



# Superannuation Act 1990

No. 38, 1990

## Compilation No. 35

<b>Compilation date:</b>	1 July 2015
<b>Includes amendments up to:</b>	Act No. 65, 2015
<b>Registered:</b>	15 July 2015

Prepared by the Office of Parliamentary Counsel, Canberra

---

## About this compilation

### This compilation

This is a compilation of the *Superannuation Act 1990* that shows the text of the law as amended and in force on 1 July 2015 (the *compilation date*).

This compilation was prepared on 6 July 2015.

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

### Uncommenced amendments

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

### Application, saving and transitional provisions for provisions and amendments

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

### Modifications

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

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

---

# Contents

<b>Part 1—Preliminary</b>	1
1 Short title .....	1
2 Commencement .....	1
3 Interpretation .....	1
3AA Designated employers .....	4
3AB Members of ACT Fire Brigade .....	6
3A Application of Act .....	6
3B Application of the <i>Criminal Code</i> .....	6
<b>Part 2—The Trust Deed</b>	7
4 Deed to establish Public Sector Superannuation Scheme etc. ....	7
5 Amendment of Trust Deed .....	7
5A Amendments of Trust Deed to implement family law interest splitting .....	8
<b>Part 3—Members of Public Sector Superannuation Scheme</b>	10
6 Membership of Public Sector Superannuation Scheme .....	10
6A Election by certain people to join CSS .....	15
6B Election by certain people to leave the Public Sector Superannuation Scheme .....	16
7 Election by holder of statutory office to be a member .....	18
8 Election by temporary employee to be member .....	18
9 Employees on probation .....	19
10 Australian Federal Police employees .....	20
11 Director of company etc. ....	20
12 Cases where person taken not to have ceased to be a member .....	20
13 Member not to be retired on grounds of invalidity without certificate from CSC .....	21
<b>Part 4—Contributions</b>	22
14 Contributions of members to Public Sector Superannuation Scheme etc. to be deducted from salary .....	22
14A Deductions of contributions by designated employer .....	22
15 Contributions to Public Sector Superannuation Scheme etc. by employer .....	22
<b>Part 5—Payments relating to benefits</b>	24
16 Payments to and by Commonwealth in respect of benefits payable under Public Sector Superannuation Scheme .....	24

---

16A	Payments relating to associate benefits .....	26
17	Payments by Commonwealth to CSC when invalidity pensioner again becomes member .....	27
18	Appropriation .....	27
19	Payment by approved authorities etc. to the Commonwealth in respect of benefits payable to members employed etc. by authorities .....	27
<b>Part 6—CSC</b>		<b>29</b>
22	Functions and powers .....	29
<b>Part 8A—Transfers to approved and authorised superannuation schemes</b>		<b>30</b>
<b>Division 1—Preliminary</b>		<b>30</b>
33A	Statutory office holder .....	30
<b>Division 2—Approved superannuation schemes</b>		<b>31</b>
33B	Interpretation .....	31
33C	Approval of superannuation schemes .....	31
33D	Transfer of assets etc. to approved superannuation schemes .....	32
33E	Payments from Consolidated Revenue Fund .....	32
33F	Exemption from tax etc. ....	33
<b>Division 3—Authorised superannuation schemes</b>		<b>34</b>
33G	Authorisation of superannuation schemes for the purposes of the Rules .....	34
<b>Part 9—Miscellaneous</b>		<b>35</b>
33H	Establishment of new corporation for purposes of holding units .....	35
33J	CSC may rely on information supplied by employers or former employers.....	35
34	Cost of administration of Act etc. ....	36
35	Certain authorities to pay part of costs of administration .....	36
36	Cost of medical examination on entry into Public Sector Superannuation Scheme .....	37
37	Costs—CSC being assisted by panel of persons.....	38
37A	CSC liable to pay surcharge under the <i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i> .....	39
38	Pre-assessment payments .....	39
39	Recovery of unpaid contributions etc. ....	40
39A	Recoverable payments.....	40

---

---

39B	Recoverable death payments .....	41
39C	Reports about recoverable payments and recoverable death payments.....	42
40	Payment of fees .....	43
41	Assignment of benefits .....	43
42	Member etc. bound by Rules .....	44
42A	CSC may require employers to distribute information etc. to members .....	44
43	Indemnification .....	45
44	Bank not liable in respect of certain payments out of account of deceased pensioner .....	45
44A	Declarations etc. by Minister or CSC .....	46
45	Legislative instruments.....	46
46	Exercise of certain powers by Minister .....	47
47	Delegation by Minister .....	48
48	Regulations.....	48
49	Regulations relating to the operation of the <i>Superannuation Industry (Supervision) Act 1993</i> and certain other laws .....	49

<b>Endnotes</b>	50
<b>Endnote 1—About the endnotes</b>	50
<b>Endnote 2—Abbreviation key</b>	51
<b>Endnote 3—Legislation history</b>	52
<b>Endnote 4—Amendment history</b>	63



# **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**

## **Part 1—Preliminary**

### **1 Short title**

This Act may be cited as the *Superannuation Act 1990*.

### **2 Commencement**

- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (2) Parts 3, 4 and 5, sections 35 to 42 (inclusive) and section 44 commence on 1 July 1990.

### **3 Interpretation**

In this Act, unless the contrary intention appears:

***accumulated funded contributions***, in relation to a person who has ceased to be a member, means the sum of:

- (a) the person's accumulated member contributions (within the meaning of the Rules); and
- (b) the person's accumulated funded employer contributions (within the meaning of the Rules).

***approved authority*** means:

- (a) an authority or body (other than Australian Airlines Limited) that was, immediately before the commencement of the Public Sector Superannuation Scheme, an approved authority for the purposes of the *Superannuation Act 1976* (other than any such authority or body declared, in writing, by the

Section 3

---

Minister not to be an approved authority for the purposes of this Act); and

- (b) an authority or body (not being an approved authority by virtue of paragraph (a)) that is declared, in writing, by the Minister to be an approved authority for the purposes of this Act and is:
- (i) a body corporate incorporated for a public purpose by an Act or regulations made under an Act or by a law of a Territory; or
  - (ii) an authority or body, not being a body corporate, established for a public purpose by, or under, an Act or regulations made under an Act or by or under a law of a Territory; or
  - (iii) a company or other body corporate incorporated under an Act or a law of a State or Territory, being a company or body corporate in which the Commonwealth has a controlling interest; or
  - (iv) an authority or body (whether established by or under an Act or regulations made under an Act or by or under a law of a Territory or otherwise, and whether a body corporate or not) financed wholly or substantially, either directly or indirectly, by money provided by the Commonwealth; or
  - (v) a company or other body corporate incorporated under an Act or a law of a State or Territory, being a company or body corporate in which:
    - (A) an authority or body referred to in subparagraph (i), (ii), (iii) or (iv), or that is an approved authority by virtue of paragraph (a), has; or
    - (B) the Commonwealth and one, or more than one, such authority or body together have; or
    - (C) 2 or more such authorities or bodies together have;a controlling interest.



**associate benefit** means a benefit that is payable under provisions of the Trust Deed that are authorised by subsection 5A(1).

**Board** means the board, called the Australian Reward Investment Alliance, established by section 20, as in force before its repeal by item 216 of Schedule 1 to the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011*.

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

**CSS** has the same meaning as in the *Superannuation Act 1976*.

**CSS Fund** has the same meaning as in the *Superannuation Act 1976*.

**designated employer** has the meaning given by section 3AA.

**permanent employee** means a person employed in a permanent capacity by the Commonwealth or by an approved authority, but does not include 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 Minister, in writing, for the purposes of this definition.

**PSSAP** has the same meaning as in the *Superannuation Act 2005*.

**PSSAP Fund** has the same meaning as in the *Superannuation Act 2005*.

**PSS Fund** means the Fund established, and vested in CSC, by the Trust Deed.

Note: From 1 July 2011, the Fund is vested in CSC.

**PSS invalidity pensioner** means a person who is an invalidity pensioner as defined by the Rules.

**Public Sector Superannuation Scheme** means the superannuation scheme established by the Trust Deed.

---

## Section 3AA

---

**Rules** means the Rules for the administration of the Public Sector Superannuation Scheme set out in the Schedule to the Trust Deed.

**State authority** means an authority or body, whether corporate or not, established by a State, or by or under a law of a State.

**statutory office** means:

- (a) an office established by an Act, by regulations made under an Act or by a law of a Territory; or
- (b) an office declared, in writing, by the Minister to be a statutory office for the purposes of this Act.

**temporary employee** means a person employed, otherwise than in a permanent capacity, by the Commonwealth or by an approved authority, but does not include a person engaged or appointed for employment outside Australia only (other than such a person who is declared, in writing, by the Minister to be a person to whom this definition applies).

**Trust Deed** means the deed referred to in section 4 and includes that deed as subsequently amended.

### 3AA Designated employers

- (1) A reference in this Act to the designated employer of a member is a reference to:
  - (a) if the member is a permanent employee, or temporary employee, of the Commonwealth but is not an LWOP member or employed by an approved authority:
    - (i) if the remuneration in respect of his or her employment is paid wholly or mainly out of money appropriated by an annual Appropriation Act—the Department in respect of which the money is appropriated; or
    - (ii) if the remuneration in respect of his or her employment is paid wholly or mainly out of money appropriated by an Act other than an annual Appropriation Act—a Department determined by the Minister in writing; or

- (b) if the member is the holder of a statutory office, but is not an LWOP member:
    - (i) if the remuneration in respect of the office is paid by an approved authority—the Authority; or
    - (ii) if subparagraph (i) does not apply—a Department or person determined by the Minister in writing; or
  - (c) if the member is an LWOP member—a person determined by the Minister in writing; or
  - (d) otherwise—the Authority or body by which the member is employed.
- (2) In this section:

**Department** means:

- (a) an Agency within the meaning of the *Public Service Act 1999*; or
- (b) a Department of the Parliament established under the *Parliamentary Service Act 1999*.

**LWOP member** means a member who:

- (a) is on leave of absence without pay and:
  - (i) if the period of leave began before 1 July 1994—because of a direction given by CSC under the Rules as in force when the period of leave began, is required to make payments in respect of contributions falling due during the period of the leave; or
  - (ii) if the period of leave began or begins on or after that date—the period of the leave is longer than 6 fortnights and is an excluded period of leave of absence for the purposes of the Rules as in force when the period of leave began or begins; or
- (b) is on leave of absence without pay or other unpaid leave in relation to the birth of a child of the member, other termination of the pregnancy of the member or the adoption of a child by the member, and is making contributions in relation to the leave in accordance with an election made under the Rules.

### **3AB Members of ACT Fire Brigade**

For the purposes of this Act, a person who was at any time before the commencement of this section, or is, a member of the Australian Capital Territory Fire Brigade, pursuant to an appointment made under the *Fire Brigade (Administration) Act 1974* of the Australian Capital Territory is taken to have been or to be employed by the Australian Capital Territory at all times from and including the time of his or her appointment under that Act or the commencement of this Act, whichever was or is the later, until he or she ceased or ceases to hold office under the appointment.

### **3A Application of Act**

This Act applies both within and outside Australia.

### **3B Application of the *Criminal Code***

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

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

## **Part 2—The Trust Deed**

### **4 Deed to establish Public Sector Superannuation Scheme etc.**

Not later than 30 days after the commencement of this Act, the Minister must, for and on behalf of the Commonwealth, by deed:

- (a) establish an occupational superannuation scheme for the benefit of:
  - (i) persons employed by the Commonwealth and approved authorities; and
  - (ii) holders of statutory offices; and
  - (iii) other persons;who, on and after the commencement of Part 3, will be, under that Part, members of the scheme; and
- (b) establish, and vest in the Board, a fund for the purposes of the Public Sector Superannuation Scheme; and
- (c) set out the functions and powers of the Board.

### **5 Amendment of Trust Deed**

- (1) The Minister may, by signed instrument, amend the Trust Deed.
- (1A) The Minister may not amend the Trust Deed unless:
  - (a) CSC has consented to the amendment; or
  - (b) the amendment:
    - (i) relates to a payment by an employer-sponsor within the meaning of the *Superannuation Industry (Supervision) Act 1993* that will, after the making of the amendment, be required or permitted to be made under this Act; or
    - (ii) relates solely to the termination of the PSS Fund; or
    - (iii) is made in circumstances covered by regulations made for the purposes of subparagraph 60(1)(b)(iii) of the *Superannuation Industry (Supervision) Act 1993*.

Section 5A

---

- (1B) For the purposes of subparagraph (1A)(b)(i), a payment under the Trust Deed or the Rules is taken to be a payment by an employer-sponsor referred to in that subparagraph.
- (2) If compliance with a provision of the Trust Deed as amended under subsection (1) would have the effect that the Public Sector Superannuation Scheme:
- (a) would not be a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993*; or
  - (b) would not comply with that Act;
- that provision is invalid.

**5A Amendments of Trust Deed to implement family law interest splitting**

- (1) Without limiting subsection 5(1), amendments under that subsection:
- (a) may provide that, when a splitting agreement or splitting order is received by CSC in respect of a superannuation interest under this Act:
    - (i) the non-member spouse is entitled to benefits determined in accordance with the Rules; and
    - (ii) the benefits of the member spouse are reduced in accordance with the Rules; and
  - (b) may make any other provision that is related to, or consequential on, provisions referred to in paragraph (a).
- (2) Subsection 12(2) of the *Legislative Instruments Act 2003* does not apply to amendments referred to in subsection (1) of this section.
- (3) In this section:

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

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

***splitting agreement*** means:

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

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

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

## **Part 3—Members of Public Sector Superannuation Scheme**

### **6 Membership of Public Sector Superannuation Scheme**

- (1) Subject to subsections (2) and (4), each of the following persons is, by force of this subsection, a member of the Public Sector Superannuation Scheme:
- (a) a permanent employee;
  - (c) the holder of a statutory office who has made an election under section 7;
  - (d) a temporary employee whose election under section 8 has effect;
  - (e) the holder of a statutory office, or a temporary employee, who:
    - (i) immediately before being appointed to that office or being employed in his or her present employment was a PSS invalidity pensioner; and
    - (ia) immediately before he or she became a PSS invalidity pensioner was the holder of that office or engaged in that employment; and
    - (ii) has been declared, in writing, by CSC to be sufficiently restored to health to perform the duties of that office or to engage in that employment;
  - (f) the holder of a statutory office, or a temporary employee, who:
    - (i) immediately before being appointed to that office or being employed in his or her present employment was a person to whom a preserved benefit was applicable under the Rules; and
    - (ii) immediately before the preserved benefit became so applicable was the holder of that office or employed in the same employment;



- (h) a person to whom Division 2 or 3 of the *Public Service Act 1922* applied immediately before the time (the **repeal time**) when that Act was repealed and who:
    - (i) during the transitional period (within the meaning of Part 3 of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, as in force immediately before its repeal) continues in eligible public employment (within the meaning of Part IV of the *Public Service Act 1922*, as in force immediately before the repeal time); or
    - (ii) after the end of that transitional period, continues in the same eligible public employment (within the meaning of Part IV of the *Public Service Act 1922*, as in force immediately before the repeal time) in which the person was engaged immediately before the end of that transitional period;
  - (j) a person declared, in writing, by the Minister to be a person to whom this section applies.
- (2) In spite of subsection (1), a person is not a member of the Public Sector Superannuation Scheme by force of that subsection if the person:
- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; or
  - (b) is a person to whom the *Judges' Pensions Act 1968* applies; or
  - (ba) is a person:
    - (i) to whom invalidity pension, or a deferred benefit by way of invalidity pension, is, or but for a suspension of payment would have been, payable to him or her under the *Superannuation Act 1976*; or
    - (ii) to whom a pension of a kind mentioned in section 64A or 65 of the *Superannuation Act 1922* as in force immediately before the repeal of that section, or a deferred benefit by way of a pension payable for the reason mentioned in subsection 119ZA(1) of that Act,

Section 6

---

is, or but for a suspension of payment would have been, payable to him or her; or

- (iii) to whom deferred benefits are applicable under the *Superannuation Act 1976*; or
- (iv) to whom deferred benefits are applicable under the *Superannuation Act 1922* and who has not become an eligible employee for the purposes of the *Superannuation Act 1976*; or
- (v) who is a re-employed former contributor with preserved rights for the purposes of the *Superannuation Act 1976* and who has not become an eligible employee for the purposes of that Act;

other than such a person who is a casual employee within the meaning of the Rules or who became a member of the Public Sector Superannuation Scheme before the commencement of section 68 of the *Superannuation Legislation Amendment Act 1991* and has continued to be such a member; or

- (c) is declared, in writing, by the Minister to be a person to whom this section does not apply.
- (3) Paragraph (2)(a) does not exclude a person from membership of the Public Sector Superannuation Scheme in relation to particular employment if the person is an eligible employee for the purposes of the *Superannuation Act 1976* in relation to other employment.

*Closure of Public Sector Superannuation Scheme*

- (4) Despite subsection (1), a person does not become a member of the Public Sector Superannuation Scheme by force of that subsection at a particular time (the **relevant time**) on or after 1 July 2005 unless:
- (a) at the relevant time, the person is already a member of the Public Sector Superannuation Scheme; or
  - (b) at the relevant time, the person is a former member of the Public Sector Superannuation Scheme (other than as a result of an election under section 6B) in respect of whom a preserved benefit under that scheme has not yet been paid; or

- (c) at the relevant time, the person is a PSS invalidity pensioner;  
or
- (d) the following conditions are satisfied:
  - (i) at the end of 30 June 2005, the person was the holder of a statutory office (other than the holder of such an office to whom paragraph (1)(e) or (f) applies);
  - (ii) the person has made an election under section 7 in relation to that office;
  - (iii) the election was made during a term of appointment that included 30 June 2005;
  - (iv) at the relevant time, the person is the holder of that office; or
- (e) the following conditions are satisfied:
  - (i) at the end of 30 June 2005, the person was a temporary employee in relation to particular employment (other than a temporary employee to whom paragraph (1)(e) or (f) applies);
  - (ii) the person has made an election under section 8 in relation to that employment;
  - (iii) the election has taken effect at or before the relevant time;
  - (iv) if the person's employment is for a fixed term—the election was made during a term of employment that included 30 June 2005, and the relevant time occurs in that term;
  - (v) if the person's employment is not for a fixed term—the election was made during a period of employment that included 30 June 2005, and the relevant time occurs in that period of employment; or
- (f) the following conditions are satisfied:
  - (i) on a particular date before 1 July 2005, the person was a temporary employee (other than a temporary employee to whom paragraph (1)(e) or (f) applies);
  - (ii) on that date, the person made an election under section 8 in relation to that employment;

Section 6

---

- (iii) the election has taken effect at or before the relevant time;
- (iv) if the person's employment is for a fixed term—the relevant time occurs in that term;
- (v) if the person's employment is not for a fixed term—the relevant time occurs in that period of employment; or
- (g) on or after 1 July 2005, the person makes a declaration and election under section 244 of the *Superannuation Act 1976*.

Note: Paragraph (a) would cover, for example, a person who is already a member of the Public Sector Superannuation Scheme in respect of a different instance of employment or another office.

*Special category of Public Sector Superannuation Scheme membership*

- (5) Subject to subsection (6), a person is, by force of this subsection, a member of the Public Sector Superannuation Scheme at a particular time (the **relevant time**) on or after 1 July 2006 if:
  - (a) the person is not a member of that scheme by force of subsection (1); and
  - (b) at the relevant time:
    - (i) the person is an APS employee; or
    - (ii) the person is specified in a written determination made by the Minister under this subparagraph; and
  - (c) the person became an APS employee or a person covered by the determination, as the case may be, on or after 1 July 2006; and
  - (d) immediately before the person became an APS employee or a person covered by the determination, as the case may be:
    - (i) the person was a former member of the Public Sector Superannuation Scheme (other than as a result of an election under section 6B) in respect of whom a preserved benefit under that scheme has not yet been paid; or
    - (ii) the person was a PSS invalidity pensioner; or
    - (iii) the person was covered by paragraph (2)(ba); and

- (e) at the relevant time, there is no chosen fund for the person (within the meaning of Part 3A of the *Superannuation Guarantee (Administration) Act 1992*); and
- (f) assuming that:
  - (i) the person were to become a member of the Public Sector Superannuation Scheme; and
  - (ii) the person's employer (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) were to make a contribution to the Public Sector Superannuation Scheme at the relevant time for the benefit of the person;the employer would rely on subsection 32C(2) or (6) of that Act to satisfy the choice of fund requirements in relation to the contribution.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (6) Despite subsection (5), a person is not a member of the Public Sector Superannuation Scheme by force of that subsection if the person is:
  - (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
  - (b) a person to whom the *Judges' Pensions Act 1968* applies; or
  - (c) covered by a declaration under paragraph (2)(c); or
  - (d) specified in a written determination made by the Minister under this paragraph.
- (7) A determination under subparagraph (5)(b)(ii) or paragraph (6)(d) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (8) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to an instrument under subparagraph (5)(b)(ii) or paragraph (6)(d) of this section.

## **6A Election by certain people to join CSS**

- (1) This section applies to a person who:
-

Section 6B

---

- (a) is a member of the Public Sector Superannuation Scheme;  
and
  - (b) became such a member before the commencement of section 68 of the *Superannuation Legislation Amendment Act 1991*; and
  - (c) is a person, other than a casual employee within the meaning of the Rules, mentioned in subparagraph 6(2)(ba)(i), (ii), (iii), (iv) or (v).
- (2) A person to whom this section applies may in writing addressed to CSC before 1 October 1991 or such later date as CSC allows having regard to all the circumstances of the particular case:
- (a) declare that he or she wishes to become an eligible employee for the purposes of the *Superannuation Act 1976*; and
  - (b) elect to cease to be a member of the Public Sector Superannuation Scheme.
- (3) A person who makes an election under subsection (2) is taken to have ceased to be a member of the Public Sector Superannuation Scheme at the end of the day on which the election is made.
- (4) CSC must, as soon as practicable after a person makes an election under this section, pay to the CSS Fund the person's accumulated funded contributions.

**6B Election by certain people to leave the Public Sector Superannuation Scheme**

- (1) A member of the Public Sector Superannuation Scheme, who is making member contributions (within the meaning of the Rules), may elect to cease to be a member of the Scheme if:
- (a) the member is not precluded by or under the *Superannuation Act 2005* from being an ordinary employer-sponsored member of PSSAP (within the meaning of that Act), other than by paragraph 13(2)(a) of that Act; or
  - (b) if paragraph (a) of this subsection does not apply—both of the following apply:

- (i) the member wants a fund to be a chosen fund for the member (within the meaning of Part 3A of the *Superannuation Guarantee (Administration) Act 1992*);
    - (ii) the member's employer has not refused to accept the chosen fund; or
  - (c) if neither paragraph (a) nor (b) applies—the member's employer has agreed to make employer contributions to:
    - (i) a complying superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); or
    - (ii) a retirement savings account (within the meaning of the *Retirement Savings Accounts Act 1997*).
- (2) The election must be given to CSC in writing.
- (3) After making an election, the member ceases to be a member of the Public Sector Superannuation Scheme:
- (a) if paragraph (1)(a) applies—at the time when the member becomes a member of PSSAP; or
  - (b) if paragraph (1)(b) applies—at the time when the fund becomes a chosen fund for the member; or
  - (c) if paragraph (1)(c) applies—the later of the following times:
    - (i) when the member becomes a member of the complying superannuation fund, or begins to hold a retirement savings account, (as the case requires);
    - (ii) when the election is given to CSC.
- (4) If the member is a member of the Public Sector Superannuation Scheme as a result of holding more than one office or position of employment, or as a result of holding an office or position of employment during more than one period:
- (a) the member is required to satisfy subsection (1) in respect of each membership in the Scheme; and
  - (b) the member must make an election to cease to be a member of the Scheme in respect of membership in the Scheme; and

Section 7

---

- (c) the member does not cease to be a member of the Scheme until the member has ceased to be a member under subsection (3) in respect of each membership of the Scheme.
- (5) For the purposes of section 32FA of the *Superannuation Guarantee (Administration) Act 1992* (employer's refusal to accept chosen fund), a member does not choose another fund merely because (as mentioned in subsection (3) of this section):
  - (a) the member becomes a member of PSSAP; or
  - (b) a fund becomes a chosen fund for the member; or
  - (c) the member becomes a member of a complying superannuation fund or begins to hold a retirement savings account.

**7 Election by holder of statutory office to be a member**

- (1) The holder of a statutory office (other than the holder of such an office to whom paragraph 6(1)(e) or (f) applies) may elect, by writing in a form approved by CSC, to become a member of the Public Sector Superannuation Scheme in relation to that office.
- (2) The effect of making an election under subsection (1) is that the person becomes a member of the Public Sector Superannuation Scheme only in respect of the office to which the election relates.
- (3) This section does not prevent the person becoming a member of the Public Sector Superannuation Scheme in respect of other employment.

**8 Election by temporary employee to be member**

- (1) A person who is a temporary employee in relation to particular employment (other than a temporary employee to whom paragraph 6(1)(e) or (f) applies) may elect, by writing in a form approved by CSC, to become a member of the Public Sector Superannuation Scheme in relation to that employment.
- (2) If a temporary employee who makes an election:



- (a) is employed under a contract for a term of not less than 3 months; or
  - (b) has, during the period of 2 years immediately before the election, been a temporary employee, a permanent employee or the holder of a statutory office for a period that is not less, or for periods that together are not less, than 3 months; or
  - (c) has a transfer value from another superannuation scheme (other than the scheme established under the *Superannuation Act 1976*) that the temporary employee intends to pay into the PSS Fund;
- the election has effect from and including the day on which it is made.
- (3) If subsection (2) does not apply in relation to the temporary employee, the election has effect immediately after the end of the day on which the temporary employee has completed:
    - (a) if paragraph (b) does not apply—a period of employment of 3 months; or
    - (b) if during any period or periods within 2 years before the commencement of his or her present employment, the temporary employee was a permanent employee, a temporary employee or the holder of a statutory office—a period of employment that together with the first-mentioned period or periods is equal to 3 months.
  - (4) The effect of making an election under subsection (1) is that the person becomes a member of the Public Sector Superannuation Scheme only in respect of the employment to which the election relates.
  - (5) This section does not prevent the person becoming a member of the Public Sector Superannuation Scheme in respect of other employment.

## **9 Employees on probation**

A person who is or becomes employed by the Commonwealth or by an approved authority is not taken, for the purposes of this Act,

## Section 10

---

to be employed otherwise than in a permanent capacity only because the employment was or is on probation and has not been confirmed.

### **10 Australian Federal Police employees**

For the purposes of this Act, an AFP employee (within the meaning of the *Australian Federal Police Act 1979*) is taken to be employed by the Commonwealth.

### **11 Director of company etc.**

Where a person is a director of a company or other body corporate incorporated under a law of the Commonwealth or of a State or Territory (being a company or other body that is an approved authority):

- (a) if the person is a full-time director—the person is, unless the Minister in writing otherwise determines, for the purposes of this Act, a person employed by the company or other body;  
or
- (b) if the person is not a full-time director—the person is, for the purposes of this Act, a person employed by the company or other body only if the Minister, in writing, so determines.

### **12 Cases where person taken not to have ceased to be a member**

- (1) If a person ceases to be a member and, immediately after so ceasing, again becomes a member:
  - (a) the person is taken, for the purposes of this Act other than paragraph (b), not to have so ceased; but
  - (b) the person is not required or permitted to pay contributions in respect of the period between the time when the person ceased to be a member and the time when the person again becomes a member.
- (2) Subsection (1) does not prevent the Rules from making provision subject to which a person of a specified class who has ceased to be

a member may, on again becoming a member, be taken not to have ceased to be a member.

### **13 Member not to be retired on grounds of invalidity without certificate from CSC**

- (1) In spite of anything contained in any Act, industrial award or contract of employment, a member who is under the age of 60 is not capable of being retired from the employment or office by virtue of which he or she is a member on the ground that, because of any mental or physical condition, the member is unable to perform his or her duties, unless CSC has certified in writing that, if the member is so retired, the member will be entitled to receive invalidity benefits under the Public Sector Superannuation Scheme.
- (1A) CSC may only give a certificate in respect of a member under subsection (1) if CSC has approved the invalidity retirement of the member under the Rules.
- (2) In subsection (1), a reference to a member being retired from employment or office includes a reference to the services of the member being otherwise terminated.
- (3) In subsection (1), *industrial award* means an industrial award, determination or agreement made, approved, lodged or registered under a law of the Commonwealth, a State or a Territory.

## **Part 4—Contributions**

### **14 Contributions of members to Public Sector Superannuation Scheme etc. to be deducted from salary**

- (1) Any contribution payable by a member under the Rules may be deducted from the member's salary.
- (2) Where additional death and invalidity cover is applicable to the member under the Rules, the amount of any payment that the member is required to make under the Rules in respect of any premium payable in respect of the member for the purposes of the cover may be deducted from the member's salary and paid to CSC.

#### **14A Deductions of contributions by designated employer**

- (1) If the designated employer of a member deducts from the member's salary an amount that the employer is permitted by subsection 14(1) to deduct from that salary:
  - (a) the employer is to pay the amount deducted to CSC; and
  - (b) if an amount deducted is not paid to CSC on the day on which it is deducted and CSC directs that this paragraph is to apply in relation to the amount—the employer is to pay to CSC interest on the amount, at any rate that CSC determines from time to time, in respect of the period beginning on the day on which the amount is deducted and ending on the day immediately before the day on which the amount is paid.
- (2) CSC is to pay to the PSS Fund any interest paid to CSC under paragraph (1)(b).

### **15 Contributions to Public Sector Superannuation Scheme etc. by employer**

- (2) The designated employer of a member must pay to CSC, in accordance with the Rules, all contributions that under the Rules

are payable by the employer of the member in respect of the member.

- (3) Where additional death and invalidity cover is applicable to a member under the Rules, the designated employer of the member is liable for any payment that, under the Rules, the employer of the member is required to make to CSC in respect of any premium payable in respect of the member for the purposes of the cover.
- (4) Where any amount payable by the designated employer of a member under subsection (2) or (3) remains unpaid after the day on which payment was due, the designated employer is liable to pay to CSC interest on any such amount that remains unpaid at such rate as CSC determines from time to time.
- (5) An authority that is required to make a payment under subsection (2), (3) or (4) may apply for that purpose any money under its control.

## Part 5—Payments relating to benefits

### 16 Payments to and by Commonwealth in respect of benefits payable under Public Sector Superannuation Scheme

- (1) Subject to subsection (2), where benefits (other than a preserved benefit or a post-retirement commutation benefit) become payable under the Rules to, or in respect of, a person who has ceased to be a member:
  - (a) CSC must pay to the Commonwealth out of the PSS Fund an amount equal to the person's accumulated funded contributions; and
  - (b) the Commonwealth must pay the benefits to such person or persons as are appropriate under the Rules.
- (2) Where the only benefit that is payable under the Rules to, or in respect of, a person who has ceased to be a member is a lump sum benefit that does not exceed the person's accumulated funded contributions, subsection (1) does not apply in relation to the member.
- (3) Where partial invalidity pension is payable to a person who is a member:
  - (a) the Commonwealth must pay to the person an amount equal to each instalment of partial invalidity pension payable under the Rules to the person; and
  - (b) if, immediately before partial invalidity pension became payable to the person, the person was an invalidity pensioner—the Commonwealth must also pay to CSC:
    - (i) where, on the person's becoming an invalidity pensioner, a pension only became payable to him or her—an amount equal to the person's accumulated funded contributions at the time when he or she became an invalidity pensioner; or

- (ii) where, on the person's becoming an invalidity pensioner, the person was entitled to receive a lump sum benefit and a pension—an amount equal to the difference between:
    - (A) the person's accumulated funded contributions at the time when he or she became an invalidity pensioner; and
    - (B) the amount of the lump sum benefit.
- (4) Subject to subsection (5), where a preserved benefit applicable to a person is payable under the Rules:
  - (a) CSC must pay to the Commonwealth an amount equal to the balance of the person's accumulated funded contributions remaining in the PSS Fund; and
  - (b) the Commonwealth must pay the preserved benefit to such person or persons as are appropriate under the Rules.
- (5) Where the preserved benefit payable to or in respect of a person under the Rules consists only of a lump sum benefit that does not exceed the balance of the person's accumulated funded contributions remaining in the PSS Fund, subsection (4) does not apply in relation to the person.
- (6) CSC must pay into the PSS Fund any amount paid to it under subsection (3).
- (7) If a post-retirement commutation benefit becomes payable under the Rules to, or in respect of, a person who has ceased to be a member, the Commonwealth is liable to pay the benefit.
- (8) If:
  - (a) a person becomes entitled to a post-retirement commutation benefit under the Rules; and
  - (b) the person has, under the Rules, requested that the amount of the benefit be:
    - (i) paid to the Commissioner of Taxation; and
    - (ii) wholly applied in payment of surcharge under an assessment;

Section 16A

---

the liability to pay that benefit must be discharged by:

- (c) paying the amount of that benefit to the Commissioner of Taxation in accordance with the person's request; and
  - (d) informing the Commissioner of Taxation of the person's request that the amount be wholly applied in payment of surcharge under the assessment concerned.
- (8A) For the purpose of this Act and the Rules, a lump sum paid by CSC in relation to a release authority issued to a person under item 3 of the table in subsection 135-10(1) in Schedule 1 to the *Taxation Administration Act 1953* is a benefit paid in respect of the person.

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

- (9) In this section:

**assessment** has the same meaning as in the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

**post-retirement commutation benefit** means a lump sum benefit payable by way of the commutation of the whole or a part of a pension, where the amount of the benefit is to be wholly applied in payment of surcharge.

**surcharge** has the same meaning as in the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

## 16A Payments relating to associate benefits

- (1) Where an associate benefit becomes payable under the Rules, the Commonwealth must pay the benefit to such person or persons as are appropriate under the Rules.
- (2) CSC must pay to the Commonwealth, out of the PSS Fund, any amount that CSC is required under the Rules to pay to the Commonwealth in respect of an associate benefit.



**17 Payments by Commonwealth to CSC when invalidity pensioner again becomes member**

Where a person who, before reaching the age of 60, ceased to be a member on the grounds of invalidity again becomes a member, the Commonwealth must pay to CSC:

- (a) if, on retirement on the grounds of invalidity, a pension only became payable to the person—an amount equal to the person's accumulated funded contributions at the time when he or she became an invalidity pensioner; or
- (b) if, on retirement on the grounds of invalidity, the person was entitled to receive a lump sum benefit and a pension—an amount equal to the difference between:
  - (i) the person's accumulated funded contributions at the time when he or she became an invalidity pensioner; and
  - (ii) the amount of the lump sum benefit;and CSC must pay that amount into the PSS Fund.

**18 Appropriation**

Any payment by the Commonwealth under section 16, 16A or 17 is to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

**19 Payment by approved authorities etc. to the Commonwealth in respect of benefits payable to members employed etc. by authorities**

- (1) This section applies to:
  - (a) an approved authority; and
  - (b) an authority (other than an approved authority) or body:
    - (i) whose staff consists of persons engaged under the *Public Service Act 1999*; and
    - (ii) that has been declared, in writing, by the Minister to be an authority or body to which this section applies; and

Section 19

---

- (c) an authority or body (other than a State authority) whose employees include a person or persons mentioned in paragraph 6(1)(h) or (j) or subparagraph 6(5)(b)(ii).
- (2) If the Minister so determines, an authority or body to which this section applies must make payments to the Commonwealth in respect of any person who:
- (a) is, or was at any time:
- (i) in the case of an approved authority—employed by that authority; or
- (ii) in the case of an authority or body referred to in paragraph (1)(b)—a member of the staff of the authority or body; or
- (iii) in the case of an authority or body mentioned in paragraph (1)(c)—employed by that authority or body; and
- (b) is a member, or was a member during the period when the person was employed by, or was a member of the staff of, the authority or body.
- (3) Payments that an authority or body is required to make in respect of a person under subsection (2) are to be made:
- (a) at such times as the Minister determines; and
- (b) in such amounts, or at such rates, as the Minister determines, having regard to the benefits that are or may become payable, or have been paid, to or in respect of the person under the Rules.
- (4) An authority or body that is required to make a payment under subsection (2) may apply for that purpose any money under its control.
- (5) For the purposes of this section, the holder of a statutory office whose remuneration is paid by an authority or body is taken to be employed by that authority or body.

## Part 6—CSC

### 22 Functions and powers

- (1) The functions and powers of CSC in relation to the Public Sector Superannuation Scheme and the PSS Fund are those set out in the Trust Deed.
- (2) CSC is also responsible for the general administration of this Act.

Note: For other functions of CSC, see section 8 of the *Governance of Australian Government Superannuation Schemes Act 2011*.

**Part 8A** Transfers to approved and authorised superannuation schemes

**Division 1** Preliminary

Section 33A

---

**Part 8A—Transfers to approved and authorised  
superannuation schemes**

**Division 1—Preliminary**

**33A Statutory office holder**

For the purposes of this Part, the holder of a statutory office whose remuneration is paid by an authority or body is taken to be employed by that authority or body.

## **Division 2—Approved superannuation schemes**

### **33B Interpretation**

In this Division, unless the contrary intention appears:

***approved superannuation scheme*** means a superannuation scheme approved by the Minister under section 33C.

***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 because of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing.

***investment assets of the PSS Fund*** means the assets of the PSS Fund or of CSC arising out of, or otherwise connected with, the exercise or proposed exercise by CSC of its power to invest money of the PSS Fund.

***investment liabilities of the PSS Fund*** means liabilities of the PSS Fund or of CSC arising out of, or otherwise connected with, the exercise or proposed exercise by CSC of its power to invest money of the PSS Fund.

***liabilities*** means liabilities of every kind and, without limiting the generality of the foregoing, includes obligations of every kind, whether arising under or because of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing.

### **33C Approval of superannuation schemes**

- (1) The Minister may approve, in writing, for the purposes of this Division, a superannuation scheme that provides benefits for

**Section 33D**

---

persons who are employed by, or are members of the staff of, an authority or body.

- (2) Where the Minister gives an approval under subsection (1), the Minister is to determine, in writing, the period within which, for the purposes of this Division, a person who is a member of the Public Sector Superannuation Scheme and employed by, or a member of the staff of, the authority or body may become a member of the superannuation scheme as so approved.

**33D Transfer of assets etc. to approved superannuation schemes**

CSC must, at such times as CSC determines, transfer to the person or body administering an approved superannuation scheme:

- (a) such assets of the PSS Fund (including investment assets of the PSS Fund) as are determined by CSC to be assets that fairly and equitably represent the accumulated funded contributions of those persons who:
- (i) have become members of the approved superannuation scheme within such period as, in relation to each of those persons, has been determined under subsection 33C(2); and
  - (ii) immediately before becoming such members, were members of the Public Sector Superannuation Scheme; and
- (b) such liabilities (if any) (including investment liabilities of the PSS Fund) as are determined by CSC to be liabilities relating to those assets.

**33E Payments from Consolidated Revenue Fund**

- (1) There must be paid to the person or body administering an approved superannuation scheme, at such times as the Minister determines, such amounts (if any) as are determined by the Minister having regard to:
- (a) the amount of the payments (if any) made under section 19 by the authority or body that established the scheme in respect of the persons mentioned in paragraph 33D(a); and

- (b) the amount of the accumulated member contributions (within the meaning of the Rules) of those persons; and
  - (c) the method of calculating final benefit accrual and preserved benefits under the Rules; and
  - (d) any relevant actuarial advice obtained by the Minister; and
  - (e) any other matters that the Minister considers relevant.
- (2) Payments under subsection (1) are to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

**33F Exemption from tax etc.**

No tax or charge is payable under any law of the Commonwealth (other than the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*) or any law of a State or of a Territory in respect of a transfer of assets or liabilities under section 33D.

### **Division 3—Authorised superannuation schemes**

#### **33G Authorisation of superannuation schemes for the purposes of the Rules**

- (1) The Minister may, in writing, declare a superannuation scheme that provides benefits for persons who are employed by, or are members of the staff of, an authority or body to be an authorised superannuation scheme for the purposes of the Rules.
- (2) Where the Minister makes a declaration under subsection (1), the Minister is to determine, in writing, the period within which, for the purposes of the Rules, a person who is a member of the Public Sector Superannuation Scheme and employed by, or a member of the staff of, the authority or body may become a member of the superannuation scheme as so authorised.



**Part 9—Miscellaneous****33H Establishment of new corporation for purposes of holding units**

- (1) If:
- (a) CSC would otherwise hold the only unit, or all the units, in a unit trust; and
  - (b) CSC is also the trustee of the trust;
- then:
- (c) CSC is taken, for the purposes of holding a unit in the unit trust, to be a corporation by the name of “The Holding Board”; and
  - (d) CSC must hold a unit in the unit trust in that corporate name.

Note: This subsection gives CSC a new and separate legal personality for the purposes of holding a unit in the unit trust. This has the effect of preventing any merger of legal and equitable interests relating to the unit trust for the purposes of trust law.

- (2) If the unit trust referred to in subsection (1) is a pooled superannuation trust (within the meaning of the *Superannuation Industry (Supervision) Act 1993*), then, for the purposes of that Act, the *Income Tax Assessment 1936* and the *Income Tax Assessment Act 1997*, the corporation named as “The Holding Board” is taken to be a regulated superannuation fund (within the meaning of those Acts).

**33J CSC may rely on information supplied by employers or former employers**

- (1) For the purposes of the Trust Deed in its application to or in respect of a person who is or has been a member of the Public Sector Superannuation Scheme, CSC may, but is not required to, presume that any information provided to CSC by an employer or former employer of the person is correct.

## Section 34

---

- (2) If a tribunal, authority or person is empowered to review a decision of CSC and vary, or make a decision in substitution for, CSC's decision, the tribunal, authority or person is not bound by any presumption made by CSC under subsection (1).

### **34 Cost of administration of Act etc.**

- (1) The costs of the administration of this Act and of the Trust Deed in relation to the Public Sector Superannuation Scheme, including the costs of and incidental to the management of the PSS Fund by CSC and the investment of its money, are to be paid as determined from time to time by the Minister.
- (1A) A determination for the purposes of subsection (1) is to be in writing and is to identify, whether by amount or otherwise:
- (a) those costs payable by the Commonwealth; and
  - (b) those costs payable by CSC out of the PSS Fund.
- (1B) Costs determined by the Minister to be payable by the Commonwealth are to be paid out of money appropriated from time to time by Parliament for the purpose.
- (2) The cost of any medical examination, or of any test, that a person (other than a person referred to in section 36) is required to undergo under the Rules when the person proposes to become, or becomes, a member of the Public Sector Superannuation Scheme is taken to be part of the cost of the administration of the Trust Deed.

### **35 Certain authorities to pay part of costs of administration**

- (1) For the purposes of this section, CSC may prepare an estimate of the costs referred to in subsection 34(1) that are likely to be incurred in respect of a financial year.
- (1A) CSC, if requested in writing to do so by the Minister, must prepare an estimate containing any information requested by the Minister in respect of any of those costs that are referred to in the request.

- (2) The Minister may, in writing, direct an authority or body that is or was, during the period specified in the direction, being a period that is included in, or is, a financial year in respect of which an estimate has been prepared under subsection (1):
- (a) an approved authority that employs or employed members; or
  - (b) a declared authority:
    - (i) whose staff includes or included members; or
    - (ii) whose employees include or included members;
- to pay to the Commonwealth such part of the costs estimated by CSC in respect of that period as:
- (c) is determined by the Minister having regard to such matters (if any) as are prescribed; and
  - (d) is specified in the direction.
- (3) An authority or body that is required to make a payment under subsection (2) may apply for that purpose any money under its control.
- (4) In subsection (2):

***declared authority*** means:

- (a) an authority (other than an approved authority) or a body:
  - (i) whose staff consists of persons engaged under the *Public Service Act 1999*; and
  - (ii) that has been declared, in writing, by the Minister to be an authority or body to which this subsection applies; or
- (b) an authority or body (other than a State authority) whose employees include a person or persons mentioned in paragraph 6(1)(h) or (j) or subparagraph 6(5)(b)(ii).

### **36 Cost of medical examination on entry into Public Sector Superannuation Scheme**

Where a person who:

- (a) proposes to become, or is, employed by an approved authority; or

Section 37

---

- (b) is the proposed appointee to, or the holder of, a statutory office whose remuneration is paid by an approved authority; or
- (c) proposes to become, or is, a member of the staff of an authority (other than an approved authority) or a body:
  - (i) whose staff consists of persons engaged under the *Public Service Act 1999*; and
  - (ii) that has been declared, in writing, by the Minister to be an authority to which this section applies; or
- (d) proposes to become, or is, employed by an authority or body (other than a State authority) whose employees include a person or persons mentioned in paragraph 6(1)(h) or (j) or subparagraph 6(5)(b)(ii);

is required under the Rules to undergo a medical examination or a test because the person proposes to become, or becomes, a member of the Public Sector Superannuation Scheme, the cost of the examination or test is to be paid by the authority referred to in paragraph (a), (b) or (c) (as the case may be), and the authority may apply for that purpose any money under its control.

**37 Costs—CSC being assisted by panel of persons**

- (1) If, under the Rules, CSC engages a panel of persons to assist it to reach a decision:
  - (a) whether or not to approve invalidity retirement for a member who has not reached the age of 60; or
  - (b) in relation to the payment of preserved benefits; or
  - (ba) in relation to the payment of associate benefits; or
  - (c) in relation to the payment of an invalidity retirement benefit on the ground that a person was totally and permanently incapacitated on his or her last day as a member;any cost specified in subsection (2) is payable from the Consolidated Revenue Fund, which is appropriated accordingly.
- (2) Each of the following costs is specified for the purposes of subsection (1):
  - (a) any cost incurred in relation to the panel of persons;

---

**Section 37A**

---

- (b) the cost of any medical examination that the person is required to undergo under the Rules to provide the panel with the medical evidence that it requires for the purpose of assisting CSC.
- (3) Where CSC decides not to approve invalidity retirement for a member, the cost of any rehabilitation program recommended for the member under the Rules and undertaken by the member is payable from the Consolidated Revenue Fund, which is appropriated accordingly.

**37A CSC liable to pay surcharge under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997***

- (1) To remove any doubt, it is stated that:
  - (a) for the purposes of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, CSC in its capacity as a superannuation provider is an entity distinct from the Commonwealth; and
  - (b) consequently, section 33 of that Act does not affect the liability of CSC under that Act to pay surcharge on the surchargeable contributions of members.
- (2) Amounts payable by CSC under subsection 16(6) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* are to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

**38 Pre-assessment payments**

- (1) The Commonwealth must pay to CSC an amount equal to any pre-assessment payment made by CSC to a member under the Rules.
- (2) Any payment by the Commonwealth under subsection (1) is to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

Section 39

---

**39 Recovery of unpaid contributions etc.**

- (1) Any amount (including an amount of contributions) that is payable to CSC under this Act or the Rules may be recovered by CSC in a court of competent jurisdiction as a debt.
- (2) Any contribution payable by a person to CSC under the Rules that remains unpaid when the person ceases to be a member may be deducted from any payment or payments of benefit payable under the Rules to, or in respect of, the person.
- (3) Where for any reason (including the making of, or cancellation of, an election under the Rules), CSC has paid an amount of benefit that is, or has become, not payable:
  - (a) the amount so paid may be recovered by CSC in a court of competent jurisdiction as a debt; or
  - (b) where the person to whom that amount was paid is receiving, or is entitled to receive, a benefit under the Rules, the amount so paid, or such part of that amount as CSC determines, may, if CSC in its discretion so directs, be recovered by deduction from that benefit.

**39A Recoverable payments**

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

*Recovery*

- (2) If a payment is made under subsection (1) to the recipient, the relevant amount:
  - (a) is a debt due to the Commonwealth by the recipient; and
  - (b) may be recovered by CSC, on behalf of the Commonwealth, in a court of competent jurisdiction.
- (3) If:

---

**Section 39B**

---

- (a) a payment is made under subsection (1) to the recipient; and
- (b) the recipient is receiving, or is entitled to receive, a benefit under the Rules;

then:

- (c) the relevant amount; or
- (d) such part of the relevant amount as the Board of CSC determines;

may, if the Board of CSC so directs, be recovered by deduction from that benefit.

*Appropriation*

- (4) For the purposes of section 18, a payment under subsection (1) of this section is taken to be a payment by the Commonwealth under section 16 or 16A.

### **39B Recoverable death payments**

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

Section 39C

---

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

*Recovery*

- (3) If a payment is made under subsection (1), the relevant amount:
- (a) is a debt due to the Commonwealth by the legal personal representative of the deceased person; and
  - (b) may be recovered by CSC, on behalf of the Commonwealth, in a court of competent jurisdiction.

*Appropriation*

- (4) For the purposes of section 18, a benefit under subsection (1) of this section is taken to be a payment by the Commonwealth under section 16 or 16A.

**39C Reports about recoverable payments and recoverable death payments**

- (1) CSC must cause a report of the following information to be published, in such manner as the Board of CSC thinks fit:
- (a) the number of payments that any employee of CSC was aware of that were made under subsection 39A(1) or 39B(1) during the reporting period (see subsection (2) of this section);
  - (b) the total amount of payments referred to in paragraph (a);
  - (c) the number of payments made under subsection 39A(1) or 39B(1) that any employee of CSC became aware of during the reporting period that were made during an earlier reporting period;
  - (d) the total amount of payments referred to in paragraph (c);
  - (e) for each payment referred to in paragraph (c)—the reporting period in which the payment was made.
- (2) The *reporting period* is:
- (a) a financial year; or



- (b) if a shorter recurring period is prescribed under paragraph (5)(a)—that period.
- (3) A report is not required if no employee of CSC is aware of any payments referred to in paragraph (1)(a) or (c).

*When report must be provided*

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

*Power to make legislative instruments*

- (5) The Minister administering the *Public Governance, Performance and Accountability Act 2013* may, by legislative instrument, prescribe:
  - (a) a period for the purposes of paragraph (2)(b); or
  - (b) a number of months for a reporting period for the purposes of paragraph (4)(b).

#### **40 Payment of fees**

- (1) Such fees as are prescribed are payable to the Commonwealth by a person who, under the Rules, requests CSC to reconsider one of its decisions.
- (2) The regulations may make provision for and in relation to the refund of any fees paid under subsection (1).

#### **41 Assignment of benefits**

No pension or other benefit payable under the Rules is capable of being assigned.

Section 42

---

**42 Member etc. bound by Rules**

- (1) A person who is, or has ceased to be, a member is subject to the Rules to the extent that they are applicable in relation to the person.
- (1A) A person who is, or has ceased to be, an associate is subject to the Rules to the extent that they are applicable in relation to the person. For this purpose, *associate* means a person to whom an associate benefit is payable.
- (2) An authority or body who is, or has been, the employer of a member is subject to the Rules to the extent that they are applicable in relation to the authority or body.
- (3) The Commonwealth is subject to the Rules to the extent that they are applicable in relation to the Commonwealth because it is, or has been, the employer of a member.

**42A CSC may require employers to distribute information etc. to members**

- (1) CSC may:
  - (a) send to the designated employer of a member any document or written information that:
    - (i) under this Act; or
    - (ii) under any other Act;CSC is required to send to the member; and
  - (b) ask the designated employer to give the document or information to the member.
- (2) CSC must ensure that the confidentiality of any document or information sent to the designated employer for transmission to the member is preserved.
- (3) The designated employer of a member must comply with a request of CSC under subsection (1) unless doing so would breach Chapter 7 of the *Corporations Act 2001*.

### 43 Indemnification

- (1) Any matter or thing done, or omitted to be done, in good faith by a person who is a member of a Reconsideration Advisory Committee established under the Trust Deed in the performance of his or her functions under the Trust Deed in relation to the Public Sector Superannuation Scheme or the PSS Fund does not subject him or her personally to any action, liability, claim or demand.
- (2) Subsection (1) does not preclude CSC from being subject to any action, liability, claim or demand.

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

### 44 Bank not liable in respect of certain payments out of account of deceased pensioner

- (1) In this section:

*bank* has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

*primary pension* means a pension payable to a pensioner.

- (2) Where:
  - (a) after the death of a retirement pensioner, an amount purporting to be an instalment of primary pension payable to the pensioner on a pension pay day not later than the 7th pension pay day after his or her death is paid into an account of the pensioner with a bank; and
  - (b) the bank pays, out of that account, to the spouse of the deceased pensioner an amount not exceeding the amount so paid into the account;

then, in spite of any other law, the bank is not liable to the Commonwealth, the personal representative of the deceased pensioner or anyone else for any loss incurred because of the payment of that amount to the spouse of the pensioner.

Section 44A

---

**44A Declarations etc. by Minister or CSC**

If a provision of this Act refers to a declaration or determination made or other thing done by the Minister or CSC and there is no other provision in this Act expressly authorising the Minister or CSC to make such a declaration or determination or do such a thing, the Minister or CSC, as the case may be, is, and is taken to have at all times been, authorised to make such a declaration or determination or do such a thing.

**45 Legislative instruments**

- (1) Each of the following instruments is a legislative instrument:
  - (a) a declaration for the purposes of paragraph (a) of the definition of *approved authority* in section 3;
  - (b) a declaration for the purposes of paragraph (b) of the definition of *approved authority* in section 3;
  - (c) a declaration for the purposes of paragraph (b) of the definition of *statutory office* in section 3;
  - (d) a declaration for the purposes of the definition of *temporary employee* in section 3;
  - (e) an instrument under subsection 5(1);
  - (f) a declaration under paragraph 6(1)(j);
  - (g) a declaration under paragraph 6(2)(c);
  - (h) a determination under section 11;
  - (i) a determination under subsection 33C(2);
  - (k) a determination under section 33E;
  - (l) a determination under subsection 33G(2).
- (2) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to an instrument referred to in subsection (1).
- (3) A declaration referred to in paragraph (1)(b) may be expressed to have taken effect from and including a day not earlier than 12 months before the making of the declaration.

- (4) A declaration referred to in paragraph (1)(c), (d) or (f) that is made after the commencement of this subsection may take effect on a day not earlier than 12 months before the making of the declaration.
- (5) If a declaration referred to in paragraph (1)(c), (d) or (f) is made after the commencement of this subsection, and before the start of the period of 12 months immediately before the making of the declaration contributions were accepted from, or in respect of:
- (a) if a declaration is a declaration referred to in paragraph (1)(c)—the holder of the statutory office concerned; or
  - (b) if the declaration is a declaration referred to in paragraph (1)(d) or (f)—a person to whom the declaration relates;
- the declaration may take effect on a day not earlier than the earliest day on which contributions were so accepted.
- (6) Subsection 12(2) of the *Legislative Instruments Act 2003* does not apply in relation to an instrument referred to in paragraph (1)(e).

#### **46 Exercise of certain powers by Minister**

- (1) The Minister may not make a declaration or determination (other than a determination under section 33E), or issue an instrument, referred to in subsection 45(1), unless:
- (a) CSC has consented to the making of the declaration or determination or the issue of the instrument; or
  - (b) the declaration, determination or instrument:
    - (i) relates to a payment by an employer-sponsor within the meaning of the *Superannuation Industry (Supervision) Act 1993* that will, after the making of the declaration or determination or the issue of the instrument, be required or permitted to be made under this Act; or
    - (ii) relates solely to the termination of the PSS Fund; or
    - (iii) is made or issued in circumstances covered by regulations made for the purposes of

Section 47

---

subparagraph 60(1)(b)(iii) of the *Superannuation Industry (Supervision) Act 1993*.

- (2) For the purposes of subparagraph (1)(b)(i), a payment under the Trust Deed or the Rules is taken to be a payment by an employer-sponsor referred to in that subparagraph.

#### 47 Delegation by Minister

The Minister may, by signed instrument, delegate all or any of his or her powers under this Act or the regulations to:

- (a) CSC or an employee of CSC; or
- (aa) a director (within the meaning of the *Governance of Australian Government Superannuation Schemes Act 2011*); or
- (b) an officer of the Department.

#### 48 Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that:
- (a) are required or permitted to be prescribed by this Act; or
  - (b) are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Regulations may not be made after the commencement of this subsection unless:
- (a) CSC has consented to the making of the regulations; or
  - (b) the regulations:
    - (i) relate to a payment by an employer-sponsor within the meaning of the *Superannuation Industry (Supervision) Act 1993* that will, after the making of the regulations, be required or permitted to be made under this Act; or
    - (ii) relate solely to the termination of the PSS Fund; or
    - (iii) are made in circumstances covered by regulations made for the purposes of subparagraph 60(1)(b)(iii) of the *Superannuation Industry (Supervision) Act 1993*.

- (3) For the purposes of subparagraph (2)(b)(i), a payment under the Trust Deed or the Rules is taken to be a payment by an employer-sponsor referred to in that subparagraph.

**49 Regulations relating to the operation of the *Superannuation Industry (Supervision) Act 1993* and certain other laws**

- (1) The regulations may make any provision that is necessary for the purpose of enabling the occupational superannuation scheme established by this Act to satisfy any condition or requirement of, or made under, an eligible regulatory law that is capable of applying in relation to the scheme.
- (2) If regulations made for the purposes of subsection (1) are inconsistent with a provision of this Act, the regulations prevail and the provision, to the extent of the inconsistency, is of no effect.
- (3) In this section:

*eligible regulatory law* means:

- (a) the *Superannuation Industry (Supervision) Act 1993*; or
- (b) the *Superannuation (Excluded Funds) Taxation Act 1987* (including a repealed provision of that Act which continues to apply because of the *Taxation Laws Amendment (Superannuation) Act 1992* or the *Occupational Superannuation Standards Amendment Act 1993*); or
- (ba) the *Financial Institutions Supervisory Levies Collection Act 1998*; or
- (c) the *Superannuation (Resolution of Complaints) Act 1993*; or
- (ca) the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; or
- (cb) the *Family Law Act 1975*; or
- (d) the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

## Endnotes

Endnote 1—About the endnotes

---

## Endnotes

### Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

### Abbreviation key—Endnote 2

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

### Legislation history and amendment history—Endnotes 3 and 4

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

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

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

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the amendment is set out in the endnotes.



**Endnote 2—Abbreviation key**

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

## Endnotes

### Endnote 3—Legislation history

---

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Act 1990	38, 1990	7 June 1990	Parts 3–5 (ss. 6–19), ss. 35–42 and 44: 1 July 1990 Remainder: Royal Assent	
Commonwealth Funds Management Limited Act 1990	13, 1991	21 Jan 1991	Part 10 (ss. 65–69): 1 July 1991 ( <i>a</i> )	ss. 4 and 5
Superannuation Legislation Amendment Act 1991	130, 1991	2 Sept 1991	ss. 10, 11 and 60: 1 Apr 1991 s. 26: 18 Dec 1986 ss. 82–84: 1 July 1990 Remainder: Royal Assent	—
Superannuation Legislation Amendment Act 1992	187, 1992	18 Dec 1992	ss. 56, 57, 58(1) (d), 58(2) and 61–65: Royal Assent ( <i>b</i> ) ss. 58(1)(a)–(c), 59 and 60: 18 June 1993 ( <i>b</i> )	s. 58(2)
Qantas Sale Act 1992	196, 1992	21 Dec 1992	Schedule (Part 4): 30 July 1995 ( <i>see Gazette</i> 1995, No. S324) ( <i>c</i> ) Schedule (Parts 3 and 6): ( <i>c</i> )	s. 2(6) (am. by 60, 1993, s. 4; 168, 1994, s. 3)
<b>as amended by</b>				
Qantas Sale Amendment Act 1993	60, 1993	3 Nov 1993	10 Mar 1993	—
Qantas Sale Amendment Act 1994	168, 1994	16 Dec 1994	s. 3 (item 17): Royal Assent ( <i>d</i> )	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Superannuation Industry (Supervision) Consequential Amendments Act 1993	82, 1993	30 Nov 1993	ss. 1, 2, 14, 16(2), 41, 42, 45, 46, 48(1) and 52–64: 1 Dec 1993 Remainder: 1 July 1994	s. 51
Superannuation Legislation Amendment Act 1994	86, 1994	23 June 1994	Divs. 2–8 of Part 2 (ss. 4–63), ss. 66(a), (c), 79–87 and 92–98: 1 July 1994 ss. 66(b) and 67: 1 July 1993 s. 69: 1 July 1992 s. 76: 1 July 1990 Remainder: Royal Assent	ss. 78, 82(2), 88 and 90(2)
Superannuation Legislation Amendment Act (No. 1) 1995	54, 1995	23 June 1995	Schedule 4 (items 1–11, 13–16) and Schedule 5 (items 1–5): Royal Assent ( <i>e</i> ) Schedule 4 (items 12, 17): 1 July 1995 ( <i>e</i> )	—
<b>as amended by</b>				
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Schedule 3 (item 116): 23 June 1995 ( <i>f</i> )	—
CFM Sale Act 1996	58, 1996	20 Nov 1996	Schedule 2 (item 6): Royal Assent ( <i>g</i> )	—
Income Tax (Consequential Amendments) Act 1997	39, 1997	17 Apr 1997	1 July 1997	—
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Schedule 2 (items 1240, 1241): 1 Jan 1998 ( <i>see Gazette</i> 1997, GN49) ( <i>h</i> )	—

*Superannuation Act 1990*

53

Compilation No. 35

Compilation date: 1/7/15

Registered: 15/7/15

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Legislation Amendment (Superannuation Contributions Tax) Act 1997	187, 1997	7 Dec 1997	Schedule 2: Royal Assent (i)	—
Financial Sector Reform (Consequential Amendments) Act 1998	48, 1998	29 June 1998	Schedule 1 (items 179–181): 1 July 1998 (see <i>Gazette</i> 1998, No. S316) (j)	—
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999	44, 1999	17 June 1999	Schedule 7 (items 216, 217): 1 July 1999 (see <i>Gazette</i> 1999, No. S283) (k) Schedule 8 (items 22, 23): Royal Assent (k)	s. 3(2)(e) (am. by 160, 2000, Sch. 4 [item 4]) Sch. 8 (items 22, 23)
<b>as amended by</b> Financial Sector Legislation Amendment Act (No. 1) 2000	160, 2000	21 Dec 2000	Schedule 1 (item 21): Royal Assent Remainder: 18 Jan 2001	—
Superannuation (Unclaimed Money and Lost Members) Consequential and Transitional Act 1999	128, 1999	13 Oct 1999	Schedule 1 (item 43): 13 Oct 1999 (l)	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (items 883–889): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (m)	—
Australian Federal Police Legislation Amendment Act 2000	9, 2000	7 Mar 2000	2 July 2000 (see <i>Gazette</i> 2000, No. S328)	Sch. 3 (items 20, 33(2), 34, 35)

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Corporations (Repeals, Consequential and Transitionals) Act 2001	55, 2001	28 June 2001	ss. 4–14: 15 July 2001 ( <i>see Gazette</i> 2001, No. S285) Schedule 3 (item 495): ( <i>n</i> )	ss. 4–14
Superannuation Legislation Amendment (Post-retirement Commutations) Act 2001	98, 2001	22 Aug 2001	22 Aug 2001	—
Finance and Administration Legislation Amendment (Application of Criminal Code) Act 2001	109, 2001	17 Sept 2001	15 Oct 2001	s. 5
Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Act (No. 1) 2003	64, 2003	30 June 2003	Schedule 2 (items 8, 14): 1 July 1995 Schedule 2 (items 9–13, 15–17): 1 July 2003	Sch. 2 (item 17)
Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004	58, 2004	4 May 2004	Schedule 1: 18 May 2004 Remainder: Royal Assent	s. 4
Superannuation (Consequential Amendments) Act 2005	81, 2005	29 June 2005	Schedule 1 (items 1–8): 29 June 2005 ( <i>see s. 2(1)</i> ) Schedule 1 (items 9–18): 1 July 2005 Schedule 1 (item 19): Royal Assent	Sch. 1 (item 4)
Superannuation Legislation Amendment (Trustee Board and Other Measures) Act 2006	51, 2006	9 June 2006	Schedule 1 (items 37–59, 66–84): 1 July 2006	Sch. 1 (items 66–84)

*Superannuation Act 1990*

55

Compilation No. 35

Compilation date: 1/7/15

Registered: 15/7/15

## Endnotes

### Endnote 3—Legislation history

---

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Superannuation Legislation Amendment (Superannuation Safety and Other Measures) Act 2006	112, 2006	23 Oct 2006	Schedule 1 (items 20–24): Royal Assent	—
<b>as amended by</b>				
Superannuation Legislation Amendment (Trustee Board and Other Measures) Act 2006	51, 2006	9 June 2006	Schedule 1 (item 65): <i>(o)</i>	—
Superannuation Legislation Amendment Act 2007	165, 2007	25 Sept 2007	Schedule 2 (items 1–3): 1 July 2008	—
Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 2008	26, 2008	23 June 2008	Schedule 2 (items 29–32) and Schedule 3: Royal Assent	—
Fair Work (State Referral and Consequential and Other Amendments) Act 2009	54, 2009	25 June 2009	Schedule 10 (items 9, 10): <i>(p)</i>	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 6 (item 133): 19 Apr 2011	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 1082, 1083): <i>(q)</i>	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011	58, 2011	28 June 2011	Schedule 1 (items 207– 221, 247(3)): ( <i>r</i> )	—
<b>as amended by</b>				
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Schedule 2 (item 37): ( <i>s</i> )	—
Financial Framework Legislation Amendment Act (No. 2) 2012	82, 2012	28 June 2012	Schedule 1 (item 123): 29 June 2012	—
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Schedule 1 (item 120): Royal Assent	—
Public Service Amendment Act 2013	2, 2013	14 Feb 2013	Sch 3 (item 20): 1 July 2013 ( <i>see</i> F2013L00484)	—
Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and Other Measures) Act 2013	82, 2013	28 June 2013	Sch 4 (item 12): Royal Assent	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 12 (items 164–167) and Sch 14 (items 1–4): 1 July 2014 (s 2(1) items 6, 14)	Sch 14 (items 1– 4)
<b>as amended by</b>				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (item 7) and Sch 7: 14 Apr 2015 (s 2)	Sch 7

*Superannuation Act 1990*

57

Compilation No. 35

Compilation date: 1/7/15

Registered: 15/7/15

## Endnotes

### Endnote 3—Legislation history

---

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Governance of Australian Government Superannuation Schemes Legislation Amendment Act 2015	65, 2014	17 June 2015	Sch 1 (items 53–62) and Sch 2: 1 July 2015 (s 2(1) item 2)	Sch 1 (items 55, 58) and Sch 2

---

- (a) The *Superannuation Act 1990* was amended by Part 10 (sections 65–69) only of the *Commonwealth Funds Management Limited Act 1990*, subsection 2(5) of which provides as follows:
- (5) If the provisions referred to in subsection (4) do not commence under that subsection before 1 July 1991, they commence on that day.
- (b) The *Superannuation Act 1990* was amended by sections 56–65 only of the *Superannuation Legislation Amendment Act 1992*, subsections 2(1) and (9) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (9) If paragraphs 58(1)(a), (b) and (c) and sections 59 and 60 do not commence under subsection (8) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.
- (c) The *Superannuation Act 1990* was amended by the Schedule (Parts 3, 4 and 6) only of the *Qantas Sale Act 1992*, subsections 2(2), 3(b), (5) and (6) of which provide as follows:
- (2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
- (3) A Proclamation may fix a day that is earlier than the day on which the Proclamation is published in the *Gazette* but only if:
- (b) in the case of sections 22, 23, 26, 27, 29, 32, 33, 34, 42, 45, 46, 47, 48 and 49 and Parts 3 and 4 of the Schedule—the day is not earlier than the 50% sale day; and
- (5) If, on the 100% sale day, Part 3 of the Schedule has not commenced, then, on the day on which Part 7 of the Schedule commences, Parts 3 and 6 of the Schedule are taken to have been repealed.



## Endnote 3—Legislation history

- (6) If a provision of this Act has not commenced before 31 August 1995, the provision is taken to have been repealed on that day.  
The Schedule (Parts 3 and 6) are taken to have been repealed on 31 August 1995.
- (d) The *Qantas Sale Act 1992* was amended by section 3 (item 17) only of the *Qantas Sale Amendment Act 1994*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (e) The *Superannuation Act 1990* was amended by Schedule 4 (items 1–17) and Schedule 5 (items 1–5) only of the *Superannuation Legislation Amendment Act (No. 1) 1995*, subsections 2(1) and (3) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (3) The amendments made by items 5, 11, 28, 36, 38, 39, 43, 47, 54, 55, 57, 58, 59, 72, 94, 95, 97, 100, 101, 102, 105, 107, 120, 137 and 138, paragraph (b) of item 145 and items 149 and 161 in Schedule 2, and the amendments made by items 12 and 17 in Schedule 4, take effect on 1 July 1995.
- (f) The *Superannuation Legislation Amendment (No. 1) Act 1995* was amended by Schedule 3 (item 116) only of the *Statute Law Revision Act 1996*, subsection 2(3) of which provides as follows:
- (3) Each item in Schedule 3 is taken to have commenced when the Act containing the provision amended by the item received the Royal Assent.
- (g) The *Superannuation Act 1990* was amended by Schedule 2 (item 6) only of the *CFM Sale Act 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (h) The *Superannuation Act 1990* was amended by Schedule 2 (items 1240 and 1241) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:
- (2) Schedules 1, 2 and 4 commences on the same day as the *Financial Management and Accountability Act 1997*.
- (i) The *Superannuation Act 1990* was amended by Schedule 2 only of the *Superannuation Legislation Amendment (Superannuation Contributions Tax) Act 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

## Endnotes

### Endnote 3—Legislation history

---

- (j) The *Superannuation Act 1990* was amended by Schedule 1 (items 179–181) only of the *Financial Sector Reform (Consequential Amendments) Act 1998*, subsection 2(2) of which provides as follows:
- (2) Subject to subsections (3) to (14), Schedules 1, 2 and 3 commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*.
- (k) The *Superannuation Act 1990* was amended by Schedule 7 (items 216 and 217) only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, subsections 3(1), (2)(e) and (16) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) The following provisions commence on the transfer date:
- (e) subject to subsection (12), Schedule 7, other than items 43, 44, 118, 205 and 207 (the commencement of those items is covered by subsections (10), (11) and (13)).
- (16) The Governor-General may, by Proclamation published in the *Gazette*, specify the date that is to be the transfer date for the purposes of this Act.
- (l) The *Superannuation Act 1990* was amended by Schedule 1 (item 43) only of the *Superannuation (Unclaimed Money and Lost Members) Consequential and Transitional Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this section, **commencing time** means the time when the *Superannuation (Unclaimed Money and Lost Members) Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.
- (m) The *Superannuation Act 1990* was amended by Schedule 1 (items 883–889) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.
- (n) The *Superannuation Act 1990* was amended by Schedule 3 (item 495) only of the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, subsection 2(9) of which provides as follows:
- (9) Item 495 of Schedule 3 commences on the later of:
- (a) the time when the *Corporations Act 2001* commences; or

## Endnote 3—Legislation history

- (b) the time when item 14 of Schedule 1 to the *Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Act 2001* commences.

The *Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Act 2001* has not been enacted. Therefore this amendment does not commence.

- (o) Subsection 2(1) (item 3) of the *Superannuation Legislation Amendment (Trustee Board and Other Measures) Act 2006* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

---

**Commencement information**


---

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
3. Schedule 1, Part 2	Immediately before the commencement of Schedule 1 to the <i>Superannuation Legislation Amendment (Superannuation Safety and Other Measures) Act 2006</i> .  However, the provision(s) do not commence at all if that Schedule commences before 1 July 2006.	23 October 2006

- (p) Subsection 2(1) (item 32) of the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
32. Schedule 10	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	1 July 2009

- (q) Subsection 2(1) (item 8) of the *Acts Interpretation Amendment Act 2011* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

## Endnotes

### Endnote 3—Legislation history

---

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
8. Schedule 2, items 1075 to 1083	At the same time as the provision(s) covered by table item 2.  However, if item 183 of Schedule 1 to the <i>Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011</i> commences at or before that time, the provision(s) do not commence at all.	Do not commence

- (r) Subsection 2(1) (item 2) of the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedules 1 and 2	Immediately after the commencement of section 2 of the <i>Governance of Australian Government Superannuation Schemes Act 2011</i> .	1 July 2011

- (s) Subsection 2(1) (item 28) of the *Statute Law Revision Act 2012* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
28. Schedule 2, item 37	Immediately after the time specified in the <i>Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011</i> for the commencement of Schedule 1 to that Act.	1 July 2011

## Endnote 4—Amendment history

## Endnote 4—Amendment history

Provision affected	How affected
<b>Part 1</b>	
s. 3 .....	am. Nos. 13 and 130, 1991; Nos. 187 and 196, 1992; No. 86, 1994; No. 54, 1995; No. 146, 1999; No. 64, 2003; No. 58, 2004; No. 81, 2005; No. 51, 2006; No. 58, 2011
s. 3AA.....	ad. No. 54, 1995 am. No. 146, 1999; Nos. 5 and 58, 2011
s. 3AB.....	ad. No. 54, 1995
s. 3A.....	ad. No. 13, 1991
s. 3B.....	ad. No. 109, 2001
<b>Part 2</b>	
Heading to s. 4 .....	am. No. 54, 1995
s. 4 .....	am. No. 54, 1995; No. 26, 2008
s. 5 .....	am. No. 82, 1993; No. 86, 1994; No. 54, 1995; No. 51, 2006; No. 58, 2011
s. 5A.....	ad. No. 58, 2004 am. No. 26, 2008; No. 58, 2011
<b>Part 3</b>	
Heading to Part 3 .....	am. No. 54, 1995
Heading to s. 6.....	am. No. 54, 1995
s. 6 .....	am. No. 130, 1991; No. 187, 1992; No. 54, 1995; No. 146, 1999; No. 81, 2005; No. 165, 2007; No. 58, 2011; No 2, 2013
Heading to s. 6A.....	am. No. 51, 2006
s. 6A.....	ad. No. 130, 1991 am. No. 51, 2006; No. 58, 2011
s. 6B.....	ad. No. 165, 2007 am. No. 58, 2011 (as am. by No. 136, 2012)
s. 7 .....	rs. No. 187, 1992 am. No. 54, 1995; No. 58, 2011
s. 8 .....	am. No. 187, 1992; No. 54, 1995 (as am. by No. 43, 1996); No. 58, 2011

## Endnotes

### Endnote 4—Amendment history

---

<b>Provision affected</b>	<b>How affected</b>
Heading to s. 10 .....	rs. No. 9, 2000
s. 10 .....	am. No. 9, 2000
s. 11 .....	rs. No. 130, 1991
s. 12 .....	rs. No. 54, 1995 am. No. 64, 2003
Heading to s. 13 .....	am. No. 58, 2011
s. 13 .....	am. No. 130, 1991; No. 54, 1995; No. 54, 2009; No. 58, 2011
<b>Part 4</b>	
Heading to s. 14 .....	am. No. 54, 1995
s. 14 .....	am. No. 54, 1995; No. 58, 2011
s. 14A.....	ad. No. 54, 1995 am. No. 58, 2011
Heading to s. 15 .....	am. No. 54, 1995
s. 15 .....	am. No. 187, 1992; No. 54, 1995; No. 58, 2011
<b>Part 5</b>	
Heading to s. 16 .....	am. No. 54, 1995
s. 16 .....	am. No. 187, 1992; No. 54, 1995; No. 98, 2001; No. 58, 2011; No 82, 2013
s. 16A.....	ad. No. 58, 2004 am. No. 58, 2011
Heading to s. 17 .....	am. No. 58, 2011
s. 17 .....	am. No. 54, 1995; No. 58, 2011
s. 18 .....	am. No. 58, 2004
s. 19 .....	am. No. 130, 1991; No. 146, 1999; No. 81, 2005
<b>Part 6</b>	
Heading to Part 6 .....	am. No. 54, 1995 rs. No. 51, 2006; No. 58, 2011
Part 6.....	rs. No. 58, 2011
s. 20 .....	am. No. 54, 1995; No. 51, 2006 rep. No. 58, 2011
Note to s. 20.....	ad. No. 51, 2006

---

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
	rep. No. 58, 2011
s. 21 .....	am. No. 152, 1997
	rep. No. 58, 2011
s. 22 .....	am. No. 81, 2005
	rs. No. 58, 2011
Note to s. 22.....	ad. No. 81, 2005
	am. No. 51, 2006
	rs. No. 58, 2011
s. 23 .....	am. No. 51, 2006
	rep. No. 58, 2011
s. 24 .....	rep. No. 58, 2011
s. 25 .....	am. No. 81, 2005
	rep. No. 58, 2011
s. 26 .....	am. No. 54, 1995; Nos. 39 and 187, 1997; No. 81, 2005
	rep. No. 58, 2011
s. 27 .....	rs. No. 152, 1997
	rep. No. 58, 2011
s. 27A.....	ad. No. 152, 1997
	am. No. 109, 2001; No. 51, 2006
	rep. No. 58, 2011
Note to s. 27A(3) .....	ad. No. 109, 2001
	rep. No. 58, 2011
s. 27B.....	ad. No. 152, 1997
	rep. No. 58, 2011
s. 28 .....	am. No. 86, 1994; No. 54, 1995; No. 81, 2005
	rep. No. 58, 2011
s. 28A.....	ad. No. 130, 1991
	rs. No. 64, 2003
	am. Nos. 51 and 112, 2006
	rep. No. 58, 2011
Part 7 .....	rep. No. 58, 2011

## Endnotes

### Endnote 4—Amendment history

---

<b>Provision affected</b>	<b>How affected</b>
s. 29 .....	am. No. 54, 1995; No. 81, 2005 rep. No. 58, 2011
s. 30 .....	rep. No. 58, 2011
Part 8 .....	rep. No. 13, 1991
ss. 31, 32 .....	rep. No. 13, 1991
<b>Part 8A</b>	
Part 8A .....	ad. No. 130, 1991
<b>Division 1</b>	
s. 33A .....	ad. No. 130, 1991
<b>Division 2</b>	
s. 33B .....	ad. No. 130, 1991 am. No. 54, 1995; No. 58, 2011
s. 33C .....	ad. No. 130, 1991 am. No. 54, 1995
s. 33D .....	ad. No. 130, 1991 am. No. 86, 1994; No. 54, 1995; No. 64, 2003; No. 58, 2011
s. 33E .....	ad. No. 130, 1991 am. No. 54, 1995
s. 33F .....	ad. No. 130, 1991 am. No. 39, 1997
<b>Division 3</b>	
Heading to s. 33G .....	am. No. 54, 1995
s. 33G .....	ad. No. 130, 1991 am. No. 54, 1995; No. 64, 2003
<b>Part 9</b>	
s. 33 .....	rs. No. 13, 1991 am. No. 54, 1995 rep. No. 58, 1996
s. 33H .....	ad. No. 51, 2006 am. No. 58, 2011
Note to s. 33H(1) .....	am. No. 58, 2011

---



## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
Heading to s. 33AA .....	am. No. 58, 2011
s. 33AA.....	ad. No. 54, 1995 am. No. 58, 2011
Renumbered s. 33J.....	No. 136, 2012
s. 34 .....	am. No. 187, 1992; No. 54, 1995; No. 51, 2006; No. 58, 2011
s. 35 .....	am. No. 130, 1991; No. 187, 1992; No. 86, 1994; No. 146, 1999; No. 81, 2005; No. 58, 2011
Heading to s. 36 .....	am. No. 54, 1995
s. 36 .....	am. No. 130, 1991; No. 54, 1995; No. 146, 1999; No. 81, 2005
Heading to s. 37 .....	am. No. 58, 2011
s. 37 .....	rs. No. 187, 1992 am. No. 58, 2004; No. 58, 2011
Heading to s. 37A .....	am. No. 58, 2011
s. 37A.....	ad. No. 187, 1997 am. No. 58, 2011
s. 38 .....	am. No. 54, 1995; No. 58, 2011
s. 39 .....	am. No. 58, 2011
s. 39A.....	ad. No. 82, 2012 am 62, 2014; No 65, 2015
s. 39B.....	ad. No. 82, 2012 am No 62, 2014; No 65, 2015
s. 39C.....	ad. No. 82, 2012 am No 62, 2014 rs No 65, 2015
s. 40 .....	am. No. 58, 2011
s. 42 .....	am. No. 58, 2004
Heading to s. 42A .....	am. No. 58, 2011
s. 42A.....	ad. No. 64, 2003 am. No. 112, 2006; No. 58, 2011
Heading to s. 43 .....	am. No. 58, 2011

## Endnotes

### Endnote 4—Amendment history

---

<b>Provision affected</b>	<b>How affected</b>
s. 43 .....	am. No. 130, 1991; No. 54, 1995; No. 64, 2003; No. 81, 2005; No. 51, 2006; No. 58, 2011
Note to s. 43(2) .....	ad. No. 58, 2011
Heading to s. 44 .....	am. No. 44, 1999
s. 44 .....	am. No. 48, 1998; No. 44, 1999; No 62, 2014
Heading to s. 44A .....	am. No. 58, 2011
s. 44A .....	ad. No. 86, 1994 am. No. 58, 2011
Heading to s. 45 .....	am. No. 26, 2008
s. 45 .....	am. No. 130, 1991; No. 86, 1994; No. 64, 2003; No. 26, 2008
s. 46 .....	rs. No. 86, 1994 am. No. 54, 1995; No. 58, 2011
s. 47 .....	am. No. 58, 2011; No 65, 2015
s. 48 .....	am. No. 86, 1994; No. 54, 1995; No. 58, 2011
s. 49 .....	ad. No. 86, 1994 am. No. 39, 1997; No. 48, 1998; No. 128, 1999; No. 58, 2004
Schedule .....	rep. No. 26, 2008

---