



Military Superannuation and Benefits Act 1991

No. 135 of 1991

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SCHEDULE

FORM OF TRUST DEED



Military Superannuation and Benefits Act 1991

No. 135 of 1991

An Act to make provision for and in relation to an occupational superannuation scheme for, and the payment of other benefits to, members of the Defence Force, and for related purposes

[Assented to 7 September 1991]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Military Superannuation and Benefits Act 1991*.

Commencement

2. (1) Parts 1, 2, 6 and 7, sections 42 and 47, paragraph 49 (1) (a) and sections 50 to 52 commence on the day on which this Act receives the Royal Assent.

(2) Section 61 commences on 1 September 1991.

(3) The remaining provisions of this Act commence on 1 October 1991.

Interpretation

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

“**Board**” means the Military Superannuation and Benefits Board of Trustees No. 1 established by section 18;

“**Chairperson**” means the Chairperson of the Board;

“**Commissioner**” means the person who for the time being:

(a) holds the office of; or

(b) is acting as;

Commissioner for Superannuation under Part II of the *Superannuation Act 1976*;

“**DFRDB Act**” means the *Defence Force Retirement and Death Benefits Act 1973*;

“**Fund**” means the fund established, and vested in the Board, by the Trust Deed;

“**Rules**” means the Rules for the administration of the Scheme set out in the Schedule to the Trust Deed;

“**Scheme**” means the superannuation scheme established by the Trust Deed;

“**Trust Deed**” means the deed referred to in section 4 and includes that deed as subsequently amended under section 5;

“**trustee**” means a person who holds office as a trustee of the Board and includes the Chairperson.

(2) Unless the contrary intention appears, a word or expression:

(a) defined, for the purposes of the Rules, in Schedule 1 to the Rules; and

(b) used in a provision of this Act other than the Deed;

has in that provision the same meaning as it has in the Rules.

PART 2—THE TRUST DEED

Deed to establish Superannuation Scheme etc.

4. (1) 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 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 superannuation scheme; and
 - (c) set out the functions and powers of the Board.
- (2) The deed must be in the form set out in the Schedule.

Amendment of Trust Deed

5. (1) The Minister may, by signed instrument, amend the Trust Deed.

(2) Where compliance with a provision of the Trust Deed as amended under subsection (1) would have the effect that the Fund would cease:

- (a) to be a superannuation fund within the meaning of the *Occupational Superannuation Standards Act 1987*; or
- (b) to comply with any standard applicable to the operation of superannuation funds that has been prescribed for the purposes of subsection 7 (1) of that Act;

that provision is invalid.

PART 3—MEMBERS OF SUPERANNUATION SCHEME

Membership of Superannuation Scheme

6. (1) Subject to subsection (2), each of the following persons is, by force of this section, a member of the Scheme:

- (a) a member of the Permanent Forces;
- (b) a member of the Emergency Forces or the Reserve Forces who is rendering continuous full-time service under an undertaking to serve for a period of not less than 12 months;
- (c) a member of the Emergency Forces or the Reserve Forces who is rendering continuous full-time service under an undertaking to serve for a period of less than 12 months but not less than 3 months and:
 - (i) has elected to become a member of the Scheme under subsection 7 (1); or
 - (ii) has elected to become a member of the Scheme under section 61B of the DFRDB Act;
- (d) a member of the Emergency Forces or the Reserve Forces who is rendering continuous full-time service under an undertaking to serve for a period of less than 3 months with a unit of the Defence Force that was allotted for duty in an operational area (within the meaning of the *Veterans' Entitlements Act 1986*) and:

- (i) has elected to become a member of the Scheme under subsection 7 (2); or
- (ii) has elected to become a member of the Scheme under section 61B of the DFRDB Act.

(2) In spite of subsection (1), a person is not a member of the Scheme if the person is an eligible member of the Defence Force for the purposes of the DFRDB Act.

Election by member of the Emergency Forces or Reserve Forces to be a member

7. (1) A person who intends to render continuous full-time service as a member of the Emergency Forces or the Reserve Forces under an undertaking to serve for a period of not less than 3 months but less than 12 months may, before becoming such a member, elect in writing to become a member of the Scheme.

(2) A person who intends to render continuous full-time service as a member of the Emergency Forces or the Reserve Forces under an undertaking to serve for a period of less than 3 months with a unit of the Defence Force that was allotted for duty in an operational area (within the meaning of the *Veterans' Entitlements Act 1986*) may, before becoming such a member, elect in writing to become a member of the Scheme.

Cases where person taken not to have ceased to be a member

8. Where a person ceases to be a member and, immediately after so ceasing, again becomes a member, the person is taken, for the purposes of this Act, not to have ceased to be a member.

PART 4—CONTRIBUTIONS

Contributions of members to Superannuation Scheme etc. to be deducted from salary

9. Any contribution payable by a member under the Rules may be deducted from the member's salary and paid to the Board.

Contributions to Superannuation Scheme etc. by Department

10. (1) The Department must pay to the Board, in accordance with the Rules, all contributions that under the Rules are payable by the Department in respect of a member.

(2) Where any amount payable by the Department under subsection (1) remains unpaid after the day on which payment was due, the Department is liable to pay to the Board interest on that amount at such rate as the Board determines from time to time.

PART 5—PAYMENT OF BENEFITS

Interpretation

11. In this Part, a reference, in relation to a person who has ceased to be a member, to a member benefit, or to the part of a member benefit, that is totally funded is a reference to a member benefit, or to that part of a member benefit that consists only of:

- (a) contributions that have been paid by the person to the Board on or after the day on which the person became, or last became, a member; and
- (b) the interest on those contributions.

Member benefits

12. Where a member benefit becomes payable under the Rules to a person who has ceased to be a member:

- (a) if the member benefit is totally funded—the member benefit is payable to the person by the Board; or
- (b) if paragraph (a) does not apply:
 - (i) an amount equal to the part of the member benefit that is totally funded is payable by the Board to the Commonwealth; and
 - (ii) the member benefit is payable to the person by the Commonwealth.

Employer benefits

13. Where an employer benefit becomes payable under the Rules to a person who has ceased to be a member:

- (a) an amount equal to the funded employer benefit in relation to the person is payable by the Board to the Commonwealth; and
- (b) any benefit to which the person is entitled is payable to the person by the Commonwealth.

Preserved benefits

14. (1) Where:

- (a) a preserved benefit, or part of a preserved benefit, applicable to a person who has ceased to be a member becomes payable; and
- (b) the preserved benefit, or the part of the preserved benefit, consists only of an amount of member benefit;

then:

- (c) if the preserved benefit consists only of an amount of member benefit that is totally funded—the preserved benefit, or the part of the preserved benefit, is payable to, or in respect of, the person by the Board; or
- (d) if paragraph (c) does not apply:
 - (i) an amount equal to:

- (A) if the total amount of preserved benefit is payable—the part of the member benefit that is totally funded; or
 - (B) if a part of a preserved benefit is payable—a corresponding part of the part of the member benefit that is totally funded;
- is payable by the Board to the Commonwealth; and
- (ii) the preserved benefit, or the part of the preserved benefit, is payable to, or in respect of, the person by the Commonwealth.
- (2) Where:
- (a) a preserved benefit applicable to a person who has ceased to be a member becomes payable; and
 - (b) the preserved benefit includes both an amount of member benefit and an amount of employer benefit;

then:

- (c) an amount equal to the sum of:
 - (i) the part of the member benefit included in the preserved benefit that is totally funded; and
 - (ii) so much of the funded employer benefit in relation to the person as is included in the preserved benefit;is payable by the Board to the Commonwealth; and
- (d) the preserved benefit is payable to, or in respect of, the person by the Commonwealth.

Payment by or to the Commonwealth on reclassification of invalidity pensioner

15. (1) Where a person who is an invalidity pensioner classified as Class A or Class B is reclassified as Class C, the Commonwealth must pay to the Board an amount equal to the amount of the funded employer benefit in relation to the person at the time when the person was retired on the ground of invalidity.

(2) Where:

- (a) a person who was an invalidity pensioner classified as Class A or Class B was reclassified as Class C; and
 - (b) the person is subsequently reclassified as Class A or Class B;
- the Board must pay to the Commonwealth an amount equal to the funded employer benefit in relation to the person.

Payment by Commonwealth where an invalidity pensioner again becomes a member

16. Where a person who is an invalidity pensioner again becomes a member, the Commonwealth must pay to the Board an amount equal to the amount of the funded employer benefit in relation to the person at the time when the person was retired on the ground of invalidity.

Appropriation

17. Any payment by the Commonwealth under this Part is to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

PART 6—THE MILITARY SUPERANNUATION AND BENEFITS BOARD OF TRUSTEES No. 1

Establishment

18. There is established by this section a board called the Military Superannuation and Benefits Board of Trustees No. 1.

Incorporation etc.

19. (1) The Board:

- (a) is a body corporate with perpetual succession; and
- (b) has a common seal; and
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

(2) The common seal of the Board is to be kept in such custody as the Board directs and is to be used only as authorised by the Board.

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

Functions etc.

20. (1) The functions and powers of the Board are those set out in the Trust Deed.

(2) The Board is also responsible for the general administration of this Act other than Part 8.

Membership of Board

21. (1) The Board is to consist of:

- (a) a Chairperson; and
- (b) 4 other trustees;

appointed on a part-time basis.

(2) The trustees are appointed, and hold office, as provided in the Trust Deed.

Defective appointment not invalid etc.

22. (1) The appointment of a person:

- (a) as Chairperson or trustee; or
- (b) to act as Chairperson or trustee;

is not invalid because of a defect or irregularity in connection with the appointment.

(2) Anything done by or in relation to a person purporting to act as Chairperson or trustee is not invalid on the ground that:

- (a) the occasion for the person's appointment had not arisen; or
- (b) the occasion for the person to act had not arisen or had ceased;
or
- (c) the person's appointment had ceased to have effect.

Trustee Act of ACT to apply

23. Except in so far as it is inconsistent with a law of the Commonwealth, the *Trustee Act 1957* of the Australian Capital Territory applies to and in relation to the trustees acting in the performance of their functions, or the exercise of their powers, under the Trust Deed.

Exemption from taxation

24. (1) Subject to this section, the Board and the Fund are not liable to taxation under:

- (a) a law of the Commonwealth other than the *Income Tax Assessment Act 1936*; or
- (b) a law of a State or Territory to which the Commonwealth is not subject.

(2) Income derived from the investment of money standing to the credit of the Fund, or otherwise from the management of the Fund by the Board, is not liable to taxation under any law of a State or Territory.

(3) The regulations may provide that subsection (1) does not apply in relation to taxation under a specified law.

Application of Division 2 of Part XI of Audit Act

25. In its application in relation to the Board by virtue of section 63CA of the *Audit Act 1901*, Division 2 of Part XI of that Act has effect as if sections 63E and 63H are omitted.

Annual report and financial statements

26. (1) The Board must, as soon as practicable after the end of each financial year commencing after the commencement of this Act, prepare and give to the Minister:

- (a) a report on the performance of its functions during that year;
and
- (b) financial statements in respect of the management of the Fund during that year in such form as is approved by the Minister.

(2) Before giving the financial statements to the Minister, the Board must submit them to the Auditor-General, who must report to the Minister:

- (a) whether the statements are based on proper accounts and records; and
- (b) whether the statements are in agreement with the accounts and records and show fairly the financial transactions and the state of the Fund; and
- (c) whether the receipt of money into the Fund, and the payment of money out of the Fund and the investment of money standing to the credit of the Fund, during the year have been in accordance with this Act and the Trust Deed; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported.

(3) The Minister must cause a copy of the report, and of the financial statements, prepared by the Board, together with a copy of the report of the Auditor-General in respect of those financial statements, to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of whichever of those documents was last received by the Minister.

(4) Where the Board has not complied with subsection (1) within a period of 6 months after the end of a financial year, the Board must, within 14 days after the end of that period, give to the Minister an interim report on the performance of its functions during that year together with interim financial statements in respect of the management of the Fund during that year.

(5) The financial statements given to the Minister under subsection (4) must be in the form approved by the Minister for the purposes of subsection (1) but need not be accompanied by a report of the Auditor-General.

(6) Where the Board gives a report and financial statements to the Minister under subsection (4), the Minister must cause a copy of the report and a copy of the financial statements to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

(7) A report furnished by the Board under this section in relation to a financial year must include particulars of:

- (a) any statement of the policy of the Commonwealth on a matter relevant to the performance of the functions of the Board given, in accordance with the Trust Deed, by the Minister to the Chairperson during that year; and
- (b) the consideration given by the Board to that policy; and
- (c) the action (if any) taken by the Board as a result of that consideration.

PART 7—COMMISSIONER FOR SUPERANNUATION

Functions of Commissioner

27. (1) Subject to this Part, the Commissioner is responsible for the provision of administrative services to the Board in the performance of its functions.

(2) In the discharge of functions under this Act, the Commissioner must act in accordance with any policies determined, and any directions given, by the Board.

(3) Anything done by the Commissioner in the name of, or on behalf of, the Board is to be taken to have been done by the Board.

Other functions of Commissioner not to be prejudiced

28. The Commissioner is not required under this Part to do anything that would prejudice the performance of:

- (a) the Commissioner's functions under any other Act (including any function that the Commissioner has by virtue of being the Chairman of the Defence Force Retirement and Death Benefits Authority); or
- (b) the Commissioner's functions under any regulations made under an Act.

PART 8—RETENTION BENEFIT

Object of this Part

29. The object of this Part is to provide for the payment of a benefit (in this Part called "**retention benefit**") to certain members of the Scheme who have completed at least 15 years of continuous eligible service as an inducement for them to continue to serve in the Permanent Forces until they complete 20 years of continuous eligible service (or more in certain circumstances) or reach their retiring age (whichever occurs first).

Interpretation

30. (1) In this Part, unless the contrary intention appears:
"**airman**" means a member of the Air Force other than an officer;
"**benefit computation day**", in relation to a member to whom retention benefit is payable or has been paid, means:

- (a) where the member is or was eligible to receive benefit under subsection 32 (1)—the day on which the member completed 15 years of continuous eligible service; or
- (b) where the member is or was eligible to receive benefit under subsection 32 (2)—the day on which the member became an eligible member; or

- (c) where the member is or was eligible to receive benefit under subsection 32 (3):
- (i) if the member would have been eligible to receive benefit on a day earlier than the day on which he or she becomes or became a member if the member had made an election under section 132 of the DFRDB Act on 1 October 1991—that earlier day; or
 - (ii) if subparagraph (i) does not apply—the day on which the member became eligible to receive retention benefit;

“eligible member” means a member who is a member of the Permanent Forces and is:

- (a) an officer holding a rank not lower than:
 - (i) if the officer is in the Navy—Lieutenant Commander; or
 - (ii) if the officer is in the Army—Major; or
 - (iii) if the officer is in the Air Force—Squadron Leader; or
- (b) an officer (other than an officer referred to in paragraph (a)) who, immediately before becoming an officer, was a sailor, a soldier or an airman (as the case may be); or
- (c) a chaplain who is entitled to be paid salary at a rate that is not less than the minimum rate at which salary is payable to an officer in the Army holding the rank of Major; or
- (d) a sailor holding a rank not lower than Petty Officer; or
- (e) a soldier or an airman holding a rank not lower than Sergeant; or
- (f) a person declared, in writing, by the Minister to be an eligible member;

“officer” has the same meaning as in the *Defence Act 1903*;

“period of prospective service”, in relation to a member to whom retention benefit is payable or has been paid, means the period:

- (a) commencing:
 - (i) if the member is or was, at the time when the benefit becomes or became payable, subject to a return of service obligation—immediately after the end of the period of service that the member is required to complete because of that obligation; or
 - (ii) if subparagraph (i) does not apply—on benefit computation day in relation to the member; and
- (b) ending at the end of:
 - (i) the day on which the member will, if he or she does not cease beforehand to serve in the Permanent Forces:
 - (A) complete 20 years of continuous eligible service; or
 - (B) if, at the time when, or at any time after, the benefit becomes or became payable, the member

is, or was, subject to a return of service obligation—complete a period of continuous eligible service that, excluding the period of service that the member is required to serve because of that obligation, is equal to 20 years; or

(ii) the day on which the member will reach his or her retiring age;

whichever occurs first;

“return of service obligation”, in relation to a member, has the meaning given by subsection (3);

“salary”, in relation to a member of the Permanent Forces, includes any service allowance payable to the member but does not include any other allowance payable to the member;

“sailor” means a member of the Navy other than an officer;

“soldier” means a member of the Army other than an officer;

“transferred member” means a person who:

- (a) was an eligible member of the Defence Force (within the meaning of the DFRDB Act); and
- (b) has become a member of the Scheme on ceasing, under section 134 or 138 of that Act, to be an eligible member of the Defence Force; and
- (c) has continued to be such a member.

(2) For the purposes of this Part, a person is not taken to be holding a rank in the Permanent Forces if he or she is holding that rank temporarily.

(3) For the purposes of this Part, a member is subject to a return of service obligation if:

- (a) the member:
 - (i) is engaged in, or has completed, a course of training, a period of employment on special duties or a period of service outside Australia; or
 - (ii) was appointed outside Australia and his or her transport, or his or her family’s transport, to Australia was at the expense of the Commonwealth; and
- (b) because of the member’s being, or having been, engaged as described in subparagraph (a)(i), or having been appointed outside Australia as described in subparagraph (a)(ii), the member is required to complete a period of service determined by the Chief of Naval Staff, Chief of the General Staff or Chief of the Air Staff (as the case may be).

Continuity of service

31. (1) This section applies where it is necessary to work out, for the purposes of this Part, how long a member of the Permanent Forces has been on continuous service.

(2) A member is taken to have continued to be on service during:

- (a)** any period of paid leave; or
- (b)** any period of leave without pay that does not exceed 21 days; or
- (c)** any period of leave without pay, or of absence without leave, of more than 21 days, being a period during which:
 - (i)** the member pays contributions in accordance with the Rules; and
 - (ii)** employer contributions are payable in respect of the member under the Rules.

(3) Any other period of leave without pay, or of absence without leave, of a member is not taken to be a period of service but, where the special circumstances specified in subsection (4) apply in relation to a period of leave without pay of a member:

- (a)** the period of service of the member immediately preceding that period of leave; and
- (b)** the period of service (if any) of the member immediately following that period of leave;

are taken to be one continuous period of service.

(4) For the purposes of subsection (3), the special circumstances in relation to a period of leave without pay of a member are:

- (a)** where:
 - (i)** the member has been on leave without pay for a period of more than 21 days but not more than 2 years; and
 - (ii)** the member has paid contributions in respect of that period in accordance with the Rules; and
 - (iii)** under the Rules, employer contributions are not payable in respect of the member in respect of that period; and
- (b)** where:
 - (i)** the member has been on leave without pay for a period of more than 2 years but not more than 4 years; and
 - (ii)** in respect of any period of 2 years within that period the member has paid contributions in accordance with the Rules; and
 - (iii)** under the Rules, employer contributions are not payable in respect of the member in respect of that period; and
- (c)** in the case of a transferred member—where the member was on leave without pay for a period of more than 21 days while

he or she was an eligible member of the Defence Force for the purposes of the DFRDB Act.

(5) Where a person ceases to be a member of the Permanent Forces and, immediately after so ceasing again becomes a member of the Permanent Forces, the person is taken, for the purposes of this Part, not to have ceased, at that time, to be a member of the Permanent Forces.

Eligibility for retention benefit

32. (1) An eligible member (other than a transferred member to whom subsection (3) applies) is eligible to receive retention benefit on the member's completing 15 years of continuous eligible service.

(2) A member (other than an eligible member or a transferred member to whom subsection (3) applies) is eligible to receive retention benefit if:

- (a) the member becomes an eligible member (other than a person to whom paragraph (b) or (f) of the definition of "eligible member" in subsection 30 (1) applies); and
- (b) the member has completed a period of continuous eligible service that is not less than 15 years but is less than 20 years.

(3) Where a transferred member has, at the time when he or she becomes a member, completed a period of continuous eligible service that is not less than 15 years but is less than 20 years, then:

- (a) if at that time the member is an eligible member—the member is eligible, at that time, to receive retention benefit; or
- (b) if paragraph (a) does not apply—the member is eligible to receive retention benefit if he or she becomes an eligible member before completing 20 years of continuous eligible service.

Election to receive retention benefit

33. (1) An eligible member to whom subsection 32 (1) applies may, within 90 days before becoming eligible to receive retention benefit under that subsection, elect to receive the benefit.

(2) A person (other than an eligible member to whom subsection 32 (1) applies) who is eligible to receive retention benefit may, within 90 days after becoming eligible to receive the benefit, elect to receive the benefit.

(3) A person making an election must, at the same time, give an undertaking that the person will serve in the Permanent Forces as an eligible member until the day specified in the undertaking, being the day on which the period of prospective service of the member will end.

(4) The election and undertaking must be in writing in a form approved by the Minister.

Revocation of election

34. (1) A person who has made an election under subsection 33 (1) may, at any time before the end of a period during which the election may be made, in writing, revoke the election.

(2) An election made under subsection 33 (2) may not be revoked.

Payment of retention benefit

35. (1) Retention benefit is payable to a member who is eligible to receive it if:

- (a) the member has made an election under section 33; and
- (b) where the member has power to revoke the election under section 34—the election has not been revoked; and
- (c) the member is certified, in a certificate issued by a recognised medical practitioner, to be medically fit for service; and
- (d) there is no order in force under section 36 in relation to the payment of the benefit.

(2) To remove any doubt, it is stated that, if:

- (a) a member eligible to receive retention benefit was certified by a recognised medical practitioner to be medically unfit for service; and
- (b) for that reason, and only for that reason, retention benefit was not payable to the member; and
- (c) the member is subsequently certified by a recognised medical practitioner to be medically fit for service;

retention benefit is payable to the member.

(3) In subsection (1):

“recognised medical practitioner” means a medical practitioner who:

- (a) is a member of the Defence Force; or
- (b) has been approved by the Surgeon-General of the Defence Force for the purposes of this section.

Suspension of payment of retention benefit

36. (1) Where:

- (a) a member who elects under section 33 to receive retention benefit has been charged with, or is standing trial on a charge of, a service offence (within the meaning of the *Defence Force Discipline Act 1982*) or a civil court offence (within the meaning of that Act); and
- (b) the Chief of Staff for the arm of the Defence Force to which the member belongs, or an officer (not below the rank of Captain, Colonel or Group Captain) authorised by the Chief of Staff, believes on reasonable grounds that, if the member is convicted of the offence, it is likely that the service of the member will be terminated;

the Chief of Staff or authorised officer may, by notice in writing, order that payment of the benefit should not be made to the member.

(2) If:

- (a) a decision is made not to proceed with the charge; or
- (b) the charge is dismissed; or
- (c) the member is acquitted of the offence of which he or she was charged;

the order is revoked by force of this subsection.

(3) Where:

- (a) a member elects under section 33 to receive retention benefit; and
- (b) the commanding officer of the member applies, or has applied, to the relevant Chief of Staff for the service of the member to be terminated;

the Chief of Staff or an officer (not below the rank of Captain, Colonel or Group Captain) authorised by the Chief of Staff may, by notice in writing, order that payment of the benefit should not be made to the member.

(4) If the service of the member is not terminated, the order is revoked by force of this subsection.

Amount of benefit

37. (1) Subject to subsection (2), the amount of retention benefit payable to a member is equal to the amount per annum of the salary payable to the member on benefit computation day in relation to the member.

(2) Where the period of prospective service of a member to whom retention benefit is payable is less than 5 years, the amount of benefit payable to the member is the amount worked out by using the formula:

$$B \times \frac{PPS}{1826}$$

where:

B is the amount of benefit that, apart from this subsection, would be payable to the member under subsection (1); and

PPS is the number of days in the period of prospective service of the member.

Payment of interest

38. (1) Where, because of the revocation of a retention order under subsection 36 (2) or (4), retention benefit becomes payable to a member on a later date than it would have been if the order had not been made, there is payable to the member an amount, calculated in the

manner determined by the Minister, representing interest accrued on the amount of the benefit in respect of the period:

- (a) commencing on the day on which, apart from the order, retention benefit would have been payable to the member; and
- (b) ending at the end of the day immediately preceding the day on which retention benefit was paid to the member.

(2) Where:

- (a) a member eligible to receive retention benefit was certified by a recognised medical practitioner to be medically unfit for service; and
- (b) for that reason, and only for that reason, retention benefit was not payable to the member; and
- (c) the member is subsequently certified by a recognised medical practitioner to be medically fit for service and retention benefit is paid to the member;

there is payable to the member an amount, calculated in the manner determined by the Minister, representing interest accrued on the amount of the benefit in respect of the period:

- (d) commencing on the day on which retention benefit would have been payable to the member if the member had not been certified to be medically unfit; and
- (e) ending at the end of the day immediately preceding the day on which retention benefit was paid to the member.

Appropriation

39. Any payment of retention benefit is to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

Partial repayment of retention benefit

40. (1) If, before the end of the period of prospective service of a member to whom retention benefit has been paid:

- (a) the member ceases to be an eligible member while continuing to render continuous full-time service in the Defence Force; or
- (b) the member:
 - (i) being an officer, resigns from office; or
 - (ii) being a sailor, soldier or airman, is discharged on request;or

(c) the service of the member is terminated for a prescribed reason; the member is liable to pay to the Commonwealth an amount worked out by using the formula:

$$B \times \frac{PPS - QPS}{PPS}$$

where:

B is the amount of retention benefit paid to the member; and
PPS is the number of days in the period of prospective service of the member; and

QPS (qualifying period of service) is the number of days in the period:

(d) commencing on benefit computation day in relation to the member; and

(e) ending on the day on which the member ceases to be an eligible member, resigns from office, is discharged on request or has his or her service terminated (as the case may be).

(2) An amount for which the member is liable under subsection (1) may be deducted from any money payable to the member under a determination made under Part IIIA of the *Defence Act 1903*.

PART 9—MISCELLANEOUS

Commonwealth Funds Management Limited as investment manager of Fund

41. (1) Commonwealth Funds Management Limited is, by this section, appointed as the investment manager of any money standing from time to time to the credit of the Fund that is, under the Trust Deed, available for investment.

(2) The appointment may be terminated at any time by the Board.

(3) Nothing in subsection (1) prevents the Board from engaging any other investment manager while the appointment subsists.

Cost of administration of Act etc.

42. The costs of the administration of this Act and of the Trust Deed, excluding the costs of and incidental to the management of the Fund by the Board and the investment of its money, are to be paid out of money appropriated from time to time by Parliament for the purpose.

Recovery of unpaid contributions etc.

43. (1) Any amount (including an amount of contributions) that is payable to the Board under this Act or the Rules may be recovered by the Board in a court of competent jurisdiction as a debt.

(2) Any contribution payable by a person to the Board 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), the Board had paid an amount of benefit that is, or has become, not payable:

- (a) the amount so paid may be recovered by the Board 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 the Board determines, may, if the Board in its discretion so directs, be recovered by deduction from that benefit.

Payment of fees

44. (1) Such fees as are prescribed are payable to the Commonwealth by a person who, under the Rules, requests the Board 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).

Assignment of benefits

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

Member etc. bound by Rules

46. (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.

(2) The Commonwealth is subject to the Rules to the extent that they are applicable in relation to the Commonwealth.

Indemnification of trustees etc.

47. (1) Any matter or thing done, or omitted to be done, in good faith by:

- (a) a trustee in the performance of his or her functions under the Trust Deed; or
- (b) the Commissioner in the performance of his or her duties under this Act; or
- (c) a member of the staff assisting the Commissioner in the performance of those duties;

does not subject him or her personally to any action, liability, claim or demand.

(2) Subsection (1) does not preclude the Board from being subject to any action, liability, claim or demand.

Financial institution not liable in respect of certain payments out of account of deceased pensioner

48. (1) In this section:

“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, credit union or building society (in this section called the “**financial institution**”); and
- (b) the financial institution 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 financial institution 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.

Disallowable instrument

49. (1) Subject to subsection (2), each of the following instruments is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*:

- (a) an instrument under subsection 5 (1);
- (b) a declaration for the purposes of paragraph (f) of the definition of “eligible member” in subsection 30 (1).

(2) A declaration referred to in paragraph (1) (b) is a Statutory Rule for the purposes of the *Statutory Rules Publication Act 1903*.

Tabling of statement of Government policy

50. Where, in accordance with the Trust Deed, the Minister gives to the Chairperson a statement of the policy of the Commonwealth government on any matter that is relevant to the performance of the functions of the Board, together with a request that the Board consider that policy in the performance of its functions, the Minister must cause a copy of the statement to be laid before each House of the Parliament within 15 sitting days of that House after the Minister has given the statement to the Chairperson.

Delegation by Minister

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

- (a) the Board; or
- (b) an officer of the Department; or
- (c) the Commissioner or a member of the staff assisting the Commissioner in the performance of his or her functions under this Act; or
- (d) an officer of the Defence Force.

Regulations

52. 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.

PART 10—AMENDMENTS OF THE DEFENCE FORCE RETIREMENT AND DEATH BENEFITS ACT 1973

Principal Act

53. In this Part, “Principal Act” means the *Defence Force Retirement and Death Benefits Act 1973*¹.

Interpretation

54. Section 3 of the Principal Act is amended:

- (a) by omitting from the definition of “eligible member of the Defence Force” in subsection (1) all words from and including “include” and substituting the following word and paragraphs:
“include:
 - (c) a person who, under section 5A, is excluded from this definition;
 - (d) a person to whom section 90 applies and who does not make an election under that section; or
 - (e) a person who has ceased, or is taken to have ceased, under section 134 or 138 to be an eligible member of the Defence Force;”;
- (b) by omitting from the definition of “recipient member” in subsection (1) all words from and including “includes” and substituting the following word and paragraphs:
“includes:
 - (a) a member of the scheme who, but for the suspension of his or her invalidity pay under subsection 35 (3) or 61D (2), would be entitled to invalidity pay; and
 - (b) a member of the scheme who, but for the suspension of his or her retirement pay under subsection 61C (1), would be entitled to retirement pay”;
- (c) by inserting in subsection (1) the following definition:
“**MSB scheme**’ means the superannuation scheme established under the *Military Superannuation and Benefits Act 1991*”;

55. After section 5 of the Principal Act the following section is inserted:

Persons excluded from definition of “eligible member of the Defence Force”

“5A. (1) Subject to subsection (2), a person who:

- (a) becomes, on or after 1 October 1991, a member of the Defence Force; or
- (b) being a member of the Reserve Forces or the Emergency Forces, commences on or after that day to render continuous full-time service for a period of not less than 12 months;

is excluded from the definition of ‘eligible member of the Defence Force’ in subsection 3 (1).

“(2) Subsection (1) does not apply to:

- (a) a person who:
 - (i) ceased to be an eligible member of the Defence Force because he or she was transferred to a Reserve, was discharged from the Defence Force, or had his or her continuous full-time service terminated, under the Defence (Parliamentary Candidates) Act; and
 - (ii) under Part III of that Act is transferred back to, reinstated in, or accepted for further continuous full-time service in, the force of which he or she was a member immediately before ceasing to be an eligible member of the Defence Force; or
- (b) a person to whom section 61B applies and who has elected under that section to become a contributory member; or
- (c) a person to whom section 63 applies.”.

Commutation of retirement pay

56. Section 24 of the Principal Act is amended:

- (a) by adding at the end of subsection (1A) “and is not excluded, under subsection (1B), from the operation of this subsection”;
- (b) by inserting after subsection (1A) the following subsection:

“(1B) A person who, after the commencement of this subsection, becomes, or is about to become, entitled to retirement pay is excluded from the operation of subsection (1A) if:

- (a) the person was a former recipient member whose invalidity pay was cancelled under subsection 62 (1) on the person again becoming an eligible member of the Defence Force; and
- (b) the person reached, or will reach, immediately before retirement, the retiring age for the rank then held by him or her or the person’s total period of effective service is not, or will not be, less than 20 years.”.

Classification in respect of incapacity

57. Section 30 of the Principal Act is amended by adding at the end the following subsection:

“(3) Where the invalidity pay of a person is cancelled under subsection 62 (1), any classification of the person under subsection (1) ceases to have effect.”.

58. After section 61A of the Principal Act the following sections are inserted:

Election by recipient member intending to resume full-time service

“61B. (1) Where a person:

- (a) who is a recipient member; or
- (b) in respect of whom deferred benefits are applicable under section 78;

intends to resume full-time service:

- (c) as a member of the Permanent Forces; or
- (d) as a member of the Emergency Forces or the Reserve Forces for a continuous period of not less than 12 months;

the person must, before resuming service, in writing addressed to the Authority, elect:

- (e) to become a contributing member; or
- (f) to become a member of the MSB scheme.

“(2) Subsection (1) does not apply if the person has previously:

- (a) made an election under that subsection; or
- (b) made, under subsection (3), an election to become a member of the MSB scheme.

“(3) A recipient member who:

- (a) intends:
 - (i) to resume full-time service as a member of the Emergency Forces or the Reserve Forces for a continuous period of not less than 3 months but less than 12 months; or
 - (ii) to resume continuous full-time service as a member of the Emergency Forces or the Reserve Forces under an undertaking to serve for a period of less than 3 months with a unit of the Defence Force that was allotted for duty in an operational area (within the meaning of the *Veterans' Entitlements Act 1986*); and
- (b) has not previously made, under this section, an election to become a member of the MSB scheme;

must, before resuming service, in writing addressed to the Authority, elect whether or not to become a member of that scheme.

Recipient member in receipt of retirement pay who becomes member of MSB scheme

“61C. (1) Where a recipient member in receipt of retirement pay becomes a member of the MSB scheme, payment of the member’s retirement pay is, subject to subsection (2), suspended.

“(2) A suspension under subsection (1) ceases to have effect when the recipient member whose retirement pay has been suspended ceases to be a member of the MSB scheme.

“(3) Where a recipient member whose retirement pay is suspended under subsection (1) dies, then, for the purposes of section 39 and subsections 42 (3) and 43 (3):

- (a) the member is taken to have been entitled to retirement pay immediately before his or her death; and
- (b) the retirement pay is taken to have been then payable to the member at the rate at which it would have been payable to him or her if it had not been suspended.

Recipient member on invalidity pay who becomes member of MSB scheme

“61D. (1) Subject to subsection (2), where:

- (a) a person becomes a member of the MSB scheme; and
- (b) immediately before becoming such a member, the person was a recipient member in receipt of invalidity pay;

the person’s invalidity pay is cancelled.

“(2) Where:

- (a) a person becomes a member of the MSB scheme; and
- (b) immediately before becoming such a member, the person was a recipient member entitled to invalidity pay under section 32; and
- (c) immediately before becoming a recipient member the person was an eligible member with a total period of effective service of not less than 20 years;

the person’s invalidity pay is not cancelled but is, subject to subsection (3), suspended.

“(3) A suspension under subsection (2) ceases to have effect when the recipient member whose invalidity pay has been suspended ceases to be a member of the MSB scheme.

“(4) Where a recipient member whose invalidity pay is suspended under subsection (2) dies:

- (a) the member is taken, for the purposes of section 39 and subsections 42 (3), 43 (3) and 47 (1), to have been entitled to invalidity pay immediately before his or her death; and
- (b) for the purposes of sections 39, 42 and 43, the invalidity pay is

taken to have been then payable to the member at the rate at which it would have been payable to him or her if it had not been suspended.”.

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

59. Section 83 of the Principal Act is amended by inserting “, or becomes a member of the MSB scheme,” after “Force”.

Application of increase to suspended pension benefits

60. Section 98C of the Principal Act is amended by omitting “section 35” and substituting “subsection 35 (3), 61C (1), 61D (2) or 135 (2)”.

61. After Part XII of the Principal Act the following Part is inserted:

“PART XIII—TRANSFER TO MSB SCHEME

Election to remain member of scheme or to join MSB scheme

“132. (1) Subject to this section, an eligible member of the Defence Force must, on or before election day in relation to the member, in writing addressed to the Authority, elect:

- (a) to continue to be a contributing member; or
- (b) to become a member of the MSB scheme.

“(2) Election day in relation to an eligible member of the Defence Force is:

- (a) if the service of the member is due to terminate before 30 September 1992—the day on which his or her service is due to terminate; or
- (b) if paragraph (a) does not apply—30 September 1992.

“(3) An eligible member of the Defence Force, being a person:

- (a) who is serving on continuous full-time service for a period that does not exceed, or successive periods that together do not exceed, 3 months; and
- (b) who, immediately before that period or the first of those periods, was a recipient member;

may not make an election under subsection (1).

“(4) Subsection (1) does not apply to a member whose service terminates, or is due to terminate, before 1 October 1991.

Election where member dies

“133. (1) This section applies if an eligible member of the Defence Force:

- (a) is unable, because of any illness or any physical or mental incapacity, to make an election under section 132; or

(b) dies before making such an election.

“(2) If the member is unable to make the election, the election may be made by a person acting on behalf of the member.

“(3) If the member dies and is survived by a widow or widower, the widow or widower may, subject to subsection (6), elect that this Act apply in relation to the member as if the member had, on the day immediately preceding his or her death, elected to become a member of the MSB scheme.

“(4) If the member dies and is not survived by a widow or widower but is survived by an eligible child or eligible children, a person acting on behalf of the child or children may, subject to subsection (6), elect that this Act apply in relation to the member as if the member had, on the day immediately preceding his or her death, elected to become a member of the MSB scheme.

“(5) An election under subsection (3) or (4) must be made on or before the day that would have been election day in relation to the member if he or she had not died.

“(6) If:

(a) a member who has died:

(i) had made an election under subsection 21 (1), paragraph 63 (1) (d) or subsection 64 (1) or 89 (1) or (2); or

(ii) had received payment of an amount under a prescribed provision (within the meaning of section 137); and

(b) at the time of his or her death, the member had not repaid:

(i) the total amount that the member was required to pay to the Commonwealth under subsection 21 (3), 63 (2), 64 (2) or 89 (4) (as the case may be); or

(ii) the total amount that the member had to repay to the Commonwealth under a provision of an enactment (within the meaning of section 137) because of the payment referred to in subparagraph (a) (ii);

an election may not be made:

(c) under subsection (3) by the widow or widower of a deceased member; or

(d) under subsection (4) by a person acting on behalf of the eligible child or eligible children of the deceased member;

unless the balance of the amount referred to in subparagraph (b) (i) or (ii) (as the case may be) that remains unpaid is paid to the Commonwealth.

“(7) If:

(a) the widow or widower of a deceased member makes an election under subsection (3); or

(b) a person acting on behalf of the eligible child or eligible children of a deceased member makes an election under subsection (4); the member is taken to have, on the day immediately preceding his or her death, elected under section 132 to become a member of the MSB scheme.

Effect of election

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

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

Loss of entitlement to benefits etc.

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

“(2) Where:

- (a) a person who has been an eligible member of the Defence Force on more than one occasion ceases, or is taken to have ceased, to be an eligible member of the Defence Force under section 134 or 138; and
- (b) at the time (in this subsection called the ‘**relevant time**’) when the person last became an eligible member of the Defence Force, the person’s retirement pay was cancelled under subsection 62 (1);

the following provisions have effect:

- (c) the person’s retirement pay is taken not to have been cancelled under subsection 62 (1) at the relevant time;
- (d) the person’s retirement pay is taken, instead, to have been suspended at the relevant time, and remains so suspended until the person ceases to be a member of the MSB scheme;
- (e) in spite of subsection (1), the person is entitled to be paid retirement pay in accordance with this Act upon the person’s ceasing to be a member of the MSB scheme.

Failure to make election

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

“(2) If:

- (a) an eligible member of a Defence Force who is required to make an election under subsection 132 (1) dies without making the election; and
- (b) the widow or widower of the deceased member, or a person acting on behalf of his or her eligible child or children (as the case may be) does not make an election under subsection 133 (3) or (4);

this Act has effect as if the member had elected, on the day immediately preceding his or her death, to continue to be a contributing member.

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

“137. (1) In this section:

‘enactment’ means:

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

‘prescribed provision’ means:

- (a) subsection 42A (1) or (2) of the previous Act; or
- (b) regulation 11, 14, 15 or 16 or subregulation 19 (1) or (2) of the Defence Force (Bounties and Gratuities) Regulations; or
- (c) clause 6, 10, 13, 15, 17 or 30 of Determination 0705, Gratuities made under section 58B of the *Defence Act 1903*, being that determination as in force from time to time.

“(2) Where an eligible member of the Defence Force who has received payment of an amount under a prescribed provision elects under section 132 to become a member of the MSB scheme, then, in spite of any provision of an enactment regarding the repayment of that amount, that amount, or any part of that amount that remains unpaid at the time of the election, becomes payable to the Commonwealth and may be recovered as a debt.

Persons precluded from transferring to MSB scheme

“138. (1) This section applies to:

- (a) an eligible member of the Defence Force who:
 - (i) made an election under subsection 21 (1), paragraph 63 (1) (d) or subsection 64 (1) or 89 (1) or (2); and
 - (ii) elects under section 132 to become a member of the MSB scheme; or
- (b) an eligible member of the Defence Force who is liable to pay an amount to the Commonwealth under section 137.

“(2) Subject to subsections (3) and (4), a person to whom this section applies ceases to be an eligible member of the Defence Force:

- (a) in the case of a person referred to in paragraph (1) (a)—at the

end of the day on which the total amount that the person is required to pay to the Commonwealth under subsection 21 (3), 63 (2), 64 (2) or 89 (4) (as the case may be) is fully paid; or

- (b) in the case of a person referred to in paragraph (1) (b)—at the end of the day on which the total amount that the person is liable to pay under section 137 is fully paid.

“(3) Where, apart from this subsection, a person would cease under subsection (2) to be an eligible member of the Defence Force before 30 September 1991, the person ceases to be an eligible member of the Defence Force at the end of 30 September 1991.

“(4) If a person to whom this section applies has not, on or before 30 September 1992, paid to the Commonwealth:

- (a) in the case of a person referred to in paragraph (1) (a)—the total amount that the person is required to pay to the Commonwealth under subsection 21 (3), 63 (2), 64 (2) or 89 (4) (as the case may be); or
- (b) in the case of a person referred to in paragraph (1) (b)—the total amount that the person is liable to pay to the Commonwealth under section 137;

the person is taken:

- (c) not to have elected under section 132 to become a member of the MSB scheme; and
- (d) to have elected under that section to continue to be a contributing member.”.

SCHEDULE

Section 4

FORM OF TRUST DEED

THIS DEED is made on 1991

BY THE COMMONWEALTH OF AUSTRALIA (in this Deed called “the Commonwealth”)

WHEREAS section 4 of the *Military Superannuation and Benefits Act 1991* (in this Deed called “the Act”) provides that the Minister, for and on behalf of the Commonwealth, must, within 30 days after the commencement of the Act, by Deed establish an occupational superannuation scheme in order to provide benefits for members of the Defence Force.

NOW THIS DEED WITNESSES as follows:

SCHEDULE—continued

Interpretation

1. (1) In this Deed, where the context requires or admits, a reference to the Deed shall include a reference to the Rules, as set out in the Schedule (in this Deed called “**the Rules**”), and the Rules shall form part of the Deed. In the case of an inconsistency between the provisions of the Deed and the Rules, the provisions of the Deed shall prevail.

(2) In this Deed, where the context requires or admits, words and expressions defined in the Act or the Rules have the same meanings when used in the Deed. The headings in this Deed and in the Rules are for the convenience of reference only and shall not affect their interpretation.

(3) In this Deed “**Minister**” means:

(a) the Commonwealth Minister of State for Defence;

(b) if 2 or more Commonwealth Ministers administer Departments which have functions in relation to the administration of matters to which the Deed relates, the Minister who administers the Department which has the function in relation to each of those matters; or

(c) a member of the Executive Council acting for the time being for and on behalf of any of those Ministers.

Establishment of the Superannuation Scheme and the Fund

2. (1) There is hereby established an occupational superannuation scheme to be known as the Military Superannuation and Benefits Scheme (in this Deed called “**the Superannuation Scheme**”) to come into force on 1 October 1991 for the benefit of:

(i) members of the Permanent Forces; and

(ii) members of the Emergency Forces and the Reserve Forces,

to be administered in accordance with the Deed by the Military Superannuation and Benefits Board of Trustees No. 1 established by the Act (in this Deed called “**the Board**”).

(2) For the purposes of the Superannuation Scheme there is hereby established and vested in the Board a fund to be known as the Military Superannuation and Benefits Fund No. 1 (in this Deed called “**the Fund**”).

Functions and powers of the Board

3. (1) The functions of the Board are to administer the Superannuation Scheme and to manage and invest the Fund in accordance with the provisions of the Act and this Deed including, without limiting the generality of the foregoing, the following functions:

(a) to pay benefits to or in respect of members, and to make payments to and receive payments from the Commonwealth, as provided for in the Act;

SCHEDULE—continued

- (b) to provide advice to the Minister on proposed changes to the Act and the Deed; and
- (c) to determine interest rates for the purposes of the Superannuation Scheme.

(2) The Board has power in Australia and elsewhere to do all things necessary or convenient to be done for, or in connection with, the performance of its functions and, in particular, may:

- (a) give guarantees;
- (b) underwrite or sub-underwrite any form of investment including the underwriting or sub-underwriting of the issue of shares, debentures or units in a unit trust;
- (c) borrow moneys and give security over the whole or any part of the assets of the Fund;
- (d) appoint agents and attorneys;
- (e) act as agent for other persons;
- (f) engage consultants and investment managers;
- (g) establish an Incapacity Classification Committee to determine members' incapacity classifications under the Rules;
- (h) establish a Reconsideration Advisory Committee or Committees to examine and report on decisions of the Board and its delegates under the Rules relating to members' entitlements to benefits;
- (i) take action to control or manage, or to enhance or protect, the value of, any investment made out of the Fund, or to enhance or protect, the return on any such investment.

(3) In exercising its functions and powers the Board shall have regard to:

- (a) the interests of members and the Commonwealth;
- (b) any statement of the policy of the Commonwealth Government on any matter that is relevant to the performance of the functions, duties and powers of the Board furnished to the Board by the Minister with a request that the Board consider that policy;

but notwithstanding anything contained in any statement of Commonwealth Government policy or the Deed, the Board shall, in exercising its functions and powers, comply with the requirements of the *Occupational Superannuation Standards Act 1987* and Regulations applicable to the Fund and the Superannuation Scheme.

Appointment of Trustees

4. (1) Four of the 5 Trustees constituting the Board shall be appointed by the Minister having regard to the following:

- (a) 2 of the Trustees shall be persons with experience in, and knowledge of, the formulation of government policy and public administration; and

SCHEDULE—continued

(b) 2 of the Trustees shall be members of the Defence Force nominated by the Chief of the Defence Force, one being an officer and the other a member, other than an officer.

(2) The 5th Trustee, who will also be the Chairperson of the Board, shall be appointed by the Minister after consultation with the Minister for Finance in relation to the appointment.

(3) The Chairperson and the Trustees nominated by the Chief of the Defence Force shall be appointed for such period, not exceeding 3 years, as the Minister specifies in the instrument of appointment. The Trustees referred to in subclause 4 (1) (a) shall hold office at the Minister's pleasure.

(4) A Trustee shall be eligible for re-appointment.

(5) A Trustee shall hold office on such terms and conditions as are determined by the Minister.

(6) The performance of the functions, or the exercise of the powers, of the Board shall not be affected by reason of there being a vacancy in the membership of the Board.

(7) The Trustees shall be paid such remuneration and allowances as are determined by the Remuneration Tribunal but, if no determination of that remuneration or allowances by the Tribunal is in operation, they shall be paid such remuneration and allowances as are determined by the Minister.

(8) The Minister may grant leave of absence to a Trustee on such terms and conditions as to remuneration or otherwise as the Minister determines.

(9) A Trustee may resign office by writing signed by the Trustee and delivered to the Minister.

Termination of Appointment

5. (1) The Minister may terminate the appointment of a Trustee for:

- (a) misbehaviour or physical or mental incapacity; or
- (b) inefficiency or incompetence.

(2) If a Trustee:

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the Trustee's creditors or makes an assignment of the Trustee's remuneration for their benefit; or
- (b) fails, without reasonable excuse, to comply with the Trustee's obligations under clause 7; or
- (c) is absent, except on leave granted by the Minister, from 3

SCHEDULE—continued

consecutive meetings of the Board of which the Trustee has had notice;

the Minister may terminate the appointment of the Trustee.

Acting Appointments

6. (1) The Minister may appoint a person to act as Chairperson after consultation with the Minister for Finance in relation to the appointment:

- (a) during a vacancy in the office of Chairperson; or
- (b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office of Chairperson.

(2) The Minister may appoint a person to act as a Trustee:

- (a) during a vacancy in the office of a Trustee; or
- (b) during any period, or during all periods, when a Trustee is acting as Chairperson, is absent from Australia or is, for any reason, unable to perform the duties of that office.

(3) The Minister shall only appoint a person to act as a Trustee who meets the same criteria, as set out in subclauses 4 (1) (a) or (b), as the Trustee in whose place the Trustee is to act.

(4) An appointment under subclause (1) or (2) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(5) While a person is acting as Chairperson or as a Trustee, the person has and may exercise all the powers, and shall perform all the duties, of the Chairperson or the Trustee as the case may be.

(6) The Minister may:

- (a) determine the terms and conditions of appointment, including remuneration and allowances of a person appointed to act in an office under subclause (1) or (2); and
- (b) terminate such an appointment at any time.

(7) A person appointed to act in an office under subclause (1) or (2) may resign the appointment by writing signed by the person and delivered to the Minister.

Disclosure of Interests

7. (1) Each Trustee shall:

- (a) as soon as possible after, but in any case not later than 60 days after, appointment as a Trustee; and
- (b) as soon as possible after, but in any case not later than 60 days after, each anniversary of the Trustee's appointment as a Trustee,

SCHEDULE—continued

present to a meeting of the Board a statement in writing setting out particulars of those interests, whether pecuniary or otherwise and whether direct or indirect, of the Trustee as at the day of appointment or as at that anniversary, as the case requires, that could reasonably be expected to conflict with the proper performance by the Trustee of the Trustee's duties as a Trustee.

(2) A statement presented by a Trustee to a meeting of the Board in pursuance of subclause (1) shall be incorporated into the minutes of the meeting.

(3) Where a Trustee acquires an interest, whether pecuniary or otherwise and whether direct or indirect, that could reasonably be expected to conflict with the proper performance by the Trustee of the Trustee's duties as a Trustee and a statement containing particulars of the interest has not been given to a meeting of the Board in accordance with subclause (1), the Trustee shall, as soon as possible after acquiring that interest, present to a meeting of the Board a statement in writing setting out particulars of the interest and the statement shall be incorporated in the minutes of the meeting.

(4) A Trustee who has a direct or indirect pecuniary interest in a matter being considered by the Board shall, as soon as possible after the relevant facts have come to the Trustee's knowledge, disclose the nature of the Trustee's interest at a meeting of the Board.

(5) A disclosure under subclause (4) shall be recorded in the minutes of the meeting of the Board and the Trustee shall not, unless the Board or the Minister otherwise determines:

- (a) be present during any deliberation of the Board with respect to that matter; or
- (b) take part in any decision of the Board with respect to that matter.

(6) For the purpose of the making of a determination by the Board under subclause (5) in relation to a Trustee who has made a disclosure under subclause (4), a Trustee who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not:

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in the making by the Board of the determination.

(7) Where a Trustee is obliged by subclause (4) to disclose the nature of an interest at a meeting of the Board, the fact that the Trustee has presented to a meeting of the Board a statement under subclause (1) or (3) that includes particulars of that interest does not relieve the Trustee of the Trustee's obligation under subclause (4).

SCHEDULE—continued

Meetings of the Board of Trustees

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

(2) The Chairperson may at any time convene a meeting of the Board and shall, when so requested in writing by another Trustee, convene a meeting of the Board within 30 days of receiving such notice.

(3) The Chairperson shall preside at all meetings of the Board at which the Chairperson is present. If the Chairperson is not present at a meeting of the Board, the Chairperson may nominate one of the Trustees to be Chairperson for the meeting. In the absence of such nomination, the Trustees shall elect one of the Trustees present at the meeting as a Chairperson for the meeting.

(4) At a meeting of the Board 4 Trustees, or acting Trustees, shall constitute a quorum and all decisions of the Board shall require a majority of 4 votes of the Trustees, or acting Trustees, present in person and voting.

(5) The Board shall keep accurate records of all meetings held by the Board.

Operation of the Fund

9. (1) All contributions and other moneys paid to the Board, or as directed by the Board, shall be held in trust by the Board in the Fund. The Fund shall be managed and invested by the Board in accordance with the Act and the Deed.

(2) The Fund shall comprise:

- (a)** contributions made by members;
- (b)** contributions made by the Commonwealth pursuant to the Act and the Deed;
- (c)** any other moneys paid or transferred to the Board pursuant to the Act and the Deed or which become subject to the trusts of the Deed;
- (d)** the income arising from investments; and
- (e)** any accretions to or profits on realisation of investments.

(3) The Fund shall be used by the Board to pay benefits to or in respect of members, to make payments to the Commonwealth in respect of members' benefits as provided for in the Act and to pay the costs and expenses of the management and investment of the Fund.

Investment of the Fund

10. (1) For the purposes of this clause:

- (a)** "invest" means expend moneys with a view to obtaining a present or future financial return (whether by way of income, profit or otherwise); and

SCHEDULE—continued

(b) “**profit**” includes capital profit.

(2) Moneys standing to the credit of the Fund which the Board, after consultation with its investment manager, is of the opinion are moneys that are not for the time being required for the purpose of making payments out of the Fund under the Act and the Deed shall, so far as is practicable, be invested by the Board in accordance with the Act and the Deed, but the Board shall so manage the Fund that moneys that are from time to time required to pay benefits that are payable out of the Fund are available for that purpose.

(3) Moneys that, by virtue of subclause (2), are required to be invested by the Board may be invested in any manner and, without limiting the generality of the foregoing, may be invested by the Board jointly with another person or other persons.

(4) The Board must determine an investment strategy and policy as soon as possible after 1 October 1991 and thereafter regularly review such a strategy and policy, and, where it considers necessary or desirable, change its existing investment strategy or policy. In determining and reviewing its investment strategy and policy, the Board shall consult with such persons or bodies as it thinks fit.

(5) The Board shall invest moneys standing to the credit of the Fund that are available for investment only through an investment manager or managers who undertake to invest, and manage the investment of, those funds on behalf of the Board.

(6) The Board shall ensure that any investment manager:

(a) operates within the investment powers of the Board and the investment strategy and policy as determined for the time being by the Board; and

(b) reports to the Board on the state of the Board’s investments and the investment market at such times and in such manner as the Board determines.

Requests by Minister for Information

11. The Board shall furnish to the Minister such information relating to the general administration and operation of the Superannuation Scheme and the Fund as the Minister may from time to time require.

Delegation by the Board

12. The Board may by an instrument under its seal delegate all or any of its powers under the Deed to any person, including the Commissioner for Superannuation or a Trustee, other than its powers under Part 9 of the Rules and this power of delegation.

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MILITARY SUPERANNUATION AND BENEFITS RULES

PART 1—PRELIMINARY

Citation

1. These Rules may be cited as the Military Superannuation and Benefits Rules.

Definitions and interpretation

2. (1) The following expressions are defined or interpreted, for the purposes of these Rules, in the Glossary in Schedule 1. Unless otherwise stated, the expressions are in Part 1 of the Schedule.

Actuary	prescribed fee
Board	prescribed year
calendar month	previous contributions
child	previous legislation
classification	relevant percentage
Committee	relevant period
contribution	relevant provision
Department	Reserve Forces
eligible child	resign to contest an
eligible service	election (see Part 2)
Emergency Forces	retirement (see Part 3)
employer benefit	retirement pensioner
final average salary	retiring age (see Part 4)
financial year	salary
foreign service member	Scheme
Fund	service
funded employer benefit	service allowance
higher duties allowance	service offence
invalidity	spouse (see Part 5)
invalidity pension	spouse's pension
invalidity pensioner	Statistician
invalidity retiree	total benefit
lump sum maximum	transferred person
benefit limit	transfer value
MBL member	unfunded preserved benefit
member	1948 Act
member benefit	1973 Act
membership	1973 Scheme
month	1973 Scheme recipient member
Parliamentary Candidates Act	1973 Scheme re-entrant
pension	1973 Scheme retirement pensioner
pension maximum	1991 Scheme
benefit limit	1991 Scheme re-entrant
Permanent Forces	

SCHEDULE—continued

(2) Interpretations of the following matters, for the purposes of these Rules, are provided in Parts 6 to 9 of Schedule 1:

- Part 6 Parts of speech and grammatical forms
- Part 7 Number
- Part 8 Reckoning of time
- Part 9 Attainment of particular age.

PART 2—CONTRIBUTIONS

Contributions by members

3. (1) A member is required to pay a contribution each fortnight in accordance with this Division.

(2) Where contributions by a member fall due during a period when he or she is on leave without pay, the member, or a person acting on his or her behalf, is to pay those contributions:

- (a) each fortnight; or
- (b) in such instalments and at such times as the Board approves;
or
- (c) with the approval of the Board, in a lump sum.

Amount of contributions

4. (1) Subject to subrule (2), the amount of the contribution payable by a member in a fortnight is an amount equal to the relevant percentage of the amount of the salary paid to the member in that fortnight.

(2) Where a member elects under subrule (10) to vary the amount of the contribution payable by him or her, that election has effect in relation to the first salary fortnight in relation to which it can be applied in the ordinary course of business.

(3) Where a member makes an election under subrule (10), the member is not entitled to make a further election until the expiration of a period of three months after the day on which the earlier election was made.

(4) For the purposes of subrule (1), salary is taken not to be paid to a member in respect of a day included in a period that, in accordance with Schedule 2, is a prescribed period.

(5) Where:

- (a) the salary and allowances of a member in respect of a period are forfeited, in whole or in part, under regulations made under the *Defence Act 1903*; and
- (b) the period does not exceed 21 consecutive days;

SCHEDULE—continued

the amounts of the contributions payable by the member in respect of that period are to be calculated as if the member were on full pay.

(6) Subject to subrule (7), where a member who is granted:

(a) long service leave on half pay; or

(b) leave without pay for a period not exceeding 21 days;

the amounts of the contributions payable by the member in respect of that period are to be calculated as if the member were on full pay.

(7) In a case to which paragraph (6) (b) applies, the member's salary for the purpose of calculating the contribution payable by the member is taken not to include higher duties allowance unless:

(a) higher duties allowance was payable to the member on the day immediately preceding the commencement of the period; and

(b) an appropriate authority of the Defence Force has notified the Board that, but for the member's absence on leave without pay, higher duties allowance would have been payable to the member in respect of the whole of the period of his or her absence on that leave.

(8) In calculating the amount of a contribution payable by a member, the calculation is to be made as if no deductions were made from the member's salary.

(9) Where the amount of a contribution payable by a member includes a fraction of a cent:

(a) if the fraction is less than one-half of a cent—the contribution is taken to be reduced by the amount of the fraction; or

(b) if the fraction is one-half of a cent or more—the contribution is taken to be increased by treating the fraction as one cent.

(10) In this rule:

“**relevant percentage**”, in relation to a member, means:

(a) the percentage, being a whole number that is not less than 5 and not more than 10, elected by the member; or

(b) if the member has not made an election—5 per centum.

Cessation of contributions on reaching maximum benefit limit

5. (1) A member is not entitled to pay contributions after he or she has been notified that his or her total benefit equals or exceeds his or her pension maximum benefit limit.

(2) At any time after a member is notified that his or her total benefit equals or exceeds his or her lump sum maximum benefit limit, he or she may elect to cease paying contributions.

(3) This rule applies in spite of anything in this Part.

SCHEDULE—continued

Contributions while on leave without pay in connection with birth of child etc.

6. A member who is on leave without pay for a period exceeding 21 days which was granted to him or her in connection with:

- (a) the birth of a child of the member; or
- (b) other termination of the pregnancy of the member; or
- (c) the adoption of a child by the member;

may elect to pay contributions, calculated as if the member were on full pay, in respect of so much of that period, not exceeding 9 months, as is specified in the election.

Contributions while on other leave without pay

7. (1) This rule does not apply to a period of leave without pay to which rule 6 applies.

(2) Where a member who is on leave without pay for a period exceeding 21 days which was granted to him or her:

- (a) for the purpose of the member:
 - (i) engaging, with the approval of the appropriate authority of the Defence Force, in full time employment; or
 - (ii) undertaking further education; or
 - (iii) undergoing training; or
 - (iv) engaging in some other activity;

and, in the case of subparagraph (ii), (iii) or (iv), an appropriate authority of the Defence Force has notified the Board that the education, training or other activity is relevant to the requirements of the Defence Force; or

- (b) because the member was for the time being physically or mentally incapable of performing his or her duties;

the member may, with the approval of the Board, elect to pay contributions, calculated as if the member were on full pay, in respect of so much of the period as is specified in the election.

(3) Where:

- (a) leave without pay is granted to a member (in this subrule called the “inactive member”) whose spouse (in this subrule called the “active member”):

- (i) is also a member; or
- (ii) is an eligible member of the Defence Force within the meaning of the 1973 Act; and

- (b) the active member is posted to a locality to which the inactive member is unable to obtain a posting; and

- (c) the inactive member is granted the leave without pay in order not to be separated from the active member;

SCHEDULE—continued

the inactive member may elect to pay contributions, calculated as if the member were on full pay, in respect of so much of that period, not exceeding 2 years, as is specified in the election.

(4) In this rule:

“**spouse**”, in relation to a member, means a person who is legally married to the member and includes a person who, although not legally married to the member, ordinarily lives with the member as his or her husband or wife, as the case may be, on a permanent and bona fide domestic basis and is not of the same sex as the member.

General conditions applicable to contributions under rules 6 and 7

8. (1) The provisions of rule 4 apply to an election made under rule 6 or 7 as if:

- (a) the reference in that rule to the amount of salary paid to the member in a fortnight were a reference to the amount of salary that would have been paid to the member in that fortnight if the member had been on full pay; and
- (b) the salary so assumed to be paid did not include higher duties allowance unless:
 - (a) higher duties allowance was payable to the member on the day immediately before the commencement of the period; and
 - (b) an appropriate authority of the Defence Force has notified the Board that, but for the member's absence on leave without pay, higher duties allowance would have been payable to the member in respect of the whole of the period of his or her absence on that leave.

(2) A member who has made an election under rule 6 or 7 may revoke the election at any time after the expiration of a period of 3 months after the election was made.

Member contributions to be paid to Board

9. Contributions payable by a member are to be paid to the Board by or on behalf of the member.

Liability of Department to pay employer contributions

10. (1) The Department must, on each salary pay-day on which a member pays contributions, pay to the Board an employer contribution in relation to the member.

(2) In spite of a member paying contributions during a period of leave without pay to which rule 7 applies, subrule (1) does not apply:

- (a) in the case of a period of leave without pay referred to in subrule 7 (2) which exceeds 12 months—to any part of the

SCHEDULE—continued

excess period in respect of which no amount is paid under a prescribed arrangement; or

- (b) in the case of a period of leave without pay referred to in subrule 7 (3).

(3) The amount of an employer contribution payable by the Department in relation to a member is an amount that is 3 per centum of the amount of the salary payable to the member in respect of the relevant fortnight.

(4) In this rule:

“**member’s employer**”, in relation to a member who is engaged in employment referred to in subparagraph 7 (2) (a) (i), means the person who is the employer of the member in respect of that employment;

“**prescribed arrangement**”, in relation to a member who is engaged in employment referred to in subparagraph 7 (2) (a) (i), means an arrangement between the Commonwealth and the member’s employer under which the employer agrees to pay to the Commonwealth an employer contribution, in relation to the member:

- (a) in respect of each salary fortnight in the period of that employment; or
(b) in respect of each salary fortnight in a specified part of that period;

as the case may be, in respect of which the member pays a contribution under this Part.

Payment of contributions into Fund

11. The Board must pay all member and employer contributions received by it into the Fund.

PART 3—MEMBERS’ BENEFITS

Division 1—Benefits other than Invalidity Benefits

Benefits on retirement before reaching 55 years of age or earlier retiring age, otherwise than for redundancy or retrenchment etc.

12. (1) This rule applies to a member who retires:

- (a) in the case of a member whose retiring age is less than 55 years—before reaching his or her retiring age; or
(b) in any other case—before reaching the age of 55 years;

not being a member who is:

- (c) retired on the ground of redundancy or retrenchment; or
(d) entitled to an invalidity pension.

(2) Subject to rule 15, in the case of a person to whom this rule applies:

SCHEDULE—continued

- (a) his or her member benefit is payable to him or her as a lump sum; and
- (b) there is applicable to him or her a preserved benefit of the amount of his or her employer benefit.

(3) Subject to rule 15, a person who is entitled to be paid a member benefit under paragraph (2) (a) may elect that, instead of that benefit being paid to him or her, there be applicable to him or her a preserved benefit of the amount of the member benefit and if he or she so elects:

- (a) the member benefit is not payable to him or her as a lump sum; and
- (b) there is applicable to him or her a preserved benefit of that amount.

Benefits on retirement for redundancy or retrenchment or on attaining retiring age of less than 55 years

13. (1) Where a member is retired on the ground of redundancy or retrenchment and he or she is not entitled to an invalidity pension:

- (a) his or her member benefit is payable to him or her as a lump sum; and
- (b) there is applicable to him or her a preserved benefit of the amount of his or her employer benefit.

(2) Where a member retires and, on that retirement:

- (a) he or she has reached his or her retiring age;
- (b) that retiring age is less than 55 years; and
- (c) he or she is not entitled to an invalidity pension;

then:

- (d) his or her member benefit is payable to him or her as a lump sum; and
- (e) there is applicable to him or her a preserved benefit of the amount of his or her employer benefit.

(3) A person who is entitled to be paid a member benefit under paragraph (1) (a) or (2) (d) may elect that, instead of that benefit being paid to him or her, there be applicable to him or her a preserved benefit of the amount of the member benefit and if he or she so elects:

- (a) the member benefit is not payable to him or her as a lump sum; and
- (b) there is applicable to him or her a preserved benefit of that amount.

(4) A person to whom a preserved benefit is applicable under paragraph (1) (b) or (2) (e) may elect that, instead of that benefit being so preserved, it be converted into a pension payable to him or her and if he or she so elects:

SCHEDULE—continued

(a) a preserved benefit of the amount of the benefit is not applicable to him or her; and

(b) the benefit is converted into a pension payable to him or her.

(5) Where:

(a) a member retired and, on that retirement, subrule (2) applied to him or her; and

(b) he or she again became a member and again retires; and

(c) on the last-mentioned retirement the member is not entitled to an invalidity pension;

then, for the purposes of these Rules, the person is taken to be a person to whom subrule (2) applies.

Benefits on retirement on or after attaining age of 55 years

14. Where a member retires:

(a) on or after attaining the age of 55 years; and

(b) he or she is not entitled to an invalidity pension;

there is applicable to him or her a preserved benefit of the amount of his or her member benefit and employer benefit.

Payment of benefits where rule 12 applies and person has less than 12 months' eligible service

15. (1) This rule applies to a person to whom rule 12 applies who has less than 12 months' eligible service and whose employer benefit consists wholly of funded employer benefit.

(2) Where the person's employer benefit is an amount to which the preservation standards set out in the Occupational Superannuation Standards Regulations apply, he or she may elect that, instead of his or her employer benefit being preserved in the Fund, it is paid to a preservation fund, or used to purchase a deferred annuity, of his or her choice, and if he or she does so:

(a) his or her employer benefit is payable to that preservation fund or to be used to purchase that annuity, as the case may be; and

(b) he or she is not entitled to elect under subrule 12 (3) to have applicable to him or her a preserved benefit of the amount of his or her member benefit.

(3) Where the person's employer benefit is an amount to which the preservation standards set out in the Occupational Superannuation Standards Regulations do not apply, he or she may elect that his or her employer benefit is paid to him or her as a lump sum, and if he or she so elects:

(a) his or her employer benefit is payable to him or her as a lump sum; and

(b) he or she is not entitled to elect under subrule 12 (3) to have

SCHEDULE—continued

applicable to him or her a preserved benefit of his or her member benefit.

(4) In spite of anything in this rule or in rule 12, where a person to whom this rule applies does not elect that there be applicable to him or her a preserved benefit of the amount of his or her member benefit, there is not applicable to him or her a preserved benefit of his or her employer benefit, but instead:

- (a) if the employer benefit is an amount referred to in subrule (2), it is payable to a preservation fund, or used to purchase a deferred annuity, of his or her choice; or
- (b) in any other case, it is payable to him or her as a lump sum.

(5) In this rule:

“preservation fund” means a fund that is required, in accordance with the standards set out in the Occupational Superannuation Standards Regulations, to preserve benefits transferred to the fund from a superannuation fund in accordance with those regulations.

Limitation on certain benefits in case of certain transferees who retire before completing 731 days’ service after 30 September 1991

16. (1) Where a person who transferred from the 1973 Scheme before 1 October 1992 retires before completing 731 days of contributory service after 30 September 1991 otherwise than:

- (a) on reaching his or her retiring age; or
- (b) on the ground of invalidity, redundancy or retrenchment;

the amount of member benefit which he or she would, but for this rule, be entitled to be paid is reduced by substituting for the amount of interest applicable in relation to him or her under the relevant provisions an amount calculated in accordance with the formula:

$$\text{Notional interest} \times \frac{\text{Number of days of contributory service}}{731}$$

where:

“Notional interest” means the amount of interest applicable in relation to the person under the relevant provisions; and

“Number of days of contributory service” means the number of days of contributory service by the person after 30 September 1991.

(2) A reference in this rule to a person who retires on the ground of invalidity is taken not to include a reference to a person who, by reason of rule 31, 32 or 33, is not entitled to invalidity benefits.

(3) In this rule:

“contributory service”, in relation to a person, means service by the person in respect of which the person paid contributions under Part 2 or contributions under section 17 of the 1973 Act;

SCHEDULE—continued

“relevant provisions” means subparagraph (e) (ii) of Schedule 9 and paragraph 1 (b) of Schedule 10.

Division 2—Invalidity Benefits

Subdivision A—Incapacity Classification

Establishment of Incapacity Classification Committee

17. The Board must establish an Incapacity Classification Committee.

Membership of Committee

18. (1) The Committee comprises such number of persons as the Board determines.

(2) The qualifications of each member of the Committee are such as the Board determines.

Functions of Committee

19. (1) The functions of the Committee are to exercise, at the request of the Board and subject to any directions given by the Board, the powers and functions under rules 22 and 23.

(2) When determining the classification of, or reclassifying, an invalidity retiree, the Committee:

(a) must take into account any evidence relating to that retiree that is made available or submitted to it; and

(b) may take steps to obtain any other evidence that it considers necessary to properly determine the classification.

(3) The Board must make available to the Committee any medical or other evidence that it has concerning the invalidity retiree whose classification or reclassification is being considered and that is relevant to his or her classification.

Proceedings of Committee

20. Subject to any directions given by the Board, the Committee may regulate its proceedings as the Committee thinks fit.

Decisions by Committee

21. The Committee must notify the Board of its decision as to the classification or reclassification of an invalidity retiree, giving reasons for its decision.

Classification in respect of incapacity

22. (1) Where a member is retired on the ground of invalidity, the Board or the Committee must determine the percentage of incapacity in relation to civil employment of the invalidity retiree and must classify the retiree according to the percentage of incapacity as follows:

SCHEDULE—continued

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

(2) In determining, for the purposes of subrule (1), the percentage of incapacity in relation to civil employment of an invalidity retiree, the Board or the Committee must have regard to the following matters only:

- (a) the vocational, trade and professional skills, qualifications and experience of the retiree;
- (b) the kinds of civil employment which a person with the skills, qualifications and experience referred to in paragraph (a) might reasonably undertake;
- (c) the degree to which the physical or mental impairment of the retiree that is the cause of the invalidity by reason of which he or she has been retired has diminished his or her capacity to undertake the kinds of civil employment referred to in paragraph (b).

(3) The death of a person after he or she has been retired on the ground of invalidity does not prevent the classifying of the person under subrule (1).

(4) This rule does not apply to a person who, by reason of rule 31, 32 or 33, is not entitled to invalidity benefits.

Reclassification in respect of incapacity

23. (1) Where the Board or the Committee, at any time, is satisfied that there has been such a change in the percentage of incapacity in relation to civil employment of an invalidity pensioner that his or her classification should be altered, the Board or the Committee may reclassify him or her in the appropriate classification set out in rule 22 according to the percentage of his or her incapacity in relation to civil employment.

(2) Where an invalidity pensioner has attained the age of 55 years and the invalidity pensioner is classified:

- (a) as Class A—subrule (1) does not apply to him or her; or
- (b) as Class B—subrule (1) is taken not to empower the Board to reclassify him or her as Class C.

(3) In determining, for the purposes of subrule (1), the percentage of incapacity in relation to civil employment of an invalidity pensioner, the Board or the Committee must have regard to the following matters only:

SCHEDULE—continued

- (a) the vocational, trade and professional skills, qualifications and experience of the pensioner;
- (b) the kinds of civil employment which a person with skills, qualifications and experience referred to in paragraph (a) might reasonably undertake;
- (c) the degree to which any physical or mental impairment of the pensioner, being a prescribed physical or mental impairment, has diminished his or her capacity to undertake the kinds of civil employment referred to in paragraph (b).

(4) Where the Board or the Committee reclassifies a person under this rule, the Board or the Committee must specify the date from which the reclassification has effect and, on and after that date, the person is, for the purposes of these Rules, taken to be classified under rule 22 accordingly.

(5) Where the Board or the Committee reclassifies a person under this rule, the date specified by the Board or the Committee as the date from which the reclassification has effect is not to be a date earlier than the date on which the Board or the Committee reclassifies the member unless:

- (a) the person is reclassified as Class A or, having been classified as Class C, is reclassified as Class B; and
- (b) the Board or the Committee is satisfied that special circumstances exist that justify an earlier date being so specified.

(6) Where a person who was retired otherwise than on the ground of invalidity is, by virtue of rule 30, treated as if he or she had been retired on the ground of invalidity, the Board or the Committee may, despite subrule (5), on the same day on which it classifies him or her under rule 22, reclassify him or her under this rule with effect from a date after the date of his or her retirement but before the date on which the Board or the Committee makes the reclassification.

(7) The death of a person after he or she has been classified under rule 22 or reclassified under this rule does not prevent the reclassifying of the person under subrule (1).

(8) For the purposes of this rule, a person who:

- (a) is classified as Class C; and
- (b) immediately before being so classified was an invalidity pensioner;

is taken to be an invalidity pensioner.

(9) This rule does not apply to a person who has attained the age of 65 years.

(10) In this rule:

SCHEDULE—continued

“prescribed physical or mental impairment”, in relation to an invalidity pensioner, means:

- (a) a physical or mental impairment of the pensioner that was the cause, or one of the causes, of the invalidity by reason of which he or she was retired, whether or not that impairment has changed, for better or worse, since that retirement; or
- (b) any other physical or mental impairment of the pensioner causally connected with a physical or mental impairment referred to in paragraph (a).

Decision as to classification or reclassification to be notified to invalidity retiree

24. The Board must notify an invalidity retiree in writing of any decision under rule 22 or 23 as to the classification or reclassification of the retiree and the reasons for that decision.

Power of Board to require persons to be medically examined etc.

25. (1) The Board may, by notice in writing given to a person in receipt of an invalidity pension, require him or her:

- (a) to submit himself or herself for medical examination by a legally qualified medical practitioner at a time and place specified in the notice; or
- (b) to furnish in writing to the Board, within such period as is specified in the notice, such information as is required by the notice with respect to any employment (whether as an employee or on his or her own account) in which he or she has been engaged during such period as is specified in the notice.

(2) A notice under subrule (1) must set out the effect of subrule (3).

(3) Where a person fails to comply with a notice given under subrule (1) and the Board is not satisfied that there was a reasonable excuse for the failure, the Board may, by notice in writing given to the person, suspend the person’s invalidity pension with effect from a day determined by the Board, being a day not earlier than:

- (a) in a case where the first-mentioned notice required the person to submit to a medical examination on a day specified in the notice—the day next following that day; or
- (b) in a case where the first-mentioned notice required the person to furnish information within a period specified in the notice—the day next following the end of that period.

(4) A notice to a person under subrule (3) must set out the effect of subrules (7), (9) and (10).

(5) An invalidity pension is not payable in respect of a period during which a suspension under subrule (3) is in force.

SCHEDULE—continued

(6) Where:

- (a) the invalidity pension of a person is suspended under subrule (3); and
- (b) the Board, having regard to such matters as it considers relevant, is of the opinion that the suspension should be revoked;

the Board may, by notice in writing given to the person, revoke the suspension with effect from a day determined by the Board, being a day not later than the day on which the notice is given.

(7) Without limiting subrule (6), where the invalidity pension of a person is suspended under subrule (3), the person may, by notice in writing given to the Board, request the Board to revoke the suspension and, where such a request is made, the Board must, by notice in writing given to the person:

- (a) if the invalidity pension has been suspended by virtue of the relevant person's having failed to comply with a notice requiring the person to submit to a medical examination—require the person to submit to a medical examination by a medical practitioner at a time and place specified in the second-mentioned notice; or
- (b) if the invalidity pension has been suspended by virtue of the person's having failed to comply with a notice requiring the person to give information to the Board (in this paragraph called "**the original notice**")—require the person to give in writing to the Board, within such period as is specified in the second-mentioned notice, such information as was required by the original notice to be given.

(8) A notice given by the Board under subrule (7) must set out the effect of subrules (9) and (10).

(9) Where:

- (a) because of a request having been made to revoke the suspension of the invalidity pension of a person, a notice under subrule (7) is given to the person: and
- (b) either:
 - (i) the person complies with the notice; or
 - (ii) the person fails to comply with the notice but the Board is satisfied that there was a reasonable excuse for the failure;

the Board must, by notice in writing given to the person, revoke the suspension with effect from a day determined by the Board, being a day not later than:

- (c) in a case to which subparagraph (b) (i) applies—the day on which the person so complied with the notice; or
- (d) in a case to which subparagraph (b) (ii) applies:

SCHEDULE—continued

- (i) the day on which the Board became so satisfied; or
- (ii) if the Board is satisfied that it would be equitable in the circumstances of the case for the revocation to have effect from an earlier day—from that earlier day.

(10) Where:

- (a) because of a request having been made to revoke the suspension of the invalidity pension of a person, a notice under subrule (7) is given to the person; and
- (b) the person fails to comply with the notice and the Board is not satisfied that there was a reasonable excuse for the failure;

the Board must, by notice in writing given to the person, refuse to revoke the suspension.

(11) A notice required or permitted to be given:

- (a) to a person by the Board under subrule (6), (7), (9) or (10) may be given to a person acting on his or her behalf; or
- (b) to the Board by a person under this rule may be given by a person acting on his or her behalf.

(12) Where the Board is required by this rule to give a person a notice, the notice is taken to have been given to the person if:

- (a) the notice is served on the person personally; or
- (b) the notice is sent to the person by pre-paid post as a letter and the person acknowledges receipt of the letter; or
- (c) where the Board has caused all reasonable steps to be taken to ascertain a reliable address of the person, the notice is sent to the person by prepaid post to:
 - (i) in a case where the Board is satisfied that at least one reliable address of the person has been ascertained—that address or one of those addresses; or
 - (ii) in any other case—the last address of the person known to the Board.

(13) A reference in subrule (12) to a reliable address of a person is a reference to an address where, if a letter were sent to the person by pre-paid post to the address, the person would probably receive the letter.

Subdivision B—Invalidity Benefits

Entitlement to invalidity benefits

26. A person who is classified as Class A or Class B under rule 22 (whether on his or her retirement or by reason of his or her having been reclassified under rule 23) is entitled to invalidity benefits in accordance with this Division.

SCHEDULE—continued

Invalidity benefits for person classified as Class A

27. (1) Where a person who is entitled to invalidity benefits is classified as Class A:

- (a) his or her member benefit is payable to him or her as a lump sum; and
- (b) his or her employer benefit is converted into a pension payable to him or her.

(2) A person who is entitled to be paid a member benefit under subrule (1) may elect that, instead of that benefit being paid to him or her, there be applicable to him or her a preserved benefit of the amount of the benefit and if he or she so elects:

- (a) the member benefit is not payable to him or her as a lump sum; and
- (b) there is applicable to him or her a preserved benefit of that amount.

Invalidity benefits for person classified as Class B

28. (1) Where a person who is entitled to invalidity benefits is classified as Class B:

- (a) his or her member benefit is payable to him or her as a lump sum; and
- (b) a pension is payable to him or her at an annual rate equal to:
 - (i) half the rate of the pension which would have been payable to him or her if he or she had been classified as Class A; or
 - (ii) the rate of the pension which would have been payable to him or her if he or she:
 - (A) had been retired otherwise than on the ground of invalidity; and
 - (B) were entitled to elect to convert his or her employer benefit into a pension and had elected to do so;whichever is the greater.

(2) A person who is entitled to be paid a member benefit under subrule (1) may elect that, instead of that benefit being paid to him or her, there be applicable to him or her a preserved benefit of the amount of the benefit and if he or she so elects:

- (a) the member benefit is not payable to him or her as a lump sum; and
- (b) there is applicable to him or her a preserved benefit of that amount.

SCHEDULE—continued

Effect of change of invalidity classification on pension and preserved benefit

29. (1) Where a person who is classified as Class A or Class B is reclassified as Class C:

- (a) the pension payable to him or her under rule 27 or 28 is cancelled; and
- (b) there is applicable to him or her a preserved benefit of the amount of his or her employer benefit.

(2) If a person referred to in subrule (1) is subsequently reclassified as Class A or Class B:

- (a) the preserved benefit referred to in that subrule ceases to be applicable to him or her; and
- (b) a pension is payable to him or her in accordance with rule 27 or 28, as the case may be, from the date specified under rule 23 by the Board or the Committee, as the case may be, as the date from which the reclassification has effect.

Person may be treated as having been retired on ground of invalidity

30. (1) Where a person has been retired otherwise than on the ground of invalidity but, after his or her retirement, the Board is satisfied that, at the time the person was retired, grounds existed on which he or she could have been retired on the ground of invalidity, the Board may, for the purposes of these Rules, treat the person as if he or she had been retired on the last-mentioned ground.

(2) Where, because of action taken under subrule (1), a person is classified as Class A or Class B under rule 22:

- (a) so much of the preserved benefit applicable to him or her under rule 12, 13 or 14 as consists of employer benefit ceases to be applicable to him or her; and
- (b) a pension is payable to him or her in accordance with rule 27 or 28, as the case may be.

Subdivision C—Invalidity Benefits Not Payable

Person classified as Class C

31. A person who is classified as Class C is not entitled to invalidity benefits under this Division.

Pre-existing condition

32. (1) Where:

- (a) a member is, within a period of 2 years after becoming a member, retired on the ground of invalidity; and
- (b) the Board is satisfied that:

SCHEDULE—continued

- (i) the invalidity was caused, or was substantially contributed to, by a physical or mental condition that existed at the time when he or she became a member; and
- (ii) the condition was not materially aggravated by his or her service after becoming a member;

the person is not entitled to invalidity benefits under this Division.

(2) Where:

- (a) a person who has retired again becomes a member after a break in the continuity of his or her service; and
 - (b) he or she is not a person who again became a member pursuant to the Parliamentary Candidates Act; and
 - (c) he or she is subsequently retired on the ground of invalidity;
- the person is, for the purposes of subrule (1), treated as if he or she had first become a member at the time when he or she again became a member.

Invalidity due to intentional act

33. (1) Where:

- (a) a member is retired on the ground of invalidity; and
- (b) the Board is satisfied that the invalidity was due to an intentional act on his or her part for the purpose of obtaining invalidity benefits under this Division;

he or she is not entitled to invalidity benefits under this Division.

(2) Subrule (1) does not apply in a case where the Board is of the opinion:

- (a) that the condition which formed the ground on which the person was retired was not wholly due to the intentional act of the person; or
- (b) that the action of the person was caused by his or her physical or mental condition.

Invalidity arising during absence without leave exceeding 21 days

34. (1) Where:

- (a) a member is retired on the ground of invalidity; and
- (b) the Board is satisfied that the invalidity was caused, or was substantially contributed to, by an occurrence that happened at a time when he or she was absent without leave and had been so absent for a period exceeding 21 consecutive days; and
- (c) the salary and allowances of the member in respect of the period were forfeited under regulations made under the *Defence Act 1903* and an amount equal to the amount of the salary and allowances so forfeited was not subsequently paid, and is not payable, under those regulations to him or her;

SCHEDULE—continued

he or she is not entitled to invalidity benefits under this Division.

(2) This rule does not apply in a case where the Board is satisfied that the absence of the member was due to sufficiently mitigating circumstances.

Division 3—Person Rejoining the Scheme

Suspension of pension of retirement pensioner other than invalidity retiree

35. Where a person who is in receipt of a pension under Division 1 again becomes a member, the pension is suspended for the duration of his or her membership and is not payable while it is suspended.

Cancellation of pension etc. of invalidity retiree

36. Where a person, who was a member and was retired on the ground of invalidity, again becomes a member:

- (a) any determination of his or her incapacity in relation to civil employment and consequent classification or reclassification, under rule 22 or 23, is cancelled; and
- (b) if he or she was, immediately before again becoming a member, a person to whom an invalidity pension was payable, his or her entitlement to that pension is cancelled; and
- (c) when the person again retires, he or she is not treated as having been retired on the ground of invalidity only by reason of his or her retirement on that ground from his or her earlier period of service.

Continuation of previous election to cease paying contributions

37. Where:

- (a) immediately before a person ceased to be a member, the person was, in consequence of an election made by him or her under subrule 5 (2), not paying contributions; and
- (b) the person again becomes a member;

that election is taken to be again in force in relation to the member as if it had been made after the member again became a member.

PART 5—SPOUSES' AND CHILDREN'S BENEFITS

Division 1—Death of a Member

Applicability of benefits

38. Where a member dies and is survived by a spouse or spouses or an eligible child or children, benefits are payable in accordance with this Division.

SCHEDULE—continued

Payment of deceased member's member benefit

39. A deceased member's member benefit is payable as a lump sum as follows:

- (a) if the deceased member is survived by a spouse, the benefit is payable to the spouse;
- (b) if the deceased member is not survived by a spouse but is survived by an eligible child or children, the benefit is payable to, or for the benefit of, the child or children;
- (c) if the deceased member is not survived by a spouse or an eligible child and he or she had notified the Board in writing that:
 - (i) he or she had a person or persons dependent on him or her who would not be eligible to receive benefits as a spouse or eligible child; and
 - (ii) he or she had made provision for that person or those persons in his or her will;the benefit is payable to, or for the benefit of, the person or persons;
- (d) in any other case the benefit is payable to the deceased member's personal representative.

Payment of deceased member's employer benefit

40. (1) A deceased member's employer benefit or a pension is payable as follows:

- (a) if the deceased member is survived by a spouse with or without an eligible child or children, the employer benefit is payable to the spouse as a lump sum;
- (b) if the deceased member is not survived by a spouse but is survived by an eligible child or children, a pension is payable to, or for the benefit of, the child or children at an annual rate equal to the relevant percentage in Table 2 in Schedule 4 of the deceased member's notional invalidity pension;
- (c) if the deceased member is not survived by a spouse or an eligible child and he or she had notified the Board in writing that:
 - (i) he or she had a person or persons dependent on him or her who would not be eligible to receive benefits as a spouse or eligible child; and
 - (ii) he or she had made provision for that person or those persons in his or her will;the employer benefit is payable to, or for the benefit of, the person or persons as a lump sum;
- (d) in any other case the employer benefit is payable to the deceased member's personal representative as a lump sum.

SCHEDULE—continued

(2) A spouse who is entitled to be paid an employer benefit under paragraph (1) (a) may elect that:

- (a) instead of that employer benefit being paid to him or her, it be converted into a pension payable to him or her at an annual rate equal to the relevant percentage in Table 1 in Schedule 4 of the deceased member's notional invalidity pension and if he or she so elects the benefit is so converted; or
- (b) instead of that employer benefit being paid in full to him or her, a specified part of that benefit, being not less than one-half of the benefit, be converted into a pension payable to him or her at an annual rate equal to the relevant percentage in Table 1 in Schedule 4 of the deceased member's reduced notional invalidity pension and if he or she so elects:
 - (i) that part of the benefit is so converted; and
 - (ii) the balance of the benefit is payable to him or her as a lump sum.

(3) An employer benefit payable under subrule (1) is calculated as if, on the date of the death of the deceased member, he or she had become entitled to invalidity benefits under Division 2 of Part 3 and had been classified as Class A under rule 22.

(4) Subrules (2) and (3) do not apply where:

- (a) a member dies and, at the time of his or her death, he or she was absent without leave and had been so absent for a period that exceeds 21 consecutive days; and
- (b) the salary and allowances of the deceased member in respect of the period of absence without leave were forfeited under regulations made under the *Defence Act 1903* and an amount equal to the amount of the salary and allowances forfeited was not subsequently paid, and is not payable, under those regulations to the deceased member's personal representative;

unless the Board is satisfied that the absence of the member was due to sufficiently mitigating circumstances.

(5) In this rule:

“notional invalidity pension”, in relation to a deceased member, means the invalidity pension that would have been payable to the deceased member if, on the date of his or her death, he or she had become entitled to invalidity benefits under Division 2 of Part 3 and had been classified as Class A under rule 22;

“reduced notional invalidity pension”, in relation to a deceased member, means the invalidity pension that would have been payable to the deceased member if, on the date of his or her death:

- (a) he or she had become entitled to invalidity benefits under Division 2 of Part 3; and

SCHEDULE—continued

- (b) he or she had been classified as Class A under rule 22; and
- (c) the amount of his or her employer benefit were the amount which his or her spouse elected under paragraph (2)(b) to convert into a pension.

Division 2—Death of Retirement Pensioner

Applicability of benefits

41. Where a retirement pensioner dies and is survived by a spouse or spouses or an eligible child or children, benefits are payable in accordance with this Division.

Pensions payable

42. (1) Where a deceased retirement pensioner is survived by a spouse with or without eligible children, a pension is payable to the spouse at an annual rate equal to the relevant percentage in Table 1 in Schedule 4 of the deceased retirement pensioner's pension.

(2) In spite of subrule (1), on each of the 7 pension paydays immediately following the death of a retirement pensioner referred to in that subrule, the rate at which pension is payable to the spouse of the deceased retirement pensioner is the rate at which pension would have been payable to the deceased retirement pensioner on that day if he or she had not died.

(3) Where a deceased retirement pensioner is not survived by a spouse but is survived by an eligible child or children, a pension is payable to, or for the benefit of, the child or children at an annual rate equal to the relevant percentage in Table 2 in Schedule 4 of the deceased retirement pensioner's pension.

(4) In this rule:

“**deceased retirement pensioner's pension**”, in relation to a deceased retirement pensioner, means the pension that was payable to the deceased retirement pensioner immediately before his or her death.

Final benefit payable in relation to deceased retirement pensioner

43. (1) Where a retirement pensioner dies not later than 10 years after his or her pension became payable to him or her and he or she is not survived by a spouse or eligible child to whom, or for the benefit of whom, benefits are payable under this Division, there is payable to the deceased retirement pensioner's personal representative as a lump sum an amount equal to:

- (a) where the deceased retirement pensioner was an invalidity pensioner:
 - (i) the amount (if any) by which the deceased invalidity pensioner's employer benefit exceeds the amount of

SCHEDULE—continued

pension paid to the deceased invalidity pensioner since he or she last ceased to be a member; or

- (ii) the amount of pension which would have been paid to the invalidity pensioner (if he or she had not died) from the date of his or her death until the expiration of a period of 10 years after the invalidity pensioner's pension became payable to him or her;

whichever is the less; or

- (b) in any other case—the amount (if any) by which so much of the deceased retirement pensioner's employer benefit as was funded exceeds the amount of pension paid to the deceased retirement pensioner since he or she last ceased to be a member.

(2) Where a retirement pensioner dies, and:

- (a) he or she is survived by a spouse or eligible child to whom, or for the benefit of whom, a pension is payable under this Division; and
- (b) that surviving person, or the last of those surviving persons, dies not later than 10 years after the retirement pensioner's pension became payable to him or her;

there is payable to the deceased spouse's or eligible child's personal representative as a lump sum an amount equal to:

- (c) where the deceased retirement pensioner was an invalidity pensioner—the amount (if any) by which the deceased invalidity pensioner's employer benefit exceeds the total of the amounts of pension paid to the deceased invalidity pensioner and his or her spouse, and to, or for the benefit of, his or her child or children, since he or she last ceased to be a member; or
- (d) in any other case—the amount (if any) by which so much of the deceased retirement pensioner's employer benefit as was funded exceeds the total of the amounts of pension paid to the deceased retirement pensioner and his or her spouse, and to, or for the benefit of, his or her child or children, since he or she last ceased to be a member.

Death in certain cases due to retirement disabilities

44. Where a person who:

- (a) is classified as Class B; or
- (b) is classified as Class C as a result of a reclassification under rule 23;

dies, and the Board is satisfied that his or her death was due to:

- (c) the physical condition that was the cause of his or her retirement on the ground of invalidity; or
- (d) a physical condition that was causally connected with that condition;

SCHEDULE—continued

he or she is taken, for the purposes of this Division, to have been, immediately before his or her death, an invalidity pensioner classified as Class A and in receipt of pension at a rate calculated accordingly.

Effect of death of invalidity pensioner while pension suspended

45. Where a person whose invalidity pension has been suspended under rule 25 dies before the invalidity pension again becomes payable, he or she is taken, for the purposes of this Division, to have been an invalidity pensioner in receipt of pension immediately before his or her death.

Division 3—Death of Spouse

Child's benefit upon death of spouse

46. (1) Where a spouse of a deceased member, being a spouse who:
(a) is in receipt of a spouse's pension; and
(b) has an eligible child or children;
dies, a pension is payable to, or for the benefit of, the child or children at an annual rate equal to the relevant percentage in Table 2 of Schedule 4 of the deceased person's notional pension.

(2) In this rule:
"deceased person" has the same meaning as in paragraph 8 of Schedule 1;
"deceased person's notional pension" means:

- (a) where the spouse was in receipt of a pension under subrule 40 (2)—the deceased person's notional invalidity pension, or reduced notional invalidity pension, on the date of the member's death; or
- (b) where the spouse was in receipt of a pension under subrule 42 (1)—the deceased person's pension on the date of the member's death;

as if the rate of that pension had been increased from time to time in accordance with Division 2 of Part 6;

"notional invalidity pension" and "reduced notional invalidity pension" have the same respective meanings as in rule 40.

Division 4—Miscellaneous

Entitlements where two spouses

47. (1) In spite of anything in this Part, where a deceased member or retirement pensioner is survived by 2 spouses, the amount of member benefit (if any) and the amount of employer benefit payable to each spouse is to be determined by the Board but so that not less than 37.5 per centum of the member benefit (if any) and 37.5 per centum of the employer benefit is payable to each spouse.

SCHEDULE—continued

(2) The total amount of member benefit (if any) and the total amount of employer benefit determined under subrule (1) is not to exceed the amount of the deceased person's member benefit (if any) or employer benefit, respectively.

(3) Where, under a provision of this Part, a spouse is entitled to make an election in relation to a benefit, then, in a case where a deceased person is survived by 2 spouses, each of those spouses is entitled to make such an election in relation to so much of the benefit as is applicable to him or her.

Payment of balance of benefit where pension becomes payable to child in certain cases

48. (1) Where a pension becomes payable to, or for the benefit of, an eligible child or children of a deceased member under paragraph 40 (1) (b), an amount equal to the amount (if any) by which the employer benefit of the deceased member exceeds the amount that the Board determines to be the capital value of the pension payable to, or for the benefit of, the child or children is payable in accordance with subrule (4).

(2) Where a pension becomes payable to, or for the benefit of, an eligible child or children of a deceased retirement pensioner (other than an invalidity pensioner) under subrule 42 (3), an amount equal to the amount (if any) by which the funded employer benefit of the deceased retirement pensioner exceeds an amount equal to the sum of:

- (a) the amounts of pension paid to the deceased retirement pensioner and his or her spouse, and to, or for the benefit of, his or her child or children, since he or she last ceased to be a member; and
- (b) the amount that the Board determines to be the capital value of the pension payable to, or for the benefit of, the child or children;

is payable in accordance with subrule (4).

(3) Where a pension becomes payable to, or for the benefit of, an eligible child or children of a deceased invalidity pensioner under subrule 42 (3), an amount equal to the amount (if any) by which the employer benefit of the deceased pensioner exceeds an amount equal to the sum of:

- (a) the amounts of pension paid to the deceased invalidity pensioner and his or her spouse, and to, or for the benefit of, his or her child or children, since he or she last ceased to be a member; and
- (b) the amount that the Board determines to be the capital value of the pension payable to, or for the benefit of, the child or children;

SCHEDULE—continued

is payable in accordance with subrule (4).

(4) Where an amount is payable under subrule (1), (2) or (3):

(a) if the deceased person had notified the Board in writing that:

(i) he or she had a person or persons dependent on him or her who would not be eligible to receive benefits as a spouse or eligible child; and

(ii) he or she had made provision for that person or those persons in his or her will;

the amount is payable to, or for the benefit of the person or persons as a lump sum; or

(b) in any other case, the amount is payable to the deceased person's personal representative as a lump sum.

(5) In determining the capital value of a pension under this rule, the Board must obtain, and have regard to, the advice of an actuary.

PART 5—PAYMENT OF PRESERVED BENEFITS

Drawing on member benefit included in preserved benefit

49. (1) Subject to subrule (2), where a preserved benefit is applicable to a person and the preserved benefit includes an amount of member benefit, he or she may, at any time, elect to have the whole or a part of that member benefit paid to him or her as a lump sum and:

(a) if he or she elects to have the whole of the member benefit paid—the whole of the member benefit is payable to him or her; or

(b) if he or she elects to have part of the member benefit paid—the amount specified in the election is payable to him or her;

and the amount of the preserved benefit applicable to the person is reduced by a corresponding amount.

(2) Where a person elects under this rule to have part of the member benefit paid:

(a) that part must be an amount of \$10,000 or a whole number multiple of that amount; and

(b) he or she is not permitted, except with the approval of the Board, to make another election under this rule until 6 months has elapsed since the last election made by him or her.

Fee for payment of part of person's member benefit

50. (1) Where a person elects under rule 49 to have part of his or her member benefit paid to him or her, there is payable to the Board by the person a fee determined by the Board but not exceeding the administrative costs incurred by the Board in relation to that payment.

SCHEDULE—continued

(2) A fee is not payable in respect of the first payment of part of a person's member benefit.

Payment of employer benefit included in preserved benefit before person attains age of 55 years

51. Where, in relation to a person:

- (a) to whom a preserved benefit applies; and
- (b) who has not attained the age of 55 years;

one of the following paragraphs applies, the employer benefit included in that preserved benefit becomes payable to him or her as a lump sum on the date specified in that paragraph:

- (c) the Board decides that by reason of the person's physical or mental incapacity, the person has become unlikely ever to be able to work again in employment for which he or she is reasonably qualified by education, training or experience or for which the person could reasonably be qualified after retraining—on the date on which the Board so decided;
- (d) the person intends to leave Australia permanently and the Board is satisfied that that intention will be carried out—on the date on which the Board became so satisfied;
- (e) the Insurance and Superannuation Commissioner approves the payment of the benefit in other circumstances—the date which is the later of:
 - (i) the date of the approval; or
 - (ii) the date on which the circumstances apply.

Payment of employer benefit included in preserved benefit to person who has attained 55 years of age

52. Where a preserved benefit is applicable to a person who has attained the age of 55 years, he or she may, at any time:

- (a) elect to have that preserved benefit paid to him or her as a lump sum and if he or she so elects the benefit is payable to him or her; or
- (b) instead of the employer benefit included in the preserved benefit being paid to him or her, elect that it be converted into a pension payable to him or her and if he or she so elects:
 - (i) the employer benefit is so converted; and
 - (ii) the member benefit (if any) included in the preserved benefit is payable to the person as a lump sum; or
- (c) instead of the employer benefit being paid in full to him or her, elect that a specified part of the employer benefit, being not less than one-half of the employer benefit, be converted into a pension payable to him or her and if he or she so elects:
 - (i) that part of the employer benefit is so converted; and

SCHEDULE—continued

- (ii) the balance of the preserved benefit is payable to him or her as a lump sum.

Compulsory payment of preserved benefit to person on attaining 65 years of age

53. Where a person in relation to whom a preserved benefit is applicable does not make an election under paragraph 52 (b) or (c) on or before attaining the age of 65 years, the preserved benefit is payable to the person as a lump sum.

Payment of deceased former member's preserved benefit

54. (1) Upon the death of a person who had been a member but at the time of his or her death was not a member or a retirement pensioner (in this rule called the “deceased former member”), his or her preserved benefit or a pension is payable in accordance with this rule.

(2) A deceased former member's preserved benefit or a pension is payable as follows:

- (a) if the deceased former member is survived by a spouse, the preserved benefit is payable to the spouse as a lump sum;
- (b) if the deceased former member is not survived by a spouse but is survived by an eligible child or children, a pension is payable to, or for the benefit of, the child or children at an annual rate equal to the relevant percentage in Table 2 in Schedule 4 of the deceased former member's notional pension;
- (c) if the deceased former member is not survived by a spouse or an eligible child and he or she had notified the Board in writing that:
 - (i) he or she had a person or persons dependent on him or her who would not be eligible to receive benefits as a spouse or eligible child; and
 - (ii) he or she had made provision for that person or those persons in his or her will;

the preserved benefit is payable to, or for the benefit of, the person as a lump sum;

- (d) in any other case, the preserved benefit is payable to the deceased member's personal representatives as a lump sum.

(3) Where a pension becomes payable under paragraph (2) (b), the member benefit (if any) included in the preserved benefit is payable, as a lump sum, to, or for the benefit of, the eligible child or children.

(4) A spouse who is entitled to be paid an employer benefit under paragraph (2) (a) may elect that:

- (a) instead of that employer benefit being paid to him or her, it be converted into a pension payable to him or her at an annual

SCHEDULE—continued

rate equal to the relevant percentage in Table 1 in Schedule 4 of the deceased member's notional pension and if he or she so elects the benefit is so converted; or

- (b) instead of that employer benefit being paid in full to him or her, a specified part of that benefit, being not less than one-half of the benefit, be converted into a pension payable to him or her at an annual rate equal to the relevant percentage in Table 1 in Schedule 4 of the deceased member's reduced notional pension and if he or she so elects:
 - (i) that part of the employer benefit is so converted; and
 - (ii) the balance of the preserved benefit is payable to him or her as a lump sum.

(5) In this rule:

“notional pension”, in relation to a deceased former member, means the pension that would have been payable to the deceased former member if, on the date of his or her death, he or she had become entitled, under Division 1 of Part 3, to elect to have his or her employer benefit converted into a pension and had elected to do so;

“reduced notional pension”, in relation to a deceased former member, means the pension that would have been payable to the deceased former member if, on the date of his or her death, he or she:

- (a) had become entitled, under Division 1 of Part 3, to elect to have part of his or her employer benefit converted into a pension; and
- (b) had elected to convert into a pension the same amount of his or her employer benefit as his or her spouse elected under paragraph (4) (b) to convert into a pension.

**PART 6—INCREASES IN MAXIMUM BENEFIT LIMITS,
PENSIONS AND CERTAIN UNFUNDED PRESERVED
BENEFITS**

Division 1—Increases in Maximum Benefit Limits

Increases in maximum benefit limits

55. (1) This rule is to have effect, on 1 July 1991 and each subsequent 1 July, as if there were substituted for:

- (a) each amount referred to in the definition of “lump sum maximum benefit multiple” in Schedule 3; and
- (b) each amount referred to in the definition of “pension maximum benefit multiple” in Schedule 3;

or for the amount last substituted for that amount under this rule (in this rule called the **“base amount”**) a new amount calculated by:

SCHEDULE—continued

- (c) multiplying the base amount by the index number for the March quarter immediately preceding that 1 July; and
- (d) dividing the product by the index number for the previous March quarter.

(2) Subject to subrule (3), if at any time, whether before or after the commencement of these Rules, the Statistician publishes an index number in respect of a particular March quarter in substitution for an index number previously published, that later index number is disregarded for the purposes of this rule.

(3) If at any time the Statistician changes the reference base for the index numbers, regard is to be had, for the purposes of the operation of this rule after the change took place, only to index numbers published in terms of the new reference base.

(4) Where an amount to be substituted under this rule is not a multiple of \$10, it is increased to the nearest multiple of \$10.

(5) In this rule:

“**index number**”, in relation to a quarter, means the amount of the full-time adult average weekly ordinary time earnings first published by the Statistician for the middle month of that quarter.

Division 2—Increases in Pensions and Certain Unfunded Preserved Benefits

Increases in pensions and certain unfunded preserved benefits

56. (1) Subject to this Part, if the all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the March quarter of the year immediately preceding a prescribed year exceeds the highest all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the March quarter of any earlier year, not being a year earlier than the year that commenced on 1 July 1989, then:

- (a) a person (in this section called the “**pensioner**”) who was in receipt of a pension immediately before the commencement of that prescribed year is entitled to an increase in the rate at which the pension was payable immediately before the commencement of that prescribed year; and
- (b) where, immediately before the commencement of that prescribed year, a preserved benefit is applicable to a person, or has become payable in respect of a deceased person but has not been paid, the amount of the unfunded employer benefit included in the preserved benefit in relation to that person immediately before the commencement of that year is increased.

SCHEDULE—continued

(2) The increase provided for by subrule (1) in the rate at which a pension was payable to a person, or in the amount of the unfunded preserved benefit in relation to a person, immediately before the commencement of a prescribed year (in this rule called the “**relevant prescribed year**”), is the percentage of that rate or amount that represents $A - B$ expressed as a percentage of B , where:

A is the all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the March quarter of the year immediately preceding the prescribed year; and

B is the highest all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the March quarter of any year earlier than the year that commenced on 1 July 1990.

(3) Where, by reason of the death on 30 June in the year immediately preceding a prescribed year of a person in receipt of a pension, a pension becomes payable on the following day to another person, that other person is entitled to such an increase in the rate of that pension as he or she would have been entitled to had the pension become payable to him or her on that 30 June.

Application of increase to suspended pension

57. Where a pension would, but for its suspension under rule 25, be payable to a person immediately before the commencement of a prescribed year, that pension is, for the purposes of this Part, taken to have been payable to that person immediately before the commencement of that prescribed year but any increase in the rate of that pension by virtue of this Part does not take effect until the day on which the pension again becomes payable.

Proportionate increase for part of a year

58. (1) This rule applies to a pension where:

- (a) the person to whom the pension is payable would, but for this rule, be entitled to an increase, in accordance with rule 56, in the rate at which the pension was payable to him or her immediately before the commencement of the prescribed year; and
- (b) the person is:
 - (i) a retirement pensioner and the pension became payable to him or her during the preceding year; or
 - (ii) the spouse of, or eligible child in relation to, a deceased person who was a member immediately before his or her death and the pension became payable to the spouse or child, as the case may be, during the preceding year; or

SCHEDULE—continued

- (iii) the spouse of, or eligible child in relation to, a deceased person who was a retirement pensioner immediately before his or her death and the deceased person's pension became payable to the deceased person during the preceding year.

(2) If:

- (a) the pension; or
- (b) where subparagraph (1) (b) (iii) applies—the pension that was payable to the deceased person in relation to whom the person was a spouse or eligible child;

became payable after 16 June in the preceding year, the person is not entitled to the increase.

(3) If:

- (a) the pension; or
- (b) where subparagraph (1) (b) (iii) applies—the pension that was payable to the deceased person in relation to whom the person was a spouse or eligible child;

became payable on or before 16 June in the preceding year, the amount of the increase is an amount calculated in accordance with the formula:

$$\text{Full increase} \times \frac{\text{Number of months in period}}{12}$$

where:

“**Full increase**” means the amount of the increase that would have been applicable but for this subrule;

“**Number of months in period**” means the number of months in the period that began on the day on which the pension referred to in paragraph (a) or (b) became payable and ended on 30 June in the preceding year.

(4) If the period referred to in subrule (3) is less than 1 month, that period is treated as 1 month.

(5) If the period referred to in subrule (3) consists of a number of whole months and a part of a month:

- (a) where the number of days in that part of that month is less than one-half of the number of days in that month—that part is disregarded; and
- (b) where the number of days in that part of that month is more than one-half of the number of days in that month—that part is treated as a whole month.

(6) Where a preserved benefit:

- (a) became applicable to a person; or

SCHEDULE—continued

(b) became payable or was converted into a pension; during the most recent prescribed year, that part of the preserved benefit that is an unfunded employer benefit is increased to the extent determined by the Board, consistent with the principle of subrule 56 (2).

(7) In this rule: “**preceding year**”, in relation to a pension to which this rule applies, means the year immediately preceding the prescribed year.

Adjustment in connection with invalidity reclassification

59. (1) Where:

- (a) a person to whom an invalidity pension is payable is reclassified from Class A to Class B or vice versa under rule 23 during a prescribed year; and
- (b) the person became entitled at the beginning of that year to an increase under this Part in the rate at which that invalidity pension was payable to him or her immediately before the beginning of that year;

the rate at which the pension is payable to him or her on and after the date from which the reclassification has effect is the rate at which the pension would have been payable to him or her at the beginning of the year if his or her classification, on and after the date on which he or she became entitled to the pension, had been in accordance with the reclassification.

(2) Where:

- (a) a person to whom an invalidity pension was payable ceased to be entitled to an invalidity pension because of his or her reclassification under rule 23; and
- (b) in consequence of a further reclassification under that rule during a prescribed year he or she again becomes entitled to an invalidity pension;

the rate at which the pension is payable to him or her on and after the date from which the latter reclassification has effect is the rate at which the pension would have been payable to him or her if:

- (c) he or she had not ceased to be entitled to an invalidity pension in consequence of the first mentioned reclassification; and
- (d) his or her classification, on and after the date on which he or she first became entitled to an invalidity pension, had been in accordance with the further reclassification.

(3) Where:

- (a) a person to whom an invalidity pension was payable ceased to be entitled to an invalidity pension because of his or her reclassification under rule 23; and

SCHEDULE—continued

- (b) in consequence of a further reclassification under that rule after his or her death he or she would, had he or she not died, have again become entitled to an invalidity pension;

then, for the purpose of calculating benefits for any surviving spouse or eligible child of the invalidity pensioner, the invalidity pensioner is to be taken to have been, immediately before his or her death, in receipt of an invalidity pension at the rate at which that pension would have been payable to him or her if:

- (c) he or she had not ceased to be entitled to invalidity pension in consequence of the first-mentioned reclassification; and
- (d) his or her classification, on and after the date on which he or she first became entitled to an invalidity pension, had been in accordance with the further reclassification.

(4) Upon a preserved benefit becoming applicable to a person under subrule 29 (1), the unfunded employer benefit included in that preserved benefit is increased as if:

- (a) that preserved benefit had become applicable to the person on the person's retirement; and
- (b) this Part had applied, since that retirement, to the unfunded employer benefit included in the preserved benefit.

Date of effect of increase

60. (1) An increase by virtue of this Part in the rate of a pension that:

- (a) was payable; or
- (b) under subrule 56 (3) is treated as having been payable;

to a person on 30 June in a year applies in relation to the instalment of pension falling due on the first pension pay-day occurring after that day and in relation to all subsequent instalments.

(2) An increase by virtue of this Part in the amount of an unfunded preserved benefit applies with effect from:

- (a) in the case of an increase under subrule 58 (6)—the date on which the preserved benefit became payable; or
- (b) in any other case—1 July of the prescribed year.

Interpretation

61. (1) Subject to subrule (2), if at any time, whether before or after the commencement of these Rules, the Statistician has published or publishes in respect of a particular March quarter an all groups consumer price index number for the weighted average of the 8 capital cities in substitution for an index number previously published by him or her in respect of that quarter, the publication of the later index number is disregarded for the purposes of this Part.

SCHEDULE—continued

(2) If at any time, whether before or after the commencement of these Rules, the Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this Part after the change took place or takes place, regard is to be had only to index numbers published in terms of the new reference base.

(3) If the percentage for the purposes of rule 56 is or includes a fraction of one tenth of 1 per centum:

- (a) where that fraction is less than one half of one tenth—that fraction is disregarded; and
- (b) where that fraction is not less than one half of one tenth—that fraction is treated as one tenth.

PART 7—CANDIDATES AT PARLIAMENTARY ELECTIONS

Re-instated member

62. (1) Where a person who resigned to contest an election:

- (a) again becomes a member; and
- (b) is a person referred to in a relevant provision of the Parliamentary Candidates Act; and
- (c) repays to the Board, before the expiration of 60 days after the day on which he or she again became a member, the amount of any benefit paid to him or her under these Rules upon him or her resigning to contest the election;

the person is taken for the purposes of these Rules:

- (d) to have been a member; and
- (e) despite the operation of the relevant provision, not to have been absent on leave without pay;

during the relevant period.

(2) Where subrule (1) applies to a person:

- (a) any benefit that became payable to him or her under these Rules upon him or her ceasing to be a member is taken not to have been payable; and
- (b) the fortnightly contributions that the person is required to make in respect of the relevant period are in accordance with the election by him or her that was in force immediately before the beginning of that period.

Death or physical or mental incapacity of person

63. When a person who resigned to contest an election:

- (a) dies; or
- (b) in the opinion of the Board, becomes physically or mentally

SCHEDULE—continued

incapacitated to the extent that he or she would have been retired on the ground of invalidity if he or she had remained a member;

he or she is, where considered appropriate by the Board, taken not to have ceased to be a member but to have died or retired on the ground of invalidity while a member at a time determined by the Board.

PART 8—GENERAL PROVISIONS APPLICABLE TO CONTRIBUTIONS AND BENEFITS

Provisions applicable to elections under the Rules

64. (1) An election under these Rules is to be in writing.

(2) Where a person is about to become, or has become, entitled:

(a) to benefits under Part 3 or Part 5; and

(b) to make an election in relation to the nature of those benefits;

he or she may make that election not earlier than 3 months before he or she is due to become entitled to the benefits and not later than 3 months after becoming entitled to the benefits.

(3) Where an election under these Rules is made by a person after the expiration of the period allowed for the making of the election and the Board is satisfied that, in all the circumstances of the case, it is desirable that the election be recognised, the Board may direct that the election be allowed and if it does so these Rules have effect as if the election had been made within the period allowed.

(4) Where a person who is entitled to make an election under these Rules is, by reason of physical or mental incapacity, unable to make that election, the Board may allow such other person as it thinks appropriate to make the election within such period as the Board allows and if it does so and the other person so makes the election these Rules have effect as if the election had been made by the first-mentioned person within the period allowed.

(5) Where:

(a) an election under Part 3, 4 or 5 is made by the person entitled to make the election or, in accordance with subrule (3), by another person on behalf of the first-mentioned person; and

(b) the person who made the election makes an application to the Board, not later than 3 months after the day on which the election is made or within such further period as the Board in special circumstances allows, requesting that the Board cancel the election; and

(c) the Board, having regard to such matters as it considers relevant, is satisfied that the election should be cancelled;

SCHEDULE—continued

the Board may direct that the election is cancelled and if it does so these Rules have effect as if the election had not been made.

(6) Where a person who is, or has been, a member is entitled to make an election under Part 3 or 5 and dies without making such an election:

- (a) if the person is survived by a spouse—the spouse may make the election within 3 months after the person's death; or
- (b) if the person is not survived by a spouse, or is survived by a spouse but the spouse dies without making such an election, but the person is survived by an eligible child—the election may be made within that period by such person as the Board permits;

and if the spouse, or the person permitted by the Board, does so, these Rules have effect as if the election had been made by the first-mentioned person.

Rate of pension where lump sum converted into pension

65. (1) Where a person is entitled under these Rules to have an amount of his or her employer benefit converted into a pension, the annual rate of that pension is calculated in accordance with Schedule 5.

Benefits in unusual or exceptional circumstances

66. Where, in a particular case, the Board is of the opinion that:

- (a) the operation of these Rules, other than this rule, with regard to a point at issue produces a result in relation to a person that is not in the spirit of the Rules; and
- (b) the relevant circumstances of the case are unusual or exceptional;

the Board may, in relation to that case, having regard to the circumstances of the case, the principles in these Rules and the need to maintain equity between members, determine the point at issue in favour of that person.

Instalments of pensions

67. (1) Pensions are to be paid in fortnightly instalments on pension pay-days.

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

(3) Where the amount of a fortnightly instalment of pension includes a fraction of a cent:

- (a) if the fraction is less than one-half of a cent—the amount of the instalment is taken to be reduced by the amount of the fraction; or

SCHEDULE—continued

(b) if the fraction is one-half of a cent or more—the amount of the instalment is taken to be increased by treating the fraction as 1 cent.

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

Set off against pension in certain cases

68. Where:

(a) the spouse of a deceased pensioner to whom retirement pension or invalidity pension (in this rule called the “**primary pension**”) was payable is entitled to spouse’s pension in accordance with subrule 42 (2); and

(b) an amount, purporting to be an instalment of primary pension payable to the pensioner in respect of a period in respect of which spouse’s pension is payable in accordance with that subrule, is paid into an account with a bank, credit union or building society (in this rule called the “**financial institution**”); and

(c) the financial institution pays, out of that account, to the spouse of the deceased pensioner an amount not exceeding the amount so paid into the account;

the Board may make arrangements under which the amount so paid to the spouse may be offset against any amount of pension payable to the spouse in accordance with subrule 42 (2).

Interest payable where payment of benefit delayed

69. (1) Where a benefit is payable as a lump sum to a person and the payment of the benefit is delayed, the Board may, in accordance with this rule, approve an increase, by an amount of interest, in the amount of the benefit payable to the person.

(2) Where a pension is payable to, or for the benefit of a person and the commencement of the payment of that pension is delayed, the Board may, in accordance with this rule, approve an increase, by an amount of interest, in the rate of the pension payable to the person for such period as the Board determines.

(3) A pension is not to be increased under subrule (2) if the Board is of the opinion that the amount of the increase would not be significant.

(4) Interest applicable under this rule is calculated in such manner as the Board determines:

(a) in the case of a lump sum payment—in respect of the period of the delay; and

(b) in the case of a pension—in respect of:

SCHEDULE—continued

- (i) each instalment of the pension delayed; and
- (ii) the period of delay of that instalment.

(5) In this rule:

“benefit” means employer benefit or member benefit.

Payment of benefit otherwise than to person entitled

70. (1) Where, in the opinion of the Board, the part of:

- (a) an instalment of spouse’s pension; or
- (b) a spouse’s lump sum payment;

attributable to an eligible child or eligible children, or any portion of that part, should, by reason of the child or children not being in the custody, care and control of the spouse, or for any other reason which the Board thinks proper, be paid to a person other than the spouse, the Board may authorise payment of that part, or a portion of the part, to the other person and if the Board does so payment is to be made to the other person accordingly.

(2) For the purposes of subrule (1), the part of a spouse’s lump sum payment attributable to that eligible child or those eligible children is taken to be the amount obtained by multiplying the spouse’s lump sum payment by the percentage applicable in respect of an eligible child or children under rule 43 in relation to a pension.

(3) Where, in the opinion of the Board:

- (a) an instalment, or part of an instalment, of a pension; or
- (b) an amount of any other benefit;

should:

- (c) by reason of the person who, but for this rule, would be entitled to the payment being a child, or being a person who is of unsound mind or undergoing imprisonment or otherwise being under a disability; or

(d) for any other reason which the Board thinks proper;

be paid to a person other than the person who would be so entitled to the payment, the Board may authorise payment to the other person and if the Board does so payment is to be made to the other person accordingly.

(4) It is the intention of this rule that:

- (a) the part, or a portion of the part, of an instalment of spouse’s pension attributable to an eligible child that, by virtue of subrule (1), is paid to a person other than the child to which that part or portion is attributable; or
- (b) an instalment of pension payable to a child that, by virtue of subrule (3), is paid to a person other than the child;

be applied for the maintenance, education or other benefit of the child.

SCHEDULE—continued

Withholding payment of benefit where required information not provided

71. The Board may withhold payment of the whole, or a part, of a benefit in relation to a person where that person does not provide, or arrange to be provided, to the Board information required by the Board in connection with the determination of the person's entitlement to benefits under these Rules or the determination of the amount of those benefits.

PART 9—RECONSIDERATION OF DECISIONS

Establishment of Reconsideration Advisory Committees

72. (1) The Board must establish a Reconsideration Advisory Committee.

(2) The Board may establish more than one Committee.

Membership of Committee

73. (1) A Committee comprises such number of persons as the Board determines.

(2) The qualifications or experience of each member are such as the Board determines.

(3) A person who is a member of the Board is not disqualified by reason of that fact from being appointed to a Committee.

Functions of Committee

74. (1) The functions of a Committee are:

- (a) to review any decision referred to it under this Part; and
- (b) to make recommendations to the Board in relation to the decision.

(2) When reviewing a decision, a Committee:

- (a) must take into account any evidence relevant to the decision that is made available or submitted to it; and
- (b) may also take steps to obtain any other evidence that it considers necessary for a proper review of the decision.

Proceedings of Committee

75. Subject to any directions given by the Board, a Committee may regulate its proceedings as the Committee thinks fit.

Reconsideration of decision made by delegate

76. (1) A person affected by a decision made by a delegate of the Board may apply to the Board for reconsideration of the decision.

(2) An application may be:

SCHEDULE—continued

- (a) in writing addressed to the Board and setting out the particulars of the decision that the person wishes to be reconsidered; or
- (b) in any other form that is acceptable to the Board.

(3) The Board must refer the decision to which an application relates to a Committee.

(4) The Board may also, on its own motion, refer a decision of a delegate to a Committee.

(5) After taking into account, in relation to a decision referred to a Committee:

- (a) the recommendations of the Committee; and
- (b) any other matter that the Board considers relevant;

the Board must, by instrument in writing setting out the reasons for so doing, affirm or vary the decision or set it aside and substitute another decision for it.

(6) The Board must make a copy of an instrument referred to in subrule (5) available to the applicant.

Reconsideration of decision made by Board

77. (1) A person affected by a decision made by the Board (including a decision under subrule 76 (5)) may apply to the Board for a reconsideration of that decision.

(2) An application must:

- (a) be in writing addressed to the Board; and
- (b) set out particulars of the decision that the person wishes to be reconsidered; and
- (c) specify the grounds for reconsideration of those particulars; and
- (d) be accompanied by the prescribed fee.

(3) A decision is to be reconsidered only if there is evidence relevant to the decision that was not previously taken into account by the Board in making the decision.

(4) If an application is not supported by evidence in accordance with subrule (3), the Board must dismiss the application.

(5) The dismissal of an application in respect of a decision does not preclude the applicant from subsequently submitting another application in respect of the decision.

(6) If the Board does not dismiss an application under subrule (4), the Board must refer the decision to which the application relates to a Committee.

(7) The Board may also, on its own motion, refer any of its decisions to a Committee.

SCHEDULE—continued

(8) After taking into account, in relation to a decision referred to a Committee:

- (a) the recommendation of the Committee; and
- (b) any other matter that the Board considers relevant;

the Board must, by instrument in writing setting out the reasons for so doing, affirm or vary the decision or set it aside and substitute another decision for it.

(9) The Board must make a copy of an instrument referred to in subrule (8) available to the applicant.

Content of statements of reasons for decisions

78. Where the Board is required by a provision of this Part to give written reasons for a decision made by it, the instrument giving the reasons must also set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.

Interpretation

79. For the purposes of this Part, a determination or a decision of the Incapacity Classification Committee under Subdivision A of Division 2 of Part 3 is taken to be the decision of a delegate of the Board.



SCHEDULE—continued

SCHEDULE 1

Rule 2

GLOSSARY

PART 1

DEFINITIONS

1. In these Rules, unless the contrary intention appears:

“actuary” means a Fellow or an Accredited Member of the Institute of Actuaries of Australia;

“Board” means the Military Superannuation and Benefits Board of Trustees established by section 13 of the Act;

“calendar month” means a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of the next month;

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

“classification” means a classification referred to in rule 22;

“Committee”, in Part 3 of these Rules, means the Incapacity Classification Committee established under rule 17;

“Committee”, in Part 9 of these Rules, means a Reconsideration Advisory Committee established under rule 72;

“contribution” means contribution to the Fund;

“Department” means the Department of State for Defence;

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

- (a) is a child in relation to the deceased person other than (where the deceased person was a retirement pensioner at the time of his or her death) a child who is declared by the Board not to be an eligible child for the purposes of these Rules; and
- (b) is a person who has not attained the age of 16 years or:
 - (i) who has attained the age of 16 years but has not attained the age of 25 years; and
 - (ii) is receiving full-time education at a school, college or university or other full-time education approved by the Board for the purposes of this subparagraph; and
 - (iii) is not ordinarily in employment or engaged in work on his or her own account; and
- (c) immediately before the deceased person’s death:
 - (i) ordinarily lived with the deceased person; or

SCHEDULE—continued

- (ii) was, in the opinion of the Board, wholly or substantially dependent upon the deceased person; or
- (iii) where the person is a child born after the deceased person's death, ordinarily would have been, in the opinion of the Board, living with the deceased person or so dependent if the person had been born before the death of the deceased person;

“eligible service”, in relation to a person, means service calculated in accordance with Schedule 6;

“Emergency Forces” has the same meaning as in the *Defence Act 1903*;

“employer benefit”, in relation to a person, means the amount of employer benefit calculated in relation to that person in accordance with Schedule 8;

“final average salary”, in relation to a person, means an amount calculated in accordance with Schedule 7;

“financial year” means a period of 12 months commencing on 1 July;

“foreign service member” means a person (not being a person who has been an eligible member of the Defence Force within the meaning of the 1973 Act):

- (a) who, before he or she became a member, had been a member of the armed forces of a country other than Australia; and
- (b) who rendered with those forces a period of service (in this definition called **“full-time service”**) of a kind similar to continuous full-time service in the Defence Force for a period of or exceeding 12 months; and
- (c) with regard to whom the Board has, after consultation with the appropriate authority of the Defence Force, formed the opinion that the full-time service or a part of that service of that person with those forces should be regarded as eligible service;

“Fund” means the fund established, and vested in the Board, by the Trust Deed;

“funded employer benefit”, in relation to a person, means the sum of:

- (a) the amount of employer contributions paid by the Department, in relation to the person, under rule 10 less the amount of income tax paid or payable by the Fund in respect of those contributions; and
- (b) the interest (if any) in respect of the amount in paragraph (a) in accordance with a determination or determinations by the Board as to rates of interest and the method of allocation of interest to such amounts;

“higher duties allowance” means the allowance of that name determined under Part IIIA of the *Defence Act 1903*;

SCHEDULE—continued

“invalidity”, in relation to a person, includes physical or mental incapacity of the person to perform his or her duties;

“invalidity pension” means a pension payable under rule 27 or 28;

“invalidity pensioner” means a person who is entitled to invalidity pension or would be so entitled if payment of that pension had not been suspended under subrule 25 (3);

“invalidity retiree” means a person who is about to be, or has been, retired from the Defence Force on the ground of invalidity and includes a person who, in accordance with rule 30, is to be treated as if he or she had been retired on that ground;

“lump sum maximum benefit limit”, in relation to a person, means an amount calculated in accordance with paragraph 1 of Schedule 3;

“MBL member” means a member who has ceased to pay contributions in accordance with rule 5;

“member” means a person who, in accordance with section 6 of the Act, is a member of the Scheme;

“member benefit”, in relation to a member, means an amount calculated in accordance with Schedule 9;

“membership” means membership of the Scheme;

“month” means calendar month;

“Parliamentary Candidates Act” means the *Defence (Parliamentary Candidates) Act 1969*;

“pension” means a pension payable under these Rules;

“pension maximum benefit limit”, in relation to a person, means an amount calculated in accordance with paragraph 3 of Schedule 3;

“Permanent Forces” has the same meaning as in the *Defence Act 1903*;

“prescribed fee” means a fee prescribed in regulations made in pursuance of section 52 of the Act;

“prescribed year” means the year commencing on 1 July 1991 or a subsequent year;

“previous contributions”, in relation to a person, means contributions made by him or her under the previous legislation, less any such contributions refunded to him or her under that legislation;

“previous legislation” means the 1948 Act and the 1973 Act;

“relevant percentage”, in relation to a spouse or eligible child of a deceased person, means the percentage applicable to that spouse or child in accordance with Schedule 4;

“relevant period”, in relation to a person to whom Part 7 of these Rules applies, means the period referred to in a relevant provision in the application of that provision to that person;

“relevant provision”, in relation to the Parliamentary Candidates Act, means subsection 10 (2), 11 (2) or 12 (2), as the case requires;

“Reserve Forces” has the same meaning as in the *Defence Act 1903*;

SCHEDULE—continued

“retirement pensioner” means a former member to whom a pension is payable but does not include a person to whom a pension is payable only because he or she is the spouse or the child of a deceased member;

“salary”, in relation to a person:

- (a) includes, in relation to the person’s service as a member, service allowance and higher duties allowance payable to that person; and
- (b) means, in relation to the person’s service on a particular day as an eligible member of the Defence Force within the meaning of the 1973 Act, the amount that, for the purposes of that Act, was the annual rate of pay applicable to the person on that day;

“Scheme” means the Military Superannuation and Benefits Scheme established by the Trust Deed;

“service” means service as a member of the Defence Force;

“service allowance” means the allowance of that name determined under Part IIIA of the *Defence Act 1903*;

“service offence” has the same meaning as in the *Defence Force Discipline Act 1982*;

“spouse’s pension” means pension payable to a spouse under Part 4 of these Rules;

“Statistician” means the Australian Statistician;

“total benefit”, in relation to a person, means the sum of the person’s member benefit and employer benefit;

“transferred person” means a person who became a member in consequence of his or her having made an election to do so under section 132 of the 1973 Act;

“transfer value”, in relation to a transferred person, means an amount calculated in accordance with Schedule 10;

“unfunded preserved benefit”, in relation to a person, means so much of the employer benefit included in the preserved benefit applicable to the person as is not funded;

“1948 Act” means the *Defence Forces Retirement Benefits Act 1948*;

“1973 Act” means the *Defence Force Retirement and Death Benefits Act 1973*;

“1973 Scheme” means the retirement and death benefits scheme provided for in the 1973 Act;

“1973 Scheme recipient member” means a member who:

- (a) began to render continuous full-time service on or after the date of commencement of the Scheme; and
- (b) immediately before beginning to render that service was a 1973 Scheme retirement pensioner;

“1973 Scheme re-entrant” means a person who became a member because he or she made an election to do so under section 61B of the

SCHEDULE—continued

1973 Act immediately before he or she began to render the period of continuous full-time service which he or she is rendering;

“1973 Scheme retirement pensioner” means a person to whom retirement pay is payable under the 1973 Act;

“1991 Scheme” means the Scheme;

“1991 Scheme re-entrant” means a member who, having been a member and retired, again became a member after a break in the continuity of his or her service.

PART 2

RESIGN TO CONTEST AN ELECTION

2. A reference in these Rules to a person who resigns to contest an election is a reference to a member:

- (a) who is transferred to a Reserve (being a Reserve within the meaning of the Parliamentary Candidates Act); or
 - (b) who is discharged from the Defence Force; or
 - (c) has his or her continuous full-time service terminated;
- under the Parliamentary Candidates Act.

PART 3

RETIREMENT

3. A reference in these Rules to the retirement of a person is a reference to his or her retirement from the Defence Force and includes:

- (a) any voluntary or involuntary termination of the person's services as a member of that force; or
- (b) in the case of a person who is an officer of the Permanent Forces—the transfer of the officer to the Emergency Forces or the Reserve Forces if, on that transfer, the person ceases to render continuous full-time service; or
- (c) in the case of a person who is a member of the Emergency Forces or the Reserve Forces and is rendering continuous full-time service—the cessation of that service.

4. Where a person retires and, without a break in the continuity of his or her service, again becomes a member of the Defence Force serving on continuous full-time service, the person is to be treated, for the purposes of these Rules, as not having retired by reason only of that retirement.

PART 4

RETIRING AGE

5. A reference in these Rules to the retiring age of a member is:

- (a) in the case of a member who is a member of the Permanent

SCHEDULE—continued

Forces—the age for the compulsory retirement of the member ascertained in accordance with, or in accordance with regulations under, the *Defence Act 1903*, the *Naval Defence Act 1910* or the *Air Force Act 1923*; or

- (b) in the case of a member who is not a member of the Permanent Forces—the age that would be the age for the compulsory retirement of the person if the person were a member of the Permanent Forces.

6. Where the age for the compulsory retirement of a member is, in accordance with a law referred to in paragraph 5, extended, the member is treated for the purposes of these Rules, on his or her subsequent retirement, as if:

- (a) where he or she is subsequently retired on the ground of invalidity—he or she had been retired on that ground; or
- (b) where he or she retires or is retired on any other ground—he or she retired on reaching the age for his or her compulsory retirement.

7. In paragraph 5:

“Permanent Forces” does not include the Regular Army Supplement.

PART 5

SPOUSE

8. In this Part:

“deceased person” means a person who:

- (a) has died; and
- (b) was, at the time of his or her death, a member or a former member.

9. Subject to this Part, a reference in these Rules to a spouse of a deceased person is a reference to:

- (a) a person who was legally married to the deceased person at the time of his or her death and who, at that time, was ordinarily living with the deceased person on a permanent and bona fide domestic basis; and
- (b) a person who was legally married to the deceased person at the time of his or her death but who was not ordinarily living with the deceased person on a permanent and bona fide domestic basis at that time and who, in the opinion of the Board, was wholly or substantially dependent upon the deceased person at that time; and
- (c) a person who was not legally married to the deceased person at the time of his or her death but who, for a continuous period of not less than 3 years immediately before the deceased person's

SCHEDULE—continued

death, had ordinarily lived with the deceased person as his or her husband or wife, as the case may be, on a permanent and bona fide domestic basis; and

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

10. Where:

- (a) a deceased person was, at the time of his or her death, a retirement pensioner (in this paragraph called the "pensioner"); and
- (b) the marriage of the pensioner to the person to whom the pensioner was legally married at the time of his or her death took place after the pensioner had become a pensioner and had attained the age of 60 years;

a reference in these Rules to a spouse of a deceased person is, in relation to the pensioner, a reference to the person to whom the pensioner was so married if:

- (c) the marriage took place not less than 5 years before the pensioner's death; or
- (d) the marriage took place less than 5 years before the pensioner's death but:
 - (i) the person had, immediately before the marriage, for a continuous period that commenced not later than 5 years before the pensioner's death but after the pensioner became a pensioner and attained the age of 60 years, ordinarily lived with the pensioner as his or her husband or wife, as the case may be, on a permanent and bona fide domestic basis; or
 - (ii) the person had, immediately before the marriage, for a continuous period that commenced not later than 3 years before the pensioner's death but before the pensioner became a pensioner or attained the age of 60 years, whichever last occurred, ordinarily lived with the pensioner as his or her husband or wife, as the case may be, on a permanent and bona fide domestic basis; or
 - (iii) the person had, immediately before the marriage, for a continuous period that commenced later than 3 years before the pensioner's death but before the pensioner became a pensioner or attained the age of 60 years,

SCHEDULE—continued

whichever last occurred, ordinarily lived with the pensioner as his or her husband or wife, as the case may be, on a permanent and bona fide domestic basis and was, in the opinion of the Board, wholly or substantially dependent upon the pensioner at the time of his or her death;

but not otherwise.

11. Where:

- (a) a deceased person was, at the time of his or her death, a retirement pensioner (in this subrule called the “**pensioner**”); and
- (b) a person who was not legally married to the pensioner at the time of his or her death commenced living with the pensioner as his or her husband or wife, as the case may be, on a permanent and bona fide domestic basis after the pensioner had become a pensioner and had attained the age of 60 years;

a reference in these Rules to a spouse of a deceased person is, in relation to the pensioner, a reference to the person with whom the pensioner had so lived if the person had ordinarily lived with the pensioner for a continuous period of not less than 5 years immediately before the pensioner’s death, but not otherwise.

12. In spite of anything in this Part, a person is not, for the purposes of these Rules, a spouse in relation to another person if he or she is of the same sex as that other person.

PART 6

PARTS OF SPEECH AND GRAMMATICAL FORMS

13. In these Rules, unless the contrary intention appears, where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

PART 7

NUMBER

14. In these Rules, unless the contrary intention appears, words in the singular number include the plural and words in the plural number include the singular.

PART 8

RECKONING OF TIME

15. Where, in these Rules, any period of time, dating from a given day, act or event, is required or allowed for any purpose, the time is, unless the contrary intention appears, to be reckoned exclusive of that day or the day of that act or event.

SCHEDULE—continued

16. Where the last day of any period required or allowed by a provision of these Rules for the doing of anything falls on a Saturday, on a Sunday or on a day which is a public holiday or a bank holiday in the place in which the thing is to be or may be done, the thing may be done on the first day following which is not a Saturday, a Sunday or a public holiday or bank holiday in the place.

PART 9

ATTAINMENT OF PARTICULAR AGE

17. For the purposes of these Rules, unless the contrary intention appears, the time at which a person attains a particular age expressed in years is the commencement of the relevant anniversary of the date of the birth of that person.

SCHEDULE—continued

SCHEDULE 2

Rule 4

PRESCRIBED PERIODS FOR THE PURPOSES OF RULE 4

1. Where:

- (a) the salary and allowances of a member in respect of a period were, on or after the date of his or her entry into the Scheme, forfeited, in whole or in part, under regulations made under the *Defence Act 1903*; and
- (b) the period exceeded 21 consecutive days; and
- (c) an amount equal to the amount of the salary and allowances forfeited was not subsequently paid, and is not payable, under those regulations to the member;

that period is a prescribed period.

2. Where:

- (a) a member was in custody under the *Defence Force Discipline Act 1982* awaiting or undergoing trial for a service offence; and
- (b) the period for which the member was in custody awaiting or undergoing trial commenced on or after the date of his or her entry into the Scheme and exceeded 21 consecutive days; and
- (c) the member was subsequently convicted of the offence or another service offence at the trial; and
- (d) either of the following subparagraphs apply:
 - (i) the conviction was not quashed or set aside;
 - (ii) the conviction was quashed or set aside and:
 - (A) a conviction for another service offence was substituted; or
 - (B) the member was ordered to be tried again for the offence of which the member was convicted, or for another service offence, and was convicted of a service offence at the subsequent trial;

that period is a prescribed period.

3. Where:

- (a) a member was in custody under the *Defence Force Discipline Act 1982* awaiting or undergoing trial for a service offence; and
- (b) the period for which the member was in custody awaiting or undergoing trial commenced before the date of his or her entry into the Scheme and ended on or after that date and exceeded 21 consecutive days; and
- (c) the member was subsequently convicted of the offence or another service offence at the trial; and
- (d) either of the following subparagraphs apply:

SCHEDULE—continued

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

so much of that period as commenced on that date is a prescribed period.

4. Where:

- (a) 2 or more consecutive periods of 24 hours or more would, but for subparagraph 1 (b), 2 (b) or 3 (b) or 2 or all of those provisions, be prescribed periods for the purposes of subrule 4 (4) in relation to a member; and
 - (b) the periods exceed, in the aggregate, 21 days;
- those periods are prescribed periods.

5. Where:

- (a) a period of 24 hours or more would, but for subparagraph 1 (b), 2 (b) or 3 (b), be a prescribed period for the purposes of subrule 4 (4) in relation to a member; and
- (b) the period is consecutive with a period that, under paragraph 1, 2 or 3, is a prescribed period for the purposes of subrule 4 (4);

the period referred to in subparagraph (a) is a prescribed period.

6. Where:

- (a) a period of 24 hours or more would, but for subparagraph 1 (b), 2 (b) or 3 (b), be a prescribed period for the purposes of subrule 4 (4) in relation to a member; and
- (b) the period is consecutive with a period that, under paragraph 5 or this paragraph, is a prescribed period for the purposes of subrule 4 (4) in relation to the member;

the period referred to in subparagraph (a) is a prescribed period.

SCHEDULE—continued

SCHEDULE 3

Rule 5

**CALCULATION OF MAXIMUM
BENEFIT LIMITS**

1. The lump sum maximum benefit limit, in relation to a person, is the product of the person's final average salary and the person's lump sum maximum benefit multiple.

2. In paragraph 1:

“lump sum maximum benefit multiple”, in relation to a person, means the number obtained by dividing the sum of:

- (a) 8 times \$39,970 or, if the person's final average salary is less than \$39,970, 8 times the person's final average salary; and
- (b) 6 times the part (if any) of the person's final average salary that exceeds \$39,970 but does not exceed \$74,220; and
- (c) 3 times the part (if any) of the person's final average salary that exceeds \$74,220;

by the person's final average salary.

3. The pension maximum benefit limit, in relation to a person, is the product of the person's final average salary and the person's pension maximum benefit multiple.

4. In paragraph 3:

“pension maximum benefit multiple”, in relation to a person, is the number obtained by dividing the sum of:

- (a) 10 times \$39,970 or, if the person's final average salary is less than \$39,970, 10 times the person's final average salary; and
- (b) 7 times the part (if any) of the person's final average salary that exceeds \$39,970 but does not exceed \$74,220; and
- (c) 4 times the part (if any) of the person's final average salary that exceeds \$74,220;

by the person's final average salary.

SCHEDULE—continued

SCHEDULE 4

Rule 42

**PERCENTAGE OF EMPLOYER BENEFIT OR DECEASED
PENSIONER'S PENSION APPLICABLE TO SPOUSE OR ELIGIBLE
CHILD**

1. The percentage of an employer benefit or deceased pensioner's pension applicable to a spouse or eligible child of a deceased person is the percentage in whichever of the following tables is applicable according to the relationship of the person to the deceased person and the number of such persons.

TABLE 1

**Relevant Percentage where Deceased Person is Survived by a
Spouse with or without Eligible Children**

Relationship and number of persons	Relevant Percentage
Spouse only	67
Spouse and 1 eligible child	78
Spouse and 2 eligible children	89
Spouse and 3 or more eligible children	100

TABLE 2

**Relevant Percentage where Deceased
Person is Survived by an Eligible Child
or Eligible Children only**

Number of eligible children	Relevant Percentage
1	45
2	80
3	90
4 or more	100

SCHEDULE—continued

SCHEDULE 5

Rule 65

**CALCULATION OF RATE OF PENSION BY CONVERSION OF
EMPLOYER BENEFIT**

1. For the purpose of converting an employer benefit into a pension, the annual rate of that pension is calculated by dividing the amount of the benefit that is to be so converted by:

- (a) if the person's age, in years, on the day on which he or she becomes entitled to the benefit is 65 years—a factor of 10; or
- (b) in any other case where the person's age is an exact number of years—a factor of 10 increased by 0.2 in respect of each year by which the person's age, in years, on the day on which he or she becomes entitled to the benefit is less than 65 years; or
- (c) in any case where the person's age is not an exact number of years—the factor that would be applicable if paragraph (b) applied to the person's age in years, reduced by a number in respect of the number of days in the person's age in excess of the person's age in years (in this paragraph called "excess days"), being a number which bears to 0.2 the same proportion as the number of excess days bears to the number of days in a year.

2. In the application of paragraph 1 in relation to a person who is entitled to invalidity benefits and is classified as Class A, the references in that paragraph to the person's age on the day on which he or she becomes entitled to a benefit are read as references to:

- (a) his or her retiring age immediately before his or her retirement;
or
 - (b) the age of 55 years;
- whichever is the greater.

SCHEDULE—continued

SCHEDULE 6

Schedule 1
(Definition of “eligible service”)

CALCULATION OF ELIGIBLE SERVICE

1. The eligible service of a member is the sum of:
 - (a) subject to paragraph 2, service by the person as a member; and
 - (b) in the case of a person entitled to an invalidity pension who is classified as Class A—a period equal to the period commencing on the day immediately following the last day of the person’s service and concluding on the day on which the person would have retired if he or she had not been retired on the ground of invalidity but had served until attaining:
 - (i) the age that was the age for the compulsory retirement of the member immediately before his or her retirement;
or
 - (ii) the age of 55 years;whichever is the greater; and
 - (c) in the case of a transferred person—a period specified in the following table in relation to that person:

Person	Period included
1. A person who, immediately before he or she transferred from the 1973 Scheme, was rendering continuous full-time service and who, before he or she began to render that service, was not a 1973 Scheme retirement pensioner.	Any period that, before the transfer of the person, was a period of effective service in relation to the person for the purposes of the 1973 Act.
2. A person who, immediately before he or she transferred from the 1973 Scheme, was rendering continuous full-time service and who, immediately before he or she began to render that service, was a 1973 Scheme retirement pensioner.	So much of that period of service rendered by the person after the person ceased to be a 1973 Scheme retirement pensioner and before his or her transfer to the 1991 Scheme as was a period of effective service in relation to the person for the purposes of the 1973 Act.

2. Service referred to in subparagraph 1 (a) does not include service during a period:
 - (a) prescribed in Schedule 2 in respect of which, under subrule 4 (4), salary is taken not to be paid to the member; or
 - (b) that was a period of leave of absence without pay granted to the member in respect of which the Department did not pay contributions to the Fund in relation to the member; or
 - (c) (except in the case of a person entitled to an invalidity benefit) that occurred after the member’s total benefit reached his or her lump sum maximum benefit limit and in respect of which the member, in pursuance of rule 5, did not pay contributions to the Fund; or
 - (d) (except in the case of a person entitled to an invalidity benefit)

SCHEDULE—continued

that occurred after the member's total benefit reached his or her pension maximum benefit limit; or

- (e) in respect of which the person accrued an employer benefit:
 - (i) which was paid to a preservation fund, or used to purchase a deferred annuity, in pursuance of subrule 15 (2) or paid to the person as a lump sum in pursuance of subrule 15 (3); or
 - (ii) which was otherwise paid to the person as a lump sum, converted into a pension or became applicable to the person as a preserved benefit.
-

SCHEDULE—continued

SCHEDULE 7

Schedule 1
(Definition of “final average salary”)

CALCULATION OF FINAL AVERAGE SALARY

1. The final average salary in relation to a person who is or was a member is an amount equal to:

- (a) in the case of a person with less than 3 years’ eligible service—
an amount calculated in accordance with the formula:

$$\text{Salary} \times \frac{365}{\text{Number of days of eligible service}}$$

where:

“Salary”, in relation to the person, means the amount of salary received by the person during his or her service; and

“Number of days of eligible service”, in relation to the person, means the number of days of eligible service of the person; or

- (b) in any other case—one-third of the amount of salary payable to the person in his or her last 3 years of eligible service.

2. In paragraph 1, any reference to eligible service includes, in the case of a person whose total benefit reached his or her lump sum maximum benefit limit, any period in respect of which the person, in pursuance of rule 5 and by reason only of that rule, did not pay contributions to the Fund.

3. For the purpose of ascertaining the amount of salary payable to a member in his or her last 3 years of service in a case where that service included a period in respect of which the member:

- (a) was in receipt of half-pay; or
(b) was not entitled to be paid salary; or
(c) forfeited his or her salary;

the member is taken to have been in receipt of salary in respect of that period at the fortnightly rate that was applicable to the member immediately before that period.

SCHEDULE—continued

SCHEDULE 8

Schedule 1
(Definition of “employer benefit”)

CALCULATION OF EMPLOYER BENEFIT

PART 1—CALCULATION OF EMPLOYER BENEFIT OF PERSON WITH NOT LESS THAN 7 YEARS’ ELIGIBLE SERVICE OR INVALIDITY RETIREE OR 1973 SCHEME RECIPIENT MEMBER (OTHER THAN 1973 SCHEME RE-ENTRANT OR 1991 SCHEME RE-ENTRANT OR MBL MEMBER OR FOREIGN SERVICE MEMBER)

1. The employer benefit, in relation to a person (other than a 1973 Scheme re-entrant, a 1991 Scheme re-entrant, an MBL member or a foreign service member) who:

- (a) has not less than 7 years’ eligible service; or
- (b) is a person who is retired on the ground of invalidity; or
- (c) is a 1973 Scheme recipient member;

is calculated in accordance with the formula:

$$\left(\text{FPES} \times \frac{18}{100} \times \text{FAS}\right) + \left(\text{SPES} \times \frac{23}{100} \times \text{FAS}\right) + \left(\text{TPES} \times \frac{28}{100} \times \text{FAS}\right)$$

where:

“FAS” means the person’s final average salary; and

“FPES” means the person’s first period of eligible service; and

“SPES” means the person’s second period of eligible service; and

“TPES” means the person’s third period of eligible service.

2. For the purposes of paragraph 1:

“first period of eligible service”, in relation to a person, means:

- (a) the first 7 years of eligible service of the person; or
- (b) if the person did not complete 7 years of eligible service—the period of eligible service of the person;

“second period of eligible service”, in relation to a person, means:

- (a) the first 20 years of eligible service of the person exclusive of the first 7 years of that service; or
- (b) if the person completed 7 years but did not complete 20 years of eligible service—the period of eligible service of the person after completing 7 years of eligible service;

“third period of eligible service”, in relation to a person, means the period of eligible service of the person after completing 20 years of eligible service.

SCHEDULE—continued

PART 2—CALCULATION OF EMPLOYER BENEFIT OF PERSON WITH LESS THAN 7 YEARS' ELIGIBLE SERVICE (OTHER THAN INVALIDITY RETIREE OR 1973 SCHEME RECIPIENT MEMBER OR 1973 SCHEME RE-ENTRANT OR 1991 SCHEME RE-ENTRANT OR FOREIGN SERVICE MEMBER)

3. The employer benefit, in relation to a person who has less than 7 years' eligible service (other than a person who is retired on the ground of invalidity, is a 1973 Scheme recipient member, is a 1973 Scheme re-entrant, is a 1991 Scheme re-entrant or is a foreign service member), is calculated in accordance with the formula:

$$\text{FEB} + ((\text{NEB} - \text{FEB}) \times \text{P})$$

where:

“FEB” means the sum of:

- (a) the amount of the person's funded employer benefit; and
- (b) in the case of a transferred person—the amount (if any) of the interim benefit that accrued, in respect of the person, in accordance with clause 7 of the Defence Force (Superannuation Interim Arrangement) Determination made under section 52 of the *Defence Act 1903* while the person was an eligible member of the Defence Force within the meaning of the 1973 Act; and
- (c) interest in respect of the amount (if any) in paragraph (b) which would have accrued before the date of the person's transfer if so much of that amount:
 - (i) as accrued before 1 October 1991 had been earning interest at the rates applicable in accordance with Schedule 11; and
 - (ii) as accrued on or after 1 October 1991 had been funded; and
- (d) interest in respect of the amounts (if any) in paragraphs (b) and (c) which would have accrued after the date of the person's transfer if those amounts had been funded; and

“NEB” means the notional employer benefit in relation to the person obtained by calculating an employer benefit for the person in accordance with Part 1 as if that Part applied to the person; and

“P” means the percentage derived from the following table in relation to the period of the person's eligible service as if the table included a factor, in respect of the number of days in excess of the total number of whole years of the person's eligible service (in this paragraph called **“excess days”**), being a factor which bears, to the difference between the factor for that whole number of years and the next higher factor in the table, the same proportion as the number of excess days bears to the number of days in a year:

SCHEDULE—continued

Completed years of eligible service	Percentage
0	0
1	10
2	20
3	30
4	40
5	50
6	75

PART 3—CALCULATION OF EMPLOYER BENEFIT OF 1973 SCHEME RE-ENTRANT, 1991 SCHEME RE-ENTRANT OR FOREIGN SERVICE MEMBER, WITH NOT LESS THAN 7 YEARS' AGGREGATED SERVICE

4. The employer benefit, in relation to a 1973 Scheme re-entrant, a 1991 Scheme re-entrant or a foreign service member who:

- (a) has not less than 7 years' aggregated service; or
- (b) is a person who is retired on the ground of invalidity;

is calculated in accordance with the formula:

$$\left(\text{FPES} \times \frac{18}{100} \times \text{FAS}\right) + \left(\text{SPES} \times \frac{23}{100} \times \text{FAS}\right) + \left(\text{TPES} \times \frac{28}{100} \times \text{FAS}\right)$$

where:

“FAS” means the person’s final average salary; and

“FPES” means so much of the person’s eligible service (if any) as is included in the person’s first period of aggregated service; and

“SPES” means so much of the person’s eligible service (if any) as is included in the person’s second period of aggregated service; and

“TPES” means so much of the person’s eligible service (if any) as is included in the person’s third period of aggregated service.

5. For the purposes of paragraph 4:

“first period of aggregated service”, in relation to a person, means:

- (a) the first 7 years of aggregated service of the person; or
- (b) if the person did not complete 7 years of aggregated service—the period of aggregated service of the person;

“second period of aggregated service”, in relation to a person, means:

- (a) the first 20 years of aggregated service of the person exclusive of the first 7 years of that service; or
- (b) if the person completed 7 but did not complete 20 years of aggregated service—the period of aggregated service of the person after completing 7 years of aggregated service;

SCHEDULE—continued

“third period of aggregated service”, in relation to a person, means the period of aggregated service of the person after completing 20 years of aggregated service.

**PART 4—CALCULATION OF EMPLOYER BENEFIT OF 1973
SCHEME RE-ENTRANT OR FOREIGN SERVICE MEMBER,
WITH LESS THAN 7 YEARS’ AGGREGATED SERVICE
(OTHER THAN INVALIDITY RETIREE)**

6. The employer benefit, in relation to a 1973 Scheme re-entrant or foreign service member, who has less than 7 years’ aggregated service, (other than a person who is retired on the ground of invalidity), is calculated in accordance with the formula:

$$\mathbf{FEB + ((NEB - FEB) \times P)}$$

where:

“FEB” means the sum of:

- (a) the amount of the person’s funded employer benefit; and
- (b) the amount (if any) of the interim benefit that accrued, in respect of the person, in accordance with clause 7 of the Defence Force (Superannuation Interim Arrangement) Determination made under section 52 of the *Defence Act 1903* while the person was an eligible member of the Defence Force within the meaning of the 1973 Act; and
- (c) interest in respect of the amount (if any) in paragraph (b) which would have accrued before the date of the person’s transfer if so much of that amount:
 - (i) as accrued before 1 October 1991 had been earning interest at the rates applicable in accordance with Schedule 11; and
 - (ii) as accrued on or after 1 October 1991 had been funded; and
- (d) interest in respect of the amounts (if any) in paragraphs (b) and (c) which would have accrued after the date of the person’s transfer if those amounts had been funded; and

“NEB” means the notional employer benefit in relation to the person obtained by calculating an employer benefit for the person in accordance with Part 3 as if that Part applied to the person; and

“P” means the percentage derived from the following table in relation to the period of the person’s aggregated service as if the table included a factor, in respect of the number of days in excess of the total number of whole years of the person’s aggregated service (in this paragraph called **“excess days”**), being a factor which bears, to the difference between the factor for that whole number of years and the next higher

SCHEDULE—continued

factor in the table, the same proportion as the number of excess days bears to the number of days in a year:

Completed years of aggregated service	Percentage
0	0
1	10
2	20
3	30
4	40
5	50
6	75

**PART 5—CALCULATION OF EMPLOYER BENEFIT OF
MBL MEMBER**

7. The employer benefit, in relation to an MBL member, is calculated in accordance with whichever formula in this Part is applicable to the member.

8. In the case of an MBL member who elected under subrule 5 (2) to cease paying contributions, the formula is:

$$\left((\text{LSMBMR} \times \left(\frac{\text{TB}}{\text{FASC}} \div \text{LSMBMC} \right)) \times \text{FASR} \right) - \text{MB}$$

where:

“FASC” means the person’s final average salary on ceasing contributions; and

“FASR” means the person’s final average salary on retirement; and

“LSMBMC” means the person’s lump sum maximum benefit multiple on ceasing contributions; and

“LSMBMR” means the person’s lump sum maximum benefit multiple on retirement; and

“MB” means the amount of the person’s member benefit on ceasing contributions; and

“TB” means the sum of the person’s employer benefit and member benefit on ceasing contributions.

9. In the case of an MBL member who:

(a) ceased paying contributions because of the operation of subrule 5 (1); or

(b) being a transferred member, did not pay contributions because of the operation of that subrule;

the formula is:

SCHEDULE—continued

$$((\text{PMBMR} \times \frac{\text{TB}}{\text{FASC}} \div \text{PMBMC}) \times \text{FASR}) - \text{MB}$$

where:

“FASC” means the person’s final average salary on ceasing contributions; and

“FASR” means the person’s final average salary on retirement; and

“PMBMC” means the person’s pension maximum benefit multiple on ceasing contributions; and

“PMBMR” means the person’s pension maximum benefit multiple on retirement; and

“MB” means the amount of the person’s member benefit on ceasing contributions; and

“TB” means the sum of the person’s employer benefit and member benefit on ceasing contributions.

PART 6—INTERPRETATION

10. A reference in this Schedule to a person who retires on the ground of invalidity does not include a reference to a person who, by reason of rule 32, 33 or 34, is not entitled to invalidity benefits.

11. A reference in this Schedule to the aggregated service of a foreign service member or a 1973 Scheme re-entrant is a reference to the sum of:

(a) the eligible service of that person; and

(b) either:

(i) in the case of a 1973 Scheme re-entrant—any period that, before the person became a member, was a period of effective service in relation to the person for the purposes of the 1973 Act; or

(ii) in the case of a foreign service member—so much of the person’s full-time service with the forces of a country other than Australia as the Board approves calculated in such manner as the Board approves.

SCHEDULE—continued

SCHEDULE 9

Schedule 1
(Definition of “member benefit”)

CALCULATION OF MEMBER BENEFIT

1. A member benefit, in relation to a person who is or was a member, is an amount equal to the sum of:

- (a) the contributions that have been paid under these Rules by the person on or after he or she began his or her current period of membership; and
- (b) in the case of a member to whom a preserved benefit is applicable—the amount of the member benefit (if any) included in that preserved benefit; and
- (c) the interest (if any), in respect of the amount in subparagraph (a) and of such of the amount in subparagraph (b) as is funded, in accordance with a determination or determinations by the Board as to rates of interest and the method of allocation of interest to such amounts; and
- (d) an amount equal to the interest, in respect of such of the amount in subparagraph (b) as is not funded, which would have accrued after the person last became a member if that amount had been funded; and
- (e) in the case of a member who transferred from the 1973 Scheme and who has not since retired:
 - (i) the person’s transfer value; and
 - (ii) an amount equal to the interest in respect of that transfer value which would have accrued on or after the date of the person’s transfer if the transfer value had been funded.

SCHEDULE—continued

SCHEDULE 10

Schedule 1
(Definition of “transfer value”)

TRANSFER VALUE

1. The transfer value, in relation to a transferred person, is an amount equal to the sum of:

- (a) previous contributions made by the person under the previous legislation; and
- (b) interest in respect of the amount in subparagraph (a) which would have accrued before the date of his or her transfer if so much of that amount:
 - (i) as comprised contributions and additional contributions (within the meaning of the 1973 Act) paid before 1 October 1991 had been earning interest at the rates applicable in accordance with Schedule 11; or
 - (ii) as comprised contributions and additional contributions (within the meaning of the 1973 Act) paid on or after that date had been funded;

less the amount (if any) remaining unpaid to the Commonwealth by the person in respect of:

- (c) an election by him or her under the previous legislation to have a period of service taken into account as service for pension or as qualifying service; and
- (d) an advance payment made to him or her in respect of a gratuity under:
 - (i) the previous legislation; or
 - (ii) the Defence Force (Bounties and Gratuities) Regulations; or
 - (iii) Determination 0705 made under Part IIIA of the *Defence Act 1903*; and
- (e) an amount required to be paid by him or her under subsection 87 (3) of the 1973 Act.

2. For the purpose of subparagraph 1 (b), where, for any period, official records of the fortnightly amounts of contributions paid by a member when he or she was a member of the retirement benefits scheme under the 1948 Act are not available, the contributions paid by the member during that period are taken to have been paid on the date at the middle of that period, unless the Board, having regard to documentary evidence of those contributions produced to the Board by the member, otherwise determines.

SCHEDULE—continued

SCHEDULE 11

(Schedules 8 and 10)

RATES OF INTEREST APPLICABLE IN RESPECT OF CERTAIN UNFUNDED AMOUNTS

1. For the purposes of sub-subparagraphs 3 (c) (i) and 6 (c) (i) of Schedule 8 and sub-subparagraph 1 (b) (i) of Schedule 10:

(a) the rate applicable in relation to:

- (i) the last complete salary fortnight in a financial year; or
- (ii) where the rate applicable in relation to that financial year is the same as the rate applicable in relation to the immediately preceding financial year—any salary fortnight in the first-mentioned financial year;

is the rate applicable in relation to that financial year in accordance with the table; and

(b) the rate applicable in relation to any other salary fortnight is the rate ascertained in accordance with the following formula:

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

where:

“A” is the rate applicable in relation to a financial year in accordance with the table; and

“B” is the rate applicable in relation to the immediately succeeding financial year in accordance with the table; and

“C” is the number of salary fortnights which have elapsed since the last complete salary fortnight in the financial year to which A relates; and

“D” is the number of salary fortnights in the financial year to which B relates.

RATES APPLICABLE IN RELATION TO FINANCIAL YEARS

A reference in this table to a year is a reference to the financial year ending on 30 June in that year:

Year	Rate	Year	Rate	Year	Rate
1950	3.19	1964	4.58	1978	9.10
1951	3.53	1965	5.15	1979	10.00
1952	4.60	1966	5.17	1980	11.76
1953	4.50	1967	5.03	1981	13.15
1954	4.46	1968	5.11	1982	16.40
1955	4.57	1969	5.35	1983	14.85
1956	5.35	1970	6.86	1984	13.75
1957	5.08	1971	6.83	1985	13.50
1958	4.95	1972	5.85	1986	12.95
1959	4.88	1973	6.72	1987	12.80

SCHEDULE—continued

Year	Rate	Year	Rate	Year	Rate
1960	4.88	1974	9.52	1988	11.95
1961	5.38	1975	9.50	1989	13.50
1962	4.81	1976	9.99	1990	12.04
1963	4.37	1977	10.41		

NOTE

1. No. 81, 1973, as amended. For previous amendments, see No. 59, 1974; No. 96, 1975; Nos. 33 and 37, 1976; Nos. 13 and 161, 1977; No. 36, 1978; Nos. 15 and 135, 1979; Nos. 61, 92 and 144, 1981; No. 164, 1984; No. 65, 1985; No. 93, 1986; No. 65, 1987; Nos. 100 and 104, 1988; and No. 125, 1989.

[*Minister's second reading speech made in—
House of Representatives on 13 March 1991
Senate on 17 April 1991*]