

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(Finance)

**SUPERANNUATION LEGISLATION AMENDMENT
BILL (NO. 1) 1995**

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1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(Finance)

A BILL

FOR

**An Act to amend certain Acts relating to superannuation,
and for related purposes**

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Superannuation Legislation Amendment Act (No. 1) 1995*.

Commencement

2.(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) The amendment made by item 160 in Schedule 2 is taken to have had effect at all times on and after 1 July 1976.

(3) The amendments made by items 5, 11, 28, 36, 38, 39, 43, 47, 54, 55, 57, 58, 59, 72, 94, 95, 97, 100, 101, 102, 105, 107, 120, 137 and 138, paragraph (b) of item 145 and items 149 and 161 in Schedule 2, and the amendments made by items 12 and 17 in Schedule 4, take effect on 1 July 1995.

(4) The amendments made by Schedule 3 take effect on 1 July 1995, immediately after the amendments in Schedule 2 that are referred to in subsection (3) take effect.

(5) The amendment made by Schedule 6 is taken to have come into effect on 23 June 1994.

Schedules

3.(1) The *Superannuation Act 1922* is amended in accordance with Schedule 1.

(2) The *Superannuation Act 1976* is amended in accordance with the applicable items in Schedule 2, and the other items in that Schedule have effect according to their terms.

(3) The *Superannuation Act 1976* is further amended in accordance with Schedule 3.

(4) The *Superannuation Act 1990* is amended in accordance with Schedules 4 and 5.

(5) The *Superannuation Legislation Amendment Act 1994* is amended in accordance with Schedule 6.

(6) The *Parliamentary Contributory Superannuation Act 1948* is amended in accordance with Schedule 7.

SCHEDULE 1

Subsection 3(1)

AMENDMENTS OF THE SUPERANNUATION ACT 1922

1. After subsection 119Q(1):

Insert:

“(1A) If:

- (a) employment (the ‘**declared employment**’) by a person has been declared (whether or not by reference to a class of persons) under subsection (1) to be public employment for the purposes of this Division; and
- (b) apart from this subsection, employment of persons generally, or of a class of persons, by that person would cease at a particular time to be public employment for the purposes of this Division;

the Minister may, by writing published in the *Gazette*, declare that a person, or a person included in a class of persons, who was employed in public employment for the purposes of this Division immediately before that time because of the declared employment continues to be so employed.

“(1B) A declaration under subsection (1) or (1A):

- (a) may be expressed to apply only in relation to the employment of a person included in a class of persons referred to in the declaration; and
- (b) may be expressed to apply only until a time stated in the declaration.”.

2. Subsection 119Q(2):

Omit “subsection (1)”, substitute “subsection (1) or (1A)”

SCHEDULE 2

Subsection 3(2)

AMENDMENTS OF THE SUPERANNUATION ACT 1976

1. Title

Omit “for persons employed by the Commonwealth, and for certain other persons, and for other purposes”, substitute “, known as the Commonwealth Superannuation Scheme, for people employed by the Commonwealth and for certain other people”.

2. Subsection 3(1):

Insert:

“**‘designated employer’** has the meaning given by section 3C;

‘exempt public sector superannuation scheme’ has the same meaning as in the SIS Act;

‘ISC’ means the Insurance and Superannuation Commissioner holding office under the *Insurance and Superannuation Commissioner Act 1987*;

‘legal personal representative’ has the same meaning as in the SIS Act;

‘PSS Board’ means the PSS Board established by Part 6 of the *Superannuation Act 1990*;

‘Public Sector Superannuation Scheme’ has the same meaning as in the *Superannuation Act 1990*;

‘regulated superannuation fund’ has the same meaning as in the SIS Act;

‘Rules for the administration of the Public Sector Superannuation Scheme’ means the rules for the administration of that scheme set out in the Schedule to the deed by which that scheme was established;

‘SIS Act’ means the *Superannuation Industry (Supervision) Act 1993* and, except in a reference to a particular provision of that Act, includes the regulations in force under that Act;”.

3. Subsection 3(1) (definition of “Superannuation (1990) Scheme”):

Omit.

4. Subsection 3(1) (definitions of “approved part-time employee”, “Board”, “deferred annuity”, “eligible roll-over fund”, “Fund” or “Superannuation Fund””, “minimum retiring age”, “period of contributory service” and “preservation fund”):

Omit, substitute:

“**‘approved part-time employee’** means:

- (a) a part-time employee included in a class of part-time employees declared by the Minister, by notice published in the *Gazette*, to be an approved class of part-time employees for the purposes of this Act;
- or

SCHEDULE 2—continued

(b) a person who:

(i) is the holder of a statutory office; and

(ii) performs the duties of the office on a part-time basis;

and is included in a class of such persons declared by the Minister, by notice published in the *Gazette*, to be an approved class of part-time employees for the purposes of this Act;

‘Board’ means the CSS Board established under section 27A;

‘deferred annuity’ has the same meaning as in the SIS Act;

‘eligible roll-over fund’ means a fund in respect of which a declaration by the ISC under section 243 of the SIS Act is in force;

‘Fund’ or **‘Superannuation Fund’** means the CSS Fund established by this Act;

‘minimum retiring age’ means:

(a) in relation to a person who is an eligible employee:

(i) unless subparagraph (ii) applies—the age of 55 years; or

(ii) if another age is applicable under the terms and conditions of employment or appointment of the person—the other age; or

(b) in relation to a person who is no longer an eligible employee:

(i) unless subparagraph (ii) applies—the age of 55 years; or

(ii) if another age was applicable under the terms and conditions of employment or appointment of the person immediately before the person last ceased to be an eligible employee—the other age;

‘period of contributory service’, in relation to a person who has ceased to be an eligible employee, means a period equal to the period (the **‘period of actual service’**) beginning on the person’s first day of service and ending on the person’s last day of service (less any part of the period of actual service that is:

(a) a period of leave of absence in respect of which subsection 51(1) applies to the person; or

(b) a period of absence from duty in respect of which subsection 51A(1) of the *Superannuation Act 1976* as in force before 1 July 1990 applies to the person; or

(c) a period that is taken, under subsection 51A(5) of the *Superannuation Act 1976* as in force on and after 1 July 1990, to be a non-contributory period of service for the person; or

(d) a period in respect of which the person was not required or permitted to pay contributions because of subsection 3(3); or

SCHEDULE 2—continued

(e) a period in respect of which benefits did not accrue to the person because of section 55A);

together with, if the person had previously ceased to be an eligible employee on an occasion earlier than his or her first day of service, any period that, under section 8, is to be added to his or her period of contributory service; ‘**preservation fund**’ has the meaning given by section 3B;”.

5. Subsection 3(1) (definition of “contribution day”):

After “means” insert “, subject to section 3A,”.

6. Subsection 3(1) (definition of “eligible employee”):

(a) Omit from paragraph (c) “, 12”.

(b) Add at the end of subparagraph (e)(i) “or”.

(c) Omit from subparagraph (e)(ii) “or”.

(d) Omit subparagraph (e)(iii).

7. Subsection 3(1) (definition of “pensioner”):

Omit “Part III and”.

8. After subsection 3(1A):

Insert:

“(1B) Regulations for the purposes of paragraph (j) of the definition of ‘eligible employee’ in subsection (1) are taken not to have applied, or not to apply, to a person at a particular time merely because the person was or is entitled at that time to superannuation or retirement benefits that were or are supplementary to the benefits provided by this Act if the provision of the first-mentioned benefits was or is authorised at that time:

(a) if that time was before 14 December 1988—under section 167A of the *Superannuation Act 1976* as in force at that time; or

(b) if that time was on or after 14 December 1988 and before 1 July 1990—under section 153AB of the *Superannuation Act 1976* as in force at that time; or

(c) if that time was or is on or after 1 July 1990—under the *Superannuation Benefits (Supervisory Mechanisms) Act 1990*.

“(1C) For the purposes of this Act, to remove any doubt:

(a) a payment of a pension or benefit is taken to be permitted under the SIS Act if:

(i) the payment is permitted by that Act as modified under section 332 of that Act; or

(ii) the payment is authorised by an exemption granted by the Commissioner under that Act; and

SCHEDULE 2—continued

- (b) a benefit is taken to be dealt with in accordance with the SIS Act if:
- (i) it is dealt with in accordance with that Act as modified under section 332 of that Act; or
 - (ii) it is dealt with in accordance with an exemption granted by the Commissioner under that Act.”.

9. Subsection 3(3):

Omit, substitute:

“(3) If a person ceases to be an eligible employee and, immediately after so ceasing, again becomes an eligible employee:

- (a) the person is taken, for the purposes of this Act, other than paragraph (b), not to have so ceased; but
- (b) the person is not required or permitted to pay contributions in respect of the period between the time when the person ceased to be an eligible employee and the time when the person again becomes an eligible employee.”.

10. After subsection 3(5):

Insert:

“(5AA) For the purposes of this Act, a person who was at any time before the commencement of this subsection, or is, a member of the Australian Capital Territory Fire Brigade (other than the Fire Commissioner or the Deputy Fire Commissioner) pursuant to an appointment made under the *Fire Brigade (Administration) Act 1974* of the Australian Capital Territory is taken:

- (a) if the person was appointed, and ceased to hold office under the appointment, before 11 May 1989—to have been employed by the Commonwealth at all times from the time of his or her appointment or the commencement of this Act, whichever was the later, until the time when he or she ceased to hold office under the appointment; or
- (b) if the person was appointed before 11 May 1989 and did not cease to hold office under the appointment before that day:
 - (i) to have been employed by the Commonwealth at all times from the time of his or her appointment or the commencement of this Act, whichever was the later, until the time immediately before that day; and
 - (ii) to have been or to be employed by the Australian Capital Territory at all times on and after that day until he or she ceased or ceases to hold office under the appointment; or

SCHEDULE 2—continued

- (c) if the person was appointed on or after 11 May 1989—to have been or to be employed by the Australian Capital Territory at all times from and including the time of his or her appointment until he or she ceased or ceases to hold office under the appointment.”.

11. After section 3:

Insert:

Variation of contribution days for certain employees

“3A.(1) If an eligible employee is paid remuneration in respect of his or her employment otherwise than in respect of fortnights ending on the day before a day that, apart from this section, would be a contribution day:

- (a) the Board and the designated employer may agree in writing that this Act is to apply in relation to the employee as if references to contribution days were references to such days as are stated in, or determined in accordance with, the agreement; and
- (b) if such an agreement is made:
- (i) the agreement may provide that this Act is to apply in relation to the employee as if references to a fortnight were references to such period as is stated in, or determined in accordance with, the agreement; and
- (ii) if the agreement provides as mentioned in subparagraph (i), this Act applies in relation to the employee as if cognate expressions (such as ‘fortnightly’) were construed accordingly.

“(2) An agreement made under subsection (1) has effect according to its terms.

“(3) If an agreement is in force under subsection (1) in relation to an eligible employee, the Board may, having regard to this Act and the need to ensure equity between eligible employees, make any adjustments that it thinks appropriate in respect of the calculation and payment of contributions and benefits under this Act in respect of that employee.

Preservation fund

“3B. A fund is a preservation fund for the purposes of this Act if any benefits that are transferred to it are preserved in accordance with:

- (a) standards prescribed by regulations made for the purposes of a provision of the *Superannuation Entities (Taxation) Act 1987*, as that provision:
- (i) applies to a year of income of a fund earlier than the 1994-95 year of income; or

SCHEDULE 2—continued

- (ii) continues to apply, despite its repeal, because of the *Occupational Superannuation Standards Amendment Act 1993*; or
- (b) standards prescribed by the SIS Act.

Designated employers

“3C.(1) A reference in this Act to the designated employer of an eligible employee is a reference to:

- (a) if the employee is a permanent employee or temporary employee but is not an LWOP employee or employed by an approved authority:
 - (i) if the remuneration in respect of his or her employment is paid wholly or mainly out of money appropriated by an annual Appropriation Act—the Department in respect of which the money is appropriated; or
 - (ii) if the remuneration in respect of his or her employment is paid wholly or mainly out of money appropriated by an Act other than an annual Appropriation Act—a Department determined by the Minister; or
- (b) if the employee is the holder of a statutory office but is not an LWOP employee:
 - (i) if the remuneration in respect of the office is paid by an approved authority—the Authority; or
 - (ii) if subparagraph (i) does not apply—a Department or person determined by the Minister; or
- (c) if the employee is employed by an approved authority but is not an LWOP employee—the authority; or
- (d) otherwise—a person determined by the Minister.

“(2) In this section:

‘Department’ means:

- (a) a Department of State; or
- (b) a Department of the Parliament; or
- (c) a branch or part of the Australian Public Service in relation to which a person has, under an Act, the powers of, or exercisable by, the Secretary of a Department of the Australian Public Service;

‘LWOP employee’ means an eligible employee who:

- (a) is on leave of absence without pay for a period in respect of which the Board has directed, for the purposes of subsection 51(1) of the *Superannuation Act 1976* as in force immediately before the commencement of the *Superannuation Legislation Amendment Act 1994*, that the subsection is not to apply; or

SCHEDULE 2—continued

- (b) is on leave of absence for a period that:
 - (i) is more than 12 weeks; and
 - (ii) is an excluded period of leave of absence for the purposes of subsection 51(1); or
- (c) is a person to whom section 51A applies and is making contributions in accordance with an election made under subsection (3) of that section.”.

12. Subsection 5(3B):

After “specified by the” insert “Commissioner or the”.

13. Subsection 5(3C):

After “specified by the” insert “Commissioner or the”.

14. Paragraph 8B(3)(d):

Omit “the Commissioner’s opinion”, substitute “the Board’s opinion”.

15. After subsection 14A(1B):

Insert:

“(1C) A person is not, and is taken never to have been, regarded as a person to whom this section does not or did not apply at a particular time merely because the person is or was entitled at that time to superannuation or retirement benefits that are or were supplementary to the benefits provided by this Act if the provision of the first-mentioned benefits is or was authorised at that time:

- (a) if that time was before 14 December 1988—under section 167A of the *Superannuation Act 1976* as in force at that time; or
- (b) if that time was on or after 14 December 1988 and before 1 July 1990—under section 153AB of the *Superannuation Act 1976* as in force at that time; or
- (c) if that time was or is on or after 1 July 1990—under the *Superannuation Benefits (Supervisory Mechanisms) Act 1990*.”.

16. Paragraph 14A(6)(b):

Omit “his or her accumulated contributions”, substitute “the person’s accumulated contributions and the Fund accumulated employer contributions (if any) in respect of the person”.

17. Subsection 14A(6):

After “those accumulated contributions” insert “and those Fund accumulated employer contributions (if any)”.

Note: The heading to section 14A is altered by adding at the end “etc.”.

SCHEDULE 2—continued

18. Subsection 16(4):

Omit “he”, substitute “it”.

19. Subsection 16(8):

Omit “he considers”, substitute “it considers”.

20. Paragraph 16AA(3)(b):

Omit “he or she”, substitute “it”.

21. Subsection 16AA(3):

Omit “in the Commissioner’s opinion”, substitute “in the Board’s opinion”.

22. Subsection 16AA(4):

Omit “he or she”, substitute “it”.

23. Subsection 16AA(6):

Omit “he or she” (wherever occurring), substitute “it”.

24. Subsection 16AB(5):

Omit “he or she”, substitute “it”.

25. Paragraph 16AB(5)(a):

Omit “he or she”, substitute “it”.

26. Paragraph 16AD(2)(b):

Omit “his or her”, substitute “its”.

27. Section 16A:

Omit “*Public Service Act 1922*” (wherever occurring), substitute “Public Service Act”.

28. Subsection 17(4):

Omit.

29. Subsection 21(1):

Omit “*Public Service Act 1922*”, substitute “Public Service Act”.

30. Heading to Part IIA:

Omit, substitute:

“PART IIA—CSS BOARD”.

SCHEDULE 2—continued

31. Section 27A:

Omit “Commonwealth Superannuation Board of Trustees No. 2”, substitute “CSS Board”.

32. Paragraph 27C(1)(b):

Add at the end “other than section 154”.

33. Section 27E (definition of “CSB No. 1”):

Omit.

34. Section 27E:

Insert:

“‘disqualified person’ has the same meaning as in Part 15 of the SIS Act.”.

35. Paragraph 27F(1)(a):

Omit “CSB No. 1”, substitute “the PSS Board”.

36. After subsection 27F(1):

Insert:

“(1A) A disqualified person is not eligible for appointment as one of the members referred to in paragraph (1)(b).”.

37. Section 27G:

Omit “CSB No. 1”, substitute “the PSS Board”.

38. After subsection 27H(1):

Insert:

“(1A) A disqualified person is not eligible for appointment to act as an appointed member.

“(1B) If the person appointed to act as an appointed member becomes a disqualified person, the appointment of the person thereupon terminates.”.

39. Section 27M:

Add at the end:

“(5) If an appointed member becomes a disqualified person, then, despite any other provision of this Act, the appointment of the member thereupon terminates.”.

40. Subsection 27N(8) (definition of “Chairperson of the Board”):

Omit “CSB No. 1”, substitute “the PSS Board”.

SCHEDULE 2—continued

41 Subsection 27N(8) (definition of “member”):

Omit “CSB No. 1”, substitute “the PSS Board”.

42. Section 27Q:

Repeal, substitute:

Delegation by Board

“27Q. The Board may delegate to:

- (a) a member of the Board; or
- (b) the Commissioner; or
- (c) a member of the staff referred to in section 26; or
- (d) an officer of the Department; or
- (e) any other person who performs duties in connection with the administration of this Act;

all or any of its powers under this Act or the regulations except its power to reconsider its own decisions or decisions made by its delegates.”.

43 Subsection 27R(3):

Omit, substitute:

“(3) Any money becoming payable by the Board in respect of an action, liability, claim or demand is to be paid out of the Fund.

“(4) If an amount is paid out of the Fund under subsection (3), an equivalent amount is to be paid to the Fund out of the Consolidated Revenue Fund, which is appropriated accordingly.”.

44. Heading to Part III:

Omit, substitute:

“PART III—CSS FUND”.

45. Section 40:

Omit “Commonwealth Superannuation Fund No. 2”, substitute “CSS Fund”.

46. Subsection 41(3):

Omit “*Superannuation Industry (Supervision) Act 1993*”, substitute “SIS Act”.

47. Before section 45:

Insert in Part IV:

Payment of contributions to be subject to SIS Act

“45A. Despite any other provision of this Act, an eligible employee is not entitled or permitted to pay contributions if, under the SIS Act, the Fund is not permitted to receive those contributions.”.

SCHEDULE 2—continued

48. Subsection 45(1):

Before “sections” insert “subsection 3(3) and”.

49. Subparagraphs 47(1)(b)(i) and (ii):

Omit, substitute:

- “(i) there had not been any decrease in his or her annual rate of salary during the period beginning immediately after the last day on which that highest annual rate of salary was payable to him or her and ending on the relevant anniversary; and
- (ii) account were taken of any generally-applying increase (including an increase resulting from the process of work-place bargaining) that would have been applied to his or her annual rate of salary during that period, other than an excluded increase;”.

50. Subsection 47(1):

Add at the end (but not as part of paragraph (b)):

“For the purposes of subparagraph (b)(ii), an **excluded increase** is an increase that falls within either or both of the following paragraphs:

- (c) an increase resulting from the employee’s progressing to a higher level of salary within a graduated range of salaries applicable to the office held by the employee or the employment in which the employee was employed;
- (d) any allowance (including an allowance in the nature of salary such as Senior Officer allowance) or penalty payment (including a payment in the nature of salary such as shift allowance) that was not included in the employee’s annual rate of salary when the decrease occurred.”.

51. Subparagraphs 47(3)(d)(i) and (ii):

Omit, substitute:

- “(i) there had not been any decrease in his or her annual rate of salary during the period beginning immediately after the last day on which that highest annual rate of salary was payable to him or her and ending on the relevant anniversary; and
- (ii) account were taken of any generally-applying increase (including an increase resulting from the process of work-place bargaining) that would have been applied to his or her annual rate of salary during that period, other than an excluded increase;”.

52. Paragraph 47(3)(d):

Omit “highest annual rate salary”, substitute “highest annual rate of salary”.

SCHEDULE 2—continued

53. Subsection 47(3):

Add at the end (but not as part of paragraph (d)):

“For the purposes of subparagraph (d)(ii), an **excluded increase** is an increase that falls within either or both of the following paragraphs:

- (e) an increase resulting from the employee’s progressing to a higher level of salary within a graduated range of salaries applicable to the office held by the employee or the employment in which the employee was employed;
- (f) any allowance (including an allowance in the nature of salary such as Senior Officer allowance) or penalty payment (including a payment in the nature of salary such as shift allowance) that was not included in the employee’s annual rate of salary when the decrease occurred.”.

54. Section 48:

Repeal, substitute:

Supplementary contributions

“48. An eligible employee may, on any contribution day, pay a supplementary contribution but, except as provided by section 185, the supplementary contribution must not be more than the basic contribution payable by the employee on that day.”.

55. Sections 49 and 50:

Repeal.

56. After section 50:

Insert:

Deductions of contributions by designated employer

“50A.(1) If the designated employer of an eligible employee deducts a fortnightly basic contribution or a supplementary contribution from the employee’s salary:

- (a) the employer is to pay the amount deducted to the Board; and
- (b) if an amount deducted is not paid to the Board on the day on which it is deducted and the Board directs that this paragraph is to apply in relation to the amount—the employer is to pay to the Board interest on the amount in respect of the period beginning on the day on which the amount is deducted and ending on the day immediately before the day on which the amount is paid.

“(2) The Board is to pay to the Fund any interest paid to the Board under paragraph (1)(b).”.

SCHEDULE 2—continued

57. Subsection 51(2):

Omit “subject to subsection (2B)”, substitute “subject to subsections (2AA) and (2B)”.

58. Paragraphs 51(2)(b) and (c):

Omit, substitute:

“(b) a period of sick leave without pay;”.

59. After subsection 51(2):

Insert:

“(2AA) Subsection (2) does not apply in respect of a period, or a part of a period, of leave of absence occurring after the commencement of this subsection in respect of which the person is, because of section 45A, not entitled to pay contributions.”.

60. Subsection 51(2B):

After “productivity employee” insert “within the meaning of Part VIA”.

61. Subsection 51(2BB) (definition of “approved organisation”):

Omit from paragraph (a) “Superannuation (1990) Scheme”, substitute “Public Sector Superannuation Scheme”.

62. Subsection 53(3):

Omit “him”, substitute “it”.

63. Section 54A (definitions of “Comcare” and “compensation leave”):

Omit “*Commonwealth Employees’ Rehabilitation and Compensation Act 1988*”, substitute “*Safety, Rehabilitation and Compensation Act 1988*”.

64. Section 54D (definition of “employee”):

Omit “*Commonwealth Employees’ Rehabilitation and Compensation Act 1988*”, substitute “*Safety, Rehabilitation and Compensation Act 1988*”.

65. Section 54D (definition of “licensed administering authority”):

Omit, substitute:

“‘**licensed administering authority**’ means a Commonwealth authority that holds a Class 2 Licence or a Class 3 Licence under Part VIIIA, or a corporation that holds a Class B Licence under Part VIIIB, of the *Safety, Rehabilitation and Compensation Act 1988*;”.

66. Section 54G:

Omit “*Commonwealth Employees’ Rehabilitation and Compensation Act 1988*”, substitute “*Safety, Rehabilitation and Compensation Act 1988*”.

SCHEDULE 2—continued

67. Paragraphs 54JA(1)(c) and (d):

Omit, substitute:

“(c) for the purposes of a provision of section 138 gives consideration to whether a person has become totally and permanently incapacitated within the meaning of Part IVA;”.

68. Subsection 54JA(6):

Omit “*Commonwealth Employees’ Rehabilitation and Compensation Act 1988*”, substitute “*Safety, Rehabilitation and Compensation Act 1988*”.

69. Section 54K:

Omit “Superannuation (1990) Scheme”, substitute “Public Sector Superannuation Scheme”.

Note: The heading to section 54K is altered by omitting “**Superannuation (1990) Scheme**” and substituting “**Public Sector Superannuation Scheme**”.

70. Subsection 54L(1):

Omit “Superannuation (1990) Scheme”, substitute “Public Sector Superannuation Scheme”.

71. Paragraph 54ZA(c):

Omit “Superannuation (1990) Scheme”, substitute “Public Sector Superannuation Scheme”.

72. Before Division 1 of Part V:

Insert in Part V:

“Division 1A—Application of SIS Act

Accrual of benefits to be subject to SIS Act

“55A. Despite any other provision of this Act, benefits do not accrue to an eligible employee if, under the SIS Act, the accrual of those benefits is not permitted.”.

73. Paragraph 58(2)(b):

Omit, substitute:

“(b) on or after reaching the person’s minimum retiring age but before reaching the age of 60 years, the person ceases to be an eligible employee for any reason other than death or involuntary retirement;”.

74. Subparagraph 58A(1)(c)(ii):

Omit “57B(d) or (e)”, substitute “57B(1)(d) or (e)”.

SCHEDULE 2—continued

75. Subparagraphs 58A(6)(a)(i) and (ii):

After “involuntarily” insert “for the purposes of this Act”.

76. Subparagraph 58B(1)(c)(iii):

Omit “*Public Service Act 1922*”, substitute “Public Service Act”.

77. Subparagraph 58B(1)(c)(iv):

Omit “57B(d) or (e)”, substitute “57B(1)(d) or (e)”.

78. Sub-subparagraph 58B(1)(c)(v)(B):

Omit “*Public Service Act 1922*”, substitute “Public Service Act”.

79. Subparagraphs 58B(6)(a)(i) and (ii):

After “involuntarily” insert “for the purposes of this Act”.

80. Subsections 62(2) and (2A):

Omit, substitute:

“(2) Subject to section 62B, if a person who ceases to be an eligible employee before 1 July 2000 makes an election under subsection (1), the person is entitled, in lieu of pension and lump sum benefit to which, if the election had not been made, the person would be entitled under section 55 or 59, to payment of:

(a) if paragraph (b) does not apply, a lump sum benefit equal to the sum of:

(i) 3.5 times the amount of the person’s accumulated basic contributions; and

(ii) the amount of the person’s accumulated supplementary contributions (if any); or

(b) if the person had, at any time before ceasing to be an eligible employee, received a partial invalidity pension, a lump sum benefit equal to the sum of:

(i) the amount worked out using the formula:

Actual contributions + (Notional contributions × 2.5); and

(ii) the amount of the person’s accumulated supplementary contributions (if any).

“(2A) Subject to section 62B, if a person who ceases to be an eligible employee on or after 1 July 2000 makes an election under subsection (1), subsection (2B) or (2C) has effect.

“(2B) If the person has reached the age of 55 years at the time when he or she ceases to be an eligible employee and provides the Board with a statement to the effect that he or she has retired from the workforce upon so

SCHEDULE 2—continued

ceasing, the person is entitled, in lieu of pension and lump sum benefit to which, if the election had not been made, the person would be entitled under section 55 or 59, to payment of:

- (a) if paragraph (b) does not apply, a lump sum benefit equal to the sum of:
 - (i) 3.5 times the amount of the person's accumulated basic contributions; and
 - (ii) the amount of the person's accumulated supplementary contributions (if any); or
- (b) if the person had, at any time before ceasing to be an eligible employee, received a partial invalidity pension, a lump sum benefit equal to the sum of:
 - (i) the amount worked out using the formula:
$$\text{Actual contributions} + (\text{Notional contributions} \times 2.5);$$
 and
 - (ii) the amount of the person's accumulated supplementary contributions (if any).

“(2C) If the person has not reached the age of 55 years at the time when he or she ceases to be an eligible employee or has not provided the Board with a statement to the effect that he or she has retired from the workforce upon so ceasing, the person is entitled, in lieu of pension and lump sum benefit to which, if the election had not been made, the person would be entitled under section 55 or 59:

- (a) to have an amount equal to the lump sum benefit mentioned in subsection (2B) paid into a preservation fund nominated by the person or applied to the purchase of a deferred annuity nominated by the person; or
- (b) to payment of an amount equal to the amount of the person's accumulated contributions and to have an amount equal to the balance of the lump sum benefit mentioned in subsection (2B) paid into a preservation fund nominated by the person or applied to the purchase of a deferred annuity nominated by the person.

“(2D) In this section:

‘**Actual contributions**’, in relation to a person, means the person's accumulated basic contributions;

‘**Notional contributions**’, in relation to a person, means the amount that would have been the person's accumulated basic contributions if, during the period in respect of which partial invalidity pension was paid, the person's basic contributions had been paid at the rate at which they would have been paid if:

SCHEDULE 2—continued

- (a) in respect of a partial invalidity pension paid under section 77—the person’s annual rate of salary on the day on which the person again became an eligible employee had been the same as the annual rate of the person’s retirement salary for the purposes of that section; or
- (b) in respect of a partial invalidity pension paid under section 78—the person’s annual rate of salary had not decreased as mentioned in that section.”.

81. Subsection 62B(4) (definition of “GBPROD”):

Before “Board” insert “Commissioner or the”.

82. Section 76:

Add at the end:

“(3) If:

- (a) a person’s entitlement to an invalidity pension has, whether before or after the commencement of this subsection, been cancelled under subsection (1) upon the person’s becoming an eligible employee; and
- (b) the person so became an eligible employee as a result of having been appointed to an office or position on probation; and
- (c) after that commencement the person ceases to be an eligible employee before attaining the person’s maximum retiring age; and
- (d) the person so ceased to be an eligible employee as a result of the appointment not being confirmed because the person had a physical or mental condition;

the person is entitled to invalidity pension, and subsection (2) applies, for the purpose of calculating the annual rate of that pension, as if the person had so ceased to be an eligible employee by reason of retirement on the ground of invalidity.”.

83. Paragraph 77(2)(b):

Omit “his discretion”, substitute “its discretion”.

84. Subsection 78(1):

Omit “Where”, substitute “Subject to section 78A, if”.

85 Subparagraph 78(2)(a)(ii):

Omit “his discretion”, substitute “its discretion”.

86. Subparagraph 78(2)(b)(iv):

Omit “his discretion”, substitute “its discretion”.

87. After section 78:

Insert:

SCHEDULE 2—continued

Partial invalidity pension not payable in certain circumstances

“78A.(1) A partial invalidity pension, or an increase in the rate of such a pension, is not payable to a person under section 78 if the person is entitled to compensation under the *Safety, Rehabilitation and Compensation Act 1988*, or under any other law of the Commonwealth, or any law of a State or Territory, providing for compensation for an employee who suffers injury or disease arising out of, or in the course of, his or her employment, in respect of the physical or mental incapacity that would, apart from this subsection, give rise to the entitlement to the pension or to the increase, as the case may be.

“(2) If a person was entitled to a partial invalidity pension immediately before the commencement of this section, subsection (1) does not apply to the pension as payable immediately before that day and applies to an increase in the rate of the pension on or after that day only to the extent to which the increase results from a decrease in the annual rate of salary of the person occurring on or after that day.”.

88. Subsection 99(1):

Omit “his discretion”, substitute “its discretion”.

89. Section 110A (definitions of “Department”, “designated employer”, “LWOP employee” and “preservation fund”):

Omit.

90. Subsection 110H(2):

Omit, substitute:

“(2) A productivity contribution in respect of a productivity employee is not payable in respect of a fortnight unless:

- (a) a basic contribution is payable by the employee for the fortnight; or
- (b) if paragraph (a) does not apply—the productivity contribution is required to be paid in respect of the employee by an agreement certified, or an award made, by an industrial authority.

“(2A) If a basic contribution is payable by a productivity employee for a fortnight, the productivity contribution in respect of the employee for the fortnight is payable on the contribution day on which the basic contribution is payable.”.

91. Paragraph 110Q(1)(e):

Before “Board” insert “Commissioner or the”.

92. Subsection 110Q(1A):

Before “Board” (first occurring) insert “Commissioner or the”.

SCHEDULE 2—continued

93. Subparagraph 110R(4A)(d)(i):

Omit “by preserved”, substitute “be preserved”.

94. Subsection 110R(7):

Omit, substitute:

“(7) Where paragraph (4)(d) or (4A)(d) applies:

- (a) if the Board is satisfied that the person intends to leave Australia permanently—the benefit may be paid to the person; or
- (b) if the ISC has determined under the SIS Act that the whole or a part of the benefit may be paid to the person because the person is suffering severe financial hardship—the benefit, or that part of the benefit, as the case may be, may be paid to the person.”.

95. Subsection 110S(2):

Omit “personal representatives or to such person or persons (if any) as the Board determines”, substitute “legal personal representative or, if no legal personal representative can be found, to any individual or individuals that the Board determines”.

96. Subsection 110SE(4) (definition of “GBPROD”):

Before “Board” insert “Commissioner or the”.

97. Paragraph 110SJ(b):

Omit “personal representative of the person or such other person or persons (if any) as the Board directs”, substitute “person’s legal personal representative or, if no legal personal representative can be found, to any individual or individuals that the Board determines”.

98. Paragraphs 110TC(2)(c) and (d):

Omit, substitute:

“(c) account were taken of any generally-applying increase (including an increase resulting from the process of work-place bargaining) in annual rate of salary that would have occurred had the person continued to be an eligible employee and continued to occupy that office or position other, than an excluded increase.”.

99. Section 110TC:

Add at the end:

“(3) For the purposes of paragraph (2)(c), an excluded increase is an increase that falls within either or both of the following paragraphs:

- (a) an increase resulting from the person’s progressing to a higher level of salary within a graduated range of salaries applicable to the office or position held by the person;

SCHEDULE 2—continued

- (b) any allowance (including an allowance in the nature of salary such as Senior Officer allowance) or penalty payment (including a payment in the nature of salary such as shift allowance) that was not included in the person's final annual rate of salary when the person ceased to be an eligible employee.”.

100. Before section 111:

Insert in Part VII:

Relationship between this Act and SIS Act

“111A.(1) If, apart from this section, a benefit would be payable in cash to a person under this Act but, under the SIS Act, the benefit, or a part of the benefit, is not permitted to be paid in cash to the person, then, despite any other provision of this Act, the benefit, or the part of the benefit, as the case may be, is not to be paid in cash to the person and the following provisions of this section apply.

“(2) If the benefit or the part of the benefit consists only of a lump sum, the benefit must:

- (a) be preserved in a preservation fund nominated by the person or applied to the purchase of a deferred annuity nominated by the person; or
- (b) if, within 90 days after the day on which, apart from this section, the benefit would have been payable in cash to the person, the person fails to make a nomination—be paid, for the benefit of the person, to an eligible roll-over fund nominated by the Board.

“(3) If the benefit or the part of the benefit includes a pension that would have been payable under section 55 or 59, Part VIB applies as if payment of the benefit had been postponed under that Part.

“(4) If the benefit would have been payable under Division 3 of Part IX, deferred benefits continue to be applicable in respect of the person until:

- (a) the 65th anniversary of the person's birth; or
- (b) if, before that anniversary, the person reaches the 55th anniversary of his or her birth and provides the Board with a statement to the effect that he or she has retired from the workforce—the day on which the statement is provided.”.

101. Subsection 111(1):

Omit “his or her personal representatives or to such person or persons (if any) as the Board determines”, substitute “the person's legal personal representative or, if no legal personal representative can be found, to any individual or individuals that the Board determines”.

SCHEDULE 2—continued

102. Subsection 111(2):

Omit, substitute:

“(2) If the total amount of the benefit or benefits (whether paid by way of instalments of pension or as a lump sum or lump sums, or both) paid to or in respect of a person who has been an eligible employee (other than any benefit, or a part of any benefit, that, under subsection (4), (5) or (6), is to be excluded from consideration for the purposes of this subsection) is, at a time when no further benefit is payable under this Act to or in respect of the person, less than the sum of:

- (a) the total of the person’s accumulated contributions, and the accumulated employer contributions (if any) in respect of the person, as at the time when the person ceased to be an eligible employee or, if the person had ceased to be an eligible employee on more than one occasion, as at the time when the person last ceased to be an eligible employee; and
- (b) if a top-up benefit is or was calculated in respect of the person under Part VIAA but the amount of the top-up benefit is nil—the amount that would have been the top-up benefit if the person had been entitled to benefits under section 80;

an amount equal to the difference is to be paid to:

- (c) the person; or
- (d) if the person has died:
 - (i) the person’s legal personal representative; or
 - (ii) if no legal personal representative can be found—any individual or individuals that the Board determines.”.

103. Subsection 111(8):

Omit.

104. Subsection 115(2):

Omit “he” (wherever occurring), substitute “it”.

105. Section 116:

Omit “be made to a person other than the person who would be so entitled to the payment, the Board may authorise the payment to be made to another person, and payment shall be made to the other person accordingly”, substitute “not be made to the person, the Board may authorise the payment to be made to the person’s legal personal representative and, if such an authorisation is made, payment is to be made in accordance with the authorisation”.

SCHEDULE 2—continued

106. Subsection 117(2):

Omit “he considers”, substitute “it considers”.

107. Subsection 119(3):

Omit “at his discretion”, substitute “if the ISC approves”.

108 Paragraph 124(1)(b):

Omit “Fund.” (last occurring), substitute “Fund; and”.

109. Subsection 124(1):

Add at the end:

“(c) if the Fund accumulated employer contributions in respect of the person have, under subsection 112(1A), been paid out of the Superannuation Fund into the Consolidated Revenue Fund:

(i) an amount equal to the amount of those contributions is to be paid out of the Consolidated Revenue Fund (which is appropriated accordingly) into the Superannuation Fund; and

(ii) for the purposes of this Act, those Fund accumulated employer contributions are taken not to have been so paid out of the Superannuation Fund into the Consolidated Revenue Fund.”.

110. Subsection 128(1):

After “employment” (first occurring) insert “(the ‘previous employment’)”.

111. Subsection 128(4):

Omit “the employment in respect of which the transfer value was payable under a superannuation scheme applicable to that employment”, substitute “the previous employment”.

112. Paragraph 128(4)(a):

Before “the amount paid” insert “the available part of”.

113. After subsection 128(4):

Insert:

“(4AA) The reference in paragraph (4)(a) to the available part of an amount paid into the Consolidated Revenue Fund in respect of the person under paragraph (2)(b) is a reference to so much of that amount as exceeds any part of that amount that:

SCHEDULE 2—continued

(a) would not have been available for payment to, or preservation in the name of, the person on the termination of the previous employment out of the superannuation scheme applicable to that employment; or
(b) would not have been retained in that scheme for payment to or in respect of the person at a later date under the rules of that scheme; unless the person engaged in further employment.”.

114. Paragraph 128(4C)(b):

Omit, substitute:

“(b) the SIS Act.”.

115. Subsection 128(7):

Omit, substitute:

“(7) If the Board gives under subsection 157(3) a direction to cancel an election made by an eligible employee under subsection (1) of this section, the Board must make such arrangements as it considers appropriate, taking into account the requirements of the SIS Act, for making payments out of the Superannuation Fund and the Consolidated Revenue Fund by way of dealing with the transferred amount (including the payment of interest on any part of that amount that was paid into the Superannuation Fund).

“(7A) If, under an arrangement made by the Board under subsection (7), an amount has to be paid out of the Consolidated Revenue Fund, the Consolidated Revenue Fund is appropriated for the purpose of the payment.”.

116. Paragraph 128AA(2)(a):

Omit “Superannuation (1990) Scheme”, substitute “Public Sector Superannuation Scheme”.

117. Subsections 131(1), (2) and (3):

Omit.

118. Subsection 131(4) (definition of “former eligible employee with benefits from previous employment”):

Omit from subparagraph (c)(iii) “the”.

119. Section 132:

Repeal.

120. Paragraph 134(5)(a):

Omit, substitute:

SCHEDULE 2—continued

“(a) the relevant scheme is a public sector superannuation scheme that is:

- (i) a regulated superannuation fund; or
- (ii) an exempt public sector superannuation scheme;”.

121. Subparagraph 134(7)(a)(ii):

Omit “*Superannuation Industry (Supervision) Act 1993* and the regulations under that Act”, substitute “SIS Act”.

122. Subparagraph 134(7)(b)(i):

Omit “*Superannuation Industry (Supervision) Act 1993* and the regulations under that Act”, substitute “SIS Act”.

123. Subsections 137(3) and (4):

Omit.

124. Sections 138 and 139:

Repeal, substitute:

Circumstances in which person entitled to deferred benefits

“138.(1) Subject to this Division, if a person makes an election under section 137, deferred benefits are applicable in respect of the person.

“(2) Deferred benefits that are applicable in respect of a person become payable on the day immediately before the earliest of the following dates:

- (a) if the Board is satisfied that the person has, because of invalidity or physical or mental incapacity, become totally and permanently incapacitated within the meaning of Part IVA—the date that the Board considers to have been the date on which the person became so incapacitated;
- (b) the date of the person’s death;
- (c) subject to subsection (3), if the person, by written notice given to the Board, selects a date (not earlier than the date on which the notice is given) for the start of the payment of the deferred benefits—the date so selected;
- (d) the 65th anniversary of the person’s birth.

“(3) Paragraph (2)(c) does not apply unless:

- (a) the person will have, by the date selected:
 - (i) reached the age that would have been his or her minimum retiring age for the purposes of this Act if he or she had not ceased to be an eligible employee and had continued to occupy the position held by him or her immediately before so ceasing; and
 - (ii) reached the 55th anniversary of the person’s birth; and

SCHEDULE 2—continued

(b) the person has provided the Board with a statement to the effect that he or she has retired from the workforce.

“(4) Deferred benefits are not payable unless:

(a) a written application has been made to the Board requesting payment of the benefits; and

(b) the applicant has given the Board any information that is necessary to enable the Board to determine whether the benefits are payable.

Circumstances in which person entitled to transfer value

“139.(1) Subject to this Division, if:

(a) a person makes an election under section 137; and

(b) the person becomes employed in public employment; and

(c) the person becomes a member of an eligible superannuation scheme that is applicable in relation to people employed in that employment;

the person may, by written notice given to the Board, within 3 months after the person became a member of that scheme, elect that, in lieu of deferred benefits, a transfer value in respect of the person be paid to the person administering the scheme.

“(2) An election under subsection (1) does not have any effect unless:

(a) the person administering the eligible superannuation scheme agrees to accept the transfer value; and

(b) under the rules of the scheme, the first-mentioned person will become entitled to retirement benefits under the scheme based upon the transfer value.

“(3) If an election is duly made under subsection (1):

(a) a transfer value in respect of the person is payable to the person administering the eligible superannuation scheme; and

(b) deferred benefits cease to be applicable in respect of the person on the day on which the person administering the scheme accepts payment of the transfer value.”.

125. Subsection 139A(1):

Omit “139(1)”, substitute “138(1)”.

126. Paragraphs 139A(1)(a) and (b):

Omit, substitute:

“(a) is employed in public employment; and

(b) becomes a member of an eligible superannuation scheme that is applicable to people employed in that employment;”.

SCHEDULE 2—continued

127. Paragraph 139A(1A)(a):

Omit “139(1)”, substitute “138(1)”.

128. Subsection 139AA(1):

(a) Omit “139(2)”, substitute “138(2)”.

(b) Omit “subsection (2)”, substitute “this section”.

129. Subsection 139AA(2):

Omit, substitute:

“(2) Subsection (1) does not apply if:

(a) the person provides the Board with a statement to the effect that the person has retired from the workforce; or

(b) the Board is satisfied that the person is about to leave Australia permanently.

“(3) If the ISC has determined that the part of the person’s deferred benefits that consists of an amount equal to the person’s accumulated employer contributions, or a portion of that part, may be paid to the person because the person is suffering severe financial hardship, the part or the portion of the part, as the case may be, may be paid to the person.”.

130. Subsection 140(1):

Omit “Subject to paragraph 139(6)(b), where”, substitute “If”.

131. Subsection 141(1):

Omit.

132. Paragraph 141(2)(a):

Omit “at the expiration of the period that is the prescribed period in relation to him”, substitute “at the end of 3 months after so ceasing”.

133. Subsections 143(1) and (3):

Omit “139(2)(a)”, substitute “138(2)(a)”.

134. Subsection 145(4):

Omit “has remained”, substitute “had remained”.

135. Subsection 145(7):

Omit “the period that is the prescribed period in relation to him for the purposes of Division 3”, substitute “3 months”.

136. Paragraph 145(7)(c):

Omit “138”, substitute “139”.

SCHEDULE 2—continued

137. Subparagraph 145(8)(a)(ii):

Omit “personal representatives or to such person or persons (if any) as the Board determines”, substitute “legal personal representative or, if no legal personal representative can be found, to any individual or individuals that the Board determines”.

138. Paragraph 145(8)(b):

Omit “personal representatives or to such person or persons (if any) as the Board determines”, substitute “legal personal representative or, if no legal personal representative can be found, to any individual or individuals that the Board determines”.

139. Section 146:

Omit “138”, substitute “139”.

140. After section 154:

Insert:

Board may rely on information supplied by employers or former employers

“154AA.(1) For the purposes of the application of this Act to or in respect of a person who is or was an eligible employee, the Board may, but is not required to, presume that any information provided to the Board by an employer or former employer of the person is correct.

“(2) If a tribunal, authority or person is empowered to review a decision of the Board and vary, or make a decision in substitution for, the Board’s decision, the tribunal, authority or person is not bound by any presumption made by the Board under subsection (1).”.

141. After section 154A:

Insert:

Calculation of increase in annual rate of salary by reference to estimated increase in full-time adult average weekly ordinary time earnings

“154B.(1) In this section:

‘AWOTE’ means full-time adult average weekly ordinary time earnings for all persons in Australia.

SCHEDULE 2—continued

“(2) If:

- (a) it is necessary for the purposes of a provision (the ‘**relevant provision**’) of this Act or of the regulations to determine the annual rate of salary as at a particular time (the ‘**later time**’) in respect of an office or position that had been held, or in respect of the duties that had been performed, by a person at a particular earlier time (the ‘**earlier time**’); and
- (b) it is not possible to make such a determination:
 - (i) because at the later time the annual rate of salary was not publicly available or the office or position no longer existed, or the duties were no longer being performed, and there was no equivalent office or position or there were no equivalent duties; or
 - (ii) for any other reason that the Board thinks sufficient for this section to apply;

the annual rate of salary as at the later time in respect of the office or position, or in respect of the duties, is taken for the purposes of the relevant provision to be the amount worked out in accordance with this section.

“(3) If:

- (a) the Australian Statistician has published, at or before the later time, an estimate or successive estimates of the change or changes (expressed as a percentage or percentages) in AWOTE in respect of the period between the earlier time and the later time; and
- (b) the estimate or estimates show no overall change, or show an overall decrease, in those earnings over that period, or the part of that period in respect of which the estimate or estimates were published, as the case may be;

the annual rate of salary as at the later time in respect of the office or position, or in respect of the duties, is taken, for the purposes of the relevant provision, to be the same as the annual rate of salary in respect of the office or position, or in respect of the duties, as at the earlier time.

“(4) If:

- (a) the Australian Statistician has published, at or before the later time, an estimate or successive estimates of the change or changes (expressed as a percentage or percentages) in AWOTE in respect of the period between the earlier time and the later time; and
- (b) the estimate or estimates show an overall increase (expressed as a percentage (the ‘**relevant percentage**’)) in those earnings over that period, or the part of that period in respect of which the estimate or estimates were published, as the case may be;

SCHEDULE 2—continued

the annual rate of salary as at the later time in respect of the office or position, or in respect of the duties, is taken, for the purposes of the relevant provision, to be the annual rate of salary in respect of the office or position, or in respect of the duties, as at the earlier time increased by the relevant percentage.

“(5) If at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes for a particular period an estimate of a change (including an estimate that no change has occurred) in AWOTE in substitution for an estimate of such a change for that period previously published by the Australian Statistician, the publication of the later estimate is to be disregarded for the purposes of this section.”.

142. Paragraph 155B(1)(d):

After “employee” insert “upon the sale or transfer or”.

143. Subsection 155C(3) (definition of “eligible regulatory law”):

Omit from paragraph (a) “*Superannuation Industry (Supervision) Act 1993*”, substitute “SIS Act”.

Note: The heading to section 155C is altered by omitting “*Superannuation Industry (Supervision) Act 1993*” and substituting “SIS Act”.

144. Subsection 156(5):

Omit “his”, substitute “its”.

145. Section 156A:

(a) Before “Board” (first, second and third occurring) insert “Commissioner or the”.

(b) Omit “personal representative or to such person or persons (if any) as the Board determines”, substitute “legal personal representative or, if no legal personal representative can be found, to any individual or individuals that the Board determines”.

146. Subsection 157(2):

Omit “he thinks”, substitute “it thinks”.

147. Subsection 157(3):

Omit “he” (wherever occurring), substitute “it”.

148. Section 158:

(a) Omit “him”, substitute “it”.

(b) Omit “he”, substitute “it”.

149. Section 158A:

Add at the end:

SCHEDULE 2—continued

“(2) If:

- (a) subsection (1) applies in relation to a benefit that is payable to a person; and
- (b) under the SIS Act the amount of the benefit is required to be paid to an eligible roll-over fund;

the Board must comply with the requirement.”.

150. Subparagraph 159(1)(b)(i):

Omit “*Public Service Act 1922*”, substitute “Public Service Act”.

151. Subsection 160(8) (definition of “declared authority”):

Omit from paragraph (a) “*Public Service Act 1922*”, substitute “Public Service Act”.

152. Paragraph 163A(1)(b):

Omit “the Commissioner’s behalf”, substitute “the Board’s behalf”.

153. Subparagraph 167AB(b)(i):

Omit “*Superannuation Industry (Supervision) Act 1993*”, substitute “SIS Act”.

154. Subparagraph 167AB(b)(iii):

Omit “*Superannuation Industry (Supervision) Act 1993*”, substitute “SIS Act”.

155. Subsection 168(1A):

Omit “Superannuation (1990) Scheme”, substitute “Public Sector Superannuation Scheme”.

156. After subsection 168(12):

Insert:

“(12A) Regulations made within one year after the commencement of this subsection for the purposes of the amendments of this Act made by Schedule 2 to the *Superannuation Legislation Amendment Act 1995* may commence on a day earlier than the day on which they are made, but not earlier than the commencement of this subsection.”.

157. Subparagraph 168(13)(b)(i):

Omit “*Superannuation Industry (Supervision) Act 1993*”, substitute “SIS Act”.

158. Subparagraph 168(13)(b)(iii):

Omit “*Superannuation Industry (Supervision) Act 1993*”, substitute “SIS Act”.

SCHEDULE 2—continued

159. Subsection 184(3):

- (a) Omit “he”, substitute “it”.
- (b) Omit “him”, substitute “it”.

160 Subsection 185(3):

Omit.

161. Subsection 185(4):

Omit, substitute:

“(4) An existing contributor to whom subsection 185(4) of the *Superannuation Act 1976* applied on 30 June 1995 may continue to pay supplementary contributions at the percentage rate at which he or she was entitled to pay supplementary contributions on that day.”.

162. Subsection 237(1) (definition of “Board No. 1”):

Omit.

163. Subsection 242D(1):

Omit “section 139 and subsection 141(1)”, substitute “section 138”.

164. Subsection 242D(2):

Omit “139(2)(a)”, substitute “138(2)(a)”.

165. Paragraph 242E(1)(c):

Omit, substitute:

“(c) if the Board is satisfied that the person has, because of invalidity or physical or mental incapacity, become totally and permanently incapacitated within the meaning of Part IVA—the date that the Board considers to have been the date on which the person became so incapacitated;”.

166. Heading to Part XIV:

Omit “**SUPERANNUATION (1990) SCHEME**”, substitute “**PUBLIC SECTOR SUPERANNUATION SCHEME**”.

167. Section 243:

Repeal, substitute:

Interpretation

“243. In this Part, unless the contrary intention appears: ‘assets’, ‘investment assets of the Fund’, ‘investment liabilities of the Fund’ and ‘liabilities’ have the same meanings as in Part XIII.”.

SCHEDULE 2—continued

168. Section 244:

Omit “*Public Service Act 1922*” (wherever occurring), substitute “Public Service Act”.

169. Subsection 244(1):

Omit “Superannuation (1990) Scheme”, substitute “Public Sector Superannuation Scheme”.

Note: The heading to section 244 is altered by omitting “**Superannuation (1990) Scheme**” and substituting “**Public Sector Superannuation Scheme**”.

170. Paragraph 244(3)(a):

Omit “Superannuation (1990) Scheme”, substitute “Public Sector Superannuation Scheme”.

171. Section 247:

Omit “Superannuation (1990) Scheme”, substitute “Public Sector Superannuation Scheme”.

172. Subsection 248(1):

Omit “Board No. 1”, substitute “the PSS Board”.

Note: The heading to section 248 is altered by omitting “**Superannuation (1990) Scheme**” and substituting “**Public Sector Superannuation Scheme**”.

173. Section 249:

Omit “Board No. 1” (wherever occurring), substitute “the PSS Board”.

174. Application

The amendments made by items 67, 117, 119, 123, 124, 125, 126, 127, 128, 130, 131, 132, 133, 135, 136, 139, 163 and 164 apply only to people who cease to be eligible employees on or after 1 July 1995.

175. Transitional

(1) Any declaration in relation to the holder of a statutory office that the Minister purported to make, before the commencement of item 4, for the purposes of the definition of “approved part-time employee” in subsection 3(1) of the *Superannuation Act 1976* is taken to have been validly made and has effect on and after that commencement as if it had been duly made by the Minister for the purposes of paragraph (b) of the definition of that expression as substituted by that item.

(2) A delegation given by the Board under section 27Q of the *Superannuation Act 1976* that was in force immediately before the commencement of item 42 continues in force as if it had been given under that section as substituted by that item.

SCHEDULE 2—continued

- (3) Despite the amendment made by item 45:
- (a) the Commonwealth Superannuation Fund No. 2 continues in existence under the name CSS Fund so that its identity is not affected; and
 - (b) in any Act, in any instrument under an Act, in any order (whether executive, judicial or otherwise), in any contract or in any other instrument, a reference to the Commonwealth Superannuation Fund No. 2 is, except in relation to matters that occurred before the commencement of that item, taken to be a reference to the CSS Fund.
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SCHEDULE 3

Subsection 3(3)

FORMAL AMENDMENTS OF THE SUPERANNUATION ACT 1976

1. Sections 3, 7, 8 10, 13, 14, 15, 16, 16A, 18, 20, 45, 47, 54 and 55, paragraph 58(3)(e), section 59, subsection 64(1), sections 65 and 66, subsection 74(6), sections 76, 77, 78, 80, 81, 82, 83, 84, 85, 86, 87, 88, 90, 97, 98, 99, 100, 101, 103, 104, 105, 106, 108, 111, 117, 120, 121, 122, 123, 124, 125, 126 and 127, subsection 128(4), sections 129, 130, 133, 135, 136, 137, 141, 143, 144, 145, 151, 152, 177, 178, 180 and 186:

After “he” (wherever occurring, except where already followed by “or she”) insert “or she”.

2. Sections 3, 6, 7, 7A and 8, subsection 14A(2), sections 15, 16, 16A, 17A, 18, 19, 23, 45, 46 and 47, subsection 53(2), sections 54, 55, 56 and 57, paragraphs 58(3)(d) and (e), sections 60, 61, 65 and 66, subsection 74(6), sections 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 94, 95, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 111, 112, 117, 118, 120, 121, 122, 123, 124, 125, 127, 128, 130, 133 and 135, subsections 136(3) and (4), sections 144, 145, 152, 173, 180, 184 and 186.

After “his” (wherever occurring, except where already followed by “or her”) insert “or her”.

3. Sections 3, 5, 7A, 8, 15, 16, 25, 44, 45, 47, 52, 57, 60 and 61, subsection 64(1), sections 65 and 66, subsections 74(6) and (7), sections 75, 76, 77, 78, 80, 98, 99, 100, 101, 112, 117, 119, 123, 124, 127, 128, 129, 130 and 135, subsections 136(3) and (4), sections 141, 143, 144, 145, 147, 149, 151, 166, 177, 185, 186, 187 and 188:

After “him” (wherever occurring, except where already followed by “or her”) insert “or her”.

4. Subsection 74(1):

After “himself” insert “or herself”.

5. Subsection 140(1):

Omit “him”, substitute “his or her”.

SCHEDULE 4

Subsection 3(4)

AMENDMENTS OF THE SUPERANNUATION ACT 1990

1. Section 3 (definition of “Board”):

Omit, substitute:

“ **‘Board’** means the PSS Board established by section 20;”.

2. Section 3 (definitions of “CSB No. 2”, “Fund” and “Superannuation Scheme”):

Omit.

3. Section 3:

Insert:

“ **‘CSS Board’** means the CSS Board established under section 27A of the *Superannuation Act 1976*;

‘designated employer’ has the meaning given by section 3AA;

‘PSS Fund’ means the Fund established, and vested in the PSS Board, by the Trust Deed;

‘Public Sector Superannuation Scheme’ means the superannuation scheme established by the Trust Deed;”.

4. After section 3:

Insert:

Designated employers

“3AA.(1) A reference in this Act to the designated employer of a member is a reference to:

- (a) if the member is a permanent employee, or temporary employee, of the Commonwealth but is not an LWOP member or employed by an approved authority:
 - (i) if the remuneration in respect of his or her employment is paid wholly or mainly out of money appropriated by an annual Appropriation Act—the Department in respect of which the money is appropriated; or
 - (ii) if the remuneration in respect of his or her employment is paid wholly or mainly out of money appropriated by an Act other than an annual Appropriation Act—a Department determined by the Minister in writing; or
- (b) if the member is the holder of a statutory office, but is not an LWOP member:
 - (i) if the remuneration in respect of the office is paid by an approved authority—the Authority; or

SCHEDULE 4—continued

- (ii) if subparagraph (i) does not apply—a Department or person determined by the Minister in writing; or
- (c) if the member is an LWOP member—a person determined by the Minister in writing; or
- (d) otherwise—the Authority or body by which the member is employed.

“(2) In this section:

‘Department’ means:

- (a) a Department of State; or
- (b) a Department of the Parliament; or
- (c) a branch or part of the Australian Public Service in relation to which a person has, under an Act, the powers of, or exercisable by, the Secretary of a Department of the Australian Public Service;

‘LWOP member’ means a member who:

- (a) is on leave of absence without pay and:
 - (i) if the period of leave began before 1 July 1994—because of a direction given by the Board under the Rules as in force when the period of leave began, is required to make payments in respect of contributions falling due during the period of the leave; or
 - (ii) if the period of leave began or begins on or after that date—the period of the leave is longer than 6 fortnights and is an excluded period of leave of absence for the purposes of the Rules as in force when the period of leave began or begins; or
- (b) is on leave of absence without pay or other unpaid leave in relation to the birth of a child of the member, other termination of the pregnancy of the member or the adoption of a child by the member, and is making contributions in relation to the leave in accordance with an election made under the Rules.

Members of ACT Fire Brigade

“3AB. For the purposes of this Act, a person who was at any time before the commencement of this section, or is, a member of the Australian Capital Territory Fire Brigade, pursuant to an appointment made under the *Fire Brigade (Administration) Act 1974* of the Australian Capital Territory is taken to have been or to be employed by the Australian Capital Territory at all times from and including the time of his or her appointment under that Act or the commencement of this Act, whichever was or is the later, until he or she ceased or ceases to hold office under the appointment.”.

SCHEDULE 4—continued

5. Subsection 6A(4):

Omit “CSB No. 2”, substitute “CSS Board”.

6. Section 12:

Repeal, substitute:

Cases where person taken not to have ceased to be a member

“12. If a person ceases to be a member and, immediately after so ceasing, again becomes a member:

- (a) the person is taken, for the purposes of this Act other than paragraph (b), not to have so ceased; but
- (b) the person is not required or permitted to pay contributions in respect of the period between the time when the person ceased to be a member and the time when the person again becomes a member.”.

7. Subsection 13(1A):

Omit “Division 1 of Part 12 of”.

8. Subsection 14(1):

Omit “and paid to the Board”.

9. After section 14:

Insert:

Deductions of contributions by designated employer

“14A.(1) If the designated employer of a member deducts from the member’s salary an amount that the employer is permitted by subsection 14(1) to deduct from that salary:

- (a) the employer is to pay the amount deducted to the Board; and
- (b) if an amount deducted is not paid to the Board on the day on which it is deducted and the Board directs that this paragraph is to apply in relation to the amount—the employer is to pay to the Board interest on the amount, at any rate that the Board determines from time to time, in respect of the period beginning on the day on which the amount is deducted and ending on the day immediately before the day on which the amount is paid.

“(2) The Board is to pay to the PSS Fund any interest paid to the Board under paragraph (1)(b).”.

SCHEDULE 4—continued

10. Subsection 15(1):

Omit.

11. Section 20:

Omit “Commonwealth Superannuation Board of Trustees No. 1”, substitute “PSS Board”.

12. Subsection 29(3):

Omit.

13. Paragraph 33E(1)(c):

Omit, substitute:

“(c) the method of calculating final benefit accrual and preserved benefits under the Rules; and”.

14. Subsection 33G(1):

Omit “Part 6 of”.

Note: The heading to section 33G is altered by omitting “Part 6 of”.

15. After section 33:

Insert:

Board may rely on information supplied by employers or former employers

“33AA.(1) For the purposes of the Trust Deed in its application to or in respect of a person who is or has been a member of the Public Sector Superannuation Scheme, the Board may, but is not required to, presume that any information provided to the Board by an employer or former employer of the person is correct.

“(2) If a tribunal, authority or person is empowered to review a decision of the Board and vary, or make a decision in substitution for, the Board’s decision, the tribunal, authority or person is not bound by any presumption made by the Board under subsection (1).”.

16. Subsection 38(1):

Omit “Division 2 of Part 12 of”.

17. Subsection 43(3):

Omit, substitute:

“(3) Any money becoming payable by the Board in respect of an action, liability, claim or demand is to be paid out of the PSS Fund.

SCHEDULE 4—continued

“(4) If an amount is paid out of the PSS Fund under subsection (3), an equivalent amount is to be paid to the PSS Fund out of the Consolidated Revenue Fund, which is appropriated accordingly.”

SCHEDULE 5

Subsection 3(4)

FURTHER AMENDMENTS OF THE SUPERANNUATION ACT 1990

**PART 1—AMENDMENTS CONSEQUENTIAL ON THE
CHANGE OF THE NAME OF THE SUPERANNUATION
SCHEME ESTABLISHED BY THE TRUST DEED**

1. Heading to Part 3:

Before “SUPERANNUATION SCHEME” insert “PUBLIC SECTOR”.

2. Heading to Part 6:

Omit “COMMONWEALTH SUPERANNUATION BOARD OF TRUSTEES No. 1”, substitute “PSS BOARD”.

3. Section 3 (definitions of “approved authority” and “Rules”), paragraph 4(1)(b), subsections 5(2) and 6(1) and (2), subparagraph 6(2)(ba)(v), subsection 6(3), paragraphs 6A(1)(a) and (2)(b), subsections 6A(3), 7(1), (2) and (3), 8(1), (4) and (5) and 13(1), subsection 28(7) (subparagraph (a)(i) and paragraph (b) of the definition of “relevant organisation”), subsection 33C(2), subparagraph 33D(a)(ii), subsections 33G(2) and 34(2) and section 36:

Before “Superannuation Scheme” (wherever occurring) insert “Public Sector”.

Note: The headings to sections 4, 6, 14, 15, 16 and 36 are altered by inserting “Public Sector” before “Superannuation Scheme”

**PART 2—AMENDMENTS CONSEQUENTIAL ON THE
CHANGE OF THE NAME OF THE FUND ESTABLISHED BY
THE TRUST DEED**

4. Subparagraph 5(1A)(b)(ii), paragraphs 5(2)(c) and 16(1)(a) and (4)(a), subsections 16(5) and (6), section 17, subsections 26(1) and (2), paragraphs 28(1)(b), (2)(b) and (2)(c), subsection 28(4), paragraphs 33D(a) and (b), subsections 33(1) and (2) and 34(1), paragraph 34(1A)(b) and subparagraphs 46(1)(b)(ii) and 48(2)(b)(ii):

Before “Fund” (wherever occurring) insert “PSS”.

5. Section 33B (definitions of “investment assets of the Fund” and “investment liabilities of the Fund”):

Omit, substitute:

“‘investment assets of the PSS Fund’ means the assets of the PSS Fund or of the Board arising out of, or otherwise connected with, the exercise or proposed exercise by the Board of its power to invest money of the PSS Fund;

SCHEDULE 5—continued

‘investment liabilities of the PSS Fund’ means liabilities of the PSS Fund or of the Board arising out of, or otherwise connected with, the exercise or proposed exercise by the Board of its power to invest money of the PSS Fund;”.

SCHEDULE 6

Subsection 3(5)

**AMENDMENT OF THE SUPERANNUATION LEGISLATION
AMENDMENT ACT 1994**

1. Section 71:

Add at the end “(first occurring)”.

SCHEDULE 7

Subsection 3(6)

**FORMAL AMENDMENTS OF THE PARLIAMENTARY
CONTRIBUTORY SUPERANNUATION ACT 1948**

1. Subsection 4(1) (definitions of “office holder” and “participant”), paragraph 4A(1)(a), subsections 4A(3) and (4), 6(2), 8(3), 13(1), (2), (3) and (4), 14(2), (3) and (4), 16(2), (3) and (4), 17(2), (4), (5) and (6), 18(1B), (2), (2A) and (9), 18B(4), (5), (6) and (7) and 19(3), section 20, subsections 20A(1) and (3) and 21B(7), paragraph 22Q(1)(b), subsection 22Q(4), paragraph 22Q(6)(a), subparagraph 22R(1)(a)(ii), paragraph 22R(1)(c) and subsections 22R(2), (4), (6), (7), (8), (9) and (10):

After “he” (wherever occurring) insert “or she”.

2. Subsection 4(1) (definition of “participant”), subsections 4A(3), 13(1), 16(1), (1A) and (2), 17(5), 18(1A), (1B), (2), (2A), (3) and (9), 18B(3), (5), (6), (9) and (14), 19(3), 19A(1) and 20(1) and (3), paragraph 20A(1)(a), subsections 20A(1B) and 21B(8), section 22, paragraphs 22R(1)(b) and (4)(a) and (b) and subsections 22R(8) and (11):

After “his” (wherever occurring) insert “or her”.

3. Subsections 4(2), 4A(3) and (4), 8(5) and 13(2), (3) and (4), paragraph 14(4)(a), subsections 14(5), 16(1), (1A) and (2), 18B(4), (6), (13) and (14) and 19A(5) and (6), paragraph 22Q(1)(a), subsections 22Q(4) and (6), paragraph 22R(1)(b), subsection 22R(2), paragraph 22R(4)(a) and subsections 22R(6), (7), (8), (9) and (10):

After “him” (wherever occurring) insert “or her”.

4. Subsection 5(4):

After “himself” insert “or herself”.

