



Defence Force Retirement and Death Benefits Act 1973

No. 81, 1973

Compilation No. 44

Compilation date:	9 December 2017
Includes amendments up to:	Act No. 129, 2017
Registered:	9 December 2017

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Defence Force Retirement and Death Benefits Act 1973* that shows the text of the law as amended and in force on 9 December 2017 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to make provision for and in relation to a Scheme for Retirement and Death Benefits for Members of the Defence Force

Part I—Preliminary

1 Short title

This Act may be cited as the *Defence Force Retirement and Death Benefits Act 1973*.

2 Commencement

- (1) Subject to subsection (2), this Act shall come into operation on the day on which it receives the Royal Assent.
- (2) Sections 3 to 6 (inclusive), and Parts III to IX (inclusive), shall be deemed to have come into operation on 1 October 1972 and, subject to this Act, contributions under section 17 are payable to the Commonwealth, and benefits under this Act are payable by the Commonwealth, on and after that date accordingly.

3 Interpretation

- (1) In this Act, unless the contrary intention appears:

additional contribution means an additional contribution payable under section 21, 64, 87, 89 or 93.

annual rate of pay, in relation to a member of the Defence Force on a particular day, means the amount, that, under the regulations, is the annual pay applicable to the member on that day.

Authority means the Defence Force Retirement and Death Benefits Authority established by section 8, as in force before its repeal by item 44 of Schedule 1 to the *Superannuation Legislation*

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(Consequential Amendments and Transitional Provisions) Act 2011.

benefit means pension benefit, and includes the following:

- (a) a lump sum payment under subsection 32(2) or section 48;
- (b) a refund of contributions under section 56;
- (c) a release authority lump sum paid in relation to a release authority issued to a person under Subdivision 135-A in Schedule 1 to the *Taxation Administration Act 1953*.

child, in relation to a deceased member of the scheme, includes:

- (a) a person who:
 - (i) is an ex-nuptial child of the member; or
 - (ii) is, immediately before the member's death, a stepchild, an adopted child, a foster child or a ward, of the member; or
 - (iii) was, immediately before the member's death, someone who would have been the stepchild of the member except that the member was not legally married to a spouse who survives the member; or
 - (iv) is a child of the member within the meaning of the *Family Law Act 1975*; and
- (b) a person who:
 - (i) is a child or ex-nuptial child of a spouse who survives the member; and
 - (ii) was wholly or substantially dependent upon the member at the time of the member's death; and
- (c) a person who:
 - (i) is, within the meaning of the *Family Law Act 1975*, a child of a spouse who survives the member; and
 - (ii) was wholly or substantially dependent upon the member at the time of the member's death.

child's pension means pension payable under Division 2 of Part VI.

Commissioner for Superannuation has the same meaning as Commissioner has in the Superannuation Act.

continuous full-time Reservist has the meaning given by the *Australian Defence Force Superannuation Act 2015*.

contributing member means a member of the Defence Force who is making, or is required to make, or, but for section 18 or 18A, would be required to make, contributions under section 17.

contributions means contributions payable under section 17, and includes any additional contributions or previous contributions.

CSC (short for Commonwealth Superannuation Corporation) has the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*.

date of commencement of the scheme means 1 October 1972.

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

decision of CSC means a decision of CSC or a delegate of CSC under:

- (a) this Act; or
- (b) the *Defence Forces Retirement Benefits Act 1948*; or
- (c) any other Act that relates to retirement benefits for members of the Defence Force and modifies or affects the provisions of the *Defence Forces Retirement Benefits Act 1948*.

Defence Force Case Assessment Panel means the Panel established under section 100.

Defence Forces Retirement Benefits Board or Board means the Defence Forces Retirement Benefits Board as in existence before being abolished by section 91 of the *Defence Legislation Amendment Act 1984*.

Section 3

Defence (Parliamentary Candidates) Act means the *Defence (Parliamentary Candidates) Act 1969* or the *Defence (Parliamentary Candidates) Act 1969-1973*.

eligible child means a person who:

- (a) is the child of a deceased member of the scheme who died while he was a contributing member or of a deceased recipient member; and
- (b) is a person who has not attained the age of 18 years or:
 - (i) has attained the age of 18 years but has not attained the age of 25 years;
 - (ii) is receiving full-time education at a school, college or university; and
 - (iii) is not ordinarily in employment or engaged in work on his own account.

eligible member of the Defence Force means:

- (a) a member of the Defence Force who:
 - (i) is serving on continuous full-time service under an appointment or engagement, or under a re-appointment or re-engagement that occurred before 1 July 2016, for a period of not less than one year; or
 - (ii) is serving on continuous full-time service, being service that is continuous with previous continuous full-time service that was, or included, service under an appointment or engagement, or under a re-appointment or re-engagement that occurred before 1 July 2016, for a period of not less than one year; or
- (b) a member of the Defence Force:
 - (i) to whom paragraph (a) does not apply;
 - (ii) who is serving on continuous full time service; and
 - (iii) who, immediately before commencing to serve, was a recipient member, was a member of the scheme to whom deferred benefits were applicable under section 78, was a person who was in receipt of, or but for a suspension of his pension under section 53A or 53B of the previous Act, would have been in receipt of,

a pension under the previous benefits scheme (being a pension to which he became entitled on retirement from the Defence Force) or was a person to whom deferred benefits were applicable under section 82ZB of the previous Act;

but does not include:

- (c) a person who, under section 5A, is excluded from this definition;
- (d) a person to whom section 90 applies and who does not make an election under that section; or
- (e) a person who has ceased, or is taken to have ceased, under section 134 or 138 to be an eligible member of the Defence Force.

Note: For a continuous full-time Reservist whose engagement spans 30 June 2016, see section 5B.

eligible orphan means an eligible child who is an orphan, and includes an eligible child who is not an orphan but who is in the custody, care and control of, and is wholly or substantially dependent on, a person other than a person to whom widow's pension or spouse pension is, or was at any time, payable.

existing contributor means a person who:

- (a) immediately before 1 October 1972 was making, or was required to make, or, but for subsection 4AA(2), paragraph 23(5)(b) or (c), or subsection 36(1), of the previous Act, would have been required to make, contributions to the Defence Forces Retirement Benefits Fund under the previous legislation; and
- (b) on that date, without having ceased to be on continuous full-time service, became an eligible member of the Defence Force for the purposes of this Act.

Finance Minister means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

Section 3

fortnightly rate of pay, in relation to a member of the Defence Force on a particular day, means an amount calculated in accordance with the formula:

$$\frac{14 \times A}{365}$$

where *A* is the annual rate of pay applicable to him on that day.

invalidity benefit means invalidity benefit under section 26.

invalidity pay means invalidity benefit consisting of invalidity pay.

marital or couple relationship has the meaning given by section 6A.

member of the Defence Force does not include a person who is a **member** as defined by subsection 3(1) of the *Defence Force (Papua New Guinea) Retirement Benefits Act 1973*.

member of the scheme means a person who is, or at any time on or after the date of commencement of the scheme, has been, an eligible member of the Defence Force.

MSB scheme means the superannuation scheme established under the *Military Superannuation and Benefits Act 1991*.

officer means a member of the Defence Force who is an officer for the purposes of the *Defence Act 1903-1970*.

partner: a person is the **partner** of another person if the two persons have a relationship as a couple (whether the persons are the same sex or different sexes).

pension benefit means retirement pay, invalidity pay, widow's pension, spouse pension or child's pension.

period of effective service, in relation to a member of the scheme, means:

- (a) any period commencing on or after the date of commencement of the scheme during which he is an eligible

member of the Defence Force, less any period included in such a period that:

- (i) is a period of non-effective service in relation to him; or
 - (ii) is a period that, under section 5B or 57, is to be disregarded as a period of effective service in relation to him; and
- (b) any period that is deemed to be a period of effective service in relation to him under section 21, 64 or 91.

period of non-effective service, in relation to a member of the scheme, means a period that, under section 6, is deemed to be a period of non-effective service in relation to him.

Permanent Forces means the Permanent Navy, the Regular Army and the Permanent Air Force.

previous Act means the *Defence Forces Retirement Benefits Act 1948* or that Act as amended and in force from time to time before 1 October 1972.

previous benefits scheme means the retirement benefits scheme provided for in the previous legislation.

previous contributions, in relation to a person, means contributions made by him under the previous legislation, less any such contributions refunded to him under the previous legislation or (except for the purposes of Part X) under section 86 of this Act.

previous legislation means the previous Act, and includes any other Act relating to retirement benefits for members of the Defence Force that came into operation before 1 October 1972 and modifies or affects the provisions of the previous Act.

productivity superannuation benefit, in relation to a member of the scheme, means productivity superannuation benefit payable in respect of the member under the determination made by the Minister under section 52 of the *Defence Act 1903*.

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

Section 3

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

recipient member:

- (a) means a member of the scheme who is entitled to retirement pay or invalidity pay; and
- (b) includes a member of the scheme who, apart from the suspension of his or her invalidity pay under subsection 35(3), would be entitled to invalidity pay.

release authority lump sum has the meaning given by section 49K.

Reserve means:

- (a) in relation to a member of the Navy—the Naval Reserve; and
- (b) in relation to a member of the Army—the Army Reserve; and
- (c) in relation to a member of the Air Force—the Air Force Reserve.

retirement means retirement as a member of the Defence Force, and includes discharge from the Defence Force, and **retire** has a corresponding meaning.

retirement pay means retirement pay payable under section 23.

Rules for the administration of the Superannuation (1990)

Scheme means the rules for the administration of that scheme set out in the Schedule to the deed by which that scheme was established.

service means service as a member of the Defence Force.

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

spouse has a meaning affected by section 6B.

spouse pension means pension payable under Division 1 of Part VI.

Superannuation Act means the *Superannuation Act 1976*.

Superannuation (1990) Scheme means the Superannuation Scheme established by deed under the *Superannuation Act 1990*.

surcharge debt account, in relation to a member of the scheme, means the surcharge debt account kept for the member by CSC under section 16 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

surcharge deduction amount, in relation to a member of the scheme to or in respect of whom benefits become payable under this Act, means the surcharge deduction amount that is specified in the determination made by CSC, under section 6C, in relation to the member.

total period of effective service, in relation to a member of the scheme, means:

- (a) in the case of a member in relation to whom there is only one period of effective service—that period; or
 - (b) in the case of a member in relation to whom there are 2 or more periods of effective service—a period equal to the total of those periods.
- (2) A reference in this Act to benefit under subsection 32(2) shall be read as including a reference to a refund of contributions under that subsection.
- (3) A reference in this Act to a provision of the Superannuation Act shall, except where the context otherwise requires, be read as including a reference to that provision as modified by regulations made under that Act.
- (5) Where, at any time after 1 October 1972, an existing contributor:
- (a) ceases to be an eligible member of the Defence Force; and

Section 4

(b) after so ceasing to be such a member again becomes an eligible member of the Defence Force;
that person shall, for the purposes of sections 25, 33, 86, 87, 87A, 92 and 95, be taken not to be an existing contributor in respect of any period after he or she so ceases to be such a member.

4 Retiring age for rank held

For the purposes of this Act, the retiring age for the rank held by a member of the Defence Force at any time is:

- (a) in the case of a member who is a member of the Permanent Forces—the age for compulsory retirement of the member ascertained in accordance with, or in accordance with regulations under, the *Naval Defence Act 1910-1971*, the *Defence Act 1903-1970* or the *Air Force Act 1923-1965*; or
- (b) in the case of a member who is not a member of the Permanent Forces—the age for compulsory retirement, as ascertained in accordance with paragraph (a), of a member of the same rank and branch who is a member of the Permanent Forces.

5 Continuity of service

- (1) For the purposes of the definition of *eligible member of the Defence Force* in subsection 3(1), a member of the Defence Force serving on continuous full-time service shall not be deemed to have ceased to be on continuous full-time service during any period that is deemed by section 6 to be a period of non-effective service in relation to the member.
- (2) Where a contributing member ceases to be on continuous full-time service but continues to be a member of the Defence Force he shall, for the purposes of this Act, be deemed to have retired on the day on which he ceases to be on continuous full-time service.
- (3) Where a contributing member retires and, without a break in the continuity of his service, again becomes an eligible member of the Defence Force serving on continuous full-time service, he shall, for

the purposes of this Act, be deemed not to have ceased to be an eligible member of the Defence Force by reason of that retirement.

- (4) Subsection (3) does not apply in relation to a person who is taken to have retired under section 5B.

5A Persons excluded from definition of *eligible member of the Defence Force*

- (1) Subject to subsection (2), a person who:
- (a) becomes, on or after 1 October 1991, a member of the Defence Force; or
 - (b) being a member of a Reserve, commences on or after that day to render continuous full-time service for a period of not less than 12 months;
- is excluded from the definition of *eligible member of the Defence Force* in subsection 3(1).
- (2) Subsection (1) does not apply to:
- (a) a person who:
 - (i) ceased to be an eligible member of the Defence Force because he or she was transferred to a Reserve, was discharged from the Defence Force, or had his or her continuous full-time service terminated, under the Defence (Parliamentary Candidates) Act; and
 - (ii) under Part III of that Act is transferred back to, reinstated in, or accepted for further continuous full-time service in, the force of which he or she was a member immediately before ceasing to be an eligible member of the Defence Force; or
 - (c) a person to whom section 63 applies.

5B Continuous full-time Reservists whose engagements span 30 June 2016

- (1) This section applies if:
- (a) a person is an eligible member of the Defence Force; and
-

Section 6

- (b) the person commences as a continuous full-time Reservist as a result of an engagement that is made before 1 July 2016; and
 - (c) the period of the engagement is extended on or after that day.
- (2) For the purposes of this Act, the person is taken:
- (a) to have retired, but not at his or her own request, on the day before the day (the *extension day*) the period of the engagement is extended; and
 - (b) to have commenced as a continuous full-time Reservist on the extension day.
- Note: The effect of this section is that this Act applies in relation to service before the extension day, while the *Australian Defence Force Superannuation Act 2015* applies in relation to service on and after the extension day.
- (3) For the purposes of this Act, disregard as a period of effective service the service rendered on or after the extension day of any member who is taken to have retired under this section.

6 Non-effective service

- (1) Where a member of the scheme has, for any period commencing on or after the date of commencement of the scheme and ending before 3 July 1985, being a period that exceeds 21 consecutive days, been:
- (a) on leave of absence without pay;
 - (b) absent without leave;
 - (c) awaiting or undergoing trial on a charge in respect of which he is later convicted; or
 - (d) undergoing field punishment, detention or imprisonment;
- that period shall be deemed to be a period of non-effective service in relation to him.
- (2) Where a member of the scheme has, for any period commencing before the date of commencement of the scheme but ending on or after that date, being a period that exceeds 21 consecutive days, been absent without leave, so much of that period as commenced

on the date of commencement of the scheme shall be deemed to be a period of non-effective service in relation to him.

- (3) Where a member of the scheme was on leave of absence without pay for a period:
- (a) that commenced:
 - (i) on or after 3 July 1985; or
 - (ii) on or after the date of commencement of the scheme and ended on or after 3 July 1985; and
 - (b) that exceeded 21 consecutive days;
- the period shall be deemed to be a period of non-effective service in relation to the member.
- (4) Where:
- (a) the salary and allowances of a member of the scheme in respect of a period were, on or after 3 July 1985, forfeited, in whole or in part, under regulations made under the *Defence Act 1903*;
 - (b) the period exceeded 21 consecutive days; and
 - (c) an amount equal to the amount of the salary and allowances forfeited was not subsequently paid, and is not payable, under those regulations to the member;
- the period shall be deemed to be a period of non-effective service in relation to the member.
- (5) Where:
- (a) a member of the scheme was in custody under the *Defence Force Discipline Act 1982* awaiting or undergoing trial for a service offence;
 - (b) the period for which the member was in custody awaiting or undergoing trial:
 - (i) commenced:
 - (A) on or after 3 July 1985; or
 - (B) on or after the date of commencement of the scheme and ended on or after 3 July 1985; and
 - (ii) exceeded 21 consecutive days;

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- (c) the member was subsequently convicted of the offence or another service offence at the trial; and
- (d) either of the following subparagraphs apply:
 - (i) the conviction was not quashed or set aside;
 - (ii) the conviction was quashed or set aside and:
 - (A) a conviction for another service offence was substituted; or
 - (B) the member was ordered to be tried again for the offence of which the member was convicted, or for another service offence, and was convicted of a service offence at the subsequent trial;

the period shall be deemed to be a period of non-effective service in relation to the member.

(6) Where:

- (a) 2 or more consecutive periods of 24 hours or more would, but for paragraph (3)(b), paragraph (4)(b) or subparagraph (5)(b)(ii) or 2 or all of those provisions, be deemed to be periods of non-effective service in relation to a member of the scheme; and

- (b) the periods exceed, in the aggregate, 21 days;

the periods shall be deemed to be periods of non-effective service in relation to the member.

(7) Where:

- (a) a period of 24 hours or more would, but for paragraph (3)(b), paragraph (4)(b) or subparagraph (5)(b)(ii), be deemed to be a period of non-effective service in relation to a member of the scheme; and

- (b) the period is consecutive with a period that, under subsection (3), (4) or (5), is deemed to be a period of non-effective service in relation to the member;

the period shall be deemed to be a period of non-effective service in relation to the member.

(8) Where:

- (a) a period of 24 hours or more would, but for paragraph (3)(b), paragraph (4)(b) or subparagraph (5)(b)(ii), be deemed to be a period of non-effective service in relation to a member of the scheme; and
 - (b) the period is consecutive with a period that, under subsection (7) or this subsection, is deemed to be a period of non-effective service in relation to the member;
- the period shall be deemed to be a period of non-effective service in relation to the member.

6A Marital or couple relationship

- (1) For the purposes of this Act, a person had a *marital or couple relationship* with another person at a particular time if the person ordinarily lived with that other person as that other person's husband, wife, spouse or partner on a permanent and bona fide domestic basis at that time.
- (2) For the purpose of subsection (1), a person is to be regarded as ordinarily living with another person as that other person's husband, wife, spouse or partner on a permanent and bona fide domestic basis at a particular time only if:
 - (a) the person had been living with that other person as that other person's husband, wife, spouse or partner for a continuous period of at least 3 years up to that time; or
 - (b) the person had been living with that other person as that other person's husband, wife, spouse or partner for a continuous period of less than 3 years up to that time and CSC, having regard to any relevant evidence, is of the opinion that the person ordinarily lived with that other person as that other person's husband, wife, spouse or partner on a permanent and bona fide domestic basis at that time;whether or not the person was legally married to that other person.
- (3) For the purposes of this Act, a marital or couple relationship is taken to have begun at the beginning of the continuous period mentioned in paragraph (2)(a) or (b).

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- (4) For the purpose of subsection (2), relevant evidence includes, but is not limited to, evidence establishing any of the following:
- (a) the person was wholly or substantially dependent on that other person at the time;
 - (b) the persons were legally married to each other at the time;
 - (ba) the persons' relationship was registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901*, as a kind of relationship prescribed for the purposes of that section;
 - (c) the persons had a child who was:
 - (i) born of the relationship between the persons; or
 - (ii) adopted by the persons during the period of the relationship; or
 - (iii) a child of both of the persons for the purposes of the *Family Law Act 1975*;
 - (d) the persons jointly owned a home which was their usual residence.
- (5) For the purposes of this section, a person is taken to be living with another person if CSC is satisfied that the person would have been living with that other person except for a period of:
- (a) temporary absence; or
 - (b) absence because of special circumstances (for example, absence because of the person's illness or infirmity or a posting of the person).

6B Spouse who survives a deceased person

- (1) In this section:

deceased person means a person who was, at the time of his or her death, a contributing member, a recipient member or a person in respect of whom deferred benefits were applicable.

- (2) For the purposes of this Act, a person is a spouse who survives a deceased person if the person had a marital or couple relationship

with the deceased person at the time of the death of the deceased person.

- (3) In spite of subsection (2), a person is taken to be a spouse who survives a deceased person if:
- (a) the person had previously had a marital or couple relationship with the deceased person; and
 - (b) the person did not, at the time of the death, have a marital or couple relationship with the deceased person but was legally married to the deceased person; and
 - (d) in CSC's opinion, the person was wholly or substantially dependent upon the deceased person at the time of the death.

6BA Benefits for certain spouses in post-retirement marital or couple relationships

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

$$\frac{\text{Number of days in the period of the relationship}}{3 \times 365} \times \text{Rate of spouse pension to which spouse would otherwise be entitled}$$

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- (3) If the rate worked out under subsection (2) is less than or equal to the rate prescribed by the regulations for the purposes of this section, the spouse is instead entitled to a lump sum payment worked out in accordance with the regulations.

6C Surcharge deduction amount

- (1) If:
- (a) benefits become payable to or in respect of a member of the scheme; and
 - (b) the member's surcharge debt account is in debit when those benefits become so payable;
- CSC must determine in writing the surcharge deduction amount that, in its opinion, it would be fair and reasonable to take into account in working out the amount of those benefits.
- (2) In making the determination, CSC must have regard to the following:
- (a) the amount by which the member's surcharge debt account is in debit when those benefits become payable;
 - (b) the value of the employer-financed component of those benefits;
 - (c) the value of the benefits that, for the purpose of working out (under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*) the notional surchargeable contributions factors applicable to the member, were assumed to be likely to be payable to the member on his or her retirement;
 - (d) whether the member has or had qualified for his or her maximum benefit entitlement under this Act;
 - (e) any other matter that CSC considers relevant.
- (3) The amount determined by CSC may not be more than the total of the following amounts:
- (a) 15% of the employer-financed component of any part of the benefits payable to the member that accrued between 20 August 1996 and 1 July 2003;

- (b) 14.5% of the employer-financed component of any part of the benefits payable to the member that accrued in the 2003-2004 financial year;
 - (c) 12.5% of the employer-financed component of any part of the benefits payable to the member that accrued in the 2004-2005 financial year.
- (4) Reductions under Division 3 of Part VIA are to be disregarded in applying subsection (3) of this section.

6D Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Part III—Contributions

17 Contributions by members of scheme

(1) Subject to sections 18 and 18A, an eligible member of the Defence Force shall pay to the Commonwealth fortnightly contributions in accordance with this Act.

(1A) Subsection (1) does not apply to an eligible member of the Defence Force who:

- (a) was a recipient member immediately before he became an eligible member; and
- (b) is serving under an appointment or enlistment for a period of less than one year that commenced after the commencement of this subsection.

(2) Subject to subsection (3), the first fortnightly contribution is payable by an eligible member of the Defence Force:

- (a) in the case of a person who is such a member on the date of commencement of the scheme—on the first pay-day next following that date; or
- (b) in any other case—on the day on which the person becomes an eligible member of the Defence Force or, if that day is not a pay-day, on the first pay-day next following that day.

(3) Where an eligible member of the Defence Force dies before the day on which, but for his death, his first fortnightly contribution would have been payable, that contribution shall be deemed to have become payable by him on the day on which he became an eligible member of the Defence Force.

18 Contributions not to be paid during periods of non-effective service

An eligible member of the Defence Force is not required to pay any fortnightly contribution that, but for this section, would become payable on a day included in a period that is a period of non-effective service in relation to him.

18A Contributions not to be paid after 40 years of effective service

An eligible member of the Defence Force whose total period of effective service is 40 years or more is not required or permitted to pay any fortnightly contributions.

19 Amount of fortnightly contributions

- (1) The amount of each fortnightly contribution to be paid by a contributing member is an amount equal to 5.5% of the fortnightly rate of pay applicable to the member on the day on which the contribution is payable.
- (2) Where the amount of a fortnightly contribution payable by a contributing member includes a fraction of a cent:
 - (a) if the fraction is less than one-half of a cent—the contribution shall be deemed to be reduced by the amount of the fraction;
or
 - (b) if the fraction is one-half of a cent or more—the contribution shall be deemed to be increased by treating the fraction as one cent.
- (3) If a member's hours of duty or periods of duty are determined under a flexible service determination (within the meaning of the *Defence Act 1903*), the fortnightly rate of pay applicable to the member is the rate of pay that would have been applicable if the member's hours of duty or periods of duty were not determined under the flexible service determination.

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20 Amount of contributions on reduction in pay

- (1) Where the annual rate of pay applicable to a contributing member changes, otherwise than by reason of the member ceasing to hold an acting or temporary rank, or of the amendment of the Defence Force Retirement and Death Benefits (Annual Rates of Pay) Regulations made by section 9 of the *Defence Force Retirement and Death Benefits Amendment Act 1981* and, as a result of the change, the amount of each fortnightly contribution to be paid by him would, if he did not make an election under this subsection, become less, he may, by notice in writing given to CSC within a period of 90 days after the change, or within such further period as CSC, in special circumstances, allows, elect to have that change in his annual rate of pay disregarded, and, if he so elects, the change shall be disregarded for the purposes of this Act.
- (2) Where a contributing member who is entitled to make an election under subsection (1) does not make that election, he is entitled to a refund, payable by the Commonwealth, of so much of the contributions paid by him under section 17 as is equal to the difference between the amount of the contributions payable by him under that section before the change referred to in subsection (1) and the amount of the contributions that would have been so payable by him if the amount of each fortnightly contribution so payable by him had not exceeded the amount that is the amount of each fortnightly contribution payable by him after the change, and the amount of any contributions in respect of which he becomes so entitled to a refund shall, for the purposes of this Act, be deemed not to have been paid by him.

21 Purchase of previous non-contributory service

- (1) Subject to this section, where, after 30 September 1972, an eligible member of the Defence Force has, before becoming an eligible member of the Defence Force:
 - (a) served as a member of the Defence Force on continuous full-time service for a period of not less than one year, being

a period during which he was not an eligible member of the Defence Force; or

- (b) served as a member of the Defence Force on continuous full-time service for a period of less than one year, being a period during which he was not an eligible member of the Defence Force but which is continuous with a subsequent period during which he is such a member;

he may, by notice in writing given to CSC within a period of 90 days after the date on which he became an eligible member of the Defence Force, or within such further period as CSC, in special circumstances allows, elect to have the period during which he served as a member of the Defence Force but during which he was not an eligible member of the Defence Force, or such part of that period as he specifies in the election, taken into account as a period of effective service in relation to him under this Act.

- (2) An eligible member of the Defence Force is not entitled to make an election under subsection (1) in respect of any period which, if he had been a contributing member during the period, would have been a period of non-effective service in relation to him.
- (3) Where, under subsection (1), an eligible member of the Defence Force has elected to have a period of service taken into account as a period of effective service in relation to him under this Act, that period shall be deemed to be a period of effective service in relation to him for the purposes of this Act and he shall pay an additional contribution to the Commonwealth under this section, which shall be:
 - (a) if that period is continuous with a period of subsequent service during which he was an eligible member of the Defence Force—an amount equal to the sum of the contributions that he would have been liable to pay during that period if he had been a contributing member during that period; and
 - (b) in any other case—an amount equal to 5.5% of the amount of pay that would have been payable to him in respect of the period to which the election relates if, at all times during that period, his rate of pay had been the annual rate of pay

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applicable to him under this Act at the time he became an eligible member of the Defence Force.

- (4) An election under subsection (1) is of no effect unless, at the time when the election is made, or, within such period after that time as CSC, in special circumstances, allows, there is refunded to the Commonwealth, or arrangements satisfactory to CSC are made for there to be refunded to the Commonwealth, any payment of a prescribed kind (being a payment of, or in the nature of, a gratuity or bounty or deferred pay) paid to the person under the previous legislation, or under legislation relating to conditions of service of members of the Defence Force, in respect of the period to which the election relates.
- (5) Where a person who makes an election under this section had credited to him, in respect of the period to which the election relates, under the previous legislation or under legislation relating to the conditions of service of members of the Defence Force, any deferred pay or interest thereon, that credit shall, by force of this section, be deemed to have been cancelled.

22 Deductions of contributions from pay

Contributions payable under this Part by a member of the scheme may be deducted from his pay.

Part IV—Retirement benefits

23 Entitlement to retirement pay

- (1) A contributing member is entitled, on the member's retirement, to retirement pay at the rate applicable to the member under this section if:
 - (a) the member retires and is not entitled to invalidity benefit; and
 - (b) on the member's retirement:
 - (i) the member's total period of effective service is not less than 20 years; or
 - (ii) the member's total period of effective service is not less than 15 years and the member has attained the retiring age for the rank held by the member immediately before the member's retirement.
- (2) Subject to subsections (3) and (6) and to sections 25 and 75, the rate at which retirement pay is payable to a recipient member is an amount per annum that is equal to such percentage of the annual rate of pay applicable to him immediately before his retirement as, having regard to the number of complete years included in his total period of effective service, is ascertained under Schedule 1.
- (3) Where:
 - (a) the total period of effective service of a member of the scheme who is an officer is not less than 20 years; and
 - (b) he is retired at his own request, or on disciplinary grounds, before attaining the age that, having regard to his rank immediately before his retirement, is his notional retiring age as ascertained under Schedule 2;the rate at which retirement pay is payable to him is the amount per annum that, but for this subsection, would be payable under subsection (2) reduced by 3% of that amount for each year included in the period equal to the difference between the age of

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the officer on his birthday last preceding his retirement and his notional retiring age as ascertained under Schedule 2.

- (4) For the purposes of subsection (3), an officer shall be deemed to have been retired at his own request or to have been retired on disciplinary grounds if the Chief of the Defence Force or a person authorized in writing by the Chief of the Defence Force states in writing that he was so retired.
- (6) If the member of the scheme makes an election under subsection 124(1), the rate at which retirement pay is payable to the member is the rate worked out by using the formula:

$$\text{Basic rate} - \frac{\text{Surcharge deduction amount}}{\text{Conversion factor}}$$

where:

basic rate means the annual rate at which retirement pay would be payable to the member under this section if the member did not make the election.

conversion factor is the factor that is applicable to the member under the determination made by CSC under section 124A.

surcharge deduction amount means the member's surcharge deduction amount.

24 Commutation of retirement pay

- (1) A person who is, or is about to become, entitled to retirement pay may, by notice in writing given to CSC, elect to commute a portion of his or her retirement pay in accordance with this section.

- (1AA) A notice under subsection (1) shall be given not earlier than 3 months before becoming entitled to retirement pay and not later than one year after becoming so entitled or such further period as CSC, in special circumstances, allows.
- (1A) Subsection (1) does not apply to a person who, after the commencement of this subsection, became a person to whom section 62 applied and is not excluded, under subsection (1B), from the operation of this subsection.
- (1B) A person who, after the commencement of this subsection, becomes, or is about to become, entitled to retirement pay is excluded from the operation of subsection (1A) if:
- (a) the person was a former recipient member whose invalidity pay was cancelled under section 62 on the person again becoming an eligible member of the Defence Force; and
 - (b) the person reached, or will reach, immediately before retirement, the retiring age for the rank then held by him or her or the person's total period of effective service is not, or will not be, less than 20 years.
- (2) An election by a person under subsection (1) shall specify the amount that is to be payable to him by virtue of the commutation.
- (2A) The amount specified in an election by a person under subsection (1) shall not be an amount that, together with:
- (a) any amount or amounts specified in any previous election or elections by the person, under this section or section 32A of this Act, to commute a portion or portions of his or her retirement pay or invalidity pay, as the case may be; and
 - (b) any amount paid to the person as a result of an application, under section 74 of the previous Act, to commute a portion of any pension payable to him or her under that Act reduced by any amount or amounts required, under subsection 69(1B) or 69(3A) of the previous Act, to be paid by the person to the Defence Forces Retirement Benefits Fund established under the previous Act, in respect of that commutation;

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exceeds the amount per annum of the retirement pay to which the person was or will be entitled on retirement multiplied by the maximum commutation factor.

Note: This amount is reduced if a release authority lump sum has been paid: see section 49M.

- (2B) For the purposes of subsection (2A), the maximum commutation factor is the number calculated in accordance with the formula:

$$\frac{80 + A}{20},$$

where *A* is:

- (a) if the number (treating zero as a number) of whole periods of 12 months between 30 June 1982 and the date of retirement of the recipient member is less than 20—that number of periods; or
 - (b) in any other case—20.
- (3) Where a person makes an election under this section, then, subject to subsections (8) and (9):
- (a) there shall be paid to him by the Commonwealth an amount equal to the amount specified in the election as the amount that is to be payable to him by virtue of the commutation; and
 - (b) the amount per annum of the retirement pay payable to him, on and after the day on which the election takes effect, is the amount per annum that, but for this paragraph and subsection 98K(1), would be payable reduced by an amount calculated by dividing the amount referred to in paragraph (a) by the expectation of life factor that, having regard to the age and sex of the person on the day on which the election takes effect, is applicable to him under Schedule 3.
- (4) For the purposes of this section, an election shall be deemed to have been made, and shall take effect, on the day on which the notice of election is received by CSC or the day following the day on which the person retires, whichever is the later.

- (8) If:
- (a) a member of the scheme makes an election under this section (**first election**); and
 - (b) the member's surcharge debt account is in debit when retirement pay becomes payable to the member; and
 - (c) the member also makes an election under subsection 124(1);
- the following provisions apply:
- (d) the Commonwealth must pay to the member the difference between the amount (**specified amount**) specified in the first election as the amount that is to be payable to the member by virtue of the commutation and:
 - (i) the member's surcharge deduction amount; or
 - (ii) if the member's surcharge deduction amount exceeds the specified amount—so much of the surcharge deduction amount as does not exceed the specified amount;
 - (e) the amount per annum of the retirement pay payable to the member, on and after the day on which the first election takes effect, is:
 - (i) if subparagraph (ii) does not apply—the amount per annum referred to in paragraph (3)(b); or
 - (ii) if the member's surcharge deduction amount exceeds the specified amount—the amount per annum worked out by using the formula:

$$\text{Basic rate} - \frac{\text{Excess}}{\text{Conversion factor}}$$

where:

basic rate means the amount per annum referred to in paragraph (3)(b).

conversion factor is the factor that is applicable to the member under the determination made by CSC under section 124A.

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excess means the amount by which the member's surcharge deduction amount exceeds the specified amount.

(9) If:

- (a) a member of the scheme makes an election under this section; and
- (b) the member's surcharge debt account is in debit when retirement pay becomes payable to the member; and
- (c) the member does not make an election under subsection 124(1); and
- (d) the member's surcharge deduction amount exceeds the amount of the member's productivity superannuation benefit;

the following provisions apply:

- (e) the Commonwealth must pay to the member an amount equal to the amount specified in the election as the amount that is to be payable to the member by virtue of the commutation;
- (f) the amount per annum of the retirement pay payable to the member, on and after the day on which the election takes effect, is the amount per annum worked out by using the formula:

$$\text{Basic rate} - \frac{\text{Excess}}{\text{Conversion factor}}$$

where:

basic rate means the amount per annum referred to in paragraph (3)(b).

conversion factor is the factor that is applicable to the member under the determination made by CSC under section 124A.

excess means the amount by which the member's surcharge deduction amount exceeds the amount of the member's productivity superannuation benefit.

25 Rate of retirement pay applicable to certain existing contributors

(1) In this section:

new pension percentage of pay, in relation to a person to whom this section applies, means the annual rate of his retirement pay (expressed as a percentage of the rate that was his annual rate of pay for the purposes of this Act immediately before his retirement) that is, or, but for an election under this section, would be, payable to him under this Act on his retirement.

previous pension percentage of pay, in relation to a person to whom this section applies, means the annual rate of pension (expressed as a percentage of the rate that was his annual rate of pay, for the purposes of the previous Act, on 30 September 1972) that would have been payable to him under the previous legislation if he had retired on 30 September 1972, otherwise than on the ground of invalidity or of physical or mental incapacity to perform his duties, and:

- (a) being an existing contributor referred to in subparagraph (2)(d)(i):
 - (i) in the case of a person who was, on 30 September 1972, an officer of the Permanent Forces—he had, on that date, attained the retiring age for the rank held by him on that date; or
 - (ii) in the case of a person who was, on that date, a non-Permanent Forces officer as defined in section 54A of the previous Act—he had, on that date:
 - (A) retired with the rank held by him on that date; and
 - (B) reached the age that was his age on the date of his retirement;and had, on 30 September 1972, completed a number of years of service for pension equal to the number of years of service for pension completed by him on his retirement; or
- (b) being a person referred to in subparagraph (2)(d)(ii)—he had, on 30 September 1972, reached the age that was his age on the date of his retirement.

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retiring age for the rank held has the same meaning as it would have in the definition of ***retiring age for the rank held*** in subsection 4(1) of the previous Act if the reference in that definition to the date of a member's retirement were a reference to 30 September 1972.

service for pension means service for pension as defined by subsection 4(1) of the previous Act.

- (2) This section applies to a person who:
- (a) is an existing contributor;
 - (b) retires and, on his retirement, is entitled to retirement pay;
 - (c) was, on 30 September 1972 and, immediately before his retirement, an officer; and
 - (d) is a person:
 - (i) who, on his retirement, had attained the retiring age for the rank held by him on 30 September 1972 and had completed not less than 15 years' service for pension; or
 - (ii) who, on his retirement, had not attained the retiring age for the rank held by him on 30 September 1972 but in respect of whom CSC is satisfied that, but for the enactment of this Act and the *Defence Forces Retirement Benefits Act 1973*, paragraph 39(2)(b) or (c) of the previous Act would, on his retirement, have applied.
- (2AA) For the purposes of subparagraph (2)(d)(ii):
- (a) a reference in subparagraph 39(2)(b)(ii) or (2)(c)(ii) of the previous Act to the rank held by an officer shall be read as a reference to the rank held by the officer on 30 September 1972;
 - (b) the reference in subparagraph 39(2)(c)(i) of the previous Act to the rank of an officer at the date of his retirement shall be read as a reference to the rank of the officer on 30 September 1972; and
 - (c) a reference in subparagraph 39(2)(b)(ii) or (2)(c)(ii) of the previous Act to the retiring age for the rank held shall be read

as a reference to the retiring age for the rank held within the meaning of this section.

- (2A) Where a person to whom this section applies has made an election under section 44 of the *Defence Forces Retirement Benefits Act 1959*, section 28 of the *Defence Forces Retirement Benefits Act 1962* or section 38, 61A or 61B of the *Defence Forces Retirement Benefits Act 1963*, this section has effect as if the previous pension percentage of pay in relation to that person were a percentage that would have been the previous pension percentage of pay in relation to him if he had not made that election and had paid all the contributions which he would, but for that election, have been required to pay under the previous legislation.
- (3) Where the previous pension percentage of pay applicable to a person to whom this section applies is greater than the new pension percentage of pay applicable to him, he may, by notice in writing given to CSC within a period of 90 days after the date of his retirement, or within such further period as CSC, in special circumstances, allows, elect that the rate at which retirement pay shall be payable to him shall be an amount per annum that is such percentage of his annual rate of pay for the purposes of this Act immediately before his retirement as is the same as the previous pension percentage of pay applicable to him, and, subject to subsection (4), the election has effect accordingly.
- (4) Where CSC so determines, an election under subsection (3) is of no effect unless the person making the election pays to the Commonwealth a contribution under this section of such amount as CSC determines as being appropriate in the circumstances or arrangements satisfactory to CSC are made for the payment of that contribution to the Commonwealth.
- (5) In the application of this section to a person who was, on 30 September 1972, a non-Permanent Forces officer as defined by section 54A of the previous Act, the retiring age for the rank held shall be the age that would be deemed, for the purposes referred to in subsection 54A(2) of that Act, to be the retiring age for the rank

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held by the person on his retirement if he had retired on
30 September 1972.

Part V—Invalidity benefits

26 Invalidity benefit

Subject to sections 27, 28 and 29, where a contributing member is retired on the ground of invalidity or of physical or mental incapacity to perform his duties, he is entitled, on his retirement, to invalidity benefit in accordance with this Part.

27 Incapacity due to wilful action

Where:

- (a) a contributing member is retired on the ground of invalidity or of physical or mental incapacity to perform his duties; and
- (b) the invalidity or incapacity is, in the opinion of CSC, due to wilful action on his part for the purpose of obtaining invalidity benefit;

he is not entitled to invalidity benefit.

28 Pre-existing invalidity or incapacity

(1) Subject to section 95, where:

- (a) a contributing member (not being a contributing member who has become an eligible member of the Defence Force by virtue of an election under section 90) is, within a period of one year after becoming a contributing member, retired on the ground of invalidity or of physical or mental incapacity to perform his duties; and
- (b) CSC is satisfied that:
 - (i) the invalidity or incapacity was caused, or was substantially contributed to, by a physical or mental condition that existed at the time when he became a contributing member; and

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- (ii) the condition was not aggravated, or was not materially aggravated, by his service after becoming a contributing member;

he is not entitled to invalidity benefit.

(2) Where:

- (a) a member of the scheme who has retired again becomes an eligible member of the Defence Force otherwise than without a break in the continuity of his service;
- (b) he is not a person who, on again becoming an eligible member of the Defence Force, was entitled to, and made, an election under section 51; and
- (c) after again becoming an eligible member of the Defence Force, he is retired on the ground of invalidity or of physical or mental incapacity to perform his duties;

he shall, for the purposes of subsection (1), be treated as if he had first become a contributing member at the time when he again became an eligible member of the Defence Force.

29 Invalidity or incapacity arising during absence without leave exceeding 60 days

Where:

- (a) a contributing member has been retired on the ground of invalidity or of physical or mental incapacity to perform his duties;
- (b) CSC is satisfied that the invalidity or incapacity was caused, or was substantially contributed to, by an occurrence that happened at a time when he was absent without leave and had been so absent for a period exceeding 60 consecutive days;
- (c) in a case where the period when the contributing member was absent without leave commenced on or after 3 July 1985 or commenced before that day and ended on or after that day—both of the following subparagraphs apply:

- (i) the salary and allowances of the member in respect of the period were forfeited under regulations made under the *Defence Act 1903*;
 - (ii) an amount equal to the amount of the salary and allowances forfeited was not subsequently paid, and is not payable, under those regulations to the member;
- he is not entitled to invalidity benefit.

30 Classification in respect of incapacity

- (1) Where a member of the scheme, not being a member of the scheme to whom section 36 applies, is, or is about to become, entitled to invalidity benefit, CSC shall determine his percentage of incapacity in relation to civil employment and shall classify him according to the percentage of incapacity as follows:

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

- (1A) Where:

- (a) a member of the scheme (other than a member to whom section 36 applies) who is entitled to invalidity benefit dies; and
- (b) at the time of his or her death, CSC has not made a determination in respect of the member under subsection (1);

CSC must:

- (c) determine what was, immediately before the member's death, his or her percentage of incapacity in relation to civil employment; and
- (d) classify the member under subsection (1) according to that percentage of incapacity, as if the member had not died.

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- (1B) Where a deceased member of the scheme is classified under this section, the classification is taken to have had effect at all times on and after his or her retirement.
- (2) In determining, for the purposes of subsection (1), the percentage of incapacity in relation to civil employment of a member of the scheme, CSC shall have regard to the following matters only:
- (a) the vocational, trade and professional skills, qualifications and experience of the member;
 - (b) the kinds of civil employment which a person with the skills, qualifications and experience referred to in paragraph (a) might reasonably undertake;
 - (c) the degree to which the physical or mental impairment of the member that caused the invalidity or physical or mental incapacity because of which he or she was retired has or had diminished the capacity of the member to undertake the kinds of civil employment referred to in paragraph (b);
 - (d) such other matters (if any) as are prescribed for the purposes of this subsection.
- (3) Where the invalidity pay of a person is cancelled under section 62, any classification of the person under subsection (1) ceases to have effect.

31 Class A and Class B invalidity pay

- (1) A member of the scheme who is entitled to invalidity benefit and is classified as Class A or Class B under section 30 (whether on his retirement or by reason of his having been reclassified under subsection 34(1)) is entitled to invalidity pay at the rate applicable to him in accordance with this section.
- (2) Subject to subsections (3) and (4), the rate at which invalidity pay is payable to a member of the scheme under this section is such amount per annum as is equal to, in the case of a recipient member classified as Class A under section 30, 76.5%, and, in the case of a recipient member classified as Class B, 38.25%, of the annual rate of pay applicable to him immediately before his retirement.

- (3) Subject to section 33, where but for this subsection, the rate of invalidity pay payable to a member of the scheme under subsection (2) at any time would be less than the rate at which retirement pay would have been payable to him at that time if, at the time when he was retired on the ground of invalidity or of physical or mental incapacity to perform his duties, he had retired on other grounds, the rate of invalidity pay payable to him at that first-mentioned time is the rate at which retirement pay would have been so payable at that time.
- (4) If the member of the scheme makes an election under subsection 124(1), the rate at which invalidity pay is payable to the member is the rate worked out by using the formula:

$$\text{Basic rate} - \frac{\text{Surcharge deduction amount}}{\text{Conversion factor}}$$

where:

basic rate means the annual rate at which invalidity pay would be payable to the member under this section if the member did not make the election.

conversion factor is the factor that is applicable to the member under the determination made by CSC under section 124A.

surcharge deduction amount means the member's surcharge deduction amount.

32 Class C invalidity benefit

- (1) Subject to section 33, where a member of the scheme who is entitled to invalidity benefit and is classified as Class C under section 30 (whether on his retirement or by reason of his having been reclassified under subsection 34(1)) would, if at the time when he was retired on the ground of invalidity or of physical or mental incapacity to perform his duties, he had retired on other grounds, have been entitled to retirement pay, the member is entitled:

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- (a) if the member does not make an election under subsection 124(1)—to invalidity pay at the rate at which retirement pay would have been payable to the member if the member had not made an election under subsection 124(1) in respect of the retirement pay; or
 - (b) if the member makes an election under subsection 124(1)—to invalidity pay at the rate at which retirement pay would have been payable to the member if the member had made an election under subsection 124(1) in respect of the retirement pay.
- (2) Where subsection (1) does not apply to a member of the scheme who is entitled to invalidity benefit and is classified as Class C under section 30 (whether on his retirement or by reason of his having been reclassified under subsection 34(1)), the member is entitled to a lump sum payment of an amount worked out under subsection (3).
- (3) The amount of the lump sum payment referred to in subsection (2) is:
- (a) if paragraph (b) does not apply—a lump sum payment equal to 1.5 times the amount of the member's contributions; or
 - (b) if the member makes an election under subsection 124(1)—a lump sum payment equal to the difference between:
 - (i) the lump sum payment referred to in paragraph (a); and
 - (ii) the member's surcharge deduction amount.

32A Commutation of Class C invalidity pay

- (1) This section applies to a member of the scheme who:
- (a) is, or is to be, retired after the commencement of this section; and
 - (b) on retirement, is, or is likely to be, classified as Class C under section 30 and entitled to invalidity pay.
- (1A) Subsection (1) does not apply to a member of the scheme who, after the commencement of this subsection, became a person to whom section 62 applied.

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- (2) A member of the scheme to whom this section applies may, by notice in writing given to CSC, elect to commute a portion of his or her invalidity pay in accordance with this section.
- (2A) A notice under subsection (2) shall be given not earlier than 3 months before becoming entitled to invalidity pay and not later than one year after becoming so entitled or such further period as CSC, in special circumstances, allows.
- (3) An election under subsection (2) by a member of the scheme to whom this section applies shall specify the amount that is to be payable to him by virtue of the commutation.
- (4) The amount specified in an election under subsection (2) by a member of the scheme to whom this section applies shall not be an amount that, together with:
- (a) any amount or amounts specified in any previous election or elections by the member, under this section or section 24 of this Act, to commute a portion or portions of his or her retirement pay or invalidity pay, as the case may be; and
 - (b) any amount paid to the member as a result of an application, under section 74 of the previous Act, to commute a portion of any pension payable to him or her under that Act reduced by any amount or amounts required, under subsection 69(1B) or 69(3A) of the previous Act, to be paid by the member to the Defence Forces Retirement Benefits Fund established under the previous Act in respect of that commutation;
- exceeds the amount per annum of the invalidity pay to which the member of the scheme was or will be entitled on retirement multiplied by the maximum commutation factor.

Note: This amount is reduced if a release authority lump sum has been paid: see section 49M.

- (4A) For the purposes of subsection (4), the maximum commutation factor is the number calculated in accordance with the formula:

$$\frac{80 + A}{20},$$

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where *A* is:

- (a) if the number (treating zero as a number) of whole periods of 12 months between 30 June 1982 and the date of retirement of the member of the scheme is less than 20—that number of periods; or
 - (b) in any other case—20.
- (5) Where a member of the scheme to whom this section applies makes an election under this section, then, subject to subsections (7) and (8):
- (a) there shall be paid to him by the Commonwealth an amount equal to the amount specified in the election as the amount that is to be payable to him by virtue of the commutation; and
 - (b) the amount per annum of the invalidity pay payable to him, on and after the day on which the election takes effect, is the amount per annum that, but for this paragraph and subsection 98K(1), would be payable reduced by an amount calculated by dividing the amount referred to in paragraph (a) by the expectation of life factor that, having regard to the age and sex of the person on the day on which the election takes effect, is applicable to him under Schedule 3.
- (5A) If a member of the scheme:
- (a) makes an election under this section before becoming entitled to invalidity pay; and
 - (b) is subsequently classified otherwise than as Class C under section 30;
- the election has no effect.
- (6) For the purposes of this section, an election shall be deemed to have been made, and shall take effect, on the day on which the notice of election is received by CSC or the day following the day on which the member of the scheme retires, whichever is the later.
- (7) If:
- (a) a member of the scheme makes an election under this section (***first election***); and

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- (b) the member's surcharge debt account is in debit when invalidity pay becomes payable to the member; and
- (c) the member also makes an election under subsection 124(1);
- the following provisions apply:
- (d) the Commonwealth must pay to the member the difference between the amount (*specified amount*) specified in the first election as the amount that is to be payable to the member by virtue of the commutation and:
- (i) the member's surcharge deduction amount; or
 - (ii) if the member's surcharge deduction amount exceeds the specified amount—so much of the surcharge deduction amount as does not exceed the specified amount;
- (e) the amount per annum of the invalidity pay payable to the member, on and after the day on which the first election takes effect, is:
- (i) if subparagraph (ii) does not apply—the amount per annum referred to in paragraph (5)(b); or
 - (ii) if the member's surcharge deduction amount exceeds the specified amount—the amount per annum worked out by using the formula:

$$\text{Basic rate} - \frac{\text{Excess}}{\text{Conversion factor}}$$

where:

basic rate means the amount per annum referred to in paragraph (5)(b).

conversion factor is the factor that is applicable to the member under the determination made by CSC under section 124A.

excess means the amount by which the member's surcharge deduction amount exceeds the specified amount.

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- (8) If:
- (a) a member of the scheme makes an election under this section; and
 - (b) the member's surcharge debt account is in debit when invalidity pay becomes payable to the member; and
 - (c) the member does not make an election under subsection 124(1); and
 - (d) the member's surcharge deduction amount exceeds the amount of the member's productivity superannuation benefit;
- the following provisions apply:
- (e) the Commonwealth must pay to the member an amount equal to the amount specified in the election as the amount that is to be payable to the member by virtue of the commutation;
 - (f) the amount per annum of the invalidity pay payable to the member, on and after the day on which the election takes effect, is the amount per annum worked out by using the formula:

$$\text{Basic rate} - \frac{\text{Excess}}{\text{Conversion factor}}$$

where:

basic rate means the amount per annum referred to in paragraph (5)(b).

conversion factor is the factor that is applicable to the member under the determination made by CSC under section 124A.

excess means the amount by which the member's surcharge deduction amount exceeds the amount of the member's productivity superannuation benefit.

33 Rate of invalidity pay applicable to certain existing contributors

- (1) In this section:

new pension percentage of pay:

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- (a) in relation to a person to whom this section applies who, on his retirement, is classified as Class B or Class C under section 30—means the annual rate of his invalidity pay (expressed as a percentage of the rate that was his annual rate of pay, for the purposes of this Act, immediately before his retirement) that is, or, but for an election under this section, would be, payable to him under this Act on his retirement; or
- (b) in relation to a person to whom this section applies who, on his retirement, is classified as Class A under section 30 but is subsequently reclassified as Class B—means the rate that would have been the annual rate of his invalidity pay (expressed as a percentage of the rate that was his annual rate of pay, for the purposes of this Act, immediately before his retirement) that would have been payable to him under this Act on his retirement if he had been classified as Class B on his retirement.

previous pension percentage of pay, in relation to a person to whom this section applies, means the annual rate of pension (expressed as a percentage of the rate that was his annual rate of pay, for the purpose of the previous Act, on 30 September 1972) that would have been payable to him under the previous legislation if he had retired on 30 September 1972, otherwise than on the ground of invalidity or of physical or mental incapacity to perform his duties, and:

- (a) in the case of a person who was, on 30 September 1972, an officer of the Permanent Forces—he had, on that date, attained the retiring age for the rank held by him on that date; or
- (b) in the case of a person who was, on that date, a non-Permanent Forces officer as defined in section 54A of the previous Act—he had, on that date:
 - (i) retired with the rank held by him on that date; and

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- (ii) reached the age that was his age on the date of his retirement;

and had, on 30 September 1972, completed a number of years of service for pension equal to the number of years of service for pension completed by him on his retirement.

retiring age for the rank held has the same meaning as it would have in the definition of *retiring age for the rank held* in subsection 4(1) of the previous Act if the reference in that definition to the date of a member's retirement were a reference to 30 September 1972.

service for pension means service for pension as defined by subsection 4(1) of the previous Act.

- (2) This section applies to a person who:
 - (a) is an existing contributor;
 - (b) is retired and:
 - (i) on his retirement, is classified as Class B or Class C under section 30 and is entitled to invalidity pay; or
 - (ii) on his retirement, is classified as Class A but is subsequently reclassified as Class B;
 - (c) was, on 30 September 1972, and, immediately before his retirement, an officer; and
 - (d) on his retirement, had attained the retiring age for the rank held by him on 30 September 1972 and had completed not less than 15 years' service for pension.
- (2A) Where a person to whom this section applies has made an election under section 44 of the *Defence Forces Retirement Benefits Act 1959*, section 28 of the *Defence Forces Retirement Benefits Act 1962* or section 38, 61A or 61B of the *Defence Forces Retirement Benefits Act 1963*, this section has effect as if the previous pension percentage of pay in relation to the person were a percentage that would have been the previous pension percentage of pay in relation to him if he had not made the election and had paid all the contributions which he would, but for that election, have been required to pay under the previous legislation.

- (3) Where the previous pension percentage of pay applicable to a person to whom this section applies, being a person who on his retirement, is classified as Class B or Class C under section 30, is greater than the new pension percentage of pay applicable to him, he may, by notice in writing given to CSC within a period of 90 days after the date of his retirement, or within such further period as CSC, in special circumstances, allows, elect that the rate at which invalidity pay shall be payable to him shall be an amount per annum that is such percentage of his annual rate of pay for the purposes of this Act immediately before his retirement as is the same as the previous pension percentage of pay applicable to him, and, subject to subsection (5), the election has effect accordingly.
- (4) Where the previous pension percentage of pay applicable to a person to whom this section applies, being a person who, on his retirement is classified as Class A under section 30 but is subsequently reclassified as Class B, is greater than the new pension percentage of pay applicable to him, he may, by notice in writing given to CSC within a period of 90 days after the date from which the re-classification has effect, or within such further period as CSC, in special circumstances, allows, elect that the rate at which invalidity pay shall be payable to him shall be an amount per annum that is such percentage of his annual rate of pay for the purposes of this Act immediately before his retirement as is the same as the previous pension percentage of pay applicable to him, and, subject to subsection (5), the election has effect accordingly.
- (5) Where CSC so determines, an election under subsection (3) or (4) is of no effect unless the person making the election pays to the Commonwealth a contribution under this section of such amount as CSC determines as being appropriate in the circumstances or arrangements satisfactory to CSC are made for the payment of that contribution to the Commonwealth.
- (6) In the application of this section to a person who was, on 30 September 1972, a non-Permanent Forces officer as defined by section 54A of the previous Act, the retiring age for the rank held shall be the age that would be deemed, for the purposes referred to in subsection 54A(2) of that Act, to be the retiring age for the rank

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held by the person on his retirement if he had retired on 30 September 1972.

34 Reclassification in respect of incapacity

- (1) CSC may, from time to time, if it is satisfied that the percentage of incapacity in relation to civil employment of a recipient member in receipt of invalidity pay is such that the classification of the member should be altered, reclassify him in the appropriate classification set out in section 30 according to the percentage of his incapacity in relation to civil employment.
- (1AA) If, at a time when CSC is reviewing, but has not yet determined, for the purposes of subsection (1), the percentage of incapacity in relation to civil employment of a recipient member, the recipient member dies:
- (a) CSC must determine what was, immediately before the member's death, his or her percentage of incapacity in relation to civil employment; and
 - (b) where CSC is satisfied, having regard to that percentage of incapacity, that, if the member had not died, the member would be reclassified and given a classification higher than that of the member at the time of his or her death, CSC must reclassify the member under subsection (1) according to that percentage of incapacity, as if the member had not died.
- (1A) In determining:
- (aa) what is the percentage of incapacity in relation to civil employment of a recipient member; or
 - (aab) what was, immediately before his or her death, the percentage of incapacity in relation to civil employment of a recipient member who has died;
- CSC shall have regard to the following matters only:
- (a) the vocational, trade and professional skills, qualifications and experience of the recipient member;
 - (b) the kinds of civil employment which a person with skills, qualifications and experience referred to in paragraph (a) might reasonably undertake;

- (c) the degree to which any physical or mental impairment of the recipient member, being a prescribed physical or mental impairment, has or had diminished the capacity of the recipient member to undertake the kinds of civil employment referred to in paragraph (b);
 - (d) such other matters (if any) as are prescribed for the purposes of this subsection.
- (1B) In subsection (1A), ***prescribed physical or mental impairment***, in relation to a recipient member or a deceased member who was immediately before his or her death a recipient member, means:
- (a) a physical or mental impairment of the member that was the cause, or one of the causes, of the invalidity or physical or mental incapacity by reason of which the member was retired, whether or not that impairment changed, for better or worse, since that retirement; or
 - (b) any other physical or mental impairment of the member causally connected with a physical or mental impairment referred to in paragraph (a).
- (2) Where a recipient member is reclassified under this section, CSC shall specify the date from which the reclassification has effect, and, on and after that date, the recipient member shall, for the purposes of this Part, be deemed to be classified under section 30 accordingly.
- (2A) Where a deceased member is reclassified under this section:
- (a) CSC must specify the day from which the reclassification has effect; and
 - (b) the member is taken, for the purposes of this Part, to have been classified under section 30 accordingly on and after that day.
- (3) Where CSC reclassifies a recipient member (other than a member to whom section 37 applies) under this section, the date specified by CSC as the date from which the reclassification has effect shall not be a date earlier than the date on which CSC reclassifies the member unless:

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- (a) the member is reclassified as Class A or, having been classified as Class C, is reclassified as Class B; and
 - (b) CSC is satisfied that special circumstances exist that justify an earlier date being so specified.
- (4) If, upon the reclassification of a recipient member as Class C, he would, but for this subsection, be entitled to benefit in accordance with subsection 32(2), he is entitled to that benefit only to the extent that the amount of that benefit exceeds the sum of the payments of invalidity pay received by him.
- (5) In this section, *recipient member* means a member of the scheme who is entitled to invalidity pay and includes a member of the scheme who:
- (a) is classified as Class C by reason of having been reclassified (whether before or after the commencement of this subsection) under subsection (1); and
 - (b) is not, after being so reclassified, entitled to invalidity pay; but does not include a member of the scheme who is retired after the commencement of this subsection and, on his retirement, is classified as Class C under section 30.

35 Power of CSC to require persons to be medically examined etc.

- (1) CSC may, by notice in writing given to a recipient member in receipt of invalidity pay require him:
- (a) to submit himself for medical examination by a legally qualified medical practitioner at a time and place specified in the notice; or
 - (b) to furnish in writing to CSC, within such period as is specified in the notice, such information as is required by the notice with respect to any employment (whether as an employee or on his own account) in which he has been engaged during such period as is specified in the notice.
- (2) A notice under subsection (1) shall set out the effect of subsection (3).

- (3) Where a recipient member fails to comply with a notice given under subsection (1) and CSC is not satisfied that there was a reasonable excuse for the failure, CSC may, by notice in writing given to the member, suspend the member's invalidity pay with effect from such day as CSC determines, being a day not earlier than:
- (a) in a case where the first-mentioned notice required the member to submit to a medical examination on a day specified in the notice—the day next following that day; or
 - (b) in a case where the first-mentioned notice required the member to furnish information within a period specified in the notice—the day next following the end of that period.
- (4) A notice to a person under subsection (3) shall set out the effect of subsections (5B), (5D) and (5E).
- (5) Invalidity pay is not payable in respect of a period during which a suspension under subsection (3) is in force.
- (5A) Where:
- (a) the invalidity pay of a recipient member is suspended under subsection (3); and
 - (b) CSC, having regard to such matters as it considers relevant, is of the opinion that the suspension should be revoked;
- CSC may, by notice in writing given to the member or to the member and a person acting on the member's behalf, as the case may be, revoke the suspension with effect from such day as CSC determines, being a day not later than the day on which the notice is given.
- (5B) Without limiting subsection (5A), where the invalidity pay of a recipient member is suspended under subsection (3), the member, or another person acting on the member's behalf, may, by notice in writing given to CSC, request CSC to revoke the suspension, and where such a request is made, CSC shall, by notice in writing given to the member or to the member and the other person, as the case may be:

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- (a) if the invalidity pay has been suspended by virtue of the relevant member's having failed to comply with a notice requiring the member to submit to a medical examination—require the member to submit to a medical examination by a medical practitioner at a time and place specified in the second-mentioned notice; or
 - (b) if the invalidity pay has been suspended by virtue of the member's having failed to comply with a notice requiring the member to give information to CSC (in this paragraph called ***the original notice***)—require the member to give in writing to CSC, within such period as is specified in the second-mentioned notice, such information as was required by the original notice to be given.
- (5C) A notice given by CSC under subsection (5B) shall set out the effects of subsections (5D) and (5E).
- (5D) Where:
- (a) because of a request having been made to revoke the suspension of the invalidity pay of a recipient member, a notice under subsection (5B) is given to the member or to the member and another person; and
 - (b) either:
 - (i) the member complies with the notice; or
 - (ii) the member fails to comply with the notice but CSC is satisfied that there was a reasonable excuse for the failure;
- CSC shall, by notice in writing given to the member or to the member and the other person, as the case may be, revoke the suspension with effect from such day as CSC determines, being a day not later than:
- (c) in a case to which subparagraph (b)(i) applies—the day on which the member so complied with the notice; or
 - (d) in a case to which subparagraph (b)(ii) applies—the day on which CSC became so satisfied.

(5E) Where:

- (a) because of a request having been made to revoke the suspension of the invalidity pay of a recipient member, a notice under subsection (5B) is given to the member or to the member and another person; and
 - (b) the member fails to comply with the notice and CSC is not satisfied that there was a reasonable excuse for the failure;
- CSC shall, by notice in writing given to the member or to the member and the other person, as the case may be, refuse to revoke the suspension.
- (6) Where a person whose invalidity pay has been suspended under this section dies before the invalidity pay again becomes payable, he shall, for the purposes of sections 39, 42, 43 and 47, be deemed to have been entitled to invalidity pay immediately before his death and, for the purposes of sections 39, 42 and 43, the invalidity pay shall be deemed to have been payable at the rate at which it would have been payable to him if it had not been suspended.
- (6A) Where CSC is required by this section to give a recipient member a notice, the notice shall be taken to have been given to the member if:
- (a) the notice is served on the member personally;
 - (b) the notice is sent to the member by pre-paid post as a letter and the member acknowledges receipt of the letter; or
 - (c) where CSC has caused all reasonable steps to be taken to ascertain a reliable address of the member, the notice is sent to the member by pre-paid post to:
 - (i) in a case where CSC is satisfied that at least one reliable address of the member has been ascertained—that address or one of those addresses; or
 - (ii) in any other case—the last address of the member known to CSC.
- (6B) A reference in subsection (6A) to a reliable address of a member shall be read as a reference to an address where, if a letter were sent to the member by pre-paid post to the address, the member would probably receive the letter.

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- (7) This section does not apply in relation to a member of the scheme who:
- (a) is retired after the commencement of this subsection; and
 - (b) on his retirement, is classified as Class C under section 30 and is entitled to invalidity pay.

36 Invalidity benefits payable to certain contributors under Superannuation Act or the *Superannuation Act 1990*

- (1) This section applies to a member of the scheme:
- (a) who becomes entitled to invalidity benefit; and
 - (b) who, at the time he becomes so entitled:
 - (i) is an eligible employee for the purposes of the Superannuation Act whose liability to make contributions to CSC is deferred by virtue of section 54 of the Superannuation Act; or
 - (ii) is a person whose entitlement to pension under that Act is suspended by force of subsection 117(1) of that Act; or
 - (iii) is a member of the Superannuation (1990) Scheme whose liability to make contributions under that scheme has been deferred under Rule 3.1.17 of the Rules for the administration of the Superannuation (1990) Scheme.
- (2) The invalidity benefit to which a member of the scheme to whom this section applies is entitled is benefit under subsection 32(2) as if he were a member of the scheme classified as Class C under section 30.

37 Chief of the Defence Force may inform CSC of grounds of retirement

Where a contributing member has been retired otherwise than on the ground of invalidity or of physical or mental incapacity to perform his duties but, after his retirement, the Chief of the Defence Force or a person authorized in writing by the Chief of the Defence Force informs CSC that, at the time the member was

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retired, grounds existed on which he could have been retired on the ground of invalidity or of physical or mental incapacity to perform his duties, he may, for the purposes of this Act, be treated as if he had been retired on that ground.

Part VI—Benefits on death of member of scheme

Division 1—Spouse's pension

38 Spouse's pension on death of contributing member

Where a member of the scheme who is a contributing member dies before retirement and is survived by a spouse, the spouse is entitled to a pension at a rate equal to five-eighths of the rate at which invalidity pay would have been payable to the deceased member if, on the date of the deceased member's death, the deceased member had become entitled to invalidity benefit and had been classified as Class A under section 30 and (in the case of a deceased member whose surcharge debt account is in debit when the pension becomes payable) had made an election under subsection 124(1).

39 Spouse's pension on death of recipient member

- (1) Where a member of the scheme who is a recipient member dies and is survived by a spouse, then, subject to sections 47 and 75, the spouse is entitled to a pension at a rate equal to five-eighths of the rate at which retirement pay or invalidity pay was payable to the deceased member immediately before the member's death or, if the member had commuted a portion of the member's retirement pay under section 24 or a portion of the member's invalidity pay under section 32A, at a rate equal to five-eighths of the rate at which retirement pay or invalidity pay, as the case may be, would have been payable to the member immediately before the member's death if the member had not so commuted a portion of the member's retirement pay or invalidity pay, as the case may be.
- (2) In spite of subsection (1), if, on any of the 7 pay-days immediately following the death of a recipient member, the rate at which pension would, apart from this subsection, be payable to the spouse of the member is less than the rate (in this subsection called the *putative rate*) at which retirement pay or invalidity pay (as the case may be) would be payable to the deceased member on that day if

the member had not died, the spouse is entitled to a pension at a rate equal to the putative rate.

40 Set off against spouse's pension in certain circumstances

(1) Where:

- (a) the spouse of a deceased member of the scheme who was a recipient member immediately before the member's death is entitled to a pension under subsection 39(2); and
- (b) there is paid into an account with a bank an amount purporting to be an instalment of retirement pay or invalidity pay (as the case may be) payable to the member in respect of a period in respect of which a pension is payable to the spouse under subsection 39(2); and
- (c) the bank pays, out of that account, to the spouse an amount not exceeding the amount so paid into the account;

then, in spite of any other law:

- (d) the bank is not liable to the Commonwealth, the personal representative of the deceased member or anyone else for any loss incurred because of the payment of that amount to the spouse; and
- (e) an amount equal to the amount so paid by the bank to the spouse must be set off against any amount of pension payable to the spouse under subsection 39(2).

(2) In this section:

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

41 Rate of pension payable on death of member of scheme leaving more than one spouse

- (1) If a member of the scheme (**deceased person**) is survived by more than one spouse, CSC must allocate any pension payable to a spouse in respect of the deceased person under this Act among the spouses.

Part VI Benefits on death of member of scheme

Division 1 Spouse's pension

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- (2) CSC must have regard to the respective needs of the spouses when making the allocation.
- (3) Subject to subsections (4) and (5), a pension is only payable to each spouse in accordance with the allocation.
- (4) The rate of pension payable to each spouse under the allocation must be at least three-eighths of the rate of the relevant pension in relation to the deceased person under this Act.
- (5) The aggregate of the rates of pension payable under an allocation must not exceed 100% of the rate of the relevant pension in relation to the deceased person under this Act.
- (6) In subsections (4) and (5), the rate of the relevant pension in relation to the deceased person under this Act is:
 - (a) in the case of a deceased person who was not a recipient member—the rate at which invalidity pay would have been payable to the deceased person if, on the date of the death, the deceased person:
 - (i) had been entitled to invalidity benefit; and
 - (ii) had been classified as Class A under section 30; and
 - (iii) in the case of a deceased member whose surcharge debt account is in debit when the pension becomes payable—had made an election under subsection 124(1); or
 - (b) in the case of a deceased recipient member, then, subject to sections 47 and 75:
 - (i) if subparagraph (ii) does not apply—the rate at which retirement pay or invalidity pay was payable to the deceased recipient member immediately before the death; or
 - (ii) if a portion of the retirement pay or invalidity pay had been commuted under section 24 or 32A—the rate at which retirement pay or invalidity pay would have been payable to the member immediately before the death if a portion of that retirement pay or invalidity pay had not been so commuted.

41A Commutation of spouse's pension

(1) Where:

(a) a person is, or becomes, entitled to a pension under this Division because the person is:

(i) a spouse in relation to a contributing member who died on or after the commencement of the *Commonwealth Superannuation Schemes Amendment Act 1992*; or

(ii) a widow or widower of a contributing member who died on or after the commencement of the *Defence Legislation Amendment Act (No. 2) 1990* but before the commencement of the *Commonwealth Superannuation Schemes Amendment Act 1992*; or

(iii) a widow or widower of a contributing member who died on or after 15 October 1990 but before the commencement of the *Defence Legislation Amendment Act (No. 2) 1990*; and

(b) in the case of a contributing member referred to in subparagraph (a)(iii)—that member is a member of a prescribed class of deceased spouses;

the person (in this section called the **elector**) may, by notice in writing given to CSC, elect to commute a portion of his or her pension in accordance with this section.

(1A) In subsection (1), **widow** and **widower** have their respective meanings given by this Act as in force immediately before the commencement of the *Commonwealth Superannuation Schemes Amendment Act 1992*.

(2) A notice given by an elector under subsection (1) must:

(a) specify the amount that is to be payable to him or her by virtue of the commutation (in this section called the **commuted amount**); and

(b) be given not later than one year after the elector becomes entitled to the pension.

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- (3) The amount referred to in subsection (2) must not exceed an amount calculated in accordance with the following formula:

$$\text{Annual Rate of Pay} \times 2$$

where:

Annual Rate of Pay is the annual rate of pay at the time of death of the deceased contributing member who was, immediately before his or her death, the spouse of the elector.

- (4) Where an elector makes an election under this section, then, subject to subsection (4A):
- (a) the Commonwealth must pay to the elector the commuted amount; and
 - (b) the amount per annum of the pension payable to the elector, on and after the day on which the election takes effect, is the amount per annum that, but for this paragraph, would be payable to the elector, reduced by an amount calculated by dividing the commuted amount by 25.

(4A) If:

- (a) an elector makes an election under this section; and
- (b) the deceased contributing member's surcharge debt account is in debit when the pension becomes payable to the elector;

the following provisions apply:

- (c) the Commonwealth must pay to the elector the difference between the commuted amount and:
 - (i) the member's surcharge deduction amount; or
 - (ii) if the member's surcharge deduction amount exceeds the commuted amount—so much of the surcharge deduction amount as does not exceed the commuted amount;
- (d) the amount per annum of the pension payable to the elector, on and after the day on which the election takes effect, is:
 - (i) if subparagraph (ii) does not apply—the amount per annum referred to in paragraph (4)(b); or

- (ii) if the member's surcharge deduction amount exceeds the commuted amount—the amount per annum worked out by using the formula:

$$\text{Basic rate} - \frac{\text{Excess}}{\text{Conversion factor}}$$

where:

basic rate means the amount per annum referred to in paragraph (4)(b).

conversion factor is the factor that is applicable to the member under the determination made by CSC under section 124A.

excess means the amount by which the member's surcharge deduction amount exceeds the commuted amount.

- (5) For the purposes of this section, an election is taken to have been made, and takes effect, on the day on which the notice of election is received by CSC.

Division 2—Children's pensions

42 Eligible children other than orphans

- (1) Pension is payable to an eligible child, not being an eligible orphan, in accordance with this section while he is an eligible child.
- (2) Pension under this section is payable to an eligible child, being the child of a contributing member who died before retirement, as follows, pension at the rate of \$312 per annum, as indexed in accordance with subsection 98B(5A), and additional pension at a rate equal to one-sixth of five-eighths of the rate at which invalidity pay would have been payable to the member if, on the date of his death, he had become entitled to invalidity benefit and had been classified as Class A under section 30.
- (3) Subject to sections 47 and 75, pension under this section is payable to an eligible child, being the child of a member of the scheme who was a recipient member at the time of his death, as follows, pension at the rate of \$312 per annum, as indexed in accordance with subsection 98B(5A), and additional pension at a rate equal to one-sixth of five-eighths of the rate at which retirement pay or invalidity pay was payable to the member immediately before his death, or, if the member had commuted a portion of his retirement pay under section 24 or a portion of his invalidity pay under section 32A, at a rate equal to one-sixth of five-eighths of the rate at which retirement pay or invalidity pay, as the case may be, would have been payable to the member immediately before his death if he had not so commuted a portion of his retirement pay or invalidity pay, as the case may be.

43 Eligible orphans

- (1) Pension is payable to an eligible orphan in accordance with this section while he is an eligible orphan.

(2) Subject to subsections (2AA) and (2A), pension under this section is payable to an eligible orphan, being the child of a contributing member who died before retirement, as follows, pension at the rate of \$5,000 per annum, as indexed in accordance with subsection 98B(5A), and additional pension at a rate equal to one-eighth of five-eighths of the rate at which invalidity pay would have been payable to the member if, on the date of his death, he had become entitled to invalidity benefit and had been classified as Class A under section 30.

(2AA) If:

(a) a contributing member dies and is survived by one or more eligible orphans; and

(b) the member's surcharge debt account is in debit when pension becomes payable to the orphan or orphans;

then, subject to subsection (2A), there is payable to the orphan or each of the orphans, instead of the pensions described in subsection (2), a pension at the rate worked out by using the formula:

$$\text{Basic rate} - \frac{\text{Surcharge deduction amount}}{\text{Conversion factor}}$$

where:

basic rate means the amount per annum equal to the sum of the rates of the pensions described in subsection (2).

conversion factor is the factor that is applicable to the member under the determination made by CSC under section 124A.

surcharge deduction amount means the member's surcharge deduction amount.

(2A) Where the number of eligible orphans in respect of whom pensions are payable under subsection (2), or a pension is payable under subsection (2AA), because of the death of the contributing member is such that the sum of the rates of all the pensions so payable exceeds the rate at which invalidity pay would have been payable

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to the member in the circumstances mentioned in subsection (2), then, while that position exists, there is payable, in respect of each of the orphans, instead of the pensions described in subsection (2) or the pension described in subsection (2AA) (as the case may be), a pension at the rate calculated by dividing the number of orphans into the rate exceeded.

- (3) Subject to subsection (4) and sections 47 and 75, pension under this section is payable to an eligible orphan, being the child of a member of the scheme who was a recipient member at the time of his death, as follows, pension at the rate of \$5,000 per annum, as indexed in accordance with subsection 98B(5A), and additional pension at a rate equal to one-eighth of five-eighths of the rate at which retirement pay or invalidity pay was payable to the member immediately before his death or, if the member had commuted a portion of his retirement pay under section 24 or a portion of his invalidity pay under section 32A, at a rate equal to one-eighth of five-eighths of the rate at which retirement pay or invalidity pay, as the case may be, would have been payable to the member immediately before his death if he had not so commuted a portion of his retirement pay or invalidity pay, as the case may be.
- (4) Where the number of eligible orphans in respect of whom pensions are payable under subsection (3) because of the death of the recipient member is such that the sum of the rates of all the pensions so payable exceeds the rate of the retirement or invalidity pay used for the calculation of the orphans' pensions under that subsection, then, while that position exists, there is payable, in respect of each of the orphans, instead of the pensions described in subsection (3), a pension at the rate calculated by dividing the number of orphans into the rate exceeded.

Division 2A—Special pensions

43A Special pensions

- (1) If, at any time after the date of commencement of this section (in this section referred to as the *commencing date*), pension is not payable under section 39 to a person to whom pension would be payable at that time under that section were this Act, as amended and in force on the commencing date, to have been in force before the date of death of a member of the scheme who died before the commencing date, CSC may grant, from such date as it specifies, a pension to the person at such rate and on such conditions as CSC, having regard to such matters (if any) as are prescribed and such other matters as it considers relevant, determines.
- (2) If, at any time after the commencing date, pension is not payable under section 42 or 43 to a person to whom pension would be payable under that section were this Act, as amended and in force on the commencing date, to have been in force before the date of death for a member of the scheme who died before the commencing date, CSC may grant, from such date as it specifies, a pension to the person at such rate and on such conditions as CSC, having regard to such matters (if any) as are prescribed and such other matters as it considers relevant, determines.
- (3) A date specified by CSC under subsection (1) or (2) in relation to the granting of an entitlement to pension benefit shall not, unless CSC is satisfied that special circumstances exist that justify an earlier date being so specified, be a date earlier than the date upon which the grant is made, and shall not, in any event, be a date earlier than the commencing date.
- (4) A determination by CSC for the purpose of subsection (1) or (2) shall be in writing.
- (5) Where, at any time before the commencing date, pension has been paid to a person under section 39 as the widow (within the meaning of this Act as in force at that time) of a deceased recipient member,

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CSC shall not under subsection (1) of this section, grant a pension to any other person in respect of that deceased recipient member.

- (6) CSC shall not, under subsection (1), grant a pension to a person unless CSC, having regard to such matters (if any) as are prescribed and such other matters as it considers relevant, is satisfied that the person is in necessitous circumstances or that the grant of the pension is otherwise warranted.
- (7) CSC shall not, under subsection (1), grant a pension to a person in relation to a deceased member of the scheme from a specified date at a rate that exceeds the rate at which pension would have been payable from that specified date to the person under this Act had the person been, for the purpose of this Act as amended and in force at the date of death of the deceased member of the scheme, the widow or widower of the deceased member of the scheme.
- (8) CSC shall not, under subsection (2), grant a pension to a person in relation to a deceased member of the scheme from a specified date at a rate that exceeds the rate at which pension would have been payable from that specified date to the person under this Act had the person been, for the purposes of this Act as amended and in force at the date of death of the deceased member of the scheme, the child of the deceased member of the scheme and an eligible child.
- (9) The grant by CSC, under this section, of a pension to a person does not affect the entitlement of any other person under this Act to a pension benefit that is payable otherwise than by virtue of a grant of pension under this section, or the rate of such a pension benefit.

44 Restoration of pensions for remarried widows and widowers

- (1) A widow or widower whose entitlement to a pension under section 39 has ceased on his or her remarriage may apply to CSC for:
 - (a) restoration of the pension; or
 - (b) restoration of the full rate of the pension.

- (2) If CSC is satisfied that the widow or widower's entitlement to a pension ceased on his or her remarriage, CSC must, in writing, grant the pension at the rate at which the pension would have been payable to the widow or widower if the pension had not ceased.
- (3) The pension is payable to the widow or widower at that rate from the day on which CSC receives the application.
- (4) If CSC grants a person a pension under this section at a particular rate, the grant at that rate does not affect:
 - (a) any other person's entitlement under this Act to any other pension benefit; or
 - (b) the rate of such a pension benefit.

Division 3—Miscellaneous

45 Payment of benefits otherwise than to person entitled

- (1) Where, in the opinion of CSC, payment of an instalment, or part of an instalment, of pension benefit, or of an amount of any other benefit, should, by reason of the person who, but for this section, would be entitled to the payment, being a child, or being a person who is insane or undergoing imprisonment or otherwise being under a disability, or for any other reason which CSC thinks proper, be made to a person other than the person who would be so entitled to the payment, CSC may authorize the payment to be made to the other person, and payment shall be made to the other person accordingly.
- (2) A payment of an instalment of pension benefit payable to a child that, by virtue of subsection (1), is paid to a person other than the child, shall be applied for the maintenance, education or other benefit of the child.

46 Superannuation Act and the *Superannuation Act 1990*

Pension benefit is not payable under this Part in respect of a member of the scheme who dies before retirement and who, immediately before his or her death, was:

- (a) an eligible employee for the purposes of the Superannuation Act whose liability to make contributions under that Act was deferred by virtue of section 54 of that Act; or
- (b) a person whose entitlement to pension under that Act was suspended by force of subsection 117(1) of that Act; or
- (c) a member of the Superannuation (1990) Scheme whose liability to make contributions under that scheme was deferred under Rule 3.1.17 of the Rules for the administration of the Superannuation (1990) Scheme.

47 Death of recipient member etc. due to retirement disabilities etc.

- (1) Where:
- (a) a member of a scheme dies and, immediately before dying, the member:
 - (i) was in receipt of invalidity pay and classified as Class B or Class C under section 30; or
 - (ii) was entitled to invalidity benefit and classified as Class C (under section 30) because of a reclassification under subsection 34(1) but was not entitled to invalidity pay; and
 - (b) CSC is satisfied that the death of the member was due to:
 - (i) a physical or mental impairment that was the cause, or one of the causes, of the invalidity or physical or mental incapacity by reason of which the member was retired; or
 - (ii) a physical or mental impairment causally connected with a physical or mental impairment referred to in subparagraph (i);
- then, for the purposes of section 39, subsection 42(3) and subsection 43(3), the rate at which invalidity pay was payable to the member immediately before his death shall be deemed to be the rate at which invalidity pay would have been payable to him if, immediately before his death, he had been classified as Class A under section 30.
- (2) This section does not apply in relation to a member of the scheme who:
- (a) is retired after the commencement of this subsection; and
 - (b) on his retirement, is classified as Class C under section 30 and is entitled to invalidity pay.

48 Lump sum payments on or after death—members with only one period of effective service

- (1A) This section applies:
- (a) where a member of the scheme dies; and
-

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- (b) there is only one period of effective service in relation to the member.
- (1) Where a member of the scheme dies before retirement and, on his death, no pension benefit is payable under this Part, a lump sum payment of an amount worked out under subsection (1AA) shall be paid to the personal representatives of the member, or failing them, to such persons, if any, as CSC determines, and no other benefit under this Act is payable in respect of the member.
- (1AA) The amount of the lump sum payment referred to in subsection (1) is:
- (a) if paragraph (b) does not apply—an amount equal to 1.5 times the amount of the member's contributions; or
- (b) if:
- (i) the member's surcharge debt account is in debit when the payment becomes payable in respect of the member; and
- (ii) an election has been made under subsection 124(2) in relation to the member's surcharge deduction amount;
- an amount equal to the difference between the amount referred to in paragraph (a) and the member's surcharge deduction amount.
- (2) Where:
- (a) a member of the scheme who is a recipient member dies and, on his death, no pension benefit is payable under this Part; and
- (b) the aggregate amount of retirement pay or invalidity pay paid or payable to him before his death is less than an amount equal to one and one-half times the amount of his contributions;
- a lump sum payment equal to the difference shall be paid to the personal representatives of the member, or failing them, to such persons, if any, as CSC determines, and no other benefit under this Act is payable in respect of the member.
- (3) Where:

- (a) a member of the scheme dies before retirement and, on his death, pension benefit is payable under this Part; and
 - (b) the aggregate amount of that pension benefit paid or payable in respect of him under this Part is less than an amount equal to one and one-half times the amount of his contributions;
- a lump sum payment equal to the difference shall be paid to the personal representatives of the member, or failing them, to such persons, if any, as CSC determines.
- (4) Where:
- (a) a member of the scheme who is a recipient member dies and, on his death, pension benefit is payable under this Part; and
 - (b) the aggregate amount of retirement pay or invalidity pay paid or payable to the member before his death and of pension benefit paid or payable in respect of him under this Part is less than an amount equal to one and one-half times the amount of his contributions;
- a lump sum payment equal to the difference shall be paid to the personal representatives of the member, or failing them, to such persons, if any, as CSC determines.
- (5) In this section, a reference to the amount of retirement pay or invalidity pay paid or payable to a member of the scheme before the member's death shall be read as including the following:
- (a) if an election has been made, by or on behalf of the member, under section 24 or 32A, to commute a portion of the retirement pay or invalidity pay, as the case may be, payable to the member—the amount paid or payable to or in respect of the member under paragraph 24(3)(a) or 32A(5)(a), as the case may be, by virtue of that election;
 - (b) if the member's retirement pay or invalidity pay is reduced under section 49N to reflect a release authority lump sum paid in relation to a release authority issued to the member—the amount of the release authority lump sum.

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48A Lump sum payments on or after death—members with more than one period of effective service

- (1) This section applies:
- (a) where a member of the scheme dies; and
 - (b) there are 2 or more periods of effective service in relation to the member.
- (2) Where:
- (a) a member of the scheme dies before retirement; and
 - (b) on his or her death, no pension benefit is payable under this Part;
- a lump sum payment of an amount worked out under subsection (2A) is payable in respect of the member.
- (2A) The amount of the lump sum payment referred to in subsection (2) is:
- (a) if paragraph (b) does not apply—an amount equal to 1.5 times the member's contributions in respect of the last period of effective service of the member; or
 - (b) if:
 - (i) the member's surcharge debt account is in debit when the payment becomes payable in respect of the member; and
 - (ii) an election has been made under subsection 124(2) in relation to the member's surcharge deduction amount;an amount equal to the difference between the amount referred to in paragraph (a) and the member's surcharge deduction amount.
- (3) Where:
- (a) a recipient member dies; and
 - (b) on his or her death, no pension benefit is payable under this Part; and

- (c) the total amount of benefits paid or payable to the member after he or she last became a recipient member is less than 1.5 times the member's contributions in respect of the last period of effective service of the member;
a lump sum payment equal to the difference is payable in respect of the member.
- (4) Where a lump sum is payable under subsection (2) or (3) in respect of a deceased member of a scheme, no benefit is payable in respect of that member under any other section of this Act.
- (5) Where:
- (a) a member of the scheme died before retirement and, on or after his or her death, pension benefit was payable under this Part in respect of the member; and
 - (b) no person is any longer entitled to such pension benefit; and
 - (c) the total amount of pension benefit paid or payable in respect of the member under this Part is less than 1.5 times the member's contributions in respect of the last period of effective service of the member;
- a lump sum payment equal to the difference is payable in respect of the member.
- (6) Where:
- (a) on or after the death of a recipient member, pension benefit was payable under this Act in respect of the member; and
 - (b) no person is any longer entitled to such pension benefit; and
 - (c) the sum of:
 - (i) the total amount of benefits paid or payable to the member after he or she last became a recipient member; and
 - (ii) the total amount of pension benefit paid or payable in respect of a member under this Part;is less than 1.5 times the member's contributions in respect of the last period of effective service of the member;
- a lump sum payment equal to the difference is payable in respect of a member.

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- (7) If:
- (a) a member of the scheme dies; and
 - (b) the total amount of benefits paid to the member before he or she last became a contributing member is less than 1.5 times the member's contributions in respect of the period, or periods, of effective service (other than the last period of effective service) of the member;
- a lump sum payment equal to the difference is payable in respect of the member in addition to the amount payable under subsection (2), (3), (5) or (6) (as the case may be) in respect of the member.
- (8) A lump sum payable in respect of a member of the scheme under this section is to be paid to the personal representatives of the member or to such person or persons (if any) as CSC determines.

49 Death of contributing member after 60 days absence without leave

- (1) Subject to subsection (2) and to section 94, where:
- (a) a member of the scheme dies before retirement and, at the time of his death, he was absent without leave and had been so absent for a period that exceeds 60 consecutive days;
 - (aa) in a case where the member dies on or after 3 July 1985—both of the following subparagraphs apply:
 - (i) the salary and allowances of the member in respect of the period of absence without leave are forfeited under regulations made under the *Defence Act 1903*;
 - (ii) an amount equal to the amount of the salary and allowances forfeited is not subsequently paid, and is not payable, under those regulations to the legal personal representative of the member; and
 - (b) retirement pay would not, if he had retired at the commencement of the period of absence without leave, have been payable to him;
- benefit is not payable in respect of him under this Part.

- (2) CSC may direct that subsection (1) does not apply in relation to a deceased member of the scheme if CSC is satisfied, within a period of 6 months after his death, that by reason that a person who, immediately before his death, was wholly or substantially dependent upon him is in necessitous circumstances, such a direction should be given.

Part VIA—Family law superannuation splitting

Division 1—Preliminary

49A Definitions

In this Part, unless the contrary intention appears:

associate pension means associate pension under section 49B.

base amount means:

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

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

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

member spouse has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

non-member spouse has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

non-standard pension means a pension benefit other than standard pension.

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

Orders means Orders under section 49F.

original interest means a superannuation interest to which section 49B applies.

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

scheme value means the amount determined under the Orders.

splitting agreement means:

- (a) a superannuation agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*); or
- (b) a flag lifting agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*) that provides for a payment split.

splitting order has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

splitting percentage means:

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

standard pension means any of the following:

- (a) retirement pay;
- (b) invalidity benefit;
- (c) pension under section 38 or 39;
- (d) pension under section 43A or 44;
- (e) associate pension.

superannuation interest has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

transfer amount means:

Part VIA Family law superannuation splitting

Division 1 Preliminary

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- (a) if a splitting percentage applies—the amount calculated by multiplying the splitting percentage by the greater of:
 - (i) the family law value; and
 - (ii) the scheme value; or
- (b) if a base amount applies and the scheme value is not more than the family law value—the base amount; or
- (c) if a base amount applies and the scheme value is more than the family law value—the amount calculated using the formula:

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

Division 2—Benefits for non-member spouse

49B Associate pension for non-member spouse if operative time in payment phase

- (1) This section applies to a superannuation interest (the *original interest*) if:
 - (a) CSC receives a splitting agreement or splitting order in respect of the original interest; and
 - (b) the original interest is not an entitlement to pension under section 42 or 43; and
 - (c) the member spouse and the non-member spouse are both alive at the operative time; and
 - (d) if a base amount applies—the base amount at the operative time is not more than the family law value or the scheme value.
- (2) If, at the operative time, standard pension is payable in respect of the original interest, then the non-member spouse is entitled to associate pension from the operative time, at the rate calculated under the Orders by reference to the transfer amount.

Note: If standard pension is not payable at the operative time in respect of the original interest, then the non-member spouse will be entitled to benefits under the *Military Superannuation and Benefits Act 1991*.

49C Commutation of small associate pension

- (1) If the annual rate of associate pension to which the non-member spouse becomes entitled is less than the amount determined under the Orders, then the non-member spouse may elect to commute the pension.
- (2) The election must be made in writing to CSC not later than 3 months after the non-member spouse becomes entitled to the pension.

Part VIA Family law superannuation splitting

Division 2 Benefits for non-member spouse

Section 49C

- (3) If the non-member spouse makes the election, then the non-member spouse is entitled instead to a lump sum equal to the transfer amount.

Division 3—Reduction of benefits for member spouse

49D Operative time during growth phase—reduction of later standard pension or lump sum amount

(1) If:

- (a) at the operative time, standard pension is not payable in respect of the original interest; and
- (b) after the operative time, standard pension becomes payable to the member spouse in respect of the original interest;

then the annual rate of that standard pension is reduced to the amount calculated under the Orders.

Note: If the member spouse dies before becoming entitled to standard pension, then subsection (1) will nevertheless result in an indirect reduction of any widow's pension or spouse pension that becomes payable. This happens because the amount of the widow's pension or spouse pension is based on the amount of invalidity pay (a standard pension) that would have become payable to the member spouse at the time of death.

(2) A reduction under subsection (1) is to be disregarded in calculating the amount of any non-standard pension that later becomes payable.

Note: For example, the reduction will be disregarded in calculating the amount of pension under section 42 payable to a child of the member spouse after the member spouse's death.

(3) If:

- (a) at the operative time, standard pension is not payable in respect of the original interest; and
- (b) after the operative time, a lump sum amount becomes payable, in respect of the original interest, under section 32, 48, 48A, 56, 57 or 77;

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

Section 49E

49E Operative time during payment phase—reduction of standard pension or lump sum amount

- (1) If, at the operative time, standard pension is payable to the member spouse in respect of the original interest, then the annual rate of that pension is reduced to the amount calculated under the Orders.

Reduction of later standard pensions

- (1A) If:
- (a) the annual rate of a standard pension (the **first pension**) payable to the member spouse is reduced under subsection (1); and
 - (b) after the operative time, another standard pension (the **later pension**) becomes payable to the member spouse;
- then the annual rate of the later pension is reduced to the amount calculated under the Orders.

Reduction in later payments of lump sum amounts

- (1B) If:
- (a) the annual rate of a standard pension payable to the member spouse is reduced under subsection (1); and
 - (b) after the operative time, a lump sum amount becomes payable, in respect of the member spouse, under section 32, 48, 48A, 56, 57 or 77;
- then the lump sum amount is reduced to the amount calculated under the Orders.
- (2) A reduction under this section is to be disregarded in calculating the amount of any non-standard pension that later becomes payable.

Note: For example, the reduction will be disregarded in calculating the amount of pension under section 42 payable to a child of the member spouse after the member spouse's death.

Division 4—Miscellaneous

49F Ministerial Orders

The Minister may, by legislative instrument, make Orders prescribing matters required or permitted by this Part to be prescribed.

Section 49K

Part VIB—Sustaining the superannuation contribution concession: release of benefit to meet deferred tax liability

49K Release of benefits under a release authority

A lump sum (the *release authority lump sum*) may be paid at a time in compliance with a release authority issued to a person under item 3 of the table in subsection 135-10(1) in Schedule 1 to the *Taxation Administration Act 1953* and given to CSC in accordance with Subdivision 135-B in that Schedule.

Note: The purpose of the release authority is to allow a lump sum to be paid to the Commissioner to meet a debt the person has under Subdivision 133-C in Schedule 1 to the *Taxation Administration Act 1953*.

49L Limit on amount that may be released

- (1) In addition to any requirements in Division 135 in Schedule 1 to the *Taxation Administration Act 1953*, the amount of a release authority lump sum must not have the effect that a benefit of the person under this Act is reduced below zero.
- (2) For the purpose of subsection (1), the effect of a release authority lump sum on the amount of a person's benefit is to be worked out after taking account of any reduction under another provision of this Act, apart from the following:
 - (a) a reduction under section 24 in relation to an amount not yet paid;
 - (b) a reduction under section 32A in relation to an amount not yet paid.

Note: Other provisions that reduce a person's benefit before a release authority lump sum include the following:

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- (a) subsections 23(6) and 31(4) (which deal with surcharge elections), if the election under section 124 is made before giving CSC the release authority (see subsection 124(3));
- (b) subsections 75(3A) and (4A) (which deal with surcharge deduction amounts for deferred benefits);
- (c) Part VIA (which deals with family law superannuation splitting).

49M Priority order in relation to commutation of pension

- (1) This section applies if:
 - (a) a person gives CSC a release authority issued to the person under item 3 of the table in subsection 135-10(1) in Schedule 1 to the *Taxation Administration Act 1953*; and
 - (b) an amount has not yet been paid to the person by virtue of a commutation under section 24 or 32A.
- (2) The release authority lump sum is to be paid before an amount is paid to the person by virtue of a commutation under section 24 or 32A.
- (3) To avoid doubt, the person's retirement pay or invalidity pay is to be reduced under this Part to reflect the release authority lump sum, and the following are to be worked out having regard to that reduced amount of retirement pay or invalidity pay:
 - (a) the amount that may be paid by virtue of the commutation;
 - (b) the retirement pay or invalidity pay payable after the commutation takes effect.

49N Calculation of person's benefits after payment of release authority lump sum

- (1) If a release authority lump sum is paid in relation to a release authority issued to a person, any benefits to which the person is entitled under this Act must be reduced to reflect the release authority lump sum.
- (2) If:
 - (a) a release authority lump sum is paid in relation to a release authority issued to a person; and

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(b) the person is entitled to retirement pay or invalidity pay; the rate at which retirement pay or invalidity pay is payable to the person is to be reduced so that it equals the amount worked out using this formula:

$$\text{Pre-reduction rate} = \frac{\text{Release authority lump sum}}{\text{Conversion factor}}$$

where:

conversion factor means the factor that is applicable to the person under the determination made by CSC under subsection (3).

pre-reduction rate means the annual rate at which retirement pay or invalidity pay would, apart from this section (but having regard to any other provisions of this Act that affect that rate at the time), be payable to the person at the time that pay becomes payable.

- (3) CSC may, by legislative instrument, determine the conversion factor, or the method for working out the conversion factor, for the purposes of subsection (2).

49P Modification for candidates at parliamentary elections

For the purposes of paragraph 55(5)(a), disregard a benefit that is a release authority lump sum.

Note: Subsection 55(5) is about benefits that must be repaid.

49Q Modification for section 62

- (1) If:
- (a) a person's invalidity pay, worked out having regard to section 49N, is cancelled under section 62; and
 - (b) after that cancellation, the person becomes entitled to retirement pay or invalidity pay;
- the rate of the person's retirement pay or invalidity pay mentioned in paragraph (b) is to be reduced in accordance with section 49N.

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- (2) However, for the purpose of the formula in subsection 49N(2), the amount of the release authority lump sum is reduced by the amount of any reductions made because of the previous application of section 49N to the invalidity pay before it was cancelled.

Part VII—Candidates at parliamentary elections

50 Interpretation

In this Part, unless the contrary intention appears:

re-instated candidate means a person who:

- (a) ceased to be an eligible member of the Defence Force by reason of having been transferred to a Reserve, having been discharged from the Defence Force or having had his continuous full-time service terminated under the Defence (Parliamentary Candidates) Act;
- (b) again became an eligible member of the Defence Force; and
- (c) is a person referred to in subsection 10(2), 11(2) or 12(2) of the Defence (Parliamentary Candidates) Act.

re-instated candidate to whom this Part applies means a re-instated candidate who has made an election under section 51.

51 Election by re-instated candidate

A re-instated candidate may, by notice in writing given to CSC within a period of 30 days after again becoming an eligible member of the Defence Force or within such further period as CSC, in special circumstances, allows, elect to be treated as an eligible member of the Defence Force in respect of the period commencing when he ceased to be such an eligible member and ending when he again became such an eligible member.

52 Effect of election under section 51

- (1) A re-instated candidate to whom this Part applies shall, in respect of the period to which the election made by him under section 51 relates, be deemed to have been an eligible member of the Defence Force and, notwithstanding subsections 10(2), 11(2) and 12(2) of the Defence (Parliamentary Candidates) Act, shall not, for the

purposes of this Act, be deemed to have been absent on leave without pay during that period.

- (2) For the purpose of calculating the contributions that a reinstated candidate to whom this Part applies is required to pay in respect of the period to which the election made by him under section 51 relates, his annual rate of pay during that period shall be deemed to be the annual rate of pay that would have been applicable to him during that period if he had not ceased to be an eligible member of the Defence Force.

53 Refund of benefits by re-instated candidates to whom this Part applies

- (1) Where a person who is a re-instated candidate to whom this Part applies became entitled to retirement pay upon his ceasing to be an eligible member of the Defence Force, he shall pay to the Commonwealth an amount equal to the aggregate of the payments of retirement pay received by him.
- (2) Where a person who is a re-instated candidate to whom this Part applies was paid, upon his ceasing to be an eligible member of the Defence Force:
- (a) a refund of his contributions; or
 - (b) a payment of a prescribed kind (being a payment of, or in the nature of, a gratuity or bounty) under legislation relating to conditions of service of members of the Defence Force, in respect of his service before he so ceased;
- he shall pay to the Commonwealth an amount equal to that refund of contributions or to that payment, as the case requires.
- (3) An election made under section 51 is of no effect unless within a period of 7 days after the date on which the election was made, or within such further period as CSC, in special circumstances, allows, any amount required to be paid to the Commonwealth under subsection (1) or (2) is so paid or arrangements satisfactory to CSC are made for the payment to the Commonwealth of that amount.

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- (4) Where:
- (a) an amount is payable by a person to the Commonwealth under this section;
 - (b) the person again ceases to be an eligible member of the Defence Force; and
 - (c) at the time he so ceases, the amount, or a part of the amount, has not been paid to the Commonwealth;
- there shall be deducted from any payment of benefit payable to or in respect of the person under this Act an amount equal to that amount, or that part of that amount, as the case may be, and, to the extent that that amount or that part of that amount is not so deducted, it may be recovered by the Commonwealth in a court of competent jurisdiction as a debt due and payable to the Commonwealth by the person.

54 Re-instated candidates to whom Part does not apply

- (1) For the purposes of this Act, subsections 10(2), 11(2) and 12(2) of the Defence (Parliamentary Candidates) Act do not apply to or in relation to a re-instated candidate who is not, and does not become, a re-instated candidate to whom this Part applies.
- (2) A re-instated candidate referred to in subsection (1) shall, for the purposes of the definition of *eligible member of the Defence Force* in subsection 3(1), be deemed to be serving on continuous full-time service under an appointment or engagement for a period of not less than one year.

55 Rights of contributing members who resign to contest elections and are not re-instated

- (1) In this section, unless the contrary intention appears:

person to whom this section applies means a person who ceased to be an eligible member of the Defence Force by reason of having been transferred to a Reserve, having been discharged from the Defence Force or having had his continuous full-time service terminated under the Defence (Parliamentary Candidates) Act.

the declared date, in relation to an election, means the date that, for the purposes of the Defence (Parliamentary Candidates) Act, is the declared date in relation to the election.

the election, in relation to a person to whom this section applies, means the election in relation to which he made the application in pursuance of which he was transferred to a Reserve, discharged from the Defence Force or had his continuous full-time service terminated under the Defence (Parliamentary Candidates) Act.

- (2) Where a person to whom this section applies:
- (a) dies on or before the date that is the declared date in relation to the election; or
 - (b) was a candidate at the election but failed to be elected and dies within a period of 90 days after the date that is the declared date in relation to the election;

then, for the purposes of this Act, he shall be deemed to have continued to have been an eligible member of the Defence Force during the period that commenced upon his ceasing to be an eligible member of the Defence Force and ended on the day on which he dies and his annual rate of pay on the day on which he dies shall be deemed to be the annual rate of pay that would have been applicable to him on that day if he had not ceased to be an eligible member of the Defence Force.

- (3) Where CSC is satisfied:
- (a) that, if a person to whom this section applies had not ceased to be an eligible member of the Defence Force, he would, at a time (in this subsection referred to as ***the relevant time***) within:
 - (i) the period that commenced upon his ceasing to be an eligible member of the Defence Force and ended on the date that is the declared date in relation to the election; or
 - (ii) the period of 90 days after the date that is the declared date in relation to the election;have been retired on the ground of invalidity or of physical or mental incapacity to perform his duties; and

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(b) that he was prevented from being a candidate at the election by reason of the invalidity or incapacity or was a candidate at the election but failed to be elected;

then, for the purposes of this Act, he shall be deemed to have continued to have been an eligible member of the Defence Force during the period that commenced upon his ceasing to be an eligible member of the Defence Force and ended at the relevant time and his annual rate of pay at the relevant time shall be deemed to be the annual rate of pay that would have been applicable to him at the relevant time if he had not ceased to be an eligible member of the Defence Force, and this Act shall apply to and in relation to him as if he had been retired at the relevant time on the ground referred to in paragraph (a).

- (4) Subsections (2) and (3) do not apply in relation to a person to whom this section applies who dies, or would have been retired, within the period of 90 days after the date that is the declared date in relation to the election if CSC is of the opinion that, if he had not died or had not suffered the invalidity or incapacity, as the case may be, he would not have been re-instated in the part of the Defence Force in which he was serving immediately before he ceased to be an eligible member of the Defence Force.
- (5) This section does not apply in relation to a person unless, within the period of 90 days after the date that is the declared date in relation to the election or within such further period as CSC allows:
- (a) there is paid to the Commonwealth an amount equal to the amount, or to the sum of the amounts, of any benefit paid to or in respect of the person by reason of his having ceased to be an eligible member of the Defence Force;
 - (b) there is paid to the Commonwealth the contributions that the person would have been required to pay after he ceased to be an eligible member of the Defence Force if he had not so ceased and his annual rate of pay during that period had been the annual rate of pay that would have been applicable to him during that period if he had not ceased to be an eligible member of the Defence Force; and

- (c) there is paid to the Commonwealth an amount equal to the amount of any payment of a prescribed kind (being a payment of, or in the nature of, a gratuity or bounty) paid to the person under legislation relating to conditions of service of members of the Defence Force, in respect of his service before he ceased to be an eligible member of the Defence Force.

Part VIII—General provisions applicable to contributions and benefits

56 Refund of contributions

- (1) Where a contributing member retires and, on his retirement, benefit is not payable to him under any other provision of this Act, he is entitled to a refund of the amount of the contributions paid by him.
- (2) Where a contributing member dies before retirement and, by virtue of section 49, benefit is not payable in respect of him under Part VI, a refund of the amount of the contributions paid by him shall be paid to his personal representatives or, failing them, to such persons, if any, as CSC determines.

57 Election by officer on short service commission who continues to serve in respect of period of service under short service commission

- (1) Where an officer who is a contributing member:
 - (a) is serving under a short service commission;
 - (b) is entitled on the termination of that commission to be paid a gratuity; and
 - (c) is to be appointed to a permanent commission or to a further short service commission;he may elect, by notice in writing given to CSC before the date of his appointment to the permanent commission or to the further short service commission, or within such period after that date as CSC, in special circumstances, allows, not to be paid the gratuity and, if he so elects, the gratuity shall not be so paid.
- (2) If an officer referred to in subsection (1) does not make an election under that subsection:
 - (a) he is entitled to a refund, payable by the Commonwealth, of the amount of the contributions paid by him under section 17

in respect of his period of service under that short service commission; and

- (b) any period of service served by him under that short service commission that is a period of effective service in relation to him for the purposes of this Act shall be disregarded as such a period.

59 Instalments of pension benefits

- (1) Pension benefit shall be paid in fortnightly instalments.
- (2) The amount of a fortnightly instalment of pension benefit shall be an amount calculated in accordance with the formula:

$$\frac{14 \times P}{365},$$

where *P* is the amount per annum of the pension benefit.

- (3) Where the amount of a fortnightly instalment of pension benefit includes a fraction of a cent:
- (a) if the fraction is less than one-half of a cent—the amount of the instalment shall be deemed to be reduced by the amount of the fraction; or
- (b) if the fraction is one-half of a cent or more—the amount of the instalment shall be deemed to be increased by treating the fraction as one cent.
- (4) The amount of pension benefit payable in respect of a day is one-fourteenth of the amount of a fortnightly instalment of the pension benefit.

60 Prescribed basic annual rate of pay

Where:

- (a) a member of the scheme who is a contributing member dies or retires; and

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- (b) the annual rate of pay applicable to him immediately before his death or retirement was an amount per annum that is less than the amount per annum that, at the time of his death or retirement, was, under the regulations, the prescribed basic annual rate of pay applicable to him for the purposes of this section;

then, for the purposes of Parts IV, V and VI, the annual rate of pay applicable to him immediately before his death or retirement shall be deemed to be that prescribed basic annual rate of pay.

61 Payment of refund of contributions or of lump sum payment to CSC in discharge of liability under Superannuation Act

Where:

- (a) the liability of a person to make contributions under the Superannuation Act has been deferred by virtue of section 54 of that Act;
- (b) by reason of the retirement or death of the person, the amount of the deferred contributions has become payable;
- (c) the whole or any part of the amount so payable has not been paid; and
- (d) benefit has become payable to or in respect of the person under subsection 32(2) or section 48 or 56 of this Act;

the amount of the benefit so payable shall, to the extent that it does not exceed the amount of the deferred contributions payable, be paid to CSC and, upon being so paid, the amount of the deferred contributions payable shall, to the extent of that payment, be deemed to have been paid to CSC under section 54 of the Superannuation Act.

61A Payment of refund of contributions or of lump sum payment to CSC in discharge of liability under the *Superannuation Act 1990*

Where:

- (a) the liability of a person to make contributions under the Superannuation (1990) Scheme has been deferred under

Rule 3.1.17 of the Rules for the administration of the Superannuation (1990) Scheme; and

- (b) because of the retirement or death of the person, the amount of the deferred contributions has become payable; and
- (c) the whole or any part of the amount so payable has not been paid; and
- (d) benefit has become payable to or in respect of the person under subsection 32(2) or section 48 or 56 of this Act;

the amount of the benefit so payable must, to the extent that it does not exceed the amount of the deferred contributions payable, be paid to CSC and, upon being so paid, the amount of the deferred contributions payable is, to the extent of that payment, taken to have been paid to CSC under Rule 3.1.17 of the Rules for the administration of the Superannuation (1990) Scheme.

62 Recipient member who becomes eligible member

Where a member of the scheme who is a recipient member becomes an eligible member of the Defence Force serving under an appointment or enlistment for a period of not less than one year, his or her invalidity pay is, by force of this subsection, cancelled (except if the rate of the invalidity pay is determined under subsection 31(3)).

63 Non-recipient retired member who again becomes an eligible member within 90 days

- (1) Where:
 - (a) a member of the scheme who is a contributing member retires;
 - (b) upon his retirement, he receives, or is entitled to receive, a refund of contributions under section 56;
 - (c) he again becomes an eligible member of the Defence Force within a period of 90 days after his retirement; and
 - (d) he elects, by notice in writing given to CSC, within a period of 90 days after he again becomes an eligible member of the Defence Force, or within such further period as CSC, in

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special circumstances, allows, to have his retirement disregarded;

this Act applies to and in relation to him as if he had not retired and as if he had, during the period during which he was not a member, been on leave of absence without pay.

- (2) An election by a person under subsection (1) is of no effect unless, within a period of 7 days after the date on which the election was made, or, within such further period as CSC, in special circumstances, allows, the contributions refunded to him are repaid by him to the Commonwealth or arrangements satisfactory to CSC are made for them to be repaid to the Commonwealth.
- (3) This section does not apply in relation to a person who is taken to have retired under section 5B.

64 Non-recipient retired member who again becomes an eligible member after 90 days

- (1) Where:
 - (a) a member of the scheme who is a contributing member retires;
 - (b) on his retirement, he receives, or is entitled to receive, a refund of contributions under section 56; and
 - (c) he again becomes an eligible member of the Defence Force but does not so become an eligible member within a period of 90 days after his retirement;

he may, by notice in writing given to CSC within a period of 90 days after he again becomes an eligible member, or within such further period as CSC, in special circumstances, allows, elect to have the whole or a specified part of any period which, before he again became an eligible member of the Defence Force, was a period of effective service taken into account as a period of qualifying service under this Act.

- (2) Where a member of the scheme makes an election under subsection (1):

- (a) he shall pay an additional contribution to the Commonwealth under this section of an amount equal to 5.5% of the amount of pay that would have been payable to him in respect of the period to which the election relates if the annual rate of pay applicable to him in respect of that period had been the annual rate of pay applicable to him at the time when he again became an eligible member of the Defence Force;
 - (b) he shall, if he was paid a payment of a prescribed kind (being a payment of, or in the nature of, a gratuity or bounty) under legislation relating to the conditions of service of members of the Defence Force, in respect of the period to which the election relates, pay to the Commonwealth an amount equal to the amount of that payment; and
 - (c) upon his death or retirement, the period to which the election relates shall, for the purposes of this Act, be deemed to be a period of effective service in relation to him.
- (3) This section does not apply in relation to a person who is taken to have retired under section 5B.

65 Application of sections 63 and 64 to benefit under subsection 32(2)

A reference in section 63 or 64 to a refund of contributions under section 56 shall be read as including a reference to benefit paid to a member of the scheme under subsection 32(2) to the extent that that benefit consists of a refund of contributions.

Part IX—Preservation of rights of certain members of the scheme

Division 1—Preliminary

66 Interpretation

- (1) In this Part, unless the contrary intention appears:

employment means employment by the terms of which persons employed in that employment are required to give the whole of their time to the duties of their employment.

life policy has the same meaning as in the *Life Insurance Act 1995*.

owner of a life policy has the same meaning as in the *Life Insurance Act 1995*.

rules, in relation to a superannuation scheme, means the rules governing the operation of the scheme, whether contained in a law or in a trust deed or other instrument.

- (2) For the purposes of this Part, the membership by a person of a House of the Parliament of the Commonwealth or of a State shall be treated as if it were employment of the person by the Commonwealth or by that State, as the case may be.
- (2A) For the purposes of this Part, the membership by a person of the Legislative Assembly of the Northern Territory or a legislative or advisory body for another Territory prescribed for the purposes of section 7 of the *Defence (Parliamentary Candidates) Act 1969-1974* shall be treated as if it were employment of the person by the Commonwealth.
- (3) A reference in this Part to a superannuation scheme shall be read as a reference to a superannuation or retirement scheme, however established, and, unless the contrary intention appears, shall be

read as including a reference to the previous benefits scheme or to the benefits scheme constituted by this Act.

- (4) For the purposes of this Part, a benefit payable to or in respect of a member under a superannuation scheme shall not be taken to have been based partly on contributions under the scheme by the employer by reason only that the benefit included interest upon contributions made under the scheme by the member.
- (5) A person in respect of whom benefits are applicable under a superannuation scheme by reason of his being employed in any employment, whether or not he has made contributions under the scheme, shall be deemed to be a member of the superannuation scheme.

67 Variation of determinations by CSC

Where, in pursuance of this Part, CSC has power to make a determination in relation to a matter, the power shall be construed as including a power, exercisable in the like manner and subject to the like conditions (if any), to vary a determination so made.

Division 2—Contributing members who have preserved rights from previous employment

68 Transfer value payable in respect of previous employment

- (1) In this Division:
- (a) a reference, in relation to a contributing member, to a transfer value payable to or in respect of the member under a superannuation scheme applicable in relation to any employment in which he was employed at any time before the date on which he became an eligible member of the Defence Force is a reference to a benefit by way of a lump sum payable to or in respect of the member under that scheme upon the termination of the employment otherwise than on the ground of invalidity or of physical or mental incapacity to perform the duties of the employment, being a benefit that was based wholly upon contributions under that scheme by the employer or was based partly upon such contributions and partly upon contributions under the scheme by the member; and
 - (b) a reference to the amount of a transfer value to which paragraph (a) applies does not include a reference to any part of the lump sum that was based upon contributions by the member that were of a similar nature to contributions under the *Superannuation Act 1922*, or that Act as amended and in force from time to time, for reserve units of pension or to supplementary contributions under the Superannuation Act.
- (2) If, after a transfer value became payable to or in respect of a person under a superannuation scheme, an amount equal to the whole or any part of that transfer value was paid to a person administering another superannuation scheme (not being the benefits scheme constituted by this Act):
- (a) where the whole of the transfer value was so paid—that transfer value shall be disregarded for the purposes of this Division; or

- (b) where part of the transfer value was so paid—the amount of that transfer value shall be deemed, for the purposes of this Division, to be reduced by the amount so paid.
- (3) Subject to subsection (4), a transfer value shall be deemed, for the purposes of this Division, to have become payable in respect of a person under a superannuation scheme upon the termination of any employment if, upon the termination of that employment, the person was the owner of a life policy, or was entitled to have the rights of the owner of a life policy assigned to him or her, being a policy the premiums for which were, while the person was employed in that employment, paid in whole or in part by the person's employer, and, in that case, the surrender value of the policy as at the date of the termination of the employment shall be taken to be the amount of the transfer value.
- (4) Where a transfer value is, by virtue of subsection (3), to be deemed, for the purposes of this Division, to have become payable in respect of a person upon the termination of any employment by reason that, upon the termination of that employment, the person was the owner of a life policy, or was entitled to have the rights of the owner of a life policy assigned to him or her, a transfer value shall not be deemed, for those purposes, to have become payable in respect of the person upon the termination of any previous employment by reason that, upon the termination of that previous employment, the person was the owner of that policy, or was entitled to have the rights of the owner of that policy assigned to him or her.

69 Members who pay transfer values to Commonwealth

- (1) Where a person who becomes a contributing member has, at any time before becoming a member, been in employment within or outside Australia upon the termination of which a transfer value became payable to or in respect of him on or after 25 May 1971 under a superannuation scheme applicable in relation to that employment, and:

Part IX Preservation of rights of certain members of the scheme

Division 2 Contributing members who have preserved rights from previous employment

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- (a) the member, by notice in writing given to CSC within a period of 90 days after the date on which he becomes a contributing member, or within such further period as CSC, in special circumstances, allows, elects to pay to the Commonwealth an amount equal to the amount of that transfer value or, if 2 or more transfer values became payable, the sum of the amounts of those transfer values; and
 - (b) that amount is, before the expiration of that period of 90 days or that further period, as the case may be, paid to the Commonwealth;
- the succeeding provisions of this section have effect.
- (2) So much of the amount paid to the Commonwealth as is equal to the employee component of the transfer value, or to the sum of the employee components of the transfer values, as the case may be, shall, to the extent to which it was payable to the member upon the termination of the employment in respect of which the transfer value or any of the transfer values became payable irrespective of whether he engaged in further employment, be deemed, for the purposes of this Act, to be contributions paid to the Commonwealth by the member under section 17.
 - (3) The total period of effective service of a contributing member referred to in subsection (1) of this section, or of a contributing member in respect of whom a transfer value was paid to the Board under section 82R of the previous Act, shall be deemed to be increased by such period as is determined by CSC, having regard to such matters as are prescribed for the purposes of this section, as being appropriate.
 - (4) If:
 - (a) under the superannuation scheme applicable in relation to any previous employment of the person, the whole or any part of the employer component of a transfer value was payable to the contributing member upon the termination of that employment irrespective of whether he engaged in further employment; and

- (b) the contributing member ceases to be an eligible member of the Defence Force and benefit is payable to him under subsection 32(2) or under section 48 or 56;
so much of the amount paid to the Commonwealth under subsection (1) as is equal to the employer component of the transfer value or to that part of that employer component, as the case may be, is payable to or in respect of him.
- (5) For the purposes of this section:
- (a) the employee component of a transfer value payable to or in respect of a person is the part (if any) of that transfer value that was based upon contributions made by the person; and
 - (b) the employer component of a transfer value payable to or in respect of a person is the part of that transfer value that was based upon contributions by an employer or employers of the person.

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70 Interpretation

- (1) For the purposes of this Division, the prescribed period in relation to a person who has ceased to be an eligible member of the Defence Force is:
- (a) in the case of a person other than a person in relation to whom paragraph (b) applies—the period of 90 days immediately after he ceased to be an eligible member of the Defence Force; or
 - (b) in the case of a person who ceased to be an eligible member of the Defence Force by reason of his having been transferred to a Reserve or discharged from the Defence Force, or having had his continuous full-time service terminated, under the Defence (Parliamentary Candidates) Act for the purpose of enabling him to become a candidate for election as a member of a House of the Parliament of Australia or of a State or of the Legislative Assembly of the Northern Territory or a legislative or advisory body for another Territory prescribed for the purposes of section 7 of the *Defence (Parliamentary Candidates) Act 1969-1974* and was a candidate at the election:
 - (i) if he is elected—the period commencing immediately after he ceased to be an eligible member and ending on the date on which he becomes a member of that House, Assembly or body, as the case may be; or
 - (ii) if he is not elected—the period of 90 days immediately after the date that is the declared date in relation to the election under the Defence (Parliamentary Candidates) Act.
- (2) For the purposes of this Division but subject to subsection (3):

- (a) a period in respect of which invalidity pay was payable to a person under this Act and immediately before the commencement of which he was a contributing member, or a period in respect of which a pension, being invalidity benefit, was payable to a person under the previous Act and immediately before the commencement of which he was a contributor under that Act, shall be treated as if it had been a period during which he was a contributing member or a contributor, as the case may be;
 - (b) a period in respect of which invalidity pay was payable to a person under this Act and immediately before the commencement of which he was employed in public employment, or a period in respect of which a pension, being invalidity benefit, was payable to a person under the previous Act and immediately before the commencement of which he was employed in public employment, shall be treated as if it had been a period during which he was employed in public employment; and
 - (c) a period in respect of which a pension was payable to a person under a superannuation scheme applicable in respect of any employment of the person (other than the previous benefits scheme or the benefits scheme constituted by this Act) by reason of his invalidity or of his physical or mental incapacity to perform the duties of that employment and immediately before the commencement of which he was employed in that employment shall be treated as if it had been a period in which he was employed in that employment.
- (3) Where invalidity pay was not payable to a person under this Act during any period by reason only of section 35, or a pension, being invalidity benefit, was not payable to a person under the previous Act during any period by reason only of section 53A or section 53B of the previous Act, that period shall be treated for the purposes of this Division as if it had been a period during which that invalidity pay or pension, as the case may be, was payable but:
- (a) if the person was, immediately before the invalidity pay or the pension, as the case may be, became payable, a contributing member for the purposes of this Act or a

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contributor under the previous Act—shall not, in the calculation of the period during which he was employed in eligible employment, be treated as if it had been a period of effective service in relation to him under this Act; or

- (b) if the person was, immediately before the invalidity pay or the pension, as the case may be, became payable, employed in public employment—shall not, in the calculation of the period during which he was employed in public employment, be treated as if it had been a period during which he was employed in public employment.

71 Eligible employment

- (1) For the purposes of the application of this Division in relation to a person who has ceased to be an eligible member of the Defence Force, the following periods of employment of the person are periods of eligible employment:
- (a) a period of employment during which the person was a member of the Defence Force and which is a period of effective service in relation to him under this Act;
 - (b) subject to subsections (2) and (3), a period of employment of the person by the Commonwealth, by the Northern Territory, by the Administration of a Territory (including the Northern Territory) or by an authority or other body, being:
 - (i) a body corporate incorporated for a public purpose by an Act, regulations made under an Act or a law of a Territory;
 - (ii) an authority or body, not being a body corporate, established for a public purpose by, or in accordance with, the provisions of an Act, regulations made under an Act or a law of a Territory;
 - (iii) a company or other body corporate incorporated under a law of the Commonwealth or of a State or Territory, being a body corporate in which the Commonwealth has a controlling interest; or
 - (iv) an authority or body established, whether by or in accordance with the provisions of an Act, regulations

- made under an Act, or a law of a Territory or otherwise and whether a body corporate or not, being an authority or body which is financed in whole or in substantial part, either directly or indirectly, by moneys provided by the Commonwealth;
- (c) subject to subsection (4), a period of employment (whether within or outside Australia) of the person during which he was a member of a superannuation scheme under which, upon the termination of that employment:
- (i) a lump sum that was based, or included an amount that was based, wholly upon contributions by the employer under the scheme or partly upon such contributions and partly upon contributions under the scheme by the person was paid to or in respect of the person;
 - (ii) a pension that was based, or included an amount that was based, wholly upon contributions by the employer under the scheme or partly upon such contributions and partly upon contributions under the scheme by the person became payable to the person; or
 - (iii) benefits, whether by way of a lump sum or of a pension, that were payable at a future time and were based, or included an amount or amounts based, wholly upon contributions by the employer under the scheme or partly upon such contributions and partly upon contributions under the scheme by the person became applicable in respect of the person;
- (d) subject to subsection (5), a period of employment of the person during which he was a contributor to a State Fund within the meaning of Part VII of the *Superannuation Act 1922* or that Act as amended and in force from time to time (in this section referred to as the ***superseded Superannuation Act***) or a contributor to a Public Service Superannuation Fund within the meaning of Part VIII of the superseded Superannuation Act; and
- (e) subject to subsection (5A), a period of employment of the person during which he was a contributor to a State

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Superannuation Fund within the meaning of section 132 of the Superannuation Act.

- (2) Paragraph (1)(b) does not apply in relation to a period of employment of a person that terminated before 25 May 1971 unless, before the expiration of a period of 90 days after the termination of that employment, the person became employed in other employment that is eligible employment.
- (3) Paragraph (1)(b) does not apply in relation to a period of employment of a person that terminated after 25 May 1971 unless:
- (a) a lump sum that was based, or included an amount based, wholly upon contributions by his employer under a superannuation scheme applicable in relation to that employment or partly upon such contributions and partly upon contributions under the scheme by the person was paid to the Defence Forces Retirement Benefits Board in accordance with subsection 82R(1) of the previous Act or was paid to the Commonwealth under paragraph 69(1)(b) of this Act;
 - (b) a pension that was based, or included an amount based, wholly upon contributions by his employer under a superannuation scheme applicable in relation to that employment or partly upon such contributions and partly upon contributions under the scheme by the person became payable to him;
 - (c) benefits, whether by way of a lump sum or of a pension, that were payable at a future time and were based, or included an amount or amounts based, wholly upon contributions by his employer under a superannuation scheme applicable in relation to that employment or partly upon such contributions and partly upon contributions under the scheme by the person became applicable in respect of him; or
 - (d) before the expiration of a period of 90 days after the termination of that employment he became employed in other employment that was eligible employment and:

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- (i) a lump sum of a kind referred to in paragraph (a) did not become payable to or in respect of him in relation to the first-mentioned employment and he was not entitled to make an election or choice, exercise an option or do any other act or thing as a result of which such a lump sum would have become so payable;
 - (ii) a pension of a kind referred to in paragraph (b) did not become payable to or in respect of him in relation to the first-mentioned employment and he was not entitled to make an election or choice, exercise an option or do any other act or thing as a result of which such a pension would have become so payable; and
 - (iii) benefits of a kind referred to in paragraph (c) did not become applicable in respect of him in relation to the first-mentioned employment and he was not entitled to make an election or choice, exercise an option or do any other act or thing as a result of which any such benefits would have become so applicable.
- (4) Paragraph (1)(c) does not apply in relation to a period of employment of a person by reason of the operation of subparagraph (1)(c)(i) unless an amount equal to the lump sum referred to in that subparagraph, or an amount that included an amount based upon that lump sum, was paid to the Defence Forces Retirement Benefits Board in accordance with subsection 82R(1) of the previous Act or was paid to the Commonwealth under paragraph 69(1)(b) of this Act.
- (5) Paragraph (1)(d) does not apply in relation to a period of employment of a person unless:
- (a) an amount equal to the amount refunded to the person from a Fund referred to in that paragraph was, in accordance with Part VII or Part VIII of the superseded Superannuation Act, paid to the Superannuation Board established under that Act; and
 - (b) a period of employment during which the person was a contributor to the Superannuation Fund established under that Act that immediately followed the period of the

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first-mentioned employment was a period of eligible employment.

- (5A) Paragraph (1)(e) does not apply in relation to a period of employment of a person unless:
- (a) an amount equal to the amount refunded to the person from the State Superannuation Fund was, in accordance with section 132 of the Superannuation Act, paid to the Commissioner for Superannuation; and
 - (b) the person became an eligible employee immediately after, or within a period of 3 months after, his period of employment during which he was a contributor to the State Superannuation Fund.
- (6) A reference in paragraph (1)(b), (c), (d) or (e) to a period of employment of a person does not include a reference to a period of employment in relation to which a paragraph of subsection (1) that precedes that paragraph applies.

72 Public employment

- (1) The Finance Minister may, by instrument under his hand published in the *Gazette*, declare employment, whether within or outside Australia, by a person, or by persons included in a class of persons, specified in the instrument to be public employment for the purposes of this Division.
- (2) A declaration under subsection (1) shall come into force on the day on which the instrument of declaration is published in the *Gazette* or, if an earlier day (not being earlier than 1 October 1972) is specified in the instrument as the day on which the declaration is to be deemed to have come into force, shall be deemed to have come into force on that earlier day.
- (3) A person shall be taken, for the purposes of this Division, to have been employed in public employment at a particular time if, and only if, the employer by whom he was employed at that time was a person, or was a person included in a class of persons, specified in

a declaration by the Finance Minister under this section that was, or is to be deemed to have been, in force at that time.

- (4) Where any public employment in which a person is employed terminates and, within a period of 90 days after the date of the termination, he again becomes employed in public employment, he shall, for the purposes of this Division, be deemed not to have ceased, by reason of the termination, to be employed in public employment but, in ascertaining the period in which he has been employed in public employment, any period between the termination of a period in which he was employed in public employment and the commencement of a further period in which he was employed in public employment shall not be treated as itself being a period in which he was employed in public employment.

73 Eligible superannuation schemes

- (1) The Finance Minister may, by instrument under his hand published in the *Gazette*, declare a superannuation scheme specified in the instrument to be an eligible superannuation scheme for the purposes of this Division.
- (2) A declaration under subsection (1) shall come into force on the day on which the instrument of declaration is published in the *Gazette* or, if an earlier day (not being earlier than 1 October 1972) is specified in the instrument as the day on which the declaration is to be deemed to have come into force, shall be deemed to have come into force on that earlier day.
- (3) A person shall be taken, for the purposes of this Division, to have been a member of an eligible superannuation scheme at a particular time if, and only if, he was at that time a member of a superannuation scheme in respect of which a declaration by the Finance Minister under this section was, or is to be deemed to have been, in force at that time.

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74 Transfer value

- (1) Subject to subsections (2) and (3), a reference in this Division to a transfer value payable in accordance with this Division to or in respect of a person who has ceased to be an eligible member of the Defence Force is a reference to such amount as is determined by CSC, having regard to such matters as are prescribed for the purposes of this section, to be the value of the rights of the person under this Act as at the time immediately before he ceased to be such a member.
- (2) If:
- (a) the surcharge debt account of a person who ceases to be an eligible member of the Defence Force is in debit when a transfer value becomes payable to the person; and
 - (b) the person makes an election under subsection 124(1);
- the amount of the transfer value is the difference between:
- (c) the amount determined by CSC as provided in subsection (1); and
 - (d) the person's surcharge deduction amount.
- (3) If:
- (a) the surcharge debt account of a person who ceases to be an eligible member of the Defence Force is in debit when a transfer value becomes payable to the person; and
 - (b) the person does not make an election under subsection 124(1); and
 - (c) the person's surcharge deduction amount exceeds the amount of the person's productivity superannuation benefit;
- the amount of the transfer value is the difference between:
- (d) the amount determined by CSC as provided in subsection (1); and
 - (e) the amount by which the person's surcharge deduction amount exceeds the amount of the person's productivity superannuation benefit.

75 Deferred benefits

- (1) The deferred benefits applicable under this Division to or in respect of a person who is a member of the scheme shall, subject to this Division, be benefits of the same nature, and payable in the same circumstances, on the same conditions and, upon his death, to the same persons (if any), as the benefits that would have been payable to or in respect of the person under this Act if he had not retired from the Defence Force and had not made the election by virtue of which the deferred benefits became applicable to or in respect of him and:
- (a) if paragraph 78(2)(a) applies to him:
 - (i) he had retired from the Defence Force on whichever date specified in subparagraph (i) or (ii) of that paragraph is applicable to him; and
 - (ii) in a case where his total period of effective service is less than 20 years—his total period of such service were 20 years;
 - (b) if paragraph 78(2)(b) applies in relation to him—he had, immediately before his death become entitled, by virtue of this subsection, to retirement pay under section 23;
 - (c) if paragraph 78(2)(c) applies to him—he had retired from the Defence Force on whichever date specified in that paragraph is applicable to him;
 - (d) if paragraph 78(2)(d) applies to him—he had retired from the Defence Force on the date specified in that paragraph;
 - (e) if paragraph 78(2)(e) applies to him and his total period of effective service is less than 15 years—his total period of such service were 15 years; and
 - (f) if paragraph 78(2)(e) applies to him and he had not attained the age of 60 years before he ceased to be an eligible member of the Defence Force—he had retired from the Defence Force on the date on which he attained that age.
- (2) Subject to subsection 78(3), no period after the actual retirement of a member of the scheme from the Defence Force shall, by virtue of

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the operation of subsection (1), be treated as a period of effective service in relation to him for the purposes of this Act.

- (3) Where, by virtue of the operation of subsection (1), a person becomes entitled to retirement pay under section 23, then, subject to subsection (3A), the rate at which that retirement pay is payable to the person is, in lieu of the rate provided for in that section, an amount per annum equal to 1.75% of the product of the number of complete years included in his total period of effective service and the amount of the annual rate of pay applicable to him immediately before his actual retirement.

(3A) If:

- (a) because of subsection (1), a person becomes entitled to retirement pay under section 23; and
(b) the person's surcharge deduction amount exceeds the amount of the person's productivity superannuation benefit;

the rate at which retirement pay is payable to the person is (instead of the rate provided for in section 23) an amount per annum worked out by using the formula:

$$\text{Basic rate} - \frac{\text{Excess}}{\text{Conversion factor}}$$

where:

basic rate means the amount per annum referred to in subsection (3).

conversion factor is the factor that is applicable to the person under the determination made by CSC under section 124A.

excess means the amount by which the person's surcharge deduction amount exceeds the amount of the person's productivity superannuation benefit.

Note: For **productivity superannuation benefit** see subsection 3(1).

(4) Where:

- (a) by virtue of subsection (1), a person becomes entitled to retirement pay under section 23;
- (b) he is a person to whom paragraph 78(2)(d) applies;
- (c) he was, immediately before his actual retirement, an officer; and
- (d) at the time he becomes entitled to retirement pay, he had not attained the age that, having regard to his rank immediately before his actual retirement, is his notional retiring age as ascertained under Schedule 2;

then, subject to subsection (4A), the rate at which retirement pay is payable to him is the amount per annum that, but for this subsection, would be payable under subsection (3) of this section, reduced by 3% of that amount for each year included in the period equal to the difference between his age on his birthday last preceding the time when he becomes entitled to retirement pay and his notional retiring age as ascertained under Schedule 2.

(4A) If:

- (a) because of subsection (1), a person becomes entitled to retirement pay under section 23; and
- (b) paragraphs 4(b), (c) and (d) apply to a person; and
- (c) the person's surcharge deduction amount exceeds the amount of the person's productivity superannuation benefit;

the rate at which retirement pay is payable to the person is the amount per annum worked out by using the formula:

$$\text{Basic rate} - \frac{\text{Excess}}{\text{Conversion factor}}$$

where:

basic rate means the amount per annum referred to in subsection (4).

conversion factor is the factor that is applicable to the person under the determination made by CSC under section 124A.

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excess means the amount by which the person's surcharge deduction amount exceeds the amount of the person's productivity superannuation benefit.

- (5) Where, upon the death of a person to whom paragraph 78(2)(b) applies, a person becomes entitled, by virtue of subsection (1) of this section, to spouse pension under section 39 or to child's pension under subsection 42(3) or subsection 43(3), then, for the purposes of section 39, subsection 42(3) or subsection 43(3), as the case may be, the person in relation to whom paragraph 78(2)(b) applies shall be deemed to have been in receipt of retirement pay immediately before his death at such rate as would have been payable to him if he were a person to whom paragraph 78(2)(a) applies.
- (6) A reference in this section to the actual retirement of a person from the Defence Force, being a person who has made an election under section 76, shall be read as a reference to the retirement by virtue of which, upon his ceasing to be an eligible member of the Defence Force, he made the election.

76 Election that Division apply

- (1) Subject to this section, where, a person, being a contributing member, ceases to be an eligible member of the Defence Force and is not entitled to a pension benefit, or is not a person to whom section 36 applies, he may by notice in writing given to CSC within a period of 21 days after the date on which he ceases to be such a member, elect that this Division shall apply in relation to him.
- (2) CSC may, if it is satisfied that there are special circumstances that justify it in so doing, extend the period for the making of an election under subsection (1).
- (3) If a person makes an election for the purposes of this section within a period of 30 days before he ceases to be an eligible member of the Defence Force, the election has effect as if it had been made on the day after he ceased to be a member.

- (4) Subject to subsection (5), an election under this section (except where the election is made by virtue of subsection 128(2)) is of no effect unless the person who made the election gives notice in writing to CSC within a period of 21 days, or within such further period as CSC, in special circumstances, allows, after the expiration of the period that is the prescribed period in relation to him:
- (a) stating whether he was employed at the expiration of that prescribed period and, if so, the name and address of his employer; and
 - (b) stating whether he was at the expiration of that prescribed period a member of a superannuation scheme applicable in relation to that employment and, if so, specifying the scheme concerned.
- (5) Subsection (4) does not apply if the person who made the election dies before the expiration of the period for the giving of a notice by him under that subsection and without having given such a notice.
- (6) This section does not apply in relation to a person to whom section 54 of the Superannuation Act applied immediately before he ceased to be an eligible member of the Defence Force and who, at the time when he ceased to be such a member, had not ceased to be an eligible employee for the purposes of that Act.
- (7) This section does not apply in relation to a contributing member who:
- (a) ceases to be an eligible member of the Defence Force by reason of his having been retired on the ground of invalidity or of physical or mental incapacity to perform his duties; and
 - (b) is not entitled to invalidity benefit by reason of the operation of section 27 or 29.

77 Circumstances in which transfer value payable

- (1) Subject to this Division, where:
- (a) a person makes an election under section 76; and

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- (b) within the period that is the prescribed period in relation to him, he:
- (i) becomes employed in public employment; and
 - (ii) becomes a member of an eligible superannuation scheme that is applicable in relation to persons employed in that employment;
- a transfer value in respect of the person is payable to the person administering that scheme.
- (2) This section does not apply in relation to a person unless the person administering the superannuation scheme agrees to accept the transfer value and, under the rules of the scheme, the first-mentioned person will become entitled to retirement benefits under the scheme based upon the transfer value.

78 Circumstances in which person entitled to deferred benefits

- (1) Where a person makes an election under section 76 and:
- (a) he becomes employed in public employment within the period that is the prescribed period in relation to him but a transfer value is not payable in respect of him under section 77; or
 - (b) he does not become employed in public employment within that period but at the time when he ceased to be an eligible member of the Defence Force he had completed 20 years' eligible employment or had attained the age of 60 years;
- deferred benefits are, subject to this Division, applicable in respect of the person.
- (2) Deferred benefits that are applicable in respect of a person are payable as from the day immediately following the earliest of the following dates:
- (a) where CSC is satisfied that the person has, by reason of invalidity or of physical or mental incapacity, become incapable (otherwise than temporarily), at a time when he was employed in public employment or after he had completed 20 years' eligible employment, of performing

duties of a kind suitable to be performed by him having regard to the duties performed by him in the employment in which he was employed immediately before he ceased to be an eligible member of the Defence Force and the duties performed by him in employment (if any) in which he was employed after he ceased to be such a member:

- (i) if, at the date that CSC is satisfied was the date on which he became so incapable, he was not employed in public employment—that date; or
 - (ii) if, at that date, he was employed in public employment—the date on which that public employment terminates;
- (b) if, at the date of his death, he was employed in public employment or had completed 20 years' eligible employment—that date;
 - (c) the date on which he attains the age that was the retiring age for the rank held by him immediately before he ceased to be an eligible member of the Defence Force or the date on which his total period of effective service amounts to 15 years, whichever is the later;
 - (d) the date on which his total period of effective service amounts to 20 years; and
 - (e) the date on which he attains the age of 60 years or, if he attained that age before he ceased to be an eligible member of the Defence Force, the date on which he ceased to be such a member.
- (3) For the purposes of subsection (2), the total period of effective service of a person shall be deemed to be the aggregate of:
- (a) his total period of effective service as defined in section 3;
 - (b) any period of public employment in which the person was employed after he ceased to be an eligible member of the Defence Force; and
 - (c) any period (not being a period of public employment referred to in paragraph (b)) occurring after the person ceased or last ceased to be an eligible member of the Defence Force and

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after the person has completed 20 years' eligible employment.

- (4) For the purposes of subsections (2) and (3), a period of public employment in which a person became employed after he ceased to be an eligible member of the Defence Force shall be deemed to be a period of eligible employment of the person.
- (5) Deferred benefits are not payable unless:
 - (a) an application in writing has been made to CSC requesting payment of the benefits; and
 - (b) the applicant has furnished to CSC any information that is necessary to enable CSC to determine whether the benefits are payable.
- (6) Subject to subsections (7) and (8), where a person in relation to whom paragraph (1)(a) applies and who, at the time when he ceased to be an eligible member of the Defence Force, had not completed 20 years' eligible employment ceases to be employed in public employment and the deferred benefits applicable in respect of him have not become payable under subsection (2), then, those deferred benefits cease to be applicable in respect of him but this Act has effect in relation to him as if the election by him under section 76 had not been made.
- (7) If a deferred benefit by way of a pension benefit has previously become payable to a person referred to in subsection (6) by reason of paragraph (2)(a), any amount that, but for this subsection, would be payable to the person by reason of subsection (6) is payable only to the extent to which it exceeds the sum of the amounts previously paid to him.
- (8) Subsection (6) does not apply in relation to a person if the sum of the periods of eligible employment in which the person has been employed and the period of public employment in which he was employed after he ceased to be an eligible member of the Defence Force is not less than 20 years.

79 Person who is entitled to rights under this Division not entitled to other retirement benefits

(1) Subject to subsection 78(6), where either of sections 77 or 78 applies in relation to a person, any benefit that, but for this Division, would be payable to or in respect of him by reason of his having ceased to be an eligible member of the Defence Force is not payable except where that benefit is payable by virtue of the operation of this Division.

(2) Where:

(a) a payment of benefit has been made under subsection 32(2) or section 56 to a person who has ceased to be an eligible member of the Defence Force; and

(b) after the payment was made, the person makes an election under section 76;

the election does not have any effect unless an amount equal to the amount of the payment is paid to the Commonwealth within 7 days after the date of the election or within such further period as CSC, in special circumstances, allows.

80 Certain former contributing members not entitled to benefits under this Division

(1) Where a person (other than a person who, at the time when he ceased to be an eligible member of the Defence Force, had completed 20 years' eligible employment) who has made an election under section 76 is not employed in public employment at the expiration of the period that is the prescribed period in relation to him, then, unless:

(a) the sum of the periods of eligible employment in which he has been employed and the period of public employment (if any) in which he was employed during that prescribed period was not less than 20 years;

(b) he died or attained the age of 60 years within that prescribed period at a time when he was employed in public employment;

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- (c) within that prescribed period he attained, at a time when he was employed in public employment, the age that was the retiring age for the rank held by him immediately before he ceased to be an eligible member of the Defence Force or, having attained that age, his total period of effective service, within the meaning of subsection 78(3), is not less than 15 years;
- (d) he attained the age of 60 years before he ceased to be an eligible member of the Defence Force; or
- (e) CSC is satisfied that:
 - (i) he ceased within that prescribed period, by reason of invalidity or of physical or mental incapacity, to be employed in public employment; and
 - (ii) that invalidity or incapacity rendered him incapable (otherwise than temporarily) of performing duties that are of a kind suitable to be performed by him having regard to the duties performed by him in employment (if any) in which he was employed immediately before he ceased to be an eligible member of the Defence Force and the duties performed by him in employment in which he was employed after he ceased to be such a member;

this Act has effect as if the election had not been made.

(2) Where:

- (a) a person who ceases to be an eligible member of the Defence Force is, at the expiration of the period that is the prescribed period in relation to him, employed in public employment in respect of which a superannuation scheme (other than an eligible superannuation scheme) is applicable and is, at the expiration of that period, a member of that scheme;
- (b) the person has made an election under section 76; and
- (c) if a payment of benefit were made to him under subsection 32(2) or section 56, he would, under the rules of the superannuation scheme applicable in respect of that employment, be entitled to pay the amount of the payment of benefit or a part of that amount to the person administering

that scheme in exchange for benefits under that scheme,
being benefits that CSC is satisfied are appropriate in the
circumstances;

this Act has effect as if the election had not been made.

81 Member who resigned to contest an election

Where a person who has made an election under section 76 is, for the purposes of Part VII, a re-instated candidate to whom that Part applies or is, by virtue of section 55, to be deemed to have continued to have been an eligible member of the Defence Force, this Act has effect as if the election had not been made.

82 Provisions applicable to certain recipient members restored to health

- (1) Where deferred benefit is payable to a person by reason that CSC is satisfied as to the matters referred to in paragraph 78(2)(a):
 - (a) section 34 does not apply in relation to him but subsection (2) of this section has effect in relation to him;
 - (b) section 35 applies in relation to him as if he were a recipient member in receipt of invalidity pay; and
 - (c) if, in the application of section 35 in relation to him, any retirement pay payable to him is suspended under that section:
 - (i) the deferred benefit does not cease to be applicable in relation to him by reason only of the suspension; and
 - (ii) the suspension ceases to have effect if the deferred benefit becomes payable under paragraph 78(2)(b), (c) or (d).
- (2) If CSC is satisfied that the health of the person has become so restored as to enable him to perform duties of a kind suitable to be performed by him, having regard to the duties performed by him immediately before he ceased to be an eligible member of the Defence Force and the duties performed by him in employment (if any) in which he was employed after he ceased to be such a

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member, CSC may cancel his retirement pay but the deferred benefit does not cease to be applicable in relation to him by reason only of the cancellation.

- (3) The retirement pay payable to a person shall not be cancelled under subsection (2) at a time when the retirement pay would have become payable, apart from the operation of paragraph 78(2)(a).

83 Person entitled to deferred benefits again becoming a member etc. before benefits payable

If a person to whom deferred benefits are applicable again becomes an eligible member of the Defence Force, or becomes a member of the MSB scheme, before the deferred benefits become payable by virtue of subsection 78(2), the deferred benefits cease to be applicable in respect of him.

Division 4—Miscellaneous

84 Special provisions affecting former members of certain superannuation schemes

(1) Where:

- (a) a person who becomes a contributing member was, at any time, a member of:
 - (i) a superannuation scheme conducted in accordance with the system established in the United Kingdom of Great Britain and Northern Ireland and known as the Federated Superannuation System for Universities; or
 - (ii) a superannuation scheme that was, or is to be deemed to have been, an approved superannuation scheme for the purposes of this section at the time when the person became a contributing member;
- (b) by virtue of subsection 68(3) a transfer value is to be deemed, for the purposes of Division 2 of this Part to have become payable in respect of the person under that superannuation scheme because the person was the owner of a life policy or policies of a kind referred to in that subsection, or because the person was entitled to have the rights of the owner of such a policy or policies assigned to him or her; and
- (c) the person has elected in accordance with paragraph 69(1)(a) to pay to the Commonwealth an amount equal to the amount of that transfer value;

the succeeding provisions of this section have effect.

(2) The person may, within the period within which he was entitled to make an election under paragraph 69(1)(a), elect that this section shall have effect in relation to him and, where an election is so made, section 69 has effect as if the amount referred to in paragraph (1)(b) of that section, or, if part only of that amount relates to the transfer value referred to in subsection (1) of this section, that part of that amount, had been paid to the Commonwealth in accordance with paragraph 69(1)(b).

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(3) An election under subsection (2) does not have effect unless the person causes to be assigned to the Commonwealth, within the period referred to in that subsection, the life policy or life policies referred to in paragraph (1)(b) free from any mortgages, charges or other encumbrances.

(4) If:

- (a) the annual rate of pay of the person upon his becoming an eligible member of the Defence Force was greater than the annual remuneration that was payable to him in respect of the last employment in which he was employed and to which a superannuation scheme referred to in subsection (1) related; or
- (b) after the person became such a member his annual rate of pay is increased;

CSC, on behalf of the Commonwealth shall, so far as is practicable, arrange for the amount or amounts of any life policy or life policies assigned to the Commonwealth by the person to be increased by the amount or amounts by which the life policy or life policies would have been increased under that scheme, or for the issue of such additional life policy or life policies in relation to the person as would have been issued under that scheme, if he had remained a member of that scheme and had been in receipt of an annual remuneration equal to that annual rate of pay or that increased annual rate of pay, as the case may be.

(5) So much of any premium payable in respect of any life policy assigned to the Commonwealth in accordance with subsection (3) or issued in accordance with subsection (4) as relates to a period during which the person is an eligible member of the Defence Force shall be paid by the Commonwealth out of the Consolidated Revenue Fund, which is appropriated accordingly.

(6) Where the amount of the fortnightly contributions payable by the person to the Commonwealth at any time is less than the amount that is the prescribed amount in relation to him at that time, he is liable to pay to the Commonwealth an amount equal to the difference.

- (7) Where the person (in this subsection referred to as *the former contributor*) makes an election under subsection 76(1) and, within the period that is the prescribed period in relation to him for the purposes of Division 3, he becomes employed in employment in respect of which a superannuation scheme referred to in paragraph (1)(a) is applicable and becomes a member of that scheme, then:
- (a) subject to paragraph (c), Division 3 has effect in relation to him as if that employment were public employment and that superannuation scheme were an eligible superannuation scheme;
 - (b) the Commonwealth shall assign to the person administering that superannuation scheme the life policies assigned by the former contributor to the Commonwealth in accordance with subsection (3) or issued in relation to the former contributor in accordance with subsection (4);
 - (c) the assignment of those life policies in accordance with paragraph (b) shall be deemed to constitute the payment of a transfer value in respect of the former contributor in accordance with section 77 to the person administering that scheme; and
 - (d) the Commonwealth shall, if the amount of any fortnightly contribution paid by the former contributor under this Act to the Commonwealth exceeded the amount that was the prescribed amount in relation to him at the time of the payment, pay to him an amount equal to the amount of the excess.
- (8) If the life policy or life policies assigned by the person to the Commonwealth in accordance with subsection (3) or issued in relation to him in accordance with subsection (4) becomes or become payable at or before the time when he ceases to be an eligible member of the Defence Force, the Commonwealth shall pay to the person or, if he is dead, to his personal representatives:
- (a) an amount equal to so much of any premiums paid by the person in respect of the policy or policies as related to, or to any part of, the period that commenced on the date on which the transfer value referred to in paragraph (1)(b) is to be

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- deemed for the purposes of Division 2 to have become payable in respect of him and ended on the date on which he became a contributing member; and
- (b) an amount equal to the sum of any amounts paid by the person to the Commonwealth under subsection (6).
- (9) Where the person ceases to be a contributing member and neither subsection (7) or subsection (8) applies in relation to him, then, if the election made by him under subsection (2) has not been revoked in accordance with subsection (10):
- (a) CSC on behalf of the Commonwealth shall arrange for the surrender of the life policy or life policies assigned by him to the Commonwealth in accordance with subsection (3) or issued in relation to him in accordance with subsection (4); and
- (b) the Commonwealth shall pay to the person:
- (i) in the case of a policy or policies assigned by the person to the Commonwealth in accordance with subsection (3) an amount equal to so much of any premiums paid by the person in respect of the policy or policies as related to, or to any part of, the period that commenced on the date on which the transfer value referred to in paragraph (1)(b) is to be deemed for the purposes of Division 2 to have become payable in respect of him and ended on the date on which he became a contributing member; and
- (ii) an amount equal to the sum of any amounts paid by him to the Commonwealth under subsection (6).
- (10) A person who has made an election under subsection (2) may, if:
- (a) he has not ceased to be a contributing member; and
- (b) the life policy or life policies assigned by him to the Commonwealth in accordance with subsection (3) or issued in relation to him in accordance with subsection (4) has not or have not become payable;
- by notice in writing to CSC revoke the election and, in that case, paragraphs (9)(a) and (b) have effect in relation to him.

- (11) The Finance Minister may, by instrument under his hand published in the *Gazette*, declare a superannuation scheme, being a scheme under which benefits are provided for by means of life policies, to be an approved superannuation scheme for the purposes of this section.
- (12) A declaration under subsection (11) shall come into force on the day on which the instrument of declaration is published in the *Gazette* or, if an earlier day (not being earlier than 1 October 1972) is specified in the instrument as the day on which the declaration is to be deemed to have come into force, shall be deemed to have come into force on that earlier day.
- (13) A superannuation scheme shall be taken, for the purposes of this section, to have been an approved superannuation scheme at a particular time if a declaration by the Finance Minister under subsection (11) in respect of that scheme was, or is to be deemed to have been, in force at that time.
- (14) In this section, ***the prescribed amount***, in relation to a person in relation to any time, is an amount ascertained in accordance with the formula $\frac{ab}{26c}$, where:

a is the amount of the annual premium, or the sum of the amounts of the annual premiums, applicable at that time under the life policy or life policies assigned by him to the Commonwealth in accordance with subsection (3) or issued in relation to him in accordance with subsection (4).

b is a number equal to the number of whole dollars included in the amount, or sum of the amounts, payable by him under the superannuation scheme referred to in subsection (4) immediately before he ceased to be a member of that scheme in respect of the annual premium or the annual premiums under the life policy or life policies assigned by him to the Commonwealth in accordance with subsection (3).

c is a number equal to the number of whole dollars included in the amount of the annual premium, or the sum of the amounts of the annual premiums, applicable under the life policy or life policies

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assigned by him to the Commonwealth in accordance with subsection (3) immediately before he ceased to be a member of the superannuation scheme referred to in subsection (4).

Part X—Contributors under previous benefits scheme etc.

85 Interpretation

- (1) In this Part, unless the contrary intention appears:

Fund means the Defence Forces Retirement Benefits Fund.

period of previous contributory qualifying service, in relation to an existing contributor, means a period equal to the sum of:

- (a) any periods of service of the existing contributor before 1 October 1972 in respect of which, before that day, the existing contributor had contributed or was liable to contribute under the previous legislation, other than:
- (i) any period that under the regulations is not to be taken into account for the purposes of this paragraph;
 - (ii) in a case where the existing contributor had, whether before or after that day, received or become entitled to receive, a refund of the contributions paid by the existing contributor under the previous legislation in respect of a period—that period; or
 - (iii) in a case where the existing contributor had, before that day, retired and did not, without a break in continuity of service, again become a member of the Defence Force on continuous full-time service—any other period of service before the existing contributor so retired or last retired; and
- (b) any other periods of service before 1 October 1972 that would have been periods of effective service applicable to him under this Act if this Act had come into operation on the day on which he first became a member of the Defence Force serving on continuous full-time service, other than such a period that, under regulations made for the purposes of this

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definition, is not to be taken into account for the purposes of this paragraph.

period of previous non-contributory qualifying service, in relation to a member of the scheme, means a period that the member has, under section 89 or 93, elected to have taken into account as a period of qualifying service for the purposes of this Act.

post-1959 contributor means an existing contributor who is not a pre-1959 contributor.

pre-1959 contributor means a person who is an existing contributor for the purposes of this Act and who was also an existing contributor as defined by subsection 38(1) of the *Defence Forces Retirement Benefits Act 1959*, but does not include a person in relation to whom regulation 5 or regulation 7 of the Defence Forces Retirement Benefits (Existing Contributors) Regulations, or regulation 6 of the Defence Forces Retirement Benefits (Prescribed Contributors) Regulations, apply or have applied.

transitional period means the period commencing on the date of commencement of the scheme, and ending immediately before the day on which this Act receives the Royal Assent.

- (2) For the purposes of this Part, the aggregate pay of an existing contributor, in respect of, or in respect of a part of, his period of previous contributory qualifying service, is such amount as is ascertained by CSC, in accordance with the regulations, as the amount that, for the purposes of this Part, is to be treated as the amount of aggregate pay received by him in respect of that period or of that part of that period, as the case may be.

86 Refund of previous contributions

- (1) Where the amount of previous contributions of an existing contributor exceeds an amount equal to 5.5% of the amount of his aggregate pay in respect of his period of previous contributory qualifying service, he is entitled to a refund of so much of the previous contributions as is equal to the amount of the excess.

- (2) The amount of any refund to which a person is entitled under subsection (1) shall be paid by the Commonwealth.

87 Additional contribution by certain pre-1959 contributors

- (1) This section applies to an existing contributor:
- (a) who is a pre-1959 contributor;
 - (b) the amount of whose previous contributions is less than 5.5% of the amount of his aggregate pay in respect of his period of previous contributory qualifying service; and
 - (c) who (not being an existing contributor to whom, immediately before 1 October 1972, Part VIB of the previous Act applied) was not, immediately before that date, or who (being an existing contributor to whom, immediately before that date, Part VIB of the previous Act applied) was not, immediately before his retirement prior to his becoming a person to whom that Part applied:
 - (i) a contributor for maximum additional basic pension for the purposes of Part III of the *Defence Forces Retirement Benefits Act 1959-1968*;
 - (ii) a contributor for maximum additional basic pension for the purposes of Part IV of the *Defence Forces Retirement Benefits Act 1962-1963*; or
 - (iii) a contributor for maximum additional basic pension for the purposes of Part IV of the *Defence Forces Retirement Benefits Act 1963-1968*;or who, whether or not he was a contributor of a kind referred to in subparagraph (i), (ii) or (iii), made an election not to increase his contributions under section 61A or 61B of the *Defence Forces Retirement Benefits Act 1963-1968*, or of that Act as amended and in force from time to time.
- (2) In subsection (3), a reference to the period of reduced contributions of a contributor to whom this section applies shall be read as a reference to that part of his period of previous contributory qualifying service as occurred after the time that is the time from which, by reason of his being an existing contributor of the kind

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referred to in paragraph (1)(c), he commenced to make contributions to the Fund at a rate less than the rate that would otherwise have applied to him.

- (3) Where an amount equal to 5.5% of the amount of aggregate pay of an existing contributor to whom this section applies in respect of his period of reduced contributions exceeds the amount of his previous contributions made in respect of that period, he shall pay an additional contribution to the Commonwealth under this section of such amount, not exceeding the amount of the excess, as CSC determines as being appropriate in the circumstances.

87A Additional contributions by certain persons purchasing service under section 27 of the previous Act

- (1) This section applies to an existing contributor:
- (a) who had, before 1 October 1972, elected under section 27 of the previous Act to have a period of service taken into account as service for pension under that Act;
 - (b) who had not, before that date, paid, under that section, an amount equal to the lesser of the amount of the contributions determined by the Defence Forces Retirement Benefits Board to be payable by him in respect of that period and an amount equal to 5.5% of his aggregate pay in respect of that period; and
 - (c) the amount of whose previous contributions is less than 5.5% of the amount of his aggregate pay in respect of his period of previous contributory qualifying service.
- (2) An existing contributor to whom this section applies:
- (a) shall pay an additional contribution to the Commonwealth under this section of such an amount, not exceeding the difference between the amount (if any) paid by him under section 27 of the previous Act and the amount first mentioned in paragraph (1)(b), as CSC determines as being appropriate in the circumstances; and

- (b) shall not be required to make any further payments under section 27 of the previous Act in relation to the period to which the election under that section relates.

88 Contribution equal to deferred contributions under previous Act

- (1) Where:

- (a) under an agreement entered into under section 78 or section 79 of the *Defence Forces Retirement Benefits Act 1959*, or of that Act as amended and in force from time to time; or
- (b) under section 79A of that Act, or of that Act as amended and in force from time to time, or under section 44, 45, 46 or 47 of the *Defence Forces Retirement Benefits Act 1962*, or of that Act as amended and in force from time to time or under section 54, 55, 56 or 57 of the *Defence Forces Retirement Benefits Act 1963*, or of that Act as amended and in force from time to time;

payment of any contributions or contribution, or of part thereof, payable by a pre-1959 contributor has been deferred, there is payable to the Commonwealth by him a contribution under this Act equal to the amount of the deferred contributions or contribution, or the part thereof, and compound interest at the rate of 5% per annum upon that amount, and he is not otherwise liable to make any payment in respect of the deferred contribution or contributions.

- (2) For the purposes of this Act, a contribution paid under this section, other than such part of that contribution as consists of interest, shall, for the purposes of this Act, be deemed to be a contribution made under the previous legislation.

89 Purchase of previous non-contributory service

- (1) Subject to this section, where an eligible member of the Defence Force, not being an existing contributor, had, before 1 October 1972, served as a member of the Defence Force on continuous full-time service for a period of not less than one year, he may, by

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notice in writing given to CSC within a period of 90 days after the date upon which this Act receives the Royal Assent or of the date on which he first became an eligible member of the Defence Force, whichever last occurs, or within such further period as CSC, in special circumstances, allows, elect to have that period of service, or such part of that period as he specifies in the election, taken into account as qualifying service under this Act.

- (2) Subject to this section, where an eligible member of the Defence Force, being an existing contributor, had, before 1 October 1972:
- (a) served as a member of the Defence Force on continuous full-time service for a period of not less than one year, being a period that is not, or is not included in, a period of previous contributory qualifying service of the member; or
 - (b) served as a member of the Defence Force on continuous full-time service for a period of less than one year, being a period that is not, or is not included in, a period of previous contributory qualifying service of the member but which is continuous with such a period;

he may, by notice in writing given to CSC, within a period of 90 days after the day on which this Act receives the Royal Assent, or within such further period as CSC, in special circumstances, allows, elect to have the period during which he so served, or such part of that period as he specifies in the election, taken into account as qualifying service under this Act.

- (3) An eligible member of the Defence Force is not entitled to make an election under subsection (1) or (2) in respect of any period which, if this Act had come into operation on the day on which he first became a member of the Defence Force, would have been a period of non-effective service in relation to him.
- (4) Where, under subsection (1) or subsection (2), an eligible member of the Defence Force has elected to have a period of service before 1 October 1972 taken into account as qualifying service under this Act, he shall pay an additional contribution to the Commonwealth under this section, which shall be:

- (a) if he is an existing contributor and he has served continuously as a member of the Defence Force from the commencement of the period to which the election relates until 1 October 1972 and became a contributor under the previous Act upon the termination of the period to which the election relates—an amount equal to 5.5% of the amount of pay that CSC determines would have been the pay received by him in respect of the period to which the election relates if, from time to time during that period, his rate of pay had been the maximum rate of pay payable to persons of the rank, branch and group that was from time to time applicable to him during that period, or such other rate of pay as CSC determines as being appropriate in the circumstances; and
 - (b) in any other case—an amount equal to 5.5% of the amount of pay that would have been payable to him in respect of the period to which the election relates if, at all times during that period, his annual rate of pay had been the annual rate of pay applicable to him at the time when he became an eligible member of the Defence Force or such other annual rate of pay as CSC approves in the circumstances.
- (5) A person is not entitled to make an election under this section in respect of any period in respect of which he is entitled to make an election under section 93.
- (6) An election under subsection (1) or (2) is of no effect unless, at the time when the election is made, or, within such period after that time as CSC, in special circumstances, allows, there is refunded to the Commonwealth, or arrangements satisfactory to CSC are made for there to be refunded to the Commonwealth, any payment of a prescribed kind (being a payment of, or in the nature of, a gratuity or bounty, deferred pay or a part of a pension) paid to the person under the previous legislation, or under legislation relating to conditions of service of members of the Defence Force, in respect of the period to which the election relates.
- (6A) Where a person who makes an election under this section had credited to him, in respect of the period to which the election relates, under the previous legislation or under legislation relating

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to the conditions of service of members of the Defence Force, any deferred pay or interest thereon, that credit shall, by force of this section, be deemed to have been cancelled.

- (7) In this section, *eligible member of the Defence Force* includes a person who, at any time during the transitional period, was an eligible member of the Defence Force.

90 Elections to become contributors by certain members

- (1) This section applies:
- (a) to a person who, under section 78 of the *Defence Forces Retirement Benefits Act 1948*, elected not to become a contributor under that Act and who, immediately before 1 October 1972, was a member of the Defence Force on continuous full-time service (being service that is continuous with his service at the time he became entitled to make the election) but who was not a contributor under the previous Act;
 - (b) to a person who, under section 80 of the *Defence Forces Retirement Benefits Act 1948*, or of that Act as amended and in force at any time before the commencement of the *Defence Forces Retirement Benefits Act 1959*, elected not to become a contributor under that Act, or that Act as amended, and who, immediately before 1 October 1972, was a member of the Defence Force on continuous full-time service (being service that is continuous with his service at the time he became entitled to make the election) but was not a contributor under the previous Act;
 - (c) to a person who, under section 82C of the *Defence Forces Retirement Benefits Act 1948-1950*, elected not to become a contributor under that Act and who, immediately before 1 October 1972, was a member of the Defence Force on continuous full-time service (being service that is continuous with her service at the time she became entitled to make the election) but was not a contributor under the previous Act;
 - (d) to a person who, under subsection 83(6) of the *Defence Forces Retirement Benefits Act 1959*, or of that Act as

amended and in force from time to time, elected not to be a contributor under the *Defence Forces Retirement Benefits Act 1948-1959* and who, immediately before 1 October 1972, was a member of the Defence Force on continuous full-time service (being service that is continuous with her service at the time she became entitled to make the election) but was not a contributor under the previous Act.

- (2) A person to whom this section applies and who, but for this subsection, would, on 1 October 1972, be an eligible member of the Defence Force, shall be deemed not to be an eligible member of the Defence Force in respect of any period commencing on that date unless, by notice in writing given to CSC within a period of 90 days after the day on which this Act receives the Royal Assent, or within such further period as CSC, in special circumstances, allows, the person elects to be treated as an eligible member of the Defence Force.
- (3) Where a person referred to in paragraph (1)(a) makes an election under subsection (2):
 - (a) he is not entitled to receive, or to have credited to him, any deferred pay or interest thereon to which he would, but for this subsection, have been entitled after 30 September 1972 by virtue of his service as a member of the Defence Force on continuous full-time service on or after that date;
 - (b) he shall repay to the Commonwealth the amount of any deferred pay or interest thereon that he has received in respect of such service; and
 - (c) any credit to him of deferred pay in respect of such service shall be cancelled.

91 Certain periods of previous service deemed to be periods of effective service

- (1) Subject to subsection (1A), a period that is a period of previous contributory qualifying service in relation to an existing contributor, or a period that is a period of previous non-contributory qualifying service in relation to a member of the

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scheme, shall, for the purposes of this Act, be deemed to be a period of effective service in relation to him.

- (1A) Where a period would be a period of effective service in relation to a person by virtue of section 63 or 64 if the person were to make an election under subsection 63(1) or 64(1), as the case requires, and comply with subsection 63(2) or 64(2), as the case requires, subsection (1) of this section does not apply in relation to the period unless the period is also a period of effective service in relation to the person by virtue of section 63 or 64.
- (2) Where deferred benefits are applicable in respect of a person under section 82ZB of the previous Act but, before those benefits become payable, he became or becomes an eligible member of the Defence Force and those benefits cease to be applicable to him by virtue of section 82ZG of the previous Act, such period as CSC determines in relation to his service before 1 October 1972 shall be deemed to be a period of effective service in relation to him.

92 Application of Act in respect of elections under subsection 4A(3B) of previous Act

- (1) Where:
- (a) by virtue of an election made by an existing contributor under subsection 4A(3B) of the previous Act, his category number for the purposes of that Act was, immediately before 1 October 1972, a number higher than the number that it would otherwise have been; and
- (b) the amount per annum that, but for this section, would be the annual rate of pay applicable to him under this Act on 1 October 1972 is less than the annual pay (in this section referred to as *his previous notional pay*) by reference to which the category number applicable to him immediately before that date was ascertained;

his annual rate of pay on 1 October 1972 shall, for the purposes of this Act, be deemed to have been the rate of his previous notional pay and shall continue to be deemed to be that rate until his annual rate of pay as ascertained in accordance with the definition of

annual rate of pay in subsection 3(1) becomes greater than the rate of his previous notional pay.

- (2) Where, during the transitional period, an existing contributor made on election in accordance with subsection 4A(3B) of the previous Act by reason of a change in his category, that election shall, for the purposes of this Act, be deemed to have been an election made under subsection 20(1) of this Act to have the change in his annual rate of pay that occurred at the time of the change in category disregarded for the purposes of this Act.
- (3) Where:
- (a) an existing contributor who becomes entitled to make an election under subsection 20(1) of this Act in relation to a change in his annual rate of pay does not make an election; and
 - (b) his category number for the purposes of the previous Act immediately before 1 October 1972 was a number greater than the number that would have been his category number at the time of the change in his annual rate of pay if the provisions of the previous Act relating to contributions had continued to apply to him;

he is entitled, in addition to a refund of contributions under subsection 20(2) of this Act to a refund, payable by the Commonwealth, of such part of his previous contributions as CSC, having regard to the provisions of subsection 4A(3B) and section 35 of the previous Act, determines as being appropriate in the circumstances, and the amount of any previous contributions in respect of which he becomes so entitled to a refund shall, for the purposes of this Act, be deemed not to have been paid by him.

93 Election by member of scheme to whom subsection 69(1A) of previous Act applies

- (1) This section applies to a member of the scheme, not being an existing contributor, who:
- (a) immediately before 1 October 1972, was a member of the Defence Force on continuous full-time service and was in

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receipt of a pension under the previous legislation a part of which had been cancelled under subsection 69(1A) of the previous Act; and

- (b) on 1 October 1972, without having ceased to be on continuous full-time service, became an eligible member of the Defence Force for the purposes of this Act.
- (2) A member of the scheme to whom this section applies may, by notice in writing given to CSC within a period of 90 days after the day on which this Act receives the Royal Assent, or within such further period as CSC, in special circumstances, allows, elect to have the period, or a specified part of the period, during which a part of his pension under the previous legislation was cancelled by force of subsection 69(1A) of the previous Act taken into account as qualifying service under this Act.
- (3) Where a member of the scheme has elected under subsection (2) to have a period taken into account as qualifying service under this Act, he shall pay an additional contribution to the Commonwealth under this section of an amount equal to 5.5% of the amount of pay that CSC determines would have been the pay received by him in respect of that period if, from time to time during that period, his rate of pay had been the maximum rate of pay payable to persons of the rank, branch and group that was from time to time applicable to him during that period.
- (4) A member of the scheme who is required to pay an additional contribution to the Commonwealth under subsection (3) shall also pay to the Commonwealth an amount equal to the amount of pension paid to him under the previous Act in respect of the period to which the election made by him under subsection (2) relates.

94 Death of contributing member after 60 days absence without leave

In the application of section 49 in relation to a member of the scheme who died during the transitional period, the reference in subsection (2) of that section to the period of 6 months after the death of a person shall be read as a reference to that period or the

period of 90 days after this Act receives the Royal Assent, whichever last expires.

95 Pre-existing invalidity or incapacity

- (1) Where a contributing member who became a member of the scheme during the transitional period, or an existing contributor, has been, during the transitional period, or is, after the transitional period, retired on the ground of invalidity or of physical or mental incapacity to perform his duties, then, in the application to him of subsection 28(1), the reference in that subsection to a period of one year after a contributing member became a contributing member shall be read as a reference to the period of 90 days after the person became a contributing member or, if he was an existing contributor, to the period of 90 days after he became a contributor under the previous Act.
- (2) Where the Board was, during the transitional period, satisfied with respect to a member of the Defence Force who, within a period of 90 days after becoming a contributing member, or, if he was an existing contributor, within a period of 90 days after becoming a contributor for the purposes of the previous Act, was retired on the ground of invalidity or of physical or mental incapacity to perform his duties, that:
 - (a) the invalidity or incapacity was caused, or was substantially contributed to, by a physical or mental condition that existed at the time he became a contributing member or a contributor, as the case may be; and
 - (b) the condition was not aggravated, or was not materially aggravated, by his service as a member of the Defence Force;he is not entitled, and shall be deemed not to have become entitled, to invalidity benefit under this Act.

96 Invalidity classification

Where, during the transitional period, a contributing member (whether an existing contributor or not) retired and, on his retirement, became entitled to invalidity benefit under Part V, any

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classification of the person during the transitional period by the Board purporting to be under section 51 of the previous Act shall, for the purposes of this Act, be deemed to be a classification of the incapacity of the person by the Authority under section 30 of this Act, and any reclassification of the incapacity of a person during the transitional period by the Board purporting to be under section 53 of the previous Act shall, for the purposes of this Act, be deemed to be a reclassification of the person made by the Authority under section 34 of this Act.

97 Medical examination of member of scheme entitled to invalidity pay

Where, under section 53B of the previous Act, the Board, at any time during the transitional period, suspended a pension that, at that time, was payable to a member of the scheme, by reason that the person failed to comply with a notice given to him under section 53B of the previous Act, the suspension has effect, and shall be deemed to have had effect, for the purposes of this Act as if any invalidity pay to which the person is entitled under this Act had been suspended at that time by the Authority under section 35 of this Act, and the notice given by the Board shall, for the purposes of section 35 of this Act, be deemed to have been a notice given by the Authority under that section.

98 Incapacity due to wilful action

Where, during the transitional period, a contributing member (whether an existing contributor or not) retired on the ground of invalidity or of physical or mental incapacity to perform his duties and the invalidity or incapacity was, in the opinion of the Board, due to wilful action on his part for the purpose of obtaining pension under the previous Act, he is not entitled to invalidity benefit, and shall be deemed not to have become entitled to invalidity benefit, under this Act.

Part XA—Pension increases

Division 1—Introduction

98AA Simplified outline of this Part

Certain pension benefits are indexed each 1 January and 1 July.

For pensioners aged under 55, the indexation is based on positive movements in the consumer price index.

For pensioners aged 55 or older, the indexation is based on the more favourable of positive movements in:

- (a) the consumer price index; and
- (b) the pensioner and beneficiary living cost index;

with an adjustment if needed to ensure that affected pension benefits are increased by at least the percentage required to maintain a hypothetical pension at 27.7% of male total average weekly earnings.

98A Definitions

In this Part, unless the contrary intention appears:

55-plus percentage has the meaning given by step 7 of the method statement in subsection 98GB(2).

current indicative pension amount has the meaning given by step 4 of the method statement in subsection 98GB(2).

December quarter means the quarter ending on 31 December.

first quarter, in relation to a half-year, means:

- (a) for a half-year beginning on 1 January in a year—the March quarter of the year; and

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(b) for a half-year beginning on 1 July in a year—the September quarter of the year.

half-year means a period of 6 months beginning on 1 January or 1 July in any year.

indicative pension amount has the meaning given by subsection 98GC(1).

June quarter means the quarter ending on 30 June.

LCI percentage (short for living cost index percentage) has the meaning given by section 98GD.

March quarter means the quarter ending on 31 March.

pension benefit includes a pension granted under section 43A or 44.

pensioner means a person to whom a pension benefit is payable.

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

prescribed percentage has the meaning given by subsection 98B(3).

relevant rate has the meaning given by subsection 98B(4).

September quarter means the quarter ending on 30 September.

Statistician means the Australian Statistician.

98AB Substitutions and changes by Statistician

- (1) Subject to subsection (2), if at any time (whether before or after the commencement of this Part) the Statistician publishes:
 - (a) an index number of the kind referred to in subsection 98B(3) or 98GD(1); or
 - (b) an amount of the kind referred to in subsection 98GE(2);

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in substitution for an index number or amount previously published by the Statistician, disregard the publication of the later index number or amount for the purposes of this Part.

- (2) If at any time (whether before or after the commencement of this Part), the Statistician changes the index reference period for:
- (a) the All Groups Consumer Price Index referred to in subsection 98B(3); or
 - (b) the All Groups Pensioner and Beneficiary Living Cost Index referred to in subsection 98GD(1);
- then, for the purposes of applying this Part after the change takes place, have regard only to index numbers published in terms of the new index reference period.
- (3) If at any time the Statistician changes the reference period for amounts of the kind referred to in subsection 98GE(2), then, for the purposes of applying this Part after the change takes place, have regard only to amounts published in terms of the new reference period.

98AC Rounding of percentages

If any of the following is or includes a fraction of one-tenth of 1%:

- (a) the prescribed percentage;
- (b) the LCI percentage;
- (c) the 55-plus percentage;

then:

- (d) disregard the fraction if it is less than half of one-tenth; and
- (e) otherwise—treat the fraction as if it were one-tenth.

Division 2—General provisions about pension increases

98AD Simplified outline of this Division

Certain pension benefits are indexed each 1 January and 1 July.

For pensioners aged under 55, the indexation is based on positive movements in the consumer price index.

For pensioners aged 55 or older, movements in the consumer price index are relevant, but they are only part of the indexation method.

For all pensioners, there are rules dealing with special cases including pension benefits that have only recently become payable and situations involving commutation of a portion of a pension benefit.

98B Increase in certain pensions

Increase

- (1) Subject to this Part, a pensioner is entitled, at the commencement of a prescribed half-year, to an increase in the pensioner's relevant rate of pension benefit in relation to that half-year. The increase is worked out by using:
 - (a) if the pensioner is aged 55 or older at the commencement of the prescribed half-year—the 55-plus percentage; and
 - (b) otherwise—the prescribed percentage.

Increase by prescribed percentage

- (2) The increase provided for by subsection (1), for a pensioner aged under 55 at the commencement of a prescribed half-year (the **relevant prescribed half-year**), is the prescribed percentage of the pensioner's relevant rate of pension benefit in relation to the relevant prescribed half-year.

Prescribed percentage

- (3) Subject to subsection (3A), the **prescribed percentage** for a prescribed half-year is:

$$\frac{\text{First quarter CPI number} - \text{Base quarter CPI number}}{\text{Base quarter CPI number}} \times 100$$

where:

base quarter CPI number means the CPI number in respect of the March quarter or September quarter that:

- (a) is before the first quarter of the half-year immediately before the prescribed half-year; and
- (b) has the highest CPI number.

CPI number, in respect of a quarter, means the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Statistician in respect of the quarter.

first quarter CPI number means the CPI number in respect of the first quarter of the half-year immediately before the prescribed half-year.

- (3A) If the first quarter CPI number is equal to or less than the base quarter CPI number, then, for the relevant prescribed half-year:
- (a) the prescribed percentage is taken to be 0%; and
 - (b) subsection (1) does not provide for an increase for a pensioner aged under 55 at the commencement of that half-year.

Relevant rate of pension benefit

- (4) The **relevant rate** of a pensioner's pension benefit, in relation to a relevant prescribed half-year, is:
- (a) in relation to a pensioner who is a recipient member to whom invalidity pay is payable—the rate at which invalidity pay was payable to the pensioner immediately before the

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commencement of the relevant prescribed half-year or, if a notional rate of invalidity pay is applicable to the pensioner in accordance with subsection (5) and the notional rate of invalidity pay so applicable immediately before the commencement of that half-year is lower than the rate at which invalidity pay was payable to the pensioner immediately before the commencement of that half-year, the notional rate of invalidity pay so applicable immediately before the commencement of that half-year;

- (ab) in relation to a pensioner who is the spouse of a recipient member to whom, immediately before his death, invalidity pay was payable—a rate equal to five-eighths of the rate at which invalidity pay would have been payable to the deceased recipient member immediately before the commencement of the relevant prescribed half-year if he had not died or, if a notional rate of invalidity pay is applicable to the deceased recipient member in accordance with subsection (5) and the notional rate of invalidity pay so applicable immediately before the commencement of that half-year is lower than the rate at which invalidity pay would have been payable to the deceased recipient member before the commencement of that half-year if he had not died, a rate equal to five-eighths of the notional rate of invalidity pay so applicable immediately before the commencement of that half-year;
- (ac) in relation to a pensioner who is the spouse of a person who, immediately before his death, was a contributing member—the rate at which pension benefit was payable to the pensioner immediately before the commencement of the relevant prescribed half-year;
- (b) in relation to a pensioner who is a recipient member to whom retirement pay is payable—the rate at which retirement pay was payable to the pensioner immediately before the commencement of the relevant prescribed half-year or, if a notional rate of retirement pay is applicable to the pensioner in accordance with subsection (5) and the notional rate of retirement pay so applicable immediately before the commencement of that half-year is lower than the rate at

which retirement pay was payable to the pensioner immediately before the commencement of that half-year, the notional rate of retirement pay so applicable immediately before the commencement of that half-year;

- (c) in relation to a pensioner who is the spouse of a recipient member to whom, immediately before his death, retirement pay was payable—a rate equal to five-eighths of the rate at which retirement pay would have been payable to the deceased recipient member immediately before the commencement of the relevant prescribed half-year if he had not died or, if a notional rate of retirement pay is applicable to the deceased recipient member in accordance with subsection (5) and the notional rate of retirement pay so applicable immediately before the commencement of that half-year is lower than the rate at which retirement pay would have been payable to the deceased recipient member immediately before the commencement of that half-year if he had not died, a rate equal to five-eighths of the notional rate of retirement pay so applicable immediately before the commencement of that half-year;
- (d) in relation to a pensioner to whom subsection 42(2) or 43(2) applies—the rate at which pension benefit referred to as additional pension was payable immediately before the commencement of the relevant prescribed half-year to the pensioner under whichever of those subsections is applicable;
- (e) in relation to a pensioner to whom subsection 42(3) or 43(3) applies and who is the child of a deceased recipient member—a rate equal to such proportion as, under subsection (6), is the appropriate proportion of the rate at which retirement pay or invalidity pay, as the case may be, would, immediately before the commencement of the relevant prescribed half-year, have been payable to the deceased recipient member if he had not died or, if a notional rate of retirement pay or invalidity pay, as the case may be, is applicable to the deceased recipient member in accordance with subsection (5) and the notional rate of retirement pay or invalidity pay, as the case may be, so applicable immediately before the commencement of that half-year is lower than the

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rate at which retirement pay or invalidity pay, as the case may be, would have been payable to the deceased recipient member immediately before the commencement of that half-year if he had not died, a rate equal to such proportion as, under subsection (6), is the appropriate proportion of the notional rate of retirement pay or invalidity pay, as the case may be, so applicable immediately before the commencement of that half-year; or

- (f) in relation to a pensioner to whom a pension benefit is payable under section 43A or 44—a rate determined by CSC, being the rate which, in the opinion of CSC, is the appropriate rate to be regarded as the relevant rate of pension in relation to the pensioner for the relevant prescribed half-year.

- (4A) For the purposes of paragraphs (4)(ab), (c) and (e), in working out the rate at which invalidity pay or retirement pay would have been payable to a deceased recipient member, work out any increases to which the member would have been entitled on or after the later of:

- (a) 1 July 2014; and
(b) the day of the member's death;

using the pensioner's age at the time of the increase (not the age that the member would have been at that time, had the member not died).

- (5) For the purposes of subsection (4):

- (aa) a notional rate of invalidity pay is applicable to a recipient member if and only if that member:

- (i) is a member of the scheme who:

(A) was retired after the commencement of section 32A; and

(B) on his retirement, was classified as Class C under section 30; and

- (ii) has not elected under section 32A to commute a portion of his invalidity pay equal to or greater than 4 times the amount per annum of the invalidity pay to which he was entitled upon his retirement;

and the notional rate of invalidity pay applicable to the member at a particular time is the rate at which invalidity pay would have been payable to him at that time if he had immediately upon his retirement commuted a portion of his invalidity pay equal to 4 times the amount per annum of the invalidity pay to which he was entitled;

- (ab) a notional rate of invalidity pay is applicable to a deceased recipient member if and only if that deceased member:

- (i) was a member of the scheme who:

- (A) was retired after the commencement of section 32A; and

- (B) on his retirement, was classified as Class C under section 30; and

- (ii) had not, before his death, elected under section 32A to commute a portion of his invalidity pay equal to or greater than 4 times the amount per annum of the invalidity pay to which he was entitled upon his retirement;

and the notional rate of invalidity pay applicable to the deceased member at a particular time is the rate at which invalidity pay would have been payable to him at that time if he had not died and if he had immediately upon his retirement commuted a portion of his invalidity pay equal to 4 times the amount per annum of the invalidity pay to which he was entitled;

- (a) a notional rate of retirement pay is applicable to a recipient member if and only if that member has not elected under section 24 to commute a portion of his retirement pay equal to or greater than 4 times the amount per annum of the retirement pay to which he was entitled upon his retirement, and the notional rate of retirement pay applicable to the member at a particular time is the rate at which retirement pay would have been payable to him at that time if he had

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immediately upon his retirement commuted a portion of his retirement pay equal to 4 times the amount per annum of the retirement pay to which he was entitled; and

- (b) a notional rate of retirement pay is applicable to a deceased recipient member if and only if that deceased member had not, before his death, elected under section 24 to commute a portion of his retirement pay equal to or greater than 4 times the amount per annum of the retirement pay to which he was entitled upon his retirement and the notional rate of retirement pay applicable to the deceased member at a particular time is the rate at which retirement pay would have been payable to him at that time if he had not died and if he had immediately upon his retirement commuted a portion of his retirement pay equal to 4 times the amount per annum of the retirement pay to which he was entitled.

Increases in children's pensions

- (5A) If the all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the first quarter of the half-year immediately preceding a prescribed half-year exceeds the highest all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the first quarter of any earlier half-year, not being a half-year earlier than the half-year that commenced on 1 July 1985, sections 42 and 43 have effect, in that prescribed half-year, as if:
- (a) for the amount of \$312 specified in subsections 42(2) and (3); and
- (b) for the amount of \$5,000 specified in subsections 43(2) and (3);
- there were substituted, on the first day of that prescribed half-year, an amount calculated by adding to the existing amount the prescribed percentage of the existing amount.
- (5B) For the purposes of the application of subsection (5A) to a provision specified in that subsection, the existing amount is:

- (a) in relation to the prescribed half-year that commenced on 1 July 2001—the amount that was the existing amount in relation to that provision, as calculated under this section immediately before the commencement of item 14 of Schedule 3 to the *Superannuation Legislation Amendment (Indexation) Act 2001*; and
 - (b) in relation to any subsequent prescribed half-year—the amount that, because of a previous application or previous applications of subsection (5A), is taken to have been substituted, or last substituted, for the amount specified in that provision.
- (6) For the purposes of subsection (4), the appropriate proportion is:
- (a) in the case of a pension benefit payable under subsection 42(3)—one-sixth of five-eighths; and
 - (b) in the case of a pension benefit payable under subsection 43(3)—one-eighth of five-eighths.

Death of recipient member on 30 June or 31 December

- (7) Where, by reason of the death of a recipient member on 30 June or 31 December (as the case requires) immediately preceding the commencement of a prescribed half-year, a pension benefit becomes payable, on the following day, to another person, that other person shall be entitled, at the commencement of that prescribed half-year, to such an increase in the rate of that pension benefit as he would have been entitled to had the pension benefit become payable to him on that 30 June or 31 December (as the case requires).

98C Application of increase to suspended pension benefits

Where a pension benefit would, but for its suspension under subsection 35(3), be payable to a person immediately before the commencement of a prescribed half-year, that pension benefit shall, for the purposes of this Part, be deemed to have been payable to that person immediately before the commencement of that prescribed half-year but any increase in the rate of that pension

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benefit by virtue of this Part does not take effect in respect of any part of that period of suspension.

98D Adjustment of increase in case of certain pension benefits

- (1) Where a person to whom pension benefit has become payable (whether or not it has become payable to the person by virtue of section 78) would, but for this section, be entitled to an increase in the rate at which the pension benefit was payable to the person immediately before the commencement of the prescribed half-year and:
- (a) if the pension benefit became payable to the person otherwise than as a spouse or as an eligible child—the pension benefit became payable to the person during the half-year (in this section referred to as the *preceding half-year*) immediately preceding the prescribed half-year;
 - (b) if the pension benefit became payable to the person as the spouse of a member of the scheme and pension benefit in accordance with that section was not payable to the member immediately before his death—the pension benefit became payable to the spouse during the preceding half-year;
 - (c) if the pension benefit became payable to the person as the spouse of a member of the scheme and pension benefit was payable to the member immediately preceding his death—the member's pension benefit became payable during the half-year;
 - (d) if the pension benefit became payable to the person as an eligible child and pension benefit was not payable to the member of the scheme in relation to whom the person is an eligible child—the pension benefit became payable to the child during the preceding half-year; and
 - (e) if the pension benefit became payable to the person as an eligible child and pension benefit was payable to a member of the scheme in relation to whom the person is an eligible child—the member's pension benefit became payable during the preceding half-year;

this section applies to the first-mentioned pension benefit.

- (2) Where a pension benefit is, under section 43A or 44, payable to a person immediately before the commencement of a prescribed half-year:
- (a) in a case where the pension benefit became so payable by virtue of the retirement and death, during the preceding half-year, of a member of the scheme who was, at the time of his death, a recipient member—this section applies to the pension benefit as if it were a pension benefit payable to the person otherwise than as a spouse or as an eligible child from the day following the date of retirement of the member of the scheme;
 - (b) in a case where the pension benefit became so payable by virtue of the death, during the preceding half-year, of a member of the scheme who was, at the time of his death, a contributing member—this section applies to the pension benefit as if it were a pension benefit payable to the person otherwise than as a spouse or as an eligible child from the day following the date of death of the member of the scheme;
or
 - (c) in any other case—this section does not apply to the pension benefit.
- (3) If:
- (a) the pension benefit;
 - (b) where paragraph (1)(c) applies—the pension benefit that was payable to the member of the scheme in relation to whom the person is a spouse; or
 - (c) where paragraph (1)(e) applies—the pension benefit that was payable to the member of the scheme in relation to whom the person was an eligible child;
- became payable after 16 June or 16 December (as the case requires) in the preceding half-year the person is not entitled to the increase.

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- (4) If:
- (a) the pension benefit;
 - (b) where paragraph (1)(c) applies—the pension benefit that was payable to the member of the scheme in relation to whom the person is a spouse; or
 - (c) where paragraph (1)(e) applies—the pension benefit that was payable to the member of the scheme in relation to whom the person was an eligible child;
- became payable on or before 16 June or 16 December (as the case requires) in the preceding half-year, the amount of the increase is so much only of the amount that, but for this section, would have been the amount of the increase as bears to that last-mentioned amount the same proportion as the number of months in the period that commenced on the day on which the pension benefit referred to in paragraph (a), (b) or (c) became payable and ended on 30 June or 31 December (as the case requires) in the preceding half-year bears to 6.
- (5) If the period referred to in subsection (4) is less than 1 month, that period shall be treated as 1 month.
- (6) If the period referred to in subsection (4) consists of a number of whole months and a part of a month:
- (a) where the number of days in that part of that month is less than one-half of the number of days in that month—that part shall be disregarded; and
 - (b) where the number of days in that part of that month is not less than one-half of the number of days in that month—that part shall be treated as a whole month.

98E Date of payment of increases

Subject to sections 98F and 98G, an increase payable by virtue of this Part in the rate of a pension benefit that was, or is, under subsection 98B(7), to be treated as having been, payable to a person on 30 June or 31 December (as the case requires) in a half-year applies in relation to the instalment of pension benefit

falling due on the first pension pay-day occurring after that day and in relation to all subsequent instalments.

98F Rate of invalidity pay payable on reclassification during a prescribed half-year

(1) Where:

- (a) a person to whom pension benefit, being invalidity pay, is payable, is reclassified under section 34 during a prescribed half-year; and
- (b) the person became entitled at the commencement of that half-year to an increase under this Part in the rate at which the pension benefit was payable to him immediately before the commencement of that half-year;

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

(3) Where:

- (a) at the commencement of a prescribed half-year, a member of the scheme entitled to invalidity benefit was classified as Class C under section 30 (whether on retirement or because of a reclassification under section 34) but was not entitled to invalidity pay; and
- (b) during the prescribed half-year the member is reclassified as Class A or Class B;

the rate at which pension benefit, being invalidity pay, is payable to the member on or after the day from which the reclassification has effect is the rate at which the benefit would be payable to the member on that day if, at all times during the period during which the member was classified as Class C, the member had been classified as Class A or Class B (as the case may be).

98G Commutation of pension benefits during a prescribed half-year

(1) Sections 24 and 32A do not authorize the commutation of a pension benefit in so far as the pension benefit has been increased by virtue of this Part.

(2) Where:

(a) a portion of the pension benefit of a person is commuted during a prescribed half-year; and

(b) the person became entitled at the commencement of the half-year to an increase under this Part in the rate at which pension benefit was payable to him immediately before the commencement of that half-year;

the rate at which the pension benefit is payable to him on and after the date on which that portion of the pension benefit is so commuted is the rate at which the pension benefit would have been payable to him at the commencement of the half-year if:

(c) he had commuted that portion of his pension benefit on the date on which he became entitled to the pension benefit; and

(d) he had attained, on the date on which he became entitled to the pension benefit, the age that is his age on the date of commutation.

Division 3—Increase for pensioners aged 55 or older

98GA Simplified outline of this Division

For pensioners aged 55 or older, indexation is based on the more favourable of positive movements in:

- (a) the consumer price index (CPI); and
- (b) the pensioner and beneficiary living cost index (LCI);

with an adjustment if needed to ensure that affected pension benefits are increased by at least the percentage required to maintain a hypothetical pension at 27.7% of male total average weekly earnings (MTAWE).

The hypothetical pension (called the indicative pension amount) is part of the method used to work out what the percentage increase should be (called the 55-plus percentage). The hypothetical pension does not represent the amount of any actual pension benefit, or the amount that any actual pension benefit should be. It is just a device to work out the percentage by which actual pension benefits should be increased.

Each 1 January and 1 July, the amount of the hypothetical pension, as indexed by the higher of CPI and LCI, is compared with what the amount of the hypothetical pension should be if it is to continue to be at least 27.7% of MTAWE. If the CPI/LCI result is higher than the MTAWE result, the 55-plus percentage is the higher of the percentage movements in CPI and LCI. If the MTAWE result is higher, the 55-plus percentage is the percentage increase needed to maintain the hypothetical pension at 27.7% of MTAWE.

Once the 55-plus percentage has been worked out, affected pension benefits are increased by that percentage.

98GB Increase for pensioners aged 55 or older

Increase by 55-plus percentage

- (1) The increase provided for by subsection 98B(1), for a pensioner aged 55 or older at the commencement of a prescribed half-year (the **relevant prescribed half-year**), is the 55-plus percentage of the pensioner's relevant rate of pension benefit in relation to the relevant prescribed half-year.

55-plus percentage

- (2) This is how to work out the 55-plus percentage for the relevant prescribed half-year:

Method statement

- Step 1. Work out the prescribed percentage for the prescribed half-year.
- Step 2. Use section 98GD to work out the LCI percentage for the prescribed half-year.
- Step 3. Take the higher of the percentages worked out in steps 1 and 2. (If they are the same, use the step 1 percentage.) This is the CPI/LCI percentage.
- Step 4. Take the indicative pension amount for the prescribed half-year immediately before the relevant prescribed half-year. This is the current indicative pension amount.
- Step 5. Work out the amount that is the CPI/LCI percentage of the current indicative pension amount and add it to the current indicative pension amount. This is the CPI/LCI result.
- Step 6. Use section 98GE to work out the MTAWÉ result.

Step 7. If the CPI/LCI result is the same as or higher than the MTAWA result, the 55-plus percentage for the prescribed half-year is the CPI/LCI percentage. If the CPI/LCI result is lower than the MTAWA result, the 55-plus percentage for the prescribed half-year is the percentage worked out under section 98GF.

Nil or negative change

- (3) If, for a prescribed half-year:
- (a) the CPI/LCI result in step 5 is the same as the current indicative pension amount; and
 - (b) the MTAWA result in step 6 is the same as or lower than the current indicative pension amount;
- then, for that prescribed half-year:
- (c) the 55-plus percentage is taken to be 0%; and
 - (d) subsection 98B(1) does not provide for an increase for a pensioner aged 55 or older at the commencement of that half-year.

98GC Indicative pension amount

- (1) The *indicative pension amount* is:
- (a) for the prescribed half-year commencing on 1 January 2014—\$19,541.91; and
 - (b) for a later prescribed half-year—the amount most recently substituted in accordance with subsection (2).

Note: The indicative pension amount is a hypothetical amount that does not represent the amount of any actual pension benefit, or the amount that any actual pension benefit should be. It is just a device to work out the percentage by which actual pension benefits should be increased.

- (2) The indicative pension amount for the prescribed half-year commencing on 1 January 2014 is to be increased, on 1 July 2014 and each later 1 January and 1 July, by the 55-plus percentage, as if the amount were a pension benefit payable to a pensioner aged 55

Section 98GD

or older on the day. Immediately after the increase, the increased amount is substituted as the indicative pension amount.

- (3) The reference in subsection (2) to the increased amount includes a reference to an amount that, because the 55-plus percentage for a prescribed half-year was 0%, has not changed.

98GD LCI percentage

LCI percentage

- (1) Subject to subsection (2), the **LCI percentage** for a prescribed half-year is:

$$\frac{\text{First quarter LCI number} - \text{Base quarter LCI number}}{\text{Base quarter LCI number}} \times 100$$

where:

base quarter LCI number means the LCI number in respect of the March quarter or September quarter that:

- (a) is before the first quarter of the half-year immediately before the prescribed half-year; and
- (b) has the highest LCI number.

first quarter LCI number means the LCI number in respect of the first quarter of the half-year immediately before the prescribed half-year.

LCI number, in respect of a quarter, is the All Groups Pensioner and Beneficiary Living Cost Index number that is the weighted average of the 8 capital cities and is published by the Statistician in respect of the quarter.

Nil or negative change

- (2) If the first quarter LCI number is equal to or less than the base quarter LCI number, the LCI percentage for the prescribed half-year is taken to be 0%.

98GE MTAWÉ result

- (1) For the purposes of step 6 of the method statement in subsection 98GB(2), the **MTAWÉ result** is the amount that is 27.7% of the annualised MTAWÉ figure for the quarter for which the Statistician has most recently published the amount referred to in subsection (2).
- (2) For the purposes of subsection (1), the **annualised MTAWÉ figure**, for a quarter, is 52 times the amount set out for the reference period in the quarter under the headings “Average Weekly Earnings of Employees, Australia—Males—All males—Total earnings—ORIGINAL” in a document published by the Statistician entitled “Average Weekly Earnings, States and Australia”.
- (3) If at any time (whether before or after the commencement of this section), the Statistician publishes the amount referred to in subsection (2):
 - (a) under differently described headings (the **new headings**); or
 - (b) in a document entitled otherwise than as described in subsection (2) (the **new document**);then the annualised MTAWÉ figure is to be calculated in accordance with subsection (2) as if the references to:
 - (c) “Average Weekly Earnings of Employees, Australia—Males—All males—Total earnings—ORIGINAL”; or
 - (d) “Average Weekly Earnings, States and Australia”;were references to either of the new headings or the new document, or both of them, as the case requires.
- (4) For the purposes of this section, the **reference period** in a particular quarter is the period described by the Statistician as the pay period ending on or before a specified day that is the third Friday of the middle month of that quarter.

Part XA Pension increases

Division 3 Increase for pensioners aged 55 or older

Section 98GF

98GF 55-plus percentage if MTAWWE result is higher

For the purposes of step 7 of the method statement in subsection 98GB(2), if this section applies then the **55-plus percentage**, for the prescribed half-year, is:

$$\frac{\text{MTAWWE result} - \text{Current indicative pension amount}}{\text{Current indicative pension result}} \times 100$$

Part XB—Provisions relating to certain members of the Defence Force

98H Interpretation

In this Part:

prescribed member means a person who was a member of the Defence Force at any time during the prescribed period.

prescribed period means the period that commenced on 1 October 1972 and ended on 13 May 1981.

98J Waiving of contributions

- (1) Notwithstanding any other provision of this Act, where:
 - (a) throughout any part (in this subsection referred to as the *relevant part*) of the prescribed period, a prescribed member held an acting or temporary rank; and
 - (b) the amount paid by, or deducted from the pay of, the member in respect of a contribution payable by him during the relevant part of the prescribed period was less than the amount of that contribution but was equal to the amount that would have been the amount of that contribution if the member had not held that acting or temporary rank;
that member or the personal representative of that member, as the case requires, is not liable to pay the difference between the amount of that contribution and the amount so paid or deducted unless:
 - (c) the member retired or died at the end of the relevant part of the prescribed period; and
 - (d) by reason of his retirement or death, a pension benefit, or a deferred benefit applicable under Division 3 of Part IX, became payable during the prescribed period.

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- (2) In ascertaining, for the purposes of this Act, the amount of a refund of contributions or the amount of a lump sum required to be calculated by reference to contributions, the amount of a contribution a part of which, by virtue of subsection (1), a member, or the personal representative of a member, is not liable to pay shall be taken to be reduced by the amount of that part.
- (3) Where:
- (a) after the commencement of this section, a prescribed member, or the personal representative of a prescribed member, who, during the prescribed period, held an acting or temporary rank, is liable to pay an amount to the Commonwealth in respect of contributions that were payable by the member when he held that rank by reason that the amounts that were paid, or deducted, in respect of those contributions were calculated by reference to the contributions that would have been payable if the member had not held that rank;
 - (b) a benefit has become payable to or in respect of that member, being:
 - (i) invalidity pay payable to a member classified as Class A or Class B under section 30;
 - (ii) a spouse pension under section 38;
 - (iii) a child's pension under subsection 42(2) or 43(2); or
 - (iv) a deferred benefit applicable under Division 3 of Part IX that is of the same nature, and payable in the same circumstances, as a pension referred to in subparagraph (i), (ii) or (iii); and
 - (c) but for this subsection, the amount of the liability referred to in paragraph (a) would exceed the amount that was payable to or in respect of the member during the prescribed period in respect of benefits referred to in paragraph (b) but was not paid during that period;
- the amount of the liability referred to in paragraph (a) is reduced by the excess.

98K Variation of pension benefits

- (1) Subject to subsection (3) but notwithstanding any other provision of this Act, where a prescribed member:
- (a) retired during the prescribed period; and
 - (b) throughout a period that ended immediately before his retirement, held an acting or temporary rank;
- the rate of any pension benefit payable, after 13 May 1981, to, or in respect of, that member shall be reduced by the difference between:
- (c) the amount that, but for this section and subsections 24(3) and 32A(4), would be the amount per annum of the benefit; and
 - (d) the amount that, but for this section and those subsections, would have been the amount per annum of the benefit if, immediately before the retirement of the member, he had not held that acting or temporary rank.
- (2) Subject to subsection (3) but notwithstanding any other provision of this Act, where a prescribed member:
- (a) died during the prescribed period before retirement; and
 - (b) throughout a period that ended immediately before his death, held an acting or temporary rank;
- the rate of any widow's pension or child's pension payable, after 13 May 1981, in respect of that member shall be reduced by the difference between:
- (c) the amount that, but for this section, would be the amount per annum of that pension; and
 - (d) the amount that, but for this section, would have been the amount per annum of that pension if, immediately before the death of the member, he had not held that acting or temporary rank.
- (3) Subsections (1) and (2) do not apply in relation to:
- (a) a rate of pension benefit that has been calculated by reference to another rate of pension benefit that has been reduced in accordance with either of those subsections; or

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- (b) a rate of pension benefit that has been reduced in accordance with either of those subsections and increased in accordance with Part XA.
- (4) In this section, *pension benefit* includes a deferred benefit applicable under Division 3 of Part IX.

98L Commutation of retirement pay and invalidity pay

- (1) Notwithstanding any other provision of this Act, where a prescribed member:
 - (a) retired during the prescribed period;
 - (b) throughout a period that ended immediately before his retirement, held an acting or temporary rank; and
 - (c) has made:
 - (i) an election under section 24 in respect of retirement pay; or
 - (ii) an election under section 32A in respect of invalidity pay;the member may make:
 - (d) a further election under section 24 in respect of retirement pay; or
 - (e) a further election under section 32A in respect of invalidity pay;as the case may be, before 1 September 1982.
- (2) For the purposes of this Act, where a prescribed member who has made:
 - (a) an election or elections under section 24 in respect of retirement pay; or
 - (b) an election or elections under section 32A in respect of invalidity pay;makes a further election under section 24 or 32A, as the case may be, that he would not have been entitled to make but for subsection (1), that further election shall, notwithstanding subsections 24(4) and 32A(6), as the case may be, be deemed to

have taken effect on the day on which that first-mentioned election or the earliest of those first-mentioned elections took effect.

Part XI—Review of decisions by CSC

Division 1—Review of decisions by CSC

99 Review of decisions of CSC

- (2) A person who is affected by a decision of CSC and is dissatisfied with the decision may, by notice in writing given to CSC, within a period of 30 days after the date on which the decision first comes to the notice of the person, or within such further period as CSC allows, request CSC to reconsider the decision.
- (3) There shall be set out in the request the ground on which the request is made.
- (4) After receiving a request for reconsideration of a decision, CSC must:
 - (a) refer the decision to the Defence Force Case Assessment Panel for the Panel to make recommendations to CSC in relation to the decision; or
 - (b) refer the decision to the Defence Force Case Assessment Panel for the Panel to reconsider the decision; or
 - (c) reconsider the decision itself.
- (4A) If CSC reconsiders a decision, it may:
 - (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) set aside the decision and substitute a new decision.
- (5) CSC shall, by notice in writing to the person who made the request, inform the person of the result of its reconsideration of the decision.

Division 2—Defence Force Case Assessment Panel

100 Establishment

CSC must establish the Defence Force Case Assessment Panel.

101 Members

- (1) The Panel comprises:
 - (a) a director of CSC nominated by the Chief of the Defence Force under the *Governance of Australian Government Superannuation Schemes Act 2011*, as determined by CSC; and
 - (b) a person nominated, in writing, by the Chief of the Air Force; and
 - (c) a person nominated, in writing, by the Chief of the Army; and
 - (d) a person nominated, in writing, by the Chief of the Navy; and
 - (e) up to 2 other persons, as determined by CSC.
- (2) The director of CSC determined by CSC under paragraph (1)(a) is to be the Chair of the Panel.

102 Functions

- (1) The functions of the Panel are to review any decision referred to it under this Part or Part 5 of the *Australian Defence Force Cover Act 2015* and:
 - (a) if CSC has delegated its powers to reconsider the decision to the Panel—to confirm, vary, substitute or set aside the decision; or
 - (b) if CSC has delegated to the Panel any of CSC's powers in relation to the decision (other than the power to reconsider the decision)—to exercise those powers; or
 - (c) in any other case—to make recommendations to CSC in relation to the decision.

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Note 1: Paragraph (c)—see section 106.

Note 2: Part 5 of the *Australian Defence Force Cover Act 2015* provides for CSC to refer to the Panel a decision of CSC under that Act if a person affected by the decision requests CSC to reconsider the decision.

- (2) When reviewing a decision, the Panel:
- (a) must take into account any evidence relevant to the decision that is submitted to it; and
 - (b) may also take steps to obtain any other evidence that it considers necessary for a proper review of the decision.

103 Proceedings

- (1) Subject to any directions given by CSC, the Panel may regulate its proceedings as the Panel thinks fit.
- (2) If a direction is given in writing, the direction is not a legislative instrument.

104 Indemnification

Any matter or thing done, or omitted to be done, in good faith by a member of the Panel in the performance of functions under this Division does not subject him or her to any action, liability, claim or demand.

Note: See also section 35 of the *Governance of Australian Government Superannuation Schemes Act 2011*.

105 Remuneration and allowances

- (1) A member of the Panel is to be paid such remuneration as is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid such remuneration as is prescribed.
- (2) A member of the Panel is to be paid such allowances (if any) as are prescribed.

- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

106 Recommendations by Panel to CSC

- (1) If the Panel makes recommendations to CSC in relation to a decision referred to it under section 99, then, after CSC takes into account:
- (a) the recommendations of the Panel; and
 - (b) any other matter that CSC considers relevant;
- CSC must make a decision in writing:
- (c) confirming the decision under review; or
 - (d) varying the decision under review; or
 - (e) setting aside the decision under review and substituting a new decision.

Note: Part 5 of the *Australian Defence Force Cover Act 2015* contains similar provisions for CSC to take into account recommendations of the Panel relating to decisions referred to it under that Part, and to confirm or vary those decisions or set them aside and substitute new decisions.

- (2) CSC's written decision must include the reasons for its decision.
- (3) CSC must make a copy of its written decision available to the applicant.

Division 3—Review of decisions by the Administrative Appeals Tribunal

107 Review by the Administrative Appeals Tribunal

Applications may be made to the Administrative Appeals Tribunal for:

- (a) review of a decision of CSC that has been confirmed or varied by CSC under paragraph 99(4A)(a) or (b); and
- (b) review of a decision of CSC that has been confirmed or varied by the Panel under paragraph 102(1)(a); and
- (c) review of a decision of CSC that has been confirmed or varied by CSC under paragraph 106(1)(c) or (d).

Part XII—Miscellaneous**124 Election relating to surcharge deduction amount**

- (1) A member of the scheme whose surcharge debt account is in debit when benefits (other than deferred benefits) become payable to the member under this Act may, not earlier than 3 months before, and not later than one year after, that benefit becomes payable, elect in writing that those benefits (instead of any productivity superannuation benefit payable to the member) be adjusted to take the member's surcharge deduction amount into account.
- (2) If the surcharge debt account of a member of the scheme is in debit when a benefit becomes payable in respect of the member under subsection 48(1) or 48A(2), then:
 - (a) the personal representative or a personal representative of the member; or
 - (b) if there are no personal representatives of the member—a person determined by CSC for the purposes of that subsection;may, not earlier than 3 months before, and not later than one year after, that benefit becomes payable, elect in writing that that benefit (instead of any productivity superannuation benefit payable to the member) be adjusted to take the member's surcharge deduction amount into account.
- (3) However, a person may not make an election under subsection (1) if the person has given CSC a release authority issued to the person under item 3 of the table in subsection 135-10(1) in Schedule 1 to the *Taxation Administration Act 1953*.

124A Determinations with respect to surcharge deduction amount

- (1) CSC must, in accordance with advice received from the Australian Government Actuary, determine in writing the conversion factor that, having regard to:

Section 124B

- (a) the age of a member of the scheme when a benefit becomes payable to the member; and
 - (b) other relevant factors (if any);
- is applicable for the purpose of working out, in relation to the member, the yearly amount that would have to be paid to discharge a liability equal to the member's surcharge deduction amount.
- (2) A determination under subsection (1) must be published in the *Gazette*.

124B Recoverable payments

- (1) If, apart from this subsection, the Commonwealth does not have power, under this Act or the previous legislation, to pay an amount (the *relevant amount*) to a person (the *recipient*) purportedly as a benefit, then the Commonwealth may pay the relevant amount to the recipient.

Recovery

- (2) If a payment is made under subsection (1) to the recipient, the relevant amount:
- (a) is a debt due to the Commonwealth by the recipient; and
 - (b) may be recovered by CSC, on behalf of the Commonwealth, in a court of competent jurisdiction.
- (3) If:
- (a) a payment is made under subsection (1) to the recipient; and
 - (b) the recipient is receiving, or is entitled to receive, a benefit;
- then:
- (c) the relevant amount; or
 - (d) such part of the relevant amount as the Board of CSC determines;
- may, if the Board of CSC so directs, be recovered by deduction from that benefit.

Section 124C

- (4) For the purposes of subsections 126(4) and (5), in determining whether an amount is payable, disregard subsection (1) of this section.
- (5) If the relevant amount is recovered under subsection 126(4) or (5), the relevant amount cannot be recovered under subsection (2) or (3) of this section.
- (6) If the relevant amount is recovered under subsection (2) or (3) of this section, the relevant amount cannot be recovered under subsection 126(4) or (5).

Benefit

- (7) For the purposes of this section, **benefit** includes pension or other money payable under the previous legislation.

124C Recoverable death payments

- (1) If, apart from this subsection, the Commonwealth does not have power, under this Act or the previous legislation, to pay an amount (the **relevant amount**) in any of the following circumstances:
 - (a) the relevant amount is deposited to an account kept in the name of a deceased person;
 - (b) the relevant amount is deposited to an account kept in the names of a deceased person and another person;
 - (c) the relevant amount is paid by way of a cheque made out to a deceased person;the Commonwealth may pay the relevant amount in the circumstances mentioned in paragraph (a), (b) or (c), so long as:
 - (d) on the last day on which changes could reasonably be made to the payment of the relevant amount, the chief executive officer (however described) of CSC did not know that the deceased person had died; and
 - (e) apart from this subsection, the relevant amount would have been payable as a benefit to the deceased person if the deceased person had not died.

Section 124D

- (2) If a payment is made under subsection (1), the relevant amount is taken to have been paid to the deceased person's estate.

Recovery

- (3) If a payment is made under subsection (1), the relevant amount:
- (a) is a debt due to the Commonwealth by the legal personal representative of the deceased person; and
 - (b) may be recovered by CSC, on behalf of the Commonwealth, in a court of competent jurisdiction.
- (4) For the purposes of subsections 126(4) and (5), in determining whether an amount is payable, disregard subsection (1) of this section.
- (5) If the relevant amount is recovered under subsection 126(4) or (5), the relevant amount cannot be recovered under subsection (3) of this section.
- (6) If the relevant amount is recovered under subsection (3) of this section, the relevant amount cannot be recovered under subsection 126(4) or (5).

Benefit

- (7) For the purposes of this section, **benefit** includes pension or other money payable under the previous legislation.

124D Reports about recoverable payments and recoverable death payments

- (1) CSC must cause a report of the following information to be published, in such manner as the Board of CSC thinks fit:
- (a) the number of payments that any employee of CSC was aware of that were made under subsection 124B(1) or 124C(1) during the reporting period (see subsection (2) of this section);
 - (b) the total amount of payments referred to in paragraph (a);

- (c) the number of payments made under subsection 124B(1) or 124C(1) that any employee of CSC became aware of during the reporting period that were made during an earlier reporting period;
 - (d) the total amount of payments referred to in paragraph (c);
 - (e) for each payment referred to in paragraph (c)—the reporting period in which the payment was made.
- (2) The *reporting period* is:
- (a) a financial year; or
 - (b) if a shorter recurring period is prescribed under paragraph (5)(a)—that period.
- (3) A report is not required if no employee of CSC is aware of any payments referred to in paragraph (1)(a) or (c).

When report must be provided

- (4) The report must be provided before the end of the following period:
- (a) 4 months after the end of the reporting period;
 - (b) if a lesser number of months has been prescribed for the reporting period under paragraph (5)(b)—that number of months after the end of the reporting period.

Power to make legislative instruments

- (5) The Minister may, by legislative instrument, prescribe:
- (a) a period for the purposes of paragraph (2)(b); or
 - (b) a number of months for a reporting period for the purposes of paragraph (4)(b).

125 Payments by the Commonwealth

- (1) Any payment of benefit under this Act shall be paid by the Commonwealth.

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- (2) The costs of and incidental to a medical examination carried out for the purposes of section 35 shall be paid by the Commonwealth.
- (3) All payments by the Commonwealth under this Act shall be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

126 Recovery of amounts payable to Commonwealth

- (1) An amount payable to the Commonwealth under this Act, including an amount of unpaid contributions, may be paid to the Commonwealth in a lump sum or in such instalments and at such times as CSC approves.
- (2) Where the amount of any contributions payable by a person to the Commonwealth has not been paid and benefit is payable to or in respect of the person, the amount of the unpaid contributions may be deducted from any payment or payments of that benefit.
- (3) An amount payable to the Commonwealth under this Act, including an amount of unpaid contributions, may be recovered by CSC, on behalf of the Commonwealth in a court of competent jurisdiction as a debt due and payable to the Commonwealth.
- (4) Where, for any reason (including the making of, or cancellation of, an election under this Act), an amount of benefit has been paid that is not payable, or has become not payable, the amount so paid may be recovered by CSC, on behalf of the Commonwealth, in a court of competent jurisdiction as a debt due and payable to the Commonwealth.
- (5) Where, for any reason (including the making of, or cancellation of, an election under this Act), an amount of benefit has been paid that is not payable, or has become not payable, and the person to whom that amount was paid is receiving, or is entitled to receive, a benefit, that amount, or such part of that amount as CSC determines, may, if CSC in its discretion so directs, be recovered by deduction from that benefit.

- (6) In subsections (4) and (5), **benefit** includes pension or other money payable under the previous legislation.

127 Recipient member etc. to inform CSC if he becomes eligible member

- (1) A person who is a recipient member, a person in receipt of a pension under the previous legislation (other than section 55 or 57 of the previous Act) or a person to whom deferred benefit is applicable under section 78 of this Act or section 82ZB of the previous Act, commits an offence if:
- (a) the person becomes an eligible member of the Defence Force; and
 - (b) the person does not, within 14 days after becoming such a member, inform CSC in writing that the person has become such a member.

Penalty: 1 penalty unit.

- (2) Subsection (1) does not apply to an eligible member of the Defence Force who:
- (a) was a recipient member immediately before he or she became an eligible member; and
 - (b) is serving an appointment or enlistment for a period of less than one year that commenced after the commencement of this subsection.

128 Extension of periods of elections

- (1) Where any period within which a person is entitled to make an election under this Act has expired before the day on which this Act receives the Royal Assent, the election may be made within such further period after that day as CSC allows.
- (2) Subject to subsection (3), where a person who is entitled to make an election under a provision of this Act:
- (a) is, by reason of a physical or mental incapacity, unable to make that election; or

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- (b) dies before the expiration of the period within which the election may be made or, if a further period has been allowed, before the expiration of that further period, without his having made the election;

CSC may, if it thinks it proper to do so, allow such other person as CSC thinks appropriate to make the election within such period as CSC allows, and, where the election is made by that other person, the election shall, for the purposes of this Act, be deemed to have been made by the first-mentioned person, and has effect accordingly.

- (3) Notwithstanding subsection (2), CSC shall not, after the death of a recipient member, allow another person to make an election under section 24 to commute a portion of the member's retirement pay or to make an election under section 32A to commute a portion of the member's invalidity pay.

128A Cancellation of elections

Where:

- (a) a person makes an election (whether before or after the commencement of this section) under section 24, 32A, 69 or 76 or is deemed by subsection 128(2) to have made such an election;
- (b) that person, or another person whom CSC has, under subsection 128(2), allowed to make an election under a provision of this Act on behalf of the first-mentioned person, makes an application to CSC not later than 3 months after the day on which the election is made or is deemed to have been made, or within such further period as CSC, in special circumstances, allows, requesting that CSC cancel the election; and
- (c) CSC, having regard to such matters (if any) as it considers relevant, is satisfied that the election should be cancelled;

CSC may direct that the election shall be cancelled and, if it so directs, this Act has effect as if the election had not been made.

129 Assignment of pensions

Subject to section 130, no pension benefit or other benefit under this Act is capable of being assigned or charged or of passing by operation of law, and any moneys payable by the Commonwealth on the death of a contributing member are not liable to be applied or made available in payment of his debts or liabilities.

130 Attachment of benefits

- (1) Where a judgment given by a court for the payment of a sum of money has not been fully satisfied by the judgment debtor and the judgment debtor is entitled to a benefit under this Act, the judgment creditor may serve on CSC a copy of the judgment, certified under the hand of the Registrar or other proper officer of the court by which the judgment was given, and a statutory declaration by the judgment creditor stating that the judgment has not been fully satisfied by the judgment debtor and specifying the amount due by the judgment debtor under the judgment.
- (2) Where a copy of a judgment and a statutory declaration are served on CSC in accordance with subsection (1), CSC shall, as soon as practicable, by notice in writing given to the judgment debtor, inform him of the service of those documents and require him, within such period as is specified in the notice and in such manner as is so specified, to notify CSC whether the amount specified in the declaration is still due under the judgment and, if no amount or a lesser amount is due under the judgment, to furnish to CSC, in such manner as is specified in the notice, evidence in support of that fact.
- (3) A person commits an offence if:
 - (a) the person is given a notice under subsection (2); and
 - (b) the person does not comply with the requirements in the notice.

Penalty: 1 penalty unit.

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- (4) If, at the expiration of the period specified in the notice, CSC is satisfied that an amount is due under the judgment, CSC may, in its discretion, authorize the deduction from the benefit, and the payment to the judgment creditor, of such sums as do not exceed that amount, and those deductions and those payments shall be made accordingly.
- (5) A deduction shall not be authorized from:
- (a) an instalment of child's pension; or
 - (b) an instalment of any other pension benefit if the deduction will reduce the amount of the instalment payable to less than one-half of the amount that would, but for this section, be payable.
- (6) If, after a copy of a judgment given against any person entitled to a benefit under this Act, being a judgment in respect of which CSC is satisfied that an amount is due, has been served in accordance with subsection (1), a copy of another judgment given (whether before or after the first-mentioned judgment) against the same person in favour of the person in whose favour the first-mentioned judgment was given, or in favour of another person, is served in accordance with that subsection, a payment shall not be made in pursuance of this section to the judgment creditor under the other judgment in respect of the amount due under that judgment until the amount due under the first-mentioned judgment has been paid.
- (7) A payment made to a judgment creditor in pursuance of this section shall, as between the Commonwealth and the person entitled to benefit under this Act, be deemed to be a payment by the Commonwealth to the person entitled to benefit.
- (8) A judgment creditor commits an offence if:
- (a) the judgment creditor serves a copy of a judgment on CSC under subsection (1); and
 - (b) the judgment creditor does not notify CSC immediately the judgment debt is satisfied.

Penalty:

- (a) if the offender is a natural person—imprisonment for 3 months or 1 penalty unit; or
 - (b) if the offender is a body corporate—5 penalty units.
- (9) If the amounts paid in pursuance of this section to a judgment creditor in respect of a judgment exceed, in the aggregate, the amount due under the judgment, the excess is repayable by the judgment creditor to the judgment debtor and, in default of payment, may be recovered by the judgment debtor from the judgment creditor in any court of competent jurisdiction.

130A Repayment of amounts that have been refunded to the Commonwealth

Where a person:

- (a) made an election under section 21, 53, 55, 64 or 89;
 - (b) paid to the Commonwealth, in accordance with the requirements of that section, the amount of any gratuity, bounty or deferred pay received by him in respect of the period to which the election relates; and
 - (c) is not, upon ceasing to be a member of the Defence Force after having made that election and made that payment, entitled to retirement pay or invalidity pay, or to a gratuity in respect of the period in relation to which the election relates;
- the Commonwealth shall repay to the person any amounts so paid by him.

130B Trustee of Scheme for purposes of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*

- (1) For the purposes of the definition of *trustee* in section 43 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, CSC is taken to be the person who manages the superannuation scheme constituted by this Act (the **Scheme**).

Note: The definitions of *public sector superannuation scheme*, *superannuation fund* and *trustee* in section 43 of the *Superannuation*

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Contributions Tax (Assessment and Collection) Act 1997 are relevant to this section.

- (2) Section 4 of the *Superannuation Contributions Tax (Application to the Commonwealth—Reduction of Benefits) Act 1997* does not apply to CSC in its capacity (because of subsection (1)) of trustee of the Scheme for the purposes of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

131 Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which, by this Act, are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular:
- (b) for prescribing the manner in which notices under this Act may be given; and
 - (c) for prescribing penalties, not exceeding a fine of 2 penalty units, for offences against the regulations.
- (2) Where the pay of a class of members of the Defence Force is increased or reduced, regulations for the purpose of the definition of **annual rate of pay** in section 3 in relation to members of the Defence Force included in that class made after the date on and from which the increase or reduction took effect may be expressed to have taken effect from and including that date.
- (3) Regulations made within a period of 6 months after the day on which this Act receives the Royal Assent may be expressed to have taken effect from and including the date of commencement of the scheme.
- (4) The regulations may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any of the provisions of a determination, as in force at a particular time or as in force from time to time, made under section 58H of the *Defence Act 1903* or under section 24 of the *Public Service Act 1999*.

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Note: In addition, section 14 of the *Legislation Act 2003* allows regulations to prescribe matters by reference to disallowable legislative instruments as in force at a particular time or from time to time. That section would, for example, allow a regulation to prescribe matters by reference to a determination under section 58B of the *Defence Act 1903* as in force at a particular time or from time to time.

Part XIII—Transfer to MSB scheme

132 Election to remain member of scheme or to join MSB scheme

- (1) Subject to this section, an eligible member of the Defence Force must, on or before election day in relation to the member, in writing addressed to the Authority, elect:
 - (a) to continue to be a contributing member; or
 - (b) to become a member of the MSB scheme.
- (2) Election day in relation to an eligible member of the Defence Force is:
 - (a) if the service of the member is due to terminate before 30 September 1992—the day on which his or her service is due to terminate; or
 - (b) if paragraph (a) does not apply—30 September 1992.
- (3) An eligible member of the Defence Force, being a person:
 - (a) who is serving on continuous full-time service for a period that does not exceed, or successive periods that together do not exceed, 3 months; and
 - (b) who, immediately before that period or the first of those periods, was a recipient member;may not make an election under subsection (1).
- (4) Subsection (1) does not apply to a member whose service terminates, or is due to terminate, before 1 October 1991.

133 Election where member dies

- (1) This section applies if an eligible member of the Defence Force:
 - (a) is unable, because of any illness or any physical or mental incapacity, to make an election under section 132; or
 - (b) dies before making such an election.

- (2) If the member is unable to make the election, the election may be made by a person acting on behalf of the member.
- (3) If the member dies and is survived by a widow or widower, the widow or widower may, subject to subsection (6), elect that this Act apply in relation to the member as if the member had, on the day immediately preceding his or her death, elected to become a member of the MSB scheme.
- (4) If the member dies and is not survived by a widow or widower but is survived by an eligible child or eligible children, a person acting on behalf of the child or children may, subject to subsection (6), elect that this Act apply in relation to the member as if the member had, on the day immediately preceding his or her death, elected to become a member of the MSB scheme.
- (5) An election under subsection (3) or (4) must be made on or before the day that would have been election day in relation to the member if he or she had not died.
- (6) If:
- (a) a member who has died:
 - (i) had made an election under subsection 21(1), paragraph 63(1)(d) or subsection 64(1) or 89(1) or (2); or
 - (ii) had received payment of an amount under a prescribed provision (within the meaning of section 137); and
 - (b) at the time of his or her death, the member had not repaid:
 - (i) the total amount that the member was required to pay to the Commonwealth under subsection 21(3), 63(2), 64(2) or 89(4) (as the case may be); or
 - (ii) the total amount that the member had to repay to the Commonwealth under a provision of an enactment (within the meaning of section 137) because of the payment referred to in subparagraph (a)(ii);
- an election may not be made:
- (c) under subsection (3) by the widow or widower of a deceased member; or

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(d) under subsection (4) by a person acting on behalf of the eligible child or eligible children of the deceased member; unless the balance of the amount referred to in subparagraph (b)(i) or (ii) (as the case may be) that remains unpaid is paid to the Commonwealth.

(7) If:

- (a) the widow or widower of a deceased member makes an election under subsection (3); or
- (b) a person acting on behalf of the eligible child or eligible children of a deceased member makes an election under subsection (4);

the member is taken to have, on the day immediately preceding his or her death, elected under section 132 to become a member of the MSB scheme.

134 Effect of election

Subject to section 138, a person who elects, or is taken to have elected, under section 132 to become a member of the MSB scheme ceases, or is taken to have ceased, to be an eligible member of the Defence Force:

- (a) if the election is made, or is taken to have been made, on or before 30 September 1991—at the end of that day; or
- (b) if paragraph (a) does not apply—at the end of the day on which the election is made or is taken to have been made.

135 Loss of entitlement to benefits etc.

Subject to this section, a person who ceases, or is taken to have ceased, to be an eligible member of the Defence Force under section 134 or 138 is not entitled to be paid any benefits, or to receive any refund of contributions, under this Act.

136 Failure to make election

- (1) If an election is not made by, or on behalf of, an eligible member of the Defence Force who is required to make an election under
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subsection 132(1), the member is taken to have elected, on election day in relation to him or her, to continue to be a contributing member.

- (2) If:
- (a) an eligible member of a Defence Force who is required to make an election under subsection 132(1) dies without making the election; and
 - (b) the widow or widower of the deceased member, or a person acting on behalf of his or her eligible child or children (as the case may be) does not make an election under subsection 133(3) or (4);
- this Act has effect as if the member had elected, on the day immediately preceding his or her death, to continue to be a contributing member.

137 Certain persons liable to make repayments to Commonwealth on making of election

- (1) In this section:

enactment means:

- (a) an Act; or
- (b) an instrument made under an Act.

prescribed provision means:

- (a) subsection 42A(1) or (2) of the previous Act; or
 - (b) regulation 11, 14, 15 or 16 or subregulation 19(1) or (2) of the Defence Force (Bounties and Gratuities) Regulations; or
 - (c) clause 6, 10, 13, 15, 17 or 30 of Determination 0705, Gratuities made under section 58B of the *Defence Act 1903*, being that determination as in force from time to time.
- (2) Where an eligible member of the Defence Force who has received payment of an amount under a prescribed provision elects under section 132 to become a member of the MSB scheme, then, in spite of any provision of an enactment regarding the repayment of that amount, that amount, or any part of that amount that remains

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unpaid at the time of the election, becomes payable to the Commonwealth and may be recovered as a debt.

138 Persons precluded from transferring to MSB scheme

- (1) This section applies to:
 - (a) an eligible member of the Defence Force who:
 - (i) made an election under subsection 21(1), paragraph 63(1)(d) or subsection 64(1) or 89(1) or (2); and
 - (ii) elects under section 132 to become a member of the MSB scheme; or
 - (b) an eligible member of the Defence Force who is liable to pay an amount to the Commonwealth under section 137.
- (2) Subject to subsections (3) and (4), a person to whom this section applies ceases to be an eligible member of the Defence Force:
 - (a) in the case of a person referred to in paragraph (1)(a)—at the end of the day on which the total amount that the person is required to pay to the Commonwealth under subsection 21(3), 63(2), 64(2) or 89(4) (as the case may be) is fully paid; or
 - (b) in the case of a person referred to in paragraph (1)(b)—at the end of the day on which the total amount that the person is liable to pay under section 137 is fully paid.
- (3) Where, apart from this subsection, a person would cease under subsection (2) to be an eligible member of the Defence Force before 30 September 1991, the person ceases to be an eligible member of the Defence Force at the end of 30 September 1991.
- (4) If a person to whom this section applies has not, on or before 30 September 1992, paid to the Commonwealth:
 - (a) in the case of a person referred to in paragraph (1)(a)—the total amount that the person is required to pay to the Commonwealth under subsection 21(3), 63(2), 64(2) or 89(4) (as the case may be); or

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- (b) in the case of a person referred to in paragraph (1)(b)—the total amount that the person is liable to pay to the Commonwealth under section 137;
- the person is taken:
- (c) not to have elected under section 132 to become a member of the MSB scheme; and
- (d) to have elected under that section to continue to be a contributing member.

Schedule 1—Retirement pay expressed as a percentage of annual rate of pay

Section 23

Number of complete years included in total period of effective service	Percentage of annual rate of pay
15	30.00%
16	31.00%
17	32.00%
18	33.00%
19	34.00%
20	35.00%
21	36.50%
22	38.00%
23	39.50%
24	41.00%
25	42.50%
26	44.00%
27	45.75%
28	47.50%
29	49.25%
30	51.25%
31	53.25%
32	55.50%
33	57.75%
34	60.25%
35	62.75%
36	65.25%
37	67.75%
38	70.50%
39	73.50%

Retirement pay expressed as a percentage of annual rate of pay **Schedule 1**

Number of complete years included in total period of effective service	Percentage of annual rate of pay
40 or more	76.50%

Schedule 2 Notional retiring age for certain officers retiring at own request or on disciplinary grounds, or entitled to deferred benefit retirement pay

Schedule 2—Notional retiring age for certain officers retiring at own request or on disciplinary grounds, or entitled to deferred benefit retirement pay

Sections 23 and 75

Rank			Notional Retiring Age— Years
Navy	Army	Air Force	
Admiral	General	Air Chief Marshal	55
Vice-Admiral	Lieutenant-General	Air Marshal	
Rear-Admiral	Major-General	Air Vice-Marshal	52
Commodore	Brigadier	Air Commodore	50
Captain	Colonel	Group Captain Group Officer	
Commander Chief Officer (WRANS) Matron (RANNS) Superintendent (Naval Police)	Lieutenant-Colonel	Wing Commander Wing Officer	45
Lower rank	Lower rank	Lower rank	42

Schedule 3—Commutation of retirement pay and Class C invalidity pay— expectation of life factor

Sections 24 and 32A

Age (in years) on date of effect of election	Factor	
	Male	Female
30	41.12	46.49
31	40.18	45.53
32	39.25	44.57
33	38.31	43.61
34	37.38	42.65
35	36.45	41.70
36	35.51	40.75
37	34.59	39.81
38	33.67	38.86
39	32.75	37.92
40	31.84	36.99
41	30.93	36.06
42	30.03	35.13
43	29.14	34.21
44	28.25	33.29
45	27.38	32.38
46	26.51	31.48
47	25.65	30.58
48	24.80	29.69
49	23.96	28.80
50	23.13	27.92
51	22.31	27.05
52	21.51	26.18

Schedule 3 Commutation of retirement pay and Class C invalidity pay—expectation of life factor

Age (in years) on date of effect of election	Factor	
	Male	Female
53	20.72	25.32
54	19.94	24.47
55	19.18	23.63
56	18.43	22.79
57	17.70	21.96
58	16.99	21.13
59	16.29	20.32
60	15.60	19.51
61	14.94	18.72
62	14.29	17.94
63	13.67	17.17
64	13.06	16.42
65	12.47	15.68

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnotes

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Defence Force Retirement and Death Benefits Act 1973	81, 1973	19 June 1973	ss. 3–6 and Parts III–IX (ss. 17–84): 1 Oct 1972 Remainder: Royal Assent	
Election Candidates (Public Service and Defence Force) Act 1974	59, 1974	27 Sept 1974	Parts I, IV and V (ss. 1–6 and 23–37): Royal Assent Remainder: 27 Aug 1974	—
Defence Force Re-organization Act 1975	96, 1975	9 Sept 1975	ss. 156–163: 9 Feb 1976 (see <i>Gazette</i> 1975, No. G42, p. 2) (a)	ss. 158(2), 159(2), 161(2) and 162(2)
as amended by Defence Force Retirement and Death Benefits Amendment Act 1976	33, 1976	7 May 1976	(see 33, 1976 below)	—
Defence Force Retirement and Death Benefits Amendment Act 1976	33, 1976	7 May 1976	ss. 1 and 2: Royal Assent s. 9: 1 Oct 1972 s.16: 9 Sept 1975 ss. 13 and 14: 1 July 1976 (see s. 2(4) and <i>Gazette</i> 1976, No. S94) Remainder: 1 July 1976	ss. 13(2) and 15
Defence Force (Retirement and Death Benefits Amendments) Act 1977	13, 1977	28 Feb 1977	ss. 3 and 4: 1 July 1976 Remainder: Royal Assent	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Defence Force (Retirement and Death Benefits Amendments) Act (No. 2) 1977	161, 1977	10 Nov 1977	ss. 5, 11–17, 24, 26, 27(2), 28(2), 34, 35(1), 36, 38–42, 46 and 48: 1 Oct 1972 Remainder: Royal Assent	ss. 25(2), 30(2)–(5), 35(2) and 49–51 ss. 21(3) and (4) (am. by 65, 1987, s. 51)
as amended by				
Defence Legislation Amendment Act 1987	65, 1987	5 June 1987	(see 65, 1987 below)	—
Administrative Changes (Consequential Provisions) Act 1978	36, 1978	12 June 1978	12 June 1978	s. 8
Defence Force (Retirement and Death Benefits Amendments) Act 1979	15, 1979	19 Mar 1979	19 Mar 1979	s. 10
Defence Force (Retirement and Death Benefits Amendments) Act (No. 2) 1979	135, 1979	23 Nov 1979	23 Nov 1979	—
Statute Law Revision Act 1981	61, 1981	12 June 1981	s. 116: 30 Sept 1983 (see <i>Gazette</i> 1983, No. S222) (b)	—
Companies (Miscellaneous Amendments) Act 1981	92, 1981	18 June 1981	s. 45: 1 July 1982 (see s. 2(3) and <i>Gazette</i> 1982, No. S124)	—

Defence Force Retirement and Death Benefits Act 1973

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Compilation date: 9/12/17

Registered: 9/12/17

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Defence Force Retirement and Death Benefits Amendment Act 1981	144, 1981	21 Oct 1981	ss. 4(1) and 7(1): 1 Oct 1972 ss. 4(2), 5(1), 6(1), 8 and 9: 14 May 1981 ss. 3, 5(2), 6(2) and 7(2)–(4): 18 Nov 1981 Remainder: Royal Assent	s. 7(3) and (4)
Defence Legislation Amendment Act 1984	164, 1984	25 Oct 1984	ss. 1, 2, 16–19, 115, 116 and 120: Royal Assent s. 71: 31 Dec 1982 ss. 23–70 and 72–78: 3 July 1985 ss. 82, 83, 85 and 87–89: 1 July 1983 ss. 84 and 86: 1 Oct 1972 ss. 108 and 109: 1 Jan 1985 ss. 117–119: 1 Aug 1984 s. 121: 1 Jan 1982 Remainder: 22 Nov 1984	ss. 83(2) and 85(2)
as amended by				
Statute Law (Miscellaneous Provisions) Act (No.1) 1985	65, 1985	5 June 1985	s. 3: (c)	—
Superannuation and Other Benefits Legislation Amendment Act 1986	93, 1986	13 Oct 1986	10 Oct 1986	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Defence Legislation Amendment Act 1987	65, 1987	5 June 1987	ss. 1–3, 9, 10, 13(1), 23–25, 26(1), 27, 29, 31, 33–36, 42–45, 52–55, 58, 61(1), 62, 69(1), Parts IX and X (ss. 71–78): Royal Assent ss. 37(1) and Part VI (ss. 50–51): 10 Nov 1977 (<i>see s. 2(3)</i>) ss. 37(2) and 38–41: 3 July 1985 ss. 46 and 47: 19 June 1973 (<i>see s. 2(2)</i>) ss. 48, 49, 56 and 57: 5 June 1987 Remainder: 1 July 1988 (<i>see Gazette</i> 1988, No. S173)	—
Defence Legislation Amendment Act 1988	100, 1988	2 Dec 1988	s. 5: 1 July 1988 (<i>see s. 2(2)</i> and <i>Gazette</i> 1988, No. S173) s. 16: 1 July 1988 (<i>see s. 2(3)</i> and <i>Gazette</i> 1988, No. S173) Remainder: Royal Assent	—
Defence Legislation Amendment Act (No. 2) 1988	104, 1988	6 Dec 1988	s. 18: 1 Sept 1989 (<i>see Gazette</i> 1989, No. S268) s. 25: 1 Oct 1972 ss. 29 and 36: 1 July 1978 Part IX (ss. 52 and 53): 18 Dec 1987 Remainder: Royal Assent	—

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Compilation No. 44

Compilation date: 9/12/17

Registered: 9/12/17

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation and Other Benefits Legislation Amendment Act 1989	125, 1989	17 Oct 1989	20 Oct 1989	—
Defence Legislation Amendment Act 1990	75, 1990	22 Oct 1990	s. 4(1): 30 June 1989 (<i>d</i>)	s. 4(2)
Defence Legislation Amendment Act (No. 2) 1990	21, 1991	5 Feb 1991	ss. 10–13 and 16–18: 1 July 1990 Remainder: Royal Assent	—
Defence Force Superannuation Legislation Amendment Act 1991 as amended by Statute Law Revision Act 1996	126, 1991 43, 1996	2 Sept 1991 25 Oct 1996	ss. 4(1), 15, 18 and 22: 1 July 1990 Remainder: Royal Assent Schedule 3 (item 19): 2 Sept 1991 (<i>e</i>)	— —
Military Superannuation and Benefits Act 1991	135, 1991	7 Sept 1991	Parts 1, 2, 6, 7 (ss. 1–5, 18–28), ss. 42, 47, 49(1)(a) and 50–52: Royal Assent s. 61: 1 Sept 1991 Remainder: 1 Oct 1991	—
Defence Legislation Amendment Act 1992	91, 1992	30 June 1992	ss. 13 and 14: 1 Sept 1992 (<i>see Gazette</i> 1992, No. S211) Remainder: Royal Assent	—
Superannuation Guarantee (Consequential Amendments) Act 1992	92, 1992	30 June 1992	1 July 1992	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Commonwealth Superannuation Schemes Amendment Act 1992	185, 1992	17 Dec 1992	25 June 1993	s. 4
Qantas Sale Act 1992	196, 1992	21 Dec 1992	s. 29: 30 July 1995 (<i>see Gazette</i> 1995, No. S324) (<i>f</i>) Schedule (Parts 3 and 6): (<i>f</i>)	s. 29 s. 2(6) (am. by 60, 1993, s. 4; 168, 1994, s. 3 [item 17])
as amended by				
Qantas Sale Amendment Act 1993	60, 1993	3 Nov 1993	s.4: 10 Mar 1993	—
Qantas Sale Amendment Act 1994	168, 1994	16 Dec 1994	s. 3 (item 17): Royal Assent (<i>g</i>)	—
Life Insurance (Consequential Amendments and Repeals) Act 1995	5, 1995	23 Feb 1995	1 July 1995 (<i>see</i> s. 2 and <i>Gazette</i> 1995, No. GN24)	s. 3(1)
Defence Legislation Amendment Act (No. 1) 1997	1, 1997	19 Feb 1997	Schedules 1 and 3: 30 Apr 1997 (<i>see Gazette</i> 1997, No. S91) Remainder: Royal Assent	—
Superannuation Legislation Amendment (Superannuation Contributions Tax) Act 1997	187, 1997	7 Dec 1997	Schedule 6: 7 Dec 1997 (<i>h</i>)	—
Financial Sector Reform (Consequential Amendments) Act 1998	48, 1998	29 June 1998	Schedule 1 (item 43): 1 July 1998 (<i>see Gazette</i> 1998, No. S316) (<i>i</i>)	—

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Compilation No. 44

Compilation date: 9/12/17

Registered: 9/12/17

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999	44, 1999	17 June 1999	Schedule 7 (items 28, 29): 1 July 1999 (<i>see Gazette</i> 1999, No. S283) (<i>j</i>)	s. 3(2)(e) (am. by 160, 2000, Sch. 4 [item 4])
as amended by				
Financial Sector Legislation Amendment Act (No. 1) 2000	160, 2000	21 Dec 2000	Schedule 1 (item 21): Royal Assent Remainder: 18 Jan 2001	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (item 370): 5 Dec 1999 (<i>see Gazette</i> 1999, No. S584) (<i>k</i>)	—
Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001	10, 2001	22 Mar 2001	Schedule 2 (items 44–48, 94, 95): 19 Apr 2001 (<i>l</i>)	Sch. 2 (items 94, 95)
as amended by				
Statute Law Revision Act 2002	63, 2002	3 July 2002	Sch 2 (item 11): 19 Apr 2001 (s 2(1) item 40)	—
Defence Legislation Amendment (Application of Criminal Code) Act 2001	141, 2001	1 Oct 2001	s. 4: Royal Assent Schedule 1 (items 89–92): 15 Dec 2001	s. 4 s. 2(2) (am. by 135, 2003, Sch. 2 [item 28])
as amended by				
Defence Legislation Amendment Act 2003	135, 2003	17 Dec 2003	Sch 2 (item 28): 1 Oct 2001 (s 2(1) item 9)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Legislation Amendment (Indexation) Act 2001	148, 2001	1 Oct 2001	1 Oct 2001	Sch. 3 (item 31)
Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001	159, 2001	1 Oct 2001	29 Oct 2001	Sch 1 (item 97)
Superannuation (Surcharge Rate Reduction) Amendment Act 2003	112, 2003	12 Nov 2003	Schedule 1: 1 July 2003 Remainder: Royal Assent	Sch. 1 (item 33)
Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004	58, 2004	4 May 2004	Schedule 1: 18 May 2004 Remainder: Royal Assent	s. 4
Superannuation Budget Measures Act 2004	106, 2004	30 June 2004	30 June 2004	Sch. 2 (item 11(2))
Superannuation Laws Amendment (Abolition of Surcharge) Act 2005	102, 2005	12 Aug 2005	12 Aug 2005	—
Defence Legislation Amendment Act (No. 1) 2005	121, 2005	6 Oct 2005	Sch 5: 1 Jan 2005 (s 2(1) item 3)	—
Superannuation Legislation Amendment Act 2007	165, 2007	25 Sept 2007	Schedule 4 (items 1–5, 8): Royal Assent Schedule 6: 1 Jan 2008 (see F2007L04119)	Sch. 4 (item 8) and Sch. 6 (items 4, 6)

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 2008	26, 2008	23 June 2008	Schedule 1 (item 57): Royal Assent	—
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008	134, 2008	4 Dec 2008	Schedule 3 (items 1–24): 1 Jan 2009	Sch. 3 (item 24)
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 5 (items 94, 95): 19 Apr 2011	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (item 519) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011	58, 2011	28 June 2011	Sch 1 (items 36–58, 246): 1 July 2011 (s 2(1) item 2)	Sch. 2 (items 15(1), (2))
Financial Framework Legislation Amendment Act (No. 2) 2012	82, 2012	28 June 2012	Sch 1 (item 43): 29 June 2012	—
Superannuation Laws Amendment (MySuper Capital Gains Tax Relief and Other Measures) Act 2013	89, 2013	28 June 2013	Sch 2: 28 June 2013 (s 2(1) item 9)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014	22, 2014	9 Apr 2014	Sch 1 (items 1–12, 21, 22): 10 Apr 2014	Sch 1 (items 21, 22)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 5 (items 1, 2): 24 June 2014	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 8 (items 102–104) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 1 (item 15): 25 Mar 2015 (s 2(1) item 2)	—

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Compilation No. 44

Compilation date: 9/12/17

Registered: 9/12/17

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Acts and Instruments (Framework Reform) Act 2015	10, 2015	5 Mar 2015	Sch 1 (items 126, 127, 166–169, 171–177, 179): 5 Mar 2016 (s 2(1) item 2)	Sch 1 (items 166–169, 171–177, 179)
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 3 (item 1): 5 Mar 2016 (s 2(1) item 8)	—
Governance of Australian Government Superannuation Schemes Legislation Amendment Act 2015	65, 2015	17 June 2015	Sch 1 (items 14–20) and Sch 2 (items 1–22): 1 July 2015 (s 2(1) item 2)	Sch 1 (items 16, 19) and Sch 2 (items 1–22)
Defence Legislation Amendment (Superannuation and ADF Cover) Act 2015	120, 2015	10 Sept 2015	Sch 1 (items 3–39, 66): 11 Sept 2015 (s 2(1) item 2) Sch 2 (item 5): 1 July 2016 (s 2(1) item 3)	Sch 1 (item 66)
Defence Legislation Amendment (First Principles) Act 2015	164, 2015	2 Dec 2015	Sch 2 (items 21–24, 80): 1 July 2016 (s 2(1) item 2)	Sch 2 (item 80)
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 129): 10 Mar 2016 (s 2(1) item 6)	—
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 1 (items 217–219): 21 Oct 2016 (s 2(1) item 1)	—
Marriage Amendment (Definition and Religious Freedoms) Act 2017	129, 2017	8 Dec 2017	Sch 3 (item 27) and Sch 4: 9 Dec 2017 (s 2(1) item 7)	Sch 4

Endnote 3—Legislation history

- (a) The *Defence Force Retirement and Death Benefits Act 1973* was amended by sections 156–163 only of the *Defence Force Re-organization Act 1975*, section 2 of which provides as follows:
2. This Part shall come into operation on the day on which this Act receives the Royal Assent, and the remaining provisions of this Act shall come into operation on such date as is, or such respective dates as are, fixed by Proclamation.
- (b) The *Defence Force Retirement and Death Benefits Act 1973* was amended by section 116 only of the *Statute Law Revision Act 1981*, subsection 2(2) of which provides as follows:
- (2) Parts III, X and XV and section 116 shall come into operation on a date to be fixed by Proclamation.
- (c) The *Defence Legislation Amendment Act 1984* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(18) of which provides as follows:
- (18) The amendment of Schedule 2 to the *Defence Legislation Amendment Act 1984* made by this Act shall be deemed to have come into operation immediately before the commencement of section 89 of that Act.
Section 89 commenced on 1 July 1983.
- (d) The *Defence Force Retirement and Death Benefits Act 1973* was amended by subsection 4(1) only of the *Defence Legislation Amendment Act 1990*, subsection 2(4) of which provides as follows:
- (4) Subsection 4(1) is to be taken to have commenced on 30 June 1989.
- (e) The *Defence Force Superannuation Legislation Amendment Act 1991* was amended by Schedule 3 (item 19) only of the *Statute Law Revision Act 1996*, subsection 2(3) of which provides as follows:
- (3) Each item in Schedule 3 is taken to have commenced when the Act containing the provision amended by the item received the Royal Assent.
- (f) The *Defence Force Retirement and Death Benefits Act 1973* was amended by section 29 and the Schedule (Parts 3 and 6) only of the *Qantas Sale Act 1992*, subsections 2(2), (3)(b), (c), (5) and (6) of which provide as follows:
- (2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
 - (3) A Proclamation may fix a day that is earlier than the day on which the Proclamation is published in the *Gazette* but only if:
 - (b) in the case of sections 22, 23, 26, 27, 29, 32, 33, 34, 42, 45, 46, 47, 48 and 49 and Parts 3 and 4 of the Schedule—the day is not earlier than the 50% sale day; and

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Endnote 3—Legislation history

- (c) in the case of sections 25, 36, 38, 44 and 51 and Parts 5, 6 and 7 of the Schedule—the day is not earlier than the 100% sale day
- (5) If, on the 100% sale day, Part 3 of the Schedule has not commenced, then, on the day on which Part 7 of the Schedule commences, Parts 3 and 6 of the Schedule are taken to have been repealed.
- (6) If a provision of this Act has not commenced before 31 August 1995, the provision is taken to have been repealed on that day.
- The Schedule (Parts 3 and 6) is taken to have been repealed on 31 August 1995.
- (g) The *Qantas Sale Act 1992* was amended by section 3 (item 17) only of the *Qantas Sale Amendment Act 1994*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (h) The *Defence Force Retirement and Death Benefits Act 1973* was amended by Schedule 6 only of the *Superannuation Legislation Amendment (Superannuation Contributions Tax) Act 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (i) The *Defence Force Retirement and Death Benefits Act 1973* was amended by Schedule 1 (item 43) only of the *Financial Sector Reform (Consequential Amendments) Act 1998*, subsection 2(2) of which provides as follows:
- (2) Subject to subsections (3) to (14), Schedules 1, 2 and 3 commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*.
- (j) The *Defence Force Retirement and Death Benefits Act 1973* was amended by Schedule 7 (items 28, 29) only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, subsections 3(2)(e) and (16) of which provide as follows:
- (2) The following provisions commence on the transfer date:
- (e) subject to subsection (12), Schedule 7, other than items 43, 44, 118, 205 and 207 (the commencement of those items is covered by subsections (10), (11) and (13)).
- (16) The Governor-General may, by Proclamation published in the *Gazette*, specify the date that is to be the transfer date for the purposes of this Act.
- (k) The *Defence Force Retirement and Death Benefits Act 1973* was amended by Schedule 1 (items 370) only of the *Public Employment (Consequential and*

Endnote 3—Legislation history

Transitional) Amendment Act 1999, subsections 2(1) and (2) of which provide as follows:

- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
 - (2) Subject to this section, this Act commences at the commencing time.
- (l) The *Defence Force Retirement and Death Benefits Act 1973* was amended by Schedule 2 (items 44–48) only of the *Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the 28th day after the day on which it receives the Royal Assent.

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Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part I	
s. 2.....	am. No. 164, 1984
s. 3.....	am No 96, 1975; No 33, 1976; No 161, 1977; No 61, 1981; No 164, 1984; No 65, 1987; No 104, 1988; No 126, 1991; No 135, 1991; No 185, 1992; No 187, 1997; No 10, 2001; No 26, 2008; No 134, 2008; No 5, 2011; No 58, 2011; No 89, 2013; No 62, 2014; No 120, 2015
s. 5.....	am No 65, 1987; No 120, 2015
s. 5A.....	ad No 135, 1991 am No 10, 2001 (as am by No 63, 2002); No 120, 2015
s. 5B.....	ad No 120, 2015
s. 6.....	am. No. 164, 1984; No. 65, 1987
s. 6A.....	ad No 185, 1992 am No 134, 2008; No 46, 2001; No 58, 2011; No 129, 2017 ed C44
s. 6B.....	ad. No. 185, 1992 am. No. 165, 2007; No. 134, 2008; No. 58, 2011
s. 6BA.....	ad No 165, 2007 am No 134, 2008
s. 6C.....	ad. No. 187, 1997 am. No. 112, 2003; Nos. 58 and 106, 2004; No. 102, 2005; No. 58, 2011
s. 6D.....	ad. No. 141, 2001
Part II.....	rep. No. 58, 2011
s. 7.....	am. No. 33, 1976 rep. No. 58, 2011
s. 8.....	am. No. 96, 1975; No. 33, 1976; No. 164, 1984; No. 126, 1991; No. 1, 1997; No. 159, 2001 rep. No. 58, 2011
s. 9.....	am. No. 96, 1975; No. 161, 1977; No. 164, 1984; No. 126, 1991; No. 91, 1992; No. 1, 1997; No. 159, 2001

Endnote 4—Amendment history

Provision affected	How affected
	rep. No. 58, 2011
s. 10.....	rs. No. 96, 1975
	am. No. 161, 1977
	rep. No. 58, 2011
s. 11.....	am. No. 126, 1991
	rep. No. 58, 2011
s. 12.....	am. No. 126, 1991 (as am. by No. 43, 1996)
	rep. No. 58, 2011
s. 13.....	rep. No. 58, 2011
s. 14.....	am. No. 164, 1984; No. 126, 1991; No. 91, 1992
	rep. No. 58, 2011
s. 15.....	rep. No. 58, 2011
s. 16.....	am. No. 164, 1984
	rep. No. 58, 2011
Part III	
s. 17.....	am. No. 144, 1981; No. 104, 1988; No. 126, 1991
s. 18A.....	ad. No. 126, 1991
s. 19.....	am. No. 164, 1984; No. 120, 2015; No. 164, 2015
s. 20.....	am. No. 144, 1981; No. 164, 1984; No. 58, 2011
s. 21.....	am. No. 161, 1977; No. 164, 1984; No. 58, 2011
Part IV	
s. 23.....	am. No. 96, 1975; No. 161, 1977; No. 164, 1984; No. 1, 1997; No. 187, 1997; No. 58, 2011; No. 120, 2015; No. 164, 2015
s. 24.....	am. No. 161, 1977; No. 135, 1979; No. 144, 1981; No. 164, 1984; No. 100, 1988; No. 126, 1991; No. 135, 1991; No. 187, 1997; No. 58, 2011; No. 89, 2013; No. 120, 2015
s. 25.....	am. No. 161, 1977; No. 164, 1984; No. 58, 2011
Part V	
s. 27.....	am. No. 58, 2011
s. 28.....	am. No. 58, 2011
s. 29.....	am. No. 164, 1984; No. 65, 1987; No. 58, 2011

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Endnote 4—Amendment history

Provision affected	How affected
s 30	am No 15, 1979; No 164, 1984; No 126, 1991; No 126, 1991; No 135, 1991; No 58, 2011; No 120, 2015
s 31	am. No. 135, 1979; No. 164, 1984; No. 187, 1997; No. 58, 2011
s 32	am. No. 135, 1979; No. 187, 1997
s 32A	ad No 135, 1979 am No 144, 1981; No 164, 1984; No 100, 1988; No 187, 1997; No 58, 2011; No 89, 2013; No 120, 2015
s 33	am. No. 161, 1977; No. 164, 1984; No. 58, 2011
s 34	am. Nos. 15 and 135, 1979; No. 126, 1991; No. 58, 2011
s 35	am. No. 161, 1977; No. 135, 1979; No. 104, 1988; No. 58, 2011
s 36	am. No. 33, 1976; No. 126, 1991; No. 58, 2011
s 37	am. No. 96, 1975; No. 1, 1997; No. 58, 2011; No 164, 2015
Part VI	
Division 1 heading.....	am. No. 185, 1992
Division 1	
s 38	am. No. 185, 1992; No. 187, 1997
s 39	am. No. 135, 1979; No. 126, 1991; No. 185, 1992
s 40	rep. No. 161, 1977 ad. No. 126, 1991 am. No. 185, 1992; No. 48, 1998; No. 44, 1999
s 41	rs. No. 161, 1977; No. 185, 1992 am. No. 187, 1997; No. 58, 2011
s 41A	ad. No. 21, 1991 am. No. 185, 1992; No. 187, 1997; No. 58, 2011
Division 2	
s 42	am. No. 135, 1979; No. 164, 1984; No. 21, 1991
s 43	am. No. 135, 1979; No. 164, 1984; No. 75, 1990; No. 21, 1991; No. 187, 1997; No. 58, 2011
Division 2A	
Division 2A	ad No 161, 1977
s 43A	ad No 161, 1977

Endnote 4—Amendment history

Provision affected	How affected
	am No 185, 1992; No 58, 2011
	ed C44
s 44	rs No 161, 1977
	rep No 185, 1992
	ad No 165, 2007
	am No 58, 2011
	ed C44
Division 3	
s 45	am. No. 58, 2011
s 46	rs. No. 33, 1976
	am. No. 126, 1991
s 47	am. No. 135, 1979; No. 126, 1991; No. 58, 2011
s 48	am. No. 161, 1977; No. 133, 1979; No. 126, 1991; No. 187, 1997; No. 58, 2011; No 89, 2013
s 48A	ad. No. 126, 1991
	am. No. 187, 1997; No. 58, 2011
s 49	am. No. 164, 1984; No. 65, 1987; No. 58, 2011
Part VIA	
Part VIA	ad. No. 58, 2004
Division 1	
s 49A	ad. No. 58, 2004
	am. No. 165, 2007
Division 2	
s 49B	ad No 58, 2004
	am No 58, 2011
s 49C	ad No 58, 2004
	am No 58, 2011
Division 3	
s 49D	ad. No. 58, 2004
	am. No. 134, 2008
s 49E.....	ad. No. 58, 2004

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Endnote 4—Amendment history

Provision affected	How affected
	am. No. 165, 2007
Division 4	
s. 49F.....	ad. No. 58, 2004 am. No. 121, 2005
Part VIB	
Part VIB	ad No 89, 2013
s 49K	ad No 89, 2013
s 49L.....	ad No 89, 2013
s 49M.....	ad No 89, 2013
s 49N	ad No 89, 2013
s 49P	ad No 89, 2013
s 49Q	ad No 89, 2013 am No 120, 2015
Part VII	
s. 50	am. No. 65, 1987
s. 51	am. No. 164, 1984; No. 58, 2011
s. 52	am. No. 65, 1987
s. 53	am. No. 161, 1977; No. 164, 1984; No. 58, 2011
s. 54	am. No. 65, 1987
s. 55	am. No. 161, 1977; No. 164, 1984; No. 58, 2011
Part VIII	
s. 56	am. No. 58, 2011
s. 57	am. No. 58, 2011
s 58	rep No 120, 2015
s. 59	am. No. 161, 1977
s. 61	rs. No. 33, 1976 am. No. 58, 2011
s. 61A	ad. No. 126, 1991 am. No. 58, 2011
s 61B	ad No 135, 1991 am No 92, 1992; No 10, 2001; No 58, 2011

Endnote 4—Amendment history

Provision affected	How affected
	rep No 120, 2015
s 61C	ad No 135, 1991
	rep No 120, 2015
s 61D	ad No 135, 1991
	rep No 120, 2015
s 62	am No 33, 1976; No 135, 1979; No 144, 1981; No 104, 1988; No 126, 1991; No 58, 2011; No 120, 2015
s 63	am No 164, 1984; No 58, 2011; No 120, 2015
s 64	am No 161, 1977; No 164, 1984; No 58, 2011; No 120, 2015
Part IX	
Division 1	
s. 66	am. No. 59, 1974; No. 164, 1984; No. 5, 1995; No 31, 2014
s. 67	am. No. 58, 2011
Division 2	
s. 68	am. No. 33, 1976; No. 164, 1984; No. 5, 1995
s. 69	am. No. 164, 1984; No. 58, 2011
Division 3	
s. 70	am. No. 59, 1974; No. 164, 1984; No 31, 2014
s. 71	am. No. 33, 1976; No. 92, 1981; No. 164, 1984; No. 104, 1988
s. 72	am. No. 36, 1978; No. 164, 1984; No. 5, 2011
s. 73	am. No. 36, 1978; No. 164, 1984; No. 5, 2011
s. 74	am. No. 187, 1997; No. 58, 2011
s. 75	am. No. 164, 1984; No. 187, 1997; No. 134, 2008; No. 58, 2011
s. 76	am. No. 33, 1976; No. 164, 1984; No. 58, 2011
s. 78	am. No. 164, 1984; No. 65, 1987; No. 58, 2011
s. 79	am. No. 164, 1984; No. 58, 2011
s. 80	am. No. 164, 1984; No. 58, 2011
s. 82	am. No. 58, 2011
s. 83	am. No. 135, 1991
Division 4	
s. 84	am. No. 36, 1978; No. 164, 1984; No. 5, 1995; Nos. 5 and 58, 2011

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Endnote 4—Amendment history

Provision affected	How affected
Part X	
s. 85	am. No. 161, 1977; No. 164, 1984; No. 65, 1987; No. 58, 2011
s. 86	am. No. 164, 1984
s. 87	am. No. 164, 1984; No. 58, 2011
s. 87A	ad. No. 161, 1977 am. No. 164, 1984; No. 58, 2011
s. 88	am. No. 164, 1984
s. 89	am. No. 161, 1977; No. 164, 1984; No. 58, 2011
s. 90	am. No. 161, 1977; No. 164, 1984; No. 58, 2011
s. 91	am. No. 164, 1984; No. 65, 1987; No. 58, 2011
s. 92	am. No. 164, 1984 (as am. by No. 65, 1985); No. 58, 2011
s. 93	am. No. 164, 1984; No. 58, 2011
s. 94	am. No. 164, 1984
s. 95	am. No. 164, 1984
Part XA	
Part XA.....	ad. No. 13, 1977
Division 1	
Division 1	ad No 22, 2014
s 98AA	ad No 22, 2014
s. 98A	ad. No. 13, 1977 am. No. 161, 1977; No. 164, 1984; No. 65, 1987; No. 148, 2001; No. 165, 2007; No 22, 2014
s 98AB.....	ad No 22, 2014
s 98AC.....	ad No 22, 2014
Division 2	
Division 2	ad No 22, 2014
s 98AD	ad No 22, 2014
s 98B	ad No 13, 1977 am No 161, 1977; No 135, 1979; No 164, 1984; No 65, 1987; No 21, 1991; No 148, 2001; No 165, 2007; No 134, 2008; No 58, 2011; No 22, 2014; No 5, 2015

Endnote 4—Amendment history

Provision affected	How affected
s 98C	ad No 13, 1977 am No 135, 1991; No 148, 2001; No 120, 2015
s. 98D	ad. No. 13, 1977 rs. No. 161, 1977 am. No. 148, 2001; No. 165, 2007; No. 134, 2008
s. 98E	ad. No. 13, 1977 am. No. 148, 2001
s. 98F	ad. No. 13, 1977 am. No. 93, 1986; No 126, 1991; No. 148, 2001
s. 98G	ad. No. 13, 1977 am. No. 135, 1979; No. 93, 1986; No. 148, 2001
Division 3	
Division 3	ad No 22, 2014
s. 98GA	ad. No. 93, 1986 rep. No. 148, 2001 ad No 22, 2014
s. 98GB	ad. No. 125, 1989 rep. No. 148, 2001 ad No 22, 2014
s 98GC	ad No 22, 2014
s 98GD	ad No 22, 2014
s 98GE	ad No 22, 2014
s 98GF	ad No 22, 2014
Part XB	
Part XB	ad. No. 144, 1981
s. 98H	ad. No. 144, 1981
s. 98J	ad. No. 144, 1981 am. No. 134, 2008
s. 98K	ad. No. 144, 1981
s. 98L	ad. No. 144, 1981

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Endnote 4—Amendment history

Provision affected	How affected
Part XI	
Part XI heading.....	rs. No. 58, 2011
Part XI.....	rs. No. 33, 1976
Division 1	
Division 1 heading.....	ad. No. 58, 2011
s. 99.....	rs. No. 33, 1976 am. No. 58, 2011
Division 2	
Division 2.....	ad No 58, 2011
s 100.....	rep No 33, 1976 ad No 58, 2011
s 101.....	rep No 33, 1976 ad No 58, 2011
s 102.....	rep No 33, 1976 ad No 58, 2011 am No 120, 2015
s 103.....	rep No 33, 1976 ad No 58, 2011
s 104.....	rep No 33, 1976 ad No 58, 2011
s 105.....	rep No 33, 1976 ad No 58, 2011
s 106.....	rep No 33, 1976 ad No 58, 2011 am No 120, 2015
Division 3	
Division 3.....	ad. No. 58, 2011
s. 107.....	rep. No. 33, 1976 ad. No. 58, 2011
ss. 108–123.....	rep. No. 33, 1976

Endnote 4—Amendment history

Provision affected	How affected
Part XII	
s. 124	rep. No. 33, 1976 ad. No. 187, 1997 am. No. 58, 2011; No 89, 2013
s. 124A	ad. No. 187, 1997 am. No. 58, 2011
s. 124B	ad No 82, 2012 am No 62, 2014; No 65, 2015
s. 124C	ad No 82, 2012 am No 62, 2014; No 65, 2015
s. 124D	ad No 82, 2012 am No 62, 2014 rs No 65, 2015
s. 126	am. No. 104, 1988; No. 58, 2011
s. 127	am. No. 164, 1984; No. 104, 1988; No. 141, 2001; No. 58, 2011; No 4, 2016; No 61, 2016
s. 128	am. No. 135, 1979; No. 58, 2011
s. 128A	ad. No. 104, 1988 am. No. 58, 2011
s. 130	am. No. 164, 1984; No. 104, 1988; No. 141, 2001; No. 58, 2011; No 4, 2016; No 61, 2016
s. 130A	ad. No. 161, 1977
s. 130B	ad. No. 187, 1997 am. No. 58, 2011
s. 131	am No 33, 1976; No 164, 1984; No 146, 1999; No 10, 2015; No 61, 2016
Part XIII	
Part XIII	ad No 135, 1991
s. 132	ad No 135, 1991
s. 133	ad No 135, 1991
s. 134	ad No 135, 1991
s. 135	ad No 135, 1991

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
	am No 120, 2015
s 136	ad No 135, 1991
s 137	ad No 135, 1991
s 138	ad No 135, 1991
Schedule 2	
Schedule 2	am. No. 96, 1975; No. 161, 1977
Schedule 3	
Schedule 3	am. No. 161, 1977; No. 135, 1979

Endnote 5—Editorial changes

In preparing this compilation for registration, the following kinds of editorial change(s) were made under the *Legislation Act 2003*.

Subsections 6A(1) and (2)**Kind of editorial change**

Change to typeface

Details of editorial change

This compilation was editorially changed to update three occurrences of the italicised words *bona fide* to regular font.

Subsections 43A(9) and 44(4)**Kind of editorial change**

Change to grammar, syntax or the use of conjunctives or disjunctives

Details of editorial change

Subsections 43A(9) and 44(4) contain the phrase “does not effect”.

This compilation was editorially changed to omit the word “effect” and substitute the word “affect” in subsections 43A(9) and 44(4) to correct this grammatical error.