

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

(As read a first time)

SUPERANNUATION LEGISLATION AMENDMENT BILL 1992

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AMENDMENTS OF THE SUPERANNUATION ACT 1976 CONSEQUENTIAL
UPON THE ENACTMENT OF THE MILITARY SUPERANNUATION AND
BENEFITS ACT 1991



1990-91-92

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 4 November 1992

(*Minister for Finance*)

A BILL

FOR

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

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 1. This Act may be cited as the *Superannuation Legislation
Amendment Act 1992*.

Commencement

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

(2) Paragraph 34(b) is taken to have commenced on 1 July 1990.

10 (3) Sections 67 and 68 are taken to have commenced on 1 July
1990.

MR

(4) Section 14 and paragraph 25(e) are taken to have commenced on 1 July 1991.

(5) Section 55 is taken to have commenced on 1 October 1991.

(6) Sections 25 (other than paragraph (e)), 26, 31, 32, 37 and 46 are taken to have commenced on 1 July 1992. 5

(7) Sections 17 and 18 commence on 1 July 1993.

(8) Subject to subsection (9), paragraphs 58(1)(a), (b) and (c), and sections 59 and 60 commence on a day to be fixed by Proclamation.

(9) If paragraphs 58(1)(a), (b) and (c) and sections 59 and 60 do not commence under subsection (8) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period. 10

PART 2—AMENDMENTS OF THE SUPERANNUATION ACT 1922

Principal Act 15

3. In this Part, “Principal Act” means the *Superannuation Act 1922*¹.

4. After section 136 of the Principal Act the following section is inserted:

Death may be presumed in certain cases

“136A. If the Commissioner, after consideration of all the circumstances, directs that the death of a person be presumed, this Act applies in relation to that person as if the person had died on such date as is determined by the Commissioner.”. 20

PART 3—AMENDMENTS OF THE SUPERANNUATION ACT 1976 25

Principal Act

5. In this Part, “Principal Act” means the *Superannuation Act 1976*².

Interpretation

6. Section 3 of the Principal Act is amended:

(a) by inserting in subsection (1) the following definitions: 30

“‘industrial award’ means:

(a) an industrial award or determination made under a law of the Commonwealth, a State or a Territory; or

(b) an industrial agreement approved or registered under such a law; 35

‘superannuation guarantee top-up benefit’ means benefit payable under section 110SE;”;

(b) by inserting "or that is an approved authority because of paragraph (b)," after "or (iv)," in sub-subparagraph (a)(v)(A) of the definition of "approved authority" in subsection (1);

(c) by adding "other than such an authority or body in relation to which a declaration under subsection (2A) is in force" at the end of paragraph (b) of the definition of "approved authority" in subsection (1);

(d) by inserting after subsection (2) the following subsection:

"(2A) If an authority or body referred to in paragraph (b) of the definition of 'approved authority' in subsection (1) becomes a body:

(a) not operating for a public purpose under an Act, regulations made under an Act or a law of a Territory; and

(b) in which none of the following has a controlling interest, namely:

(i) the Commonwealth;

(ii) an authority or other body mentioned in paragraph (a) of that definition;

(iii) the Commonwealth together with one or more such authorities or bodies;

(iv) such an authority or body together with one or more other such authorities or bodies;

the Minister, for the purposes of paragraph (b), may declare that the body is not an approved authority for the purposes of this Act."

Definition of "approved authority"— declarations

7. Section 4A of the Principal Act is amended:

(a) by omitting subsection (1) and substituting the following subsection:

"(1) Subject to subsection (2), a declaration for the purposes of paragraph (a) or (b) of the definition of 'approved authority' in subsection 3(1) is a disallowable instrument.";

(b) by omitting from subsection (3) "referred to in subsection (1)" and substituting "for the purposes of paragraph (a) of that definition".

8. After section 6 of the Principal Act the following section is inserted:

Persons engaged in more than one employment

"6A.(1) Subject to subsection (3), if:

(a) a person is engaged in more than one employment; and

(b) either:

(i) in relation to more than one of those employments the person is an eligible employee; or

(ii) in relation to any such employment, the person would, if that were the person's only employment, be an eligible employee or entitled to request that a direction be given under section 11, 13 or 14;

this Act has a separate operation in respect of the person in relation to any employment in relation to which the person is an eligible employee, or any employment mentioned in subparagraph (b)(ii), as if that were the person's only employment.

“(2) A separate operation of this Act given by subsection (1) in respect of a person in relation to any employment, being a person who is, or becomes, an eligible employee in relation to that employment, continues after the person ceases to be an eligible employee.

“(3) A person who:

(a) is an eligible employee and on leave of absence without pay from particular employment; and

(b) while on such leave engages in other employment;

is not, for the purposes of this section, because of engaging in that other employment, taken to be engaged in 2 different employments.

“(4) If, before the commencement of this section, a person made payments in respect of any employment that would have been contributions if subsection (1) had then been in force, that subsection is taken to have been in force in relation to that person at the time the payments were made or at such earlier time (not being a time earlier than the commencement of that employment) as the Commissioner may determine.

“(5) If, because of subsection (1), this Act has a separate operation in respect of a person in relation to any employment, the person may elect, by notice in writing to the Commissioner, that that subsection applies to him or her in respect of that employment before the commencement of this section and, where such an election is made, that subsection is taken to have been in force in relation to the person during the period of that employment.

“(6) The regulations may make provision for modifying this Act, or a provision of this Act specified in the regulations, in the application of this Act or that provision in relation to a person in respect of whom this Act, because of subsection (1), has an operation in relation to any employment.”.

Accumulated basic and supplementary contributions and Fund accumulated employer contributions—additional amounts

9. Section 7A of the Principal Act is amended by adding at the end of subsection (2) the following word and paragraph:

- 5 “; and (f) there shall be added to the amount that, but for this subsection, would be the amount of the person’s Fund accumulated employer contributions an amount equal to the amount that was the person’s Fund accumulated employer contributions upon the person ceasing to be an eligible employee as referred to in paragraph (a), together with the amount of any interest that is payable in respect of the amount.”.
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Functions

10. Section 27C of the Principal Act is amended:

- 15 (a) by inserting after paragraph (1)(f) the following paragraph:
“(fa) functions mentioned in section 122; and”;
- (b) by inserting after paragraph (1)(h) the following paragraph:
“(ha) functions mentioned in section 139; and”;
- (c) by inserting after paragraph (1)(i) the following paragraph:
20 “(ia) functions mentioned in section 141; and”.

Eligible employee not to be retired on ground of invalidity without certificate from Board

11. Section 54C of the Principal Act is amended by omitting from subsection (1) “maximum retirement age” and substituting “maximum retiring age”.

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Board to decide whether to approve retirement

12. Section 54H of the Principal Act is amended:

- (a) by adding at the end of subsection (2) “unless it defers its decision under subsection (2A)”;
- 30 (b) by inserting after subsection (2) the following subsections:
- “(2A) If, after taking the steps mentioned in paragraphs (2)(a) and (b), the Board thinks that it should allow further time within which to make a decision whether or not to approve the retirement of an eligible employee, the Board may:
- 35 (a) defer making such a decision until such time as appears to it to be appropriate; and
- (b) if it appears to it to be desirable in the circumstances, before making a decision again have the matter considered by a panel mentioned in section 54F.
- 40 “(2B) Where the Board wants to have the matter considered again by a panel mentioned in section 54F, that section, other

than subsection (5), applies, subject to subsection (2C), in relation to the matter in the same way as it applied in relation to the initial consideration of the matter by such a panel.

“(2C) In the application of section 54F as mentioned in subsection (2B), subsection 54F(4) applies as if the period within which the members of the panel are required to make recommendations in writing to the Board were such period as is specified by the Board in the particular case.

“(2D) If the matter is again considered by a panel of persons, the Board is to take the recommendations of the panel into consideration before making its decision.”.

13. After section 54J of the Principal Act, the following section is inserted in Division 3 of Part IVA:

Other provisions relating to invalidity assessment

“54JA.(1) Where the Board:

- (a) for the purposes of subsection 7(2) gives consideration to whether a person was, because of physical or mental incapacity, totally and permanently incapacitated within the meaning of Part IVA; or
- (b) for the purposes of a provision of section 122 gives consideration to whether a person would have ceased to be an eligible employee because of retirement on the ground of invalidity; or
- (c) for the purposes of a provision of section 139 gives consideration to whether a person has become totally and permanently incapacitated within the meaning of Part IVA; or
- (d) for the purposes of subsection 141(1) gives consideration to whether a person was rendered so incapacitated;

the following provisions of this section apply.

“(2) The Board, if it thinks it desirable in the particular case, may appoint a panel consisting of such number of persons as the Board determines to assist it in its consideration of a matter mentioned in subsection (1).

“(3) The members of the panel must be persons with expertise in the assessment of invalidity claims for the purposes of superannuation.

“(4) The Board:

- (a) may require the person to undergo such medical examinations as it considers necessary and to provide such information as the members of the panel require; and
- (b) must make available to the members of the panel any medical or other evidence that it has concerning the person and that is relevant in the circumstances.

“(5) The members of the panel must, within such period as is specified by the Board, make recommendations in writing to the Board, giving reasons for their recommendations:

(a) on the matter under consideration by the Board; and

(b) on any other matter that the panel considers relevant or the Board may specify.

“(6) If the matter under consideration relates to a condition in respect of which the person is, or was, entitled to receive compensation under the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*, the Board may ascertain, in relation to that matter, the views of any Commonwealth authority that, under that Act, is or has been, liable to pay compensation in respect of the person.

“(7) The fact that, in relation to a matter, the Board has previously under this section received the recommendations of a panel or ascertained the views of a Commonwealth authority does not prevent the Board, if it wishes to give the matter further consideration, from again appointing such a panel under this section or ascertaining those views.”.

Determination of requests, payments and rehabilitation programs to be in accordance with the Rules for the administration of the Superannuation (1990) Scheme

14. Section 54K of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

“(ba) the reference in paragraph 12.2.4(c) to a member were a reference to an eligible employee within the meaning of this Act; and”.

Costs to be paid from Consolidated Revenue Fund

15. Section 54ZA of the Principal Act is amended:

(a) by omitting from paragraph (a) “subsection 54F(1)” and substituting “subsection 54F(1) or 54JA(2)”;

(b) by omitting paragraph (b) and substituting the following paragraph:

“(b) the cost of any medical examination that a person is required to undergo under subsection 54F(3) or 54JA(4);”.

Early retirement—voluntary or involuntary retirement

16. Section 58 of the Principal Act is amended:

(a) by inserting after subsection (3) the following subsection:

“(3A) Subsection (3) does not apply to a person who ceases to be an eligible employee in circumstances connected with the sale or transfer of an organisation, business, service or asset, or the transfer of a function, if the person, before ceasing to be an eligible employee:

- (a) accepted an offer of employment by the purchaser or transferee in connection with the organisation, business, service, asset or function and becomes employed accordingly; or
- (b) rejected such an offer of employment that was equivalent employment to the position or office the person held immediately before ceasing to be an eligible employee.”; 5
- (b) by adding at the end the following subsection:
 - “(5) If the question arises whether employment mentioned in paragraph (3A)(b) is equivalent employment, the Minister may determine the matter.”. 10

Election for lump sum benefit in case of involuntary retirement

17. Section 62 of the Principal Act is amended by omitting from subsection (2) “Where” and substituting “Subject to section 62B, if”.

Insertion of new Division

18. After Division 2 of Part V of the Principal Act the following Division is inserted: 15

“Division 2A—Preservation of benefit payable under subsection 62(2)

Interpretation

“62A.(1) In this Division: 20

‘**accumulated government body contributions**’, in relation to a person’s relevant period of employment, means the total of:

- (a) the total amount of the productivity contributions applicable to the person in respect of the period; and
- (b) notional interest on the amount worked out under paragraph (a); 25

‘**government body scheme**’ means a superannuation scheme:

- (a) established by, or operating for the benefit of employees of:
 - (i) an authority of the Commonwealth; or
 - (ii) a State or an authority of a State; or 30
 - (iii) a Territory or an authority of a Territory; or
 - (iv) a body corporate in which the Commonwealth, or a person of the kind referred to in paragraph (i), (ii) or (iii), either individually or in combination with one or more other such persons, has a controlling interest; and 35
- (b) that has eligible employees as members; and
- (c) under which productivity contributions accrue in respect of those eligible employees;

‘**notional accumulated SG contributions**’, in relation to a person’s relevant period of employment, means an amount equal to the sum of: 40

- (a) the person’s SG minimum contributions in relation to that

period as reduced by an amount specified in, or worked out in accordance with, a determination made by the Australian Government Actuary under subsection (4); and

- (b) notional interest on the amount worked out under paragraph (a);

'period of actual contributory service', in relation to a person, means the person's period of contributory service other than any part of that period added by the operation of subsection 128(5) that is not attributable to a transfer value previously paid under Division 3 of Part IX;

'productivity contribution' means:

- (a) in relation to a person who is a productivity employee within the meaning of Part VIA—a productivity contribution within the meaning of that Part (other than an amount taken to be a productivity contribution by virtue of the operation of paragraph 128(2)(c)); or

- (b) in relation to any other person—an amount similar in kind to such a productivity contribution, whether worked out under an industrial award or otherwise;

'rate of fund contribution tax' means 15% or such other rate as is determined by the Minister under section 110SD;

'relevant period of employment', in relation to a person, means:

- (a) if the whole of the person's period of actual contributory service occurred after 30 June 1993—that period; or

- (b) if part only of the person's period of actual contributory service occurred after that date—that part of the person's period of actual contributory service;

but does not include any period for which the person is engaged or appointed exclusively for employment outside Australia unless that period:

- (c) is a period during which the person is on leave of absence without pay; and

- (d) is a period in respect of which the person is entitled to make contributions in accordance with a direction under subsection 51(1);

'SG minimum contribution' has the same meaning as in Part VIAA;

'top-up benefit' means superannuation guarantee top-up benefit payable under section 110SE.

“(2) For the purposes of paragraph (a) of the definition of ‘accumulated government body contributions’ in subsection (1), the amount of a productivity contribution applicable to a person in relation to a particular period (**‘the accrual period’**) is:

- (a) if the relevant government body scheme provides for productivity contributions (applicable to all eligible employees who are members of the scheme) that may be expressed as a

percentage of the earnings (as described for the purposes of the scheme) of each employee—that percentage of the earnings of the person for the accrual period based on the person's fortnightly rate of salary that, for the purposes of section 46, was payable on the most recent anniversary of birth of the person; or

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- (b) if the relevant government body scheme provides for productivity contributions (applicable to a class of eligible employees identified by the scheme) that may be expressed as a percentage of the earnings (as described for the purposes of the scheme) of each employee in the class, and the percentage is lower than the corresponding percentage for any other class of eligible employees—that percentage of the earnings of the person for the accrual period based on the person's fortnightly rate of salary that, for the purposes of section 46, was payable on the most recent anniversary of birth of the person; or

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- (c) if the relevant government body scheme is a defined benefit superannuation scheme within the meaning of the *Superannuation Guarantee (Administration) Act 1992* that provides for a productivity related benefit applicable to all eligible employees who are members of the scheme—the contribution percentage, in relation to that benefit, of the earnings of the person for the accrual period based on the person's fortnightly rate of salary that, for the purposes of section 46, was payable on the most recent anniversary of birth of the person.

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“(3) For the purposes of paragraph (2)(c), ‘**contribution percentage**’ means the rate of contribution, expressed as a percentage of the eligible employees’ earnings and certified by an actuary, required to provide the productivity related benefit.

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“(4) The percentage referred to in paragraph (2)(a) or (b) must be certified by the person's employer.

“(5) For the purposes of the definition of ‘notional accumulated SG contributions’ in subsection (1), the Australian Government Actuary is to determine:

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- (a) an amount representing the cost of death and invalidity cover relevant to the person's SG minimum contributions; or
- (b) a means of working out such an amount.

Preservation of portion of benefit

“62B.(1) Subject to subsection (2), if a benefit is payable to a person under subsection 62(2), the portion of that benefit worked out under whichever of subsections (3) and (4) is applicable must be:

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- (a) paid, for the benefit of the person, to a preservation fund nominated by the person; or

- (b) applied, on behalf of the person, for the purchase of a deferred annuity nominated by the person; or
- (c) if the person does not make a nomination within 2 months after the benefit becomes payable—paid, for the benefit of the person, to a preservation fund nominated by the Commissioner.

“(2) Subsection (1) does not apply to a benefit payable to a person if:

- (a) the person is 65 or over; or
- (b) the person is 55 or over and has given the Commissioner a written statement to the effect that he or she has retired from the workforce; or
- (c) the total of the following amounts is less than \$500:
 - (i) the amount of the accumulated employer contributions in respect of the person;
 - (ii) the amount that would be preserved or applied under subsection (1) in relation to the person but for the operation of this subsection; or
- (d) the Commissioner is satisfied that the person is departing permanently from Australia.

“(3) If a persons’s employer was liable to pay productivity contributions under section 110H in respect of the person for the person’s relevant period of employment, the portion of the benefit referred to in subsection (1) is the amount worked out using the formula:

$$\text{NASGC} = \frac{\text{AEC} \times 100}{(100 - \text{TR})}$$

where:

‘NASGC’ is the notional accumulated SG contributions in respect of the person for the person’s relevant period of employment;

‘AEC’ is that part of the accumulated employer contributions in respect of the person that is based on the operation of paragraphs 110Q(1)(a) and (b) in relation to productivity contributions paid or payable after 30 June 1993;

‘TR’ is the percentage figure representing the rate of fund contribution tax applicable to the relevant period of employment.

“(4) If a person’s employer was liable to pay productivity contributions to a government body scheme in respect of the person for the person’s relevant period of employment, the portion of the benefit referred to in subsection (1) is whichever of the following amounts is determined by the Commissioner after having regard to the views of the government body:

- (a) an amount worked out using the formula:

NASGC – AGBC;

(b) an amount worked out using the formula:

$$\text{NASGC} = \frac{\text{GBB} \times 100}{(100 - \text{TR});}$$

(c) an amount worked out using the formula:

$$\text{NASGC} = \frac{\text{GBPROD} \times 100}{(100 - \text{TR});}$$

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where:

‘NASGC’ is the notional accumulated SG contributions in respect of the person for the person’s relevant period of employment;

‘AGBC’ is the accumulated government body contributions in respect of the person for the person’s relevant period of employment;

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‘GBB’ is the benefit paid or payable from the government body scheme in respect of the person for the person’s relevant period of employment together with, except where the person ceases to be both a member of the government body scheme and an eligible employee, notional interest on that benefit;

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‘TR’ is the percentage figure representing the rate of fund contribution tax applicable to the relevant period of employment;

‘GBPROD’ the total of:

(a) the part of the amount that has been paid to the Commissioner under section 110MA in respect of the person for the person’s relevant period of employment less the amount in the nature of income tax (if any) that is relevant to that amount; and

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(b) interest on the paid amount referred to in paragraph (a).

“(5) In determining the benefit paid or payable from a government body scheme in respect of a person, the Commissioner may accept a statement from the trustees, the administrator on behalf of the trustees or, if there are no trustees, the administrator of the government body scheme as to:

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(a) the amount of benefit paid or payable; or

(b) the date on which it was paid or is payable; or

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(c) the period in respect of which the benefit was paid or is payable; or

(d) rates of interest applicable to amounts of money paid to the scheme; or

(e) any other matter in connection with the payment of the benefit.

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Application of formulae

“62C. If a single application of a formula set out in section 62B cannot properly be made for the whole of a person’s relevant period of employment because of a change in the person’s employment, the rate of fund contribution tax or any other thing:

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- (a) that period is to be broken up into such separate periods as is appropriate for the proper application of such a formula in respect of each such period; and
- (b) the resulting amounts (including negative amounts) are to be aggregated in respect of the whole of the person's period of actual contributory service."

19. After section 80 of the Principal Act the following section is inserted in Division 5 of Part V:

Procedure where pension exceeds reasonable benefit limits

"80A.(1) This section applies where the Insurance and Superannuation Commissioner:

(a) makes:

(i) a determination under subsection 15K(1) of the *Occupational Superannuation Standards Act 1987* ('the OSS Act') that a pension payable to a person under this Act exceeds the reasonable benefit limits within the meaning of the OSS Act; or

(ii) an interim determination under section 15L of the OSS Act in relation to such a pension that has effect as if it were such a determination; and

(b) makes a request under subsection 15S(4) of the OSS Act in relation to that pension.

"(2) The Commissioner for Superannuation must:

(a) convert to a lump sum so much of the pension as exceeds those reasonable benefit limits, being a lump sum that is equal to the excess amount specified in the notice under subsection 15S(4) of the OSS Act, and pay the lump sum to the person; and

(b) work out the rate of pension (if any) payable to the person that would not be in excess of those limits and pay pension (if any) at that rate to the person.

"(3) The rate of pension mentioned in paragraph (2)(b) is to be worked out in accordance with rules determined by the Minister for the purposes of this section.

"(4) A determination so made by the Minister is a disallowable instrument."

Interpretation

20. Section 110A of the Principal Act is amended:

(a) by omitting the definition of "designated employer" and substituting the following definitions:

"**'designated employer'**, in relation to a productivity employee, means:

(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 principally out of money appropriated by an annual Appropriation Act—the Department in respect of which the money is appropriated; or 5
- (ii) if the remuneration in respect of his or her employment is paid wholly or principally out of money appropriated by an Act other than an annual Appropriation Act—such Department as is determined by the Minister; or 10
- (b) if the employee is the holder of a statutory office but is not an LWOP employee:
 - (i) if the remuneration in respect of that office is paid by an approved authority—that authority; or 15
 - (ii) if subparagraph (i) does not apply—such Department or person as is determined by the Minister; or
- (c) if the employee is employed by an approved authority but is not an LWOP employee—that authority; or 20
- (d) in any other case—such person as is determined by the Minister;

‘LWOP employee’ means a productivity 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), that that subsection does not apply; or 25
- (b) is a person to whom section 51A applies and is making contributions in accordance with an election made under subsection (3) of that section;”; 30
- (b) by omitting “or includes” from the definition of “productivity related benefit” and substituting “or is worked out by reference to”.

Rate of salary

21. Section 110B of the Principal Act is amended by inserting “the rate of salary that, for the purposes of section 46, was” after “is taken to be”. 35

22. After section 110M of the Principal Act the following section is inserted:

Payments of productivity related benefits to Fund by certain eligible employees 40

“110MA.(1) If:

- (a) an eligible employee, while an eligible employee but not a

productivity employee, has been a member of a government body scheme within the meaning of Part VIAA that provided for a productivity related benefit in respect of the eligible employee; and

- 5 (b) an amount is paid to or in respect of the eligible employee by way of that benefit;

the eligible employee may pay that amount to the Commissioner.

10 “(2) A payment to the Commissioner may only be made within the period of 3 months commencing on the day on which the amount was paid to or in respect of the employee or such longer period as the Commissioner allows for the particular payment.”.

Commissioner to pay Fund

23.(1) Section 110N of the Principal Act is amended:

- 15 (a) by omitting from subsection (1) “110L or 110M” and substituting “110L, 110M or 110MA”;
- (b) by omitting subsection (2).

20 (2) An amount that was a supplementary contribution because of the operation of subsection 110N(2) of the Principal Act, as in force before the commencement of this section, continues to be a supplementary contribution despite the amendments made by paragraph (1)(b).

Accumulated employer contributions

24. Section 110Q of the Principal Act is amended by omitting paragraph (1)(e) and substituting the following paragraph:

- 25 “(e) if an amount has been paid or transferred to the Commissioner under section 110K, 110L, 110M or 110MA in respect of the employee—the amount paid or transferred less such amount (if any) in the nature of income tax that is relevant to that amount; and”.

30 Payment of productivity benefit

25. Section 110R of the Principal Act is amended:

- (a) by inserting in paragraph (4)(c) “aggregate” after “amount of the”;
- 35 (b) by inserting in paragraph (4)(d) “aggregate” after “amount of the”;
- (c) by inserting in paragraph (4A)(c) “aggregate” after “amount of the”;
- (d) by inserting in paragraph (4A)(d) “aggregate” after “amount of the”;
- 40 (e) by omitting paragraph (7)(b) and substituting the following paragraph:

“(b) either:

- (i) the Commissioner is satisfied that the person intends to leave Australia permanently; or
- (ii) the Insurance and Superannuation Commissioner has approved the payment of the benefit;”;

5

(f) by adding at the end the following subsection:

“(9) For the purposes of subsections (4) and (4A), the aggregate benefit, in relation to a person, is the total of the following amounts:

- (a) the amount of superannuation guarantee top-up benefit payable to the person;
- (b) the amount of the accumulated employer contributions in respect of the person;
- (c) any amount of a kind preserved or applied under subsection 128(4A).”.

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Insertion of new Part

26. After Part VIA of the Principal Act the following Part is inserted:

“PART VIAA—SUPERANNUATION GUARANTEE TOP-UP BENEFIT

Purpose of Part

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“110SA. The purpose of this Part is to establish, in respect of certain persons who cease to be eligible employees, an entitlement to a benefit (called ‘**superannuation guarantee top-up benefit**’) so that an employer of such a person while the person was an eligible employee does not have an individual superannuation guarantee shortfall within the meaning of the *Superannuation Guarantee (Administration) Act 1992* in relation to that person in respect of the period, or any part of the period, during which the person was an eligible employee.

25

Interpretation

“110SB.(1) In this Part, unless the contrary intention appears: ‘**accumulated government body contributions**’, in relation to a person’s relevant period of employment, means the total of:

30

- (a) the total amount of the productivity contributions applicable to the person in respect of the period; and
- (b) notional interest on the amount worked out under paragraph (a);

35

‘**government body scheme**’ means a superannuation scheme:

- (a) established by, or operating for the benefit of employees of:
 - (i) an authority of the Commonwealth; or
 - (ii) a State or an authority of a State; or

40

- (iii) a Territory or an authority of a Territory; or
- (iv) a body corporate in which the Commonwealth, or a person of the kind referred to in paragraph (i), (ii) or (iii), either individually or in combination with one or more other such persons, has a controlling interest; and

(b) that has eligible employees as members; and

(c) under which productivity contributions accrue in respect of those eligible employees;

5
10 **'notional accumulated SG contributions'**, in relation to a person's relevant period of employment, means an amount equal to the sum of:

(a) the person's SG minimum contributions in relation to that period as reduced by an amount specified in, or worked out in accordance with, a determination made by the Australian Government Actuary under subsection (4); and

15 (b) notional interest on the amount worked out under paragraph (a);

20 **'other vested benefit'**, in relation to a person, means the value that the Commissioner, having regard to the advice of the Australian Government Actuary, determines to be the value that the benefits paid or payable in respect of the person's relevant period of employment would have if the total amount of these benefits were taken not to include:

(a) the amount equal to the total of whichever of the following amounts is, or are, applicable:

25 (i) the amount equal to that part of the accumulated employer contributions in respect of the person that is based on the operation of paragraphs 110Q(1)(a) and (b) in relation to productivity contributions paid or payable after 30 June 1992;

30 (ii) the amount equal to that part of an amount paid by or in respect of the person that is based on the operation of paragraphs 110Q(1)(e) and (f) in relation to payments made under section 110L in relation to any period commencing after 30 June 1992;

35 (iii) the amount equal to that part of an amount paid by or in respect of the person that is based on the operation of paragraphs 110Q(1)(e) and (f) in relation to payments made under section 110M in relation to any period commencing after 30 June 1992;

40 (iv) the amount equal to that part of an amount paid by or in respect of the person that is based on the operation of paragraphs 110Q(1)(e) and (f) in relation to payments made under section 110MA in relation to any period commencing after 30 June 1992;

45 (b) the amount equal to that part of the person's accumulated

contributions based on contributions that became payable, by the person, after 30 June 1992;

‘period of actual contributory service’, in relation to a person, means the person’s period of contributory service other than any part of that period added by the operation of subsection 128(5) that is not attributable to a transfer value previously paid under Division 3 of Part IX;

‘productivity contribution’ means:

(a) in relation to a person who is a productivity employee within the meaning of Part VIA—a productivity contribution within the meaning of that Part (other than an amount taken to be a productivity contribution by virtue of the operation of paragraph 128(2)(c)); or

(b) in relation to any other person—an amount similar in kind to such a productivity contribution, whether worked out under an industrial award or otherwise;

‘rate of fund contribution tax’ means 15% or such other rate as is determined by the Minister under section 110SD;

‘relevant period of employment’, in relation to a person, means:

(a) if the whole of the person’s period of actual contributory service occurred after 30 June 1992—that period; or

(b) if part only of the person’s period of actual contributory service occurred after that date—that part of the person’s period of actual contributory service;

but does not include any period for which the person is engaged or appointed exclusively for employment outside Australia unless that period:

(c) is a period during which the person is on leave of absence without pay; and

(d) is a period in respect of which the person is entitled to make contributions in accordance with a direction under subsection 51(1);

‘SG minimum contribution’ has the meaning given by section 110SC;

‘top-up benefit’ means superannuation guarantee top-up benefit payable under section 110SE.

“(2) For the purposes of paragraph (a) of the definition of ‘accumulated government body contributions’ in subsection (1), the amount of a productivity contribution applicable to a person in relation to a particular period (**‘the accrual period’**) is:

(a) if the relevant government body scheme provides for productivity contributions (applicable to all eligible employees who are members of the scheme) that may be expressed as a percentage of the earnings (as described for the purposes of the scheme) of each employee—that percentage of the earnings of the person for the accrual period based on the person’s

fortnightly rate of salary that, for the purposes of section 46, was payable on the most recent anniversary of birth of the person; or

(b) if the relevant government body scheme provides for productivity contributions (applicable to a class of eligible employees identified by the scheme) that may be expressed as a percentage of the earnings (as described for the purposes of the scheme) of each employee in the class, and the percentage is lower than the corresponding percentage for any other class of eligible employees—that percentage of the earnings of the person for the accrual period based on the person's fortnightly rate of salary that, for the purposes of section 46, was payable on the most recent anniversary of birth of the person; or

(c) if the relevant government body scheme is a defined benefit superannuation scheme within the meaning of the *Superannuation Guarantee (Administration) Act 1992* that provides for a productivity related benefit applicable to all eligible employees who are members of the scheme—the contribution percentage, in relation to that benefit, of the earnings of the person for the accrual period based on the person's fortnightly rate of salary that, for the purposes of section 46, was payable on the most recent anniversary of birth of the person.

“(3) For the purposes of paragraph (2)(c), ‘**contribution percentage**’ means the rate of contribution, expressed as a percentage of the eligible employees’ earnings and certified by an actuary, required to provide the productivity related benefit.

“(4) The percentage referred to in paragraph (2)(a) or (b) must be certified by the person's employer.

“(5) For the purposes of the definition of ‘notional accumulated SG contributions’ in subsection (1), the Australian Government Actuary is to determine:

(a) an amount representing the cost of death and invalidity cover relevant to the person's SG minimum contributions; or

(b) a means of working out such an amount.

Interpretation—SG minimum contribution

“110SC.(1) The SG minimum contribution in respect of an eligible employee on a contribution day during the eligible employee's relevant period of employment is 4% of the fortnightly rate of salary that, for the purposes of section 46, was payable to the eligible employee on the anniversary of his or her birth immediately preceding the contribution day.

“(2) The Minister may vary the percentage mentioned in subsection (1) by determination.

“(3) In so determining, the Minister is to have regard to the charge percentages set out in sections 20 and 21 of the *Superannuation Guarantee (Administration) Act 1992*.

“(4) Subject to subsection (5), the determination is a disallowable instrument. 5

“(5) The determination is a Statutory Rule for the purposes of the *Statutory Rules Publication Act 1903*.

Minister may determine rate of fund contribution tax

“110SD.(1) The Minister may vary the percentage mentioned in the definition of ‘rate of fund contribution tax’ in subsection 62A(1) or 110SB(1) by determination. 10

“(2) The determination:

(a) takes effect from such date as is specified in the determination; and

(b) may provide for a percentage of nil. 15

“(3) In making the determination, the Minister is to have regard to the rate of tax payable on employer contributions paid to a superannuation fund.

“(4) Subject to subsection (5), the determination is a disallowable instrument. 20

“(5) The determination is a Statutory Rule for the purposes of the *Statutory Rules Publication Act 1903*.

Superannuation guarantee top-up benefit

“110SE.(1) Superannuation guarantee top-up benefit is payable to or in respect of a person who ceases to be an eligible employee in respect of his or her relevant period of employment if an amount greater than nil is worked out, under whichever of subsections (3) and (4) is applicable, in relation to the person for that period. 25

“(2) A top-up benefit to which an entitlement so arises is a lump sum benefit equal to the amount referred to in subsection (1). 30

“(3) If the person’s employer was liable to pay productivity contributions under section 110H in respect of the person for his or her relevant period of employment, the amount mentioned in subsection (1) is the amount worked out using the formula:

$$\text{NASGC} - \frac{\text{AEC} \times 100}{(100 - \text{TR})} - \text{OVB} \quad 35$$

where:

‘NASGC’ is the notional accumulated SG contributions in respect of the person for the person’s relevant period of employment;

'AEC' is that part of the accumulated employer contributions in respect of the person that is based on the operation of paragraphs 110Q(1)(a) and (b) in relation to productivity contributions paid or payable after 30 June 1992;

5 'TR' is the percentage figure representing the rate of fund contribution tax applicable to that period;

'OVV' is the person's other vested benefit in respect of that period.

10 "(4) If the person's employer was liable to pay productivity contributions to a government body scheme in respect of the person for his or her relevant period of employment, the amount mentioned in subsection (1) is whichever of the following amounts is determined by the Commissioner after having regard to the views of the government body:

(a) an amount of nil;

15 (b) an amount worked out using the formula:

$$\text{NASGC} - \text{AGBC} - \text{OVV};$$

(c) an amount worked out using the formula:

$$\text{NASGC} - \frac{\text{GBB} \times 100}{(100 - \text{TR})} - \text{OVV} ;$$

(d) an amount worked out using the formula:

$$\text{NASGC} - \frac{\text{GBPROD} \times 100}{(100 - \text{TR})} - \text{OVV} ;$$

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where:

'NASGC' is the notional accumulated SG contributions in respect of the person for the person's relevant period of employment;

25 'AGBC' is the accumulated government body contributions in respect of the person for the relevant period of employment;

'OVV' is the person's other vested benefit in respect of that period;

30 'GBB' is the benefit paid or payable from the government body scheme in respect of the person for the person's relevant period of employment together with, except where the person ceases to be both a member of the government body scheme and an eligible employee, notional interest on that benefit;

'TR' is the percentage figure representing the rate of fund contribution tax applicable to that period;

'GBPROD' is the total of:

- 35 (a) that part of the amount that has been paid to the Commissioner under section 110MA in respect of the person for the person's relevant period of employment less the amount in the nature of income tax (if any) that is relevant to that amount; and
(b) interest on the paid amount referred to in paragraph (a).

“(5) In determining the benefit paid or payable from a government body scheme in respect of a person, the Commissioner may accept a statement from the trustees, the administrator on behalf of the trustees or, if there are no trustees, the administrator of the government body scheme as to:

- (a) the amount of benefit paid or payable; or
- (b) the date on which it was paid or is payable; or
- (c) the period in respect of which the benefit was paid or is payable; or
- (d) rates of interest applicable to amounts of money paid to the scheme; or
- (e) any other matter in connection with the payment of the benefit.

“(6) Despite anything else in this section, top-up benefit does not become payable to or in respect of a person if the Australian Government Actuary has certified that, in his or her opinion, because of the value of other benefits payable to or in respect of the person, an employer of the person while an eligible employee will not, in respect of the person for a financial year, have an individual superannuation guarantee shortfall within the meaning of the *Superannuation Guarantee (Administration) Act 1992*.

Application of formulae

“110SF. If a single application of a formula set out in section 110SE cannot properly be made for the whole of a person’s relevant period of employment because of a change in the person’s employment, the rate of fund contribution tax or any other thing:

- (a) that period is to be broken up into such separate periods as is appropriate for the proper application of such a formula in respect of each such period; and
- (b) the resulting amounts (including negative amounts) are to be aggregated in respect of the whole of the person’s relevant period of employment.

Payment of top-up benefit—preservation

“110SG.(1) Subject to section 110SH, if top-up benefit becomes payable in respect of a person, the Commissioner must, in accordance with a nomination made by the person:

- (a) pay the benefit, for the benefit of the person, to a preservation fund; or
- (b) apply the benefit on behalf of the person for the purchase of a deferred annuity.

“(2) If the person fails, within 2 months after the benefit becomes payable, to make a nomination, the benefit must be paid, for the benefit of the person, to a preservation fund nominated by the Commissioner.

Payment of top-up benefit—exceptions to preservation

“110SH. Section 110SG does not apply in any of the following circumstances:

- (a) the person is 65 or over;
- 5 (b) the person is 55 or over and has given the Commissioner a written statement to the effect that he or she has retired from the workforce;
- (c) the payment is being made to or in respect of the person on invalidity retirement or death;
- 10 (d) the total of the following amounts is less than \$500:
 - (i) the amount of the top-up benefit in respect of the person’s relevant period of employment;
 - (ii) the amount of the accumulated employer contributions in respect of the person;
 - 15 (iii) any amount of a kind preserved or applied under subsection 128(4A);
- (e) the Commissioner is satisfied that the person is departing permanently from Australia.

Payment of top-up benefit—non-preservation

- 20 “110SJ. If section 110SG does not apply to top-up benefit in relation to a person, the Commissioner must:
- (a) pay the benefit to the person; or
 - (b) if the person has died—pay the benefit to the personal representative of the person or such other person or persons (if
 - 25 any) as the Commissioner directs.”.

Payment of accumulated contributions where no other benefit payable etc.

27. Section 111 of the Principal Act is amended by omitting from subsection (3) “paragraph (1)(b)” and substituting “subsection (1)”.

30 **Payments into and out of Consolidated Revenue Fund**

28. Section 112 of the Principal Act is amended:

- (a) by omitting from subsection (4A) “sub-section (1) does” and substituting “subsections (1) and (1A) do”;
- (b) by omitting from subsection (7) “to him” and substituting “to
- 35 the person’s accumulated contributions”;
- (c) by omitting from subsection (10A) “subsection (1) does” and substituting “subsections (1) and (1A) do”;
- (d) by omitting from subsection (10B) “subsection 110TA(2)” and substituting “section 110TA”;
- 40 (e) by inserting in subsection (10B) “and Fund accumulated employer contributions” after “accumulated contributions”;
- (f) by omitting from subsection (10C) “in relation to the person”

and substituting "in relation to the person's accumulated contributions".

Physical or mental incapacity of person to whom Part applies before declaration of result of election etc.

29.(1) Section 122 of the Principal Act is amended: 5

- (a) by omitting from paragraph (1)(a) "Commissioner" and substituting "Board";
- (b) by omitting from paragraph (2)(b) "Commissioner" and substituting "Board";
- (c) by omitting from subsection (4) "Commissioner" and substituting "Board"; 10
- (d) by omitting from subsection (5) "Commissioner" and substituting "Board";
- (e) by adding at the end the following subsection:

"(6) For the purposes of this section, the Board may only be satisfied that a person would, at a particular time, have ceased to be an eligible employee by reason of retirement on the ground of invalidity if it appears to the Board that the person, at that time, was totally and permanently incapacitated within the meaning of Part IVA." 15 20

(2) Despite the amendment of the Principal Act made by paragraph (1)(e), section 122 of the Principal Act as in force immediately before the commencement of this section continues to apply in respect of a person who ceased to be an eligible employee before that commencement. 25

Modification of Act in relation to former eligible employees who become members of a superannuation scheme

30. Section 126A of the Principal Act is amended:

- (a) by inserting in paragraph (3)(c) ", or the Fund accumulated employer contributions," after "accumulated contributions"; 30
- (b) by omitting from paragraph (3)(d) "Trust" and substituting "Board".

Transfer value payable in relation to certain employment

31. Section 127 of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsections: 35

"(1) Subject to subsection (1AAA), a reference in this Division to a transfer value in relation to an eligible employee is a reference to:

- (a) a lump sum benefit ('a paragraph (a) benefit'): 40
 - (i) payable in relation to an eligible employee under

a superannuation scheme on the termination of employment or cessation of membership otherwise than on the ground of physical or mental incapacity to perform that employment; and

- 5 (ii) based wholly on contributions by the employer under the scheme or partly on such contributions and partly on contributions by the eligible employee under the scheme;

10 unless that benefit has been applied for the purchase of a deferred annuity or paid into a preservation fund; or

- (b) an amount payable to or in relation to the eligible employee on surrender of a deferred annuity if a paragraph (a) benefit had been applied for the purchase of that annuity; or

- 15 (c) an amount payable to or in relation to the eligible employee if that amount is payable from a preservation fund in relation to a paragraph (a) benefit paid to the fund for the benefit of the eligible employee; or

- 20 (d) an amount payable to, or in relation to, the eligible employee in accordance with Part 8 of the *Superannuation Guarantee (Administration) Act 1992*.

25 “(1AAA) In this Division, a reference to a transfer value in relation to an eligible employee does not include a reference to any part of a lump sum benefit payable under a superannuation scheme that is based on contributions by the employee under the scheme that are of a similar nature to supplementary contributions under this Act or to contributions under the superseded Act for reserve units of pension.”;

- (b) by omitting subsection (1AB).

30 **Payment of transfer values to Commissioner**

32. Section 128 of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsection:

35 “(1) If an eligible employee has been in employment, within or outside Australia, on the termination of which a transfer value or transfer values became payable to or in relation to him or her under a superannuation scheme applicable in relation to that employment and:

- 40 (a) the transfer value or transfer values, as the case may be, became payable on or after 25 May 1971; and

- (b) the eligible employee elects by written notice given to the Commissioner to pay the Commissioner an amount (“the election amount”) equal to the amount of the transfer

value or, if 2 or more transfer values became payable, the total of the amounts of those transfer values:

(i) before the transfer value or transfer values, as the case may be, are paid; or

(ii) not later than 3 months after the day on which:
 (A) the person becomes an eligible employee; or
 (B) the transfer value or transfer values, as the case may be, became payable;

whichever is the later; or

(iii) within such further period as the Commissioner, in special circumstances allows; and 10

(c) the election amount is, before the expiration of the period referred to in subparagraph (b)(ii) or (iii), as the case may be, paid to the Commissioner;

then the succeeding provisions of this section have effect. 15

(b) by inserting in subparagraph (2)(c)(i) "or, if the transferred amount does not include an amount of productivity related benefit, the notional productivity amount" after "that amount";

(c) by inserting in subsection (3) "or (2A)" after "62(2)";

(d) by inserting in subsection (3) "(other than so much of that transferred amount as is worked out under paragraph (2)(c))" after "transferred amount"; 20

(e) by omitting from subsection (4) "him upon the termination of his previous employment" and substituting "or in respect of him on the termination of the employment in respect of which the transfer value was payable"; 25

(f) by omitting from subsection (4) "that last-mentioned amount." and substituting the following:

"the total of:

(a) the amount paid into the Consolidated Revenue Fund in respect of the person under paragraph (2)(b); and 30

(b) the amount that would have accrued by way of interest on that amount if it had been paid into the Superannuation Fund on the day on which the amount referred to in paragraph (a) was paid into the Consolidated Revenue Fund."; 35

(g) by inserting after subsection (4) the following subsections:

"(4A) Subject to subsection (4B) and (4C), any benefit payable to or in respect of a person under subsection (4) must be:

(a) paid, for the benefit of the person, to a preservation fund nominated by the person; or 40

(b) applied, on behalf of the person, for the purchase of a deferred annuity nominated by the person; or

(c) if the person does not make a nomination within 2

months after the benefit becomes payable—paid, for the benefit of the person, to a preservation fund nominated by the Commissioner.

“(4B) Subsection (4A) does not apply to a benefit payable to or in respect of a person if:

(a) the person is 55 or over and has given the Commissioner a written statement to the effect that he or she has retired from the workforce; or

(b) the benefit becomes payable on the person’s death; or

(c) the total of:

(i) the amount of the person’s accumulated employer contributions under section 110Q; and

(ii) the amount that would be preserved or applied under subsection (4A) in relation to the person but for the operation of this subsection; and

(iii) the amount of superannuation guarantee top-up benefit paid to the person;

is less than \$500; or

(d) the Commissioner is satisfied that the person is departing permanently from Australia.

“(4C) Subsection (4A) does not apply to a benefit, or a part of a benefit, payable to or in respect of a person if the person establishes, to the satisfaction of the Commissioner, that the benefit or the part of the benefit, as the case may be, need not be preserved or applied under subsection (4A) in order to satisfy the superannuation fund conditions under the *Occupational Superannuation Standards Act 1987* as they apply in relation to that benefit.”;

(h) by inserting in subparagraph (6)(b)(i) “or, if the transfer value payable to or in respect of the person does not include such an amount, an amount equal to the notional productivity amount” after “Part VIA”;

(i) by adding at the end the following subsection:

“(8) For the purposes of subparagraphs (2)(c)(i) and (6)(b)(i), the ‘**notional productivity amount**’, in relation to a transferred amount or a transfer value, is the amount equal to 3% of so much of a person’s earnings as were relevant for the purpose of establishing whether, in relation to the period, or periods, of employment in respect of which the transferred amount or the transfer value, as the case may be, was payable, the employee was an employee in respect of whom one or more employers incurred an individual superannuation guarantee shortfall within the meaning of the *Superannuation Guarantee (Administration) Act 1992*.”.

Public employment

33. Section 133 of the Principal Act is amended:

(a) by inserting after subsection (1) the following subsection:

“(1AA) A declaration under subsection (1) may be expressed to apply only in relation to the employment of a person included in a class of persons specified in the declaration.”; 5

(b) by inserting after subsection (1C) the following subsection:

“(1D) If:

(a) 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 10

(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; 15

the Board may, by instrument 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 that employment continues to be so employed.”; 20

(c) by inserting in subsection (2) “or (1D)” after “subsection (1)”;

(d) by inserting after subsection (2) the following subsection:

“(2A) A declaration under this section that is expressed to expire at a specified time ceases to be in force at that time.”; 25

(e) by omitting subsection (3) and substituting the following subsection:

“(3) A person is to be taken, for the purposes of this Division, to have been employed in public employment at a particular time if, and only if: 30

(a) the employer by whom the person was employed at that time was a person, or was included in a class of persons, specified in a declaration by the Board under subsection (1) that was, or is deemed to have been, in force at that time and, in the case of a declaration expressed to apply only in relation to the employment of a person included in a class of persons, the person was included in that class; or 35

(b) a declaration by the Board under subsection (1D) was, or is deemed to have been, in force at that time in relation to that person.”. 40

Deferred benefits

34. Section 136 of the Principal Act is amended:

(a) by omitting paragraph (2)(b) and substituting the following paragraph:

“(b) if:

(i) a deferred benefit by way of additional age retirement pension is payable to the person in accordance with subsection 57(1); or

(ii) a deferred benefit by way of additional early retirement pension is payable to the person in accordance with subsection 61(1);

the annual rate of that pension is an amount per annum equal to:

(iii) if an event mentioned in subsection 139AA(2) has not happened in relation to the person—the amount calculated in accordance with the formula:

$$F_1 \times AC; \text{ or}$$

(iv) if such an event has happened in relation to the person before the day on which the deferred benefit becomes payable, or happens on that day—the amount calculated in accordance with the formula:

$$F_1 \times (AC + AEC);”;$$

(b) by inserting after subsection (2B) the following subsections:

“(2BA) In spite of subsection (2B), on each of the 7 pension paydays immediately following the death of a person in respect of whom an amount of benefit is calculated in accordance with paragraph (2B)(j), (k) or (m), pension mentioned in that paragraph is payable at the rate at which pension would have been payable to that person on that day if the person had not died.

“(2BB) Where pension is payable as mentioned in subsection (2BA), section 96A applies as if the pension were payable in accordance with subsection 94(3), 95(2) or 96(3).”.

Circumstances in which person entitled to deferred benefits

35. Section 139 of the Principal Act is amended:

(a) by omitting from paragraph (2)(a) “Commissioner” (wherever occurring) and substituting “Board”;

(b) by omitting from paragraph (3)(a) “Commissioner” and substituting “Board”;

(c) by omitting subsection (5) and substituting the following subsection:

“(5) Deferred benefits are not payable unless:

(a) if paragraph (2)(a) applies:

- (i) an application in writing has been made to the Board requesting payment of the benefits; and
- (ii) the applicant has furnished to the Board any information that is necessary to enable the Board to determine whether the benefits are payable; or

(b) if paragraph (2)(b), (c) or (d) applies:

- (i) an application in writing has been made to the Commissioner requesting payment of the benefits; and
- (ii) the applicant has furnished to the Commissioner any information that is necessary to enable the Commissioner to determine whether the benefits are payable.”.

36. After section 139A of the Principal Act the following section is inserted:

Deferral of benefit payable under section 110P

“139AA.(1) If, under subsection 139(2), deferred benefits become payable to a person on a day immediately following a date selected under paragraph (c) of that subsection and that part of the person’s deferred benefits that consists of an amount equal to the person’s accumulated employer contributions is not less than \$500, then, subject to subsection (2):

(a) the part must, in accordance with a nomination made by the person:

- (i) be preserved in a preservation fund nominated by the person; or
- (ii) be applied to the purchase of a deferred annuity nominated by the person; or

(b) if the person fails, within 2 months after the benefit becomes payable, to make a nomination—it must be preserved in a preservation fund nominated by the Commissioner.

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

- (a) the person provides the Commissioner with a statement to the effect that he or she has retired from the workforce; or
- (b) the Commissioner is satisfied that the person is about to leave Australia permanently; or
- (c) the Insurance and Superannuation Commissioner approves the payment of the benefit.”.

Person who is entitled to rights under Division not entitled to rights under other provisions of Act

37. Section 140 of the Principal Act is amended:

- (a) by omitting subsection (2) and substituting the following subsection:

“(2) If:

(a) a person referred to in subsection 137(1) is:

(i) if paragraph 137(1)(a) applies—a person who has been paid an amount by way of lump sum benefit to which the person became entitled under section 80 or Part VIA or VIAA; or

(ii) if paragraph 137(1)(b) applies—a person who has been paid:

(A) an amount or amounts by way of pension or by way of pension and lump sum benefit to which the person became entitled under section 55 or 59 or Part VIA; or

(B) an amount by way of lump sum benefit to which the person became entitled under section 62 or Part VIA; and

(b) after the payment, preservation or application, as the case may be, of the amount, or those amounts, the person makes an election under section 137;

the election does not have effect unless an amount equal to that amount or the aggregate of those amounts, as the case requires, is paid to the Commissioner within 7 days after the date of the election or within such further period as the Commissioner, in special circumstances, allows.”;

(b) by omitting paragraphs (3)(a) and (b) and substituting the following paragraphs:

“(a) if the person is a person to whom paragraph 137(1)(a) applies—an amount equal to the amount paid to the Commissioner less any part of that amount that is:

(i) an amount of a kind referred to in paragraph 110Q(1)(c) or (d); or

(ii) an amount of superannuation guarantee top-up benefit; or

(b) if the person is a person to whom paragraph 137(1)(b) applies—the portion of the amount paid to the Commissioner that was paid to the Consolidated Revenue Fund under section 112 at the time that the person last ceased to be an eligible employee.”.

Certain former eligible employees not entitled to benefits under Division

38. Section 141 of the Principal Act is amended by omitting from paragraph (1)(c) “Commissioner” and substituting “Board”.

Interpretation

39. Section 153AA of the Principal Act is amended:

(a) by inserting after paragraph (d) of the definition of “decision” in subsection (1) the following paragraph:

“(da) a decision made by the Board as to whether or not it is satisfied for the purposes of a provision of section 122; or”;

- (b) by inserting after paragraph (f) of the definition of “decision” in subsection (1) the following paragraph:

“(fa) a decision made by the Board as to whether or not it is satisfied for the purposes of paragraph 139(2)(a); or”;

- (c) by inserting after paragraph (g) of the definition of “decision” in subsection (1) the following paragraph:

“(ga) a decision made by the Board as to whether or not it is satisfied for the purposes of paragraph 141(1)(c); or”.

Decision to be referred to panel in certain circumstances

40. Section 153AJ of the Principal Act is amended by omitting from subsection (1) “Where the decision” and substituting “Subject to section 153ALA, where the decision”.

Decision to be referred to Committee

41. Section 153AK of the Principal Act is amended by inserting in subsection (1) “and section 153ALA” after “subsection (2)”.

42. After section 153AL of the Principal Act the following section is inserted in Division 3 of Part XA:

Reconsideration of certain decisions by a delegate relating to invalidity

“153ALA.(1) If the Board, in relation to an application for reconsideration of a decision by a delegate not to approve the retirement of an eligible employee as provided by Part IVA, is satisfied that the eligible employee is totally and permanently incapacitated within the meaning of that Part, the Board may, without proceeding under section 153AJ to refer the decision to a panel or under section 153AK to refer the decision to a Committee, by instrument set aside the decision and substitute another decision approving the retirement of the eligible employee on the ground of invalidity.

“(2) The Board must:

- (a) set out in the instrument the reasons for setting aside the decision and substituting the other decision; and
(b) make available a copy of the instrument to the applicant.”.

Decision to be referred to panel in certain circumstances

43. Section 153AQ of the Principal Act is amended by omitting from subsection (1) “Where a decision” and substituting “Subject to section 153AT, where a decision”.

Decision to be referred to Committee

44. Section 153AR of the Principal Act is amended by inserting in subsection (1) "and section 153AT" after "subsection (2)".

5 45. After section 153AS of the Principal Act the following section is inserted in Division 4 of Part XA:

Reconsideration of certain decisions by the Board relating to invalidity

10 "153AT.(1) If the Board, in relation to an application for reconsideration of a decision by the Board not to approve the retirement of an eligible employee as provided by Part IVA, is satisfied that the eligible employee is totally and permanently incapacitated within the meaning of that Part, the Board may, without proceeding under section 153AQ to refer the decision to a panel or under section 153AR to refer the decision to a Committee, by instrument set aside the decision and substitute another decision approving the retirement of the eligible
15 employee on the ground of invalidity.

"(2) The Board must:

- (a) set out in the instrument the reasons for setting aside the decision and substituting the other decision; and
- (b) make available a copy of the instrument to the applicant."

20 **Determinations with respect to interest and notional interest**

46. Section 154A of the Principal Act is amended:

(a) by inserting after subsection (1) the following subsection:

25 "(1A) If, under a provision of this Act, notional interest is to be calculated on an amount, that interest must be calculated in accordance with a determination made by the Board for the purposes of that provision.";

(b) by inserting in subsection (2) "or (1A)" after "subsection (1)".

Modification of Act in relation to persons who cease to be eligible employees in certain circumstances

30 47.(1) Section 155B of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

"(1) This section applies to a person who:

- (a) was the holder of a position or office, and an eligible employee, immediately before the position or office, as the case may be,
35 ceased to exist as a result of the sale or transfer of an organisation, business, service or asset, or the transfer of a function; and
- (b) before the date of the sale or transfer received and accepted an offer of employment in connection with the organisation,
40 business, service, asset or function; and

- (c) took up employment in accordance with that offer on or after the date of the sale or transfer, as the case may be; and
- (d) ceased to be an eligible employee upon taking up that employment.”.

(2) The Superannuation (Former HLIC Employees) Regulations have effect, and are taken to have always had effect, as if this section had commenced immediately before they were made. 5

48. After section 155B of the Principal Act the following sections are inserted:

Regulations relating to the operation of the *Occupational Superannuation Standards Act 1987* 10

“155C.(1) The regulations may make such provision as is necessary for the purpose of enabling:

- (a) the Fund; and
- (b) any other scheme or arrangement established by or under this Act that provides for the payment of benefits; 15

to satisfy any condition or requirement specified in or under the *Occupational Superannuation Standards Act 1987* that is capable of applying in relation to the Fund, or the scheme or arrangement, as the case may be. 20

“(2) If regulations made for the purposes of subsection (1) are inconsistent with a provision of this Act, the regulations prevail and that provision, to the extent of the inconsistency, is of no effect.

Death may be presumed in certain cases

“155D. If the Commissioner, after consideration of all the circumstances, directs that the death of a person be presumed, this Act applies in relation to that person as if the person had died on such date as is determined by the Commissioner.”. 25

49. After section 156 of the Principal Act the following section is inserted: 30

Refund of money paid by mistake etc.

“156A. If:

- (a) an amount of money (other than a productivity contribution paid under Part VIA in respect of a person who is a productivity employee within the meaning of that Part) has been paid to the Commissioner by, or on behalf of, a person who at the time was not an eligible employee; and 35

(b) the Commissioner has paid that amount into the Fund; then, upon the Commissioner becoming aware that the person was not an eligible employee, an amount equal to that amount is to be paid, together with interest in respect of the amount, to the person or, if the 40

person has died, to the person's personal representative or to such person or persons (if any) as the Commissioner determines.”.

Directions etc. to be in writing

- 5 50. Section 164 of the Principal Act is amended by omitting “or by the Commissioner” and substituting “the Commissioner or the Board”.

Regulations

51. Section 168 of the Principal Act is amended by adding at the end the following subsections:

- 10 “(11) Regulations made within 2 years after the commencement of this subsection for the purposes of section 6A may commence on a day earlier than the day on which they are made, but not earlier than the commencement of this subsection.”.

- 15 “(12) Regulations made within one year after the commencement of this subsection for the purposes of section 14A, 51, 126, 155, 180 or 183 may commence on a day earlier than the day on which they are made, but not earlier than the commencement of this subsection.”.

Transfer of assets etc. to approved superannuation schemes

52. Section 240 of the Principal Act is amended by inserting in paragraph (1)(a) “Fund” after “accumulated contributions and”.

20 **Election to join Superannuation (1990) Scheme**

53. Section 244 of the Principal Act is amended by omitting from paragraph (3)(a) “until 31 March” and substituting “on 31 March”.

Transfer of assets etc. to Superannuation (1990) Scheme

- 25 54. Section 248 of the Principal Act is amended by inserting in paragraph (1)(a) “Fund” after “accumulated contributions and”.

Amendments consequential upon the enactment of the *Military Superannuation and Benefits Act 1991*

55. The Principal Act is further amended as set out in the Schedule.

30 **PART 4—AMENDMENTS OF THE SUPERANNUATION ACT 1990**

Principal Act

56. In this Part, “Principal Act” means the *Superannuation Act 1990*³.

Interpretation

- 35 57. Section 3 of the Principal Act is amended by inserting “or that is an approved authority by virtue of paragraph (a),” after “or (iv),” in sub-subparagraph (b)(v)(A) of the definition of “approved authority”.

Membership of Superannuation Scheme

58.(1) Section 6 of the Principal Act is amended:

- (a) by inserting after subparagraph (1)(e)(i) the following subparagraph:

“(ia) immediately before he or she became an invalidity pensioner was the holder of that office or engaged in that employment; and”;

- (b) by omitting paragraph (1)(f) and substituting the following paragraph:

“(f) the holder of a statutory office, or a temporary employee, who:

(i) immediately before being appointed to that office or being employed in his or her present employment was a person to whom a preserved benefit was applicable under the Rules; and

(ii) immediately before the preserved benefit became so applicable was the holder of that office or employed in the same employment;”;

- (c) by omitting paragraph (1)(g);

- (d) by adding at the end the following subsection:

“(3) Paragraph (2)(a) does not exclude a person from membership of the Superannuation Scheme in relation to particular employment if the person is an eligible employee for the purposes of the *Superannuation Act 1976* in relation to other employment.”.

(2) A person who, under paragraph 6(1)(e), (f) or (g) of the Principal Act, was a member of the Superannuation Scheme immediately before the commencement of paragraph (1)(a), (b) or (c) continues to be such a member despite the amendments made by paragraph (1)(a), (b) or (c).

59. Section 7 of the Principal Act is repealed and the following section is substituted:

Election by holder of statutory office to be a member

“7.(1) The holder of a statutory office (other than the holder of such an office to whom paragraph 6(1)(e) or (f) applies) may elect, by writing in a form approved by the Board, to become a member of the Superannuation Scheme in relation to that office.

“(2) The effect of making an election under subsection (1) is that the person becomes a member of the Superannuation Scheme only in respect of the office to which the election relates.

“(3) This section does not prevent the person becoming a member of the Superannuation Scheme in respect of other employment.”.

Election by temporary employee to be member

60. Section 8 of the Principal Act is amended:

(a) by omitting subsection (1) and substituting the following subsection:

5 “(1) A person who is a temporary employee in relation to particular employment (other than a temporary employee to whom paragraph 6(1)(e) or (f) applies) may elect, by writing in a form approved by the Board, to become a member of the Superannuation Scheme in relation to that employment.”;

10 (b) by adding at the end the following subsections:

 “(4) The effect of making an election under subsection (1) is that the person becomes a member of the Superannuation Scheme only in respect of the employment to which the election relates.

15 “(5) This section does not prevent the person becoming a member of the Superannuation Scheme in respect of other employment.”.

Contributions to Superannuation Scheme etc. by employer

20 **61.** Section 15 of the Principal Act is amended by omitting from subsection (1) the definition of “designated employer” and substituting the following definitions:

 “‘designated employer’, in relation to a member, means:

(a) where the member is a permanent employee, or temporary employee, of the Commonwealth, but is not an LWOP member:

25 (i) if the remuneration in respect of his or her employment is paid wholly or principally out of money appropriated under an annual Appropriation Act—the Department in respect of which the money is appropriated; or

30 (ii) if the remuneration in respect of his or her employment is paid wholly or principally out of money appropriated under an Act other than an annual Appropriation Act—such Department as is determined by the Minister in writing; or

35 (b) where the member is the holder of a statutory office, but is not an LWOP member:

(i) if the remuneration in respect of that office is paid by an approved authority—that authority; or

(ii) if subparagraph (i) does not apply—such Department as is determined by the Minister in writing; or

40 (c) where the member is an LWOP member—such person as is determined by the Minister; or

(d) in any other case—the authority or body by which the member is employed;

'LWOP member' means a member who:

- (a) is on leave of absence without pay and, because of a direction given under the Rules by the Board, is required to make payment in respect of contributions falling due during the period of that leave; or 5
- (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 that leave in accordance with an election made under the Rules." 10

Payments to and by Commonwealth in respect of benefits payable under Superannuation Scheme

62. Section 16 of the Principal Act is amended:

- (a) by omitting paragraph (1)(b) and substituting the following paragraph: 15
 - "(b) the Commonwealth must pay the benefits to such person or persons as are appropriate under the Rules.";
- (b) by omitting from paragraph (3)(a) "the Board" and substituting "the person";
- (c) by inserting in paragraph (3)(b) "pension" after "partial invalidity"; 20
- (d) by omitting paragraph (4)(b) and substituting the following paragraph:
 - "(b) the Commonwealth must pay the preserved benefit to such person or persons as are appropriate under the Rules.";
 25
- (e) by omitting from subsection (6) "paragraph (1)(b), subsection (3) or paragraph (4)(b)" and substituting "subsection (3)".

Cost of administration of Act etc.

63. Section 34 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections: 30

"(1) The costs of the administration of this Act and of the Trust Deed, including the costs of and incidental to the management of the Fund by the Board and the investment of its money, are to be paid as determined from time to time by the Minister. 35

"(1A) A determination for the purposes of subsection (1) is to be in writing and is to identify, whether by amount or otherwise:

- (a) those costs payable by the Commonwealth; and
- (b) those costs payable by the Board out of the Fund.

"(1B) Costs determined by the Minister to be payable by the Commonwealth are to be paid out of money appropriated from time to time by Parliament for the purpose." 40

Certain authorities to pay part of costs of administration

64. Section 35 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- 5 “(1A) The Board, if directed in writing to do so by the Minister, must prepare an estimate containing such information as the Minister requires in respect of such of those costs as are specified by the Minister.”.

65. Section 37 of the Principal Act is repealed and the following section is substituted:

10 **Costs—Board being assisted by panel of persons**

“37.(1) If, under the Rules, the Board engages a panel of persons to assist it to reach a decision:

- (a) whether or not to approve invalidity retirement for a member who has not reached the age of 60; or
15 (b) in relation to the payment of preserved benefits; or
(c) in relation to the payment of an invalidity retirement benefit on the ground that a person was totally and permanently incapacitated on his or her last day as a member;

20 any cost specified in subsection (2) is payable from the Consolidated Revenue Fund, which is appropriated accordingly.

“(2) Each of the following costs is specified for the purposes of subsection (1):

- (a) any cost incurred in relation to the panel of persons;
25 (b) the cost of any medical examination that the person is required to undergo under the Rules to provide the panel with the medical evidence that it requires for the purpose of assisting the Board.

30 “(3) Where the Board decides not to approve invalidity retirement for a member, the cost of any rehabilitation program recommended for the member under the Rules and undertaken by the member is payable from the Consolidated Revenue Fund, which is appropriated accordingly.”.

**PART 5—AMENDMENTS OF THE SUPERANNUATION
(PRODUCTIVITY BENEFIT) ACT 1988**

35 **Principal Act**

66. In this Part, “Principal Act” means the *Superannuation (Productivity Benefit) Act 1988*⁴.

Interpretation

67. Section 3 of the Principal Act is amended by inserting “(other than superannuation benefits approved under the *Superannuation Benefits (Supervisory Mechanisms) Act 1990*)” after “superannuation benefits” in paragraph (d) of the definition of “qualified employee” in subsection (1). 5

Rates of salary

68. Section 3B of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) In working out under subsection (1) the rate of salary of a remainder employee for a pay period, any ongoing compensation payments received by the employee in respect of his or her employment as such an employee during the first pay period mentioned in that subsection are taken to be salary paid to the employee.”. 10

Continuing contributions

69. Section 3C of the Principal Act is amended by inserting after subsection (2) the following subsection: 15

“(2A) Subject to this section, where a fund employee who is employed on a full-time basis is on leave without pay during the whole or part of a pay period of the employee, the continuing contribution in respect of the employee for the pay period is: 20

- (a) if the employee is on leave without pay during the whole of the pay period—nil; or
- (b) if the employee is on leave without pay for part only of the pay period—the amount worked out using the formula: 25

$$\frac{\text{Actual salary}}{\text{Full-time salary}} \times \text{Full-time continuing contribution}$$

where:

‘Actual salary’ means the salary payable to the employee for the pay period;

‘Full-time salary’ means the salary that would have been payable to the employee for the period if he or she had not been on leave without pay; 30

‘Full-time continuing contribution’ means the amount that would be the continuing contribution in respect of the employee for the pay period if he or she had not been on leave without pay.”. 35

Arrangements for certain employers

70. Section 4A of the Principal Act is amended by omitting from subsection (1) “, not being scheme employees,”.

SCHEDULE

Section 55

**AMENDMENTS OF THE SUPERANNUATION ACT 1976
CONSEQUENTIAL UPON THE ENACTMENT OF THE MILITARY
SUPERANNUATION AND BENEFITS ACT 1991**

Subsection 3(1):

Insert the following definition:

“ ‘**MSB Act**’ means the *Military Superannuation and Benefits Act 1991*;”.

Subsection 10(2):

After “Defence Force Retirement and Death Benefits Act” insert “or the MSB Act”.

Subsection 54(1):

After “under the Defence Force Retirement and Death Benefits Act” insert “or the MSB Act”.

Subsection 54(2):

Omit “Death Benefits Act, is entitled to retirement pay”, substitute “Death Benefits Act or the MSB Act, is entitled to retirement pay or pension (as the case requires)”.

Subsection 117(1):

- (a) Omit “Death Benefits Act, he ceases”, substitute “Death Benefits Act or the MSB Act, he ceases”.
 - (b) Omit “Death Benefits Act, but”, substitute “Death Benefits Act or the MSB Act (as the case may be), but”.
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NOTES

1. No. 33, 1922, as amended. For previous amendments, see No. 45, 1924; No. 22, 1930; No. 10, 1931; No. 45, 1934; No. 28, 1937; No. 53, 1942; No. 18, 1943; Nos. 15 and 30, 1945; No. 2, 1946; Nos. 1 and 35, 1947; No. 19, 1948; No. 76, 1950; Nos. 49 and 62, 1951; No. 92, 1952; No. 11, 1954; No. 27, 1955; Nos. 19 and 112, 1956; No. 94, 1957; No. 45, 1958; No. 102, 1959; No. 102, 1963; Nos. 97 and 154, 1965; Nos. 69 and 86, 1966; No. 52, 1967; Nos. 49 and 57, 1968; Nos. 14 and 26, 1969; No. 46, 1971; Nos. 46, 83 and 135, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 59, 1974; Nos. 32 and 37, 1976; No. 17, 1978; No. 92, 1981; No. 63, 1984; Nos. 80, 93 and 151, 1986; No. 125, 1989; and No. 40, 1990.
2. No. 31, 1976, as amended. For previous amendments, see No. 51, 1976; No. 80, 1977; Nos. 17, 134, 169 and 170, 1978; Nos. 52 and 155, 1979; No. 177, 1980; No. 92, 1981, No. 92, 1983; Nos. 63 and 165, 1984; Nos. 80, 93, 151 and 153, 1986; No. 141, 1987; Nos. 38 and 130, 1988; Nos. 71, 97 and 125, 1989; No. 40, 1990; and Nos. 13, 122 and 130, 1991.
3. No. 38, 1990, as amended. For previous amendments, see Nos. 13 and 130, 1991.
4. No. 70, 1988, as amended. For previous amendments, see No. 130, 1988; No. 40, 1990; and No. 130, 1991.

NOTE ABOUT SECTION HEADING

1. On the day on which section 117 of the *Superannuation Act 1976* is amended by this Act, the heading to that section is altered by adding at the end "or MSB Act".