



# **Superannuation (Salary) Regulations**

**Statutory Rules No. 282, 1978**

## **Compilation No. 2**

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## About this compilation

This is a compilation of the *Superannuation (Salary) Regulations* that shows the text of the law as amended and in force on 5 December 1985 (the **compilation date**).

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

### Uncommenced amendments

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

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

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

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

### Modifications

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

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## **Part I—Preliminary**

### **1 Citation**

These Regulations may be cited as the Superannuation (Salary) Regulations.

### **2 Commencement**

These Regulations shall be deemed to have taken effect from and including 1 July 1976.

### **3 Interpretation**

- (1) In these Regulations, *the Act* means the *Superannuation Act 1976*.
- (2) In Parts IV and V, unless the contrary intention appears, *salary* has the same meaning as in section 5 of the Act.

## Part II—Allowances

### 4 Interpretation

In this Part, a reference to an allowance of a prescribed kind shall be read as a reference to an allowance of one of the following kinds:

- (a) an allowance that is payable to an eligible employee by reason that he temporarily performs the whole or a part of the duties of an office of a higher classification than the classification of the office occupied by him;
- (c) an allowance that is payable to an eligible employee by reason that he is liable to be called upon to perform duties or work at any time during which he is off duty;
- (d) an allowance that is payable to an eligible employee by reason that he is required in the performance of his duties or work to be in charge of staff, equipment or premises;
- (e) an allowance that is payable to an eligible employee in lieu of payments for overtime or other extra duty work;
- (f) an allowance that is payable to an eligible employee as compensation for the physical hardships or discomforts associated with the duties or work that he is required to perform;
- (g) an allowance not otherwise referred to in this regulation that is payable to an eligible employee by reason that he is required to perform any special function as part of his duties or work.

### 5 Certain allowances to be treated as salary

Each of the following kinds of allowance is a kind of allowance that is to be treated as salary for the purposes of the Act:

- (a) an allowance that is payable to an eligible employee as compensation for any loss of salary or wages incurred by the eligible employee while he is undergoing a course of training for the purpose of promotion to another office;
- (b) an allowance that is payable to an eligible employee by reason that—
  - (i) he possesses a qualification (including the completion of a course, of study or training, success at a particular level in an examination or the holding of any degree, diploma, licence or certificate); or
  - (ii) he has acquired a particular standard of proficiency in any skill related to the performance of his duties or work;
- (c) an allowance that is payable to an eligible employee by reason of the length of his period of service and the standard of efficiency attained by him in the performance of his duties or work;
- (d) an allowance that is payable to an eligible employee in respect of housing or quarters while he holds a particular office or performs particular duties or work;

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- (e) the rent-free use by an eligible employee of premises or quarters made available to him by reason that he holds a particular office or performs particular duties or work;
- (f) an allowance that, pursuant to a law in force in the United Kingdom, is payable to an eligible employee, being a person who was engaged or appointed for employment in the United Kingdom and whose salary is fixed and payable in sterling, in order to compensate him for an increase in the cost of living;
- (g) an allowance that is payable to an eligible employee, being a person who has not attained the age of 21 years, by reason—
  - (i) that he is married; or
  - (ii) that he is required to perform duties or work of a kind normally performed by a person who has attained the age of 21 years;
- (h) an allowance that is payable to an eligible employee by reason that he is employed in the Public Service Board in the position of Chairman, Promotions Appeal Committee;
- (j) an allowance that is payable to an eligible employee (being an eligible employee referred to in paragraph (ea) of the definition of **eligible employee** in subsection 3(1) of the Act) in pursuance of—
  - (i) where the eligible employee is employed as a member of the staff of the Legal Aid Commission of Western Australia established under the *Legal Aid Commission Act, 1976* of the State of Western Australia—the provisions of paragraph 4 in the Schedule to the agreement made on 12 January 1978 between the Commonwealth and that State in relation to the provision in that State of legal aid to which that agreement relates;
  - (ii) where the eligible employee is employed as a member of the staff of the Legal Services Commission established under the *Legal Services Commission Act, 1977* of the State of South Australia—the provisions of paragraph 4 in the Schedule to the agreement made on 4 December 1978 between the Commonwealth and that State in relation to the provision in that State of legal assistance to which that agreement relates;
  - (iii) where the eligible employee is employed as a member of the staff of the Legal Aid Commission of Queensland established under the *Legal Aid Act 1978* of the State of Queensland—the provisions of paragraph 4 in the Schedule to the agreement made on 26 June 1979 between the Commonwealth and that State in relation to the provision in that State of legal assistance to which that agreement relates; or
  - (iv) where the eligible employee is employed as a member of the staff of the Legal Aid Commission established under the *Legal Aid Commission Act 1978* of the State of Victoria—the provisions of paragraph 4 in the Schedule to the agreement made on 20 December 1979 between the Commonwealth and that State in relation to the provision in that State of legal aid to which the agreement relates;

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- (k) an allowance that is payable to an eligible employee, being a person to whom subsection 16(3) of the *Trade Union Training Authority Amendment Act 1978* applies, under subsection 16(5) of that Act;
- (l) an allowance of a prescribed kind that is payable on a regular basis to an eligible employee.

### 6 Payment of allowance of a prescribed kind on regular basis

- (1) An allowance of a prescribed kind shall not, for the purposes of paragraph 5(1), be taken to be payable to an eligible employee on a regular basis unless the allowance is payable in respect of duties or work performed by the eligible employee for a continuous period that commences—
  - (a) immediately after the eligible employee has performed for a continuous period of 12 months duties or work in respect of the performance of which an allowance of the same kind as that allowance has been paid or is payable to the eligible employee; or
  - (b) where a certificate in respect, of the eligible employee has been given under subregulation (2)—on the day specified in the certificate.
- (2) If a person authorized by the Commissioner for the purposes of this regulation is of the opinion that there is a likelihood that, from and including a particular day—
  - (a) an eligible employee will, for a continuous period of not less than 12 months, perform duties or work in respect of the performance of which an allowance of a prescribed kind will be payable to him; or
  - (b) where the eligible employee has, for a continuous period of less than 12 months immediately preceding the particular day, performed duties or work in respect of the performance of which an allowance of a prescribed kind has been paid or is payable to him—the eligible employee will, for a continuous period of less than 12 months that together with the first-mentioned period will not be less than a period of 12 months, perform duties or work in respect of the performance of which an allowance of the same kind, as that allowance will be payable to him,the authorized person shall give to the Commissioner a certificate to that effect specifying the day (not being a day earlier than the day on which the certificate is given) on which the period referred to in paragraph (a) or (b), as the case may be, in relation to the eligible employee will commence.
- (3) For the purposes of this regulation, where—
  - (a) for a continuous period immediately preceding a period of leave of absence, an eligible employee performs duties or work in respect of the performance of which an allowance of a prescribed kind is payable to him;
  - (b) that allowance or an allowance of the same kind as that allowance is not payable to him during the period of leave; and
  - (c) immediately after the expiration of the period of leave, the eligible employee performs, for a continuous period, duties or work in respect of the performance of which an allowance of the same kind as that allowance is payable to him,



the period of leave shall be disregarded and the periods during which he performs those duties or that work, being the period immediately preceding that period of leave and the period immediately following that period of leave, shall be deemed to be a continuous period.

- (4) Where an allowance of a prescribed kind is payable to an eligible employee during a period of leave of absence, the eligible employee shall, for the purposes of this regulation, be deemed to perform during the period of leave of absence the duties or work in respect of the performance of which that allowance is payable.

## **7 Part of salary or wages not to be treated as salary in certain circumstances**

- (1) Where—
- (a) an allowance of a kind referred to in paragraph 5(j) or (k) is payable to an eligible employee; and
  - (b) a part (in this subregulation referred to as the *relevant part*) of that allowance is payable to the eligible employee by reason of a reduction in, or the discontinuance of, the payment to the eligible employee of another allowance, not being an allowance of a kind referred to in regulation 5, that is or was payable to the eligible employee,
- so much of the salary or wages of the eligible employee as is equal to the amount of the relevant part of that allowance shall not be treated as salary for the purposes of the Act.
- (2) Where—
- (a) an eligible employee performs on a particular day duties or work in respect of the performance of which an allowance of a prescribed kind is payable to the eligible employee and that allowance is payable on a regular basis to the eligible employee; and
  - (b) at any time during the relevant period an allowance of the same kind as the allowance referred to in paragraph (a) was payable to the eligible employee at a rate that is lower than the rate at which the allowance referred to in paragraph (a) is payable,
- so much of the salary or wages payable to the eligible employee on the particular day as is equal to—
- (c) if paragraph (d) does not apply to the eligible employee—the amount by which the amount of the allowance referred to in paragraph (a) exceeds the amount of the allowance that would be payable to him on the particular day if he had continued to perform those duties, or that work, performed by him during the relevant period in respect of which an allowance of the same kind as the allowance referred to in paragraph (a) was payable to him at the lower or lowest rate, as the case may be; or
  - (d) if the amount of the salary or wages payable to the eligible employee on the particular day is not less than the amount in the aggregate of the allowance and the salary or wages that would have been payable to him on that day if he had continued to receive—

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- (i) the allowance of the same kind as the allowance referred to in paragraph (a) that was payable to him at the lower or lowest rate, as the case may be, during the relevant period; and
  - (ii) the salary or wages payable to him at the commencement of the relevant period,
    - the amount of allowance referred to in paragraph (a),shall not be treated as salary for the purposes of the Act.
- (3) In subregulation (2), **relevant period**, in relation to an eligible employee who performs on a particular day duties or work in respect of the performance of which an allowance of a prescribed kind is payable, means—
  - (a) where a certificate in respect of the eligible employee has been given to the Commissioner under subregulation 6(2) and the period specified in the certificate is not less than 12 months—the period that commenced on the day specified in that certificate and ended on the expiration of the day immediately preceding the particular day; and
  - (b) in any other case—
    - (i) the period of 12 months immediately preceding the particular day; or
    - (ii) if immediately before the particular day the eligible employee has, for a continuous period of less than 12 months, performed the duties or work performed by him on the particular day or duties or work in respect of the performance of which an allowance of the same kind as the allowance payable to him on the relevant day has been paid or is payable to him—that lesser period.

### 8 Salary for purposes of determination of certain benefits

- (1) Where—
  - (a) a person has ceased to be an eligible employee—
    - (i) by reason of early retirement; or
    - (ii) in circumstances that entitle him to age retirement pension; and
  - (b) on the relevant day the person performed duties or work in respect of the performance of which an allowance of a prescribed kind has been paid or is payable to him and that allowance was taken to be payable to the person on a regular basis by reason only that a certificate in respect of the person had been given to the Commissioner under subregulation 6(2),then, for the purposes of the definition of **final annual rate of salary** in subsection 3(1) of the Act, the annual rate of salary of that person on the relevant day shall be an amount equal to the amount per annum that would, for the purposes of the Act, have been the annual rate of salary of the person on that day if the certificate referred to in paragraph (b) had not been given.
- (2) In this regulation, **relevant day**, in relation to a person who has ceased to be an eligible employee, means—
  - (a) except where paragraph (b) applies—his last day of service; or

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- (b) if his final annual rate of salary is ascertained by reference to the annual rate of salary payable to him on a day other than his last day of service—that other day.

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## Part IIA—Employees in receipt of shift allowance

### 8A Interpretation

(1) In this Part—

*pay period*, in relation to a person who is, or has ceased to be, an eligible employee, means—

- (a) where the first day of service of the person is not a pay day in relation to the person—the period commencing on the first day of service of the person and ending on the expiration of the day immediately preceding the pay day in relation to the person first occurring after his or her first day of service;
- (b) each period commencing on a pay day in relation to the person (not being the pay day in relation to the person last preceding his or her last day of service) and ending on the expiration of the day immediately preceding the next following pay day in relation to the person;
- (c) the period commencing on the pay day in relation to the person last preceding his or her last day of service and ending on the expiration of his or her last day of service; and
- (d) where there is no pay day in relation to the person that falls within the period commencing on his or her first day of service and ending on the expiration of his or her last day of service—that period.

*prescribed eligible employee* means an eligible employee who is, under the terms and conditions of his or her employment, entitled to receive as part of his or her salary or wages, in addition to the amount payable to the eligible employee in respect of the actual performance of his or her work or duties, an amount that is payable to the eligible employee solely by reason that the eligible employee has performed work or duties during specified hours that are, under those terms and conditions of employment, normal hours of duty for the eligible employee.

*shift allowance* means—

- (a) so much of the salary or wages of a prescribed eligible employee as is, under the terms and conditions of his or her employment, payable to the prescribed eligible employee solely by reason that the prescribed eligible employee has performed work or duties during specified hours that are, under those terms and conditions of employment, normal hours of duty for the prescribed eligible employee; and
- (b) where a prescribed eligible employee is, under the terms and conditions of his or her employment, entitled to receive, as part of his or her salary or wages in respect of a period of leave of absence, an amount that is payable to the prescribed eligible employee in lieu of any amount of salary or wages of the kind referred to in paragraph (a) that the prescribed eligible employee would have been likely to earn if the eligible employee had not

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been on leave of absence during that period—so much of the salary or wages of the prescribed eligible employee as is so payable to him or her.

- (2) Where it is necessary to ascertain, for the purposes of this Part, the number of pay periods in relation to a person who is, or has ceased to be, an eligible employee that are included in a particular period, then—
- (a) except where paragraph (b) applies in relation to the particular period—
    - (i) if the commencement of the particular period coincides with the commencement of a pay period in relation to the person but the expiration of the particular period does not coincide with the expiration of that pay period or a subsequent pay period in relation to the person, the pay period in relation to the person that commences on the last of the pay days in relation to the person that fall within the particular period shall be taken as not being included in the particular period;
    - (ii) if the commencement of the particular period does not coincide with the commencement of a pay period in relation to the person but the expiration of the particular period coincides with the expiration of such a pay period, the pay period in relation to the person that ends on the day immediately preceding the pay day, or the first of the pay days, in relation to the person that falls or fall within the particular period shall be taken as not being included in the particular period; and
    - (iii) if the commencement of the particular period does not coincide with the commencement of a pay period in relation to the person and the expiration of the particular period does not coincide with the expiration of such a pay period—
      - (A) the pay period in relation to the person that ends on the day immediately preceding the pay day, or the first of the pay days, in relation to the person that falls or fall within the particular period shall be taken to be included in the particular period; and
      - (B) the pay period in relation to the person that commences on that pay day or the last of those pay days shall be taken as not being included in the particular period; or
  - (b) if the particular period consists only of a part of a pay period in relation to the person—that pay period shall be taken to be included in the particular period.
- (3) Where—
- (a) a person who is, or was at any time, a prescribed eligible employee has been, or was, on leave of absence for part of a period during which the person has been, or was, a prescribed eligible employee; and
  - (b) the person was not, during the period of leave of absence, entitled to be paid an amount in respect of shift allowance,
- then—

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- (c) in ascertaining, for the purpose of the application of paragraph 8C(a) or 8D(1)(a) to and in relation to the person, the length and continuity of any period (in this subregulation referred to as a *relevant period*) of which the period of leave of absence is a part—the period of leave of absence shall be treated as being an integral part of the relevant period; and
- (d) in ascertaining, for the purpose of the application of a provision of this Part other than paragraph 8C(a) or 8D(1)(a) to and in relation to a person, the length and continuity of a relevant period—
  - (i) if more than one pay day in relation to the person falls within the period of leave of absence—
    - (A) the period commencing on the first of the pay days in relation to the person that fall within the period of leave of absence and ending on the day immediately preceding the last of those pay days shall be disregarded; and
    - (B) the parts of the relevant period that, but for this paragraph, would have been taken to be separated by the period referred to in sub-subparagraph (A) shall be deemed to be continuous;
  - (ii) if only one pay day in relation to the person falls within the period of leave of absence and the expiration of the period of leave of absence coincides with the expiration of the pay period in relation to the person that commences on that pay day or with the expiration of the relevant period—
    - (A) the pay period commencing on that pay day or the period commencing on that pay day and ending on the expiration of the relevant period (as the case requires) shall be disregarded; and
    - (B) the day immediately preceding that pay day and the day immediately following that pay period or the relevant period (as the case may be) shall be deemed to be consecutive days; or
  - (iii) if subparagraph (i) or (ii) does not apply—the period of leave of absence shall be treated as being an integral part of the relevant period.

### **8B Payment of shift allowance on a regular basis**

For the purposes of this Part, shift allowance shall not be taken to have been, during a particular period, payable on a regular basis to an eligible employee who has been during the whole or any part of that period a prescribed eligible employee unless shift allowance has been paid, or is payable, to the eligible employee in respect of work or duties performed during a number of the pay periods in relation to the eligible employee that are included in that particular period that is equal to not less than 75 per cent of the total number of those pay periods.

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**8C Circumstances where part of salary or wages not to be treated as salary for purposes of Act**

Where the salary or wages of a prescribed eligible employee on a particular day includes, or include, an amount in respect of shift allowance, so much of that salary or those wages as is equal to the amount in respect of shift allowance is not to be treated as salary for the purposes of the Act unless—

- (a) the prescribed eligible employee has been an eligible employee for a continuous period of not less than 12 months immediately preceding that day; and
- (b) shift allowance has been payable on a regular basis to the prescribed eligible employee during the period of 12 months immediately preceding that day.

**8D Annual rate of salary of eligible employee who has received shift allowance on a regular basis during period of 12 months**

(1) Where—

- (a) a person is on a particular day, and has been for a continuous period of not less than 12 months immediately preceding that day, an eligible employee;
- (b) the person (whether or not he or she is on the particular day a prescribed eligible employee) was, during the whole or any part of the period of 12 months immediately preceding that day, a prescribed eligible employee; and
- (c) shift allowance has been payable on a regular basis to the person during the period referred to in paragraph (b),

the annual rate of salary of the person on the particular day shall, for the purposes of the Act, be whichever is the less of—

- (d) the amount per annum ascertained in accordance with the formula—  
 $A \times B$ ; and
- (e) the amount per annum ascertained in accordance with the formula—  
 $C + D$

where—

*A* is the highest amount of salary paid or payable to the person in respect of work or duties performed by the person during a pay period in relation to the person included in the period of 12 months immediately preceding the particular day;

*B* is the number of pay periods in relation to the person included in the period of 12 months immediately preceding the particular day;

*C* is the amount per annum of the salary (within the meaning of section 5 of the Act) that would be payable to the person on the particular day if the salary or wages payable to the person on that day did not include an amount in respect of shift allowance; and

*D* is—

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- (f) if paragraph (g) does not apply—the total amount of shift allowance paid or payable to the person in respect of—
    - (i) work or duties performed during the pay periods in relation to the person included in the period of 12 months immediately preceding the particular day; and
    - (ii) any period of leave of absence during that period when the person was entitled to receive shift allowance; or
  - (g) if shift allowance—
    - (i) in respect of work or duties performed by the person during specified hours of duty (in this paragraph referred to as the **relevant hours**) on any day during the period of 12 months immediately preceding the particular day; or
    - (ii) in respect of any period of leave of absence during that period when the person was entitled to receive shift allowance,  
was payable to the person at a rate that is not the same as the rate at which shift allowance would be payable to the person—
    - (iii) in respect of the same work or duties if the person performed that work or those duties during the same relevant hours on the particular day; or
    - (iv) if the person were on leave of absence on the particular day, as the case may be—the total amount of shift allowance that would have been payable to the person in respect of—
      - (v) work or duties performed during the pay periods in relation to the person included in the period of 12 months immediately preceding the particular day; and
      - (vi) periods of leave of absence included in that period when the person was entitled to receive shift allowance,if shift allowance in respect of the work or duties referred to in subparagraph (i) or in respect of the period of leave of absence referred to in subparagraph (ii) had been payable to the person at the last-mentioned rate.
- (2) For the purposes of subregulation (1)—
- (a) the reference in the definition of *A* to the amount of salary paid or payable to a person in respect of work or duties performed by the person during a pay period in relation to the person is a reference to—
    - (i) in a case where subparagraph (ii) does not apply—the amount of salary (within the meaning of section 5 of the Act) so paid or payable to the person; or
    - (ii) in a case where, by virtue of regulation 8C, an amount (in this subparagraph referred to as the **relevant amount**) equal to an amount in respect of shift allowance included in the salary or wages paid or payable to the person in respect of work or duties performed by the person during that pay period is not, in relation to the person, to be treated as salary for the purposes of the Act—the aggregate of the



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amount of salary referred to in subparagraph (i) and the relevant amount; and

- (b) a reference in paragraph (1)(g) to the rate at which shift allowance in respect of work or duties performed during specified hours of duty on a day or in respect of a period of leave of absence was, or would be, payable to a person shall, in the case of a person to whom the shift allowance is, under the terms and conditions of his or her employment, payable in a fixed amount and not at a specified rate, be read as a reference to the amount so fixed in respect of the shift allowance that was, or would be, payable to the person.

### **8E Annual rate of salary on last day of service of certain persons who have ceased to be eligible employees**

- (1) In this regulation, *final year of service*, in relation to a person who has ceased to be an eligible employee and has been, immediately before his or her so ceasing, an eligible employee for a continuous period of not less than 12 months, means the period of 12 months ending on the expiration of his or her last day of service.
- (2) This regulation applies to a person who—
- (a) has ceased to be an eligible employee by reason of—
    - (i) death; or
    - (ii) retirement on the ground of invalidity before attaining his or her maximum retiring age; and
  - (b) was not, on his or her last day of service, a person in relation to whom regulation 8D applied.
- (3) Where this regulation applies to a person and—
- (a) the person—
    - (i) immediately before his or her ceasing to be an eligible employee, has been an eligible employee for a continuous period of not less than 12 months; and
    - (ii) has been during the whole or any part of his or her last year of service a prescribed eligible employee, and shift allowance has been payable on a regular basis to the person during that year; or
  - (b) if paragraph (a) does not apply in relation to the person—
    - (i) the person became a prescribed eligible employee within the period of 12 months ending on the expiration of his or her last day of service;
    - (ii) shift allowance has been payable on a regular basis to the person during the period commencing on the day within the period referred to in subparagraph (i) on which the person became a prescribed eligible employee or, if the person became a prescribed eligible employee on more than one occasion within that period, on the day within that period on which the person last became a prescribed eligible

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employee and ending on the expiration of his or her last day of service; and

- (iii) a certificate in respect of the person has been given under subregulation (4),

then, the annual rate of salary of the person on his or her last day of service shall be whichever is the less of—

- (c) the amount ascertained in accordance with the formula—

$A \times B$ ; and

- (d) the amount ascertained in accordance with—

- (i) in the case of a person in relation to whom paragraph (a) applies—the formula—

$C + D$ ; or

- (ii) in the case of a person in relation to whom paragraph (b) applies—the formula—

$C + \frac{EF}{G}$

where—

*A* is the highest amount of salary paid or payable to the person in respect of work or duties performed by the person during a pay period in relation to the person included—

- (e) in the case of a person in relation to whom paragraph (a) applies—in his or her final year of service; or  
(f) in the case of a person in relation to whom paragraph (b) applies—in the period referred to in subparagraph (b)(ii);

*B* is—

- (g) except where paragraph (h) applies—the number of pay periods in relation to the person included in his or her final year of service; or  
(h) if the person has been an eligible employee for a continuous period of less than 12 months immediately preceding his or her last day of service—the number of pay periods in relation to the person that would have been included in the period of 12 months ending on the expiration of his or her last day of service if the person had been an eligible employee during the whole of that period;

*C* is the amount per annum of the salary (within the meaning of section 5 of the Act) payable to the person on his or her last day of service;

*D* is—

- (j) if paragraph (k) does not apply—the total amount of shift allowance paid or payable to the person in respect of—  
(i) work or duties performed during the pay periods in relation to the person included in his or her final year of service; and  
(ii) any period of leave of absence during that year when the person was entitled to receive shift allowance; or

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- (k) if shift allowance—
- (i) in respect of work or duties performed by the person during specified hours of duty (in this paragraph referred to as the *relevant hours*) on any day during his or her final year of service; or
  - (ii) in respect of any period of leave of absence during that year when the person was entitled to receive shift allowance,  
was payable to the person at a rate that is not the same as the rate at which shift allowance would be payable to the person—
  - (iii) in respect of the same work or duties if the person performed that work or those duties during the same relevant hours on his or her last day of service; or
  - (iv) if the person were on leave of absence on his or her last day of service,  
as the case may be—the total amount of shift allowance that would have been payable to the person in respect of—
  - (v) work or duties performed during the pay periods in relation to the person included in his or her final year of service; and
  - (vi) periods of leave of absence included in that year when the person was entitled to receive shift allowance,  
if shift allowance in respect of the work or duties referred to in subparagraph (i) or in respect of the period of leave of absence referred to in subparagraph (ii) had been payable to the person at the last-mentioned rate;

**E** is—

- (m) if paragraph (n) does not apply—the total amount of shift allowance paid or payable to the person in respect of—
  - (i) work or duties performed during the pay periods in relation to the person included in the period referred to in subparagraph (b)(ii) in relation to the person; and
  - (ii) any period of leave of absence during that period when the person was entitled to receive shift allowance; or
- (n) if shift allowance—
  - (i) in respect of work or duties performed by the person during specified hours of duty (in this paragraph referred to as the *relevant hours*) on any day during the period referred to in subparagraph (b)(ii) in relation to the person; or
  - (ii) in respect of any period of leave of absence during that period when the person was entitled to receive shift allowance,  
was payable to the person at a rate that is not the same as the rate at which shift allowance would be payable to the person—
  - (iii) in respect of the same work or duties if the person performed that work or those duties during the same relevant hours on his or her last day of service; or

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- (iv) if the person were on leave of absence on his or her last day of service,  
as the case may be—the total amount of shift allowance that would have been payable to the person in respect of—
- (v) work or duties performed during the pay periods in relation to the person included in the period referred to in subparagraph (b)(ii) in relation to the person; and
- (vi) periods of leave of absence included in that period when the person was entitled to receive shift allowance,  
if shift allowance in respect of the work or duties referred to in subparagraph (i) or in respect of the period of leave of absence referred to in subparagraph (ii) had been payable to the person at the last-mentioned rate;

**F** is—

- (o) except where paragraph (p) applies—the number of days in the pay periods in relation to the person included in his or her final year of service; or
- (p) if the person was an eligible employee for a continuous period of less than 12 months immediately preceding his or her last day of service—the number of days in the pay periods in relation to the person that would have been included in the period of 12 months ending on the expiration of his or her last day of service if the person had been an eligible employee during the whole of that period; and

**G** is the number of days in the pay periods in relation to the person included in the period referred to in subparagraph (b)(ii) in relation to the person.

(4) Where—

- (a) subparagraphs (3)(b)(i) and (ii) apply in relation to a person to whom this regulation applies; and
- (b) a person authorized by the Commissioner for the purposes of this regulation is of the opinion that there is a likelihood that, if the first-mentioned person had not ceased to be an eligible employee, shift allowance would have been payable on a regular basis to the person during the period of 12 months that commenced on the day on which the period referred to in subparagraph (3)(b)(ii) in relation to the person commenced,  
the authorized person shall give to the Commissioner a certificate to that effect specifying the day on which the first-mentioned period commenced.

(5) For the purposes of subregulation (3)—

- (a) the reference in the definition of **A** to the amount of salary paid or payable to a person in respect of work or duties performed by the person during a pay period in relation to the person is a reference to—
  - (i) in a case where subparagraph (ii) does not apply—the amount of salary (within the meaning of section 5 of the Act) so paid or payable to the person;

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- (ii) in a case where, by virtue of regulation 8C, an amount (in this subparagraph referred to as the ***relevant amount***) equal to an amount in respect of shift allowance included in the salary or wages paid or payable to the person in respect of work or duties performed by the person during that pay period is not, in relation to the person, to be treated as salary for the purposes of the Act—the aggregate of the amount of salary referred to in subparagraph (i) and the relevant amount; and
- (b) a reference in paragraph 3(k) or (n) to the rate at which shift allowance in respect of work or duties performed during specified hours of duty on a day or in respect of a period of leave of absence was, or would be, payable to a person shall, in a case where the shift allowance is, under the terms and conditions of employment of the person, payable in a fixed amount and not at a specified rate, be read as a reference to the amount so fixed in respect of the shift allowance that was, or would be, payable to the person.

## Part III—Temporary Employees

### 9 Interpretation

- (1) In this Part, a reference to the basic salary of an eligible employee on a particular day is a reference to—
- (a) in the case of an eligible employee—
    - (i) whose salary or wages includes, or include, an allowance or the value of an allowance; or
    - (ii) to whom is payable an allowance, or the value of an allowance, that is, in relation to the eligible employee, an allowance of a kind that, under these Regulations, is to be treated as salary for the purposes of the Act,  
so much of the salary (within the meaning of section 5 of the Act) of the eligible employee on that day as would be payable to him or her if the eligible employee were not entitled to receive on that day any amount in respect of—
    - (iii) an allowance, or the value of an allowance, that is part of the salary or wages of the eligible employee; or
    - (iv) an allowance, or the value of an allowance of a kind referred to in subparagraph (ii) in relation to the eligible employee,  
together with, in a case where, by virtue of a provision of these Regulations, a specified part of the salary or wages of the eligible employee is not to be treated as salary for the purposes of the Act, any amount that, but for that provision, would be included in the salary (within the meaning of section 5 of the Act) of the eligible employee on that day;  
or
  - (b) in any other case—the salary (within the meaning of section 5 of the Act) of the eligible employee on that day.
- (2) For the purposes of this Part, an eligible employee, being a temporary employee, shall be taken to perform, or to have performed, prescribed work on a particular day if—
- (a) on the particular day the eligible employee performs, or has performed, work other than—
    - (i) where subparagraph (ii) or (iii) does not apply in relation to the eligible employee—the work in respect of which the eligible employee was paid, or is entitled to receive, the salary by reference to which the fortnightly basic contribution payable by the eligible employee on the contribution day last preceding the particular day was calculated;
    - (ii) where the eligible employee was not required to make contributions on the contribution day last preceding the particular day—the work in respect of which the eligible employee was paid, or is entitled to receive, the salary by reference to which the fortnightly basic

- contribution that would have been payable by the eligible employee on that contribution day would have been calculated if the eligible employee had been required to make contributions on that contribution day; or
- (iii) where the contribution day last preceding the particular day occurred before the first day of service of the eligible employee—the work that the eligible employee performed on his or her first day of service; and
- (b) the basic salary of the eligible employee on the particular day exceeds the basic salary that would be payable to the eligible employee on that day if the eligible employee had continued to perform, and performed on that day, the work referred to in subparagraph (a)(i), (ii) or (iii) (as the case may be).

### **10 Annual rate of salary of certain temporary employees**

- (1) Where an eligible employee, being a temporary employee, performs prescribed work on a particular day, so much of the salary or wages of the eligible employee as is equal to the amount of the difference between—
- (a) the basic salary of the eligible employee on the particular day; and
- (b) the basic salary that would be payable to the eligible employee on the particular day if the eligible employee had continued to perform, and performed on that day, the work referred to in whichever of subparagraphs 9(2)(a)(i), (ii) and (iii) applies in relation to the eligible employee,
- is not to be treated as salary for the purposes of the Act unless—
- (c) the eligible employee has, during the period of 12 months immediately preceding the particular day, continuously performed prescribed work; or
- (d) a certificate specifying a day not later than the particular day has been given under subregulation (3) in respect of the eligible employee.
- (2) Where—
- (a) an eligible employee, being a temporary employee, performs prescribed work on a particular day;
- (b) the eligible employee has—
- (i) during a period of not less than 12 months immediately preceding the particular day; or
- (ii) if a certificate specifying a day not later than the particular day has been given in respect of the eligible employee under subregulation (3)—from and including the day specified in the certificate,
- continuously performed prescribed work; and
- (c) at any time during the relevant period the basic salary of the eligible employee was less than the basic salary that would have been payable at that time to the eligible employee if at that time the eligible employee had been performing the work performed by him or her on the particular day,
- so much of the salary or wages of the eligible employee as is equal to the difference between—
- (d) the basic salary of the eligible employee on the particular day; and

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- (e) the basic salary that would be payable to the eligible employee on the particular day if the eligible employee had continued to perform, and performed on that day, the prescribed work that the eligible employee performed at the time during the relevant period when the basic salary of the eligible employee was less than the basic salary payable to him or her at any other time during that period,

is not to be treated as salary for the purposes of the Act.

- (3) If a person authorized by the Commissioner for the purpose of this regulation is of the opinion that there is a likelihood that, from and including a particular day—
  - (a) an eligible employee, being a temporary employee, will perform prescribed work for a continuous period of not less than 12 months; or
  - (b) where the eligible employee, being a temporary employee, has performed prescribed work for a continuous period of less than 12 months immediately preceding the particular day—the eligible employee will perform prescribed work for a continuous period of less than 12 months that together with the first-mentioned period will not be less than a period of 12 months,

the authorized person shall give to the Commissioner a certificate to that effect specifying the day (not being a day earlier than the day on which the certificate is given) on which the period referred to in paragraph (a) or (b), as the case may be, in relation to the eligible employee will commence.

- (4) For the purposes of this regulation, where—
  - (a) an eligible employee, being a temporary employee, performs prescribed work for a continuous period immediately preceding a period of leave of absence;
  - (b) subregulation (5) does not apply in relation to the period of leave; and
  - (c) immediately after the expiration of that period of leave, the eligible employee again performs prescribed work,

the period of leave shall be disregarded and the periods during which he performs prescribed work, being the period immediately preceding that period of leave and the period immediately following that period of leave, shall be treated as a continuous period.

- (5) Where—
  - (a) an eligible employee, being a temporary employee, performs prescribed work immediately before a period of leave of absence; and
  - (b) the salary payable to the eligible employee on each day during the period of leave of absence is higher than the basic salary of the eligible employee in respect of that day,

the eligible employee shall, for the purposes of this regulation, be deemed to perform during that period the prescribed work referred to in paragraph (a).

- (6) In subregulation (2), *relevant period*, in relation to an eligible employee who, being a temporary employee, performs prescribed work on a particular day, means—



- (a) where a certificate in respect of the eligible employee has been given to the Commissioner under subregulation (3) and the period specified in the certificate is not less than 12 months—the period that commenced on the day specified in that certificate and ended on the expiration of the day immediately preceding the particular day; and
- (b) in any other case—
  - (i) the period of 12 months immediately preceding the particular day; or
  - (ii) if immediately before the particular day the eligible employee has performed prescribed work for a continuous period of less than 12 months—that lesser period.

## **11 Final annual rate of salary of certain temporary employees**

- (1) Where—
  - (a) a person who has ceased to be an eligible employee—
    - (i) by reason of early retirement; or
    - (ii) in circumstances that entitle him to age retirement pension, was on his last day of service a temporary employee;
  - (b) before the relevant day a certificate specifying a day not later than the relevant day had been given in respect of the person under subregulation 10(3);
  - (c) during the period that commenced on the day specified in the certificate and ended on the expiration of his last day of service, the person continuously performed prescribed work; and
  - (d) the person did not continuously perform prescribed work during the period of 12 months immediately preceding his last day of service,then, for the purposes of the definition of *final annual rate of salary* in subsection 3(1) of the Act, the annual rate of salary of that person on the relevant day shall be an amount equal to the amount per annum of the salary (within the meaning of section 5 of the Act) that would be payable to the eligible employee on the relevant day if the eligible employee had continued to perform, and performed on that day, the work referred to in whichever of subparagraphs 9(2)(a)(i), (ii) and (iii) applies in relation to the eligible employee.
- (2) In this regulation, *relevant day*, in relation to a person who has ceased to be an eligible employee, means—
  - (a) except where paragraph (b) applies—his last day of service; or
  - (b) if his annual rate of salary is ascertained by reference to the annual rate of salary payable to him on a day other than his last day of service—that other day.

## Part IV—Employees on leave of absence

### 12 Interpretation

In this Part—

- (a) a reference, in relation to an eligible employee who undertakes prescribed employment during a period of leave of absence without pay, to an approved organization shall be read as a reference to—
- (i) an organization registered pursuant to the *Conciliation and Arbitration Act 1904* of which eligible employees are members; or
  - (ii) an association to which such an organization is affiliated, being an organization or association that, in accordance with the conditions set out in a direction given by the Minister under subsection 51(1) of the Act in respect of the period of leave of the eligible employee; has agreed to make payments to the Commonwealth in respect of the higher amount that, in pursuance of a provision of the Act, is likely to become payable out of the Consolidated Revenue Fund in respect of the eligible employee by reason that salary is payable to the eligible employee during the period of leave of absence at an annual rate that is higher than the annual rate of his notional salary;
- (b) a reference, in relation to an eligible employee who is on leave of absence without pay, to the notional salary of the eligible employee on a particular day during the period of leave of absence shall be read as a reference to the salary that would be payable to the eligible employee on that day if—
- (i) on the day (in this paragraph referred to as the *relevant day*) immediately preceding the day on which the leave of absence commenced, the eligible employee had commenced to perform duties or work in respect of which salary was payable at an annual rate eligible to the actual annual rate of salary of the eligible employee on the relevant day; and
  - (ii) the eligible employee continued to perform during the period of leave of absence those duties or that work, but does not include a reference to any allowance (not being an allowance that was included in the actual salary of the eligible employee on the relevant day), or the value of any such allowance, that would be included in the salary of the eligible employee on the particular day in respect of the performance of those duties or that work;
- (c) a reference, in relation to an eligible employee who is on leave of absence without pay, to prescribed employment shall be read as a reference to:
- (i) employment with the Commonwealth or with an authority of the Commonwealth;
  - (ii) employment with Commonwealth Hostels Limited, Commonwealth Brickworks (Canberra) Limited or any other company that is, for the purposes of section 71 of the *Public Service Act 1922*, declared by

- regulations made under that Act to be a company in which Australia has an interest;
- (iii) work or employment that is in the interests of the defence or public safety of Australia or the Territories;
  - (iv) service as a representative in another country of the Government of Australia;
  - (v) employment with the Northern Territory of Australia; or
  - (vi) employment on a full-time basis in an office within an approved organization; and
- (d) a reference, in relation to an eligible employee who undertakes prescribed employment during a period of leave of absence without pay, to prescribed leave shall be read as a reference to leave of absence granted to the eligible employee in accordance with the terms and conditions of the prescribed employment undertaken by the eligible employee.

### **13 Salary of certain eligible employees on leave of absence without pay**

- (1) This regulation does not apply to—
- (a) an eligible employee who is on leave of absence without pay and to whom section 51 of the Act applies in respect of the period of leave of absence; or
  - (b) an eligible employee who is on leave of absence without pay and in respect of whom prescribed circumstances apply.
- (2) For the purposes of subregulation (1), prescribed circumstances apply in respect of an eligible employee—
- (a) where—
    - (i) the eligible employee is on leave of absence without pay and section 51 of the Act does not apply to the eligible employee;
    - (ii) the leave of absence has been granted for the purpose of enabling the eligible employee to undertake, and the eligible employee undertakes, employment in a teaching capacity with the University of New South Wales in the Faculty of Military Studies at the Royal Military College; and
    - (iii) during the period of leave of absence salary is payable to the eligible employee in respect of the employment referred to in subparagraph (ii) at an annual rate that is higher than the annual rate of the notional salary of the eligible employee;
  - (b) where—
    - (i) at any time on or after 3 February 1977 the eligible employee is on leave of absence without pay, being leave of absence granted for a period of not less than 12 months in respect of which the Minister has directed that subsection 51(1) of the Act does not apply;
    - (ii) the leave of absence has been granted for the purpose of enabling the eligible employee to undertake, and the eligible employee undertakes, employment on a full-time basis in an office within an approved organization; and

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- (iii) during the period of leave of absence salary is payable to the eligible employee in respect of the employment referred to in subparagraph (ii) at an annual rate that is higher than the annual rate of the notional salary of the eligible employee; or
- (c) where—
  - (i) the eligible employee is on leave of absence without pay for a period of not less than 12 months in respect of which the Minister has directed that subsection 51(1) of the Act does not apply;
  - (ii) the leave of absence has been granted for the purpose of enabling the eligible employee to undertake, and the eligible employee undertakes, prescribed employment other than employment of the kind referred to in paragraph 12(c)(vi); and
  - (iii) during the period of leave of absence salary is payable to the eligible employee in respect of the prescribed employment that he has undertaken at an annual rate that is higher than the annual rate of the notional salary of the eligible employee.
- (3) Where an eligible employee to whom this regulation applies is on leave of absence without pay, the annual rate of salary of the eligible employee on a particular day during the period of leave of absence shall, for the purposes of the Act, be an amount equal to the amount per annum of the notional salary of the eligible employee on that day.

### **14 Maximum rate of salary payable to eligible employees undertaking employment with approved organizations**

Where—

- (a) the circumstances referred to in paragraph 13(2)(b) apply in respect of an eligible employee who is undertaking employment on a full-time basis in an office within an approved organization; and
- (b) salary in respect of the employment referred to in paragraph (a) is payable to the eligible employee at an annual rate that is higher than—
  - (i) in the case of an eligible employee who holds within the approved organization an office, not being an office within a branch of the organization—the annual rate of salary payable to an officer of the Australian Public Service occupying an office classified as Level 3 in the Second Division; and
  - (ii) in any other case—the annual rate of salary payable to an officer of the Australian Public Service occupying an office classified as Class 11 in the Third Division and in receipt of salary at the maximum rate applicable to that office,

the annual rate of salary of the eligible employee on a particular day, not being a day before 3 February 1977, during the period of leave of absence shall, for the purposes of the Act, be an amount equal to the amount per annum of the salary payable on that day to the officer of the Australian Public Service referred to in subparagraph (b)(i) or (ii), as the case may be.

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**15 Salary of certain eligible employees undertaking employment during the period of leave of absence without pay**

- (1) This regulation applies to an eligible employee in respect of whom the circumstances referred to in paragraph 13(2)(b) or (c) apply where the eligible employee undertakes prescribed employment (being employment of the same kind as the eligible employee's initial employment) in respect of which salary is payable to the eligible employee at an annual rate that is higher than the annual rate of salary that would be payable to the eligible employee if the eligible employee had continued to undertake his initial employment.
- (2) Where—
- (a) this regulation applies to an eligible employee who is on leave of absence;
  - (b) the eligible employee has not, during the period of 12 months immediately preceding a particular day in the period of leave of absence, continuously undertaken prescribed employment, being prescribed employment by virtue of which this regulation applies to the eligible employee; and
  - (c) a certificate specifying a date not later than the particular day has not been given under subregulation (4) in respect of the eligible employee,
- the annual rate of salary of the eligible employee on the particular day shall, for the purposes of the Act, be an amount equal to the amount per annum of the salary that would be payable to the eligible employee on the particular day if the eligible employee had continued to undertake his initial employment.
- (3) Where—
- (a) this regulation applies to an eligible employee who is on leave of absence;
  - (b) the eligible employee has—
    - (i) during a period of not less than 12 months immediately preceding a particular day in the period of leave of absence; or
    - (ii) if a certificate specifying a date not later than the particular day has been given in respect of the eligible employee under subregulation (4)—from and including the day specified in the certificate,continuously undertaken prescribed employment, being prescribed employment by virtue of which this regulation applies to the eligible employee; and
  - (c) at any time during the relevant period the eligible employee has been paid in respect of prescribed employment that he has undertaken salary at an annual rate that is lower than the annual rate of salary of the eligible employee on that particular day,
- then, subject to regulation 16, the annual rate of salary of the eligible employee on the particular day in the period of leave of absence shall, for the purposes of the Act, be an amount equal to the amount per annum of the salary that would be payable to him on the particular day if he had continued to undertake the employment in respect of which salary was payable to him at the lower or lowest rate, as the case may be, during the relevant period.

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- (4) If a person authorized by the Commissioner for the purposes of this regulation is of the opinion that there is a likelihood that, from and including a particular day during the period of leave of absence—
- (a) an eligible employee to whom this regulation applies will, for a continuous period of not less than 12 months, undertake the prescribed employment by virtue of which this regulation applies to the eligible employee; or
  - (b) where the eligible employee has undertaken the prescribed employment referred to in paragraph (a) for a continuous period of less than 12 months immediately preceding the particular day—the eligible employee will undertake that employment for a continuous period of less than 12 months that together with the first-mentioned period will not be less than a period of 12 months,

the authorized person shall give to the Commissioner a certificate to that effect specifying the day (not being a day earlier than the day on which the certificate was given) on which the period referred to in paragraph (a) or (b), as the case may be, in relation to the eligible employee will commence.

- (5) For the purposes of this regulation, where—
- (a) immediately before a period of prescribed leave this regulation applies to an eligible employee;
  - (b) subregulation (6) does not apply in relation to the period of prescribed leave; and
  - (c) this regulation again applies to the eligible employee on the expiration of the period of prescribed leave,

the period of prescribed leave shall be disregarded and the periods in respect of which this regulation applies to the eligible employee, being the period immediately preceding the period of prescribed leave and the period immediately following the period of prescribed leave, shall be treated as a continuous period.

- (6) Where—
- (a) immediately before a period of prescribed leave this regulation applies to an eligible employee; and
  - (b) during the period of prescribed leave salary is payable to the eligible employee at a rate that is higher than the rate of salary that would be payable to the eligible employee if during that period the eligible employee were undertaking the eligible employee's initial employment,

the eligible employee shall, for the purposes of this regulation, be deemed to undertake prescribed employment during the period of prescribed leave.

- (7) In this regulation—

***initial employment*** in relation to an eligible employee who undertakes prescribed employment during a period of leave of absence without pay, means the prescribed employment first undertaken by the eligible employee after the commencement of the period of leave of absence;

***relevant period***, in relation to an eligible employee who undertakes prescribed employment on a particular day during a period of leave of absence without pay, means—

- (a) where a certificate in respect of the eligible employee has been given to the Commissioner under subregulation (4) and the period specified in the certificate is not less than 12 months—the period that commenced on the day specified in the certificate and ended on the expiration of the day immediately preceding the particular day; and
- (b) in any other case—
  - (i) the period of 12 months immediately preceding the particular day; or
  - (ii) if immediately before the particular day the eligible employee has, for a continuous period of less than 12 months, performed prescribed employment, being prescribed employment by virtue of which this regulation applies to the eligible employee—that lesser period.

## 16 Salary for purposes of determination of certain benefits

- (1) Where—
  - (a) a person has ceased to be an eligible employee—
    - (i) by reason of early retirement; or
    - (ii) in circumstances that entitle him to age retirement pension;
  - (b) on the relevant day the person was an eligible employee to whom regulation 15 applied;
  - (c) before the relevant day, a certificate specifying a day not later than the relevant day had been given in respect of the person under subregulation 15(4); and
  - (d) the person had not during the period of 12 months immediately preceding the relevant day, continuously undertaken prescribed employment, being prescribed employment by virtue of which regulation 15 applied to the person,

then, for the purposes of the definition of *final annual rate of salary* in subsection 3(1) of the Act, the annual rate of salary of that person on the relevant day shall be an amount equal to the amount per annum that would, for the purposes of the Act, have been the annual rate of salary of the person on that day if the certificate referred to in paragraph (c) had not been given.

- (2) In this regulation, *relevant day*, in relation to a person who has ceased to be an eligible employee, means—
  - (a) except where paragraph (b) applies—his last day of service; or
  - (b) if his annual rate of salary is ascertained by reference to the annual rate of salary payable to him on a day other than his last day of service—that other day.

## 17 Annual rate of salary of certain employees where anniversary of birth occurs during period of leave of absence, &c.

- (1) Where—
  - (a) a certificate in respect of an eligible employee has been given to the Commissioner under subregulation 6(2);
  - (b) during any part of the period specified in the certificate—

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- (i) the eligible employee, not being an eligible employee referred to in subparagraph (ii), was on leave of absence; or
  - (ii) the eligible employee, being an eligible employee in respect of whom the circumstances referred to in paragraph 13(2)(b) or (c) apply, was on prescribed leave;
  - (c) an anniversary of the birth of the eligible employee occurred during that period of leave of absence or prescribed leave; and
  - (d) subregulation 6(3) applies in relation to the eligible employee, the annual rate of salary of the eligible employee on that anniversary of his birth shall, for the purposes of section 46 of the Act, be an amount equal to the amount per annum of the salary that would be payable to the eligible employee on that anniversary if he had continued to perform during the period of leave of absence or prescribed leave the duties or work last performed by him before the commencement of that period.
- (2) Where—
- (a) a certificate in respect of an eligible employee has been given to the Commissioner under subregulation 10(3);
  - (b) during any part of the period specified in the certificate the eligible employee was on leave of absence;
  - (c) an anniversary of the birth of the eligible employee occurred during that period of leave of absence; and
  - (d) subregulation 10(4) applies in relation to the eligible employee, the annual rate of salary of the eligible employee on that anniversary of his birth shall, for the purposes of section 46 of the Act, be an amount equal to the amount per annum of the salary that would be payable to the eligible employee on that anniversary if he had continued to perform during the period of leave of absence the work last performed by him before the commencement of the period of leave of absence.
- (3) Where—
- (a) a certificate in respect of an eligible employee to whom regulation 15 applies has been given to the Commissioner under subregulation 15(4);
  - (b) during any part of the period specified in the certificate the eligible employee was on prescribed leave;
  - (c) an anniversary of the birth of the eligible employee occurred during that period of prescribed leave; and
  - (d) subregulation 15(5) applies in relation to the eligible employee, the annual rate of salary of the eligible employee on that anniversary of his birth shall, for the purposes of section 46 of the Act, be an amount equal to the amount per annum of the salary that would be payable to the eligible employee on that anniversary if he had continued to undertake during the period of prescribed leave the prescribed employment last undertaken by him before the commencement of the period of prescribed leave.



## **Part V—Miscellaneous**

### **18 Eligible employees transferred outside the Australian Public Service**

- (1) Where, in pursuance of arrangements made under section 47DA of the *Public Service Act 1922* as modified and adapted by the Papua New Guinea Independence (Public Service) Regulations, an eligible employee has, whether before or after the commencing day, been transferred for a specified period to an office in the Public Service of the Independent State of Papua New Guinea, the annual rate of salary of that eligible employee on a particular day (not being a day before the commencing day) during the specified period shall, for the purposes of the Act, be an amount equal to the amount per annum of the salary (in this regulation referred to as the eligible employee's *notional salary*) that would be payable to the eligible employee on that day in respect of the duties that the eligible employee would be likely to perform as an officer of the Australian Public Service on that day if the eligible employee had not been transferred to that office.
- (2) Where the duties that an eligible employee would, but for the transfer referred to in subregulation (1), be likely to perform as an officer of the Australian Public Service on a particular day are not the duties last so performed by the eligible employee before that transfer, the notional salary of the eligible employee on the particular day shall not, for the purposes of subregulation (1), include any allowance, or the value of any allowance, that, but for this subregulation, would be included in his notional salary.

### **19 Variation of salary with retrospective effect**

- (1) Where—
  - (a) after an anniversary of the birth of a person who is, or has ceased to be, an eligible employee, the annual rate of salary of the person on that anniversary is varied; and
  - (b) section 47 of the Act does not apply in relation to the annual rate of salary of the person on that anniversary,then, for the purposes of section 46 of the Act, the annual rate of salary of the person on that anniversary shall be an amount equal to the amount that, but for that variation, would have been his annual rate of salary on that anniversary.
- (2) Where—
  - (a) after an anniversary of the birth of a person who is, or has ceased to be, an eligible employee, the annual rate of salary of the person on that anniversary is varied;
  - (b) section 47 of the Act applied in relation to the annual rate of salary of the person on that anniversary; and
  - (c) the annual rate of salary as varied of the person on that anniversary is higher than the annual rate of salary that, but for that variation, would, in

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accordance with section 47 of the Act, be deemed to be his annual rate of salary on that anniversary,

then, for the purposes of section 46 of the Act, the annual rate of salary of the person on that anniversary shall be an amount equal to the amount per annum of the salary that, but for that variation, would, in accordance with section 47 of the Act, be deemed to have been payable to the person on that anniversary.

(3) Where—

(a) subsection 47(1) of the Act applies in relation to the annual rate of salary of a person (being a person who is, or has ceased to be, an eligible employee) on an anniversary of his birth (in this subregulation referred to as the *relevant anniversary*); and

(b) after the relevant anniversary, the highest annual rate of salary that was payable to the person on any day during the period commencing on the anniversary of his birth last preceding the relevant anniversary and ending on the day immediately preceding the relevant anniversary is varied,

then, for the purposes of section 46 of the Act, the annual rate of salary of the person on any day during that period on which salary was payable to him at that highest rate shall be an amount equal to the amount that, but for that variation, would have been his annual rate of salary on that day.

(4) Where—

(a) a person who is, or has ceased to be, an eligible employee has made an election under subsection 47 (2) of the Act by virtue of a decrease in his annual rate of salary;

(b) subsection 47(3) of the Act applies in relation to the annual rate of the salary of the person on the anniversary of his birth next following the date of the decrease; and

(c) after that anniversary, the highest annual rate of salary that was payable to the person on any day during the period commencing on the date of the decrease and ending on the day immediately preceding that anniversary is varied,

then, for the purposes of section 46 of the Act, the annual rate of salary of the person on any day during that period on which salary was payable to him at that highest rate shall be an amount equal to the amount that, but for that variation, would have been his annual rate of salary on that day.

(5) Where—

(a) a person who is, or has ceased to be, an eligible employee has made an election under subsection 47(2) of the Act by virtue of a decrease in his annual rate of salary;

(b) subsection 47(4) of the Act applies in relation to the annual rate of the salary of the person on the anniversary of his birth last preceding the date of the decrease; and

(c) after the date of the election, the annual rate of the salary that was payable to the person on the date of the decrease is varied,

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then, for the purposes of subsection 47(4) of the Act, the annual rate of salary of the person on the date of the decrease shall be an amount equal to the amount that, but for that variation, would have been his annual rate of salary on that date.

## 20 Annual rate of salary of certain redeployed eligible employees, &c.

(1) In this regulation—

*classification, office of Secretary, officer, Secretary, Senior Executive Service office, Senior Executive Service officer* and *unattached Secretary* have the same meaning as in subsection 7(1) of the Public Service Act.

*fixed-term appointment* means—

- (a) in relation to a Secretary—a fixed-term appointment within the meaning of section 37 of the Public Service Act; or
- (b) in relation to a Senior Executive Service officer—a fixed-term appointment within the meaning of section 44 of that Act.

*relevant day*, in relation to an eligible employee to whom this regulation applies, means the day on which the eligible employee became such an eligible employee.

(2) For the purposes of this regulation, the question whether the classification of an office is equal to, higher than, or lower than, the classification of another office is to be determined in accordance with subsections 28(2) and (3) of the Public Service Act.

(3) Subject to subregulation (6), where—

- (a) an eligible employee, being a Secretary or an unattached Secretary—
  - (i) is appointed to an office of Secretary of lower classification than the classification of the office of Secretary held immediately before the appointment, or last held before the appointment, by the eligible employee;
  - (ii) is transferred to a Senior Executive Service office; or
  - (iii) has his or her classification reduced to a classification that is, for the purposes of the Public Service Act, a Senior Executive Service classification; or

(b) an eligible employee, being a Senior Executive Service officer, is transferred to an office of lower classification than the classification of the office held, immediately before the transfer, by the eligible employee, then, unless on the day on which the eligible employee is so appointed or transferred or has his or her classification so reduced the eligible employee is, by virtue of subregulation (4), an eligible employee to whom this regulation applies, the eligible employee becomes on that day an eligible employee to whom this regulation applies.

(4) Where an eligible employee becomes an eligible employee to whom this regulation applies, then, subject to subregulation (7), the eligible employee

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continues to be such an eligible employee until such time as the eligible employee ceases to be an officer having a classification that is lower than the classification that the eligible employee had on the day immediately preceding the relevant day in relation to the eligible employee.

- (5) Where—
- (a) this regulation applies to an eligible employee; and
  - (b) if the eligible employee had, on any particular day (being the relevant day in relation to the eligible employee or any day after that relevant day), been an officer having the same classification as, or a classification equal to, the classification of the eligible employee on the day immediately preceding the relevant day in relation to the eligible employee, the annual rate of the salary that would have been payable to the eligible employee (in this subregulation referred to as his or her *notional salary*) on the particular day would have been higher than the annual rate of salary by reference to which the fortnightly basic contribution of the eligible employee—
    - (i) where subparagraph (ii) does not apply—on the contribution day last preceding the particular day; or
    - (ii) where the particular day is a contribution day—on the particular day, was calculated,then, the annual rate of salary of the eligible employee on the particular day shall, for the purposes of the Act, be an amount equal to the amount per annum of the notional salary of the eligible employee on that day.
- (6) Subregulation (3) does not apply to an eligible employee who is appointed or transferred to an office, or has his or her classification reduced, in any of the circumstances referred to in paragraph (3)(a) or (b) if the eligible employee —
- (a) immediately before the day that, but for this subregulation, would have been the relevant day in relation to the eligible employee, held an office of Secretary under a fixed-term appointment or was a Senior Executive Service officer by virtue of a fixed-term appointment;
  - (b) is, on the day referred to in paragraph (a), given a fixed-term appointment to an office of Secretary or as a Senior Executive Service officer; or
  - (c) makes, on the day referred to in paragraph (a), an election under subsection 47(2) of the Act in relation to the appointment, transfer or reduction in classification occurring on that day.
- (7) An eligible employee to whom this regulation applies ceases to be such an eligible employee if the eligible employee—
- (a) at any time after the relevant day in relation to the eligible employee, makes (whether in relation to the appointment, transfer or reduction in classification by virtue of which the eligible employee became such an eligible employee or in relation to any subsequent appointment or transfer to another office) an election under subsection 47(2) of the Act;
  - (b) is, at any time after the relevant day in relation to the eligible employee, given a fixed-term appointment to an office of Secretary or as a Senior Executive Service officer; or

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- (c) having been transferred from a Senior Executive Service office to an office (in this subregulation referred to as a *prescribed office*) that is not an office of Secretary or a Senior Executive Service office, is next transferred from that prescribed office to a prescribed office of a lower classification than the classification of the first-mentioned prescribed office.

## Endnotes

### Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

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

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

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

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

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

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

**Endnote 2—Abbreviation key**

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

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

<b>Number and year</b>	<b>FRLI registration or gazettal</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
1978 No. 282	29 Dec 1978	1 July 1976	
1981 No. 5	29 Jan 1981 (F1996B02193)	29 Jan 1981	—
1985 No. 204	29 Aug 1985 (F1996B02194)	29 Aug 1985	—
1985 No. 326	5 Dec 1985 (F1996B02195)	5 Dec 1985	—



## Endnote 4—Amendment history

## Endnote 4—Amendment history

Provision affected	How affected
<b>Part I</b>	
r 3.....	am No 326, 1985
<b>Part II</b>	
r 4.....	am No 326, 1985
r 5.....	am No 5, 1981
r 7.....	am No 5, 1981
<b>Part IIA</b>	
Part IIA.....	ad No 326, 1985
r 8A.....	ad No 326, 1985
r 8B.....	ad No 326, 1985
r 8C.....	ad No 326, 1985
r 8D.....	ad No 326, 1985
r 8E.....	ad No 326, 1985
<b>Part III</b>	
r 9.....	rs No 326, 1985
r 10.....	am No 326, 1985
r 11.....	am No 326, 1985
<b>Part IV</b>	
r 17.....	am No 5, 1981
<b>Part V</b>	
r 19.....	rs No 5, 1981
r 20.....	ad No 204, 1985