board requests the Committee, under subparagraph 74 (1) (b) (i), to make recommendations to the Board, the Board must, after receiving the Committee's recommendations:
  - (a) take into account the recommendations and any other matter that the Board considers relevant; and
  - (b) affirm or vary the decision, or set the decision aside and substitute another decision for it; and
  - (c) state in writing the results of the reconsideration, including the reasons for the Board's decision.
- (6) The Board must give a copy of a document mentioned in subrule (5) to the applicant.
- (7) If the Board requests the Committee, in accordance with subparagraph 74 (1) (b) (ii), to affirm, vary or set aside the decision:
  - (a) the Committee must:
    - (i) reconsider the decision; and
    - (ii) affirm or vary the decision, or set the decision aside and substitute another decision for it; and
    - (iii) state in writing the results of the reconsideration, including the reasons for the Committee's decision; and
    - (iv) give the statement, or a copy of the statement, to the Board; and
  - (b) the Committee's decision has effect as the decision on reconsideration.

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**Rule 77**

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- (8) The Board must give a copy of a document mentioned in subrule (7) to the applicant.

**77 Reconsideration of decisions made by Board and Committees**

- (1) A person affected by a decision of the Board (including a decision under subrule 76 (5)), or a decision of a Committee under subrule 76 (7), may apply to the Board for reconsideration of the decision within:
- (a) a period of 30 days after the day on which the person was notified of the decision; or
  - (b) a longer period that, because of special circumstances, the Board allows, either during or after the 30 day period.
- (2) An application must:
- (a) be in writing addressed to the Board; and
  - (b) set out particulars of the decision that the person wishes to be reconsidered; and
  - (c) specify the grounds for reconsideration of those particulars; and
  - (d) be accompanied by the prescribed fee (if any).
- (3) A decision of the Board, or a Committee, must not be reconsidered unless evidence is mentioned in the application for reconsideration that:
- (a) is not trivial or lacking in substance; and
  - (b) was not previously considered by the Board or Committee in making that decision; and
  - (c) the Board reasonably considers is relevant to the decision.
- (4) If an application is not supported by evidence in accordance with subrule (3), the Board must dismiss the application.
- (5) 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.
- (6) If the Board does not dismiss an application under subrule (4), the Board must refer the decision to which the application relates to a Committee.
- (7) The Board may also, on its own motion, refer any of its decisions to a Committee.
- (8) If the Board requests the Committee to reconsider the decision in accordance with subparagraph 74 (1) (b) (i), the Board must, after receiving the Committee's recommendations:
- (a) take into account the recommendations and any other matter that the Board considers relevant; and
  - (b) affirm or vary the decision, or set the decision aside and substitute another decision for it; and
  - (c) state in writing the results of the reconsideration, including the reasons for the Board's decision.

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**Rule 80**

- (9) The Board must give a copy of a document mentioned in subrule (8) to the applicant.

**78 Content of statements of reasons for decisions**

Where the Board or a Committee is required by a provision of this Part to give written reasons for a decision made by it, the instrument giving the reasons must also set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.

**79 Interpretation**

For the purposes of this Part, a determination or a decision of the Incapacity Classification Committee under Subdivision A or C of Division 2 of Part 3 is taken to be the decision of a delegate of the Board.

## **Part 10 Surcharge deduction amount**

**80 Deduction of surcharge deduction amount**

- (1) If a member's surcharge debt account is in debit when a benefit under these Rules becomes payable to or in respect of the member, the member may, by notice in writing to the Board, elect to discharge the debt in 1 or more of the following ways:
- (a) by deduction from the member's employer benefit before it is paid to the member as a lump sum, or before it is converted into a pension;
  - (b) by deduction from the member's member benefit before it is paid to the member as a lump sum;
  - (c) by deduction from the pension payable to the member after conversion of the member's employer benefit;
  - (d) by deduction from the member's ancillary benefit, associate A benefit or associate B benefit before the benefit is paid.
- (2) If the member does not make an election in accordance with subrule (1), the debt must be discharged in the following ways:
- (a) if these Rules provide that the member is to receive the employer benefit in the form of a pension — by deduction from the member's employer benefit after it is converted into a pension;
  - (b) if these Rules provide that the member may elect to receive their employer benefit either as a lump sum payment or converted into a pension and the member elects to convert the whole or any part of the benefit to a pension — by deduction from the member's employer benefit after it is converted to a pension;
  - (c) in any other case — by deduction from the member's employer benefit before it is paid as a lump sum.

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**Rule 81**

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**81 Deduction of surcharge deduction amount where member deceased**

- (1) If a deceased member's surcharge debt account is in debit, a person entitled under these Rules to be paid the deceased member's employer benefit or member benefit (*the claimant*) may, by notice in writing to the Board, elect to have the debt discharged in 1 or more of the following ways:
  - (a) by deduction from the deceased member's employer benefit before it is paid to the claimant as a lump sum, or converted into a pension;
  - (b) by deduction from the deceased member's member benefit before it is paid to the claimant as a lump sum;
  - (c) by deduction from the pension payable to the claimant after conversion of the deceased member's employer benefit.
- (2) If the claimant does not make an election in accordance with subrule (1), the debt must be discharged in the following ways:
  - (a) if these Rules provide that the claimant is to receive the deceased member's employer benefit in the form of a pension — by deduction from the deceased member's employer benefit after it is converted into a pension;
  - (b) if these Rules provide that the claimant may elect to receive the deceased member's employer benefit either as a lump sum payment or converted into a pension and the claimant elects to convert the whole or any part of the benefit to a pension — by deduction from the deceased member's employer benefit after it is converted into a pension;
  - (c) in any other case — by deduction from the deceased member's employer benefit before it is paid as a lump sum.

**Part 11 Preserved benefits**

**82 Member benefits accruing before 1 July 1999**

If a person becomes entitled to be paid a member benefit:

- (a) the amount of the member benefit accruing to the person before 1 July 1999 is payable to him or her as a lump sum; or
- (b) the person may elect to preserve that amount in a regulated superannuation fund.

**83 Member benefits accruing on or after 1 July 1999**

If a person becomes entitled to be paid a member benefit, the amount of the benefit accruing to the person on or after 1 July 1999 must be preserved in a regulated superannuation fund until he or she attains his or her preservation age.



**Rule 86**

**84 Employer benefits**

If a person turns age 55 before attaining his or her preservation age, the amount of the employer benefit accruing to the person must be preserved in a regulated superannuation fund until he or she attains his or her preservation age.

**Part 12 Associate benefit and ancillary benefit**

**85 Associate A benefit and ancillary benefit**

- (1) Associate A benefit is a benefit:
  - (a) created as associate A benefit under Part 13; and
  - (b) held for a person as units in one or more Investment Divisions.
- (2) Ancillary benefit is a benefit:
  - (a) created as ancillary benefit under Part 14; and
  - (b) held for a person as units in one or more Investment Divisions.
- (2A) For paragraph (2) (b), ancillary benefit arising from a contribution taken to be made by a spouse under rule 110 is to be held for the spouse.
- (3) Divisions 5, 6 and 7 of Part 2B apply in relation to associate A benefit and ancillary benefit as if the person for whom the benefit is held were a unitised member and the units were units in a member funded account.
- (4) A person is entitled to be paid associate A benefit and ancillary benefit when the person reaches his or her preservation age.
- (5) The person may, at any time before the benefit becomes payable, request that the Board roll over or transfer the associate A benefit or ancillary benefit to a regulated superannuation fund, an RSA, or an approved deposit fund nominated by the person, to be held for the benefit of the person.
- (6) When the benefit becomes payable in accordance with subrule (4), the person may request that the Board:
  - (a) pay the benefit to the person as a lump sum; or
  - (b) roll over or transfer the benefit to a regulated superannuation fund, an RSA, or an approved deposit fund nominated by the person, to be held for the benefit of the person.
- (7) If a person does not make a request under subrule (5) or (6), the benefit must be paid to the person as a lump sum when the person reaches the age of 65.

**86 Associate B benefit**

- (1) Associate B benefit is a benefit:
  - (a) created as associate B benefit under Part 13; and
  - (b) preserved in the Scheme for a person; and

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**Rule 87**

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- (c) indexed annually at the long term bond rate.
- (2) A person is entitled to be paid associate B benefit when the person reaches his or her preservation age.
- (3) On reaching the age of 55, the person may request that the Board roll over or transfer the associate B benefit to a regulated superannuation fund, an RSA, or an approved deposit fund nominated by the person, to be held for the benefit of the person.
- (4) When the benefit becomes payable in accordance with subrule (2), the person may request that the Board:
  - (a) pay the benefit to the person as a lump sum; or
  - (b) roll over or transfer the benefit to a regulated superannuation fund, an RSA, or an approved deposit fund nominated by the person, to be held for the benefit of the person.
- (5) If a person does not make a request under subrule (3) or (4), the benefit must be paid to the person as a lump sum when the person reaches the age of 65.

**87 Release of benefits because of total and permanent incapacity, on compassionate grounds, or because of severe financial hardship**

- (1) This rule applies to a person:
  - (a) to whom associate A benefit, associate B benefit or ancillary benefit applies; and
  - (b) who has not reached his or her preservation age.
- (2) Subject to Part 10, the associate A benefit, associate B benefit or ancillary benefit becomes payable to the person as a lump sum:
  - (a) if the Board decides that by reason of the person's physical or mental incapacity, the person has become unlikely ever to be able to work again in employment for which he or she is reasonably qualified by education, training or experience or for which the person could reasonably be qualified after retraining — on the date on which the Board so decides; or
  - (b) if the Australian Prudential Regulation Authority determines that the person satisfies a condition of release on a compassionate ground under subregulation 6.19A (2) of the SIS Regulations — on the date of the determination; or
  - (c) if the Board is satisfied that the person is in severe financial hardship within the meaning of subregulation 6.01 (5) of the SIS Regulations — on the date when the Board becomes so satisfied.
- (3) An amount that becomes payable under paragraph (2) (b) or (c) is limited to so much of the benefit as is necessary to meet the expenses that give rise to the compassionate grounds or is necessary to alleviate financial hardship.

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- (4) If only part of a benefit payable under subrule (2) is payable because of subrule (3), that part may be reduced by part of the surcharge deduction amount before it is paid as a lump sum if the Board considers that there may be insufficient benefit remaining unpaid to pay the surcharge deduction amount.

**88 Death of a person who has associate benefit or ancillary benefit**

- (1) This rule applies if a person for whom associate A benefit, associate B benefit or ancillary benefit is held dies.
- (2) Associate A benefit, associate B benefit or ancillary benefit is payable as a lump sum as follows:
- (a) if the deceased person is survived by a spouse, the benefit is payable to the spouse;
  - (b) if the deceased person is survived by more than 1 spouse, the benefit is payable to the spouses;
  - (c) if the deceased person is survived by:
    - (i) a spouse or spouses; and
    - (ii) an eligible child or children;the benefit is payable to, or for the benefit of, the spouse or spouses and the child or children;
  - (d) if the deceased person is not survived by a spouse but is survived by an eligible child or children, the benefit is payable to, or for the benefit of, the child or children;
  - (e) if the deceased person is not survived by a spouse or an eligible child and he or she had notified the Board in writing that:
    - (i) he or she had a person or persons dependent on him or her who would not be eligible to receive benefits as a spouse or eligible child; and
    - (ii) he or she had made provision for that person or those persons in his or her will;the benefit is payable to, or for the benefit of, the person or persons;
  - (f) in any other case, the benefit is payable to the deceased person's personal representative.

## Part 13                      Family law superannuation interest splitting

### Division 1                      Preliminary

#### 89                      Definitions

In this Part:

**base amount** means:

- (a) for a splitting agreement — the base amount specified in, or calculated under, the agreement; or
- (b) for a splitting order — the amount allocated under subsection 90MT (4) of the *Family Law Act 1975*.

**employer funded component** of a transfer amount, means the employer benefit, or part of the employer benefit, that is totally funded.

**employer unfunded component** of a transfer amount, means the employer benefit, or part of the employer benefit that is not totally funded.

**family law value** means the amount determined in accordance with regulations made under the *Family Law Act 1975* that apply for paragraph 90MT (2) (a) of that Act (taking the relevant date to be the date on which the operative time occurs).

*Note* The family law value is determined by applying those regulations, whether or not an order has been made under subsection 90MT (1) of the *Family Law Act 1975*.

**member funded component** of a transfer amount means the member benefit or part of the member benefit, that is totally funded.

**member unfunded component** of a transfer amount means the member benefit, or part of the member benefit, that is not totally funded.

**operative time**, for a splitting agreement or splitting order, means the time that is the operative time for Part VIIIB of the *Family Law Act 1975* in relation to a payment split under the agreement or order.

**payment split** has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

**scheme value** means the amount determined under rule 98.

**splitting percentage** means:

- (a) for a splitting agreement — the percentage specified in the agreement under subparagraph 90MJ (1) (c) (iii) of the *Family Law Act 1975*; or
- (b) for a splitting order — the percentage specified in the order under subparagraph 90MT (1) (b) (i) of the *Family Law Act 1975*.

**transfer amount** means:

- (a) if a splitting percentage applies — the amount calculated by multiplying the splitting percentage by the greater of:
  - (i) the family law value; and
  - (ii) the scheme value; or

- (b) if a base amount applies and the scheme value is not more than the family law value — the base amount; or
- (c) if a base amount applies and the scheme value is more than the family law value — the amount calculated using the formula:

$$\text{Scheme value} \times \frac{\text{Whole dollars in base amount}}{\text{Whole dollars in family law value}}$$

## **Division 2                      Dealing with splitting agreements and splitting orders**

### **Subdivision 1                      Payment split of benefit in the growth phase**

#### **90                      Splitting a benefit that is not ancillary benefit, associate A benefit or associate B benefit**

- (1) This rule applies if:
  - (a) the Board receives a splitting agreement or a splitting order in respect of a member spouse's superannuation interest that is:
    - (i) a superannuation interest under the Act; and
    - (ii) not ancillary benefit, associate A benefit or associate B benefit; and
  - (b) a pension is not payable in respect of the interest at the operative time; and
  - (c) the member spouse and the non-member spouse are both alive at the operative time; and
  - (d) if a base amount applies — the base amount at the operative time is not more than the family law value or the scheme value.

*Note 1* This rule applies to the benefit of a member spouse as a member of the Scheme. The member spouse may also have ancillary benefit or associate benefit in the Scheme. Ancillary benefit and associate benefit are split under rule 91.

*Note 2* The non-member spouse may also be a member of the Scheme, in which case he or she will have benefit held as a member of the Scheme as well as the benefit created under this rule.

- (2) The Board must determine the transfer amount for the non-member spouse and allocate the transfer amount as associate benefit to the non-member spouse in accordance with subrules (3) and (4).
- (3) The value of the following components of the transfer amount is transferred to the non-member spouse as associate A benefit:
  - (a) any member funded component of the transfer amount;
  - (b) any member unfunded component of the transfer amount;
  - (c) any employer funded component of the transfer amount.

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- (4) Any employer unfunded component of the transfer amount is transferred to the non-member spouse as associate B benefit.
- (5) If the non-member spouse has nominated to the Board the Investment Division or Investment Divisions to which the associate A benefit should be credited (***an investment nomination***), the Board must comply as far as possible with the nomination.
- (6) If the Board:
  - (a) has not received an investment nomination from the non-member spouse; or
  - (b) cannot comply with an investment nomination in relation to all or part of the associate A benefit because the nomination is defective or because the Investment Divisions have changed;
 the Board must allocate the associate A benefit to the default Investment Division.
- (7) To derive the transfer amount, the following benefits are reduced in respect of the superannuation interest of the member spouse:
  - (a) any benefit in the member funded account;
  - (b) any benefit in the member unfunded account;
  - (c) any employer funded benefit;
  - (d) any employer unfunded benefit.
- (8) In allocating the transfer amount to the non-member spouse:
  - (a) a proportion must be taken from any benefit, in the member funded account, any benefit in the member unfunded account, any employer funded benefit and any employer unfunded benefit; and
  - (b) the proportion taken from each category of benefit must be the same as the category bears to the member spouse's original interest immediately before the payment split.
- (9) The total reduction of the benefit is made in accordance with the benefit reduction factors and methodology developed and maintained by an actuary for these Rules.

## 91 Splitting ancillary benefit, associate A benefit or associate B benefit

- (1) This rule applies if:
  - (a) the Board receives a splitting agreement or a splitting order in respect of a superannuation interest that is ancillary benefit, associate A benefit or associate B benefit held for the member spouse; and
  - (b) an associate pension is not payable in respect of the interest at the operative time; and
  - (c) the member spouse and the non-member spouse are both alive at the operative time; and

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- (d) if a base amount applies — the base amount at the operative time is not more than the family law value or the scheme value.

*Note* This rule applies to ancillary benefit and associate benefit. If the member spouse is a member of the Scheme, the benefit of the member spouse as a member of the Scheme will be split under rule 90.

- (2) The Board must determine the transfer amount for the non-member spouse and allocate the transfer amount as associate benefit to the non-member spouse in accordance with subrules (3) and (4).
- (3) The component of the transfer amount that is taken from any ancillary benefit or associate A benefit of the member spouse is transferred to the non-member spouse as associate A benefit.
- (4) The component of the transfer amount that is taken from any associate B benefit of the member spouse is transferred to the non-member spouse as associate B benefit.
- (5) If the non-member spouse has nominated to the Board the Investment Division or Investment Divisions to which the associate A benefit should be credited (*an investment nomination*), the Board must comply as far as possible with the nomination.
- (6) If the Board:
- (a) has not received an investment nomination from the non-member spouse; or
  - (b) cannot comply with an investment nomination in relation to all or part of the associate A benefit because the nomination is defective or because the Investment Divisions have changed;
- the Board must allocate the associate A benefit to the default Investment Division.
- (7) To derive the transfer amount, the ancillary benefit, the associate A benefit and the associate B benefit are reduced in respect of the superannuation interest of the member spouse.
- (8) In allocating the transfer amount to the non-member spouse:
- (a) a proportion must be taken from:
    - (i) any ancillary benefit and associate A benefit; and
    - (ii) any associate B benefit; and
  - (b) the proportion taken from each category of benefit must be the same as the category bears to the member spouse's original interest immediately before the payment split.

**92 Member spouse is 1973 Act member**

- (1) This rule applies if:
- (a) the Board receives a splitting agreement or splitting order in respect of a superannuation interest under the 1973 Act; and
  - (b) the non-member spouse is not entitled to associate pension under subsection 49B (2) of the 1973 Act.

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- (2) The Board must allocate the transfer amount as associate B benefit for the non-member spouse.

*Note* The benefit of the member spouse under the 1973 Act is reduced in accordance with the *Defence Force Retirement and Death Benefits (Family Law Superannuation) Orders 2004*.

### **93 Member spouse has a superannuation interest under section 52 of the *Defence Act 1903***

- (1) This rule applies if the Board receives a splitting agreement or a splitting order in respect of a superannuation interest under section 52 of the *Defence Act 1903*.

*Note 1* If a member spouse has a DFRDB productivity benefit accumulating under the *Defence Act 1903*, the non-member spouse is entitled to benefits.

*Note 2* The benefit of the member spouse is reduced in accordance with the Defence Force (Superannuation) (Productivity Benefit) Determination.

- (2) The Board must allocate the transfer amount as associate B benefit for the non-member spouse.

### **94 Member spouse is member who has ancillary benefit or associate benefit**

- (1) This rule applies if:
- (a) the Board receives a splitting agreement or a splitting order in respect of the superannuation interest of a member spouse; and
  - (b) the member spouse:
    - (i) is a member of the Scheme or a former member with preserved member benefit or preserved employer benefit; and
    - (ii) has ancillary benefit, associate A benefit or associate B benefit; and
  - (c) a pension is not payable in respect of the interest at the operative time; and
  - (d) the splitting agreement or splitting order provides for the splitting of the member spouse's superannuation interest as a whole and does not differentiate the member spouse's superannuation interest as a member or the interest that is preserved member benefit or preserved employer benefit from the member spouse's superannuation interest that is ancillary benefit, associate A benefit or associate B benefit; and
  - (e) the member spouse and the non-member spouse are both alive at the operative time; and
  - (f) if a base amount applies — the base amount at the operative time is not more than the family law value or scheme value of the member interest and any ancillary interest and associate interest.



- (2) The Board must determine a proportion of the transfer amount in relation to 2 categories of interest:
- (a) the member spouse's superannuation interest as a member, the preserved member benefit or preserved employer benefit; and
  - (b) the ancillary benefit, associate A benefit or associate B benefit;
- and the proportion for each category of interest must be the same as the category bears to the member spouse's total superannuation interest immediately before the payment split.
- (3) Rule 90 is to be used in respect of the proportion of the transfer amount determined for paragraph (2) (a) and rule 91 is to be used in respect of the proportion of the transfer amount determined for paragraph (2) (b) as if the amounts determined by the Board were amounts specified in the splitting agreement or splitting order.

*Note* If the Board receives a splitting agreement or a splitting order that differentiates between member benefit or preserved benefit and ancillary benefit or associate benefit, the agreement or order will be given effect under rule 90 in respect of the member benefit or preserved benefit and under rule 91 in respect of any ancillary benefit or associate benefit.

## **Subdivision 2                      Payment split of benefit in the payment phase**

### **95                      Member spouse is in receipt of a pension or associate pension**

- (1) This rule applies if:
- (a) the Board receives a splitting agreement or a splitting order in respect of the superannuation interest of a member spouse; and
  - (b) either:
    - (i) the splitting agreement or splitting order has an operative time on or after the commencement of Schedule 1 to the *Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004*; or
    - (ii) the splitting agreement or splitting order has an operative time earlier than the commencement of Schedule 1 to the *Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004*, and no benefits have become payable before that time in respect of the original interest to which the agreement or order relates; and
  - (c) at the operative time the member spouse receives:
    - (i) a pension, other than a pension payable in respect of a child; or
    - (ii) an associate pension; and
  - (d) the member spouse and the non-member spouse are both alive at the operative time; and
  - (e) if a base amount applies — the base amount at the operative time is not more than the family law value or the scheme value.

## Rule 96

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- (2) The non-member spouse in relation to the splitting agreement or splitting order is entitled to an associate pension from the operative time at a rate calculated under rule 99 by reference to the transfer amount in relation to a pension or associate pension.

*Note* The associate pension for the non-member spouse does not include a reversionary component and therefore ceases on the death of the non-member spouse.

- (3) The annual rate of the pension payable to the member spouse is reduced to the amount calculated under rule 100.

*Note* If a member in receipt of a pension was, for the purposes of family law superannuation splitting, a non-member spouse in relation to another member of the Scheme who was also in receipt of a pension at the operative time, the first-mentioned member may receive an associate pension.

A person who receives an associate pension does not become a member but a member who receives an associate pension in addition to a pension under the Scheme remains a member.

## 96 Commutation of small associate pension

- (1) If the annual rate of associate pension is less than \$1 303.03, the non-member spouse may elect to commute the associate pension.
- (2) On 1 January 2005, the amount mentioned in subrule (1) is indexed in accordance with rule 97.
- (2A) On 1 July 2005, and on 1 January and 1 July in each year following 2005, the indexed amount in force immediately before that date is indexed in accordance with rule 97.
- (3) The election must be made, in writing to the Board, not later than 3 months after the non-member spouse becomes entitled to the associate pension.
- (4) If the non-member spouse makes the election, the non-member spouse is entitled instead to a lump sum equal to the transfer amount mentioned in rule 95.

## 97 Indexation of amount for small associate pension

- (1) If the all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the March quarter or September quarter of the half-year immediately before the date of the indexation (factor **A**) exceeds the highest all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the March quarter or September quarter of any earlier half-year, not being a half-year earlier than the half-year that commenced on 1 January 2004 (factor **B**), the amount is increased at the rate worked out in accordance with subrule (2).
- (2) The rate is  $A - B$  expressed as a percentage of **B**.

## **Division 3                      Determination of scheme value, associate pension rate and member spouse pension reduction**

### **98      Scheme value**

For the definition of *scheme value* the scheme value in relation to a member spouse is determined as follows:

- Step 1**      Identify the methodology and factors set out in regulations made for section 90MT of the *Family Law Act 1975* that would be used to determine the family law value in relation to the member spouse in accordance with that section as if that section applied in relation to the member spouse.

*Note* The family law value is determined in accordance with the *Family Law (Superannuation) Regulations 2001* that are made for paragraph 90MT (2) (a) of the *Family Law Act 1975*. The process of determining the family law value may include reliance on methodology and factors approved by the Attorney-General under subsection 90MT (3) of that Act.

- Step 2**      Substitute the factors with factors nominated by an actuary for this rule.

- Step 3**      Use the methodology identified in step 1, and the factors substituted in step 2, to determine the scheme value in relation to the member spouse.

### **99      Annual rate of associate pension**

For rule 95, the annual rate of associate pension payable to a non-member spouse is calculated as follows:

- Step 1**      Identify the transfer amount in relation to the non-member spouse.

- Step 2**      Identify a pension factor, nominated by an actuary for this rule, based on the non-member spouse's age and gender.

*Note 1* Schedule 4 to the *Family Law (Superannuation) Regulations 2001* sets out general pension factors based on age and gender, but those factors are not specific to benefits payable under the Act.

*Note 2* The associate pension does not include a reversionary component and therefore ceases on the death of the non-member spouse.

- Step 3**      Divide the transfer amount by the pension factor.

The result is the annual rate of the associate pension.

## Rule 100

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### 100 Reduction of pension

For rule 95, the amount to which an annual rate of pension is to be reduced is calculated as follows:

**Step 1** Identify the annual rate of pension that was payable to the member spouse immediately before the operative time.

**Step 2** Calculate a reduction factor using the formula

$$\frac{\text{scheme value} - \text{transfer amount}}{\text{scheme value}}$$

**Step 3** Multiply the amount identified in step 1 by the reduction factor.

The result is the annual rate of pension payable after the operative time in respect of the member spouse's interest.

## Part 14 Contributions to ancillary benefit

### 101 Definitions

In this Part:

***approved deposit fund*** has the same meaning as in subsection 10 (1) of the SIS Act.

***contribution*** means a contribution made, or taken to be made, under this Part.

***Government co-contribution*** means an amount paid as a Government co-contribution under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*.

***Special Account*** has the same meaning as in section 4 of the *Small Superannuation Accounts Act 1995*.

### 102 Part 2 does not apply

Part 2 does not apply to contributions made under this Part.

### 103 Certain investment nominations to continue in operation

- (1) An investment nomination in force under subrule 103 (2) (a ***former nomination***) immediately before the commencement of this rule is to be taken:
  - (a) if made by a member — to have been made under subrule 11Q (1) and to continue in force until changed by the member under subrule 11Q (4); or
  - (b) if made by a DFRDB member — to have been made under rule 104 and to continue in force until changed by the member under that rule.

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**Rule 105**

- (2) However, subrule (1) does not apply to a former nomination by a member if:
  - (a) the member had also, before the commencement of this rule, made an investment nomination under subrule 11Q (1); and
  - (b) the investment nomination under subrule 11Q (1) had the same effect as the former nomination; and
  - (c) the investment nomination under subrule 11Q (1) was in force immediately before that commencement.

**104 Investment nominations by DFRDB members and spouses**

- (1) This rule applies to:
  - (a) a DFRDB member; and
  - (b) a person taken to be making contributions under rule 110.
- (2) A person may nominate to the Board the Investment Division or Investment Divisions to which contributions by the person should be allocated, from the day specified in the nomination.
- (3) A person may change an investment nomination at any time.

**105 Allocation of contributions**

- (1) This rule applies to:
  - (a) a member; and
  - (b) a DFRDB member; and
  - (c) a person taken to be making contributions under rule 110.
- (2) Subject to rules 105A and 105B, the Board must allocate contributions by a person to the Investment Division or Investment Divisions nominated by the person under their investment nomination and comply as far as possible with that nomination.
- (3) If the Board:
  - (a) has not received an investment nomination from a person; or
  - (b) cannot comply with an investment nomination in relation to all or part of a person's contribution because the nomination is defective or because 1 or more of the Investment Divisions have changed;the Board must allocate the person's contributions, or the part of the person's contributions, to the default Investment Division.
- (4) Subject to rule 11R, a contribution to be allocated to an Investment Division in accordance with this rule must be allocated to the Investment Division as at the day that the contribution is received.
- (5) A person's contribution allocated under this rule becomes ancillary benefit for the person.

**Rule 105A**

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**105A Treatment of additional personal contributions where no tax file number has been provided**

- (1) Subject to subrule (2), if the Board receives an additional personal contribution from, or on behalf of, a member under rule 109 in a manner that is inconsistent with subregulation 7.04 (2) of the *Superannuation Industry (Supervision) Regulations 1994*, the Board:
  - (a) must allocate the contribution to the Investment Division or Investment Divisions nominated by the member; but
  - (b) must not allocate the contribution to the member's account.
- (2) If, within 30 days after the Board receives the contribution, the member's tax file number is provided to the Board, the Board must allocate the contribution to the member's account with effect from the day the tax file number is provided to the Board.
- (3) If, at the end of 30 days after the Board receives the contribution, the member's tax file number has not been provided to the Board, the Board must return the contribution to the member or, if the contribution was paid to the Board by another person on behalf of the member, to that person for the benefit of the member.
- (4) In this rule, *member* includes a DFRDB member.

**105B Treatment of contributions for the benefit of member's spouse where spouse's tax file number has not been provided**

- (1) Subject to subrule (2), if the Board receives a contribution from, or on behalf of, a member for the benefit of the spouse of the member under rule 110 in a manner that is inconsistent with subregulation 7.04 (2) of the *Superannuation Industry (Supervision) Regulations 1994*, the Board:
  - (a) must allocate the contribution to the Investment Division or Investment Divisions nominated by the member's spouse; but
  - (b) must not allocate the contribution to the member's spouse's account.
- (2) If, within 30 days after the Board receives the contribution, the member's spouse's tax file number is provided to the Board, the Board must allocate the contribution to the member's spouse's account with effect from the day the tax file number is provided to the Board.
- (3) If, at the end of 30 days after the Board receives the contribution, the member's spouse's tax file number has not been provided to the Board, the Board must return the contribution:
  - (a) to the member for the benefit of the member's spouse; or
  - (b) if the contribution was paid to the Board by another person on behalf of the member, to that person for the benefit of the member's spouse.
- (4) In this rule, *member* includes a DFRDB member.

**Rule 108**

**106 Government co-contribution and SG charge payments**

- (1) If the Board receives a Government co-contribution in respect of a member or a DFRDB member, the co-contribution is taken to be a contribution by the member or DFRDB member for rule 105.
- (2) If the Board receives an amount payable to, or in respect of a member or a DFRDB member, under Part 8 of the *Superannuation Guarantee (Administration) Act 1992*, the amount is taken to be a contribution by the member or DFRDB member for rule 105.

**107 Amounts transferred from regulated superannuation funds, etc**

- (1) A member or a DFRDB member may make a request in writing to the Board to transfer into the Scheme the whole or part of the member's or DFRDB member's benefit in:
  - (a) another regulated superannuation fund; or
  - (b) an RSA; or
  - (c) an approved deposit fund; or
  - (d) the Special Account.

*Note* This rule does not enable the transfer into the Scheme of a DFRDB member's benefit in the 1973 Scheme, as the 1973 Scheme is not a regulated superannuation fund or an RSA.

- (2) The Board:
  - (a) must refuse to accept a transfer, if the transfer does not comply with the SIS Act; and
  - (b) may refuse to accept a transfer, if the Board does not have sufficient information to accept the transfer.
- (3) If the Board receives a request for transfer from:
  - (a) a member or a DFRDB member; or
  - (b) a regulated superannuation fund, an RSA, an approved deposit fund or the Special Account on behalf of a member or a DFRDB member;and the Board accepts the transfer, the transferred benefit is taken to be a contribution by the member or DFRDB member for rule 105.

**108 Salary sacrifice**

- (1) A member or a DFRDB member may make a request in writing to the Department to deduct an amount from the member's or DFRDB member's pre-tax salary to be paid into the Scheme for the benefit of the member or DFRDB member.
- (2) The Board may refuse to accept an amount on behalf of a member or a DFRDB member, if the Board does not have sufficient information to accept the amount.

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**Rule 109**

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- (3) If the Department sends the Board an amount deducted under this rule and the Board accepts the amount, the amount is taken to be a contribution by the member or DFRDB member for rule 105.

**109 Additional personal contributions**

- (1) A member may, in addition to any contributions made under Part 2, make 1 or more contributions into the Scheme for the benefit of the member by paying the contributions directly to the Board.
- (2) A DFRDB member may, in addition to any contributions made under Part III of the 1973 Act, make 1 or more contributions into the Scheme for the benefit of the DFRDB member by paying the contributions directly to the Board.
- (3) The Board may refuse to accept a contribution from a member or a DFRDB member, if the Board does not have sufficient information to accept the contribution.

**110 Contributions for the benefit of the spouse of a member**

- (1) A member or a DFRDB member may make a request in writing to the Board to establish a superannuation interest for the spouse of the member or DFRDB member.
- (2) A request must be accompanied by sufficient information to enable the Board to identify and contact the spouse.
- (3) The member or DFRDB member may make contributions into the Scheme for the benefit of the spouse by paying the contributions directly to the Board.
- (4) However, the Board may refuse to accept a contribution for the benefit of the spouse of a member or a DFRDB member, if the Board does not have sufficient information to accept the contribution.
- (5) If a member or a DFRDB member makes a contribution under this rule and the Board accepts the contribution, the contribution is taken to be a contribution by the member's spouse for rule 105.

**Part 15 Transitional****111 Definitions**

In this Part:

*allocated contributions*, in relation to a member or a DFRDB member, means the amount, or the total of all amounts, of Government co-contribution received by the Board in respect of the member or DFRDB member and allocated to the default Investment Division under subrule 103 (3) before the commencement of this rule.



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**Rule 112**

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*relevant amount*, in relation to the allocated contributions for a member or a DFRDB member, means the amount (if any) remaining in the default Investment Division for the member immediately before the commencement of this rule.

**112 Transfer of certain amounts**

- (1) As soon as practicable after the commencement of this rule, the Board must, under subrule (7), transfer the relevant amount for a member if:
  - (a) at least part of the allocated contributions for the member remained in the default Investment Division immediately before the commencement; and
  - (b) the member had, before the commencement of this rule, made an investment nomination under subrule 11Q (1) or 103 (2); and
  - (c) the investment nomination was in force immediately before that commencement.
- (2) As soon as practicable after the commencement of this rule, the Board must request a member to complete an investment nomination if:
  - (a) at least part of the allocated contributions of the member remained in the default Investment Division immediately before the commencement; and
  - (b) the member had, before the commencement of this rule, made an investment nomination under subrule 11Q (1) and an investment nomination under subrule 103 (2); and
  - (c) the investment nominations did not have the same effect; and
  - (d) the investment nominations were in force immediately before that commencement.
- (3) A member requested to complete an investment nomination under subrule (2) must complete the investment nomination and submit it to the Board so that it is received by the Board within 5 working days.
- (4) If the Board receives an investment nomination under subrule (3):
  - (a) the Board must, under subrule (7), transfer the relevant amount for the member in accordance with the member's investment nomination; and
  - (b) the member's investment nominations under subrules 11Q (1) and 103 (2) cease to have effect at the time the Board transfers the relevant amount.
- (5) If the Board has not received an investment nomination from a member under subrule (3):
  - (a) the Board must, under subrule (7), transfer the relevant amount for the member in accordance with the member's investment nomination under subrule 11Q (1); and
  - (b) the member's investment nomination under subrule 103 (2) ceases to have effect at the time the Board transfers the relevant amount.

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**Rule 113**

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- (6) As soon as practicable after the commencement of this rule, the Board must, under subrule (7), transfer the relevant amount for a DFRDB member if:
  - (a) at least part of the allocated contributions for the DFRDB member remained in the default Investment Division immediately before the commencement; and
  - (b) the DFRDB member had, before the commencement of this rule, made an investment nomination under subrule 103 (2) nominating an Investment Division or Investment Divisions; and
  - (c) the investment nomination was in force immediately before that commencement.
- (7) The Board must transfer the relevant amount for the member or DFRDB member to the Investment Division or Investment Divisions nominated by the member or DFRDB member in the investment nomination and comply as far as possible with that nomination.
- (8) However, this rule does not:
  - (a) affect the application of Division 5 of Part 2B in relation to the ancillary benefit of the member or DFRDB member; or
  - (b) prevent the member making a further investment nomination under subrule 11Q (1); or
  - (c) prevent the DFRDB member making a further investment nomination under subrule 104 (2).
- (9) A transfer under subrule (7) is to be taken to have had effect on the commencement of this rule.
- (10) If, but for this subrule, subrule (9) would operate, in whole or part, so that the amount held in an Investment Division in the name of the member or DFRDB member would be reduced by an amount (the *loss*) below the amount that would otherwise be the amount held in the Investment Division, the Fund must credit the Investment Division with the amount of the loss.

**113 Allocation of Government co-contribution**

If Government co-contribution received by the Board under subrule 103 (1) before the commencement of this rule had not been allocated before the commencement it must be allocated under subrule 105 as if received after the commencement.

**114 Expiration and saving**

- (1) This Part ceases to have effect at the end of 31 January 2006.
- (2) Despite subrule (1), a subrule 112 (3) investment nomination continues in force as if made under subrule 11Q (1).
- (3) In subrule (2), *subrule 112 (3) investment nomination* means an investment nomination received under subrule 112 (3) that was in force immediately before this Part ceases to have effect.

## Schedule 1      Glossary

(rule 2)

### Part 1      Definitions [see Note 2]

1. In these Rules, unless the contrary intention appears:

**actuary** means a Fellow or an Accredited Member of the Institute of Actuaries of Australia.

**allocation**, of a unit in an Investment Division, has the meaning given by rule 11O.

**allowance** means an allowance determined by the Defence Force Remuneration Tribunal under section 58H of the *Defence Act 1903*.

**ancillary** means a person for whom ancillary benefit is held in the Scheme.

**ancillary benefit** has the meaning given by subrule 85 (2).

**associate** has the meaning given in subsection 46 (1A) of the Act.

Note Under subsection 46 (1A) of the Act an associate is a person to whom an associate benefit is payable. Associate benefit includes an associate A benefit, an associate B benefit and an associate pension.

**associate A benefit** has the meaning given by subrule 85 (1).

**associate B benefit** has the meaning given by subrule 86 (1).

**associate pension** means a pension that is paid under rule 95.

**bank** includes, but is not limited to, a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

**Board** means the Military Superannuation and Benefits Board of Trustees established by section 13 of the Act.

**calendar month** means a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of the next month.

**carry over value**, in relation to a 1973 Scheme (deferred benefit) re-entrant, means an amount calculated in relation to that person in accordance with Schedule 10A.

**child**, in relation to a person who has died, includes:

- (a) a person who:
  - (i) is an ex-nuptial child of the deceased person; or
  - (ii) is, immediately before the death of the deceased person, a stepchild, an adopted child, a foster child or a ward, of the deceased person; and
- (b) a person who:
  - (i) is a child or ex-nuptial child of a spouse who survives the deceased person; and
  - (ii) was wholly or substantially dependent upon the deceased person at the time of the deceased person's death.

**classification** means a classification referred to in rule 22.

**Committee**, in Part 3 of these Rules, means the Incapacity Classification Committee established under rule 17.

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**Committee**, in Part 9 of these Rules, means a Reconsideration Committee established under rule 72.

**contribution** means contribution to the Fund.

**contributory service**, in relation to a transferred person, means service by the person after 1 October 1991 in respect of which the person paid contributions under Part 2 or contributions under section 17 of the 1973 Act.

**default Investment Division** has the meaning given by rule 11D.

**Department** means the Department of State for Defence.

**Determination No. 6 of 1992** means Determination No. 6 of 1992, Salaries, made under section 58H of the *Defence Act 1903*, as in force from time to time.

**DFRDB member** means a person who is a contributing member within the meaning of subsection 3 (1) of the 1973 Act.

**eligible child**, in relation to a person who has died and was at the time of his or her death, an ancillary, an associate, a member or a former member, means a person who is the child of the deceased person and:

- (a) is a person who has not attained the age of 16 years; or
- (b) is a person who:
  - (i) has attained the age of 16 years but has not attained the age of 25 years; and
  - (ii) is receiving full-time education at a school, college or university or other full-time education approved by the Board for the purposes of this subparagraph; and
  - (iii) is not ordinarily in employment or engaged in work on his or her own account.

**eligible service**, in relation to a person, means service calculated in relation to that person in accordance with Schedule 6.

**Emergency Forces** has the same meaning as in the *Defence Act 1903*.

**employer benefit**, in relation to a person, means the amount of employer benefit calculated in relation to that person in accordance with Schedule 8.

**employer funded account**, for a unitised member, means the account established under paragraph 11M (1) (b).

**final average salary**, in relation to a person, means an amount calculated in relation to that person in accordance with Schedule 7.

**financial year** means a period of 12 months commencing on 1 July.

**flying allowance** means the allowance of that name established by Determination No. 7 of 1997, Flying Allowance, made under section 58H of the *Defence Act 1903*, as in force from time to time.

**foreign service member** means a person (not being a person who has been an eligible member of the Defence Force within the meaning of the 1973 Act):

- (a) who, before he or she became a member, had been a member of the armed forces of a country other than Australia; and
- (b) who rendered with those forces a period of service (in this definition called **full-time service**) of a kind similar to continuous full-time service in the Defence Force for a period of or exceeding 12 months; and

- (c) with regard to whom the Board, after consultation with the appropriate authority of the Defence Force, directs that the full-time service or a part of that service of that person with those forces is to be included in aggregated service for the purposes of Schedule 8.

**Fund** means the fund established, and vested in the Board, by the Trust Deed.

**funded employer benefit**, in relation to a person, means:

- (a) before 1 July 2002 — the sum of:
- (i) the amount of employer contributions paid by the Department, in relation to the person, under rule 10 less the amount of income tax paid or payable by the Fund in respect of those contributions; and
  - (ii) the interest (if any) in respect of the amount in subparagraph (i) in accordance with a determination or determinations by the Board as to rates of interest and the method of allocation of interest to such amounts; and
- (b) on or after 1 July 2002 — the sum of the values of units in the person's employer funded account.

**higher duties allowance** means the allowance of that name determined under Part IIIA of the *Defence Act 1903*.

**interim benefit**, in relation to a person, means the interim benefit that accrued, in respect of the person, in accordance with clause 7 of the Defence Force (Superannuation) (Productivity Benefit) Determination (made under section 52 of the *Defence Act 1903*) while the person was an eligible member of the Defence Force within the meaning of the 1973 Act.

**interim salary fortnight contribution**, in relation to a member who is a transferred person, means a contribution by the member, the rate of which is governed by the operation of subrule 4 (1A).

**invalidity**, in relation to a person, includes physical or mental incapacity of the person to perform his or her duties.

**invalidity pension** means a pension payable under rule 27 or 28.

**invalidity pensioner** means a person who is entitled to invalidity pension or would be so entitled if payment of that pension had not been suspended under subrule 25 (3).

**invalidity retiree** means a person who is about to be, or has been, retired from the Defence Force on the ground of invalidity and includes a person who, in accordance with rule 30, is to be treated as if he or she had been retired on that ground.

**Investment Division** means the Investment Division established under rule 11A or an Investment Division established as a result of an action by the Board under rule 11C.

**investment nomination** means a nomination under subrule 11Q (1) or subrule 104 (2).

**issue price** has the meaning given by rule 11J.

**lump sum maximum benefit limit**, in relation to a person, means an amount calculated in relation to that person in accordance with paragraph 1 of Schedule 3.

**MBL member** means a member who has ceased to pay contributions in accordance with rule 5.

**member** means a person who, in accordance with section 6 of the Act, is a member of the Scheme.

**member benefit**, for a person, means:

- (a) before 1 July 2002 — an amount calculated in accordance with Schedule 9; and
- (b) on or after 1 July 2002 — the sum of the value of units in the person's member funded account and member unfunded account.

**member funded account**, for a unitised member, means the account established under paragraph 11M (1) (a).

**member unfunded account**, for a unitised member, means the account established under paragraph 11M (2) (a).

**membership** means membership of the Scheme.

**month** means calendar month.

**net asset value** has the meaning given by rule 11F.

**Parliamentary Candidates Act** means the *Defence (Parliamentary Candidates) Act 1969*.

**pension** means a pension payable under these Rules.

**pension maximum benefit limit**, in relation to a person, means an amount calculated in relation to that person in accordance with paragraph 3 of Schedule 3.

**Permanent Forces** has the same meaning as in the *Defence Act 1903*.

**prescribed fee** means a fee prescribed in regulations made in pursuance of section 52 of the Act.

**prescribed half-year** means the half-year commencing on 1 January 2002 or a subsequent half-year.

**prescribed year** means the year commencing on 1 July 1991 or a subsequent year.

**preservation age** has the same meaning as in subregulation 6.01 (2) of the SIS Regulations.

**previous contributions**, in relation to a person, means contributions made by him or her under the previous legislation, other than:

- (a) any such contributions refunded to him or her under that legislation; and
- (b) in the case of a person who, immediately before he or she transferred from the 1973 Scheme, was rendering continuous full-time service (in this paragraph called the **relevant service**) and who, before he or she began to render the relevant service, was a 1973 Scheme retirement pensioner — any such contributions made in respect of service rendered by the member before the member began to render the relevant service; and
- (c) any such contributions in respect of which a transfer value was paid under section 82ZA of the 1948 Act or section 77 of the 1973 Act.

**previous legislation** means the 1948 Act and the 1973 Act.

**Q & S component**, of an allowance, means the qualifications and skill component of the allowance.

**regulated superannuation fund** has the same meaning as in section 19 of the SIS Act.

**relevant percentage**, in relation to a spouse or eligible child of a deceased person, means the percentage applicable to that spouse or child in accordance with Schedule 4.

**relevant period**, in relation to a person to whom Part 7 of these Rules applies, means the period referred to in a relevant provision in the application of that provision to that person.

**relevant provision**, in relation to the Parliamentary Candidates Act, means subsection 10 (2), 11 (2) or 12 (2), as the case requires.

**Reserve Forces** has the same meaning as in the *Defence Act 1903*.

**retirement pensioner** means a former member to whom a pension is payable but does not include a person to whom a pension is payable only because he or she is the spouse or the child of a deceased member.

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

**salary** has the meaning given by Part 10 of this Schedule.

**Scheme** means the Military Superannuation and Benefits Scheme established by the Trust Deed.

**service** means service as a member of the Defence Force.

**service allowance** means the allowance of that name established under Determination No. 11 of 1994, Service Allowance, made under section 58H of the *Defence Act 1903*, as in force from time to time.

**service offence** has the same meaning as in the *Defence Force Discipline Act 1982*.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993*.

**SIS preservation threshold amount** means the amount specified, in column 2, in item 104 of Schedule 1 to the Superannuation Industry (Supervision) Regulations.

**SIS Regulations** means the *Superannuation Industry (Supervision) Regulations 1994*.

**special action forces allowance** means the allowance of that name established by Determination No. 11 of 2002, Special Action Forces Allowance, made under section 58H of the *Defence Act 1903*, as in force from time to time.

**specialist operations allowance** means the allowance of that name established by Determination No. 19 of 2002, Specialist Operations Allowance, made under section 58H of the *Defence Act 1903*, as in force from time to time.

**spouse**:

- (a) in relation to someone who survives a deceased person — has the meaning given by Part 5 of this Schedule; and
- (b) in any other case (except Part 13) — means a person who has a marital relationship within the meaning of Part 1A of this Schedule.

**spouse's pension** means pension payable to a spouse under Part 4 of these Rules.

**Statistician** means the Australian Statistician.

**submarine service allowance** means the allowance of that name established by Determination No. 9 of 1995, Submarine Service Allowance, made under section 58H of the *Defence Act 1903*, as in force from time to time.

**surcharge debt account**, for a member of the Scheme, means the surcharge debt account kept for the member by the Board under section 16 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

**surcharge deduction amount**, in relation to a member of the Scheme to or in respect of whom benefits become payable under the Rules, means the surcharge deduction amount that is specified in the determination made by the Board, under Schedule 12, in relation to the member.

**tax file number** has the same meaning as in Part VA of the *Income Tax Assessment Act 1936*.

**total benefit**, in relation to a person, means the sum of the person's member benefit and employer benefit.

**transfer**, of a unit in an Investment Division, has the meaning given by rule 11S.

**transfer application** has the meaning given by rule 11U.

**transferred (former recipient) person** means a transferred person who, immediately before he or she transferred from the 1973 Scheme, was rendering continuous full-time service and who, immediately before he or she began to render that service, was a 1973 Scheme retirement pensioner.

**transferred person** means a person who became a member in consequence of his or her having made an election to do so under section 132 of the 1973 Act.

**transferred (refunded contributions) person** means a transferred person who, immediately before he or she transferred from the 1973 Scheme, was rendering continuous full-time service and who, before he or she began to render that service, had been an eligible member of the Defence Force within the meaning of the 1973 Act during an earlier period of such service rendered by him or her, in respect of which he or she:

- (a) received, under section 56 of that Act, a refund of the amount of the contributions paid by him or her; and
- (b) did not subsequently make an election under paragraph 63(1)(d) or subsection 64(1) of that Act.

**transfer value**, in relation to a transferred person, means an amount calculated in relation to that person in accordance with Schedule 10.

**unfunded preserved benefit**, in relation to a person, means so much of the employer benefit included in the preserved benefit applicable to the person as is not funded.

**unitised member** means:

- (a) a member of the Fund; and
- (b) a person who has a preserved benefit (other than a person in respect of whom a death benefit is payable).

**unit value** has the meaning given by rule 11I.

**withdrawal price** has the meaning given by rule 11K.

**1948 Act** means the *Defence Forces Retirement Benefits Act 1948*.

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

**1973 Scheme** means the retirement and death benefits scheme provided for in the 1973 Act.

**1973 Scheme (deferred benefit) re-entrant** means a 1973 Scheme re-entrant to whom, immediately before he or she became a member, deferred benefits were applicable under the 1973 Act.

**1973 Scheme (invalidity pay) re-entrant** means a 1973 Scheme re-entrant whose invalidity pay under the 1973 Act was, upon his or her becoming a member, cancelled under section 61D of that Act.

**1973 Scheme re-entrant** means a member, other than a transferred member, who:

- (a) had not been a member before he or she began to render the period of continuous full-time service which he or she is rendering; and



- (b) had been an eligible member of the Defence Force within the meaning of the 1973 Act before becoming a member.

**1973 Scheme (refunded contributions) re-entrant** means a 1973 Scheme re-entrant who, in respect of his or her last period of service as an eligible member of the Defence Force within the meaning of the 1973 Act, received, under section 56 of that Act, a refund of the amount of the contributions paid by him or her.

**1973 Scheme (retirement pay) re-entrant** means a 1973 Scheme re-entrant whose retirement pay under the 1973 Act was, upon his or her becoming a member, suspended under section 61C of that Act.

**1973 Scheme retirement pensioner** means a person to whom retirement pay is payable under the 1973 Act.

**1991 Scheme** means the Scheme.

**1991 Scheme re-entrant** means a member who, having been a member and retired, again became a member after a break in the continuity of his or her service.

## Part 1A Marital relationship

- 1A. A person has a marital relationship with another person (the *other*) at a particular time if the person ordinarily lives with the other as the other's husband or wife on a permanent and bona fide domestic basis at the time.
- 1B. For the purpose of this Part:
- (a) a person is regarded as ordinarily living with another person as that other person's husband or wife on a permanent and bona fide domestic basis at a particular time only if:
    - (i) the person had been living with that other person as that person's husband or wife for a continuous period of at least 3 years up to that time; or
    - (ii) the person had been living with that person as that person's husband or wife for a continuous period of less than 3 years up to that time and the Board, having regard to any relevant evidence, is of the opinion that the person ordinarily lived with that other person as that other person's husband or wife on a permanent and bona fide domestic basis at that time;whether or not the person was legally married to that other person; and
  - (b) a person is taken to be living with another person if the Board is satisfied that the person would have been living with that person except for a period of:
    - (i) temporary absence; or
    - (ii) absence because of special circumstances (for example, absence because of a person's illness or infirmity or a posting of the person); and
  - (c) A marital relationship begins at the beginning of the continuous period mentioned in sub-subparagraph (a) (i) or (ii).
- 1C. For the purposes of paragraph 1B, relevant evidence includes, but is not limited to, evidence establishing any of the following:

- (a) the person was wholly or substantially dependent on that person at the time;
- (b) the persons were legally married to each other at the time;
- (c) the persons had a child who was:
  - (i) born of the relationship between the persons; and
  - (ii) adopted by the persons during the period of the relationship;
- (d) the persons jointly owned a home which was their usual residence.

## Part 2 Resign to contest an election

- 2. A reference in these Rules to a person who resigns to contest an election is a reference to a member who:
  - (a) is transferred to a Reserve (being a Reserve within the meaning of the Parliamentary Candidates Act); or
  - (b) is discharged from the Defence Force; or
  - (c) has his or her continuous full-time service terminated; under the Parliamentary Candidates Act.

## Part 3 Retirement

- 3. A reference in these Rules to the retirement of a person is a reference to his or her retirement from the Defence Force and includes:
  - (a) any voluntary or involuntary termination of the person's services as a member of that force; or
  - (b) in the case of a person who is an officer of the Permanent Forces — the transfer of the officer to the Emergency Forces or the Reserve Forces if, on that transfer, the person ceases to render continuous full-time service; or
  - (c) in the case of a person who is a member of the Emergency Forces or the Reserve Forces and is rendering continuous full-time service — the cessation of that service.
- 4. Where a person retires and, without a break in the continuity of his or her service, again becomes a member of the Defence Force serving on continuous full-time service, the person is to be treated, for the purposes of these Rules, as not having retired by reason only of that retirement.

## Part 3A Retirement on completion of limited tenure appointment

- 4A. Subject to paragraph 4B, where:
  - (a) a member who is an officer of the Defence Force holds an appointment under section 9 or 9AA of the *Defence Act 1903* (in this Part called ***the relevant appointment***); and
  - (b) before the member was appointed to the relevant appointment he was notified in writing by the Minister that he or she would be expected to resign his or her naval, military or air force office immediately after ceasing to hold the relevant appointment; and

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- (c) the member resigns his or her office accordingly;  
then, for the purposes of these Rules, the member is taken not to have resigned but to have retired on completion of a limited tenure appointment.
- 4B. Paragraph 4A does not apply to an officer who, on or before the completion by him or her of the period of a relevant appointment to which subparagraph 4A (b) applies is offered a further relevant appointment to which that subparagraph applies and declines that further appointment.
- 4C. In subparagraph 4A (c), a reference to a member who resigns his or her office includes a reference to a member who ceases to render continuous full-time service on being transferred to the Reserve Forces.

## Part 4 Retiring age

5. A reference in these Rules to the retiring age of a member is:
- (a) in the case of a member who is a member of the Permanent Forces — the age for the compulsory retirement of the member ascertained in accordance with, or in accordance with regulations under, the *Defence Act 1903*, the *Naval Defence Act 1910* or the *Air Force Act 1923*; or
  - (b) in the case of a member who is not a member of the Permanent Forces — the age that would be the age for the compulsory retirement of the person if the person were a member of the Permanent Forces.
6. Where the age for the compulsory retirement of a member is, in accordance with a law referred to in paragraph 5, extended, the member is to be treated for the purposes of these Rules, on his or her subsequent retirement, as if:
- (a) where he or she is subsequently retired on the ground of invalidity — he or she had been retired on that ground; or
  - (b) where he or she retires or is retired on any other ground — he or she retired on reaching the age for his or her compulsory retirement.
7. In paragraph 5:  
***Permanent Forces*** does not include the Regular Army Supplement.

## Part 5 Spouse who survives a deceased person

8. In this Part:  
***deceased person*** means a person who:
- (a) has died; and
  - (b) was, at the time of his or her death, a member or a former member.
9. A person is a spouse who survives a deceased person if:
- (a) the person had a marital relationship with the deceased person at the time of the death of the deceased person (in this paragraph called ***the death***); and
  - (b) in the case of a deceased person who was a retirement pensioner (in this paragraph called ***the pensioner***) at the time of the death:
    - (i) the marital relationship began before the pensioner became a pensioner; or

- (ii) the marital relationship began after the pensioner became a pensioner but before the pensioner reached 60; or
  - (iii) in any other case — the marital relationship had continued for a period of at least 5 years up to the time of death.
- 10. In spite of paragraph 9, a person is taken to be a spouse who survives a deceased person if:
  - (a) the person had previously had a marital relationship with the deceased person; and
  - (b) the person did not, at the time of the death, have a marital relationship with the deceased person but was legally married to the deceased person; and
  - (c) in the case of a marital relationship that began after the pensioner became a pensioner and reached 60 — the relationship began at least 5 years before the deceased person's death; and
  - (d) in the Board's opinion, the person was wholly or substantially dependent upon the deceased person at the time of the death.
- 12. In spite of anything in this Part, a person is not, for the purposes of these Rules, a spouse in relation to another person if he or she is of the same sex as that other person.

## **Part 6        Parts of speech and grammatical forms**

- 13. In these Rules, unless the contrary intention appears, where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

## **Part 7        Number**

- 14. In these Rules, unless the contrary intention appears, words in the singular number include the plural and words in the plural number include the singular.

## **Part 8        Reckoning of time**

- 15. Where, in these Rules, any period of time, dating from a given day, act or event, is required or allowed for any purpose, the time is, unless the contrary intention appears, to be reckoned exclusive of that day or the day of that act or event.
- 16. Where the last day of any period required or allowed by a provision of these Rules for the doing of anything falls on a Saturday, on a Sunday or on a day which is a public holiday or a bank holiday in the place in which the thing is to be or may be done, the thing may be done on the first day following which is not a Saturday, a Sunday or a public holiday or bank holiday in the place.

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## Part 9      Attainment of particular age

17. For the purposes of these Rules, unless the contrary intention appears, the time at which a person attains a particular age expressed in years is the commencement of the relevant anniversary of the date of the birth of that person.

## Part 10      Salary

- 18 (1) Subject to this section, **salary**, in relation to a person who is a member of the Scheme on a particular day, means the sum of:
- (a) the annual rate of salary of the member on that day under Determination No. 6 of 1992, as in force from time to time; and
  - (b) for a member to whom service allowance is payable — an amount equal to the annual rate of the service allowance that is applicable in respect of service by the member on that day; and
  - (c) for a member to whom higher duties allowance is payable — an amount equal to the annual rate of the higher duties allowance that is applicable in respect of service by the member on that day; and
  - (d) for a member to whom the Q & S component of:
    - (i) flying allowance; or
    - (ii) special action forces allowance; or
    - (iii) specialist operations allowance; or
    - (iv) submarine service allowance;is payable — an amount equal to the annual rate of the Q & S component that is applicable in respect of service by the member on that day.
- (2) For a member holding the office of Chief of the Defence Force, Vice Chief of the Defence Force, Chief of Navy, Chief of Army or Chief of Air Force on a particular day, **salary** means the annual rate of salary on that day of a holder of that office as determined by the Remuneration Tribunal under subsection 7 (3) of the *Remuneration Tribunal Act 1973*.
- (3) A reference in this section to the annual rate of salary of a member on a day under Determination No. 6 of 1992 is taken to be a reference to the amount that would be the annual rate of salary of the member on that day under that Determination if the expression **rank**, when used in that Determination, had the meaning given to that expression by subsection 3 (1) of the 1973 Act and did not have the meaning given to that expression by that Determination.

*Note* The definition of **rank** in subsection 3 (1) of the 1973 Act is:

**rank**, in relation to a member of the Defence Force, means:

- (a) his substantive rank or, if he is appointed provisionally or on probation, the rank to which he is so appointed; or
- (b) if he is provisionally promoted to another rank — that other rank.

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## Schedule 2 Prescribed periods for the purposes of rule 4

(rule 4)

1. Where:
  - (a) the salary of a member in respect of a period was, on or after the date of his or her entry into the Scheme, forfeited, in whole or in part, under regulations made under the *Defence Act 1903*; and
  - (b) the period exceeded 21 consecutive days; and
  - (c) an amount equal to the amount of the salary forfeited was not subsequently paid, and is not payable, under those regulations to the member;that period is a prescribed period.
2. Where:
  - (a) a member was in custody under the *Defence Force Discipline Act 1982* awaiting or undergoing trial for a service offence; and
  - (b) the period for which the member was in custody awaiting or undergoing trial commenced on or after the date of his or her entry into the Scheme and exceeded 21 consecutive days; and
  - (c) the member was subsequently convicted of the offence or another service offence at the trial; and
  - (d) either of the following subparagraphs apply:
    - (i) the conviction was not quashed or set aside;
    - (ii) the conviction was quashed or set aside and:
      - (A) a conviction for another service offence was substituted; or
      - (B) the member was ordered to be tried again for the offence of which the member was convicted, or for another service offence, and was convicted of a service offence at the subsequent trial;that period is a prescribed period.
3. Where:
  - (a) a member was in custody under the *Defence Force Discipline Act 1982* awaiting or undergoing trial for a service offence; and
  - (b) the period for which the member was in custody awaiting or undergoing trial commenced before the date of his or her entry into the Scheme and ended on or after that date and exceeded 21 consecutive days; and
  - (c) the member was subsequently convicted of the offence or another service offence at the trial; and
  - (d) either of the following subparagraphs apply:
    - (i) the conviction was not quashed or set aside;

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(ii) the conviction was quashed or set aside and:

- (A) a conviction for another service offence was substituted;  
or
- (B) the member was ordered to be tried again for the offence of which the member was convicted, or for another service offence, and was convicted of a service offence at the subsequent trial;

so much of that period as commenced on that date is a prescribed period.

4. Where:

- (a) 2 or more consecutive periods of 24 hours or more would, but for subparagraph 1 (b), 2 (b) or 3 (b) or 2 or all of those provisions, be taken to be prescribed periods for the purposes of subrule 4 (4) in relation to a member; and
- (b) the periods exceed, in the aggregate, 21 days;  
those periods are prescribed periods.

5. Where:

- (a) a period of 24 hours or more would, but for subparagraph 1 (b), 2 (b) or 3 (b), be a prescribed period for the purposes of subrule 4 (4) in relation to a member; and
- (b) the period is consecutive with a period that, under paragraph 1, 2 or 3, is a prescribed period for the purposes of subrule 4 (4);  
the period referred to in subparagraph (a) is a prescribed period.

6. Where:

- (a) a period of 24 hours or more would, but for subparagraph 1 (b), 2 (b) or 3 (b), be a prescribed period for the purposes of subrule 4 (4) in relation to a member; and
- (b) the period is consecutive with a period that, under paragraph 5 or this paragraph, is a prescribed period for the purposes of subrule 4 (4) in relation to the member;  
the period referred to in subparagraph (a) is a prescribed period.

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## Schedule 3 Calculation of maximum benefit limits

(rule 5)

1. The lump sum maximum benefit limit, in relation to a member, is the product of the member's final average salary and the member's lump sum maximum benefit multiple.
2. In paragraph 1:  
*lump sum maximum benefit multiple* means the number obtained by dividing, by the member's final average salary:
  - (a) in relation to a member whose salary is less than \$25 000 — \$200 000; or
  - (b) in any other case — the sum of:
    - (i) 8 times \$39 970 or, if the member's final average salary is less than \$39 970, 8 times the member's final average salary; and
    - (ii) 6 times the part (if any) of the member's final average salary that exceeds \$39 970 but does not exceed \$74 220; and
    - (iii) 3 times the part (if any) of the member's final average salary that exceeds \$74 220.
3. The pension maximum benefit limit, in relation to a member, is the product of the member's final average salary and the member's pension maximum benefit multiple.
4. In paragraph 3:  
*pension maximum benefit multiple* means the number obtained by dividing, by the member's final average salary:
  - (a) in relation to a member whose salary is less than \$25 000 — \$250 000; or
  - (b) in any other case — the sum of:
    - (i) 10 times \$39 970 or, if the member's final average salary is less than \$39 970, 10 times the member's final average salary; and
    - (ii) 7 times the part (if any) of the member's final average salary that exceeds \$39 970 but does not exceed \$74 220; and
    - (iii) 4 times the part (if any) of the member's final average salary that exceeds \$74 220.
5. If a member's benefits have been subject to a family law superannuation payment split under Part 13, the maximum benefit limit in relation to the member is calculated as if there were no benefit reduction under that Part.
6. This Schedule does not apply to ancillary benefit, associate A benefit or associate B benefit held for the member.



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## **Schedule 4      Percentage of employer benefit or deceased pensioner's pension applicable to spouse or eligible child**

(rule 42)

1. The percentage of an employer benefit or deceased pensioner's pension applicable to a spouse or eligible child of a deceased person is the percentage in whichever of the following tables is applicable according to the relationship of the person to the deceased person and the number of such persons.

**Table 1**

Relevant percentage where Deceased Person is Survived by a Spouse with  
or without Eligible Children

<b>Relationship and number of persons</b>	<b>Relevant Percentage</b>
Spouse only	67
Spouse and 1 eligible child	78
Spouse and 2 eligible children	89
Spouse and 3 or more eligible children	100

**Table 2**

Relevant percentage where Deceased Person is Survived by an Eligible  
Child or Eligible Children only

<b>Number of eligible children</b>	<b>Relevant Percentage</b>
1	45
2	80
3	90
4 or more	100

## Schedule 4A Calculation of notional employer benefit

(rule 52)

### 1. Interpretation

In this Schedule:

*notional employer benefit* means the sum of:

- (a) the amount of the employer benefit included in a preserved benefit that applied to a person at the date of the person's retirement; and
- (b) the amount by which the amount referred to in paragraph (a) is calculated to have increased, under clauses 2 and 3, in the period that begins on the date of the person's retirement and ends on the date of the person's election to convert the benefit to a pension.

### 2. Calculating increase in the notional employer benefit in any year

- (1) A person's notional employer benefit is taken to have increased in a financial year (in this clause called the *relevant year*):
  - (a) if the all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the March quarter of the year immediately preceding the relevant year exceeds the highest all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the March quarter of any earlier year (except a year earlier than the year that commenced on 1 July 1989); and
  - (b) in the circumstances described in paragraph (a) — by an amount equal to the prescribed percentage of the person's notional employer benefit as at the end of the previous financial year.
- (2) The *prescribed percentage* is  $A - B$ , expressed as a percentage of  $B$  where:
  - $A$  is the all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the March quarter of the year immediately preceding the relevant year; and
  - $B$  is the highest all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the March quarter of any year earlier than the year immediately preceding the relevant year (except a year earlier than the year that commenced on 1 July 1989).
- (3) If the percentage calculated is or includes a fraction of one-tenth of 1%:
  - (a) that is less than one-half of one-tenth — the fraction is to be disregarded; and
  - (b) that is not less than one-half of one-tenth — the fraction is taken to be one-tenth.

### 3 Calculating increase in notional employer benefit in an incomplete year

- (1) If, in a financial year:
- (a) a person retires on a day other than 1 July; or
  - (b) a person elects to convert his or her residual employer benefit to a pension on a day other than 30 June;
- the amount by which the notional employer benefit increases in that year is calculated in accordance with the formula:

$$\text{Full increase} \times \frac{\text{Number of months}}{12}$$

where:

**full increase** means:

- (a) if the date of retirement and the date of election do not occur in the same financial year — the amount, calculated in accordance with clause 2, by which the person's notional employer benefit would have increased in the relevant financial year if the person had:
  - (i) retired on 1 July; or
  - (ii) elected to convert his or her residual employer benefit to a pension on 30 June
 as the case may be; or
- (b) if the date of retirement and the date of election occur in the same financial year — the amount, calculated in accordance with clause 2, by which the person's notional employer benefit would have increased in that year if the person had retired on 1 July and had elected to convert his or her residual employer benefit to a pension on 30 June;

**number of months** means:

- (a) if the date of retirement and the date of election do not occur in the same financial year—the number of months in the period that begins:
    - (i) on the date of retirement and ends on 30 June in that financial year; or
    - (ii) on 1 July in the financial year in which the election occurs and ends on the date of election;
 as the case may be; or
  - (b) if the date of retirement and the date of election occur in the same financial year — the number of months in the period that begins on the date of retirement and ends on the date of election.
- (2) If the period referred to in subclause (1) is less than one month, that period is taken to be one month.
- (3) If the period referred to in subclause (1) consists of at least one whole month and a part of a month:
- (a) if the number of days in that part is less than one-half of the number of days in that month — that part is disregarded; and
  - (b) if the number of days in that part is more than one-half of the number of days in that month — that part is taken to be a whole month.

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#### **4      Interpretation**

- (1) Subject to subclause (2), if at any time, whether before or after the commencement of these Rules, the Statistician has published or publishes in respect of a particular March quarter an all groups consumer price index number for the weighted average of the 8 capital cities in substitution for an index number published by him or her in respect of that quarter, the publication of the later index number is disregarded for the purposes of this Schedule.
- (2) If, at any time, whether before or after the commencement of these Rules, the Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this Schedule after the change took place or takes place, regard is to be had only to index numbers published in terms of the new reference base.

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## Schedule 5      **Calculation of rate of pension by conversion of employer benefit**

(rule 65)

1. For the purpose of converting an employer benefit into a pension, the annual rate of that pension is calculated by dividing the amount of the benefit that is to be so converted by:
  - (a) if the person's age, in years, on the day on which he or she becomes entitled to the benefit is 65 years — a factor of 10; or
  - (b) in any other case where the person's age is an exact number of years — a factor of 10 increased by 0.2 in respect of each year by which the person's age, in years, on the day on which he or she becomes entitled to the benefit is less than 65 years; or
  - (c) in any case where the person's age is not an exact number of years — the factor that would be applicable if subparagraph (b) applied to the person's age in years, reduced by a number in respect of the number of days in the person's age in excess of the person's age in years (in this subparagraph called *excess days*), being a number which bears to 0.2 the same proportion as the number of excess days bears to the number of days in a year.
2. In the application of paragraph 1 in relation to a person who is entitled to invalidity benefits and is classified as Class A, the references in that paragraph to the person's age on the day on which he or she becomes entitled to a benefit are read as references to:
  - (a) his or her retiring age immediately before his or her retirement; or
  - (b) the age of 55 years;whichever is the greater.

## Schedule 6 Calculation of eligible service

(Schedule 1  
(Definition of *eligible service*))

1. The eligible service of a member is the sum of:
  - (a) subject to paragraph 2, service by the person as a member; and
  - (b) in the case of a person entitled to an invalidity pension who is classified as Class A — a period equal to the period commencing on the day immediately following the last day of the person's service and concluding on the day on which the person would have retired if he or she had not been retired on the ground of invalidity but had served until attaining:
    - (i) his or her retiring age immediately before his or her retirement; or
    - (ii) the age of 55 years;
 whichever is the greater; and
  - (c) in the case of a transferred person — a period specified in the following table in relation to that person:

Person	Period included
1. A person who, immediately before he or she transferred from the 1973 Scheme, was rendering continuous full-time service and who, before he or she began to render that service, was not a 1973 Scheme retirement pensioner.	Any period that, before the transfer of the person, was a period of effective service in relation to the person for the purposes of the 1973 Act.
2. A person who, immediately before he or she transferred from the 1973 Scheme, was rendering continuous full-time service and who, before he or she began to render that service, was a 1973 Scheme retirement pensioner.	So much of that period of service rendered by the person after the person ceased to be a 1973 Scheme retirement pensioner and before his or her transfer to the 1991 Scheme as was a period of effective service in relation to the person for the purposes of the 1973 Act.

; and

- (d) in the case of a 1973 Scheme (deferred benefit) re-entrant — so much of the period of effective service in relation to the person for the purposes of the 1973 Act in respect of which the person accrued benefits from which the deferred benefits, which were applicable to the member under the 1973 Act immediately before he or she became a member, derived; and
- (e) in the case of a 1973 Scheme (invalidity pay) re-entrant — any period that, before the person became a member, was a period of effective service in relation to the person for the purposes of the 1973 Act.

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2. Service referred to in subparagraph 1 (a) does not include:
- (a) service during a period:
    - (i) prescribed in Schedule 2 in respect of which, under subrule 4 (4), salary is taken not to be paid to the member; or
    - (ii) that was a period of leave of absence without pay granted to the member in respect of which the Department did not pay contributions to the Fund in relation to the member; or
    - (iii) in respect of which the person accrued an employer benefit that was paid to the person as a lump sum, was converted into a pension or became applicable to the person as a preserved benefit; or
  - (b) if the member is not an invalidity retiree who is entitled to an invalidity benefit — service during a period:
    - (i) that occurred after the member has been notified that his or her total benefit has equalled or exceeded his or her lump sum maximum benefit limit and in respect of which the member, in pursuance of rule 5, did not pay contributions to the Fund; or
    - (ii) that occurred after the member has been notified that his or her total benefit has equalled or exceeded his or her pension maximum benefit limit.

## Schedule 7 Calculation of final average salary

(Schedule 1  
(Definition of *final average salary*))

1. The final average salary, in relation to a person who is or was a member, is an amount equal to:
  - (a) in the case of a person with less than 1095 days' service — an amount calculated in accordance with the formula:

$$\text{Salary} \times \frac{365}{\text{Number of days of service}}$$

where:

*salary*, in relation to the person, means the amount of salary payable to the person during his or her service; and

*number of days of service*, in relation to the person, means the number of days of service of the person; or

- (b) in any other case — one-third of the amount of salary payable to the person during his or her last 1095 days of service.
2. For the purpose of ascertaining the amount of salary payable to a person during his or her service or service or last 1 095 days of service, as the case may be, in a case where that service included a period in respect of which the person:
  - (a) was in receipt of half-pay; or
  - (b) was not entitled to be paid salary; or
  - (c) forfeited his or her salary;

salary is taken to have been payable to the person in respect of that period as if the person were on full pay.
- 2A. For the purpose of ascertaining the amount of salary payable to a person during his or her service or service (or last 1 095 days of service) as a trainee other ranks who became entitled to an invalidity benefit or died, the person's salary, for the period of trainee service, is the maximum increment (less service allowance) that is applicable in the period to:
  - (a) the rank of Private Group 1 in the Army; or
  - (b) the equivalent rank in the Air Force or Navy that the trainee held.
- 2B. For the purpose of ascertaining the amount of salary payable to a person during his or her service or service (or last 1 095 days of service) as a trainee officer who became entitled to an invalidity benefit or died, the person's salary, for the period of trainee service, is the greater of:
  - (a) the maximum increment (less service allowance) that is applicable, in the period of the person's service, to the rank of Private Group 1; and
  - (b) the maximum increment (less service allowance) that is applicable to the person in that period.



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3. In this Schedule:

***service***, in relation to a person, does not include service by the person before a break in the continuity of the person's service.

***trainee*** means a person who is or was a trainee officer, or trainee other ranks, of the Permanent Forces when he or she became entitled to an invalidity benefit or died.

## Schedule 8 Calculation of employer benefit

(Schedule 1  
(Definition of **employer benefit**))

### Part 1 Calculation of employer benefit in relation to certain persons with not less than 7 years' eligible service, certain invalidity retirees, etc

1. This part applies in relation to a person who:
  - (a) has not less than 7 years eligible service; or
  - (b) is an invalidity retiree; or
  - (c) is a transferred (former recipient) person; or
  - (d) is a 1973 Scheme (retirement pay) re-entrant; other than:
    - (e) a transferred (refunded contributions) person; or
    - (f) a 1973 Scheme (refunded contributions) re-entrant; or
    - (g) a 1991 Scheme re-entrant; or
    - (h) an MBL member who is not an invalidity retiree; or
    - (j) a foreign service member; or
    - (k) an invalidity retiree who:
      - (i) is an MBL member; and
      - (ii) is classified, or is taken to be classified, as Class C under rule 22.
2. The employer benefit, in relation to a person to whom this Part applies, is calculated in accordance with the formula:

$$\left( FPES \times \frac{18}{100} \times FAS \right) + \left( SPES \times \frac{23}{100} \times FAS \right) + \left( TPES \times \frac{28}{100} \times FAS \right)$$

where:

**FAS** means the person's final average salary; and

**FPES** means the person's first period of eligible service; and

**SPES** means the person's second period of eligible service; and

**TPES** means the person's third period of eligible service.

3. For the purposes of paragraph 2:
 

**first period of eligible service**, in relation to a person, means:

  - (a) the first 7 years of eligible service of the person; or
  - (b) if the person did not complete 7 years of eligible service — the period of eligible service of the person.

**second period of eligible service**, in relation to a person, means:

  - (a) the first 20 years of eligible service of the person exclusive of the first 7 years of that service; or

- (b) if the person completed 7 but did not complete 20 years of eligible service — the period of eligible service of the person exclusive of the first 7 years of that service.

*third period of eligible service*, in relation to a person, means the period of eligible service of the person exclusive of the first 20 years of that service.

## Part 2      **Calculation of employer benefit in relation to certain persons with less than 7 years' eligible service**

4. This Part applies in relation to a person who has less than 7 years' eligible service other than a person who:
- (a) is an invalidity retiree; or
  - (b) is a transferred (former recipient) person; or
  - (c) is a transferred (refunded contributions) person; or
  - (d) is a 1973 Scheme (refunded contributions) re-entrant; or
  - (e) is a 1973 Scheme (retirement pay) re-entrant; or
  - (f) is a 1991 Scheme re-entrant; or
  - (g) is a foreign service member.
5. The employer benefit, in relation to a person in relation to whom this Part applies, is calculated in accordance with the formula:

$$FEB + ((NEB - FEB) \times P)$$

where:

**FEB** means the sum of:

- (a) the amount of the person's funded employer benefit; and
- (b) an amount equal to the amount of employer contribution (if any) in relation to the person which the Department would have paid to the Board under subrule 10 (1) but for the operation of subrule 10 (1A); and
- (c) in the case of a transferred person — the amount (if any) of the person's interim benefit; and
- (d) interest in respect of the amount (if any) in paragraph (c) which would have accrued before the date of the person's transfer if so much of that amount as accrued on or after 1 October 1991 had been funded; and
- (e) interest in respect of the amounts (if any) in paragraphs (b), (c) and (d) which would have accrued after the date of the person's transfer if those amounts had been funded; and

**NEB** means the notional employer benefit in relation to the person obtained by calculating an employer benefit for the person in accordance with Part 1 as if that Part applied to the person; and

**P** means:

*In the case of a person who retired before 1 July 1992*

The percentage derived from the following table in relation to the period of the person's eligible service as if the table included a factor, in respect of the number of days in excess of the total number of whole years of the person's eligible service (in this paragraph called *excess days*), being a factor which bears, to the difference between the factor for that whole number of years and the next higher factor in the table, the same proportion as the number of excess days bears to the number of days in a year:

Completed years of eligible service	Percentage
0	0
1	10
2	20
3	30
4	40
5	50
6	75
7	100

*In the case of a person who retired or retires on or after 1 July 1992*

The percentage derived from the following table in relation to:

- (a) the period in which the person retires; and
- (b) the period of the person's eligible service;

as if the table included a factor, in respect of the number of days in excess of the total number of whole years of the person's eligible service (in this paragraph called *excess days*), being a factor which bears, to the difference between the factor for that whole number of years and the next higher factor in the relevant column of the table, the same proportion as the number of excess days bears to the number of days in a year:

Completed years of eligible service	Percentage			
	Period ended 31 December 1992	Period 1 January 1993 to 30 June 1995 (inclusive)	Period 1 July 1995 to 30 June 1998 (inclusive)	Period from 1 July 1998
0	15	25	40	100
1	15	25	40	100
2	20	25	40	100
3	30	30	40	100
4	40	40	40	100
5	50	50	50	100
6	75	75	75	100

Completed years of eligible service	Percentage			
	Period ended 31 December 1992	Period 1 January 1993 to 30 June 1995 (inclusive)	Period 1 July 1995 to 30 June 1998 (inclusive)	Period from 1 July 1998
7	100	100	100	100

### Part 3 Calculation of employer benefit in relation to persons with not less than 7 years' aggregated service and certain invalidity retirees

6. This Part applies in relation to a person who:
- is any of the following:
    - a transferred (refunded contributions) person;
    - a 1973 Scheme (refunded contributions) re-entrant;
    - a 1991 Scheme re-entrant;
    - a foreign service member; and
  - either:
    - has not less than 7 years aggregated service; or
    - is an invalidity retiree, other than an invalidity retiree to whom Part 5 applies.

*Note* Part 5 applies to an invalidity retiree who is an MBL member and who is classified, or is taken to be classified, as Class C under rule 22.

7. The employer benefit, in relation to a person in relation to whom this Part applies, is to be calculated in accordance with the formula:

$$\left( \text{FPES} \times \frac{18}{100} \times \text{FAS} \right) + \left( \text{SPES} \times \frac{23}{100} \times \text{FAS} \right) + \left( \text{TPES} \times \frac{28}{100} \times \text{FAS} \right)$$

where:

**FAS** means the person's final average salary; and

**FPES** means so much of the person's eligible service (if any) as is included in the person's first period of aggregated service; and

**SPES** means so much of the person's eligible service (if any) as is included in the person's second period of aggregated service; and

**TPES** means so much of the person's eligible service (if any) as is included in the person's third period of aggregated service.

8. For the purposes of paragraph 7:
- first period of aggregated service**, in relation to a person, means:
- the first 7 years of aggregated service of the person; or
  - if the person did not complete 7 years of aggregated service — the period of aggregated service of the person.

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***second period of aggregated service***, in relation to a person, means:

- (a) the first 20 years of aggregated service of the person exclusive of the first 7 years of that service; or
- (b) if the person completed 7 but did not complete 20 years of aggregated service — the period of aggregated service of the person exclusive of the first 7 years of that service.

***third period of aggregated service***, in relation to a person, means the period of aggregated service of the person exclusive of the first 20 years of that service.

## Part 4      **Calculation of employer benefit in relation to certain persons with less than 7 years' aggregated service**

- 9. This Part applies in relation to:
  - (a) a transferred (refunded contributions) person; or
  - (b) a 1973 Scheme (refunded contributions) re-entrant; or
  - (c) a 1991 Scheme re-entrant; or
  - (d) a foreign service member;
 who has less than 7 years' aggregated service, other than an invalidity retiree.
- 10. The employer benefit, in relation to a person in relation to whom this Part applies, is to be calculated in accordance with the formula:

$$FEB + ((NEB - FEB) \times P)$$

where:

***FEB*** means the sum of:

- (a) the amount of the person's funded employer benefit; and
- (b) an amount equal to the amount of employer contribution (if any) in relation to the person which the Department would have paid to the Board under subrule 10 (1) but for the operation of subrule 10 (1A); and
- (c) in the case of a transferred person — the amount (if any) of the person's interim benefit; and
- (d) interest in respect of the amount (if any) in paragraph (c) which would have accrued before the date of the person's transfer if so much of that amount as accrued on or after 1 October 1991 had been funded; and
- (e) interest in respect of the amounts (if any) in paragraphs (b), (c) and (d) which would have accrued after the date of the person's transfer if those amounts had been funded; and

***NEB*** means the notional employer benefit in relation to the person obtained by calculating an employer benefit for the person in accordance with Part 3 as if that Part applied to the person; and

**P** means

*In the case of a person who retired before 1 July 1992*

The percentage derived from the following table in relation to the period of the person's aggregated service as if the table included a factor, in respect of the number of days in excess of the total number of whole years of the person's aggregated service (in this paragraph called *excess days*), being a factor which bears, to the difference between the factor for that whole number of years and the next higher factor in the table, the same proportion as the number of excess days bears to the number of days in a year:

Completed years of aggregated service	Percentage
0	0
1	10
2	20
3	30
4	40
5	50
6	75
7	100

*In the case of a person who retired or retires on or after 1 July 1992*

The percentage derived from the following table in relation to:

- (a) the period in which the person retires; and
- (b) the period of the person's aggregated service;

as if the table included a factor, in respect of the number of days in excess of the total number of whole years of the person's aggregated service (in this paragraph called *excess days*), being a factor which bears, to the difference between the factor for that whole number of years and the next higher factor in the relevant column of the table, the same proportion as the number of excess days bears to the number of days in a year:

Completed years of aggregated service	Percentage			
	Period ended 31 December 1992	Period 1 January 1993 to 30 June 1995 (inclusive)	Period 1 July 1995 to 30 June 1998 (inclusive)	Period from 1 July 1998
0	15	25	40	100
1	15	25	40	100
2	20	25	40	100
3	30	30	40	100
4	40	40	40	100
5	50	50	50	100
6	75	75	75	100

Completed years of aggregated service	Percentage			
	Period ended 31 December 1992	Period 1 January 1993 to 30 June 1995 (inclusive)	Period 1 July 1995 to 30 June 1998 (inclusive)	Period from 1 July 1998
7	100	100	100	100

## Part 5 Calculation of employer benefit of MBL member (other than invalidity retiree)

11. The employer benefit, in relation to:
  - (a) an MBL member who is not an invalidity retiree; or
  - (b) an MBL member who:
    - (i) is an invalidity retiree; and
    - (ii) is classified, or is taken to be classified, as Class C under rule 22;
is calculated in accordance with whichever formula in this Part is applicable to the member.
12. In the case of an MBL member who elected under subrule 5 (2) to cease paying contributions, the formula is:

$$\left( \text{LSMBMR} \times \left( \frac{\text{TB}}{\text{FASC}} \div \text{LSMBMC} \right) \times \text{FASR} \right) - \text{MB}$$

where:

**FASC** means the person's final average salary on ceasing contributions; and

**FASR** means the person's final average salary on retirement; and

**LSMBMC** means the person's lump sum maximum benefit multiple, worked out in accordance with paragraph 2 of Schedule 3, on ceasing contributions; and

**LSMBMR** means the person's lump sum maximum benefit multiple, worked out in accordance with paragraph 2 of Schedule 3, on retirement; and

**MB** means the amount of the person's member benefit on ceasing contributions; and

**TB** means the sum of the person's employer benefit and member benefit on ceasing contributions.

13. In the case of an MBL member who:
  - (a) ceased paying contributions because of the operation of subrule 5 (1); or
  - (b) being a transferred member, did not pay contributions because of the operation of that subrule;



the formula is:

$$\left( \text{PMBMR} \times \left( \frac{\text{TB}}{\text{FASC}} \div \text{PMBMC} \right) \times \text{FASR} \right) - \text{MB}$$

where:

**FASC** means the person's final average salary on ceasing contributions; and

**FASR** means the person's final average salary on retirement; and

**PMBMC** means the person's pension maximum benefit multiple, worked out in accordance with paragraph 4 of Schedule 3, on ceasing contributions; and

**PMBMR** means the person's pension maximum benefit multiple, worked out in accordance with paragraph 4 of Schedule 3, on retirement; and

**MB** means the amount of the person's member benefit on ceasing contributions; and

**TB** means the sum of the person's employer benefit and member benefit on ceasing contributions.

- 13A. If an MBL member's benefits have been subject to a family law superannuation payment split under Part 13, the employer benefit will be reduced, at the time of the payment split, in accordance with that Part.

*Note* The maximum benefit limit in relation to the member is calculated as if there were no benefit reduction under Part 13.

## Part 6 Interpretation

14. A reference in this Schedule to an invalidity retiree does not include a reference to a person who, by reason of rule 32, 33 or 34, is not entitled to invalidity benefits.
15. A reference in this Schedule to the aggregated service of a transferred (refunded contributions) person, a 1973 Scheme (refunded contributions) re-entrant, a 1991 Scheme re-entrant or a foreign service member, is a reference to the sum of:
  - (a) the eligible service of that person; and
  - (b) either:
    - (i) in the case of a transferred (refunded contributions) person — any other period that, before the person began to render the period of continuous full-time service which he or she was rendering when he or she transferred to the 1991 Scheme, was a period of effective service in relation to the person for the purposes of the 1973 Act; or
    - (ii) in the case of a 1973 Scheme (refunded contributions) re-entrant — any period that, before the person became a member, was a period of effective service in relation to the person for the purposes of the 1973 Act; or

- 
- (iii) in the case of a 1991 Scheme re-entrant — any period that, before the person last became a member, had been a period of eligible service in relation to the person; or
  - (iv) in the case of a foreign service member — so much of the person's full-time service with the forces of a country other than Australia as the Board has directed under the definition of *foreign service member* is service for the purposes of this Schedule.

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## Schedule 9      Calculation of member benefit before 1 July 2002

(Schedule 1  
(Definition of *member benefit*))

1. A member benefit, in relation to a person who is or was a member, is an amount equal to the sum of:
  - (a) the contributions that have been paid under these Rules by the person on or after he or she began his or her current period of membership; and
  - (b) in the case of a member to whom a preserved benefit is applicable — the amount of the member benefit (if any) included in that preserved benefit; and
  - (c) the interest (if any), in respect of the amount in paragraph (a) and of such of the amount in paragraph (b) as is funded, in accordance with a determination or determinations by the Board as to rates of interest and the method of allocation of interest to such amounts; and
  - (d) an amount equal to the interest, in respect of such of the amount in paragraph (b) as is not funded, which would have accrued after the person last became a member if that amount had been funded; and
  - (e) in the case of a member who transferred from the 1973 Scheme (not being a person who has since retired and has again become a member):
    - (i) the person's transfer value; and
    - (ii) an amount equal to the interest in respect of that transfer value which would have accrued on or after the date of the person's transfer if the transfer value had been funded;

less, in the case of a person who paid an amount to the Commonwealth under paragraph 3 of this Schedule or paragraph 3 of Schedule 10 (each paragraph, in this paragraph called a *repayment provision*), the amount of interest calculated under sub-subparagraph (ii) in respect of so much of the person's transfer value as is an amount equal to the sum of:

  - (iii) the amount by which so much of the person's transfer value as comprised previous contributions is taken to have increased by reason of the recalculation of the person's transfer value in consequence of the operation of the relevant repayment provision; and
  - (iv) an amount equal to the amount by which the amount calculated under subparagraphs 1 (a) and (b) of Schedule 10 is, by reason of the recalculation of the person's transfer value in consequence of the operation of the relevant repayment provision, no longer reduced by an amount calculated under subparagraphs 1 (c), (d) and (e) of that Schedule;

in respect of the period before the day on which the amount so paid was, in fact, paid; and

- 
- (f) in the case of a 1973 Scheme (deferred benefit) re-entrant:
- (i) the person's carry over value; and
  - (ii) an amount equal to the interest in respect of that carry over value which would have accrued on or after the date on which the person became a member if the carry over value had been funded.
2. Where a transferred person who retired in the period from and including 27 May 1992 to and including 8 September 1992 (in this paragraph called the **relevant period**):
- (a) had been, before transfer to the Scheme, a person in respect of whom an amount (in this paragraph called the **unpaid amount**) remained unpaid to the Commonwealth by the person in respect of:
    - (i) an election by him or her under the previous legislation to have a period of service taken into account as service for pension or as qualifying service; or
    - (ii) an amount required to be paid by him or her under subsection 87 (3) of the 1973 Act; and
  - (b) had, before transferring, paid the unpaid amount or a part of that amount to the Commonwealth;
- then, the person is entitled to be paid, as additional member benefit, an amount ascertained by using the formula:

$$\text{Recalculated member benefit} - \text{Original member benefit}$$

where:

**Original member benefit** means the member benefit that was paid or payable to the person on his or her retirement; and

**Recalculated member benefit** means the member benefit that would have been payable to the person on his or her retirement if paragraph (b) of the definition of **previous contributions** in Schedule 1 (as in force during the relevant period) had been omitted from that definition.

3. Where a transferred person who has retired became a transferred person on a day (in this paragraph called the **person's commencement day**), and in the application of Schedule 10 to that person on that day:
- (a) the calculation of the person's transfer value required the deduction of an amount (in this paragraph called the **deducted amount**) in accordance with paragraph 1 of that Schedule from the sum of the amounts referred to in subparagraphs 1 (a) and (b) of that Schedule; and
  - (b) the deducted amount included an amount in respect of an election referred to in subparagraph 1 (c) or an amount referred to in subparagraph 1 (e), of that Schedule;
- then, if the person pays to the Commonwealth for the purposes of this paragraph, before the expiration of 90 days after the commencement of this paragraph, an amount (in this paragraph called the **paid amount**) equal to, or less than, the deducted amount, then, the person is entitled to be paid, as additional member benefit, an amount ascertained by using the formula:

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Recalculated member benefit – Original member benefit

where:

***Original member benefit*** means the member benefit that was paid or payable to the person on his or her retirement; and

***Recalculated member benefit*** means the member benefit that would have been payable to the person on his or her retirement if the person had paid the paid amount to the Commonwealth immediately before the person's commencement day.

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## Schedule 10      Transfer value

(Schedule 1  
(Definition of *transfer value*))

1. The transfer value, in relation to a transferred person, is an amount equal to the sum of:
  - (a) previous contributions made by the person under the previous legislation; and
  - (b) interest in respect of the amount in subparagraph (a) which would have accrued before the date of his or her transfer if so much of that amount:
    - (i) as comprised contributions and additional contributions (within the meaning of the 1973 Act) paid before 1 October 1991 had been earning interest at the annual rates applicable in accordance with Schedule 11; and
    - (ii) as comprised contributions and additional contributions (within the meaning of the 1973 Act) paid on or after that date had been funded;less the amount (if any) remaining unpaid to the Commonwealth by the person in respect of:
  - (c) an election by him or her under the previous legislation to have a period of service taken into account as service for pension or as qualifying service; and
  - (d) an advance payment made to him or her in respect of a gratuity under:
    - (i) the previous legislation; or
    - (ii) the Defence Force (Bounties and Gratuities) Regulations; or
    - (iii) Determination 0705 made under Part IIIA of the *Defence Act 1903*; and
  - (e) an amount required to be paid by him or her under subsection 87 (3) of the 1973 Act.
2. For the purpose of subparagraph 1 (b), where, for any period, official records of the fortnightly amounts of contributions paid by a member when he or she was a member of the retirement benefits scheme under the 1948 Act are not available, the contributions paid by the member during that period are taken to have been paid on the date at the middle of that period, unless the Board, having regard to documentary evidence of those contributions produced to the Board by the member, otherwise determines.
3. Where, on a day (in this paragraph called the *person's commencement day*) a person became a transferred person (not being a person who has since retired), and in the application of this Schedule to that person on that day:
  - (a) the calculation of the person's transfer value required the deduction of an amount (in this paragraph called the *deducted amount*) in accordance with paragraph 1 from the sum of the amounts referred to in subparagraphs 1 (a) and (b); and

- 
- (b) the deducted amount included an amount in respect of an election referred to in subparagraph 1 (c) or an amount referred to in subparagraph 1 (e);

then, if the person pays to the Commonwealth for the purposes of this paragraph, before the expiration of 90 days after the commencement of this paragraph, an amount (in this paragraph called the ***paid amount***) equal to, or less than, the deducted amount, this Schedule applies to the person as if the person had paid the paid amount to the Commonwealth immediately before the person's commencement day.

4. If:

- (a) a transferred person (not being a person who has since retired) is a person who had a right to pay to the Commonwealth, within the time specified in paragraph 3, an amount (referred to in paragraph 3 as the ***paid amount***) equal to, or less than, the deducted amount referred to in paragraph 3; and
- (b) the Board is satisfied that the person had not been informed, within the time specified in paragraph 3, of his or her right to pay that paid amount to the Commonwealth;

the Board must give the person notice in writing informing the person of his or her right to pay to the Commonwealth, before the end of 90 days after the day on which the notice is given, that paid amount.

5. If a transferred person (not being a person who has since retired) who has been given notice by the Board under paragraph 4 pays to the Commonwealth, before the end of 90 days after the day on which the notice is given, an amount (in this paragraph called the ***paid amount***) equal to, or less than, the deducted amount referred to in paragraph 3, this Schedule applies to the person as if the person had paid the paid amount to the Commonwealth immediately before the day on which the person became a transferred person.

## **Schedule 10A    Carry over value**

(Schedule 1  
(Definition of *carry over value*))

1. The carry over value, in relation to a 1973 Scheme (deferred benefit) re-entrant, is an amount equal to the sum of:
  - (a) previous contributions made by the person under the previous legislation which comprised the benefits from which the deferred benefits, which were applicable to the member under the 1973 Act immediately before he or she became a member, derived; and
  - (b) interest in respect of the amount in subparagraph (a) which would have accrued before the date on which he or she first became a member if so much of that amount:
    - (i) as comprised contributions and additional contributions (within the meaning of the 1973 Act) paid before 1 October 1991 had been earning interest at the annual rates applicable in accordance with Schedule 11; and
    - (ii) as comprised contributions and additional contributions (within the meaning of the 1973 Act) paid on or after that date had been funded.



## Schedule 11 Annual rates of interest applicable in respect of certain unfunded amounts

(rule 16 (1) and Schedules 10 and 10A)

1. For the purposes of the definition of *pre-commencement notional interest* in subrule 16 (1), sub-subparagraph 1 (b) (i) of Schedule 10 and sub-subparagraph 1 (b) (i) of Schedule 10A:
  - (a) the annual rate applicable in relation to a complete salary fortnight in a financial year; and
  - (b) the annual rate applicable in relation to a salary fortnight which concludes in a financial year;
 is the rate applicable in relation to that financial year in accordance with the table.

### Rates applicable in relation to financial years

A reference in this table to a year is a reference to the financial year ending on 30 June in that year.

Year	Rate	Year	Rate	Year	Rate
1950	3.19	1970	6.86	1990	12.04
1951	3.53	1971	6.83	1991	11.10
1952	4.60	1972	5.85	1992	11.10
1953	4.50	1973	6.72		
1954	4.46	1974	9.52		
1955	4.57	1975	9.50		
1956	5.35	1976	9.99		
1957	5.08	1977	10.41		
1958	4.95	1978	9.10		
1959	4.88	1979	10.00		
1960	4.88	1980	11.76		
1961	5.38	1981	13.15		
1962	4.81	1982	16.40		
1963	4.37	1983	14.85		
1964	4.58	1984	13.75		
1965	5.15	1985	13.50		
1966	5.17	1986	12.95		
1967	5.03	1987	12.80		
1968	5.11	1988	11.95		
1969	5.35	1989	13.50		

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## Schedule 12 Surcharge deduction amount

(Schedule 1  
(Definition of **surcharge deduction amount**))

1. If a member's surcharge debt account, or a deceased member's surcharge debt account, is in debit when benefits become payable to or in respect of the member, the Board must determine, in writing:
  - (a) the surcharge deduction amount that, in its opinion, it would be fair and reasonable to take into account in working out the amount of the benefits; and
  - (b) if the benefits have been converted into a pension — the conversion factor for working out the yearly amount that would have to be paid to discharge a liability equal to the surcharge deduction amount.
2. In making the determination, the Board must have regard to the following:
  - (a) the amount by which the member's surcharge debt account is in debit when those benefits become payable;
  - (b) the value of the employer-financed component of those benefits;
  - (c) the value of the benefits that, for the purpose of working out (under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*) the notional surchargeable contributions factors applicable to the member, were assumed to be likely to be payable to the member on his or her retirement;
  - (d) whether the member has or had qualified for his or her maximum benefit entitlement under the Rules;
  - (e) any other matter that the Board considers relevant.
3. The amount determined by the Board for subparagraph 1 (a) may not be more than the total of the following amounts:
  - (a) 15% of the employer-financed component of any part of the benefits payable to the member that accrued between 20 August 1996 and 1 July 2003;
  - (b) 14.5% of the employer-financed component of any part of the benefits payable to the member that accrued in the 2003–2004 financial year;
  - (c) 12.5% of the employer-financed component of any part of the benefits payable to the member that accrued in the 2004–2005 financial year.
4. In making a determination for paragraph 1 (b), the Board must also have regard to:
  - (a) written advice about the conversion factor, prepared by an actuary; and
  - (b) the person's age when the benefit becomes payable to the person.

*Note* A surcharge deduction amount is not subject to a family law superannuation payment split under Part 13.

## Notes to the Military Superannuation and Benefits Trust Deed

### Note 1

The Military Superannuation and Benefits Trust Deed (in force under section 4 of the *Military Superannuation and Benefits Act 1991*) as shown in this compilation is amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions see Table A.

Under the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments.

### Table of Instruments

Title	Date of notification in Gazette or FRLI registration	Date of commencement	Application, saving or transitional provisions
<i>Military Superannuation and Benefits Trust Deed</i>	18 Sept 1991	18 Sept 1991	
<i>Military Superannuation and Benefits Trust Deed (Amendment) (No. 1, 1991)</i>	25 Sept 1991	25 Sept 1991	—
<i>Military Superannuation and Benefits Trust Deed (Amendment) (No. 1, 1992)</i>	28 Apr 1992	28 Apr 1992	—
<i>Military Superannuation and Benefits Trust Deed (Amendment) (No. 2, 1992) (a)</i>	27 May 1992	27 May 1992	R. 4
<i>Military Superannuation and Benefits Trust Deed (Amendment) (No. 3, 1992)</i>	19 Nov 1992	19 Nov 1992	—
<i>Military Superannuation and Benefits Trust Deed (Amendment) (No. 1, 1993)</i>	20 Jan 1993	20 Jan 1993	—
<i>Military Superannuation and Benefits Trust Deed (Amendment) (No. 2, 1993)</i>	3 Mar 1993	C. 4: 1 Oct 1991 Remainder: 3 Mar 1993	R. 3
<i>Military Superannuation and Benefits Trust Deed (Amendment) (No. 3, 1993)</i>	22 Apr 1993	22 Apr 1993	—
<i>Military Superannuation and Benefits Trust Deed (Amendment) (No. 4, 1993)</i>	19 May 1993	25 June 1993	R. 4
<i>Military Superannuation and Benefits Trust Deed (Amendment) (No. 1, 1994)</i>	7 Sept 1994	7 Sept 1994	—
<i>Military Superannuation and Benefits Trust Deed (Amendment) (No. 2, 1994)</i>	8 Nov 1994	8 Nov 1994	—
<i>Military Superannuation and Benefits Trust Deed (Amendment) (No. 3, 1994)</i>	7 Dec 1994	7 Dec 1994	—

**Table of Instruments**

<b>Title</b>	<b>Date of notification in Gazette or FRLI registration</b>	<b>Date of commencement</b>	<b>Application, saving or transitional provisions</b>
<i>Military Superannuation and Benefits Trust Deed (Amendment) (No. 1, 1995)</i>	30 June 1995	C. 9: 1 July 1995 Remainder: 30 June 1995	—
<i>Military Superannuation and Benefits Trust Deed (Amendment) (No. 1, 1998)</i>	6 May 1998	6 May 1998	—
<i>Military Superannuation and Benefits Trust Deed (Amendment) (No. 2, 1998)</i>	6 May 1998	6 May 1998	—
<i>Military Superannuation and Benefits Trust Deed (Amendment) (No. 3, 1998) (b)</i>	1 July 1998	1 July 1998	—
<i>Military Superannuation and Benefits Trust Deed (Amendment) (No. 4, 1998)</i>	19 Aug 1998	1 July 1998	—
<i>Military Superannuation and Benefits Amendment Trust Deed 1999 (No. 1)</i>	16 June 1999	16 June 1999	—
<i>Military Superannuation and Benefits Amendment Trust Deed 1999 (No. 2)</i>	7 July 1999	1 July 1999	—
<i>Military Superannuation and Benefits Amendment Trust Deed 1999 (No. 3)</i>	13 Oct 1999	13 Oct 1999	—
<i>Military Superannuation and Benefits Amendment Trust Deed 2000 (No. 1)</i>	24 Jan 2001	24 Jan 2001	—
<i>Military Superannuation and Benefits Amendment Trust Deed 2001 (No. 1)</i>	21 Dec 2001	21 Dec 2001	—
<i>Military Superannuation and Benefits Amendment Trust Deed 2002 (No. 1)</i>	8 July 2002	8 July 2002	—
<i>Military Superannuation and Benefits Amendment Trust Deed 2004 (No. 1)</i>	18 May 2004 (see Gazette 2004, No. S161)	Ss. 1–3 and Schedule 2: 12 Nov 2003 Remainder: 18 May 2004	—
<i>Military Superannuation and Benefits Amendment Trust Deed 2004 (No. 2)</i>	1 July 2004 (see Gazette 2004, No. S261)	12 Aug 2004	—
<i>Military Superannuation and Benefits Amendment Trust Deed 2004 (No. 3)</i>	1 Dec 2004 (see Gazette 2004, No. GN48)	1 July 2004	—
<i>Military Superannuation and Benefits Amendment Trust Deed 2004 (No. 4)</i>	1 Dec 2004 (see Gazette 2004, No. GN48)	1 Dec 2004	—
<i>Military Superannuation and Benefits Amendment Trust Deed 2004 (No. 5)</i>	24 Dec 2004 (see Gazette 2004, No. S568)	Ss. 1–3 and Schedule 1: 1 July 2004 Remainder: 24 Dec 2004	—
<i>Military Superannuation and Benefits Amendment Trust Deed 2005 (No. 1)</i>	18 July 2005 (see F2005L01974)	1 Aug 2005	—

## Table of Instruments

Title	Date of notification in Gazette or FRLI registration	Date of commencement	Application, saving or transitional provisions
<i>Military Superannuation and Benefits Amendment Trust Deed 2005 (No. 2)</i>	27 Sept 2005 (see F2005L02886)	27 Sept 2005	—
<i>Military Superannuation and Benefits Amendment Trust Deed 2006 (No. 1)</i>	22 Dec 2006 (see F2006L04096)	23 Dec 2006	—
<i>Military Superannuation and Benefits Amendment Trust Deed 2007 (No. 1)</i>	5 Feb 2007 (see F2007L00231)	6 Feb 2007	—
<i>Military Superannuation and Benefits Amendment Trust Deed 2007 (No. 2)</i>	20 June 2007 (see F2007L01762)	21 June 2007	—
<i>Military Superannuation and Benefits Amendment Trust Deed 2007 (No. 3)</i>	10 July 2007 (see F2007L02209)	1 July 2007	—
(a) Instrument No. 2 of 1992 was disallowed by the Senate on 9 September 1992 by subsection 48 (6) of the <i>Acts Interpretation Act 1901</i> . That disallowance had the same effect as a repeal of the Instrument and, by subsection 48 (7), the disallowance had the effect of reviving the provision omitted by that Instrument from and including the date of disallowance.			
(b) Instrument No. 3 of 1998 was withdrawn due to an oversight by the Senate tabling office. These amendments were resubmitted as Instrument No. 4 of 1998.			

**Table of Amendments****Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
<b>Trust Deed</b>	
C. 3 .....	am. No. 1, 1995; No. 1, 2000; No. 1, 2002; No. 1, 2005
C. 4 .....	am. 2006 No. 1
C. 6 .....	am. 2006 No. 1
C. 10 .....	am. No. 1, 2002
C. 10A .....	am. No. 1, 2002
<b>Rules</b>	
<b>Schedule</b>	
<b>Part 1</b>	
R. 2 .....	am. No. 1, 1991; No. 1, 1992; No. 4, 1993; No. 1, 1995; No. 2, 1998; Nos. 2 and 3, 1999; No. 1, 2002; Nos. 1, 2, and 4, 2004
<b>Part 2</b>	
R. 4 .....	am. No. 1, 1991; No. 2, 2004
R. 5 .....	am. Nos. 1 and 4, 2004; No. 1, 2007
R. 6 .....	am. No. 1, 1991
R. 7 .....	am. No. 1, 1991; No. 1, 1994; No. 1, 2005
R. 8 .....	am. No. 1, 1991; No. 2, 2004
R. 9 .....	am. No. 1, 1991
R. 10 .....	am. No. 1, 1991; No. 1, 1994; No. 1, 1998; No. 2, 1999; No. 4, 2004; No. 1, 2005; No. 3, 2007
<b>Part 2A</b>	
Part 2A of Schedule .....	ad. No. 1, 2002
R. 11A .....	ad. No. 1, 2002
R. 11B .....	ad. No. 1, 2002
<b>Part 2B</b>	
Part 2B of Schedule .....	ad. No. 1, 2002
<b>Division 1</b>	
R. 11C .....	ad. No. 1, 2002
R. 11D .....	ad. No. 1, 2002
R. 11E .....	ad. No. 1, 2002
R. 11F .....	ad. No. 1, 2002
<b>Division 2</b>	
R. 11G .....	ad. No. 1, 2002
R. 11H .....	ad. No. 1, 2002
R. 11I .....	ad. No. 1, 2002
R. 11J .....	ad. No. 1, 2002
R. 11K .....	ad. No. 1, 2002
R. 11L .....	ad. No. 1, 2002
<b>Division 3</b>	
R. 11M .....	ad. No. 1, 2002
R. 11N .....	ad. No. 1, 2002 am. Nos. 1 and 4, 2004
<b>Division 4</b>	
R. 11O .....	ad. No. 1, 2002
R. 11P .....	ad. No. 1, 2002 am. No. 1, 2005

## Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 11Q.....	ad. No. 1, 2002 am. No. 1, 2005; No. 3, 2007
R. 11QA .....	ad. No. 3, 2007
R. 11R.....	ad. No. 1, 2002 am. No. 1, 2005
<b>Division 5</b>	
R. 11S.....	ad. No. 1, 2002
R. 11T .....	ad. No. 1, 2002
R. 11U.....	ad. No. 1, 2002
R. 11V .....	ad. No. 1, 2002
R. 11W .....	ad. No. 1, 2002
R. 11X.....	ad. No. 1, 2002
R. 11Y .....	ad. No. 1, 2002
R. 11Z .....	ad. No. 1, 2002
R. 11ZA.....	ad. No. 1, 2002
<b>Division 6</b>	
R. 11ZB.....	ad. No. 1, 2002
<b>Division 7</b>	
R. 11ZC.....	ad. No. 1, 2002
R. 11ZD.....	ad. No. 1, 2002
<b>Part 3</b>	
Note to Part 3 heading .....	ad. No. 1, 2004
<b>Division 1</b>	
R. 12 .....	am. Nos. 1 and 2, 1998; Nos. 1 and 2, 1999
R. 13 .....	am. No. 1, 1991; No. 1, 1992; Nos. 1 and 2, 1998; Nos. 1 and 2, 1999
R. 14 .....	rs. No. 1, 1991 am. Nos. 1 and 2, 1998; Nos. 1 and 2, 1999
R. 15 .....	am. No. 1, 1991; No. 1, 1995 rep. No. 2, 1998
R. 16 .....	rs. No. 1, 1991 am. No. 1, 1992; No. 2, 1993
<b>Division 2</b>	
<b>Subdivision A</b>	
R. 17 .....	rs. No. 1, 2000
R. 18 .....	am. No. 1, 1991
R. 19 .....	am. No. 2, 1993
R. 22 .....	am. No. 1, 1991; No. 2, 1993; No. 4, 1998
R. 22A.....	ad. No. 2, 1993 am. No. 4, 1998
R. 23 .....	am. No. 1, 1991; No. 2, 1993; No. 2, 1999
R. 24 .....	am. No. 2, 1993
<b>Subdivision B</b>	
R. 26 .....	am. No. 2, 1993
R. 27 .....	am. Nos. 1 and 2, 1998; Nos. 1 and 2, 1999
R. 28 .....	am. Nos. 1 and 2, 1998; Nos. 1 and 2, 1999
R. 29 .....	am. No. 1, 1991; No. 2, 1999
R. 30 .....	am. No. 1, 1991; No. 2, 1993; No. 1, 2000
<b>Subdivision C</b>	
R. 32 .....	am. No. 1, 1991; No. 2, 1993; No. 4, 1998
R. 33 .....	am. No. 2, 1993; No. 4, 1998

**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
R. 34 .....	am. No. 2, 1993; No. 4, 1998; No. 2, 2004
<b>Division 3</b>	
R. 35 .....	am. No. 1, 1991
R. 36 .....	am. No. 1, 1991
<b>Part 4</b>	
<b>Division 1</b>	
R. 39 .....	am. No. 1, 1999; No. 1, 2004
R. 40 .....	am. No. 1, 1991; No. 2, 1998; No. 1, 1999; No. 2, 2004
<b>Division 2</b>	
R. 43 .....	rs. No. 1, 1991
R. 44 .....	am. No. 2, 1993
<b>Division 4</b>	
R. 48 .....	am. No. 1, 1991
<b>Part 5</b>	
R. 48A .....	ad. No. 1, 2004
R. 49 .....	am. Nos. 1 and 2, 1999
Heading to r. 51 .....	rs. No. 2, 1999
R. 51 .....	am. No. 1, 1991; No. 2, 1994; No. 2, 1998; Nos. 1 and 2, 1999; No. 1, 2005
R. 52 .....	rs. No. 1, 1991 am. No. 2, 1994; No. 2, 1998; Nos. 1 and 2, 1999
R. 53 .....	am. No. 1, 1991; No. 1, 1995; No. 2, 1998; No. 1, 1999
R. 53A .....	ad. No. 1, 1991
R. 54 .....	am. No. 1, 1991; No. 2, 1998; No. 1, 1999
R. 54A .....	ad. No. 1, 1991
<b>Part 6</b>	
<b>Division 1</b>	
R. 55 .....	am. No. 1, 1991
<b>Division 2</b>	
Heading to Div. 2 of Part 6 .....	rs. No. 1, 2001; No. 1, 2004
Heading to r. 56 .....	rs. No. 1, 2001; No. 1, 2004
R. 56 .....	am. No. 1, 1991; No. 2, 1993; No. 1, 2001; Nos. 1 and 5, 2004
R. 57 .....	am. No. 1, 1991; No. 1, 2001
R. 58 .....	am. No. 1, 2001; No. 1, 2004
R. 59 .....	am. No. 1, 1991; No. 1, 2001
R. 60 .....	am. No. 1, 1991; No. 1, 2001; No. 1, 2004
R. 61 .....	am. No. 1, 1991; No. 1, 2001
<b>Division 3</b>	
Div. 3 of Part 6 .....	ad. No. 1, 2001
R. 61A .....	ad. No. 1, 2001
R. 61B .....	ad. No. 1, 2001
R. 61C .....	ad. No. 1, 2001
R. 61D .....	ad. No. 1, 2001
R. 61E .....	ad. No. 1, 2001
<b>Part 8</b>	
R. 64 .....	am. No. 1, 1999
R. 65A .....	ad. No. 1, 1991



## Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 65B .....	ad. No. 1, 1991 am. No. 2, 1994; No. 1, 1995; No. 2, 1998
R. 67 .....	rs. No. 1, 2004
R. 68 .....	am. No. 3, 1999
R. 69 .....	am. Nos. 1 and 4, 2004
R. 70 .....	am. No. 1, 1991; No. 1, 2004
<b>Part 9</b>	
R. 72 .....	rs. No. 1, 2000
R. 73 .....	am. No. 1, 1991
R. 74 .....	rs. No. 1, 2000
Heading to r. 76 .....	rs. No. 1, 2000
R. 76 .....	am. No. 1, 2000
Heading to r. 77 .....	rs. No. 1, 2000
R. 77 .....	am. No. 1, 2000
R. 78 .....	am. No. 1, 2000
R. 79 .....	am. No. 2, 1993
<b>Part 10</b>	
Part 10 of Schedule .....	ad. No. 1, 1999
R. 80 .....	ad. No. 1, 1999 am. Nos. 1 and 4, 2004
R. 81 .....	ad. No. 1, 1999
<b>Part 11</b>	
Part 11 of Schedule .....	ad. No. 2, 1999
R. 82 .....	ad. No. 2, 1999
R. 83 .....	ad. No. 2, 1999
R. 84 .....	ad. No. 2, 1999
<b>Part 12</b>	
Part 12 of Schedule .....	ad. No. 1, 2004 rs. No. 4, 2004
R. 85 .....	ad. No. 1, 2004 rs. No. 4, 2004 am. No. 1, 2005
R. 86 .....	ad. No. 1, 2004 rs. No. 4, 2004
R. 87 .....	ad. No. 1, 2004 rs. No. 4, 2004 am. No. 2, 2007
R. 88 .....	ad. No. 1, 2004 rs. No. 4, 2004
<b>Part 13</b>	
Part 13 of Schedule .....	ad. No. 1, 2004
<b>Division 1</b>	
R. 89 .....	ad. No. 1, 2004
Heading to r. 90 .....	rs. No. 4, 2004
R. 90 .....	ad. No. 1, 2004 am. No. 4, 2004
<b>Division 2</b>	
Note 1 to r. 90 (1) .....	rs. No. 4, 2004

**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
Heading to r. 91 .....	rs. No. 4, 2004
R. 91 .....	ad. No. 1, 2004 am. No. 4, 2004
Note to r. 91 (1) .....	rs. No. 4, 2004
R. 92 .....	ad. No. 1, 2004
R. 93 .....	ad. No. 1, 2004
Heading to r. 94 .....	rs. No. 4, 2004
R. 94 .....	ad. No. 1, 2004 am. No. 4, 2004
Note to r. 94 (3) .....	rs. No. 4, 2004
R. 95 .....	ad. No. 1, 2004
R. 96 .....	ad. No. 1, 2004 am. No. 5, 2004
R. 97 .....	ad. No. 1, 2004 am. No. 5, 2004
<b>Division 3</b>	
R. 98 .....	ad. No. 1, 2004
R. 99 .....	ad. No. 1, 2004
R. 100 .....	ad. No. 1, 2004
<b>Part 14</b>	
Part 14 .....	ad. No. 4, 2004 rs. No. 1, 2005
R. 101 .....	ad. No. 4, 2004 rs. No. 1, 2005
R. 102 .....	ad. No. 4, 2004 rs. No. 1, 2005
R. 103 .....	ad. No. 4, 2004 rs. No. 1, 2005
R. 104 .....	ad. No. 1, 2005
R. 105 .....	ad. No. 1, 2005 am. No. 3, 2007
R. 105A .....	ad. No. 3, 2007
R. 105B .....	ad. No. 3, 2007
R. 106 .....	ad. No. 1, 2005
R. 107 .....	ad. No. 1, 2005
R. 108 .....	ad. No. 1, 2005
R. 109 .....	ad. No. 1, 2005
R. 110 .....	ad. No. 1, 2005
<b>Part 15</b>	
Part 15 .....	ad. No. 1, 2005
R. 111 .....	ad. No. 1, 2005
R. 112 .....	ad. No. 1, 2005
R. 113 .....	ad. No. 1, 2005
R. 114 .....	ad. No. 1, 2005
<b>Schedule 1</b>	
Schedule 1 .....	am. No. 1, 1991; No. 1, 1992; Nos. 3 and 4, 1993; No. 1, 1995; No. 2, 1998; Nos. 2 and 3, 1999; No. 1, 2000; No. 1, 2001; No. 1, 2002; Nos. 1, 2 and 4, 2004; No. 1, 2005; No. 2, 2007; No. 3, 2007
<b>Schedule 2</b>	
Schedule 2 .....	am. Nos. 1 and 2, 2004

**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
<b>Schedule 3</b>	
Schedule 3.....	am. No. 1, 1991; Nos. 1 and 4, 2004; Nos. 1 and 2, 2007
<b>Schedule 4A</b>	
Schedule 4A.....	ad. No. 2, 1994
<b>Schedule 5</b>	
Schedule 5.....	am. No. 1, 1991; No. 1, 2004
<b>Schedule 6</b>	
Schedule 6.....	am. No. 1, 1991; No. 2, 1998; No. 2, 2007
<b>Schedule 7</b>	
Schedule 7.....	rs. No. 1, 1991; No. 2, 1993 am. No. 1, 2000
<b>Schedule 8</b>	
Schedule 8.....	rs. No. 1, 1991 am. Nos. 1 and 2, 1993; No. 1, 1995; No. 4, 1998; No. 1, 2004; Nos. 1 and 2, 2007
<b>Schedule 9</b>	
Heading to Schedule 9.....	rs. No. 1, 2002
Schedule 9.....	am. No. 1, 1991; No. 3, 1992
<b>Schedule 10</b>	
Schedule 10.....	am. No. 1, 1991; No. 3, 1992; No. 3, 1994
<b>Schedule 10A</b>	
Schedule 10A.....	ad. No. 1, 1991
<b>Schedule 11</b>	
Schedule 11.....	rs. No. 1, 1991 am. No. 1, 2004
<b>Schedule 12</b>	
Schedule 12.....	ad. No. 2, 1998 am. No. 1, 1999; Nos. 1 and 3, 2004; No. 2, 2005

## Note 2

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## Note 2

Rules, Schedule 1, Part 1 — Schedule 1 (item 18) of the *Military Superannuation and Benefits Amendment Trust Deed 2005 (No. 1)* provides as follows:

**[18] Rules, Schedule 1, Part 1, definition of *SIS preservation threshold amount***

*omit*

*Superannuation Industry (Supervision) Regulations 1994*

*insert*

SIS Regulations

The proposed amendment was misdescribed and is not incorporated in this compilation.

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<b>Table A</b>	<b>Application, saving or transitional provisions</b>
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**Military Superannuation and Benefits Trust Deed (Amendment)  
(No. 2, 1992)**

**4 Application**

- 4.1 The amendment made to the Trust Deed by this Instrument does not apply to or in relation to a member who transferred to the MSB scheme under Part XIII of the 1973 Act before the date of commencement of this Instrument.

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**Military Superannuation and Benefits Trust Deed (Amendment)  
(No. 2, 1993)**

**3 Application**

- 3.1 The amendments made to the Rules by clause 4 have effect as if they had been made on 1 October 1991.

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**Military Superannuation and Benefits Trust Deed (Amendment)  
(No. 4, 1993)**

**4 Application and saving**

- 4.1 The amendments made by this Instrument apply in relation to any benefits payable under the Rules in respect of a deceased person who was, at the time of his or her death:
- (a) a member; or
  - (b) a retirement pensioner; or
  - (c) a person in respect of whom a preserved benefit consisting wholly or in part of an employer benefit was applicable;
- only if the person dies on or after 25 June 1993.
- 4.2 The Rules, as in force immediately before 25 June 1993, continue to apply in relation to any benefits payable under the Rules in respect of a deceased person who was, at the time of his or her death:
- (a) a member; or
  - (b) a retirement pensioner; or
  - (c) a person in respect of whom a preserved benefit consisting wholly or in part of an employer benefit was applicable;
- and who died before 25 June 1993.