

1987-88

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 14 April 1988

(Minister for Employment, Education and Training)

A BILL

FOR

**An Act to make provision for an interim superannuation
benefit for certain persons**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

5 1. This Act may be cited as the *Superannuation Benefit (Interim Arrangement) Act 1988*.

Commencement

2. This Act shall be taken to have commenced on 1 January 1988.

Interpretation

10 3. (1) In this Act, unless the contrary intention appears:
“annual rate of salary”, in relation to a qualified employee in relation to a particular day, means:

(a) if the person is an eligible employee for the purposes of the Superannuation Act—the rate that would be the person’s final annual rate of salary for the purposes of that Act if the person had ceased to be such an eligible employee on that day; or

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(b) in any other case—the rate that would be the annual rate of salary of the person under that Act on that day if that Act applied to the person;

“annual rate of contribution”, in relation to a qualified employee, means:

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(a) for the year commencing on 1 January 1988:

(i) if the employee’s annual rate of salary is less than \$19,934—\$299;

(ii) if the employee’s annual rate of salary is \$19,934 or more but less than \$31,201—1.5% of the person’s annual rate of salary;

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(iii) if the employee’s annual rate of salary is \$31,201 or more but less than \$46,801—\$468; or

(iv) if the employee’s annual rate of salary is \$46,801 or more—1% of the person’s annual rate of salary; and

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(b) for each subsequent year—the amount prescribed by, or ascertained in accordance with, the regulations;

“approved deposit fund” has the same meaning as in the Standards Act;

“average annual rate of contribution”, in relation to a person in respect of whom an interim benefit is payable in relation to the year commencing on 1 January 1988 or a subsequent year, means half of the sum of:

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(a) the annual rate of contribution of the person based on the person’s annual rate of salary at the commencement of that year or at the commencement of the person’s service relevant to that interim benefit, whichever is the later; and

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(b) the annual rate of contribution of the person based on the person’s annual rate of salary at the end of that year or, if the interim benefit became payable in respect of the person in that year, immediately before the day on which the interim benefit became payable;

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“interim benefit” means a benefit payable in accordance with this Act;

“long term bond rate”, in relation to a calendar year, means:

(a) in the case of the year commencing on 1 January 1988—0.1286; or

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(b) in the case of a subsequent year—the rate, expressed as a fraction, that is the assessed secondary market yield last published by the Reserve Bank before 1 January in that year in respect of 10-year non-rebate Treasury bonds or, if such a yield had not been published by the Reserve Bank in

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the period of 3 months ending on that day, the rate fixed by the Minister by notice published in the *Gazette* in relation to that year;

5 “pay period”, in relation to a person who is, or has been, a qualified employee, means a period in respect of which the person would ordinarily receive salary or wages;

“Public Service Act” means the *Public Service Act 1922*;

“qualified employee” means:

- 10 (a) a person who is an officer or employee for the purposes of the Public Service Act;
- (b) a person, other than a person referred to in paragraph (a), who is employed by the Commonwealth;
- 15 (c) a person who is the holder of an office established by an Act, by regulations under an Act or by an Ordinance of the Australian Capital Territory;
- (d) a person who is employed by a body that is an approved authority for the purposes of the Superannuation Act, being a body that does not provide superannuation benefits to any of its employees otherwise than under the Superannuation Act;
- 20 (e) a person who is an eligible employee for the purposes of the Superannuation Act and is employed by a body that is an approved authority for the purposes of that Act, being a body that provides superannuation benefits to some of its employees otherwise than under that Act;
- 25 (f) a person to whom subsection 3 (5A) or (6) of the Superannuation Act applies; or
- (g) a person who, under the regulations, is a qualified employee; but, subject to regulations made for the purposes of paragraph (g), does not include:
- 30 (h) a person who is an employee of the Northern Territory or of an authority of the Northern Territory;
- (j) a person who is not an eligible employee for the purposes of the Superannuation Act but is a member of a superannuation scheme or has superannuation benefits funded by the person’s employer or partly by the person’s employer and partly by contributions from the person and other employees;
- 35 (k) a person who is a member of the Defence Force;
- (m) a person who is engaged or appointed for employment outside Australia only;
- 40 (n) a member of the Parliament;
- (o) a person who is a judge for the purposes of the *Judges’ Pensions Act 1968*; or
- 45 (p) a person who, under the regulations, is not a qualified employee;

“qualifying pay period”, in relation to a person in respect of whom an interim benefit is payable, means:

- (a) in the case of a person who, immediately before the benefit became payable, was an eligible employee for the purposes of the Superannuation Act and was employed by a body that was at that time an approved authority for the purposes of that Act—a pay period in respect of which the person was paid salary or wages by that body, or received ongoing compensation payments in respect of the person’s employment with that body, as a qualified employee for more than half of the person’s normal working hours for a pay period that includes no public holidays; or 5
- (b) in any other case—a pay period in respect of which the person was paid salary or wages as a qualified employee other than a qualified employee of the kind referred to in paragraph (a), or received ongoing compensation payments in respect of the person’s employment as such an employee, for more than half of the person’s normal working hours for a pay period that includes no public holidays; 10 15

other than a pay period that has been taken into account in determining the amount of another interim benefit payable in respect of the person; 20

“qualifying pay period value”, in relation to a qualifying pay period of a person, means:

- (a) if paragraph (b), (c) or (d) does not apply—one; 25
- (b) if the person was paid on a part-time basis throughout the pay period, including ongoing compensation payments on such a basis—the fraction obtained by dividing the amount of salary or wages that the person received in respect of that period by the amount that the person would have received in respect of that period if the person had been paid or received those compensation payments on a full-time basis throughout that period; 30
- (c) if the person received reduced salary or wages throughout the pay period—the fraction obtained by dividing the amount of salary or wages that the person received in respect of the pay period by the amount that the person would have received if the person had not received reduced salary or wages; or 35
- (d) if the person was paid on a part-time basis throughout the pay period and received reduced salary or wages throughout the pay period—the fraction obtained by dividing the amount of salary or wages that the person received in respect of that period by the amount that the person would have received in respect of that period if the person had been paid on a full-time basis throughout that period and had not received reduced salary or wages; 40 45

“reduced salary or wages” means reduced salary or wages during a period of sick leave or long service leave;

“Standards Act” means the *Occupational Superannuation Standards Act 1987*;

5 “Superannuation Act” means the *Superannuation Act 1976*;

“superannuation fund” has the same meaning as in the Standards Act;

10 “yearly interest factor”, in relation to a qualified employee in respect of whom an interim benefit is payable in relation to the year commencing on 1 January 1988 or a subsequent year, means the number ascertained in accordance with the formula:

$$1 + \frac{\text{LTBR}}{2} \times \frac{\text{PPE}}{\text{PP}}$$

where:

LTBR is the long term bond rate for that year;

15 **PPE** is the number of pay periods ending during the person’s period of employment as a qualified employee in that year in respect of that benefit (including any period during which the person was on leave without pay); and

PP is the number of pay periods ending in that year;

20 “yearly pay period value”, in relation to the year commencing on 1 January 1988 or a subsequent year in relation to a person in respect of whom an interim benefit is payable, means the number obtained by dividing the sum of the qualifying pay period values of the person for that year in respect of that benefit by the number of pay periods ending in that year.

25 (2) For the purposes of this Act, a former qualified employee shall be taken to have retired voluntarily if:

(a) the person retired after attaining the maximum retiring age applicable to the person; or

30 (b) the person was retired at his or her own request or resigned his or her office, position or employment and had, at that time, attained the minimum retiring age applicable to the person.

(3) Where:

(a) an interim benefit is payable in respect of a person in a year; and

35 (b) the benefit became payable in a pay period that ends in the following year;

the pay period shall, for the purpose only of determining the number of pay periods ending during the person’s period of employment as a qualified employee in the first-mentioned year in respect of that benefit, be taken to end in the first-mentioned year.

40 (4) For the purposes of the definitions of “annual rate of contribution” and “average annual rate of contribution” in subsection (1), if a person’s annual rate of salary on a particular day is later adjusted with retrospective effect to that day, that adjustment shall be taken into account.

(5) For the purposes of this Act:

- (a) no account shall be taken of overtime worked by a person; and
- (b) if the pay periods of a person during a year are not all of the same length, the person shall be taken to have been paid during the year on the basis of pay periods of a length that is the shorter or shortest of the person's pay periods.

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(6) Section 167A of the Superannuation Act does not apply to interim benefits, and the provision of interim benefits shall not be taken to be the provision of a superannuation scheme for the purposes of regulations under that Act.

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Other employers may apply interim benefit

4. Nothing in this Act prevents an employer of persons who are not qualified employees paying in respect of those persons benefits that are calculated and preserved on the basis set out in this Act.

Qualifying service

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5. (1) An interim benefit is not payable in respect of a qualified employee unless, at the time when that benefit would be payable in respect of the employee, the employee has completed at least 3 months continuous service:

- (a) in the case of an employee who, immediately before the benefit became payable, was an eligible employee for the purposes of the Superannuation Act and was employed by a body that was at that time an approved authority for the purposes of that Act—with the body by which the person was employed; or
- (b) in any other case—as a qualified employee other than an employee to whom paragraph (a) applies;

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whether or not that service commenced before the commencement of this subsection.

(2) For the purposes of this section:

- (a) a period of leave without pay shall be ignored for the purposes of calculating the length of service of the person, and for the purposes of determining whether the person has had a continuous period of service with an employer;
- (b) a break in employment for a period not exceeding 6 months by a person included in a prescribed class shall be ignored for the purposes of determining whether the person has had a continuous period of service with an employer; and
- (c) if a person is employed during a period on a part-time basis, including a period during which the person receives ongoing compensation payments on such a basis in respect of the person's current employment, the person's service during that period shall be reduced by multiplying the number of days in that period by the fraction obtained by dividing the amount of salary or wages, or compensation payments, that the person received in respect of that

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period by the amount that the person would have received in respect of that period if the person had been paid or received compensation payments on a full-time basis throughout that period.

When benefit payable

5 **6. (1)** Subject to section 5 and to subsection (2) of this section, where, on or after 1 January 1988, a qualified employee:

10 (a) in the case of an employee who is an eligible employee for the purposes of the Superannuation Act and is employed by a body that is an approved authority for the purposes of that Act—ceases to be employed by the person's employer; or

 (b) in any other case—ceases to be a qualified employee or becomes a qualified employee of the kind referred to in paragraph (a);
an interim benefit becomes payable in respect of the person.

15 **(2)** An interim benefit does not become payable in respect of a person where:

 (a) the person takes up different employment as part of an interchange or similar scheme and is expected to resume his or her previous employment; or

20 (b) the person is expected to be employed again by the person's employer in the same capacity within 6 months of ceasing that employment and becomes employed again by the person's employer within that period.

(3) Where:

25 (a) an interim benefit is payable in respect of a person because the person retired voluntarily or retired on the ground of permanent incapacity or permanent invalidity; or

 (b) the amount of the benefit is less than \$500;
the benefit is payable to the person at the time when the benefit becomes payable in respect of the person.

30 **(4)** Where an interim benefit is payable in respect of a person following the death of the person, the benefit shall be paid to the person's personal representative.

(5) Where:

35 (a) an interim benefit becomes payable in respect of a person otherwise than in the circumstances mentioned in subsection (3) or (4); and

 (b) the person is about to leave Australia permanently;
the benefit is payable to the person.

40 **(6)** Where an interim benefit becomes payable in respect of a person otherwise than in the circumstances mentioned in subsection (3), (4) or (5), the benefit shall be preserved in accordance with subsection (7) until:

 (a) the person retires from the workforce after attaining the age of 55 years;

- (b) the person retires from the workforce before attaining the age of 55 years on the ground of permanent incapacity or permanent invalidity;
- (c) the person leaves Australia permanently;
- (d) the person dies; or
- (e) such other circumstances (if any) as the Insurance and Superannuation Commissioner approves prevail.

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(7) An interim benefit payable in respect of a person that is required by subsection (6) to be preserved shall:

- (a) be paid to, for preservation in relation to the person:
 - (i) a superannuation fund nominated by the person, being a superannuation fund of which the person is, or intends to become, a member and that is required to preserve superannuation benefits in accordance with standards prescribed by regulations under the Standards Act;
 - (ii) an approved deposit fund nominated by the person, being a fund that is required to preserve superannuation benefits in accordance with standards prescribed by those regulations; or
 - (iii) a deferred annuity nominated by the person, being an annuity that cannot be surrendered or assigned before the person attains the age of 55 years and that does not pay benefits except in the circumstances mentioned in subsection (6); or
- (b) if the person does not make such a nomination within 2 months after the benefit becomes payable in respect of the person—be paid to such a superannuation fund or approved deposit fund nominated by the person's employer.

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(8) An employer may, before paying an interim benefit to a person, seek evidence as to the circumstances in which that benefit becomes payable to the person under this Act.

Employers to pay interim benefit for their employees

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7. An interim benefit that is payable in respect of a person is payable by the person who was, immediately before the benefit became payable, the person's employer.

Amount of interim benefit

8. (1) The amount of an interim benefit that accumulates in respect of service by a qualified employee in the year commencing on 1 January 1988 or a subsequent year is the amount calculated in accordance with the formula:

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$$(AARC \times YPPV \times YIF) + (LTBR \times \frac{PPE}{PP} \times PA), \text{ where:}$$

AARC is the average annual rate of contribution of the person for that year;

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YPPV is the yearly pay period value of the person for that year;

YIF is the yearly interest factor for that person for that year;

LTBR is the long term bond rate for that year;

PPE is the number of pay periods ending during the person's period of employment as a qualified employee in that year in respect of that benefit (including any period during which the person was on leave without pay);

PP is the number of pay periods ending in that year; and

PA is the sum of the amounts (if any) that accumulated under this subsection in respect of the person in respect of that benefit in the preceding years.

(2) Where an interim benefit becomes payable in respect of a person in a year, the amount of that benefit is the sum of the amount that accumulated in respect of service by the person under subsection (1) in respect of that year and the amounts (if any) that accumulated under that subsection in respect of the person in the preceding years.

Assignment of benefit

9. An interim benefit is not capable of being assigned or charged.

Regulations

10. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may determine that that part of the interim benefit that is calculated by reference to the period commencing on 1 January 1989 should be calculated by reference to a year commencing on an earlier day specified in the regulations and, if such a determination is made, the regulations may make such modifications, omissions and additions to this Act as are necessary to give effect to that determination.

(3) Regulations made for the purposes of subsection (2) take effect from such day, not earlier than 1 January 1988, as is specified in the regulations.

(4) Regulations made for the purposes of paragraph (g) of the definition of "qualified employee" in subsection 3 (1) take effect from 1 January 1988.

(5) Regulations made for the purposes of paragraph (p) of the definition of "qualified employee" in subsection 3 (1) take effect from such day, not earlier than 1 January 1988, as is specified in the regulations.