

**2002**

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**SENATE**

**SUPERANNUATION LEGISLATION (COMMONWEALTH  
EMPLOYMENT) REPEAL AND AMENDMENT BILL 2002**

**REVISED EXPLANATORY MEMORANDUM**

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

**THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE  
BY THE HOUSE OF REPRESENTATIVES TO THE BILL AS  
INTRODUCED**

## **SUPERANNUATION LEGISLATION (COMMONWEALTH EMPLOYMENT) REPEAL AND AMENDMENT BILL 2002**

### **GENERAL OUTLINE**

This Bill proposes amendments to six Acts. The Acts to be amended are the *Superannuation Act 1976*, the *Superannuation Act 1990*, the *Superannuation Legislation Amendment Act (No. 1) 1995*, the *Administrative Appeals Tribunal Act 1975*, the *Law Officers Act 1964* and the *Workplace Relations Act 1996*.

The *Superannuation Act 1976* (the 1976 Act), the *Superannuation Act 1990* (the 1990 Act) and the *Superannuation Legislation Amendment Act (No. 1) 1995* (the 1995 Amendment Act) provide for the superannuation arrangements for Commonwealth civilian employees. The 1976 Act and the 1990 Act provide the rules for the Commonwealth Superannuation Scheme (the CSS) and the Public Sector Superannuation Scheme (the PSS) respectively. The *Administrative Appeals Tribunal Act 1975* (the AAT Act), the *Law Officers Act 1964* (the Law Officers Act) and the *Workplace Relations Act 1996* (the Workplace Relations Act) provide, among other things, for the terms and conditions of employment for certain persons under those Acts.

The Bill proposes to amend the 1976 Act to improve access to superannuation spouse benefits in certain circumstances where the retirement pensioner commenced a marital relationship after age 60 years. Generally, a spouse's pension under that Act is not payable if the pensioner who commences a marital relationship after age 60 dies within 5 years of the relationship commencing. The Bill removes the restrictions on the payment of benefits following such post-retirement relationships. However, a pro-rata rate of spouse's pension will be payable where the relationship existed for less than 3 years immediately before the pensioner's death. Where the resulting rate of pension is small it may be commuted to a lump sum in some cases.

The Bill proposes to amend the 1976 Act to provide an option for age and early age retirees entitled to pensions under that Act to reduce their pension entitlements and increase reversionary benefits payable to their spouse or to any children after the death of the retiree. Age or early age retirees will be able to elect when their benefit first becomes payable to reduce their pension entitlement to 93 percent of their original entitlement. The resulting reversionary benefits will increase from 67 percent of the retiree's pension to 85 percent of the pension being paid at the time of the retiree's death. Corresponding increases would apply in relation to pensions paid in respect of any children.

The Bill proposes to amend the 1976 Act to allow for certain payments payable from other superannuation funds or superannuation schemes to be paid into the CSS Fund. This will enable CSS members who have superannuation amounts held in other funds to transfer those amounts into the CSS Fund.

The Bill proposes to amend the 1976 Act and the PSS Trust Deed within the meaning of the 1990 Act in relation to the benefit options of scheme members who cease membership on the sale of an asset or the transfer or outsourcing of a function. The amendments will remove restrictions on the options available on involuntary retirement where a person is made redundant in those circumstances. The amendments also provide for an additional

option for other CSS and PSS members who cease to be members of the schemes in these circumstances but are not made redundant. These amendments will take effect from the date of announcement of these changes, ie 27 June 1997.

The Bill also proposes to amend the 1976 Act and the 1990 Act to simplify the rules of the CSS and the PSS and to allow for simplified administration. Rules relating to membership of both schemes and, in relation to the CSS:

- ? salary for superannuation purposes;
- ? the treatment of leave without pay;
- ? the payment of amounts requiring preservation; and
- ? the payment of superannuation amounts to the Fund;

are being changed to allow for simplified administration without having adverse effects on existing entitlements. It is proposed that related changes to the PSS Rules will be made by Ministerial amendment to the Trust Deed under the 1990 Act.

Some powers that currently are exercised by the Minister or the Minister in conjunction with the CSS or PSS Board should more appropriately be exercised by those Boards and are to be transferred to the Boards. The CSS and PSS Boards' powers of delegation are to be extended to enable the Boards to carry out the task of administering the schemes more efficiently.

The Bill proposes to amend provisions in the AAT Act, the Law Officers Act and the Workplace Relations Act, in relation to people who leave the CSS or the PSS to join the Judges' Pension Scheme, to ensure that those schemes continue to comply with the Superannuation Guarantee legislation.

## **FINANCIAL IMPLICATIONS**

Although the Bill includes provisions that provide for new benefit options there is no financial impact as these benefits are being paid under other arrangements, for example, under act of grace arrangements, and therefore provided for in the Budget.

## TERMS USED IN THE NOTES ON CLAUSES

"1976 Act" means the *Superannuation Act 1976*;

"1990 Act" means the *Superannuation Act 1990*;

"APS" means the Australian Public Service;

"ASIC" means the Australian Securities and Investment Commission;

"AWOTE" means average weekly ordinary time earnings;

"Commissioner" means the Commissioner for Superannuation;

"CRF" means the Consolidated Revenue Fund;

"CSS" means the Commonwealth Superannuation Scheme provided for under the 1976 Act;

"CSS member" is used to describe a person who makes personal contributions to the CSS  
(the 1976 Act uses the term "eligible employee" for such a person);

"Disallowable instrument" means an instrument described as a disallowable instrument for  
the purposes of section 46A of the *Acts Interpretation Act 1901*;

"PB Act" means the *Superannuation (Productivity Benefit) Act 1988*;

"PSS" means the Public Sector Superannuation Scheme provided for under the 1990 Act;

"PSS Rules" means the rules for the administration of the PSS;

"RSA" means a Retirement Savings Account;

"SG Act" means the *Superannuation Guarantee (Administration) Act 1992*;

"SIS" means the *Superannuation Industry (Supervision) Act 1993* including the regulations  
under that Act;

"SIS Act" means the *Superannuation Industry (Supervision) Act 1993*;

"Statutory Rule" means an instrument described as a Statutory Rule for the purposes of the  
*Statutory Rules Publication Act 1903*.

## **NOTES ON CLAUSES**

### **Clause 1 – Short title**

**Clause 1** provides for the short title of the Act to be the *Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Act 2002*.

### **Clause 2 – Commencement**

2. **Clause 2** provides for the commencement of the Act on Royal Assent or the day following Royal Assent with the following exceptions:

- (a) amendments to allow more effective administration of the Commonwealth's civilian superannuation schemes are to take effect from 1 July 2002;
- (b) amendments to the benefits available to CSS and PSS members who cease their membership because of the sale of an asset or the transfer or outsourcing of a function take effect from 27 June 1997, the date of announcement of the new arrangements;
- (c) an amendment to clarify a provision of the 1976 Act inserted into the Act on 1 July 1995 (the date on which the CSS became a regulated scheme under SIS) is taken to have commenced on that day along with various amendments intended to ensure that the CSS complies with SIS;
- (d) a consequential amendment arising from amendments to the PSS Trust Deed is taken to have commenced on 1 July 1995 being the date of effect of the amendments to that Deed;
- (e) amendments to clarify the extent of a regulation-making power is taken to have commenced on 18 December 1992 the day on which the regulation-making power came into effect; and
- (f) certain minor and technical amendments are taken to have commenced on 23 June 1995 being the day from which the amended provisions originally operated.

### **Clause 3 - Schedules**

2. **Clause 3** provides that the Acts and the PSS Trust Deed as specified in the Schedules are to be amended or repealed according to the applicable items set out in each of the Schedules.

## **SCHEDULE 1 – AMENDMENT OF THE SUPERANNUATION ACT 1976**

### *PART 1 – AMENDMENTS RELATING TO THE SCOPE AND ADMINISTRATION OF THE ACT*

- 3. The CSS has been closed to new entrants since 1 July 1990 when it was replaced as the principal scheme for Commonwealth civilian employees by the Public Sector Superannuation Scheme (the PSS).
- 4. It is intended to streamline and simplify both the administrative arrangements for the schemes and, in some aspects, the rules of the schemes.

### **Item 1 – Definition of 'approved authority'**

5. **Item 1** repeals the existing definition of 'approved authority' included in subsection 3(1) of the 1976 Act and provides that the new section 3D, inserted by item 12, defines the term.

### **Item 2 – Definition of 'AWOTE'**

6. **Item 2** inserts a definition of 'AWOTE' in subsection 3(1) of the 1976 Act. This term is used in the provisions of the Act which deal with indexation of salary in certain circumstances.

### **Items 3 to 6 – Definition of 'eligible employee'**

7. These items, together with item 19 that repeals section 14A of the 1976 Act, consolidate the provisions that describe a CSS member and ensure that members covered by the repealed section 14A can continue to be members.

8. **Items 3 and 5** amend the definition of 'eligible employee' in subsection 3(1) of the 1976 Act as a consequence of item 19 of this Schedule.

9. **Item 4** inserts a new paragraph (ec) that gives the Minister the power to declare a class of persons to be CSS members. This replaces a similar power that was included in the repealed section 14A.

10. **Item 6** repeals paragraph (j) that provides for the making of regulations to exclude classes of persons from CSS membership and replaces it with two paragraphs. Paragraph (i) ensures that persons who were excluded from membership immediately before the commencement of the amendments by regulations under the repealed paragraph (j) will continue to be excluded. The new paragraph (j) provides that the Minister may exclude classes of persons from membership by declaration. Item 9 of this Schedule includes provision about the date of effect of Ministerial declarations under the definition and provides that those declarations are disallowable instruments.

### **Item 7 – Definition of 'preservation fund'**

11. **Item 7** repeals the definition of 'preservation fund' in subsection 3(1) of the 1976 Act. The term will not be used following other amendments.

### **Item 8 – Definition of 'voting share'**

12. **Item 8** inserts a definition of 'voting share' in subsection 3(1) of the 1976 Act. The term is used in the new definition of 'approved authority' as inserted by item 12 of this Schedule.

### **Item 9 – Dates of effect of declarations made for the purposes of the definition of eligible employee**

13. Section 14A of the 1976 Act, to be repealed by item 19 of this Schedule, allows for the making of regulations to include persons as members of the CSS and to modify the operations of the Act in respect of those persons. Item 4 provides a power for the Minister to make declarations concerning membership of the CSS in place of the regulation making power of section 14A. **Item 9** inserts subsection 3(1AA) in the 1976 Act to provide that regulations can be made to modify the operations of the Act in relation to persons who are members of the CSS as a result of a declaration of the Minister.

14. The existing subsections 3(1A) and (1B) relate to the making of regulations under the repealed paragraph (j) of the definition of 'eligible employee'. As no further regulations will be able to be made because of the amendments made by item 6, the subsections are no longer required. **Item 9** repeals the subsections and inserts new subsections (1A) to (1BD) in relation to the Minister's powers under paragraphs (ec) and (j) inserted into the definition of 'eligible employee' by items 4 and 6. The new subsections allow the Minister to make declarations with retrospective effect but not in such a way as to disadvantage a person who had been making contributions to the CSS and been treated as a member of the scheme.

#### **Item 10 – Consequential amendment**

15. **Item 10** repeals subsection 3(2A) of the 1976 Act as a consequence of the changes to the definition of 'approved authority' made by items 1 and 12 of the Schedule.

#### **Item 11 – Preservation fund**

16. **Item 11** repeals section 3B of the 1976 Act (which defines the term 'preservation fund') as a consequence of other amendments intended to simplify the treatment of benefits payable under the Act that are intended to be preserved according to the rules of SIS. Rather than specifying in detail how these benefits should be paid, it is intended that they be treated according to SIS. The term preservation fund will not be used.

#### **Item 12 – Definition of approved authority**

17. **Item 12** inserts new section 3D in the 1976 Act.

18. New section 3D determines whether or not an authority or body is an approved authority for the purposes of the 1976 Act and replaces the definition repealed by item 1 of this Schedule. Staff of approved authorities may be eligible to be CSS members. The intention is to streamline the administration of the provision that currently requires case-by-case consideration of each request for a body to be declared to be an approved authority. The revised definition, however, does not cease approved authority status for any authority or body covered by the repealed definition while it retains its present character (see paragraph 24).

19. Paragraph (a) of the existing definition describes the type of authority or body that could be declared by the Minister to be an approved authority for the purposes of the Act and provides for the Minister to make the declaration. Paragraph (b) of the existing definition provides that a body that was an approved authority under the *Superannuation Act 1922* (which provided superannuation arrangements for Commonwealth civilian employees prior to 1 July 1976) on 30 June 1976 continued to be an approved authority under the 1976 Act.

20. New section 3D describes a body that is an approved authority for the purposes of the Act unless the Minister declares otherwise under subsection 3D(9).

21. Subsection 3D(2) includes an authority or body that is an approved authority at the time of commencement of the section.

22. Subsection 3D(3) provides that a body that is an approved authority prior to the commencement of the subsection will cease to be an approved authority automatically where there has been a change of character. However, this will only apply to future changes of character. If this does occur, the Minister may still, if appropriate, declare the body to continue to be an approved authority under subsection 3D(8) or provide for continuing

membership for existing employees of the body by declaration under the definition of "eligible employee" included in subsection 3(1).

23. An authority or body changes its character if the level of Commonwealth control reduces or if, in the last financial year, the level of the funding received from the Commonwealth Budget is below 30% and further reduces.

24. Subsections 3D(4), (5), (6) and (7) provide that certain Commonwealth bodies are approved authorities if their Chief Executive Officer agrees to contribute towards the cost of providing membership to employees of the body. This applies provided the body:

- (a) is fully Commonwealth controlled;
- (b) is not operating in a competitive environment; or
- (c) 30% or more of its funding is received from the Commonwealth Budget (otherwise than by way of taxes imposed by the Commonwealth).

2. One of the effects of these provisions is that, if a body that has automatically been an approved authority in the past changes its character so that it would not automatically be an approved authority, it will cease to be an approved authority.

3. Subsection 3D(8) provides that the Minister may declare any authority or body to be an approved authority including one that has lost that status because of a change in character.

4. Subsection 3D(9) provides that the Minister may, despite the other provisions of the section, declare that an authority or body is not an approved authority for the purposes of the Act.

5. The declarations under section 3D are all Statutory Rules and disallowable instruments as provided by section 4A of the 1976 Act. They may be made with retrospective effect in some circumstances as provided by that section as amended by items 13 to 15 of this Schedule.

### **Items 13 to 15 – Consequential amendments**

2. **Items 13 to 15** amend subsections 4A(1) and (3) of the 1976 Act as a consequence of the substitution of the definition of 'approved authority' with section 3D and add subsections (4) and (5) to section 4A. Those subsections provide that declarations made under section 3D are disallowable instruments and Statutory Rules and allow the Minister to make declarations concerning the status of an authority or body with retrospective effect in certain specified circumstances. In particular, declarations to include an authority or body as an approved authority with retrospective effect can be made effective from a date earlier than the commencement of the new definition. (Subsection 4A(3) allows declarations to be made with retrospective effect for up to 12 months.) The section also allows an authority or body to be excluded from the definition retrospectively to the commencement of the new definition if employees of the authority or body have not been treated as CSS members.

### **Items 16 to 18 – Salary**

3. Generally, contributions and benefits under the 1976 Act are based, either directly or indirectly, on a CSS member's annual rate of salary. Section 5 of the Act defines annual rate of salary as the salary payable to the member or such other amount specified in regulations. Regulations under section 5 recognise, amongst other things, an annual rate of salary agreed between the member and his or her employer through a certified agreement or Australian Workplace Agreement and certain other flexible remuneration arrangements. This



recognises that, in the new flexible workplace agreement making arrangements, some CSS members may wish to have recognised a salary for superannuation purposes which is different from that which would otherwise be the case, for example, by trading off some cash salary for increased superannuation salary.

4. To ensure that the authority for employees and employers to agree a superannuation salary extends to all CSS members and that references to agreements may be to those agreements as applying from time to time (this is not generally permitted in regulations), the amendments made to section 5 by **item 17** provide that a member's annual rate of salary may be an amount agreed between the member and his or her employer. If there is no agreement, the existing provisions of the Act or the regulations will continue to apply. A member cannot be disadvantaged by this change because even if a reduced annual rate of salary is provided for in a workplace agreement section 47 of the 1976 Act ensures that a person's annual rate of salary cannot be reduced unless the member elects that it be reduced.

5. **Item 18** amends the provisions in section 5 of the 1976 Act that provide for a previously higher salary than is received by a CSS member to be recognised for calculating benefits if the member has been receiving a partial invalidity pension. The amendment will provide for that higher salary to be updated by AWOTE instead of either by reference to actual salary rates that might have applied or, if they are not known, by AWOTE (see section 154B). With the workplace agreement making arrangements and the conversion of awards to minimum rates awards this change should ensure that these salaries can continue to be updated using readily available data.

6. **Item 16** amends subsection 5(2) as a consequence of the changes made to section 5 by items 17 and 18.

### **Items 19 and 20 – Membership of the CSS**

7. Section 14A of the 1976 Act provides for the making of regulations to include persons as members of the CSS. It also provides that those regulations may modify the provisions of the Act in relation to those persons. In order to simplify the administration of the CSS membership provisions, item 4 of this Schedule inserts paragraph (ec) into the definition of 'eligible employee' to allow the Minister to make a declaration to include persons as members of the CSS.

8. **Item 19** repeals section 14A. Persons who were CSS members because of the effect of that section continue as members because of amendments made by item 3 of this Schedule.

9. **Item 20** saves the modifications made to the Act under section 14A in respect of persons who continue to be members of the CSS and allows for additional modifications to be made in the future where those modifications could have been made if section 14A had not been repealed.

### **Items 21 to 25 – Maintenance of salary**

10. The annual rate of salary to be used for the payment of contributions under the Act is adjusted every year on the member's birthday. Section 47 of the 1976 Act provides that the rate of salary to be used should be the highest annual rate payable, or deemed to have been payable, during the year. That is, if the person's salary has reduced during the year, it is the higher annual rate that is used for the purposes of the payment of contributions. (The member may, under the section, elect to use the reduced rate of salary.)

11. That higher annual rate of salary should continue to apply in the future, updated at each birthday, by generally applying salary increases. However, because of considerable change to the workplace relations processes in the APS generally applying salary increases are less likely to occur in the future. Section 154B of the Act already provides that, where it is impossible to establish an annual rate of salary for maintenance purposes, AWOTE should be used. It is now intended to apply AWOTE increases to annual rate of salary in all cases where there is a maintained rate.

12. **Items 21 to 24** amend section 47 of the 1976 Act to allow the updating of maintained annual rate of salary by AWOTE rather than attempting to establish the annual rate that would have been paid if the member's salary had not been reduced.

13. **Item 25** ensures that the existing provisions continue to apply prior to 1 July 2002.

#### **Item 26 – Supplementary contributions**

14. Section 48 of the 1976 Act allows CSS members to pay supplementary contributions at any time but limits the amount to being no more than a basic contribution (usually 5% of a person's fortnightly rate of salary). As supplementary contributions remain in the CSS Fund until benefits are payable, earn the Fund rate of interest during that time and do not attract any additional employer contribution, there is no reason to put a limit on the amount that a CSS member can contribute.

15. **Item 26** amends section 48 of the 1976 Act to allow that member to pay any amount of supplementary contributions.

#### **Items 27 to 29 – The payment of contributions on leave without pay**

16. Section 51 of the 1976 Act currently provides various rules relating to leave without pay. The effect of these rules is generally that a CSS member cannot pay contributions while on leave without pay except in particular circumstances. Where a member is permitted to pay contributions in these circumstances, full employer-funded benefits also accrue during the period. Because employer-funded benefits are based on the salary payable to the person on cessation and are paid by the Commonwealth, it was reasonable to restrict the circumstances in which a person on leave without pay may contribute where they are employed by non-Commonwealth employers during that leave.

17. However since 1 July 1995 all participating employers have been required to make payments to the Commonwealth towards the benefits payable to their employees who are CSS members. In those circumstances it is now possible to simplify the provision to provide that a member may pay contributions while on leave without pay where the member's employer continues to make payments to the Commonwealth in relation to that member's future benefits.

18. **Item 27** amends section 51 of the 1976 Act to provide that contributions are not payable where a CSS member is on leave without pay if the member's designated employer does not continue to make payments to the Commonwealth in respect of the benefits payable to the person under the Act. The effect of this amendment is that, if a CSS member's employer is willing to continue to make employer payments while the member is on leave without pay, the member is also required to contribute and full employer benefits accrue during the period.

19. **Item 28** removes a specific provision in relation to study leave without pay. Where an employer grants study leave and is willing to continue to make employer payments during

the period the amendments made by item 27 will ensure that full employer benefits will accrue during the period.

20. **Item 29** provides that section 51 continues to apply without amendment to any period of leave without pay that commenced prior to 1 July 2002, although not to any extension of such a period of leave without pay made after that date.

21. Existing section 51 provides that, where a person is on sick leave without pay, that person must continue to contribute to the CSS. The amendments to the section will not affect the rights of CSS members who are now, or will in the future be, in this situation.

### **Items 30 and 31 – Benefits to be preserved under SIS**

2. Some of the benefits payable under the 1976 Act are intended to be treated as preserved benefits for the purposes of SIS. However, because not all of those benefits necessarily come under the SIS definition of preserved benefits, the payment provisions of the Act in relation to those benefits have attempted to duplicate the requirements for the payment of SIS preserved benefits. Because changes have been made to the SIS requirements it has been necessary to make regular amendments to those payment provisions.

3. In order to allow the CSS to continue to comply with SIS without the necessity for future legislative amendments it is intended to amend the Act to specify the benefits which are to be preserved benefits for the purposes of SIS and to provide that they be dealt with accordingly.

4. **Items 30 and 31** amend section 62 of the 1976 Act to provide that benefits payable under that section are to be preserved benefits for the purposes of SIS and will be dealt with accordingly. The member may, however, choose to receive payment in cash of his or her own contributions with interest, in which case the remaining benefit is to be a preserved benefit and dealt with accordingly. Since 1 July 1999, SIS has extended the preservation rules to member contributions in certain circumstances. Section 111A of the 1976 Act would ensure that only the amount of member contributions and interest allowed to be taken in cash by SIS are available in that form under section 62.

### **Items 32 and 33 – Use of AWOTE to update salary**

5. Section 73A of the 1976 Act provides for the reduction of invalidity pensions because of earnings in certain circumstances and in determining whether a reduction is to occur refers the pensioner's "relevant maximum rate". That definition uses, in part, the pensioner's final annual rate of salary updated in a similar way to that used in section 47. Section 47 is being amended by this Bill to provide that, from 1 July 2002, amounts recognised as annual rate of salary under that provision will be indexed by AWOTE rather than by salary movements.

6. **Item 32** amends section 73A to provide that AWOTE is to be used to update the final annual rate of salary in all circumstances. This recognises that there are difficulties in establishing salary rates for particular positions as a result of current workplace relations arrangements.

7. **Item 33** ensures that the existing method of updating salary continues to apply up to 30 June 2002 with the new method applying after that date.

**Item 34 – Variation of Table of productivity contributions**

8. Section 110C of the 1976 Act provides a Table for the calculation of productivity contributions payable under the Act. Section 110D provides that the Minister may vary that Table.

9. **Item 34** amends section 110D to transfer the power to vary the Table under section 110C from the Minister to the CSS Board but provides that the Board should vary the Table in accordance with a method provided by the Minister.

**Items 35 and 36 – Productivity benefits to be treated as preserved benefits under SIS**

10. Productivity benefits payable under section 110R of the 1976 Act are intended to be preserved benefits for the purposes of SIS.

11. **Item 35** provides that benefits payable under section 110R are to be treated as preserved benefits for the purposes of SIS and dealt with accordingly. The item also ensures that benefits payable may be used for the purchase of additional pension in certain circumstances.

12. **Item 36** repeals the existing provisions of section 110R that attempt to replicate the SIS preservation requirements.

13. The notes for items 30 and 31 in this Schedule provide further details.

**Item 37 – Consequential amendment**

14. **Item 37** makes a consequential amendment to section 110SB of the 1976 Act as a result of the amendments made by item 48 of this Schedule.

**Item 38 – Top-up benefits to be treated as preserved benefits under SIS**

15. Sections 110SG, 110SH and 110SJ of the 1976 Act provide for the payment of a top-up benefit, in certain circumstances, under Part VIAA of the Act. The sections replicate the SIS requirements for preservation that applied when those sections were inserted into the Act.

16. **Item 38** repeals section 110SG, 110SH and 110SJ and replaces them with a new section 110SG that provides that a top-up benefit is a preserved benefit for the purposes of SIS and is to be dealt with accordingly. The section also provides for the payment of the benefit where the person has died.

17. The notes for items 30 and 31 in this Schedule provide further details.

**Item 39 – Consequential amendment**

18. **Item 39** makes a consequential amendment to section 110TA of the 1976 Act as a result of the amendments made by item 48 of this Schedule.

**Item 40 – Use of AWOTE to update salary for the payment of a postponed benefit**

19. Part VIB of the 1976 Act allows a CSS member entitled to a retirement benefit to postpone the payment of that benefit. When the benefit becomes payable, the annual rate of salary to be used for the calculation of the benefit is the final annual rate of salary updated in a similar way to that used in section 47 of the 1976 Act to the time of payment. Section 47 is being amended by this Bill to provide that, from 1 July 2002, amounts recognised as annual

rate of salary under that provision will be indexed by AWOTE rather than by salary movements.

20. **Item 40** amends section 110TC of the 1976 Act to provide that the final annual rate of salary to be used for the purposes of calculating a postponed benefit will be updated by generally applying increases before 1 July 2002 and from 1 July 2002 by AWOTE. This recognises that there are difficulties in establishing salary rates for particular positions as a result of current workplace relations arrangements.

#### **Items 41 to 43 – Consequential amendments**

21. **Items 41 to 43** make consequential amendments to sections 110TD, 110TF and 110TG of the 1976 Act as a result of the amendments made by item 48 of this Schedule.

#### **Item 44 - Payment of benefits to be preserved benefits under SIS**

22. **Item 44** amends section 111A of the 1976 Act which applies the SIS preservation rules to the payment of benefits under the CSS to ensure that a benefit which may not be paid in cash because of SIS continues to be treated as a preserved benefit under SIS and will be dealt with accordingly.

23. The notes for items 30 and 31 in this Schedule provide further details.

#### **Items 45 and 46 – Consequential amendments**

24. **Items 45 and 46** make consequential amendments to sections 111 and 126A of the 1976 Act as a result of the amendments made by item 48 of this Schedule.

#### **Items 47 and 48 – Transfer value provisions**

25. Sections 127 and 128 of the 1976 Act allow for the payment of transfer values to the CSS in certain circumstances. Transfer values are amounts that have become payable to or in respect of a CSS member from another superannuation scheme on cessation of employment relative to that scheme. A transfer value may become payable to the CSS where it becomes payable to or in respect of the person within three months of becoming a CSS member. The provisions are complex because of the way the various components of a transfer value are treated within the scheme. Because the CSS is closed to new members very few transfer values are now payable under those provisions.

26. However, CSS members may take additional employment on a part-time or casual basis while continuing the employment that gives rise to their CSS membership. Their other employers may be required by the SG Act to pay superannuation contributions into other superannuation funds or RSA's on their behalf. These superannuation amounts cannot be treated as transfer values under the current provisions. To allow members to consolidate all their superannuation benefits in the one scheme, it is intended that CSS members be able to pay any superannuation amount that becomes payable on cessation of other employment into the CSS whether or not that amount would qualify as a transfer value.

27. The current arrangements for distribution of the various components of a transfer value between the CSS Fund and CRF can continue to apply to amounts that qualify as transfer values and the CSS member elects under subsection 128(1) to pay them to the scheme as a transfer value. Where an amount cannot be dealt with as a transfer value, or the CSS member does not make an election under subsection 128(1), it is intended that these amounts should

be paid into the CSS Fund and accumulate interest until benefits become payable to the member.

28. **Items 47 and 48** insert Subdivision B into Division 2 of Part IX of the 1976 Act to deal with transferred amounts that are not transfer values. The new Subdivision provides for the payment of transferred amounts into the scheme.

29. New section 130A defines transferred amounts as broadly as possible but ensures that members will not be able to pay to the scheme amounts received from other employers until the employment to which it relates has ended.

30. New section 130B provides that a transferred amount that has been paid to the CSS Board by a CSS member must be paid into the CSS Fund. New section 130C provides that a person will be entitled to the payment of a benefit under this Subdivision when other benefits become payable under this Act.

31. New section 130D provides that the benefit to which a person becomes entitled is the amount paid into the Fund under section 130B less any income tax payable, plus interest on the amount.

32. New sections 130E and 130F provide for the payment of a benefit under this Subdivision where the person has died.

#### **Items 49 to 51 – Eligible superannuation schemes**

2. Section 134 of the 1976 Act provides for the CSS Board and the Minister to agree that a particular public sector superannuation scheme should be an eligible superannuation scheme in order to allow the payment of transfer values from the CSS to that scheme. The requirements to be satisfied before the Board and the Minister agree are complex and can apply only to a limited range of schemes. No new schemes have agreed to enter into these arrangements for some time. It is therefore proposed that no new agreements be made under the section with the exception of a successor scheme to an existing eligible scheme.

3. **Items 49 to 51** amend section 134 to provide that no further schemes become eligible schemes after 30 June 2002. However, the CSS Board may determine that a successor scheme to an existing eligible scheme is an eligible superannuation scheme after that date.

#### **Item 52 – Consequential amendments**

4. **Item 52** amends section 135 of the 1976 Act as a consequence of the amendments made by item 48 of this Schedule.

#### **Items 53 and 54 – Consequential amendment**

5. **Items 53 and 54** amend subparagraphs 136(2)(b)(iii) and 136(2)(b)(iv) of the 1976 Act as a consequence of the amendment made by item 55 of this Schedule.

#### **Item 55 – Productivity component of deferred benefits to be preserved under SIS**

6. **Item 55** replaces section 139AA of the 1976 Act with the effect that any part of deferred benefits that arises from a productivity benefit is to be treated as a preserved benefit under SIS and dealt with accordingly.

7. The notes for items 30 and 31 in this Schedule provide further details.

**Items 56 to 58 – Consequential amendments**

8. **Items 56 to 58** amend section 140 of the 1976 Act as a consequence of the amendments made by item 48 of this Schedule.

**Item 59 – Consequential amendment**

9. **Item 59** amends subsection 168(15) of the 1976 Act as a consequence of the insertion of subsection 3(1AA) by item 9 of this Schedule.

**Item 60 and 61 – Consequential amendments**

10. **Items 60 and 61** amend sections 240 and 246 of the 1976 Act as a consequence of the amendments made by item 48 of this Schedule.

***PART 2 – AMENDMENTS RELATING TO THE MARITAL STATUS OF DECEASED  
RETIREMENT PENSIONER***

11. In the CSS and the PSS when a pensioner begins a marital relationship, legal or de facto, after age 60, no reversionary benefit is payable to the spouse on the death of the pensioner unless the relationship had lasted 5 years prior to the death. A relationship of this kind is known as a "post-retirement marriage".

12. It is proposed, in all of these schemes, to remove this restriction on eligibility for benefits and provide for a phase-in of the benefit on a pro-rata basis where the relationship has existed for less than 3 years prior to the death.

13. While the existing arrangements produce inequities because of the absolute nature of the cut-off point, providing full benefits in all cases could significantly increase scheme costs. A three-year phase in period is seen as a compromise between the two extremes.

14. This Part amends the 1976 Act to remove the bar on reversionary benefits becoming payable in the case of a post-retirement marriage which did not last for five years prior to the death of a pensioner. It further amends the reversionary provisions of the 1976 Act to enable the calculation and payment of a benefit where the pro-rata rate applies.

15. Where the relationship has been of a very short term prior to the pensioner's death the pro-rata calculation may result in a very low rate of annual pension becoming payable. In those circumstances, it is proposed to allow the person to whom the benefit has become payable, to request the CSS Board to commute the pension into a lump sum.

16. Amendments to apply the new arrangements for post-retirement marriages to the rules of the PSS will be made by Trust Deed.

**Items 62 to 67 – Definitions and related provisions**

17. **Items 62 and 64 to 67** amend the various definitions in the 1976 Act relating to the eligibility of spouses and children to receive reversionary benefits under the Act or repeal related provisions to remove the restrictions that apply to the payment of benefits where a relationship had commenced after a pensioner reached the age of 60 and lasted less than five years before his or her death.

18. **Item 63** defines a late short-term marital relationship as one that commenced after the pensioner reached the age of 60 and within three years of his or her death. Where a person has been in a late short-term marital relationship with a pensioner the benefit payable on the death of a pensioner is to be calculated on a pro-rata basis in relation to the length of the relationship prior to the death.

**Items 68 to 76 – Calculation of reduced rate and optional commutation of benefits payable to spouse**

19. **Items 68 to 71, 73 and 74** amend the reversionary spouse's benefit provisions of the 1976 Act to allow for a reduced benefit to be payable where the benefit arises from a late short-term marital relationship.

20. **Items 72 and 75** insert sections 95A and 96AA into the Act, respectively, to provide for the commutation of a pension to a lump sum where:

- (a) the pension is payable at a reduced rate because of a late short-term marital relationship;
- (b) the annual rate of that pension is less than an amount determined by the CSS Board; and
- (c) the person entitled to the pension has requested that it be commuted.

2. **Item 76** inserts section 96AB into the Act to provide for the pro rata rate of pension that is payable as a result of the amendments made by items 68 to 71, 73 and 74 of Schedule 1.

**Items 77 to 100 – Calculation of reduced rate of benefit and optional commutation to orphans and where there is more than one family entitled to a benefit**

3. **Items 77 to 100** apply the new arrangements for a pro rata rate of pension and the capacity to commute a low annual rate to a lump sum to the 1976 Act, by amendments to existing provisions and insertion of new sections similar to new sections 95A, 96AA and 96AB, in respect of;

- (a) extra spouse's pension that becomes payable as a result of a late short-term marital relationship (section 96BA);
- (b) benefits payable to orphans (section 108A)
- (c) benefits payable where there is at least one child not in the care, custody and control of the spouse (section 109AB);
- (d) benefits payable where there is more than one spouse (section 110); and
- (e) benefits payable where a person to whom deferred benefits are applicable has died before the benefit becomes payable (section 136).

**Item 101 – To ensure no reduction in benefits**

2. **Item 101** provides that the amendments made by Part 2 of Schedule 1 will not reduce any benefits payable under Part IV of the 1976 Act to eligible spouses and children that would have been payable if the amendments had not been made.



***PART 3 – REDUCED AGE RETIREMENT AND EARLY RETIREMENT BENEFITS  
AND INCREASED BENEFITS TO SPOUSE OR ORPHANS***

3. When a CSS pensioner dies, the benefit payable under the 1976 Act to an eligible spouse is 67% of the benefit that had been payable to the pensioner with an additional 11% payable for each child up to a maximum of 100% of the pension payable at the time of death. Some CSS members have expressed a wish to take a lower initial pension and make more generous provision for their dependants on their death.

4. This Part proposes to amend the 1976 Act to allow a CSS member, on becoming eligible for an age or early age retirement pension, to elect to receive that pension at a reduced rate of 93% of the benefit that would otherwise have been paid. Where a pensioner who has made such an election dies, the reversionary benefits payable to the eligible spouse would be paid at 85% of the benefit being paid to the member at date of death. That rate would increase to an aggregate of 97% where there is one eligible child or 108% where there are two or more such children. The rate of 108% of the actual benefit payable is equal to 100% of the benefit that would have been payable at death if the pensioner had not elected for a reduced initial rate of pension.

5. The various percentages have been actuarially calculated to ensure that there is no increase in the costs of the scheme. The amendments do not apply to CSS members who retire on the grounds of invalidity as it would not be possible to determine appropriate rates of reduction to apply in such cases because of the increased possibility of the premature death of the pensioner.

**Items 102 and 103 - Interpretation**

6. **Items 102 and 103** insert definitions of "category 1 deceased pensioner" and "category 2 deceased pensioner" into subsection (3)(1) of the 1976 Act. A category 1 deceased pensioner is one who takes the full rate of initial pension and a category 2 deceased pensioner is one who has elected for the lower initial rate.

**Items 104 to 112 – Election to receive reduced rate of initial pension on age retirement**

7. **Items 104 to 111** amend sections 55, 56 and 57 of the 1976 Act that provide for the calculation of age retirement pensions, as a consequence of the member making an election under section 57AA.

8. **Item 112** inserts section 57AA into the Act to allow a retiring member to elect, within a period of three months before or three months after retirement, for a reduced rate of benefit on age retirement. The reduced rate payable is 93% of the benefit that would otherwise be payable.

9. A person who elects for postponement of their retirement benefits under Part VIB may not make an election under section 57AA (such a person may make an election under the relevant provision in that Part). Similarly, a person who is electing under section 76A to renounce the payment of an invalidity benefit in favour of an age retirement benefit may not make an election under section 57AA (such a person has been retired on the grounds of invalidity and some benefit has already been paid).

**Items 113 to 119 – Election to receive reduced rate of initial pension on early age retirement**

10. **Items 113 to 117, and 119** amend sections 59, 60, 61 and 65 of the 1976 Act that provide for the calculation of early age retirement pensions, as a consequence of the member making an election under section 61AB.

11. **Item 118** inserts section 61AB into the Act to allow a retiring member to elect, within a period of three months before or three months after retirement, for a reduced rate of benefit on early age retirement. The reduced rate payable is 93% of the rate that would otherwise have been payable.

12. A person who elects for postponement of their retirement benefits under Part VIB may not make an election under section 61AB (such a person may make an election under the relevant provision in that Part). Similarly, a person who is electing under section 76A to renounce the payment of an invalidity benefit in favour of an early age retirement benefit may not make an election under section 61AB (such a person has been retired on the grounds of invalidity and a benefit has already been paid).

**Items 120 to 129 – Rates of reversionary benefits payable to a spouse**

13. **Items 120 to 123** amend sections 94 and 95 of the 1976 Act that set the annual rates of standard and additional pension payable to a spouse on the death of a pensioner. The amendments provide for different rates of benefits on the death of category 1 and category 2 pensioners to allow for a higher rate to be payable as a result of the election made by the category 2 pensioner.

14. The minimum benefit payable to an eligible spouse on the death of a category 1 pensioner is 67% of the benefit payable to the pensioner at death, rising to a maximum of 100% where there are 3 or more children. The minimum benefit payable to an eligible spouse on the death of a category 2 pensioner is 85% of the benefit payable to the pensioner at death, rising to a maximum of 108% where there are 2 or more children. The maximum rate of 108% is equal to 100% of the benefit that would have been payable to the category 2 pensioner if he or she had not made the election for a reduced rate of initial pension.

15. **Items 124 to 129** amend section 96B of the Act which provides for extra spouses pension to be paid where there is a partially dependant child, to allow an increased rate to be payable where the deceased pensioner was a category 2 pensioner.

**Items 130 to 132 – Rates of reversionary benefits payable to orphans**

16. **Items 130 to 132** amend section 109 of the 1976 Act to provide for the rates at which benefits should be payable to an orphan or orphans on the death of a pensioner. Different percentages of the pension payable at the pensioner's death are payable in respect of a category 1 pensioner (ranging from 45% to 100%) and category 2 pensioner (ranging from 51% to 108%).

**Items 133 to 136 – Rates of reversionary benefits payable where there is a child not in the custody, care and control of the spouse**

17. Section 109AB of the 1976 Act provides for the rates of benefits payable on the death of a pensioner where there is both a spouse and at least one child not in the custody, care and

control of that spouse. **Items 133 to 136** amend that provision to allow a higher rate of benefit to be paid on the death of a category 2 pensioner.

**Items 137 to 141 – Rates of reversionary benefits payable where there is more than one spouse**

18. Sections 110 and 110AB of the 1976 Act provide for the rates of benefits payable where a pensioner is survived by more than one spouse and for an additional amount to be available in certain circumstances. The section allows the CSS Board to allocate the available benefit among the spouses, after taking certain prescribed matters into account. **Items 137 to 141** provide for higher rates of benefits to be available for allocation in the case of the death of a category 2 pensioner.

**Item 142 – Consequential amendment**

19. **Item 142** amends section 110R of the 1976 Act as a consequence of the amendments made by items 112 and 118.

**Items 143 and 144 – Election by a person who has postponed the payment of pension**

20. **Item 143** inserts new section 110TBA into the 1976 Act and **item 144** amends section 110TC of the Act to allow a person who has made an election to postpone the payment of his or her age or early age retirement benefit, to elect, within a period of three months before or three months after the postponed benefit becomes payable, to receive that benefit at a reduced rate. When a person makes that election, the other provisions relating to the reduced initial pension and increased reversionary pension apply.

**Items 145 to 153 – Election by a person to whom deferred benefits are applicable**

21. Section 137 of the 1976 Act allows certain persons, on ceasing CSS membership, to elect to forgo immediate benefit but preserve their entitlements. In most cases the election makes deferred benefits applicable to that person which become payable to or in respect of the person, in certain circumstances at a later time. Where deferred benefits become payable, section 136 provides for the rates of benefits that are to be paid.

22. **Item 152** inserts section 137A into the Act to allow a person to whom deferred benefits are applicable, to elect, within a period of three months before and three months after those benefits become payable to receive the benefits at a reduced rate. **Item 153** repeals and replaces Table 1 of Schedule 11 to the Act to provide new factors for the calculation of pension benefits payable where the person has made an election under 137A.

23. **Items 145 to 151** amend various provisions of section 136 of the Act to allow for different rates of reversionary benefits to be payable where a person has made an election under section 137A.

**PART 4 – PAYMENT INTO FUND OF AMOUNTS HELD IN OTHER  
SUPERANNUATION FUNDS OR PAYABLE UNDER SUPERANNUATION  
ARRANGEMENTS**

24. Under an industrial agreement that earlier applied to the Australian Public Service performance based pay (PBP) was available to some CSS members. Members could elect to pay 5 % of that PBP to certain superannuation funds that were declared funds under the PB Act. This contribution was matched by an additional amount equal to 15% of the PBP also paid to those funds in respect of the member by his or her employer. This arrangement is no longer available and some CSS members have small amounts in those funds that cannot, under the current arrangements, be transferred to the CSS.

25. In order to allow CSS members to consolidate their superannuation benefits it is intended to allow members to elect to transfer those PBP amounts into the CSS with the agreement of the trustees of the other funds.

26. This Part amends the 1976 Act to allow PBP amounts, and any additional amounts in the member's accounts at the time, to be paid to the CSS Fund. These amounts will remain in the Fund until other benefits become payable, accumulating interest as determined by the CSS Board. When a member becomes entitled to the payment of benefits from the fund, the new accumulation is to be treated as a preserved benefit under the SIS and paid accordingly.

27. PBP amounts transferred to the CSS do not attract any further employer subsidy from the Commonwealth.

**Item 154 – Interpretation**

28. **Item 154** inserts definitions of "accumulated performance pay employee contributions" and "accumulated performance pay employer contributions", which make up a PBP amount, into subsection 3(1) of the 1976 Act. It is necessary to differentiate between the employee and employer components of the PBP amounts because the SIS imposes different preservation requirements on the components.

29. The item also inserts definitions of "employer component", "superannuation entity" and "transferable productivity amount" into subsection 3(1).

**Item 155 – Consequential amendment**

30. **Item 155** amends subsection 110SB(1) of the 1976 Act as a consequence of the amendments made in relation to the transfer of PBP amounts.

**Item 156 – Insertion of new Part to allow the transfer of PBP amounts**

31. **Item 156** inserts Part VIAB into the 1976 Act to provide for payment into the CSS Fund of amounts held in other superannuation funds.

32. New sections 110SK and 110SL provide for a CSS member to request payment of PBP amounts (and other amounts to the person's account with the other fund) to the CSS Board and for the Board to pay those amounts into the Fund. PBP amounts that have been transferred from a declared fund to another fund may also be paid to the Board and transferred to the Fund. CSS members who may make an election under these sections include some non-contributing members to whom benefits have not yet become payable, eg

members who have elected for a deferred benefit to become payable at some point in the future.

33. Sections 110SM and 110SN provide for the circumstances in which a CSS member is entitled to a benefit under the new Part and for the amount of benefit that becomes payable. The benefits will be the transferred amounts with appropriate reductions for income tax and additions of interest.

34. Section 110SO ensures that the employer component of the benefit is to be treated as a preserved benefit under the SIS.

35. Sections 110SP to 110SQ provide for the payment of the benefit on the death of a member.

#### **Items 157 to 170 – Consequential amendments**

36. **Items 157 to 170** make amendments to various provisions of the 1976 Act as a consequence of the new Part VIAB.

### ***PART 5 – AMENDMENTS RELATING TO POWERS OF RECONSIDERATION ADVISORY COMMITTEES***

37. **Items 171 to 173** amend sections 153AD, 153AL and 153AS of the 1976 Act to allow a Reconsideration Advisory Committee to reconsider a decision referred to it where the CSS Board has delegated its power of reconsideration to the Committee.

### ***PART 6 – MISCELLANEOUS***

#### **Item 174 – Delegation by CSS Board**

38. Section 27Q of the 1976 Act provides for the CSS Board to be able to delegate its powers. **Item 174** repeals the section and replaces it with a new section. New subsection 27Q(1) enables the Board to delegate all or any of its powers (other than the power to review its own, or its delegates', decisions) under the Act, to certain specified persons as well as to a committee of 2 or more of those persons.

39. New subsection 27Q(2) provides that the Board may delegate its power to reconsider its own decisions or decisions made by its delegates to the Reconsideration Advisory Committees established under the repealed 1976 Act or the PSS Trust Deed.

40. New subsection 27Q(3) provides that a person to whom the Board has delegated power may subdelegate that power to one of the other persons to whom the power may be delegated. Generally a delegated power may be subdelegated to a person referred to by the same or a later paragraph of the section.

41. Provisions of the *Acts Interpretation Act 1901* will apply to the subdelegation as if it were a delegation.

**Item 175 – Indemnification of CSS Board members etc**

42. **Item 175** amends section 27R of the 1976 Act to ensure that CSS Board members may only be indemnified in circumstances permitted by SIS.

**Item 176 – Involuntary retirement on sale or transfer**

43. Subsection 58(3A) of the 1976 Act provides that, where a person has ceased to be a CSS member in circumstances connected with the sale of an asset or the transfer of a function, that person will not be taken to have been involuntarily retired if he or she had accepted an offer of employment or rejected an offer of equivalent employment in connection with that sale or transfer. This has the effect of restricting the options available to the person on cessation of membership.

44. **Item 176** repeals the subsection so that a person who ceases to be a CSS member in those circumstances has access to the options available on involuntary retirement in the same circumstances as other CSS members.

**Items 177 to 181 – Actuarial advice**

45. **Items 177 to 180** amend subsections 62A(1), 62A(5), 110SB(1) and 110SB(5) of the 1976 Act to allow any actuary rather than only the Australian Government Actuary to make a determination in relation to a person's **notional accumulated SG contributions**.

46. **Item 181** amends subsection 110SE(6) of the 1976 Act to allow any actuary rather than only the Australian Government Actuary to certify that the value of a person's benefits meet the superannuation guarantee requirements.

**Item 182 – Benefit on cessation of membership following sale or transfer**

2. In some circumstances, where an asset is sold or a function is outsourced (transferred) CSS members may have to resign to take up an offer of employment with the new provider or owner. Also, in some circumstances a person may cease to be a CSS member because the Commonwealth no longer owns the business in which they are employed, eg, where the Commonwealth has sold its shares in a company. Where a person ceases membership in these circumstances, benefits payable from the CSS do not include the options available on involuntary retirement. Because the person who resigns may not have any more choice in the matter than the person who is retired involuntarily, it is intended to make a new option available.

3. This option is equivalent to the lump sum benefit available on involuntary retirement and must be preserved according to SIS.

4. **Item 182** inserts a new Part VID into the 1976 Act to provide this benefit. New section 110TV provides that the Part applies to CSS members who cease membership on or after 27 June 1997 in circumstances connected with the sale of an asset or the transfer of a function. The section also ensures that, where a benefit becomes payable under this provision, this is in lieu of an involuntary retirement benefit that would otherwise be payable under the Act

5. The new section also describes the benefit that becomes payable to the person under the Part, ensures that it is a preserved benefit under SIS (other than the member-financed component) and allows for the reduction of that amount where the person's surcharge debt account is in debit when the benefit becomes payable.

6. Since 1 July 1999, SIS has extended the preservation rules to member contributions in certain circumstances. Section 111A of the 1976 Act would ensure that only the amount of member contributions and interest allowed to be taken in cash by SIS is available in that form under section 110TV.

7. Part VID is taken to have had effect from 27 June 1997, the date of announcement of the changes.

#### **Item 183 – Payment of a preserved benefit**

8. **Item 183** amends section 111A of the 1976 Act to provide that, where SIS has not permitted the payment of deferred benefits to a person, the benefits will become payable as soon as the person notifies that the payment has become permissible under SIS.

#### **Item 184 – Judgment orders**

9. Section 119 of the 1976 Act provides that the CSS Board may make payments to the creditor of a CSS member in certain circumstances. The section was drafted to allow those payments to be made only with the permission of the Insurance and Superannuation Commission but that body has since advised that its approval is not necessary for the purposes of SIS. (When the responsibilities of that body were transferred in part to the ASIC, section 119 was amended to refer to the new body by the *Financial Sector Reform (Consequential Amendments) Act 1998*).

10. **Item 184** amends section 119 to remove the requirement that the ASIC must approve payments to creditors under that provision.

#### **Item 185 – Minor drafting amendment**

11. **Item 185** makes a minor drafting amendment to section 136 of the 1976 Act.

#### **Item 186 – Clarification of drafting**

12. **Item 186** clarifies the drafting of section 138 of the 1976 Act.

#### **Item 187 – Compliance with SIS**

13. Section 138 of the 1976 Act was amended by the *Superannuation Legislation Amendment Act (No. 1) 1995* to comply with the SIS requirement for release of preserved benefits as understood at the time. A later understanding of those requirements meant that section 138 was applying more stringent preservation rules than required. Regulations were made under section 155C of the 1976 Act to allow benefits to be released where possible in accordance with SIS. These regulations are included in Statutory Rule 1995 No 406 (Superannuation (Deferred Benefit) Regulations). When section 155C was inserted into the Act it was on the understanding that any regulations modifying the Act under that section would result in amendments to the Act at the earliest possible opportunity.

14. **Item 187** amends section 138 in the same way as the regulations made under section 155C.

**Items 188 to 190 – Consequential amendments**

15. **Items 188 to 190** amend section 140 of the 1976 Act as a consequence of the amendments made by items 156 and 182 of this Schedule.

**Item 191 – Consequential amendment**

16. **Item 191** amends section 153AA of the 1976 Act as a consequence of the amendments made by items 201 to 204 of this Schedule.

**Item 192 – Actuarial advice**

17. **Item 192** amends section 154AB of the 1976 Act to allow the CSS Board to choose any actuary to give advice concerning the reduction of pension benefits where the member's surcharge debt account is in debit at the time of cessation of membership.

**Item 193 – Clarification of regulation making power**

18. Section 155B of the 1976 Act provides for the making of regulations to modify the Act in relation to CSS members who cease membership on the sale of an asset or the transfer of a function. The provision was intended to apply to all persons who cease membership in those circumstances but this is unclear.

19. **Item 193** amends section 155B to make it clear that it applies to all persons who cease CSS membership in circumstances described in the section.

20. The amendment has effect from 18 December 1992, the date of effect of the provision.

**Item 194 – Section not to apply after 26 June 1997**

21. **Item 194** amends section 155B of the 1976 Act to provide that it does not apply to a person who ceases to be a CSS member after 26 June 1997. As with the amendment made by item 176 of this Schedule, it is intended that CSS members who cease membership in the circumstances of a sale or transfer have access to the options available on involuntarily retirement in the same circumstances as other CSS members. There is no need, therefore, to have powers to make special benefit arrangements for such persons by regulation.

**Item 195 – Unclaimed money**

22. Section 158A of the 1976 Act provides for the treatment of unclaimed money.

**Item 195** amends the provision in order to ensure that those monies are dealt with according to the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

**Items 196 and 197 – Payments by employers**

23. Section 159 of the 1976 Act provides for employers to make payments to the Commonwealth in respect of future benefit payments for their employees who are CSS members. Section 160 of the Act provides for employers to make payments towards the cost of the administration of the scheme in relation to their employees who are CSS members.

24. **Items 196 and 197** ensure that sections 159 and 160 of the 1976 Act can apply to employers whose employees are members of the CSS because of the operation of new paragraph (ec) of the definition of 'eligible employee' as inserted by item 4 of this Schedule.



**Item 198 – Employers to distribute information**

25. **Item 198** inserts a new section 163AB into the 1976 Act to allow the CSS Board to send certain information to designated employers under the Act and request those employers to distribute the information to CSS members. The section requires the employer to distribute that information.

**Item 199 – Foreign currency exchange rate**

26. **Item 199** amends section 166 of the 1976 Act to provide that, where an amount under the Act has to be converted to a foreign currency other than sterling, the conversion rate should be agreed between the CSS member and his or her designated employer.

**Item 200 – Consequential regulations**

27. Section 168 of the 1976 Act provides for the making of regulations under the Act. **Item 200** inserts a new subsection (17A) to provide that, where regulations under the Act no longer have their intended effect because of later 1976 Act amendments, the CSS Board may treat those regulations as if consequential amendments had been made to them.

**Items 201 to 204 – Transfer of Ministerial power to the CSS Board**

28. Section 240 of the 1976 Act requires that the Minister and the CSS Board agree concerning the transfer of assets from the CSS Fund to an approved fund on behalf of CSS members who transfer to that approved fund. Similarly section 248 requires that the Minister and the Board agree concerning the transfer of assets from the CSS Fund to the PSS Board in relation to CSS members who elected to transfer to the PSS. As the CSS Board has full responsibility for the Fund it is appropriate that the Board have full responsibility for transfers from that Fund.

29. **Items 201 to 203** transfer the Minister's powers under section 240 to the Board and make a consequential amendment to section 241.

30. **Item 204** repeals and replaces section 248 to transfer the Minister's powers under that section to the Board.

**SCHEDULE 2 – AMENDMENT OF THE SUPERANNUATION ACT 1990*****PART 1 – AMENDMENTS RELATING TO THE SCOPE AND ADMINISTRATION  
OF THE ACT AND THE TRUST DEED*****Item 1 – Definition of 'approved authority'**

31. **Item 1** repeals the existing definition of 'approved authority' in section 3 of the 1990 Act and provides that the new section 3AAA inserted by item 3 defines the term.

**Item 2 – Definition of 'voting share'**

32. **Item 2** inserts a definition of 'voting share' in section 3 of the 1990 Act. The term is used in the new definition of 'approved authority' as inserted by item 3 of this Schedule.

**Item 3 – Approved authority**

33. **Item 3** inserts a new provision into the 1990 Act.

34. New section 3AAA determines whether or not an authority or body is an approved authority for the purposes of the 1990 Act and replaces the definition repealed by item 1 of this Schedule. Staff of approved authorities may be eligible to be PSS members. The intention is to streamline the administration of the provision that currently requires case-by-case consideration of each request for a body to be declared to be an approved authority. The revised definition, however, does not cease approved authority status for any approved authority covered by the repealed definition while it retains its present character (see paragraph 184).

35. Paragraph (b) of the existing definition describes the type of authority or body that could be declared by the Minister to be an approved authority for the purposes of the Act and provides for the Minister to make the declaration. Paragraph (a) of the existing definition provides that a body that was an approved authority for the purposes of the 1976 Act on 30 June 1990 continued to be an approved authority under the 1990 Act.

36. New section 3AAA describes a body that is an approved authority for the purposes of the Act unless the Minister declares otherwise under subsection 3AAA(9).

37. Subsection 3AAA(2) includes an authority or body that is an approved authority at the time of commencement of the section.

38. Subsection 3AAA(3) provides that a body that is an approved authority prior to the commencement of the subsection, will cease to be an approved authority automatically where there has been a change of character. However, this will only apply to future changes of character. If this does occur the Minister may still, if appropriate, declare the body to continue to be an approved authority under subsection 3AAA(8) or provide for continuing membership for existing employees of the body through a Membership Inclusion Declaration under section 6.

39. An authority or body changes its character if the level of Commonwealth control reduces, or if in the last financial year the level of the funding received from the Commonwealth Budget is below 30% and further reduces.

40. Subsection 3AAA(4), (5), (6) and (7) provide that certain Commonwealth bodies are approved authorities if their Chief Executive Officer agrees to contribute towards the cost of providing membership to employees of the body. This applies provided the body:

- (a) is fully Commonwealth controlled;
- (b) is not operating in a competitive environment; or
- (c) 30% or more of its funding is received from the Commonwealth Budget (otherwise than by way of taxes imposed by the Commonwealth).

2. One of the effects of these provisions is that, if a body that has automatically been an approved authority in the past changes its character so that it would not automatically be an approved authority, it will cease to be an approved authority.

3. Subsection 3AAA(8) provides that the Minister may declare any authority or body to be an approved authority including one that lost that status because of a change in character.

4. Subsection 3AAA(9) provides that the Minister may, despite the other provisions of the section, declare that an authority or body is not an approved authority for the purposes of the Act.

5. The declarations under section 3AAA are all Statutory Rules and disallowable instruments as provided by section 45 of the Act as amended by items 4 to 7 of this Schedule. They may be made with retrospective effect in circumstances as provided by that section as amended.

#### **Items 4 to 7 – Consequential amendments**

6. **Items 4 to 7** amend section 45 of the 1990 Act as a consequence of the insertion of section 3AAA by item 3 of this Schedule. New subsections 45(3A) and (3B) allow the Minister to make declarations concerning the status of an authority or body with retrospective effect in certain specified circumstances. In particular, declarations to include an authority or body as an approved authority with retrospective effect can be made effective from a date earlier than the commencement of the new definition. The section also allows an authority or body to be excluded from the definition retrospectively to the commencement of the new definition if employees of the authority or body have not been treated as PSS members.

### *PART 2 – MISCELLANEOUS*

#### **Item 8 – Consequential amendment**

7. **Item 8** amends the definition of Trust Deed in section 3 of the 1990 Act by omitting the reference to section 5 of the Act as a consequence of amendments made to the Tenth Amending Deed.

#### **Item 9 – Continuity of membership**

8. **Item 9** inserts new subsection 12(2) into the 1990 Act which clarifies that where the PSS Rules currently or in the future provide for continuity of membership of the PSS for specified categories of persons, those situations are to be covered by the provisions in the 1990 Act that provide for continuation of membership in certain circumstances.

9. Section 12 of the 1990 Act currently provides for continuity of membership in certain circumstances where there is a break in employment. The existence of this section raises the question whether there is power for the PSS Rules to cover other situations involving continuity of membership. Such provisions include where a person resigns to contest an election for Commonwealth, State or Territorial legislature or persons who are re-appointed or re-employed after termination of appointment or employment under provisions in the Public Service Act.

#### **Item 10 – Delegation by PSS Board**

10. Section 28A of the 1990 Act provides for the PSS Board to be able to delegate its powers. **Item 10** repeals the section and replaces it with a new section. New subsection 27A(1) enables the Board to delegate all or any of its powers (other than the power to review its own, or its delegates', decisions) under the Act, to certain specified persons as well as to a committee of 2 or more of those persons.

11. New subsection 28A(2) provides that a person to whom the Board has delegated its power may subdelegate that power to one of the other persons to whom the power may be delegated. Generally a delegated power may be subdelegated to a person referred to by the same or a later paragraph of the section.

12. Provisions of the *Acts Interpretation Act 1901* will apply to the subdelegation as if it were a delegation.

#### **Item 11 – Transfer of power to the PSS Board**

13. Section 33D of the 1990 Act requires that the Minister and the PSS Board agree concerning the transfer of assets from the PSS Fund to an approved fund on behalf of PSS members who transfer to that approved fund. As the Board has full responsibility for the PSS Fund it is appropriate that the Board have full responsibility for transfers from that Fund.

14. **Item 11** amends section 33D to transfer the Minister's powers under that section to the Board.

#### **Item 12 – Reference to the PSS Rules**

2. **Item 12** amends subsection 33G(2) of the 1990 Act to remove a reference to Part 6 of the PSS Rules. This subsection was not amended when amendments were made in the *Superannuation Legislation Amendment Act (No1) 1995* to replace references to specific Parts and Divisions of the PSS Rules with more general references. The amendments were made to avoid the need for amendment of the 1990 Act every time the PSS Rules are amended.

#### **Item 13 – Employers to distribute information**

3. **Item 13** inserts a new section 42A into the 1990 Act to allow the PSS Board to send certain information to designated employers under the Act and request those employers to distribute the information to PSS members. The section requires the employer to distribute that information.

#### **Item 14 – Indemnification of PSS Board members etc**

4. **Item 14** amends section 43 of the 1990 Act to ensure that PSS Board members may only be indemnified in circumstances permitted by SIS.

#### **Item 15 – Consequential amendment**

5. **Item 15** amends section 45 of the 1990 Act as a consequence of the amendment made by item 11 of this Schedule.

#### **Item 16 – Retrospective amendments**

6. **Item 16** inserts new subsection 45(6) into the 1990 Act to provide that subsection 48(2) of the *Acts Interpretation Act 1901* does not apply in relation to an Amending Deed. This will allow retrospective amendments to be made to the Trust Deed in any circumstances permitted by SIS. Members' rights and benefits will be protected in accordance with the SIS that limits the circumstances in which retrospective amendments can be made to the rules of a superannuation scheme.

#### **Item 17 – Commencement of certain provisions of the Tenth Amending Deed**

7. The Ninth Amending Deed, effective from 1 July 1995, remade the PSS Rules in a simplified form. The simplified Rules were, in the main, a translation of the Rules in force

before 1 July 1995. Some of these translated Rules contained errors that inadvertently advantaged some groups of members, eg the amount of pension benefits to be received on retirement. The revised provisions including these errors were never implemented administratively as they were intended to be a direct translation of the "old" Rules. The errors were corrected by the Tenth Amending Deed (effective 1 February 1996) after the PSS Board and the ISC approved the changes under SIS regulation 13.16(d).

8. The Senate Standing Committee on Regulations and Ordinances questioned the validity of the administration of the affected provision for the period 1 July 1995 to 1 February 1996, between the Ninth and Tenth Amending Deeds. The Committee agreed with the proposal that, to address their concerns, the 1990 Act be amended to validate the administration of those Rules.

9. **Item 17** provides for the amendments made by the Tenth Amending Deed to have retrospective effect.

### **SCHEDULE 3 – AMENDMENT OF THE RULES FOR THE ADMINISTRATION OF THE PUBLIC SECTOR SUPERANNUATION SCHEME**

10. Schedule 3 amends the Rules for the Administration of the Public Sector Superannuation Scheme (the PSS Rules).

11. The PSS Rules currently provide that, where a person has ceased to be a PSS member in circumstances connected with the sale of an asset or the transfer or outsourcing of a function, that person will not be taken to have been involuntarily retired if he or she had accepted an offer of employment or rejected an offer of equivalent employment in connection with that sale or transfer. This has the effect of restricting the options available to the person on cessation of membership.

12. Under new PSS redundancy arrangements announced by the Government in 1997, employees made redundant before 1 July 2000 in this situation, who were previously treated as having resigned, have access to a cash lump sum benefit, including the employer-financed component, as one of the benefit options, subject to preservation of the portion required by SIS to be preserved. Previously all the employer component of a PSS resignation benefit payable in those circumstances usually had to be preserved. From 1 July 2000 the employer-financed component of all redundancy benefits has to be preserved.

13. The new arrangements also allow employees who cease membership as a result of outsourcing or sale but are not made redundant to choose to rollover their superannuation entitlements to a superannuation fund or RSA of their choice. If this option is chosen, the employer component must be preserved in the receiving fund or RSA.

14. Schedule 3 takes effect from 27 June 1997, the date of announcement of the changes.

15. Amendments to the 1976 Act included in Part 6 of Schedule 1 to the Bill provide similar options to CSS members who cease membership in circumstances connected with the sale of an asset or the transfer or outsourcing of a function.

#### *Interpretation*

16. Division 2 of Part 1 of the Rules defines special terms and phrases and some concepts used in the Rules.

17. The definition of "involuntary retirement" in Rule 1.2.1 currently excludes all members who cease membership in sale or outsourcing situations. This approach was used because

the PSS Rules need provisions that only apply in sale or outsourcing situations (Divisions 6 and 7 of Part 6) and separate provisions that apply in all other situations involving involuntary retirement, for example, downsizing (Division 3 of Part 6). However, some people find this approach confusing as they would usually include sale or transfer situations under the term "involuntary retirement".

18. **Item 1** deletes the definition of "equivalent employment" as this concept is no longer needed under the new rules relating to PSS benefits on sale or outsourcing. Under these new rules employees are no longer prevented from accessing redundancy benefits when they reject an offer of equivalent employment.

19. With the introduction of the new rules relating to PSS benefits on sale or transfer, the definition of "involuntary retirement" has been simplified by including sale or transfer situations in the definition. To achieve this **item 2** deletes the tenth dot point of the definition of "involuntary retirement", which excludes sale or transfer situations from the definition. To ensure that separate provisions continue to apply in sale or transfer situations, schedule 3 also excludes sale or transfer situations from Division 3 of Part 6, which deals with all other situations involving involuntary retirement (see below).

### *Benefit Options*

20. Part 6 of the Rules sets out the form of, and those conditions under which, members' benefits can be taken. The forms and conditions vary according to the reason membership ceased.

### **Benefit options - involuntary retirement**

21. Division 3 of Part 6 details the benefit options available on involuntary retirement, other than in sale or transfer situations.

22. **Item 3** replaces Division 3 of Part 6 in order to implement the new PSS redundancy arrangements. The new rule 6.3.2 should also be easier to understand as it spells out all of the benefit options that apply on or after 1 July 2000 instead of referring to rule 6.3.1. This approach also allows rule 6.3.2 to include the requirement that the employer-financed component is to be treated as a preserved benefit for the purposes of the SIS.

23. The new rules 6.3.1, 6.3.2 and 6.3.3 also make it clear that they do not apply in sale or transfer situations (see paragraph (A)). This change follows the broadening of the definition of "involuntary retirement" to include sale or transfer situations.

### **Benefit options - sale or transfer of an asset or function**

24. Divisions 6 and 7 of Part 6 currently describe the benefit options on the sale or transfer of an asset or function, with Division 6 applying where a person continues in employment with the new owner or transferee, and Division 7 applying where a person does not continue in employment.

25. As a result of the Government's decisions on PSS redundancy benefits in sale or transfer situations, members will receive the same benefits whether or not they remain in employment with the new owner or transferee. Accordingly, **item 4** replaces Division 6 of Part 6 with a new Division that covers all sale or outsourcing situations, and **item 5** deletes the now redundant Division 7 of Part 6.

26. Rule 6.6.1 describes the benefit options for members who continue their PSS membership after sale or transfer and rule 6.6.2 describes the benefit options for members

who could have continued their PSS membership. These rules are unchanged from the current Division 6 of Part 6.

27. Rule 6.6.3 describes the benefit options for members who cease their PSS membership but continue in employment, without changing employer. In this situation SIS does not permit any amounts to be paid to the member, so rule 6.6.3 specifies that a member's benefits must be rolled-over or combined with a benefit accrual from another current period of PSS membership. The rollover option includes the requirement that the employer-financed component is to be treated as a preserved benefit for the purposes of SIS. Apart from the addition of the rollover option, rule 6.6.3 is the same as the current rule 6.6.4.

28. Rule 6.6.4 describes the benefit options for members who cease membership on involuntary retirement before 1 July 2000. Rule 6.6.5 describes the benefit options for members who cease membership on involuntary retirement on or after 1 July 2000 as well as for members who cease membership in circumstances other than on involuntary retirement.

29. Rules 6.6.4 and 6.6.5 contain the same benefit options, with the only difference being the amount of lump sum that can be paid to a member. Under rule 6.6.4 members can obtain the maximum lump sum allowable under the SIS in all circumstances, whereas rule 6.6.5 limits this lump sum to the member's accumulated member contributions, with the rule including the requirement that the employer-financed component is to be treated as a preserved benefit for the purposes of SIS. Under rule 6.6.5 members can only obtain a lump sum of the employer-financed component when the release requirements of SIS have been met.

### *Preserved Benefits*

2. Part 8 of the Rules sets out the conditions for access to preserved benefits.

#### **Early access to preserved benefit on involuntary retirement after sale or transfer of assets**

3. Division 4 of Part 8 details the different benefit options for certain preserved benefit members who ceased membership in a sale or transfer situation and are subsequently retrenched by the new owner or transferee.

4. **Item 6** replaces Division 4 of Part 8 in order to implement the new PSS redundancy arrangements. The new rule 8.4.3 should be easier to understand as it spells out all of the benefit options that apply on or after 1 July 2000, which means that rule 8.4.1 can refer directly to 8.4.3 instead of modifying the options under rule 8.4.2. This approach allows rule 8.4.3 to include the requirement that the employer-financed component is to be treated as a preserved benefit for the purposes of the SIS. The current rule 8.4.3 has been renumbered as 8.4.4, to allow for the insertion of the new rule 8.4.3. Current rule 8.4.4 has been deleted as this saving provision is no longer needed.

5. **Item 7** provides that the Minister may, under section 5 of the 1990 Act, amend the Schedule to the Trust Deed in relation to the alterations made by this Schedule.

**SCHEDULE 5 – AMENDMENT OF OTHER ACTS****Items 1, 2 and 7 - Amendments in relation to the benefits for certain CSS or PSS members who join the Judges' Pension Scheme**

6. The SG Act imposes a responsibility on employers to provide a minimum level of superannuation for the majority of their employees. Where this is provided through a defined benefit superannuation scheme, the scheme's actuary is required to certify that the scheme satisfies the employers' superannuation guarantee obligations. Actuarial advice has indicated that the PSS may not satisfy that obligation in respect of those PSS members who are appointed to a federal office and who cease scheme membership on joining the scheme governed by the *Judges' Pension Act 1968*, the Judges' Pension Scheme (JPS).

7. *The Administrative Appeals Tribunal Act 1975*, *Law Officers Act 1964* and *Workplace Relations Act 1996* limit the superannuation benefits that members of the PSS and CSS can receive on appointment under those Acts, and joining the JPS.

8. The amendments in items 1, 2 and 7 of this schedule remove the provisions in the *Administrative Appeals Tribunal Act 1975*, *Law Officers Act 1964* and *Workplace Relations Act 1996* that restrict a person's entitlement to CSS or PSS benefits on joining the JPS. This will ensure that the PSS complies with the requirements of the SG Act and that the PSS or CSS benefits for persons who join that scheme are the same as those applying to any other person who voluntarily leaves the relevant scheme.

9. **Item 1** amends section 16 of the *Administrative Appeals Tribunal Act 1975* by repealing subsections 16(4), (4A) and (4B)

10. **Item 2** amends section 14 of the *Law Officers Act 1964* by repealing subsections 14(3), (4) and (5).

11. **Item 7** amends section 22 of the *Workplace Relations Act 1996* by repealing subsections 22(3), (4) and (5).

**Items 3 to 6 - Amendments to the Superannuation Legislation Amendment Act (No. 1) 1995**

12. **Items 3 to 6** make technical amendments to clarify some provisions in the Superannuation Legislation Amendment Act (No. 1) 1995.