



Public Sector Superannuation Legislation Amendment Act 2018

No. 80, 2018

**An Act to amend the law relating to
superannuation, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Public Sector Superannuation Legislation Amendment Act 2018

No. 80, 2018

**An Act to amend the law relating to
superannuation, and for related purposes**

[Assented to 24 August 2018]

The Parliament of Australia enacts:

1 Short title

This Act is the *Public Sector Superannuation Legislation
Amendment Act 2018*.

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 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	24 August 2018
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	25 August 2018
3. Schedule 1, Part 2	The first 1 January to occur at least 6 months after the day this Act receives the Royal Assent.	1 January 2020
4. Schedule 1, Part 3	Immediately after the time specified in the <i>Judges and Governors-General Legislation Amendment (Family Law) Act 2012</i> for the commencement of item 38 of Schedule 1 to that Act.	15 March 2013
5. Schedule 2	1 July 2020.	1 July 2020

Note: This table relates only to the provisions of this Act as originally enacted.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 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Superannuation arrangements

Part 1—Amendments commencing on the day after Royal Assent

Judges' Pensions Act 1968

1 Before section 1

Insert:

Part 1—Preliminary

2 Subsection 4(1)

Insert:

defined benefit interest has the meaning given by
subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

Division 293 tax law has the meaning given by
subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

release authority lump sum has the meaning given by
section 17AL.

superannuation provider has the meaning given by
subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

3 After section 5

Insert:

Part 2—Benefits

4 At the end of subsection 6(2)

Add:

Note: A pension to which a Judge is entitled in accordance with
subsection 6A(2) or 6B(2) may be reduced under section 17AN
(which deals with sustaining the superannuation contribution
concession).

5 Section 6A (heading)

Repeal the heading, substitute:

6A Rate of pension—Judge’s surcharge debt account not in debit

6 After subsection 6C(2)

Insert:

- (2A) However, a Judge may not make an election under subsection (2) if the Judge has given the Secretary of the Department a written notice under paragraph 17AL(2)(c).

7 After section 17

Insert:

Part 3—Family law superannuation splitting

8 After section 17AJ

Insert:

Part 4—Sustaining the superannuation contribution concession

17AK Secretary treated as superannuation provider

For the purposes of this Act, the Division 293 tax law applies as if the Secretary of the Department was the superannuation provider in relation to the defined benefit interest established under this Act.

Note: See subsection 4(1) for definitions of *Division 293 tax law*, *superannuation provider* and *defined benefit interest*.

17AL Release of benefits under a release authority

- (1) A lump sum (the *release authority lump sum*) may be paid at a time in compliance with a release authority issued to a Judge under item 3 of the table in subsection 135-10(1) in Schedule 1 to the *Taxation Administration Act 1953* and given to the Secretary of the

Department in accordance with Subdivision 135-B in that Schedule if, at that time, either:

- (a) the Judge's surcharge debt account is not in debit; or
- (b) subsection (2) applies.

Note 1: The purpose of the release authority is to allow a lump sum to be paid to the Commissioner to meet a debt a Judge has under Subdivision 133-C in Schedule 1 to the *Taxation Administration Act 1953* (deferred payment of Division 293 tax).

Note 2: Division 293 tax is not payable by a Justice of the High Court or a justice or judge of a court created by the Parliament (see Subdivision 293-F of the *Income Tax Assessment Act 1997*).

Surcharge election must be made or forgone

- (2) This subsection applies if any of the following are satisfied:
 - (a) the Judge has made an election under subsection 6C(2) (which deals with the adjustment of benefits to take account of an amount of surcharge debt);
 - (b) the Judge has not made an election under that subsection and the period within which such an election may be made has expired;
 - (c) the Judge gives the Secretary of the Department written notice that the Judge forgoes making an election under that subsection.

Appropriation

- (3) Payment of a release authority lump sum must be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

17AM Limit on amount that may be released

- (1) In addition to any requirements in Division 135 in Schedule 1 to the *Taxation Administration Act 1953*, the amount of a release authority lump sum paid in relation to a release authority issued to a Judge must not have the effect that the Judge's retirement pension is reduced below zero.
- (2) For the purpose of subsection (1), the effect of a release authority lump sum on the amount of the Judge's retirement pension is to be worked out after taking account of:

- (a) any adjustment applicable to the Judge's retirement pension under section 6B or 6C (which deals with surcharge debt); and
- (b) any reduction under sections 17AA to 17AJ (which deal with family law splitting).

17AN Calculation of benefits after payment of release authority lump sum

- (1) If:
- (a) a release authority lump sum is paid in relation to a release authority issued to a Judge; and
 - (b) the Judge is entitled to a retirement pension in accordance with subsection 6A(2) or 6B(2);

the Judge's rate of retirement pension is the applicable percentage of the rate of retirement pension that would, apart from this section (but having regard to any other provisions of this Act that affect that rate), be worked out under subsection 6A(2), 6B(2) or 6C(3).

- (2) For the purposes of subsection (1), the applicable percentage is worked out using this formula:

$$\left[1 - \left(\frac{\text{Release authority lump sum}}{\text{Age factor}} \div \text{Basic rate} \right) \right] \times 100$$

where:

age factor means the age factor for the Judge on the day on which the retirement pension becomes payable (see subsection (4)).

basic rate means the rate of the retirement pension that would, apart from this subsection (but having regard to any other provisions of this Act that affect that rate), be worked out under subsection 6A(2), 6B(2) or 6C(3) for the Judge at the time the retirement pension becomes payable.

- (3) The applicable percentage mentioned in subsection (1) is to be calculated to 3 decimal places (rounding up if the fourth decimal place is 5 or more).
- (4) The regulations may prescribe the age factor, or the method for working out the age factor, for the purposes of subsection (2).

Part 5—Miscellaneous

Parliamentary Contributory Superannuation Act 1948

9 After section 8

Insert:

8A Resolutions without meetings

- (1) The trustees are taken to have passed a resolution at a meeting and may bind the Trust if:
 - (a) without meeting, a majority of the trustees indicate agreement with the resolution; and
 - (b) that agreement is indicated in accordance with the method determined by the trustees under subsection (2); and
 - (c) all the trustees were informed of the proposed resolution, or reasonable efforts were made to inform all the trustees of the proposed resolution.
- (2) Subsection (1) applies only if the trustees:
 - (a) have determined that they may pass resolutions of that kind without meeting; and
 - (b) have determined the method by which trustees are to indicate agreement with proposed resolutions.

10 Before subsection 16A(1) (after the heading)

Insert:

- (1A) The *superannuation guarantee safety-net amount*, in relation to a person, is the greater of:
 - (a) the amount worked out under subsection (1); and
 - (b) the amount worked out under subsection (1AA).

11 Subsection 16A(1)

Omit “this Act, the *superannuation guarantee safety-net amount* in relation to a person”, substitute “paragraph (1A)(a), the amount”.

12 After subsection 16A(1)

Insert:

Schedule 1 Superannuation arrangements

Part 1 Amendments commencing on the day after Royal Assent

- (1AA) For the purposes of paragraph (1A)(b), the amount is the sum of:
- (a) the person's minimum requisite benefit; and
 - (b) an amount, determined in writing by the Secretary of the Finance Department in relation to the person in accordance with advice received from an actuary, representing interest on the person's minimum requisite benefit.
- (1AB) In determining an amount for the purposes of paragraph (1AA)(b), the Secretary must have regard to the following:
- (a) the timing and amounts of the benefits paid to or in respect of the person under this Act;
 - (b) determinations by CSC under the superannuation scheme established by deed under the *Superannuation Act 1990* as to rates of interest and the method of allocating interest;
 - (c) any other matter that the Secretary considers relevant.
- (1AC) In working out the superannuation guarantee safety-net amount for the purposes of paragraph 19AB(1C)(b), increase the amount worked out under subsection (1AA) of this section by the person's surcharge deduction amount.

13 Subsection 16A(3)

Insert:

benefit certificate means the benefit certificate (within the meaning of section 10 of the *Superannuation Guarantee (Administration) Act 1992*) that was in effect on the last day the person was entitled to a parliamentary allowance.

minimum requisite benefit means the benefit certified by an actuary in the benefit certificate as the minimum requisite benefit for the person, as a member of the scheme constituted by the provisions of this Act, calculated at the last day the person was entitled to a parliamentary allowance.

14 Subsections 19AAA(6), 19ABA(6), 22A(1) and 22B(1)

Omit "the Australian Government Actuary", substitute "an actuary".

Part 2—Amendments relating to children

Federal Circuit Court of Australia Act 1999

15 Paragraph 9F(1)(a) of Schedule 1

Repeal the paragraph, substitute:

- (a) the person:
 - (i) has not attained the age of 18 years; or
 - (ii) has attained the age of 18 years but has not attained the age of 25 years and is receiving full-time education at a school, college or university; and

Judges' Pensions Act 1968

16 Subsection 4(1) (paragraph (a) of the definition of *child*)

Omit “16 years”, substitute “18 years”.

17 Subsection 4(1) (subparagraph (b)(i) of the definition of *child*)

Omit “16 years”, substitute “18 years”.

Parliamentary Contributory Superannuation Act 1948

18 Subsection 19AA(5) (paragraph (a) of the definition of *eligible child*)

Omit “16 years”, substitute “18 years”.

19 Subsection 19AA(5) (subparagraph (b)(i) of the definition of *eligible child*)

Omit “16 years”, substitute “18 years”.

Superannuation Act 1922

20 Subsection 4(1) (subparagraph (a)(i) of the definition of *eligible child*)

Repeal the subparagraph, substitute:

(i) under the age of 18 years; or

21 Subsection 4(1) (sub-subparagraph (a)(ii)(A) of the definition of *eligible child*)

Repeal the sub-subparagraph, substitute:

(A) who has reached the age of 18 years but is under the age of 21 years; and

22 Subsection 4(1) (sub-subparagraph (a)(iii)(A) of the definition of *eligible child*)

Repeal the sub-subparagraph, substitute:

(A) who has reached the age of 21 years but is under the age of 25 years; and

23 Subsection 4(1) (sub-subparagraph (a)(iii)(B) of the definition of *eligible child*)

Omit “and is not ordinarily in employment or engaged in work on his or her own account;”, substitute “; and”.

24 Subsection 4(10)

Repeal the subsection.

Superannuation Act 1976

25 Subsection 3(1) (paragraph (b) of the definition of *eligible child*)

Repeal the paragraph, substitute:

(b) is a person who:

(i) is under the age of 18 years; or

(ii) has reached the age of 18 years but is under the age of 25 years and is receiving full-time education at a school, college or university; and

26 Subsection 3(1) (paragraph (b) of the definition of *partially dependent child*)

Repeal the paragraph, substitute:

(b) to whom either of the following applies:

(i) the person is under the age of 18 years;

- (ii) the person has reached the age of 18 years but is under the age of 25 years and is receiving full-time education at a school, college or university; and

27 Application of amendments

Definitions

- (1) In this item:
commencement day means the day this item commences.

Federal Circuit Court of Australia Act 1999

- (2) The amendment of the *Federal Circuit Court of Australia Act 1999* made by this Part applies in relation to a Judge or retired disabled Judge who dies on or after the commencement day.

Other Acts

- (3) The amendments of an Act (the **benefit Act**) (other than the *Federal Circuit Court of Australia Act 1999*) made by this Part apply to a person (the **young person**), in relation to paying a benefit under the benefit Act to the extent that the benefit is payable for a day occurring on or after:
 - (a) the commencement day, if:
 - (i) the benefit is payable because of the death of a person that occurred on or after the commencement day; or
 - (ii) on the day before the commencement day, a benefit was payable under the benefit Act to or for the young person, or to or for another person in respect of the young person; or
 - (b) the later of the commencement day and the day notice is first given as mentioned in subitem (4), if:
 - (i) subparagraphs (a)(i) and (ii) do not apply; and
 - (ii) such notice is given.
- (4) For the purposes of paragraph (3)(b), notice is given on the day, occurring on or after the day this Act receives the Royal Assent, on which:
 - (a) an application is made under the benefit Act for a benefit to be paid to or for the young person, or to or for another person in respect of the young person; or

Schedule 1 Superannuation arrangements
Part 2 Amendments relating to children

- (b) either of the following persons requests the person specified in the following table to apply the amendments to the young person:
- (i) the young person;
 - (ii) a person to whom a benefit is payable (or would be payable, were the amendments to apply) under the benefit Act for or in respect of the young person.

Requests		
Item	Column 1 If the benefit Act is the ...	Column 2 a request under paragraph (b) may be made to ...
1	<i>Judges' Pensions Act 1968</i>	the Secretary of the Department (within the meaning of that Act).
2	<i>Parliamentary Contributory Superannuation Act 1948</i>	the Secretary of the Finance Department (with the meaning of that Act).
3	<i>Superannuation Act 1922</i>	CSC.
4	<i>Superannuation Act 1976</i>	CSC.

28 Transitional provision—amendments do not decrease existing benefits

- (1) This item applies if:
- (a) apart from this item, the amendments of an Act made by this Part would reduce (including to nil) the amount of a benefit (the *existing beneficiary's post-commencement benefit*) payable under the Act to or for a person (the *existing beneficiary*):
 - (i) for a day (the *post-commencement day*) occurring on or after the commencement of this item; and
 - (ii) because of the death of a person (the *deceased person*); and
 - (b) apart from this item, the amendments would increase (including from nil) the amount of a benefit (the *new beneficiary's post-commencement benefit*) payable under that Act to or for a person (the *new beneficiary*) other than the existing beneficiary:
 - (i) for the post-commencement day; and

- (ii) because of the death of the deceased person, or a spouse of the deceased person; and
- (c) a benefit was payable under that Act:
 - (i) to or for the existing beneficiary; or
 - (ii) to another person in respect of the existing beneficiary; in relation to the death of the deceased person, or a spouse of the deceased person, for the day occurring immediately before that commencement.
- (2) The amount of the existing beneficiary's post-commencement benefit for the post-commencement day is increased to what it would have been if this Part had not been enacted.
- (3) If there is only one new beneficiary, the amount of the new beneficiary's post-commencement benefit for the post-commencement day is reduced by the amount of the increase mentioned in subitem (2).
- (4) If there is more than one new beneficiary:
 - (a) the total amount of the new beneficiaries' post-commencement benefits for the post-commencement day is reduced by the amount of the increase mentioned in subitem (2); and
 - (b) that reduction is applied to each new beneficiary's post-commencement benefit in proportion to his or her share of the total.

Part 3—Other amendments

Judges and Governors-General Legislation Amendment (Family Law) Act 2012

29 Item 38 of Schedule 1

Before “this”, insert “be payable under”.

Schedule 2—Governance arrangements for the Board of CSC

Governance of Australian Government Superannuation Schemes Act 2011

1 Paragraph 11(1)(b)

Omit “10”, substitute “8”.

2 Subsection 11(2)

Omit “10”, substitute “8”.

3 Paragraph 11(2)(a)

Omit “3”, substitute “2”.

4 Subsection 11(2) (note)

Omit “5”, substitute “4”.

5 Subsection 21(1)

Omit “9”, substitute “6”.

6 Subsection 21(2)

Repeal the subsection.

7 Subsection 21(3)

Omit “subsections (1) and (2)”, substitute “subsection (1)”.

8 Section 23

Repeal the section, substitute:

23 Voting at meetings

At a meeting of the Board, a question is decided by the agreement
of 6 directors.

9 Paragraph 24(1)(a)

Omit “9”, substitute “6”.

10 Existing appointments

The amendments made by this Schedule to section 11 of the *Governance of Australian Government Superannuation Schemes Act 2011* do not affect the appointment of a director that took effect before the commencement of this item.

11 Provisions relating to quorum, voting etc.

Sections 21, 23 and 24 of the *Governance of Australian Government Superannuation Schemes Act 2011* as amended by this Schedule:

- (a) apply, at any time after the commencement of this item at which the number of directors is 11, as if references in subsection 21(1), section 23 and paragraph 24(1)(a) of that Act as so amended to 6 directors were references to 8 directors; and
- (b) apply, at any time after that commencement at which the number of directors is 10, as if references in subsection 21(1), section 23 and paragraph 24(1)(a) of that Act as so amended to 6 directors were references to 7 directors.

Note: Although section 11 of that Act, as amended by this Schedule, reduces the number of directors to 9, it is possible for the number of directors to be 10 or 11 after the commencement of this Schedule because of item 10.

[Minister's second reading speech made in—
House of Representatives on 28 March 2018
Senate on 15 August 2018]

(55/18)
