



Commonwealth Superannuation Schemes Amendment Act 1992

No. 185 of 1992

**An Act to amend various Acts to remove certain
discriminatory provisions from a range of Commonwealth
superannuation schemes, and for other purposes**

[Assented to 17 December 1992]

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Commonwealth Superannuation Schemes Amendment Act 1992*.

Commencement

2. This Act commences on 25 June 1993.

Amendments of Acts

3. The Acts specified in the Schedule are amended as set out in the Schedule.

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Application and saving—*Defence Force Retirement and Death Benefits Act 1973*

4.(1) The amendments of the *Defence Force Retirement and Death Benefits Act 1973* made by this Act apply, in relation to any benefits payable under that Act in respect of a deceased person who was a contributing member, a recipient member or a person in respect of whom deferred benefits were applicable (within the meaning of that Act), only if the deceased person dies on or after 25 June 1993.

(2) The *Defence Force Retirement and Death Benefits Act 1973*, as in force immediately before 25 June 1993, continues to apply in relation to any benefits payable under that Act in respect of a deceased person who was a contributing member, a recipient member or a person in respect of whom deferred benefits were applicable (within the meaning of that Act), and who died before 25 June 1993.

Application and saving—*Governor-General Act 1974*

5.(1) The amendments of the *Governor-General Act 1974* made by this Act apply, in relation to any allowance payable under that Act in respect of a deceased person who held or had held the office of Governor-General, only if the deceased person dies on or after 25 June 1993.

(2) The *Governor-General Act 1974*, as in force immediately before 25 June 1993, continues to apply in relation to any allowance payable under that Act in respect of a deceased person who held or had held the office of Governor-General, and who died before 25 June 1993.

Application and saving—*Judges' Pensions Act 1968*

6.(1) The amendments of the *Judges' Pensions Act 1968* made by this Act apply, in relation to any pension payable under that Act in respect of a deceased person who was a Judge or retired Judge (within the meaning of that Act), only if the deceased person dies on or after 25 June 1993.

(2) The *Judges' Pensions Act 1968*, as in force immediately before 25 June 1993, continues to apply in relation to any pension payable under that Act in respect of a deceased person who was a Judge or retired Judge (within the meaning of that Act), and who died before 25 June 1993.

Application and saving—*Parliamentary and Judicial Retiring Allowances Act 1973*

7.(1) The amendments of the *Parliamentary and Judicial Retiring Allowances Act 1973* made by this Act apply, in relation to any benefits payable under that Act, in respect of a deceased person who was or had been an office-holder mentioned in subsection 22(2) of that Act, only if the deceased person dies on or after 25 June 1993.

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(2) The *Parliamentary and Judicial Retiring Allowances Act 1973*, as in force immediately before 25 June 1993, continues to apply in relation to any benefits payable under that Act in respect of a deceased person who was or had been an office-holder mentioned in subsection 22(2) of that Act, and who died before 25 June 1993.

Application and saving—*Parliamentary Contributory Superannuation Act 1948*

8.(1) The amendments of the *Parliamentary Contributory Superannuation Act 1948* made by this Act apply, in relation to any benefits payable under that Act in respect of a deceased person who was entitled to a parliamentary allowance or retiring allowance (within the meaning of that Act), whether or not the retiring allowance was immediately payable, only if the deceased person dies on or after 25 June 1993.

(2) The *Parliamentary Contributory Superannuation Act 1948*, as in force immediately before 25 June 1993, continues to apply in relation to any benefits payable under that Act in respect of a deceased person who was entitled to a parliamentary allowance or retiring allowance (within the meaning of that Act), whether or not the retiring allowance was immediately payable, and who died before 25 June 1993.

Application—*Superannuation Act 1922*

9. The amendment to insert section 48ABA in the *Superannuation Act 1922* made by this Act applies, in relation to any pension payable under that Act in respect of a deceased person who was a contributor or pensioner (within the meaning of that Act), only if the deceased person dies on or after 25 June 1993.

Application and saving—*Superannuation Act 1976*

10.(1) The amendments of the *Superannuation Act 1976* made by this Act apply, in relation to any benefits payable under that Act in respect of a deceased person who was an eligible employee or retirement pensioner (within the meaning of that Act), only if the deceased person dies on or after 25 June 1993.

(2) The *Superannuation Act 1976*, as in force immediately before 25 June 1993, continues to apply in relation to any benefits payable under that Act in respect of a deceased person who was an eligible employee or retirement pensioner (within the meaning of that Act), and who died before 25 June 1993.

SCHEDULE

Section 3

AMENDMENTS OF ACTS

Defence Force Retirement and Death Benefits Act 1973

Subsection 3(1) (paragraph (a) of the definition of “child”):

Omit the paragraph, substitute:

“(a) a person who:

- (i) is an ex-nuptial child of the member; or
- (ii) is, immediately before the member’s death, a stepchild, an adopted child, a foster child or a ward, of the member; and”.

Subsection 3(1) (subparagraph (b)(i) of the definition of “child”):

(a) Omit “the ex-nuptial child of the member, or”.

(b) Omit “the widow of”, substitute “a spouse who survives”.

Subsection 3(1) (subparagraph (b)(ii) of the definition of “child”):

Omit the subparagraph, substitute:

“(ii) was wholly or substantially dependent upon the member at the time of the member’s death;”.

Subsection 3(1) (definitions of “widow” and “widow’s pension”):

Omit the definitions.

Subsection 3(1):

Insert:

“‘spouse pension’ means pension payable under Division 1 of Part VI;”.

Subsection 3(4):

Omit the subsection.

After section 6:

Insert:

Marital relationship

“6A.(1) For the purposes of this Act, a person had a **marital relationship** with another person at a particular time if the person ordinarily lived with that other person as that other person’s husband or wife on a permanent and *bona fide* domestic basis at that time.

“(2) For the purpose of subsection (1), a person is to be regarded as ordinarily living with another person as that other person’s husband

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or wife on a permanent and *bona fide* domestic basis at a particular time only if:

- (a) the person had been living with that other person as that other person's husband or wife for a continuous period of at least 3 years up to that time; or
- (b) the person had been living with that other person as that other person's husband or wife for a continuous period of less than 3 years up to that time and the Authority, having regard to any relevant evidence, is of the opinion that the person ordinarily lived with that other person as that other person's husband or wife on a permanent and *bona fide* domestic basis at that time;

whether or not the person was legally married to that other person.

“(3) For the purposes of this Act, a marital relationship is taken to have begun at the beginning of the continuous period mentioned in paragraph (2)(a) or (b).

“(4) For the purpose of subsection (2), relevant evidence includes, but is not limited to, evidence establishing any of the following:

- (a) the person was wholly or substantially dependent on that other person at the time;
- (b) the persons were legally married to each other at the time;
- (c) the persons had a child who was:
 - (i) born of the relationship between the persons; or
 - (ii) adopted by the persons during the period of the relationship;
- (d) the persons jointly owned a home which was their usual residence.

“(5) For the purposes of this section, a person is taken to be living with another person if the Authority is satisfied that the person would have been living with that other person except for a period of:

- (a) temporary absence; or
- (b) absence because of special circumstances (for example, absence because of the person's illness or infirmity or a posting of the person).

Spouse who survives a deceased person

“6B.(1) In this section:

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

“(2) For the purposes of this Act, a person is a spouse who survives a deceased person if:

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- (a) the person had a marital relationship with the deceased person at the time of the death of the deceased person (**‘the death’**); and
- (b) in the case of a deceased person who was a recipient member at the time of the death:
 - (i) the marital relationship began before the recipient member became a recipient member; or
 - (ii) the marital relationship began after the recipient member became a recipient member but before the recipient member reached 60; or
 - (iii) in the case of neither subparagraph (i) nor (ii) applying—the marital relationship had continued for a period of at least 5 years up to the time of the death.

“(3) In spite of subsection (2), a person is taken to be a spouse who survives a deceased person if:

- (a) the person had previously had a marital relationship with the deceased person; and
- (b) the person did not, at the time of the death, have a marital relationship with the deceased person but was legally married to the deceased person; and
- (c) in the case of a marital relationship that began after the deceased person became a recipient member and reached 60—the relationship began at least 5 years before the deceased person’s death; and
- (d) in the Authority’s opinion, the person was wholly or substantially dependent upon the deceased person at the time of the death.”.

Division 1 of Part VI (heading):

Omit “*Widows’ Pensions*”, substitute “*Spouse’s Pension*”.

Section 38:

- (a) Omit “widow” (twice occurring), substitute “spouse”.
- (b) Omit “his”, substitute “the deceased member’s”.
- (c) Omit “he”, substitute “the deceased member”.

Subsection 39(1):

- (a) Omit “widow” (twice occurring), substitute “spouse”.
- (b) Omit “his” (5 times occurring), substitute “the member’s”.
- (c) Omit “he”, substitute “the member”.

Subsection 39(2):

- (a) Omit “widow” (twice occurring), substitute “spouse”.
- (b) Omit “he”, substitute “the member”.

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Section 40:

- (a) Omit “widow” (5 times occurring), substitute “spouse”.
- (b) Omit “his”, substitute “the member’s”.
- (c) Omit “her”, substitute “the spouse”.

Section 41:

Repeal the section, substitute:

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

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

“(2) The Authority must have regard to the respective needs of the spouses when making the allocation.

“(3) Subject to subsections (4) and (5), a pension is only payable to each spouse in accordance with the allocation.

“(4) The rate of pension payable to each spouse under the allocation must be at least three-eighths of the rate of the relevant pension in relation to the deceased person under this Act.

“(5) The aggregate of the rates of pension payable under an allocation must not exceed 100% of the rate of the relevant pension in relation to the deceased person under this Act.

“(6) In subsections (4) and (5), the rate of the relevant pension in relation to the deceased person under this Act is:

- (a) in the case of a deceased person who was not a recipient member—the rate at which invalidity pay would have been payable to the deceased person if, on the date of the death, the deceased person:
 - (i) had been entitled to invalidity benefit; and
 - (ii) had been classified as Class A under section 30; or
- (b) in the case of a deceased recipient member, then, subject to sections 47 and 75:
 - (i) if subparagraph (ii) does not apply—the rate at which retirement pay or invalidity pay was payable to the deceased recipient member immediately before the death; or
 - (ii) if a portion of the retirement pay or invalidity pay had been commuted under section 24 or 32A—the rate at which retirement pay or invalidity pay would have been

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payable to the member immediately before the death if a portion of that retirement pay or invalidity pay had not been so commuted.”.

Paragraph 41A(1)(a):

Omit “the widow of”.

Subparagraphs 41A(1)(a)(i) and (ii):

Omit the subparagraphs, substitute:

- “(i) a spouse in relation to a contributing member who died on or after the commencement of the *Commonwealth Superannuation Schemes Amendment Act 1992*; or
- (ii) a widow or widower of a contributing member who died on or after the commencement of the *Defence Legislation Amendment Act (No. 2) 1990* but before the commencement of the *Commonwealth Superannuation Schemes Amendment Act 1992*; or
- (iii) a widow or widower of a contributing member who died on or after 15 October 1990 but before the commencement of the *Defence Legislation Amendment Act (No. 2) 1990*; and”.

Paragraph 41A(1)(b):

Omit “(a)(ii)”, substitute “(a)(iii)”.

After subsection 41A(1):

Insert:

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

Subsection 43A(5):

After “the widow” insert “(within the meaning of this Act as in force at that time)”.

Section 44:

Repeal the section.

Governor-General Act 1974

Title:

Omit “widows or widowers”, substitute “spouses”.

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Section 2A:

Add at the end:

“(2) In this Act:

‘the Commissioner’ means the person who holds, or performs the functions of, the office of Commissioner for Superannuation under the *Superannuation Act 1976*.”.

After section 2A:

Insert:

Marital relationship

“2B.(1) In this section and section 2C:

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

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

“(3) For the purpose of subsection (2), a person is to be regarded as ordinarily living with a deceased person as the deceased person’s husband or wife on a permanent and *bona fide* domestic basis at a particular time only if:

- (a) the person had been living with the deceased person as the deceased person’s husband or wife for a continuous period of at least 3 years up to that time; or
- (b) the person had been living with the deceased person as the deceased person’s husband or wife for a continuous period of less than 3 years up to that time and the Commissioner, having regard to any relevant evidence, is of the opinion that the person ordinarily lived with the deceased person as the deceased person’s husband or wife on a permanent and *bona fide* domestic basis at that time;

whether or not the person was legally married to the deceased person.

“(4) For the purpose of subsection (3), relevant evidence includes, but is not limited to, evidence establishing any of the following:

- (a) the person was wholly or substantially dependent on the deceased person at the time;
- (b) the persons were legally married to each other at the time;
- (c) the persons had a child who was:
 - (i) born of the relationship between the persons; or

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- (ii) adopted by the persons, during the period of the relationship;
- (d) the persons jointly owned a home which was their usual residence.

“(5) For the purposes of this section, a person is taken to be living with the deceased person if the Commissioner is satisfied that the person would have been living with the deceased person except for a period of:

- (a) temporary absence; or
- (b) absence because of special circumstances (for example, absence because of the person’s illness or infirmity).

Spouse of a deceased person

“2C. For the purposes of this Act, a person is a spouse of a deceased person if:

- (a) the person had a marital relationship with the deceased person at the time of the deceased person’s death; or
- (b) the person:
 - (i) had previously had a marital relationship with the deceased person; and
 - (ii) did not, at the time of the death, have a marital relationship with the deceased person but was legally married to the deceased person; and
 - (iii) in the Commissioner’s opinion, was wholly or substantially dependent on the deceased person at the time of the death.”.

Subsection 4(2):

- (a) Insert “and section 4A” after “subsection (4)”.
- (b) Omit “the widow or widower” (first occurring), substitute “a spouse”.
- (c) Omit “the widow or widower” (second occurring), substitute “the spouse”.

Paragraph 4(3)(b):

Omit “the widow or widower”, substitute “a spouse”.

After section 4:

Insert:

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Allowance payable when there is more than one spouse

“4A.(1) If a person who held office or had held office as the Governor-General (**‘deceased person’**) dies leaving more than one spouse, the Commissioner must allocate any allowance payable to a spouse of the deceased person under this Act among the spouses.

“(2) Subject to subsection (3), an allowance is only payable to each spouse in accordance with the allocation.

“(3) In making the allocation, the Commissioner must:

- (a) have regard to the respective needs of each of the spouses; and
- (b) ensure that the aggregate of the rates of allowance applicable to the spouses will not exceed 100% of the rate of allowance that would have been applicable to the deceased person under paragraph 4(3)(a); and
- (c) ensure that the rate of allowance applicable to each spouse will not exceed the rate specified in paragraph 4(3)(b).

Application for review

“4B. Applications may be made to the Administrative Appeals Tribunal for the review of a decision of the Commissioner made under:

- (a) paragraph 2B(3)(b); or
- (b) subsection 2B(5); or
- (c) subparagraph 2C(b)(iii); or
- (d) subsection 4A(1).”.

Judges’ Pensions Act 1968

Subsection 4(1) (definitions of “child” and “eligible child”):

Omit the definitions.

Subsection 4(1):

Insert:

“ **‘child’** means a child or an adopted child:

- (a) who is under the age of 16 years; or
- (b) who:
 - (i) has reached the age of 16 years but is under the age of 25 years; and
 - (ii) is receiving full-time education at a school, college or university;

‘child of a marital relationship’ means:

- (a) a child born of a marital relationship; or
- (b) a child adopted by the persons engaged in that relationship during the period of the relationship;

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‘eligible child’, in relation to a Judge or retired Judge who has died, has the meaning given by section 4AA;”.

Subsection 4(2):

Omit the subsection.

After section 4:

Insert:

Meaning of eligible child

“4AA. For the purposes of this Act, a child is an eligible child of a Judge or retired Judge who has died (**‘deceased Judge’**) if:

- (a) the child is a child of the deceased Judge; or
- (b) the Attorney-General is of the opinion that:
 - (i) at the time of the death of the deceased Judge, the child was wholly or substantially dependent on the deceased Judge; or
 - (ii) but for the death of the deceased Judge, the child would have been wholly or substantially dependent on the deceased Judge.

Marital relationship

“4AB.(1) For the purposes of this Act, a person had a **marital relationship** with another person at a particular time if the person ordinarily lived with that other person as that other person’s husband or wife on a permanent and *bona fide* domestic basis at that time.

“(2) For the purpose of subsection (1), a person is to be regarded as ordinarily living with another person as that other person’s husband or wife on a permanent and *bona fide* domestic basis at a particular time only if:

- (a) the person had been living with that other person as that other person’s husband or wife for a continuous period of at least 3 years up to that time; or
- (b) the person had been living with that other person as that other person’s husband or wife for a continuous period of less than 3 years up to that time and the Attorney-General, having regard to any relevant evidence, is of the opinion that the person ordinarily lived with that other person as that other person’s husband or wife on a permanent and *bona fide* domestic basis at that time;

whether or not the person was legally married to that other person.

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“(3) For the purposes of this Act, a marital relationship is taken to have begun at the beginning of the continuous period mentioned in paragraph (2)(a) or (b).

“(4) For the purpose of subsection (2), relevant evidence includes, but is not limited to, evidence establishing any of the following:

- (a) the person was wholly or substantially dependent on that other person at the time;
- (b) the persons were legally married to each other at the time;
- (c) the persons had a child who was:
 - (i) born of the relationship between the persons; or
 - (ii) adopted by the persons during the period of the relationship;
- (d) the persons jointly owned a home which was their usual residence.

“(5) For the purposes of this section, a person is taken to be living with another person if the Attorney-General is satisfied that the person would have been living with that other person except for a period of:

- (a) temporary absence; or
- (b) absence because of special circumstances (for example, absence because of the person’s illness or infirmity).

Spouse who survives a deceased Judge

“4AC.(1) In this section:

‘**deceased Judge**’ means a person who was, at the time of his or her death, a Judge or retired Judge.

“(2) For the purposes of this Act, a person is a spouse who survives a deceased Judge if:

- (a) the person had a marital relationship with the deceased Judge at the time of the death of the deceased Judge (**‘the death’**); and
- (b) in the case of a deceased Judge who was a retired Judge at the time of the death:
 - (i) the marital relationship began before the retired Judge became a retired Judge; or
 - (ii) the marital relationship began after the retired Judge became a retired Judge but before the retired Judge reached 60; or
 - (iii) in the case of neither subparagraph (i) nor (ii) applying—the marital relationship had continued for a period of at least 5 years up to the time of the death.

“(3) In spite of subsection (2), a person is taken to be a spouse who survives a deceased Judge if:

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- (a) the person had previously had a marital relationship with the deceased Judge; and
- (b) the person did not, at the time of the death, have a marital relationship with the deceased Judge but was legally married to the deceased Judge; and
- (c) in the case of a marital relationship that began after the deceased person became a retired Judge and reached 60—the relationship began at least 5 years before the deceased person’s death; and
- (d) in the Attorney-General’s opinion, the person was wholly or substantially dependent upon the deceased Judge at the time of the death.”.

Subsection 7(1):

Omit “widow or widower” (wherever occurring), substitute “spouse”.

Subsection 8(1):

- (a) Omit all the words before and including “before the retired Judge died;” and substitute “If a retired Judge dies leaving a spouse,”.
- (b) Omit “the widow or widower”, substitute “the spouse”.

Subsection 9(1):

- (a) Omit “widow or widower” (first 3 occurrences), substitute “spouse”.
- (b) Omit “of the widow or widower or of the Judge (other than a child of any re-marriage of the widow or widower)”, substitute “of the Judge,”.

Subsection 10(1):

- (a) Omit “widow or widower” (first 3 occurrences), substitute “spouse”.
- (b) Omit “of the widow or widower or of the retired Judge (other than a child of any re-marriage of the widow or widower)”, substitute “of the retired Judge,”.

Subsection 10(2):

Omit the subsection, substitute:

“(2) If a retired Judge entered into a marital relationship:

- (a) after retirement; and
- (b) after the retired Judge reached the age of 60; and
- (c) less than 5 years before the retired Judge died;

pension is not, upon the retired Judge’s death, payable under this section in respect of a child of that marital relationship.”.

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Subsection 11(1):

- (a) Omit “of the widow or widower or of the Judge or retired Judge (other than a child of any re-marriage of the widow or widower)”, substitute “of the Judge or retired Judge,”.
- (b) Omit “widow or widower” (wherever occurring), substitute “spouse”.

Subsection 11(3):

Omit the subsection, substitute:

“(3) If a retired Judge entered into a marital relationship:

- (a) after retirement; and
- (b) after the retired Judge reached the age of 60; and
- (c) less than 5 years before the retired Judge died;

pension is not, upon the death of the person with whom the retired Judge had that relationship, payable under this section in respect of a child of that marital relationship.”.

Subsection 12(1):

- (a) Omit “widow or widower”, substitute “spouse”.
- (b) Omit “or of a person (whether deceased or not) who was at any time the wife or husband of the Judge or retired Judge”.

Subsection 12(3):

Omit the subsection, substitute:

“(3) If a retired Judge entered into a marital relationship:

- (a) after retirement; and
- (b) after the retired Judge reached the age of 60; and
- (c) less than 5 years before the retired Judge died;

pension is not, upon the retired Judge’s death, payable under this section in respect of a child of that marital relationship.”.

Subsection 15(1):

Omit “widow or widower”, substitute “spouse”.

Subsection 15(2):

Omit “widow or widower”, substitute “spouse”.

After section 15:

Insert:

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SCHEDULE—continued

Allocation of pension if a deceased Judge or retired Judge is survived by more than one spouse

“15A.(1) If a Judge or retired Judge dies leaving more than one spouse, the Attorney-General must allocate any pension (including pension in respect of any eligible children) payable to a spouse in respect of the deceased Judge or retired Judge under this Act among the spouses.

“(2) The Attorney-General must have regard to the respective needs of the spouses and eligible children (if any) when making the allocation.

“(3) Subject to subsections (4) and (5), a pension is only payable to each of the spouses in accordance with the allocation.

“(4) The rate of pension payable to a spouse under the allocation in respect of the spouse or any eligible children must not exceed the applicable rate (as provided in section 7, 8, 9, 10, 11 or 12) of the relevant pension in relation to the Judge or retired Judge.

“(5) The aggregate of the rates of pension payable under an allocation must not exceed 100% of the rate of the relevant pension in relation to the Judge or retired Judge.

“(6) In this section:

‘**relevant pension**’, in relation to a retired Judge who has died, means the pension that would have been payable to the retired Judge if he or she had not died.”.

After paragraph 17A(a):

Insert:

- “(aa) a decision of the Attorney-General under paragraph 4AA(b);
- (aaa) a decision of the Attorney-General under paragraph 4AB(2)(b);
- (aab) a decision of the Attorney-General under subsection 4AB(5);
- (aac) a decision of the Attorney-General under paragraph 4AC(3)(d);”.

Paragraph 17A(c):

Omit “or”.

Section 17A:

Add at the end:

“; or (e) a decision of the Attorney-General under subsection 15A(1).”.

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SCHEDULE—continued

Parliamentary and Judicial Retiring Allowances Act 1973

After subsection 22(2):

Insert:

“(2A) The provisions of the Principal Act applied under subsection (2) are to apply with the modifications specified in the Schedule.”.

Add at the end:

“SCHEDULE

Subsection 22(2A)

**MODIFICATIONS OF APPLIED PROVISIONS OF THE
PRINCIPAL ACT**

Subsection 22K(2):

- (a) Omit “widow” (3 times occurring), substitute “spouse”.
- (b) Omit “was a male who”.
- (c) Omit “he”, substitute “the deceased person”.
- (d) Omit “his” (twice occurring), substitute “the deceased person’s”.
- (e) Omit “her” (first 2 occurrences), substitute “the spouse’s”.
- (f) Omit “but ceasing upon her re-marriage”.

Subsection 22K(3):

- (a) Omit “was a male who”.
- (b) Omit “widow” (twice occurring), substitute “spouse”.
- (c) Omit “or was a female”.

Subsection 22K(4):

- (a) Omit “widow”, substitute “spouse”.
- (b) Omit “or remarries”.
- (c) Omit “she”, substitute “the spouse”.
- (d) Omit “her death or remarriage”, substitute “the spouse’s death”.

Subsection 22M(3):

Omit “widow”, substitute “spouse”.

Parliamentary Contributory Superannuation Act 1948

Subsection 4(1):

Insert:

“‘former spouse’, in relation to another person, means a person who previously had had a marital relationship with that other person;”.

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SCHEDULE—continued

After section 4A:

Insert:

Marital relationship

“4B.(1) For the purposes of this Act, a person had a **marital relationship** with another person at a particular time if the person ordinarily lived with that other person as that other person’s husband or wife on a permanent and *bona fide* domestic basis at that time.

“(2) For the purpose of subsection (1), a person is to be regarded as ordinarily living with another person as that other person’s husband or wife on a permanent and *bona fide* domestic basis at a particular time only if:

- (a) the person had been living with that other person as that other person’s husband or wife for a continuous period of at least 3 years up to that time; or
- (b) the person had been living with that other person as that other person’s husband or wife for a continuous period of less than 3 years up to that time and the Trust, having regard to any relevant evidence, is of the opinion that the person ordinarily lived with that other person as that other person’s husband or wife on a permanent and *bona fide* domestic basis at that time;

whether or not the person was legally married to that other person.

“(3) For the purposes of this Act, a marital relationship is taken to have begun at the beginning of the continuous period mentioned in paragraph (2)(a) or (b).

“(4) For the purpose of subsection (2), relevant evidence includes, but is not limited to, evidence establishing any of the following:

- (a) the person was wholly or substantially dependent on that other person at the time;
- (b) the persons were legally married to each other at the time;
- (c) the persons had a child who was:
 - (i) born of the relationship between the persons; or
 - (ii) adopted by the persons during the period of the relationship;
- (d) the persons jointly owned a home which was their usual residence.

“(5) For the purposes of this section, a person is taken to be living with another person if the Trust is satisfied that the person would have been living with that other person except for a period of:

- (a) temporary absence; or
- (b) absence because of the person’s illness or infirmity.

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Spouse who survives a deceased person

“4C.(1) In this section:

‘deceased person’ means a person who was, at the time of his or her death:

- (a) a person who was entitled to a parliamentary allowance; or
- (b) a person who was entitled to a retiring allowance, whether or not the retiring allowance was immediately payable;

‘retired member’ means a person who was entitled to a retiring allowance, whether or not the retiring allowance was immediately payable.

“(2) For the purposes of this Act, a person is a spouse who survives a deceased person if:

- (a) the person had a marital relationship with the deceased person at the time of the death of the deceased person (**‘the death’**); and
- (b) in the case of a deceased person who was a retired member at the time of the death:
 - (i) the marital relationship began before the retired member became a retired member; or
 - (ii) the marital relationship began after the retired member became a retired member but before the retired member reached 60; or
 - (iii) in the case of neither subparagraph (i) nor (ii) applying—the marital relationship had continued for a period of at least 5 years up to the time of the death.

“(3) In spite of subsection (2), a person is taken to be a spouse who survives a deceased person if:

- (a) the person had previously had a marital relationship with the deceased person; and
- (b) the person did not, at the time of the death, have a marital relationship with the deceased person but was legally married to the deceased person; and
- (c) in the case of a marital relationship that began after the deceased person became a retired member and reached 60—the relationship began at least 5 years before the deceased person’s death; and
- (d) in the Trust’s opinion, the person was wholly or substantially dependent upon the deceased person at the time of the death.”.

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Subsection 19(2):

Omit the subsection, substitute:

“(2) Subject to section 21AA, if the deceased person is survived by a spouse, there is payable to the spouse an annuity, during his or her life-time, at a rate ascertained in accordance with subsection (3).”.

Subsection 19(7):

Omit the subsection.

Subsection 19AA(2):

Omit all the words after paragraph (2)(b) and substitute:

“and the deceased person:

(c) was or is survived by a child of the deceased person or of a former spouse of the deceased person, being a child who:

- (i) was dependent on the deceased person; and
- (ii) is an eligible child; and

(d) was not or is not survived by a person with whom the deceased person had had a marital relationship and who is the natural or adoptive parent of that child;

then, subject to section 21AA, benefit in accordance with this section is payable in respect of the child.”.

Paragraph 19AA(2B)(a):

Omit the paragraph, substitute:

“(a) the child was:

- (i) born while the deceased person was having a marital relationship with another person; or
- (ii) adopted by the deceased person or the deceased person with that other person during the duration of that relationship; and”.

Subsection 19AA(3):

(a) Omit “widow or widower” (first 2 occurrences), substitute “spouse”.

(b) Omit “late spouse of the widow or widower”, substitute “deceased person”.

Subsection 19AA(3A):

Omit the subsection, substitute:

“(3A) Subsection (3) does not apply to a child who:

(a) was born after the date of the death of the deceased person; or

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(b) was adopted by the spouse after that date (whether alone or together with another person);
unless the child would, in the Trust's opinion, have been a dependant of the deceased person if the deceased person had not died.”.

Paragraph 19AA(4)(a):

Omit “widow or widower” (twice occurring), substitute “spouse”.

Paragraph 19AA(4)(c):

Omit “widow or widower” (twice occurring), substitute “spouse”.

Subsection 19AA(4A):

Omit the subsection.

Subsection 19AA(5):

Insert:

“‘deceased person’ means a deceased person mentioned in paragraph (2)(a) or (b);”.

Paragraph 19AB(1)(b):

Omit “widow or widower”, substitute “spouse”.

Paragraph 19AB(2)(b):

Omit “widow or widower” (twice occurring), substitute “spouse”.

Subsection 19A(2):

- (a) Omit “widow or widower” (twice occurring), substitute “spouse”.
- (b) Omit “but ceasing upon her or his re-marriage”.
- (c) Omit “her late husband or his late wife as”, substitute “the former”.

Subsection 19A(6):

Omit “widow”, substitute “spouse”.

Subsection 20(4):

Omit “widow or widower”, substitute “spouse”.

After section 21:

Insert:

Rate of benefits if there is more than one spouse

“21AA.(1) If a person (‘deceased person’) who was:

- (a) entitled to a parliamentary allowance; or

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(b) entitled to a retiring allowance, whether or not the retiring allowance was immediately payable;
dies leaving more than one spouse, the Trust must allocate any annuities or benefits payable to a spouse or any eligible children in respect of the deceased person under this Act among them.

“(2) The Trust must have regard to:

- (a) the respective needs of the spouses; and
- (b) if there are any eligible children of the deceased person who are entitled to benefits under section 19AA—the respective needs of the children;

when making the allocation.

“(3) Subject to subsections (4) and (5), annuities or benefits are only payable to each spouse and eligible child (if any) in accordance with the allocation.

“(4) The aggregate of the rates of the annuities and benefits payable under an allocation must not exceed five-sixths of the rate of the retiring allowances applicable to the deceased person.

“(5) In subsection (4), the rate of the retiring allowance applicable to the deceased person means the rate of the retiring allowance that would have been applicable to the deceased person if he or she had not died and:

- (a) if the deceased person died while entitled to a retiring allowance the rate of which was, at the time of the death, reduced under section 21 or 21B—the rate of retiring allowance to which the deceased person was entitled was not so reduced; and
- (b) if the deceased person died while entitled to a parliamentary allowance—the deceased person ceased to be entitled to that allowance at the time of the death; and
- (c) if the period of service of the deceased person was less than 8 years—the period of service of the deceased person was 8 years.”.

Superannuation Act 1922

After subsection 48AB(3):

Insert:

“(3AA) If a pensioner or contributor died before 25 June 1993:

- (a) the amendments of the *Superannuation Act 1976* (‘the 1976 Act’) and this Act made by the *Commonwealth Superannuation Schemes Amendment Act 1992* do not apply in relation to any pension that may be granted, apart from this subsection, under

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this section in respect of the deceased pensioner or contributor;
and

- (b) the 1976 Act and this Act, as in force immediately before 25 June 1993, continue to apply in relation to any pension granted or that may be granted under this section in respect of the deceased pensioner or contributor.”.

Subsection 48AB(4):

- (a) Omit “The grant”, substitute “If a deceased pensioner died before 25 June 1993, the grant”.
- (b) After “in respect of a person”, insert “, in relation to that deceased pensioner,”.

After section 48AB:

Insert:

Deceased pensioner survived by more than one spouse

“48ABA.(1) In this section:

‘**eligible child**’, in relation to a deceased pensioner, includes a person who would, if the deceased pensioner had been a retirement pensioner for the purposes of the *Superannuation Act 1976* immediately before his or her death, be an eligible child in relation to that retirement pensioner within the meaning of that Act;

‘**spouse**’, in relation to a deceased pensioner, means:

- (a) a person who:
 - (i) survives the deceased pensioner; and
 - (ii) would, if the deceased pensioner had been a retirement pensioner for the purposes of the *Superannuation Act 1976* immediately before his or her death, be a spouse in relation to that person within the meaning of that Act;or
- (b) a widow or widower of the deceased pensioner who is entitled to a pension under section 47.

“(2) If a deceased pensioner is survived by more than one spouse, a pension is only payable under section 47 or 48 (including under the section because of section 48AB) to a person in accordance with an allocation made under subsection (3).

“(3) The Commissioner must, subject to subsections (4), (5) and (6) of this section and subsection 48AB(3A), and having regard to:

- (a) the respective needs of the surviving spouses; and
- (b) the respective needs of any eligible child or eligible children of the deceased pensioner; and

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(c) such other matters as the Commissioner considers relevant; allocate any pension payable under section 47 or 48 (including under the section because of section 48AB) among all the persons who are entitled to such a pension.

“(4) The amount of pension payable to each person must not exceed the applicable percentage of the annual rate of pension payable to the pensioner at the time of the pensioner’s death.

“(5) For the purpose of subsection (4), the applicable percentage in relation to a pension payable to a spouse of the deceased pensioner, is:

- (a) if paragraph (b) does not apply:
 - (i) if there are no eligible children of the deceased pensioner or the spouse who are in the custody, care and control of the spouse—67%; or
 - (ii) if there is one such eligible child—78%; or
 - (iii) if there are 2 such eligible children—89%; or
 - (iv) if there are 3 or more such eligible children—100%; or
- (b) if the pensioner elected that section 26 should not apply to the pensioner:
 - (i) if there are no eligible children of the deceased pensioner or the spouse who are in the custody, care and control of the spouse—54%; or
 - (ii) if there is one such eligible child—65%; or
 - (iii) if there are 2 such eligible children—76%; or
 - (iv) if there are 3 or more such eligible children—87%.

“(6) For the purpose of subsection (4), the applicable percentage in relation to a pension payable to each eligible child of the deceased pensioner who is not in the custody, care and control of a spouse of the deceased pensioner is:

- (a) if there is only one such eligible child—45%; or
- (b) if there are 2 such eligible children—40%; or
- (c) if there are 3 such eligible children—30%; or
- (d) if there are 4 or more such eligible children—100% divided by the number of the children.

“(7) If:

- (a) the Commissioner allocates pensions payable in respect of a deceased pensioner under subsection (3); and
- (b) there is an eligible child or there are eligible children of the deceased pensioner (whether or not in the custody, care and control of any of the surviving spouses);

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the Commissioner must determine the part of the pensions that is attributable to each eligible child.

“(8) If a pension is payable in accordance with an allocation under this section, the Commissioner may, having regard to:

- (a) the respective needs of each person to whom the allocation relates; and
- (b) such other matters as the Commissioner considers relevant; vary that allocation from time to time.”.

Superannuation Act 1976

Subsection 3(1) (definition of “spouse”):

Omit the definition.

Subsection 3(2):

Omit the subsection.

After section 8:

Insert:

Marital relationship

“8A.(1) For the purposes of this Act, a person had a **marital relationship** with another person at a particular time if the person ordinarily lived with that other person as that other person’s husband or wife on a permanent and *bona fide* domestic basis at that time.

“(2) For the purpose of subsection (1), a person is to be regarded as ordinarily living with another person as that other person’s husband or wife on a permanent and *bona fide* domestic basis at a particular time only if:

- (a) the person had been living with that other person as that other person’s husband or wife for a continuous period of at least 3 years up to that time; or
- (b) the person had been living with that other person as that other person’s husband or wife for a continuous period of less than 3 years up to that time and the Commissioner, having regard to any relevant evidence, is of the opinion that the person ordinarily lived with that other person as that other person’s husband or wife on a permanent and *bona fide* domestic basis at that time;

whether or not the person was legally married to that other person.

“(3) For the purposes of this Act, a marital relationship is taken to have begun at the beginning of the continuous period mentioned in paragraph (2)(a) or (b).

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“(4) For the purpose of subsection (2), relevant evidence includes, but is not limited to, evidence establishing any of the following:

- (a) the person was wholly or substantially dependent on that other person at the time;
- (b) the persons were legally married to each other at the time;
- (c) the persons had a child who was:
 - (i) born of the relationship between the persons; or
 - (ii) adopted by the persons during the period of the relationship;
- (d) the persons jointly owned a home which was their usual residence.

“(5) For the purposes of this section, a person is taken to be living with another person if the Commissioner is satisfied that the person would have been living with that other person except for a period of:

- (a) temporary absence; or
- (b) absence because of the person’s illness or infirmity.

Spouse who survives a deceased person

“8B.(1) In this section:

‘deceased person’ means a person who was, at the time of his or her death, an eligible employee or a retirement pensioner.

“(2) For the purposes of this Act, a person is a spouse who survives a deceased person if:

- (a) the person had a marital relationship with the deceased person at the time of the death of the deceased person (**‘the death’**); and
- (b) in the case of a deceased person who was a retirement pensioner at the time of the death:
 - (i) the marital relationship began before the retirement pensioner became a retirement pensioner; or
 - (ii) the marital relationship began after the retirement pensioner became a retirement pensioner but before the retirement pensioner reached 60; or
 - (iii) in the case of neither subparagraph (i) nor (ii) applying—the marital relationship had continued for a period of at least 5 years up to the time of the death.

“(3) In spite of subsection (2), a person is taken to be a spouse who survives a deceased person if:

- (a) the person had previously had a marital relationship with the deceased person; and
- (b) the person did not, at the time of the death, have a marital

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- relationship with the deceased person but was legally married to the deceased person; and
- (c) in the case of a marital relationship that began after the deceased person became a retirement pensioner and reached 60—the relationship began at least 5 years before the deceased person’s death; and
 - (d) in the Commissioner’s opinion, the person was wholly or substantially dependent upon the deceased person at the time of the death.”.

Section 9:

Repeal the section, substitute:

Children of deceased retirement pensioners

“9.(1) A person who became a child of a deceased retirement pensioner (**“pensioner”**) after the pensioner became a retirement pensioner and reached 60 is taken not to be an eligible child or partially dependent child of the pensioner unless subsection (2) or (3) applies to the person.

“(2) This subsection applies to a child of a pensioner if:

- (a) the person became a child of the pensioner only because the person:
 - (i) was born of a marital relationship between the pensioner and another person; or
 - (ii) became a stepchild of the pensioner as a result of a marital relationship between the pensioner and another person; or
 - (iii) is a child of a person with whom the pensioner had a marital relationship; and
- (b) one of the following subparagraphs applies:
 - (i) the marital relationship began before the pensioner became a retirement pensioner;
 - (ii) the marital relationship began after the pensioner became a retirement pensioner but before the pensioner reached 60;
 - (iii) in the case of neither subparagraph (i) nor (ii) of this paragraph applying—the marital relationship began at least 5 years before the deceased person’s death.

“(3) If a person became a child of the pensioner only because the person is an adopted child, foster child or ward of the pensioner, this subsection applies to the person if the person had been such an adopted child, foster child or ward for a period of not less than 5 years before the pensioner’s death.”.

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NOTES ABOUT SECTION HEADINGS

1. On the day on which the *Defence Force Retirement and Death Benefits Act 1973* is amended by this Act, the headings to sections of that Act are altered as follows:
 - (a) the headings to sections 38 and 39 are altered by omitting “Widow’s” and substituting “Spouse’s”;
 - (b) the headings to sections 40 and 41A are altered by omitting “widow’s” and substituting “spouse’s”.

2. On the day on which the *Judges’ Pensions Act 1968* is amended by this Act, the headings to sections of that Act are altered as follows:
 - (a) the headings to sections 7, 8 and 11 are altered by omitting “widow or widower” and substituting “spouse”;
 - (b) the heading to section 8A is altered by omitting “widow’s or widower’s”;
 - (c) the heading to section 12 is altered by omitting “widow’s or widower’s” and substituting “spouse’s”.

3. On the day on which the *Parliamentary Contributory Superannuation Act 1948* is amended by this Act, the heading to section 19 of that Act is altered by omitting “widow or widower” and substituting “spouse”.

[*Minister’s second reading speech made in—
House of Representatives on 14 October 1992
Senate on 5 November 1992*]