



# **Governor-General Act 1974**

**No. 16, 1974**

## **Compilation No. 19**

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## About this compilation

### **This compilation**

This is a compilation of the *Governor-General Act 1974* 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](http://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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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 in relation to the Salary of the Governor-General, and the Payment of Allowances to persons, and to the spouses of persons, who have held the office of Governor-General, to establish the office of Official Secretary to the Governor-General, to provide for the employment of staff of the Governor-General, and for related purposes**

**1 Short title**

This Act may be cited as the *Governor-General Act 1974*.

**2 Commencement**

This Act shall come into operation on the day on which it receives the Royal Assent.

**2A Interpretation**

(1) References in sections 6, 7, 11, 12 and 18 to the Governor-General shall be construed as references to the Governor-General acting with the advice of the Executive Council.

(2) In this Act:

*Allowance Orders* means Allowance Orders made under subsection 4AH(1).

*associate allowance* means an associate deferred allowance or associate immediate allowance.

*associate deferred allowance* means an associate deferred allowance under subsection 4AB(3).

**associate immediate allowance** means an associate immediate allowance under subsection 4AB(2).

**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 that Act. 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 that Act.

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

**Finance Secretary** means the Secretary of the Finance Department.

**marital or couple relationship** has the meaning given by section 2B.

**medical practitioner** means a person registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners.

**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*.

**operative time**, in relation to a splitting agreement or splitting order, means the time that is the operative time for the purposes of

Part VIII B of the *Family Law Act 1975* in relation to a payment split under the agreement or order.

**original interest** means a superannuation interest to which section 4AB applies.

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

**permanently incapacitated** has the meaning given by subsection 4AC(4).

**retirement allowance** means an allowance under subsection 4(1).

**scheme value** means the amount determined under the Allowance Orders.

**splitting agreement** means:

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

**splitting order** has the same meaning as in Part VIII B 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 that Act.

**spouse** has a meaning affected by section 2C.

**spouse allowance** means an allowance under subsection 4(2).

**standard allowance** means:

- (a) a retirement allowance; or
- (b) a spouse allowance; or

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- (c) an associate allowance.

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

**transfer amount** means:

- (a) if a splitting percentage applies—the amount worked out 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 worked out using the formula:

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

**transfer factor** means the number rounded to 6 decimal places (rounding up if the seventh decimal place is 5 or more) that is worked out by dividing the number of whole dollars in the transfer amount by the number of whole dollars in the scheme value.

### 2B Marital or couple relationship

- (1) In this section and section 2C:

**deceased person** means a person who was, at the time of his or her death, the Governor-General or a person who has at any time after the commencement of this Act held that office.

- (2) For the purposes of this Act, a person had a **marital or couple relationship** with a deceased person at a particular time if the person ordinarily lived with the deceased person as the deceased person's husband, wife, spouse or partner on a permanent and bona fide domestic basis at that time.



- (3) For the purpose of subsection (2), a person is to be regarded as ordinarily living with a deceased person as the deceased 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 the deceased person as the deceased 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 the deceased person as the deceased person's husband, wife, spouse or partner for a continuous period of less than 3 years up to that time and the Finance Secretary, having regard to any relevant evidence, is of the opinion that the person ordinarily lived with the deceased person as the deceased 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 the deceased person.
- (4) For the purpose of subsection (3), relevant evidence includes, but is not limited to, evidence establishing any of the following:
- (a) the person was wholly or substantially dependent on the deceased 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 within the meaning of the *Family Law Act 1975*;
  - (d) the persons jointly owned a home which was their usual residence.

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- (5) For the purposes of this section, a person is taken to be living with the deceased person if the Finance Secretary is satisfied that the person would have been living with the deceased 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).
- (6) For the purposes of this section, 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).

### 2C Spouse of a deceased person

For the purposes of this Act, a person is a spouse of a deceased person if:

- (a) the person had a marital or couple relationship with the deceased person at the time of the deceased person's death; or
- (b) the person:
  - (i) had previously had a marital or couple relationship with the deceased person; and
  - (ii) 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
  - (iii) in the Finance Secretary's opinion, was wholly or substantially dependent on the deceased person at the time of the death.

### 3 Salary of Governor-General

The annual sum payable out of the Consolidated Revenue Fund for the salary of the Governor-General shall be \$425,000.

#### 4 Allowances

- (1) Subject to subsection (4) and sections 4AE and 4AG, where, after the commencement of this Act, a person ceases to hold office as Governor-General, an allowance is payable under this section to him or her during his or her life-time at such rate as is from time to time payable under paragraph (3)(a).
- (2) Subject to subsection (4) and sections 4A, 4AE and 4AG, where, after the commencement of this Act, a person who is Governor-General dies, or a person who has at any time after the commencement of this Act held office as Governor-General dies, an allowance is payable under this section to a spouse of the person during the life-time of the spouse at such rate as is from time to time payable under paragraph (3)(b).
- (3) The rate of the allowance payable to a person under this section at any time is:
  - (a) in the case of a person who has held office as Governor-General—60% of the rate of the salary payable to the Chief Justice of the High Court of Australia at that time; or
  - (b) in the case of a person who is a spouse of a deceased person who held office as Governor-General—five-eighths of the rate applicable under paragraph (a) at that time to a person who has held office as Governor-General.
- (4) The amount of the allowance that, but for this subsection, would be payable to a person under this section in respect of any period is reduced by the amount of any pension or retiring allowance payable to that person, whether by virtue of a law or otherwise, in respect of that period out of money provided in whole or in part by the Commonwealth, a State or a Territory.

#### 4A Allowance payable when there is more than one spouse

- (1) If a person who held office or had held office as the Governor-General (*deceased person*) dies leaving more than one spouse, the Finance Secretary must allocate any allowance payable

to a spouse of the deceased person under this Act among the spouses.

- (2) Subject to subsection (3), an allowance is only payable to each spouse in accordance with the allocation.
- (3) In making the allocation, the Finance Secretary must:
  - (a) have regard to the respective needs of each of the spouses; and
  - (b) ensure that the aggregate of the rates of allowance applicable to the spouses will not exceed 100% of the rate of allowance that would have been applicable to the deceased person under paragraph 4(3)(a); and
  - (c) ensure that the rate of allowance applicable to each spouse will not exceed the rate specified in paragraph 4(3)(b).

#### **4AA Benefit payable where Governor-General or surviving spouse dies on or after 1 July 2006**

##### *Scope*

- (1) This section applies if:
  - (a) a person who is, or has previously been, the Governor-General dies on or after 1 July 2006 without leaving a spouse; or
  - (b) a person who is, or has previously been, the Governor-General has died leaving a spouse or spouses and:
    - (i) if there was only one spouse—that spouse dies on or after 1 July 2006; or
    - (ii) if there was more than one spouse—both or all of the spouses have died and the death of the last surviving spouse occurs on or after 1 July 2006;and, on the last day on which the person held office as Governor-General, the person was not a qualified employee (within the meaning of the *Superannuation (Productivity Benefit) Act 1988*).

*Benefit*

- (2) Subject to subsection (3), there is payable to the personal representative of the person an amount of benefit equal to the sum of the following amounts:
- (a) the total of the minimum amounts that the Commonwealth would have had to contribute to a complying superannuation fund or scheme for the benefit of the person in order to avoid having any individual superannuation guarantee shortfalls in respect of the person if it were assumed that:
    - (i) the person was an employee of the Commonwealth (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) in his or her capacity as the Governor-General and had never been an employee of the Commonwealth (within the meaning of that Act) in any other capacity; and
    - (ii) section 4 of this Act had not been enacted; and
    - (iii) those contributions were made on a monthly basis;
  - (b) the interest that would have accrued on the contributions covered by paragraph (a) if it were assumed that interest on those contributions had accrued in accordance with the method set out in a determination made by the Minister under subsection (6).

*Personal representatives*

- (3) The amount of benefit payable to the personal representative of the person under subsection (2) is to be reduced by the sum of the amounts of the allowances (if any) that were paid to the person or any spouse of the person under section 4.
- (4) If an amount of benefit is payable under subsection (2) to the personal representative of the person and no personal representative can be found, the amount is to be paid to any individual or individuals that the Minister determines.

*Appropriation*

- (5) A benefit under subsection (2) is payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

*Interest method determination*

- (6) The Minister must, by writing, determine a method for the purposes of paragraph (2)(b).
- (7) A method determined under subsection (6) may provide for different interest rates for different periods.
- (8) A method determined under subsection (6) may be expressed to relate to a period that began before the determination was made.
- (9) A determination under subsection (6) may be varied, but not revoked, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.
- (10) Subsection (9) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* to other instruments under this Act.
- (11) A determination under subsection (6) is a legislative instrument.
- (12) Despite anything in regulations made for the purposes of paragraph 44(2)(b) of the *Legislation Act 2003*, section 42 (disallowance) of that Act applies to a determination under subsection (6) of this section.

*Definitions*

- (13) In this section:

***complying superannuation fund or scheme*** has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*.

***individual superannuation guarantee shortfall*** has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*.

#### **4AB Associate allowance for non-member spouse**

- (1) This section applies to a superannuation interest under this Act (the *original interest*) if:
- (a) the Finance Secretary receives a splitting agreement or splitting order in respect of the original interest; and
  - (b) the member spouse and the non-member spouse are both alive at the operative time; and
  - (c) if a base amount applies—the base amount at the operative time is not more than the family law value or scheme value.

Note: If the same superannuation interest is subject to 2 or more payment splits, then this section applies separately in relation to each of those splits.

##### *Associate immediate allowance*

- (2) If, at the operative time, a standard allowance is payable in respect of the original interest, then the non-member spouse is entitled to an associate immediate allowance from the operative time at the rate calculated under the Allowance Orders by reference to the transfer amount.

##### *Associate deferred allowance*

- (3) If, at the operative time, a standard allowance is not payable in respect of the original interest, then the non-member spouse is entitled to an associate deferred allowance in accordance with section 4AC.

##### *Rounding of transfer amount*

- (4) For the purposes of subsection (2), the transfer amount is to be rounded to the nearest cent (rounding 0.5 cents upwards).

#### 4AC Associate deferred allowance

##### *Annual rate*

- (1) The associate deferred allowance is payable at an annual rate calculated under the Allowance Orders by reference to the transfer amount.
- (2) For the purposes of subsection (1), the transfer amount is to be rounded to the nearest cent (rounding 0.5 cents upwards).

##### *When the allowance is payable*

- (3) Subject to section 4AD, the allowance is payable from the later of:
  - (a) the operative time; and
  - (b) the earliest of the following days:
    - (i) if the non-member spouse is permanently incapacitated—the day that the Finance Secretary considers to be the day on which the spouse became permanently incapacitated;
    - (ii) a day notified to the Finance Secretary under subsection (5) of this section;
    - (iii) the day on which the non-member spouse turns 65.
- (4) The non-member spouse is ***permanently incapacitated*** if the Finance Secretary is satisfied that the spouse is unlikely, because of ill-health (whether physical or mental), to engage in gainful employment for which the spouse is reasonably qualified by education, training or experience.
- (5) The non-member spouse may give a written notice to the Finance Secretary specifying a day that is not before the day on which the non-member spouse turns 60.

##### *Death of non-member spouse*

- (6) If the non-member spouse dies before the allowance becomes payable, an amount calculated under the Allowance Orders must be paid to:



- (a) the legal personal representative of the spouse; or
  - (b) if no such legal personal representative can be found—any individual or individuals that the Finance Secretary determines.
- (7) An amount under subsection (6) is payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

**4AD Application for payment of associate deferred allowance**

- (1) The associate deferred allowance is not payable to the non-member spouse unless:
- (a) a written application has been made to the Finance Secretary requesting payment of the allowance; and
  - (b) the applicant has provided any information that is necessary to determine whether the allowance is payable.
- (2) An application for payment on the ground of permanent incapacity must be accompanied by:
- (a) a certificate given by a medical practitioner nominated by, or on behalf of, the non-member spouse; and
  - (b) such additional information or documents as the Finance Secretary requires.
- (3) The certificate mentioned in paragraph (2)(a) must include a statement to the effect that, in the opinion of the medical practitioner, the non-member spouse is permanently incapacitated.

**4AE Reduction of retirement and spouse allowances payable after operative time**

- (1) This section applies if:
- (a) at the operative time, a retirement allowance is not payable to a person in respect of the original interest; and
  - (b) after the operative time:
    - (i) the retirement allowance becomes payable to the person; or

- (ii) the person dies before the retirement allowance becomes payable and a spouse allowance becomes payable to a spouse of the person.

*Reduction of allowances*

- (2) In working out the rate of the retirement allowance that is payable:
  - (a) work out the rate of the allowance under section 4 (disregarding subsection 4(4)); and
  - (b) reduce that rate to the amount calculated under the Allowance Orders.
- (3) For the purposes of working out the rate of the spouse allowance under paragraph 4(3)(b), the rate applicable under paragraph 4(3)(a) is reduced to the amount calculated under the Allowance Orders.

Note: The rate of the spouse allowance may be reduced under subsection 4(4).

*Effect of reduction of retirement allowance*

- (4) If:
  - (a) the rate of a retirement allowance payable to a person is reduced under subsection (2); and
  - (b) a spouse allowance later becomes payable because the person dies;

then, for the purposes of working out the rate of the spouse allowance under paragraph 4(3)(b), the rate applicable under paragraph 4(3)(a) is reduced to the amount calculated under the Allowance Orders.

Note: The rate of the spouse allowance may be reduced under subsection 4(4).

**4AF Reduction of associate deferred allowance payable after operative time**

If:

- (a) at the operative time, a standard allowance is not payable in respect of the original interest; and
- (b) the original interest is an entitlement to an associate deferred allowance;

the annual rate of the associate deferred allowance (when it becomes payable) is reduced to the amount calculated under the Allowance Orders.

Note: Although an associate immediate allowance becomes payable at the operative time, an associate deferred allowance will often not become payable until some time after the operative time.

#### **4AG Reduction of standard allowance payable at operative time**

- (1) This section applies if, at the operative time, a standard allowance is payable in respect of the original interest.

##### *Reduction of allowances*

- (2) If the standard allowance is not a retirement allowance, the rate of the allowance is reduced to the amount calculated under the Allowance Orders.
- (3) If the standard allowance is a retirement allowance, the rate of the allowance is worked out as follows:
  - (a) work out the rate of the allowance under section 4 (disregarding subsection 4(4));
  - (b) reduce that rate to the amount calculated under the Allowance Orders.

##### *Effect of reduction of retirement allowance*

- (4) If:
  - (a) the rate of a retirement allowance payable to a person is reduced under subsection (3); and
  - (b) a spouse allowance later becomes payable because the person dies;

then, for the purposes of working out the rate of the spouse allowance under paragraph 4(3)(b), the rate applicable under

## Section 4AH

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paragraph 4(3)(a) is reduced to the amount calculated under the Allowance Orders.

Note: The rate of the spouse allowance may be reduced under subsection 4(4).

### **4AH Allowance Orders**

- (1) The Minister may, by legislative instrument, make Allowance Orders providing for matters:
  - (a) required or permitted by this Act to be provided; or
  - (b) necessary or convenient to be provided in order to carry out or give effect to this Act.
- (2) Despite regulations made for the purposes of paragraph 44(2)(b) of the *Legislation Act 2003*, section 42 (disallowance) of that Act applies to the Allowance Orders.

### **4AI Compensation for acquisition of property**

- (1) If the operation of sections 4AB to 4AG, or the Allowance Orders, would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.
- (3) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

#### **4B Application for review**

Applications may be made to the Administrative Appeals Tribunal for the review of a decision of the Finance Secretary made under:

- (a) paragraph 2B(3)(b); or
- (b) subsection 2B(5); or
- (c) subparagraph 2C(b)(iii); or
- (d) subsection 4A(1); or
- (e) subparagraph 4AC(3)(b)(i); or
- (f) subsection 4AC(4); or
- (g) paragraph 4AC(6)(b).

#### **4BA Sustaining the superannuation contribution concession— release of money to meet deferred tax liability**

*Release of lump sum under a release authority*

- (1) 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 the Finance Secretary 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*.

*Finance Secretary treated as superannuation provider*

- (2) For the purposes of this Act, the Division 293 tax law (within the meaning of the *Income Tax Assessment Act 1997*) applies as if the Finance Secretary was the superannuation provider in relation to the defined benefit interest (within the meaning of that Act) established under this Act.

## Section 4BA

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### *Limit on amount that may be released*

- (3) In addition to any requirements in Division 135 in Schedule 1 to the *Taxation Administration Act 1953*, the amount of the release authority lump sum must not have the effect that the person's allowance is reduced below zero.
- (4) For the purpose of subsection (3), the effect of the release authority lump sum on the amount of the person's allowance is to be worked out after taking account of any reduction under another provision of this Act.

### *Appropriation*

- (5) Payment of a release authority lump sum must be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

### *Calculation of allowance after payment of release authority lump sum*

- (6) If:
  - (a) a release authority lump sum is paid in relation to a release authority issued to a person; and
  - (b) an allowance is payable to the person under subsection 4(1);the rate of the allowance is the applicable percentage of the rate of allowance that would, apart from this section (but having regard to any other provisions of this Act that affect that rate) be payable to the person.
- (7) For the purposes of subsection (6), the applicable percentage is worked out using this formula:

$$\left[ 1 - \left( \frac{\text{Release authority lump sum}}{\text{Age factor}} \div \text{Basic allowance} \right) \right] \times 100$$

where:

***age factor*** means the age factor for the person on the day on which the allowance becomes payable (see subsection (10)).

**basic allowance** means the rate of the allowance that would, apart from this subsection (but having regard to any other provisions of this Act that affect that rate), be payable to the person at the time the allowance becomes payable.

- (8) The applicable percentage mentioned in subsection (7) is to be calculated to 3 decimal places (rounding up if the fourth decimal place is 5 or more).
- (9) If:
- (a) the rate of allowance payable to a person is worked out under subsection (6) having regard to a particular applicable percentage; and
  - (b) a spouse allowance becomes payable to a spouse of the person;
- the rate of the spouse allowance is that applicable percentage of the rate of spouse allowance that would, apart from this section (but having regard to any other provisions of this Act that affect that rate) be payable to the spouse.
- (10) The Finance Secretary may, by legislative instrument, determine the age factor, or the method for working out the age factor, for the purposes of subsection (7).

#### **4C Recoverable payments**

- (1) If, apart from this subsection, the Commonwealth does not have power under this Act 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 the designated Secretary, on behalf of the Commonwealth, in a court of competent jurisdiction.

## Section 4D

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- (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 designated Secretary determines;
- may, if the designated Secretary so directs, be recovered by deduction from that benefit.

### *Appropriation*

- (4) For the purposes of subsection 4AA(5), if a payment under subsection (1) of this section relates to a benefit under subsection 4AA(2), the payment is taken to be a benefit under subsection 4AA(2).
- (5) For the purposes of section 5, if a payment under subsection (1) of this section relates to an allowance under section 4, the payment is taken to be an allowance under section 4.

### *Benefit*

- (6) For the purposes of this section, **benefit** means:
- (a) an allowance under section 4; or
  - (b) a benefit under subsection 4AA(2).

### *Designated Secretary*

- (7) For the purposes of this section, **designated Secretary** means the Secretary of the Department administered by the Minister who administers sections 4 and 4AA.

## **4D Recoverable death payments**

- (1) If, apart from this subsection, the Commonwealth does not have power under this Act 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 designated Secretary 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.
- (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 the designated Secretary, on behalf of the Commonwealth, in a court of competent jurisdiction.

*Appropriation*

- (4) For the purposes of subsection 4AA(5), if a payment under subsection (1) of this section relates to a benefit under subsection 4AA(2), the payment under subsection (1) of this section is taken to be a benefit under subsection 4AA(2).
- (5) For the purposes of section 5, if a payment under subsection (1) of this section relates to an allowance under section 4, the payment is taken to be an allowance under section 4.

*Benefit*

- (6) For the purposes of this section, **benefit** means:
- (a) an allowance under section 4; or
  - (b) a benefit under subsection 4AA(2).

*Designated Secretary*

- (7) For the purposes of this section, **designated Secretary** means the Secretary of the Department administered by the Minister who administers sections 4 and 4AA.

**4E Reports about recoverable payments and recoverable death payments**

- (1) During the applicable publication period for a reporting period, the designated Secretary must cause to be published, in such manner as the designated Secretary thinks fit, a report that sets out:
- (a) both:
    - (i) the number of payments made under subsection 4C(1) during the reporting period; and
    - (ii) the total amount of those payments; and
  - (b) both:
    - (i) the number of payments made under subsection 4D(1) during the reporting period; and
    - (ii) the total amount of those payments.
- (2) However, a report is not required if:
- (a) the number mentioned in subparagraph (1)(a)(i) is zero; and
  - (b) the number mentioned in subparagraph (1)(b)(i) is zero.

*Deferred reporting*

- (3) Paragraph (1)(a) of this section does not require a report to deal with a payment unless, before the preparation of the report, a designated Department official was aware the payment was made under subsection 4C(1).

- (4) Paragraph (1)(b) of this section does not require a report to deal with a payment unless, before the preparation of the report, a designated Department official was aware the payment was made under subsection 4D(1).
- (5) For the purposes of this section, if:
- (a) a payment was made under subsection 4C(1) or 4D(1) in a reporting period; and
  - (b) either:
    - (i) because of subsection (3) of this section, paragraph (1)(a) of this section did not require a report to deal with the payment; or
    - (ii) because of subsection (4) of this section, paragraph (1)(b) of this section did not require a report to deal with the payment; and
  - (c) during a later reporting period, a designated Department official becomes aware that the payment was made under subsection 4C(1) or 4D(1), as the case may be;
- the payment is subject to a *deferred reporting obligation* in relation to the later reporting period.
- (6) If one or more payments made under subsection 4C(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the designated Secretary must, during the applicable publication period for the later reporting period:
- (a) prepare a report that sets out:
    - (i) the number of those payments; and
    - (ii) the total amount of those payments; and
    - (iii) the reporting period during which the payments were made; and
  - (b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and
  - (c) if paragraph (b) does not apply—publish, in such manner as the designated Secretary thinks fit, the paragraph (a) report.

## Section 4E

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- (7) If one or more payments made under subsection 4D(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the designated Secretary must, during the applicable publication period for the later reporting period:
- (a) prepare a report that sets out:
    - (i) the number of those payments; and
    - (ii) the total amount of those payments; and
    - (iii) the reporting period during which the payments were made; and
  - (b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and
  - (c) if paragraph (b) does not apply—publish, in such manner as the designated Secretary thinks fit, the paragraph (a) report.

### *Reporting period*

- (8) For the purposes of this section, a **reporting period** is:
- (a) a financial year; or
  - (b) if a shorter recurring period is specified in a legislative instrument made by the designated Minister—that period.

### *Applicable publication period*

- (9) For the purposes of this section, the **applicable publication period** for a reporting period is the period of:
- (a) 4 months; or
  - (b) if a lesser number of months is specified, in relation to the reporting period, in a legislative instrument made by the designated Minister—that number of months;
- beginning immediately after the end of the reporting period.

### *Designated Department*

- (10) For the purposes of this section, **designated Department** means the Department administered by the designated Minister.

*Designated Department official*

- (11) For the purposes of this section, **designated Department official** means an official (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) of the designated Department.

*Designated Minister*

- (12) For the purposes of this section, **designated Minister** means the Minister who administers sections 4 and 4AA.

*Designated Secretary*

- (13) For the purposes of this section, **designated Secretary** means the Secretary of the designated Department.

## 5 Appropriation

An allowance under this Act is payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

## 6 Official Secretary

- (1) There shall be an Official Secretary, who shall be appointed by the Governor-General.
- (2) The Official Secretary, together with the staff employed under section 13, constitute the Office of Official Secretary to the Governor-General.
- (3) The function of the Office is to assist the Governor-General.
- (4) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):
  - (a) the Office is a listed entity; and
  - (b) the Official Secretary is the accountable authority of the Office; and
  - (c) the persons referred to in subsection (2) are officials of the Office; and

- (d) the purposes of the Office include the functions of the Office referred to in subsection (3).

## **7 Terms and conditions of appointment**

The Official Secretary holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

## **8 Remuneration of Official Secretary**

- (1) The Official Secretary shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Remuneration Tribunal is in operation, the Official Secretary shall be paid such remuneration as is prescribed.
- (2) The Official Secretary shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

## **10 Resignation**

The Official Secretary may resign from the office of Official Secretary by writing delivered to the Governor-General.

## **11 Termination of appointment**

The Governor-General may at any time terminate the appointment of a person as Official Secretary.

## **12 Acting Official Secretary**

The Governor-General may appoint a person to act as Official Secretary:

- (a) during a vacancy in the office of Official Secretary, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Official Secretary is absent from duty or from Australia, or is, for any other reason, unable to perform the functions of the office of Official Secretary.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

### **13 Official Secretary may employ staff**

The Official Secretary may, on behalf of the Commonwealth, employ, under an agreement in writing, a person as a member of the Governor-General's staff.

### **14 Remuneration and other conditions of employees**

The remuneration and other conditions of employment of a person employed under section 13 are as determined by the Official Secretary.

### **15 Termination of employment**

- (1) The Official Secretary may at any time, by notice in writing given to a person employed under section 13, terminate the person's employment.
- (2) A person employed by the Official Secretary under section 13 may at any time, by notice in writing given to the Official Secretary, terminate the person's employment.

### **16 Delegation by the Finance Secretary**

- (1) The Finance Secretary may delegate, in writing, all or any of the Finance Secretary's powers under this Act to an SES employee or acting SES employee in the Finance Department.

- (2) In exercising powers under a delegation, the delegate must comply with any written directions of the Finance Secretary.

## **20 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.



## 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

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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

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### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Governor-General Act 1974	16, 1974	11 Apr 1974	11 Apr 1974	
Governor-General Amendment Act 1977	118, 1977	10 Nov 1977	10 Nov 1977	s. 2
Governor-General Amendment Act 1982	44, 1982	9 June 1982	9 June 1982	s. 2
Statute Law (Miscellaneous Provisions) Act (No. 1) 1983	39, 1983	20 June 1983	s 7(1): 18 July 1983 (s 2(1)) Sch 1: 9 June 1982 (s 2(10))	s 7(1)
Public Service Reform Act 1984	63, 1984	25 June 1984	s 139–141: 24 Dec 1984 (s 2(4) and gaz 1984, No S539)	—
<b>as amended by</b>				
Statute Law (Miscellaneous Provisions) Act (No. 2) 1984	165, 1984	25 Oct 1984	s 6(2): 22 Nov 1984 (s 2(1)) s 6(3): 25 Oct 1984 (s 2(31)) s 6(1) and Sch 1: 24 Dec 1984 (s 2(21)(a), (32))	s 6
Governor-General Amendment Act 1988	83, 1988	19 Oct 1988	19 Oct 1988	s. 2
Prime Minister and Cabinet Legislation Amendment Act 1991	199, 1991	18 Dec 1991	18 Dec 1991	s. 3(2)

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 1992	94, 1992	30 June 1992	s. 3: 1 July 1990 Remainder: Royal Assent	—
Commonwealth Superannuation Schemes Amendment Act 1992	185, 1992	17 Dec 1992	25 June 1993	. 5
Governor-General Amendment Act 1995	122, 1995	2 Nov 1995	2 Nov 1995	Sch (item 2)
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 4 (items 1, 79) and Sch 5 (items 65–67): 25 Oct 1996 (s 2(1))	—
Superannuation Legislation Amendment (Superannuation Contributions Tax) Act 1997	187, 1997	7 Dec 1997	Sch 4: 7 Dec 1997 (s 2(1))	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 496–499): 5 Dec 1999 (gaz 1999 No S584 and s 2(2))	—
Governor-General Legislation Amendment Act 2001	57, 2001	28 June 2001	28 June 2001	Sch 1 (items 2, 14)
Governor-General Amendment Act 2003	68, 2003	3 July 2003	3 July 2003	—
Superannuation (Consequential Amendments) Act 2005	81, 2005	29 June 2005	Sch 5: 1 July 2005	—

*Governor-General Act 1974*

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Compilation No. 19

Compilation date: 9/12/17

Registered: 9/12/17

## Endnotes

### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Governor-General Amendment (Salary and Superannuation) Act 2008	62, 2008	30 June 2008	30 June 2008	Sch 1 (items 2, 17)
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008	134, 2008	4 Dec 2008	s. 4: Royal Assent Sch 5: 1 Jan 2009 (F2008L04609)	s 4 and Sch. 5 (item 9)
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 655–660) and Sch 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 94–101): 1 July 2011 (s 2(1) item 2)	—
Financial Framework Legislation Amendment Act (No. 2) 2012	82, 2012	28 June 2012	Sch 1 (item 66): 29 June 2012	—
Judges and Governors-General Legislation Amendment (Family Law) Act 2012	143, 2012	11 Oct 2012	Sch 2: 15 Mar 2013 (F2013L00390)	Sch 2 (item 29)
Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and Other Measures) Act 2013	82, 2013	28 June 2013	Sch 4 (item 1): 28 June 2013 (s 2)	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Governor-General Amendment (Salary) Act 2014	7, 2014	13 Mar 2014	13 Mar 2014	Sch 1 (item 2)
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 6 (item 46), Sch 9 (items 135–138) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
<b>as amended by</b> 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
<b>as amended by</b> 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)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 238–240): 5 Mar 2016 (s 2(1) item 2)	—

## Endnotes

### Endnote 3—Legislation history

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Marriage Amendment (Definition and Religious Freedoms) Act 2017	129, 2017	8 Dec 2017	Sch 3 (item 31) and Sch 4: 9 Dec 2017 (s 2(1) item 7)	Sch 4

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## Endnote 4—Amendment history

## Endnote 4—Amendment history

Provision affected	How affected
Title .....	am No 63, 1984; No 185, 1992
s 2A .....	ad No 63, 1984
	am No 185, 1992; No 187, 1997; No 57, 2001; No 62, 2008; No 134, 2008; No 58, 2011; No 143, 2012; No 62, 2014
s 2B.....	ad No 185, 1992
	am No 134, 2008; No 46, 2011; No 58, 2011; No 129, 2017
	ed C19
s 2C.....	ad No 185, 1992
	am No 134, 2008; No 58, 2011
s 3 .....	rs No 118, 1977; No 44, 1982
	am No 39, 1983
	rs No 83, 1988
	am No 122, 1995; No 57, 2001; No 68, 2003; No 62, 2008; No 7, 2014
s 4 .....	am No 199, 1991; No 185, 1992; No 43, 1996; No 187, 1997; No 57, 2001; No 62, 2008; No 143, 2012
s 4A .....	ad No 185, 1992
	am No 187, 1997; No 62, 2008; No 58, 2011
s 4AA.....	ad No 81, 2005
	am No 126, 2015
s 4AB.....	ad No 143, 2012
s 4AC.....	ad No 143, 2012
s 4AD.....	ad No 143, 2012
s 4AE.....	ad No 143, 2012
s 4AF .....	ad No 143, 2012
s 4AG.....	ad No 143, 2012
s 4AH.....	ad No 143, 2012
	am No 126, 2015
s 4AI.....	ad No 143, 2012
s 4B.....	ad No 185, 1992

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
	am. No. 58, 2011; No. 143, 2012
s 4BA.....	ad No 82, 2013
s 4C.....	ad No 82, 2012 am No 62, 2014
s 4D.....	ad No 82, 2012 am No 62, 2014
s. 4E.....	ad. No. 82, 2012 am No 62, 2014
s. 5.....	am. No. 143, 2012
s. 5A.....	ad. No. 187, 1997 rep. No. 62, 2008
s. 6.....	ad. No. 63, 1984 am. No. 146, 1999; No 62, 2014
s. 7.....	ad. No. 63, 1984
s. 8.....	ad. No. 63, 1984 am. No. 43, 1996
s. 9.....	ad. No. 63, 1984 rep. No. 94, 1992
s 10.....	ad No 63, 1984
s 11.....	ad No 63, 1984
s. 12.....	ad. No. 63, 1984 am. No. 46, 2011
s. 13.....	ad. No. 63, 1984
s. 14.....	ad. No. 63, 1984 am. No. 199, 1991 rs. No. 146, 1999
s. 15.....	ad. No. 63, 1984
s. 16.....	ad. No. 63, 1984 rep. No. 146, 1999 ad. No. 58, 2011
s. 17.....	ad. No. 63, 1984

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Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
	rep. No. 146, 1999
s. 18 .....	ad. No. 63, 1984 (as rep. by No. 165, 1984)
s. 19 .....	ad. No. 63, 1984
	am. No. 43, 1996
	rep No 62, 2014
s. 20 .....	ad. No. 63, 1984

## Endnotes

### Endnote 5—Editorial changes

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#### **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 2B(2) and (3)**

##### **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.