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**THE PARLIAMENT OF THE COMMONWEALTH OF
AUSTRALIA**

HOUSE OF REPRESENTATIVES

AUSTRALIAN DEFENCE FORCE COVER BILL 2015

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Assistant Minister for Defence, the Hon
Stuart Robert MP...)

GENERAL OUTLINE

AUSTRALIAN DEFENCE FORCE COVER BILL 2015

The Australian Defence Force Cover Bill 2015 (the Bill) gives effect to the Government's announcement to introduce new modern superannuation arrangements for people joining the Australian Defence Force (ADF) on and after 1 July 2016. A new superannuation scheme, to be known as the Australian Defence Force Superannuation Scheme or ADF Super, is being established to come into effect from this date. In conjunction with the introduction of ADF Super, a new statutory death and invalidity scheme, to be known as the Australian Defence Force Cover Scheme or ADF Cover, is being established to come into effect from this date.

The *Superannuation Guarantee Act 1992* provides that, in order for employer superannuation contributions to satisfy the choice of fund requirements, the relevant fund to which the contributions are paid must comply with various prescribed requirements, one of which applies to insurance in respect of death.

In addition, the core and ancillary purposes of the sole purpose test in the *Superannuation Industry (Supervision) Act 1993* (SIS Act) permit superannuation funds to offer a range of benefits to members, including insured benefits for particular risks, including for death and the total and permanent incapacity of a member. The SIS Act allows operating standards to be prescribed in relation to the kinds of benefits that must not be provided other than by taking out insurance, or insurance of a particular kind.

Until recently, funds could self-insure, but changes now require any insurance arrangements provided by the trustees of funds to be supported by an insurance policy provided by an insurer. However, there is an exemption to this requirement for the trustees of any fund where the insured benefits are provided by, or their provision is guaranteed by, the Commonwealth Government or the government of a State or Territory.

ADF Cover is being established to meet the requirement for death and invalidity cover for new members of the ADF. From 1 July 2016, ADF Super members will be covered under this statutory scheme, as will members who could have been ADF Super members but for choosing another fund into which the Department's employer contributions are to be paid. The reason for this is that it is difficult for ADF members to obtain death and invalidity cover at a reasonable cost under group insurance arrangements.

There will be no contributions required for ADF Cover (either from Defence or those who are covered under the statutory scheme) as the benefits will be paid from the Consolidated Revenue under a specific appropriation. ADF Cover is designed to be consistent with the death and invalidity benefits provided under the current Military Superannuation and Benefits Scheme (MSBS).

Benefits for Incapacity of Invalids

ADF Cover will provide benefits for ADF members who are medically discharged as a result of a physical or mental impairment that occurs while in ADF service. The benefits provided under the scheme established by the Act

are designed to be consistent with the benefits provided under the current MSBS.

Those ADF members medically discharged will be assessed for their incapacity for civilian employment. If that incapacity is 60% or more, they will be classified as class A and receive an appropriate pension. If that incapacity is 30% or more but less than 60%, then they will be classified as class B and receive an appropriate pension. The incapacity factors to be used for calculating a basic invalidity pension is 2.2% for a person classified as class A and 1.1% for a person classified as class B.

A person's incapacity for civilian employment is required to be reviewed between 12 and 36 months after the original classification. Any subsequent review will be determined by the Commonwealth Superannuation Corporation (CSC) which will be administering the scheme.

Benefits for Death

If an ADF member dies in service, or if an invalid dies while receiving an invalidity pension, benefits will be paid to the dependants of that member or invalid, or to their estate.

In the case of an invalid who dies, their spouse (if any) will receive a reversionary pension or lump sum. The pension will be increased if there are eligible children of the spouse and the invalid. If that spouse later dies and was receiving a pension, any eligible children will also receive a reversionary pension. If there is no spouse but there are eligible children, the eligible children will receive a reversionary pension.

In the case of an ADF member who dies in service, their spouse (if any) will receive a pension or a lump sum. The pension will be increased if there are eligible children of the spouse and the ADF member. If that spouse later dies and was receiving a pension, any eligible children will also receive a reversionary pension. If there is no spouse but there are eligible children, the eligible children will receive a lump sum. If there is no spouse or eligible children, a lump sum will go to the estate or the personal legal representative of the ADF member.

The Bill

The Bill is part of a package of three Bills to establish ADF Super. The other two Bills in the package are:

- the Australian Defence Force Superannuation Bill 2015 which gives effect to the Government's announcement to introduce a new modern superannuation arrangement (ADF Super) for people joining the ADF on and after 1 July 2016. The new arrangements will allow ADF members to choose which superannuation fund they belong to and, for the first time, give those members the ability to transfer their accumulated ADF Super benefits to a fund of their choice when they leave the ADF.
- the Defence Legislation Amendment (Superannuation and ADF Cover) Bill 2015 which contains the consequential and transitional arrangements necessary to set up the new ADF Super arrangement. This Bill will also assist with the introduction of the ADF's future workforce model by providing flexible service conditions for permanent members of the ADF.

Also included in the package are exposure drafts of both the Australian Defence Force Superannuation Trust Deed and the Military Superannuation and Benefits Amendment (Trust Deed – ADF Super Consequential) Instrument 2015 which effects consequential changes to the MSBS Trust Deed and Rules. This is to facilitate the measure and to make some administrative changes to reduce red tape.

Financial Impact Statement

This Bill has no additional financial impact as the benefits are funded from Consolidated Revenue and are consistent with benefits provided under the invalidity provisions of MSBS, the majority of which are also funded from Consolidated Revenue.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1: Short title

1. **Clause 1** provides for the short title of the Act to be the *Australian Defence Force Cover Act 2015* (the Act).

Clause 2: Commencement

2. **Clause 2** is the commencement provision for the Act and includes a table setting out the details of the commencement of sections of the Act. Column 1 of the table sets out the provisions in numbered items, column 2 sets out the commencement and column 3 sets out date/details. Information in column 3 (which is currently blank) does not form part of the Act, so information can subsequently be inserted in the column (or edited) in a published version of the Act.

3. Item 1 in the table provides that sections 1 and 2 of the Act and anything in the Act not covered elsewhere in the table commence when the Act receives Royal Assent.

4. Item 2 in the table provides that the main provisions of the Act commence at the later of 1 July 2016 and the commencement of the *Australian Defence Force Superannuation Act 2015* (ADF Super). If ADF Super does not commence, the ADF Cover Act does not commence.

5. A note to the reader stipulates that the table only relates to the provisions originally enacted and will not be amended to reflect later amendments to the sections of the Act.

Clause 3: Simplified Outline

6. **Clause 3** gives a simplified outline of the Act. The simplified outline is included to assist readers to understand the substantive provisions of the Act, but is not intended to be comprehensive. Readers should rely on the substantive provisions.

Clause 4: Definitions

7. **Clause 4** defines several terms which are used in the Bill. Of particular note is the definition of:

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

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

A note to the definition explains that the basic annual rate of pension is relevant to the calculation of a pension payable to a surviving spouse or to an eligible child. The note also makes clear that the incapacity factor may change if an invalid classified as class B or class C dies from the physical or medical condition that was the cause of the person's medical

discharge, or from another physical or mental condition resulting from the condition that resulted in the medical discharge.

EXAMPLE OF CALCULATION OF BASIC ANNUAL RATE OF PENSION

Joe joins the Air Force at age 20 and is medically discharged at age 40 on 20 October 2016. At the date Joe is medically discharged, his salary (including service allowance) is \$110,000. Joe is classified as class A (that is, he has a 60% or more incapacity for civilian employment). Joe's basic annual rate of pension is calculated using this salary as follows:

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

$$20 \times \$110,000 \times 2.2\% = \$48,400 \text{ per annum}$$

- b) **covered ADF member** who is a member of the Permanent Forces or a member of the Reserves on continuous full-time service under age 60 and is either an ADF Super member or would be an ADF Super member but for choosing another fund to which the Department is making employer contributions.
- c) **death benefit lump sum** is calculated by the following formula:

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

EXAMPLE OF CALCULATION OF DEATH BENEFIT LUMP SUM

Bill joins the Air Force at age 20 and dies in service at age 45. At the date Bill dies, his salary (including service allowance) is \$120,000. The death benefit lump sum payable to Bill's surviving spouse or dependants (or to his estate if he has no dependants) is:

$$15 \times \$120,000 \times 25\% = \$450,000$$

- d) **invalid** is a person who is medically discharged before age 60 and is no longer a covered ADF member
- e) **medically discharged** is when a covered ADF member's service is terminated because the member is medically unfit to perform his or her duties because of a mental or physical impairment.

Clause 5: Definition of eligible child

8. **Clause 5** provides for a definition of eligible child who is a child, an ex-nuptial child, a step-child, an adopted child, a foster child or a ward of an invalid or covered ADF member who is under age 18 or between age 18 and 25 and in

full-time education and wholly or substantially dependent on the invalid or covered ADF member.

Clause 6: Definition of *eligible children pension percentage*

9. **Clause 6** provides a definition of eligible children pension percentage which sets the factor for determining the rate of a pension to be paid to an orphan because of the death of:

- a. an ADF member or invalid with no surviving spouse; or
- b. a surviving spouse of the ADF member or invalid,

where the ADF member, or invalid, or surviving spouse had eligible children. The factor increases depending on the number of orphans, with a maximum pension benefit of 150% of the pension that would have been paid to a surviving spouse if there are four or more orphans.

10. **Subclause 6(2)** sets the relevant percentages in the table contained in that subclause.

Clause 7: Definition of *marital or couple relationship*

11. **Clause 7** provides for a definition of marital or couple relationship to be used in the Act. This definition includes same sex and opposite sex couples and is similar to the definition used in both current military superannuation schemes..

Clause 8: Definition of *prospective service to age 60*

12. **Clause 8** provides for a definition for a member's prospective service to age 60. This is calculated on the basis of the differential between 60 and the age of the member at discharge or death. The age of the member is the member's age in whole years rounded down to their last birthday. This method of calculation is beneficial because it ensures that a larger number is used to calculate a member's basic annual rate of pension than if the age was rounded up.

13. A note to the clause reminds readers that a covered ADF member who is medically discharged under age 60 is an invalid.

Clause 9: Definition of *salary*

14. **Clause 9** provides for a definition of salary of a covered ADF member and is the same definition used in MSBS.

15. **Subclause 9(1)** provides that salary for the purposes of the Act is a member's:

- a. annual salary on the relevant date; plus
- b. any higher duties allowance; plus
- c. any service allowance or trainee allowance.

16. **Subclause 9(2)** provides a minimum salary that is to be used to calculate benefits in ADF Cover for a trainee. For the purposes of this clause, salary cannot be less than the maximum annual rate of salary for a Private Group 1 or equivalent rank excluding service or trainee allowance.

17. **Subclause 9(3)** provides that for the statutory office holders listed in that subclause, **subclause 9(1)** does not apply and that salary will instead refer to the

relevant salary for superannuation purposes determined under subsection 7(3) of the *Remuneration Tribunal Act 1973*.

Clause 10: Definition of spouse pension child supplement percentage

18. **Subclause 10(1)** defines the factors that determine the percentage increase in a pension payable to a surviving spouse. The increase is based on the number of eligible children, increasing the spouse pension by a maximum of 50% if there are three or more eligible children. The factors are those shown in the table in **subclause 10(2)**.

Clause 11: Definition of surviving spouse

19. **Clause 11** provides for a definition of surviving spouse.

20. **Subclause 11(1)** provides that a person is a surviving spouse if the person was in a marital or couple relationship with an ADF member or former ADF member at the time of their death.

21. **Subclause 11(2)** provides that a person is also a surviving spouse if:

- a. a person had previously had a marital or couple relationship with an ADF member or former ADF member and:
- b. at the time of death, the person remained legally married to the member or former member; and
- c. in CSC's opinion, the person was wholly or substantially dependant upon the member or invalid at the time of death.

22. A note to the clause alerts readers to the fact that if there are two or more surviving spouses, CSC may determine to whom and how much is payable to each spouse.

Division 3 – Scope of this Act

Clause 12: This Act binds the Crown

23. **Clause 12** provides that the Act binds the Crown in right of the Commonwealth. To avoid doubt, the Act does not bind the Crown in right of the States or Territories.

Clause 13: Extension to external Territories

24. **Clause 13** provides that the application of the Act extends to every external Australian Territory.

Clause 14: Extraterritoriality

25. **Clause 14** provides that the Act applies both inside and outside Australia.

PART TWO – BENEFITS FOR INCAPACITY OF INVALID

Division 1 – Simplified outline of this Part

Clause 15: Simplified outline of this Part

26. **Clause 15** provides a simplified outline of this Part. The simplified outline is included to assist readers to understand the substantive provisions of the Part, but is not intended to be comprehensive. Readers should rely on the substantive provisions.

Division 2 – Invalidity pension

Subdivision A – Invalidity pension

Clause 16: Invalidity pension

27. **Clause 16** sets out when invalidity pensions are payable.

28. **Subclause 16(1)** provides that invalidity pensions are payable to invalids classified as either class A or class B. Note 1 to the subclause points readers to Subdivision B which provides for CSC to classify those medically discharged according to their incapacity for civilian employment. Class A means that an invalid is classified as having at least 60% incapacity for civilian employment. Class B means that an invalid has at least 30%, but less than 60%, incapacity for civilian employment.

29. Note 2 to the subclause reminds the reader that classification applies from the date of medical discharge.

30. **Subclause 16(2)** provides for the annual rate of an invalidity pension payable. Where the invalid is under 60, the rate of pension is the sum of the basic annual rate of the pension and a top-up annual rate of pension. Where the member is age 60 or over, the rate of pension is only the basic annual rate of pension. Basic annual rate of pension is defined in **clause 4**. The top-up rate of pension is set out in **clause 17**. The incapacity factors used to calculate the rates of pension are also defined in **clause 4**.

31. **Subclause 16(3)** provides that an invalidity pension is not payable if the incapacity for which the member was discharged was as a result of a pre-existing condition that was not materially contributed to by military service, was intentionally caused or arose while the member was absent without leave. An invalidity pension is also not payable if the annual value of the pension is \$5,000 or less; if this is the case, the pension is commuted and a one-off lump sum benefit is paid.

32. A note to the clause reminds readers that payment of an invalidity pension may be stopped if an invalid fails to give information or attend for a medical examination.

Clause 17: Top-up rate of invalidity pension

33. **Clause 17** provides for the top-up rate of invalidity pension.

34. **Subclause 17(1)** shows the formula used for calculating the top-up rate of invalidity pension which is:

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

35. **Subclause 17(2)** provides that an invalid's period of qualifying service is the number of whole years in the period an invalid:

- a. served as a member of the Permanent Force; or
- b. rendered continuous full-time service as a Reservist.

36. Whole years are used to calculate an invalid's period of qualifying service. The member is taken to only have completed the number of years they have served. Any partial years of service are disregarded. This is for ease of administration and because of the beneficial method in which the basic annual rate of pension is calculated.

37. **Subclause 17(3)** provides that, for the purposes of **subclause 17(2)**, where there is a break in service, only the most recent service of an ADF member is counted.

EXAMPLE OF CALCULATION OF INVALIDITY PENSION

John joins the Army at age 20 and is medically discharged at age 50. John is classified as Class A invalidity. At the date of discharge, John's salary was \$120,750. John's prospective service to age 60 is 10 years. John's period of qualifying service is 30 years. John is entitled to both a basic pension and a top-up pension.

John's basic pension:

$$10 \times \$120,750 \times 2.2\% = \$26,565 \text{ per annum}$$

John's top-up pension is:

$$30 \times \$120,750 \times 2.2\% = \$79,695 \text{ per annum}$$

The total amount John receives while he is under age 60 as a result of his incapacity is \$106,260 per annum, indexed to upwards movements in CPI.

When John is 60, his top-up pension will cease, leaving only his basic pension of \$26,565 per annum, indexed to upward movements in CPI (this example assumes no CPI increases). However, as John has reached his preservation age, John will now be able to access his accumulated superannuation from ADF Super (or his chosen fund).

Subdivision B – Classifying invalid's incapacity for civil employment

Clause 18: Determining person's incapacity for civil employment

38. **Clause 18** requires CSC to determine a person's incapacity for civilian employment at certain times.

39. **Subclause 18(1)** provides for the circumstances when CSC must determine a person's incapacity for civilian employment. CSC must determine a person's incapacity for civilian employment at the times specified in **subclause 18(2)** if,

at that time, the person is a covered ADF member under age 60 who is about to be medically discharged or an invalid.

40. The note under this subclause explains to readers how this subclause interacts with **clause 19** – substantive classification and **clause 20** – interim classification.

41. **Subclause 18(2)** provides the times for when CSC must make a mandatory determination under **subclause 18(1)**. The times are either:

- a) before or as soon as reasonably practical after medical discharge (mandatory classification);
- b) between 12 and 36 months after the mandatory classification;
- c) within 3 months of an interim classification; or
- d) as soon as is practical after it has sufficient information to determine a classification if it does not make an interim classification.

42. CSC may not determine a different classification for a covered ADF member or an invalid at any later time if it determined at the mandatory classification that the person's incapacity for civilian employment is less than 30% (that is, the person is classified as class C). This is consistent with the MSBS invalidity provisions.

43. **Subclause 18(3)** provides that CSC does not need to determine a person's classification if the incapacity for which the member was discharged was as a result of a pre-existing condition that was not materially contributed to by military service, was intentionally caused or arose while the member was absent without leave.

44. **Subclause 18(4)** provides that CSC may determine a person's incapacity for civilian employment at any time after a person has been substantially classified as class A or B. CSC may not determine a different classification for a covered ADF member or an invalid if the initial substantive classification at the time of the mandatory determination was that the person's incapacity for civilian employment is less than 30% (that is, the person is substantially classified as class C). This is consistent with the MSBS invalidity provisions.

45. The note under this section makes clear that a person's incapacity for civilian employment may have changed since a previous determination of incapacity and as a result, their classification may change.

46. **Subclause 18(5)** provides that, on determining a person's incapacity for civilian employment, CSC must only have regard to the matters in that subclause. Again, this is consistent with the MSBS invalidity provisions.

47. **Subclause 18(6)** provides that the death of an invalid does not prevent CSC from later determining incapacity for civilian employment just prior to death.

48. A note to the subdivision informs readers that under section 36 of the *Governance of Australian Government Superannuation Schemes Act 2011*, CSC may delegate its powers under the subdivision to an Invalidity Classification Committee established under the MSBS Trust Deed. If a delegate exercises the powers, CSC is taken to have done so under this Act.

Clause 19: Substantive classification

49. **Subclause 19(1)** provides that where CSC makes a determination of a person's capacity for civilian employment under **clause 18**, CSC must classify them as either class A, class B or class C, according to the table in the subclause.

50. **Subclause 19(2)** provides that, if the determination occurred at the discretion of CSC under **subclause 18(4)** (effectively, CSC has determined a different incapacity for civilian employment and a different classification), then CSC must:

- a. not reduce the classification of a person classified as either class A or class B to class C if that person is age 60 or above; or
- b. not determine a different classification at all for a person if that person is age 65 or above.

51. **Subclause 19(3)** provides that CSC is not prevented from classifying a person who has turned age 60 if that person's invalidity pension was withheld or suspended for failing to provide information or attend a medical examination. This is to address situations where invalids deliberately delay a classification process so that they can continue to receive the rate of pension they were receiving prior to age 60.

Clause 20: Interim classification

52. **Subclause 20(1)** provides that this clause applies if CSC determines under **subclause 18(1)** (mandatory determination) that a person's incapacity for civilian employment is at least 30% but needs further investigation to determine if the incapacity could be at least 60%.

53. **Subclause 20(2)** provides that if CSC cannot make a substantive classification under the mandatory determination, CSC may classify a person as class B on an interim basis. If CSC does not make an interim classification, CSC is not relieved of its obligation to make a determination under **subclause 18(1)** as soon as is reasonably practical after discharge.

54. **Subclause 20(3)** provides that if CSC makes a mandatory determination within 3 months of the interim classification of class B, then the person's substantive classification must be class B, even if it still does not have sufficient information to support a classification as class A.

55. This clause is not intended to prevent CSC from making a later determination of a person's incapacity for civilian employment at any time under **subclause 18(4)** or as required under **subclause 18(2)** between 12 and 36 months after the mandatory determination in **subclause 20(3)**.

Clause 21: Date of classification

56. **Subclause 21(1)** provides that the mandatory determination of a person's classification for incapacity for civilian employment takes effect from the date of medical discharge, even if that determination is made after discharge.

57. **Subclause 21(2)** provides that a substantive classification of class A, after an interim classification of class B under **clause 20**, takes effect when the class A classification is made, unless CSC determines an earlier date (which cannot be before the date of medical discharge) from which the class A classification is to apply.

58. **Subclause 21(3)** provides that any classification, other than a substantive classification under a mandatory determination or after a substantive classification of class A following on from an interim classification, applies from the date it is made or a later date specified by CSC.

Clause 22: Notice of classification

59. **Clause 22** provides that CSC must notify the person or surviving spouse (if the person has died) or eligible children (if there is no surviving spouse) of the classification of the person and the reasons for that classification.

Subdivision C – Incapacity for which invalidity pension is not payable

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

60. **Subclause 23(1)** provides that, where a member is medically discharged within two years of joining the ADF and the condition for which the person was medically discharged was pre-existing when the person became an ADF member and the condition was not materially aggravated by the person's ADF service, then no invalidity pension is payable.

61. **Subclause 23(2)** provides that, in situations where the person has more than one period of service that is broken by a period when the person was not a member of the ADF, the two year period applying in **subclause 23(1)** refers to the latest period of service.

Clause 24: Incapacity due to intentional act

62. **Subclause 24(1)** provides that an invalidity pension is not payable if CSC is satisfied that the condition for which the person was medically discharged was caused by an intentional act for the purposes of gaining an invalidity pension.

63. **Subclause 24(2)** provides CSC with a discretion to disregard **subclause 24(1)** if, after taking into account all the circumstances surrounding the act (for example and without limiting CSC's discretion, did the intentional act result from a mental impairment arising from ADF service), it is satisfied that an invalidity pension should be paid.

Clause 25: Incapacity arising on extended absence without leave

64. **Subclause 25(1)** provides that an invalidity pension will not be paid if:

- a. the basis of the condition that resulted in the medical discharge resulted from an event that happened more than 21 days after a member was absent without leave; and
- b. the member's salary was forfeited under regulations made under the *Defence Act 1903*; and
- c. the forfeited salary was not later paid or payable to that member.

65. **Subclause 25(2)** provides CSC with a discretion to disregard **subclause 25(1)** if it is satisfied that the circumstances surrounding the absence were such that it would be appropriate to not apply the subclause (for example and without limiting CSC's discretion, did the absence arise as a result of a mental impairment arising from ADF service).

Division 3 – Surviving spouse’s benefit after death of invalid pensioner

Subdivision A – Invalid’s spouse pension

Clause 26: Pension payable to surviving spouse after death of invalid

66. **Clause 26** provides for a benefit payable to a surviving spouse (if any) on the death of an invalid (an invalid’s spouse pension).

67. **Subclause 26(1)** provides that an invalid’s spouse pension is payable to the surviving spouse of an invalid where that invalid was receiving an invalidity pension at death.

68. The note to this subclause refers to Division 5 and informs readers that Division 3 applies even if an invalid pension was not being paid when the invalid died (that is, the invalid was classified as class C, but CSC is satisfied that the physical or mental impairment that was the reason for medical discharge was the cause of the invalid’s death).

69. **Subclause 26(2)** defines the basic rate of the invalid’s spouse pension as 67% of the current value of the basic annual rate of pension payable to the invalid on the date of the invalid’s death.

70. A note to the subclause alerts readers to the fact that the rate of invalidity pension that is taken to have been payable is affected by Division 5.

EXAMPLE OF CALCULATION OF PENSION PAYABLE TO SURVIVING SPOUSE AFTER DEATH OF INVALID

John joins the Army at age 20 and is medically discharged at age 50. John is classified as class A invalidity and has a basic annual rate of pension of \$26,565 per annum, indexed to upward movements in CPI. He also has a top-up pension which ceases on his death.

At age 51, John dies. John had a surviving spouse at death, Richard. Richard is entitled to an invalid’s spouse pension. Richard’s invalid’s spouse pension will be calculated using John’s basic annual rate of pension only.

Richard’s invalid’s spouse pension is:

$$\$26,565 \times 67\% = \$17,798.55 \text{ per annum}$$

Even though John was receiving a top-up pension, the top-up pension is not payable to Richard because he will be able to access John’s accumulated superannuation benefit as John’s dependant.

71. **Subclause 26(3)** provides that, if there is more than one surviving spouse, the benefit under **subclause 26(2)** is payable in a manner determined by CSC - refer **clause 39**.

72. **Subclause 26(4)** provides for the situation where there is a surviving spouse who only had a short term relationship with the invalid. Where the relationship with the surviving spouse began in the circumstances detailed in **subclause 26(4)**, the formula in that subclause will modify the rate of invalid’s spouse pension payable.

EXAMPLE OF SITUATION WHERE SURVIVING SPOUSE ONLY HAD SHORT TERM RELATIONSHIP WITH INVALID

John joins the Army at age 20 and is medically discharged at age 50. John is classified as class A invalidity. John is entitled to both a basic annual rate of pension and a top-up pension.

John turns 60, and his top-up pension ceases because John can access his accumulated superannuation benefits having reached preservation age. John continues to receive his basic annual rate of pension (\$26,565 per annum, indexed to upward movements of CPI). On his birthday, John meets Richard and begins a relationship with him.

At age 62, 730 days after meeting Richard, John dies, leaving Richard as his surviving spouse. Because John and Richard were in a relationship that began:

- after John began to receive his invalidity pension; and
- after John turned age 60; and
- within 3 years of John's death,

Richard's invalid's spouse pension will be modified by the formula contained in **subclause 26(4)**.

Richard's invalid's spouse pension is \$11,865.7 per annum, indexed to upwards movements in CPI (this example assumes no increases in CPI) calculated as follows:

$$(\$26,565 \times 67\%) \times \frac{730}{1095} = \$11,865.70 \text{ per annum}$$

73. **Subclause 26(5)** provides that the invalid's spouse pension calculated under **subclause 26(2)** is increased for the period of time for which there are eligible children. The rate of pension is increased by the spouse pension child supplement percentage under **clause 10**.

74. A note to the subclause suggests that any spouse pension child supplement may be reduced or negated if the increase as a result of the existence of an eligible child or children is paid to someone else for the benefit of the eligible child/children and points readers to **clause 41**.

EXAMPLE OF SITUATION WHERE THERE ARE ELIGIBLE CHILDREN

John joins the Army at age 20 and is medically discharged at age 50. John is classified as class A invalidity and has a basic annual rate of pension of \$26,565 per annum, indexed to upwards movements in CPI. He also has a top-up pension that ceases on his death.

At age 51, John dies. John had a surviving spouse at death, Richard. John and Richard had one eligible child. Richard is entitled to an invalid's spouse pension. Richard's base invalid's spouse pension is: $\$26,565 \times 67\% = \$17,798.55$ per annum, indexed to upwards movements in CPI.

Because John and Richard had one eligible child, the base surviving spouse benefit is increased by 17% in line with the factors displayed in the table in **clause 10**.

Richard's invalid's spouse pension is \$20,824.30 per annum, indexed to upwards movements in CPI (this example assumes no increases in CPI) calculated as follows:

$$\$17,798.55 + (\$17,798.55 \times 17\%) = \$20,824.30 \text{ per annum}$$

75. **Subclause 26(6)** provides that the first seven instalments of an invalid's spouse pension will be the annual rate of invalidity pension that would have been payable to the invalid if the invalid had not died (including any top-up pension that would have been payable). This provision recognises the significant disruption that follows the death of an invalid and gives the surviving spouse time to come to terms with the death and then notify CSC so that the appropriate spouse pension can be calculated.

76. **Subclause 26(7)** provides that a pension is only payable if the spouse does not elect to receive a lump sum instead of a pension or if the pension is less than \$5,000 and is automatically converted to a lump sum under **clause 44**.

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

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

77. **Subclause 27(1)** provides an option for a surviving spouse who is under age 60 to convert the invalid's spouse pension to a lump sum instead. The surviving spouse must choose to do this within 6 months of the death of the invalid. A note to the subclause refers readers to **clause 55** which requires the choice to be in writing in a manner determined by CSC.

78. **Subclause 27(2)** sets out the conversion rate for calculating the amount of the lump sum. The conversion rate is 16.5 times the basic rate of the invalid's spouse pension calculated in accordance with **subclause 26(2)**, subject to any reductions as a result of **clause 39** and **subclause 26(4)**.

EXAMPLE OF CONVERTING PENSION TO LUMP SUM

John joins the Army at age 20 and is medically discharged at age 50. John is classified as class A invalidity and has a basic annual rate of pension of \$26,565 per annum, indexed to upwards movements in CPI (John also receives a top-up pension but this ceases on his death).

At age 51, John dies. John had a surviving spouse at death, Richard. Richard is entitled to an invalid's spouse pension. However, Richard is under 60 (Richard is 45 years old) and wishes to instead receive a lump sum. Within 6 months of John's death, Richard chooses to convert the invalid's spouse pension to a lump sum (that is, to commute the pension).

The lump sum Richard will receive from commuting the invalid's spouse pension is \$293,676.08, calculated as follows:

$$(\$26,565 \times 67\%) \times 16.5 = \$293,676.08$$

Division 4 – Eligible children’s pension after death of an invalidity pensioner

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

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

79. **Subclause 28(1)** provides that, where an invalid receiving an invalidity pension dies without a surviving spouse but where there are eligible children, the eligible children will receive a pension.

80. The note in this subclause refers to Division 5 and informs readers that Division 4 applies even if an invalid pension was not being paid when the invalid died (that is, the invalid was classified as class C, but CSC is satisfied that the physical or mental impairment that was the reason for medical discharge was the cause of the invalid’s death).

81. **Subclause 28(2)** provides that the pension, which is based on the eligible children pension percentage, will be paid as a single pension to or for those eligible children. CSC will determine to whom the pension is payable (for example, to one of the children or to a guardian or to a legal personal representative or to a person appointed by the Court).

82. **Subclause 28(3)** provides that the eligible children’s pension is payable to or for those eligible for the period that they are eligible children. The note explains that eligible children who are between the ages of 18 and 25 may cease to be eligible children whenever they are not in full-time education (for example, a pension would not be paid while an eligible child is on a “gap year”, but may be paid when full-time education resumes before the child turns 25).

83. **Subclause 28(4)** provides that the rate of the pension payable to one or more eligible children is calculated using the formula:

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

84. The note in this subclause explains that Division 5 may affect the rate of invalidity pension. Even if an invalidity pension was not being paid when the invalid died (that is, the invalid was classified as class C, but CSC is satisfied that the physical or mental impairment that was the reason for medical discharge was the cause of the invalid’s death).

EXAMPLE OF ELIGIBLE CHILDREN’S PENSION

John joins the Army at age 20 and is medically discharged at age 50. John is classified as class A invalidity and has a basic annual rate of pension of \$26,565 per annum, indexed to upwards movements in CPI (John also receives a top-up pension, but this ceases when he dies).

At age 51, John dies in a car accident that also claims the life of his partner, Richard. John and Richard had one eligible child. The eligible child is entitled to a pension under **clause 28**.

The pension for the eligible child will be \$11,925.03 per annum, indexed to upwards movements in CPI, until the child is no longer an eligible child, calculated as follows:

$$67\% \times \$26,565 \times 67\% = \$11,925.03 \text{ per annum}$$

85. **Subclause 28(5)** provides that, where a lump sum benefit is payable (because of automatic commutation under **clause 44**, that is, the pension is less than \$5,000), no pension is payable under this clause.

Subdivision B – Pension if surviving spouse of invalid received invalid’s pension then died

Clause 29: Pension payable to eligible children dependant on surviving spouse who received invalid’s spouse pension then died

86. **Subclause 29(1)** provides that, where an invalid receiving an invalidity pension dies:

- a. with a surviving spouse who received an invalid’s spouse pension; and
- b. eligible children; and
- c. the surviving spouse then died; and
- d. there were eligible children wholly or substantially dependant on the surviving spouse,

then a pension is payable to or for the eligible children.

87. **Subclause 29(2)** provides that the pension will be paid to or for the eligible children as a single pension. CSC will determine to whom the pension is payable (for example, to one of the children or to a guardian or to a legal personal representative or to a person appointed by the Court).

88. **Subclause 29(3)** provides that the pension is payable to or for those eligible children for the period that they are eligible children. The note explains that eligible children who are between the ages of 18 and 25 may cease to be eligible children whenever they are not in full-time education (for example, a pension would not be paid while an eligible child is on a “gap year”, but may be paid when full-time education resumes before the child turns 25).

89. **Subclause 29(4)** provides that the rate of the pension payable to one or more eligible children is calculated using the formula:

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

EXAMPLE OF PENSION PAYABLE TO ELIGIBLE CHILDREN OF SURVIVING SPOUSE WHO DIED

Richard is the surviving spouse of John, an invalidity pensioner who died. Richard is receiving an invalid’s spouse pension of

\$20,824.30 per annum, which is the spouse invalid's pension of \$17,798.55 increased by 17% (\$3,025.75) to take into account that John and Richard had one eligible child. Richard dies, leaving behind the eligible child who was wholly or substantially dependent on Richard.

The eligible child's pension payable on the death of Richard is \$11,925.03 per annum, indexed to upwards movements in CPI, until the child is no longer an eligible child, calculated as follows:

$$\$17,798.55 \times 67\% = \$11,925.03 \text{ per annum}$$

90. **Subclause 29(5)** provides that, where a lump sum benefit is payable (because of automatic commutation under **clause 44**, that is, the pension is less than \$5,000), no pension is payable under this clause.

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

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

91. **Subclause 30(1)** provides that this clause applies if CSC is satisfied that an invalid who was classified or reclassified as Class B or Class C died as a result of the medical condition that was the basis of the invalid's medical discharge.

92. **Subclause 30(2)** provides that Division 3 (surviving spouse benefit) and Division 4 (eligible children's pension) operate as if, at the time of the invalid's death, the invalid had been classified as class A and was receiving a commensurate invalidity pension.

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

93. **Clause 31** provides that, where an invalid's pension was suspended under **clause 47** at the time of their death because the invalid failed to submit to a medical examination or failed to provide information, Division 3 and 4 operate as if the pension had not been suspended.

PART 3 – BENEFITS FOR DEATH OF COVERED ADF MEMBER

Division 1 – Simplified outline of this Part

Clause 32: Simplified outline of this Part

94. **Clause 32** provides a simplified outline of this Part. The simplified outline is included to assist readers to understand the substantive provisions of the Part, but is not intended to be comprehensive. Readers should rely on the substantive provisions.

Division 2 – Surviving spouse’s benefit for death of a covered ADF member

Subdivision A – Lump sum benefit

Clause 33: Benefit for surviving spouse of covered ADF member who dies

95. **Subclause 33(1)** provides for a benefit payable to a surviving spouse (if any) of a covered ADF member (that is, the member dies in service).

96. **Subclause 33(2)** provides that the benefit is a payment of the death benefit lump sum, which is calculated using the formula:

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

97. However, the surviving spouse may choose to receive a benefit, either as a lump sum under this clause, or as a pension under Subdivision B.

EXAMPLE OF LUMP SUM BENEFIT

Jack joins the Air Force at age 20 and dies in service at age 30 years and 6 months. Jack’s final salary was \$84,000. Jack had a surviving spouse at death, Jill. Jill chose to take the death benefit as a lump sum. Jack’s prospective service to age 60 was 30 years (rounded down).

Jill’s surviving spouse lump sum benefit is \$630,000, calculated as follows:

$$30 \times \$84,000 = \$630,000$$

Subdivision B – Pension

Clause 34: Surviving spouse may choose to receive benefit as pension

98. **Subclause 34(1)** provides that a surviving spouse may choose to receive a death benefit as a pension. This choice must be made prior to receiving the death benefit as a lump sum. Once made, this choice may not be revoked.

99. Note 1 to the subclause provides that a pension is payable for the life of the spouse and a pension is payable to any eligible children who were wholly or substantially dependent on the spouse at the date of his/her death.

100. Note 2 to the subclause refers readers to **clause 55** which requires the choice to be in writing in a manner determined by CSC.

101. Note 3 to the subclause points out that the choice of a pension will not have effect if the subsequent pension is less than \$5,000, because a pension at this rate is automatically converted to a lump sum under **clause 44**.

102. **Subclause 34(2)** provides that, if a surviving spouse chooses to receive the death benefit as a pension, the relevant rate is:

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

EXAMPLE OF SURVIVING SPOUSE PENSION

Jack joins the Air Force at age 20 and dies in service at age 30. Jack's final salary was \$84,000. Jack had a surviving spouse at death, Jill. Jill chose to take the death benefit as a pension. Jack's prospective service to age 60 was 30 years. Jack and Jill had no children.

Jill's pension benefit is \$37,800 per annum, payable for life and indexed to upwards movements in CPI. The pension is calculated as follows:

$$30 \times \$84,000 \times 1.5\% = \$37,800 \text{ per annum}$$

103. **Subclause 34(3)** provides that, if there is more than one surviving spouse, CSC will determine to whom (and how much) the benefit under **subclause 34(2)** is payable.

104. **Subclause 34(4)** provides that the rate of pension payable under **subclause 34(2)** is increased for the period there are eligible children of the deceased covered ADF member. The rate of pension is increased by the spouse pension child supplement percentage set out in **clause 10**.

EXAMPLE OF SURVIVING SPOUSE PENSION WHERE THERE ARE ELIGIBLE CHILDREN

Jack joins the Air Force at age 20 and dies in service at age 30. Jack's final salary was \$84,000. Jack had a surviving spouse at death, Jill. Jill chose to take the death benefit as a pension. Jack's prospective service to age 60 was 30 years. Jack and Jill had three eligible children.

Jill's base surviving spouse benefit is \$37,800 per annum.

Because Jack and Jill had three eligible children, the base surviving spouse benefit is increased by 50% in line with the factors displayed in the table in **clause 10**.

Jill's surviving spouse benefit is \$56,700 per annum indexed to increase in the consumer price index, calculated as follows::

$$\$37,800 + (\$37,800 \times 50\%) = \$56,700$$

Jill will receive the extra amount on her base surviving spouse pension for as long as there are eligible children.

Two months after Jack's death, Jill discovers that she is pregnant with Jack's child. Eight months after Jack's death, the child is born. As a result, there are four eligible children for the purposes of calculating Jill's surviving spouse benefit.

However, the maximum number of children that count towards increases of the base surviving spouse benefit is three. As such, Jill is already receiving the highest rate of pension possible and her surviving spouse benefit remains at \$56,700 per annum (this example assumes no increases in CPI).

Five years after Jack's death, two of the eligible children cease full-time education. As such, they are no longer eligible children for the purposes of calculating the surviving spouse benefit. Therefore, Jill's surviving spouse benefit is recalculated in line with the factors displayed in the table in **clause 10**.

Jill's surviving spouse benefit is \$50,274 per annum (this example assumes no increases in CPI), calculated as follows:

$$\$37,800 + (\$37,800 \times 33\%) = \$50,274 \text{ per annum}$$

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

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

Clause 35: Lump sum payable to eligible children if no surviving spouse

105. **Subclause 35(1)** provides that, where a covered ADF member dies and there is no surviving spouse but there are eligible children, a lump sum benefit is payable to or for the eligible children.

106. **Subclause 35(2)** provides that a single death benefit lump sum is payable to or for all the eligible children. The death benefit lump sum is calculated using the formula:

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

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

Clause 36: Pension payable to eligible children dependant on surviving spouse who received pension then died

107. **Subclause 36(1)** provides that the section applies where a covered ADF member died:

- a. with a surviving spouse; and
- b. eligible children; and
- c. the surviving spouse chose to receive the death benefit as a pension; and
- d. the surviving spouse then died; and

- e. there were eligible children wholly or substantially dependent on the surviving spouse.

108. **Subclause 36(2)** provides that pension will be paid to or for the eligible children as a single pension. CSC will determine to whom the pension is payable (for example, to one of the children or to a guardian or to a legal personal representative or to a person appointed by the Court).

109. **Subclause 36(3)** provides that the pension is payable to or for those eligible children for the period that they are eligible children. The note explains that eligible children who are between the ages of 18 and 25 may cease to be eligible children whenever they are not in full-time education (for example, a pension would not be paid while an eligible child is on a “gap year”, but may be paid when full-time education resumes before the child turns 25)..

110. **Subclause 36(4)** provides that the rate of the pension payable to one or more eligible children is calculated using the formula:

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

111. CSC will determine to whom the pension is payable (for example, to one of the children or to a guardian or to a legal personal representative or to a person appointed by the Court).

112. **Subclause 36(5)** provides that where a lump sum benefit is payable (because of automatic commutation under **clause 44**, that is, the pension is less than \$5,000), no pension is payable under this clause.

EXAMPLE OF PENSION WHERE SURVIVING SPOUSE DIED

Jack joins the Air Force at age 20 and dies in service at age 30. Jack's final salary was \$84,000. Jack had a surviving spouse at death, Jill. Jill chose to take the death benefit as a pension. Jack's prospective service to age 60 was 30 years. Jack and Jill had three eligible children. Jill's base surviving spouse pension was \$37,800 per annum.

Two years after Jack's death, Jill also died. There were still three eligible children. The pension payable to or for the children is \$50,274 per annum, indexed in line with upward movements in CPI (this example assumes no increases in CPI), calculated using the eligible children pension percentage in clause 6 as follows:

$$\$37,800 \times 133\% = \$50,274 \text{ per annum}$$

Three years after Jack's death, one eligible child leaves full-time education. As such, she is no longer an eligible child. Therefore, there are two eligible children remaining for whom a pension is payable. The pension payable to or for the two remaining eligible children will be reduced according to the eligible children pension percentage. The pension will be \$44,226 per annum (this example

assumes no increases in CPI), calculated using the eligible children pension percentage in **clause 6** as follows:

$$\$37,800 \times 117\% = \$44,226 \text{ per annum}$$

113. **Clause 36(6)** provides that where a lump sum benefit is payable (because of automatic commutation under **clause 44**, that is, the pension is less than \$5,000), no pension is payable under this clause.

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

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

114. **Clause 37** provides for lump sum benefits payable on the death of a covered ADF member to that member’s beneficiaries or estate.

115. **Subclause 37(1)** provides that this clause applies where:

- a. an ADF member has died; and
- b. there is no surviving spouse; and
- c. there are no eligible children dependent on the covered ADF member.

116. **Subclause 37(2)** provides a benefit of the death benefit lump sum, calculated as:

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

117. The benefit will be paid to dependants who are nominated in the covered ADF member’s will who are not entitled to be paid a benefit as either a surviving spouse or eligible child and the covered ADF member notified CSC that these were the people he/she had nominated in his/her will to receive the death benefit lump sum. If there are no such persons, the death benefit lump sum is to be paid to the executor of the covered ADF member’s will or the administrator of the covered ADF member’s estate

PART 4 – GENERAL PROVISIONS ABOUT BENEFITS

Division 1 – Simplified outline of this Part

Clause 38: Simplified outline of this Part

118. **Clause 38** provides for a simplified outline of this Part. The simplified outline is included to assist readers to understand the substantive provisions of this Part, but is not intended to be comprehensive. Readers should rely on the substantive provisions.

Division 2 – Allocation of a benefit if more than one person entitled

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

119. **Subclause 39(1)** provides that the clause applies if a benefit is payable on the death of an invalid or covered ADF member to:

- a. each of 2 or more surviving spouses; or
- b. to or for all of 2 or more dependents who are nominated in the covered ADF member's will who are not entitled to be paid a benefit as either a surviving spouse or eligible child. A note to the subclause refers readers to **paragraph 37(2)(a)**.

120. **Subclause 39(2)** provides CSC is to determine:

- a. to whom a benefit is and is not to be paid (a benefit may be paid to more than one person); and
- b. the proportion of the benefit to be paid to each person.

121. **Subclause 39(3)** provides that if CSC makes a determination under **subclause 39(2)** in relation to surviving spouses of an invalid or covered ADF member, the total benefit must equal the benefit that would have been payable to a single surviving spouse.

122. **Subclause 39(4)** provides that the terms of this clause override the operation of any other clauses of the Act.

Division 3 – Payment of benefits

Clause 40: Pensions to be paid in fortnightly instalments

123. **Subclause 40(1)** provides that pensions payable under the Act are payable in fortnightly instalments.

124. **Subclause 40(2)** provides the amount of a fortnightly instalment is the sum of the daily amount of the pension, for each day in the fortnight that the pension is payable.

125. **Subclause 40(3)** provides the daily amount of a pension for a day is $\frac{1}{365}$ of the annual amount of the pension, rounded to the nearest cent (rounding half a cent upwards).

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

126. **Subclause 41(1) and 41(2)** provide that if, excluding the operation of this clause:

- a. a pension would be payable to a surviving spouse of an invalid or a covered ADF member; and
- b. the rate of the pension would be increased by the spouse pension child supplement percentage; and
- c. CSC considers it appropriate that a pension at the rate of part or all of that increase be paid to a person other than the surviving spouse for the welfare (which includes education and financial advantage) of one or more eligible children because the person may care for one or more of those children (for example, as a Court appointed guardian); then
- d. CSC may determine that a pension is payable to a specific person other than a surviving spouse.

127. The rate of a pension payable under this clause may not be more than the increase resulting from the spouse pension child supplement percentage.

128. The rate of the surviving spouse's pension will be reduced by the rate of pension paid to a specific person for the welfare of one or more eligible children.

129. The rate of a pension paid under this clause may be expressed as a proportion, including 100%, of the increase as a result of the spouse pension child supplement percentage.

130. **Subclause 41(3)** provides that the terms of this clause override the operation of any other clauses of the Act.

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

131. **Subclauses 42(1) and 42(2)** provides for the situation where CSC considers it appropriate to pay a benefit to a person other than the beneficiary specified under this Act (for example, without limiting CSC's decision, because the beneficiary is a child, is imprisoned or has a disability).

132. In that situation, CSC may determine that all, or a portion of the benefit, may be paid to a person other than the beneficiary. If all, or a portion of the benefit, is paid to a person other than the beneficiary then the benefit, or a portion of that benefit, is not payable to the beneficiary.

133. **Subclause 42(3)** provides that the terms of this clause override the operation of any other clauses of the Act.

Division 4 – Indexation of pension rates etc.

Clause 43: Indexation of factors affecting pension rates

134. **Subclause 43(1)** provides for the indexation on 1 January and 1 July of a rate that another clause of the Act requires to be indexed.

135. **Subclause 43(2)** provides that an amount is only indexed if the index number for the latest September (for 1 January indexation) or March (for 1 July indexation) is greater than the greatest index number for an earlier March or September quarter after 31 December 2015.

136. **Subclauses 43(3) and 43(4)** provide that the increased rate as a result of indexation is worked out by multiplying the previous indexed rate by an indexation factor (rounded to three decimal places) calculated using the formula:

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

137. **Subclause 43(5)** requires that only the most recent indexed numbers published for the most recently published index reference period for the Consumer Price Index published by the Australian Bureau of Statistics be considered. Any index numbers published in substitution of previously published index numbers are to be disregarded unless those substituted numbers are published to take account of changes in the index reference period.

EXAMPLE OF INDEXATION OF PENSION

The following example demonstrates how the indexation measures apply for the purposes of the definition of basic annual rate in **clause 4**.

Joe joins the Air Force at age 20 and is medically discharged at age 40 on 20 October 2016. At the date Joe is medically discharged, his salary (including service allowance) is \$110,000. Joe is classified as class A (that is, he has a 60% or more incapacity for civilian employment). Joe's basic annual rate of pension is calculated using this salary is as follows:

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

$$20 \times \$110,000 \times 2.2\% = \$48,400 \text{ per annum}$$

On 1 January 2017, the indexation measures in this Act are applied to Joe's salary. The latest index number on 1 January 2017 is 110.3. The old record index number is 108.7. The indexation factor is

$$\frac{110.3 - 108.7}{108.7} = 0.015$$

Joe's salary will increase by the indexation factor. Joe's new salary for calculating his basic annual rate of pension on 1 January 2017 will be:

$$\$110,000 + (\$110,000 \times 0.015) = \$111,650$$

Joe's new basic annual rate of pension will be \$49,126, calculated as follows:

$$20 \times \$111,650 \times 2.2\% = \$49,126 \text{ per annum}$$

The practical affect of the indexation measure is that Joe's basic annual rate of pension increases by 1.5%, or \$726, from 1 January 2017.

Division 5 – Lump sums payable instead of small pensions

Clause 44: Automatic conversion of small pensions to lump sums

138. **Clause 44** provides for the automatic conversion of small pensions to lump sums. It is included to make the ADF Cover scheme easier to administer. The administrative burden of providing a small pension is sufficient to justify the cost of paying out those small pensions as a one-off lump sum.

139. **Subclause 44(1)** provides that the clause applies if, on a particular day, the annual rate of a single pension payable under the Act is less than \$5,000 per annum or another greater rate prescribed by the rules (which may provide for the indexation of the \$5,000 minimum amount).

140. **Subclause 44(2)** provides that a pension ceases to be paid when it is converted to a lump sum.

141. **Subclause 44(3)** provides that a lump sum will be paid instead of the pension.

142. **Subclause 44(4)** specifies the conversion rate of the pension to lump sum as:

$$16.5 \times \begin{array}{l} \text{Annual rate of the pension on the conversion day,} \\ \text{subject to subsection (5), if relevant} \end{array}$$

EXAMPLE OF CONVERSION OF SMALL PENSION TO LUMP SUM

Mary is a 63 year old invalid receiving an invalidity pension of \$6,000 per annum. Mary dies, leaving behind a surviving spouse, Boris. Boris is entitled to a surviving spouse invalidity pension calculated at 67% of \$6,000. Since the annual rate of Boris's invalid's spouse pension would be less than \$5,000 ($67\% \times \$6,000 = \$4,020$), Boris's invalid's spouse pension will instead be converted into a lump sum.

Boris's lump sum will be \$66,330, calculated as follows:

$$\$4,020 \times 16.5 = \$66,330$$

143. **Subclause 44(5)** provides that if:

- a. a pension referred to in **subclause 44(1)** is a pension paid to a surviving spouse (whether of an invalid or a covered ADF member); and
- b. that pension is affected by the spouse pension child supplement percentage; then

the lump sum will be calculated as if the pension was not affected by the spouse pension child supplement percentage.

144. The reason for this is that increases in a surviving spouse's pension due to the spouse pension child supplement percentage are temporary. They are only paid for the period of time there are eligible children. As the lump sum is intended to compensate for no longer receiving a pension, only the permanent part of a surviving spouse's pension is used in the calculation.

Clause 45: Choice to receive small pension is ineffective

145. **Clause 45** provides that if a choice to receive a pension under this Act would result in that pension being under \$5,000 per annum, or another amount prescribed by the rules, then that choice is ineffective.

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

Clause 46: Withholding payment of benefit while required information is not given

146. **Subclause 46(1)** provides that, where CSC requires information to determine a benefit payable under this Act, CSC may require a person to give that information.

147. **Subclause 46(2)** provides that if the person does not give the information or arrange for the information to be given, then CSC may withhold the benefit until the information is provided.

148. The note under **subclause 46(2)** makes clear that if, after the information is given, CSC determines that a benefit was payable for the period of time the information was not provided, then CSC will pay the withheld benefit.

149. **Subclause 46(3)** provides that **subclause 46(2)** will have effect, despite Part 2 (benefits for incapacity of an invalid) and Part 3 (benefits for death of a covered ADF member) of the Act.

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

150. **Clause 47** sets out the circumstances in which CSC can suspend an invalid's pension.

151. **Subclause 47(1)** provides that CSC may require an invalid to submit to a medical examination or give CSC information about work that an invalid is undertaking. CSC must inform an invalid of this requirement in writing (the notice). The notice must inform an invalid of the consequences of not complying with the notice (**subclause 47(2)**) and contain a date by which an invalid must comply with the notice.

152. **Subclause 47(2)** provides that if an invalid fails to comply with the requirement in **subclause 47(1)** and CSC is not satisfied that there was a reasonable excuse for failing to comply, CSC may suspend that invalid's pension. The suspension takes effect from a date determined by CSC. That date may not be earlier than the day after the first notice required the invalid to take action. CSC must inform the invalid of the suspension in writing (the notice). The notice must inform the invalid of the effect of **subclauses 47(5) through (8)**.

153. **Subclause 47(3)** provides that an invalidity pension is not payable for the period for which it is suspended, despite the operation of Division 2 of Part 2 (which makes the pension payable).

154. **Subclause 47(4)** provides that CSC may revoke the suspension of an invalidity pension by written notice.

155. **Subclause 47(5)** provides that the invalid, or a person acting for them, may request CSC revoke the suspension. This request must be made in writing.

156. **Subclause 47(6)** where a person requests that CSC revoke the suspension, CSC must give the invalid another written notice that requires the invalid to submit to a medical examination or give CSC information about work that an invalid is undertaking. The notice must set out the effect of **subclauses 47(7) and 47(8)**.

157. **Subclause 47(7)** provides that if an invalid satisfies a condition of the notice under **subclause 47(6)** or if CSC is satisfied that there is a reasonable excuse for not satisfying the conditions of the notice, CSC must revoke the suspension.

158. **Subclause 47(8)** provides that if CSC does not revoke a suspension under **subclause 47(7)**, CSC must provide a written notice to the invalid.

Clause 48: Relationship between sections 46 and 47

159. **Clause 48** provides that, to avoid doubt, **clauses 46 and 47** do not limit each other.

Division 7 – Protection of benefits

Clause 49: Benefits are inalienable

160. **Subclause 49(1)** provides that benefits under this act are inalienable (that is, a person may not assign a benefit under this Act to any other person).

161. **Subclause 49(2)** provides that **clause 49** has effect subject to **clause 41** (payment of part of a pension to another person), **clause 42** (payment of a benefit to someone other than the beneficiary) and **subclause 61(3)** (recovery by deduction from benefits).

PART 5 – ADMINISTRATION AND FINANCE

Division 1 – Simplified outline of this Part

Clause 50: Simplified outline of this Part

162. **Clause 50** gives a simplified outline of this Part. The simplified outline is included to assist readers to understand the substantive provisions of the Part, but is not intended to be comprehensive. Readers should rely on the substantive provisions.

Division 2 – Administration

Subdivision A – Information

Clause 51: Department to give CSC information around time of medical discharge

163. **Clause 51** provides that if a covered ADF member is about to be, or has been, medically discharged under the age of 60, the Department must give CSC any information the Department has that would be relevant to determining the incapacity of the ADF member. The Department must give this information to CSC within two months before or after the date of discharge.

164. The note in this section refers to **clauses 46 and 47** which give CSC powers to request information.

165. The purpose of this clause is to give the Department a mechanism to provide medical or other information about an ADF member to CSC to enable CSC to determine a covered ADF member's entitlement to benefits under the Act. Giving this information to CSC could obviate the need for CSC to require the covered ADF member to be medically examined by contracted medical professionals (for which the Department would pay) so that CSC can determine a benefit.

166. If the information is given before the covered ADF member is medically discharged, then CSC will be in a position to determine whether further medical examination is required and if this is the case, can arrange for that examination to be undertaken by Departmental medical personnel. In all circumstances, the Department would generally seek a member's permission to provide the information to CSC.

167. The information that would be provided is appropriately limited for the purposes of determining an entitlement to invalidity benefits under this Act, with those receiving the personal information maintaining a legitimate interest in that information.

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

168. **Clause 52** provides that, where a covered ADF member under age 60 dies, the Department must give CSC any information the Department has on the member that would assist CSC to determine the benefit payable for the member's death.

169. The information that can be provided is appropriately limited for the purposes of determining an entitlement to invalidity benefits under the scheme, with those receiving the personal information maintaining a legitimate interest in that information.

Clause 53: CSC may rely on information given by the Department

170. **Subclause 53(1)** provides that CSC may presume that information provided to CSC by the Department about the salary or service of a covered ADF member (including the age of the member) is correct for the purposes of administering this Act.

171. **Subclause 53(2)** provides that a tribunal, authority or person empowered to review a decision of CSC is not bound by any such presumption made by CSC.

172. This clause is designed to reduce administrative burden and red tape. It ensures that CSC is not required to verify salary or service information provided to it by the Department. The clause is not intended to prevent CSC from verifying any information provided to it, if it wishes to do so.

Clause 54: Use and disclosure of personal information by CSC

173. **Clause 54** provides that CSC may use and disclose for the purposes of this Act (for which it is the administrator), information collected by it for the purposes of the *Australian Defence Force Superannuation Act 2015* or ADF Super (for which CSC is the trustee) and vice versa.

174. This clause allows CSC to utilise information gathered for ADF Super or ADF Cover between the two schemes. The reason for this is that the two schemes are linked and work in tandem with each other (one provides the superannuation arrangements and the other the "insured" benefits for death and total and permanent incapacity required under SIS legislation).

Subdivision B – Choices and notices

Clause 55: Way in which choices about benefits must be made

175. **Clause 55** provides that if a person makes a choice under the Act to receive a pension instead of a lump sum or vice versa, the choice must be in writing in a way determined by CSC and must be accompanied by any information CSC requires to give effect to the decision.

Clause 56: Notices may be given to or by agent

176. **Subclause 56(1)** provides that if CSC is required to or permitted to give a notice to a person under the Act, CSC may give the notice to an agent of that person.

177. **Subclause 56(2)** provides that if a person is required or permitted to give a notice to CSC under the Bill, an agent of that person may give the notice to CSC.

Subdivision C – Reconsideration of CSC decision

Clause 57: Reconsideration of CSC decisions by CSC

178. **Subclause 57(1)** provides that CSC may reconsider a decision made by CSC either under of its own initiative or at the request of a person who has been affected by the decision.

179. The note under **subclause 57(1)** makes clear that a decision made by a delegate or sub-delegate of CSC is a decision made by CSC for the purposes of **clause 57**.

180. **Subclause 57(2)** provides that CSC, when reconsidering its decision, must confirm the decision or vary the decision or set aside the decision and substitute a new decision.

181. The note under **subclause 31(2)** makes it clear that a person who is not satisfied with the reconsideration decision made by CSC is able to apply to the Superannuation Complaints Tribunal established under the *Superannuation (Resolution of Complaints) Act 1993* for further review of the decision.

Clause 58: Request for reconsideration by CSC

182. **Subclause 58(1)** provides that a person who is affected by a CSC decision made by CSC (or a delegate) may request CSC to reconsider that decision.

183. **Subclause 58(2)** provides that a reconsideration request must be in writing and must be given to CSC within 30 days (or such further time as CSC allows) of the person having knowledge of the decision. The request for review must set out the ground upon which the person is relying in seeking a review.

184. **Subclause 58(3)** provides that CSC must either refer a request for reconsideration to the Defence Force Case Assessment Panel (DFCAP) established under the DFRDB Act to make recommendations to CSC or to have DFCAP reconsider the decision or for CSC to reconsider the decision itself.

185. The note under **subclause 58(3)** explains that under the DFRDB Act there is a detailed explanation of how DFCAP performs its functions.

186. **Subclause 58(4)** provides that when making a decision on a requested reconsideration, CSC must take into consideration recommendations made by DFCAP. This does not limit the matters that CSC can take into account.

187. **Subclause 58(5)** provides that CSC must keep the person who requested the reconsideration informed of its progress and any delays.

188. **Subclause 58(6)** provides that CSC must give the person who requested the reconsideration, notice of the results along with reasons for the decision made. The notice and reasons must be made in writing.

Subdivision D – Delegation

Clause 59: CSC taken to have exercised power if delegate exercises power

189. **Clause 59** provides that where CSC has delegated or sub-delegated a power under section 36 of the *Government of Australia Government Superannuation Scheme Act 2011* to a person and that person has exercised that power, it is taken that CSC has exercised that power.

Division 3 – Finance

Clause 60: Appropriation for benefits

190. **Clause 60** provides that benefits are paid from an appropriation from the Consolidated Revenue Fund.

Clause 61: Recoverable Payments

191. **Clause 61** provides authority for the inadvertent overpayments of some benefits and for their recovery.

192. **Subclause 61(1)** provides that CSC may pay a benefit under the Act even though it does not have authority to make such a payment. The payment is referred to as a recoverable payment.

193. **Subclause 61(2)** provides that where a recoverable payment (or payments) has been made to or on behalf of a recipient, CSC may recover the payment on behalf of the Commonwealth.

194. **Subclause 61(3)** provides that where a debt is owed to the Commonwealth as a result of a recoverable payment, the CSC Board may determine a relevant amount to be recovered by deduction from the recipient's benefit.

Clause 62: Recoverable death payments

195. **Subclause 62(1)** provides for payments to be made up until CSC is notified of a benefit recipient's death.

196. **Subclause 62(2)** provides that payments made are taken to have been made to the deceased estate.

197. **Subclause 62(3)** provides that where payments have been made in the interim period, between the recipient's death and the notification, those amounts may be recoverable from the deceased's estate.

Clause 63: Reports about recoverable payments and recoverable death payments

198. **Subclause 63(1)** provides that CSC must publish (as the CSC Board sees fit) a report on the number and amount of recoverable payments and recoverable death payments that CSC was aware of during the reporting period. CSC must also publish the total number and amount of any payments made in the previous period that CSC has since become aware of.

199. **Subclause 63(2)** provides that the reporting period is a financial year unless a shorter period is prescribed in the rules.

200. **Subclause 63(3)** provides that a report is not required if CSC does not have knowledge of any recoverable payments or recoverable death payments.

201. **Subclause 63(4)** provides that the report is to be provided within 4 months of the end of the reporting period unless a lesser period is specified in the rules.

PART 6 – MISCELLANEOUS

Clause 64: Simplified outline of this part

202. **Clause 64** provides a simplified outline of this Part. The simplified outline is included to assist readers to understand the substantive provisions of the Part, but is not intended to be comprehensive. Readers should rely on the substantive provisions.

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

203. **Subclause 65(1)** provides that, to avoid doubt, the Act has effect subject to Part VIII B of the *Family Law Act 1975* which deals with splitting and temporarily withholding payments from a superannuation interest of a party to a marriage or de facto relationship that breaks down.

204. **Subclause 65(2)** provides that the rules may provide for CSC to pay a benefit for a non-member spouse as a result of a splitting agreement or splitting order.

205. **Subclause 65(3)** provides that, if a benefit is paid to a non-member spouse under the rules, then the benefit of a member is reduced accordingly. The terms of this subclause override the operation of any other clauses of the Act.

206. **Subclause 65(4)** provides that the rules may make provision for the purposes of **subclauses 65(2) and (3)** with reference to a decision of, or a method determined by, a Fellow or Accredited Member of the Institute of Actuaries of Australia.

207. **Subclause 65(5)** provides that the rules may include anything incidental or consequential on **subclauses 65(2), (3) or (4)**.

Clause 66: Rules

208. **Subclause 66(1)** provides that the Minister may, by way of legislative instrument, make rules prescribing matters in relation to this Act.

209. **Subclause 66(2)** provides that to avoid doubt, the rules may not do things as specified by **clause 66(2)**.

210. **Subclause 66(3)** provides that **paragraph 66(2)(d)** does not prevent the rules from making provision for a benefit in accordance with **subclause 65(2)**.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Defence Force Cover Bill 2015

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The Australian Defence Force Cover Bill 2015 (the Bill) gives effect to the Government's announcement to introduce new modern superannuation arrangements for people joining the Australian Defence Force (ADF) on and after 1 July 2016. A new superannuation scheme, to be known as the Australian Defence Force Superannuation Scheme or ADF Super, is being established to come into effect from this date. In conjunction with the introduction of ADF Super, a new statutory death and invalidity scheme, to be known as the Australian Defence Force Cover Scheme or ADF Cover, is being established to come into effect from this date.

The *Superannuation Guarantee Act 1992* provides that, in order for employer superannuation contributions to satisfy the choice of fund requirements, the relevant fund to which the contributions are paid must comply with various prescribed requirements, one of which applies to insurance in respect of death.

In addition, the core and ancillary purposes of the sole purpose test in the *Superannuation Industry (Supervision) Act 1993* (SIS Act) permit superannuation funds to offer a range of benefits to members, including insured benefits for particular risks, including for death and the total and permanent incapacity of a member. The SIS Act allows operating standards to be prescribed in relation to the kinds of benefits that must not be provided other than by taking out insurance, or insurance of a particular kind.

Until recently, funds could self-insure, but changes now require any insurance arrangements provided by the trustees of funds be supported by an insurance policy provided by an insurer. However, there is an exemption to this requirement for the trustees of any fund where the insured benefits are provided by, or their provision is guaranteed by, the Commonwealth Government or the government of a State or Territory.

ADF Cover is also being established to meet the requirement for insurance in ADF Super. From 1 July 2015, ADF Super members will be covered under this statutory scheme, as will members who could have been ADF Super members but for choosing another fund into which Defence's employer contributions are to be paid. The reason for this is that it is difficult for ADF members to obtain death and invalidity cover at a reasonable cost under group insurance arrangements.

There will be no contributions required for ADF Cover (either from Defence or those who are covered under the statutory scheme) as the benefits will be paid from the Consolidated Revenue under a specific appropriation. ADF Cover is

designed to be consistent with the death and invalidity benefits provided under the current Military Superannuation and Benefits Scheme (MSBS).

Human Rights Implications

The Bill engages the following rights:

- Article 7, International Covenant on Economic, Social and Cultural Rights (ICESCR), the right to just and favourable conditions of work;
- Article 9, ICESCR, the right to social security;
- Article 11, ICESCR, the right to an adequate standard of living;

The proposals promote the rights contained in article 7 (the right to just and favourable conditions of work), article 9 (the right to social security) and article 11 (the right to an adequate standard of living) of the ICESCR.

Conclusion: The Australian Defence Force Cover Bill is compatible with human rights. It advances the protection of human rights.