

2002

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Superannuation Legislation
(Commonwealth Employment) Repeal
and Amendment Bill 2002**

No. , 2002

(Finance and Administration)

**A Bill for an Act to amend certain Acts relating to
superannuation, and for related purposes**

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1 **A Bill for an Act to amend certain Acts 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 *(Commonwealth Employment) Repeal and Amendment Act 2002*.

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, on the day or at the
10 time specified in column 2 of the table.
11

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. Schedule 1, Part 1	1 July 2002	
3. Schedule 1, Parts 2 to 5 and item 174	The day after the day on which this Act receives the Royal Assent	
4. Schedule 1, item 175	1 July 1995	
5. Schedule 1, item 176	27 June 1997	
6. Schedule 1, items 177 to 181	The day after the day on which this Act receives the Royal Assent	
7. Schedule 1, item 182	27 June 1997	
8. Schedule 1, item 183	1 July 1995	
9. Schedule 1, items 184 and 185	The day after the day on which this Act receives the Royal Assent	
10. Schedule 1, items 186 and 187	1 July 1995	
11. Schedule 1, items 188 to 192	The day after the day on which this Act receives the Royal Assent	
12. Schedule 1, item 193	18 December 1992	
13. Schedule 1, item 194	27 June 1997	
14. Schedule 1, items 195 to 204	The day after the day on which this Act receives the Royal Assent	
15. Schedule 2, Part 1	1 July 2002	
16. Schedule 2, item 8	1 July 1995	

1
2 **Schedule 1—Amendment of the**
3 **Superannuation Act 1976**

4 **Part 1—Amendments relating to the scope and**
5 **administration of the Act**

6 **1 Subsection 3(1) (definition of *approved authority*)**

7 Repeal the definition, substitute:

8 *approved authority* has the meaning given by section 3D.

9 **2 Subsection 3(1)**

10 Insert:

11 *AWOTE* means full-time adult average weekly ordinary time
12 earnings for all persons in Australia.

13 **3 Subsection 3(1) (paragraph (ea) of the definition of *eligible***
14 ***employee*)**

15 Repeal the paragraph, substitute:

16 (ea) a person to whom section 14A of this Act as previously in
17 force applied immediately before that section was repealed;

18 **4 Subsection 3(1) (after paragraph (eb) of the definition of**
19 ***eligible employee*)**

20 Insert:

21 (ec) a person included in a class of persons declared by the
22 Minister to be eligible employees for the purposes of this
23 Act;

24 **5 Subsection 3(1) (definition of *eligible employee*)**

25 Omit “, other than paragraph (ea),”.

26 **6 Subsection 3(1) (paragraph (j) of the definition of *eligible***
27 ***employee*)**

28 Repeal the paragraph, substitute:

29 (i) a person who, immediately before the commencement of this
30 paragraph, was included in a class of persons that, under the

1 regulations in force at that time, were not eligible employees
2 for the purposes of this Act; or

- 3 (j) a person included in a class of persons declared by the
4 Minister not to be eligible employees for the purposes of this
5 Act; or

6 **7 Subsection 3(1) (definition of *preservation fund*)**

7 Repeal the definition.

8 **8 Subsection 3(1)**

9 Insert:

10 *voting share* has the same meaning as in the *Corporations Act*
11 *2001*.

12 **9 Subsections 3(1A) and (1B)**

13 Repeal the subsections, substitute:

14 (1AA) The regulations may make provision for modifying this Act, or a
15 provision of this Act specified in the regulations, in the application
16 of this Act or that provision to and in relation to a person to whom
17 paragraph (ec) of the definition of *eligible employee* applies or has
18 applied or to and in relation to a prescribed class of persons to
19 whom that paragraph applies or has applied.

20 (1A) A declaration made for the purposes of paragraph (ec) of the
21 definition of *eligible employee* in subsection (1) may be expressed
22 to have taken effect from and including a day specified in the
23 declaration, being a day earlier than the day on which the
24 declaration is signed but, subject to subsection (1B), not earlier
25 than 12 months before the day on which the declaration is signed.

26 Note: The day of effect may be a day earlier than the day on which
27 paragraph (ec) commenced (see subsection (1BC)).

28 (1B) If, before a declaration is made for the purposes of paragraph (ec)
29 of the definition of *eligible employee* in subsection (1),
30 contributions were accepted from, or in respect of, a person to
31 whom the declaration applies, the declaration may be expressed to
32 have taken effect from and including the earliest day on which
33 contributions were so accepted.

Schedule 1 Amendment of the Superannuation Act 1976
Part 1 Amendments relating to the scope and administration of the Act

Note: The day of effect may be a day earlier than the day on which paragraph (ec) commenced (see subsection (1BC)).

(1BA) A declaration made for the purposes of paragraph (j) of the definition of *eligible employee* in subsection (1) may be expressed to have taken effect from and including a day specified in the declaration, being a day earlier than the day on which the declaration is signed but not earlier than 1 July 2002, if, and only if, there is no person to whom the declaration applies:

(a) who was treated as an eligible employee on or after the specified day; or

(b) from, or in respect of, whom contributions were accepted on or after the specified day.

(1BB) A declaration that is expressed, in accordance with subsection (1A), (1B) or (1BA), to have taken effect from and including a day earlier than the day on which the declaration was signed, is taken to have had effect accordingly.

(1BC) To remove any doubt, a declaration made for the purposes of paragraph (ec) of the definition of *eligible employee* in subsection (1) may be expressed, to the extent permitted under subsection (1A) or (1B), to have taken effect from and including a day (the *effective day*) earlier than the day on which that paragraph commenced. If a declaration is so expressed, it is taken to have had, before the day on which that paragraph commenced, the effect that the declaration would have had if that paragraph had been in force from and including the effective day.

(1BD) A declaration made for the purposes of paragraph (ec) or (j) of the definition of *eligible employee* in subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

10 Subsection 3(2A)

Repeal the subsection.

11 Section 3B

Repeal the section.

12 After section 3C

1 Insert:

2 **3D Approved authorities**

- 3 (1) This section has effect for the purpose of determining whether an
4 authority or other body is an approved authority for the purposes of
5 this Act.
- 6 (2) An authority or other body that was an approved authority
7 immediately before the commencement of this section continues to
8 be an approved authority.
- 9 (3) An authority or other body that is an approved authority under
10 subsection (2) ceases to be an approved authority under that
11 subsection if:
- 12 (a) it is a body corporate with a share capital and any of the
13 voting shares in it that are beneficially owned by the
14 Commonwealth at the commencement of this section cease to
15 be so owned; or
- 16 (b) the financial statements prepared by it for any financial year
17 ending after the commencement of this section that are
18 publicly available show that the percentage of its revenue for
19 that year that was received from sources other than the
20 Commonwealth exceeded 70% and also exceeded the
21 percentage of its revenue that was shown, in the last publicly
22 available financial statements prepared by it for a financial
23 year that ended at or before that commencement, to have
24 been received from sources other than the Commonwealth.
- 25 (4) Subsection (5) applies to authorities or other bodies:
- 26 (a) that were incorporated or established before the
27 commencement of this section and are not approved
28 authorities under subsection (2); or
- 29 (b) are incorporated or established after that commencement.
- 30 (5) Subject to subsection (6), an authority or other body is an approved
31 authority for the purposes of this Act if:
- 32 (a) the authority or other body:
- 33 (i) is a body corporate incorporated for a public purpose; or
34 (ii) not being a body corporate, is established for a public
35 purpose;
-

- 1 by, or in accordance with, an Act, regulations made under an
2 Act, or a law of a Territory; and
3 (b) the chief executive officer of the authority or other body has
4 agreed to make payments to the Commonwealth in respect of
5 benefits that become payable under this Act to or in respect
6 of employees of the authority or other body.
- 7 (6) An authority or other body is not an approved authority under
8 subsection (5) if:
9 (a) it is a body corporate with a share capital and any of the
10 voting shares in it are beneficially owned by a person other
11 than the Commonwealth; or
12 (b) a purpose for which it is incorporated or established will
13 involve its carrying on business in competition with one or
14 more other persons; or
15 (c) the last financial statements prepared by it for a financial year
16 that are publicly available show that 70% or more of its
17 revenue for that year was received from sources other than
18 the Commonwealth.
- 19 (7) An amount paid to an authority or other body by the
20 Commonwealth is taken for the purposes of paragraph (6)(c) to
21 have been received by the authority or other body from a source
22 other than the Commonwealth if the amount was calculated by
23 reference to amounts received by the Commonwealth as a result of
24 the imposition of a tax or taxes.
- 25 (8) Despite the previous provisions of this section, an authority or
26 other body that is declared by the Minister to be an approved
27 authority for the purposes of this Act is an approved authority.
- 28 (9) Despite the previous provisions of this section, an authority or
29 other body that is declared by the Minister not to be an approved
30 authority for the purposes of this Act is not an approved authority.

31 **13 Subsection 4A(1)**

32 Omit “paragraph (a) or (b) of the definition of *approved authority* in
33 subsection 3(1)”, substitute “subsection 3D(8) or (9)”.

34 **14 Subsection 4A(3)**

35 Omit “paragraph (a) of that definition”, substitute “subsection 3D(8)”.

1 **15 At the end of section 4A**

2 Add:

- 3 (4) To remove any doubt, a declaration made for the purposes of
4 subsection 3D(8) may be expressed, to the extent permitted by
5 subsection (3), to have taken effect from and including a day (the
6 ***effective day***) earlier than the day on which subsection 3D(8)
7 commenced. If a declaration is so expressed, it is taken to have
8 had, before the day on which that subsection commenced, the
9 effect that the declaration would have had if that subsection had
10 been in force from and including the effective day.
- 11 (5) A declaration made for the purposes of subsection 3D(9) may be
12 expressed to have taken effect from and including 1 July 2002 if,
13 and only if, no contributions have been accepted from, or in respect
14 of, an employee of the authority or other body to which the
15 declaration relates on or after that date.

16 **16 Subsection 5(2)**

17 Omit “subsections (3), (3A), (3B) and (3C)”, substitute “subsections (3)
18 to (3E)”.

19 **17 After subsection 5(3)**

20 Insert:

- 21 (3AA) Despite subsections (1), (2) and (3), an eligible employee and his
22 or her designated employer may agree that a particular annual rate
23 is to be the employee’s annual rate of salary for the purposes of the
24 application of this Act on a particular day and, if such an
25 agreement is made, the agreed rate is taken to be the employee’s
26 annual rate of salary on that day.

27 **18 Subsections 5(3A), (3B) and (3C)**

28 Repeal the subsections, substitute:

- 29 (3A) If, at the time (the ***later time***) immediately before a person ceased
30 or last ceased to be an eligible employee, the person was entitled to
31 partial invalidity pension under section 77 or 78, the annual rate of
32 salary payable to the person at the later time is to be worked out,
33 for the purposes of this Act other than sections 77 and 78, under
34 subsections (3B) to (3E).

- 1 (3B) If the person's entitlement arose under section 77, the annual rate
2 of salary payable to the person at the later time is taken to be the
3 amount per annum that would have been the person's final annual
4 rate of salary at the time (the *earlier time*) that was the occasion on
5 which the person ceased or last ceased to be an eligible employee
6 before the person's entitlement arose.
- 7 (3C) If the person's entitlement arose under section 78, the annual rate
8 of salary payable to the person at the later time is taken to be the
9 amount per annum that would, if the person had ceased to be an
10 eligible employee on the day immediately before the day on which
11 the person's entitlement arose, have been the person's final annual
12 rate of salary at the time (the *earlier time*) that would have been
13 the occasion of the person's so ceasing to be an eligible employee.
- 14 (3D) However, if:
- 15 (a) the Australian Statistician has published, at or before the later
16 time, an estimate or successive estimates of the change or
17 changes (expressed as a percentage or percentages) in
18 AWOTE in respect of the period between the relevant earlier
19 time and the later time; and
- 20 (b) the estimate or estimates show an overall increase (expressed
21 as a percentage) in those earnings over that period, or over
22 the part of that period in respect of which the estimate or
23 estimates were published;
- 24 the annual rate of salary payable to the person at the later time is
25 taken to be the annual rate of salary worked out under
26 subsection (3B) or (3C), as the case requires, increased by that
27 percentage.
- 28 (3E) If, at any time, whether before or after the commencement of this
29 subsection, the Australian Statistician has published or publishes
30 for a particular period an estimate of a change (including an
31 estimate that no change has occurred) in AWOTE in substitution
32 for an estimate of such a change for that period previously
33 published by the Australian Statistician, the publication of the later
34 estimate is to be disregarded for the purposes of this section.

19 Section 14A

Repeal the section.

1 **20 Saving of modifications in force under section 14A of the**
2 ***Superannuation Act 1976***

- 3 (1) Despite the repeal of section 14A of the *Superannuation Act 1976*
4 effected by item 19, the modifications of that Act made by regulations
5 in force under subsection (3) of that section immediately before the
6 repeal continue to apply in relation to people to whom those
7 modifications applied at that time.
- 8 (2) The power to make regulations conferred by section 168 of the
9 *Superannuation Act 1976* extends to making provision for additions to,
10 variations of, or omissions from, any modifications that are continued in
11 force by subitem (1), but the regulations may only make such provision
12 to the extent that the additions, variations or omissions could have been
13 made under section 14A if that section had not been repealed.

14 **21 Subparagraph 47(1)(b)(ii)**

15 Repeal the subparagraph, substitute:

- 16 (ii) his or her annual rate of salary had been increased
17 during the period by the same percentage as any overall
18 percentage increase in AWOTE that occurred over the
19 period (being an overall percentage increase worked out
20 from estimates of changes in AWOTE in respect of the
21 period published by the Australian Statistician, other
22 than estimates published in substitution for earlier
23 estimates);

24 **22 Subsection 47(1)**

25 Omit all the words from and including “For the purposes of
26 subparagraph (b)(ii)”.

27 **23 Subparagraph 47(3)(d)(ii)**

28 Repeal the subparagraph, substitute:

- 29 (ii) his or her annual rate of salary had been increased
30 during the period by the same percentage as any overall
31 percentage increase in AWOTE that occurred over the
32 period (being an overall percentage increase worked out
33 from estimates of changes in AWOTE in respect of the
34 period published by the Australian Statistician, other

1 than estimates published in substitution for earlier
2 estimates);

3 **24 Subsection 47(3)**

4 Omit all the words from and including “For the purposes of
5 subparagraph (d)(ii)”.

6 **25 Application**

7 The amendments made by items 21 to 24 apply only in respect of an
8 anniversary of an eligible employee’s birth that occurs after 30 June
9 2002, and the *Superannuation Act 1976* as in force immediately before
10 the commencement of those amendments continues to apply in respect
11 of anniversaries that occurred on or before that date as if the
12 amendments had not been made.

13 **26 Section 48**

14 Repeal the section, substitute:

15 **48 Supplementary contributions**

16 An eligible employee may, on any contribution day, pay a
17 supplementary contribution of such amount as the employee
18 determines.

19 **27 At the end of subsection 51(1)**

20 Add:
21 ; and (d) where the period of leave of absence starts after 30 June
22 2002—the person’s designated employer has stopped making
23 payments to the Commonwealth in respect of benefits that
24 become payable under this Act to or in respect of the person.

25 **28 Paragraph 51(2)(e)**

26 Repeal the paragraph.

27 **29 Application**

28 (1) The amendments made by items 27 and 28 apply only in respect of
29 periods of leave of absence beginning on or after 1 July 2002 and,
30 despite the amendments, section 51 of the *Superannuation Act 1976* as
31 in force immediately before the commencement of those amendments

1 continues to apply in respect of periods of leave of absence beginning
2 before that date as if the amendments had not been made.

3 (2) If a person was granted leave of absence before 1 July 2002 for a period
4 (the ***relevant period***) beginning before that date but ending on or after
5 that date, the reference in subitem (1) to periods of leave of absence
6 beginning before that date:

- 7 (a) includes a reference to the part of the relevant period that
8 occurs on or after that date; but
9 (b) does not include a reference to the period of any extension of
10 the relevant period that is granted on or after that date.

11 **30 Paragraphs 62(2C)(a) and (b)**

12 Repeal the paragraphs, substitute:

- 13 (a) to have an amount equal to the lump sum benefit mentioned
14 in subsection (2B) treated as a preserved benefit under the
15 SIS Act and dealt with accordingly; or
16 (b) to payment of an amount equal to the amount of the person's
17 accumulated contributions and to have an amount equal to
18 the balance of the lump sum benefit mentioned in
19 subsection (2B) treated as a preserved benefit under the SIS
20 Act and dealt with accordingly.

21 **31 Subsections 62B(1) and (2)**

22 Repeal the subsections, substitute:

- 23 (1) If a benefit is payable to a person under subsection 62(2), the
24 portion of that benefit worked out under whichever of
25 subsections (3) and (4) of this section applies is to be treated as a
26 preserved benefit under the SIS Act and dealt with accordingly.

27 **32 Subsection 73A(1) (paragraph (b) of the definition of** 28 ***relevant maximum rate***)

29 Repeal the paragraph, substitute:

- 30 (b) 75% of the amount per annum worked out by increasing the
31 final annual rate of salary of the pensioner by the same
32 percentage as any overall percentage increase in AWOTE
33 that occurred during the period since the pensioner ceased to
34 be an eligible employee (being an overall increase worked
35 out from estimates of changes in AWOTE in respect of the

period published by the Australian Statistician, other than estimates published in substitution for earlier estimates).

33 Application

The amendment made by item 32 applies only in respect of a period after 30 June 2002 and, despite the amendment, subsection 73A(1) of the *Superannuation Act 1976* as in force immediately before the commencement of that amendment continues to apply in respect of periods occurring on or before that date as if the amendment had not been made.

34 Section 110D

Omit “Minister”, substitute “Board, in accordance with a method of calculation notified to the Board by the Minister,”.

35 Subsections 110R(1) and (2)

Repeal the subsections, substitute:

- (1) Subject to subsection (2) and section 110S, if a productivity benefit becomes payable in respect of a person, the benefit is to be treated as a preserved benefit under the SIS Act and dealt with accordingly.
- (2) If:
 - (a) the productivity benefit has become payable because of any of the following:
 - (i) the person ceased to be an eligible employee on or after reaching the age of 60 years;
 - (ii) if the person has reached the age of 55 years—the person is taken, under subsection 58(2), to have retired voluntarily;
 - (iii) if the person has reached the age of 55 years and has not made an election under section 137—the person is taken, under subsection 58(3), or under section 58A or 58B, to have retired involuntarily;
 - (iv) the person retired on the ground of invalidity; and
 - (b) the person is entitled to receive an additional age retirement pension or an additional early retirement pension; and
 - (c) the person has not made an election under section 64 to commute his or her pension into a lump sum benefit;

1 the person may elect to have applied, for the provision of
2 additional age retirement pension or additional early retirement
3 pension, so much of the productivity benefit as will not result in
4 the base amount within the meaning of section 57, 57AA, 61 or
5 61AB (whichever is applicable) being greater than the maximum
6 amount within the meaning of section 57, 57AA, 61 or 61AB
7 (whichever is applicable).

8 **36 Subsections 110R(4) to (9)**

9 Repeal the subsections.

10 **37 Subsection 110SB(1) (at the end of the definition of *other***
11 ***vested benefit*)**

12 Add:

13 ; (d) if a benefit is payable in respect of the person under
14 Subdivision B of Division 2 of Part IX—the amount equal to
15 that benefit.

16 **38 Sections 110SG, 110SH and 110SJ**

17 Repeal the sections, substitute:

18 **110SG Payment of top-up benefit**

19 If top-up benefit becomes payable in respect of a person, the Board
20 must:

21 (a) subject to paragraph (b)—treat the benefit as a preserved
22 benefit under the SIS Act and deal with it accordingly; or

23 (b) if the person has died:

24 (i) pay the benefit to his or her legal personal
25 representative; or

26 (ii) if no legal personal representative can be found—pay
27 the benefit to any individual or individuals that the
28 Board determines.

29 **39 After paragraph 110TA(1)(c)**

30 Insert:

31 and (d) any benefit that is, or is about to become, payable in respect
32 of the person under Subdivision B of Division 2 of Part IX;

1 **40 Paragraph 110TC(2)(c)**

2 Repeal the paragraph, substitute:

3 (c) the following subparagraphs applied in respect of the period
4 starting on the day when the person became a person
5 mentioned in subsection 110TC(1) and ending on the day
6 immediately before the day on which the benefit became
7 payable:

- 8 (i) in respect of so much of the period as occurred before
9 1 July 2002—account were taken of any
10 generally-applying increase (including an increase
11 resulting from the process of work-place bargaining) in
12 annual rate of salary that would have occurred had the
13 person continued to be an eligible employee and
14 continued to occupy the office or position in respect of
15 which the person’s final annual rate of salary was
16 calculated, other than an excluded increase;
- 17 (ii) in respect of so much of the period as occurred on or
18 after 1 July 2002—the person’s annual rate of salary
19 had been increased by the same percentage as any
20 overall percentage increase in AWOTE that occurred
21 over the period (being an overall percentage increase
22 worked out from estimates of changes in AWOTE in
23 respect of the period published by the Australian
24 Statistician, other than estimates published in
25 substitution for earlier estimates).

26 **41 Paragraph 110TD(b)**

27 After “and VIAB”, insert “and Subdivision B of Division 2 of Part IX”.

28 Note: The heading to section 110TD is omitted and replaced by “**Application of Parts VI,**
29 **VIA and VIAB and Subdivision B of Division 2 of Part IX in relation to postponed**
30 **benefits**”.

31 **42 After paragraph 110TF(f)**

32 Insert:

33 and (g) the benefit (if any) payable in respect of the deceased person
34 under Subdivision B of Division 2 of Part IX;

35 **43 Paragraph 110TG(1)(a)**

1 Omit “or Part VIA or VIAB”, substitute “, Part VI or VIAB or
2 Subdivision B of Division 2 of Part IX”.

3 **44 Subsection 111A(2)**

4 Omit all the words after “lump sum,”, substitute “the benefit is to be
5 treated as a preserved benefit under the SIS Act and dealt with
6 accordingly”.

7 **45 After paragraph 111(2)(ba)**

8 Insert:
9 and (bb) if a benefit is payable in respect of the person under
10 Subdivision B of Division 2 of Part IX—that benefit;

11 **46 Paragraph 126A(3)(c)**

12 After “Part VIAB”, insert “or Subdivision B of Division 2 of Part IX”.

13 **47 After the heading to Division 2 of Part IX**

14 Insert:

15 **Subdivision A—Transfer values**

16 **48 At the end of Division 2 of Part IX**

17 Add:

18 **Subdivision B—Transferred amounts**

19 **130A Transferred amounts**

20 In this Subdivision:

21 *transferred amount*, in relation to a person, means:

- 22 (a) an amount paid to or in respect of the person after 30 June
23 2002 by a superannuation entity, other than an amount paid
24 because of the person’s physical or mental incapacity to
25 perform his or her duties; or
26 (b) an amount paid to or in respect of the person after 30 June
27 2002 that is an eligible termination payment for the purposes
28 of Subdivision AA of Division 2 of Part III of the *Income*
29 *Tax Assessment Act 1936*; or

(c) an amount paid to or in respect of the person in accordance with the *Superannuation Guarantee (Administration) Act 1992* upon the cessation of his or her employment;

but does not include an amount paid to the Board as a result of an election referred to in paragraph 128(1)(b).

130B Transferred amount may be paid to Board

(1) An eligible employee who, whether before or after becoming an eligible employee, receives a transferred amount may pay an amount equal to the transferred amount to the Board.

(2) The Board is to pay into the Fund any transferred amounts received by it.

130C Person's entitlement to benefit

If an amount has been paid into the Fund under section 130B in respect of a person, the person is entitled to a benefit under this Subdivision if another benefit to which the person is entitled under this Act becomes payable.

130D Amount of benefit

(1) Subject to subsection (2), the amount of the benefit payable in respect of a person under this Subdivision is the sum of:

(a) an amount equal to the difference between:

(i) the total amount that was paid into the Fund in respect of the person under section 130B; and

(ii) the sum of any amounts in the nature of income tax relevant to that amount; and

(b) interest on the amount mentioned in paragraph (a).

(2) If the person's surcharge debt account is in debit when the benefit becomes payable to the person, the benefit to which the person is entitled is equal to the difference between:

(a) the benefit to which the person would be entitled if this subsection did not apply to the person; and

(b) the person's surcharge deduction amount.

130E Payment of benefit to spouse etc.

(1) If, because of a person's death:

(a) a benefit becomes payable in respect of the person under this Subdivision; and

(b) Part VI applies;

then:

(c) if the person is survived by a spouse—the benefit is payable to the spouse; or

(d) if orphan benefit is payable to an eligible child or eligible children—the benefit is payable to:

(i) the eligible child or eligible children; or

(ii) if the orphan benefit is payable under section 115 to another person or other persons—that person or those persons.

(2) If, because of a person's death:

(a) a benefit becomes payable in respect of the person under this Subdivision; and

(b) a deferred benefit by way of spouse's benefit is payable in respect of the person;

the benefit under this Subdivision is payable to the spouse.

(3) If, because of a person's death:

(a) a benefit becomes payable in respect of the person under this Subdivision; and

(b) a deferred benefit by way of orphan benefit is payable in respect of the person;

the benefit under this Subdivision is payable to:

(c) the eligible child or eligible children entitled to the deferred benefit; or

(d) if the deferred benefit is payable under section 115 to another person or other persons—that person or those persons.

130F Payment of benefit to personal representatives etc.

If:

(a) because of a person's death, a benefit is payable in respect of a person under this Subdivision; and

- 1 (b) the person is not survived by any spouse; and
2 (c) there is no surviving child of the person or no surviving child
3 of the person who could be at any time an eligible child of
4 the person;
5 the benefit is payable to the person's legal personal representative
6 or, if no legal personal representative can be found, to any
7 individual or individuals that the Board determines.

8 **49 Subsection 134(1)**

9 Omit "subsection (5)", substitute "subsections (4A) and (5)".

10 **50 After subsection 134(4)**

11 Insert:

- 12 (4A) An agreement may not be made under subsection (1) after 30 June
13 2002.

14 **51 At the end of section 134**

15 Add:

- 16 (10) If the Board is satisfied that an eligible superannuation scheme that
17 has ceased to exist was, upon so ceasing to exist, replaced by
18 another superannuation scheme, the Board may determine that the
19 other scheme is an eligible superannuation scheme for the purposes
20 of this Division.

21 **52 At the end of subsection 135(1)**

22 Add:

- 23 ; and (e) the amount of benefit (if any) payable in respect of the
24 person under Subdivision B of Division 2 of Part IX.

25 **53 Subparagraph 136(2)(b)(iii)**

- 26 Omit "if an event mentioned in subsection 139AA(2) has not happened
27 in relation to the person", substitute "if, under the SIS Act, the benefit
28 referred to in section 139AA is not to be paid in cash to the person".

54 Subparagraph 136(2)(b)(iv)

Omit “if such an event has happened in relation to the person before the day on which the deferred benefit becomes payable, or happens on that day”, substitute “if, under the SIS Act, that benefit is to be paid in cash to the person”.

55 Section 139AA

Repeal the section, substitute:

139AA Deferral of benefit

If, under subsection 138(2), deferred benefits applicable in respect of a person become payable on the day immediately following a date selected under paragraph (c) of that subsection, that part of the deferred benefits that consists of an amount equal to the person’s accumulated employer contributions is to be treated as a preserved benefit under the SIS Act and dealt with accordingly.

56 Subparagraph 140(2)(a)(i)

Omit “or Part VIA, VIAA, VIAB or VID”, substitute “, Part VIA, VIAA, VIAB or VID or Subdivision B of Division 2 of Part IX”.

57 Sub-subparagraph 140(2)(a)(ii)(A)

Omit “or Part VIA or VIAB”, substitute “, Part VIA or VIAB or Subdivision B of Division 2 of Part IX”.

58 Sub-subparagraph 140(2)(a)(ii)(B)

Omit “or Part VIA, VIAB or VID”, substitute “, Part VIA, VIAB or VID or Subdivision B of Division 2 of Part IX”.

59 Paragraph 168(15)(b)

Repeal the paragraph, substitute:

(b) for the purposes of subsection 3(1AA);

60 Paragraph 240(1)(a)

After “Part VIAB”, add “or Subdivision B of Division 2 of Part IX”.

61 Paragraph 246(b)

After “110SQ”, insert “or 130E”.

Part 2—Amendments relating to marital status of deceased retirement pensioner

62 Subsection 3(1) (paragraph (a) of the definition of *eligible child*)

Repeal the paragraph, substitute:

- (a) is a child of the deceased person; and

63 Subsection 3(1)

Insert:

late short-term marital relationship, in relation to a deceased retirement pensioner, means a marital relationship between the pensioner and his or her spouse that began:

- (a) less than 3 years before the pensioner's death; and
(b) after the pensioner became a retirement pensioner and had reached the age of 60 years.

Note: For *marital relationship* see section 8A and for *spouse* see section 8B.

64 Subsection 3(1) (paragraph (a) of the definition of *partially dependent child*)

Repeal the paragraph, substitute:

- (a) who is a child (other than an eligible child) of the deceased person; and

65 Subsection 8B(2)

Repeal the subsection, substitute:

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

66 Paragraph 8B(3)(c)

Repeal the paragraph.

67 Section 9

1 Repeal the section.

2 **68 Subsection 93(1)**

3 Before “entitled”, insert “, subject to section 95A,”.

4 **69 Subsection 93(2)**

5 Before “entitled”, insert “, subject to section 96AA,”.

6 **70 After subsection 94(2)**

7 Insert:

8 (2A) If the spouse of the deceased pensioner had a late short-term
9 marital relationship with the pensioner, spouse’s standard pension
10 is payable to the spouse at the rate applicable under section 96AB.

11 **71 Before subsection 95(2)**

12 Insert:

13 (1B) If the spouse of the deceased pensioner had a late short-term
14 marital relationship with the pensioner, spouse’s additional pension
15 is payable to the spouse at the rate applicable under section 96AB.

16 **72 After section 95**

17 Insert:

18 **95A Lump sum instead of spouse’s standard pension etc.**

19 (1) If:

- 20 (a) the annual rate at which spouse’s standard pension is payable
21 to a person under subsection 94(2A); or
22 (b) if the person is entitled to spouse’s additional pension under
23 subsection 95(1B)—the combined annual rate of the spouse’s
24 standard pension and the spouse’s additional pension payable
25 to the person;

26 is less than the annual rate determined in writing by the Board for
27 the purposes of this section, the person may, not later than 3
28 months after the pension or pensions become payable, by notice in
29 writing to the Board, elect to commute the pension or pensions into
30 a lump sum benefit payable to him or her.

- 1 (2) If the person makes the election, there is payable to the person,
2 instead of spouse's standard pension, or spouse's standard pension
3 and spouse's additional pension (as the case may be), a lump sum
4 of an amount determined in writing by the Board after consultation
5 with an actuary.

6 **73 Subsection 96(1)**

7 After "is" (last occurring), insert ", subject to subsection (2A),".

8 **74 After subsection 96(2)**

9 Insert:

- 10 (2A) If the spouse of the deceased pensioner had a late short-term
11 marital relationship with the pensioner, spouse's pension is payable
12 to the spouse at the rate applicable under section 96AB.

13 **75 After section 96**

14 Insert:

15 **96AA Lump sum instead of spouse's pension**

- 16 (1) If the annual rate at which spouse's pension is payable to a person
17 under subsection 96(2A) is less than the annual rate determined in
18 writing by the Board for the purposes of this section, the person
19 may, not later than 3 months after the pension becomes payable, by
20 notice in writing to the Board, elect to commute that pension into a
21 lump sum benefit payable to him or her.
- 22 (2) If the person makes the election, there is payable to the person,
23 instead of spouse's pension, a lump sum of an amount determined
24 in writing by the Board after consultation with an actuary.

25 **76 At the end of Division 3 of Part VI**

26 Add:

27 **96AB Rate applicable for purposes of certain provisions**

- 28 (1) If, at any time:
29 (a) spouse's standard pension under subsection 94(2A); or
30 (b) spouse's additional pension under subsection 95(1B); or

- (c) spouse's pension under subsection 96(2A);
is payable to the spouse of a deceased pensioner, then, for the
purposes of whichever of those subsections is applicable, the
applicable rate is:
(d) if paragraph (e) does not apply—the rate worked out by using
the formula:

$$\text{Basic rate of pension} \times \frac{\text{Number of days in relevant period}}{1095}$$

- (e) if at that time there is one or more than one eligible child
who became a child of the pensioner:
(i) before the pensioner became a retirement pensioner or
turned 60; or
(ii) at least 3 years before the pensioner died;
—such rate, being a rate higher than the rate worked out
under paragraph (d) but less than the basic rate of pension, as
the Board determines to be fair and equitable in all the
circumstances of the case.

(2) In subsection (1):

basic rate of pension means the annual rate at which, apart from
subsection (1), spouse's standard pension, spouse's additional
pension or spouse's pension (as the case requires) would be
payable to the spouse at that time.

relevant period means the period:

- (a) beginning on the day on which the marital relationship
between the deceased pensioner and his or her spouse began;
and
(b) ending on the day on which the pensioner died.

77 Subsection 96B(1)

After "subsection (3)", insert "and section 96BA".

Note: The heading to section 96B is altered by adding at the end "**—general**".

78 At the end of Division 3A of Part VI

Add:

1 **96BA Extra spouse's pension—special case**

2 (1) If:

- 3 (a) the spouse of a deceased pensioner had a late short-term
4 marital relationship with the pensioner; and
5 (b) apart from this section, the spouse of the deceased pensioner
6 would, at any time, be entitled to extra spouse's pension
7 under subsection 96B(2) or (6);

8 the annual rate of that pension at that time is:

- 9 (c) if paragraph (d) does not apply—the amount worked out by
10 using the formula:

11
$$\text{Basic rate of pension} \times \frac{\text{Number of days in relevant period}}{1095}$$

- 12 (d) if at that time there is one or more than one eligible child or
13 partially dependent child who became a child of the
14 pensioner:

- 15 (i) before the pensioner became a retirement pensioner or
16 turned 60; or

- 17 (ii) at least 3 years before the pensioner died;

18 —such rate, being a rate higher than the rate worked out
19 under paragraph (c) but less than the basic rate of pension, as
20 the Board determines to be fair and equitable in all the
21 circumstances of the case.

22 (2) In subsection (1):

23 ***basic rate of pension*** means the annual rate at which, apart from
24 subsection (1), extra spouse's pension would be payable to the
25 person.

26 ***relevant period*** means the period:

- 27 (a) beginning on the day on which the marital relationship
28 between the deceased pensioner and his or her spouse began;
29 and
30 (b) ending on the day on which the pensioner died.

96BB Lump sum instead of extra spouse's pension

If:

- (a) instead of a pension under Division 3 of this Part, a lump sum benefit is payable to the spouse of a deceased pensioner under section 95A or 96AA; and
- (b) had the pension been payable to the spouse, extra spouse's pension would be payable to him or her under section 96B; there is payable to the spouse, instead of that extra spouse's pension, a lump sum of an amount determined in writing by the Board after consultation with an actuary.

79 Subsection 105(1)

After "then," insert "subject to section 108A,".

80 Subsection 106(1)

After "then," insert "subject to section 108A,".

81 Subsection 107(1)

After "then," insert "subject to section 108A,".

82 Subsection 108(1)

After "then," insert "subject to section 108A,".

83 After section 108

Insert:

108A Orphan benefit reduced if deceased pensioner had marital relationship of less than 3 years etc.

- (1) This section applies to the eligible child or eligible children of a deceased retirement pensioner if the child, or at least one of the children, is a child of the pensioner because of a late short-term marital relationship between the pensioner and his or her spouse.
- (2) This section also applies to the eligible child or eligible children of a deceased retirement pensioner if:
 - (a) the child, or at least one of the children, became a child of the pensioner only because he or she was an adopted child, foster child or ward of the pensioner; and

- 1 (c) if the deceased person was, immediately before his or her
2 death, a retirement pensioner and had had a marital
3 relationship that had begun:
4 (i) before he or she had become a retirement pensioner; or
5 (ii) before he or she had turned 60; or
6 (iii) not less than 3 years before the pensioner's death;
7 —the applicable percentage of the annual rate of pension
8 payable to the retirement pensioner immediately before his or
9 her death.

10 **85 Before subsection 109AB(4)**

11 Insert:

12 (3B) If the deceased person:

- 13 (a) was, immediately before his or her death, a retirement
14 pensioner; and
15 (b) had had a late short-term marital relationship with his or her
16 spouse;

17 the amount of the spouse's pension payable to the spouse must not
18 exceed such percentage of the annual rate of pension payable to the
19 retirement pensioner immediately before his or her death as is
20 determined by the Board.

21 (3C) In making a determination under subsection (3B), the Board must
22 take into consideration:

- 23 (a) the extent to which spouse's pension payable to the spouse of
24 a deceased pensioner under Division 3 is reduced when the
25 spouse and the deceased pensioner have been in a marital
26 relationship of the kind referred to in paragraph (3B)(b); and
27 (b) whether one or more than one eligible child, or one or more
28 than one partially dependent child, of the pensioner is or is
29 not a child of the pensioner because of the late short-term
30 marital relationship referred to in paragraph (3B)(b).

31 **86 Subsection 109AB(4)**

32 After "(5)", insert ", (5A)".

33 **87 Paragraph 109AB(5)(c)**

34 Repeal the paragraph, substitute:

- 1 (c) if the deceased person was, immediately before his or her
2 death, a retirement pensioner and had had a marital
3 relationship that had begun:
4 (i) before he or she had become a retirement pensioner; or
5 (ii) before he or she had turned 60; or
6 (iii) not less than 3 years before the pensioner's death;
7 —the applicable percentage of the annual rate of pension
8 payable to the retirement pensioner immediately before his or
9 her death.

10 **88 After subsection 109AB(5)**

11 Insert:

- 12 (5A) If the deceased person:
13 (a) was, immediately before his or her death, a retirement
14 pensioner; and
15 (b) had had a late short-term marital relationship with his or her
16 spouse;
17 benefit attributed under subsection (4) to the eligible child or
18 eligible children of the deceased person not in the custody, care
19 and control of the spouse must not exceed in the aggregate such
20 proportion of the applicable percentage of the annual rate of
21 pension payable to the retirement pensioner immediately before his
22 or her death as is determined by the Board.
- 23 (5B) In making a determination under subsection (4) or (5A), the Board
24 must take into consideration:
25 (a) the extent to which spouse's pension payable to the spouse of
26 a deceased pensioner under Division 3 is reduced when the
27 spouse and the deceased pensioner have been in a marital
28 relationship of the kind referred to in paragraph (5A)(b); and
29 (b) whether one or more than one eligible child of the pensioner
30 is or is not a child of the pensioner because of the late
31 short-term marital relationship referred to in
32 paragraph (5A)(b).

33 **89 Paragraph 109AB(7)(b)**

34 After "(5)", insert "or (5A)".

35 **90 Paragraph 110(4)(c)**

1 Repeal the paragraph, substitute:

- 2 (c) if the deceased person was, immediately before his or her
3 death, a retirement pensioner and had had a marital
4 relationship with the spouse that had begun:
5 (i) before the retirement pensioner had become a retirement
6 pensioner; or
7 (ii) before the retirement pensioner had turned 60; or
8 (iii) not less than 3 years before the pensioner's death;
9 —the applicable percentage of the annual rate of pension
10 payable to the retirement pensioner before his or her death; or
11 (d) if the deceased pensioner was, immediately before his or her
12 death, a retirement pensioner and had had a late short-term
13 marital relationship with the spouse—such percentage of the
14 annual rate of pension payable to the retirement pensioner
15 immediately before his or her death as is determined by the
16 Board.

17 **91 Before subsection 110(6)**

18 Insert:

- 19 (5B) In making a determination under paragraph (4)(d), the Board must
20 take into consideration:
21 (a) the extent to which spouse's pension payable to the spouse of
22 a deceased pensioner under Division 3 is reduced when the
23 spouse and the deceased pensioner have been in a marital
24 relationship of the kind referred to in paragraph (4)(d); and
25 (b) whether there is in the custody, care and control of the spouse
26 one, or more than one, eligible child who:
27 (i) was not born of the marital relationship referred to in
28 paragraph (4)(d); or
29 (ii) did not become a stepchild of the pensioner as a result
30 of that marital relationship; or
31 (iii) is not a child of the person with whom the pensioner
32 had that marital relationship.

33 **92 Paragraph 110(7)(c)**

34 Repeal the paragraph, substitute:

- 1 (c) if the deceased person was, immediately before his or her
2 death, a retirement pensioner and had been in a marital
3 relationship that had begun:
4 (i) before he or she had become a retirement pensioner; or
5 (ii) before he or she had turned 60; or
6 (iii) not less than 3 years before the pensioner's death;
7 the applicable percentage of the annual rate of pension
8 payable to the retirement pensioner immediately before his or
9 her death.

10 **93 After subsection 110(7)**

11 Insert:

12 (7A) If:

- 13 (a) the deceased person:
14 (i) was, immediately before his or her death, a retirement
15 pensioner; and
16 (ii) had had a late short-term marital relationship; and
17 (b) one or more than one eligible child of the pensioner:
18 (i) was born of that marital relationship; or
19 (ii) became a stepchild of the pensioner as a result of that
20 marital relationship; or
21 (iii) is a child of the person with whom the pensioner had
22 that marital relationship; and
23 (c) that child or any of those children is not in the custody, care
24 and control of any of the surviving spouses;
25 the following provisions apply:
26 (d) benefit attributed under subsection (6) to that child or to each
27 of those children should be less than the amount of benefit
28 that would be attributed to him or her if he or she were an
29 eligible child other than a child referred to in paragraph (b);
30 (e) benefit attributed under subsection (6) to the eligible child or
31 eligible children of the deceased person not in the custody,
32 care and control of any of the surviving spouses must not
33 exceed in the aggregate such proportion of the applicable
34 percentage of the annual rate of pension payable to the
35 retirement pensioner immediately before his or her death as
36 is determined by the Board.

1 (7B) In making a determination under subsection (6) as affected by
2 paragraph (7A)(d) or under paragraph (7A)(e), the Board must take
3 into consideration:

- 4 (a) the extent to which spouse's pension payable to the spouse of
5 a deceased pensioner under Division 3 is reduced when the
6 spouse and the deceased pensioner have been in a marital
7 relationship of the kind referred to in paragraph (7A)(a); and
8 (b) whether the eligible child or any of the eligible children not
9 in the custody of any surviving spouse was or was not a child
10 referred to in paragraph (7A)(b).

11 **94 Paragraph 110(9)(b)**

12 After "(7)", insert "or (7A)".

13 **95 Paragraph 136(2B)(j)**

14 After "94", insert ", then, except if paragraph (ma) applies".

15 **96 Paragraph 136(2B)(k)**

16 After "95", insert ", then, except if paragraph (ma) applies".

17 **97 Paragraph 136(2B)(m)**

18 After "96", insert ", then, except if paragraph (ma) applies".

19 **98 After paragraph 136(2B)(m)**

20 Insert:

21 (ma) if:

- 22 (i) a deferred benefit by way of spouse's standard pension,
23 spouse's additional pension or spouse's pension is
24 payable in respect of the person in accordance with
25 section 94, 95 or 96 (as the case may be); and
26 (ii) the person had had a late short-term marital relationship
27 with his or her spouse;
28 the annual rate of that pension is:
29 (iii) if subparagraph (iv) does not apply—the rate worked
30 out by using the formula:

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1 *basic rate of pension* means the annual rate at which the
2 deferred benefit by way of orphan pension would be payable
3 in respect of the person under paragraph (w), (y) or (za)
4 (whichever would be applicable) if the deferred benefit was
5 not payable in respect of the person in accordance with
6 section 108A but was payable in respect of the person in
7 accordance with section 105, 106, 107 or 108 (as the case
8 may be).

9 *relevant period* has the same meaning as in section 108A.

10 **100 Paragraph 136(2D)(d)**

11 After “96B”, insert “or 96BA”.

12 **101 Beneficiaries not to be adversely affected by**
13 **amendments**

14 Despite the amendments made by this Part, the benefits payable in
15 respect of a deceased pensioner under Part VI of the *Superannuation*
16 *Act 1976* after the commencement of this item must not be less than the
17 benefits that would have been payable in respect of the pensioner under
18 that Part if the amendments had not been made.

Part 3—Reduced age retirement and early retirement benefits and increased benefits to spouse or orphans

102 Subsection 3(1)

Insert:

category 1 deceased pensioner means a deceased pensioner who:

- (a) before his or her death, was entitled to receive age retirement pension or early retirement pension; and
- (b) had not elected under section 57AA or 61AB (as the case may be) to be paid that pension at a reduced rate.

103 Subsection 3(1)

Insert:

category 2 deceased pensioner means a deceased pensioner who:

- (a) before his or her death, was entitled to receive age retirement pension or early retirement pension; and
- (b) had elected under section 57AA or 61AB (as the case may be) to be paid that pension at a reduced rate.

104 At the end of paragraph 55(1)(a)

Add “or paragraph 57AA(2)(a); and”.

105 Paragraph 55(1)(b)

After “57(1)”, insert “or paragraph 57AA(2)(b)”.

106 At the end of paragraph 55(1)(c)

Add “or paragraph 57AA(2)(c)”.

107 At the end of paragraph 55(2)(a)

Add “or paragraph 57AA(2)(a); and”.

108 Paragraph 55(2)(b)

After “57(1)”, insert “or paragraph 57AA(2)(b)”.

109 At the end of paragraph 55(2)(c)

Add “or paragraph 57AA(2)(c)”.

110 Before subsection 56(1)

Insert:

(1A) This section does not apply to a person who makes an election under subsection 57AA(1).

111 Before subsection 57(1)

Insert:

(1A) This section does not apply to a person who makes an election under subsection 57AA(1).

112 After section 57

Insert:

57AA Election to receive age retirement benefit at reduced rate

- (1) Subject to subsection (2), a person who becomes, or is about to become, entitled to standard age retirement pension payable under this Division may, not later than 3 months after but not earlier than 3 months before he or she becomes so entitled, by notice in writing to the Board, elect to be paid age retirement benefit at a reduced rate under this section.
- (2) A person who has made an election under section 76A or 110T may not make an election under subsection (1).
- (3) If a person makes an election under section 110T after making an election under subsection (1), the person is taken not to have made the election under subsection (1).
- (4) If a person makes an election under subsection (1):
 - (a) the annual rate at which standard age retirement pension is payable to the person is 93% of the annual rate at which that pension would be payable to the person if he or she did not make the election; and
 - (b) if the person is entitled to additional age retirement pension, the annual rate of that pension is:

-
- 1 (i) an amount per annum equal to the amount (*base*
2 *amount*) worked out by multiplying the person's
3 accumulated contributions by the factor that, having
4 regard to the person's age on his or her last day of
5 service and such other matters (if any) as are prescribed,
6 is applicable to the person under regulations made for
7 the purposes of this paragraph; or
8 (ii) if the rate worked out under subparagraph (i) is greater
9 than 20% of his or her final annual rate of salary—20%
10 of the person's final annual rate of salary; and
11 (c) if the base amount is greater than an amount (*maximum*
12 *amount*) equal to 20% of the person's final annual rate of
13 salary, the person is to be paid a lump sum benefit equal to
14 the amount by which his or her accumulated contributions
15 exceed an amount worked out by dividing the maximum
16 amount by the factor referred to in subparagraph (b)(i).

17 **113 At the end of paragraph 59(1)(a)**

18 Add "or paragraph 61AB(2)(a); and".

19 **114 At the end of paragraph 59(1)(b)**

20 Add "or paragraph 61AB(2)(b)".

21 **115 At the end of paragraph 59(1)(c)**

22 Add "or paragraph 61AB(2)(c)".

23 **116 Before subsection 60(1)**

24 Insert:

25 (1A) This section does not apply to a person who makes an election
26 under subsection 61AB(1).

27 **117 Before subsection 61(1)**

28 Insert:

29 (1AA) This section does not apply to a person who makes an election
30 under subsection 61AB(1).

31 **118 After section 61A**

32 Insert:

61AB Election to receive early retirement benefit at reduced rate

- (1) Subject to subsection (2), a person who becomes, or is about to become, entitled to standard early retirement pension under this Division or Subdivision C of Division 3 of Part VIC may, not later than 3 months after but not earlier than 3 months before he or she becomes so entitled, by notice in writing to the Board, elect to be paid early retirement benefit at a reduced rate under this section.
- (2) A person who has made an election under section 76A or 110T may not make an election under subsection (1).
- (3) If a person makes an election under section 110T after making an election under subsection (1), the person is taken not to have made the election under subsection (1).
- (4) If a person makes an election under this section:
- (a) the annual rate at which standard early retirement pension is payable to the person is 93% of the annual rate at which that pension would be payable to the person if he or she did not make the election; and
 - (b) if the person is entitled to additional early retirement pension, the annual rate of that pension is:
 - (i) an amount per annum equal to the amount (*base amount*) worked out by multiplying the person's accumulated contributions by the factor applicable to him or her under subsection (5); or
 - (ii) if the rate worked out under subparagraph (i) is greater than 20% of the person's notional final annual rate of salary—20% of his or her notional final annual rate of salary; and
 - (c) if the base amount is greater than an amount (*maximum amount*) equal to 20% of the person's final annual rate of salary, the person is to be paid a lump sum benefit equal to the amount by which his or her accumulated contributions exceed an amount worked out by dividing the maximum amount by the factor applicable to him or her under subsection (5).
- (5) The factor applicable to a person for the purposes of paragraphs (4)(b) and (c) is the factor that, having regard to his or

her age on his or her last day of service and such other matters (if any) as are prescribed, is applicable to him or her under regulations made for the purposes of this subsection.

(6) In this section:

notional final annual rate of salary, in relation to a person, means the annual rate of the person's final annual rate of salary reduced by the percentage of that rate that, having regard to his or her age on his or her last day of service and such other matters (if any) as are prescribed, is applicable to him or her under regulations made for the purposes of this definition.

119 Subsection 65(2)

Omit "or 61(2)" (wherever occurring), substitute ", paragraph 57AA(2)(c), subsection 61(2) or paragraph 61AB(2)(c)".

120 Subsections 94(1) and (2)

Repeal the subsections, substitute:

- (1) If, at any time, the spouse of a category 1 deceased pensioner is entitled to spouse's standard pension under paragraph 93(1)(a), then, subject to subsection (2A), the annual rate of that pension is:
- (a) if at that time there are no children of the pensioner who are eligible children—67% of the annual rate (***pensioner rate***) at which standard age retirement pension or standard early retirement pension (as the case may be) was payable to the pensioner immediately before his or her death; or
 - (b) if at that time only one child of the pensioner is an eligible child—78% of the pensioner rate; or
 - (c) if at that time 2 children of the pensioner are eligible children—89% of the pensioner rate; or
 - (d) if at that time 3 or more children of the pensioner are eligible children—100% of the pensioner rate.
- (2) If, at any time, the spouse of a category 2 deceased pensioner is entitled to spouse's standard pension under paragraph 93(1)(a), then, subject to subsection (2A), the annual rate of that pension is:
- (a) if at that time there are no children of the pensioner who are eligible children—85% of the annual rate (***pensioner rate***) at which standard age retirement pension or standard early

- 1 retirement pension (as the case may be) was payable to the
2 pensioner immediately before his or her death; or
3 (b) if at that time only one child of the pensioner is an eligible
4 child—97% of the pensioner rate; or
5 (c) if at that time 2 or more children of the pensioner are eligible
6 children—108% of the pensioner rate.

7 **121 Subsection 94(3)**

8 Repeal the subsection, substitute:

- 9 (3) Despite subsections (1), (2) and (2A), if, on any of the 7 pension
10 pay days immediately following the death of the pensioner,
11 spouse's standard pension would, apart from this subsection, be
12 payable to the spouse of the deceased pensioner at a rate that is less
13 than the rate (*pensioner rate*) at which standard age retirement
14 pension or standard early retirement pension (as the case may be)
15 would be payable to the deceased pensioner on that day if he or she
16 had not died, spouse's standard pension is payable to the spouse on
17 that day at a rate equal to the pensioner rate.

18 **122 Subsection 95(1)**

19 Repeal the subsection, substitute:

- 20 (1) If the spouse of a category 1 deceased pensioner is entitled to
21 spouse's additional pension under paragraph 93(1)(b), then, subject
22 to subsection (1B), the annual rate of that pension is 67% of the
23 annual rate at which additional age retirement pension or additional
24 early retirement pension was payable to the pensioner immediately
25 before his or her death.
- 26 (1A) If the spouse of a category 2 deceased pensioner is entitled to
27 spouse's additional pension under paragraph 93(1)(b), then, subject
28 to subsection (1B), the annual rate of that pension is 85% of the
29 annual rate at which additional age retirement pension or additional
30 early retirement pension was payable to the pensioner immediately
31 before his or her death.

32 **123 Subsection 95(2)**

33 Repeal the subsection, substitute:

- 34 (2) Despite subsections (1), (1A) and (1B), if:
-

-
- 1 (a) the pensioner did not make an election under section 64; and
2 (b) on any of the 7 pension pay days immediately following the
3 death of the pensioner, spouse's additional pension would,
4 apart from this subsection, be payable to the spouse of the
5 deceased person at a rate that is less than the rate (*pensioner*
6 *rate*) at which additional age retirement pension or additional
7 early retirement pension (as the case may be) would be
8 payable to the deceased pensioner on that day if he or she had
9 not died;
10 spouse's additional pension is payable to the spouse on that day at
11 a rate equal to the pensioner rate.

12 **124 Paragraph 96B(1)(b)**

13 Omit "section 94 or 96", substitute "subsection 94(1) or section 96".

14 **125 Subsection 96B(2)**

15 After "pension" (first occurring), insert "under subsection (1)".

16 **126 Paragraph 96B(2)(a)**

17 Omit ", 90, 94 or 96", substitute "or 90, subsection 94(1) or section 96".

18 **127 Subsection 96B(3)**

19 After "pension", insert "under subsection (1)".

20 **128 Subsection 96B(4)**

21 After "pension", insert "under subsection (1)".

22 **129 At the end of section 96B**

23 Add:

- 24 (5) If, at any time when spouse's pension is payable to the spouse of a
25 deceased pensioner in accordance with subsection 94(2), there is
26 one, or more than one, child of the deceased pensioner who is a
27 partially dependent child, then, subject to subsection (7) and
28 section 96BA, the spouse is entitled to extra spouse's pension in
29 accordance with subsection (6).
30 (6) If, at any time, the spouse of a deceased pensioner is entitled to
31 extra spouse's pension under subsection (5), the annual rate of that
32 pension is:
-

- 1 (a) the applicable percentage of the annual rate of the pension by
2 reference to which the spouse's pension payable to the
3 spouse under subsection 94(2) is to be calculated under that
4 subsection; or
5 (b) an amount equal to the amount per annum of the regular
6 maintenance payments that the deceased pensioner was, at
7 the time of his or her death, voluntarily making, or required
8 by a court to make, to or in respect of the partially dependent
9 child or children;
10 whichever is less.
- 11 (7) The spouse of a deceased pensioner is not entitled to extra spouse's
12 pension under subsection (5) at any time when there is more than
13 one child of the deceased pensioner who is an eligible child.
- 14 (8) If, at any time, the spouse of a deceased pensioner is entitled to
15 extra spouse's pension under subsection (5), then, for the purposes
16 of subsection (6), the applicable percentage is:
17 (a) if, at that time, one child of the deceased pensioner is an
18 eligible child—11%; or
19 (b) if, at that time, no child of the deceased pensioner is an
20 eligible child:
21 (i) if there is one partially dependent child—12%; or
22 (ii) if there are 2 or more partially dependent children—
23 23%.

24 **130 Section 109**

25 Omit "105(2),".

26 **131 Section 109**

27 Omit ", 107(2)".

28 **132 At the end of section 109**

29 Add:

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(2) If, at any time, orphan pension is payable in respect of an eligible child or eligible children of a deceased pensioner, then, for the purposes of subsection 105(2) or 107(2), the applicable percentage is the percentage worked out in accordance with the following table:

Applicable percentage			
Item	Number of eligible children	Category 1 deceased pensioner	Category 2 deceased pensioner
1	If, at that time, there is 1 eligible child	45%	51%
2	If, at that time, there are 2 eligible children	80%	92%
3	If, at that time, there are 3 eligible children	90%	108%
4	If, at that time, there are 4 or more eligible children	100%	108%

133 Subsection 109AB(3)

Omit “subsection (2)”, substitute “paragraphs (2)(a) and (b)”.

134 After subsection 109AB(3)

Insert:

(3A) The applicable percentage mentioned in paragraph (2)(c) is the percentage worked out in accordance with the following table:

Applicable percentage			
Item	Number of eligible children in custody etc. of spouse	Category 1 deceased pensioner	Category 2 deceased pensioner
1	If there are no eligible children of the deceased person in the custody, care and control of the spouse	67%	85%
2	If there is one eligible child of the deceased person in the custody, care and control of the spouse	78%	97%
3	If there are 2 eligible children of the deceased person in the custody, care and control of the spouse	89%	108%

Applicable percentage			
Item	Number of eligible children in custody etc. of spouse	Category 1 deceased pensioner	Category 2 deceased pensioner
4	If there are 3 or more eligible children of the deceased person in the custody, care and control of the spouse	100%	108%

1 **135 Subsection 109AB(6)**

2 Omit “subsection (5)”, substitute “paragraphs (5)(a) and (b)”.

3 **136 After subsection 109AB(6)**

4 Insert:

5 (6A) The applicable percentage mentioned in paragraph (5)(c) is the
6 percentage worked out in accordance with the following table:
7

Applicable percentage			
Item	Number of eligible children not in custody etc. of spouse	Category 1 deceased pensioner	Category 2 deceased pensioner
1	If there is one eligible child not in the custody, care and control of the spouse	45%	51%
2	If there are 2 eligible children not in the custody, care and control of the spouse	80%	92%
3	If there are 3 eligible children not in the custody, care and control of the spouse	90%	108%
4	If there are 4 or more eligible children not in the custody, care and control of the spouse	100%	108%

8 **137 Subsection 110(5)**

9 Omit “subsection (4)”, substitute “paragraphs (4)(a) and (b)”.

10 **138 After subsection 110(5)**

11 Insert:

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(5A) The applicable percentage mentioned in paragraph (4)(c) is the percentage worked out in accordance with the following table:

Applicable percentage			
Item	Number of eligible children in custody etc. of spouse	Category 1 deceased pensioner	Category 2 deceased pensioner
1	If there is no eligible child of the deceased person in the custody, care and control of the spouse	67%	85%
2	If there is one eligible child of the deceased person in the custody, care and control of the spouse	78%	97%
3	If there are 2 eligible children of the deceased person in the custody, care and control of the spouse	89%	108%
4	If there are 3 or more eligible children of the deceased person in the custody, care and control of the spouse	100%	108%

139 Subsection 110(8)

Omit “subsection (7)”, substitute “paragraphs (7)(a) and (b)”.

140 After subsection 110(8)

Insert:

(8A) The applicable percentage mentioned in paragraph (7)(c) is the percentage worked out in accordance with the following table:

Applicable percentage			
Item	Number of eligible children not in custody etc. of spouse	Category 1 deceased pensioner	Category 2 deceased pensioner
1	If there is one eligible child not in the custody, care and control of the spouse	45%	51%
2	If there are 2 eligible children not in the custody, care and control of the spouse	80%	92%

Applicable percentage			
Item	Number of eligible children not in custody etc. of spouse	Category 1 deceased pensioner	Category 2 deceased pensioner
3	If there are 3 eligible children not in the custody, care and control of the spouse	90%	108%
4	If there are 4 or more eligible children not in the custody, care and control of the spouse	100%	108%

1 **141 Paragraphs 110AB(3)(a), (b) and (c)**

2 Repeal the paragraphs, substitute:

- 3 (a) in the case of spouses of a category 2 deceased pensioner:
- 4 (i) if there are 2 spouses—11%; or
- 5 (ii) if there are 3 or more spouses—22%; or
- 6 (b) in any other case:
- 7 (i) if there are 2 spouses—11%; or
- 8 (ii) if there are 3 spouses—22%; or
- 9 (iii) if there are 4 or more spouses—33%.

10 **142 Subsection 110R(2)**

11 Omit “or 61” (twice occurring), substitute “, 57AA, 61 or 61AB”.

12 **143 After section 110TB**

13 Insert:

14 **110TBA Election to receive age retirement benefit etc. at reduced**
15 **rate**

16 A person who has made an election under section 110T may, not
17 later than 3 months after, but not earlier than 3 months before, age
18 retirement benefit or early retirement benefit becomes payable to
19 him or her under section 110TB, elect to receive the benefit at a
20 reduced rate.

21 **144 At the end of subsection 110TC(1)**

22 Add:

; and (e) if the person has made an election under section 110TBA—the person is taken to have elected:

- (i) to receive age retirement pension at a reduced rate under section 57AA; or
 - (ii) to receive early retirement benefit at a reduced rate under section 61AB;
- as the case requires.

145 Subsection 136(2) (definition of F_I)

Repeal the definition, substitute:

F_I is such factor as, having regard to:

- (a) the age of the person on the day on which the deferred benefits become payable; and
 - (b) whether or not the person has elected under section 137A that deferred benefits be paid to him or her at a reduced rate;
- is applicable in accordance with Table 1 in Schedule 11; and

146 Paragraph 136(2B)(k)

Omit all the words from and including “the annual rate”, substitute:
the annual rate of that pension is:

- (i) except if subparagraph (ii) applies—67% of the annual rate of the pension that was payable to the person in accordance with paragraph (2)(b) immediately before his or her death; or
- (ii) if the person elected under section 137A that deferred benefits be paid to him or her at a reduced rate—85% of the annual rate of that pension;

147 Subsection 136(2G)

Omit “, (j)”.

148 After subsection 136(2G)

Insert:

(2GA) If, at any time, a deferred benefit by way of spouse's pension is payable in respect of a person in accordance with section 94, then, for the purposes of paragraph (2B)(j), the applicable percentage is the percentage worked out in accordance with the following table:

Applicable percentage			
Item	Number of eligible children	If person did not make election under section 137A	If person made election under section 137A
1	If, at that time, there is no eligible child of the person who is an eligible child	67%	85%
2	If, at that time, one child of the person is an eligible child	78%	97%
3	If, at that time, 2 children of the person are eligible children	89%	108%
4	If, at that time, more than 2 children of the person are eligible children	100%	108%

149 Subsection 136(2H)

Omit "(w),".

150 Subsection 136(2H)

Omit ", (z)".

151 After subsection 136(2H)

Insert:

(2HA) If, at any time, a deferred benefit by way of orphan pension is payable in respect of a person in accordance with section 105 or 107, then, for the purposes of paragraph (2B)(w) or (2B)(z) (as the case requires), the applicable percentage is the percentage worked out in accordance with the following table:

Schedule 1 Amendment of the Superannuation Act 1976

Part 3 Reduced age retirement and early retirement benefits and increased benefits to spouse or orphans

Applicable percentage			
Item	Number of eligible children	If person did not make election under section 137A	If person made election under section 137A
1	If, at that time, one child of the person is an eligible child	45%	51%
2	If, at that time, 2 children of the person are eligible children	80%	92%
3	If, at that time, 3 children of the person are eligible children	90%	108%
4	If, at that time, more than 3 children of the person are eligible children	100%	108%

152 After section 137

Insert:

137A Election to receive deferred benefits at reduced rate

A person who has made an election under section 137 may, within 3 months after deferred benefits become payable to him or her under section 138, elect that those deferred benefits are to be paid to him or her at a reduced rate.

153 Schedule 11, Table 1

Repeal the table, substitute:

Table 1—Factors applicable where benefits payable in accordance with section 56, 57, 60 or 61			
Column 1 Item	Column 2 Age on which benefits become payable	Column 3 Factor if person has not made an election under section 137A	Column 4 Factor if person has made an election under section 137A
1	65	.110	.1030
2	64	.108	.1010
3	63	.106	.0990

Amendment of the Superannuation Act 1976 **Schedule 1**
Reduced age retirement and early retirement benefits and increased benefits to spouse or
orphans **Part 3**

**Table 1—Factors applicable where benefits payable in accordance with
section 56, 57, 60 or 61**

Column 1 Item	Column 2 Age on which benefits become payable	Column 3 Factor if person has not made an election under section 137A	Column 4 Factor if person has made an election under section 137A
4	62	.104	.0970
5	61	.102	.0950
6	60	.100	.0930
7	59	.0985	.0916
8	58	.0970	.0902
9	57	.0955	.0888
10	56	.0940	.0874
11	55	.0925	.0860
12	54	.0910	.0846
13	53	.0895	.0832
14	52	.0880	.0818
15	51	.0865	.0804
16	50	.0850	.0790

1

Part 4—Payment into fund of amounts held in other superannuation funds or payable under superannuation arrangements

154 Subsection 3(1)

Insert:

accumulated performance pay employee contributions, in relation to a person, means the sum of:

(a) an amount equal to the difference between:

(i) the sum of the amounts paid into a declared fund (within the meaning of the *Superannuation (Productivity Benefit) Act 1988*) in respect of the person under paragraph 11(1)(a) of the Superannuation (Productivity Benefit) Alternative Arrangements Declaration No. 6 (Statutory Rules 1993, No. 34); and

(ii) the sum of any amounts deducted by way of charges or fees from those amounts by the trustee of the fund; and

(b) interest on the amount mentioned in paragraph (a).

accumulated performance pay employer contributions, in relation to a person, means the sum of:

(a) an amount equal to the difference between:

(i) the sum of the amounts paid into a declared fund (within the meaning of the *Superannuation (Productivity Benefit) Act 1988*) in respect of the person under paragraph 11(1)(b) of the Superannuation (Productivity Benefit) Alternative Arrangements Declaration No. 6 (Statutory Rules 1993, No. 34); and

(ii) the sum of any amounts in the nature of income tax relevant to those amounts and any amounts deducted by way of charges or fees from those amounts by the trustee of the fund; and

(b) interest on the amount mentioned in paragraph (a).

employer component, in relation to a benefit payable in respect of a person under Part VIAB, means that part of the benefit that is payable because of:

- 1 (a) the accumulated performance pay employer contributions of
2 the person; and
3 (b) if the person's transferable productivity amount was paid to
4 the Board under section 110SL or was paid first to the trustee
5 of another superannuation entity and then an amount in
6 respect of that transferable productivity amount was paid
7 under section 110SL by that trustee to the Board—the
8 person's transferable productivity amount.

9 *superannuation entity* has the same meaning as in the SIS Act.

10 *transferable productivity amount*, in relation to a person whose
11 continuing contributions (within the meaning of the
12 *Superannuation (Productivity Benefit) Act 1988*) are, or were, held
13 in a declared fund (within the meaning of that Act), means the sum
14 of:

- 15 (a) an amount equal to the difference between:
16 (i) the sum of the continuing contributions paid into the
17 declared fund; and
18 (ii) the sum of any amounts in the nature of income tax
19 relevant to those contributions and any amounts
20 deducted by way of charges or fees from those
21 contributions by the trustee of the declared fund; and
22 (b) interest on the amount mentioned in paragraph (a).

23 **155 Subsection 110SB(1) (at the end of the definition of *other***
24 ***vested benefit*)**

25 Add:

- 26 ; (c) if a benefit is payable in respect of the person under
27 Part VIAB—the amount equal to that benefit.

28 **156 After Part VIAA**

29 Insert:

Part VIAB—Payment into fund of amounts held in other superannuation funds

110SK Request for transfer of amounts to Board

(1) This section applies to a person if:

- (a) the person is an eligible employee; or
- (b) deferred benefits are applicable in respect of the person under Division 3 of Part IX; or
- (c) either:
 - (i) the person has elected under subsection 110T(1) that Part VIB apply to him or her; or
 - (ii) regulation 15, 15A or 15B of the Superannuation (CSS) Former Eligible Employees Regulations applies to the person;

and no benefits under this Act have been paid or begun to be paid to the person;

and the person made an election under clause 6 of the Superannuation (Productivity Benefit) Alternative Arrangements Declaration No. 6 (Statutory Rules 1993, No. 34) to have performance pay taken into account in his or her superannuation arrangements under the *Superannuation (Productivity Benefit) Act 1988*.

(2) A person to whom this section applies may, at any time, by notice in writing, ask the trustee of the declared fund (within the meaning of the *Superannuation (Productivity Benefit) Act 1988*) holding the person's accumulated performance pay employee contributions and accumulated performance pay employer contributions to pay those contributions to the Board.

(3) If continuing contributions (within the meaning of the *Superannuation (Productivity Benefit) Act 1988*) have been paid, but are no longer being paid, into the declared fund in respect of a continuous period of employment of the person, the person may, by the same notice, ask the trustee of the declared fund to pay also to the Board the person's transferable productivity amount.

(4) If:

- 1 (a) a person's accumulated performance pay employee
2 contributions and accumulated performance pay employer
3 contributions; or
4 (b) a person's accumulated performance pay employee
5 contributions, accumulated performance pay employer
6 contributions and transferable productivity amount;
7 have, at the person's request, been paid by the trustee of the
8 declared fund to the trustee of a superannuation entity other than
9 the Fund, the person may, by notice in writing, ask the trustee of
10 that superannuation entity to pay to the Board the sum of:
11 (c) an amount equal to the difference between:
12 (i) the total amount paid to the superannuation entity; and
13 (ii) the sum of any amounts in the nature of income tax
14 relevant to that amount and any amounts deducted by
15 way of charges or fees from that amount by the trustee
16 of the superannuation entity; and
17 (d) interest on the amount mentioned in paragraph (c).
18 (5) The person must, as soon as possible, give to the Board notice in
19 writing of any request made to the trustee of a fund or
20 superannuation entity under subsection (2), (3) or (4).

21 **110SL Board to pay amounts into Fund**

22 If, following a request from a person under subsection 110SK(2),
23 (3) or (4), the trustee of a fund or superannuation entity pays an
24 amount to the Board, the Board must pay that amount into the
25 Fund.

26 **110SM Person's entitlement to benefit**

27 If an amount has been paid into the Fund under section 110SL in
28 respect of a person, the person becomes entitled to a benefit under
29 this Part if another benefit to which the person was entitled under
30 this Act becomes payable.

31 **110SN Amount of benefit**

32 The amount of the benefit payable in respect of a person under this
33 Part is the sum of:

- 1 (a) an amount equal to the difference between:
- 2 (i) the total amount that was paid into the Fund in respect
- 3 of the person under section 110SL; and
- 4 (ii) the sum of any amounts in the nature of income tax
- 5 relevant to that amount; and
- 6 (b) interest on the amount mentioned in paragraph (a).

7 **110SO Application of benefit**

8 The employer component of the benefit to which a person is

9 entitled under this Part is to be treated as a preserved benefit under

10 the SIS Act and the remainder of the benefit is payable to the

11 person.

12 **110SP Payment of benefit to spouse etc.**

- 13 (1) If, because of a person's death:
- 14 (a) a benefit becomes payable in respect of the person under this
- 15 Part; and
- 16 (b) Part VI applies;
- 17 then:
- 18 (c) if the person is survived by a spouse—the benefit is payable
- 19 to the spouse; or
- 20 (d) if orphan benefit is payable to an eligible child or eligible
- 21 children—the benefit is payable to:
- 22 (i) the eligible child or eligible children; or
- 23 (ii) if the orphan benefit is payable under section 115 to
- 24 another person or other persons—that person or those
- 25 persons.
- 26 (2) If, because of a person's death:
- 27 (a) a benefit becomes payable in respect of the person under this
- 28 Part; and
- 29 (b) a deferred benefit by way of spouse's benefit is payable in
- 30 respect of the person;
- 31 the benefit under this Part is payable to the spouse.
- 32 (3) If, because of a person's death:
- 33 (a) a benefit becomes payable in respect of the person under this
- 34 Part; and
-

- 1 (b) a deferred benefit by way of orphan benefit is payable in
2 respect of the person;
3 the benefit under this Part is payable to:
4 (c) the eligible child or eligible children entitled to the deferred
5 benefit; or
6 (d) if the deferred benefit is payable under section 115 to another
7 person or other persons—that person or those persons.

8 **110SQ Payment of benefit to personal representatives etc.**

- 9 If:
10 (a) because of a person's death, a benefit is payable in respect of
11 a person under this Part; and
12 (b) the person is not survived by any spouse; and
13 (c) there is no surviving child of the person or no surviving child
14 of the person who could be at any time an eligible child of
15 the person;
16 the benefit is payable to the person's legal personal representative
17 or, if no legal personal representative can be found, to any
18 individual or individuals that the Board determines.

19 **157 After paragraph 110TA(1)(b)**

- 20 Insert:
21 and (c) any benefit that is, or is about to become, payable in respect
22 of the person under Part VIAB;

23 **158 Paragraph 110TD(b)**

- 24 Omit "Part VIA applies", substitute "Parts VIA and VIAB apply".

25 Note: The heading to section 110TD is altered by omitting "**and VIA**" and substituting "**VIA**
26 **and VIAB**".

27 **159 Section 110TF**

- 28 Omit all the words from and including "a lump sum benefit", substitute:
29 a lump sum benefit equal to the sum of:
30 (d) the accumulated contributions of the deceased person; and
31 (e) the accumulated employer contributions in respect of the
32 deceased person; and

- 1 (f) the benefit (if any) payable in respect of the deceased person
2 under Part VIAB;
3 is payable in respect of that child or those children.

4 **160 Paragraph 110TG(1)(a)**

5 After “VIA” (second occurring), insert “or VIAB”.

6 **161 After paragraph 111(2)(b)**

7 Insert:

8 and (ba) if a benefit is payable in respect of the person under
9 Part VIAB—that benefit;

10 **162 Paragraph 126A(3)(c)**

11 After “persons” (first occurring) insert “, or the whole or a part of the
12 benefit (if any) payable under Part VIAB in respect of the person or
13 each or all of those persons,”.

14 **163 After subparagraph 128(2)(c)(ii)**

15 Insert:

16 and (iii) the amount of any part of the benefit payable in respect
17 of the person under Part VIAB included in a transfer
18 value (if any) that was payable to the person under
19 Division 3 of Part IX and interest on that amount;

20 **164 After subparagraph 128(4B)(c)(iii)**

21 Insert:

22 and (iv) if a benefit is payable in respect of the person under
23 Part VIAB—the employer component of that benefit;

24 **165 At the end of paragraph 128(6)(b)**

25 Add:

26 ; or (iii) if a benefit is payable in respect of the person under
27 Part VIAB—an amount equal to the employer
28 component of that benefit.

29 **166 At the end of subsection 135(1)**

30 Add:

1 ; and (d) the amount of benefit (if any) payable in respect of the
2 person under Part VIAB.

3 **167 Subparagraph 240(1)(a)(ii)**

4 Omit “and”.

5 **168 At the end of paragraph 240(1)(a)**

6 Add “and any benefits payable in respect of those persons under
7 Part VIAB; and”.

8 **169 Section 246**

9 Omit all the words from and including “other than”, substitute:
10 other than:

- 11 (a) benefits under Part VI, subsection 110S(2) or section 111; or
12 (b) if, on the death of another person, a benefit is payable to the
13 person under section 110SQ—that benefit.

14 **170 Paragraph 248(1)(a)**

15 After “section 245”, insert “and any benefits payable in respect of those
16 persons under Part VIAB”.

**Part 5—Amendments relating to powers of
Reconsideration Advisory Committees**

171 Subsection 153AD(1)

Repeal the subsection, substitute:

(1) The functions of a Committee are to review any decision referred to it under this Part and:

(a) if the Board has delegated to the Committee any of the Board's powers in relation to the decision—to exercise those powers; or

(b) otherwise—to make recommendations to the Board in relation to the decision.

172 Subsection 153AL(1)

Omit all the words before paragraph (a), substitute "If a Committee makes recommendations to the Board in relation to a decision referred to the Committee, then, after the Board takes into account:".

173 Subsection 153AS(1)

Omit all the words before paragraph (a), substitute "If a Committee makes recommendations to the Board in relation to a decision referred to the Committee, then, after the Board takes into account:".

Part 6—Miscellaneous

174 Section 27Q

Repeal the section, substitute:

27Q Delegation by Board

- (1) The Board may, by signed instrument, delegate to:
- (a) a member of the Board; or
 - (b) the Commissioner; or
 - (c) a member of the staff referred to in section 26; or
 - (d) an APS employee in the Department; or
 - (e) an officer or employee of a person who is responsible for investing money forming part of a superannuation fund vested in or managed by the Board; or
 - (f) any other person who performs duties in connection with the operation of this Act; or
 - (g) a committee consisting of 2 or more persons each of whom is a person referred to in any of the above paragraphs;
- all or any of its powers under this Act or the regulations except its power to reconsider its own decisions or decisions made by its delegates.
- (2) The Board may delegate to a Reconsideration Advisory Committee established under section 153AB the Board's power to reconsider its own decisions or decisions made by its delegates.
- (3) If the Board delegates a power under subsection (1), the delegate may, by writing, sub-delegate the power:
- (a) if the delegate is a member of the Board—to:
 - (i) another member of the Board; or
 - (ii) a person referred to in paragraph (1)(b), (c), (d), (e) or (f); or
 - (b) if the delegate is the Commissioner—to a person referred to in paragraph (1)(c), (d), (e) or (f); or
 - (c) if the delegate is a person referred to in paragraph (1)(c), (d), (e) or (f)—to:
 - (i) another person referred to in the same paragraph; or

- 1 (ii) a person referred to in another of those paragraphs.
- 2 (4) Section 34AA and paragraphs 34AB(a), (b) and (d) of the *Acts*
3 *Interpretation Act 1901* apply in relation to a sub-delegation in a
4 corresponding way to the way in which they apply to a delegation.
- 5 (5) Section 34A and paragraphs 34AB(c) and (d) of the *Acts*
6 *Interpretation Act 1901* apply to a sub-delegation as if it were a
7 delegation.
- 8 **175 Subsection 27R(3)**
9 Omit “Any”, substitute “Except in cases where the SIS Act does not so
10 permit, any”.
- 11 **176 Subsection 58(3A)**
12 Repeal the subsection.
- 13 **177 Subsection 62A(1) (paragraph (a) of the definition of**
14 ***notional accumulated SG contributions*)**
15 Omit “the Australian Government Actuary”, substitute “an actuary”.
- 16 **178 Subsection 62A(5)**
17 Omit “the Australian Government Actuary”, substitute “an actuary”.
- 18 **179 Subsection 110SB(1) (paragraph (a) of the definition of**
19 ***notional accumulated SG contributions*)**
20 Omit “the Australian Government Actuary”, substitute “an actuary”.
- 21 **180 Subsection 110SB(5)**
22 Omit “the Australian Government Actuary”, substitute “an actuary”.
- 23 **181 Subsection 110SE(6)**
24 Omit “the Australian Government Actuary”, substitute “an actuary”.
- 25 **182 Before Part VII**
26 Insert:

**Part VID—Benefits on ceasing to be an eligible
employee because of sale of organisation or
outsourcing of function**

110TV Entitlement to benefits

- (1) A person is entitled to benefits in accordance with this section if the person:
- (a) ceases to be an eligible employee on or after 27 June 1997 in circumstances connected with the sale or transfer of an organisation, business, service or asset, or the transfer of a function; and
 - (b) is not taken by section 58 to have retired involuntarily; and
 - (c) has not reached his or her minimum retiring age when he or she so ceases to be an eligible employee; and
 - (d) has not made an election under section 137.
- (2) Subject to subsection (7), the benefits are an amount (the ***total benefit***) equal to the sum of:
- (a) an amount equal to 3.5 times the amount of his or her accumulated basic contributions; and
 - (b) an amount equal to his or her accumulated supplementary contributions (if any); and
 - (c) any productivity benefits applying in relation to him or her under Part VIA; and
 - (d) any benefit applying in relation to him or her under Part VIAB or Subdivision B of Division 2 of Part IX;
- (3) The person must choose to receive the benefits either in accordance with subsection (4) or in accordance with subsection (5).
- (4) If the person chooses to receive the benefits in accordance with this subsection, the person is entitled to have the total benefit treated as a preserved benefit under the SIS Act and dealt with accordingly.
- (5) If the person chooses to receive the benefits in accordance with this subsection, the person is entitled to payment of so much of the total benefit as is equal to his or her accumulated contributions and to

1 have the balance of the total benefit treated as a preserved benefit
2 under the SIS Act and dealt with accordingly.

3 (6) If the person fails to make a choice as provided by subsection (3),
4 the person is taken to have chosen to receive benefits in accordance
5 with subsection (5).

6 (7) If the person's surcharge debt account is in debit when the person
7 becomes entitled to the benefits, the total benefit is reduced by the
8 person's surcharge deduction amount.

9 **183 Paragraph 111A(4)(b)**

10 Repeal the paragraph, substitute:

11 (b) if, before that anniversary, the payment in full of the benefit
12 becomes permissible under the SIS Act—the day on which
13 the person notifies the Board in writing that the payment has
14 become permissible under that Act.

15 **184 Subsection 119(3)**

16 Omit “, if ASIC approves,”.

17 **185 Subsection 136(1)**

18 After “his”, insert “or her”.

19 **186 Subsection 138(2)**

20 Omit “before”, substitute “after”.

21 **187 Subsection 138(3)**

22 Repeal the subsection, substitute:

23 (3) Paragraph (2)(c) does not apply unless the person will have, by the
24 date selected, reached the age that would have been his or her
25 minimum retiring age for the purposes of this Act if he or she had
26 not ceased to be an eligible employee and had continued to occupy
27 the position held by him or her immediately before so ceasing.

28 **188 Subparagraph 140(2)(a)(i)**

29 Omit “or VIAA”, substitute “, VIAA, VIAB or VID”.

30 **189 Sub-subparagraph 140(2)(a)(ii)(A)**

1 After “VIA”, insert “or VIAB”.

2 **190 Sub-subparagraph 140(2)(a)(ii)(B)**

3 After “VIA”, insert “, VIAB or VID”.

4 **191 Subsection 153AA(1) (subparagraph (g)(ii) of the**
5 **definition of *decision*)**

6 Repeal the subparagraph.

7 **192 Subsections 154AB(1) and (2)**

8 Omit “the Australian Government Actuary”, substitute “an actuary”.

9 **193 After subsection 155B(1)**

10 Insert:

11 (1A) This section applies to a person who:

- 12 (a) immediately before the sale or transfer of an organisation,
13 business, service or asset, or the transfer of a function, was an
14 eligible employee because he or she was the holder of a
15 particular position or office; and
16 (b) as a result of the sale or transfer of the organisation, business,
17 service or asset, or the transfer of a function, ceases to be an
18 eligible employee even though he or she continues to be the
19 holder of the position or office.

20 **194 At the end of section 155B**

21 Add:

- 22 (4) This section does not apply to a person who ceases to be an eligible
23 employee after 26 June 1997.

24 **195 At the end of section 158A**

25 Add:

26 (3) If:

- 27 (a) subsection (1) applies in relation to a benefit that is payable
28 to a person; and
29 (b) the amount of the benefit is unclaimed money within the
30 meaning of the *Superannuation (Unclaimed Money and Lost*

1 *Members*) Act 1999 and is required to be paid to the
2 Commissioner of Taxation under that Act;
3 the Board must comply with the requirement.

4 **196 At the end of subsection 159(1)**

5 Add:

6 ; and (c) an authority (other than an approved authority) or body
7 whose staff include a person or persons mentioned in
8 paragraph (ec) of the definition of *eligible employee* in
9 subsection 3(1).

10 **197 Subsection 160(8) (definition of *declared authority*)**

11 Repeal the definition, substitute:

12 *declared authority* means:

- 13 (a) an authority (other than an approved authority) or a body:
14 (i) whose staff consist of persons engaged under the Public
15 Service Act; and
16 (ii) that has been declared by the Minister (whether before
17 or after the commencement of this subparagraph) to be
18 an authority or body to which this section applies; or
19 (b) an authority (other than an approved authority) or a body
20 whose staff include a person or persons mentioned in
21 paragraph (ec) of the definition of *eligible employee* in
22 subsection 3(1).

23 **198 After section 163A**

24 Insert:

25 **163AB Board may require employers to distribute information etc.**
26 **to eligible employees**

27 (1) The Board may:

- 28 (a) send to the designated employer of an eligible employee any
29 document or written information that, under this Act or the
30 SIS Act, the Board is required to send to the employee; and
31 (b) ask the designated employer to give the document or
32 information to the eligible employee.

1 (2) The Board must ensure that the confidentiality of any document or
2 information sent to the designated employer for transmission to the
3 employee is preserved.

4 (3) The designated employer of an eligible employee must comply
5 with a request of the Board under subsection (1).

6 **199 Paragraph 166(3)(b)**

7 Repeal the paragraph, substitute:

8 (b) the amount in any other foreign currency that corresponds to
9 an amount referred to in this Act is to be calculated by using
10 such rate of exchange as is agreed between the eligible
11 employee and the designated employer.

12 **200 After subsection 168(17)**

13 Insert:

14 (17A) If:

15 (a) a provision of the regulations is incorrect, inadequate or
16 ineffective because of a provision of any Act (including an
17 Act amending this Act) that was enacted after the provision
18 of the regulations was made; and

19 (b) the incorrectness, inadequacy or ineffectiveness could be
20 remedied by an appropriate amendment of the regulations;
21 the Board may, for the purposes of the performance of its functions
22 or the exercise of its powers, treat the amendment as having been
23 made.

24 **201 Subsection 240(1)**

25 Omit “Minister, with the consent of the Board,” (wherever occurring),
26 substitute “Board”.

27 **202 Subsection 240(2)**

28 Repeal the subsection.

29 **203 Paragraph 241(1)(a)**

30 Omit “(1)”.

31 **204 Section 248**

1 Repeal the section, substitute:

2 **248 Transfer of assets and liabilities to PSS Board**

3 The Board may transfer to the PSS Board:

- 4 (a) such assets of the Fund (including investment assets of the
5 Fund) as are determined by the Board to be assets that fairly
6 and equitably represent the accumulated contributions and
7 Fund accumulated employer contributions of those people
8 who have ceased to be eligible employees under section 245;
9 and
10 (b) such liabilities (if any) (including investment liabilities of the
11 Fund) as are determined by the Board to be liabilities relating
12 to those assets.

1
2 **Schedule 2—Amendment of the**
3 **Superannuation Act 1990**

4 **Part 1—Amendments relating to the scope and**
5 **administration of the Act**

6 **1 Section 3 (definition of *approved authority*)**

7 Repeal the definition, substitute:

8 *approved authority* has the meaning given by section 3AAA.

9 **2 Section 3**

10 Insert:

11 *voting share* has the same meaning as in the *Corporations Act*
12 *2001*.

13 **3 After section 3**

14 Insert:

15 **3AAA Approved authorities**

- 16 (1) This section has effect for the purpose of determining whether an
17 authority or other body is an approved authority for the purposes of
18 this Act.
- 19 (2) An authority or other body that was an approved authority
20 immediately before the commencement of this section continues to
21 be an approved authority.
- 22 (3) An authority or other body that is an approved authority under
23 subsection (2) ceases to be an approved authority under that
24 subsection if:
- 25 (a) it is a body corporate with a share capital and any of the
26 voting shares in it that are beneficially owned by the
27 Commonwealth at the commencement of this section cease to
28 be so owned; or
- 29 (b) the financial statements prepared by it for a financial year
30 ending after the commencement of this section that are
31 publicly available show that the percentage of its revenue for

- 1 that year that was received from sources other than the
2 Commonwealth exceeded 70% and also exceeded the
3 percentage of its revenue that was shown, in the last publicly
4 available financial statements prepared by it for a financial
5 year that ended at or before that commencement, to have
6 been received from sources other than the Commonwealth.
- 7 (4) Subsection (5) applies to authorities or other bodies:
8 (a) that were incorporated or established before the
9 commencement of this section and are not approved
10 authorities under subsection (2); or
11 (b) are incorporated or established after that commencement.
- 12 (5) Subject to subsection (6), an authority or other body is an approved
13 authority for the purposes of this Act if:
14 (a) the authority or other body:
15 (i) is a body corporate incorporated for a public purpose; or
16 (ii) not being a body corporate, is established for a public
17 purpose;
18 by, or in accordance with, an Act, regulations made under an
19 Act, or a law of a Territory; and
20 (b) the chief executive officer of the authority or other body has
21 agreed to make payments to the Commonwealth in respect of
22 benefits that become payable under this Act to or in respect
23 of employees of the authority or other body.
- 24 (6) An authority or other body is not an approved authority under
25 subsection (5) if:
26 (a) it is a body corporate with a share capital and any of the
27 voting shares in it are beneficially owned by a person other
28 than the Commonwealth; or
29 (b) a purpose for which it is incorporated or established will
30 involve its carrying on business in competition with one or
31 more other persons; or
32 (c) the last financial statements prepared by it for a financial year
33 that are publicly available show that 70% or more of its
34 revenue for that year was received from sources other than
35 the Commonwealth.
-

- 1 (7) An amount paid to an authority or other body by the
2 Commonwealth is taken for the purposes of paragraph (6)(c) to
3 have been received by the authority or other body from a source
4 other than the Commonwealth if the amount was calculated by
5 reference to amounts received by the Commonwealth as a result of
6 the imposition of a tax or taxes.
- 7 (8) Despite the previous provisions of this section, an authority or
8 other body that is declared in writing by the Minister to be an
9 approved authority for the purposes of this Act is an approved
10 authority.
- 11 (9) Despite the previous provisions of this section, an authority or
12 other body that is declared in writing by the Minister not to be an
13 approved authority for the purposes of this Act is not an approved
14 authority.

15 **4 Paragraphs 45(1)(a) and (b)**

16 Repeal the paragraphs, substitute:

- 17 (a) a declaration for the purposes of subsection 3AAA(8);
18 (b) a declaration for the purposes of subsection 3AAA(9).

19 **5 Subsection 45(3)**

20 Omit “referred to in paragraph (1)(b)”, substitute “for the purposes of
21 subsection 3AAA(8)”.

22 **6 At the end of subsection 45(3)**

23 Add:

24 Note: The day of effect may be a day earlier than the day on which
25 subsection 3AAA(8) commenced (see subsection (3A)).

26 **7 After subsection 45(3)**

27 Insert:

- 28 (3A) To remove any doubt, a declaration made for the purposes of
29 subsection 3AAA(8) may be expressed, to the extent permitted
30 under subsection (3) of this section, to have taken effect from and
31 including a day (the *effective day*) earlier than the day on which
32 subsection 3AAA(8) commenced. If a declaration is so expressed,
33 it is taken to have had, before the day on which that subsection

Schedule 2 Amendment of the Superannuation Act 1990

Part 1 Amendments relating to the scope and administration of the Act

- 1 commenced, the effect that the declaration would have had if that
2 subsection had been in force from and including the effective day.
- 3 (3B) A declaration made for the purposes of subsection 3AAA(9) may
4 be expressed to have taken effect from and including 1 July 2002
5 if, and only if, no contributions have been accepted from, or in
6 respect of, an employee of the authority or other body to which the
7 declaration relates on or after that date.
8

Part 2—Miscellaneous

8 Section 3 (definition of *Trust Deed*)

Omit “under section 5”.

9 At the end of section 12

Add:

- (2) Subsection (1) does not prevent the Rules from making provision subject to which a person of a specified class who has ceased to be a member may, on again becoming a member, be taken not to have ceased to be a member.

10 Section 28A

Repeal the section, substitute:

28A Delegation by Board

- (1) The Board may, by signed instrument, delegate to:
- (a) a member of the Board; or
 - (b) the Commissioner; or
 - (c) a member of the staff assisting the Commissioner in the performance of his or her functions under this Act; or
 - (d) an APS employee in the Department; or
 - (e) an officer or employee of a person who is responsible for investing money forming part of a superannuation fund vested in or managed by the Board; or
 - (f) any other person who performs duties in connection with the operation of this Act; or
 - (g) a committee consisting of 2 or more persons each of whom is a person referred to in any of the above paragraphs;
- all or any of its powers under this Act or the regulations.
- (2) If the Board delegates a power under subsection (1), the delegate may, by writing, sub-delegate the power:
- (a) if the delegate is a member of the Board—to:
 - (i) another member of the Board; or

- 1 (ii) a person referred to in paragraph (1)(b), (c), (d), (e) or
2 (f); or
3 (b) if the delegate is the Commissioner—to a person referred to
4 in paragraph (1)(c), (d), (e) or (f); or
5 (c) if the delegate is a person referred to in paragraph (1)(c), (d),
6 (e) or (f)—to:
7 (i) another person referred to in the same paragraph; or
8 (ii) a person referred to in another of those paragraphs.
- 9 (3) Section 34AA and paragraphs 34AB(a), (b) and (d) of the *Acts*
10 *Interpretation Act 1901* apply in relation to a sub-delegation in a
11 corresponding way to the way in which they apply to a delegation.
- 12 (4) Section 34A and paragraphs 34AB(c) and (d) of the *Acts*
13 *Interpretation Act 1901* apply to a sub-delegation as if it were a
14 delegation.

15 **11 Section 33D**

16 Omit “Minister, with the consent of the Board,” (wherever occurring),
17 substitute “Board”.

18 **12 Subsection 33G(2)**

19 Omit “of Part 6”.

20 **13 After section 42**

21 Insert:

22 **42A Board may require employers to distribute information etc. to**
23 **members**

- 24 (1) The Board may:
25 (a) send to the designated employer of a member any document
26 or written information that:
27 (i) under this Act; or
28 (ii) under the SIS Act;
29 the Board is required to send to the member; and
30 (b) ask the designated employer to give the document or
31 information to the member.

(2) The Board must ensure that the confidentiality of any document or information sent to the designated employer for transmission to the member is preserved.

(3) The designated employer of a member must comply with a request of the Board under subsection (1).

14 Subsection 43(3)

Omit “Any”, substitute “Except in cases where the *Superannuation Industry (Supervision) Act 1993* or regulations under that Act do not so permit, any”.

15 Paragraph 45(1)(j)

Repeal the paragraph.

16 At the end of section 45

Add:

(6) Subsection 48(2) of the *Acts Interpretation Act 1901* does not apply in relation to an instrument referred to in paragraph (1)(e).

17 Commencement of certain provisions of Tenth Amending Deed

(1) Subclauses 3.13, 3.14, 3.15, 3.16, 3.17, 3.18, 3.29, 3.44 and 3.46 of the Tenth Amending Deed are taken to have commenced immediately after the commencement of the Ninth Amending Deed.

(2) In this item:

Ninth Amending Deed means the deed:

- (a) amending the Trust Deed under subsection 5(1) of the *Superannuation Act 1990*; and
- (b) notified in the *Gazette* of 28 June 1995 (*Gazette* No. GN25).

Tenth Amending Deed means the deed:

- (a) amending the Trust Deed under subsection 5(1) of the *Superannuation Act 1990*; and
- (b) notified in the *Gazette* of 1 February 1996 (*Gazette* No. S41).

Trust Deed has the same meaning as in the *Superannuation Act 1990*.

Schedule 3—Amendment of the Rules for the Administration of the Public Sector Superannuation Scheme

1 Rule 1.2.1 (definition of *equivalent employment*)

Repeal the definition.

2 Rule 1.2.1 (definition of *involuntary retirement*)

Omit:

- on the sale or transfer of all or part of an organisation,
business, service, asset or function (*see Divisions 6 and 7 of
Part 6*); or

3 Division 3 of Part 6

Repeal the Division, substitute:

Division 3

Involuntary Retirement Benefit Options

Benefit options — before minimum retiring age

6.3.1 A member who, before 1 July 2000, ceases membership
on **involuntary retirement** before **minimum retiring age** is
entitled to leave his/her **final benefit accrual** in the scheme as a
preserved benefit, or, as an alternative, may choose:

- (a) to be paid a lump sum of that part of his/her **final
benefit accrual** that the **SIS Act** permits to be
paid in cash, or a lump sum of less than that
amount, and:

-
- 1 (i) leave the balance of his/her **final benefit**
2 **accrual** in the scheme as a **preserved**
3 **benefit**; or
- 4 (ii) **roll-over** the balance of his/her **final**
5 **benefit accrual**; or
- 6 (iii) if the balance is 50% or more of his/her
7 **final benefit accrual**, convert the balance
8 into a **pension**; or
- 9 (b) to take his/her **final benefit accrual** as a
10 **pension**; or
- 11 (c) to **roll-over** his/her **final benefit accrual**; or
- 12 (d) to combine his/her **final benefit accrual** with the
13 benefit accruing under another current **period of**
14 **membership**, provided the combined benefit
15 does not exceed his/her **maximum benefit** (*see*
16 *Rules 5.2.20 and 5.3.20*);

17 unless:

- 18 (A) he/she ceases membership on the sale or transfer
19 of all or part of an organisation, business, service,
20 asset or function (*see Division 6 of Part 6*); or
- 21 (B) he/she transfers his/her benefits to an **eligible**
22 **superannuation scheme** (*see Rule 6.8.6*), or
23 joins an **approved superannuation scheme** (*see*
24 *Rule 6.8.10*) or an **authorised superannuation**
25 **scheme** (*see Rule 6.8.11*).

26 **6.3.2** A member who, on or after 1 July 2000, ceases
27 membership on **involuntary retirement** before **minimum**
28 **retiring age** is entitled to leave his/her **final benefit accrual** in
29 the scheme as a **preserved benefit**, or, as an alternative, may
30 choose:

-
- 1 (a) to be paid a lump sum of that part of his/her **final**
2 **benefit accrual** that the **SIS Act** permits to be
3 paid in cash and that does not exceed his/her
4 **accumulated member contributions**, or a lump
5 sum of less than that amount, and:
- 6 (i) leave the balance of his/her **final benefit**
7 **accrual** in the scheme as a **preserved**
8 **benefit**; or
- 9 (ii) **roll-over** the balance of his/her **final**
10 **benefit accrual**, with any amount that
11 exceeds the member's **accumulated**
12 **member contributions** being treated as a
13 preserved benefit for the purposes of the
14 **SIS Act**; or
- 15 (iii) convert the balance of his/her **final**
16 **benefit accrual** into a **pension**; or
- 17 (b) to take his/her **final benefit accrual** as a
18 **pension**; or
- 19 (c) to **roll-over** his/her **final benefit accrual**, with
20 any amount that exceeds the member's
21 **accumulated member contributions** being
22 treated as a preserved benefit for the purposes of
23 the **SIS Act**; or
- 24 (d) to combine his/her **final benefit accrual** with the
25 benefit accruing under another current **period of**
26 **membership**, provided the combined benefit
27 does not exceed his/her **maximum benefit** (*see*
28 *Rules 5.2.20 and 5.3.20*);
- 29 unless:
-

-
- 1 (A) he/she ceases membership on the sale or transfer
2 of all or part of an organisation, business, service,
3 asset or function (*see Division 6 of Part 6*); or
- 4 (B) he/she transfers his/her benefits to an **eligible**
5 **superannuation scheme** (*see Rule 6.8.6*), or
6 joins an **approved superannuation scheme** (*see*
7 *Rule 6.8.10*) or an **authorised superannuation**
8 **scheme** (*see Rule 6.8.11*).

9 **Benefit options — after minimum retiring age**

10 **6.3.3** A member who ceases membership on **involuntary**
11 **retirement** on or after **minimum retiring age** may choose:

- 12 (a) to be paid a lump sum of that part of his/her **final**
13 **benefit accrual** that the **SIS Act** permits to be
14 paid in cash, or a lump sum of less than that
15 amount, and:
- 16 (i) leave the balance, if any, of his/her **final**
17 **benefit accrual** in the scheme as a
18 **preserved benefit**; or
- 19 (ii) **roll-over** the balance, if any, of his/her
20 **final benefit accrual**; or
- 21 (iii) if the balance is 50% or more of his/her
22 **final benefit accrual**, convert the balance
23 into a **pension**; or
- 24 (b) to take his/her **final benefit accrual** as a
25 **pension**; or
- 26 (c) to leave his/her **final benefit accrual** in the
27 scheme as a **preserved benefit**; or
- 28 (d) to **roll-over** his/her **final benefit accrual**; or
-

- 1 (e) to combine his/her **final benefit accrual** with the
2 benefit accruing under another current **period of**
3 **membership**, provided the combined benefit
4 does not exceed his/her **maximum benefit** (*see*
5 *Rules 5.2.20 and 5.3.20*);
- 6 unless:
- 7 (A) he/she ceases membership on the sale or transfer
8 of all or part of an organisation, business, service,
9 asset or function (*see Division 6 of Part 6*); or
- 10 (B) he/she transfers his/her benefits to an **eligible**
11 **superannuation scheme** (*see Rule 6.8.6*), or
12 joins an **approved superannuation scheme** (*see*
13 *Rule 6.8.10*) or an **authorised superannuation**
14 **scheme** (*see Rule 6.8.11*).

15 **4 Division 6 of Part 6**

16 Repeal the Division, substitute:

17 **Division 6**

**Sale or Transfer of Assets
Benefit Options**

21 **Benefit options — PSS membership continues**

22 **6.6.1** A **member** who continues to be a **member** on the sale or
23 transfer of all or part of an organisation, business, service, asset
24 or function is not entitled to any benefits until he/she ceases
25 membership. When the **member** ceases membership he/she will
26 be entitled to benefits under whichever Rule is applicable to
27 him/her at that time.

Benefit options — PSS membership ceases

6.6.2 A **member** who ceases membership on the sale or transfer of all or part of an organisation, business, service, asset or function and:

- (a) continues in employment with the new owner or transferee; and
- (b) could have continued to be a **member** of the scheme after the sale or transfer;

may choose:

- (i) to leave his/her **final benefit accrual** in the scheme as a **preserved benefit**; or
- (ii) to combine his/her **final benefit accrual** with the benefit accruing under another current **period of membership**, provided it will not cause him/her to exceed his/her **maximum benefit** (*see Rules 5.2.20 and 5.3.20*);

unless he/she transfers his/her benefits to an **eligible superannuation scheme** (*see Rule 6.8.6*), or joins an **approved superannuation scheme** (*see Rule 6.8.10*) or an **authorised superannuation scheme** (*see Rule 6.8.11*).

Benefit options — Continues in employment, but does not change employer

6.6.3 A **member** who ceases membership on the sale or transfer of all or part of an organisation, business, service, asset or function and continues in employment with the new owner or transferee, but does not change employer, is entitled to leave his/her **final benefit accrual** in the scheme as a **preserved benefit**, or, as an alternative, may choose:

-
- 1 (i) to **roll-over** his/her **final benefit accrual**,
2 with any amount that exceeds the
3 member's **accumulated member**
4 **contributions** being treated as a
5 preserved benefit for the purposes of the
6 **SIS Act**; or
- 7 (ii) to combine his/her **final benefit accrual**
8 with the benefit accruing under another
9 current **period of membership**, provided
10 it will not cause him/her to exceed his/her
11 **maximum benefit** (*see Rules 5.2.20 and*
12 *5.3.20*);
- 13 unless:
- 14 (A) he/she could have continued to be a **member** of
15 the scheme after the sale or transfer (*see Rule*
16 *6.6.2*); or
- 17 (B) he/she transfers his/her benefits to an **eligible**
18 **superannuation scheme** (*see Rule 6.8.6*), or
19 joins an **approved superannuation scheme** (*see*
20 *Rule 6.8.10*) or an **authorised superannuation**
21 **scheme** (*see Rule 6.8.11*).

22 **Benefit options — Involuntary retirement before 1 July 2000**

23 **6.6.4** A **member** who ceases membership on **involuntary**
24 **retirement before 1 July 2000** on the sale or transfer of all or
25 part of an organisation, business, service, asset or function is
26 entitled to leave his/her **final benefit accrual** in the scheme as a
27 **preserved benefit**, or, as an alternative, may choose:

- 28 (a) to be paid a lump sum of that part of his/her **final**
29 **benefit accrual** that the **SIS Act** permits to be
30 paid in cash, or a lump sum of less than that
31 amount, and:
-

-
- 1 (i) leave the balance of his/her **final benefit**
2 **accrual** in the scheme as a **preserved**
3 **benefit**; or
- 4 (ii) **roll-over** the balance of his/her **final**
5 **benefit accrual**; or
- 6 (iii) if the balance is 50% or more of his/her
7 **final benefit accrual**, convert the balance
8 into a **pension**;
- 9 provided that the **member**:
- 10 (A) ceases membership before
11 **minimum retiring age**; or
- 12 (B) ceases membership on or after
13 **minimum retiring age** and before
14 age 60, and remains in the
15 workforce; or
- 16 (b) to be paid a lump sum of his/her **final benefit**
17 **accrual**, or a lump sum of less than that amount,
18 and:
- 19 (i) leave the balance of his/her **final benefit**
20 **accrual** in the scheme as a **preserved**
21 **benefit**; or
- 22 (ii) **roll-over** the balance of his/her **final**
23 **benefit accrual**; or
- 24 (iii) if the balance is 50% or more of his/her
25 **final benefit accrual**, convert the balance
26 into a **pension**;
- 27 provided that the **member**:
- 28 (A) ceases membership on or after
29 **minimum retiring age** and before
-

-
- 1 age 60, and retires permanently
2 from the workforce; or
- 3 (B) ceases membership on or after age
4 60; or
- 5 (c) to take his/her **final benefit accrual** as a
6 **pension**; or
- 7 (d) to **roll-over** his/her **final benefit accrual**; or
- 8 (e) to combine his/her **final benefit accrual** with the
9 benefit accruing under another current **period of**
10 **membership**, provided the combined benefit
11 does not exceed his/her **maximum benefit** (*see*
12 *Rules 5.2.20 and 5.3.20*);
- 13 unless:
- 14 (A) he/she:
- 15 (i) continues in employment with the new
16 owner or transferee; and
- 17 (ii) could have continued to be a **member** of
18 the scheme after the sale or transfer (*see*
19 *Rule 6.6.2*); or
- 20 (B) he/she:
- 21 (i) continues in employment with the new
22 owner or transferee, but does not change
23 employer; and
- 24 (ii) was not allowed to continue to be a
25 **member** of the scheme after the sale or
26 transfer (*see Rule 6.6.3*); or
- 27 (C) he/she transfers his/her benefits to an **eligible**
28 **superannuation scheme** (*see Rule 6.8.6*), or
-

joins an **approved superannuation scheme** (see Rule 6.8.10) or an **authorised superannuation scheme** (see Rule 6.8.11).

Benefit options — Circumstances other than on involuntary retirement, and involuntary retirement on or after 1 July 2000

6.6.5 A member who ceases membership:

- in circumstances other than on **involuntary retirement**; or
- on **involuntary retirement** on or after 1 July 2000;

on the sale or transfer of all or part of an organisation, business, service, asset or function is entitled to leave his/her **final benefit accrual** in the scheme as a **preserved benefit**, or, as an alternative, may choose:

- (a) to be paid a lump sum of that part of his/her **final benefit accrual** that the **SIS Act** permits to be paid in cash and that does not exceed his/her **accumulated member contributions**, or a lump sum of less than that amount, and:
 - (i) leave the balance of his/her **final benefit accrual** in the scheme as a **preserved benefit**; or
 - (ii) **roll-over** the balance of his/her **final benefit accrual**, with any amount that exceeds the member's **accumulated member contributions** being treated as a preserved benefit for the purposes of the **SIS Act**; or

-
- 1 (iii) convert the balance of his/her **final**
2 **benefit accrual** into a **pension**;
- 3 provided that the **member**:
- 4 (A) ceases membership before
5 **minimum retiring age**; or
- 6 (B) ceases membership on or after
7 **minimum retiring age** and before
8 age 60, and remains in the
9 workforce; or
- 10 (b) to be paid a lump sum of his/her **final benefit**
11 **accrual**, or a lump sum of less than that amount,
12 and:
- 13 (i) leave the balance of his/her **final benefit**
14 **accrual** in the scheme as a **preserved**
15 **benefit**; or
- 16 (ii) **roll-over** the balance of his/her **final**
17 **benefit accrual**; or
- 18 (iii) if the balance is 50% or more of his/her
19 **final benefit accrual**, convert the balance
20 into a **pension**;
- 21 provided that the **member**:
- 22 (A) ceases membership on or after
23 **minimum retiring age** and before
24 age 60, and retires permanently
25 from the workforce; or
- 26 (B) ceases membership on or after age
27 60; or
- 28 (c) to take his/her **final benefit accrual** as a
29 **pension**; or
-

-
- 1 (d) to **roll-over** his/her **final benefit accrual**, with
2 any amount that exceeds the member's
3 **accumulated member contributions** being
4 treated as a preserved benefit for the purposes of
5 the **SIS Act**; or
- 6 (e) to combine his/her **final benefit accrual** with the
7 benefit accruing under another current **period of**
8 **membership**, provided the combined benefit
9 does not exceed his/her **maximum benefit** (*see*
10 *Rules 5.2.20 and 5.3.20*);
- 11 unless:
- 12 (A) he/she:
- 13 (i) continues in employment with the new
14 owner or transferee; and
- 15 (ii) could have continued to be a **member** of
16 the scheme after the sale or transfer (*see*
17 *Rule 6.6.2*); or
- 18 (B) he/she:
- 19 (i) continues in employment with the new
20 owner or transferee, but does not change
21 employer; and
- 22 (ii) was not allowed to continue to be a
23 **member** of the scheme after the sale or
24 transfer (*see Rule 6.6.3*); or
- 25 (C) he/she transfers his/her benefits to an **eligible**
26 **superannuation scheme** (*see Rule 6.8.6*), or
27 joins an **approved superannuation scheme** (*see*
28 *Rule 6.8.10*) or an **authorised superannuation**
29 **scheme** (*see Rule 6.8.11*).
-

5 Division 7 of Part 6

Repeal the Division.

6 Division 4 of Part 8

Repeal the Division, substitute:

Division 4

**Early Access to Preserved
Benefit on Involuntary
Retirement after Sale or
Transfer of Assets**

**Benefit options for certain preserved benefit members on
subsequent retrenchment**

8.4.1 A former **member** who was employed by an organisation, business, service or asset or function nominated by the Minister and agreed by the **Board** immediately before the date of sale or transfer of that organisation, business, service or asset or function, and who:

- (a) was not allowed to continue to be a **member** after the sale or transfer; and
- (b) became entitled to a **preserved benefit** under Rule 6.6.3, 6.6.4 or 6.6.5 which includes all of his/her **accumulated member contributions** (other than any refunded Excess Contribution Multiple), **accumulated productivity contributions** and **unfunded preserved benefit**; and

-
- 1 (c) remains continuously in employment with the
2 new owner or transferee, or any subsequent new
3 owner or transferee; and
- 4 (d) is subsequently retrenched by the new owner or
5 transferee, or any subsequent new owner or
6 transferee, within a period of three years of the
7 date of sale or transfer of the organisation,
8 business, service, asset or function; and
- 9 (e) has not reached his/her **maximum retiring age**;
- 10 may choose, within three months after the date of the
11 retrenchment:
- 12 (A) any one of the options in Rule 8.4.2 if he/she is
13 retrenched before 1 July 2000 and before
14 **minimum retiring age**; or
- 15 (B) any one of the options in Rule 8.4.3 if he/she is
16 retrenched on or after 1 July 2000 and before
17 **minimum retiring age**; or
- 18 (C) any one of the options in Rule 8.4.4 if he/she is
19 retrenched on or after **minimum retiring age**.

20 **Benefit options on retrenchment before 1 July 2000 and**
21 **before minimum retiring age**

22 **8.4.2** A **preserved benefit member** who is retrenched before
23 1 July 2000 and before **minimum retiring age** under the
24 conditions set out in Rule 8.4.1 may choose:

- 25 (a) to retain his/her **preserved benefit** in the **PSS**
26 **scheme**; or
- 27 (b) to take his/her **preserved benefit** as a **pension**;
28 or
-

-
- 1 (c) to **roll-over** his/her **preserved benefit**; or
- 2 (d) to be paid a lump sum of that part of his/her
- 3 **preserved benefit** that the **SIS Act** permits to be
- 4 paid in cash, or a lump sum of less than that
- 5 amount, and:
- 6 (i) retain the balance of his/her **preserved**
- 7 **benefit** in the **PSS scheme**; or
- 8 (ii) **roll-over** the balance of his/her
- 9 **preserved benefit**; or
- 10 (iii) if the balance is 50% or more of his/her
- 11 **preserved benefit**, convert the balance
- 12 into a **pension**.

13 **Benefit options on retrenchment on or after 1 July 2000 and**

14 **before minimum retiring age**

15 **8.4.3** A **preserved benefit member** who is retrenched on or

16 after 1 July 2000 and before **minimum retiring age** under the

17 conditions set out in Rule 8.4.1 may choose:

- 18 (a) to retain his/her **preserved benefit** in the **PSS**
- 19 **scheme**; or
- 20 (b) to take his/her **preserved benefit** as a **pension**;
- 21 or
- 22 (c) to **roll-over** his/her **preserved benefit**, with any
- 23 amount that exceeds the member's **accumulated**
- 24 **member contributions** being treated as a
- 25 preserved benefit for the purposes of the **SIS Act**;
- 26 or
- 27 (d) to be paid a lump sum of that part of his/her
- 28 **preserved benefit** that the **SIS Act** permits to be
- 29 paid in cash and that does not exceed his/her
-

accumulated member contributions, or a lump sum of less than that amount, and:

- (i) retain the balance of his/her **preserved benefit** in the **PSS scheme**; or
- (ii) **roll-over** the balance of his/her **preserved benefit**, with any amount that exceeds the member's **accumulated member contributions** being treated as a preserved benefit for the purposes of the **SIS Act**; or
- (iii) convert the balance into a **pension**.

Benefit options on retrenchment after minimum retiring age

8.4.4 A **preserved benefit member** who is retrenched on or after **minimum retiring age** under the conditions set out in Rule 8.4.1 may choose:

- (a) to be paid a lump sum of that part of his/her **preserved benefit** that is permitted to be paid in cash under the **SIS Act**, or a lump sum of less than that amount, and:
 - (i) retain the balance, if any, of his/her **preserved benefit** in the **PSS scheme**; or
 - (ii) **roll-over** the balance, if any, of his/her **preserved benefit**; or
 - (iii) if the balance is 50% or more of his/her **preserved benefit**, convert the balance into a **pension**; or
- (b) to take his/her **preserved benefit** as a **pension**; or

1 (c) to retain his/her **preserved benefit** in the **PSS**
2 **scheme**; or

3 (d) to **roll-over** his/her **preserved benefit**.

4 **7 Amendment of Trust Deed**

5 The powers of the Minister under section 5 of the *Superannuation Act*
6 *1990* to amend the Trust Deed (within the meaning of that Act) extend
7 to amending the Schedule to that Trust Deed for the purpose of
8 changing the Rules contained in that Schedule as altered by this
9 Schedule.
10

Schedule 4—Amendment of the Parliamentary Contributory Superannuation Act 1948

1 Subsection 4C(2)

Repeal the subsection, substitute:

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

2 Paragraph 4C(3)(c)

Repeal the paragraph.

3 Subsection 19(2)

After “spouse” (first occurring), insert “and subsections (4) and (6) do not apply”.

4 At the end of section 19

Add:

(4) If:

- (a) a person who is entitled to a retiring allowance (whether or not the retiring allowance is immediately payable) dies; and
- (b) the person had with his or her spouse a marital relationship that began:
 - (i) less than 3 years before the person’s death; and
 - (ii) after the person had become entitled to the retiring allowance and had turned 60; and

(c) the person is survived by the spouse;
there is payable to the spouse, during his or her life-time, an annuity at a rate worked out by using the formula:

$$\text{Basic rate of annuity} \times \frac{\text{Number of days in relevant period}}{1095}$$

1 (5) If the rate at which the annuity is payable to the spouse under
2 subsection (4) is less than the rate determined in writing by the
3 Trust for the purposes of this subsection, the spouse may, not later
4 than 3 months after the annuity becomes payable, by notice in
5 writing to the Trust, elect to commute the annuity into a lump sum
6 benefit payable to him or her.

7 (6) If the spouse makes the election, there is payable to the spouse,
8 instead of the annuity, a lump sum of an amount determined in
9 writing by the Trust after consultation with an actuary.

10 (7) In subsection (4):

11 *basic rate of annuity* means the rate at which, apart from
12 subsection (4), the annuity referred to in subsection (2) would be
13 payable to the spouse.

14 *relevant period* means the period:

- 15 (a) beginning on the day on which the marital relationship
16 between the deceased person and his or her spouse began;
17 and
18 (b) ending on the day on which the person died.

19 **5 Subsection 19AAA(6)**

20 Omit “the Australian Government Actuary”, substitute “an actuary”.

21 **6 Subsection 19AA(2)**

22 Omit “Subject to subsections (2A) and (2B), where”, substitute “If”.

23 **7 Subsection 19AA(2)**

24 Omit all the words from and including “and the deceased person:” to
25 the end of paragraph (d), substitute:

- 26 and the deceased person was or is survived by a child of the
27 deceased person or of a former spouse of the deceased person,
28 being a child who:
29 (c) was dependent on the deceased person; and
30 (d) is an eligible child; and
31 (e) is not dependent on someone to whom a benefit is payable
32 under section 19 because of the death of the deceased person;

33 Note: The heading to section 19AA is altered by omitting “orphaned”.

8 Subsections 19AA(2A) and (2B)

Repeal the subsections.

9 Subsection 19ABA(6)

Omit “the Australian Government Actuary”, substitute “an actuary”.

Note: The heading to section 19ABA is altered by omitting “orphaned”.

10 Paragraph 20A(1)(b)

After “his”, insert “or her”.

11 Subsection 21AA(1)

Omit all the words after paragraph (b), substitute “dies leaving more than one spouse, or leaving one or more spouses and one or more eligible children, the Trust must allocate among them, in such proportions as the Trust thinks appropriate, any annuities or benefits payable to any of them in respect of the deceased person under this Act.”.

12 Paragraph 21AA(2)(a)

After “needs of the”, insert “spouse or”.

13 Subsection 21AA(3)

Omit “each spouse and eligible child (if any)”, substitute “each spouse, or the spouse or each spouse and the eligible child or each eligible child, as the case may be,”.

14 After subsection 21AA(5)

Insert:

(5A) In this section:

eligible child has the same meaning as in section 19AA.

15 Subsection 22A(1)

Omit “the Australian Government Actuary”, substitute “an actuary”.

16 Subsection 22B(1)

Omit “the Australian Government Actuary”, substitute “an actuary”.

1 **17 Paragraph 22Q(1)(a)**

2 After “1973” (first occurring), insert “and before 2 July 2002”.

3 **18 Paragraph 22Q(1)(a)**

4 Omit “on or after 8 June 1973” (last occurring), substitute “during that
5 period”.

6 **19 Subsection 22Q(1)**

7 Omit “the following provisions of this section”, substitute
8 “subsections (2) to (7)”.

9 **20 After subsection 22Q(1)**

10 Insert:

11 (1A) In respect of a person who made an election under paragraph (1)(b)
12 before the commencement of this subsection:

- 13 (a) paragraph (1)(b) has effect, and is taken to have at all times
14 had effect, as if the words “an amount equal to” were
15 replaced by the words “an amount not exceeding”; and
16 (b) subsection (3) has effect, and is taken to have at all times had
17 effect, as if the words “is equal to the employee component
18 of the transfer value, or to” were replaced by “represents the
19 whole or a portion of the employee component of the transfer
20 value or”; and
21 (c) paragraph (5)(c) has effect, and is taken to have at all times
22 had effect, as if the words “is equal to” were replaced by the
23 words “represents the whole or a portion of”; and
24 (d) subsection (6) has effect, and is taken to have at all times had
25 effect, as if the words “is equal to the employer component of
26 the transfer value or to” were replaced by “represents the
27 whole or a portion of the employer component of the transfer
28 value or”.

29 **21 Subsection 22Q(5)**

30 After “If”, insert “there is payable to or in respect of the member”.

31 **22 Paragraphs 22Q(5)(a) and (b)**

32 Repeal the paragraphs, substitute:

- 1 (a) a refund of all or any part of the contributions paid by the
2 member to the Commonwealth; and
3 (b) the whole or any part of the Commonwealth supplement;

4 **23 Paragraph 22Q(5)(d)**

5 Omit “worked out under paragraph (c)”, substitute “paid to the
6 Commonwealth under subsection (1)”.

7 **24 After subsection 22Q(5)**

8 Insert:

- 9 (5A) If the superannuation guarantee safety-net amount is payable to or
10 in respect of the member, the sum of the following amounts is
11 payable to or in respect of the member by the Commonwealth:
12 (a) so much of the amount paid to the Commonwealth under
13 subsection (1) as is equal to the employer component of the
14 transfer value or to the sum of the employer components of
15 the transfer values (as the case may be);
16 (b) the interest that would have accrued on the amount worked
17 out under paragraph (a) if the matters set out in
18 subparagraphs (5)(d)(i), (ii), (iii) and (iv) were assumed.

19 **25 Paragraph 26B(4)(d)**

20 Omit “approved deposit fund”, substitute “eligible rollover fund”.

21 **26 Subsection 26B(6)**

22 Insert:

23 *eligible rollover fund* has the same meaning as in the
24 *Superannuation Industry (Supervision) Act 1993*”.

1
2 **Schedule 5—Amendment of other Acts**
3

4 *Administrative Appeals Tribunal Act 1975*

5 **1 Subsections 16(4), (4A) and (4B)**

6 Repeal the subsections.

7 *Law Officers Act 1964*

8 **2 Subsections 14(3), (4) and (5)**

9 Repeal the subsections.

10 *Superannuation Legislation Amendment Act (No. 1) 1995*

11 **3 Item 1 of Schedule 3**

12 Omit “, 126 and 127”, substitute “and 126”.

13 **4 Item 2 of Schedule 3**

14 Omit “17A,”.

15 **5 Item 2 of Schedule 3**

16 Omit “127,”.

17 **6 Item 3 of Schedule 3**

18 Omit “127,”.

19 *Workplace Relations Act 1996*

20 **7 Subsections 22(3), (4) and (5)**

21 Repeal the subsections.