

**2004-2005-2006-2007**

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**SUPERANNUATION LEGISLATION AMENDMENT BILL 2007**

**EXPLANATORY MEMORANDUM**

(Circulated by authority of the Minister for Finance and Administration,  
Senator the Hon Nick Minchin)

## GENERAL OUTLINE

### SUPERANNUATION LEGISLATION AMENDMENT) BILL 2007

#### OUTLINE

The purpose of the *Superannuation Legislation Amendment Bill 2007* (the Bill) is to make enhancements to the Australian Government civilian and military superannuation schemes. In this regard, the Bill:

- removes, from 1 July 2008, the requirement for contributory members of the Commonwealth Superannuation Scheme (CSS) to make member contributions to the CSS, thereby, generally making all member contributions voluntary and providing members with the same flexibility and incentives to contribute to superannuation that are available to the broader community;
- allows, from 1 July 2008, eligible members of the Public Sector Superannuation Scheme (PSS) to elect to leave the PSS and join another superannuation arrangement for the payment of future contributions, which will provide eligible members with the flexibility for future contributions that is already available to most of the Australian workforce;
- enables, from 1 January 2008, members of the CSS to obtain early release of their funded account balances on severe financial hardship and compassionate grounds;
- provides, from 1 January 2008, for the prospective restoration of previously cancelled spouse pensions;
- makes consequential and technical amendments arising from the Government's *Better Super* reforms;
- ensures that the entitlement to benefits in the *Defence Force Retirement and Death Benefits Act 1973* (DFRDB Act) scheme relating to post retirement marriages is consistent with the treatment in the civilian schemes; and
- addresses an anomaly in the treatment of the benefits payable in the DFRDB Act scheme upon marriage breakdown.

#### **Making CSS Member Contributions Voluntary**

The *Superannuation Act 1976* (CSS Act) includes a requirement for contributory members of the CSS to pay basic member contributions of 5 per cent of their salary for superannuation purposes. The Bill includes amendments to the CSS Act that will remove this requirement and allow CSS contributors to elect, on or after 1 July 2008, to cease making basic member contributions.

Amendments to the *Superannuation Act 1990* (PSS Act) are not required as the necessary changes for the PSS will be made by a PSS Amending Deed.

### **Choice of Fund for PSS Members**

The PSS Act provides the eligibility requirements for membership of the PSS and generally only allows members to cease contributing on leaving employment or on retirement. The Bill includes amendments to that Act that will allow eligible PSS members to elect to cease membership of the scheme, preserve their accumulated PSS benefit and have their future employer contributions paid to an accumulation scheme, thereby having access to the Government's broader choice of fund arrangements. These changes will commence on 1 July 2008.

The Bill also amends the *Superannuation Act 2005* (PSSAP Act) to allow eligible PSS members who have elected to join the Public Sector Superannuation Accumulation Plan (PSSAP) to become members of that scheme.

### **Early Release**

The Bill contains amendments to the CSS Act that will, from 1 January 2008, enable CSS members to obtain early release of their funded account balances on severe financial hardship or compassionate grounds, to the extent allowed under the regulatory framework established under the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

- Early release on severe financial hardship grounds is specified in Regulation 6.01(5) of the *Superannuation Industry (Supervision) Regulations 1994*. Circumstances covered by this regulation might include, for example, to prevent foreclosure by a mortgagee.
- Early release on compassionate grounds is specified in Regulation 6.19A of the *Superannuation Industry (Supervision) Regulations 1994*. Circumstances covered by this regulation might include, for example, to treat life threatening illnesses, for palliative care, funeral and burial expenses.

Amendments to the PSS Act are not required as the necessary changes will be made by a PSS Amending Deed.

### **Pension Restoration**

The Bill will enable the prospective restoration of pensions for persons who have previously had their spouse pensions cancelled upon remarriage.

Prior to 1976, in the *Superannuation Act 1922* (1922 Act) civilian scheme, and 1977, in the *Defence Forces Retirement Benefits Act 1948* (DFRB Act) and DFRDB Act schemes, spouse pensions were cancelled on remarriage. Cancellation never applied in the PSS, CSS or Military Superannuation Benefit Scheme (MSBS).

Although provisions cancelling spouse pensions on remarriage were removed from the 1922 Act scheme in 1976 and the DFRB Act and DFRDB Act schemes in 1977, spouses who remarried before the cancellation provisions were removed continued to be affected by the former provisions.

From 1 January 2008, restrictions on the restoration of spouse pensions that were previously cancelled when a spouse remarried will be removed prospectively upon successful application. The changes will also apply to persons who have previously had their spouse pension only partially restored.

The changes will not affect persons who have already had full restoration of their spouse pension in accordance with the necessitous circumstances provisions of the 1922 Act, DFRB Act or DFRDB Act. Further, the changes will not prevent a person from applying for restoration of their spouse pension on the necessitous circumstances grounds set out in these Acts. In relation to the 1922 Act, while section 48AA is being repealed and substituted, section 48AB can still be relied upon should a person wish to apply for pension restoration on the ground of necessitous circumstances.

The Bill amends relevant provisions in the DFRB Act, the DFRDB Act and the 1922 Act.

### **Amendments in relation to the Government's *Better Super* reforms**

The Bill includes amendments to the CSS Act as a consequence of the Government's *Better Super* reforms. The main amendment will ensure the continued payment of employer productivity contributions for a member who cannot make member contributions because they have not provided their tax file number (TFN). This is consistent with the arrangements in the broader community where employer contributions would still be payable even though the member has not provided their TFN.

The Bill also includes amendments to take account of the payment of amounts from the CSS Fund in relation to release authorities issued by the Commissioner of Taxation and to reflect changed superannuation terminology.

The *Better Super* reforms generally commence from 1 July 2007. The amendments in relation to the CSS Act may commence between 1 July 2007 and 1 July 2008 depending on the particular amendment.

Amendments to the PSS Act are not required as the necessary changes will be made by a PSS Amending Deed.

### **Reversionary benefits for post-retirement marriages**

The Bill also amends the DFRDB Act to improve access to reversionary benefits in certain circumstances where the retirement pensioner commenced a marital relationship after age 60.

Currently, a spouse's pension under the DFRDB Act scheme is generally not payable if the pensioner, who commences a marital relationship after age 60, dies within 5 years of the relationship commencing. The Bill removes the restrictions on the payment of benefits following such post-retirement relationships.

However, a pro-rata rate of spouse's pension will be payable where the relationship existed for less than 3 years immediately before the pensioner's death. Where the resulting rate of pension is small, it may be commuted to a lump sum in some cases.

These amendments will also apply to the MSBS and the necessary changes will be made by amending the MSBS Trust Deed and Rules.

It is proposed that the new post retirement marriage arrangements will commence on a day or days to be fixed by proclamation or 6 months after this Act receives Royal Assent.

These changes will ensure consistency between the military schemes and the civilian schemes.

### **Family Law Splitting**

The Bill will address an anomaly in the Family Law provisions of the DFRDB Act to allow Family Law orders to be applied as intended. As the current legislation stands Family Law orders only apply to a current lump sum or pension. This amendment only applies to a second and subsequent (or later) pension or lump sum that is paid as a result of a period of effective service that begins on or after the day in which this amendment commences.

It is proposed that commencement of this amendment will be on a day or days to be fixed by proclamation or 6 months after this Act receives Royal Assent.

### **Financial Implications**

The amendments relating to voluntary member contributions for CSS members and choice of fund for PSS members are part of a package of measures announced in the 2007-08 Budget which, overall will cost approximately \$160 million over 4 years.

The amendments relating to early release will not have a material Budget impact.

The amendments relating to pension restoration will not have a material Budget impact.

The consequential amendments in relation to the Government's *Better Super* reforms have no financial implications.

Funding for the amendments relating to reversionary benefits for DFRDB Post Retirement Marriages was set aside in the Defence People Plan as part of the 2006-07 Defence Budget which was estimated to cost approximately \$0.6m over 4 years.

The DFRDB technical amendments in relation to Family Law Splitting will not have a material Budget impact.

## TERMS USED IN THE NOTES ON CLAUSES

“**ARIA**” means the Australian Reward Investment Alliance.

“**Bill**” means the *Superannuation Legislation Amendment Bill 2007*.

“**CSS**” means the Commonwealth Superannuation Scheme established under the CSS Act.

“**CSS Act**” means the *Superannuation Act 1976*.

“**CSS Fund**” means the Fund established under the CSS Act.

“**CSS member**” means a person who is an eligible employee for the purposes of the *Superannuation Act 1976*.

“**DFRB Act**” means the *Defence Forces Retirement Benefits Act 1948*.

“**DFRB Act scheme**” means the superannuation scheme under the DFRB Act.

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

“**DFRDB Act scheme**” means the superannuation scheme under the DFRDB Act.

“**PSS**” means the Public Sector Superannuation Scheme established by Trust Deed under the PSS Act.

“**PSS Act**” means the *Superannuation Act 1990*.

“**PSSAP**” means the Public Sector Superannuation Accumulation Plan.

“**PSSAP Act**” means the *Superannuation Act 2005*.

“**PSS Rules**” means the rules for the administration of the PSS made under the PSS Act.

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

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

“**1922 Act**” means the *Superannuation Act 1922*.

## NOTES ON CLAUSES

### **Clause 1: Short title**

**Clause 1** provides for the short title of the Act to be the *Superannuation Legislation Amendment Act 2007*.

### **Clause 2: Commencement**

2. **Clause 2** is the commencement provision for the Bill. The commencement dates for specific provisions are included in the table in subclause 2(1).

3. **Item 1 of the table** provides that Sections 1 to 3 (and anything in the Act not elsewhere covered by the table) commence on the day on which the Act receives the Royal Assent.

4. **Item 2 of the table** provides that Schedules 1 and 2 commence on 1 July 2008. Schedule 1 relates to the removal of mandatory contributions in the CSS and Schedule 2 relates to choice of funds.

5. **Item 3 of the table** provides that Schedule 3 commence on the later of the day on which the Act receives the Royal Assent or 1 January 2008. Schedule 3 relates to early release of CSS members' benefits.

6. **Item 4 of the table** provides that Schedule 4 commences on the day on which the Act receives the Royal Assent. Schedule 4 relates to pension restoration in Australian Government civilian and military superannuation schemes.

7. **Item 5 of the table** provides that Schedule 5, Part 1 commences on a single day to be fixed by Proclamation or if there has been no Proclamation, then on 1 July 2008. Schedule 5, Part 1 relates to amendments in relation to employer productivity contributions as a result of the Government's *Better Super* reforms. It is proposed that the amendments would come into effect before 1 July 2008 if the necessary changes to the administrative systems can be put in place before that date. A commencement date of 1 July 2008 would be consistent with the changes being made in the Bill that relate to the removal of mandatory member contributions in the CSS.

8. **Item 6 of the table** provides that Schedule 5, Part 2 commences on the day on which the Act receives the Royal Assent. Schedule 5, Part 2 relates to release authority payments as a result of the Government's *Better Super* reforms.

9. **Item 7 of the table** provides that Schedule 5, Part 3 commences on 1 July 2007. Schedule 5, Part 3 relates to technical amendments regarding roll-over superannuation benefits as a result of the Government's *Better Super* reforms.



10. **Item 8 of the table** provides that Schedule 6 commences on a day or days to be fixed by Proclamation or if there has been no Proclamation, six months and one day after the day on which the Act received the Royal Assent.

- Part 1 of Schedule 6 ensures that the entitlement to benefits in the DFRDB Act scheme relating to post retirement marriages is consistent with the treatment in the civilian Schemes; and
- Part 2 of Schedule 6 addresses an anomaly in the treatment of the benefits payable in the DFRDB Act scheme upon marriage breakdown.

## **SCHEDULE 1 – AMENDMENTS RELATING TO THE REMOVAL OF MANDATORY CONTRIBUTIONS IN THE CSS**

11. **Schedule 1** contains amendments to the CSS Act to remove the requirement for members of the CSS to pay 5% basic contributions and permit them to elect to pay 0% basic contributions. Special provisions are included in relation to some periods of leave of absence without pay of more than 12 weeks.

### **Items 1 to 5 – Election for 0% basic contributions**

12. **Item 1 of Schedule 1** amends paragraph (b) of the definition of *final annual rate of salary* in subsection 3(1) to include a final basic contribution of nil.

13. **Item 2 of Schedule 1** removes the reference to section 51B in subsection 45(1) because section 51B is repealed by Item 10 of these amendments.

14. **Item 3 of Schedule 1** adds a note to the end of subsection 45(1) which indicates that the amount of basic fortnightly contributions payable might be nil in accordance with subsections 46(2) to (4), which are inserted by these amendments.

15. **Items 4 and 5 of Schedule 1** amend section 46. New subsections (2) to (6) are inserted to permit an eligible employee to elect to pay 0% basic contributions. Where a CSS member makes such an election, basic contributions remain payable but the amount of the contribution payable is nil. An election to pay 0% must be made in writing and given to ARIA. The election will take effect from the first contribution day following the day the written notice is given to ARIA. A member may revoke their election at any time in writing to ARIA, which will similarly take effect from the first contribution day following the day the written notice is given to ARIA. A revocation will have the effect that amount of the fortnightly basic contribution payable will revert to 5% of the CSS member's rate of salary.

### **Items 6 to 9 – Provisions relating to leave of absence without pay**

16. The leave without pay provisions in the CSS Act are generally not being affected. **Items 6 to 9 of Schedule 1** provide that the principles underpinning the existing rules in relation to leave without pay continue to operate in the same way as they did prior to these amendments. Headings have been added to improve the readability of the provisions relating to leave without pay.

17. **Item 6 of Schedule 1** inserts a note at the end of subsection 51(1) to clarify that subsection (3) generally prohibits a person from making contributions during a period of leave of absence without pay (where there is no employer contribution payable). Exceptions to this are “*excluded periods of leave*” (such as compensation leave) and also short periods of leave of 12 weeks or less (where employer contributions continue to be paid). It also inserts subsection headings to allow for easier navigation of the section.

18. **Item 7 of Schedule 1** inserts a new section 51AA which applies to members on certain categories of leave of absence without pay for a period of more than 12 weeks where they had, either before or after commencing the leave, elected to pay 0% basic contributions. The relevant categories of leave are sick leave, compensation leave, and periods of leave for the purpose of engaging in other employment where employer contributions are paid and, consequently, the person must make contributions.

19. Subsection (2) provides that, despite the election to pay 0% basic contributions, the election is effectively suspended during the relevant period of leave of absence and the person is required to make contributions at 5% of his or her rate of salary during that period. As employer contributions are also paid during the period, this will effectively retain the status quo in respect of these categories of leave and ensure that persons on sick leave without pay and compensation leave do not receive a reduced benefit because of that leave. Once the period of the leave of absence has ended, however, the person would recommence to make 0% contributions without making a further election.

20. Subsection (3) provides, consistent with the current framework for such leave, that where a person has been on leave of absence without pay for a period of 12 weeks or less, but is expected to be on the leave of absence for longer than 12 weeks, the person will be taken to be on the leave of absence for a period of more than 12 weeks. The effect of this subsection is that where the leave is expected to extend for more than 12 weeks, the person is required to pay contributions for the entire period including the first 12 weeks.

21. Subsection (4) allows regulations to modify the clause in respect of a person to whom the section applies or a prescribed class of such persons. This is because circumstances may arise whereby it would be necessary to effect a change in a timely manner to avoid a potentially harsh outcome for certain persons.

22. **Item 8 and 9 of Schedule 1** amends subsection 51A(4) to provide that where a person on maternity or parental leave without pay elects to make member contributions during that period, the person must make contributions at 5% of their rate of salary. That is, the person cannot elect to make contributions at 0%.

- The note inserted at the end of subsection 51A(4) clarifies that even where a person had previously elected to pay 0%, if they subsequently elect to make contributions during the period of maternity or parental leave (triggering the requirement for their employer to make employer contributions), they would be required to pay 5%.

### **Items 10, 11 and 12 – Miscellaneous provisions**

23. **Item 10 of Schedule 1** repeals section 51B. This section applies to members with more than 40 years of service and allows them to elect to cease making contributions. This section effectively becomes redundant under these amendments, as all members will generally have the same capacity to elect to pay 0% contributions. A transitional provision is inserted in Item 12 of these amendments to provide for persons for whom an election is in force under this section (see paragraph relating to **Item 12**, below).

24. **Item 11 of Schedule 1** amends the definition of *notional contributions* in subsection 62(2D) to clarify that the reference to the rate at which the person's basic contributions *had been paid* during a period in which they were in receipt of a partial invalidity pension, includes a rate of nil if the person has elected to pay 0% contributions under section 46(2).

25. **Item 12 of Schedule 1** inserts a transitional provision to provide that a person who has made an election under section 51B is taken to have made an election to contribute at 0% under subsection 46(2). An affected person will be able to revoke the election under subsection 46(2) at any time consistent with being able to do so under section 51B.

## **SCHEDULE 2 – AMENDMENTS RELATING TO CHOICE OF FUNDS**

26. **Schedule 2** contains amendments to the PSS Act to permit eligible PSS members to elect to leave that scheme, commence membership of another superannuation scheme for future employer contributions and retain a preserved benefit in the PSS. It also amends the PSSAP Act to allow PSS members who have elected and are eligible to join the PSSAP to become members of that scheme. Where a PSS member is eligible to join the PSSAP and has elected for “choice of fund” they will become a PSSAP member in the first instance.

### **Items 1, 2 and 3 – Ceasing PSS membership**

27. **Items 1 and 2 of Schedule 2** amend paragraphs 6(4)(b) and sub-paragraph 6(5)(d)(i) to provide that a person cannot again become a member of the PSS where they have previously made an election to leave under section 6B. This includes, for example, where a person also has a preserved benefit from a previous membership in the PSS.

28. **Item 3 of Schedule 2** inserts a new section 6B which allows a PSS member who is making member contributions to make an election to ARIA in writing, to leave the PSS in certain circumstances. The circumstances are:

- where a member is not precluded from joining the PSSAP or
- where they are precluded from joining the PSSAP, either:
  - they have a chosen fund that is accepted by the employer; or
  - the member’s employer has agreed to make employer contributions to another superannuation arrangement.

The phrase *PSS member who is making member contributions* is intended to be read broadly and will be defined in the PSS Rules. For example, it will include a member who has elected to make member contributions of 0%, but excludes a member with only a preserved benefit in the PSS.

29. Subsection (3) determines the timing for when, after making an election, a member ceases to become a member of the PSS. A member cannot cease to be a member of the PSS until they have made an election in writing to ARIA and are a member of either the PSSAP, or the other fund to which their employer has agreed to make contributions. This ensures that employees electing for “choice of fund” have continuity of employer contributions.

30. Subsection (4) covers where a member has more than one concurrent membership of the PSS (which can arise, for example, where a person has more than one employer at the same time) and provides that any election to leave the PSS is in respect of all such

memberships. It also provides that a member cannot cease to be a member of the PSS until subsection (3) is satisfied in respect of all current memberships.

31. Subsection (5) ensures that an electing member who initially must become a member of the PSSAP or another particular superannuation arrangement (because of their election to leave the PSS) is able, under the *Superannuation Guarantee (Administration) Act 1992*, to move to a different fund *of their choice* in the 12 month period following the initial election to leave the PSS. Their employer could otherwise refuse to accept another chosen fund within that 12 month period.

#### **Items 4, 5 and 6 – PSSAP membership**

32. **Item 4 of Schedule 2** amends paragraph 13(2)(a) of the PSSAP Act to clarify that a PSS member who has made an election under section 6B of the PSS Act to cease that membership is not precluded from becoming a member of the PSSAP.

33. **Items 5 and 6 of Schedule 2** adds a note under subsection 14(4) to clarify that where the PSSAP is the person's *mandated fund* (under this subsection) they will become a member of the PSSAP (rather than any other fund) at the time they make an election under section 6B of the PSS Act.

### **SCHEDULE 3 – EARLY RELEASE OF BENEFITS**

34. **Schedule 3** amends the CSS Act to enable persons with benefits in the CSS Fund to obtain early release of their funded account balances to the extent allowed by the SIS Act and SIS Regulations on severe financial hardship and compassionate grounds.

35. The early release of superannuation benefits is currently provided for under Schedule 1 to the SIS Regulations. “Severe financial hardship” is defined at SIS Regulation 6.01(5) and “compassionate grounds” are described at SIS Regulation 6.19A.

36. These amendments are required as the early release provisions of the SIS Act and SIS Regulations do not operate automatically on their own terms. That is, to operate in a particular scheme, the rules of that scheme must explicitly allow for early release.

37. The phrase “paid to or for the benefit of the person” has been included in several provisions in this schedule. The intention of this phrase is to ensure that the early release amount is used in relation to the reasons the application was approved. For example, it may be that the early release amount should be provided directly from the CSS Fund to a mortgagee. Further, consistent with the SIS Regulations, the release of an amount for the benefit of the person also includes circumstances where the amount to be released is approved in relation to the person’s dependant.

38. Analogous changes will be made to the PSS Rules by a PSS Amending Deed.

#### **Item 1 – Early release of benefits**

39. **Item 1 of Schedule 3** inserts Division 4A.

40. Section 79A provides certain standard definitions applicable to the new early release provisions. This includes detailing the amounts available for early release.

41. Subsection 79B(1) identifies persons who are eligible to apply for early release of benefits. It provides, for the purposes of the SIS Regulations, that one or more lump sums may be paid to, or on behalf of:

- an eligible employee (a contributory member of the CSS);
- a deferred benefit member (generally a person who ceased membership of the CSS before reaching minimum retiring age, and who has elected to leave all of their benefits in the scheme); or
- a postponed benefit member of the CSS (a person who reached minimum retiring age and became eligible for a CSS age retirement benefit, and who elected to postpone receipt of that benefit).

42. Under subsection 79B(1), the member is not required to be paid the entire (or any of the) amount approved for early release in one lump sum.

- This is to reflect the possibility that between the time of application for early release, and approval being granted, the member's financial or personal circumstances may have changed, resulting in there no longer being a need for the total (or any) amount approved, or there no longer being an immediate need for the total (or any) amount.

43. A **Note** has been added to subsection 79B(1) to explain that where an early release amount has been provided for the benefit of a member, the member's funded account balance in the CSS Fund is to initially be treated as though no amount has been removed, except in the case of considering further early release requests.

- This notional treatment of a member's funded account balance is designed to ensure that a member is not disadvantaged in the course of determining the member's final benefit. However, the notional treatment will not apply in relation to valuing benefits for the purpose of Family Law splitting arrangements.

44. Subsection 79B(2) makes it clear that a person who is entitled to apply, can do so more than once, provided that there is still a funded amount of accrued superannuation benefit available.

45. Subsection 79C(1) limits the amount available for early release to the person's funded account balance less any amount already released.

46. Subsection 79C(2) requires that the early release lump sum is paid out of the CSS Fund. **Item 2**, which is explained below, is relevant to subsection 79C(2).

47. Section 79C(3) provides that no other benefits become payable because an early release amount becomes payable to a person. This section is required as there are existing provisions in the CSS Act which trigger the payment of a person's total benefit on release of any part of that benefit.

48. Section 79D provides for the calculation of a member's final benefit where that member has been paid an early release amount. Subsection 79D(1) explains that the section applies where a member has been paid an early release amount and the member's final benefit has become payable.

49. Subsection 79D(2) makes it clear that a member's final benefit must be reduced where the member has been paid an early release amount. That is, there is no discretion for ARIA to decide not to reduce the member's final benefit to reflect the member's early release deduction amount. However, the subsection provides ARIA with the discretion to determine the method for calculating the amount of the reduction to the member's final benefit.

- The discretion provided to ARIA in relation to the methodology will enable ARIA to consider the appropriate way of reducing the member's funded benefit to adequately reflect the early release deduction amount.



**Item 2 – Payment from CSS Fund to person**

50. Related to the new subsection 79C(2), **item 2** adds a note at the end of subsection 112(2) of the CSS Act explaining that the early release lump sum is to be paid out of the CSS Fund (and not the Consolidated Revenue Fund (CRF)). This means that the early release amount will not be returned from the CSS Fund to the CRF prior to being paid to, or on behalf of, the person. This approach will reduce administrative complexity.

**Item 3 – Payment from CSS Fund to CRF**

51. **Item 3** inserts subsection 112(10D) into the CSS Act. This subsection makes it clear that where amounts have to be paid from the CSS Fund to the CRF the amounts payable are to take into account any early release deduction amount. This will ensure that the amount provided by the CSS Fund to the CRF reflects the remaining funded account balance of the member.

## **SCHEDULE 4 – PENSION RESTORATION IN AUSTRALIAN GOVERNMENT CIVILIAN AND MILITARY SUPERANNUATION SCHEMES**

52. **Schedule 4** amends the DFRDB Act, DFRB Act and the 1922 Act to remove the requirement for a widow or widower of a beneficiary under those schemes, to prove necessitous circumstances or that the restoration of the pension is otherwise warranted when applying for the restoration of a pension than was previously cancelled on re-marriage.

53. These provisions will provide for the full restoration (upon successful application) of spouse pensions previously cancelled upon on remarriage, including where pensions have already been partially restored.

54. The amendments made by this Bill will not prevent a widow or widower from making an application for full or partial restoration of their spouse pension on the existing grounds of necessitous circumstances or that the restoration of the pension is otherwise warranted.

### **Items 1 to 5 – Defence Force Retirement and Death Benefits Act 1973**

55. **Item 1** inserts a new section 44 to allow for the prospective restoration of certain widow and widower's pensions that were previously cancelled on remarriage to be reinstated at the rate at which the pension would have been payable if the pension had not ceased.

56. The restoration will take effect on or after 1 January 2008, subject to the receipt of a successful application by the DFRDB Authority. The widow or widower may submit an application to the DFRDB Authority after this part receives Royal Assent, even though the restoration will only commence on or after 1 January 2008.

57. **Item 2** inserts a reference to the new section 44 into the definitions in relation to Family Law superannuation splitting.

58. **Items 3, 4 and 5** inserts a reference to the new section 44 into the definitions in relation to pension increases.

### **Item 6 – Defence Forces Retirement Benefits Act 1948**

59. **Item 6** inserts a new section 64A to allow for the prospective restoration of certain widow and widower's pensions that were previously cancelled on remarriage to be reinstated at the rate at which the pension would have been payable if the pension had not ceased.

60. The restoration will take effect on or after 1 January 2008, subject to the receipt of a successful application by the DFRDB Authority. The widow or widower may submit an

application to the DFRDB Authority after this part receives Royal Assent, even though the restoration will not commence until on or after 1 January 2008.

**Item 7 – Superannuation Act 1922 (1922 Act)**

61. **Schedule 4** repeals section 48AA of the 1922 Act and substitutes a new section 48AA.

62. Section 48AA(1) allows a person to apply for the restoration of a spouse pension that was previously cancelled on remarriage. This provision is also relevant for persons who have had partial restoration of their pension.

63. Section 48AA(2) provides that once satisfied that a person's application is valid, the Commissioner must grant full restoration of the pension at the rate the person would now have been receiving had the pension never been cancelled.

64. Section 48AA(3) specifies that the commencement date for the payment of the pension is the day the Commissioner receives the application. This is, however, subject to:

- a successful application; and
- a commencement date of no earlier than 1 January 2008.

65. For the avoidance of doubt, section 48AA(3) ensures that the restoration will not be retrospective to the date that the pension was cancelled. The pension will not commence until the Commissioner is satisfied that the applicant is entitled to the pension. However, if the Commissioner is satisfied, the pension will be backdated to the date the application is received (with the exception of applications received before 1 January 2008 as explained in relation to Item 8 below). This will ensure that a person will not be adversely affected if an extended period of time elapses before a final decision is made.

**Item 8 – Application**

66. **Item 8** specifies that the amendments will commence from Royal Assent, but that the payment of a pension cannot commence prior to 1 January 2008. However, from Royal Assent, applications will be able to be received and considered before 1 January 2008. This will enable payments, where possible, to begin from 1 January 2008.

## **SCHEDULE 5 – AMENDMENTS IN RELATION TO THE GOVERNMENT’S BETTER SUPER REFORMS**

67. Schedule 5 of the Bill amends the CSS Act mainly as a result of changes made to the broader superannuation framework under the Government’s *Better Super* reforms.

### **Part 1 – Employer productivity contributions**

#### **Items 2 and 3 – Payment of employer productivity contributions**

68. Part VIA of the CSS Act provides for the payment of productivity contributions by employers to the CSS Fund on behalf of an employee who is both a CSS member and productivity employee. Section 110H provides that a productivity contribution is payable when a basic contribution (member contribution) is payable by the CSS member or where an employer of a CSS member is required under an industrial award (as defined in the CSS Act) to pay superannuation contributions similar to productivity contributions on behalf of their employees.

69. Productivity contributions are payable on each contribution day on which the employee is required to pay a basic contribution.

70. Under the *Better Super* reforms, a person will not be able to make basic (member) contributions to the CSS Fund if they have not provided their tax file number (TFN). Without changes to the CSS Act, productivity contributions would also not be payable in respect of the person.

71. Therefore, it is proposed to amend the CSS Act to ensure that that productivity contributions remain payable in this situation. This will ensure that CSS members who do not provide a TFN are treated similarly to members of the broader community.

72. **Item 2** repeals the current paragraph 110H(2)(b) of the CSS Act and substitutes a new paragraph 110H(2)(b). The substituted paragraph will in effect provide that productivity contributions will be payable where an employee is not able to make a basic contribution because they have not quoted (for superannuation purposes) their TFN to the ARIA. As is currently the case, productivity contributions will also continue to be payable where they are required under an industrial award.

73. **Item 3** inserts a new subsection 110H(2B) to provide that, where productivity contributions are payable in respect of an employee who has not quoted their TFN number, those contributions are to be made on the contribution day on which the employee’s basic contribution would have been payable. This is consistent with the current arrangements for the payment of productivity contributions.

74. The proposed date of effect for items 2 and 3 is the earlier of 1 July 2008 or Proclamation. It is proposed that the amendments would come into effect before 1 July 2008 if the necessary changes to the administrative systems can be put in place before that date. A commencement date of 1 July 2008 would be consistent with the changes being made in the Bill that relate to the removal of mandatory basic contributions in the CSS.

#### **Item 1 – Drafting correction**

75. **Item 1** corrects a drafting error in paragraph 110H(1)(b) of the CSS Act.

#### **Item 4 – Application provision**

76. **Item 4** provides that the amendments made by items 2 and 3 will apply in respect of the first fortnight beginning on the first contribution day on or after the amendments commence.

#### **Part 2 – Release authority payments**

77. Under the *Better Super* reforms, from 1 July 2007 superannuation contributions will be subject to annual caps. Contributions in excess of the relevant caps will be subject to additional tax (excess contributions tax) which can be paid from an interest (other than a defined benefit interest) held in a member's superannuation fund through the provision of a release authority to the fund. It is not necessary for the release authority to be provided to the fund to which excessive contributions were made.

78. Amounts held in the CSS Fund that come within Part VIAB and Subdivision B of Division 2 of Part IX of the CSS Act are not defined benefit interests for the purpose of the new superannuation reforms and therefore can be subject to a release authority.

#### **Item 5 – Definition of benefit**

79. **Item 5** amends the definition of 'benefit' in subsection 3(1) of the CSS Act. This will make it clear that a payment in respect of a release authority is not a benefit payment for the purposes of the CSS Act. This will ensure, for example, that the payment does not fall within the provisions of subsection 112(2) of the CSS Act, and therefore have to be paid from the CRF. It will also ensure that other benefits payable under the CSS Act do not become payable because of a payment in respect of a release authority.

**Items 6 and 7 – Reduction of benefits in respect of certain amounts held in the CSS Fund**

80. Part VIAB of the CSS Act provides for the payment to the CSS Fund of certain amounts held in other superannuation funds. These amounts relate to superannuation on performance based pay and additional amounts that CSS members held in other funds. These amounts remain in the CSS Fund until other benefits become payable, accumulating with interest as determined by ARIA.

81. **Item 6** amends section 110SN of the CSS Act as a consequence of the insertion of subsection 110SN(2) by item 7 of this Schedule.

82. **Item 7** inserts a new subsection 110SN(2) into the CSS Act. This new subsection provides that any benefit payable to the member under Part VIAB is to be reduced to take account of any previously paid amount in respect of a release authority (including a transitional release authority) given to ARIA. The amount takes account of interest that would have been paid if no amount had been paid in respect of a release authority. This is necessary as other provisions in the CSS Act assume that those amounts remain in the CSS Fund until benefits are paid.

83. A **note** is also being added to new subsection 110SN(2) to explain that a payment made out of the CSS Fund in respect of a release authority (including a transitional release authority) is not a benefit payment. The note also includes a reference back to subsection 3(1) of the CSS Act.

**Items 8 and 9 – Reduction of benefits in respect of transfer amounts held in the CSS Fund**

84. Subdivision B of Division 2 of Part IX of the CSS Act provides for the payment to the CSS Fund of amounts that come within the definition of ‘transfer amount’ in section 130A of the CSS Act. These include amounts held in other superannuation funds. These amounts remain in the CSS Fund until other benefits become payable, accumulating with interest as determined by ARIA.

85. **Item 8** amends subsection 130D(1) as a consequence of the insertion of subsection 130D(3) made by item 9 of this Schedule.

86. **Item 9** inserts a new subsection 130D(3) into the CSS Act. This new subsection provides that any benefit payable to the member under Subdivision B of Division 2 of Part IX is to be reduced to take account of any previously paid amount in respect of a release authority (including transitional release authority) given to ARIA. The amount takes account of interest that would have been paid if no amount had been paid in respect of a release authority. This is necessary as other provisions in the CSS Act assume that those amounts remain in the CSS Fund until benefits are paid.

87. A **note** is also being added to new subsection 130D(3) to explain that a payment made out of the CSS Fund in respect of a release authority (including a transitional release authority) is not a benefit payment. The note also includes a reference back to subsection 3(1) of the CSS Act.

#### **Item 10 – Application provision**

88. **Item 10** provides that the amendments made by **items 5 to 9** apply to benefits payable after the amendments commence regardless of when the release authority is given to ARIA.

#### **Part 3 – Roll-over superannuation benefits**

89. Subdivision B of Division 2 of Part IX of the CSS Act provides for the payment to the CSS Fund of amounts that come within the definition of ‘transferred amount’ in section 130A of the CSS Act.

90. Paragraph (b) of the definition refers to an amount that is an eligible termination payment for the purposes of the *Income Tax Assessment Act 1936* whilst paragraph (a) refers to amounts paid from a superannuation entity other than because of a person’s physical or mental incapacity to perform his or her duties.

#### **Item 11 – Consequential amendments**

91. **Item 11** repeals the current section 130A of the CSS Act and substitutes a new section 130A to ensure that the terminology used to describe the amounts that can be accepted by the CSS Fund is consistent with the changes made by the *Better Super* reforms. The new section 130A also takes account that it will no longer be possible to identify whether an amount paid from a superannuation entity is as a result of a person’s physical or mental incapacity to perform his or her duties.

92. As under the previous section 130A, an amount paid to or in respect of a person in accordance with the SG Act upon cessation of his or her employment or an amount payable in respect of a person under the Superannuation (*Government Co-contribution for Low Income Earners*) Act 2003 will be able to be paid into the CSS Fund.

#### **Item 12 – Application provision**

93. **Item 12** provides that the amendment made by item 11 applies from 1 July 2007. This ensures that CSS members will not be disadvantaged by the change from 1 July 2007 in the terminology used to describe amounts that can be accepted by a superannuation fund.

## **SCHEDULE 6 – MILITARY SUPERANNUATION**

### **Part 1 – Reversionary Benefits for Post Retirement Marriages**

#### **Items 1 to 3 – Defence Force Retirement and Death Benefits Act 1973**

94. **Item 1** repeals subsection 6B(2) and substitutes with a new description of a spouse who survives a deceased person.

95. **Item 2** repeals subsection 6B(3)(c) that related to a marital relationship that began after age 60 (post retirement marriage). The repealing of this subsection removes the restriction of a marriage having to last 5 years before a spouse's benefit can receive a pension.

96. **Item 3** inserts a new section 6BA to allow a post retirement marriage as having to last only 3 years before a spouse's pension is payable. The amendments will also allow a pro-rata rate of a spouse's pension where the relationship existed for less than 3 years immediately before the pensioner's death. The amendments also make provision for a resulting rate of pension that is less than or equal to an amount prescribed in the regulations to be commuted to a lump sum. These amendments will also apply to the Military Superannuation Benefit Scheme Rules which will be made by Trust Deed.

97. These changes will ensure consistency between the military schemes and the Australian Government Civilian schemes.

#### **Item 4 – Application**

98. **Item 4** specifies that the new post retirement marriage arrangements will apply in respect of any spouse who survives a deceased person if the death of the deceased person occurs after Part 1 commences. As mentioned previously, Schedule 6 commences on a day or days to be fixed by Proclamation or if there has been no Proclamation, six months and one day after the day on which the Act received the Royal Assent.

### **Part 2 – Family Law Superannuation Splitting**

#### **Item 5 – Defence Force Retirement and Death Benefits Act 1973**

99. **Item 5** inserts a new provision to address an anomaly that occurred when the initial Family Law amendments were applied to the Act. The new provision will provide for Family Law Orders to apply to a second or subsequent (or later) pension and lump sums that become payable to be reduced to the amount calculated under the Orders.



**Item 6 – Application**

100. **Item 6** provides for a technical amendment to apply in relation to a later pension or a lump sum amount, which is paid as a result of a period of effective service that begins on or after the day on which this part commences.