

1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SUPERANNUATION LEGISLATION (CONSEQUENTIAL AMENDMENTS
AND TRANSITIONAL PROVISIONS) BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Finance
the Hon Ralph Willis, MP)

Printed by Authority by the Commonwealth Government Printer

SUPERANNUATION LEGISLATION (CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS) BILL 1992

GENERAL OUTLINE

This Bill amends a number of Acts to update provisions relating to superannuation. The amendments are required as a result of the enactment of the Superannuation Act 1990 and amendments made to the Superannuation Act 1976 with effect from 1 July 1990.

Until 30 June 1990 the main superannuation scheme for Commonwealth employees was the Commonwealth Superannuation Scheme (CSS) provided for in the Superannuation Act 1976.

On 1 July 1990 a new superannuation scheme for Commonwealth employees was implemented. This is the Public Sector Superannuation (PSS) Scheme established by deed under the Superannuation Act 1990. The PSS provides superannuation for new employees of the Australian Public Service and approved Commonwealth authorities from 1 July 1990.

Related amendments were made to the Superannuation Act 1976 by the Superannuation Legislation Amendment Act 1990, with effect from 1 July 1990. The CSS was closed to new employees from that date, but remains open for existing members and to certain former members who return to Commonwealth employment. Other amendments included:

- . changes to the invalidity retirement processes in the CSS to bring them into line with those in the PSS; and
- . the removal from the Superannuation Act 1976 of supervisory mechanisms applying to the provision of superannuation benefits to Commonwealth sector employees and their re-enactment, with some minor changes, in the Superannuation Benefits (Supervisory Mechanisms) Act 1990.

This Bill makes essentially technical amendments to a number of Acts to reflect these changes. The amendments fall into the following categories:

- (a) where the Acts presently refer to the Superannuation Act 1976 or parts of that Act or to aspects of the CSS, the amendments include corresponding references in relation to the Superannuation Act 1990 and the PSS;
- (b) where the Acts presently provide for the removal from office and/or retirement of office-holders on grounds such as incapacity or invalidity, the amendments include references to the requirements of the CSS and the PSS. These requirements are that persons who are members of those schemes not be retired on the grounds of invalidity unless the Board of Trustees of the relevant scheme has certified that the person is entitled to receive invalidity retirement benefits.

The Superannuation Acts already impose these requirements and the inclusion of references in the individual Acts would draw attention to the requirements. Where the existing removal from office powers are wider than invalidity within the meaning of the Superannuation Acts, those wider powers will not be affected; and

- (c) where the Acts presently provide for the provision of superannuation, or for an action to be done, in accordance with arrangements approved by the Minister administering the Superannuation Act 1976, the amendments reflect the replacement of provisions in that Act by the Superannuation Benefits (Supervisory Mechanisms) Act 1990.

The amendments to the Acts are to have effect from 1 July 1990. This reflects the date on which the PSS was implemented and the changes were made to the CSS and the Superannuation Act 1976.

The Bill also includes "savings" provisions in relation to certain amendments to four of the Acts so that any action that might inadvertently have been taken that is inconsistent with the amendments will not be invalidated by the amendments. These provisions are intended to protect the superannuation scheme membership or the benefits of anyone who might inadvertently have been the subject of incorrect administrative action.

FINANCIAL IMPACT

This Bill will have no new financial effects as it makes only consequential amendments that reflect changes that were previously put in place by the Superannuation Act 1990, the Superannuation Benefits (Supervisory Mechanisms) Act 1990 and the Superannuation Legislation Amendment Act 1990.

TERMS USED IN THE NOTES ON CLAUSES

In the Notes on Clauses the following terms have the following meanings -

"1976 Act" means the Superannuation Act 1976;

"1990 Act" means the Superannuation Act 1990;

"CSS" means the Commonwealth Superannuation Scheme provided for in the Superannuation Act 1976;

"PSS" means the Public Sector Superannuation scheme. That is, the superannuation scheme established by deed under the Superannuation Act 1990;

"1922 Act scheme" means the superannuation scheme provided for in the Superannuation Act 1922.

"CSS member" means a person who is an 'eligible employee' for the purposes of the Superannuation Act 1976. 'Eligible employee' is the term used in that Act to describe a person who is a member of the Commonwealth Superannuation Scheme established by that Act;

"PSS member" means a person who is a member of the superannuation scheme established by deed under the Superannuation Act 1990;

"CSS Board" means the Commonwealth Superannuation Board of Trustees No. 2 established under the Superannuation Act 1976;

"PSS Board" means the Commonwealth Superannuation Board of Trustees No. 1 established under the Superannuation Act 1990;

"PSS Rules" means the rules for the administration of the Public Sector Superannuation scheme.

NOTES ON CLAUSES

Clause 1 - Short title

1. The Act will be called the Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 1992.

Clause 2 - Commencement

2. Clause 2 provides for the Act, with the exception of clause 3, to commence on the day on which it receives Royal Assent. Clause 3 will be taken to have commenced on 1 July 1990. The effect of this will be that the amendments made by the Act will be retrospective to that date. That is because they are required as a consequence of the implementation of the PSS under the Superannuation Act 1990 and changes to the Superannuation Act 1976 that were made by the Superannuation Legislation Amendment Act 1990 and the Superannuation Benefits (Supervisory Mechanisms) Act 1990, with effect from 1 July 1990.

Clause 3 - Amendments of various Acts

3. Clause 3 provides that the Acts specified in the Schedule are amended as set out in the Schedule.

Clause 4 - Transitional provision for the Australian Broadcasting Corporation Act

4. Clause 4 has the effect that, if a PSS member incorrectly made an election under the rules made under subsection 62(2) of the Australian Broadcasting Corporation Act 1983 between 1 July 1990 and the day this Act commences, the person is to be taken to have validly made the election. The purpose of the clause is to protect any redeployment and redundancy benefit that might inadvertently have been paid by the Corporation to a PSS member in a form similar to CSS benefits.

Clause 5 - Transitional provisions for the Australian Federal Police Act

5. Subclause 5(1) has the effect of protecting the CSS membership of a person appointed under sections 25, 26 or 26B of the Australian Federal Police Act 1979, between 1 July 1990 and the day this Act commences, who met the criteria for membership of the PSS but who might inadvertently have become a CSS member.

6. Subclause 5(2) has the effect of protecting the PSS membership of a person appointed under sections 25, 26 or 26B of the Australian Federal Police Act 1979, between 1 July 1990 and the day this Act commences, who met the criteria for membership of the CSS but who might inadvertently have become a PSS member.

Clause 6 - Transitional provisions for the Members of Parliament (Staff) Act

7. Subclauses 6(1), 6(3) and 6(5) have the effect of protecting the PSS membership of a person engaged or employed under the Members of Parliament (Staff) Act 1984, between 1 July 1990 and the day this Act commences, who met the criteria for membership of the CSS but who might inadvertently have become a PSS member.

8. Subclauses 6(2), 6(4) and 6(6) have the effect of protecting the CSS membership of a person engaged or employed under the Members of Parliament (Staff) Act 1984, between 1 July 1990 and the day this Act commences, who met the criteria for membership of the PSS but who might inadvertently have become a CSS member.

Clause 7 - Transitional provisions for the Public Service Act

9. Subclauses 7(1) and 7(3) have the effect of protecting the CSS membership of a person appointed under sections 37 or 44 of the Public Service Act 1922, between 1 July 1990 and the day this Act commences, who met the criteria for membership of the PSS but who might inadvertently have become a CSS member.

10. Subclauses 7(2) and 7(4) have the effect of protecting the PSS membership of a person appointed under sections 37 or 44 of the Public Service Act 1922, between 1 July 1990 and the day this Act commences, who met the criteria for membership of the CSS but who might inadvertently have become a PSS member.

SCHEDULE

CONSEQUENTIAL AMENDMENTS OF ACTS

11. The Schedule sets out the amendments to various Acts that will be made by this Act, as provided in clause 3 of the Bill.

Administrative Appeals Tribunal Act 1975

Subsection 13(9)

12. The replacement subsection 13(9) extends the existing provision for the Governor-General to retire a member of the Administrative Appeals Tribunal (AAT) from office on the ground of incapacity, if the AAT member is a CSS member and consents, to those AAT members who are PSS members.

Subsections 13(12) and 13(13)

13. The effect of the new subsection 13(12) is that an AAT member who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act, unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. The subsection also applies to removal from office on similar grounds. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

14. The effect of the new subsection 13(13) is that an AAT member who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act, unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. The subsection also applies to removal from office on similar grounds. It reflects the PSS invalidity retirement processes.

Replacement subsections 16(2) and 16(3) and new subsections 16(3A), 16(3B), 16(4A) and 16(4B)

15. Subsections 16(2), 16(3), 16(3A) and 16(3B) extend the provisions of section 16 that presently cover persons who are appointed as presidential members of the AAT and who are CSS members, to persons who are PSS members so that:

- (a) the Judges' Pensions Act 1968 will not apply to a person appointed as a presidential member of the AAT if the person was a PSS member immediately before the appointment; but
- (b) a presidential member can elect within 3 months of appointment to stop being a PSS member; and

- (c) in that case, the presidential member will be taken to have stopped being a PSS member immediately before appointment and the Judges' Pensions Act 1968 will be taken to have applied to the person instead.

16. The new subsections 16(4A) and 16(4B) apply provisions to presidential members who elect to stop being PSS members similar to the provision in subsection 16(4) that applies to those who stop being CSS members. That is, the person will stop being entitled to benefits under the PSS except for the person's own contributions and interest and the accumulated productivity benefit.

Subsection 24K(3)

17. The replacement subsection 24K(3) extends the existing provision for the Governor-General to retire the Registrar of the AAT from office on the ground of incapacity, if the Registrar is a CSS member and consents, to a Registrar who is a PSS member.

Subsections 24K(4) and 24K(5)

18. The new subsection 24K(4) provides that a Registrar of the AAT who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. The subsection also applies to termination of a Registrar's appointment on similar grounds. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

19. The new subsection 24K(5) provides that a Registrar of the AAT who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. The subsection also applies to termination of a Registrar's appointment on similar grounds. It reflects the invalidity retirement processes in the PSS.

Anti-Dumping Authority Act 1988

Subsection 20(7) and section 20A - Removal taken to be retirement on ground of invalidity

20. Subsection 20(7) will be omitted and replaced by the new section 20A. The effects of the proposed new section 20A are to:

- (a) include the provision presently in subsection 20(7) that, in relation to a member of the Anti-Dumping Authority who is a CSS member, removal from office on the ground of physical or mental incapacity will be taken to be retirement on the ground of invalidity, within the meaning of the 1976 Act, on the day suspension from office began;

- (b) extend that provision to members of the Authority who are PSS members so that removal from office on the ground of physical or mental incapacity will be taken to be retirement on the ground of invalidity, within the meaning of the 1990 Act, on the day suspension from office began; and
- (c) provide, nevertheless, that the invalidity retirement processes of the CSS and the PSS will apply as appropriate to the removal from office on those grounds.

Section 20B - Retirement on ground of invalidity under the Superannuation Acts

21. The effect of the new subsection 20B(1) is that a member of the Authority who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act, unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. The subsection also applies to removal from office on similar grounds. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

22. The effect of the new subsection 20B(2) is that a member of the Authority who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act, unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. The subsection also applies to removal from office on similar grounds. It reflects the PSS invalidity retirement processes.

Audit Act 1901

Section 7A - Removal taken to be retirement on ground of invalidity

23. The effects of the proposed new section 7A are to:
- (a) include the provision presently included in section 9 that, in relation to an Auditor-General who is a CSS member, removal from office on the ground of physical or mental incapacity will be taken to be retirement on the ground of invalidity, within the meaning of the 1976 Act;
 - (b) extend that provision to an Auditor-General who is a PSS member so that removal from office on the ground of physical or mental incapacity will be taken to be retirement on the ground of invalidity, within the meaning of the 1990 Act; and
 - (c) provide, nevertheless, that the invalidity retirement processes of the CSS and the PSS will apply as appropriate to removal from office on those grounds.

Section 7B - Retirement on ground of invalidity under the Superannuation Acts

24. The effect of the new subsection 7B(1) is that an Auditor-General who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act, unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. The subsection applies to removal from office on similar grounds. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

25. The effect of the new subsection 7B(2) is that an Auditor-General who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act, unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. The subsection applies to removal from office on similar grounds. It reflects the PSS invalidity retirement processes.

Section 9

26. The section will be repealed and its provisions included in the new subsection 7A.

Australian Broadcasting Corporation Act 1983

Subsection 62(2A)

27. The proposed new subsection 62(2A) will make similar provisions relating to PSS members as subsection 62(2) makes for CSS members. It will enable rules made under the Australian Broadcasting Corporation Act 1983 to provide for:

- (a) employees of the Corporation who are PSS members to elect to receive any redeployment and redundancy benefit from the Corporation in pension form similar to pensions payable under the 1990 Act;
- (b) payment of the benefit in association with any benefit payable under the 1990 Act; and
- (c) the PSS Rules, except those relating to pension increases, to apply to the benefit.

Subsection 62(3A)

28. The proposed new subsection 62(3A) will place similar restrictions on the making of elections under the rules by PSS members as subsection 62(3) places on CSS members. It will require the rules made under the Australian Broadcasting Corporation Act 1983 to:

- (a) allow an election under subsection 62(2A) to be made only by a PSS member who became entitled to receive a pension under the 1990 Act on retirement and who has elected to receive at least part of the benefits under the 1990 Act as a pension; and
- (b) provide for an election made under subsection 62(2A) to be void if the person elects not to receive any part of the benefit under the 1990 Act as a pension.

Paragraph 62(4)(ab)

29. The new paragraph provides for the redeployment and redundancy benefits payable as pensions similar to those payable under the 1990 Act to be payable out of the Consolidated Revenue Fund in accordance with the appropriation of the Fund for the payment of pension benefits under that Act. This is similar to the provisions of paragraph 62(4)(a) in relation to pensions similar to those payable under the 1976 Act.

Paragraph 62(4)(b)

30. The amendment excludes the payments to which paragraph 62(4)(ab) applies from payments to employees that are to be paid out of moneys of the Corporation.

Subsections 62(5) and 62(6)

31. These are consequential amendments that extend the provisions of subsections 62(5) and 62(6) to the new subsection 62(2A) and paragraph 62(2A)(a), respectively.

Subsection 66B(6)

32. The amendment excludes the 1990 Act, like the 1976 Act, from the Acts for the purposes of which a determination can be made that a period of leave of absence without pay forms part of an employee's period of service.

Australian Federal Police Act 1979

Subsection 4(1) - definition of "eligible employee"

33. This amendment relates the definition of "eligible employee" specifically to the meaning of that term in the 1976 Act. The amendment is consequential on the inclusion of the 1990 Act in the definition of "Superannuation Act".

Subsection 4(1) - definition of "Superannuation Act"

34. This amendment includes the 1990 Act in the definition of "Superannuation Act".

Subsections 38B(3) and 38B(4)

35. The effect of the new subsection 38B(3) is that a member or staff member of the Australian Federal Police who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act, unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

36. The effect of the new subsection 38B(4) is that a member or staff member of the Australian Federal Police who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act, unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. It reflects the PSS invalidity retirement processes.

Section 39E - Members and staff members to be treated as temporary employees employed under contract

37. Section 39E will be repealed and replaced by the proposed new section 39E. The new section reflects the introduction of the PSS and the requirement that new Commonwealth employees after 30 June 1990 should, with certain exceptions, join the PSS. The exceptions are certain categories of former CSS members or 1922 Act scheme members who, because of their connections with the 1976 Act should join the CSS. The categories are specified in subsection 39E(2).

38. The new section continues the provision of the repealed section that persons appointed under section 25, 26 or 26B of the Australian Federal Police Act 1979 who are eligible to join the CSS, are taken to be temporary employees employed under a contract for the purposes of section 13 of the 1976 Act. It also extends this so that persons eligible to join the PSS are taken to be temporary employees employed under a contract for the purposes of the 1990 Act.

Section 41 - paragraphs (a) and (ab) of the definition of "superannuation authority"

39. Paragraph (a) of the definition of "superannuation authority" will be replaced by a definition that reflects that with effect from 1 July 1990 some matters relating to the CSS have become the responsibility of the CSS Board.

40. The new paragraph (ab) adds the PSS Board in respect of the PSS to the definition.

Australian National Railways Commission Act 1983

Subsections 32(5) and 32(6)

41. The effect of the new subsection 32(5) is that a Commissioner who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act, unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. The subsection applies to the termination of a Commissioner's appointment on similar grounds. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

42. The effect of the new subsection 32(6) is that a Commissioner who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act, unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. The subsection applies to the termination of a Commissioner's appointment on similar grounds. It reflects the PSS invalidity retirement processes.

Australian Securities Commission Act 1989

Subsection 5(1) - definition of "superannuation benefits"

43. The proposed paragraph (c) includes a reference to benefits under the 1990 Act in the definition.

Subsection 111(2)

44. The replacement subsection 111(2) extends the existing provision for the Governor-General to retire a full-time member of the Australian Securities Commission (ASC) from office on the ground of incapacity, if the member is a CSS member and consents, to a full-time member of the ASC who is a PSS member.

Subsections 111(3) and 111(4)

45. The effect of the new subsection 111(3) is that an ASC member who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act, unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. The subsection also applies to the termination of a member's appointment on similar grounds. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

46. The effect of the new subsection 111(4) is that an ASC member who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act, unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. The subsection applies to the termination of a member's appointment on similar grounds. It reflects the PSS invalidity retirement processes.

Subsection 114(1)

47. The proposed amendment will extend the present provision, that excludes CSS members from those members of the ASC to whom a determination about the provision of superannuation benefits may be made, to also exclude PSS members.

Subsection 114(3)

48. The proposed replacement subsection 114(3) will have the effect of requiring that a determination about the provision of superannuation benefits be in accordance with arrangements approved under the Superannuation Benefits (Supervisory Mechanisms) Act 1990. This reflects the commencement of that Act from 1 July 1990 and the repeal of similar provisions in the 1976 Act with effect from that date.

Automotive Industry Authority Act 1984

Subsection 21(7)

49. The subsection will be omitted and replaced by section 21A.

Section 21A - Removal taken to be retirement on ground of invalidity

50. The effects of the proposed new section 21A are to:

- (a) include the provision presently in subsection 21(7) that, in relation to a member of the Automotive Industry Authority who is a CSS member, removal from office on the ground of physical or mental incapacity will be taken to be retirement on the ground of invalidity, within the meaning of the 1976 Act, on the day suspension from office began;
- (b) extend that provision to members of the Authority who are PSS members so that removal from office on the ground of physical or mental incapacity will be taken to be retirement on the ground of invalidity, within the meaning of the 1990 Act, on the day suspension from office began; and
- (c) provide, nevertheless, that the invalidity retirement processes of the CSS and the PSS will apply as appropriate to the removal from office on those grounds.

Section 21B - Retirement on ground of invalidity under the Superannuation Acts

51. The effect of the new subsection 21B(1) is that a member of the Authority who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act, unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. The subsection also applies to the removal of a member from office on similar grounds. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

52. The effect of the new subsection 21B(2) is that a member of the Authority who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act, unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. The subsection also applies to the removal of a member from office on similar grounds. It reflects the PSS invalidity retirement processes.

Commonwealth Legal Aid Act 1977

Paragraph 21(2)(d)

53. The proposed replacement paragraph 21(2)(d):

- (a) continues the effect of the present provision that arrangements made with a State for the making to officers of the Australian Legal Aid Office (ALAO) of offers of employment by a State legal aid commission shall exempt officers who are CSS members from liability to contribute to other superannuation benefits unless, within 3 months after becoming so employed, the officer elects to contribute to the other benefits; and
- (b) extends the effect of that provision to officers who are PSS members.

Paragraph 21(3)(a)

54. The effect of the present paragraph is that the arrangements with a State shall provide for the provision of CSS benefits to officers of the ALAO who become employed by a State legal aid commission and do not elect to contribute to superannuation benefits other than under the 1976 Act. The proposed amendments would extend similar effects to the 1990 Act and such officers who are PSS members.

Crimes (Superannuation Benefits) Act 1989

Section 2 - definition of "Superannuation Act"

55. The proposed replacement definition of "Superannuation Act" defines it as meaning the 1976 Act or the 1990 Act.

Section 2 - paragraphs (a) and (ab) of the definition of "superannuation authority"

56. Paragraph (a) of the definition of "superannuation authority" will be replaced by a definition that reflects that with effect from 1 July 1990 some matters relating to the CSS have become the responsibility of the CSS Board.

57. The new paragraph (ab) adds the PSS Board in respect of the PSS to the definition.

Director of Public Prosecutions Act 1983

Subsections 23(3) and 23(4)

58. The effect of the new subsection 23(3) is that a Director or Associate Director who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act, unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. The subsection also applies to the termination of appointment on similar grounds. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

59. The effect of the new subsection 23(4) is that a Director or Associate Director who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act, unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. The subsection also applies to the termination of appointment on similar grounds. It reflects the PSS invalidity retirement processes.

Family Law Act 1975

Subsections 38K(3), 38K(4) and 38K(5)

60. The replacement subsection 38K(3) extends the existing provision for the Governor-General to retire the Chief Executive Officer (CEO) from office on the ground of incapacity, if the CEO is a CSS member and consents, to a CEO who is a PSS member.

61. The effect of the new subsection 38K(4) is that a CEO who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act, unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. The subsection also applies to the termination of the CEO's appointment on similar grounds. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

62. The effect of the new subsection 38K(5) is that a CEO who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act, unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. The subsection also applies to the termination of the CEO's appointment on similar grounds. It reflects the PSS invalidity retirement processes.

Federal Court of Australia Act 1976

Subsections 18K(3), 18K(4) and 18K(5)

63. The replacement subsection 18K(3) extends the existing provision for the Governor-General to retire the Registrar from office on the ground of incapacity, if the Registrar is a CSS member and consents, to a Registrar who is a PSS member.

64. The effect of the new subsection 18K(4) is that a Registrar who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act, unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. The subsection also applies to the termination of a Registrar's appointment on similar grounds. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

65. The effect of the new subsection 18K(5) is that a Registrar who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act, unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. The subsection also applies to the termination of a Registrar's appointment on similar grounds. It reflects the PSS invalidity retirement processes.

Governor-General Act 1974

Section 9

66. Section 9 is proposed to be repealed. It presently provides that for the purposes of the 1976 Act a person appointed as Official Secretary shall be deemed to have been appointed for a term of not less than one year. The 1976 Act was amended with effect from 1 July 1990 to remove the requirement for a temporary employee to be employed for a minimum period of one year before being able to elect to join the CSS. Section 9 is therefore no longer required.

Health Insurance Commission Act 1973

Subsection 28A(4)

67. The proposed amendment would add the 1990 Act to the 1976 Act and other Acts specified in the subsection. It would have the effect of applying to the 1990 Act the existing provision that an industrial award, order, determination or agreement made in relation to the staff of the Commission shall not be inconsistent with the Acts specified in the subsection.

Section 31

68. It is proposed that section 31 be repealed. The section provides that the Commission may establish and conduct a superannuation scheme for staff of the Commission. However, the Superannuation Benefits (Supervisory Mechanisms) Act 1990 now makes provision for supervisory mechanisms to apply to the provision of superannuation benefits to Commonwealth sector employees.

Industrial Relations Act 1988

Replacement subsections 22(1) and 22(2) and new subsections 22(2A), 22(2B), 22(4) and 22(5)

69. Subsections 22(1), 22(2), 22(2A) and 22(2B) extend the provisions of section 22 that presently cover persons who are appointed as Presidential Members of the Industrial Relations Commission (IRC) and who are CSS members, to persons who are PSS members so that:

- (a) the Judges' Pensions Act 1968 will not apply to a person appointed as a Presidential Member if the person was a PSS member immediately before the appointment; but
- (b) a Presidential Member can elect within 3 months of appointment to stop being a PSS member; and

(c) in that case, the Presidential Member will be taken to have stopped being a PSS member immediately before appointment and the Judges' Pensions Act 1968 will be taken to have applied to the person instead.

70. The new subsections 22(4) and 22(5) apply provisions to Presidential Members who elect to stop being PSS members similar to the provision in subsection 22(3) that applies to those who stop being CSS members. That is, the person will stop being entitled to benefits under the PSS except for the person's own contributions and interest and the accumulated productivity benefit.

Subsection 121(2) - paragraph (a) of the definition of "relevant law"

71. The proposed amendment would add the 1990 Act to the 1976 Act and other specified Acts that are presently excluded from the the definition of "relevant law". It would have the effect of providing that the Commission may not make an award or order in relation to an industrial dispute involving public sector employment that is inconsistent with the 1990 Act.

Industry Commission Act 1989

Subsection 38(6)

72. The subsection will be omitted and replaced by section 8A.

Section 38A - Removal taken to be retirement on ground of invalidity

73. The effects of the proposed new section 38A are to:
- (a) include the provision presently in subsection 38(6) that, in relation to a Commissioner or Associate Commissioner of the Industry Commission who is a CSS member, removal from office on the ground of physical or mental incapacity will be taken to be retirement on the ground of invalidity, within the meaning of the 1976 Act, on the day of suspension from office;
 - (b) extend that provision to a Commissioner or Associate Commissioner who is a PSS member so that removal from office on the ground of physical or mental incapacity will be taken to be retirement on the ground of invalidity, within the meaning of the 1990 Act, on the day of suspension from office; and
 - (c) provide, nevertheless, that the invalidity retirement processes of the CSS and the PSS will apply as appropriate to the removal from office on those grounds.

Section 38B - Retirement on ground of invalidity under the Superannuation Acts

74. The effect of the new subsection 38B(1) is that a Commissioner or Associate Commissioner who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act, unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. The subsection also applies to the removal of a Commissioner or Associate Commissioner from office on similar grounds. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

75. The effect of the new subsection 38B(2) is that a Commissioner or Associate Commissioner who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act, unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. The subsection also applies to the removal of a Commissioner or Associate Commissioner from office on similar grounds. It reflects the PSS invalidity retirement processes.

Law Officers Act 1964

Replacement subsections 14(1) and 14(2) and new subsections 14(2A), 14(2B), 14(4) and 14(5)

76. Subsections 14(1), 14(2), 14(2A) and 14(2B) extend the provisions of section 14 that presently cover persons who are appointed as Solicitor-General and who are CSS members, to persons who are PSS members so that:

- (a) the Judges' Pensions Act 1968 will not apply to a person appointed as Solicitor-General if the person was a PSS member immediately before the appointment; but
- (b) a Solicitor-General can elect within 3 months of appointment to stop being a PSS member; and
- (c) in that case, the Solicitor-General will be taken to have stopped being a PSS member immediately before appointment and the Judges' Pensions Act 1968 will be taken to have applied to the person instead.

77. The new subsections 14(4) and 14(5) apply provisions to a Solicitor-General who elects to stop being a PSS member similar to the provision in subsection 14(3) that applies to those who stop being CSS members. That is, the person will stop being entitled to benefits under the PSS except for the person's own contributions and interest and the accumulated productivity benefit.

Members of Parliament (Staff) Act 1984

Section 3 - definition of "Superannuation Act"

78. The definition of "Superannuation Act" will be omitted. It will be replaced by references to the 1976 Act and the 1990 Act in the Act.

Section 3 - paragraphs (aa) and (a) of the definition of "pensioner"

79. A new paragraph (aa) is inserted to include a reference to a person to whom a PSS invalidity retirement pension is payable. This corresponds to the reference to a CSS invalidity retirement pensioner in paragraph (a). A consequential amendment is also made to the reference to the 1976 Act in paragraph (a).

Subsection 8(1) - definition of "prescribed modification"

80. The definition will be omitted as the 1976 Act was amended from 1 July 1990 to remove the requirement that where a temporary employee was employed under a contract, the contract had to be for a term of not less than one year before the person was able to elect to join the CSS.

Subsection 8(1) - paragraphs (a) and (ab) of the definition of "relevant person"

81. A new paragraph (ab) is inserted to include a reference to a person who was a PSS member immediately before being engaged under Part II of the Act. This corresponds to the reference to a person who was a CSS member in paragraph (a). A consequential amendment is also made to the reference to the 1976 Act in paragraph (a).

82. The effect of the new paragraph (ab) is to exclude persons who are already PSS members from provisions that enable PSS membership to be made available to persons engaged by Ministers as consultants.

Subsection 8(3) and paragraphs 8(3)(a) and 8(3)(b)

83. The proposed amendments provide for:

- (a) consequential amendments to references to the 1976 Act;
- (b) the amendment of the present paragraph (a) to restrict it to persons who were engaged before 1 July 1990. The effect of this is, subject to the exceptions provided for in the proposed new subsection 8(3A), to reflect that the CSS was closed to new members from that date; and
- (c) omitting paragraph (b) as a consequence of the amendment of the 1976 Act to remove the requirement that where a temporary employee was employed under a contract, the contract had to be for a term of not less than one year before the person was able to elect to join the CSS.

Subsections 8(3A), 8(3B), 8(3C) and 8(3D)

84. The new subsections 8(3A) and 8(3B) have the effect of providing for persons who are engaged as consultants after 30 June 1990, and who fall within the categories of persons having connections with the CSS or the 1922 Act scheme specified in subsection 8(3A), to be able to join the CSS. This reflects the provisions of the 1976 Act.

85. The new subsections 8(3C) and 8(3D) have the effect of providing for persons who are engaged as consultants after 30 June 1990, and who are not within the categories of persons having connections with the CSS or the 1922 Act scheme specified in subsection 8(3A), to be able to join the PSS. This reflects the provisions of the 1976 Act and the 1990 Act that new employees after 30 June 1990 should join the PSS.

Subsection 8(4) and paragraphs 8(4)(a) and 8(4)(b)

86. The proposed amendments provide for:

- (a) consequential amendments to references to the 1976 Act; and
- (b) consequential amendments to refer to subsections 8(3A) and 8(3B). The effect of these amendments is to provide that the 1976 Act will not apply to persons referred to in subsections 8(3A) engaged as consultants, unless the application of that Act is expressly provided for in the agreement for the engagement of the person.

Subsections 8(4A), 8(4B) and 8(4C)

87. The proposed new subsections 8(4A) and 8(4B) have the effect that:

- (a) a person who is engaged as a consultant and in respect of whom an agreement provides that the 1976 Act is to apply, is not prevented by that from transferring from the CSS to the PSS if the person can elect to do so under the 1976 Act; and
- (b) the person is not prevented from again having the 1976 Act apply to him or her if the person is able to revoke such an election.

88. The proposed new subsection 8(4C) has the effect of providing that the 1990 Act will not apply to persons engaged as consultants, unless the application of that Act is expressly provided for in the agreement for the engagement of the person. But this would not affect a person's ability to transfer from the CSS to the PSS under the terms of the 1976 Act.

Subsection 15(1) - definition of "prescribed modification"

89. The definition will be omitted as the 1976 Act was amended from 1 July 1990 to remove the requirement for a temporary employee to be employed for a minimum period of one year before being able to elect to join the CSS.

Subsection 15(1) - paragraphs (a) and (ab) of the definition of "relevant person"

90. A new paragraph (ab) is inserted to include a reference to a person who was a PSS member immediately before being employed under Part III of the Act. This corresponds to the reference to a person who was a CSS member in paragraph (a). A consequential amendment is also made to the reference to the 1976 Act in paragraph (a).

91. The effect of the new paragraph (ab) is to exclude persons who are already PSS members from provisions that enable PSS membership to be made available to persons employed as members of an office-holder's staff.

Subsection 15(3) and paragraphs 15(3)(a) and 15(3)(b)

92. The proposed amendments provide for:

- (a) consequential amendments to references to the 1976 Act;
- (b) the amendment of the present paragraph (a) to restrict it to persons who were employed before 1 July 1990. The effect of this is, subject to the exceptions provided for in the proposed new subsection 15(3A), to reflect that the CSS was closed to new members from that date; and
- (c) omitting paragraph (b) as a consequence of the amendment of the 1976 Act to remove the requirement for a temporary employee to be employed for a minimum period of one year before being able to elect to join the CSS.

Subsections 15(3A), 15(3B), 15(3C) and 15(3D)

93. The new subsections 15(3A) and 15(3B) have the effect of providing for persons who are employed as a member of an office-holder's staff after 30 June 1990, and who fall within the categories of persons having connections with the CSS or the 1922 Act scheme specified in subsection 15(3A), to be able to join the CSS. This reflects the provisions of the 1976 Act.

94. The new subsections 15(3C) and 15(3D) have the effect of providing for persons who are employed as a member of an office-holder's staff after 30 June 1990, and who are not within the categories of persons having connections with the CSS or the 1922 Act scheme specified in subsection 15(3A), to be able to join the PSS. This reflects the provisions of the 1976 Act and the 1990 Act that new employees after 30 June 1990 should join the PSS.

Subsection 15(4) and paragraphs 15(4)(a) and 15(4)(b)

95. The proposed amendments provide for:

- (a) consequential amendments to references to the 1976 Act; and
- (b) consequential amendments to refer to subsections 15(3A) and 15(3B). The effect of these amendments is to provide that the 1976 Act will not apply to persons referred to in subsections 15(3A) employed as a member of an office-holder's staff, unless the application of that Act is expressly provided for in the agreement for the employment of the person.

Subsections 15(4A), 15(4B) and 15(4C)

96. The proposed new subsections 15(4A) and 15(4B) have the effect that:

- (a) a person who is engaged as a member of an office-holder's staff and in respect of whom an agreement provides that the 1976 Act is to apply, is not prevented by that from transferring from the CSS to the PSS if the person can elect to do so under the 1976 Act; and
- (b) the person is not prevented from again having the 1976 Act apply to him or her if the person is able to revoke such an election.

97. The proposed new subsection 15(4C) has the effect of providing that the 1990 Act will not apply to persons employed as members of an office-holder's staff, unless the application of that Act is expressly provided for in the agreement for the employment of the person. But this would not affect a person's ability to transfer from the CSS to the PSS under the terms of the 1976 Act.

Subsection 22(1) - definition of "prescribed modification"

98. The definition will be omitted as the 1976 Act was amended from 1 July 1990 to remove the requirement for a temporary employee to be employed for a minimum period of one year before being able to elect to join the CSS.

Subsection 22(1) - paragraphs (a) and (ab) of the definition of "relevant person"

99. A new paragraph (ab) is inserted to include a reference to a person who was a PSS member immediately before being employed under Part IV of the Act. This corresponds to the reference to a person who was a CSS member in paragraph (a). A consequential amendment is also made to the reference to the 1976 Act in paragraph (a).

100. The effect of the new paragraph (ab) is to exclude persons who are already PSS members from provisions that enable PSS membership to be made available to persons employed as members staff of a Senator or Member of the House of Representatives.

Subsection 22(3) and paragraphs 22(3)(a) and 22(3)(b)

101. The proposed amendments provide for:

- (a) consequential amendments to references to the 1976 Act;
- (b) the amendment of the present paragraph (a) to restrict it to persons who were employed before 1 July 1990. The effect of this is, subject to the exceptions provided for in the proposed new subsection 22(3A), to reflect that the CSS was closed to new members from that date; and
- (c) omitting paragraph (b) as a consequence of the amendment of the 1976 Act to remove the requirement for a temporary employee to be employed for a minimum period of one year before being able to elect to join the CSS.

Subsections 22(3A), 22(3B), 22(3C) and 22(3D)

102. The new subsections 22(3A) and 22(3B) have the effect of providing for persons who are employed as a member of staff of a Senator or Member after 30 June 1990, and who fall within the categories of persons having connections with the CSS or the 1922 Act scheme specified in subsection 22(3A), to be able to join the CSS. This reflects the provisions of the 1976 Act.

103. The new subsections 22(3C) and 22(3D) have the effect of providing for persons who are employed as a member of staff of a Senator or Member after 30 June 1990, and who are not within the categories of persons having connections with the CSS or the 1922 Act scheme specified in subsection 22(3A), to be able to join the PSS. This reflects the provisions of the 1976 Act and the 1990 Act that new employees after 30 June 1990 should join the PSS.

Subsection 22(4) and paragraphs 22(4)(a) and 22(4)(b)

104. The proposed amendments provide for:

- (a) consequential amendments to references to the 1976 Act; and
- (b) consequential amendments to refer to subsections 22(3A) and 22(3B). The effect of these amendments is to provide that the 1976 Act will not apply to persons referred to in subsections 22(3A) employed as a member of staff of a Senator or Member, unless the application of that Act is expressly provided for in the agreement for the employment of the person.

Subsections 22(4A), 22(4B) and 22(4C)

105. The proposed new subsections 22(4A) and 22(4B) have the effect that:

- (a) a person who is engaged as a member of staff of a Senator or Member and in respect of whom an agreement provides that the 1976 Act is to apply, is not prevented by that from transferring from the CSS to the PSS if the person can elect to do so under the 1976 Act; and
- (b) the person is not prevented from again having the 1976 Act apply to him or her if the person is able to revoke such an election.

106. The proposed new subsection 22(4C) has the effect of providing that the 1990 Act will not apply to persons employed as members of staff of a Senator or Member, unless the application of that Act is expressly provided for in the agreement for the employment of the person. But this would not affect a person's ability to transfer from the CSS to the PSS under the terms of the 1976 Act.

Merit Protection (Australian Government Employees) Act 1984Section 76 - Removal taken to be retirement on ground of invalidity

107. The section will be repealed and replaced by a new section 76.

108. The effects of the proposed new section 76 are to:

- (a) include the provision presently in section 76 that, in relation to a member of the Merit Protection and Review Agency who is a CSS member, removal from office on the ground of physical or mental incapacity will be taken to be retirement on the ground of invalidity, within the meaning of the 1976 Act;
- (b) extend that provision to members of the Agency who are PSS members so that removal from office on the ground of physical or mental incapacity will be taken to be retirement on the ground of invalidity, within the meaning of the 1990 Act; and
- (c) provide, nevertheless, that the invalidity retirement processes of the CSS and the PSS will apply as appropriate to the removal from office on those grounds.

Section 76A - Retirement on ground of invalidity under the Superannuation Acts

109. The effect of the new subsection 76A(1) is that a member of the Agency who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act, unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. The subsection also applies to the removal of a member from office on similar grounds. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

110. The effect of the new subsection 76A(2) is that a member of the Agency who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act, unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. The subsection also applies to the removal of a member from office on similar grounds. It reflects the PSS invalidity retirement processes.

National Crime Authority Act 1984

Subsections 43(4) and 43(5)

111. The effect of the new subsection 43(4) is that a member of the National Crime Authority who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act, unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. The subsection also applies to the termination of appointment on similar grounds. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

112. The effect of the new subsection 43(5) is that a member of the Authority who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act, unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. The subsection also applies to the termination of appointment on similar grounds. It reflects the PSS invalidity retirement processes.

Ombudsman Act 1976Section 28A - Removal taken to be retirement on ground of invalidity

113. The effects of the proposed new section 28A are to:

- (a) include the provision presently in section 30 that, in relation to an Ombudsman who is a CSS member, removal from office on the ground of physical or mental incapacity will be taken to be retirement on the ground of invalidity, within the meaning of the 1976 Act;
- (b) extend that provision to an Ombudsman who is a PSS member so that removal from office on the ground of physical or mental incapacity will be taken to be retirement on the ground of invalidity, within the meaning of the 1990 Act; and
- (c) provide, nevertheless, that the invalidity retirement processes of the CSS and the PSS will apply as appropriate to the removal from office on those grounds.

Section 28B - Retirement on ground of invalidity under the Superannuation Acts

114. The effect of the new subsection 28B(1) is that an Ombudsman who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act, unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. The subsection also applies to the removal of an Ombudsman from office on similar grounds. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

115. The effect of the new subsection 28B(2) is that an Ombudsman who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act, unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. The subsection also applies to the removal of an Ombudsman from office on similar grounds. It reflects the PSS invalidity retirement processes.

Section 30

116. The provisions of section 30 are proposed to be included in the new subsection 28A(1).

Parliamentary Contributory Superannuation Act 1948

Paragraph 4A(1)(b)

117. The proposed amendment of paragraph 4A(1)(b) will have the effect of excluding any excess contribution multiple under the PSS from being counted as part of a transfer value paid to the Parliamentary Contributory Superannuation Scheme (PCSS) when determining the amount of notional past service in the PCSS that is purchased by the transfer value.

118. Paragraph 4A(1)(b) presently excludes certain amounts from transfer values paid to the PCSS in respect of the previous non-parliamentary employment of members. Those amounts represent member contributions to a superannuation scheme that are in excess of contributions required to attract the employer benefits. The excess contribution multiple in the PSS is a similar component of a transfer value and its exclusion is consistent with the present provisions of paragraph 4A(1)(b).

Public Service Act 1922

Subsection 38(1) - paragraph (aa) of the definition of "pensioner"

119. A new paragraph (aa) is inserted to include a reference to a person to whom a PSS invalidity retirement pension is payable. This corresponds to the reference to a CSS invalidity retirement pensioner in paragraph (a).

Subsection 38(1) - paragraph (ab) of the definition of "relevant person"

120. A new paragraph (ab) is inserted to include a reference to a person who is a PSS member. This corresponds to the reference to a person who is a CSS member in paragraph (a). The effect of the new paragraph (ab) is to exclude persons who are already PSS members from provisions that enable PSS membership to be made available to persons who are appointed to an office of Secretary under a fixed term appointment.

Subsection 38(2A)

121. The proposed new subsection 38(2A) has the effect that a relevant person who is appointed to an office of Secretary under a fixed term appointment does not automatically qualify for PSS membership. This provision corresponds to the existing provision relating to CSS membership in subsection 8(2).

Subsection 38(4)

122. The proposed amendment would restrict subsection 38(4) to persons who were appointed before 1 July 1990. The effect of this is, subject to the exceptions provided for in the proposed new subsection 38(4A), to reflect that the CSS was closed to new members from that date.

Subsections 38(4A), 38(4B), 38(4C) and 38(4D)

123. The new subsections 38(4A) and 38(4B) have the effect of providing for persons who are appointed after 30 June 1990, and who fall within the categories of persons having connections with the CSS or the 1922 Act scheme specified in subsection 38(4A), to be able to join the CSS. This reflects the provisions of the 1976 Act.

124. The new subsections 38(4C) and 38(4D) have the effect of providing for persons who are appointed after 30 June 1990, and who are not within the categories of persons having connections with the CSS or the 1922 Act scheme specified in subsection 38(4A), to be able to join the PSS. This reflects the provisions of the 1976 Act and the 1990 Act that new employees after 30 June 1990 should join the PSS.

Paragraphs 38(5)(a) and 38(5)(b)

125. The proposed amendments provide for consequential amendments to refer to subsection 38(4A). The effect of these amendments is to provide that the 1976 Act will not apply to persons referred to in subsection 38(4A) who hold fixed-term appointments as Secretaries, unless the application of that Act is expressly provided for in a determination under subsection 38(3).

Subsections 38(5A), 38(5B) and 38(5C)

126. The proposed new subsections 38(5A) and 38(5B) have the effect that:

- (a) a person who holds a fixed-term appointment as a Secretary and in respect of whom a determination provides that the 1976 Act is to apply, is not prevented by that from transferring from the CSS to the PSS if the person can elect to do so under the 1976 Act; and
- (b) the person is not prevented from again having the 1976 Act apply to him or her if the person is able to revoke such an election.

127. The proposed new subsection 38(5C) has the effect of providing that the 1990 Act will not apply to a person who holds a fixed-term appointment as a Secretary, unless the application of that Act is expressly provided for in a determination under subsection 38(3). But this would not affect a person's ability to transfer from the CSS to the PSS under the terms of the 1976 Act.

Subsection 45(1) - paragraph (aa) of the definition of "pensioner"

128. A new paragraph (aa) is inserted to include a reference to a person to whom a PSS invalidity retirement pension is payable. This corresponds to the reference to a CSS invalidity retirement pensioner in paragraph (a).

Subsection 45(1) - paragraph (ab) of the definition of "relevant person"

129. A new paragraph (ab) is inserted to include a reference to a person who is a PSS member. This corresponds to the reference to a person who is a CSS member in paragraph (a). The effect of the new paragraph (ab) is to exclude persons who are already PSS members from provisions that enable PSS membership to be made available to persons who are appointed as Senior Executive Service officers under a fixed term appointment.

Subsection 45(2A)

130. The proposed new subsection 45(2A) has the effect that a relevant person who is appointed as a Senior Executive Service officer under a fixed term appointment does not automatically qualify for PSS membership. This provision corresponds to the existing provision relating to CSS membership in subsection 45(2).

Subsection 45(4)

131. The proposed amendment would restrict subsection 45(4) to persons who were appointed before 1 July 1990. The effect of this is, subject to the exceptions provided for in the proposed new subsection 45(4A), to reflect that the CSS was closed to new members from that date.

Subsections 45(4A), 45(4B), 45(4C) and 45(4D)

132. The new subsections 45(4A) and 45(4B) have the effect of providing for persons who are appointed after 30 June 1990, and who fall within the categories of persons having connections with the CSS or the 1922 Act scheme specified in subsection 45(4A), to be able to join the CSS. This reflects the provisions of the 1976 Act.

133. The new subsections 45(4C) and 45(4D) have the effect of providing for persons who are appointed after 30 June 1990, and who are not within the categories of persons having connections with the CSS or the 1922 Act scheme specified in subsection 45(4A), to be able to join the PSS. This reflects the provisions of the 1976 Act and the 1990 Act that new employees after 30 June 1990 should join the PSS.

Paragraphs 45(5)(a) and 45(5)(b)

134. The proposed amendments provide for consequential amendments to refer to subsection 45(4A). The effect of these amendments is to provide that the 1976 Act will not apply to persons referred to in subsection 45(4A) who hold fixed-term appointments as Senior Executive Service officers, unless the application of that Act is expressly provided for in a determination under subsection 45(3).

Subsections 45(5A), 45(5B) and 45(5C)

135. The proposed new subsections 45(5A) and 45(5B) have the effect that:

- (a) a person who holds a fixed-term appointment as a Senior Executive Service officer and in respect of whom a determination provides that the 1976 Act is to apply, is not prevented by that from transferring from the CSS to the PSS if the person can elect to do so under the 1976 Act; and
- (b) the person is not prevented from again having the 1976 Act apply to him or her if the person is able to revoke such an election.

136. The proposed new subsection 45(5C) has the effect of providing that the 1990 Act will not apply to a person who holds a fixed-term appointment as a Senior Executive Service officer, unless the application of that Act is expressly provided for in a determination under subsection 45(3). But this would not affect a person's ability to transfer from the CSS to the PSS under the terms of the 1976 Act.

Subsections 63F(11) and 63G(9)

137. The amendments add references to the 1990 Act to the existing references in these subsections to the 1976 Act. They exclude the 1990 Act from the effect of any determinations under these subsections that a period of absence is to form part of an officer's period of service.

Subsection 64(18) - (paragraph (b) of the definition of "net salary")

138. The amendment adds a reference to the 1990 Act to the existing reference to the 1976 Act in paragraph (b) of the definition of "net salary" in subsection 64(18). The effect of the amendment is to exclude amounts deducted from an officer's salary under Part IV of the 1990 Act from the definition of "net salary" in the subsection.

Subsection 66B(5)

139. The amendment adds a reference to the 1990 Act to the existing reference in this subsection to the 1976 Act. It excludes the 1990 Act from the effect of any determination under this subsection that a period of absence is to form part of an officer's period of service.

Subsections 76D(3) and 76D(4)

140. The effect of the new subsection 76D(3) is that a Secretary who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act, unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

141. The effect of the new subsection 76D(4) is that a Secretary who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act, unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. It reflects the PSS invalidity retirement processes.

Section 76RA - Retirement on ground of invalidity under the Superannuation Acts

142. The effect of the new subsection 76RA(1) is that a Senior Executive Service officer who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act, unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

143. The effect of the new subsection 76RA(2) is that a Senior Executive Service officer who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act, unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. It reflects the PSS invalidity retirement processes.

Section 76WA - Retirement on ground of invalidity under the Superannuation Acts

144. The effect of the new subsection 76WA(1) is that an officer who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act, unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

145. The effect of the new subsection 76WA(2) is that an officer who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act, unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. It reflects the PSS invalidity retirement processes.

Paragraph 82AK(5)(b)

146. The amendment adds a reference to the 1990 Act to the existing reference in this paragraph to the 1976 Act. It excludes the 1990 Act from the effect of any determination under this paragraph that a period of absence is to form part of an officer's period of service.

Subparagraph 82D(4)(a)(iva)

147. The amendment adds a reference to the 1990 Act to the existing reference to the 1976 Act. It excludes the 1990 Act from the effect of any determination under section 82D that reckons a period between an officer's resignation and re-appointment or employment as service.

Subsection 87B(3) and subparagraphs 87B(3)(a)(ii) and 87B(3)(b)(ii)

148. The amendments are consequential on the addition of the new subparagraph 87B(3)(c).

Subparagraph 87B(3)(c)

149. The proposed new subparagraph adds a condition to those that are required by subsection 87B(2) to be fulfilled. That is, that satisfactory arrangements have been made for the provision of PSS benefits for employees who are PSS members because they are persons to whom Divisions 2 or 3 of Part IV of the Public Service Act 1922 apply.

Paragraph 87B(6)(h)

150. The replacement paragraph extends the existing provisions of the paragraph relating to CSS members to cover PSS members. It has the effect of requiring provision to be made for an employee who is a PSS member to be exempted from liability to contribute for superannuation benefits except under the 1990 Act.

Paragraph 87B(7)(c)

151. The amendments include references to the 1990 Act. They have the effect of requiring provision to be made for an employee who is a PSS member to be exempted from liability to contribute for superannuation benefits except under the 1990 Act, unless the employee elects within 3 months to contribute for those other benefits.

Subparagraph 87J(8)(a)(iii)

152. The amendments include references to the 1990 Act. They have the effect of requiring provision to be made for a person who is already contributing for PSS benefits to be exempted from liability to contribute for superannuation benefits except under the 1990 Act, unless the person elects within 3 months to contribute for those other benefits.

Subparagraph 87J(8)(b)(ii) and paragraph 87J(8)(c)

153. The proposed new paragraph 87J(8)(c) adds a condition to those that are required by subsection 87J(7) to be fulfilled. That is, that satisfactory arrangements have been made for the provision of PSS benefits for relevant employees who are PSS members because they are persons to whom Divisions 2 or 3 of Part IV of the Public Service Act 1922 apply. The amendment to subparagraph 87J(8)(b)(ii) is a consequential amendment.

Subparagraph 87N(7)(a)(iii)

154. The amendment adds a reference to the 1990 Act to the existing reference in this subparagraph to the 1976 Act. It excludes the 1990 Act from the effect of any determination under subsection 87N(7) that a period of absence is to form part of an officer's period of service.

Resource Assessment Commission Act 1989Subsection 45(8) and section 45A - Removal taken to be retirement on ground of invalidity

155. Subsection 45(8) will be omitted and replaced by a new section 45A.

156. The effects of the proposed new section 45A are to:

- (a) include the provision presently in subsection 45(8) that, in relation to a Commissioner of the Resource Assessment Commission who is a CSS member, removal from office on the ground of physical or mental incapacity will be taken to be retirement on the ground of invalidity, within the meaning of the 1976 Act, on the day of suspension from office;
- (b) extend that provision to a Commissioner who is a PSS member so that removal from office on the ground of physical or mental incapacity will be taken to be retirement on the ground of invalidity, within the meaning of the 1990 Act, on the day of suspension from office; and
- (c) provide, nevertheless, that the invalidity retirement processes of the CSS and the PSS will apply as appropriate to the removal from office on those grounds.

Section 45B - Retirement on ground of invalidity under Superannuation Acts

157. The effect of the new subsection 45B(1) is that a Commissioner who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act, unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. The subsection also applies to the removal of a Commissioner from office on similar grounds. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

158. The effect of the new subsection 45B(2) is that a Commissioner who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act, unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. The subsection also applies to the removal of a Commissioner from office on similar grounds. It reflects the PSS invalidity retirement processes.

Seamen's War Pensions and Allowances Act 1940

Subsection 4C(7)

159. The replacement subsection 4C(7) extends the existing provision for the Governor-General to retire a member of a Pensions Committee from office on the ground of physical or mental incapacity, if the member is a CSS member and consents, to a member of a Committee who is a PSS member.

Subsections 4C(9) and 4C(10)

160. The effect of the new subsection 4C(9) is that a member of a Committee who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act, unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. The subsection also applies to the removal of a member of a Committee from office on similar grounds. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

161. The effect of the new subsection 4C(10) is that a member of a Committee who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act, unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. The subsection also applies to the removal of a member of a Committee from office on similar grounds. It reflects the PSS invalidity retirement processes.

Social Security Act 1991Subsection 1334(9)

162. The replacement subsection 1334(9) extends the existing provision for the Governor-General to retire a National Convener or a senior member of the Social Security Appeals Tribunal from office on the ground of physical or mental incapacity on a specified date, if the person is a CSS member and consents, to a National Convener or a senior member who is a PSS member.

Subsection 1334(10)

163. The replacement subsection 1334(10) extends the existing provision for the Minister to retire an ordinary member of the Tribunal from office on the ground of physical or mental incapacity on a specified date, if the person is a CSS member and consents, to an ordinary member who is a PSS member.

Subsections 1334(13) and 1334(14)

164. The effect of the new subsection 1334(13) is that a National Convener, a senior member or an ordinary member of the Tribunal who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act, unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. The subsection also applies to the removal of a National Convener, a senior member or an ordinary member from office on similar grounds. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

165. The effect of the new subsection 1334(14) is that a National Convener, a senior member or an ordinary member of the Tribunal who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act, unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. The subsection also applies to the removal of a National Convener, a senior member or an ordinary member from office on similar grounds. It reflects the PSS invalidity retirement processes.

Veterans' Entitlements Act 1986Subsections 164(6), 164(6A) and 164(6B)

166. The replacement subsections 164(6), 164(6A) and 164(6B) extend the existing provision for the Governor-General to retire a member of the Veterans' Review Board (VRB) from office on the ground of physical or mental incapacity on a specified date, if the person is a CSS member and consents, to a member of the VRB who is a PSS member.

Subsections 164(8) and 164(9)

167. The effect of the new subsection 164(8) is that a member of the VRB who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act, unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. The subsection also applies to the removal of a member of the VRB from office on similar grounds. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

168. The effect of the new subsection 164(9) is that a member of the VRB who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act, unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. The subsection also applies to the removal of a member of the VRB from office on similar grounds. It reflects the PSS invalidity retirement processes.

Subsections 188(7), 188(7A) and 188(7B)

169. The replacement subsections 188(7), 188(7A) and 188(7B) extend the existing provision for the Governor-General to retire a commissioner of the Repatriation Commission from office on the ground of physical or mental incapacity on a specified date, if the person is a CSS member and consents, to a commissioner who is a PSS member.

Subsections 188(9) and 188(10)

170. The effect of the new subsection 188(9) is that a commissioner who is a CSS member and under maximum retiring age is not able to be retired on the ground of invalidity within the meaning of the 1976 Act, unless the CSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the CSS. The subsection also applies to the removal of a commissioner from office on similar grounds. It reflects changes made to the CSS invalidity retirement processes with effect from 1 July 1990.

171. The effect of the new subsection 188(10) is that a commissioner who is a PSS member and under age 60 is not able to be retired on the ground of invalidity within the meaning of the 1990 Act, unless the PSS Board has certified that the person will be entitled to receive invalidity retirement benefits under the PSS. The subsection also applies to the removal of a commissioner from office on similar grounds. It reflects the PSS invalidity retirement processes.



9 780644 239431