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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Superannuation Legislation Amendment
Bill 2007**

No. , 2007

(Finance and Administration)

**A Bill for an Act to amend the law relating to
superannuation, and for related purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **superannuation, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Superannuation Legislation*
6 *Amendment Act 2007*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

| Commencement information | | |
|---------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent. | |
| 2. Schedules 1 and 2 | 1 July 2008. | 1 July 2008 |
| 3. Schedule 3 | The later of: (a) the day on which this Act receives the Royal Assent; and (b) 1 January 2008. | |
| 4. Schedule 4 | The day on which this Act receives the Royal Assent. | |
| 5. Schedule 5, Part 1 | A single day to be fixed by Proclamation. However, if the provision(s) do not commence before 1 July 2008, they commence on that day. | |
| 6. Schedule 5, Part 2 | The day on which this Act receives the Royal Assent. | |
| 7. Schedule 5, Part 3 | 1 July 2007. | 1 July 2007 |
| 8. Schedule 6 | A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period. | |

1 Note: This table relates only to the provisions of this Act as originally
2 passed by both Houses of the Parliament and assented to. It will not be
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

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3 Schedule(s)

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

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Schedule 1—Basic contributions

Superannuation Act 1976

1 Subsection 3(1) (paragraph (b) of the definition of *final annual rate of salary*)

After “final basic contribution”, insert “(including a final basic contribution of nil)”.

2 Subsection 45(1)

Omit “, 51B”.

3 At the end of subsection 45(1)

Add:

Note: The amount of fortnightly basic contributions payable might be nil (see subsection 46(2)).

4 Section 46

Before “The”, insert “(1)”.

5 At the end of section 46

Add:

(2) However, an eligible employee may elect that the amount of the fortnightly basic contribution payable by the employee is an amount equal to 0% of the fortnightly rate of salary referred to in subsection (1).

Note: The election is suspended during some periods of leave of absence without pay of more than 12 weeks (see sections 51A and 51AA).

(3) To avoid doubt, while an election made by an eligible employee under subsection (2) is in force:

(a) basic contributions continue to be payable by the employee; and

(b) the amount of basic contribution that is payable by the employee is nil.

(4) An eligible employee may revoke an election at any time.

1 (5) An eligible employee who makes an election under subsection (2),
2 or revokes an election under subsection (4), must give written
3 notice of the election or revocation to the Board.

4 (6) An election under subsection (2), or a revocation under
5 subsection (4), takes effect from the first contribution day
6 following the day on which notice of the election or revocation is
7 given to the Board.

8 **6 At the end of subsection 51(1)**

9 Add:

10 Note: Subsection (3) prohibits a person to whom this section applies from
11 making contributions during the period of leave of absence without
12 pay.

13 Note 1: The following heading to subsection 51(1) is inserted “*Scope of section*”.

14 Note 2: The following heading to subsection 51(2) is inserted “*Excluded periods (during which*
15 *person is permitted to make contributions)*”.

16 Note 3: The following heading to subsection 51(2A) is inserted “*Certain transfers of*
17 *employment (during which person is permitted to make contributions)*”.

18 Note 4: The following heading to subsection 51(2BC) is inserted “*Minister and Board*
19 *agreements that period is an excluded period*”.

20 Note 5: The following heading to subsection 51(3) is inserted “*Prohibition on making*
21 *contributions during period of unpaid leave*”.

22 Note 6: The following heading to subsection 51(5) is inserted “*Anticipating that a person will*
23 *be on unpaid leave for more than 12 weeks*”.

24 Note 7: The following heading to subsection 51(6) is inserted “*Section does not apply to*
25 *maternity and parental leave etc.*”.

26 **7 After section 51**

27 Insert:

28 **51AA Leave of absence without pay where basic contributions are of**
29 **0%**

- 30 (1) This section applies to a person if:
- 31 (a) the person is, or at any time has been, an eligible employee;
 - 32 and
 - 33 (b) the person, while an eligible employee, has been on leave of
 - 34 absence without pay for a period of more than 12 weeks; and
 - 35 (c) paragraph 51(2)(b), (d), (da), (f) or (g) applies in respect of
 - 36 the period; and
-

1 (d) the person has (whether before or after the period of leave
2 began) made an election under subsection 46(2)
3 (contributions of 0%) that is in force.

4 (2) Despite the election made under subsection 46(2), the person is
5 required to make contributions, on each contribution day occurring
6 during the period of leave, of the amount that is payable under
7 subsection 46(1).

8 Note: Subsection 46(1) requires a person to pay 5% of his or her fortnightly
9 rate of salary. However, the person would be permitted to make
10 contributions of 0% after the period of leave ends (without making a
11 further election).

12 (3) For the purposes of this section, an eligible employee is taken to
13 have been on leave of absence without pay for a period of more
14 than 12 weeks if:

15 (a) the employee has been on leave of absence without pay for a
16 period of less than 12 weeks; but

17 (b) the employee is expected to be on leave of absence without
18 pay for a period of more than 12 weeks.

19 (4) The regulations may modify the operation of this section in relation
20 to:

21 (a) a person to whom this section applies; or

22 (b) a prescribed class of such persons.

23 **8 Subsection 51A(4)**

24 After “would be payable”, insert “under subsection 46(1) (despite any
25 election in force under subsection 46(2))”.

26 **9 At the end of subsection 51A(4)**

27 Add:

28 Note: Subsection (4) requires a person to pay 5% of his or her fortnightly
29 rate of salary even if an election by the person to pay 0% of that salary
30 is in force under subsection 46(2). However, the person would be
31 permitted to make contributions of 0% after the period covered by the
32 election under subsection (3) ends (without making a further election
33 under subsection 46(2)).

34 **10 Section 51B**

35 Repeal the section.

36 **11 Subsection 62(2D) (definition of *Notional contributions*)**

1 After “would have been paid”, insert “(including, if the person has
2 made an election that is in force under subsection 46(2), at the rate of
3 nil)”.

4 **12 Transitional provision**

5 A person who has made an election, under section 51B of the
6 *Superannuation Act 1976*, that is in force immediately before this item
7 commences is taken to have made an election under subsection 46(2) of
8 that Act (as inserted by item 5 of this Schedule).

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Schedule 2—Choice of funds

4
Superannuation Act 1990

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1 Paragraph 6(4)(b)

6 After “Public Sector Superannuation Scheme”, insert “(other than as a
7 result of an election under section 6B)”.

8
2 Subparagraph 6(5)(d)(i)

9 After “Public Sector Superannuation Scheme”, insert “(other than as a
10 result of an election under section 6B)”.

11
3 After section 6A

12 Insert:

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**6B Election by certain people to leave the Public Sector
Superannuation Scheme**

- 15 (1) A member of the Public Sector Superannuation Scheme, who is
16 making member contributions (within the meaning of the Rules),
17 may elect to cease to be a member of the Scheme if:
- 18 (a) the member is not precluded by or under the *Superannuation*
19 *Act 2005* from being a member of PSSAP (other than by
20 paragraph 13(2)(a) of that Act); or
 - 21 (b) if paragraph (a) of this subsection does not apply—both of
22 the following apply:
 - 23 (i) the member wants a fund to be a chosen fund for the
24 member (within the meaning of Part 3A of the
25 *Superannuation Guarantee (Administration) Act 1992*);
 - 26 (ii) the member’s employer has not refused to accept the
27 chosen fund; or
 - 28 (c) if neither paragraph (a) nor (b) applies—the member’s
29 employer has agreed to make employer contributions to:
 - 30 (i) a complying superannuation fund (within the meaning
31 of the *Superannuation Industry (Supervision) Act 1993*);
32 or
 - 33 (ii) a retirement savings account (within the meaning of the
34 *Retirement Savings Accounts Act 1997*).

-
- 1 (2) The election must be given to the Board in writing.
- 2 (3) After making an election, the member ceases to be a member of the
3 Public Sector Superannuation Scheme:
- 4 (a) if paragraph (1)(a) applies—at the time when the member
5 becomes a member of PSSAP; or
- 6 (b) if paragraph (1)(b) applies—at the time when the fund
7 becomes a chosen fund for the member; or
- 8 (c) if paragraph (1)(c) applies—the later of the following times:
- 9 (i) when the member becomes a member of the complying
10 superannuation fund, or begins to hold a retirement
11 savings account, (as the case requires);
- 12 (ii) when the election is given to the Board.
- 13 (4) If the member is a member of the Public Sector Superannuation
14 Scheme as a result of holding more than one office or position of
15 employment, or as a result of holding an office or position of
16 employment during more than one period:
- 17 (a) the member is required to satisfy subsection (1) in respect of
18 each membership in the Scheme; and
- 19 (b) the member must make an election to cease to be a member
20 of the Scheme in respect of membership in the Scheme; and
- 21 (c) the member does not cease to be a member of the Scheme
22 until the member has ceased to be a member under
23 subsection (3) in respect of each membership of the Scheme.
- 24 (5) For the purposes of section 32FA of the *Superannuation*
25 *Guarantee (Administration) Act 1992* (employer’s refusal to accept
26 chosen fund), a member does not choose another fund merely
27 because (as mentioned in subsection (3) of this section):
- 28 (a) the member becomes a member of PSSAP; or
- 29 (b) a fund becomes a chosen fund for the member; or
- 30 (c) the member becomes a member of a complying
31 superannuation fund or begins to hold a retirement savings
32 account.

33 ***Superannuation Act 2005***

34 **4 Paragraph 13(2)(a)**

1 After “PSS”, insert “(other than a member of the PSS who has made an
2 election under section 6B of the *Superannuation Act 1990*)”.

3 **5 Subsection 14(4) (note)**

4 Omit “Note”, substitute “Note 1”.

5 **6 At the end of subsection 14(4)**

6 Add:

7 Note 2: If a person makes an election under section 6B of the *Superannuation*
8 *Act 1990* to cease to be a member of the PSS, and the PSSAP is the
9 person’s mandated fund, the person is taken to become a member of
10 the PSSAP in accordance with this subsection at the time that the
11 election is given to the Board.

1 **Schedule 3—Early release of benefits**
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4 *Superannuation Act 1976*

5 **1 After Division 4 of Part V**

6 Insert:

7 **Division 4A—Early release of benefits**

8 **79A Definitions**

9 (1) In this Division:

10 *available early release amount*, in relation to a person at a
11 particular time, means the difference between the person's early
12 release amount at that time and the person's early release deduction
13 amount at that time.

14 *compassionate ground* has the same meaning as in regulation 6.01
15 of the *Superannuation Industry (Supervision) Regulations 1994*.

16 *deferred benefit member* means a person, who has ceased to be an
17 eligible employee, to or in respect of whom a deferred benefit has
18 not been paid.

19 *early release amount*, in relation to a person at a particular time,
20 means the sum of the following amounts:

- 21 (a) the person's accumulated basic contributions;
22 (b) the person's accumulated supplementary contributions;
23 (c) the person's accumulated employer contributions
24 (disregarding any amounts mentioned in paragraphs
25 110Q(1)(c) and (d));
26 (d) the amount (if any) payable in respect of the person under
27 section 110SN;
28 (e) the amount of the benefit payable to the person under
29 Subdivision B of Division 2 of Part IX.

30 Note: This definition is affected by subsection (2).

31 *early release deduction amount*, in relation to a person at a
32 particular time, means the total of the following:

- 1 (a) the amount of each early release lump sum previously paid to
2 or for the benefit of the person;
3 (b) interest on the amount of each such early release lump sum
4 for the period beginning at the time the early release lump
5 sum is paid and ending at the particular time.

6 **early release lump sum** has the meaning given by section 79B.

7 **severe financial hardship** has the same meaning as in regulation
8 6.01 of the *Superannuation Industry (Supervision) Regulations*
9 *1994*.

- 10 (2) For the purposes of the definition of **early release amount**, work
11 out the sum of the amounts referred to in that definition:
12 (a) in the case of an eligible employee—as if the person ceased
13 to be an eligible employee at that time; or
14 (b) in the case of a deferred benefit member—as if the person
15 ceased to be a deferred benefit member at that time; or
16 (c) in the case of a person who has made an election under
17 section 110T—as if the person’s benefit became payable at
18 that time.

19 Note: The components that make up a person’s early release amount might
20 be reduced if the Board has received, under Part IXB (family law
21 superannuation splitting), a splitting agreement or splitting order in
22 relation to the person’s superannuation interest.

23 **79B Early release of benefits**

- 24 (1) For the purposes of the *Superannuation Industry (Supervision)*
25 *Regulations 1994*, a lump sum (the **early release lump sum**) may
26 be paid, on the grounds of severe financial hardship or on
27 compassionate grounds, in accordance with those regulations, to or
28 for the benefit of the following persons:
29 (a) an eligible employee;
30 (b) a deferred benefit member;
31 (c) a person who has made an election under section 110T
32 (postponement of benefits).

33 Note: The components that make up the person’s early release amount are
34 not reduced when an early release lump sum is paid. However, when a
35 benefit to which the person is entitled under this Act becomes payable
36 to the person, the amount of the benefit is reduced to reflect any
37 previous early release lump sums paid to or for the benefit of the
38 person (see section 79D).

- 1 (2) To avoid doubt, more than one early release lump sum can be paid
2 to or for the benefit of a person.

3 **79C Requirements relating to early release of benefits**

- 4 (1) In addition to any requirements in the *Superannuation Industry*
5 *(Supervision) Regulations 1994*, the amount of an early release
6 lump sum paid to or for the benefit of a person at a particular time
7 must not exceed the person's available early release amount at that
8 time.

9 *Payment to be made to or for the benefit of a person*

- 10 (2) Despite section 112 of this Act (payments from the Consolidated
11 Revenue Fund), an early release lump sum that is payable to or for
12 the benefit of a person must be paid out of the Superannuation
13 Fund to or for the benefit of the person.

14 *Benefit does not become payable*

- 15 (3) For the purposes of this Act, merely because an early release lump
16 sum becomes payable to or for the benefit of a person does not
17 mean a benefit to which the person is entitled under this Act
18 becomes payable.

19 **79D Calculation of benefits after payment of early release lump**
20 **sums**

- 21 (1) This section applies if:
22 (a) an early release lump sum is paid to or for the benefit of a
23 person; and
24 (b) a benefit to which the person is entitled under this Act
25 becomes payable to the person at a particular time.
- 26 (2) The amount of the benefit to which the person is entitled to be paid
27 at that time must be reduced to reflect the person's early release
28 deduction amount at that time. However, the method of working
29 out the amount of the reduction is to be determined by the Board.

30 **2 At the end of subsection 112(2)**

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Schedule 4—Restoration of pensions for remarried widows and widowers

Defence Force Retirement and Death Benefits Act 1973

1 At the end of Division 2A of Part VI

Add:

44 Restoration of pensions for remarried widows and widowers

- (1) A widow or widower whose entitlement to a pension under section 39 has ceased on his or her remarriage may apply to the Authority for:
 - (a) restoration of the pension; or
 - (b) restoration of the full rate of the pension.
- (2) If the Authority is satisfied that the widow or widower’s entitlement to a pension ceased on his or her remarriage, the Authority must, in writing, grant the pension at the rate at which the pension would have been payable to the widow or widower if the pension had not ceased.
- (3) The pension is payable to the widow or widower at that rate from the day on which the Authority receives the application.
- (4) If the Authority grants a person a pension under this section at a particular rate, the grant at that rate does not effect:
 - (a) any other person’s entitlement under this Act to any other pension benefit; or
 - (b) the rate of such a pension benefit.

2 Section 49A (paragraph (d) of the definition of *standard pension*)

After “43A”, insert “or 44”.

3 Subsection 98A(1) (definition of *pension benefit*)

After “43A”, insert “or 44”.

4 Paragraph 98B(4)(f)

1 After “43A”, insert “or 44”.

2 **5 Subsection 98D(2)**

3 After “43A”, insert “or 44”.

4 ***Defence Forces Retirement Benefits Act 1948***

5 **6 After section 64**

6 Insert:

7 **64A Restoration of pensions for remarried widows and widowers**

8 (1) A widow or widower whose entitlement to a pension under
9 subsection 55(1) or 57(1) has ceased on his or her remarriage may
10 apply to the Authority for:

11 (a) restoration of the pension; or

12 (b) restoration of the full rate of the pension.

13 (2) If the Authority is satisfied that the widow or widower’s
14 entitlement to a pension ceased on his or her remarriage, the
15 Authority must, in writing, grant the pension at the rate at which
16 the pension would have been payable to the widow or widower if
17 the pension had not ceased.

18 (3) The pension is payable to the widow or widower at that rate from
19 the day on which the Authority receives the application.

20 (4) If the Authority grants a person a pension under this section at a
21 particular rate, the grant at that rate does not effect:

22 (a) any other person’s entitlement under this Act to any other
23 pension; or

24 (b) the rate of such a pension.

25 ***Superannuation Act 1922***

26 **7 Section 48AA**

27 Repeal the section, substitute:

1 **48AA Restoration of widow's or widower's pension previously**
2 **cancelled on remarriage**

- 3 (1) A widow or widower whose entitlement to a pension under
4 subsection 46(1) or 47(1) has ceased on his or her remarriage may
5 apply to the Commissioner for:
6 (a) restoration of the pension; or
7 (b) restoration of the full rate of the pension.
- 8 (2) If the Commissioner is satisfied that the widow or widower's
9 entitlement to a pension ceased on his or her remarriage, the
10 Commissioner must, in writing, grant the pension at the rate at
11 which the pension would have been payable to the widow or
12 widower if the pension had not ceased.
- 13 (3) The pension is payable to the widow or widower at that rate from
14 the day on which the Commissioner receives the application.

15 **8 Application**

- 16 (1) The amendments made by this Schedule apply in respect of any
17 application for restoration of a pension, or for restoration of the full rate
18 of a pension, that is made on or after the day on which this Schedule
19 commences.
- 20 (2) If an application made before 1 January 2008 is granted, the pension is
21 payable at the full rate only from 1 January 2008 (despite the following
22 provisions:
23 (a) subsection 44(3) of the *Defence Force Retirement and Death*
24 *Benefits Act 1973* (as inserted by item 1 of this Schedule);
25 (b) subsection 64A(3) of the *Defence Forces Retirement Benefits*
26 *Act 1948* (as inserted by item 6 of this Schedule);
27 (c) subsection 48AA(3) of the *Superannuation Act 1922* (as
28 inserted by item 7 of this Schedule)).

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2 **Schedule 5—Amendments relating to better**
3 **superannuation**

4 **Part 1—Employer productivity contributions**

5 *Superannuation Act 1976*

6 **1 Paragraph 110H(1)(b)**

7 Omit “subsection (2)”, substitute “subsection (2A)”.

8 **2 Paragraph 110H(2)(b)**

9 Repeal the paragraph, substitute:

10 (b) if paragraph (a) does not apply:

- 11 (i) the productivity contribution is required to be paid in
12 respect of the employee by an industrial award; or
13 (ii) a basic contribution would be payable by the employee
14 for the fortnight if the employee’s tax file number had
15 been quoted (for superannuation purposes), within the
16 meaning of the *Income Tax Assessment Act 1997*, to the
17 Board.

18 **3 After subsection 110H(2A)**

19 Insert:

20 (2B) If subparagraph (2)(b)(ii) applies, the productivity contribution in
21 respect of the employee for the fortnight is payable on the
22 contribution day on which the basic contribution would have been
23 payable if the employee’s tax file number had been quoted (for
24 superannuation purposes), within the meaning of the *Income Tax*
25 *Assessment Act 1997*, to the Board.

26 **4 Application**

27 The amendments made by items 2 and 3 of this Schedule apply in
28 relation to the fortnight beginning on the first contribution day on or
29 after the day the amendments commence, and each later fortnight.

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Part 2—Release authority payments

Superannuation Act 1976

5 Subsection 3(1) (definition of *benefit*)

Repeal the definition, substitute:

benefit means pension or other benefit payable under this Act, but does not include a payment made out of the Fund that is required to be made under:

- (a) a release authority given to the Board under section 292-410 of the *Income Tax Assessment Act 1997*; or
- (b) a transitional release authority given to the Board under section 292-80B of the *Income Tax (Transitional Provisions) Act 1997*.

6 Section 110SN

Before “The amount”, insert “(1)”.

7 At the end of section 110SN

Add:

- (2) The amount of the benefit payable in respect of a person under this Part is reduced by the sum of the following amounts:
 - (a) any amount paid out of the Fund in accordance with:
 - (i) a release authority given to the Board under section 292-410 of the *Income Tax Assessment Act 1997* that relates to the superannuation interest (within the meaning of that Act) constituted by the amount paid into the Fund in respect of the person under section 110SL of this Act; or
 - (ii) a transitional release authority given to the Board under section 292-80B of the *Income Tax (Transitional Provisions) Act 1997* that relates to that superannuation interest;
 - (b) the amount of any interest that would have been earned on an amount mentioned in paragraph (a), in respect of the period

Schedule 5 Amendments relating to better superannuation
Part 2 Release authority payments

1 since the amount was paid out of the Fund, if it had not been
2 paid out of the Fund.

3 Note: Payments made out of the Fund that are required to be made under a
4 release authority or transitional release authority are not *benefits*: see
5 the definition of *benefit* in subsection 3(1).

6 **8 Subsection 130D(1)**

7 Omit “subsection (2)”, substitute “subsections (2) and (3)”.

8 **9 At the end of section 130D**

9 Add:

10 (3) The amount of the benefit payable in respect of a person under this
11 Subdivision is reduced by the sum of the following amounts:

12 (a) any amount paid out of the Fund in accordance with:

13 (i) a release authority given to the Board under
14 section 292-410 of the *Income Tax Assessment Act 1997*
15 that relates to the superannuation interest (within the
16 meaning of that Act) constituted by the amount paid
17 into the Fund in respect of the person under
18 section 130B of this Act; or

19 (ii) a transitional release authority given to the Board under
20 section 292-80B of the *Income Tax (Transitional*
21 *Provisions) Act 1997* that relates to that superannuation
22 interest;

23 (b) the amount of any interest that would have been earned on an
24 amount mentioned in paragraph (a), in respect of the period
25 since the amount was paid out of the Fund, if it had not been
26 paid out of the Fund.

27 Note: Payments made out of the Fund that are required to be made under a
28 release authority or transitional release authority are not *benefits*: see
29 the definition of *benefit* in subsection 3(1).

30 **10 Application**

31 (1) The amendments made by this Part apply in relation to benefits that are
32 payable to a person on or after the day the amendments commence.

33 (2) For the purposes of that application, the amendments apply in relation
34 to a release authority (under section 292-410 of the *Income Tax*
35 *Assessment Act 1997*), or a transitional release authority (under

1 section 292-80B of the *Income Tax (Transitional Provisions) Act 1997*,
2 no matter when the authority is given to the Board.

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2 **Part 3—Roll-over superannuation benefits**

3 *Superannuation Act 1976*

4 **11 Section 130A**

5 Repeal the section, substitute:

6 **130A Transferred amounts**

7 In this Subdivision:

8 *transferred amount*, in relation to a person, means an amount,
9 other than an amount that is elected to be paid to the Board as
10 mentioned in paragraph 128(1)(b), that is:

- 11 (a) an amount that would, if paid into the Fund in respect of the
12 person, be a roll-over superannuation benefit within the
13 meaning of the *Income Tax Assessment Act 1997*; or
14 (b) an amount paid to or in respect of the person in accordance
15 with the *Superannuation Guarantee (Administration) Act*
16 *1992* on the cessation of his or her employment; or
17 (c) an amount payable in respect of the person under the
18 *Superannuation (Government Co-contribution for Low*
19 *Income Earners) Act 2003*; or
20 (d) an amount that would, if paid into the Fund in respect of the
21 person, be a directed termination payment within the
22 meaning of section 82-10F of the *Income Tax (Transitional*
23 *Provisions) Act 1997*.

24 **12 Application**

25 The amendment made by item 11 of this Schedule applies, for the
26 purposes of section 130B of the *Superannuation Act 1976*, in relation to
27 an amount received by an eligible employee (whether before or after
28 becoming an eligible employee) on or after 1 July 2007.

1
2 **Schedule 6—Military superannuation**

3 **Part 1—Reversionary benefits for post-retirement**
4 **marriages**

5 *Defence Force Retirement and Death Benefits Act 1973*

6 **1 Subsection 6B(2)**

7 Repeal the subsection, substitute:

- 8 (2) For the purposes of this Act, a person is a spouse who survives a
9 deceased person if the person had a marital relationship with the
10 deceased person at the time of the death of the deceased person.

11 **2 Paragraph 6B(3)(c)**

12 Repeal the paragraph.

13 **3 After section 6B**

14 Insert:

15 **6BA Benefits for certain spouses in post-retirement marriages**

- 16 (1) This section applies if:
17 (a) a spouse survives a deceased person (within the meaning of
18 section 6B); and
19 (b) the spouse's marital relationship with the deceased person:
20 (i) began after the recipient member became a recipient
21 member; and
22 (ii) began after the recipient member reached 60; and
23 (iii) continued for a period (the *period of the relationship*)
24 of less than 3 years up to the time of the deceased
25 member's death.
- 26 (2) The rate of the spouse pension to which the spouse is entitled is
27 worked out using the following formula:

1

2 **Part 2—Family law superannuation splitting**

3 *Defence Force Retirement and Death Benefits Act 1973*

4 **5 After subsection 49E(1)**

5 Insert:

6 *Reduction of later standard pensions*

7 (1A) If:

8 (a) the annual rate of a standard pension (the *first pension*)
9 payable to the member spouse is reduced under
10 subsection (1); and

11 (b) after the operative time, another standard pension (the *later*
12 *pension*) becomes payable to the member spouse;
13 then the annual rate of the later pension is reduced to the amount
14 calculated under the Orders.

15 *Reduction in later payments of lump sum amounts*

16 (1B) If:

17 (a) the annual rate of a standard pension payable to the member
18 spouse is reduced under subsection (1); and

19 (b) after the operative time, a lump sum amount becomes
20 payable, in respect of the member spouse, under section 32,
21 48, 48A, 56, 57 or 77;

22 then the lump sum amount is reduced to the amount calculated
23 under the Orders.

24 Note: The heading to section 49E is altered by adding at the end “**or lump sum amount**”.

25 **6 Application**

26 The amendment made by this Part applies in relation to a later pension,
27 or a lump sum amount, that is paid as a result of a period of effective
28 service that begins on or after the day on which this Part commences.