

SUPERANNUATION ACT 1976

No. 31 of 1976

TABLE OF PROVISIONS

PART I—PRELIMINARY

Section	
1.	Short title
2.	Commencement
3.	Interpretation
4.	Application of Act
5.	Annual rate of salary
6.	References to anniversary of birth, &c.
7.	Retirement on ground of invalidity
8.	Contributory service—additional periods
9.	Children of deceased retirement pensioners
10.	Members of Defence Force
11.	Temporary employees likely to be continued in employment
12.	Temporary employees of approved authorities likely to be employed on a permanent basis
13.	Temporary employees employed under contract
14.	Statutory office holders
15.	Invalidity pensioners returning to employment otherwise than as permanent employees
16.	Medical examinations and benefit classification certificates

PART II—COMMISSIONER FOR SUPERANNUATION

17.	Commissioner for Superannuation
18.	Appointment and term of office
19.	Commissioner not to engage in other work
20.	Remuneration and allowances
21.	Leave of absence
22.	Resignation
23.	Termination of appointment
24.	Acting appointments
25.	Delegation
26.	Officers' Rights Declaration Act
27.	Commissioner to keep records with respect to contributions, &c.

PART III—THE INVESTMENT TRUST AND THE FUND

Division 1—The Investment Trust

28.	Establishment of Trust
29.	Trust to be a body corporate
30.	Membership of Trust
31.	Chairman not to engage in other work
32.	Remuneration and allowances
33.	Leave of absence
34.	Resignation
35.	Termination of appointment
36.	Acting appointments
37.	Meetings of the Trust
38.	Delegation
39.	Officers' Rights Declaration Act

TABLE OF PROVISIONS—continued

Division 2—The Fund

- 40. Establishment of Fund
- 41. Fund to be managed by Trust
- 42. Investment of Fund
- 43. Borrowing
- 44. Trust to keep accounts and records in respect of Fund

PART IV—CONTRIBUTIONS

- 45. Basic contributions
- 46. Amount of basic contribution
- 47. Decreases in salary
- 48. Election to pay supplementary contributions
- 49. Amount of supplementary contribution
- 50. Revocation or variation of elections to pay supplementary contributions
- 51. Leave of absence without pay
- 52. Payment of contributions where eligible employee on leave of absence without pay or at less than full pay
- 53. Payment of contributions
- 54. Deferral of contributions of contributors under Defence Force Retirement and Death Benefits Act

PART V—ELIGIBLE EMPLOYEES' BENEFITS

Division 1—Age Retirement Benefit

- 55. Entitlement to age retirement benefit
- 56. Rate of standard age retirement pension
- 57. Rate of additional age retirement pension and amount of lump sum benefit

Division 2—Early Retirement Benefit

- 58. Early retirement—voluntary or involuntary retirement before attaining 60 years of age
- 59. Entitlement to early retirement benefit
- 60. Rate of standard early retirement pension
- 61. Rate of additional early retirement pension and amount of lump sum benefit
- 62. Election for lump sum benefit in case of involuntary retirement

Division 3—Commutation of Additional Age or Early Retirement Pensions

- 63. Pensions to which Division applies
- 64. Election to commute
- 65. Lump sum benefit payable on commutation

Division 4—Invalidity Benefit

- 66. Entitlement to invalidity benefit
- 67. Invalidity benefit where pension not reduced on medical grounds and election not made under section 68 or 69
- 68. Election where benefit not reduced on medical grounds
- 69. Election where benefit not reduced on medical grounds and period of prospective service less than 8 years
- 70. Invalidity benefit where benefit reduced on medical grounds, period of contributory service not less than 8 years and election not made under section 71 or 72
- 71. Election where benefit reduced on medical grounds and period of contributory service not less than 8 years
- 72. Election where benefit reduced on medical grounds and period of contributory service less than 15, but not less than 8, years

TABLE OF PROVISIONS—continued

- 73. Invalidation benefit where benefit reduced on medical grounds and period of contributory service less than 8 years
- 74. Power of Commissioner to require invalidity pensioners to be medically examined, &c.
- 75. Invalidation pensioner restored to health to be found employment
- 76. Cancellation of invalidity pension where invalidity pensioner again becomes eligible employee, &c.
- 77. Partial invalidity pension payable in certain circumstances where invalidity pensioner again becomes eligible employee
- 78. Partial invalidity pension where eligible employee's salary decreases for health reasons
- 79. Benefit not payable under Division in certain circumstances

Division 5—Miscellaneous

- 80. Payment of accumulated contributions where no other benefit payable under Part

PART VI—BENEFITS PAYABLE TO SPOUSES AND CHILDREN

Division 1—Spouse's Benefit on Death of Eligible Employee before Attaining Maximum Retiring Age

- 81. Entitlement to spouse's benefit under Division
- 82. Spouse's benefit where benefit not reduced on medical grounds and election not made under section 83 or 84
- 83. Election where pension not reduced on medical grounds
- 84. Election where benefit not reduced on medical grounds and period of prospective service less than 8 years
- 85. Spouse's benefit where benefit reduced on medical grounds, period of contributory service not less than 8 years and election not made under section 86 or 87
- 86. Election where benefit reduced on medical grounds and period of contributory service not less than 8 years
- 87. Election where pension reduced on medical grounds and period of contributory service less than 15, but not less than 8, years
- 88. Spouse's benefit where pension reduced on medical grounds and period of contributory service less than 8 years

Division 2—Spouse's Benefit on Death of Eligible Employee after Attaining Maximum Retiring Age

- 89. Entitlement to spouse's benefit under Division
- 90. Rate of spouse's standard pension
- 91. Rate of spouse's additional pension and amount of lump sum benefit
- 92. Election to commute spouse's additional pension entitlement

Division 3—Spouse's Benefit on Death of Pensioner

- 93. Entitlement to spouse's benefit on death of pensioner
- 94. Rate of spouse's standard pension on death of age or early retirement pensioner
- 95. Rate of spouse's additional pension on death of age or early retirement pensioner
- 96. Rate of spouse's pension on death of invalidity pensioner

Division 4—Orphan Benefits

- 97. Orphan benefit—death of eligible employee after attaining maximum retiring age
- 98. Orphan benefit—death of eligible employee before attaining maximum retiring age where benefit not reduced on medical grounds and direction not given under section 99

TABLE OF PROVISIONS—continued

- 99. Orphan benefit—death of eligible employee before attaining maximum retiring age where benefit not reduced on medical grounds, period of prospective service less than 8 years and direction given under this section
- 100. Orphan benefit—death of eligible employee before attaining maximum retiring age where benefit reduced on medical grounds and period of contributory service not less than 8 years
- 101. Orphan benefit—death of eligible employee before attaining maximum retiring age where benefit reduced on medical grounds and period of contributory service less than 8 years
- 102. Orphan benefit—death of spouse of deceased eligible employee who died after attaining maximum retiring age
- 103. Orphan benefit—death of spouse of deceased eligible employee who died before attaining maximum retiring age and where benefit not reduced on medical grounds
- 104. Orphan benefit—death of spouse of deceased eligible employee who died before attaining maximum retiring age where benefit reduced on medical grounds and period of contributory service not less than 8 years
- 105. Orphan benefit—death of age or early retirement pensioner
- 106. Orphan benefit—death of invalidity pensioner
- 107. Orphan benefit—death of spouse of deceased age retirement or early retirement pensioner
- 108. Orphan benefit—death of spouse of deceased invalidity pensioner
- 109. Percentages applicable for purpose of certain provisions

Division 5—Miscellaneous

- 110. Apportionment of spouse's benefit amongst surviving spouses

PART VII—GENERAL PROVISIONS APPLICABLE TO BENEFITS

- 111. Payment of accumulated contributions to personal representatives of deceased eligible employee where no other benefit payable, &c.
- 112. Payments into and out of Consolidated Revenue Fund
- 113. Instalments of pensions
- 114. Payment of part of spouse's pension attributable to children
- 115. Payment of orphan benefit
- 116. Payment of benefit otherwise than to person entitled
- 117. Pension to or in respect of certain contributors under Defence Force Retirement and Death Benefits Act
- 118. Assignment of benefits
- 119. Attachment of benefits

PART VIII—CANDIDATES AT PARLIAMENTARY ELECTIONS

- 120. Persons to whom Part applies
- 121. Death of person to whom Part applies before declaration of result of election, &c.
- 122. Physical or mental incapacity of person to whom Part applies before declaration of result of election, &c.
- 123. Re-employment of person to whom Part applies
- 124. Effect of section 121, 122 or 123 in relation to person to whom Part applies

TABLE OF PROVISIONS—continued

PART IX—PRESERVATION OF RIGHTS OF CERTAIN ELIGIBLE EMPLOYEES

Division 1—Preliminary

- 125. Interpretation
- 126. Modification of Act in relation to eligible employees who were previously members of a superannuation scheme

Division 2—Eligible Employees with Preserved Rights from Previous Employment

- 127. Transfer value payable in respect of previous employment
- 128. Payment of transfer values to Commissioner
- 129. Certain lump sums not included in transfer value may be treated as supplementary contributions
- 130. Exemption of certain eligible employees from medical examination

Division 3—Preservation of Rights of Persons Ceasing to be Eligible Employees

- 131. Interpretation
- 132. Eligible employment
- 133. Public employment
- 134. Eligible superannuation schemes
- 135. Transfer value
- 136. Deferred benefits
- 137. Election that Division may apply
- 138. Circumstances in which transfer value payable
- 139. Circumstances in which person entitled to deferred benefits
- 140. Person who is entitled to rights under Division not entitled to rights under other provisions of Act
- 141. Certain former eligible employees not entitled to benefits under Division
- 142. Eligible employee who resigned to contest an election
- 143. Invalid pensioner restored to health
- 144. Person entitled to deferred benefits again becoming an eligible employee, &c.

Division 4—Miscellaneous

- 145. Special provisions affecting certain former contributors under certain superannuation schemes
- 146. Payments into and out of Consolidated Revenue Fund

PART X—PENSION INCREASES

- 147. Interpretation
- 148. Increases in pensions
- 149. Increase payable in respect of part only of certain pensions
- 150. Adjustment of increases in cases of certain pensions
- 151. Application of Part to pensions payable to or in respect of certain overseas employees
- 152. Death or invalidity retirement of eligible employee before 21st anniversary of birth
- 153. Date of effect of increases

PART XI—MISCELLANEOUS

- 154. Review of decisions of Commissioner
- 155. Modification of Act in relation to part-time employees
- 156. Recovery of unpaid contributions, &c.
- 157. Extension of periods of elections, &c.
- 158. Interim payment of benefits
- 159. Payments to the Commonwealth by approved authorities in respect of eligible employees

TABLE OF PROVISIONS—continued

- 160. Cost of administration of, and of medical examinations under, Act
- 161. Annual report of Trust
- 162. Annual report of Commissioner
- 163. Treasurer may request Commissioner or Trust to furnish information
- 164. Directions, &c. to be in writing
- 165. Delegation
- 166. Eligible employees paid in foreign currency
- 167. Persons not to make false statements to Commissioner, &c.
- 168. Regulations

PART XII—TRANSITIONAL PROVISIONS

Division 1—Preliminary

- 169. Definitions

Division 2—Existing Superannuation Fund

- 170. Interpretation
- 171. Transfer of assets and liabilities of existing Fund
- 172. Instruments
- 173. Certificates
- 174. Pending proceedings
- 175. Allocation of existing Fund between pensioners and contributors
- 176. Allocation among eligible pensioners
- 177. Allocation among existing contributors
- 178. Payment from new Fund to the Commonwealth
- 179. Determinations, &c. to be in writing

Division 3—Invalidity Pensioners

- 180. Existing invalidity pensioners

Division 4—Existing Contributors

- 181. Definitions
- 182. First day of service
- 183. Modification of Act in relation to existing contributors
- 184. Medical examinations and benefit classification certificates
- 185. Existing contributors contributing in excess of 5% of salary
- 186. Existing contributors under 40 years of age contributing less than 5% of salary

Division 5—Miscellaneous

- 187. Persons who exchanged pension rights for equivalent rights under superseded Act
- 188. Persons who exchanged rights to refunds or gratuities under other law for equivalent rights under superseded Act
- 189. Dealings by Trust with policies to which section 74 of superseded Act applies
- 190. Unpaid contributions under superseded Act
- 191. Assignment of life policies to Commissioner
- 192. Persons with whom arrangements made under section 7 of the superseded Act

TABLE OF PROVISIONS—continued**SCHEDULE 1****Standard Age Retirement Pension on or after attaining 65 years****Table 1****Rate of pension where contributory service not less than 31 years****Table 2****Rate of pension where contributory service less than 30 years****SCHEDULE 2****Standard Age Retirement Pension on or after attaining 60 years and before 65 years****Rate of pension****SCHEDULE 3****Invalidity Pension****Rate of pension where pension not reduced on medical grounds and contributory service not less than 31 years****SCHEDULE 4****Invalidity Pension****Rate of pension where pension not reduced on medical grounds and prospective service less than 30 years****SCHEDULE 5****Invalidity Pension****Rate of pension where pension reduced on medical grounds and prospective service not less than 30 years****SCHEDULE 6****Invalidity Pension****Rate of pension where pension reduced on medical grounds and prospective service less than 30, but not less than 20, years****SCHEDULE 7****Invalidity Pension****Factors applicable where pension reduced on medical grounds and prospective service less than 30, but not less than 20, years****SCHEDULE 8****Invalidity Pension****Rate of pension where pension reduced on medical grounds and prospective service less than 20 years**

SUPERANNUATION ACT 1976

No. 31 of 1976

An Act to make provision for and in relation to an Occupational Superannuation Scheme for persons employed by the Commonwealth, and for certain other persons.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:—

PART I—PRELIMINARY

1. This Act may be cited as the *Superannuation Act 1976*.¹ Short title.
2. This Act shall come into operation on 1 July 1976. Commence-
ment.
3. (1) In this Act, unless the contrary intention appears— Interpret-
ation.
 - “accumulated basic contributions”, in relation to a person who has ceased to be an eligible employee, means an amount equal to the sum of—
 - (a) the basic contributions that have been, or are deemed to have been, paid, or have become payable, by him on or after his first day of service and the amount of any interest that, in accordance with the regulations, is payable in respect of those contributions; and
 - (b) any amount that, on or after his first day of service, is paid to the Fund under sub-section 112 (5) in respect of him and the amount of any interest that, in accordance with the regulations, is payable in respect of the amount so paid;
 - “accumulated contributions”, in relation to a person who has ceased to be an eligible employee, means the sum of his accumulated basic contributions and his accumulated supplementary contributions (if any);
 - “accumulated supplementary contributions”, in relation to a person who has ceased to be an eligible employee, means an amount equal to the sum of the supplementary contributions that have been, or are deemed to have been, paid, or have become payable, by him on or after his first day of service and the amount of any interest that, in accordance with the regulations, is payable in respect of those contributions;
 - “age retirement pension” means pension payable under Division 1 of Part V;

“approved authority” means—

- (a) an authority or other body that is specified in the regulations as an approved authority for the purposes of this Act, being—
 - (i) a body corporate incorporated, whether before or after the commencement of this Act, 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, whether before or after the commencement of this Act, 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, whether before or after the commencement of this Act, under a law 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 before or after the commencement of this Act, and 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; or
- (b) an authority or body that, immediately before the commencement of this Act, was an approved authority for the purposes of the superseded Act;

“approved part-time employee” means a part-time employee included in a class of part-time employees declared by the Treasurer, by notice published in the *Gazette*, to be an approved class of part-time employees for the purposes of this Act;

“basic contributions” means contributions paid or payable under section 45;

“benefit” means pension or other benefit payable under this Act;

“benefit classification certificate”, in relation to a person, means a certificate in force in respect of the person under section 16;

“child”, in relation to a person who has died, means a child (including an adopted child, an ex-nuptial child, a foster child, a step child or a ward) of the person or of a spouse of the person;

“commencing day” means 1 July 1976;

“Commissioner” means the Commissioner for Superannuation;

“contribution day” means the Thursday that falls on 8 July 1976, and each succeeding alternate Thursday;

“contributions” means basic contributions or supplementary contributions;

“Defence Force Retirement and Death Benefits Act” means the *Defence Force Retirement and Death Benefits Act 1973* as amended and in force from time to time;

“early retirement pension” means pension payable under Division 2 of Part V;

“eligible child”, in relation to a person who has died and was, at the time of his death, an eligible employee or a retirement pensioner, means a person who—

- (a) is a child of the deceased person other than (where the deceased person was a retirement pensioner at the time of his death) a child who, by virtue of section 9, is deemed not to be an eligible child for the purposes of this Act;
- (b) is a person the 16th anniversary of whose birth has not occurred or—
 - (i) the 16th anniversary of whose birth has occurred but the 25th anniversary of whose birth has not occurred;
 - (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; and
- (c) immediately before the deceased person’s death—
 - (i) was (except where the person is a child of a spouse of the deceased person, but not of the deceased person) living with the deceased person;
 - (ii) was, in the opinion of the Commissioner, wholly or substantially dependent upon the deceased person; or
 - (iii) where the person is a child born after the deceased person’s death—would have been, in the opinion of the Commissioner, living with the deceased person or so dependent if the person had been born before the death of the deceased person;

“eligible employee” means—

- (a) a person who, immediately before the commencement of this Act, was an employee for the purposes of the superseded Act and has continued to be, and is, such an employee;
- (b) a person who is a permanent employee;

- (c) a person who is a temporary employee and is specified in a direction given under section 11, 12 or 13;
- (d) a person who is the holder of a statutory office and is specified in a direction given under sub-section 14 (1) in relation to that statutory office;
- (e) a person—
 - (i) who is a temporary employee;
 - (ii) who is the holder of a statutory office to which he was appointed on a full-time basis; or
 - (iii) who is the holder of a statutory office to which he was appointed otherwise than on a full-time basis and who is specified in a direction given under sub-section 14 (2) in relation to that statutory office,

and who, immediately before the commencement of the employment by reason of which he is such a temporary employee or his appointment to that office, was an eligible employee by virtue of another paragraph of this definition or a previous application of this paragraph;

- (f) a person—
 - (i) who is a temporary employee; or
 - (ii) who is the holder of a statutory office,
 and to whom, immediately before becoming a temporary employee or the holder of that office, invalidity pension was payable and who is specified in a direction given under sub-section 15 (1); and

- (g) the Commissioner and the Chairman of the Trust,

but does not include a person to whom the *Judges' Pensions Act* 1968-1974 applies or any person included in a prescribed class of persons;

“existing contributor” means a person referred to in paragraph (a) of the definition of “eligible employee” in this sub-section and who, immediately before the commencing day, was a contributor for the purposes of the superseded Act;

“final annual rate of salary”, in relation to a person who has ceased to be an eligible employee, means—

- (a) if paragraph (b) or (c) does not apply in relation to him—his annual rate of salary on his last day of service;
- (b) if the annual rate of salary by reference to which his final basic contribution was calculated is higher than the rate specified in paragraph (a)—that higher rate; or
- (c) if his annual rate of salary was higher than the rate referred to in paragraph (a) or (b) at any time on or after—

- (i) the anniversary of his birth last preceding his last day of service; or
- (ii) where, on or after that anniversary, he made an election under section 47 in respect of a reduction in his annual rate of salary—the date of the election,

that higher rate;

“final basic contribution”, in relation to a person who has ceased to be an eligible employee, means the fortnightly basic contribution payable by him on the contribution day last preceding his last day of service, or, if his last day of service is a contribution day, payable by him on his last day of service;

“first day of service”, in relation to a person who is, or has ceased to be, an eligible employee, means—

- (a) except where paragraph (b) applies—the day on which he became an eligible employee; or
- (b) where the person has become an eligible employee on more than 1 occasion—the day on which he last became an eligible employee;

“fortnightly rate of salary”, in relation to an eligible employee, means an amount equal to one-twenty-sixth of the amount of his annual rate of salary;

“Fund” or “Superannuation Fund” means the Superannuation Fund established by this Act;

“invalidity pension” means pension payable under Division 4 of Part V, other than partial invalidity pension;

“last day of service”, in relation to a person who has ceased to be an eligible employee, means—

- (a) except where paragraph (b) applies—the day on which he so ceased; or
- (b) where the person has ceased to be an eligible employee on more than 1 occasion—the day on which he last so ceased;

“maximum retiring age”, in relation to a person who is, or has been, an eligible employee, means the age of 65 years or such lesser age as, under the regulations, is the maximum retiring age applicable to him or a class of persons in which he is, at the relevant time, included;

“minimum retiring age”, in relation to a person who is, or has been, an eligible employee, means the age of 60 years or such lesser age as, under the regulations, is the minimum retiring age applicable to him or a class of persons in which he is, at the relevant time, included;

“orphan pension” means pension payable under Division 4 of Part VI;

- “partial invalidity pension” means pension payable under section 77 or 78;
- “pension” means any pension payable under this Act;
- “pension pay day” means the Thursday that falls on 1 July 1976, and each succeeding alternate Thursday;
- “pensioner” means a person who is entitled to pension under this Act and, for the purposes of Part III and sub-section 154 (6), includes a pensioner under the superseded Act;
- “period of contributory service”, in relation to a person who has ceased to be an eligible employee, means a period equal to the period commencing on his first day of service and ending on his last day of service (less any period during that period when he was on leave of absence without pay and in respect of which sub-section 51 (1) applies) together with, in the case of a person who had previously ceased to be an eligible employee on an occasion earlier than his first day of service, any period that, under section 8, is to be added to his period of contributory service;
- “period of prospective service”, in relation to a person who, before attaining the age of 65 years or, if his maximum retiring age is less than 65 years, before attaining his maximum retiring age, ceases to be an eligible employee by reason of having been retired on the ground of invalidity or by reason of death, means the aggregate of—
- (a) his period of contributory service; and
 - (b) the period commencing on the day immediately following his last day of service and ending on the day on which he will, or but for his death, would, attain the age of 65 years or his maximum retiring age, whichever is the earlier;
- “permanent employee” means—
- (a) a person who is an officer for the purposes of the Public Service Act; and
 - (b) any other person employed by the Commonwealth or by an approved authority in a permanent capacity, but does not include a part-time employee who is not an approved part-time employee;
- “Public Service Act” means the *Public Service Act* 1922 as amended and in force from time to time;
- “retirement pensioner” means a person to whom age retirement pension, early retirement pension or invalidity pension is payable;
- “spouse”, in relation to a person who has died and was, at the time of his death, an eligible employee or a retirement pensioner, means—

- (a) a person who was legally married to the deceased person at the time of the person's death and who, at that time, was living with the person on a permanent and *bona fide* domestic basis;
- (b) a person who was legally married to the deceased person at the time of the person's death but who was not living with the person on a permanent and *bona fide* domestic basis at that time, and who, in the opinion of the Commissioner, was wholly or substantially dependent upon the deceased person at that time;
- (c) a person who was not legally married to the deceased person at the time of the person's death but who, for a continuous period of not less than 3 years immediately preceding the person's death, had ordinarily lived with the person as the person's husband or wife, as the case may be, on a permanent and *bona fide* domestic basis; and
- (d) a person who was not legally married to the deceased person at the time of the person's death but who, for a continuous period of less than 3 years immediately preceding the person's death, had ordinarily lived with the person as the person's husband or wife, as the case may be, on a permanent and *bona fide* domestic basis, and who, in the opinion of the Commissioner, was wholly or substantially dependent upon the deceased person at the time of the deceased person's death,

but, where the deceased person was, at the time of his death, a retirement pensioner, does not include—

- (e) a person who was legally married to the deceased person at the time of his death if the marriage took place after the deceased person had become a pensioner and after the deceased person had attained the age of 60 years unless—
 - (i) the marriage took place not less than 5 years before the deceased person's death; or
 - (ii) the marriage took place less than 5 years before the deceased person's death but—
 - (A) the person had, immediately preceding the marriage, for a continuous period that commenced while the deceased person was a retirement pensioner and not later than 5 years before the deceased person's death, lived with the deceased person as the person's husband or wife, as the case may be, on a permanent and *bona fide* domestic basis;

- (B) the person had, immediately preceding the marriage, for a continuous period that commenced while the deceased person was an eligible employee and not later than 3 years before the deceased person's death, lived with the deceased person as the deceased person's husband or wife, as the case may be, on a permanent and *bona fide* domestic basis; or
- (C) the person had, immediately preceding the marriage, for a continuous period that commenced while the deceased person was an eligible employee but later than 3 years before the deceased person's death, lived with the deceased person as the deceased person's husband or wife, as the case may be, on a permanent and *bona fide* domestic basis and was, in the opinion of the Commissioner, wholly or substantially dependent upon the deceased person at the time of the deceased person's death; or
- (f) a person who was not legally married to the deceased person at the time of his death if the person commenced living with the deceased person as the person's husband or wife, as the case may be, on a permanent and *bona fide* domestic basis after the deceased person had become a pensioner and after the deceased person had attained the age of 60 years unless the person had so lived with the deceased person for a continuous period of not less than 5 years immediately preceding the deceased person's death;

“spouse's pension” means pension payable under Division 1, 2 or 3 of Part VI;

“statutory office” means an office established by an Act, by regulations made under an Act or by a law of a Territory, or an office specified in the regulations as an office that is a statutory office for the purposes of this Act;

“superseded Act” means the *Superannuation Act* 1922 as amended and in force from time to time;

“supplementary contributions” means contributions paid or payable under section 48;

“temporary employee” means—

- (a) a person who is an employee for the purposes of the Public Service Act; and

- (b) any other person employed by the Commonwealth or by an approved authority otherwise than in a permanent capacity,

but does not include—

- (c) a part-time employee who is not an approved part-time employee; or
- (d) a person who is engaged or appointed for employment outside Australia only, not being a person who is included in a class of persons approved by the Treasurer, in writing, for the purposes of this definition;

“Trust” or “Investment Trust” means the Superannuation Fund Investment Trust established by this Act.

(2) Where the Commissioner is of the opinion that a person would, but for a temporary absence or an absence resulting from illness or infirmity, have been living with another person at any time on a permanent and *bona fide* domestic basis, the first-mentioned person shall, for the purposes of the definition of “spouse” in sub-section (1) of this section, and of section 9, be deemed to have been living with the other person on a permanent and *bona fide* domestic basis at that time.

(3) Where a person ceases to be an eligible employee and, immediately after so ceasing, again becomes an eligible employee, he shall, for the purposes of this Act, be deemed not to have so ceased.

(4) A reference in this Act to a person who has ceased to be an eligible employee shall, unless the contrary intention appears, be read as including a reference to a person who has ceased to be an eligible employee by reason of death.

(5) A person who is or becomes employed by the Commonwealth or by an approved authority shall not be taken, for the purposes of this Act, to be employed otherwise than in a permanent capacity by reason only that his appointment was or is on probation and has not been confirmed.

(6) Where a person is a director of a company or other body corporate incorporated, whether before or after the commencement of this Act, under a law of a State or Territory, being a company or other body that is an approved authority, the person shall, for the purposes of this Act, be deemed to be employed by the company or other body.

(7) A reference in this Act, by number, to a provision of the superseded Act shall be read as a reference to that provision as re-numbered by section 78 of the *Superannuation Act 1959*.

4. This Act applies both within and without Australia.

Application
of Act.

Annual rate
of salary.

5. (1) In this section, “salary” means salary or wages, and includes—

- (a) any allowance, or the value of any allowance, or any fee, that is an allowance or fee of a kind that, under the regulations, is to be treated as salary for the purposes of this Act; and
- (b) partial invalidity pension,

but does not include any part of any salary or wages that, under the regulations, is not to be treated as salary for the purposes of this Act.

(2) For the purposes of this Act but subject to sub-section (3), the annual rate of salary of an eligible employee on a particular day is an amount equal to the amount per annum of the salary payable to him on that day.

(3) The regulations may provide that, in a case specified in the regulations, the annual rate of salary of an eligible employee on a particular day shall, for the purposes of this Act or a provision of this Act specified in the regulations, be an amount equal to such amount per annum as is ascertained under the regulations.

(4) Where the rate of the salary, or of a part of the salary, of an eligible employee is not an annual rate, the amount per annum of that salary, or of that part of that salary, as the case may be, shall, for the purposes of sub-section (2), be ascertained—

- (a) where the rate is a weekly rate—by multiplying the weekly rate by 52;
- (b) where the rate is a monthly rate—by multiplying the monthly rate by 12; and
- (c) in any other case—in such manner as is prescribed.

References
to
anniversary
of birth, &c.

6. (1) A reference in this Act to the anniversary of the birth of a person shall be read as a reference to the day on which the anniversary occurs, and a reference in this Act to the anniversary of the birth of a person last preceding a particular day shall, where the person is or has been an eligible employee and that anniversary occurred before his first day of service, be read as a reference to his first day of service.

(2) Where a person was born on 29 February in any year, then, in any subsequent year that is not a leap year, the anniversary of the birth of the person shall be deemed to occur on 1 March of that subsequent year.

(3) For the purposes of this Act, a person shall be taken to have attained a particular age on the day immediately preceding the relevant anniversary of his birth.

7. (1) A reference in this Act to the retirement of an eligible employee on the ground of invalidity shall be read as a reference to his having been retired, or his services having been otherwise terminated, on the ground of physical or mental incapacity to perform his duties.

Retirement
on ground of
invalidity.

(2) Where a person has, before attaining his maximum retiring age, ceased to be an eligible employee otherwise than by reason of death or by reason of his having been retired, or his services having been otherwise terminated, on the ground of physical or mental incapacity to perform his duties, but the Commissioner is satisfied that, at the time he ceased to be an eligible employee, he was, by reason of physical or mental incapacity, unfit to perform his duties, the Commissioner may direct that the person shall, for the purposes of this Act, be deemed to have been retired on the ground of that physical or mental incapacity.

8. (1) Where—

(a) a person became entitled to an invalidity pension upon his ceasing to be an eligible employee; and

Contributory
service—
additional
periods.

(b) he again becomes an eligible employee and the pension referred to in paragraph (a) is cancelled under sub-section 76 (1) upon his again becoming an eligible employee,

then, upon his next ceasing to be an eligible employee, there shall be added to the period that, but for this sub-section, would be his period of contributory service—

(c) the period that was his period of contributory service upon his previously ceasing to be an eligible employee and becoming entitled to the pension that was so cancelled; and

(d) if that pension was payable in accordance with section 67 or 68—any period in respect of which that pension was payable.

(2) Where—

(a) a person ceases to be an eligible employee and, upon his so ceasing, deferred benefits are applicable in relation to him by virtue of Division 3 of Part IX; and

(b) the person again becomes an eligible employee and the deferred benefits cease to be applicable in relation to him by virtue of section 144,

then, upon his next ceasing to be an eligible employee, there shall be added to the period that, but for this sub-section, would be his period of contributory service—

(c) the period that was his period of contributory service upon his previously ceasing to be an eligible employee and becoming a person in relation to whom deferred benefits are applicable; and

(d) if, during any period after his previously so ceasing to be an eligible employee and before he again becomes an eligible employee, he was in receipt of deferred benefits, being invalidity

pension payable in accordance with section 67 or 68—any period in respect of which that pension was payable.

Children of deceased retirement pensioners.

9. (1) A person who is the child of a marriage of a deceased retirement pensioner that took place after the pensioner became a pensioner and after the pensioner had attained the age of 60 years, or a person who became the step-child of a deceased retirement pensioner by reason of such a marriage, shall be deemed not to be an eligible child of the deceased pensioner for the purposes of this Act unless—

- (a) the marriage took place not less than 5 years before the pensioner's death; or
- (b) the marriage took place less than 5 years before the pensioner's death but—
 - (i) the other party to the marriage had, immediately preceding the marriage, for a continuous period that commenced while the pensioner was a retirement pensioner and not later than 5 years before the pensioner's death, lived with the pensioner as the pensioner's husband or wife, as the case may be, on a permanent and *bona fide* basis;
 - (ii) the other party to the marriage had, immediately preceding the marriage, for a continuous period that commenced while the pensioner was an eligible employee and not later than 3 years before the pensioner's death, lived with the pensioner as the pensioner's husband or wife, as the case may be, on a permanent and *bona fide* domestic basis; or
 - (iii) the other party to the marriage had, immediately preceding the marriage, for a continuous period that commenced while the pensioner was an eligible employee but later than 3 years before the pensioner's death, lived with the pensioner as the pensioner's husband or wife, as the case may be, on a permanent and *bona fide* domestic basis and was, in the opinion of the Commissioner, wholly or substantially dependent upon the deceased pensioner at the time of the pensioner's death.

(2) A person who is an ex-nuptial child of a deceased retirement pensioner and who was born—

- (a) after the pensioner had become a pensioner; and
- (b) after the pensioner had attained the age of 60 years,

shall be deemed not to be an eligible child of the pensioner for the purposes of this Act unless the person is the child of the pensioner and another person with whom the pensioner lived on a permanent and *bona fide* domestic basis for—

- (c) except in a case where paragraph (d) applies—a continuous period of not less than 3 years immediately preceding the pensioner's death or, if the Commissioner is of the opinion that the person was wholly or substantially dependent upon the deceased pensioner at the time of the pensioner's death, any continuous period (which may be a period of less than 3 years) immediately preceding the pensioner's death; or
- (d) where the pensioner had commenced so living with the other person after the pensioner had become a pensioner and after the pensioner had attained the age of 60 years—a continuous period of not less than 5 years immediately preceding the pensioner's death.

(3) A person who became the adopted child, foster child or ward of a deceased retirement pensioner after the pensioner became a pensioner and after the pensioner had attained the age of 60 years shall be deemed not to be an eligible child of the deceased pensioner for the purposes of this Act unless the person became the adopted child, foster child or ward, as the case may be, of the pensioner not less than 5 years before the pensioner's death.

(4) A person who is the child of a deceased retirement pensioner by reason only of being a child of a surviving spouse of the pensioner shall be deemed not to be an eligible child of the pensioner for the purposes of this Act unless the person is the child of a person with whom the pensioner lived on a permanent and *bona fide* domestic basis for—

- (a) except in a case where paragraph (b) applies—a continuous period of not less than 3 years immediately preceding the pensioner's death or, if the Commissioner is of the opinion that the person was wholly or substantially dependent upon the pensioner at the time of the pensioner's death, any continuous period (which may be a period of less than 3 years) immediately preceding the pensioner's death; or
- (b) where the pensioner had commenced so living with the other person after the pensioner had become a pensioner and after the pensioner had attained the age of 60 years—a continuous period of not less than 5 years immediately preceding the pensioner's death.

(5) A person who is the child of a deceased retirement pensioner by reason only of being a child of a spouse of the pensioner (other than a spouse who survives him) shall be deemed not to be an eligible child of the pensioner for the purposes of this Act unless the person is the child of a person with whom the pensioner lived on a permanent and *bona fide* domestic basis for—

- (a) except in a case where paragraph (b) applies—a continuous period of not less than 3 years immediately preceding the spouse's death or, if the Commissioner is of the opinion that the

spouse was wholly or substantially dependent upon the pensioner at the time of the spouse's death, any continuous period (which may be a period of less than 3 years) immediately preceding the spouse's death; or

- (b) where the pensioner had commenced so living with the other person after the pensioner had become a pensioner and after the pensioner had attained the age of 60 years—a continuous period of not less than 5 years immediately preceding the spouse's death.

Members of
Defence
Force.

10. (1) A member of the Defence Force shall not, by reason only of being a member of the Defence Force, be deemed to be an eligible employee.

(2) Where a member of the Defence Force who is liable to contribute under the Defence Force Retirement and Death Benefits Act becomes an eligible employee, he shall not be treated as such until he ceases to be liable to contribute under that Act.

Temporary
employees
likely to be
continued in
employment.

11. (1) Where—

- (a) a person who is a temporary employee has, for the immediately preceding period of 1 year (whether or not the period commenced before the commencement of this Act), been a temporary employee, or a temporary employee and a permanent employee;
- (b) the person requests the Commissioner to direct, under this section, that he be treated as an eligible employee for the purposes of this Act; and
- (c) the Commissioner is satisfied that the person is likely to continue to be a temporary employee for a further period of at least 3 years after the date of the request or that, during that period of 3 years, the person is likely to become an eligible employee otherwise than by virtue of a direction under this section,

the Commissioner may direct that the person is, as from the date of the direction, an eligible employee for the purposes of this Act.

(2) Where—

- (a) a person who is a temporary employee was, during any period before he became a temporary employee, employed in employment within or outside Australia upon the termination of which—
 - (i) a transfer value within the meaning of Division 2 of Part IX became payable to or in respect of him after 25 May 1971 under a superannuation scheme applicable in relation to that employment;
 - (ii) 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; 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 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,

and was, during that period, a member of that superannuation scheme; and

- (b) if the prior employment was employment in relation to which sub-paragraph (a) (i) applies—an amount equal to the amount of the transfer value referred to in that sub-paragraph has been paid to the Commissioner under sub-section 128 (1),

then sub-section (1) of this section has effect in relation to the person subject to the modifications referred to in sub-section (3) of this section.

- (3) The modifications referred to in sub-section (2) are as follows:—
 - (a) any period of the prior employment shall be deemed, for the purposes of paragraph (1)(a), to have been a period of employment of the same nature as the employment of the person referred to in that paragraph and to have been continuous with that employment;
 - (b) if the total of the periods of the prior employment is more than 1 year but less than 4 years—the reference in paragraph (1) (c) to 3 years shall be read as a reference to the difference between 4 years and the total of the periods of the prior employment;
 - (c) if the total of the periods of the prior employment is not less than 4 years—sub-section (1) has effect as if paragraph (c) of that sub-section were omitted.

12. Where—

- (a) a person is a temporary employee of an approved authority;
- (b) the person requests the Commissioner to direct, under this section, that he be treated as an eligible employee for the purposes of this Act; and
- (c) the Commissioner is satisfied that the person will, within a period of 12 months after the date of the request, become employed by the approved authority in a permanent capacity,

the Commissioner may direct that the person is, as from the date of the direction, an eligible employee for the purposes of this Act.

Temporary employees of approved authorities likely to be employed on a permanent basis.

Temporary employees employed under contract.

13. Where—

- (a) a person who is a temporary employee is employed under a contract for a term of not less than 1 year; and
- (b) the person requests the Commissioner to direct, under this section, that he be treated as an eligible employee for the purposes of this Act,

the Commissioner may direct that the person is, as from the date of the direction, an eligible employee for the purposes of this Act.

Statutory office holders.

14. (1) Where—

- (a) a person is the holder of a statutory office to which he has been appointed for a term of not less than 1 year; and
- (b) the person requests the Commissioner to direct, under this section, that he be treated as an eligible employee for the purposes of this Act,

the Commissioner may direct that the person is, as from the date of the direction, an eligible employee for the purposes of this Act.

(2) Where a person is the holder of a statutory office to which he has been appointed otherwise than on a full-time basis, the Commissioner may direct that paragraph (e) of the definition of “eligible employee” in sub-section 3 (1), or sub-paragraph 123 (b) (iv), applies in relation to the person.

(3) Except in accordance with principles approved by the Treasurer, the Commissioner shall not give a direction under sub-section (1) or (2) in respect of the holder of a statutory office to which the holder has been appointed otherwise than on a full-time basis.

Invalidity pensioners returning to employment otherwise than as permanent employees.

15. (1) Where—

- (a) a person to whom invalidity pension is payable becomes a temporary employee or the holder of a statutory office; and
- (b) the Commissioner is satisfied that the health of the person has become so restored as to enable him to perform duties of a kind that are, in the opinion of the Commissioner, suitable to be performed by him, having regard to the duties performed by him immediately before he ceased to be an eligible employee by reason of his retirement on the ground of invalidity,

the Commissioner may direct that the person is, as from the date of the direction, or shall be deemed to have been as from such earlier date as is specified in the direction (not being a date earlier than the date on which he became a temporary employee or the holder of the statutory office), an eligible employee for the purposes of this Act.

(2) Except in accordance with principles approved by the Treasurer, the Commissioner shall not give a direction under sub-section (1) in respect of the holder of a statutory office to which the holder has been appointed otherwise than on a full-time basis.

16. (1) In this section, “approved medical practitioner” means a medical practitioner approved by the Commissioner for the purposes of this Act.

Medical examinations and benefit classification certificates.

(2) A person who proposes to become, or becomes, an eligible employee shall undergo such medical examination or examinations by an approved medical practitioner or practitioners as the Commissioner requires.

(3) A report or reports of the result or results of the medical examination or examinations shall be furnished to the Commissioner.

(4) The Commissioner shall consider the report or reports, and such other matters (if any) as the Commissioner considers relevant, and, if he is of the opinion that the person is not likely, by reason of or for a reason connected with a physical or mental condition or conditions referred to in the report or reports, to continue to be an eligible employee until the person attains his maximum retiring age, the Commissioner shall issue a benefit classification certificate to that effect, being a certificate in which the relevant condition or conditions is or are specified.

(5) In the application of this Act to an eligible employee at any time, a reference in this Act to a benefit classification certificate that is in force in respect of an eligible employee shall, in the case of an eligible employee whose period of contributory service would, if he ceased to be an eligible employee at that time, be not less than 20 years or an eligible employee who has attained his maximum retiring age, be read as not including a reference to a benefit classification certificate that has been issued in respect of him.

(6) Where a benefit classification certificate is in force in respect of an eligible employee, he may, on grounds specified in the request, request the Commissioner to revoke or vary the certificate and, where an eligible employee makes such a request, he shall, within such period as the Commissioner requires, undergo such further medical examination or examinations by an approved medical practitioner or practitioners as the Commissioner requires.

(7) A report or reports of the result or results of the further medical examination or examinations shall be furnished to the Commissioner.

(8) The Commissioner shall consider the report or reports, and such other matters (if any) as he considers relevant, and—

- (a) where there is not more than 1 physical or mental condition specified in the benefit classification certificate and the Commissioner is of the opinion that the person is not likely, by reason of or for a reason connected with that condition, to cease to be an eligible employee before he attains his maximum retiring age—the Commissioner shall revoke the certificate;

- (b) where there is more than 1 physical or mental condition specified in the benefit classification certificate—
 - (i) if the Commissioner is of the opinion that the person is not likely, by reason of or for a reason connected with those conditions, to cease to continue to be an eligible employee before the person attains his maximum retiring age—the Commissioner shall revoke the certificate; or
 - (ii) if the Commissioner is of the opinion that the person is not likely, by reason of or for a reason connected with 1 or some only of the conditions specified in the certificate, to continue to be an eligible employee until he attains his maximum retiring age—the Commissioner shall vary the certificate by deleting the reference in the certificate to any other condition or conditions so specified; and
 - (c) in any other case—the Commissioner shall refuse the request to revoke or vary the benefit classification certificate.
- (9) A revocation or variation of a benefit classification certificate has effect on and from the date on which the revocation or variation is made.
- (10) Where—
- (a) a person who is an eligible employee dies or ceases to be an eligible employee by reason of retirement on the ground of invalidity—
 - (i) before he has undergone a medical examination or examinations as required under sub-section (2);
 - (ii) if he has undergone such an examination or examinations—before the report or reports of the result or results of the examination or examinations has or have been considered by the Commissioner;
 - (iii) if the report or reports has or have been considered by the Commissioner—before the Commissioner has reached a decision as to whether he should issue a benefit classification certificate in respect of the person under sub-section (4); or
 - (iv) if the Commissioner has decided to issue a benefit classification certificate in respect of the person under sub-section (4)—before the certificate has been issued; and
 - (b) the Commissioner is not satisfied that his death or the incapacity which was the ground for his retirement, was not caused, and was not substantially contributed to, by a physical or mental condition or conditions of the person that existed at the time the person became an eligible employee,

the Commissioner shall issue a benefit classification certificate in which that condition or those conditions is or are specified and, for the purposes of this Act, the certificate shall be deemed to have been in force in respect of that person at the time of the person's death or retirement.

(11) Where—

- (a) a person has ceased to be an eligible employee by reason of death or retirement on the ground of invalidity;
- (b) his period of contributory service is less than 20 years and, at the time he ceased to be an eligible employee, he had not attained his maximum retiring age;
- (c) a benefit classification certificate was not in force in respect of him at the time he ceased to be an eligible employee or a benefit classification certificate was in force in respect of him at that time but there was not specified in the certificate the physical or mental condition or conditions which, in the opinion of the Commissioner, caused, or substantially contributed to, the death or the incapacity which was the ground for his retirement on the ground of invalidity; and
- (d) the Commissioner is satisfied—
 - (i) that, at or in connexion with a medical examination which the person was required to undergo under this section, the person failed to furnish any information required to be furnished by him or furnished false information; and
 - (ii) that, if the person had not failed to furnish that information or had not furnished false information, there would have been in force in respect of the person at the time he ceased to be an eligible employee a benefit classification certificate in which the physical or mental condition or conditions referred to in paragraph (c), or a physical or mental condition connected with that condition or those conditions, would have been specified,

the Commissioner shall issue a benefit classification certificate in which the condition or conditions referred to in paragraph (c) is or are specified and, for the purposes of this Act, the certificate shall be deemed to have been in force in respect of that person at the time of his death or retirement.

(12) A copy of a benefit classification certificate, and a copy of any revocation or variation of such a certificate, and notice of refusal by the Commissioner of a request to revoke or vary such a certificate, shall be served on the person to whom the certificate relates or, if the person has died, on the personal representatives of the person or such other person or persons as the Commissioner, in his discretion, determines.

(13) In the application of this section to a person who is an eligible employee by virtue of paragraph (g) of the definition of “eligible employee” in sub-section 3 (1), any reference in this section to the Commissioner shall be read as a reference to the Secretary to the Department of the Treasury.

(14) Subject to sub-section 160 (3), the cost of any medical examination carried out for the purposes of this section shall be treated as part of the cost of the administration of this Act.

PART II—COMMISSIONER FOR SUPERANNUATION

Com-
missioner for
Super-
annuation.

17. (1) There shall be a Commissioner for Superannuation.

(2) The Commissioner shall have the general administration of this Act, other than Part III, and the general administration of the superseded Act.

Appointment
and term of
office.

18. (1) The Commissioner shall be appointed by the Governor-General.

(2) A person appointed as Commissioner shall hold office for such period, not exceeding 7 years, as the Governor-General specifies in his instrument of appointment.

(3) A person appointed as Commissioner is eligible for re-appointment.

(4) A person who has attained the age of 65 years shall not be appointed or re-appointed as Commissioner and a person shall not be appointed or re-appointed as Commissioner for a period that extends beyond the date on which he will attain the age of 65 years.

(5) The Commissioner shall hold 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.

Com-
missioner
not to
engage in
other work.

19. The Commissioner shall not engage in paid employment outside the duties of his office except with the approval of the Treasurer.

Remuner-
ation and
allowances.

20. (1) The Commissioner shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

(2) The Commissioner shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act* 1973-1975.

Leave of
absence.

21. The Treasurer may grant leave of absence to the Commissioner on such terms and conditions as to remuneration or otherwise as the Treasurer determines.

22. The Commissioner may resign his office by writing signed by him delivered to the Governor-General, but the resignation does not have effect until it is accepted by the Governor-General. Resignation.

23. (1) The Governor-General may terminate the appointment of the Commissioner for misbehaviour or physical or mental incapacity. Termination of appointment.

(2) If the Commissioner—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) except with the approval of the Treasurer, engages in paid employment outside the duties of his office; or
- (c) is absent from duty, except on leave of absence granted by the Treasurer, for 14 consecutive days or for 28 days in any 12 months,

the Governor-General shall, by notice published in the *Gazette*, declare that the office of the Commissioner is vacant, and thereupon the office shall be deemed to be vacant.

24. (1) Where there is a vacancy in the office of Commissioner, or the Commissioner is, or is expected to be, absent from duty or from Australia, the Treasurer may appoint a person to be acting Commissioner until the filling of the vacancy or during the absence, as the case may be, and, when a person is so acting as Commissioner, he has the powers and the functions of the Commissioner, including powers and functions of the Commissioner under any other Act. Acting appointments.

(2) An acting Commissioner appointed by reason of the office of the Commissioner being vacant shall not continue in office after the expiration of 12 months after the occurrence of the vacancy.

(3) The Treasurer may—

- (a) determine the terms and conditions of appointment of a person appointed as acting Commissioner; and
- (b) at any time terminate such an appointment.

(4) An acting Commissioner may resign his office by writing signed by him delivered to the Treasurer, but the resignation does not have effect until it is accepted by the Treasurer.

(5) The validity of an act done by a person appointed, or purporting to be appointed, as acting Commissioner shall not be questioned in any proceedings on a ground arising from the fact that the occasion for the appointment had not arisen or that the appointment had ceased to have effect.

Delegation. **25.** (1) The Commissioner may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person any of his powers under this Act or the superseded Act, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act or the superseded Act, as the case requires, be deemed to have been exercised by the Commissioner.

(3) A delegation under this section does not prevent the exercise of a power by the Commissioner.

Officers' Rights Declaration Act.

26. Where a person appointed as Commissioner was, immediately before his appointment, an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act* 1928-1975 applied—

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service under this Act shall be taken into account as if it were service in the Australian Public Service; and
- (c) the *Officers' Rights Declaration Act* 1928-1975 applies as if this Act and this section had been specified in the Schedule to that Act.

Commissioner to keep records with respect to contributions, &c.

27. The Commissioner shall cause proper records to be kept in respect of contributions paid into the Superannuation Fund, in respect of benefits paid under this Act and under the superseded Act (whether out of the Superannuation Fund or out of the Consolidated Revenue Fund) and in respect of amounts that, under this Act, are paid out of the Consolidated Revenue Fund into the Superannuation Fund or out of the Superannuation Fund into the Consolidated Revenue Fund.

PART III—THE INVESTMENT TRUST AND THE FUND

Division 1—The Investment Trust

Establishment of Trust

28. There shall be a body by the name of the Superannuation Fund Investment Trust.

Trust to be a body corporate.

- 29.** (1) The Trust—
- (a) is a body corporate, with perpetual succession;
 - (b) shall have a common seal;
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued in its corporate name.

(2) The common seal of the Trust shall be kept in such custody as the Trust directs and shall not be used except as authorized by the Trust.

(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Trust and shall presume that it was duly affixed.

30. (1) The Trust shall consist of 3 members, as follows:—

Membership
of Trust.

(a) a Chairman;

(b) a member who shall be an eligible employee or a pensioner;
and

(c) one other member.

(2) The members of the Trust shall be appointed by the Governor-General.

(3) The Chairman shall be appointed as a full-time member, and shall be the executive member of the Trust.

(4) The other 2 members of the Trust shall be appointed as part-time members, and the member referred to in paragraph (1) (b) shall be selected from persons whose names are submitted to the Treasurer after consultation by him with such organizations as he considers appropriate, being organizations the members, or a substantial proportion of the members, of which are eligible employees or pensioners.

(5) In making appointments of persons as members of the Trust, the Governor-General shall ensure that, so far as is practicable, a person is not appointed unless he has had appropriate experience in matters relating to the investment of moneys or otherwise in matters relating to the management of moneys.

(6) The Chairman of the Trust shall hold office for such period, not exceeding 7 years, as the Governor-General specifies in his instrument of appointment, and each other member of the Trust shall hold office for such period, not exceeding 3 years, as the Governor-General specifies in his instrument of appointment.

(7) A member of the Trust is eligible for re-appointment.

(8) A person who has attained the age of 65 years shall not be appointed or re-appointed as Chairman of the Trust and a person shall not be appointed or re-appointed as Chairman of the Trust for a period that extends beyond the date on which he will attain the age of 65 years.

(9) A member of the Trust shall hold 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.

(10) The performance of the functions, or the exercise of the powers, of the Trust is not affected by reason of there being a vacancy or vacancies in the membership of the Trust.

(11) The appointment of a member of the Trust is not invalidated, and shall not be called in question, by reason of a deficiency or irregularity in, or in connexion with, his selection or appointment.

Chairman
not to
engage in
other work.

31. The Chairman shall not engage in paid employment outside the duties of his office except with the approval of the Treasurer.

Remuner-
ation and
allow-
ances.

32. (1) The Chairman and the part-time members of the Trust shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, they shall be paid such remuneration as is prescribed.

(2) The Chairman and the part-time members shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973-1975*.

Leave of
absence.

33. The Treasurer may grant leave of absence to a member of the Trust on such terms and conditions as to remuneration or otherwise as the Treasurer determines.

Resignation.

34. A member of the Trust may resign his office by writing signed by him delivered to the Governor-General, but the resignation does not have effect until it is accepted by the Governor-General.

Termination
of appoint-
ment.

35. (1) The Governor-General may terminate the appointment of a member of the Trust for misbehaviour or physical or mental incapacity.

(2) If—

(a) a member of the Trust—

(i) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or

(ii) fails to comply with his obligations under sub-section (3);

(b) the member of the Trust who is the Chairman of the Trust—

(i) except with the approval of the Treasurer, engages in paid employment outside the duties of his office; or

(ii) is absent from duty, except on leave of absence granted by the Treasurer, for 14 consecutive days or for 28 days in any 12 months; or

(c) a part-time member of the Trust—

(i) is absent, except on leave granted by the Treasurer, from 3 consecutive meetings of the Trust of which he has had notice; or

- (ii) being the member referred to in paragraph 30 (1) (b), ceases to be a person who is either an eligible employee or a pensioner,

the Governor-General shall, by notice published in the *Gazette*, declare that the office of the member of the Trust is vacant, and thereupon the office shall be deemed to be vacant.

(3) A member of the Trust who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Trust, otherwise than as a member of, and in common with the other members of, an incorporated company that consists of more than 25 persons and of which he is not a director, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Trust.

(4) A disclosure by a member of the Trust under sub-section (3) shall be recorded in the minutes of the meeting of the Trust, and the member shall not be present during any deliberation of the Trust in respect of that matter.

(5) A reference in sub-section (3) or (4) of this section to a member of the Trust shall be read as including a person who is an acting Chairman, or an acting part-time member, of the Trust by virtue of an appointment under section 36.

36. (1) Where there is a vacancy in the office of Chairman of the Trust, or the Chairman of the Trust is, or is expected to be, absent from duty or from Australia, the Treasurer may appoint a person to be acting Chairman of the Trust until the filling of the vacancy or during the absence, as the case may be. Acting appointments.

(2) Where there is a vacancy in the office of the part-time member of the Trust referred to in paragraph 30 (1) (b), or that member is, or is expected to be, unable (whether on account of illness or otherwise) to attend the meetings of the Trust, the Treasurer may, after consulting with such organizations as he considers appropriate, being organizations the members, or a substantial proportion of the members, of which are eligible employees or pensioners, appoint a person who is an eligible employee or a pensioner to be an acting member of the Trust, in the place of the member referred to in that paragraph, until the filling of the vacancy or during the inability, as the case may be.

(3) Where there is a vacancy in the office of the part-time member of the Trust referred to in paragraph 30 (1) (c), or that part-time member of the Trust is, or is expected to be, unable (whether on account of illness or otherwise) to attend meetings of the Trust, the Treasurer may appoint a person to be an acting member of the Trust, in the place of the member referred to in that paragraph, until the filling of the vacancy or during the inability, as the case may be.

(4) For the purposes of sub-sections (2) and (3), there shall be deemed to be a vacancy in the office of a part-time member of the Trust at any time when that part-time member is acting Chairman of the Trust.

(5) An acting Chairman, or an acting part-time member, appointed by reason of the office of the Chairman of the Trust or of a part-time member of the Trust, as the case may be, being vacant shall not continue in office after the expiration of 12 months after the occurrence of the vacancy.

(6) The Treasurer may—

- (a) determine the terms and conditions of appointment of a person appointed under this section; and
- (b) at any time terminate such an appointment.

(7) An acting Chairman, or acting part-time member of the Trust, may resign his office by writing signed by him delivered to the Treasurer, but the resignation does not have effect until it is accepted by the Treasurer.

(8) The validity of an act or thing done by, or a decision of, the Trust shall not be called in question in any proceedings on a ground arising from the fact that the occasion for the appointment of a person purporting to be appointed under this section had not arisen or that an appointment under this section had ceased to have effect.

(9) The appointment of a person under this section is not invalidated, and shall not be called in question, by reason of a deficiency or irregularity in, or in connexion with his selection or appointment.

Meetings of
the Trust.

37. (1) The Trust shall hold such meetings as are necessary for the conduct of its affairs.

(2) The Chairman may at any time convene a meeting of the Trust and shall, when so requested in writing by another member of the Trust, convene a meeting of the Trust.

(3) The Chairman shall preside at all meetings of the Trust at which he is present.

(4) If the Chairman is not present at a meeting of the Trust, the member of the Trust referred to in paragraph 30 (1) (b) shall preside at the meeting.

(5) At a meeting of the Trust of which all members of the Trust have notice, 2 members constitute a quorum, but in any other case, 3 members constitute a quorum.

(6) Questions arising at a meeting of the Trust shall be determined by a majority of the votes of the members present and voting.

(7) The person presiding at a meeting of the Trust has a deliberative vote, but does not have a casting vote.

(8) Where the voting on any question is equal, the question shall be postponed until the next meeting of the Trust, and notice of the question, and of the fact that the voting was equal, shall be given to all the members of the Trust before the next meeting.

(9) If the voting on the question at the next meeting is again equal, the question shall be postponed to a meeting of the Trust at which all the members of the Trust are present.

(10) In this section—

- (a) a reference to the Chairman of the Trust shall, if there is a person who is an acting Chairman by virtue of an appointment under sub-section 36 (1), be read as a reference to the acting Chairman;
- (b) the reference to the member of the Trust referred to in paragraph 30 (1) (b) shall, if there is a person who is an acting member of the Trust by virtue of an appointment under sub-section 36 (2), be read as a reference to that acting member; and
- (c) a reference to a member of the Trust shall be read as including a person who is an acting Chairman, or an acting part-time member, of the Trust by virtue of an appointment under section 36.

38. (1) The Trust may, either generally or as otherwise provided by Delegation. the instrument of delegation, by writing under its common seal, delegate to a person (including the Chairman or acting Chairman, or a part-time member or acting part-time member, of the Trust) any of its powers under this Act, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Trust.

(3) A delegation under this section does not prevent the exercise of a power by the Trust.

39. Where a person appointed as Chairman of the Trust was, immediately before his appointment, an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act* 1928-1975 applied— Officers' Rights Declaration Act.

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service under this Act shall be taken into account as if it were service in the Australian Public Service; and
- (c) the *Officers' Rights Declaration Act* 1928-1975 applies as if this Act and this section had been specified in the Schedule to that Act.

Division 2—The Fund

Establishment of Fund.

40. (1) For the purposes of this Act, there shall be a Fund to be known as the Superannuation Fund.

(2) The Superannuation Fund shall form part of the Trust Fund referred to in section 60 of the *Audit Act* 1901-1975, and the provisions of that Act relating to the Trust Fund (other than section 62B of that Act) shall, subject to this Act, extend to that portion of the Trust Fund which comprises the Superannuation Fund.

Fund to be managed by Trust.

41. (1) The Fund shall be managed by the Trust.

(2) The Trust has power to do, in Australia or elsewhere, all things necessary or convenient to be done for or in connexion with, or as incidental to, the management of the Fund, and the investment under section 42 of moneys standing to the credit of the Fund, including, without limiting the generality of the foregoing, power—

- (a) to give guarantees;
- (b) to appoint agents and attorneys;
- (c) to act as agents for other persons;
- (d) to engage consultants; and
- (e) to open and maintain an account or accounts with the Reserve Bank of Australia or any other bank for the time being approved by the Treasurer.

Investment of Fund.

42. (1) Moneys standing to the credit of the Fund which the Trust, after consultation with the Commissioner, is of the opinion are moneys that are not for the time being required for the purpose of making payments out of the Fund under this Act shall, so far as is practicable, be invested by the Trust in accordance with this section, but the Trust shall so manage the Fund that moneys that are from time to time required to pay benefits that are payable out of the Fund are available for that purpose.

(2) Moneys that, by virtue of sub-section (1), are required to be invested by the Trust may be invested—

- (a) in public securities;
- (b) in a loan the repayment of which is guaranteed by the Commonwealth, a State or a Territory;
- (c) in a loan to a municipal corporation or other local governing body in Australia;
- (d) in a loan secured by a mortgage of an estate in fee simple, or of a leasehold interest, in land in Australia, being a loan—
 - (i) the amount of which does not exceed 70 per centum of the value of the security at the time the loan was made; and

- (ii) which is repayable on demand or is for a term not exceeding 30 years;
 - (e) subject to and in accordance with the regulations—in an estate or interest in land in Australia;
 - (f) in shares of a company incorporated in Australia or of a building society;
 - (g) in a loan to (including deposit with) a bank as defined by sub-section 5 (1) of the *Banking Act* 1959-1974 or a building society;
 - (h) in debentures issued in Australia by a company incorporated in Australia;
 - (i) in any manner for the time being allowed by an Act, or by a law of a State or Territory, for the investment of trust moneys in Australia; or
 - (j) in any manner that is prescribed,
- but shall not be invested in any other manner.

(3) Nothing in paragraphs (a) to (i) (inclusive) in sub-section (2) shall be taken as limiting in any way the power to make regulations for the purposes of paragraph (j) of that sub-section.

- (4) The Trust shall, so far as is practicable, ensure that at all times—
 - (a) the assets of the Fund consisting of investments shall include public securities the cost of which was not less than 30 per centum of the cost of all those assets; and
 - (b) the assets of the Fund consisting of public securities include Commonwealth securities the cost of which was not less than 20 per centum of the cost of all the assets of the Fund that consist of investments.

(5) Income derived from the investment of moneys standing to the credit of the Fund, or otherwise from the management of the Fund by the Trust, shall form part of the Fund, and is not subject to taxation under a law of the Commonwealth, a Territory or a State.

(6) In this section—

“building society” means a society registered or incorporated as a building society, co-operative housing society or similar society under the law in force in a State or Territory relating to such societies;

“Commonwealth securities” means bonds, debentures, stock or other securities issued under an Act, but does not include securities issued in respect of a loan raised outside Australia unless the securities are Commonwealth securities for the purposes of the *Income Tax Assessment Act* 1936-1975;

“debenture”, in relation to a company, includes debenture stock, bonds, notes and any other securities of the company, whether constituting a charge on the assets of the company or not;

“public securities” means—

- (a) Commonwealth securities;
- (b) bonds, debentures, stock or other securities issued by—
 - (i) a State;
 - (ii) a Territory; or
 - (iii) a municipal corporation, other local governing body or public authority constituted by or under an Act or by or under the law of a State or Territory,

but does not include securities in respect of a loan raised outside Australia and the Territories unless the securities are public securities for the purposes of the *Income Tax Assessment Act 1936-1975*;

- (c) securities issued in respect of a loan to a company the principal business of which is the supply and distribution, by a system of reticulation, in Australia or a Territory, of water, gas or electricity; and
- (d) other securities specified in the regulations as public securities for the purposes of this section;

“share”, in relation to a company or a building society, means a share in the capital of the company or society, and includes stock.

Borrowing. **43.** The Treasurer may lend to the Fund, at such rate of interest and on such other terms and conditions as the Treasurer determines, moneys not exceeding two-thirds of the amount of moneys of the Fund invested in Commonwealth securities as defined by sub-section 42 (6), and moneys so lent shall be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

Trust to keep accounts and records in respect of Fund. **44.** (1) The Trust shall cause proper accounts and records to be kept in respect of the Fund.

(2) The Commissioner shall furnish to the Trust such information as is in his possession and is necessary for the purpose of enabling the accounts and records referred to in sub-section (1) to be kept.

(3) The Auditor-General, or an officer authorized by him, is entitled at all reasonable times to full and free access to all accounts, records, documents and papers which are in the custody of the Trust relating directly or indirectly to the receipt or payment of moneys into or out of the Fund or to the acquisition, receipt, custody or disposal of assets by the Trust.

(4) The Auditor-General, or an officer authorized by him, may make copies of, or take extracts from, any such accounts, records, documents or papers.

(5) The Auditor-General, or an officer authorized by him, may require any person to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorized officer considers necessary for the purposes of the functions of the Auditor-General under this Act and the person shall comply with the requirement.

(6) The person who contravenes sub-section (5) is guilty of an offence and is punishable upon conviction by a fine not exceeding \$200.

PART IV—CONTRIBUTIONS

45. (1) Subject to sections 51 and 54, an eligible employee shall pay Basic contributions. fortnightly basic contributions.

(2) Subject to sub-section (3), the first fortnightly basic contribution of an eligible employee is payable—

(a) in the case of an eligible employee who, immediately before the commencing day, was an employee for the purposes of the superseded Act—on the contribution day next following the commencing day; and

(b) in any other case—on the contribution day next following the day on which the person became an eligible employee,

and subsequent basic contributions are payable on each succeeding contribution day during the period during which the person continues to be an eligible employee.

(3) Where an eligible employee (not being an eligible employee referred to in paragraph (2) (a) who was an existing contributor) dies, or retires on the ground of invalidity, before the day on which, but for his death or retirement, his first fortnightly basic 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 employee.

46. The amount of the fortnightly basic contribution payable by an Amount of basic contribution. eligible employee on a contribution day is an amount equal to 5 per centum of the fortnightly rate of salary that was payable (or is deemed by section 47 to have been payable) to the employee on the anniversary of his birth last preceding that contribution day or, if that amount is not a multiple of 10 cents, the next higher amount that is such a multiple.

47. (1) If, on an anniversary of an eligible employee's birth (in this sub-section referred to as the "relevant anniversary"), his annual rate of salary is less than the highest annual rate of salary that was payable (or is deemed by a previous application of this sub-section, or by sub-section (3), to have been payable) to him on any day during the period commencing on the anniversary of his birth last preceding the relevant anniversary and ending on the day immediately preceding the relevant anniversary, his annual rate of salary on the relevant anniversary shall, Decreases in salary.

unless he has made or makes an election under sub-section (2) by virtue of a decrease in his annual rate of salary that occurred during that period, be deemed, for the purposes of section 46, and any subsequent application of this sub-section, to be that highest rate.

(2) If the annual rate of salary payable to an eligible employee decreases, the employee may, not later than 3 months after the anniversary of his birth next following the date of the decrease, elect, by notice in writing to the Commissioner, that sub-section (1) shall not apply in relation to his annual salary on that anniversary of his birth.

(3) Where—

- (a) an eligible employee makes an election under sub-section (2) by virtue of a decrease in his annual rate of salary; and
- (b) the annual rate of his salary on the anniversary of his birth next following the date of the decrease is less than the highest annual rate of salary that was payable to him on any day during the period commencing on the date of the decrease and ending on the day immediately preceding that anniversary,

the annual rate of his salary on that anniversary shall, for the purposes of section 46 and sub-section (1) of this section, be deemed to be that highest rate.

(4) Where—

- (a) an eligible employee makes an election under sub-section (2) by virtue of a decrease in his annual rate of salary;
- (b) the annual rate of salary payable to him immediately after the decrease is less than the rate of salary that was payable (or is deemed by sub-section (1) or (3) to have been payable) to him on the anniversary of his birth last preceding the date of the decrease; and
- (c) the election is made before the anniversary of his birth next following the date of the decrease,

the annual rate of his salary on the anniversary of his birth last preceding the date of the decrease shall, for the purpose of calculating the amount of the basic contribution payable by him on each contribution day occurring after the date of the election and before the anniversary of his birth next following that date, be deemed to be the annual rate of his salary immediately after the decrease.

Election to
pay sup-
plementary
contributions.

48. (1) Subject to paragraph 50 (3) (b), an eligible employee may, at any time, by notice in writing to the Commissioner, elect to pay supplementary contributions.

(2) An eligible employee who makes an election under sub-section (1) shall specify in the election the factor by reference to which the amount of the supplementary contributions to be paid by him is to be determined in accordance with this section, being a factor that is a whole number and does not exceed 5.

(3) Subject to sections 50, 51 and 54, where an eligible employee makes an election under sub-section (1) of this section, he shall, on each contribution day after the date of the election during the period commencing on the day immediately following the day of the election and ending on the day on which he ceases to be an eligible employee, pay a supplementary contribution to the Commissioner.

49. The amount of the supplementary contribution payable by an eligible employee on a contribution day is an amount equal to the product of one-fifth of the basic contribution payable by him on that day and the factor specified in the election. Amount of supplementary contribution.

50. (1) In this section, “election to pay supplementary contributions” means an election under sub-section 48 (1). Revocation or variation of elections to pay supplementary contributions.

(2) An eligible employee who has made an election to pay supplementary contributions may, by notice in writing to the Commissioner, revoke the election.

(3) Where an eligible employee revokes an election to pay supplementary contributions—

- (a) he shall cease to pay supplementary contributions on and after the contribution day next following the date of the notice of revocation; and
- (b) he is not entitled, until the expiration of a period of 1 year after that date, to make a further election to pay supplementary contributions.

(4) An eligible employee who has made an election to pay supplementary contributions, not being an election that has been revoked, may, by notice in writing to the Commissioner, vary the election by substituting for the factor specified in the election another factor specified in the instrument of variation, being a factor that is a whole number and does not exceed 5.

(5) Where an eligible employee varies an election to pay supplementary contributions—

- (a) the election as varied has effect as from the contribution day next following the date of the instrument of variation; and
- (b) if the factor substituted by the variation is lower than the factor specified in the election—the employee is not entitled to make a further variation of the election until the expiration of a period of 1 year after the date of the instrument of variation other than a further variation to substitute a factor that is lower than the factor specified in the earlier variation.

Leave of absence without pay.

51. (1) This section applies to an eligible employee who has been on leave of absence without pay for a period exceeding 12 weeks, not being a period of leave of absence in respect of which the Treasurer directs that this sub-section does not apply or a period of leave of absence during which his liability to make contributions under this Act is deferred by virtue of sub-section 54 (1).

(2) A direction by the Treasurer for the purposes of sub-section (1) may be given subject to such conditions (if any) as are specified in the direction, including a condition that there shall be paid to the Commonwealth by or on behalf of the eligible employee in relation to whom the direction is given an amount specified in, or calculated in accordance with, the direction.

(3) An eligible employee to whom this section applies is not required, and shall be deemed not to have been required, to make contributions on any contribution day occurring during the period of leave of absence without pay, and the regulations may make provision for modifying this Act, or a provision of this Act specified in the regulations, in the application of this Act or that provision to and in relation to an eligible employee to whom this section applies, or to and in relation to a prescribed class of such eligible employees.

(4) The modifications that may be made by regulations in pursuance of sub-section (3) include, but are not limited to, modifications providing for benefits in addition to, or in substitution for, benefits provided for by this Act.

(5) For the purposes of this section, an eligible employee who is on leave of absence without pay but has not been on leave of absence without pay for a period that exceeds 12 weeks, but is expected to be on leave of absence without pay for a period exceeding 12 weeks, shall, except as otherwise provided by the regulations, be deemed to have been on leave of absence without pay for a period exceeding 12 weeks.

Payment of contributions where eligible employee on leave of absence without pay or at less than full pay.

52. Where an eligible employee is on leave of absence, either without pay or with less than full pay, the Commissioner may, upon application in writing by or on behalf of the eligible employee, permit him to make payment of the contributions falling due during the absence in such instalments and at such times as the Commissioner approves.

Payment of contributions.

53. (1) Contributions payable under this Act shall, subject to sub-section (2), be paid to the Commissioner by or on behalf of the person liable to pay the contributions.

(2) Contributions payable under this Act by an eligible employee may be deducted from his salary and any contributions so deducted shall be paid to the Commissioner.

(3) The Commissioner shall pay all contributions received by him into the Fund.

54. (1) Where an eligible employee is or becomes liable to contribute under the Defence Force Retirement and Death Benefits Act, his liability to make contributions under this Act is deferred until, for any reason (including death)—

- (a) he ceases (otherwise than by reason of the operation of section 18 of the Defence Force Retirement and Death Benefits Act) to be liable to contribute under that Act; or
- (b) he ceases to be an eligible employee,

Deferment of contributions of contributors under Defence Force Retirement and Death Benefits Act.

whichever first occurs, but, upon his so ceasing to be liable or so ceasing to be an eligible employee, the amount of the deferred contributions shall be paid to the Commissioner.

(2) Sub-section (1) does not apply to an eligible employee who, immediately before becoming liable to contribute under the Defence Force Retirement and Death Benefits Act, is entitled to retirement pay under that Act or pension under the *Defence Forces Retirement Benefits Act 1948* or that Act as amended and in force from time to time or under 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* or that Act as amended and in force from time to time.

(3) Sub-section (1) does not apply, and shall be deemed never to have applied, to an eligible employee who, upon ceasing to be liable to contribute under the Defence Force Retirement and Death Benefits Act, becomes entitled to retirement pay under section 23 of that Act.

PART V—ELIGIBLE EMPLOYEES' BENEFITS

Division 1—Age Retirement Benefit

55. (1) Where a person ceases to be an eligible employee on or after attaining the age of 65 years, otherwise than by reason of death, then, subject to sub-section (3) of this section, the person is entitled to—

Entitlement to age retirement benefit.

- (a) standard age retirement pension in accordance with sub-section 56 (1), (2) or (3);
- (b) if he does not make an election under section 64, additional age retirement pension in accordance with sub-section 57 (1); and
- (c) lump sum benefit (if any) in accordance with sub-section 57 (2).

(2) Where a person ceases to be an eligible employee on or after attaining the age of 60 years, but before attaining the age of 65 years, otherwise than by reason of death or retirement on the ground of invalidity, then, subject to sub-section (3) of this section, the person is entitled to—

- (a) standard age retirement pension in accordance with sub-section 56 (4);
 - (b) if he does not make an election under section 64, additional age retirement pension in accordance with sub-section 57 (1); and
 - (c) lump sum benefit (if any) in accordance with sub-section 57 (2).
- (3) Sub-sections (1) and (2) do not apply to a person whose period of contributory service is less than 1 year.

Rate of
standard age
retirement
pension.

56. (1) Where—

- (a) a person is entitled to standard age retirement pension by virtue of sub-section 55 (1); and
- (b) his period of contributory service is not less than 30 years,

then, subject to sub-section (2) of this section, the annual rate of that pension is 50 per centum of his final annual rate of salary.

(2) Where—

- (a) a person is entitled to standard age retirement pension by virtue of sub-section 55 (1); and
- (b) his period of contributory service before attaining the age of 65 years is not less than 31 years,

the annual rate of that pension is such percentage of his final annual rate of salary as, having regard to the number of complete years included in that period of contributory service, is applicable in accordance with Table 1 in Schedule 1.

(3) Where—

- (a) a person is entitled to a standard age retirement pension by virtue of sub-section 55 (1); and
- (b) his period of contributory service is less than 30 years,

the annual rate of that pension is such percentage of his final annual rate of salary as, having regard to the number of complete years included in that period of contributory service, is applicable in accordance with Table 2 in Schedule 1.

(4) Where a person is entitled to standard age retirement pension by virtue of sub-section 55 (2), the annual rate of that pension is such percentage of his final annual rate of salary as, having regard to his age on his last day of service and to the number of completed years included in his period of contributory service, is applicable in accordance with Schedule 2.

57. (1) Where a person is entitled to additional age retirement pension by virtue of section 55, the annual rate of that pension is—

Rate of additional age retirement pension and amount of lump sum benefit.

- (a) an amount per annum equal to the amount (in this section referred to as the “base amount”) that is the product of his accumulated contributions and such factor as, having regard to his age on his last day of service and such other matters (if any) as are prescribed, is applicable to him in accordance with regulations made for the purposes of this paragraph; or
- (b) if the rate ascertained in accordance with paragraph (a) of this sub-section is greater than 20 per centum of his final annual rate of salary—20 per centum of his final annual rate of salary.

(2) Where the base amount is greater than an amount (in this sub-section referred to as the “maximum amount”) equal to 20 per centum of the amount per annum that is his final annual rate of salary, there shall be paid to him a lump sum benefit equal to the amount by which his accumulated contributions exceed an amount ascertained by dividing the maximum amount by the factor referred to in paragraph (1) (a).

Division 2—Early Retirement Benefit

58. (1) For the purposes of this Act, a person shall be deemed to have ceased to be an eligible employee by reason of early retirement if the person is deemed by sub-section (2) to have retired voluntarily, or by sub-section (3) to have retired involuntarily.

Early retirement—voluntary or involuntary retirement before attaining 60 years of age.

- (2) Where—
 - (a) the minimum retiring age of a person who is an eligible employee is less than 60 years; and
 - (b) on or after the person attains his minimum retiring age but before he attains the age of 60 years, he ceases to be an eligible employee by reason that he is retired at his own request or he resigns,

the person shall, for the purposes of this Act, be deemed to have retired voluntarily.

(3) Where, before a person who is an eligible employee attains the age of 60 years, he ceases to be an eligible employee by reason that—

- (a) if his minimum retiring age is less than 60 years and he has attained that minimum retiring age—he is retired, otherwise than at his own request;
- (b) he is retrenched, he is retired under section 20 of the Public Service Act or he is retired otherwise than under that Act on a ground similar to the ground on which persons may be retired under section 20 of the Public Service Act;
- (c) in the case of the holder of a statutory office—the term of his appointment to that office has expired and, notwithstanding that

he was eligible for re-appointment to that office and desired to be so re-appointed, he was not re-appointed;

- (d) except in the case of a temporary employee—his position or office ceases to exist, whether by reason of its being abolished or otherwise; or
- (e) he is retired under section 67 of the Public Service Act or his employment or appointment is terminated otherwise than under that Act on a ground similar to a ground specified in that section,

the person shall, for the purposes of this Act, be deemed to have retired involuntarily.

- (4) Sub-sections (2) and (3) do not apply to a person—
 - (a) who ceases to be an eligible employee by reason of retirement on the ground of invalidity; or
 - (b) whose period of contributory service is less than 1 year.

Entitlement to early retirement benefit.

59. Where a person ceases to be an eligible employee by reason of early retirement, then, if the person does not make an election under section 62, he is entitled to—

- (a) standard early retirement pension in accordance with section 60;
- (b) if he does not make an election under section 64, additional early retirement pension in accordance with sub-section 61 (1); and
- (c) lump sum benefit (if any) in accordance with sub-section 61 (2).

Rate of standard early retirement pension.

60. Where a person is entitled to standard early retirement pension by virtue of section 59, the annual rate of that pension is the amount per annum of the standard age retirement pension that would be payable to him in accordance with sub-section 56 (4) if his age on his last day of service had been 60 years, reduced by 4 per centum of that amount for each year, or part of a year, included in the period commencing on the day immediately following his last day of service and ending on the day immediately preceding the day on which the 60th anniversary of his birth will occur.

Rate of additional early retirement pension and amount of lump sum benefit.

61. (1) Where a person is entitled to additional early retirement pension by virtue of section 59, the annual rate of that pension is—

- (a) an amount per annum equal to the amount (in this section referred to as the “base amount”) that is the product of his accumulated contributions and the factor applicable to him under sub-section (3); or
- (b) if the rate ascertained in accordance with paragraph (a) is greater than 20 per centum of the notional final annual rate of salary of the person—20 per centum of his notional final annual rate of salary.

(2) Where the base amount is greater than an amount (in this sub-section referred to as the “maximum amount”) equal to 20 per centum of the amount per annum that is the notional final annual rate of salary of the person, there shall be paid to him a lump sum benefit equal to the amount by which his accumulated contributions exceed an amount ascertained by dividing the maximum amount by the factor applicable to him under sub-section (3).

(3) The factor applicable to a person for the purposes of sub-sections (1) and (2) is the factor that would be applicable to him in accordance with paragraph 57 (1) (a) if his age on his last day of service had been 60 years, reduced by 4 per centum for each year, or part of a year, included in the period commencing on the day immediately following his last day of service and ending on the day immediately preceding the day on which the 60th anniversary of his birth will occur.

(4) In this section, “notional final annual rate of salary”, in relation to a person, means the annual amount of the person’s final annual rate of salary reduced by 4 per centum of that amount for each year, or part of a year, included in the period commencing on the day immediately following his last day of service and ending on the day immediately preceding the day on which the 60th anniversary of his birth will occur.

62. (1) Where a person who ceases to be an eligible employee by reason of early retirement is deemed, by sub-section 58 (3), to have retired involuntarily, the person may, not later than 1 month after his last day of service, elect by notice in writing to the Commissioner, that, in lieu of pension and lump sum benefit being payable under section 59, a lump sum benefit be paid under sub-section (2) of this section and, where he had paid supplementary contributions, an additional lump sum benefit in accordance with sub-section (3) of this section.

Election for lump sum benefit in case of involuntary retirement.

(2) Where a person makes an election under sub-section (1) of this section, the person is entitled, in lieu of pension and lump sum benefit to which, but for the election, the person would be entitled under section 59, to payment of a lump sum benefit of an amount equal to 3½ times the amount of his accumulated basic contributions.

(3) Where a person makes an election under sub-section (1) and the person has paid supplementary contributions, the person is entitled to payment out of the Fund of a lump sum benefit equal to the person’s accumulated supplementary contributions.

Division 3—Commutation of Additional Age or Early Retirement Pensions

63. This Division applies—

(a) to additional age retirement pension payable under Division 1 of this Part; and

Pensions to which Division applies.

- (b) to additional early retirement pension payable under Division 2 of this Part.

Election to commute.

64. A person who becomes, or is about to become, entitled to a pension to which this Division applies may, not later than 3 months after but not earlier than 3 months before he becomes so entitled, make, by notice in writing to the Commissioner, an election to commute that pension into a lump sum benefit payable to him.

Lump sum benefit payable on commutation.

65. (1) Where a person makes an election under section 64 to commute a pension to which this Division applies, there shall be paid to the person a lump sum benefit equal to his accumulated contributions and—

- (a) he is not entitled to the pension; and
 (b) spouse's additional pension is not payable under sub-section 93 (1) to a spouse of the person.

(2) Where a lump sum benefit is payable under sub-section 57 (2) or 61 (2) to a person who has made or makes an election under section 64, sub-section (1) of this section has effect in relation to him as if the reference in that sub-section to his accumulated contributions were a reference to the amount of those contributions reduced by the amount of the lump sum benefit payable under sub-section 57 (2) or 61 (2).

Division 4—Invalidity Benefit

Entitlement to invalidity benefit.

66. (1) Subject to sub-sections (3) and (4) of this section and to section 79, where a person ceases to be an eligible employee by reason of retirement on the ground of invalidity before attaining his maximum retiring age then, except in a case where sub-section (2) of this section applies, the person is entitled—

- (a) if the person does not make an election under section 68 or 69—to invalidity pension in accordance with section 67 and, where the person has paid supplementary contributions, a lump sum benefit in accordance with that section;
 (b) if the person makes an election under section 68—to invalidity pension, and a lump sum benefit, in accordance with that section; or
 (c) if the person is entitled to make an election under section 69 and makes such an election—to a lump sum benefit in accordance with sub-section 69 (2) and, where the person has paid supplementary contributions, an additional lump sum benefit in accordance with sub-section 69 (3).

(2) Subject to sub-sections (3) and (4) of this section and section 79, where—

- (a) a person ceases to be an eligible employee by reason of retirement on the ground of invalidity before attaining his maximum retiring age;

- (b) there was in force in respect of the person, immediately before the person's retirement, a benefit classification certificate; and
- (c) the Commissioner is of the opinion that the incapacity which was the ground for his retirement was caused, or was substantially contributed to, by a physical or mental condition or conditions specified in the certificate or by a physical or mental condition connected with such a condition or such conditions,

the person is entitled—

- (d) where the period of contributory service of the person is not less than 8 years—
 - (i) if the person does not make an election under section 71 or 72—to invalidity pension in accordance with section 70 and, where the person has paid supplementary contributions, a lump sum benefit in accordance with that section;
 - (ii) if the person makes an election under section 71—to invalidity pension, and a lump sum benefit, in accordance with that section; or
 - (iii) if the person is entitled to make an election under section 72 and makes such an election—to a lump sum benefit in accordance with sub-section 72 (2) and, where the person has paid supplementary contributions, an additional lump sum benefit in accordance with sub-section 72 (3); or
- (e) where the period of contributory service of the person is less than 8 years—to a lump sum benefit in accordance with sub-section 73 (2) and, where the person has paid supplementary contributions, an additional lump sum benefit in accordance with sub-section 73 (3).

(3) Where a person to whom invalidity pension had been payable in accordance with section 68 or 71 again became an eligible employee and later ceases to be an eligible employee by reason of retirement on the ground of invalidity before attaining his maximum retiring age, he is not entitled to invalidity benefit in accordance with section 67 or 70, but he is entitled to invalidity benefit in accordance with section 68 or 71, as the case may be as if he had made an election under whichever of those sections is applicable.

(4) Sub-sections (1) and (2) do not apply to a person whose period of prospective service is less than 1 year.

Invalidity benefit where pension not reduced on medical grounds and election not made under section 68 or 69.

67. (1) This section applies to a person who—

- (a) is entitled to invalidity benefit by virtue of sub-section 66 (1); and
- (b) does not make an election under section 68 or 69.

(2) Where the period of prospective service of a person to whom this section applies is not less than 30 years, then, subject to sub-section (3) of this section, the annual rate of the pension to which the person is entitled is 70 per centum of that person's final annual rate of salary.

(3) Where the period of contributory service of a person to whom this section applies is not less than 31 years, the annual rate of the pension to which the person is entitled is such percentage of the person's final annual rate of salary as, having regard to the number of complete years included in that period of contributory service, is applicable in accordance with columns 1 and 2 of Schedule 3.

(4) Where the period of prospective service of a person to whom this section applies is less than 30 years, the annual rate of the pension to which the person is entitled is such percentage of the person's final annual rate of salary as, having regard to the number of complete years included in the person's period of prospective service, is applicable in accordance with columns 1 and 2 of Schedule 4.

(5) Where a person to whom this section applies has paid supplementary contributions, the lump sum benefit to which the person is entitled is an amount, payable out of the Fund, equal to the person's accumulated supplementary contributions.

Election where benefit not reduced on medical grounds.

68. (1) A person who becomes entitled to invalidity pension by virtue of sub-section 66 (1) may, not later than 1 month after becoming so entitled, elect, by notice in writing to the Commissioner, that, in lieu of benefit being payable in accordance with section 67, pension and lump sum benefit be paid in accordance with this section.

(2) Where a person makes an election under sub-section (1) and the period of prospective service of the person is not less than 30 years, then, subject to sub-section (3), the annual rate of the pension to which the person is entitled is 50 per centum of that person's final annual rate of salary.

(3) Where a person makes an election under sub-section (1) and the period of contributory service of the person is not less than 31 years, the annual rate of the pension to which the person is entitled is such percentage of the person's final annual rate of salary as, having regard to the number of complete years included in that period of contributory service, is applicable in accordance with columns 1 and 3 of Schedule 3.

(4) Where a person makes an election under sub-section (1) and the period of prospective service of the person is less than 30 years, the

annual rate of the pension to which the person is entitled is such percentage of the person's final annual rate of salary as, having regard to the number of complete years included in that period of prospective service, is applicable in accordance with columns 1 and 3 of Schedule 4.

(5) Where a person makes an election under sub-section (1), the lump sum benefit to which the person is entitled is an amount, payable out of the Fund, equal to the person's accumulated contributions.

(6) A person who makes an election under section 69 is not entitled to make an election under sub-section (1) of this section.

69. (1) A person—

(a) who becomes entitled to invalidity benefit by virtue of sub-section 66 (1); and

(b) whose period of prospective service is less than 8 years,

may, not later than 1 month after becoming so entitled, elect, by notice in writing to the Commissioner, that, in lieu of benefit being payable in accordance with section 67, lump sum benefit be paid in accordance with this section.

Election where benefit not reduced on medical grounds and period of prospective service less than 8 years.

(2) Where a person makes an election under sub-section (1), the lump sum benefit to which the person is entitled in accordance with this sub-section is an amount equal to whichever is the greater of—

(a) 3½ times the person's accumulated basic contributions; or

(b) one-half of the amount that is the amount per annum of the person's final annual rate of salary.

(3) Where a person makes an election under sub-section (1) and the person has paid supplementary contributions, the lump sum benefit to which the person is entitled in accordance with this sub-section is an amount, payable out of the Fund, equal to the persons's accumulated supplementary contributions.

(4) A person who makes an election under section 68 is not entitled to make an election under sub-section (1) of this section.

70. (1) This section applies to a person—

(a) who is entitled to invalidity benefit by virtue of sub-section 66 (2);

(b) whose period of contributory service is not less than 8 years; and

(c) who has not made an election under section 71 or 72.

(2) Where the period of prospective service of a person to whom this section applies is not less than 30 years, the annual rate of the pension to which the person is entitled is such percentage of the person's final annual rate of salary as, having regard to the number of complete years included in the person's period of contributory service, is applicable in accordance with columns 1 and 2 of Schedule 5.

Invalidity benefit where benefit reduced on medical grounds, period of contributory service not less than 8 years and election not made under section 71 or 72.

(3) Where the period of prospective service of a person to whom this section applies is less than 30, but is not less than 20, years, the annual rate of the pension to which the person is entitled is an amount per annum calculated by—

- (a) ascertaining the amount per annum that is such percentage of the person's final annual rate of salary as, having regard to the number of complete years included in the person's period of prospective service, is applicable in accordance with columns 1 and 2 of Schedule 6; and
- (b) multiplying the amount so ascertained by such factor as, having regard to the number of complete years included in the person's period of contributory service, is applicable in accordance with Schedule 7.

(4) Where the period of prospective service of a person to whom this section applies is less than 20 years, the annual rate of the pension to which the person is entitled is such percentage of the person's final annual rate of salary as, having regard to the number of complete years included in the person's period of contributory service, is applicable in accordance with columns 1 and 2 of Schedule 8.

(5) Where a person to whom this section applies has paid supplementary contributions, the lump sum benefit to which the person is entitled is an amount, payable out of the Fund, equal to the person's accumulated supplementary contributions.

Election where benefit reduced on medical grounds and period of contributory service not less than 8 years.

71. (1) A person—

- (a) who becomes entitled to invalidity benefit by virtue of sub-section 66 (2); and
 - (b) whose period of contributory service is not less than 8 years,
- may, not later than 1 month after becoming so entitled, elect, by notice in writing to the Commissioner, that, in lieu of benefit being payable in accordance with section 70, pension and lump sum benefit be paid in accordance with this section.

(2) Where a person makes an election under sub-section (1) and the period of prospective service of the person is not less than 30 years, the annual rate of the pension to which the person is entitled is such percentage of the person's final annual rate of salary as, having regard to the number of complete years included in the person's period of contributory service, is applicable in accordance with columns 1 and 3 of Schedule 5.

(3) Where a person makes an election under sub-section (1) and the period of prospective service of the person is less than 30, but is not less than 20, years, the annual rate of the pension to which the person is entitled is an amount per annum calculated by—

- (a) ascertaining the amount per annum that is such percentage of the person's final annual rate of salary as, having regard to the

number of complete years included in the person's period of prospective service, is applicable in accordance with columns 1 and 3 of Schedule 6; and

- (b) multiplying the amount so ascertained by such factor as, having regard to the number of complete years included in the person's period of contributory service, is applicable in accordance with Schedule 7.

(4) Where a person makes an election under sub-section (1) and the period of prospective service of the person is less than 20 years, the annual rate of the pension to which the person is entitled is such percentage of the person's final annual rate of salary as, having regard to the number of complete years included in the person's period of contributory service, is applicable in accordance with columns 1 and 3 of Schedule 8.

(5) Where a person makes an election under sub-section (1), the lump sum benefit to which the person is entitled is an amount, payable out of the Fund, equal to the person's accumulated contributions.

(6) A person who makes an election under section 72 is not entitled to make an election under sub-section (1) of this section.

72. (1) A person—

- (a) who becomes entitled to invalidity benefit by virtue of sub-section 66 (2); and
 (b) whose period of contributory service is less than 15, but is not less than 8, years,

may, not later than 1 month after becoming so entitled, elect, by notice in writing to the Commissioner, that, in lieu of benefit being payable in accordance with section 70, lump sum benefit be paid in accordance with this section.

Election where benefit reduced on medical grounds and period of contributory service less than 15, but not less than 8, years.

(2) Where a person makes an election under sub-section (1), the lump sum benefit to which the person is entitled in accordance with this sub-section is whichever is the greater of—

- (a) $3\frac{1}{2}$ times the person's accumulated basic contributions; or
 (b) one-half of the amount that is the amount per annum of the person's final annual rate of salary.

(3) Where a person makes an election under sub-section (1) and the person has paid supplementary contributions, the lump sum benefit to which the person is entitled in accordance with this sub-section is an amount, payable out of the Fund, equal to the person's accumulated supplementary contributions.

(4) A person who makes an election under section 71 is not entitled to make an election under sub-section (1) of this section.

Invalidity benefit where benefit reduced on medical grounds and period of contributory service less than 8 years.

73. (1) This section applies to a person—
- (a) who is entitled to invalidity benefit by virtue of sub-section 66 (2); and
 - (b) whose period of contributory service is less than 8 years.
- (2) The lump sum benefit to which a person to whom this section applies is entitled in accordance with this sub-section is an amount equal to whichever is the greater of—
- (a) 3½ times the person's accumulated basic contributions; or
 - (b) one-half of the amount that is the amount per annum of the person's final annual rate of salary.
- (3) The lump sum benefit to which a person to whom this section applies is entitled in accordance with this sub-section (being a person who has paid supplementary contributions) is an amount, payable out of the Fund, equal to the person's accumulated supplementary contributions.

Power of Commissioner to require invalidity pensioners to be medically examined, &c.

74. (1) The Commissioner may, by notice in writing given to a person to whom invalidity pension is payable but who has not attained the age of 65 years, require the person—
- (a) to submit himself for medical examination by a medical practitioner at a time and place specified in the notice; or
 - (b) to furnish in writing to the Commissioner, within such a 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 to a person under sub-section (1) may be given by delivering it to him personally or by sending it by post addressed to him at his address last known to the Commissioner.
- (3) Where a person fails to comply with a notice given to him under sub-section (1) and does not satisfy the Commissioner that there was a reasonable excuse for the failure, the Commissioner may suspend the person's invalidity pension.
- (4) Where the Commissioner suspends a person's invalidity pension under sub-section (3) by virtue of his having failed to comply with a notice requiring him to submit himself for medical examination, invalidity pension is not payable to him in respect of the period that commenced on the day on which he was required by the notice to submit himself for examination and ends on the day immediately preceding the day on which he submits himself for medical examination at a time and place approved by the Commissioner or on such earlier day as the Commissioner, in special circumstances, approves.
- (5) Where the Commissioner suspends a person's invalidity pension under sub-section (3) by virtue of his having failed to comply with a

notice requiring him to furnish information to the Commissioner, invalidity pension is not payable to him in respect of the period that commenced upon the expiration of the period within which he was required by the notice to furnish the information and ends on the day immediately preceding the day on which he furnishes the information to the Commissioner or on such earlier day as the Commissioner, in special circumstances, approves.

(6) Where a person whose invalidity pension has been suspended under sub-section (3) of this section dies before the invalidity pension again becomes payable, he shall, for the purposes of sub-section 93 (2), 106 (1) or 108 (1), be deemed to have been in receipt of invalidity pension at the time of his death and, for the purposes of section 96 and sub-section 106 (3), the pension 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.

(7) Where invalidity pension again becomes payable to a person whose pension was suspended under sub-section (3) of this section, the person shall, for the purposes of the application of Part X in relation to the pension, be deemed to have been in receipt of invalidity pension during the period of the suspension at the rate at which it would have been payable to him if it had not been suspended.

(8) The cost of any medical examination carried out for the purposes of this section shall be treated as part of the cost of the administration of this Act.

75. (1) Where the Commissioner is satisfied, after receiving the report or reports of a medical practitioner or medical practitioners with respect to the health of a person to whom invalidity pension is payable, that the health of the person has become so restored as to enable him to perform duties of a kind that are, in the opinion of the Commissioner, suitable to be performed by him (having regard to the duties performed by him immediately before his retirement on the ground of invalidity and to such other matters as the Commissioner considers relevant), the Commissioner shall so inform such person or authority as the Commissioner considers appropriate with a view to that person or authority finding suitable employment for the pensioner.

Invalidity pensioner restored to health to be found employment.

(2) If—

(a) the pensioner is offered by the Commonwealth or by an approved authority employment (not being employment on a part-time basis) that involves the performance of duties that, in the opinion of the Commissioner, are suitable to be performed by him (having regard to the duties performed by him immediately before his retirement on the ground of invalidity and to such other matters as the Commissioner considers relevant); and

- (b) the person unreasonably refuses or fails to accept the offer within 14 days after the receipt by him of the offer, or within such further period as the Commissioner allows,

the Commissioner may cancel the person's entitlement to invalidity pension.

Cancellation of invalidity pension where invalidity pensioner again becomes eligible employee, &c.

76. (1) Upon a person to whom invalidity pension is payable again becoming an eligible employee, his entitlement to that pension is, by force of this sub-section, cancelled.

- (2) Where—
- (a) a person, upon ceasing to be an eligible employee, becomes entitled to invalidity pension;
- (b) his entitlement to that pension is cancelled under sub-section (1) upon his again becoming an eligible employee; and
- (c) he again ceases to be an eligible employee before attaining his maximum retiring age by reason of death or retirement on the ground of invalidity,

the annual rate of any pension that becomes payable under this Act to or in respect of him after he again ceases to be an eligible employee shall not be less than—

- (d) the rate at which that pension would have been payable if he had not again become an eligible employee; or
- (e) if a lesser rate is applicable in respect of him under the regulations—that lesser rate.

Partial invalidity pension payable in certain circumstances where invalidity pensioner again becomes eligible employee.

77. (1) Where the annual rate of salary of a person referred to in section 76 is, on the day on which he again becomes an eligible employee, less than the annual rate of his retirement salary, he is entitled to a partial invalidity pension in accordance with this section.

(2) The annual rate of partial invalidity pension to which a person is, at any time, entitled by virtue of sub-section (1) is—

- (a) if the annual rate of his salary is, at that time, not less than one-half of the annual rate of his retirement salary—an amount per annum ascertained in accordance with the formula—

$$\frac{A}{B}(C - D)$$

where—

A is—

- (i) if invalidity pension was payable to the person in accordance with section 67 immediately before he became entitled to partial invalidity pension—the amount per annum equal to the annual rate at which invalidity pension would have been payable to him in accordance with section 68

immediately after his retirement on the ground of invalidity if he had made an election under sub-section 68 (1);

- (ii) if invalidity pension was payable to the person in accordance with section 70 immediately before he became entitled to partial invalidity pension—the amount per annum equal to the annual rate at which invalidity pension would have been payable to him in accordance with section 71 immediately after his retirement on the ground of invalidity if he had made an election under sub-section 71 (1); or
- (iii) in any other case—the amount per annum equal to the annual rate at which invalidity pension was payable to him immediately after his retirement on the ground of invalidity;

B is an amount per annum equal to his final annual rate of salary on the day that was his last day of service before he became entitled to the invalidity pension that was payable to him immediately before he became entitled to partial invalidity pension;

C is an amount per annum equal to the annual rate of his retirement salary; and

D is an amount per annum equal to his annual rate of salary; or

- (b) if the the annual rate of his salary is, at that time, less than one-half of the annual rate of his retirement salary—such annual rate as the Commissioner, in his discretion, determines, being an annual rate not less than the rate that would be payable to the person if paragraph (a) applied to him.

(3) Upon the annual rate of salary of a person to whom partial invalidity pension is payable in accordance with this section becoming equal to or greater than the annual rate of his retirement salary, his entitlement to that pension is, by force of this sub-section, cancelled.

(4) Upon a person to whom partial invalidity pension is payable in accordance with this section ceasing to be an eligible employee, his entitlement to that pension is, by force of this sub-section, cancelled.

(5) Subject to sub-section (6), a reference in this section to the annual rate of the retirement salary of a person to whom sub-section (1) applies shall be read as a reference to the rate that was his annual rate of salary immediately before he last ceased to be an eligible employee.

(6) Where at any time the Commissioner, having regard to any changes in rates of remuneration which have occurred since the retirement of a person referred to in sub-section (5) and which the Commissioner considers to be relevant, is of the opinion that the annual rate

of the retirement salary of the person should, for the purposes of this section, be a rate other than the rate referred to in sub-section (5) or a rate specified by the Commissioner in a previous determination made under this sub-section, the Commissioner may determine that, for the purposes of this section, the annual rate of the retirement salary of the person shall, from the date of the determination or such other date as is specified in the determination, be deemed to be such rate as is specified in the determination.

(7) Subject to sub-section (8), a reference in the preceding provisions of this section to the annual rate of the salary of a person to whom sub-section (1) applies shall, notwithstanding any change in that rate of salary, be read as a reference to the rate that was his annual rate of salary on the day on which he again became an eligible employee.

(8) Where at any time the Commissioner, having regard to any changes in the annual rate of salary of a person referred to in sub-section (7) which have occurred since he again became an eligible employee and which the Commissioner considers to be relevant, is of the opinion that the annual rate of salary of the person should, for the purposes of this section, be a rate other than the rate referred to in sub-section (7) or a rate specified by the Commissioner in a previous determination made under this sub-section, the Commissioner may determine that, for the purposes of this section, the annual rate of the salary of the person shall, from the date of the determination or such other date as is specified in the determination, be deemed to be such rate as is specified in the determination.

Partial
invalidity
pension
where
eligible
employee's
salary
decreases for
health
reasons.

78. (1) Where the annual rate of salary of an eligible employee who has not attained his maximum retiring age and is not entitled to partial invalidity pension in accordance with section 77 decreases under such circumstances that the Commissioner is satisfied that the decrease can properly be regarded as attributable to physical or mental incapacity and—

- (a) the number of complete years included in the period that would have been his period of contributory service if he had ceased to be an eligible employee on the day immediately preceding the day on which that rate decreases is not less than 8 years; or
- (b) where the number of complete years included in that period is less than 8 years—
 - (i) a benefit classification certificate is not in force in respect of him immediately before that last-mentioned day; or
 - (ii) a benefit classification certificate is so in force in respect of him but the Commissioner is of the opinion that the physical or mental incapacity was not caused, or substantially contributed to, by a physical or mental condition or conditions specified in the certificate or a physical or

mental condition connected with such a condition or such conditions,

he is entitled to a partial invalidity pension in accordance with this section

(2) The annual rate of partial invalidity pension to which a person is, at any time, entitled by virtue of sub-section (1) is—

(a) except where paragraph (b) applies—

(i) if the annual rate of his salary is, at that time, not less than one-half of his previous annual rate of salary—an amount per annum ascertained in accordance with the formula—

$$\frac{A}{B} (C - D)$$

where—

A is an amount per annum equal to the annual rate at which invalidity pension would have been payable to him in accordance with section 68 if he had become entitled to invalidity benefit on the day on which he became entitled to partial invalidity pension and had made an election under sub-section 68 (1);

B is an amount per annum equal to the annual rate that would have been his final annual rate of salary if he ceased to be an eligible employee on the day immediately preceding the day on which he became entitled to partial invalidity pension;

C is an amount per annum equal to his previous annual rate of salary; and

D is an amount per annum equal to his annual rate of salary; or

(ii) if the annual rate of his salary is, at that time, less than one-half of his previous annual rate of salary—such annual rate as the Commissioner, in his discretion, determines, being an annual rate not less than the rate that would be payable to the person if sub-paragraph (i) applied to him; or

(b) where—

(i) there was in force in respect of the person, immediately before he became entitled to partial invalidity pension in accordance with this section, a benefit classification certificate; and

(ii) the Commissioner is of the opinion that the physical or mental incapacity referred to in sub-section (1) was caused, or substantially contributed to, by a physical or

mental condition or conditions specified in the certificate or a physical or mental condition connected with such a condition or such conditions,

then—

- (iii) if the annual rate of his salary, at that time, is not less than one-half of his previous annual rate of salary—an amount per annum ascertained in accordance with the formula—

$$\frac{A}{B} (C - D)$$

where—

- A is an amount per annum equal to the annual rate at which invalidity pension would have been payable to him in accordance with section 71 if he had become entitled to invalidity benefit on the day on which he became entitled to partial invalidity pension and had made an election under sub-section 71 (1);
- B is an amount per annum equal to the annual rate that would have been his final annual rate of salary if he ceased to be an eligible employee on the day immediately preceding the day on which he became entitled to partial invalidity pension;
- C is an amount per annum equal to his previous annual rate of salary; and
- D is an amount per annum equal to his annual rate of salary; or
- (iv) if the annual rate of his salary is, at that time, less than one-half of his previous rate of salary—such annual rate as the Commissioner, in his discretion, determines, being an annual rate not less than the rate that would be payable to the person if sub-paragraph (iii) applied to him.

(3) Upon the annual rate of salary of a person to whom partial invalidity pension is payable in accordance with this section becoming equal to or greater than his previous annual rate of salary, his entitlement to that pension is, by force of this sub-section, cancelled.

(4) Upon a person to whom partial invalidity pension is payable in accordance with this section ceasing to be an eligible employee, his entitlement to that pension is, by force of this sub-section, cancelled.

(5) Subject to sub-section (6), a reference in this section to the previous annual rate of salary of a person to whom sub-section (1) applies shall be read as a reference to the rate that was his annual rate of salary immediately before he became entitled to partial invalidity pension under this section.

(6) Where at any time the Commissioner, having regard to any changes in rates of remuneration which have occurred since a person referred to in sub-section (5) became entitled to partial invalidity pension and which the Commissioner considers to be relevant, is of the opinion that the previous annual rate of salary of the person should, for the purposes of this section, be a rate other than the rate referred to in sub-section (5) or a rate specified by the Commissioner in a previous determination made under this sub-section, the Commissioner may determine that, for the purposes of this section, the previous annual rate of salary of the person shall, from the the date of the determination or such other date as is specified in the determination, be deemed to be such rate as is specified in the determination.

(7) Subject to sub-section (8), a reference in the preceding provisions of this section to the annual rate of the salary of a person to whom sub-section (1) applies shall, notwithstanding any change in that rate of salary, be read as a reference to the rate that was his annual rate of salary on the day on which he became entitled to partial invalidity pension under this section.

(8) Where at any time the Commissioner, having regard to any changes in the annual rate of salary of a person referred to in sub-section (7) which have occurred since he became entitled to partial invalidity pension and which the Commissioner considers to be relevant, is of the opinion that the annual rate of salary of the person should, for the purposes of this section, be a rate other than the rate referred to in sub-section (7) or a rate specified by the Commissioner in a previous determination made under this sub-section, the Commissioner may determine that, for the purposes of this section, the annual rate of the salary of the person shall, from the date of the determination or such other date as is specified in the determination, be deemed to be such rate as is specified in the determination.

79. Where—

- (a) a person ceases to be an eligible employee by reason of retirement on the ground of invalidity; and
- (b) the incapacity which was the ground for his retirement was, in the opinion of the Commissioner, due to wilful action on the part of the person for the purpose of obtaining invalidity benefit,

Benefit not payable under Division in certain circumstances.

the person is not entitled to benefit under this Division.

Division 5—Miscellaneous

80. (1) Subject to sub-section (2), where—

- (a) a person ceases to be an eligible employee otherwise than by reason of death; and
- (b) the person is not entitled to benefit under Division 1, 2 or 4 of this Part or under Division 3 of Part IX,

Payment of accumulated contributions where no other benefit payable under Part.

the person is entitled to a lump sum benefit, payable out of the Fund, of an amount equal to the person's accumulated contributions.

(2) Where—

- (a) a person who, upon having ceased to be an eligible employee, became entitled to invalidity pension in accordance with section 67 or 70 again becomes an eligible employee;
- (b) his entitlement to that pension was cancelled under sub-section 76 (1) upon his again having become an eligible employee; and
- (c) he again ceases to be an eligible employee, otherwise than by reason of death, but does not, upon again so ceasing, become entitled to benefit under Division 1, 2 or 4 of this Part or under Division 3 of Part IX,

the person is entitled to a lump sum benefit equal to the sum of—

- (d) an amount equal to so much of his accumulated basic contributions as is applicable in respect of him by virtue of paragraph (a) of the definition of “accumulated basic contributions” in sub-section 3 (1);
- (e) his accumulated supplementary contributions; and
- (f) where the amount paid to the Fund under sub-section 112 (5) by virtue of his having again become an eligible employee as referred to in paragraph (a) of this sub-section exceeds the total of the amounts of invalidity pension at any time paid to him in accordance with section 67 or 70 (other than an amount (if any) that has been taken into account in a previous application of this sub-section in relation to him)—the amount of that excess.

PART VI—BENEFITS PAYABLE TO SPOUSES AND CHILDREN

Division 1—Spouse's Benefit on Death of Eligible Employee before Attaining Maximum Retiring Age

Entitlement to spouse's benefit under Division.

81. (1) Where an eligible employee who dies before attaining his maximum retiring age is survived by a spouse, then, except in a case where sub-section (2) of this section applies, the spouse is entitled—

- (a) if the spouse does not make an election under section 83 or 84—to spouse's pension in accordance with section 82 and, where the eligible employee had paid supplementary contributions, a lump sum benefit in accordance with that section;
- (b) if the spouse makes an election under section 83—to spouse's pension, and a lump sum benefit, in accordance with that section; or
- (c) if the spouse is entitled to make an election under section 84 and makes such an election—to a lump sum benefit in accordance with sub-section 84 (2) and, where the eligible employee had

paid supplementary contributions, an additional lump sum benefit in accordance with sub-section 84 (3).

(2) Where—

- (a) an eligible employee who dies before attaining his maximum retiring age is survived by a spouse;
- (b) there was in force in respect of the eligible employee, immediately before his death, a benefit classification certificate; and
- (c) the Commissioner is of the opinion that the eligible employee's death was caused, or was substantially contributed to, by a physical or mental condition or conditions specified in the certificate or by a physical or mental condition connected with such a condition or conditions,

the spouse is entitled—

- (d) where the period of contributory service of the eligible employee is not less than 8 years—
 - (i) if the spouse does not make an election under section 86 or 87—to spouse's pension in accordance with section 85 and, where the eligible employee had paid supplementary contributions, a lump sum in accordance with that section;
 - (ii) if the spouse makes an election under section 86—to spouse's pension, and a lump sum benefit, in accordance with that section; or
 - (iii) if the spouse is entitled to make an election under section 87 and makes such an election—to a lump sum benefit in accordance with sub-section 87 (2) and, where the eligible employee had paid supplementary contributions, an additional lump sum benefit in accordance with sub-section 87 (3); or
- (e) where the period of contributory service of the eligible employee is less than 8 years—to a lump sum benefit in accordance with sub-section 88 (1) and, where the eligible employee had paid supplementary contributions, an additional lump sum benefit in accordance with sub-section 88 (2).

(3) Where the surviving spouse is the spouse of an eligible employee who, if he had not died but had retired on the ground of invalidity on the day of his death, would have been entitled to invalidity benefit as provided by sub-section 66 (3), the spouse shall be deemed, for the purposes of this Division, to have made an election under sub-section 83 (1) or 86 (1), as the case may be.

(4) Sub-sections (1) and (2) do not apply to the spouse of a deceased eligible employee whose period of prospective service is less than 1 year.

Spouse's benefit where benefit not reduced on medical grounds and election not made under section 83 or 84.

82. (1) This section applies to the spouse of a deceased eligible employee who—

- (a) is entitled to spouse's benefit by virtue of sub-section 81 (1); and
- (b) does not make an election under section 83 or 84.

(2) The annual rate of spouse's pension of a spouse to whom this section applies is 67 per centum of the annual rate of the invalidity pension to which the deceased eligible employee would have been entitled under section 67 if he had not died, but had, on the day immediately following the date of his death, become entitled to invalidity benefit in accordance with that section.

(3) If, at any time when spouse's pension is payable to a spouse to whom this section applies, there are children of the deceased eligible employee who are eligible children, then, in the application of sub-section (2) at that time to the spouse, the reference in sub-section (2) to 67 per centum shall be read as a reference to—

- (a) where there is 1 eligible child—78 per centum;
- (b) where there are 2 eligible children—89 per centum; or
- (c) where there are 3 or more eligible children—100 per centum.

(4) Where a spouse to whom this section applies is the spouse of a deceased eligible employee who had paid supplementary contributions, the lump sum benefit to which the spouse is entitled is an amount, payable out of the Fund, equal to the accumulated supplementary contributions of the deceased eligible employee.

Election where pension not reduced on medical grounds.

83. (1) The spouse of a deceased eligible employee who becomes entitled to spouse's benefit by virtue of sub-section 81 (1) may, not later than 1 month after becoming so entitled, elect, by notice in writing to the Commissioner, that, in lieu of benefit being payable in accordance with section 82, pension and lump sum benefit be paid in accordance with this section.

(2) Where a spouse makes an election under sub-section (1) of this section, the annual rate of pension to which the spouse is entitled is 67 per centum of the annual rate of the pension to which the deceased eligible employee would have been entitled under section 68 if he had not died, but had, on the day immediately following the date of his death, become entitled to invalidity benefit and had made an election under that section.

(3) If, at any time when spouse's pension is payable to a spouse who makes an election under sub-section (1), there are children of the deceased eligible employee who are eligible children, then, in the application of sub-section (2) at that time to the spouse, the reference in sub-section (2) to 67 per centum shall be read as a reference to—

- (a) where there is 1 eligible child—78 per centum;

- (b) where there are 2 eligible children—89 per centum; or
- (c) where there are 3 or more eligible children—100 per centum.

(4) The lump sum benefit to which a spouse who makes an election under sub-section (1) is entitled is an amount, payable out of the Fund, equal to the accumulated contributions of the deceased eligible employee.

(5) A spouse who makes an election under section 84 is not entitled to make an election under sub-section (1) of this section.

84. (1) The spouse of a deceased eligible employee (being an eligible employee whose period of prospective service is less than 8 years) who becomes entitled to spouse's benefit by virtue of sub-section 81 (1) may, not later than 1 month after becoming so entitled, elect, by notice in writing to the Commissioner, that, in lieu of benefit being payable in accordance with section 82, a lump sum benefit be paid in accordance with sub-section (2) of this section and, where the deceased eligible employee had paid supplementary contributions, an additional lump sum benefit in accordance with sub-section (3) of this section.

Election where benefit not reduced on medical grounds and period of prospective service less than 8 years.

(2) Where a spouse makes an election under sub-section (1) of this section, the lump sum benefit to which the spouse is entitled in accordance with this sub-section is an amount equal to the lump sum benefit to which the deceased eligible employee would have been entitled under sub-section 69 (2) if he had not died, but had, on the day immediately following the date of his death, become entitled to invalidity benefit and had made an election under section 69.

(3) Where a spouse makes an election under sub-section (1) and the deceased eligible employee had paid supplementary contributions, the additional lump sum benefit to which the spouse is entitled in accordance with this sub-section is an amount, payable out of the Fund, equal to the accumulated supplementary contributions of the deceased eligible employee.

(4) A spouse who makes an election under section 83 is not entitled to make an election under sub-section (1) of this section.

85. (1) This section applies to the spouse of a deceased eligible employee (being an eligible employee whose period of contributory service is not less than 8 years) who—

- (a) is entitled to spouse's benefit by virtue of sub-section 81 (2); and
- (b) does not make an election under section 86 or 87.

(2) The annual rate of spouse's pension of a spouse to whom this section applies is 67 per centum of the annual rate of invalidity pension to which the deceased eligible employee would have been entitled under section 70 if he had not died, but had, on the day immediately following

Spouse's benefit where benefit reduced on medical grounds, period of contributory service not less than 8 years and election not made under section 86 or 87.

the date of his death, become entitled to invalidity pension in accordance with that section.

(3) If, at any time when spouse's pension is payable to a spouse to whom this section applies, there are children of the deceased eligible employee who are eligible children then, in the application of sub-section (2) at that time to the spouse, the reference in sub-section (2) to 67 per centum shall be read as a reference to—

- (a) where there is 1 eligible child—78 per centum;
- (b) where there are 2 eligible children—89 per centum; or
- (c) where there are 3 or more eligible children—100 per centum.

(4) Where a spouse to whom this section applies is the spouse of a deceased eligible employee who had paid supplementary contributions, the lump sum benefit to which the spouse is entitled is an amount, payable out of the Fund, equal to the accumulated supplementary contributions of the deceased eligible employee.

Election where benefit reduced on medical grounds and period of contributory service not less than 8 years.

86. (1) The spouse of a deceased eligible employee (being an eligible employee whose period of contributory service is not less than 8 years) who becomes entitled to spouse's benefit by virtue of sub-section 81 (2) may, not later than 1 month after becoming so entitled, elect, by notice in writing to the Commissioner, that, in lieu of benefit being payable in accordance with section 85, pension and lump sum benefit be paid in accordance with this section.

(2) Where a spouse makes an election under sub-section (1) of this section, the annual rate of the pension to which the spouse is entitled is 67 per centum of the annual rate of the pension to which the deceased eligible employee would have been entitled under section 71 if he had not died, but had, on the day immediately following the date of his death, become entitled to invalidity benefit and had made an election under that section.

(3) If, at any time when spouse's pension is payable to a spouse who makes an election under sub-section (1), there are children of the deceased eligible employee who are eligible children, then, in the application of sub-section (2) at that time to the spouse, the reference in sub-section (2) to 67 per centum shall be read as a reference to—

- (a) where there is 1 eligible child—78 per centum;
- (b) where there are 2 eligible children—89 per centum; or
- (c) where there are 3 or more eligible children—100 per centum.

(4) Where a spouse makes an election under sub-section (1), the lump sum benefit to which the spouse is entitled is an amount, payable out of the Fund, equal to the accumulated contributions of the deceased eligible employee.

(5) A spouse who makes an election under section 87 is not entitled to make an election under sub-section (1) of this section.

87. (1) The spouse of a deceased eligible employee (being an eligible employee whose period of contributory service is less than 15, but not less than 8, years) who becomes entitled to spouse's benefit by virtue of sub-section 81 (2) may, not later than 1 month after becoming so entitled, elect, by notice in writing to the Commissioner, that, in lieu of benefit being payable in accordance with section 85, a lump sum benefit be paid in accordance with sub-section (2) of this section and, where the deceased eligible employee had paid supplementary contributions, an additional lump sum benefit in accordance with sub-section (3) of this section.

Election where pension reduced on medical grounds and period of contributory service less than 15, but not less than 8, years.

(2) Where a spouse makes an election under sub-section (1) of this section, the lump sum benefit to which the spouse is entitled in accordance with this sub-section is an amount equal to the lump sum benefit to which the deceased eligible employee would have been entitled under sub-section 72 (2) if he had not died, but had, on the day immediately following the date of his death, become entitled to invalidity benefit and had made an election under section 72.

(3) Where a spouse makes an election under sub-section (1) and the deceased eligible employee had paid supplementary contributions, the lump sum benefit to which the spouse is entitled in accordance with this sub-section is an amount, payable out of the Fund, equal to the accumulated supplementary contributions of the deceased eligible employee.

(4) A spouse who makes an election under section 86 is not entitled to make an election under sub-section (1) of this section.

88. (1) Where the spouse of a deceased eligible employee (being an eligible employee whose period of contributory service is less than 8 years) is entitled to lump sum benefit by virtue of sub-section 81 (2), the lump sum benefit payable in accordance with this sub-section is an amount equal to the lump sum benefit to which the deceased eligible employee would have been entitled under sub-section 73 (2) if he had not died, but had, on the day immediately following the date of his death, become entitled to invalidity benefit.

Spouse's benefit where pension reduced on medical grounds and period of contributory service less than 8 years.

(2) Where a spouse referred to in sub-section (1) is the spouse of a deceased eligible employee who had paid supplementary contributions, the lump sum benefit payable in accordance with this sub-section is an amount, payable out of the Fund, equal to the accumulated supplementary contributions of the deceased eligible employee.

Division 2—Spouse's Benefit on Death of Eligible Employee after Attaining Maximum Retiring Age

Entitlement to spouse's benefit under Division.

89. (1) Where an eligible employee who dies on or after attaining his maximum retiring age is survived by a spouse, the spouse is entitled to—

- (a) spouse's standard pension in accordance with section 90;
- (b) subject to sub-section 92 (2), spouse's additional pension in accordance with sub-section 91 (1); and
- (c) lump sum benefit (if any) in accordance with sub-section 91 (2).

(2) Sub-section (1) does not apply to the spouse of a deceased eligible employee whose period of contributory service is less than 1 year.

Rate of spouse's standard pension.

90. (1) Where the spouse of a deceased eligible employee is entitled to spouse's standard pension by virtue of section 89, the annual rate of that pension is, subject to sub-section (2) of this section, 67 per centum of the annual rate of the standard age retirement pension to which the deceased eligible employee would have been entitled if he had not died but had, on the day immediately following the date of his death, become entitled to standard age retirement pension in accordance with section 56.

(2) If, at any time when spouse's standard pension is payable by virtue of section 89 to the spouse of a deceased eligible employee, there are children of the eligible employee who are eligible children, then, in the application of sub-section (1) of this section at that time to the spouse, the reference in that sub-section to 67 per centum shall be read as a reference to—

- (a) where there is 1 eligible child—78 per centum;
- (b) where there are 2 eligible children—89 per centum; or
- (c) where there are 3 or more eligible children—100 per centum.

Rate of spouse's additional pension and amount of lump sum benefit.

91. (1) Where the spouse of a deceased eligible employee is entitled to spouse's additional pension by virtue of section 89, then, subject to sub-section 92 (2), the annual rate of that pension is—

- (a) an amount per annum equal to the amount (in this section referred to as the "base amount") that is the product of the accumulated contributions of the deceased eligible employee and such factor as is applicable in accordance with regulations made for the purposes of this paragraph; or
- (b) if the rate ascertained in accordance with paragraph (a) is greater than 13.4 per centum of the final annual rate of salary of the deceased eligible employee—13.4 per centum of that final annual rate of salary.

(2) Where the base amount is greater than an amount (in this sub-section referred to as the "maximum amount") equal to 13.4 per centum

of the amount per annum that is the final annual rate of salary of a deceased eligible employee, there shall be paid to the spouse of that eligible employee a lump sum benefit equal to the amount by which the accumulated contributions of the deceased eligible employee exceed an amount ascertained by dividing the maximum amount by the factor referred to in paragraph (1) (a).

92. (1) The spouse of a deceased eligible employee who becomes entitled to spouse's additional pension by virtue of section 89 may, not later than 3 months after becoming so entitled, make, by notice in writing to the Commissioner, an election to commute that pension into a lump sum benefit payable to her.

Election to commute spouse's additional pension entitlement.

(2) Where a spouse makes an election under sub-section (1) to commute her spouse's additional pension, there shall be paid to the spouse a lump sum benefit equal to the accumulated contributions of the deceased eligible employee and the spouse is not entitled to the pension.

(3) Where a lump sum benefit is payable under sub-section 91 (2) to a spouse who makes an election under this section, sub-section (2) of this section has effect in relation to the spouse as if the reference in that sub-section to the accumulated contributions of the deceased eligible employee were a reference to the amount of those contributions reduced by the amount of the lump sum benefit payable under sub-section 91 (2).

Division 3—Spouse's Benefit on Death of Pensioner

93. (1) Where a pensioner to whom age retirement pension or early retirement pension is payable dies and is survived by a spouse, the spouse is entitled—

Entitlement to spouse's benefit on death of pensioner.

- (a) to spouse's standard pension in accordance with section 94; and
- (b) if the pensioner did not make an election under section 64, to spouse's additional pension in accordance with section 95.

(2) Where a pensioner to whom invalidity pension is payable dies and is survived by a spouse, the spouse is entitled to spouse's pension in accordance with section 96.

94. (1) Where the spouse of a deceased pensioner is entitled to spouse's standard pension by virtue of paragraph 93 (1) (a), the annual rate of that pension is, subject to sub-section (2) of this section, 67 per centum of the annual rate at which standard age retirement pension or standard early retirement pension, as the case may be, was payable to the deceased pensioner immediately before his death.

Rate of spouse's standard pension on death of age or early retirement pensioner.

(2) If, at any time when spouse's standard pension is payable by virtue of section 93 to the spouse of a deceased pensioner, there are children of the pensioner who are eligible children, then, in the application of

sub-section (1) of this section at that time to the spouse, the reference in that sub-section to 67 per centum shall be read as a reference to—

- (a) where there is 1 eligible child—78 per centum;
- (b) where there are 2 eligible children—89 per centum; or
- (c) where there are 3 or more eligible children—100 per centum.

Rate of spouse's additional pension on death of age or early retirement pensioner.

95. Where the spouse of a deceased pensioner is entitled to spouse's additional pension by virtue of paragraph 93 (1) (b), the annual rate of that pension is 67 per centum of the annual rate at which additional age retirement pension or additional early retirement pension was payable to the deceased pensioner immediately before his death.

Rate of spouse's pension on death of invalidity pensioner.

96. (1) Where the spouse of a deceased pensioner is entitled to spouse's pension by virtue of sub-section 93 (2), the annual rate of that pension is 67 per centum of the annual rate at which invalidity pension was payable to the deceased pensioner immediately before the pensioner's death.

(2) If, at any time when spouse's pension is payable to the spouse under sub-section (1), there are children of the deceased pensioner who are eligible children, then, in the application of sub-section (1) at that time to the spouse, the reference in sub-section (1) to 67 per centum shall be read as a reference to—

- (a) where there is 1 eligible child—78 per centum;
- (b) where there are 2 eligible children—89 per centum; or
- (c) where there are 3 or more eligible children—100 per centum.

Division 4—Orphan Benefit

Orphan benefit—death of eligible employee after attaining maximum retiring age.

97. (1) Where—

- (a) an eligible employee dies on or after attaining his maximum retiring age;
- (b) his period of contributory service is not less than 1 year; and
- (c) he is not survived by a spouse but is survived by a person or persons who is or are his child or children,

then—

- (d) at any time after his death when the surviving child or 1 or more of the surviving children is an eligible child or are eligible children—*orphan pension is payable in respect of the eligible child or eligible children in accordance with sub-section (2); and*
- (e) if the surviving child or 1 or more of the surviving children is or are, immediately after his death, an eligible child or eligible children or, in the opinion of the Commissioner, is or are likely to become an eligible child or eligible children—*lump sum benefit is payable in respect of that child or those children in accordance with sub-section (3).*

(2) Where, by virtue of paragraph (1) (d), orphan pension is at any time payable in respect of an eligible child or eligible children of a deceased eligible employee, the annual rate of the pension payable in respect of that child or those children is such percentage of the notional standard age retirement pension of the deceased eligible employee as is applicable under section 109.

(3) Where, by virtue of paragraph (1) (e), lump sum benefit is payable in respect of a surviving child or surviving children of a deceased eligible employee, the lump sum benefit is an amount, payable out of the Fund, equal to the accumulated contributions of the deceased eligible employee.

(4) The reference in sub-section (2) to the notional standard age retirement pension of a deceased eligible employee means the rate of the standard age retirement pension to which he would have been entitled if he had not died, but had, on the day immediately following the date of his death, become entitled to standard age retirement pension in accordance with section 56.

98. (1) Where—

- (a) an eligible employee dies before attaining his maximum retiring age;
- (b) his period of prospective service is not less than 1 year; and
- (c) he is not survived by a spouse but is survived by a person or persons who is or are his child or children,

then, except in a case where section 99, 100 or 101 applies—

- (d) at any time after his death when the surviving child or 1 or more of the surviving children is an eligible child or are eligible children—*orphan pension is payable in respect of the eligible child or eligible children in accordance with sub-section (2); and*
- (e) if the deceased eligible employee had paid supplementary contributions and the surviving child or 1 or more of the surviving children is or are, immediately after his death, an eligible child or eligible children or, in the opinion of the Commissioner, is or are likely to become an eligible child or eligible children—*lump sum benefit is payable in respect of that child or those children in accordance with sub-section (3) of this section.*

Orphan benefit—death of eligible employee before attaining maximum retiring age where benefit not reduced on medical grounds and direction not given under section 99.

(2) Where, by virtue of paragraph (1) (d), orphan pension is at any time payable in respect of an eligible child or eligible children of a deceased eligible employee, the annual rate of the pension payable in respect of that child or those children is such percentage of the notional invalidity pension of the deceased eligible employee as is applicable under section 109.

(3) Where, by virtue of paragraph (1) (e), lump sum benefit is payable in respect of a surviving child or surviving children of a deceased eligible employee, the lump sum benefit is an amount, payable out of the

Fund, equal to the accumulated supplementary contributions of the deceased eligible employee.

(4) The reference in sub-section (2) to the notional invalidity pension of a deceased eligible employee means—

- (a) subject to paragraph (b) of this sub-section, the rate of the invalidity pension to which the eligible employee would have been entitled under section 67 if he had not died, but had, on the day immediately following the date of his death, become entitled to invalidity pension in accordance with that section; or
- (b) where an amount equal to the deceased eligible employee's accumulated contributions has been paid out of the Fund under section 111—the rate of the invalidity pension to which the eligible employee would have been entitled under section 68 if he had not died, but had, on the day immediately following the date of his death, become entitled to invalidity pension and had made an election under that section.

(5) Where a deceased eligible employee would, if he had not died but had retired on the ground of invalidity on the day of his death, have been entitled to invalidity benefit as provided by sub-section 66 (3), this section applies in relation to him as if—

- (a) there were substituted for paragraph (1) (e) of this section provision that lump sum benefit equal to the accumulated contributions of the deceased eligible employee were payable out of the Fund in respect of the child or children referred to in that paragraph; and
- (b) paragraph (4) (b) of this section applied in relation to him.

99. (1) Where—

- (a) an eligible employee dies before attaining his maximum retiring age;
- (b) his period of prospective service is less than 8 years but not less than 1 year;
- (c) there was not in force in respect of him immediately before his death a benefit classification certificate or, if such a certificate was in force in respect of him immediately before his death, the Commissioner is of the opinion that his death was not caused, and was not substantially contributed to, by a physical or mental condition or conditions specified in the certificate or by a physical or mental condition connected with such a condition or such conditions;
- (d) he is not survived by a spouse but is survived by a person or persons who is or are his child or children, being a child who is, or children at least one of whom is, an eligible child; and

Orphan benefit—death of eligible employee before attaining maximum retiring age where benefit not reduced on medical grounds, period of prospective service less than 8 years and direction given under this section.

(e) the Commissioner is of the opinion that no other surviving child of the deceased eligible employee who is not an eligible child immediately after his death is likely to become an eligible child, then, upon application in writing being made to the Commissioner not later than 1 month after the date of the eligible employee's death by or on behalf of the eligible child or eligible children, the Commissioner may, in his discretion, direct that, in lieu of benefit being payable in accordance with section 98 in respect of the eligible child or eligible children, a lump sum benefit be payable in accordance with sub-section (2) of this section and, where the deceased eligible employee had paid supplementary contributions, an additional lump sum benefit be payable in accordance with sub-section (3) of this section.

(2) Where the Commissioner gives a direction under sub-section (1) of this section in relation to an eligible child or eligible children of a deceased eligible employee, there is payable in respect of the eligible child or eligible children a lump sum benefit of an amount equal to the amount of the lump sum benefit to which the deceased eligible employee would have been entitled under sub-section 69 (2) if he had not died, but had, on the day immediately following the date of his death, become entitled to an invalidity pension and had made an election under section 69.

(3) Where the Commissioner gives a direction under sub-section (1) in relation to an eligible child or eligible children of a deceased eligible employee who had paid supplementary contributions, there is payable, out of the Fund, in respect of the eligible child or eligible children a lump sum benefit of an amount equal to the accumulated supplementary contributions of the deceased eligible employee.

100. (1) Where—

- (a) an eligible employee dies before attaining his maximum retiring age;
- (b) his period of contributory service is not less than 8 years;
- (c) there was in force in respect of him immediately before his death a benefit classification certificate and the Commissioner is of the opinion that his death was caused, or was substantially contributed to, by a physical or mental condition or conditions specified in the certificate or by a physical or mental condition connected with such a condition or such conditions; and
- (d) he is not survived by a spouse but is survived by a person or persons who is or are his child or children,

Orphan benefit—death of eligible employee before attaining maximum retiring age where benefit reduced on medical grounds and period of contributory service not less than 8 years.

then—

- (e) at any time after his death when the surviving child or 1 or more of the surviving children is an eligible child or are eligible children—*orphan pension* is payable in respect of the eligible child or eligible children in accordance with sub-section (2); and

- (f) if the deceased eligible employee had paid supplementary contributions and the surviving child or 1 or more of the surviving children is or are, immediately after his death, an eligible child or children or, in the opinion of the Commissioner, is or are likely to become an eligible child or children—lump sum benefit is payable in respect of that child or those children in accordance with sub-section (3).

(2) Where, by virtue of paragraph (1) (e) of this section, orphan pension is at any time payable in respect of an eligible child or eligible children of a deceased eligible employee, the annual rate of the pension payable in respect of that child or those children is such percentage of the notional invalidity pension of the deceased eligible employee as is applicable under section 109.

(3) Where, by virtue of paragraph (1) (f), lump sum benefit is payable in respect of a surviving child or surviving children of a deceased eligible employee, the lump sum benefit is an amount, payable out of the Fund, equal to the accumulated supplementary contributions of the deceased eligible employee.

(4) The reference in sub-section (2) of this section to the notional invalidity pension of a deceased eligible employee means—

- (a) subject to paragraph (b) of this sub-section, the rate of the invalidity pension to which the eligible employee would have been entitled under section 70 if he had not died, but had, on the day immediately following the date of his death, become entitled to invalidity pension in accordance with that section; or
- (b) where an amount equal to the deceased eligible employee's accumulated contributions has been paid out of the Fund under section 111—the rate of the invalidity pension to which the eligible employee would have been entitled under section 71 if he had not died, but had, on the day immediately following the date of his death, become entitled to invalidity pension and had made an election under that section.

(5) Where a deceased eligible employee would, if he had not died but had retired on the ground of invalidity on the day of his death, have been entitled to invalidity benefit as provided by sub-section 66 (3), this section applies in relation to him as if—

- (a) there were substituted for paragraph (1) (f) of this section provision that lump sum benefit equal to the accumulated contributions of the deceased eligible employee were payable out of the Fund in respect of the child or children referred to in that paragraph; and
- (b) paragraph (4) (b) of this section applied in relation to him.

101. (1) Where—

- (a) an eligible employee dies before attaining his maximum retiring age;
- (b) his period of contributory service is less than 8 years;
- (c) his period of prospective service is not less than 1 year;
- (d) there was in force in respect of him immediately before his death a benefit classification certificate and the Commissioner is of the opinion that his death was caused, or was substantially contributed to, by a physical or mental condition or conditions specified in the certificate or by a physical or mental condition connected with such a condition or such conditions;
- (e) he is not survived by a spouse but is survived by a person or persons who is or are his child or children; and
- (f) the surviving children or 1 or more of the surviving children is or are, immediately after his death, an eligible child or eligible children or, in the opinion of the Commissioner, is or are likely to become an eligible child or eligible children,

Orphan benefit—death of eligible employee before attaining maximum retiring age where benefit reduced on medical grounds and period of contributory service less than 8 years.

a lump sum benefit is payable to that child or those children in accordance with sub-section (2) and, where the deceased eligible employee had paid supplementary contributions, an additional lump sum benefit is payable to that child or those children in accordance with sub-section (3).

(2) Where, by virtue of sub-section (1), a lump sum benefit is payable in respect of the child or children of a deceased eligible employee, the lump sum benefit payable in accordance with this sub-section is an amount equal to the amount of the lump sum benefit to which the deceased eligible employee would have been entitled under sub-section 73 (2) if he had not died, but had, on the day immediately following the date of his death, become entitled to invalidity benefit under section 73.

(3) Where, by virtue of sub-section (1), an additional lump sum benefit is payable in respect of the child or children of a deceased eligible employee, the lump sum benefit payable in accordance with this sub-section is an amount, payable out of the Fund, equal to the accumulated supplementary contributions of the deceased eligible employee.

102. (1) Where—

- (a) spouse's pension is payable to the spouse of a person who ceased to be an eligible employee by reason of the death of the eligible employee on or after attaining his maximum retiring age; and
- (b) the spouse dies but is survived by a person or persons who is or are the child or children of the deceased eligible employee,

Orphan benefit—death of spouse of deceased eligible employee who died after attaining maximum retiring age.

then, at any time after the spouse's death when the surviving child or 1 or more of the surviving children, is an eligible child or are eligible

children, orphan pension is payable in respect of the eligible child or eligible children in accordance with sub-section (2).

(2) Where, by virtue of sub-section (1), orphan pension is at any time payable in respect of an eligible child or eligible children of a deceased eligible employee, the annual rate of the pension payable in respect of that child or those children is such percentage of the notional standard age retirement pension of the deceased eligible employee as is applicable under section 109.

(3) The reference in sub-section (2) to the notional standard age retirement pension of a deceased eligible employee means the rate of the standard age retirement pension to which the deceased eligible employee would have been entitled on the day on which the spouse's pension ceased to be payable if the eligible employee had not died, but had, on the day immediately following the date of his death, become entitled to standard age retirement pension in accordance with section 56.

Orphan benefit—death of spouse of deceased eligible employee who died before attaining maximum retiring age and where benefit not reduced on medical grounds.

103. (1) Where—

- (a) spouse's pension is payable in accordance with section 82 or 83 to the spouse of a person who ceased to be an eligible employee by reason of the death of the eligible employee before attaining his maximum retiring age; and
- (b) the spouse dies but is survived by a person or persons who is or are the child or children of the deceased eligible employee,

then, at any time after the spouse's death when the surviving child or 1 or more of the surviving children is an eligible child or are eligible children, orphan pension is payable in respect of the eligible child or eligible children in accordance with sub-section (2).

(2) Where, by virtue of sub-section (1), orphan pension is at any time payable in respect of an eligible child or eligible children of a deceased eligible employee, the annual rate of the pension payable in respect of that child or those children is such percentage of the notional invalidity pension of the deceased eligible employee as is applicable under section 109.

(3) The reference in sub-section (2) to the notional invalidity pension of a deceased eligible employee means—

- (a) subject to paragraph (b) of this sub-section, the rate of the invalidity pension to which the eligible employee would have been entitled under section 67 on the day on which spouse's pension ceased to be payable to the spouse if he had not died, but had, on the day immediately following the date of his death, become entitled to invalidity pension in accordance with that section; or
- (b) if the spouse had made an election under section 83—the rate of the invalidity pension to which he would have been entitled under section 68 on the day on which spouse's pension ceased to

be payable to the spouse if he had not died, but had, on the day immediately following the date of his death, become entitled to invalidity benefit and made an election under section 68.

104. (1) Where—

- (a) spouse's pension is payable in accordance with section 85 or 86 to the spouse of a person who ceased to be an eligible employee by reason of the death of the eligible employee before attaining his maximum retiring age; and
- (b) the spouse dies but is survived by a person or persons who is or are the child or children of the deceased eligible employee,

Orphan benefit—death of spouse of deceased eligible employee who died before attaining maximum retiring age where benefit reduced on medical grounds and period of contributory service not less than 8 years.

then, at any time after the spouse's death when the surviving child or 1 or more of the surviving children, is an eligible child or are eligible children, orphan pension is payable in respect of the eligible child or eligible children in accordance with sub-section (3).

(2) Where, by virtue of sub-section (1), orphan benefit is payable at any time in respect of an eligible child or eligible children of a deceased eligible employee, the annual rate of pension payable in respect of that child or those children is such percentage of the notional invalidity pension of the deceased eligible employee as is applicable under section 109.

(3) The reference in sub-section (2) to the notional invalidity pension of a deceased eligible employee means—

- (a) subject to paragraph (b) of this sub-section, the rate of the invalidity pension to which the eligible employee would have been entitled under section 70 on the day on which spouse's pension ceased to be payable to the spouse if he had not died, but had, on the day immediately following the date of his death, become entitled to invalidity pension in accordance with that section; or
- (b) if the spouse had made an election under section 86—the rate of the invalidity pension to which he would have been entitled under section 71 on the day on which spouse's pension ceased to be payable to the spouse if he had not died, but had, on the day immediately following the date of his death, become entitled to invalidity benefit and made an election under section 71.

105. (1) Where—

- (a) a pensioner to whom age retirement pension or early retirement pension is payable dies; and
- (b) he is not survived by a spouse but is survived by a person or persons who is or are his child or children,

Orphan benefit—death of age or early retirement pensioner.

then, at any time after his death when the surviving child or 1 or more of the surviving children is an eligible child or are eligible children, orphan pension is payable in respect of the eligible child or eligible children in accordance with sub-section (2).

(2) Where, by virtue of sub-section (1) of this section, orphan pension is payable at any time in respect of an eligible child or eligible children of a deceased pensioner, the annual rate of the pension payable in respect of the child or children is such percentage of the notional standard pension of the deceased pensioner as is applicable under section 109.

(3) A reference in sub-section (2) to the notional standard pension of a deceased pensioner means the annual rate at which standard age retirement pension or standard early retirement pension, as the case may be, was payable to the deceased pensioner immediately before his death.

Orphan
benefit—death
of invalidity
pensioner.

106. (1) Where—

- (a) a pensioner to whom invalidity pension is payable dies; and
- (b) he is not survived by a spouse but is survived by a person or persons who is or are his child or children,

then, at any time after his death when the surviving child or 1 or more of the surviving children is an eligible child or are eligible children, orphan pension is payable in respect of the eligible child or eligible children in accordance with sub-section (2).

(2) Where, by virtue of sub-section (1) of this section, orphan pension is payable in respect of an eligible child or eligible children of a deceased pensioner, the annual rate of the pension payable in respect of that child or those children is such percentage of the notional invalidity pension of the deceased pensioner as is applicable under section 109.

(3) A reference in sub-section (2) to the notional invalidity pension of a deceased pensioner means the rate at which invalidity pension was payable to the deceased pensioner immediately before his death.

Orphan
benefit—
death of
spouse of
deceased age
retirement or
early
retirement
pensioner.

107. (1) Where—

- (a) spouse's pension is payable to the spouse of a person to whom age retirement pension or early retirement pension was payable at the time of the person's death; and
- (b) the spouse dies, but is survived by a person or persons who is or are the child or children of the deceased pensioner,

then, at any time after the spouse's death when the surviving child or 1 or more of the surviving children is an eligible child or are eligible children, orphan pension is payable in respect of the eligible child or eligible children in accordance with sub-section (2).

(2) Where, by virtue of sub-section (1), orphan pension is payable at any time in respect of an eligible child or eligible children of a deceased pensioner, the annual rate of the pension payable in respect of that child or those children is such percentage of the notional standard pension of the deceased pensioner as is applicable under section 109.

(3) A reference in sub-section (2) to the notional standard pension of a deceased pensioner means the rate at which standard age retirement

pension or standard early retirement pension, as the case may be, would have been payable to the deceased pensioner immediately before the pensioner's death if the pensioner had died on the day on which his spouse died.

108. (1) Where—

- (a) spouse's pension is payable to the spouse of a person to whom invalidity pension was payable at the time of the person's death; and
- (b) the spouse dies, but is survived by a person or persons who is or are the child or children of the deceased pensioner,

Orphan benefit—death or spouse of deceased invalidity pensioner.

then, at any time after the spouse's death when the surviving child or 1 or more of the surviving children is an eligible child or are eligible children, orphan pension is payable in respect of the eligible child or eligible children in accordance with sub-section (2).

(2) Where, by virtue of sub-section (1), orphan pension is payable at any time in respect of an eligible child or eligible children of a deceased pensioner, the annual rate of the pension payable in respect of that child or those children is such percentage of the notional invalidity pension of the deceased pensioner as is applicable under section 109.

(3) A reference in sub-section (2) to the notional invalidity pension of a deceased pensioner means the annual rate at which invalidity pension would have been payable to the deceased pensioner immediately before the pensioner's death if he had died on the day on which his spouse died.

109. Where, at any time, orphan pension is payable in respect of an eligible child or eligible children of a deceased eligible employee or a deceased pensioner, then, for the purposes of sub-section 97 (2), 98 (2), 100 (2), 102 (2), 103 (2), 104 (2), 105 (2), 106 (2), 107 (2) or 108 (2), as the case requires, the applicable percentage is—

Percentages applicable for purpose of certain provisions.

- (a) if at that time there is 1 eligible child—45 per centum;
- (b) if at that time there are 2 eligible children—80 per centum;
- (c) if at that time there are 3 eligible children—90 per centum; and
- (d) if at that time there are 4 or more eligible children—100 per centum.

Division 5—Miscellaneous

110. (1) Where a person who is an eligible employee or a retirement pensioner dies and is survived by more than 1 person who is a spouse of the person for the purposes of this Act—

Apportionment of spouse's benefit amongst surviving spouses.

- (a) spouse's benefit is payable to those persons, where the benefit is a pension, at such rate as would be applicable if there were 1 surviving spouse only or, where the benefit is a lump sum

benefit, that benefit shall be such amount as would be applicable if there were 1 surviving spouse only; and

- (b) the benefit is payable to those persons in such proportions as the Commissioner determines or, where the benefit is a pension, as the Commissioner from time to time determines, having regard to the respective needs of those persons and to such other matters as he considers relevant.

(2) Where spouse's benefit, being a pension, is payable to 2 or more persons in accordance with sub-section (1), then, upon the death of one of the persons, the spouse's benefit payable to the survivor or survivors in accordance with sub-section (1) shall be pension at the rate payable immediately before the death reduced by such proportion of that rate as was the proportion of the pension payable to the deceased person immediately before the death.

(3) In this section, "spouse's benefit" means spouse's pension or a lump sum benefit payable to a spouse under this Act.

PART VII—GENERAL PROVISIONS APPLICABLE TO BENEFITS

Payment of accumulated contributions to personal representatives of deceased eligible employee where no other benefit payable, &c.

111. (1) Where—

- (a) a person ceases to be an eligible employee by reason of death; and
- (b) benefit is not payable in respect of the person under Part VI, a lump sum benefit of an amount equal to the person's accumulated contributions shall be paid out of the Fund to his personal representatives or to such person or persons (if any) as the Commissioner determines.

(2) Where the total amount of the benefit or benefits (whether paid by way of instalments of pension or as a lump sum or lump sums, or both) paid to or in respect of a person who has been an eligible employee (excluding, if he is a person who at any time ceased to be an eligible employee otherwise than by reason of having been retired on the ground of invalidity, any benefit or benefits paid to him before he so ceased) is, at a time when no further benefit is payable under this Act to or in respect of the person, less than the accumulated contributions of the person as at the time when he ceased to be an eligible employee, an amount equal to the difference shall be paid to the personal representatives of the person or to such person or persons (if any) as the Commissioner determines.

(3) For the purposes of paragraph (1) (b), benefit shall be deemed not to be payable in respect of an eligible employee under section 97, 98

or 100, if, notwithstanding that benefit may later become payable in respect of him, no benefit is payable in respect of him upon his death.

112. (1) Subject to sub-sections (3) and (4), the accumulated contributions of an eligible employee shall, upon his ceasing to be an eligible employee, be paid out of the Superannuation Fund into the Consolidated Revenue Fund.

Payments into and out of Consolidated Revenue Fund.

(2) Except where otherwise provided by this Act, any payment of benefit shall be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

(3) Where a person ceases to be an eligible employee and, upon his so ceasing, a lump sum benefit of an amount equal to his accumulated contributions is payable to or in respect of him out of the Superannuation Fund, sub-section (1) does not apply in relation to him.

(4) Where a person ceases to be an eligible employee and, upon his so ceasing, a lump sum benefit of an amount equal to his accumulated supplementary contributions is payable out of the Superannuation Fund to or in respect of him, sub-section (1) does not apply in relation to him, but his accumulated basic contributions shall be paid out of the Superannuation Fund into the Consolidated Revenue Fund.

(5) Where a person to whom invalidity pension is payable in accordance with section 67 or 70 again becomes an eligible employee, an amount equal to the amount that was paid in respect of the person out of the Superannuation Fund to the Consolidated Revenue Fund upon his last ceasing to be an eligible employee shall be paid to the Superannuation Fund out of the Consolidated Revenue Fund, which is appropriated accordingly.

113. (1) Pensions shall be paid in fortnightly instalments on pension pay days.

Instalments of pensions.

(2) The amount of a fortnightly instalment of pension shall be an amount ascertained by dividing the amount per annum of the pension by 26.

(3) Where the amount of a fortnightly instalment of pension 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 reduced by the amount of the fraction; or
- (b) if the fraction is not less than one-half of a cent—the amount of the instalment shall be deemed to be increased by treating the fraction as 1 cent.

(4) The amount of pension payable in respect of a day is one-fourteenth of the amount of a fortnightly instalment of the pension.

Payment of part of spouse's pension attributable to children.

114. (1) Where, in the opinion of the Commissioner, payment of the part of an instalment of spouse's pension attributable to an eligible child or eligible children, or any portion of that part, should, by reason of the child or children not being in the custody, care and control of the spouse, or for any other reason which the Commissioner thinks proper, be made to a person other than the spouse, the Commissioner may authorise payment of that part, or a portion of the part, to be made to the other person, and payment shall be made to the other person accordingly.

(2) A payment of the part, and a payment of a portion of the part, of an instalment of spouse's pension attributable to an eligible child that, under sub-section (1), is paid to a person other than the child to which that part or portion is attributable, shall be applied for the maintenance, education or other benefit of the child.

Payment of orphan benefit.

115. (1) A payment of orphan benefit payable in respect of an eligible child or the eligible children of a deceased person shall be made to the child or children or to such other person or persons as the Commissioner considers appropriate.

(2) Where an amount of orphan benefit is payable in respect of 2 or more eligible children of a deceased person, the Commissioner may, having regard to the respective circumstances of the children and to such other matters as he considers appropriate, apportion the amount amongst the children in such manner as he thinks fit, and the portion applicable to a particular eligible child or to particular eligible children shall, for the purposes of sub-section (1), be deemed to be a payment of orphan benefit payable in respect of that child or those children.

(3) A payment of orphan benefit that, under sub-section (1), is made to a person or persons other than the eligible child or eligible children in respect of whom it is payable shall be applied for the maintenance, education or other benefit of that eligible child or those eligible children.

(4) In this section, "orphan benefit" means orphan pension or a lump sum benefit payable under Division 4 of Part VI.

Payment of benefit otherwise than to person entitled.

116. Where, in the opinion of the Commissioner, payment of an instalment, or part of an instalment, of pension, 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 person who is insane or undergoing imprisonment or otherwise being under a disability, or for any other reason which the Commissioner thinks proper, be made to a person other than the person who would be so entitled to the payment, the Commissioner may authorise the payment to be made to another person, and payment shall be made to the other person accordingly.

117. (1) Where—

- (a) the liability of an eligible employee to make contributions under this Act has been deferred by virtue of section 54 of this Act; and
- (b) before he has ceased to be liable to contribute under the Defence Force Retirement and Death Benefits Act, he ceases to be an eligible employee and becomes entitled to pension under this Act by reason of retirement on the grounds of invalidity,

Pension to or in respect of certain contributors under Defence Force Retirement and Death Benefits Act.

his entitlement to that pension is suspended until such time as he ceases to be liable to contribute under the Defence Force Retirement and Death Benefits Act, but, if he dies before he so ceases to be liable to contribute under that Act, he shall, for the purposes of sub-sections 93 (2), 106 (1) and 108 (1) of this Act, be deemed to have been in receipt of invalidity pension at the time of his death and, for the purposes of section 96 and sub-section 106 (3), the pension shall be deemed to have been payable at the rate at which pension would, but for this sub-section, have been payable to him at that time.

(2) Where—

- (a) the liability of an eligible employee to make contributions under this Act has been deferred by virtue of section 54 of this Act and—

- (i) he ceases to be an eligible employee and, upon so ceasing, becomes entitled to pension under this Act by reason of retirement on the ground of invalidity and—

- (A) he has been or is discharged from the Defence Force on the ground of invalidity or of physical and mental incapacity to perform his duties, section 36 of the Defence Force Retirement and Death Benefits Act applies to him and, in the opinion of the Commissioner, the incapacity which was the ground for this retirement as an eligible employee is related to the ground on which he was discharged from the Defence Force; or

- (B) he dies after ceasing to be an eligible employee but before being discharged from the Defence Force from causes that, in the opinion of the Commissioner, are related to the incapacity which was the ground for his retirement as an eligible employee; or

- (ii) he dies—

- (A) before being discharged from the Defence Force; or

- (B) after having been discharged from the Defence Force on the ground of invalidity or of physical or mental incapacity to perform his duties, from causes that, in the opinion of the Commissioner,

are related to the ground on which he was discharged from the Defence Force; and

- (b) the rate of any pension payable to or in respect of him under this Act (including pension that became payable before he was discharged from the Defence Force) is less than the rate of any corresponding benefit that, but for section 36 or 46 of the Defence Force Retirement and Death Benefits Act, would be payable to or in respect of him under that Act,

the Commissioner may increase the rate of the pension payable under this Act to such extent as he considers appropriate in the circumstances.

(3) Where—

- (a) the liability of an eligible employee to make contributions under this Act has been deferred by virtue of section 54 of this Act; and
- (b) at any time after the death of the person benefit under the Defence Force Retirement and Death Benefits Act would, but for section 36 or 46 of that Act, be payable in respect of him under that Act but no pension is payable in respect of him under this Act at that time,

the Commissioner may pay such benefit corresponding to the benefit under that Act as he considers appropriate in the circumstances.

(4) An eligible employee who is liable to contribute under the Defence Force Retirement and Death Benefits Act shall, for the purposes of this section, be deemed not to have ceased to be liable to so contribute by reason only of the operation of section 18 of that Act in relation to him.

Assignment
of benefits.

118. Except as prescribed and subject to section 119, no pension or other benefit under this Act is capable of being assigned or charged or of passing by operation of law, and any moneys payable under this Act on the death of a person are not liable to be applied or made available in payment of his debts or liabilities.

Attachment
of benefits.

119. (1) Where a judgment given by a court in Australia or in an external Territory 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 the Commissioner 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 the Commissioner in accordance with sub-section (1), the Commissioner 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 the Commissioner 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 the Commissioner, in such manner as is specified in the notice, evidence in support of that fact.

(3) If, at the expiration of the period specified in the notice—

- (a) the person to whom the notice was given has not complied with the notice; or
- (b) the person has complied with the notice, but the Commissioner is satisfied that an amount is due under the judgment,

the Commissioner may, at his discretion, authorize the deduction from the benefit, and the payment to the judgment creditor, of such sums as do not exceed, in the aggregate, the amount that the Commissioner is of the opinion is due under the judgment, and those deductions and those payments shall be made accordingly.

(4) A deduction shall not be authorized from—

- (a) an instalment of orphan pension or the part of a spouse's pension (if any) that is attributable to an eligible child or eligible children; or
- (b) an instalment of any other pension or any other part of a pension, as the case may be, if the deduction will reduce the amount of the instalment or that part of the instalment payable to less than one-half of the amount that would, but for this section, be payable.

(5) 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 the Commissioner is satisfied that an amount is due, has been served in accordance with sub-section (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 sub-section, 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.

(6) A payment made to a judgment creditor in pursuance of this section out of an amount of benefit payable to a person shall be deemed to be a payment of benefit to the person entitled to benefit.

(7) A judgment creditor who serves a copy of a judgment on the Commissioner under sub-section (1) shall notify the Commissioner when the judgment debt is satisfied.

Penalty: \$100 or imprisonment for 10 days.

(8) 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.

PART VIII—CANDIDATES AT PARLIAMENTARY ELECTIONS

Persons to whom Part applies.

120. This Part applies to a person who has ceased to be an eligible employee by reason that he has voluntarily terminated his employment in order to become a candidate for election as a member of a House of the Parliament of the Commonwealth or of a State or of the Legislative Assembly for the Northern Territory or a legislative or advisory body for another Territory prescribed for the purposes of section 47C of the Public Service Act, but so applies only if the termination took effect not earlier than 1 month before the day on which nominations for the election closed.

Death of person to whom Part applies before declaration of result of election, &c.

121. (1) Where a person to whom this Part applies dies on or before the day of the declaration of the result of the election, he shall be deemed not to have ceased, by reason of the termination of his employment, to be an eligible employee.

(2) Where a person to whom this Part applies was a candidate at the election, but failed to be elected, and—

- (a) he dies within the period of 2 months after the day of the declaration of the result of the election; or
- (b) he applies, within that period, to become employed by the Commonwealth or by an approved authority, or to be appointed to a statutory office, and dies before the application is determined (or, if the application is granted, before becoming so employed or appointed) and the employment or appointment is of such a kind that, if the person had become so employed or so appointed, he would have become an eligible employee,

he shall be deemed not to have ceased, by reason of the termination of his employment, to be an eligible employee.

(3) Where a person to whom this Part applies, and who was a candidate at the election and was elected, dies before he becomes a member of the legislative or advisory body to which he was elected, he shall be deemed not to have ceased, by reason of the termination of his employment, to be an eligible employee.

122. (1) Where—

- (a) the Commissioner is satisfied that, if a person to whom this Part applies had not terminated his employment, he would, at a time (in this sub-section referred to as “the relevant time”) within the period that commenced on the day after the day of the termination and ended on the day of the declaration of the result of the election, have ceased to be an eligible employee by reason of retirement on the ground of invalidity; and
- (b) he was not a candidate at the election by reason of the physical or mental incapacity which would have been the ground for his retirement or was such a candidate but failed to be elected,

Physical or
mental
incapacity of
person to
whom Part
applies
before
declaration
of result of
election, &c.

he shall be deemed not to have ceased, by reason of the termination of his employment, to be an eligible employee, but shall be deemed to have ceased, by reason of retirement on the ground of invalidity, to be an eligible employee at the relevant time.

(2) Where—

- (a) a person to whom this Part applies and who was a candidate at the election, but failed to be elected, does not apply, within the period of 2 months after the day of the declaration of the result of the election, to become employed by the Commonwealth or by an approved authority, or to be appointed to a statutory office; and
- (b) the Commissioner is satisfied that, if he had not terminated his employment, he would, at a time (in this sub-section referred to as “the relevant time”) within that period, have ceased to be an eligible employee by reason of retirement on the ground of invalidity,

he shall be deemed not to have ceased, by reason of the termination of his employment, to be an eligible employee, but shall be deemed to have ceased, by reason of retirement on the ground of invalidity, to be an eligible employee at the relevant time.

(3) Where—

- (a) a person to whom this Part applies, and who was a candidate at the election, but failed to be elected, applies, within the period of 2 months after the day of the declaration of the result of the election, to become employed by the Commonwealth or by an approved authority, or to be appointed to a statutory office; and
- (b) the application is granted but the employment or appointment is of such a kind that the person does not become an eligible employee by virtue of the employment or appointment or the application is not granted but the employment or appointment is of such a kind that, if it had been granted, the person would not, by virtue of the employment or appointment, have become an eligible employee,

then, for the purposes of sub-section (2), he shall be deemed not to have made the application.

(4) Where a person to whom this Part applies, and who was a candidate at the election, but failed to be elected, applies, within the period of 2 months after the day of the declaration of the result of the election, to become employed by the Commonwealth or by an approved authority, or to be appointed to a statutory office, and the employment or appointment is of such a kind that, if the person had become so employed or appointed, he would have become an eligible employee and the Commissioner is satisfied that—

- (a) in the case of a person whose application is rejected—if he had not terminated his employment, he would, at a time (in this sub-section referred to as “the relevant time”) within the period that commenced on the day after the day of the declaration of the result of the election and ended on the day of the rejection, have ceased to be an eligible employee by reason of retirement on the ground of invalidity;
- (b) in the case of a person whose application has been granted but who has not become employed by the Commonwealth or by that authority or appointed to that office—if he had not terminated his employment, he would, at a time (in this sub-section also referred to as “the relevant time”) within the period that commenced on the day after the day of the declaration of the result of the election and ended on the day on which he was required to commence his employment with the Commonwealth or the authority, have ceased to be an eligible employee by reason of retirement on the ground of invalidity; or
- (c) in the case of a person whose application has not been determined—if he had not terminated his employment, he would, at a time (in this sub-section also referred to as “the relevant time”) after the day of the declaration of the result of the election, have ceased to be an eligible employee by reason of retirement on the ground of invalidity,

then he shall be deemed not to have ceased, by reason of the termination of his employment in order to become a candidate for election, to be an eligible employee but shall be deemed to have ceased, by reason of retirement on the ground of invalidity, to be an eligible employee at the relevant time.

(5) Where the Commissioner is satisfied that, if a person to whom this Part applies, and who was a candidate at the election and was elected, but did not, by reason of physical or mental incapacity, become a member of the legislative or advisory body to which he was elected, had not terminated his appointment, he would, at a time (in this sub-section referred to as “the relevant time”) after he was elected, have ceased to be an eligible employee by reason of retirement on the ground of

invalidity, he shall be deemed not to have ceased, by reason of the termination of his employment, to be an eligible employee, but shall be deemed to have ceased, by reason of retirement on the ground of invalidity, to be an eligible employee at the relevant time.

123. Where—

- (a) a person to whom this Part applies was a candidate at the election but failed to be elected; and
- (b) by virtue of an application for employment or an appointment made by him within the period of 2 months after the day of the declaration of the result of the election—
 - (i) he becomes a permanent employee;
 - (ii) he becomes a temporary employee;
 - (iii) he becomes the holder of a statutory office to which he was appointed on a full-time basis; or
 - (iv) he becomes the holder of a statutory office to which he was appointed otherwise than on a full-time basis and he is specified in a direction given under sub-section 14 (2),

Re-employment of person to whom Part applies.

he shall be deemed not to have ceased, by reason of the termination of his employment in order to become a candidate for election, to be an eligible employee.

124. (1) Where a person to whom this Part applies is, by virtue of section 121, 122 or 123, deemed not to have ceased to be an eligible employee by reason of the termination of his employment for the purpose referred to in section 120—

Effect of section 121, 122 or 123 in relation to a person to whom Part applies.

- (a) any benefit that became payable to him under this Act upon that termination shall be deemed not to have been payable and the amount of any benefit so paid to him shall be repaid by him to the Commissioner before the expiration of 2 months after the day of the declaration of the result of the election or within such further period as the Commissioner allows; and
- (b) where his accumulated contributions have, under sub-section 112 (1), or his accumulated basic contributions have, under sub-section 112 (4), been paid out of the Superannuation Fund into the Consolidated Revenue Fund, an amount equal to the amount of those contributions shall be paid out of the Consolidated Revenue Fund (which is appropriated accordingly) into the Superannuation Fund and, for the purposes of this Act, those accumulated contributions or those accumulated basic contributions shall be deemed not to have been so paid out of the Superannuation Fund into the Consolidated Revenue Fund.

(2) Where an amount repaid to the Commissioner under sub-section (1) is an amount that has been paid out of the Consolidated Revenue Fund, the Commissioner shall pay the amount so repaid to him into the Consolidated Revenue Fund, and where an amount so repaid has been

paid out of the Superannuation Fund, the Commissioner shall pay the amount so repaid to him into the Superannuation Fund.

(3) Where, by virtue of section 121, 122 or 123, a person to whom this Part applies is deemed not to have ceased to be an eligible employee by reason of the termination of his employment for the purpose referred to in section 120, then, at any time after that termination that is relevant for the purposes of the application of this Act in relation to him, he shall be deemed, for the purposes of this Act, to have been in receipt of salary at an annual rate of such amount as, in the opinion of the Commissioner, would have been his annual rate of salary at that time if he had not so terminated his employment.

PART IX—PRESERVATION OF RIGHTS OF CERTAIN ELIGIBLE EMPLOYEES

Division 1—Preliminary

Interpretation.

125. (1) In this Part, unless the contrary intention appears—

“employment” does not include employment on a part-time basis except as otherwise provided by the regulations;

“life policy” means a life policy as defined by sub-section 4 (1) of the *Life Insurance Act* 1945 or of that Act as amended and in force from time to time;

“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;

“superannuation scheme” means a superannuation or retirement scheme, however established, and includes the superannuation scheme constituted by this Act and the superannuation scheme constituted by the superseded Act.

(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.

(3) For the purposes of this Part, membership by a person of the Legislative Assembly for the Northern Territory or a legislative or advisory body for another Territory prescribed for the purposes of section 47C of the Public Service Act shall be treated as if it were employment of the person by the Commonwealth.

(4) For the purposes of this Part, a benefit payable under a superannuation scheme to or in respect of a member of the scheme shall not be taken to have been based partly on contributions 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.

(6) Where, in pursuance of this Part, the Commissioner 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.

126. (1) This section applies to a person who is or has ceased to be an eligible employee, being a person who, immediately before he became an eligible employee, was a member of a superannuation scheme.

Modification of Act in relation to eligible employees who were previously members of a superannuation scheme.

(2) The regulations may make provision for modifying this Act, or a provision of this Act specified in the regulations, in the application of this Act or that provision to and in relation to a person to whom this section applies, or to and in relation to a prescribed class of persons to whom this section applies.

(3) The modifications that may be made by regulations in pursuance of sub-section (2) include, but are not limited to, modifications providing for the payment of contributions in addition to, or in substitution for, contributions that would otherwise be payable under this Act and for benefits in addition to, or in substitution for, benefits provided for by this Act.

Division 2—Eligible Employees with Preserved Rights from Previous Employment

127. (1) In this Division—

- (a) a reference, in relation to an eligible employee, 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 day on which he became an eligible employee 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 supplementary contributions under this Act or to contributions under the superseded Act for reserve units of pension.

Transfer value payable in respect of previous employment.

(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 scheme constituted by the provisions of 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 sub-section (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, he had the legal title to a life policy, or was entitled to have the legal title to such a policy assigned to him, being a policy the premiums for which were, while he was employed in that employment, paid in whole or in part by his 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 sub-section (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, he had the legal title to a life policy, or was entitled to have the legal title to a life policy assigned to him, 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, he had the legal title to that policy, or was entitled to have the legal title to that policy assigned to him.

Payment of
transfer
values to
Commis-
sioner.

128. (1) Where a person who becomes an eligible employee has, at any time before becoming an eligible employee, been in employment, within or outside Australia, upon the termination of which a transfer value or transfer values 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—

- (a) the eligible employee, before he becomes an eligible employee or not later than 3 months after the day on which he becomes an eligible employee, or within such further period as the Commissioner, in special circumstances, allows, elects, by notice in writing to the Commissioner, to pay to the Commissioner 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 3 months or that further period, as the case may be, paid to the Commissioner,

the succeeding provisions of this section have effect.

(2) Where an amount (in this section referred to as the “transferred amount”) has been paid by a person to the Commissioner under sub-section (1)—

- (a) so much of the transferred amount 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 be paid by the Commissioner into the Superannuation Fund, and, for the purposes of this Act, the amount so paid by the Commissioner into the Superannuation Fund shall, subject to sub-section (3), be deemed to be basic contributions paid by the person to the Commissioner under this Act; and
- (b) so much of the transferred amount as is equal to the employer component of the transfer value or the sum of the employer components of the transfer values, as the case may be, shall be paid by the Commissioner into the Consolidated Revenue Fund.

(3) If, upon the person ceasing to be an eligible employee, a lump sum benefit becomes payable to or in respect of him under or in accordance with sub-section 62 (2), 69 (2), 72 (2), 73 (2), 84 (2), 87 (2), 88 (1), 99 (2) or 101 (2), then, for the purpose of calculating the amount of that benefit, the amount of his accumulated basic contributions shall be deemed to be the amount that would have been the amount of his accumulated basic contributions if the amount paid into the Superannuation Fund in respect of him under paragraph (2) (a) of this section had been an amount equal to two-sevenths of the transferred amount.

(4) If, upon the person ceasing to be an eligible employee, lump sum benefit becomes payable to or in respect of him under section 80 or 111, the person is entitled to an additional lump sum benefit of an amount equal to—

- (a) subject to paragraph (b) of this sub-section, the amount paid into the Consolidated Revenue Fund in respect of him under paragraph (2) (b) of this section; or
- (b) if part only of the amount so paid into the Consolidated Revenue Fund is an amount that, irrespective of whether he engaged in further employment, was payable to him upon the termination of his previous employment under a superannuation scheme applicable to that employment—an amount equal to that part.

(5) There shall be added to the period that, but for this sub-section, would be his period of contributory service, such period as the Commissioner determines as being appropriate, having regard to—

- (a) the employer component of the transfer value; and

(b) such other matters as the Commissioner considers relevant and such matters (if any) as are prescribed.

(6) 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.

Certain lump sums not included in transfer value may be treated as supplementary contributions.

129. (1) Where—

(a) a person who becomes an eligible employee has, at any time before becoming an eligible employee, been in employment within or outside Australia;

(b) upon the termination of that employment a lump sum 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

(c) that lump sum, or a part of that lump sum, is an amount that is based upon contributions by the member and, if sub-section 128 (1) applies to the person, does not form part of the transfer value referred to in that sub-section,

he may, within a period of 3 months after the date on which he becomes an eligible employee, or within such further period as the Commissioner, in special circumstances, allows, pay to the Commissioner the whole or a part of the amount of that lump sum or that part of that lump sum, as the case may be, and request the Commissioner, in writing, to treat the amount so paid by him to the Commissioner as an amount of supplementary contributions paid by him under this Act.

(2) The Commissioner shall pay the amount so paid to him into the Fund, and the amount shall, for the purposes of this Act, be deemed to be an amount of supplementary contributions paid by the person under this Act.

Exemption of certain eligible employees from medical examination.

130. (1) Subject to sub-section (2), this section applies in relation to an eligible employee if—

(a) by reason of the termination of the employment in which he was last employed before he became an eligible employee—

(i) a transfer value within the meaning of Division 2 of Part IX became payable to or in respect of him after 25 May 1971 under a superannuation scheme applicable in relation to that employment and an amount equal to that transfer value has been paid to the Commissioner in accordance with sub-section 128 (1);

- (ii) 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; 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 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 him became applicable in respect of him; and
- (b) the eligible employee—
 - (i) underwent a medical examination required under the rules of the superannuation scheme referred to in paragraph (a) for the purpose of determining whether his health and physical fitness were of such a standard as would justify his being admitted as a member of that scheme;
 - (ii) underwent a medical examination required by the person by whom he was employed in the employment referred to in paragraph (a) for the purpose of determining whether his health and physical fitness were of such a standard as would justify his being employed in that employment; or
 - (iii) was admitted as a member of the superannuation scheme referred to in paragraph (a) under provisions of the rules of that scheme corresponding to the provisions of this section.
- (2) This section does not apply in relation to an eligible employee if—
 - (a) a period of more than 3 months elapsed between the termination of the employment referred to in paragraph (1) (a) and the day on which he became an eligible employee; or
 - (b) in the case of a person to whom sub-paragraph (1) (a) (i) or (ii) applies—the employment referred to in that paragraph terminated by reason of his invalidity or his physical or mental incapacity to perform his duties.
- (3) Where, under the superannuation scheme applicable in respect of the employment in which an eligible employee in relation to whom this section applies was last employed before he became an eligible employee—

- (a) the benefits that would have been applicable in respect of him if the termination of that employment had been caused by his death, or had been caused by invalidity or physical or mental incapacity, would have been, or would have included, benefits by way of a pension;
- (b) those benefits would have been the maximum benefits available under the scheme; and
- (c) the applicability of those maximum benefits would not have been attributable to his having paid contributions at a higher rate than the ordinary rate of contributions,

section 16 does not apply in relation to him.

(4) If the Commissioner is satisfied that, at the time when an eligible employee in relation to whom this section applies commenced to be employed in the employment in which he was last employed before he became an eligible employee, his physical or mental condition was such that, if he had then become an eligible employee, grounds would not have existed for the issue of a benefit classification certificate in respect of him by the Commissioner, the Commissioner may direct that section 16 does not apply in relation to him.

(5) If neither sub-section (3) nor sub-section (4) of this section is applicable in respect of an eligible employee in relation to whom this section applies, section 16 applies in relation to him, but, in the application of that section in relation to him, regard shall not be had to any physical or mental condition of the person that did not exist at the time when he commenced to be employed in the employment in which he was last employed before he became an eligible employee.

Division 3—Preservation of Rights of Persons Ceasing to be Eligible Employees

Interpretation.

131. (1) For the purposes of this Division, the prescribed period, in relation to a person who has ceased to be an eligible employee, is—

- (a) in the case of a person other than a person in relation to whom paragraph (b) applies—the period of 3 months immediately after he ceased to be an eligible employee; or
- (b) in the case of a person who ceased to be an eligible employee by reason of his having voluntarily terminated his employment in order to become a candidate for election as a member of a House of the Parliament of the Commonwealth or of a State or of the Legislative Assembly for the Northern Territory or a legislative or advisory body for another Territory prescribed for the purposes of section 47C of the Public Service Act and was a candidate at the election—
 - (i) if he is elected—the period commencing immediately after he ceases to be an eligible employee and ending on the day on which he becomes such a member; or

- (ii) if he is not elected—the period of 3 months immediately after the date of the declaration of the result of the election.

(2) Subject to sub-section (3)—

(a) a period—

- (i) in respect of which invalidity pension was payable to a person under this Act by reason of his retirement on the grounds of invalidity arising out of physical or mental incapacity to perform the duties of his employment; and
- (ii) immediately before the commencement of which he was employed in public employment,

shall be treated for the purposes of this Division as if it had been a period in which he was employed in public employment; and

(b) a period—

- (i) 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 superannuation scheme constituted by the provisions of this Act or the provisions of the superseded Act) by reason of his invalidity or of his physical or mental incapacity to perform the duties of that employment; and
- (ii) immediately before the commencement of which he was employed in the employment referred to in subparagraph (i),

shall be treated for the purposes of this Division as if it had been a period in which he was employed in that employment.

(3) Where—

- (a) invalidity pension is not payable to a person under this Act during a period by reason of sub-section 74 (3); and
- (b) that pension would, but for that section, have been payable to that person during that period,

that period shall be treated for the purposes of this Division as if it had been a period in which that pension was payable but, if the person was, immediately before the pension became payable, employed in public employment, shall not, in the calculation of the period during which he was employed in public employment, be treated, by reason of paragraph (2) (a) of this section, as if it had been a period during which he was employed in public employment.

132. (1) For the purposes of the application of this Division in relation to a person who has ceased to be an eligible employee, the following periods are periods of eligible employment:—

- (a) the person's period of contributory service;

- (b) subject to sub-sections (2) and (3), a period of employment of the person by the Commonwealth, by the Administration of a 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 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 sub-section (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 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 to 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; and
- (d) subject to sub-section (5), a period of employment of the person during which he was a contributor to a State Superannuation Fund.

(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 3 months 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 Commissioner in accordance with paragraph 128 (1) (a);
- (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 3 months after the termination of that employment he became employed in other employment that was eligible employment and—
 - (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 sub-paragraph (1) (c) (i) of this section unless an amount equal to the lump sum referred to in that sub-paragraph, or an amount that included an amount based upon that lump sum, has been paid to the Commissioner in accordance with paragraph 128 (1) (a).

(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 paid to the person from the Fund referred to in that paragraph was paid to the Commissioner; 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 a State Superannuation Fund.

(6) A reference in paragraph (1) (b), (c) or (d) to a period of employment of a person does not include a reference to a period of employment in relation to which a preceding paragraph of that sub-section applies.

(7) In this section, “State Superannuation Fund” means a fund or account established under the law of a State to provide superannuation or other similar benefits for persons employed in the public service, railway service or other service of the State.

Public
employment.

133. (1) The Treasurer 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 the last preceding sub-section 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 a day earlier than the commencing day) 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 Treasurer under this section that was, or is to be deemed to have been, in force at that time.

(4) A declaration may be made under sub-section (1) specifying employment by the Government of the United Kingdom of Great Britain and Northern Ireland or by a body corporate established for a public purpose by a law in force in the United Kingdom of Great Britain

and Northern Ireland to be public employment for the purposes of this Division, but a person shall not be taken, for the purposes of this Division, to have been employed in public employment by reason of his having been employed in employment by that Government or by such a body unless his salary, immediately before his last day of service, was fixed and payable in sterling.

(5) Where any public employment in which a person is employed terminates and, within 3 months 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.

134. (1) The Treasurer 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. Eligible
super-
annuation
schemes.

(2) A declaration under sub-section (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 a day earlier than the commencing day) 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 Treasurer under this section was, or is to be deemed to have been, in force at that time.

135. (1) 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 employee is a reference to such amount as is determined by the Commissioner, having regard to such matters as the Commissioner considers relevant and to such other matters (if any) as are prescribed, to be the value of the rights of the person under this Act as at the time immediately before he ceased to be an eligible employee. Transfer
value.

(2) Where a transfer value becomes payable in accordance with this Division to or in respect of a person who has ceased to be an eligible employee and to whom section 54 applied and—

- (a) at the time when he ceased to be an eligible employee, he had not ceased to be an eligible member of the Defence Force as

defined by sub-section 3 (1) of the Defence Force Retirement and Death Benefits Act; or

- (b) at the time when the transfer value becomes payable, a transfer value also becomes payable in respect of him under Division 3 of Part IX of that Act,

then, any period during which his liability to make contributions under this Act was deferred under section 54 of this Act shall be disregarded in determining the first-mentioned transfer value and he is not required or permitted to pay the amount of those deferred contributions.

Deferred benefits.

136. (1) The deferred benefits applicable under this Division in respect of a person who has ceased to be an eligible employee shall, subject to this Division, be such benefits payable under this Act as the Commissioner considers to be benefits of the same nature, and payable in the same circumstances and 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 ceased to be an eligible employee and had not made the election by virtue of which the deferred benefits became applicable.

(2) The amount of any pension or lump sum benefit constituting or forming part of any deferred benefits payable to or in respect of a person shall be determined by the Commissioner having regard to such matters as the Commissioner considers relevant and such matters (if any) as are prescribed.

(3) Where a deferred benefit becomes applicable in accordance with this Division in respect of a person who has ceased to be an eligible employee and to whom section 54 applied, and—

- (a) at the time when he ceased to be an eligible employee he had not ceased to be an eligible member of the Defence Force as defined by sub-section 3 (1) of the Defence Force Retirement and Death Benefits Act; or
- (b) at the time when the deferred benefit became applicable, a deferred benefit or retirement pay also became applicable in respect of him under that Act,

then, any period during which his liability to make contributions under this Act was deferred under section 54 of this Act shall be disregarded in determining the amount of the first-mentioned deferred benefit and he is not required or permitted to pay the amount of those deferred contributions.

Election that Division may apply.

137. (1) Where a person ceases to be an eligible employee and is not entitled to pension under this Act, he may, not later than 21 days after he ceases to be an eligible employee, elect, by notice in writing to the Commissioner, that this Division apply in relation to him.

(2) If a person makes an election for the purposes of this section within 1 month before he ceases to be an eligible employee, the election

has effect as if it had been made on the day after he ceased to be an eligible employee.

(3) Subject to sub-section (4) an election under this section is of no effect unless the person who made the election gives notice in writing to the Commissioner within 21 days, or within such further period as the Commissioner 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 the prescribed period and, if so, the name and address of his employer; and
- (b) stating whether he was at the expiration of the prescribed period a member of the superannuation scheme applicable in relation to that employment and, if so, specifying the scheme concerned.

(4) Sub-section (3) 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 sub-section and without having given such notice.

(5) Where a person who is entitled to make an election under this section dies, without making such an election—

- (a) if the person is survived by a spouse—the spouse may make such an election within 21 days after the date of the death of the person; or
- (b) if the person is not survived by a spouse, or is survived by a spouse but the spouse dies without making such an election, but the person is survived by an eligible child or eligible children—such an election may be made within that period by such person as the Commissioner permits,

and, in that case, this Act has effect as if the election had been made by the first-mentioned person but sub-section (3) does not apply.

138. (1) Subject to this Division, where—

- (a) a person makes an election under section 137; and
- (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,

Circumstances
in which
transfer
value
payable.

a transfer value in respect of the person is payable to the person administering that scheme.

(2) Sub-section (1) 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.

Circumstances
in which
person
entitled to
deferred
benefits.

- 139.** (1) Where a person makes an election under section 137 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 138; or
 - (b) he does not become employed in public employment within that period but at the time when he ceased to be an eligible employee he had completed 5 years' eligible employment,

deferred benefits are, subject to this Division, applicable in respect of the person.

(2) Deferred benefits that are applicable in respect of a person become payable on the day immediately following the earliest of the following dates:—

- (a) where the Commissioner is satisfied that the person has, by reason of invalidity or of physical or mental incapacity, become incapable (otherwise than temporarily) 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 employee, the duties performed by him in employment (if any) in which he was employed after he ceased to be an eligible employee and such other matters (if any) as the Commissioner considers relevant)—
 - (i) if, at the date that the Commissioner 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—
 - (i) at the date of his death he was employed in public employment or had completed 5 years' eligible employment; or
 - (ii) at that date he was over the age of 60 years and, at the date when he attained that age, he was employed in public employment,

the date of his death;

- (c) if the person, by notice in writing given to the Commissioner, selects a date for the commencement of the payment of the deferred benefits, being a date not earlier than—
 - (i) the date on which he attains the age of 60 years; or
 - (ii) the date on which the notice is given—
 the date so selected;
- (d) the date on which the person attains the age of 65 years.

(3) Paragraph (2) (a) does not apply in relation to a person unless—

- (a) at the date that the Commissioner is satisfied was the date on which he became incapable of performing the duties referred to in that paragraph, he was employed in public employment or had completed 5 years' eligible employment; or
- (b) at that date, he had attained the age of 60 years and, on the day when he attained that age, he was employed in public employment.

(4) For the purposes of sub-sections (2) and (3), a period of public employment in which a person became employed after he ceased to be an eligible employee 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 the Commissioner requesting payment of the benefits; and
- (b) the applicant has furnished to the Commissioner any information that is necessary to enable the Commissioner to determine whether the benefits are payable.

(6) Subject to sub-section (7), where a person in relation to whom paragraph (1) (a) applies and who, at the time when he ceased to be an eligible employee had not completed 5 years' eligible employment ceases to be employed in public employment before he attains the age of 60 years and the deferred benefits applicable in respect of him have not become payable under sub-section (2) then—

- (a) if a deferred benefit by way of a pension has previously been paid to him by reason of paragraph (2) (a)—the deferred benefits that were applicable in respect of him cease to be so applicable; or
- (b) in any other case—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 137 had not been made.

(7) Sub-section (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 the public employment in which he was employed after he ceased to be an eligible employee as the case may be, is not less than 5 years.

140. (1) Subject to paragraph 139 (6) (b), where section 138 or 139 applies in relation to a person, any benefit that, but for this Division, would be payable to or in respect of the person under this Act upon him ceasing to be an eligible employee, before attaining the age of 65 years, otherwise than by reason of retirement on the ground of invalidity or death is not payable except where that benefit is payable by virtue of the operation of this Division.

Person who is entitled to rights under Division not entitled to rights under other provisions of Act.

(2) Where—

- (a) lump sum benefit has been paid under section 80 to a person who has ceased to be an eligible employee; and
- (b) after the lump sum benefit was paid, the person makes an election under section 137,

the election does not have any effect unless an amount equal to the lump sum benefit is paid to the Commissioner within 7 days after the date of the election or within such further period as the Commissioner in special circumstances allows.

Certain former eligible employees not entitled to benefits under Division.

141. (1) Where a person (other than a person who, at the time when he ceased to be an eligible employee had completed 5 years' eligible employment) who has made an election under section 137 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 5 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; or
- (c) the Commissioner is satisfied that—
 - (i) he ceased within that prescribed period, by reason of invalidity or 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 in the opinion of the Commissioner of a kind suitable to be performed by him (having regard to the duties performed by him in employment in which he was employed immediately before he ceased to be an eligible employee, the duties performed by him in employment (if any) in which he was employed after he ceased to be an eligible employee and such other matters (if any) as the Commissioner considers relevant),

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

(2) Where—

- (a) a person who ceases to be an eligible employee 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 137; and

- (c) if lump sum benefit was paid to him under section 80, he would, under the rules of the superannuation scheme applicable in respect of that employment, be entitled to pay an amount equal to the lump sum benefit to the person administering that scheme in exchange for benefits under that scheme,

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

142. Where a person who has made an election under section 137 is, by virtue of section 121, 122 or 123, to be deemed not to have ceased to be an eligible employee this Act has effect as if the election had not been made.

Eligible employee who resigned to contest an election.

143. (1) Where a deferred benefit by way of a pension is payable to a person by reason of the Commissioner being satisfied as to the matters referred to in paragraph 139 (2) (a)—

Invalid pensioner restored to health.

- (a) if the pension is suspended under sub-section 74 (3)—deferred benefits do not cease to be applicable in relation to him by reason only of the suspension of the pension and the suspension ceases to have effect if the deferred benefit becomes payable by virtue of paragraph 139 (2) (a) or 139 (2) (b); and
- (b) sub-section 75 (2) does not apply in relation to the person but sub-section (2) of this section has effect in relation to him.

(2) Subject to sub-section (3), if the Commissioner is satisfied that the health of the person has become so restored as to enable him to perform duties of a kind that are, in the opinion of the Commissioner, suitable to be performed by him (having regard to the duties performed by him immediately before he ceased to be an eligible employee, the duties performed by him in employment (if any) in which he was employed after he ceased to be such an employee and such other matters (if any) as the Commissioner considers relevant), the Commissioner may cancel the person's entitlement to pension but, upon the cancellation, the deferred benefits again become applicable in respect of the person.

(3) The Commissioner shall not, under sub-section (2) of this section, cancel a person's entitlement to pension at a time when pension would have become payable, apart from the operation of paragraph 139 (2) (a).

144. (1) Deferred benefits cease to be applicable in respect of a person—

Person entitled to deferred benefits again becoming an eligible employee, &c.

- (a) subject to sub-section 143 (2), upon the deferred benefits becoming payable; or
- (b) upon the person again becoming an eligible employee before attaining the age of 60 years.

(2) Where—

- (a) deferred benefits become applicable in respect of a person who ceases to be an eligible employee;
- (b) the deferred benefits cease to be applicable in respect of him by virtue of paragraph (1) (b) upon his again becoming an eligible employee; and
- (c) he again ceases to be an eligible employee before attaining his maximum retiring age by reason of death or retirement on the ground of invalidity,

the annual rate of any pension that becomes payable under this Act to or in respect of him after he again ceases to be an eligible employee shall not be less than—

- (d) the rate at which that pension would have been payable if he had not again become an eligible employee; or
- (e) if a lesser rate is applicable in respect of him under the regulations—that lesser rate.

Division 4—Miscellaneous

Special provisions affecting certain former contributors under certain superannuation schemes.

145. (1) Where—

- (a) a person who becomes an eligible employee was, at any time before becoming an eligible employee, 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 he became an eligible employee;
- (b) by virtue of sub-section 127 (3) a transfer value is to be deemed for the purposes of Division 2 to have become payable in respect of him after 25 May 1971 under that superannuation scheme by reason of his having the legal title to a life policy or life policies of a kind referred to in that sub-section or by reason of his being entitled to have the legal title to such a policy or policies assigned to him; and
- (c) he has elected in accordance with paragraph 128 (1) (a) to pay to the Commissioner 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 128 (1) (a), elect that this section shall have effect in relation to him and, where an election is so made, section 128 has effect as if the amount referred to in paragraph 128 (1) (b),

or, if part only of that amount relates to the transfer value referred to in sub-section (1) of this section that part of that amount, had been paid to the Commissioner in accordance with that paragraph and the Commissioner had made the payments referred to in paragraphs 128 (2) (a) and 128 (2) (b) in relation to that amount or that part of that amount, as the case may be.

(3) An election under sub-section (2) does not have effect unless the person causes to be assigned to the Commissioner within the period referred to in that sub-section, 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 salary of the person upon his becoming an eligible employee 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 sub-section (1) related; or

(b) after the person became an eligible employee his salary is increased,

the Commissioner shall so far as is practicable arrange for the amount or amounts of any life policy or life policies assigned to the Commissioner 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 the scheme and had been in receipt of an annual remuneration equal to that salary or that increased salary, as the case may be.

(5) Subject to sub-section (14), so much of any premium payable in respect of any life policy assigned to the Commissioner in accordance with sub-section (3) or issued in accordance with sub-section (4) as relates to a period during which the person is an eligible employee shall be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

(6) Where the person is an eligible employee and the amount of the basic contributions payable by him 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 Commissioner an amount equal to the difference and any amount so paid to the Commissioner shall be paid by the Commissioner into the Consolidated Revenue Fund.

(7) Where a person (in this sub-section referred to as “the former contributor”) makes an election under sub-section 137 (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) of this section is applicable and becomes a member of that scheme, then—

- (a) subject to paragraph (c) of this sub-section, 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 Commissioner shall assign to the person administering that superannuation scheme the life policies assigned by the former contributor to the Commissioner in accordance with sub-section (3) of this section or issued in relation to the former contributor in accordance with sub-section (4) of this section;
- (c) the assignment of those life policies in accordance with paragraph (b) of this sub-section shall be deemed to constitute the payment of a transfer value in respect of the former contributor in accordance with section 138 to the person administering that scheme; and
- (d) the Commissioner shall—
 - (i) if the amount of any basic contribution paid by the former contributor to the Commissioner exceeded the amount that was the prescribed amount in relation to him at the time of the payment—pay to him out of the Superannuation Fund an amount equal to the amount of the excess; and
 - (ii) pay out of the Superannuation Fund and into the Consolidated Revenue Fund an amount equal to the amount that, but for this Part, would have been payable to the former contributor under section 80 less any amounts paid to him under sub-paragraph (d) (i) of this sub-section.

(8) If the life policy or life policies assigned by the person to the Commissioner in accordance with sub-section (3) or issued in relation to him in accordance with sub-section (4) becomes or become payable at or before the time when he ceases to be an eligible employee—

- (a) the Commissioner shall, out of the amount paid to him under the policy or policies—
 - (i) pay into the Superannuation Fund an amount equal to the amount that, but for sub-section (2) of this section would have been paid by the Commissioner into the Superannuation Fund under paragraph 128 (2) (a) together with compound interest on that amount, in respect of the period that commenced on the date on which the person made an election in accordance with paragraph 128 (1) (a) and ended on the date on which the life policy or life policies became payable, at the rate or rates applicable in accordance with the regulations;

(ii) in the case of a policy or policies assigned by the person to the Commissioner in accordance with sub-section (3) of this section—pay to the person, or, if he is dead, to his personal representatives or to such person or persons (if any) as the Commissioner determines, 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) of this section 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 an eligible employee; and

(iii) pay the balance into the Consolidated Revenue Fund; and

(b) a lump sum benefit of an amount equal to the sum of any amounts paid by the person to the Commissioner under sub-section (6) is payable to the person, or, if he is dead, to his personal representatives or to such person or persons (if any) as the Commissioner determines.

(9) Where the person attains his minimum retiring age while he is an eligible employee or ceases to be such an eligible employee before he attains that age, and neither sub-section (7) nor sub-section (8) applies in relation to him, then, if the election made by the person under sub-section (2) has not been revoked in accordance with sub-section (10)—

(a) the Commissioner shall surrender the life policy or life policies assigned by him to the Commissioner in accordance with sub-section (3) or issued in relation to him in accordance with sub-section (4) and, out of the proceeds of the surrender, shall—

(i) pay into the Superannuation Fund an amount equal to the amount that, but for sub-section (2) of this section, would have been paid by the Commissioner into the Superannuation Fund under paragraph 128 (2) (a) together with compound interest on that amount, in respect of the period that commenced on the date on which the person made an election in accordance with paragraph 128 (1) (a) and ended on the date as at which the surrender value or surrender values of the life policy or life policies was or were calculated, at the rate or rates applicable in accordance with the regulations;

(ii) in the case of a policy or policies assigned by the person to the Commissioner in accordance with sub-section (3) of this section pay to the person 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) of this sub-section

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 an eligible employee; and

(iii) pay the balance into the Consolidated Revenue Fund; and

(b) a lump sum benefit of an amount equal to the sum of any amounts paid to the Commissioner under sub-section (6) shall be paid to the person.

(10) A person who has made an election under sub-section (2) may, if—

(a) he has not attained his minimum retiring age;

(b) he has not ceased to be an eligible employee; and

(c) the life policy or life policies assigned by him to the Commissioner in accordance with sub-section (3) or issued in relation to him in accordance with sub-section (4) has not or have not become payable,

by notice in writing to the Commissioner revoke the election and, in that case, paragraphs (9) (a) and (b) have effect in relation to him.

(11) The Treasurer 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 or a scheme that is an eligible superannuation scheme for the purposes of Division 3, to be an approved superannuation scheme for the purposes of this section.

(12) A declaration under sub-section (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 a day earlier than the commencing day) 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 Treasurer under sub-section (11) in respect of that scheme was, or is to be deemed to have been, in force at that time.

(14) In the application of this section in relation to a person who is employed by an approved authority—

(a) sub-section (5) does not apply but the premiums referred to in that sub-section shall be paid by that approved authority, which may apply, for the purpose of making the payments, any moneys under its control; and

(b) a reference in any other provision of this section to Consolidated Revenue Fund shall be read as a reference to that approved authority.

(15) In this section, “the prescribed amount”, in relation to a person at 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 Commissioner in accordance with sub-section (3) or issued in relation to him in accordance with sub-section (4);
- B is the amount, or the sum of the amounts, payable by him under the superannuation scheme referred to in sub-section (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 Commissioner in accordance with sub-section (3); and
- C is the amount of the annual premium, or the sum of the amounts of the annual premiums, applicable under the life policy or life policies assigned by him to the Commissioner in accordance with sub-section (3) immediately before he ceased to be a member of the superannuation scheme referred to in sub-section (4).

146. (1) Subject to sub-section (2), section 112 applies in relation to a payment of a transfer value under section 138 in respect of a person who has been an eligible employee as if that payment were a payment of benefit under this Act.

Payments
into and out
of
Consolidated
Revenue
Fund.

(2) Where—

- (a) an amount has been paid by the Commissioner into the Superannuation Fund under paragraph 128 (2) (a) in respect of a person; and
- (b) a benefit is subsequently paid under this Act to or in respect of the person, being a benefit consisting of—
 - (i) an instalment of pension (including pension constituting or forming part of any deferred benefits referred to in section 139);
 - (ii) a lump sum benefit payable under section 80 (including a lump sum benefit constituting a deferred benefit referred to in section 139); or
 - (iii) a transfer value referred to in section 138,

section 112 and sub-section (1) of this section do not apply in relation to the payment of that benefit but there shall be paid out of the Superannuation Fund into the Consolidated Revenue Fund an amount equal to so much of the amount of that benefit as the Commissioner determines.

PART X—PENSION INCREASES

Interpretation.

147. (1) In this Part, unless the contrary intention appears—
 “pension to which this Part applies” means a pension payable under this Act other than—

- (a) additional age retirement pension payable by virtue of paragraph 55 (1) (b) or 55 (2) (b);
- (b) additional early retirement pension payable by virtue of paragraph 59 (b);
- (c) spouse’s additional pension payable by virtue of paragraph 89 (1) (b);
- (d) spouse’s additional pension payable by virtue of paragraph 93 (1) (b); or
- (e) partial invalidity pension;

“prescribed year” means the year commencing on 1 July 1977, and each subsequent year;

“Statistician” means the Australian Statistician.

(2) Subject to sub-section (3), if at any time, whether before or after the commencement of this Act, the Statistician has published in respect of a particular March quarter an all groups consumer price index number for the weighted average of the 6 State capital cities in substitution for an index number previously published by him in respect of that quarter, the publication of the later index number shall be disregarded for the purposes of this Part.

(3) If at any time, whether before or after the commencement of this Act, the Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this Part after the change took place or takes place, regard shall be had only to index numbers published in terms of the new reference base.

(4) If the prescribed percentage for the purposes of section 148 is or includes a fraction of one-tenth of 1 per centum—

- (a) where that fraction is less than one-half of one-tenth—that fraction shall be disregarded; and
- (b) where that fraction is not less than one-half of one-tenth—that fraction shall be treated as one-tenth.

Increases in pensions.

148. (1) Subject to this Part, if the all groups consumer price index number for the weighted average of the 6 State capital cities published by the Statistician in respect of the March quarter of the year immediately preceding a prescribed year exceeds the highest all groups consumer price index number for the weighted average of the 6 State capital cities published by the Statistician in respect of the March quarter in any earlier year, not being a year earlier than the year that commenced on 1 July 1975, a person who was in receipt of a pension to which this Part applies immediately before the commencement of that prescribed year is

entitled to an increase, as ascertained in accordance with this section, in the rate at which the pension was payable immediately before the commencement of that prescribed year.

(2) The increase provided for by sub-section (1) in the rate at which a pension was payable to a person immediately before the commencement of a prescribed year is the prescribed percentage of that rate or, in the case of a pension in respect of which provision is made by section 149, the prescribed percentage of such rate as is applicable under that section to the pension for the purposes of this sub-section.

(3) For the purposes of this section, the prescribed percentage is a percentage ascertained in accordance with the formula—

$$\frac{100 (A-B)}{B}$$

where—

- A is the all groups consumer price index number for the weighted average of the 6 State capital cities published by the Statistician in respect of the March quarter of the year immediately preceding the prescribed year; and
- B is the highest all groups consumer price index number for the weighted average of the 6 State capital cities published by the Statistician in respect of the March quarter of any year earlier than the year immediately preceding the prescribed year but not being earlier than the year that commenced on 1 July 1975.

149. For the purposes of sub-section 148 (2), the rate applicable to a pension is—

- (a) in the case of invalidity pension payable to a person in accordance with section 67—an amount per annum equal to the annual rate at which invalidity pension would, immediately before the commencement of the relevant prescribed year, have been payable to the person in accordance with section 68 if the person had made an election under sub-section 68 (1);
- (b) in the case of invalidity pension payable to a person in accordance with section 70—an amount per annum equal to the annual rate at which invalidity pension would, immediately before the commencement of the relevant prescribed year, have been payable to the person in accordance with section 71 if the person had made an election under sub-section 71 (1);
- (c) in the case of spouse's pension payable to a person in accordance with section 82—an amount per annum equal to the annual rate at which spouse's pension would, immediately before the commencement of the relevant prescribed year, have been payable to the person in accordance with section 83 if the person had made an election under sub-section 83 (1);

Increase payable in respect of part only of certain pensions.

- (d) in the case of spouse's pension payable to a person in accordance with section 85—an amount per annum equal to the annual rate at which spouse's pension would, immediately before the commencement of the relevant prescribed year, have been payable to the person in accordance with section 86 if the person had made an election under sub-section 86 (1);
- (e) in the case of spouse's pension payable to the spouse of a deceased invalidity pensioner in accordance with section 96, being an invalidity pensioner to whom invalidity pension was payable in accordance with section 67 or 70—an amount per annum equal to the annual rate at which spouse's pension would, immediately before the commencement of the relevant prescribed year, have been payable to the spouse in accordance with section 96 if the deceased invalidity pensioner had made an election under sub-section 68 (1) or 71 (1), as the case may be, and invalidity pension had been payable to him in accordance with section 68 or 71, as the case may be;
- (f) in the case of orphan pension payable in respect of the eligible child or eligible children of a deceased eligible employee in accordance with section 98, being a case where an amount equal to the deceased eligible employee's accumulated contributions has not been paid out of the Fund under section 111—an amount per annum equal to the annual rate at which orphan pension would, immediately before the commencement of the relevant prescribed year, have been payable in respect of the eligible child or eligible children in accordance with section 98 if an amount equal to the deceased eligible employee's accumulated contributions had been paid out of the Fund under section 111;
- (g) in the case of orphan pension payable in respect of the eligible child or children of a deceased eligible employee in accordance with section 100, being a case where an amount equal to the deceased eligible employee's accumulated contributions has not been paid out of the Fund under section 111—an amount per annum equal to the annual rate at which orphan pension would, immediately before the commencement of the relevant prescribed year, have been payable in respect of the eligible child or eligible children in accordance with section 100 if an amount equal to the deceased eligible employee's accumulated contributions had been paid out of the Fund under section 111;
- (h) in the case of orphan pension payable in respect of the eligible child or eligible children of a deceased eligible employee in accordance with section 103 after the death of the spouse of the deceased eligible employee, being a spouse who had not made an election under section 83—an amount per annum equal to the annual rate at which orphan pension would, immediately before the commencement of the relevant prescribed year, have been

payable in respect of the eligible child or eligible children in accordance with section 103 if the spouse had made an election under sub-section 83 (1);

- (i) in the case of orphan pension payable in respect of the eligible child or eligible children of a deceased eligible employee in accordance with section 104 after the death of the spouse of the deceased eligible employee, being a spouse who had not made an election under section 86—an amount per annum equal to the annual rate at which orphan pension would, immediately before the commencement of the relevant prescribed year, have been payable in respect of the eligible child or eligible children in accordance with section 104 if the spouse had made an election under sub-section 86 (1);
- (j) in the case of orphan pension payable in respect of the eligible child or eligible children of a deceased invalidity pensioner in accordance with section 106, being an invalidity pensioner to whom invalidity pension was payable in accordance with section 67 or 70—an amount per annum equal to the annual rate at which orphan pension would, immediately before the commencement of the relevant prescribed year, have been payable in respect of the eligible child or eligible children in accordance with section 106 if the deceased invalidity pensioner had made an election under sub-section 68 (1) or 71 (1), as the case may be, and invalidity pension had been payable to him in accordance with section 68 or 71, as the case may be; and
- (k) in the case of orphan pension payable in respect of the eligible child or eligible children of a deceased invalidity pensioner in accordance with section 108 after the death of the spouse of the deceased invalidity pensioner, being an invalidity pensioner to whom invalidity pension was payable in accordance with section 67 or 70—an amount per annum equal to the annual rate at which orphan pension would, immediately before the commencement of the relevant prescribed year, have been payable in respect of the eligible child or eligible children in accordance with section 108 if the deceased invalidity pensioner had made an election under sub-section 68 (1) or 71 (1), as the case may be, and invalidity pension had been payable to him in accordance with section 68 or 71, as the case may be.

150. (1) Where a person would, but for this section, be entitled to an increase in the annual rate of the pension that was payable to the person immediately before the commencement of a prescribed year and—

Adjustment
of increases
in cases of
certain
pensions.

- (a) in a case where the pension is age retirement pension, early retirement pension or invalidity pension—the pension became payable by reason of the retirement of the person during the immediately preceding year (in this section referred to as the “preceding year”);

- (b) in a case where the pension is spouse's pension or orphan pension—
 - (i) the pension became payable by reason of the death before retirement of an eligible employee during the preceding year; or
 - (ii) the pension became payable by reason of the death during the preceding year of a person whose retirement as an eligible employee took place during that year; or
- (c) in the case of a pension payable by virtue of section 136—
 - (i) if the pension is age retirement pension, early retirement pension or invalidity pension—the pension became payable during the preceding year; or
 - (ii) if the pension is spouse's pension or orphan pension—
 - (A) if, immediately before the death of the person by reason of whose death the spouse's pension or orphan pension became payable, a pension was not payable to the deceased person by virtue of section 136—the pension became payable during the preceding year; or
 - (B) if, immediately before the death of the person by reason of whose death the spouse's pension or orphan pension became payable, a pension was payable to the deceased person by virtue of section 136—the pension that was payable to the deceased person became payable during the preceding year,

the following provisions of this section have effect.

(2) If the retirement or death took place, or the pension that became payable by virtue of section 136 became so payable, after 15 June in the preceding year, the person is not entitled to the increase.

(3) If the retirement or death took place, or the pension that became payable by virtue of section 136 became so payable, on or before 15 June in the preceding 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 next following the day on which the retirement or death took place, or the pension became payable, and ended on 30 June in the preceding year bears to 12.

(4) If the period referred to in sub-section (3) is less than 1 month, that period shall be treated as 1 month.

(5) If the period referred to in sub-section (3) consists of a number of whole months and a part of a month—

- (a) where the number of days in that part of a month is less than one-half of the number of days in that month—that part of a month shall be disregarded; and
- (b) where the number of days in that part of a month is not less than one-half of the number of days in that month—that part of a month shall be treated as a whole month.

(6) In this section, “retirement” means the ceasing of a person to be an eligible employee otherwise than by reason of death.

151. Where a person who, immediately before he ceased to be an eligible employee—

- (a) was a temporary employee by reason that he was included in a class of persons approved by the Treasurer, under paragraph (d) of the definition of “temporary employee” in sub-section 3 (1), for the purposes of that definition; or
- (b) was an eligible employee whose remuneration was fixed and payable in sterling,

Application of Part to pensions payable to or in respect of certain overseas employees.

this Part applies to a pension payable to or in respect of him with such modifications (if any) as the Treasurer determines in relation to him or a class of persons in which he is included.

152. Where a person has, before the 21st anniversary of his birth, ceased to be an eligible employee by reason of retirement on the ground of invalidity or by reason of death, the Commissioner shall, in writing, in respect of each anniversary of his birth up to and including the 21st anniversary that will occur after he so ceased, determine the rate that, in the opinion of the Commissioner, would have been his final annual rate of salary if his age when he so ceased had been the age that would have been his age at that time if the anniversary of his birth that last occurred before he so ceased had been the anniversary in respect of which the determination is made, and, on and after that anniversary, this Act shall apply to and in relation to any pension payable to or in respect of the person as if that rate had been his final annual rate of salary.

Death or invalidity retirement of eligible employee before 21st anniversary of birth.

153. (1) An increase payable by virtue of a provision of this Part, other than section 152, in the amount of the annual pension that was payable to a person on 30 June in a year applies in relation to the instalment of pension falling due on the first pension pay day occurring after that day and in relation to all subsequent instalments.

Date of effect of increases.

(2) An increase payable by virtue of section 152 in the amount of the annual pension that was payable to or in respect of a person immediately before an anniversary of the person’s birthday applies in relation to the instalment of pension falling due on the first pension pay day occurring after that anniversary and in relation to all subsequent instalments.

PART XI—MISCELLANEOUS

Review of
decisions of
Com-
missioner.

154. (1) In this section—

“decision” has the same meaning as in the *Administrative Appeals Tribunal Act 1975*;

“decision of the Commissioner” means a decision of the Commissioner, or a delegate of the Commissioner, under this Act or under the superseded Act.

(2) A person who is affected by a decision of the Commissioner and who is dissatisfied with the decision may, by notice in writing given to the Commissioner 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 the Commissioner allows, request the Commissioner to reconsider the decision.

(3) There shall be set out in the request the ground on which the request is made.

(4) Upon receipt of the request, the Commissioner shall reconsider the decision, and may either confirm the decision or vary the decision in such manner as he thinks fit.

(5) The Commissioner shall, by notice in writing to the person who made the request, inform the person of the result of his reconsideration of the decision.

(6) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Commissioner (being decisions that have been confirmed or varied under sub-section (4)) and, for the purposes of such a review, one of the non-presidential members constituting the Tribunal shall be an eligible employee or a pensioner.

Modification
of Act in
relation to
part-time
employees.

155. (1) This section applies to a person who is or has ceased to be an eligible employee, being a person who is, or at any time has been, an approved part-time employee.

(2) The regulations may make provision for modifying this Act, or a provision of this Act specified in the regulations, in the application of this Act or that provision to and in relation to a person to whom this section applies, or to and in relation to a prescribed class of persons to whom this section applies.

(3) The modifications that may be made by regulations in pursuance of sub-section (2) include, but are not limited to, modifications providing for the payment of contributions in addition to, or in substitution for, contributions that would otherwise be payable under this Act and for benefits in addition to, or in substitution for, benefits provided for by this Act.

156. (1) An amount payable to the Commissioner under this Act, including an amount of unpaid contributions, may be paid to the Commissioner in a lump sum or in such instalments and at such times as the Commissioner approves. Recovery of unpaid contributions, &c.

(2) An amount payable to the Commissioner under this Act, including an amount of unpaid contributions, may be recovered by the Commissioner in a court of competent jurisdiction as a debt due and payable to the Commissioner.

(3) The amount of any unpaid contributions payable by a person to the Commissioner may be deducted from any payment or payments of benefit payable under this Act to or in respect of the person.

157. (1) Notwithstanding anything contained in this Act, where an election under this Act is made by a person after the expiration of the period allowed by or under this Act for the making of the election, and the Commissioner is satisfied that in all the circumstances of the case it is desirable that the election should be recognized, the Commissioner may direct that the election be treated as if it had been made within the period allowed and the election shall have effect accordingly. Extension of periods of elections, &c.

(2) Where a person who is entitled to make an election under a provision of this Act is, by reason of physical or mental incapacity, unable to make that election, the Commissioner may, if he thinks it proper to do so, allow such other person as the Commissioner thinks appropriate to make the election within such period as the Commissioner 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.

158. Where a person has become entitled to a benefit under this Act, but the payment of the benefit cannot be made or commence to be made by reason that the rate or the amount of that benefit has not been ascertained, the Commissioner may, upon application in writing being made to him, direct that an interim payment or interim payments be made to the person, at such rate or rates, or in such amount or amounts, as he determines, and any interim payment so made shall be deemed to be a payment made in respect of that benefit. Interim payment of benefits.

159. (1) Where, in pursuance of a provision of this Act, an amount is paid out of the Consolidated Revenue Fund to or in respect of a person who is or has been an eligible employee, being an eligible employee who is or was employed by an approved authority (or is or was the holder of a statutory office and is declared by the Treasurer to be a person who is to be treated, for the purposes of this section, as if he were or had been so employed), the authority shall pay to the Commonwealth an amount equal to that amount less, where an amount has been paid or is payable out of the Superannuation Fund into the Consolidated Revenue Fund in respect of the person, such amount as the Treasurer determines, and the Payments to the Commonwealth by approved authorities in respect of eligible employees.

approved authority may apply for that purpose any moneys under its control.

(2) The Treasurer may enter into an arrangement with an approved authority for the making of payments to the Commonwealth by the approved authority in lieu of payments that, but for the arrangement, the authority would be required to make under sub-section (1), being an arrangement which the Treasurer is satisfied will provide a fair basis of payment to the Commonwealth in respect of amounts paid, payable or likely to become payable out of the Consolidated Revenue Fund in respect of eligible employees who are or have been employed by the approved authority, and the approved authority may apply for the purposes of the arrangement any moneys under its control.

(3) The regulations may provide that the provisions of sub-sections (1) and (2) do not apply to an approved authority specified in the regulations.

Cost of administration of, and of medical examinations under, Act.

160. (1) The costs of the administration of this Act, including the costs of and incidental to the management of the Fund by the Trust, shall be paid out of moneys appropriated from time to time by the Parliament for the purpose.

(2) Moneys received and paid under this section, and the accounts in connexion therewith, shall be kept, as part of the Public Account, separately from the moneys and accounts of the Fund.

(3) Where the medical examination of a person (being a person who proposes to become, becomes or is employed by an approved authority or is a person whom it is proposed to appoint, or has been appointed, to a statutory office the remuneration of which is borne by an approved authority) is required by or under section 16, the cost of the examination shall, unless the Treasurer otherwise directs, be borne by the approved authority, and the approved authority may apply for that purpose any moneys under its control.

Annual report of Trust.

161. (1) The Trust shall, as soon as practicable after each 30 June, prepare a report on the management of the Fund by the Trust during the year ended on that day, together with financial statements in respect of that year in such form as the Treasurer approves, and furnish the report and financial statements to the Commissioner for transmission by him to the Treasurer with the report prepared by him in accordance with sub-section 162 (1).

(2) Before furnishing the financial statements to the Commissioner, the Trust shall submit them to the Auditor-General, who shall report to the Treasurer—

(a) whether the statements are based on proper accounts and records;

- (b) whether the statements are in agreement with the accounts and records and show fairly the financial transactions and the state of the Fund;
- (c) whether the receipt of moneys into the Fund, and the payment of moneys out of the Fund and the investment of moneys standing to the credit of the Fund, during the year have been in accordance with this Act; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported.

(3) The Commissioner shall furnish to the Trust such information as is in his possession and is necessary for the purpose of enabling the Trust to prepare the financial statements referred to in sub-section (1).

162. (1) The Commissioner shall, as soon as practicable after each 30 June, prepare a report on the general administration and operation of this Act (other than Part III) and the superseded Act during the year ended on that day, and furnish the report to the Treasurer together with the report and financial statements furnished by the Trust to the Commissioner in pursuance of section 161 for transmission by the Commissioner to the Treasurer.

Annual report of Commissioner.

(2) The Treasurer shall cause a copy of the Commissioner's report and a copy of the report and financial statements furnished by the Trust to the Commissioner in pursuance of section 161, together with a copy of the report of the Auditor-General with respect to those statements, to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Treasurer.

163. (1) The Commissioner shall furnish to the Treasurer such information relating to the general administration and operation of this Act (other than Part III) and the superseded Act as the Treasurer may from time to time require.

Treasurer may request Commissioner or Trust to furnish information.

(2) The Trust shall furnish to the Treasurer such information relating to the management of the Fund by the Trust as the Treasurer may from time to time require.

164. A direction, determination or declaration by the Treasurer, or by the Commissioner, under this Act shall be in writing.

Directions, &c., to be in writing.

165. (1) The Treasurer may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to an officer of the Department of the Treasury any of his powers under this Act, other than this power of delegation.

Delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Treasurer.

(3) A delegation under this section does not prevent the exercise of a power by the Treasurer.

Eligible employees paid in foreign currency.

166. (1) In this section, “foreign currency” means currency other than Australian currency.

(2) Where the salary of an eligible employee is fixed and payable in foreign currency, this Act shall, for the purpose of calculating—

- (a) any contributions or other payments payable by him under this Act;
- (b) any benefit payable to or in respect of him under this Act; and
- (c) any payment which may become payable from the Consolidated Revenue Fund to the Superannuation Fund, or from the Superannuation Fund to the Consolidated Revenue Fund, in respect of him under this Act,

be read as if any reference to an amount of salary, contribution, benefit, or payment, or to any other amount, were a reference to the amount in that foreign currency that corresponds with that amount.

(3) For the purposes of sub-section (2)—

- (a) the amount in sterling that corresponds with an amount referred to in this Act shall be calculated on the basis that £1 sterling is the equivalent of \$2; and
- (b) the amount in any other foreign currency that corresponds with an amount referred to in this Act shall be calculated on such basis as is prescribed.

(4) Where a payment made to the Superannuation Fund exceeds, or a payment made from the Superannuation Fund is less than, the amount of the payment which would, but for this section, have been made, there shall be payable into the Consolidated Revenue Fund from the Superannuation Fund an amount equal to the difference, and, where a payment made to the Superannuation Fund is less than, or a payment made from the Superannuation Fund exceeds, the amount of the payment which would, but for this section, have been made, there shall be payable to the Superannuation Fund out of the Consolidated Revenue Fund, which is appropriated accordingly, an amount equal to that difference.

Persons not to make false statements to Commissioner, &c.

167. (1) A person shall not—

- (a) make, either orally or in writing, a false or misleading statement in connexion with, or in support of, an application for benefit under this Act;
- (b) obtain payment of a benefit under this Act that is not payable;
- (c) obtain payment of a benefit under this Act by means of a false or misleading statement or by means of impersonation; or
- (d) make or present to an officer exercising powers or performing functions in relation to this Act a statement or document that is false or misleading in a material particular.

Penalty: \$500 or imprisonment for 6 months.

(2) In sub-section (1), “officer” means the Commissioner, a delegate of the Commissioner or an officer of the Australian Public Service or an approved authority, and includes a medical practitioner performing functions for the purposes of section 16.

(3) A reference in sub-section (1) to this Act shall be read as including a reference to the superseded Act.

168. (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— Regulations.

- (a) for prescribing the manner in which notices and other documents under this Act may be given or served; and
- (b) for prescribing penalties not exceeding a fine of \$100 for offences against the regulations.

(2) Regulations made within a period of 12 months after the commencing day may be expressed to have taken effect from and including the commencing day.

PART XII—TRANSITIONAL PROVISIONS

Division 1—Preliminary

169. In this Part, unless the contrary intention appears— Definitions.

“Board” or “Superannuation Board” means the Superannuation Board established by the superseded Act;

“existing Fund” means the Superannuation Fund established by the superseded Act;

“new Fund” means the Superannuation Fund established by this Act.

Division 2—Existing Superannuation Fund

170. (1) In this Division, unless the contrary intention appears— Interpretation.

“assets” means property of any kind and, without limiting the generality of the foregoing, includes—

- (a) choses in action; and
- (b) rights, interests and claims of every kind in or to property, whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing;

“authorized person” means the Chairman of the Trust or a person authorized in writing by the Chairman of the Trust to give certificates under section 173;

“eligible pensioner” means a person to whom, or in respect to whom, at the commencement of this Act, pension, other than a non-contributory pension, was payable or would, but for the pension having been suspended, have been payable under—

- (a) the superseded Act; or
- (b) section 10 of the *Superannuation (Pension Increases) Act 1971*;

“instrument” means an instrument of any kind and, without limiting the generality of the foregoing, includes a contract, guarantee or agreement (whether express or implied and whether made or given orally or in writing), bond, authority, order, power of attorney, mortgage, transfer, conveyance or other assurance, charge, lien, bill of exchange, letter of credit and security;

“instrument to which this Division applies” means an instrument arising out of, or otherwise connected with, the exercise or proposed exercise by the Board of its investment power, being an instrument—

- (a) to which the Board is a party;
- (b) which was given to or in favour of the Board;
- (c) in which a reference is made to the Board; or
- (d) under which any money is or may become payable, or any other property is to be, or may become liable to be, transferred, conveyed or assigned to or by the Board,

being an instrument subsisting immediately before the commencing day;

“investment assets of the existing Fund” means the assets of the existing Fund or of the Board arising out of, or otherwise connected with, the exercise or proposed exercise by the Board of its investment power, being assets subsisting immediately before the commencing day;

“investment liabilities of the existing Fund” means liabilities of the existing Fund or of the Board arising out of, or otherwise connected with, the exercise or proposed exercise by the Board of its investment power, being liabilities subsisting immediately before the commencing day;

“investment power”, in relation to the Board, means the power of the Board under section 12 of the superseded Act to invest moneys of the existing Fund;

“liabilities” means liabilities of every kind and, without limiting the generality of the foregoing, includes obligations of every kind,

whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing;

“non-contributory pension” means—

- (a) a pension that became payable under section 57 of the *Superannuation Act 1922* or of that Act as amended, not being a pension for which contributions were made to a State Fund as defined by section 101 of the superseded Act;
- (b) a pension that became payable under section 58 of the *Superannuation Act 1922* or of that Act as amended; or
- (c) a pension to which sub-section 9 (2), or sub-section 14 (2), of the *Superannuation Act (No. 2) 1956* applies;

“uninvested moneys of the existing Fund” means moneys of the existing Fund that, immediately before the commencing day, are held uninvested by the Board, including any moneys lodged on call or on fixed deposit under section 13 of the superseded Act.

(2) Where deferred benefits were applicable in respect of a person under section 119W of the superseded Act on the day immediately preceding the commencing day but had not become payable to or in respect of the person on or before that day, the person shall be deemed to be an eligible pensioner for the purposes of this Division.

(3) A reference in this Division to the net assets of the existing Fund shall be read as a reference to the assets of the existing Fund subsisting immediately before the commencing day less the liabilities of the existing Fund subsisting immediately before that day, and, for the purposes of this Division, the value of those net assets shall be such amount as is determined by the Treasurer.

171. Upon the commencement of this Act—

- (a) the uninvested moneys of the existing Fund become, by force of this section, moneys of the new Fund;
- (b) the investment assets of the existing Fund become, by force of this section, assets of the new Fund and shall be deemed to be moneys of the new Fund invested by the Trust under section 42; and
- (c) the investment liabilities of the Board become, by force of this section, liabilities of the Trust.

Transfer of certain assets and liabilities.

172. An instrument to which this Division applies continues, by force of this section, in full force and effect but, in its operation in relation to acts, transactions, matters or things done, entered into or occurring on or after the commencing day, has effect as if a reference in the instrument to the Board were a reference to the Trust. Instruments.

Certificates. 173. (1) An authorized person may, by writing under his hand, certify that an asset, liability or instrument specified or described in the certificate is an investment asset of the existing Fund, an investment liability of the existing Fund or an instrument to which this Division applies, as the case may be, and the certificate is, in all courts and for all purposes, *prima facie* evidence of the matters stated in the certificate.

(2) Where a document purports to be a certificate under sub-section (1) signed by an authorized person, judicial notice shall be taken of the signature of that person and of the fact that that person is or was an authorized person.

(3) An instrument or document that an authorized person certified to have been made, executed or given by reason of, or for a purpose connected with or arising out of, the operation of this Division is not liable to stamp duty or other tax under a law of the Commonwealth or of a State or of a Territory.

Pending proceedings. 174. Where, immediately before the commencing day, proceedings to which the Board was a party (being proceedings with respect to any matter arising out of, or otherwise connected with, the exercise by the Board of its investment power) were pending in any court, the Trust is, by force of this section, substituted for the Board as a party to the proceedings.

Allocation of existing Fund between pensioners and contributors. 175. (1) For the purposes of this Division, part of the value of the net assets of the existing Fund, being a part the value of which is determined by the Treasurer, shall be deemed to relate to persons other than existing contributors.

(2) In making the determination under sub-section (1), the Treasurer shall have regard to such matters as are prescribed.

Allocation among eligible pensioners.

176. (1) In this section—

“amount available for distribution” means the sum of—

- (a) the amount (in paragraph (b) referred to as the “surplus amount”) equal to the amount by which the value of the part of the value of the net assets of the existing Fund that, by virtue of sub-section 175 (1), is deemed to relate to persons other than existing contributors, exceeds the amount determined by the Treasurer under sub-section (2) of this section; and
- (b) an amount determined by the Treasurer, after receiving advice from the Investment Trust, to be the amount that will accrue to the new Fund, in respect of the period commencing on the commencing day and ending on the distribution date, in relation to the surplus amount;

“distribution date” means such date as is fixed by the Treasurer, by notice published in the *Gazette*, as the distribution date for the purposes of this section.

(2) The Treasurer shall, as soon as practicable after the commencing day, determine the amount necessary to provide for the benefits (other than benefits that might have become payable to or in respect of existing contributors) which were a charge upon the existing Fund immediately before the commencing day or are, under the regulations, to be treated as if they were such a charge.

(3) The Treasurer shall, in making the determination for the purposes of sub-section (2), have regard to such matters as are prescribed.

(4) The Commissioner shall, as soon as practicable after the distribution date has been fixed by the Treasurer, allocate among eligible pensioners, in such manner as the Treasurer directs, the amount nearest to the amount available for distribution that it is practicable to allocate in that manner among eligible pensioners, and, in giving those directions, the Treasurer shall take into account all matters relevant to ensure that the amount to be distributed will be allocated among the persons concerned on a fair and reasonable basis.

(5) Subject to sub-section (6), as soon as practicable after the allocation in respect of eligible pensioners has been made under sub-section (4), there shall be paid out of the new Fund to each eligible pensioner who is entitled to an amount under the allocation (not being an amount that is less than \$2) an amount equal to that amount.

(6) Where an eligible pensioner who is entitled to an amount under the allocation made under sub-section (4) has died before payment of the amount, an amount equal to, or amounts aggregating, the amount to which the pensioner is so entitled shall be paid out of the new Fund to such person (if any), or to such persons (if any), as the Commissioner determines.

(7) Sections 118 and 119 apply in relation to any moneys payable under this section as if those moneys were a benefit payable under this Act.

177. (1) In this section—

“amount available for allocation as basic contributions” means the amount referred to in paragraph (2) (a);

“amount available for allocation as supplementary contributions” means the amount referred to in paragraph (2) (b);

“amount available for distribution as supplementary contributions” means the sum of—

(a) the amount (in paragraph (b) referred to as the “surplus amount”) equal to the amount available for allocation as supplementary contributions; and

Allocation
among
existing
contributors.

- (b) an amount determined by the Treasurer, after receiving advice from the Investment Trust, to be the amount that will accrue to the new Fund, in respect of the period commencing on the commencing day and ending on the distribution date, in relation to the surplus amount;

“distribution date” means such date, being a date not earlier than the election date, as is fixed by the Treasurer, by notice published in the *Gazette*, as the distribution date for the purposes of this section;

“election date” means such date as is fixed by the Treasurer, by notice published in the *Gazette*, as the election date for the purposes of this section.

(2) For the purposes of this section, the Treasurer shall, as soon as practicable after the commencing day, determine, in relation to the value of the net assets of the existing Fund—

- (a) the amount that is to be treated as basic contributions made by existing contributors on the commencing day; and
(b) the amount that is to be treated as supplementary contributions made by existing contributors on the commencing day,

and, in making the determination, the Treasurer shall have regard to such matters as are prescribed.

(3) The Commissioner shall, as soon as practicable after the commencing day—

- (a) allocate among existing contributors, in such manner as the Treasurer directs, the amount nearest to the amount available for allocation as basic contributions that it is practicable to allocate in that manner among existing contributors;
(b) allocate among existing contributors, in such manner as the Treasurer directs, the amount nearest to the amount available for allocation as supplementary contributions that it is practicable to allocate in that manner among existing contributors; and
(c) allocate among existing contributors, in such manner as the Treasurer directs, the amount nearest to the amount available for distribution as supplementary contributions that it is practicable to allocate in that manner among existing contributors,

and, in giving those directions, the Treasurer shall take into account all matters relevant to ensure that the amounts to be allocated will be allocated among the persons concerned on a fair and reasonable basis.

(4) As soon as practicable after the allocations in respect of existing contributors have been made under sub-section (3), the Commissioner shall cause notice to be given to each existing contributor of the respective amounts that have been allocated to him under paragraphs (a), (b) and (c) of that sub-section.

(5) An existing contributor may, not later than the election date, or, if he ceases to be an eligible employee before the election date, not later than the date on which he so ceases, elect, by notice in writing to the Commissioner, that an amount specified in the election, being an amount not exceeding the amount allocated to him under paragraph (3) (c), be paid to him.

(6) Where an existing contributor makes an election under sub-section (5), then, subject to sub-section (7), there shall be paid out of the new Fund to him an amount equal to the amount specified in the election.

(7) Where an existing contributor who is entitled to an amount under sub-section (6) has died before the payment of the amount, an amount equal to, or amounts aggregating, the amount to which he is so entitled shall be paid out of the new Fund to such person (if any), or to such persons (if any), as the Commissioner determines.

(8) Sections 118 and 119 apply in relation to any moneys payable under this section as if those moneys were a benefit payable under this Act.

(9) An amount equal to the amount allocated to an existing contributor under paragraph (3) (a) shall be deemed to be an amount of basic contributions paid by him under this Act on the commencing day.

(10) Where an existing contributor does not make an election under sub-section (5), an amount equal to the amount allocated to him under paragraph (3) (b) shall be deemed to be an amount of supplementary contributions paid by him under this Act on the commencing day.

(11) Where an existing contributor makes an election under sub-section (5) and specifies in the election an amount less than the amount allocated to him under paragraph (3) (c), an amount ascertained for the purposes of this sub-section in accordance with sub-section (12) shall be deemed to be an amount of supplementary contributions paid by him under this Act on the commencing day.

(12) The amount to be ascertained for the purposes of sub-section (11) in accordance with this sub-section in respect of an existing contributor is an amount ascertained in accordance with the formula—

$$A - \frac{AB}{C}$$

where—

- A is an amount equal to the amount allocated to him under paragraph (3) (b);
- B is the amount specified in the election; and
- C is an amount equal to the amount allocated to him under paragraph (3) (c).

Payment from new Fund to the Commonwealth.

178. (1) There shall be paid from the new Fund to the Commonwealth an amount equal to the amount by which the value of the net assets of the existing Fund exceeds the sum of—

- (a) the amount referred to in the definition of “amount available for distribution” in sub-section 176 (1) as the “surplus amount”;
- (b) the amount defined in sub-section 177 (1) as the amount available for allocation as basic contributions; and
- (c) the amount defined in sub-section 177 (1) as the amount available for allocation as supplementary contributions.

(2) The Treasurer may approve the transfer, subject to such conditions (if any) as he determines, of the excess established under sub-section (1) from the new Fund to the Commonwealth in such manner, in such instalments, and at such times during the period of 10 years commencing on the commencing day, as he determines.

Determinations, &c., to be in writing.

179. Any determination, direction or allocation by the Treasurer or the Commissioner for the purposes of this Division shall be in writing, and shall not be varied except for the purpose of correcting an error, whether in calculation or otherwise, or a mistake of fact, or for a purpose authorized by the regulations.

Division 3—Invalidity Pensioners

Existing invalidity pensioners.

180. (1) In this section, “existing invalidity pensioner” means a person to whom a pension of a kind referred to in section 64A or section 65 of the superseded Act is payable or would, but for the pension having been suspended, be payable.

(2) Section 15, section 74 (other than sub-sections (6) and (7)) and section 75 apply to and in relation to an existing invalidity pensioner who has not become an eligible employee, with such modifications (if any) as are prescribed, as if his pension were an invalidity pension payable under this Act and as if, immediately before he became entitled to that pension, he had been an eligible employee.

(3) The provisions of this Act apply to and in relation to an existing invalidity pensioner who becomes an eligible employee with such modifications (if any) as are prescribed and subject to sub-section (4).

(4) Where an existing invalidity pensioner becomes an eligible employee, there shall be paid into the new Fund out of the Consolidated Revenue Fund (which is appropriated accordingly) such amount as the Commissioner determines having regard to the total amount of contributions paid by the pensioner under the superseded Act and such other matters as the Commissioner considers relevant, and an amount equal to the amount so paid shall be deemed to be an amount paid to the new Fund under sub-section 112 (5) in respect of the person.

Division 4—Existing Contributors

181. In this Division—

Definitions.

“first contribution day” means the contribution day that falls on 8 July 1976;

“initial basic contribution”, in relation to an existing contributor, means the amount of the basic contribution made, or required to be made, by the contributor on the first contribution day;

“previous contribution (excluding contribution for reserve units)”, in relation to an existing contributor, means the amount of the contribution made, or required to be made, by the contributor under the superseded Act in respect of units of pension, other than reserve units of pension, on the pay day last preceding the commencing day;

“previous contribution (including contribution for reserve units)”, in relation to an existing contributor, means the amount of the contribution made, or required to be made, by the contributor under the superseded Act in respect of units of pension, including reserve units of pension, on the pay day last preceding the commencing day.

182. A person who is an eligible employee referred to in paragraph (a) of the definition of “eligible employee” in sub-section 3 (1) shall be deemed to have become an eligible employee on the commencing day.

First day of service.

183. (1) This section applies to a person who is or has ceased to be an eligible employee, being an eligible employee referred to in paragraph (a) of the definition of “eligible employee” in sub-section 3 (1).

Modification of Act in relation to existing contributors.

(2) The regulations may make provision for modifying this Act, or a provision of this Act specified in the regulations, in the application of this Act or that provision to and in relation to a person to whom this section applies, or to and in relation to a prescribed class of persons to whom this section applies.

(3) The modifications that may be made by regulations in pursuance of sub-section (2) include, but are not limited to, modifications providing for the payment of contributions in addition to, or in substitution for, contributions that would otherwise be payable under this Act and for benefits in addition to, or in substitution for, benefits provided for by this Act.

184. (1) Subject to sub-section (2) of this section, section 16 does not apply to an existing contributor.

Medical examinations and benefit classification certificates.

(2) For the purposes of this Act (including sub-sections 16 (6), (7) and (8)), there shall be deemed to be in force, on the commencing day, in respect of an eligible employee—

- (a) who is an existing contributor and who, immediately before the commencing day, was (otherwise than by reason of an election made under section 81 of the superseded Act) a contributor to the Provident Account established under the superseded Act;
- (b) whose period of contributory service on the commencing day would have been less than 20 years if he had ceased to be an eligible employee on that day; and
- (c) who, at the commencement of this Act, had not attained his maximum retiring age,

a benefit classification certificate issued by the Commissioner under sub-section 16 (4) specifying the physical or mental condition or conditions by reason of which the Superannuation Board did not accept the person as a contributor under Part III of the superseded Act.

(3) Where—

- (a) an eligible employee who is an existing contributor (whether or not he was, immediately before the commencing day, a contributor to the Provident Account established under the superseded Act) has ceased to be an eligible employee by reason of death or retirement on the ground of invalidity;
- (b) his period of contributory service is less than 20 years and, at the time he ceased to be an eligible employee, he had not attained his maximum retiring age;
- (c) a benefit classification certificate was not, by virtue of sub-section (2), deemed to have been in force in respect of him on the commencing day or, if a benefit classification certificate was, by virtue of sub-section (2), deemed to have been in force in respect of him on the commencing day—
 - (i) the certificate was not in force in respect of him at the time he ceased to be an eligible employee; or
 - (ii) the certificate was in force in respect of him at that time but there was not specified in the certificate the physical or mental condition or conditions which, in the opinion of the Commissioner, caused, or substantially contributed to, the death or the incapacity which was the ground for his retirement on the ground of invalidity; and
- (d) the Commissioner is satisfied—
 - (i) that, at or in connexion with a medical examination which the person was required to undergo by virtue of section 5 of the superseded Act, the person failed to furnish any information required to be furnished by him or furnished false information; and
 - (ii) that, if the person had not failed to furnish that information or had not furnished false information, he would, immediately before the commencing day, have

been a contributor to the Provident Account established under the superseded Act or, if he was, immediately before that day, a contributor to the Provident Account, there would, by virtue of sub-section (2), be deemed to have been in force in respect of him at the time he ceased to be an eligible employee a benefit classification certificate in which the physical or mental condition or conditions referred to in paragraph (c), or a physical or mental condition connected with that condition or those conditions, would have been deemed to have been specified,

the Commissioner shall issue a benefit classification certificate in which the condition or conditions referred to in paragraph (c) is or are specified and, for the purposes of this Act, the certificate shall be deemed to have been in force in respect of that person at the time of his death or retirement.

(4) Sub-section 16 (11) shall apply in relation to a certificate issued under sub-section (3) as if it were a certificate issued under sub-section 16 (10).

185. (1) Where the amount of the previous contribution (including contribution for reserve units) of an existing contributor is in excess of the amount of the initial basic contribution of the contributor, the contributor shall, subject to sub-section (2), pay to the Commissioner on the first contribution day a supplementary contribution of an amount equal to the excess, and pay to the Commissioner on each succeeding contribution day on which the amount of the previous contribution (including contribution for reserve units) exceeds the amount of the basic contribution required to be made by the contributor on that succeeding contribution day an amount equal to the amount of that excess.

Existing contributors contributing in excess of 5% of salary.

(2) An existing contributor referred to in sub-section (1) may, by notice in writing to the Commissioner, elect that, as from the contribution day next following the date of the election, sub-section (1) shall cease to apply in relation to him.

(3) An existing contributor referred to in sub-section (1), not being a contributor to whom that sub-section has ceased to apply (whether by reason of an election under sub-section (2) or otherwise), is not entitled to make an election under section 48.

(4) In the application of sub-section 48 (1) to an existing contributor referred to in sub-section (1) of this section, the reference in sub-section 48 (2) to a factor of 5 shall be read as a reference to such number as is ascertained by dividing the amount of the previous contribution (including contribution for reserve units) of the contributor by one-fifth of the amount of the initial basic contribution of the contributor or, if the number so ascertained is not a whole number, such number as is the next higher whole number.

Existing contributors under 40 years of age contributing less than 5% of salary.

186. (1) A reference in sub-section (3), (5), (6) or (9) to the notional basic contribution applicable to an existing contributor on a particular day shall be read as a reference to the amount that would, but for sub-section (2) or (4), be the amount of his basic contribution on that day.

(2) Where the amount of the previous contribution (excluding contribution for reserve units) of an existing contributor who has not attained the age of 40 years on the commencing day is less than four-fifths, but not less than three-fifths, of the amount that, but for this sub-section, would be the amount of the basic contribution required to be made by him on the first contribution day, section 46 applies in relation to him in respect of each contribution day occurring before or on the anniversary of his birth next following the commencing day as if—

- (a) the reference in section 46 to 5 per centum were a reference to 4 per centum; and
- (b) the reference in that section to 10 cents were a reference to 8 cents.

(3) Where an existing contributor referred to in sub-section (2) makes an election under sub-section 48 (1) before the anniversary of his birth next following the commencing day, then, for the purpose of calculating the amount of the supplementary contribution payable by the contributor on a contribution day occurring before or on that anniversary—

- (a) section 49 has effect as if the reference in that section to the basic contribution payable by the contributor on a contribution day were a reference to the notional basic contribution applicable to him on that day; and
- (b) if the factor specified in the election is 5 and the contributor requests in the election that this paragraph apply in relation to the election—the election shall, for the purposes of section 49, be treated as if the factor specified in the election were 6.

(4) Where the amount of the previous contribution (excluding contribution for reserve units) of an existing contributor who had not attained the age of 40 years on the commencing day is less than three-fifths of the amount that, but for this sub-section, would be the amount of the basic contribution required to be made by him on the first contribution day—

- (a) section 46 applies in relation to him in respect of each contribution day occurring before or on the anniversary of the contributor's birth next following the commencing day as if—
 - (i) the reference in section 46 to 5 per centum were a reference to 3 per centum; and
 - (ii) the reference in that section to 10 cents were a reference to 6 cents; and
- (b) section 46 applies in relation to the contributor in respect of each contribution day occurring after that anniversary of the

contributor's birth and before the anniversary of the contributor's birth next following that anniversary as if—

- (i) the reference in section 46 to 5 per centum were a reference to 4 per centum; and
- (ii) the reference in that section to 10 cents were a reference to 8 cents.

(5) Where an existing contributor referred to in sub-section (4) makes an election under sub-section 48 (1) before the anniversary of his birth next following the commencing day, then, for the purpose of calculating the amount of supplementary contribution payable by him on a contribution day occurring before or on the anniversary of his birth next following that first-mentioned anniversary—

- (a) section 49 has effect as if the reference in that section to the basic contribution payable by the contributor on a contribution day were a reference to the notional basic contribution applicable to the contributor on that day; and
- (b) if the factor specified in the election is 5 and the contributor requests in the election that this paragraph apply in relation to him—the election shall, for the purposes of section 49, be treated—
 - (i) if the contribution day occurs before that first-mentioned anniversary—as if the factor specified in the election were 7; and
 - (ii) if the contribution day occurs on or after that first-mentioned anniversary—as if the factor specified in the election were 6.

(6) Where an existing contributor referred to in sub-section (4) makes an election under sub-section 48 (1) on or after the anniversary of his birth next following the commencing day but before the anniversary of his birth next following that first-mentioned anniversary, then, for the purpose of calculating the amount of the supplementary contribution payable by the contributor on a contribution day occurring before or on that later anniversary—

- (a) section 49 has effect as if the reference in that section to the basic contribution payable by the contributor on a contribution day were a reference to the notional basic contribution applicable to him on that day; and
- (b) if the factor specified in the election is 5 and the contributor requests in the election that this paragraph apply in relation to him—the election shall, for the purposes of section 49, be treated as if the factor specified in the election were 6.

(7) A contributor who has made a request referred to in paragraph (3)(b), (5)(b) or (6)(b) may, by notice in writing to the Commissioner, revoke the request and, where a contributor revokes such a request, whichever of those paragraphs is relevant shall cease to apply to

him as from the contribution day next following the date of the instrument of revocation.

(8) Where the anniversary of the birth of an existing contributor falls on the commencing day or on any subsequent day before the first contribution day, the preceding provisions of this section shall apply in relation to him with such modifications (if any) as are prescribed.

(9) Where the amount of the previous contribution (including contribution for reserve units) of an existing contributor who has not attained the age of 40 years on the commencing day is less than the amount of notional basic contribution applicable to him on that day, he shall, in addition to any supplementary contributions which he is required to pay to the Commissioner by virtue of an election made by him under sub-section 48 (1), pay to the Commissioner such additional contributions (if any) as are ascertained in accordance with the regulations and any contributions so paid shall, for the purposes of this Act, be deemed to be supplementary contributions paid under section 48.

Division 5—Miscellaneous

Persons who exchanged pension rights for equivalent rights under superseded Act.

187. Where a person has, by virtue of an application made by him under section 71 of the superseded Act, been granted rights of pension under that Act of the kind referred to in that section and the person has not, before the commencing day, ceased to be an employee for the purposes of the superseded Act, the provisions of this Act shall apply to and in relation to contributions payable by him under this Act, and to any benefits that may become payable to or in respect of him under this Act, with such modifications as are determined by the Commissioner having regard to the contributions (if any) being made by him under the superseded Act immediately before the commencing day and the rights of pension granted under the superseded Act.

Persons who exchanged rights to refunds or gratuities under other law for equivalent rights under superseded Act.

188. Where a person has, by virtue of an application made by him under section 72 of the superseded Act been granted rights of pension under that Act of the kind referred to in that section and the person has not, before the commencing day, ceased to be an employee for the purposes of the superseded Act, the provisions of this Act shall apply to and in relation to any benefits that may become payable to or in respect of him under this Act with such modifications as are determined by the Commissioner having regard to the rights of pension granted under the superseded Act.

Dealings by Trust with policies to which section 74 of superseded Act applies.

189. All payments which, by virtue of section 74 of the superseded Act, are required to be made by the Trust shall be paid out of the Fund and all payments that, by virtue of that section, are required to be made to the Trust shall be paid to the Trust and paid by the Trust into the Fund.

190. Sections 53 and 156 of this Act apply to and in relation to contributions that a person has become liable to pay under the superseded Act but which have not been paid before the commencing day as if those contributions were payable by the person under this Act. Unpaid contributions under superseded Act.

191. Where, by force of sub-section 76 (2) of the *Superannuation Amendment Act* 1976, a life policy that was assigned by a person to the Superannuation Board under section 119ZC of the superseded Act is transferred to the Commissioner, section 145 of this Act applies, with such modifications as are determined by the Commissioner, to and in relation to that person and that policy as if the policy had been assigned to the Commissioner by the person under that section. Assignment of life policies to Commissioner.

192. On and after the commencing day, the provisions of sections 7 and 119ZD of the superseded Act, and the provisions of this Act, have effect in relation to a person with whom an arrangement is in force under section 7 of the superseded Act immediately before the commencing day with such modifications as the Commissioner for Superannuation determines. Persons with whom arrangements made under section 7 of the superseded Act.

SCHEDULE 1 Sub-sections 56 (2) and (3)

STANDARD AGE RETIREMENT PENSION ON OR AFTER ATTAINING 65 YEARS

TABLE 1

RATE OF PENSION WHERE CONTRIBUTORY SERVICE NOT LESS THAN 31 YEARS

Column 1 Number of complete years of contributory service completed before age 65	Column 2 Percentage of final annual rate of salary
31	50.25
32	50.50
33	50.75
34	51.00
35	51.25
36	51.50
37	51.75
38	52.00
39	52.25
40 or more	52.50

TABLE 2

RATE OF PENSION WHERE CONTRIBUTORY SERVICE LESS THAN 30 YEARS

Column 1 Number of complete years of contributory service	Column 2 Percentage of final annual rate of salary
29	49
28	48
27	47

SCHEDULE 1—continued

Column 1	Column 2
Number of complete years of contributory service	Percentage of final annual rate of salary
26	46
25	45
24	44
23	43
22	42
21	41
20	40
19	38
18	36
17	34
16	32
15	30
14	28
13	26
12	24
11	22
10	20
9	18
8	16
7	14
6	12
5	10
4	8
3	6
2	4
1	2

SCHEDULE 2

Sub-section 56 (4)

STANDARD AGE RETIREMENT PENSION ON OR AFTER ATTAINING 60 YEARS AND BEFORE 65 YEARS

RATE OF PENSION

Column 1	Column 2				
Number of complete years of contributory service	Percentage of final annual rate of salary				
	Age attained in years				
	64	63	62	61	60
40 or more	51.450	50.400	49.350	48.300	47.250
39	51.205	50.160	49.115	48.070	47.025
38	50.960	49.920	48.880	47.840	46.800
37	50.715	49.680	48.645	47.610	46.575
36	50.470	49.440	48.410	47.380	46.350
35	50.225	49.200	48.175	47.150	46.125
34	49.980	48.960	47.940	46.920	45.900
33	49.735	48.720	47.705	46.690	45.675
32	49.490	48.480	47.470	46.460	45.450
31	49.245	48.240	47.235	46.230	45.225
30	49.000	48.000	47.000	46.000	45.000
29	48.020	47.040	46.060	45.080	44.100
28	47.040	46.080	45.120	44.160	43.200
27	46.060	45.120	44.180	43.240	42.300
26	45.080	44.160	43.240	42.320	41.400
25	44.100	43.200	42.300	41.400	40.500

SCHEDULE 2—continued

Column 1 Number of complete years of contributory service	Column 2 Percentage of final annual rate of salary				
	Age attained in years				
	64	63	62	61	60
24	43.120	42.240	41.360	40.480	39.600
23	42.140	41.280	40.420	39.560	38.700
22	41.160	40.320	39.480	38.640	37.800
21	40.180	39.360	38.540	37.720	36.900
20	39.200	38.400	37.600	36.800	36.000
19	37.240	36.480	35.720	34.960	34.200
18	35.280	34.560	33.840	33.120	32.400
17	33.320	32.640	31.960	31.280	30.600
16	31.360	30.720	30.080	29.440	28.800
15	29.400	28.800	28.200	27.600	27.000
14	27.440	26.880	26.320	25.760	25.200
13	25.480	24.960	24.440	23.920	23.400
12	23.520	23.040	22.560	22.080	21.600
11	21.560	21.120	20.680	20.240	19.800
10	19.600	19.200	18.800	18.400	18.000
9	17.640	17.280	16.920	16.560	16.200
8	15.680	15.360	15.040	14.720	14.400
7	13.720	13.440	13.160	12.880	12.600
6	11.760	11.520	11.280	11.040	10.800
5	9.800	9.600	9.400	9.200	9.000
4	7.840	7.680	7.520	7.360	7.200
3	5.880	5.760	5.640	5.520	5.400
2	3.920	3.840	3.760	3.680	3.600
1	1.960	1.920	1.880	1.840	1.800

SCHEDULE 3

Sub-sections 67 (3) and 68 (3)

INVALIDITY PENSION

RATE OF PENSION WHERE PENSION NOT REDUCED ON MEDICAL GROUNDS
AND CONTRIBUTORY SERVICE NOT LESS THAN 31 YEARS

Column 1 Number of complete years of contributory service	Column 2 Percentage of final annual rate of salary where pension payable under section 67	Column 3 Percentage of final annual rate of salary where pension payable under section 68
31	70.25	50.25
32	70.50	50.50
33	70.75	50.75
34	71.00	51.00
35	71.25	51.25
36	71.50	51.50
37	71.75	51.75
38	72.00	52.00
39	72.25	52.25
40 or more	72.50	52.50

SCHEDULE 4

Sub-sections 67 (4) and 68 (4)

INVALIDITY PENSION

RATE OF PENSION WHERE PENSION NOT REDUCED ON MEDICAL GROUNDS
AND PROSPECTIVE SERVICE LESS THAN 30 YEARS

Column 1	Column 2	Column 3
Number of complete years of prospective service	Percentage of final annual rate of salary where pension payable under section 67	Percentage of final annual rate of salary where pension payable under section 68
29	68.6	49
28	67.2	48
27	65.8	47
26	64.4	46
25	63.0	45
24	61.6	44
23	60.2	43
22	58.8	42
21	57.4	41
20	56.0	40
19	53.2	38
18	50.4	36
17	47.6	34
16	44.8	32
15	42.0	30
14	39.2	28
13	36.4	26
12	33.6	24
11	30.8	22
10	28.0	20
9	25.2	18
8	22.4	16
7	19.6	14
6	16.8	12
5	14.0	10
4	11.2	8
3	8.4	6
2	5.6	4
1	2.8	2

SCHEDULE 5

Sub-sections 70 (2) and 71 (2)

INVALIDITY PENSION

RATE OF PENSION WHERE PENSION REDUCED ON MEDICAL GROUNDS AND
PROSPECTIVE SERVICE NOT LESS THAN 30 YEARS

Column 1	Column 2	Column 3
Number of complete years of contributory service	Percentage of final annual rate of Salary where pension payable under section 70	Percentage of final annual rate of salary where pension payable under section 71
19	66.5	47.5
18	63.0	45.0

SCHEDULE 5—continued

Column 1	Column 2	Column 3
Number of complete years of contributory service	Percentage of final annual rate of Salary where pension payable under section 70	Percentage of final annual rate of salary where pension payable under section 71
17	59.5	42.5
16	56.0	40.0
15	52.5	37.5
14	49.0	35.0
13	45.5	32.5
12	42.0	30.0
11	38.5	27.5
10	35.0	25.0
9	31.5	22.5
8	28.0	20.0

SCHEDULE 6 Paragraphs 70 (3) (a) and 71 (3) (a)

INVALIDITY PENSION

RATE OF PENSION WHERE PENSION REDUCED ON MEDICAL GROUNDS AND PROSPECTIVE SERVICE LESS THAN 30, BUT NOT LESS THAN 20, YEARS

Column 1	Column 2	Column 3
Number of complete years of prospective service	Percentage of final annual rate of salary where pension payable under section 70	Percentage of final annual rate of salary where pension payable under section 71
29	68.6	49
28	67.2	48
27	65.8	47
26	64.4	46
25	63.0	45
24	61.6	44
23	60.2	43
22	58.8	42
21	57.4	41
20	56.0	40

SCHEDULE 7 Paragraphs 70 (3) (b) and 71 (3) (b)

INVALIDITY PENSION

FACTORS APPLICABLE WHERE PENSION REDUCED ON MEDICAL GROUNDS AND PROSPECTIVE SERVICE LESS THAN 30, BUT NOT LESS THAN 20, YEARS

Column 1	Column 2
Number of complete years of contributory service	Factor
19	.95
18	.90
17	.85
16	.80

SCHEDULE 7—continued

Column 1	Column 2
Number of complete years of contributory service	Factor
1575
1470
1365
1260
1155
1050
945
840

SCHEDULE 8

Sub-sections 70 (4) and 71 (4)

INVALIDITY PENSION

RATE OF PENSION WHERE PENSION REDUCED ON MEDICAL GROUNDS AND PROSPECTIVE SERVICE LESS THAN 20 YEARS

Column 1	Column 2	Column 3
Number of complete years of contributory service	Percentage of final annual rate of salary where pension payable under section 70	Percentage of final annual rate of salary where pension payable under section 71
19	53.2	38.0
18	50.4	36.0
17	47.6	34.0
16	44.8	32.0
15	42.0	30.0
14	39.2	28.0
13	36.4	26.0
12	33.6	24.0
11	30.8	22.0
10	28.0	20.0
9	25.2	18.0
8	22.4	16.0

NOTE

1. Act No. 31, 1976; assented to 7 May 1976.