

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

Presented and read a first time

(Finance)

**SUPERANNUATION LEGISLATION AMENDMENT
BILL 1994**

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1993-94

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

Presented and read a first time

(Finance)

A BILL

FOR

**An Act to amend certain Acts relating to superannuation
for people employed by the Commonwealth, and for certain
other people, 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 1994*.

Commencement

2.(1) Except as otherwise provided by this section, this Act commences on the day on which it receives the Royal Assent

(2) Divisions 2 to 8 of Part 2, paragraphs 66(a) and (c) and sections 79 to 87 and 92 to 98 commence, or are taken to have commenced, as the case may be, on 1 July 1994.

(3) Paragraph 66(b) and section 67 are taken to have commenced on 1 July 1993. 5

(4) Section 69 is taken to have commenced on 1 July 1992.

(5) Section 76 is taken to have commenced on 1 July 1990.

PART 2—AMENDMENTS OF THE SUPERANNUATION ACT 1976

Division 1—Preliminary 10

Principal Act

3. In this Part, “Principal Act” means the *Superannuation Act 1976*¹.

Division 2—Directions and declarations by the Board

Object of Division

4. The object of this Division is to amend the Principal Act so as to ensure that the rules of the superannuation scheme provided for in that Act are consistent with section 58 of the *Superannuation Industry (Supervision) Act 1993*. 15

Statutory office holders

5. Section 14 of the Principal Act is amended: 20

(a) by inserting after “office” in paragraph (1)(a) “to which the person has been appointed on a full-time basis”;

(b) by omitting subsections (2) and (3).

Invalidity pensioners returning to employment except as permanent employees 25

6. Section 15 of the Principal Act is amended:

(a) by inserting after “office” in paragraph (1)(a) “to which the person was appointed on a full-time basis”;

(b) by omitting subsection (2).

Functions 30

7. Section 27C of the Principal Act is amended by omitting subsections (6) and (7).

Leave of absence without pay

35 8.(1) Section 51 of the Principal Act is amended by omitting subsections (1), (1A), (2), (2A), (2B) and (2C) and substituting the following subsections:

“(1) This section applies to a person if:

- (a) the person is, or at any time has been, an eligible employee; and
- (b) the person, while an eligible employee, has been on leave of absence without pay for a period longer than 12 weeks; and
- 5 (c) the period of leave of absence is not an excluded period of leave of absence.

“(2) For the purposes of subsection (1), the following periods of leave of absence of a person are, subject to subsection (2B), excluded periods of leave of absence:

- 10 (a) a period of leave of absence during which the person’s liability to make contributions is deferred under subsection 54(1);
- (b) a period of sick leave without pay that is a continuous period of less than 2 years;
- (c) if a period of sick leave without pay is a continuous period of 2 years or longer—the part of the period that is less than 2 years;
- 15 (d) a period of compensation leave granted under the *Safety, Rehabilitation and Compensation Act 1988*;
- (e) a period of leave of absence granted for the purpose of undertaking a course of studies approved by the person’s employer except:
 - 20 (i) a period in respect of which the person elects not to make basic contributions; or
 - (ii) if the period of leave of absence is a continuous period of 2 years or longer—the part of the period that begins on the last day of those 2 years;
- 25 (f) subject to subsection (2A), a period of leave of absence for the purpose of engaging in other employment (other than employment by an approved organisation) if:
 - (i) in respect of a person who is employed in a Department (within the meaning of the Public Service Act)—the Secretary (within
 - 30 the meaning of that Act) of the Department is satisfied that the engaging by the person in the other employment is in the interests of the Australian Public Service; or
 - (ii) in respect of any other person—the person’s employer is satisfied that the engaging by the person in the other
 - 35 employment is in the employer’s interests;
- (g) subject to subsection (2A), a period of leave of absence for the purpose of engaging in employment by an approved organisation;

- (h) subject to subsection (2BC), a period of leave of absence in respect of which there is in force an agreement made (whether before or after the end of the period) between the Minister and the Board declaring the period to be an excluded period of leave of absence. 40

“(2A) Subject to subsection (2BA), paragraph (2)(f) or (g) does not apply in respect of a period, or a part of a period, of leave of absence granted to a person unless the following requirements have been complied with:

- (a) if the person is ordinarily employed by one of the following Governments, authorities or bodies (the ‘**usual employer**’): 5
- (i) the Government of the Australian Capital Territory or of the Northern Territory;
 - (ii) an authority or body established by or under a law of the Australian Capital Territory or of the Northern Territory;
 - (iii) the Australian National University; 10
 - (iv) the Snowy Mountains Hydro-electric Authority;
 - (v) another authority or body declared by the Minister, by signed writing, to be an authority or body to which this subparagraph applies;

the person’s employer in respect of the employment engaged in during the period, or the part of the period, of leave of absence (the ‘**temporary employer**’) makes payments to the usual employer of such amounts, or at such rates, as are determined in respect of the person during the period or the part of the period by: 15

- (vi) if the usual employer is an authority or body established by or under a law of the Australian Capital Territory or of the Northern Territory—the Government of the Territory concerned; or 20
 - (vii) otherwise—the usual employer;
- (b) if the person is ordinarily employed by one of the following authorities or bodies (the ‘**usual employer**’) that is not an authority or body referred to in paragraph (a): 25
- (i) an approved authority;
 - (ii) another authority or body referred to in subsection 159(1);
 - (iii) a body referred to in item 2.1 of Schedule 1 to the Superannuation (Continuing Contributions for Benefits) Regulations; 30

the person’s employer in respect of the employment engaged in during the period, or the part of the period, of leave of absence (the ‘**temporary employer**’): 35

(iv) makes payments to the usual employer of such amounts, or at such rates, as the Minister determines in respect of the person during the period or the part of the period; and

40 (v) makes those payments at the times at which payments are required to be made to the Commonwealth under section 159 by authorities or bodies to which that section applies;

5 (c) if the person is ordinarily employed by someone other than a Government, authority or body referred to in paragraph (a) or (b)—the person's employer in respect of the employment engaged in during the period, or the part of the period, of leave of absence (the **'temporary employer'**) makes payments to the Commonwealth of such amounts or at such rates, and at such times, as the Minister determines in respect of the person during the period or the part of the period.

10 "(2B) Subject to subsection (2BA), except in respect of a person who is not a productivity employee or is, under an agreement made between the Minister and the Board, exempted from the operation of this subsection, subsection (2) does not apply in respect of a period, or a part of a period, of leave of absence granted to a person unless:

15 (a) if the leave of absence was granted so that the person could engage in other employment—the other employer; or

(b) otherwise—the employer by whom the person is ordinarily employed;

20 makes payments to the Board in respect of the person, during the period, or the part of the period, of leave of absence, of productivity contributions of the amounts worked out under section 110C.

25 "(2BA) Subsections (2A) and (2B) have effect in relation to a particular period of leave granted to a person, or a particular part of such a period, subject to any modifications agreed between the Minister and the Board in relation to the person in respect of the period or the part of the period, as the case may be.

"(2BB) In paragraphs (2)(f) and (g):

'approved organisation' means:

30 (a) an organisation registered under the *Industrial Relations Act 1988* whose the membership includes people who are eligible employees or members of the Superannuation (1990) Scheme; or

(b) a body consisting of organisations referred to in paragraph (a).

“(2BC) An agreement made under paragraph (2)(h) in respect of a period of leave of absence may be subject to such conditions as are set out in the agreement, and, if any such conditions are contravened in relation to the period or a part of the period, that paragraph does not apply in respect of the period or the part of the period, as the case may be. 35

“(2BD) The Minister and the Board may at any time vary or terminate an agreement made under paragraph (2)(h).”.

(2) The amendments made by subsection (1) apply only to periods of leave of absence beginning on or after 1 July 1994 and, despite the amendments, section 51 of the Principal Act continues to have effect in respect of periods of leave of absence beginning before that date as if the amendments had not been made. 5

(3) If a person was granted leave of absence before 1 July 1994 for a period (the “**relevant period**”) beginning before that date but ending on or after that date, the reference in subsection (2) to a period of leave of absence beginning before that date:

- (a) includes a reference to the part of the relevant period that occurs on or after that date; but 10
- (b) does not include a reference to the period of any extension of the relevant period that is granted on or after that date.

Interpretation

9. Section 110A of the Principal Act is amended: 15

(a) by inserting “of the *Superannuation Act 1976* as in force immediately before the commencement of the *Superannuation Legislation Amendment Act 1994*” after “51(1)” in paragraph (a) of the definition of “LWOP employee”;

(b) by inserting after paragraph (a) of the definition of “LWOP employee” the following paragraph: 20

“(aa) 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”;
- 25

(c) by adding at the end of the definition of “productivity employee” (but not as part of paragraph (b) of that definition) “but does not include an eligible employee whom the Minister and the Board have agreed to exempt from the operation of subsection 51(2B);”.

Public employment 30

10.(1) Section 133 of the Principal Act is amended:

(a) by omitting subsections (1), (1AA), (1A), (1B) and (1C) and substituting the following subsections:

35 “(1) The Minister and the Board may agree that employment, whether within or outside Australia, by a person, or by persons included in a class of persons, is public employment for the purposes of this Division.

“(1A) The Minister and the Board may at any time vary or terminate an agreement made under subsection (1).”;

(b) by omitting from paragraph (1D)(a) “declared” and substituting “agreed”;

5 (c) by omitting from subsection (1D) “Board may, by instrument published in the *Gazette*, declare” and substituting “Minister and the Board may agree”;

(d) by omitting subsections (2), (2A) and (3) and substituting the following subsections:

10 “(2) An agreement made under this section may be expressed to have taken effect on a day earlier than the day on which the agreement is made but not earlier than 1 July 1976.

“(2A) An agreement made under this section or a variation of such an agreement:

15 (a) may be expressed to apply only in relation to employment of a person included in a class of persons referred to in the agreement; and

(b) may be expressed to apply only until a time stated in the agreement.

20 “(2B) The Board must cause notice of the making of an agreement under this section, or of the variation or termination of such an agreement, to be published in the *Gazette*.

“(3) A person is taken, for the purposes of this Division, to have been employed in public employment at a particular time before 1 July 1994 if, and (except as otherwise provided by an Act other than this Act) only if:

25 (a) the employer by whom the person was employed at that time was a person, or was included in a class of persons, referred to in a declaration by the Board under subsection 133(1) of the *Superannuation Act 1976* as in force at that time and, if the declaration was 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

30 (b) a declaration by the Board under subsection 133(1D) of the *Superannuation Act 1976* as in force at that time was, or is taken to have been, in force at that time in relation to the person.

35

“(3A) A person is taken, for the purposes of this Division, to have been employed in public employment at a particular time on or after 1 July 1994 if, and (except as otherwise provided by an Act other than this Act) only if:

- (a) the employer by whom the person was employed at that time was a person, or was included in a class of persons, referred to in an agreement under subsection (1) that was in force at that time and, if the agreement was expressed to apply only in relation to the employment of a person included in a class of persons, the person was included in the class; or
- (b) an agreement made between the Minister and the Board under subsection (1D) was, or is taken to have been, in force at that time in relation to the person.”;
- (e) by omitting from subsection (4) “A declaration” and substituting “An agreement”.

(2) A declaration made by the Board under subsection 133(1) of the Principal Act (including, to remove any doubt, a declaration that is taken, by subsection 46(2) of the *Superannuation Legislation Amendment Act 1991*, to have been made by the Board under subsection 133(1) of the *Superannuation Act 1976*) is taken, for the purposes of section 133 (other than subsection 133(3)) of the Principal Act as amended by this section, to be an agreement made between the Minister and the Board under subsection 133(1) of the Principal Act as amended by this section.

(3) A declaration made by the Board under subsection 133(1D) of the Principal Act is taken, for the purposes of section 133 of the Principal Act as amended by this section, to be an agreement made between the Minister and the Board under subsection 133(1D) of the Principal Act as amended by this section.

Repeal of section and substitution of new section

11.(1) Section 134 of the Principal Act is repealed and the following section is substituted:

Eligible superannuation schemes

“134.(1) Subject to subsection (5), the Minister and the Board may agree that a superannuation scheme is an eligible superannuation scheme for the purposes of this Division.

“(2) The Minister and the Board may at any time terminate an agreement made under subsection (1).

“(3) An agreement made under subsection (1) may be expressed to have taken effect on a day earlier than the day on which the agreement is made but not earlier than 1 July 1976.

35 “(4) The Board must cause notice of the making of an agreement under subsection (1), or of the termination of such an agreement, to be published in the *Gazette*.

“(5) An agreement may not be made under subsection (1) in relation to a superannuation scheme (the ‘**relevant scheme**’) unless:

- (a) the relevant scheme is a public sector superannuation scheme; and
- (b) the trustee of the relevant scheme has given a written undertaking to the Board stating that:

5 (i) the relevant scheme will accept transfer values paid from, and pay transfer values to, the scheme provided for under this Act (the ‘**Commonwealth scheme**’) or any other eligible superannuation scheme; and

(ii) the relevant scheme will provide equitable benefits in return for a transfer value so accepted; and

10 (c) the trustee of the relevant scheme has given a written undertaking to the Board stating that, except as provided by subsection (7), the scheme will not pay out:

(i) the whole or any part of the employer component of a transfer value paid to the relevant scheme from the Commonwealth scheme; or

15 (ii) any part of any other transfer value paid to the relevant scheme that represents the whole or a part of the employer component of a transfer value paid from the Commonwealth scheme; and

20 (d) the trustee of the relevant scheme has given a written confirmation to the Board stating that the undertaking does not conflict with the trust instrument, other document or legislation, or combination of them, governing the establishment and operation of the relevant scheme;

25 or the Minister and the Board are satisfied that there are special circumstances that make it desirable for the relevant scheme to be treated as an eligible superannuation scheme for the purposes of this Division even though one or more of the paragraphs of this subsection are not complied with.

“(6) In subsection (5):

30 ‘**public sector superannuation scheme**’ means a scheme for the payment of superannuation, retirement or death benefits that is established:

(a) by or under a law of the Commonwealth, of a State or of a Territory;
or

(b) under the authority of:

(i) the Commonwealth, a State or a Territory; or

- (ii) a municipal corporation, another local governing body, or a public authority constituted by or under a law of the Commonwealth, of a State or of a Territory; or 35
- (iii) a company or other body corporate in which the Commonwealth, a State, a Territory, a municipal corporation, another local governing body or a public authority referred to in subparagraph (ii) has, or any 2 or more of them together have, a controlling interest;

‘trustee’, in relation to a superannuation scheme of which there is no trustee (within the ordinary meaning of that expression), means the person who manages the scheme. 5

“(7) The whole or a part of an employer component, or the part of a transfer value that represents the whole or a part of an employer component, referred to in subparagraph (5)(c)(i) or (ii), as the case may be, may only be paid out as follows: 10

- (a) except where the amount proposed to be paid is the whole or a part of a lump sum retrenchment benefit to which paragraph (b) applies, payment may be made:
 - (i) to an eligible superannuation scheme; or
 - (ii) in the same circumstances, and to the same extent, as benefits that are required to be compulsorily preserved under the *Superannuation Industry (Supervision) Act 1993* and the regulations under that Act may be paid; 15
- (b) if the amount proposed to be paid is the whole or a part of a lump sum retrenchment benefit that has become payable before 1 July 2000: 20
 - (i) payment may be made of any part of the amount other than the amount (the **‘preserved part of the amount’**) required to be compulsorily preserved under the *Superannuation Industry (Supervision) Act 1993* and the regulations under that Act; and
 - (ii) payment may be made of the preserved part of the amount in the circumstances provided for under that Act and those regulations. 25

“(8) A superannuation scheme to which an agreement made under subsection (1) relates is not an eligible superannuation scheme in relation to a person if Part XIII or XIII A applies in respect of the person because of his or her having become a member of the superannuation scheme. 30

“(9) A person is taken, for the purposes of this Division, to have been a member of an eligible superannuation scheme at a particular time if, and only if, the person was at that time a member of a superannuation scheme in respect of which: 35

- (a) if that time was before 1 July 1994—a declaration by the Board under subsection 134(1) of the *Superannuation Act 1976* as in force at that time was, or is taken to have been, in force; or
- (b) if that time was on or after that date—an agreement under this section was in force.”

40

(2) A declaration made by the Board under subsection 134(1) of the Principal Act (including, to remove any doubt, a declaration that is taken, by subsection 47(2) of the *Superannuation Legislation Amendment Act 1991*, to have been made by the Board under subsection 134(1) of the *Superannuation Act 1976*) is taken, for the purposes of section 134 (other than paragraph 134(9)(a)) of the Principal Act as amended by this section, to be an agreement made between the Minister and the Board under subsection 134(1) of the Principal Act as amended by this section.

5

Election for transfer value by people in relation to whom deferred benefits apply

10

12.(1) Section 139A of the Principal Act is amended:

(a) by omitting from subsection (1A) “Except where the Board otherwise directs,” and substituting “Unless the Minister and the Board otherwise agree,”;

15

(b) by omitting subsections (1B), (1C) and (1D) and substituting the following subsections:

“(1B) The Minister and the Board may terminate an agreement made under subsection (1A).

“(1C) An agreement may not be made under subsection (1A) in relation to a person in respect of whom Part XIII A applies.”.

20

(2) A direction given by the Board as mentioned in subsection 139A(1A) of the Principal Act (including, to remove any doubt, a declaration that is taken, by subsection 50(2) of the *Superannuation Legislation Amendment Act 1991*, to have been given by the Board under subsection 139A(1A) of the *Superannuation Act 1976*) is taken, for the purposes of section 139A of the Principal Act as amended by this section, to be an agreement made between the Minister and the Board under subsection 139A(1A) of the Principal Act as amended by this section.

25

Special provisions affecting certain former contributors under certain superannuation schemes

30

13.(1) Section 145 of the Principal Act is amended:

(a) by omitting from subparagraph (1)(a)(ii) “, or is to be deemed to have been,”;

35

(b) by omitting subsections (11), (11A), (11B), (11C), (12) and (13) and substituting the following subsections:

“(11) The Minister and the Board may agree that a particular superannuation scheme that:

- (a) provides for benefits by means of life policies; and
- (b) is an eligible superannuation scheme for the purposes of Division 3;

is an approved superannuation scheme for the purposes of this section.

“(11A) The Minister and the Board may at any time terminate an agreement made under subsection (11). 5

“(11B) An agreement made under subsection (11) may be expressed to have taken effect on a day earlier than the day on which the agreement is made but not earlier than 1 July 1976.

“(12) The Board must cause notice of the making of an agreement under subsection (11), or of the termination of such an agreement, to be published in the *Gazette*. 10

“(13) A superannuation scheme is taken, for the purposes of this section, to have been an approved superannuation scheme at a particular time if: 15

- (a) in respect of a time before 1 July 1994—a declaration in respect of the scheme made by the Board under subsection 145(11) of the *Superannuation Act 1976* was, or is taken to have been, in force at that time; or
- (b) in respect of a time on or after that date—an agreement under subsection (11) in respect of the scheme was in force at that time.”. 20

(2) A declaration made by the Board under subsection 145(11) of the Principal Act (including, to remove any doubt, a declaration that is taken, by subsection 53(2) of the *Superannuation Legislation Amendment Act 1991*, to have been made by the Board under subsection 145(11) of the *Superannuation Act 1976*) is taken, for the purposes of section 145 (other than paragraph 145(13)(a)) of the Principal Act as amended by this section to be an agreement made between the Minister and the Board under subsection 145(11) of the Principal Act as amended by this section. 25 30

Determination by Board

14.(1) Section 153AL of the Principal Act is amended by omitting paragraph (1)(b).

(2) The amendment made by subsection (1) applies only to decisions made on or after 1 July 1994 and, despite that subsection, subsection 153AL(1) of the Principal Act continues to apply to decisions made before that date as if the amendment had not been made. 35

Determination by Board

40 15.(1) Section 153AS of the Principal Act is amended by omitting paragraph (1)(b).

(2) The amendment made by subsection (1) applies only to decisions made on or after 1 July 1994 and, despite that subsection, subsection 153AS(1) of the Principal Act continues to apply to decisions made before that date as if the amendment had not been made.

5 **Annual report of Board**

16.(1) Section 161 of the Principal Act is amended:

(a) by omitting from subsection (1A) “approved by the Minister” and substituting “agreed between the Minister and the Board”;

(b) by omitting subsection (7).

10 (2) The amendments made by subsection (1) apply to financial statements or a report, as the case requires, in respect of any period beginning on or after 1 July 1994.

Division 3—Exercise of powers by Commissioner, Minister and Governor-General

15 **Object of Division**

17. The object of this Division is to amend the Principal Act so as to ensure that the rules of the superannuation scheme provided for in that Act are consistent with sections 59 and 60 of the *Superannuation Industry (Supervision) Act 1993*.

20 **Certain references to Commissioner to be replaced by references to the Board**

18. The Principal Act is amended by omitting from the provisions referred to in Schedule 1 “Commissioner” (wherever occurring) and substituting “Board”.

25 **Repeal of section**

19. Section 16AE of the Principal Act is repealed.

Commissioner for Superannuation

20. Section 17 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

30 “(2) The Commissioner is responsible for:

(a) the provision of administrative services to the Board; and

(b) the general administration of the superseded Act; and

(c) any functions conferred on the Commissioner under section 154.

“(3) In providing administrative services to the Board under paragraph (2)(a), the Commissioner must act in accordance with any policies determined, and any directions given, by the Board. 35

“(4) Anything done by the Commissioner in the name of, or on behalf of, the Board is taken to have been done by the Board.”.

Insertion of new section

21. After section 17 of the Principal Act the following section is inserted:

Other functions of Commissioner not to be prejudiced 5

“17A. The Commissioner is not required under this Act to do anything that would prejudice the performance of:

- (a) the Commissioner’s functions under any other Act (including any function that the Commissioner has because of his or her being the Chairman of the Defence Force Retirement and Death Benefits Authority); or 10
- (b) the Commissioner’s functions under any regulations made under an Act.”.

Repeal of section and substitution of new section

22. Section 27 of the Principal Act is repealed and the following section 15 is substituted:

Commissioner to keep records with respect to benefits paid under superseded Act

“27. The Commissioner must cause proper records to be kept in respect of benefits paid under the superseded Act.”. 20

Functions of Board

23. Section 27C of the Principal Act is amended by omitting from subsection (1) all the paragraphs after paragraph (a) and substituting the following paragraph:

- “(b) to be responsible for the general administration of this Act.”. 25

Insertion of new section

24. After section 27C of the Principal Act the following section is inserted:

Board to keep records with respect to contributions etc.

- “27CA. The Board must cause proper records to be kept in respect of: 30
- (a) contributions paid into the Superannuation Fund; and
 - (b) benefits paid under this Act, whether out of the Superannuation Fund or out of the Consolidated Revenue Fund; and

(c) amounts that, under this Act, are:

- 35 (i) paid out of the Consolidated Revenue Fund into the Superannuation Fund; or
(ii) paid out of the Superannuation Fund into the Consolidated Revenue Fund.”.

Repeal of section

25. Section 27U of the Principal Act is repealed.

5 **Investment of funds**

26. Section 42 of the Principal Act is amended by omitting from subsection (1) “, after consultation with the Commissioner,”.

Accounts and records

- 10 27. Section 44 of the Principal Act is amended by omitting subsection (2).

Interpretation

28. Section 62A of the Principal Act is amended by omitting from the definition of “rate of fund contribution tax” in subsection (1) “Minister” and substituting “Board”.

15 **Interpretation**

29. Section 110SB of the Principal Act is amended by omitting from the definition of “rate of fund contribution tax” in subsection (1) “Minister” and substituting “Board”.

Interpretation—SG minimum contribution

- 20 30. Section 110SC of the Principal Act is amended:
(a) by omitting from subsections (2) and (3) “Minister” and substituting “Board”;
(b) by omitting subsections (4) and (5) and substituting the following subsection:
25 “(4) A determination by the Board under subsection (2) takes effect on:
(a) a day stated in the determination; or
(b) if no day is stated—the day of the making of the determination; and the Board must cause a copy of the determination to be published
30 in the *Gazette*.”.

Board may determine rate of fund contribution tax

31. Section 110SD of the Principal Act is amended:

- (a) by omitting from subsections (1) and (3) “Minister” and substituting “Board”;
- (b) by omitting subsections (4) and (5) and substituting the following subsection: 35
“(4) The Board must cause a copy of the determination to be published in the *Gazette*.”.

Eligible employment

32. Section 132 of the Principal Act is amended by inserting in subsections (3), (4) and (5) “or the Board” after “Commissioner” 5
(wherever occurring).

Transfer value

33. Section 135 of the Principal Act is amended by inserting in paragraph (1A)(d) “or the Board” after “Commissioner”.

Deferred benefits 10

34. Section 136 of the Principal Act is amended by inserting in paragraphs (2A)(d) and (2F)(d) “or the Board” after “Commissioner”.

Special provisions affecting certain former contributors under certain superannuation schemes

35.(1) Section 145 of the Principal Act is amended by omitting 15
subsection (3) and substituting the following subsection:

“(3) An election under subsection (2) does not have effect unless the person who made the election, within the period referred to in that subsection, causes the life policy or life policies referred to in paragraph (1)(b) to be assigned to the Board, free from any mortgages, 20
charges or other encumbrances.”.

(2) A life policy assigned to the Commissioner under subsection 145(3), or issued to the Commissioner under subsection 145(4), of the Principal Act before the commencement of this section is, by this subsection, assigned to the Board. 25

Application of Part to pensions payable to or in respect of certain overseas employees

36. Section 151 of the Principal Act is amended by omitting “Minister” (last occurring) and substituting “Board”.

Interpretation 30

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

- (a) by omitting from subsection (1) the definition of “decision” and substituting the following definition:

“**decision**” means a decision of the Board other than:

- 35 (a) a decision in respect of the investment of the Fund; or
 (b) a determination under subsection 110Q(1A); or
 (c) a determination under subsection 110SC(2); or
 (d) a determination under section 110SD; or
 (e) a determination under section 154A; or
 (f) a decision:
 5 (i) to make, or to refuse to make, an agreement with the Minister under section 51, 133, 134, 139A or 145; or
 (ii) to agree, or to refuse to agree, to vary or terminate such an agreement; or
 (g) a decision to consent, or not to consent, to:
 10 (i) a proposed declaration or determination by the Minister referred to in section 167AB; or
 (ii) a proposed determination by the Minister under section 240 or 248; or
 (iii) the making of regulations;”;
 15 (b) by omitting from subsection (2) “subsection 51(1), 133(1), 134(1), 139A(1A) or 145(11)” and substituting “a provision of the *Superannuation Act 1976* referred to in the subsection concerned”.

Annual report of Board

20 38. Section 161 of the Principal Act is amended by omitting subsection (3).

Repeal of section and substitution of new section

39. Section 161A of the Principal Act is repealed and the following section is substituted:

Annual report of Commissioner in relation to superseded Act

25 “161A. The Commissioner must, as soon as practicable after the end of each financial year, prepare and give to the Minister a report on the general administration and operation of the superseded Act during that year.”.

Minister may request the supply of information

40. Section 163 of the Principal Act is amended:
 30 (a) by omitting from subsection (1) “this Act (other than Part III) and”;
 (b) by omitting from subsection (3) “performance of its functions” and substituting “general administration and operation of this Act (including the investment of the Fund)”.

Making false statements to Board, Commissioner etc.

35 41. Section 167 of the Principal Act is amended:

(a) by inserting in subsection (2) “the Board, a member of the Board, a delegate of the Board,” after “means”;

(b) by omitting from subsection (3) all the words from and including “order” to the end of the subsection and substituting the following words and paragraphs:

“order the person:

(a) in relation to an offence relating to the superseded Act— 5
to pay to the Commissioner; or

(b) otherwise—to pay to the Board;

an amount equal to any amount of benefit paid to the person as a result of the act, failure or omission in respect of which the person was convicted.”; 10

(c) by omitting from subsection (4) “, under the hand of the Commissioner,” and substituting “by the Commissioner or the Board stating”;

(d) by inserting after subsection (4) the following subsection:

“(4A) In any proceeding, a document purporting to be a 15
certificate under subsection (4) is taken, unless the contrary is proved, to be such a certificate and to have been duly given.”.

Insertion of new section

42. After section 167AA of the Principal Act, the following section is inserted: 20

Exercise of certain powers by Minister

“167AB. The Minister may not make a declaration or determination (other than a determination under section 241) under this Act that is a disallowable instrument unless:

(a) the Board has consented to the making of the declaration or 25
determination; or

(b) the declaration or determination:

(i) relates to a payment by an employer-sponsor within the meaning of the *Superannuation Industry (Supervision) Act 1993* that will, after the making of the declaration or 30
determination, be required or permitted to be made under this Act; or

(ii) relates solely to the termination of the Fund; or

(iii) is made or given in circumstances covered by regulations made for the purposes of subparagraph 60(1)(b)(iii) of the 35
Superannuation Industry (Supervision) Act 1993.”.

Regulations

43. Section 168 of the Principal Act is amended by inserting after subsection (12) the following subsections:

“(13) Regulations may not be made after the commencement of this subsection unless:

- (a) the Board has consented to the making of the regulations; or
- (b) the regulations:

- 5 (i) relate to a payment by an employer-sponsor within the meaning of the *Superannuation Industry (Supervision) Act 1993* that will, after the making of the regulations, be required or permitted to be made under this Act; or
- (ii) relate solely to the termination of the Fund; or
- 10 (iii) are made in circumstances covered by regulations made for the purposes of subparagraph 60(1)(b)(iii) of the *Superannuation Industry (Supervision) Act 1993*.

“(14) If any regulations in force at the commencement of this subsection confer a power on the Commissioner:

- 15 (a) that power is exercisable after that commencement by the Board and not by the Commissioner; and
- (b) any determination, approval or other thing that was made, given or done by the Commissioner under that power before that commencement is taken, after that commencement, for the purposes of this Act (other than section 154 and Part XA) to have been made,
- 20 given or done by the Board.”

Repeal of section and substitution of new section

44. Section 191 of the Principal Act is repealed and the following section is substituted:

25 **Assignment of life policies under superseded Act**

“191. If:

- 30 (a) a life policy that was assigned by a person to the Superannuation Board under section 119ZC of the superseded Act was transferred to the Commissioner by subsection 76(2) of the *Superannuation Amendment Act 1976*; or
- (b) a life policy is assigned by a person to the Commissioner under section 119ZC of the superseded Act;

the following paragraphs apply:

- (c) the policy is, by this section, assigned to the Board;

- (d) section 145 of this Act applies, with such modifications as are 35
determined by the Board, to and in relation to the person and the
policy as if the policy had been assigned to the Board by the person
under that section.”.

Transfer of assets etc. to approved superannuation schemes

45. Section 240 of the Principal Act is amended by inserting in
subsection (1) “, with the consent of the Board,” after “Minister”
(wherever occurring).

Transfer of assets etc. to Superannuation (1990) Scheme 5

46. Section 248 of the Principal Act is amended by inserting in
subsection (1) “, with the consent of the Board,” after “Minister”
(wherever occurring).

Saving

47.(1) A reference in this section to anything done by the Commissioner 10
or the Minister includes a reference to a determination made, or a direction,
approval or delegation given, by the Commissioner or the Minister, as the
case may be.

(2) Anything done before the commencement of this section under a
provision of the Principal Act referred to in subsection (4) by, or to or in 15
respect of, the Commissioner has effect, after that commencement, for all
purposes of the Principal Act as amended by this Act (other than Parts XA
and XI of that Act as so amended) as if it had been done by the Board under
the corresponding provision of the Principal Act as amended by this
Division. 20

(3) Anything done before the commencement of this section under a
provision of the Principal Act referred to in subsection (4) by, or to or in
respect of, the Minister has effect, after that commencement, for all purposes
of the Principal Act as amended by this Act as if it had been done by the Board
under the corresponding provision of the Principal Act as amended by this 25
Division.

(4) The provisions of the Principal Act in relation to which
subsection (2) or (3) applies are:

- (a) the provisions referred to in Schedule 1; and
- (b) sections 17, 25, 27 and 27U, the definition of “rate of fund 30
contribution tax” in subsections 62A(1) and 110SB(1) and sections
110SC, 110SD, 145 and 191.

**Division 4—Remuneration of Chairperson of Commonwealth
Superannuation Board of Trustees No. 2**

35 **Object of Division**

48. The object of this Division is to amend the Principal Act so as to ensure that the superannuation scheme provided for in that Act is consistent with the definition of “independent director” in section 10 of the *Superannuation Industry (Supervision) Act 1993*.

Remuneration

49. Section 27J of the Principal Act is amended by adding at the end the following subsections:

5 “(2) The remuneration and allowances of the Chairperson of the Board are to be paid out of the Fund.

“(3) The remuneration and allowances of the members of the Board other than the Chairperson may be paid, as determined by the Minister:

- 10 (a) out of the Fund; or
(b) out of the Consolidated Revenue Fund; or
(c) partly out of the Fund and partly out of the Consolidated Revenue Fund.”.

**Division 5—Termination of appointment of certain members of the
Commonwealth Superannuation Board of Trustees No. 2**

Object of Division

15 50. The object of this Division is to amend the Principal Act so as to ensure that the superannuation scheme provided for in that Act is consistent with section 107 of the *Superannuation Industry (Supervision) Act 1993*.

Termination of appointment of appointed members

20 51. Section 27M of the Principal Act is amended by adding at the end the following subsections:

“(3) The Minister may not terminate the appointment of a member who was nominated for appointment by the Australian Council of Trade Unions unless the Council has consented to the termination.

25 “(4) Before deciding whether to consent to a proposed termination of the appointment of a member referred to in subsection (3), the Australian Council of Trade Unions must consult with organisations referred to in subsection 27F(4).”.

Division 6—Payment of certain money to eligible roll-over funds

Object of Division

52. The object of this Division is to amend the Principal Act so as to ensure that the superannuation scheme provided for in that Act is consistent with section 244 of the *Superannuation Industry (Supervision) Act 1993*. 30

Interpretation

53. Section 3 of the Principal Act is amended by inserting in subsection (1) the following definition: 35
“**‘eligible roll-over fund’** means a fund in respect of which a declaration by the Insurance and Superannuation Commissioner under section 243 of the *Superannuation Industry (Supervision) Act 1993* is in force.”.

Preservation of portion of benefit

54. Section 62B of the Principal Act is amended:
- (a) by omitting from paragraph (1)(c) “2 months” and substituting “90 days”;
 - (b) by omitting from paragraph (1)(c) “a preservation fund nominated by the Commissioner” and substituting “an eligible roll-over fund nominated by the Board”.

Payment of productivity benefit

55. Section 110R of the Principal Act is amended:
- (a) by omitting from subsection (6) “2 months” and substituting “90 days”; 10
 - (b) by omitting from subsection (6) “a preservation fund nominated by the Commissioner” and substituting “an eligible roll-over fund nominated by the Board”.

Payment of top-up benefit—preservation 15

56. Section 110SG of the Principal Act is amended:
- (a) by omitting from subsection (2) “2 months” and substituting “90 days”;
 - (b) by omitting from subsection (2) “a preservation fund nominated by the Commissioner” and substituting “an eligible roll-over fund nominated by the Board”. 20

Payment of transfer values to Commissioner

57. Section 128 of the Principal Act is amended:
- (a) by omitting from paragraph (4A)(c) “2 months” and substituting “90 days”; 25

- (b) by omitting from paragraph (4A)(c) “a preservation fund nominated by the Commissioner” and substituting “an eligible roll-over fund nominated by the Board”.

Deferral of benefit payable under section 110P

30 **58.** Section 139AA of the Principal Act is amended:

- (a) by omitting from paragraph (1)(b) “2 months” and substituting “90 days”;
- (b) by omitting from paragraph (1)(b) “a preservation fund nominated by the Commissioner” and substituting “an eligible roll-over fund nominated by the Board”.

35

Insertion of new section

59. After section 158 of the Principal Act the following section is inserted:

Payment of unclaimed money to eligible roll-over fund

“158A. If:

- (a) a lump sum benefit is payable under this Act to a person; and
- (b) the person fails, within 90 days after the benefit becomes payable, to tell the Board in writing how the person wishes the benefit to be paid; the Board may pay the amount of the benefit to an eligible roll-over fund.”.

5

Division 7—Fund to cease to be part of the Trust Fund

Object of Division

10 **60.** The object of this Division is to amend the Principal Act so as to ensure that the superannuation scheme provided for in that Act is consistent with paragraph 52(2)(d) of the *Superannuation Industry (Supervision) Act 1993*.

Establishment of Fund

15 **61.** Section 40 of the Principal Act is amended by omitting subsection (2).

Division 8—Refund of productivity contributions

Object of Division

20 **62.** The object of this Division is to amend the Principal Act so as to ensure that the superannuation scheme provided for in that Act is consistent with subsection 117(3) of the *Superannuation Industry (Supervision) Act 1993*.

Repeal of section and substitution of new section

63.(1) Section 110EA of the Principal Act is repealed and the following section is substituted:

Effect of retrospective declaration under section 110E 25

“110EA. If the Minister makes a declaration under section 110E with retrospective effect:

- (a) the amounts paid as productivity contributions in respect of an employee to whom the declaration relates in respect of the period covered by the declaration; and 30

- (b) interest in respect of those amounts;

are payable, as soon as practicable after the declaration is made, to the fund out of which the productivity related benefits to which the employee is entitled as mentioned in subsection 110E(2) are payable.”.

(2) Section 110EA of the Principal Act as amended by this section applies only in respect of declarations made after the commencement of this section and, despite the amendment, section 110EA of the Principal Act continues to apply in respect of declarations made before that commencement. 5

Division 9—Other amendments

Object of Division

64. The object of this Division is to make amendments to correct various technical defects in the Principal Act.

Insertion of new section 10

65.(1) After section 4 of the Principal Act the following section is inserted:

Declarations, determinations, approvals etc. by Minister, Board or Commissioner

“4AA.(1) If a provision of this Act refers to a declaration or determination made, approval given or other thing done by the Minister, the Board or the Commissioner and there is no other provision in this Act expressly authorising the Minister, the Board or the Commissioner to make such a declaration or determination, give such an approval or do such a thing, the Minister, the Board or the Commissioner, as the case may be, is, and is taken to have at all times been, authorised to make such a declaration or determination, give such an approval or do such a thing. 20

“(2) An approval given by the Minister for the purposes of the definition of ‘temporary employee’ in subsection 3(1) may take effect on a day not earlier than: 25

- (a) 12 months before the giving of the approval; or
- (b) if contributions have been accepted before the start of that period of 12 months from, or in respect of, the person to whom the approval relates—the earliest day on which contributions were so accepted.”.

30 (2) Subsection 4AA(1) of the Principal Act as amended by
subsection (1) of this section is taken to have had effect on and from 1 July
1976.

35 (3) An approval given before the commencement of this section for the
purposes of the definition of “temporary employee” in subsection 3(1) of
the *Superannuation Act 1976* that purported to take effect on a day earlier
than the day on which the approval was given has the effect, and is taken to
have at all times had the effect, that it would have, or would have had, if
subsection 4AA(2) of the Principal Act as amended by subsection (1) of
this section had been in force when the approval was given.

Interpretation

66. Section 62A of the Principal Act is amended:

- 5 (a) by omitting from paragraph (a) of the definition of “notional
accumulated SG contributions” in subsection (1) “(4)” and
substituting “(5)”;
- (b) by omitting from paragraph (a) of the definition of “relevant period
of employment” in subsection (1) “1993” and substituting
“1994”;
- 10 (c) by omitting from the definition of “relevant period of employment”
in subsection (1) all the words and paragraphs after paragraph (b).

Preservation of portion of benefit

67. Section 62B of the Principal Act is amended by omitting from the
definition of “AEC” in subsection (3) “1993” and substituting “1994”.

Accumulated employer contributions

15 68. Section 110Q of the Principal Act is amended by omitting from
subsection (1B) “(1)” and substituting “(1A)”.

Interpretation

69. Section 110SB of the Principal Act is amended:

- 20 (a) by omitting from paragraph (a) of the definition of “notional
accumulated SG contributions” in subsection (1) “(4)” and
substituting “(5)”;
- (b) by omitting from the definition of “relevant period of employment”
in subsection (1) all the words and paragraphs after paragraph (b).

Payments into and out of Consolidated Revenue Fund

25 70. Section 112 of the Principal Act is amended:

- (a) by inserting after subsection (10) the following subsection:
“(10AA) If payment of a pension and benefit (if any) to a person
is postponed under subsection 110TA(1), subsection (1A) does not
apply in relation to the person.”;

- (b) by inserting after subsection (10A) the following subsection: 30
 “(10AAA) If a pension the payment of which has been postponed under subsection 110TA(1) becomes payable to or in respect of a person, the person’s Fund accumulated employer contributions (if any) must be paid out of the Superannuation Fund into the Consolidated Revenue Fund.”; 35
- (c) by omitting from subsection (10B) “Subject to subsection (10C), where” and substituting “If”;
- (d) by omitting from subsection (10B) “section 110TA” and substituting “subsection 110TA(2)”;
- (e) by inserting after subsection (10B) the following subsection:
 “(10BA) If a person who has postponed payment of a pension and benefit (if any) under subsection 110TA(1) dies and there is no beneficiary to whom a pension and benefit (if any) are payable in respect of the person, an amount equal to the person’s Fund 5
 accumulated employer contributions (if any) must be paid out of the Superannuation Fund into the Consolidated Revenue Fund.”;
- (f) by omitting from subsection (10C) “subsection (10B) does not apply in relation to the person’s accumulated contributions” and substituting “the person’s Fund accumulated employer contributions 10
 (if any) must be paid out of the Superannuation Fund into the Consolidated Revenue Fund;”.

Correction of clerical errors

71. Section 163B of the Principal Act is amended by inserting in paragraph (b) “the Board, a delegate of the Board,” before “the 15
 Commissioner”.

Regulations

72.(1) Section 168 of the Principal Act is amended:

- (a) by inserting after subsection (1) the following subsections:
 - “(1A) If a provision of this Act refers to a provision (the ‘former 20
 provision’) of the Rules for the administration of the Superannuation (1990) Scheme, then:
 - (a) if a change is made to those Rules so that the former pr ovision is replaced by another provision of those Rules (the ‘new 25
 provision’)—the regulations may amend this Act by omitting from that provision of this Act the reference to the former provision and substituting a reference to the new provision; or
 - (b) if those Rules are replaced by new Rules—the regulations may amend this Act by omitting from that provision of this Act the reference to the former provision and substituting a reference 30
 to the corresponding provision of the new Rules.

“(1B) Regulations made as mentioned in subsection (1A) may commence on a day earlier than the day on which they are made, but not earlier than the day on which the former provision was replaced by the new provision or by the corresponding provision of the new Rules, as the case may be.”;

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

“(15) Regulations made after the commencement of this subsection:

(a) for the purpose of the definition of ‘statutory office’ in subsection 3(1); or

(b) for the purpose of section 14A;

may commence on a day not earlier than 12 months before the making of the regulations.

“(16) If regulations are made after the commencement of this subsection for a purpose referred to in subsection (15) and, before the start of the period of 12 months before the making of the regulations, contributions have been accepted from, or in respect of:

(a) if the regulations are made for the purpose mentioned in paragraph (15)(a)—the holder of the statutory office concerned; or

(b) if the regulations are made for the purpose mentioned in paragraph (15)(b)—a person to whom the regulations relate;

the regulations may commence on a day not earlier than the earliest day on which contributions were so accepted.”.

(2) Regulations made before the commencement of this section for the purposes of the definition of “statutory office” in subsection 3(1), or for the purposes of section 14A, of the *Superannuation Act 1976* that purported to take effect on a day earlier than the day on which the regulations were made have the effect, and are taken to have at all times had the effect, that they would have, or would have had, if subsections 168(15) and (16) of the Principal Act as amended by subsection (1) of this section had been in force when the regulations were made.

Interpretation

73. Section 169 of the Principal Act is amended:

(a) by omitting the definition of “‘Board’ or ‘Superannuation Board’”;

(b) by inserting the following definition:

“‘former Board’ means the Superannuation Board established by the superseded Act;”.

Consequential amendments

74. Part XII of the Principal Act is amended by omitting from the provisions referred to in Schedule 2 “Board” (wherever occurring) and “Superannuation Board” (wherever occurring) and substituting in either case “former Board”. 30

PART 3—AMENDMENT OF THE SUPERANNUATION LEGISLATION AMENDMENT ACT 1990 35

Object of Part

75. The object of this Part is to correct an error in the *Superannuation Legislation Amendment Act 1990*².

Payments into and out of Consolidated Revenue Fund

76. Section 66 of the *Superannuation Legislation Amendment Act 1990* is amended by inserting in paragraph (b) “(first occurring)” before “and substituting”.

PART 4—AMENDMENTS OF THE SUPERANNUATION ACT 1990 5

Division 1—Preliminary

Principal Act

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

Division 2—Amendments consequential on the Superannuation Industry (Supervision) Act 1993 10

Object of Division

78. The object of this Division is to amend the Principal Act so as to ensure that the superannuation scheme provided for in that Act is consistent with the *Superannuation Industry (Supervision) Act 1993*. 15

Interpretation

79. Section 3 of the Principal Act is amended by inserting the following definition:
“‘CSB No. 2’ means the Commonwealth Superannuation Board of Trustees No. 2 established under section 27A of the *Superannuation Act 1976*;” 20

Amendment of Trust Deed

80. Section 5 of the Principal Act is amended by inserting after subsection (1) the following subsections:

“(1A) The Minister may not amend the Trust Deed unless:

- 25 (a) the Board has consented to the amendment; or
(b) the amendment:
- 30 (i) relates to a payment by an employer-sponsor within the meaning of the *Superannuation Industry (Supervision) Act 1993* that will, after the making of the amendment, be required or permitted to be made under this Act; or
 - (ii) relates solely to the termination of the Fund; or
 - (iii) is made in circumstances covered by regulations made for the purposes of subparagraph 60(1)(b)(iii) of the *Superannuation Industry (Supervision) Act 1993*.

35 “(1B) For the purposes of subparagraph (1A)(b)(i), a payment under the Trust Deed or the Rules is taken to be a payment by an employer-sponsor referred to in that subparagraph.”.

Election by certain people to join scheme under the *Superannuation Act 1976*

81. Section 6A of the Principal Act is amended by omitting from subsection (4) “Commissioner” and substituting “CSB No. 2”.

5 **Annual report and financial statements**

82.(1) Section 28 of the Principal Act is amended:

- (a) by omitting from paragraph (1)(b) “such form as is approved by the Minister” and substituting “a form agreed between the Minister and the Board”.
- 10 (b) by omitting subsection (8).

(2) The amendment made by paragraph (1)(b) applies to any report in respect of a period beginning on or after 1 July 1994.

Transfer of assets etc. to approved superannuation schemes

15 83. Section 33D of the Principal Act is amended by inserting “, with the consent of the Board,” after “Minister” (wherever occurring).

Certain authorities to pay part of costs of administration

84. Section 35 of the Principal Act is amended by omitting subsection (1A) and substituting the following subsection:

20 “(1A) The Board, if requested in writing to do so by the Minister, must prepare an estimate containing any information requested by the Minister in respect of any of those costs that are referred to in the request.”.

Repeal of section and substitution of new section

85. Section 46 of the Principal Act is repealed and the following section is substituted:

Exercise of certain powers by Minister 25

“46.(1) The Minister may not make a declaration or determination (other than a determination under section 33E), or issue an instrument, referred to in subsection 45(1), unless:

- (a) the Board has consented to the making of the declaration or determination or the issue of the instrument; or 30
- (b) the declaration, determination or instrument:
 - (i) relates to a payment by an employer-sponsor within the meaning of the *Superannuation Industry (Supervision) Act 1993* that will, after the making of the declaration or determination or the issue of the instrument, be required or permitted to be made under this Act; or 35
 - (ii) relates solely to the termination of the Fund; or
 - (iii) is made or issued in circumstances covered by regulations made for the purposes of subparagraph 60(1)(b)(iii) of the *Superannuation Industry (Supervision) Act 1993*.

“(2) For the purposes of subparagraph (1)(b)(i), a payment under the Trust Deed or the Rules is taken to be a payment by an employer-sponsor referred to in that subparagraph.” 5

Regulations

86. Section 48 of the Principal Act is amended by adding at the end the following subsections:

“(2) Regulations may not be made after the commencement of this subsection unless: 10

- (a) the Board has consented to the making of the regulations; or
- (b) the regulations:
 - (i) relate to a payment by an employer-sponsor within the meaning of the *Superannuation Industry (Supervision) Act 1993* that will, after the making of the regulations, be required or permitted to be made under this Act; or 15
 - (ii) relate solely to the termination of the Fund; or
 - (iii) are made in circumstances covered by regulations made for the purposes of subparagraph 60(1)(b)(iii) of the *Superannuation Industry (Supervision) Act 1993*. 20

“(3) For the purposes of subparagraph (2)(b)(i), a payment under the Trust Deed or the Rules is taken to be a payment by an employer-sponsor referred to in that subparagraph.”

Insertion of new section 25

87. After section 48 of the Principal Act the following section is inserted:

Regulations relating to the operation of the *Superannuation Industry (Supervision) Act 1993* and certain other laws

30 “49.(1) The regulations may make any provision that is necessary for the purpose of enabling the occupational superannuation scheme established by this Act to satisfy any condition or requirement of, or made under, an eligible regulatory law that is capable of applying in relation to the scheme.

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

“(3) In this section:

‘eligible regulatory law’ means:

- (a) the *Superannuation Industry (Supervision) Act 1993*; or
- (b) the *Superannuation Entities (Taxation) Act 1987* (including a repealed provision of that Act which continues to apply because of the *Taxation Laws Amendment (Superannuation) Act 1992* or the *Occupational Superannuation Standards Amendment Act 1993*); or
- 5 (c) the *Superannuation (Resolution of Complaints) Act 1993*; or
- (d) the *Income Tax Assessment Act 1936*.”.

Division 3—Other amendments

Object of Division

10 **88.** The object of this Division is to make amendments to correct various technical defects in the Principal Act.

Insertion of new section

89. After section 44 of the Principal Act the following section is inserted:

Declarations etc. by Minister or Board

15 “44A. If a provision of this Act refers to a declaration or determination made or other thing done by the Minister or the Board and there is no other provision in this Act expressly authorising the Minister or the Board to make such a declaration or determination or do such a thing, the Minister or the Board, as the case may be, is, and is taken to have at all times been, authorised to make such a declaration or determination or do such a thing.”.

20 **Disallowable instruments**

90.(1) Section 45 of the Principal Act is amended by adding at the end the following subsections:

25 “(4) A declaration referred to in paragraph (1)(c), (d) or (f) that is made after the commencement of this subsection may take effect on a day not earlier than 12 months before the making of the declaration.

“(5) If a declaration referred to in paragraph (1)(c), (d) or (f) is made after the commencement of this subsection, and before the start of the period of 12 months immediately before the making of the declaration contributions were accepted from, or in respect of:

- (a) if a declaration is a declaration referred to in paragraph (1)(c)—the holder of the statutory office concerned; or 30
- (b) if the declaration is a declaration referred to in paragraph (1)(d) or (f)—a person to whom the declaration relates;

the declaration may take effect on a day not earlier than the earliest day on which contributions were so accepted.”. 35

(2) A declaration made before the commencement of this section:

- (a) for the purposes of paragraph (b) of the definition of “statutory office” in section 3 of the Principal Act; or
- (b) for the purposes of the definition of “temporary employee” in section 3 of that Act; or
- (c) under paragraph 6(1)(j) of that Act;

that purported to take effect on a day earlier than the day on which the declaration was made has the effect, and is taken to have at all times had the effect, that it would have, or would have had, if subsections 45(4) and (5) of the Principal Act as amended by subsection (1) of this section had been in force when the declaration was made. 5

PART 5—AMENDMENTS OF THE SUPERANNUATION BENEFITS (SUPERVISORY MECHANISMS) ACT 1990 10

Principal Act

91. In this Part, “**Principal Act**” means the *Superannuation Benefits (Supervisory Mechanisms) Act 1990*⁴.

Object of Part

92. The object of this Part is to ensure that the Commonwealth has power to oversee and control the establishment of superannuation schemes by Commonwealth authorities in a manner that is consistent with the *Superannuation Industry (Supervision) Act 1993*. 15

Interpretation

93. Section 3 of the Principal Act is amended: 20
- (a) by omitting from subsection (1) the definitions of “applicable law” and “eligible body”;
 - (b) by omitting from subsection (2) “, or to be eligible bodies,”;
 - (c) by omitting from paragraph (3)(a) “or under an applicable law”;
 - (d) by omitting from paragraph (3)(b) “or by an eligible body”. 25

Insertion of new section

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

Declarations etc. by Minister

30 “4A. If a provision of this Act refers to a declaration made or other thing done by the Minister and there is no other provision in this Act expressly authorising the Minister to make such a declaration or do such a thing, the Minister is, and is taken to have at all times been, authorised to make such a declaration or do such a thing.”.

Restrictions upon provision of superannuation

35 95.(1) Section 5 of the Principal Act is amended:

- (a) by omitting paragraph (1)(a);
- 5 (b) by omitting from paragraph (1)(c) “and the Minister has by signed instrument, approved their provision” and substituting “and they satisfy the relevant prescribed requirements for the provision of superannuation benefits under a superannuation arrangement”;
- (c) by omitting paragraph (2)(b);
- (d) by omitting from paragraph (2)(c) “and the Minister has, by signed instrument, approved their provision” and substituting “and they satisfy the relevant prescribed requirements for the provision of superannuation benefits under a superannuation arrangement”;
- 10 (e) by omitting subsections (4) and (5);
- (f) by omitting from subsection (6) “, not being a superannuation arrangement referred to in subsection (4) or (5),”;
- 15 (g) by omitting from subsection (10) “it is approved by the Minister by signed instrument” and substituting “the provision of superannuation benefits under the arrangement as amended would satisfy the relevant prescribed requirements”;
- (h) by omitting from subsection (11) “(4), (5),”;
- (i) by omitting subsection (12).

20 (2) Superannuation benefits in respect of whose provision an approval by the Minister was in force immediately before 1 July 1994 under paragraph 5(1)(c) or (2)(c) of the Principal Act, or was taken to be in force because of paragraph 9(2)(c) or (d) of that Act, are taken, for the purposes of the Principal Act as amended by this Part, to be superannuation benefits that satisfy the prescribed requirements referred to in section 6 of the Principal Act as so amended.

25 (3) Superannuation benefits provided in accordance with a superannuation arrangement, or an amendment of a superannuation arrangement, in respect of which, immediately before 1 July 1994, an approval by the Minister was in force under subsection 5(4) or (10) of the

30

Principal Act, or was taken to be in force because of paragraph 9(2)(e) or (f) of that Act, are taken, for the purposes of the Principal Act as amended by this Part, to be superannuation benefits that satisfy the prescribed requirements referred to in section 6 of the Principal Act as so amended.

(4) If a superannuation arrangement, or an amendment of a superannuation arrangement, that, immediately before 1 July 1994, had no force or effect, or had no force or effect in its purported application in respect of particular people, under subsection 5(4), (5) or (10) of the Principal Act (including subsection (4), (5) or (10) as it had effect because of subsection 9(6) of that Act), then, subject to section 7 of the Principal Act as amended by this Part, the arrangement or amendment has no force or effect on or after that date. 35 40

(5) If a superannuation arrangement, or an amendment of a superannuation arrangement, that, immediately before 1 July 1994, had no force or effect, or had no force or effect in its purported application in respect of particular people, under subsection 5(6) of the Principal Act because of subsection 9(6) of that Act, then, subject to section 7 of the Principal Act as amended by this Part, the arrangement or amendment has no force or effect on or after that date. 5

Repeal of section and substitution of new section

96.(1) Section 6 of the Principal Act is repealed and the following section is substituted: 10

Prescribed requirements for provision of superannuation benefits

“6.(1) The prescribed requirements for the provision of superannuation benefits under a superannuation arrangement for the purposes of section 5 are:

- (a) the requirements that the Minister, by signed writing, determines; 15
and
- (b) a requirement that procedures, satisfactory to the Minister, are in place for an employer that employs people for or in relation to whom the benefits are to be provided to make annual or other reports relating to the establishment and operation of the superannuation arrangement under which the benefits are provided. 20

“(2) The requirements that the Minister may determine under paragraph (1)(a) may include requirements as to:

- (a) the classes or kinds of employers (to be determined, in particular, by reference to the nature of their operations) in respect of whom it is appropriate to allow superannuation benefits to be provided for or in relation to people employed by them; and 25
- (b) the maximum costs that may be incurred by an employer in providing the benefits.

30 “(3) The requirements that the Minister may determine under paragraph (1)(a) may be of general or specially limited application and may differ according to differences in circumstance.

35 “(4) Without limiting the generality of subsection (3), the Minister may determine under paragraph (1)(a) different requirements in relation to different classes of people employed, people employed under different laws or people employed by different employers or classes or kinds of employers.

40 “(5) The Minister may determine under paragraph (1)(a) a requirement in relation to all employers, or particular employers or classes or kinds of employers, that superannuation benefits for or in relation to all or any of the people employed by such an employer may only be provided by someone other than:

- (a) the employer concerned; or
 - (b) a person who is associated in any way with the employer concerned (including, if the employer is a body corporate, another body corporate that is related to the first-mentioned body corporate for the purposes of the Corporations Law).
- 5

“(6) In this section:

‘**employer**’ means a person (including a Department within the meaning of the *Public Service Act 1922*) that:

- (a) employs people under a relevant law; or
 - (b) is a relevant body; and
- 10

includes a person in respect of whom a declaration is in force under subsection 3(5).”

15 (2) Superannuation benefits the provision of which was authorised by section 6 of the Principal Act (including that section as it had effect because of subsection 9(4) of that Act) immediately before 1 July 1994 are taken, for the purposes of the Principal Act as amended by this Part, to be superannuation benefits that satisfy the prescribed requirements referred to in section 6 of the Principal Act as so amended.

Effect of contravention of prescribed requirements

20 **97.(1)** Section 7 of the Principal Act is amended:

- (a) by omitting subsections (1) and (2) and substituting the following subsection:

25 “(1) Any act done in relation to the provision of superannuation benefits that contravenes any of the prescribed requirements referred to in section 6 is void to the extent that it contravenes the requirements.”;

- (b) by omitting from subsection (3) “or (2)” and substituting “of this Act or subsection 7(2) of the *Superannuation Benefits (Supervisory Mechanisms) Act 1990* as in force immediately before 1 July 1994”;

- (c) by omitting from subsection (4) “subsection 5(4), (5), (6) or (10)” 30
and substituting “subsection 5(6) or (10) of this Act, or
subsection 5(4) or (5) of the *Superannuation Benefits (Supervisory
Mechanisms) Act 1990* as in force immediately before 1 July 1994,”;
- (d) by omitting from subsection (5) “subsection 5(4), (5) or (6)” and 35
substituting “subsection 5(6) of this Act, or subsection 5(4) or (5)
of the *Superannuation Benefits (Supervisory Mechanisms) Act 1990*
as in force immediately before 1 July 1994”.

(2) If an act done before 1 July 1994 was void to a particular extent under
subsection 7(2) of the Principal Act (including an act that was void because
of subsection 9(5) of that Act), then, subject to subsection 7(3) of the
Principal Act as amended by this Part, the act continues to be void to the same
extent on and after that date. 5

Consequential amendments and transitional provisions

98. Section 9 of the Principal Act is amended:

- (a) by omitting subparagraphs (2)(a)(i) and (iii);
(b) by omitting paragraphs (2)(c), (d), (e) and (f);
(c) by omitting subsections (3), (4) and (6); 10
(d) by omitting from subsection (5) “or (2)”.
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SCHEDULE 1

Section 18

**Provisions of the *Superannuation Act 1976* containing references to the Commissioner for Superannuation that are to be replaced by references to the Commonwealth Superannuation Board of Trustees
No. 2**

Subsection 3(1) (definition of “approved medical practitioner”, subparagraphs (c)(ii) and (iii) of the definition of “eligible child” and subparagraph (1)(i) of the definition of “eligible employee”), subsections 5(3B) and (3C) and 6A(4) and (5), paragraph 8A(2)(b), subsection 8A(5), paragraph 8B(3)(d), subsections 11(1), 13(1), 14(1) and (2) and 15(1), sections 16, 16AA, 16AB, 16AC and 16AD, subsection 47(2), sections 48 and 50, subsection 51A(3), sections 51B, 52 and 53, subsection 54(1), section 62, subsections 62B(2), (4) and (5), section 64, paragraph 66(2)(c), subsections 66(2A) and (2B), sections 68, 69, 71, 72, 73A, 74, 74A, 75, 76A, 77, 78 and 79, paragraph 81(2)(c), sections 83, 84, 86, 87 and 92, paragraphs 97(1)(e) and 98(1)(e), section 99, paragraphs 100(1)(c) and (f), sections 101, 109AB, 110, 110H, 110K, 110L, 110M, 110MA, 110N, 110Q, 110R (except subsection (6)), 110S, 110SB (definition of “other vested benefit”) and 110SE, subsection 110SG(1), sections 110SH, 110SJ, 110T, 110TB, 110TC, 110TE, 110TF, 110TG, 111, 113, 114, 115, 116, 117, 119, 124 and 125, section 128 (except paragraph (4A)(c)), sections 128AA, 129 and 130, section 135 (except paragraphs (1A)(b) and (d)), section 136 (except paragraphs (2A)(b) and (d) and (2F)(b) and (d)), sections 137 and 139, subsection 139A(1), paragraphs 139AA(2)(a) and (b), section 140, paragraph 141(2)(c), section 143, section 145 (except subsection (3)), sections 152, 155D, 156, 156A, 157, 158, 163A and 163B (except paragraph (b)), Part XII (except sections 176, 177, 179 and 191) and sections 242E, 244 and 247.

SCHEDULE 2

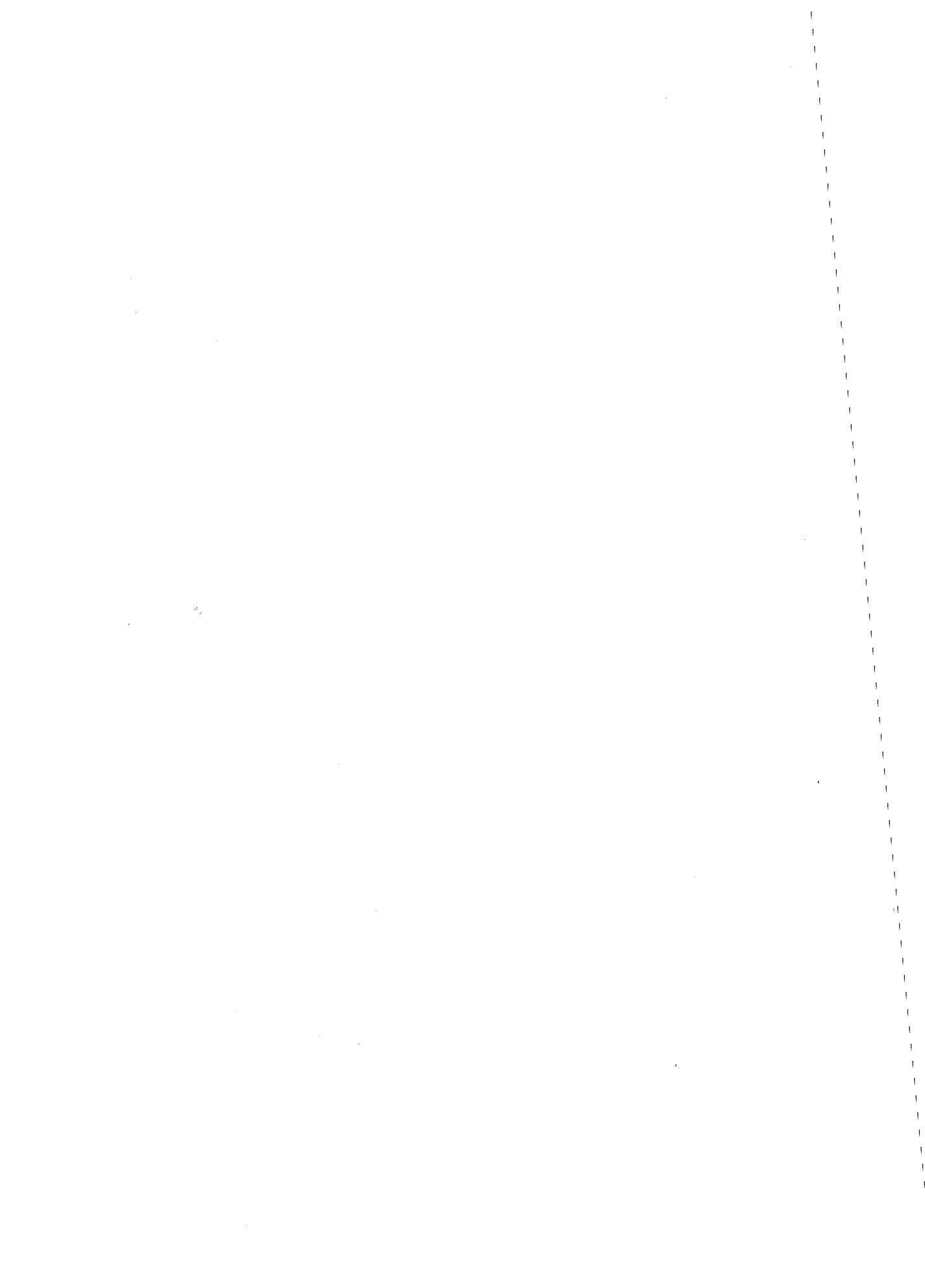
Section 74

Provisions of Part XII of the *Superannuation Act 1976* containing references to the Board or the Superannuation Board that are to be replaced by references to the former Board

Subsection 170(1) (definitions of “instrument to which this Division applies”, “investment assets of the existing Fund”, “investment liabilities of the existing Fund”, “investment power”, “uninvested moneys of the existing Fund”, “unreceived amounts in respect of life assurance policies” and “unreceived moneys of the existing Fund”), paragraph 171(c), sections 172 and 174, paragraph 184(7)(c) and sections 189 and 191.

NOTES

1. 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 and 93, 1986; No. 151, 1986 (as amended by No. 141, 1987); No. 153, 1986; Nos. 38 and 130, 1988; No. 71, 1989; No. 97, 1989 (as amended by No. 105, 1989); No. 125, 1989; No. 153, 1989 (as amended by No. 28, 1991); No. 39, 1990 (as amended by No. 130, 1991); No. 40, 1990; Nos. 13, 122 and 130, 1991; Nos. 95, 185, 187 and 196, 1992; and No. 82, 1993.
2. No. 40, 1990.
3. No. 38, 1990, as amended. For previous amendments, see Nos. 13 and 130, 1991; Nos. 187 and 196, 1992; and No. 82, 1993.
4. No. 39, 1990, as amended. For previous amendments, see No. 130, 1991; No. 196, 1992; and No. 82, 1993.







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