



Australian Defence Force Cover Act 2015

No. 118, 2015

**An Act to provide benefits for incapacity or death
suffered by certain members of the Australian
Defence Force, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act to provide benefits for incapacity or death
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Defence Force, and for related purposes**

[Assented to 10 September 2015]

The Parliament of Australia enacts:

Part 1—Preliminary

Division 1—Preliminary

1 Short title

This Act may be cited as the *Australian Defence Force Cover Act 2015*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	10 September 2015
2. Sections 3 to 67	The later of: (a) the start of 1 July 2016; and (b) the commencement of the <i>Australian Defence Force Superannuation Act 2015</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	1 July 2016 (paragraph (a) applies)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Simplified outline of this Act

This Act provides for benefits for medical discharge or death of a member of the ADF who is under 60 and either is an ADF Super member or would be such a member if he or she had not chosen another superannuation fund.

A benefit for medical discharge is payable only if CSC has classified the invalid as having a significant degree of incapacity for civil employment. The benefit is generally a pension, initially payable to the invalid. If the invalid dies while receiving a pension, leaving either a surviving spouse or eligible children, a pension is also payable to the spouse or, if there is no spouse, those children.

The benefit payable for death is generally a lump sum. Depending on the circumstances, it is payable to a surviving spouse, eligible children or in accordance with the member's will or intestacy arrangements.

If more than one person would otherwise be entitled to a benefit relating to a former member of the ADF, CSC may decide which of those persons is to receive a benefit and how much of the benefit each should receive.

Pensions are payable fortnightly, and increased by indexation.

Payment of benefits may be stopped for failing to provide information relevant to determining entitlement to, or amount of, the benefits.

Division 2—Definitions

4 Definitions

In this Act:

ADF means the Australian Defence Force.

ADF Super has the same meaning as in the *Australian Defence Force Superannuation Act 2015*.

basic annual rate of invalidity pension for an invalid on a day (the **key day**) is the rate worked out using the formula:

$$\text{Invalid's prospective service to age 60} \times \frac{\text{Current value on the key day of the invalid's salary on the day he or she was discharged}}{\text{Incapacity factor on the key day}}$$

Note: If the basic annual rate of invalidity pension is relevant to the rate of another pension payable under Division 3 or 4 of Part 2, Division 5 of that Part may affect the incapacity factor and therefore the basic annual rate.

benefit means a pension or other payment under this Act.

Board has the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*.

continuous full-time Reservist means a member of the Reserves:

- (a) whose undertaking to render defence service of a continuous nature for a specified period has been accepted under:
 - (i) subsection 32A(3) of the *Naval Defence Act 1910*; or
 - (ii) subsection 50(3) of the *Defence Act 1903*; or
 - (iii) subsection 4J(3) of the *Air Force Act 1923*; and
- (b) who is rendering that continuous service in accordance with the undertaking.

covered ADF member means a person:

- (a) who is under 60; and
- (b) who is a member of the Permanent Forces or a continuous full-time Reservist; and

- (c) who either:
- (i) is an ADF Super member (as defined in the *Australian Defence Force Superannuation Act 2015*); or
 - (ii) would have been an ADF Super member except that a fund other than ADF Super has become the person's chosen fund under section 32F of the *Superannuation Guarantee (Administration) Act 1992* for contributions by the Department.

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

current value: the **current value** on a day (the **key day**) of the rate of a person's salary or pension on the day the person was medically discharged or died is:

- (a) if the key day is before the first 1 January or 1 July after the day of the discharge or death—that rate; or
- (b) if the key day is on or after the first 1 January or 1 July after the day of the discharge or death—that rate, as affected by indexation under section 43 on each 1 January and 1 July that is:
 - (i) after the day of the discharge or death; and
 - (ii) before or on the key day.

death benefit lump sum for the death of a covered ADF member means the amount worked out using the formula:

$$\text{Member's prospective service to age 60} \times \text{Member's salary on the day of his or her death} \times 25\%$$

Defence Force Case Assessment Panel means the Defence Force Case Assessment Panel established under section 100 of the *Defence Force Retirement and Death Benefits Act 1973*.

defence service has the meaning given for a declared member by section 6 of the *Military Rehabilitation and Compensation Act 2004*.

eligible child has the meaning given by section 5.

Section 4

eligible children pension percentage has the meaning given by section 6.

incapacity factor for an invalid who is classified under Subdivision B of Division 2 of Part 2 as class A or class B means:

- (a) if the invalid is classified as class A—2.2%; or
- (b) if the invalid is classified as class B—1.1%.

index number for a March quarter or September quarter means the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician in relation to that quarter.

invalid means a person who ceased to be a covered ADF member because he or she was medically discharged before he or she turned 60.

invalidity pension means pension payable to an invalid under Subdivision A of Division 2 of Part 2.

invalid's spouse pension means pension payable under Subdivision A of Division 3 of Part 2 to the surviving spouse of an invalid who has died.

March quarter means the 3 months starting on 1 January.

marital or couple relationship has the meaning given by section 7.

medically discharged: a covered ADF member is **medically discharged** when his or her service in the ADF is terminated because he or she is medically unfit to perform his or her duties because of a physical or mental impairment.

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

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

partner: a person is the **partner** of another person if the 2 persons have a relationship as a couple (whether the persons are the same sex or different sexes).

Permanent Forces means:

- (a) the Permanent Navy established by the *Naval Defence Act 1910*; or
- (b) the Regular Army established by the *Defence Act 1903*; or
- (c) the Permanent Air Force established by the *Air Force Act 1923*.

personal information has the same meaning as in the *Privacy Act 1988*.

prospective service to age 60 has the meaning given by section 8.

Reserves means:

- (a) the Naval Reserve established by the *Naval Defence Act 1910*; or
- (b) the Army Reserve established by the *Defence Act 1903*; or
- (c) the Air Force Reserve established by the *Air Force Act 1923*.

rules means rules made under section 67.

salary of a covered ADF member has the meaning given by section 9.

September quarter means the 3 months starting on 1 July.

splitting agreement means:

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

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

spouse pension child supplement percentage has the meaning given by section 10.

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

Section 5

surviving spouse of an invalid, or covered ADF member, who dies has the meaning given by section 11.

welfare includes education and financial advantage.

5 Definition of *eligible child*

- (1) A person is an ***eligible child*** of an invalid, or covered ADF member, who dies if the person is under subsection (2) a child of the invalid or member and either:
- (a) the person is under 18; or
 - (b) the person:
 - (i) is at least 18 but under 25; and
 - (ii) is receiving full-time education at a school, college or university or other full-time education approved by CSC for the purposes of this subparagraph; and
 - (iii) was wholly or substantially dependent on the invalid or member when he or she died.
- (2) For the purposes of subsection (1), the person is a child of the invalid or member if:
- (a) the person is, for the purposes of the *Family Law Act 1975*, a child of the invalid or member; or
 - (b) the person is an ex-nuptial child of the invalid or member; or
 - (c) the person was a step-child, an adopted child, a foster child or a ward of the invalid or member when the invalid or member died; or
 - (d) the person was wholly or substantially dependent upon the invalid or member when the invalid or member died, and either:
 - (i) is, for the purposes of the *Family Law Act 1975*, a child of a surviving spouse of the invalid or member; or
 - (ii) is a child or ex-nuptial child of a surviving spouse of the invalid or member.

The paragraphs of this subsection do not limit one another.

6 Definition of *eligible children pension percentage*

- (1) This section defines one of the factors determining the rate of a single pension that:
 - (a) is payable because of the death of either or both of:
 - (i) an invalid or covered ADF member; and
 - (ii) a surviving spouse of the invalid or member; and
 - (b) is payable for a day (the *key day*) to or for one or more eligible children of the invalid or member.
- (2) The *eligible children pension percentage* is the percentage worked out using the following table:

Eligible children pension percentage		
Item	Number of the eligible children to or for whom the pension is payable for the key day	Percentage
1	1	67
2	2	117
3	3	133
4	at least 4	150

7 Definition of *marital or couple relationship*

- (1) A person had a *marital or couple 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 or partner 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 or partner 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 or partner 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 or partner for a continuous period of less than 3 years up to that time and CSC, having regard to

Section 7

any relevant evidence, is of the opinion that the person ordinarily lived with that other person as that other person's husband or wife or partner 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 or couple 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' relationship was registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901*, as a kind of relationship prescribed for the purposes of that section;
 - (d) the persons had a child who was:
 - (i) born of the relationship between the persons; or
 - (ii) adopted by the persons during the period of the relationship; or
 - (iii) a child of both of the persons for the purposes of the *Family Law Act 1975*;
 - (e) 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 CSC 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).

8 Definition of *prospective service to age 60*

The *prospective service to age 60* of a covered ADF member who is medically discharged, or dies, under 60 is the difference between:

- (a) 60; and
- (b) the number of whole years (ignoring any parts of years) of the member's age when he or she is discharged or dies.

Note: A covered ADF member who is medically discharged under 60 is an invalid.

9 Definition of *salary*

- (1) The *salary* of a covered ADF member on a day is the sum of the following determined under Part IIIA of the *Defence Act 1903*:
 - (a) the annual rate of salary applying to the member on that day (on the assumption that the member is on full pay);
 - (b) for a member to whom service allowance is payable—the annual rate of the service allowance for service by the member on that day;
 - (c) for a member to whom higher duties allowance is payable—the annual rate of the higher duties allowance for service by the member on that day;
 - (d) for a member to whom trainee allowance is payable—the annual rate of the trainee allowance for service by the member on that day.

To avoid doubt, *salary* does not include any other allowance.

- (2) However, if a covered ADF member is a trainee of the Permanent Forces on a day and his or her salary worked out under subsection (1) is less than the maximum annual rate of salary (ignoring allowances) for a Private Group 1 or equivalent rank in the member's arm of the ADF, the member's *salary* on that day is that maximum annual rate.
- (3) Despite subsection (1), the *salary* of a covered ADF member holding one of the following offices on a day is the annual rate of salary on that day of a holder of the office determined under subsection 7(3) of the *Remuneration Tribunal Act 1973*:

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- (a) Chief of the Defence Force;
- (b) Vice Chief of the Defence Force;
- (c) Chief of Navy;
- (d) Chief of Army;
- (e) Chief of Air Force;
- (f) Director of Military Prosecutions;
- (g) an office prescribed by the rules.

10 Definition of *spouse pension child supplement percentage*

- (1) This section defines the factor determining the increase in a pension payable to a surviving spouse of an invalid or covered ADF member on account of one or more eligible children of the invalid or member who are wholly or substantially dependent on the spouse.
- (2) The *spouse pension child supplement percentage* is the percentage worked out using the following table:

Spouse pension child supplement percentage		
Item	Number of eligible children wholly or substantially dependent on the spouse	Percentage
1	1	17
2	2	33
3	at least 3	50

11 Definition of *surviving spouse*

- (1) A person is a *surviving spouse* of an invalid, or covered ADF member, who dies if the person had a marital or couple relationship with the invalid or member at the time of the death.
- (2) However, a person is also a *surviving spouse* of an invalid, or covered ADF member, who dies if:
 - (a) the person had previously had a marital or couple relationship with the invalid or member; and

- (b) at the time of the death, the person did not have a marital or couple relationship with the invalid or member but was legally married to the invalid or member; and
- (c) in CSC's opinion, the person was wholly or substantially dependent upon the invalid or member at the time of the death.

Note: If there is more than one surviving spouse of the same invalid, or covered ADF member, who dies and each of them would be entitled to a benefit because of that death if he or she were the only surviving spouse of the invalid or member, CSC determines which of the surviving spouses the benefit is paid to and in what amount. Under section 39, CSC may determine:

- (a) that the benefit is divided between them in proportions determined by CSC; or
- (b) that the whole benefit is payable to only one of them, and no benefit is payable to the rest.

Division 3—Scope of this Act

12 This Act binds the Crown

This Act binds the Crown in right of the Commonwealth.
However, it does not bind the Crown in right of a State, of the
Australian Capital Territory or of the Northern Territory.

13 Extension to external Territories

This Act extends to every external Territory.

14 Extraterritoriality

This Act applies to acts, matters and things inside and outside
Australia.

Part 2—Benefits for incapacity of invalid

Division 1—Simplified outline of this Part

15 Simplified outline of this Part

A covered ADF member who is medically discharged before turning 60 is entitled to invalidity pension if he or she is classified by CSC as having at least 30% incapacity for civil employment.

The basic annual rate of the invalidity pension depends on his or her age at discharge, his or her salary then and the degree of his or her incapacity. This rate is increased while he or she is under 60 by a top-up that depends on how long he or she served in the ADF, his or her salary when discharged and the degree of his or her incapacity. The top-up stops when he or she turns 60 because he or she should have access to his or her superannuation then.

If an invalidity pensioner dies, a pension is payable to his or her surviving spouse or, if there is no surviving spouse, to his or her eligible children. The rate of the pension depends on the basic annual rate of the invalidity pension. In some cases, the spouse's pension can be converted to a lump sum.

If the surviving spouse dies while receiving a pension and any of the invalid's eligible children were dependent on the spouse, a pension is payable to those children. The rate of the pension depends on the rate of the invalid's spouse pension.

Division 2—Invalidity pension

Subdivision A—Invalidity pension

16 Invalidity pension

Payability of pension

- (1) Invalidity pension is payable to an invalid who is classified as class A or class B.

Note 1: Subdivision B provides for CSC to classify invalids according to their incapacity for civil employment. Class A invalids are those whom CSC determines as having at least 60% incapacity. Class B invalids are those whom CSC determines as having at least 30%, but less than 60%, incapacity.

Note 2: The first classification takes effect when the invalid is medically discharged, even if the classification results from a determination made after the discharge: see section 21.

Rate of pension

- (2) The annual rate of the pension on a day (the *key day*) is:
- (a) if the invalid is under 60 on the key day—the sum of:
 - (i) the basic annual rate of the pension for the invalid on the key day; and
 - (ii) the top-up annual rate of the pension on the key day worked out under section 17 for the invalid; or
 - (b) if the invalid is at least 60 on the key day—the basic annual rate of the pension for the invalid on the key day.

Cases in which pension is not payable

- (3) This section has effect subject to:
- (a) Subdivision C (which deals with incapacity for which pension is not payable); and
 - (b) section 44 (which deals with automatic conversion of small pensions to lump sums).

Note: Even if a pension is payable under this section, payment of it may be stopped under Division 6 of Part 4 for failing to give information or submit to medical examination as required by CSC.

17 Top-up annual rate of invalidity pension

- (1) The top-up annual rate of the pension on the key day when the invalidity pensioner is under 60 is the rate worked out using the formula:

$$\text{Invalid's period of qualifying service} \times \text{Current value on the key day of the invalid's salary on the day he or she was discharged} \times \text{Incapacity factor on the key day}$$

- (2) In subsection (1):

invalid's period of qualifying service means the number of whole years in the period (subject to subsection (3)) for which the invalid was a member of the Permanent Forces or continuous full-time Reservist.

How to deal with multiple periods of service

- (3) For the purposes of subsection (2), if:
- (a) there are 2 or more periods (the *servicing periods*) when the invalid was a member of the Permanent Forces or a continuous full-time Reservist; and
 - (b) the servicing periods are separated by one or more periods (the *non-servicing periods*) when the invalid was neither a member of the Permanent Forces nor a continuous full-time Reservist;
- take account of only the servicing period or servicing periods after the latest non-servicing period.

Subdivision B—Classifying invalid’s incapacity for civil employment

18 Determining person’s incapacity for civil employment

Mandatory determinations

- (1) At each time described in paragraph (2)(a), (b) or (c), CSC must determine the percentage of a person’s incapacity for civil employment at that time if the person is at that time:

- (a) a covered ADF member who is about to be medically discharged while under 60; or
- (b) an invalid.

Note: When CSC makes a determination:

- (a) section 19 (which deals with substantive classification) may require CSC to classify the person as class A, class B or class C, depending on the determination; or
 - (b) section 20 (which deals with interim classification) may permit or require CSC to classify the person as class B if the percentage determined is at least 30% but CSC needs more information to determine whether the percentage is at least 60%.
- (2) The times for making a determination are as follows:
- (a) a single time before, or as soon as reasonably practicable after, the person’s medical discharge;
 - (b) if CSC has classified the person as class A or class B under section 19—a single time 12 to 36 months after the first such classification;
 - (c) if CSC has classified the person as class B under section 20—a single time within 3 months after the last such classification;
 - (d) if CSC may classify the person as class B under subsection 20(2) but chooses not to do so—the first time after making the choice at which it is reasonably practicable to make a determination with more information about the percentage of the person’s incapacity.
- (3) Despite subsection (1), CSC is not required to make a determination at a time if CSC is satisfied then that invalidity

pension is not payable for the person's incapacity because of Subdivision C.

Discretionary determination after substantive classification

- (4) At any time after CSC first classified a person as class A or class B under section 19, CSC may determine the percentage of a person's incapacity for civil employment.

Note: If CSC does so, that section requires CSC to classify the person depending on the new percentage determined, so the person may be classified differently.

Considerations in making determination

- (5) In determining under this section the percentage of a person's incapacity for civil employment, CSC must have regard to only:
- (a) his or her vocational, trade and professional skills, qualifications and experience; and
 - (b) the kinds of civil employment that a person with those skills, qualifications and experience might reasonably undertake; and
 - (c) the degree to which the physical or mental impairment that is the basis of his or her medical discharge has diminished his or her capacity to undertake those kinds of civil employment; and
 - (d) if the determination is the second or later determination of that percentage—his or her experience and civil employment history since the last determination of that percentage.

Death of person does not prevent determination

- (6) The death of an invalid does not prevent CSC from later determining the percentage of his or her incapacity for civil employment immediately before he or she died.

Note: CSC may delegate its powers under this Subdivision to an Incapacity Classification Committee established under the Trust Deed made under the *Military Superannuation and Benefits Act 1991*: see section 36 of the *Governance of Australian Government Superannuation Schemes Act 2011*. If a delegate exercises those powers, CSC is taken to have done so: see section 59.

Section 19

19 Substantive classification

- (1) CSC must classify the person in accordance with the following table.

Classifying person according to incapacity		
Item	If CSC determines the percentage of incapacity for civil employment is in this range:	CSC must classify the person as:
1	At least 60%	Class A
2	At least 30% but less than 60%	Class B
3	Less than 30%	Class C

- (2) However, if the determination was made under subsection 18(4) (which deals with a discretionary determination), CSC must not:
- (a) classify a person who has turned 60:
 - (i) as class C if he or she was previously classified as class A or class B; or
 - (ii) as class B if he or she was previously classified as class A; or
 - (b) classify a person who has turned 65.
- (3) Paragraph (2)(a) does not prevent CSC from classifying a person who has turned 60 if, immediately before the person turned 60, the person's invalidity pension was withheld or suspended under Division 6 of Part 4.

20 Interim classification

- (1) This section applies if, when CSC determines the percentage of a person's incapacity for civil employment under subsection 18(1) (which deals with mandatory determinations), CSC determines that the percentage is at least 30% but CSC needs more information to determine whether the percentage is at least 60%.
- (2) If, before the determination is made, the person has not been classified, CSC may classify the person as class B.

- (3) If the determination is made after CSC has classified the person as class B under this section, CSC must classify the person as class B again.

21 Date of classification

- (1) The first classification of a person under this Subdivision takes effect when the person is medically discharged (even if the classification is not made until after the discharge).
- (2) If a person is first classified under section 19 (which deals with substantive classification) as class A, after being classified as class B under section 20 (which deals with interim classification), the classification as class A takes effect:
- (a) when it is made; or
 - (b) if CSC specifies in writing an earlier day (not before the person is medically discharged) when the classification takes effect—that earlier day.
- (3) A classification under this Subdivision, except one described in subsection (1) or (2), takes effect:
- (a) when it is made; or
 - (b) if CSC specifies in writing a later day when the classification takes effect—that later day.

End of classification

- (4) A classification of the person ceases to have effect when a classification of the person that is made later takes effect.

22 Notice of classification

If CSC classifies a person under this Subdivision, CSC must give written notice of the classification and written reasons for it to:

- (a) the person; or
- (b) if the person has died:
 - (i) each surviving spouse of the person; or
 - (ii) if there is no surviving spouse of the person—each eligible child (if any) of the person.

Subdivision C—Incapacity for which invalidity pension is not payable

23 Incapacity due to pre-existing condition of invalid with not more than 2 years' membership of the ADF

- (1) Invalidity pension is not payable to an invalid who is medically discharged not more than 2 years after becoming a member of the ADF if CSC is satisfied that:
 - (a) the discharge was caused, or substantially contributed to, by a physical or mental condition that existed when the invalid became a member of the ADF; and
 - (b) the condition was not materially aggravated by service after becoming a member of the ADF.
- (2) If the invalid has been a member of the ADF for 2 or more periods, separated by one or more periods when he or she was not a member of the ADF, take account of only the most recent time he or she became a member of the ADF.

24 Incapacity due to intentional act

- (1) Invalidity pension is not payable to an invalid if CSC is satisfied that the basis of the invalid's medical discharge was wholly due to an intentional act by the invalid for the purpose of obtaining invalidity pension.
- (2) Subsection (1) does not apply if the CSC is satisfied that the circumstances of the act are such that the subsection should not apply.

25 Incapacity arising on extended absence without leave

- (1) Invalidity pension is not payable to an invalid if:
 - (a) CSC is satisfied that the physical or mental condition that is the basis of the invalid's medical discharge was caused, or substantially contributed to, by an event that happened while he or she was absent without leave and more than 21 days after that absence started; and

- (b) his or her salary for the period of absence before the event was forfeited under regulations made under the *Defence Act 1903*; and
 - (c) an amount equal to that forfeited salary is not later paid or payable to him or her under those regulations.
- (2) Subsection (1) does not apply if the CSC is satisfied that the circumstances of the absence are such that the subsection should not apply.

Division 3—Surviving spouse's benefit after death of invalid pensioner

Subdivision A—Invalid's spouse pension

26 Pension payable to surviving spouse after death of invalid

Payability of pension

- (1) Invalid's spouse pension is payable to the surviving spouse of an invalid who was receiving an invalidity pension on the day the invalid died.

Note: This Division also applies in relation to certain invalids who are not actually receiving invalidity pension on the day they die as if they had been receiving that pension on that day: see Division 5.

Basic rate of invalid's spouse pension

- (2) The annual rate of the invalid's spouse pension on a day (the **key day**) is 67% of the current value on the key day of the basic annual rate of the invalidity pension on the day the invalid died.

Note: Division 5 may affect the rate of invalidity pension that is taken for the purposes of this subsection to have been payable to the invalid on the day he or she died.

General adjustment of basic rate of invalid's spouse pension

- (3) Subsection (2) has effect subject to section 39 (which deals with how much benefit is payable to each surviving spouse of the invalid if there is more than one surviving spouse of the invalid).

Reduction in rate if spouse had only short relationship with invalid

- (4) Despite subsection (2), the annual rate of invalid's spouse pension payable to the surviving spouse is worked out using the formula at the end of this subsection if the marital or couple relationship of the spouse with the invalid began:
- (a) after the invalid started to receive invalidity pension; and
 - (b) after the invalid turned 60; and

(c) less than 3 years before the invalid died.

Annual rate of pension payable to the spouse under subsection (2), as affected by section 39 if relevant \times $\frac{\text{Number of days for which the marital or couple relationship existed}}{1,095}$

Increase in rate if eligible children depend on spouse

- (5) The rate under subsection (2) (as affected by section 39 and by subsection (4), if relevant) of pension for a period when one or more eligible children of the invalid are wholly or substantially dependent on the spouse is increased by the spouse pension child supplement percentage for those children.

Note: This increase may be reduced or negated under section 41 so that a pension can be paid to someone else for the welfare of those children.

Special rate for first 7 instalments after invalid's death

- (6) For working out the amount of the first 7 instalments of pension payable to the spouse after the invalid's death, the annual rate of the invalid's spouse pension is, subject to section 39, the annual rate of invalidity pension that would have been payable to the invalid if he or she had not died. This subsection has effect despite subsections (2), (3), (4) and (5).

Pension not payable if lump sum is payable instead

- (7) This section has effect subject to:
- (a) Subdivision B; and
 - (b) section 44 (which deals with automatic conversion of small pensions to lump sums).

Section 27

Subdivision B—Choosing to convert invalid's spouse pension to lump sum

27 Choice by surviving spouse under 60 to convert pension to lump sum

- (1) The surviving spouse of an invalid who dies may choose, within 6 months of the death, to receive a lump sum instead of invalid's spouse pension, if the spouse is under 60.

Note: Section 55 also deals with making a choice.

- (2) If the spouse makes the choice, the amount of the lump sum is 16.5 times the annual amount of the pension for the spouse worked out under subsection 26(2) (as affected by section 39 and subsection 26(4), if relevant).

Division 4—Eligible children's pension after death of invalid pensioner

Subdivision A—Pension if there is no surviving spouse when invalid dies

28 Pension payable to eligible children if invalid dies without a surviving spouse

Application

- (1) This section applies if:
 - (a) an invalid dies; and
 - (b) the invalid was receiving an invalidity pension immediately before dying; and
 - (c) there was not a surviving spouse of the invalid immediately after his or her death; and
 - (d) there are one or more eligible children of the invalid.

Note: This Division also applies in relation to certain invalids who are not actually receiving an invalidity pension on the day they die as if they had been receiving the pension on that day: see Division 5.

Pension payable

- (2) A single pension is payable to or for all those eligible children.

Children to or for whom the pension is payable

- (3) However, the pension is payable for a period to or for only those eligible children who are eligible children for the period.

Note: An eligible child who is at least 18 but under 25 may cease to be an eligible child, and become an eligible child again, depending on whether he or she is undertaking full-time education.

Section 29

Rate of pension

- (4) The rate of the pension payable to or for one or more eligible children of the invalid for a day (the **key day**) because of the death of the invalid is worked out using the formula:

$$67\% \times \frac{\text{Current value on the key day of the basic annual rate of the invalidity pension on the day the invalid died}}{\text{Eligible children pension percentage on the key day}}$$

Note: Division 5 may affect the rate of invalidity pension that is taken for the purposes of this subsection to have been payable to the invalid on the day he or she died.

Pension not payable if lump sum is payable instead

- (5) This section has effect subject to section 44 (which deals with automatic conversion of small pensions to lump sums).

Subdivision B—Pension if surviving spouse of invalid received invalid's spouse pension then died

29 Pension payable to eligible children dependent on surviving spouse who received invalid's spouse pension then died

Application

- (1) This section applies if:
- (a) an invalid who was receiving invalidity pension has died; and
 - (b) there was a surviving spouse of the invalid; and
 - (c) the surviving spouse dies; and
 - (d) immediately before dying, the surviving spouse was receiving invalid's spouse pension because of the death of the invalid; and
 - (e) one or more eligible children of the invalid are wholly or substantially dependent on the surviving spouse when the surviving spouse dies.

Payability of pension

- (2) A single pension is payable to or for all those eligible children.

Children to or for whom pension is payable

- (3) However, the pension is payable for a period to or for only those eligible children who are eligible children for the period.

Note: An eligible child who is at least 18 but under 25 may cease to be an eligible child, and become an eligible child again, depending on whether he or she is undertaking full-time education.

Rate of pension

- (4) The rate of the pension payable to or for one or more eligible children for a day (the **key day**) because of the death of the surviving spouse of the invalid is worked out using the formula:

$$\begin{array}{l} \text{Current value on the key day of the} \\ \text{rate of the invalid's spouse pension,} \\ \text{disregarding subsections 26(5) and (6),} \\ \text{on the day the spouse died} \end{array} \times \begin{array}{l} \text{Eligible children} \\ \text{pension percentage} \\ \text{on the key day} \end{array}$$

Pension not payable if lump sum is payable instead

- (5) This section has effect subject to section 44 (which deals with automatic conversion of small pensions to lump sums).

Division 5—Special provisions affecting pension for surviving spouse or eligible children

30 Divisions 3 and 4 operate in some cases as if invalid who died were classified as class A and received invalidity pension

- (1) This section applies if:
 - (a) an invalid dies; and
 - (b) CSC is satisfied that his or her death was due to:
 - (i) the physical or mental condition that was the basis of the invalid's medical discharge; or
 - (ii) another physical or mental condition caused by the condition mentioned in subparagraph (i); and
 - (c) at the time of his or her death, the invalid:
 - (i) was classified as class B; or
 - (ii) was reclassified as class C.
- (2) Divisions 3 and 4 operate as if, at the time of the invalid's death, he or she were:
 - (a) classified as class A; and
 - (b) receiving invalidity pension accordingly.

31 Divisions 3 and 4 operate as if invalid was receiving suspended invalidity pension when he or she died

Divisions 3 and 4 operate in relation to an invalid whose invalidity pension was suspended under section 47 at the time of his or her death as if he or she were receiving that pension at that time.

Part 3—Benefits for death of covered ADF member

Division 1—Simplified outline of this Part

32 Simplified outline of this Part

A benefit is payable for the death of a covered ADF member.

The benefit is payable to:

- (a) the surviving spouse (if any) of the member; or
- (b) the eligible children (if any) of the member, if there is no surviving spouse; or
- (c) beneficiaries under the member's will who were nominated to CSC and dependent on the member just before the member's death, if there is neither a surviving spouse nor dependent eligible children; or
- (d) the member's estate, if the benefit is not payable to anyone else.

Generally, the benefit is a lump sum of 25% of the amount the member would have earned if he or she had continued to serve in the ADF, at the salary payable at the time of his or her death, until turning 60.

However, if the lump sum would be paid to a surviving spouse of the member, the spouse can choose to convert it to a pension. If, after doing so, the spouse dies leaving one or more eligible children of the member who were dependent on the spouse, a pension is payable to them.

Division 2—Surviving spouse's benefit for death of covered ADF member

Subdivision A—Lump sum benefit

33 Benefit for surviving spouse of covered ADF member who dies

- (1) If a covered ADF member dies, a benefit for the member's death is payable to the member's surviving spouse (if any).
- (2) The benefit is a payment of the death benefit lump sum for the member's death, unless the surviving spouse chooses under Subdivision B to receive the benefit as a pension instead.

Note: If there is more than one surviving spouse of the member, section 39 will affect how much each of them receives.

Subdivision B—Pension

34 Surviving spouse may choose to receive benefit as pension

Choosing to receive benefit as pension

- (1) The surviving spouse of a covered ADF member who dies may, before receiving the spouse's benefit for the death as a lump sum, choose to receive the benefit as a pension instead. The choice cannot be revoked.

Note 1: If the surviving spouse makes the choice, the pension is payable for the life of the spouse (and a pension will be payable after the spouse dies to any eligible children of the member who are wholly or substantially dependent on the spouse when he or she dies).

Note 2: Section 55 also deals with making the choice.

Note 3: The choice will not have effect if it would result in a pension payable at an annual rate less than that described in section 45.

Basic rate of pension

- (2) If the surviving spouse of a covered ADF member who dies chooses to receive the spouse's benefit as a pension, the annual rate

of the pension on a day (the *key day*) is the rate worked out using the formula:

$$\text{Member's prospective service to age 60} \times \frac{\text{Current value on the key day of the member's salary on the day he or she died}}{\text{he or she died}} \times 1.5\%$$

Adjustment of basic rate

- (3) Subsection (2) has effect subject to section 39 (which deals with how much benefit is payable to each surviving spouse if there is more than one surviving spouse of the covered ADF member).

Increase in rate for dependent eligible children

- (4) The rate under subsection (2) (as affected by the section 39, if relevant) of pension for a period when one or more eligible children of the covered ADF member are wholly or substantially dependent on the spouse is increased by the spouse pension child supplement percentage for those children.

Note: This increase may be reduced or negated under section 41 so that a pension can be paid to someone else for the welfare of those children.

Division 3—Eligible children's benefits for death of covered ADF member

Subdivision A—Lump sum benefit if covered ADF member died without a surviving spouse

35 Lump sum payable to eligible children if no surviving spouse

- (1) This section applies if:
 - (a) a covered ADF member dies; and
 - (b) there is not a surviving spouse of the member immediately after his or her death; and
 - (c) there are one or more eligible children of the member immediately after his or her death.
- (2) A single benefit of the death benefit lump sum for the member's death is payable to or for all those eligible children.

Subdivision B—Pension if surviving spouse of covered ADF member received pension then died

36 Pension payable to eligible children dependent on surviving spouse who received pension then died

Application

- (1) This section applies if:
 - (a) a covered ADF member has died; and
 - (b) there was a surviving spouse of the member; and
 - (c) the surviving spouse chose to receive his or her benefit for the death of the member as a pension; and
 - (d) the surviving spouse dies; and
 - (e) one or more eligible children of the member are wholly or substantially dependent on the surviving spouse when the surviving spouse dies.

Pension payable

- (2) A single pension is payable to or for all those eligible children.

Children to or for whom pension is payable

- (3) However, the pension is payable for a period to or for only those eligible children who are eligible children for the period.

Note: An eligible child who is at least 18 but under 25 may cease to be an eligible child, and become an eligible child again, depending on whether he or she is undertaking full-time education.

Rate of pension

- (4) The rate of the pension payable to or for one or more eligible children of a deceased covered ADF member for a day (the **key day**) because of the death of the surviving spouse of the member is worked out using the formula:

$$\frac{\text{Current value on the key day of the rate of the spouse's pension under section 34, disregarding subsection 34(4), on the day he or she died}}{\text{Eligible children pension percentage on the key day}} \times$$

Pension not payable if lump sum is payable instead

- (5) This section has effect subject to section 44 (which deals with automatic conversion of small pensions to lump sums).

Part 3 Benefits for death of covered ADF member

Division 4 Benefit for beneficiaries or estate of covered ADF member who died without a surviving spouse and eligible children

Section 37

Division 4—Benefit for beneficiaries or estate of covered ADF member who died without a surviving spouse and eligible children

37 Lump sum benefit for covered ADF member’s beneficiaries or estate

- (1) This section applies if:
 - (a) a covered ADF member dies; and
 - (b) immediately after his or her death, there is neither a surviving spouse of the member nor any eligible children of the member.
- (2) A single benefit of the death benefit lump sum for the member’s death is payable:
 - (a) to or for all the persons for whom all the following conditions are met:
 - (i) the member made provision for the persons in his or her will;
 - (ii) the persons were dependent on the member;
 - (iii) benefit would not be payable under Division 2 or 3 to or for the persons;
 - (iv) the member notified CSC in writing that subparagraphs (i), (ii) and (iii) apply to the persons; or
 - (b) if there are no such persons—to the executor of the member’s will or the administrator of the member’s estate.

Note: If there are 2 or more persons covered by paragraph (a), section 39 will affect how much each of them receives.

Part 4—General provisions about benefits

Division 1—Simplified outline of this Part

38 Simplified outline of this Part

If 2 or more surviving spouses or nominated beneficiaries are entitled to a benefit as a result of the death of a single invalid or covered ADF member, CSC is to determine which of those persons is to be paid the benefit, and how much of the benefit each is to be paid.

A pension is payable in fortnightly instalments.

CSC may determine that a benefit be paid to a person to whom the benefit would not otherwise be payable, for the welfare of a child or of another person to or for whom the benefit would normally be payable.

Factors affecting pension rates may be increased twice a year by reference to increases in the Consumer Price Index.

If the annual rate of a pension is below a threshold, the pension ceases to be payable and a lump sum is payable instead. The threshold is \$5,000 a year or a higher rate prescribed by the rules.

If CSC has required a person entitled to a benefit to give CSC information relevant to the entitlement, or to undergo medical examination, and the person does not comply, CSC may stop payment of the benefit while the person does not comply.

Benefits are inalienable.

Division 2—Allocation of benefit if more than one person entitled

39 CSC to allocate benefit if otherwise payable to more than one surviving spouse or nominated beneficiary

- (1) This section applies if, as a result of the death of a particular invalid or covered ADF member, a benefit would, apart from this section, be payable:
 - (a) to each of 2 or more persons who are surviving spouses of the invalid or member; or
 - (b) to or for all of 2 or more persons for whom the conditions in paragraph 37(2)(a) are met in relation to the member.

Note: Paragraph 37(2)(a) provides that a single benefit for the death of a covered ADF member is payable to or for all the persons who were provided for in the member's will, were dependent on the member, were not eligible for the benefit as surviving spouses or eligible children and were mentioned by the member to CSC as being in those circumstances.

- (2) CSC is to determine:
 - (a) which one or more of those persons are to have an amount of benefit paid to or for them, and which (if any) of those persons is not to have any benefit paid to or for him or her, as a result of that death; and
 - (b) the amount or proportion of benefit to be paid to or for each person to or for whom payment is to be made.
- (3) If CSC makes a determination under subsection (2) in relation to surviving spouses of an invalid or covered ADF member who died, the total benefit for the death of the invalid or member payable under the determination must equal the benefit that would have been payable had there been only one surviving spouse of the invalid or member.
- (4) A determination under this section has effect according to its terms, despite any other provision of this Act.

Division 3—Payment of benefits**40 Pensions to be paid in fortnightly instalments**

- (1) Pensions under this Act are payable in fortnightly instalments.
- (2) The amount of a fortnightly instalment of a pension is the sum of the daily amount of the pension for each day that is in the fortnight and is a day for which the pension was payable.
- (3) The daily amount of the pension for a day is $\frac{1}{365}$ of the annual amount of the pension, worked out using the annual rate of the pension on that day and rounded to the nearest cent (rounding half a cent upwards).

41 Payment of part of surviving spouse's pension attributable to eligible children of invalid or covered ADF member

- (1) This section applies if:
 - (a) apart from this section:
 - (i) a pension would be payable to the surviving spouse of an invalid or covered ADF member; and
 - (ii) the rate of the pension would be increased by the spouse pension child supplement percentage for one or more eligible children of the invalid or member; and
 - (b) CSC considers it appropriate that a pension at the rate of all or part of that increase be paid to a person other than the surviving spouse for the welfare of one or more of those children (for example because the person cares for one or more of those children).
- (2) CSC may determine that:
 - (a) a pension is payable to a specified person other than the surviving spouse for the welfare of one or more of those children, at a specified rate not more than that increase; and
 - (b) the rate of the pension payable to the surviving spouse (apart from this section) is reduced by that specified rate.

Section 42

The rate may be specified as a proportion (including 100%) of the increase.

- (3) The determination has affect according to its terms, despite any other provision of this Act.

42 Payment of benefit to person other than beneficiary, for beneficiary's welfare

- (1) This section applies if CSC considers it appropriate that some or all of a benefit that would (apart from this section) be payable to or for a person (the *beneficiary*) be paid instead to another person for the beneficiary's welfare (for example because the beneficiary is a child, is imprisoned or is under a disability).
- (2) CSC may determine that all, or a specified part, of the benefit:
 - (a) is payable to a specified person other than the beneficiary for the beneficiary's welfare; and
 - (b) is not payable to the beneficiary.
- (3) The determination has affect according to its terms, despite any other provision of this Act.

Division 4—Indexation of pension rates etc.

43 Indexation of factors affecting pension rates

- (1) This section provides for the indexation on 1 January or 1 July (the *indexation day*) of a rate (the *indexed rate*) that another provision of this Act indicates is to be indexed.
- (2) The indexed rate is increased on the indexation day if the index number (the *latest index number*) for the latest September quarter or March quarter before the indexation day is greater than the greatest index number (the *old record index number*) for an earlier March quarter or September quarter after 31 December 2015.
- (3) The increased rate is worked out by multiplying the indexed rate immediately before the indexation day by the indexation factor worked out under subsection (4).
- (4) The indexation factor is worked out using the following formula and rounding the result to 3 decimal places (rounding up if the number in the fourth decimal place is 5 or greater):

$$\frac{\text{Latest index number} - \text{Old record index number}}{\text{Old record index number}}$$

- (5) For the purposes of this section:
 - (a) have regard only to the index numbers published in terms of the most recently published index reference period for the Consumer Price Index; and
 - (b) disregard index numbers published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the index reference period).

Division 5—Lump sums payable instead of small pensions

44 Automatic conversion of small pensions to lump sums

- (1) This section applies if, on a day (the *conversion day*), the annual rate of a single pension payable to or for one or more persons under this Act is less than:
 - (a) \$5,000 a year; or
 - (b) if a greater rate is prescribed by the rules—that greater rate.
- (2) The pension ceases to be payable on the conversion day (and is not payable on any later day), despite any other provision of this Act.
- (3) Instead, a single lump sum is payable to or for the person or persons.
- (4) The amount of the lump sum is worked out using the formula:
$$16.5 \times \begin{array}{l} \text{Annual rate of the pension on the conversion day,} \\ \text{subject to subsection (5), if relevant} \end{array}$$
- (5) If:
 - (a) the pension is invalid's spouse pension or pension payable under section 34 (because the surviving spouse of a covered ADF member who dies chose to receive the benefit for the member's death as a pension); and
 - (b) the annual rate of the pension on the conversion day is affected by the spouse pension child supplement percentage;work out the lump sum using the formula in subsection (4) as if the annual rate of the pension on the conversion day were not increased by that percentage.

45 Choice to receive small pension is ineffective

A choice under this Act to receive a pension instead of a lump sum does not have effect if (apart from this section) it would result in a pension being payable at an annual rate (on the first day on which the pension would be payable) that is less than:

- (a) \$5,000 a year; or

(b) if a greater rate is prescribed by the rules—that greater rate.

Division 6—Stopping payment for failure to give information etc.

46 Withholding payment of benefit while required information not given

- (1) CSC may require a person to or for whom a benefit may be payable under this Act to give CSC, or arrange for CSC to be given, information required by CSC to determine:
 - (a) whether the benefit is payable; and
 - (b) if it is, the amount of the benefit.
- (2) CSC may withhold payment of all or part of a benefit to or for the person while that person does not give the information, or arrange for it to be given, to CSC.

Note: If, after the information is given, CSC determines that benefit was payable for the period before the information was given, that benefit will need to be paid.

- (3) Subsection (2) has effect despite Parts 2 and 3 (which make benefits payable).

47 Suspension of invalidity pension for invalid's failure to submit to medical examination or give work information to CSC

Requirement to undergo examination or give information

- (1) CSC may, by written notice (the **first notice**) given to an invalid receiving 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 give CSC, within the period specified in the notice, the information required in the notice about any work (as an employee or on his or her own account) in which he or she has been engaged during the period specified in the notice.

The first notice must set out the effect of subsection (2).

Suspension for failure to comply with requirement

- (2) If the invalid fails to comply with the first notice and CSC is not satisfied that there was a reasonable excuse for the failure, CSC may, by another written notice given to the invalid, suspend his or her invalidity pension with effect from a day determined by CSC that is not earlier than:
- (a) the day after the day the first notice required the invalid to submit to medical examination; or
 - (b) the day after the end of the period in which the first notice required the invalid to give CSC information.
- The notice suspending the pension must set out the effect of subsections (5), (6), (7) and (8).
- (3) The pension is not payable for a period for which it is suspended. This subsection has effect despite Division 2 of Part 2 (which makes the pension payable).

Revoking suspension

- (4) CSC may, by written notice given to the invalid, revoke the suspension of the pension, with effect from the day the notice is given or an earlier day specified by CSC in the notice.

Request to revoke suspension

- (5) The invalid, or a person acting for the invalid, may request CSC in writing to revoke the suspension. This does not limit subsection (4).
- (6) If the revocation is requested, CSC must give the invalid another notice (the **repeat notice**) requiring the invalid:
- (a) to submit himself or herself for medical examination by a legally qualified medical practitioner at a time and place specified in the repeat notice, if the first notice required the invalid to submit to a medical examination; or
 - (b) to give CSC, within a specified period, the information required by the first notice.
- The repeat notice must set out the effect of subsections (7) and (8).

Part 4 General provisions about benefits

Division 6 Stopping payment for failure to give information etc.

Section 48

- (7) CSC must revoke the suspension under subsection (4), if:
- (a) the invalid complies with the requirement in the repeat notice; or
 - (b) the invalid fails to do so but CSC is satisfied that there is a reasonable excuse for that failure.

CSC must specify that the revocation has effect from a day not later than:

- (c) the day the invalid complied with the requirement in the repeat notice; or
 - (d) the day CSC was satisfied that there is a reasonable excuse for the failure.
- (8) CSC must give the invalid a written notice refusing to revoke the suspension if the invalid does not comply with the requirement in the repeat notice and CSC is not satisfied that there is a reasonable excuse for the failure.

48 Relationship between sections 46 and 47

Sections 46 and 47 do not limit each other.

Division 7—Protection of benefits

49 Benefits are inalienable

- (1) Benefits are absolutely inalienable, by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.
- (2) Subsection (1) has effect subject to:
 - (a) section 41 (which deals with payment of part of a pension of a surviving spouse of a person to someone else for the welfare of the person's children); and
 - (b) section 42 (which deals with payment of a benefit to someone other than the beneficiary, for the beneficiary's welfare); and
 - (c) subsection 61(3) (which provides for recovery of certain amounts by deductions from payments of benefits).

Part 5—Administration and finance

Division 1—Simplified outline of this Part

50 Simplified outline of this Part

The Department must give CSC information relevant to working out whether a benefit, and how much benefit, is payable for a covered ADF member who is medically discharged or dies.

Choices about the form of benefit are not effective unless they are notified to CSC in a way suitable to CSC.

CSC may give a person's agent a notice for the person, and a person's agent may give CSC a notice for the person.

CSC may reconsider its own decisions on its own initiative or on request by persons affected by those decisions, and may involve the Defence Force Case Assessment Panel in reconsiderations.

CSC may delegate its powers in accordance with the *Governance of Australian Government Superannuation Schemes Act 2011*.

Benefits are payable from the Consolidated Revenue Fund.

Payments made purportedly as pensions or lump sums that were not actually payable may be recovered from the recipient, and must be reported.

Division 2—Administration

Subdivision A—Information

51 Department to give CSC information around time of medical discharge

If a covered ADF member is about to be, or has been, medically discharged while under 60, the Department must, within 2 months before or after the discharge, give CSC any information the Department has about the member that is relevant to:

- (a) classifying the member; or
- (b) working out the rate of invalidity pension for the member after the discharge.

Note: Sections 46 and 47 give the CSC powers to get information from a person to whom a benefit may be payable or to whom an invalidity pension is being paid.

52 Department to give CSC information about covered ADF member who dies

If a covered ADF member dies while under 60, the Department must give CSC any information the Department has about the member that is relevant to working out the benefit payable for the member's death.

53 CSC may rely on information given by the Department

- (1) For the purposes of this Act, CSC may presume that any information given to CSC by the Department about the salary or service of a covered ADF member (including the age of the member when he or she was medically discharged or died) is correct.
- (2) If a tribunal, authority or person is empowered:
 - (a) to review or reconsider a decision of CSC under this Act; and
 - (b) to vary, or make a decision in substitution for, CSC's decision under this Act;

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the tribunal, authority or person is not bound by any presumption made by CSC under subsection (1).

54 Use and disclosure of personal information by CSC

- (1) CSC may use and disclose for the purposes of this Act personal information that CSC holds and was collected for the purpose of:
 - (a) the *Australian Defence Force Superannuation Act 2015*; or
 - (b) ADF Super.
- (2) CSC may use and disclose, for the purposes of the *Australian Defence Force Superannuation Act 2015* and ADF Super, personal information that CSC holds and was collected for the purpose of this Act.

Subdivision B—Choices and notices

55 Way in which choices about benefits must be made

- (1) This section applies to a choice:
 - (a) to receive a pension instead of a lump sum; or
 - (b) to receive a lump sum instead of a pension.
- (2) The choice has effect only if written notice of the choice is given to CSC in a way determined by CSC, along with any information required by CSC to give effect to the choice.

56 Notices may be given to or by agent

- (1) If CSC is required or permitted by this Act to give a notice to a person, CSC may give the notice to someone else who is acting for the person.
- (2) If a person is required or permitted by this Act to give CSC a notice, the notice may be given to CSC by someone else acting on behalf of the person.

Subdivision C—Reconsideration of CSC decisions

57 Reconsideration of CSC decisions by CSC

- (1) CSC may reconsider a decision of CSC under this Act, either on its own initiative or on request of a person affected by the decision.

Note: A decision actually made by a delegate or sub-delegate of CSC is a decision of CSC for this purpose: see section 59.

- (2) If CSC reconsiders a decision, it must:
- (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) set aside the decision and substitute a new decision.

Note: A person affected by the outcome of the reconsideration of the decision may complain to the Superannuation Complaints Tribunal under the *Superannuation (Resolution of Complaints) Act 1993* so that Tribunal may review the reconsideration or decision.

58 Request for reconsideration by CSC

- (1) A person affected by a decision of CSC may request CSC to reconsider the decision.
- (2) The request must:
- (a) be made in writing given to CSC within 30 days after the person becomes aware of the decision or such further period as CSC allows; and
 - (b) set out the ground for the request.
- (3) After receiving a request to reconsider a decision, CSC must:
- (a) refer the decision to the Defence Force Case Assessment Panel for the Panel to make recommendations to CSC in relation to the decision; or
 - (b) refer the decision to the Defence Force Case Assessment Panel for the Panel to reconsider the decision; or
 - (c) reconsider the decision itself.

Note: Division 2 of Part XI of the *Defence Force Retirement and Death Benefits Act 1973* deals with how the Defence Force Case Assessment Panel performs its functions relating to a reconsideration.

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- (4) In making a decision on a requested reconsideration, CSC must take into account any recommendations made by the Defence Force Case Assessment Panel. This does not limit the matters CSC may take into account.
- (5) CSC must keep the person who requested the reconsideration informed of its progress and the reason for any delay.
- (6) CSC must give the person who requested the reconsideration written notice of its result and written reasons for the decision made on reconsideration.

Subdivision D—Delegation

59 CSC taken to have exercised power if delegate exercises power

For the purposes of this Act, CSC is taken to have exercised a power of CSC under this Act if:

- (a) the power has been delegated or sub-delegated to a person under section 36 of the *Governance of Australian Government Superannuation Schemes Act 2011*; and
- (b) the person exercises the power.

Division 3—Finance

60 Appropriation for benefits

Benefits are payable from the Consolidated Revenue Fund, which is appropriated accordingly.

61 Recoverable payments

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

Recovery

- (2) If a payment is made under subsection (1) to the recipient, the relevant amount:
- (a) is a debt due to the Commonwealth by the recipient; and
 - (b) may be recovered by CSC, on behalf of the Commonwealth, in a court of competent jurisdiction.
- (3) If:
- (a) a payment is made under subsection (1) to or for the recipient; and
 - (b) a benefit is paid or payable to or for the recipient;
- the relevant amount, or such part of it as the Board determines, may, if the Board so directs, be recovered by deduction from that benefit.

62 Recoverable death payments

- (1) If, apart from this subsection, the Commonwealth does not have power under this Act to pay an amount (the *relevant amount*) in any of the following circumstances:
- (a) the relevant amount is deposited to an account kept in the name of a deceased person;

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

Recovery

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

63 Reports about recoverable payments and recoverable death payments

- (1) CSC must cause a report of the following information to be published in such manner as the Board thinks fit:
- (a) the number of payments that any employee of CSC was aware of that were made under subsection 61(1) or 62(1) during the reporting period (see subsection (2) of this section);
 - (b) the total amount of payments referred to in paragraph (a);
 - (c) the number of payments made under subsection 61(1) or 62(1) that any employee of CSC became aware of during the

- reporting period that were made during an earlier reporting period;
- (d) the total amount of payments referred to in paragraph (c);
 - (e) for each payment referred to in paragraph (c)—the reporting period in which the payment was made.
- (2) The **reporting period** is:
- (a) a financial year; or
 - (b) if a shorter recurring period is prescribed by the rules—that period.
- (3) A report is not required if no employee of CSC is aware of any payments referred to in paragraph (1)(a) or (c).

When report must be provided

- (4) The report must be provided before the end of the following period:
- (a) 4 months after the end of the reporting period;
 - (b) if a lesser number of months is prescribed by the rules—that number of months after the end of the reporting period.

Part 6—Miscellaneous

64 Simplified outline of this Part

Benefits may be split or withheld under Part VIII B of the *Family Law Act 1975*.

Rights under this Act may be varied under various provisions of this Act or later legislation, or may be terminated by later legislation.

The Minister may make rules for the purposes of this Act.

65 Splitting of benefits under the *Family Law Act 1975*

- (1) To avoid doubt, this Act has effect subject to Part VIII B of the *Family Law Act 1975* (which deals with splitting and temporarily withholding payments from a superannuation interest of a party to a marriage or de facto relationship that breaks down).
- (2) The rules may provide that, when a splitting agreement or splitting order is received by CSC in respect of a superannuation interest under this Act, the non-member spouse is entitled to a benefit determined in accordance with the rules.
- (3) If the rules provide that the non-member spouse is entitled to a benefit, the benefit of the member spouse is reduced in accordance with the rules, despite any provision of this Act outside this section.
- (4) The rules may make provision for the purposes of subsection (2) or (3) by reference to a decision of, or a method determined by, a Fellow or an Accredited Member of the Institute of Actuaries of Australia.
- (5) The rules may include any other provision that is related to, or consequential on, provisions referred to in subsection (2) or (4) or reductions under subsection (3).

66 Variation etc. of rights under this Act

A right granted under this Act is granted on the basis that:

- (a) the right may be varied under section 39, 41, 42, 44, 45, 46, 47 or 65; and
- (b) the right may be cancelled, revoked, terminated or varied by or under later legislation; and
- (c) no compensation is payable if the right is cancelled, revoked, terminated or varied as mentioned in paragraph (a) or (b).

67 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) amend this Act.
- (3) Except as provided by subsection 65(2), the rules may not set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act.

*[Minister's second reading speech made in—
House of Representatives on 25 June 2015
Senate on 19 August 2015]*

(115/15)
