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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SUPERANNUATION LEGISLATION AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

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

SUPERANNUATION LEGISLATION AMENDMENT BILL 1992

GENERAL OUTLINE

The purpose of this Bill is to amend four Acts covering superannuation for Commonwealth sector civilian employees, namely the Superannuation Act 1922, the Superannuation Act 1976, the Superannuation Act 1990 and the Superannuation (Productivity Benefit) Act 1988.

The amendments to these Acts are either changes to provide for additional benefits in certain limited circumstance that are required as a result of the Superannuation Guarantee (Administration) Act 1992, changes to bring the Commonwealth superannuation schemes into line with the requirements and spirit of the Occupational Superannuation Standards, corrections of certain unintended effects, or changes of a technical nature, including changes to clarify certain aspects of the invalidity retirement procedures in the schemes.

Superannuation Act 1922

The Superannuation Act 1922 (the 1922 Act) provided for a superannuation scheme for Commonwealth sector employees prior to the introduction of the Superannuation Act 1976 on 1 July 1976. The scheme under the 1922 Act has been closed since that date, however there are still a large number of persons in receipt of pensions under the provisions of that Act.

The amendment to the 1922 Act will provide for the Commissioner for Superannuation to be able to presume the death of a person in appropriate circumstances to enable the swifter payment of reversionary benefits.

Superannuation Act 1976

The Superannuation Act 1976 (the 1976 Act) established the Commonwealth Superannuation Scheme for Commonwealth sector civilian employees (the CSS). The CSS was closed to new members from 1 July 1990.

The Bill proposes amendments to the 1976 Act which include -

- (a) changes to make the CSS comply with the Superannuation Guarantee (SG) requirements;
- (b) changes to continue the process of providing for the CSS to comply with the Occupation Superannuation Standards, and in this context providing for a regulation-making power to enable future changes needed for compliance to be made more readily;

- (c) changes to clarify the intention that persons who cease to be members of the CSS because of a sale of a Commonwealth asset or a transfer of a Commonwealth function and either continue to be employed or reject an offer of equivalent employment, do not have access to involuntary retirement benefits;
- (d) enabling a person to have separate membership of the CSS in respect of more than one job at the one time;
- (e) clarifying and standardising procedures in the CSS in relation to invalidity retirement approvals; and
- (f) allowing the Commissioner for Superannuation to presume in appropriate circumstances the death of a person to enable the swifter payment of reversionary benefits.

Superannuation Act 1990

The Superannuation Act 1990 (the 1990 Act) provided for the establishment of the Public Sector Superannuation (PSS) scheme. The PSS commenced on 1 July 1990 and provides superannuation coverage for new employees of the Australian Public Service and approved Commonwealth authorities from that date.

The Bill proposes amendments to the 1990 Act which include:

- (a) changes to the membership provisions to provide more flexibility where a person has more than one job. For example, members of the CSS will be able to join the PSS in relation to a second or subsequent job. Some categories of statutory office-holders and temporary employees who currently have to be PSS members because of one job will be able to choose to be PSS members for other jobs;
- (b) changes to the way in which benefits are paid that will bring the payment arrangements into line with those of other schemes administered by the Retirement Benefits Office, thereby gaining some administrative savings;
- (c) enabling the determination of costs relating to the administration of the PSS, including the costs of the management and investment of the PSS Fund, to be shared appropriately between the Commonwealth and the PSS Fund; and
- (d) extending the current appropriation of the Consolidated Revenue Fund to meet the cost of medical examinations and the assessment panel in relation to invalidity retirement and to meet similar costs:
 - (i) where payment of preserved benefits on invalidity grounds is sought; and

- (ii) invalidity benefits should have been paid because the person was totally and permanently incapacitated when he or she left the PSS but did not claim invalidity benefits.

Superannuation (Productivity Benefit) Act 1988

The Superannuation (Productivity Benefit) Act 1988 provides superannuation benefits for Commonwealth employees not covered by other arrangements.

The Bill proposes amendments to the Productivity Benefit Act to:

- (a) provide that compensation payments in the nature of income maintenance be treated as salary for the purposes of the Superannuation (Productivity Benefit) Act;
- (b) give effect to the intention that contributions in respect of persons on leave without pay for part of a pay period be pro rata contributions for the actual hours worked;
- (c) extend the coverage of the Superannuation (Productivity Benefit) Act to other employees of approved authorities which provide benefits to senior staff through personalised superannuation arrangements approved under the Superannuation Benefits (Supervisory Mechanisms) Act 1990; and
- (d) enable the Minister for Finance to declare that members of the CSS or the PSS may be covered by the Superannuation (Productivity Benefit) Act in certain circumstances (eg in respect of employment for which benefits are not being provided under the CSS and the PSS even though the person may be a member of the CSS or the PSS).

Retrospectivity of some amendments

Some of the amendments are to operate retrospectively. These either:

- (a) benefit members:
 - for example, the additional benefits in some situations required by the Superannuation Guarantee (Administration) Act 1992; or
- (b) correct unintended effects of the legislation:
 - for example, the amendments to the Superannuation (Productivity Benefit) Act to provide rights of membership to certain employees; or

(c) are technical amendments required by changes to other legislation:

- for example, changes to the 1976 Act resulting from changes in the numbering of the PSS Rules.

FINANCIAL IMPACT

It is not possible to quantify the financial impact of the changes in the Bill. However, any increase in immediate Budgetary outlays or any increase in long-term costs from the changes in the Bill is not likely to be significant.

Most of the proposed changes do not have any financial impact because they are technical amendments or clarifications of existing provisions.

Other changes are enabling provisions which would not, of themselves, carry any financial impact although any future provision of benefits under those provisions would involve additional costs.

The extension of the invalidity retirement procedures to the payment of preserved payments on invalidity grounds and providing access to superannuation benefits for certain employees currently excluded also would involve additional expenditure. However the number of persons involved are likely to be small.

The proposed changes that would have the greatest potential financial impact are the provision of additional benefits in the CSS in order to comply with the Superannuation Guarantee requirements. However, the two situations that would require payment of an additional benefit are now fairly uncommon and the amount of any additional benefit would be small. The contingent nature of the additional benefit means that accurate costings are not possible.

TERMS USED IN THE NOTES ON CLAUSES

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

"1922 Act" means the Superannuation Act 1922;

"1976 Act" means the Superannuation Act 1976;

"1990 Act" means the Superannuation Act 1990;

"Commissioner" means the Commissioner for Superannuation;

"CRF" means the Consolidated Revenue Fund;

"CSS" is used to describe the superannuation scheme established by the 1976 Act which has become known as the Commonwealth Superannuation Scheme;

"CSS Board" means the Commonwealth Superannuation Board of Trustees No 2 established by the provisions of the 1976 Act;

"CSS Fund" means the Superannuation Fund No 2;

"CSS member" is used to describe a person who makes contributions to, and receives benefits under, the CSS (the 1976 Act uses the term "eligible employee" for such a person);

"Occupational Superannuation Standards" means the standards under the OSS Act;

"OSS Act" means the Occupational Superannuation Standards Act 1987 and regulations under that Act;

"PSS" is used to describe the superannuation scheme established by trust deed and rules under the provisions of the 1990 Act which has become known as the Public Sector Superannuation scheme;

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

"PSS Fund" means the Superannuation Fund No.1;

"PSS member" means a person who is a member of the PSS;

"PSS Rules" means the rules for the administration of the PSS;

"SG legislation" is a term used to refer to the SG(A) Act and regulations under the OSS Act relevant to the Superannuation Guarantee; and

"SG(A) Act" means the Superannuation Guarantee (Administration) Act 1992.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clauses 1 and 2 - Short title and Commencement

1. Clause 1 provides for the short title of the Act to be the Superannuation Legislation Amendment Act 1992.

2. Clause 2 provides for the commencement of various provisions of the Act as follows -

- (a) Royal Assent - all provisions of the Act other than those described in paragraphs (b) to (g) below;
- (b) 1 July 1990 - paragraph 34(b) and sections 67 and 68;
- (c) 1 July 1991 - section 14 and paragraph 25(e);
- (d) 1 October 1991 - section 55;
- (e) 1 July 1992 - sections 25 (other than paragraph (e)), 26, 31, 32, 37 and 46;
- (f) 1 July 1993 - sections 17 and 18; and
- (g) paragraphs 58(1)(a), (b) and (c) and sections 59 and 60 on a day to be fixed by Proclamation and, if those provisions do not commence within six months of the day on which the Act receives Royal Assent, they will automatically commence on the first day after the end of that period.

3. The amendments to the 1990 Act made by paragraphs 58(1)(a), (b) and (c) and clauses 59 and 60 will require changes to be made to the PSS Rules to provide for persons who become PSS members in relation to more than one office or position. It is intended that those amendments to the 1990 Act will commence when the changes to the PSS Rules have been made.

PART 2 - AMENDMENTS TO THE SUPERANNUATION ACT 1922

Clause 3 - Principal Act

4. Clause 3 defines the Principal Act for the purposes of Part 1A to be the Superannuation Act 1922 (the 1922 Act).

Clause 4 - Presumption of death

5. Clause 4 inserts section 136A in the 1922 Act to provide that the Commissioner may direct that the death of a person be presumed. The Act will then apply as if the person died on the date determined by the Commissioner.

6. This power is provided to enable payment of benefits to eligible dependants to be made more quickly where a pensioner disappears in circumstances where death reasonably can be presumed but cannot be proved, eg persons lost at sea.

PART 3 - AMENDMENTS OF THE SUPERANNUATION ACT 1976

Clause 5 - Principal Act

7. Clause 5 defines the Principal Act for the purposes of Part 2 to be the Superannuation Act 1976 (the 1976 Act).

Clause 6 - Interpretation

8. Clause 6 amends section 3 of the 1976 Act. Section 3 of the 1976 Act defines a number of terms used in the Act.

9. The clause makes amendments to the definition of "approved authority" contained in subsection 3(1) to make it clear that a subsidiary of any approved authority may apply to become an approved authority in its own right. Also a consequential amendment is made because of the insertion of subsection 3(2A) by this clause.

10. The clause inserts a definition of "industrial award" and "superannuation guarantee top-up benefit" in that subsection.

11. There is currently no mechanism whereby an authority or body that is included as an approved authority under the 1976 Act because it was such an authority under the 1922 Act on 30 June 1976 can be ceased to be an authority for the purposes of the 1976 Act. It is envisaged that such a mechanism could be required in future, eg where an authority or body passes outside the public sector on the sale of an asset.

12. Therefore, clause 6 also inserts a new subsection 3(2A) which gives the Minister the power to declare, in certain limited circumstances, that an approved authority included in the 1976 Act because it was a 1922 Act approved authority is not an approved authority for the purposes of the 1976 Act.

Clause 7 - Definition of "approved authority" - declarations

13. Clause 7 amends section 4A of the 1976 Act by remaking subsection 4A(1) to provide that a declaration of the Minister for the purposes of both paragraphs (a) and (b) of the definition of "approved authority" contained in subsection 3(1) of the Act is to be a disallowable instrument. This amendment is made as a consequence of the amendment to the definition made by clause 6 and the associated insertion of subsection 3(2A) by that clause.

14. The clause also amends subsection 4A(3) consequential upon the amendment of the definition of "approved authority" contained in clause 6 to make it clear that the Minister may not make a retrospective declaration under the new subsection 3(2A) that an authority or body is not an approved authority for the purposes of the 1976 Act.

Clause 8 - Persons engaged in more than one employment

15. When the 1976 Act came into operation on 1 July 1976, the normal pattern of employment was a single full-time position. Since 1976 permanent part-time employment has been introduced into the Australian Public Service and many Commonwealth authorities. One of the consequences of permanent part-time employment is that it is possible for a person to have two part-time jobs or even a full-time job and a part-time job concurrently. The 1976 Act does not cater for multiple employments in a satisfactory manner.

16. Clause 8 inserts section 6A in the 1976 Act.

17. Subsection 6A(1) provides that, if a person is employed in more than one position that entitles him or her to be a CSS member (or to elect to be a CSS member), the Act is to have separate application to that person in relation to each position.

18. Subsection 6A(2) provides that the separation of multiple employments continues after a person ceases to be a CSS member.

19. Subsection 6A(3) provides that multiple memberships do not apply to a person with one job who is on leave without pay from that job and during that leave takes up another job which entitles him or her to continue CSS membership.

20. Subsection 6A(4) provides that where a CSS member has made contributions in the past that would have been contributions if subsection 6A(1) had been in operation, subsection 6A(1) is to be taken to commence from the date of those contributions or such earlier time as the Commissioner for Superannuation may determine.

21. Subsection 6A(5) provides that any person who held more than one position prior to the commencement of the section may elect to have the section apply retrospectively to those positions.

22. Subsection 6A(6) provides for a power to make regulations to modify the 1976 Act in relation to persons with multiple memberships. This power is necessary so that benefits provided to a person with multiple jobs are appropriate to the service to the Commonwealth and the person is not advantaged or disadvantaged compared to a person who had a full-time job throughout his/her period of CSS membership.

Clause 9 - Accumulated basic and supplementary contributions and Fund accumulated employer contributions - additional amounts

23. Clause 9 amends section 7A of the 1976 Act. Section 7A contains provisions enabling the correct amounts to be paid from the CSS Fund where a person has more than one period of membership.

24. When a person ceases to be a CSS member under the Act and deferred benefits become applicable under Division 3 of Part IX of the 1976 Act, that person's accumulated contributions and the Fund accumulated employer contributions (productivity amounts) remain in the Superannuation Fund (and continue to earn interest) until such time as the deferred benefit becomes payable.

25. If the person again becomes a CSS member, the amounts remain in the Fund.

26. When that person again ceases to be a CSS member, an amount representing his or her previous accumulated contributions together with interest on that amount is added to the amount of accumulated contributions accrued during the later period of membership of the scheme.

27. The amendments to section 7A in Clause 9 provide that the person's Fund accumulated employer contributions (ie productivity contributions) are to be treated in the same way as the accumulated contributions.

Clause 10 - Functions

28. The Bill contains provisions that transfer certain powers from the Minister to the CSS Board.

29. Clause 10 amends section 27C of the 1976 Act to include in the list of functions of the CSS Board the additional functions transferred to the Board under clauses 29, 35 and 38.

Clause 11 - Eligible employee not to be retired on ground of invalidity without certificate from Board

30. Clause 11 makes a technical amendment to section 54C of the 1976 Act. The section refers to "maximum retirement age" while the term defined in subsection 3(1) of the Act is "maximum retiring age". The clause makes the necessary substitution.

Clause 12 - Board to decide whether to approve retirement

31. Section 54H of the 1976 Act provides for the CSS Board to make a decision whether or not to approve the retirement of a person on the ground of invalidity.

32. The amendment to section 54H in Clause 12 is intended to clarify the original intention of the section that the Board may defer the making of a decision under the section. This may be necessary where the Board, after receiving and considering the medical evidence, is uncertain as to whether or not the person is totally and permanently incapacitated and considers that waiting for a further period may enable a particular medical condition to settle down so that a more accurate diagnosis can be made.

33. Paragraph 12(b) provides that, if the Board thinks that it requires further time in which to make a decision about a case, it may defer the making of a decision and again refer the case to an assessment panel as provided by section 54F of the 1976 Act. If the Board does refer the case again to an assessment panel, the Board may specify the time in which it expects the panel to make a report, and must take the recommendations of the panel into account before making its decision.

Clause 13 - Other provisions relating to invalidity assessment

34. The CSS Board is required under subsection 7(2) of the 1976 Act to be satisfied that a person is totally and permanently incapacitated. The Bill includes similar requirements in sections 122, 139 and 141.

35. Clause 13 inserts section 54JA into the 1976 Act. The new section provides that the Board may, if it thinks it desirable in a particular case, refer matters under those sections to an assessment panel similar to that provided for under section 54F. The new section also provides that the Board may request the views of any Commonwealth authority that may have, or have had, a liability to pay compensation to the person.

Clause 14 - Determination of requests, payments and rehabilitation programs to be in accordance with the Rules for the administration of the Superannuation (1990) Scheme

36. Clause 14 makes an amendment to section 54K of the 1976 Act that is required as a consequence of changes made to the Rules for the administration of the Superannuation (1990) Scheme. (The Superannuation (1990) Scheme is the term used in the 1976 Act for the PSS.)

Clause 15 - Costs to be paid from Consolidated Revenue Fund

37. Clause 15 amends section 54ZA of the 1976 Act to provide that the costs incurred by the Board as a result of the operations of the proposed section 54JA should be paid from the CRF.

Clause 16 - Early retirement - voluntary or involuntary retirement

38. Section 58 provides for voluntary or involuntary retirement before attaining age 60. Subsection 58(3) describes the circumstances in which a person is deemed to have been retired involuntarily.

39. Section 155B of the 1976 Act provides that regulations may be made modifying the Act in relation persons who cease to be CSS members because of a sale of an asset or transfer of a function. Regulations have been made under section 155B to provide that:

- (a) the superannuation retrenchment benefits should not be provided where a person continues employment with the new employer (but rather the superannuation benefit should be preserved for genuine retirement from the workforce); and
- (b) a person who rejects an offer of equivalent employment with the new employer should not be able to access superannuation retrenchment benefits (which were intended to assist a person who had lost his or her position through retrenchment or redundancy over the period until a new position could be found).

40. In either of the above cases, a person under age 60 has been able to elect to preserve his or her benefit with the CSS until genuine retirement from the workforce so that no loss of accrued benefit need be sustained. A person aged 60 or over was entitled to age retirement pension.

41. In a recent transfer of a function it was considered that both subsection 58(3) and section 155B could apply. Legal advice confirmed that section 155B would apply but that advice suggested that the operation of subsection 58(3) should be clarified.

42. Clause 16 amends section 58 by inserting subsection 58(3A). This new subsection provides that subsection (3) does not apply to a person who ceases to be a CSS member as a result of a sale of an asset or a transfer of a function if that person either:

- (a) takes up an offer of employment (whether equivalent to his or her previous position or otherwise) with the new body; or
- (b) rejects an offer of equivalent employment.

43. Paragraph 16(b) inserts subsection 58(5) which provides that if there is any question about whether or not the employment referred to in subsection 58(3A) is equivalent employment, the Minister may determine the matter.

Clause 17 - Election for lump sum benefit in case of involuntary retirement

44. Section 62 of the 1976 Act provides for persons who are retrenched or otherwise retired involuntarily to elect to receive their total benefit as a cash-in-hand lump sum benefit.

45. The amendment in Clause 17 provides for section 62 to be subject to a new section 62B to be inserted by clause 18 (see later).

Clause 18 - Insertion of new Division - Division 2A -
Preservation of benefit payable under subsection 62(2)

46. Clause 18 inserts a new Division - Division 2A (comprising sections 62A to 62C) - in Part V of the 1976 Act.

47. The Superannuation Guarantee (SG) legislation provides for both:

- (a) a minimum quantum of employer benefit to be vested in each employee each year from 1 July 1992; and
- (b) that minimum quantum to be preserved until genuine retirement from the workforce on or after a set age (currently age 55) or earlier death or invalidity.

48. The cash-in-hand employer benefit on involuntary retirement (ie retrenchment or redundancy) more than meets the quantum requirement. However, payment of the full benefit in cash to the member would fail the preservation requirement.

49. Accordingly, the purpose of the new Division 2A is to provide for preservation of a portion of a cash-in-hand retrenchment lump sum benefit so that the CSS would comply with the SG preservation requirements. The new Division will not change the quantum of the lump sum benefit but will provide for a portion of the benefit to be preserved until retirement rather than taken cash-in-hand. The separate productivity benefit is already required to be preserved.

50. Division 2A will commence from 1 July 1993 which is the date from which the SG preservation requirements in respect of existing benefits are to commence.

Section 62A

51. Section 62A(1) is an interpretation provision. Subsection 62A(1) includes definitions of terms used in the new Division. Most of the terms are required for the application of the formulae in section 62B which calculate the amount to be preserved. Subsections 62A(2), (3), (4) and (5) include provisions which support some of the definitions.

52. Some of the terms that are defined are relevant only where the productivity contributions provided for CSS members are provided outside the CSS. This situation arises with some Government Business Enterprises and some other approved authorities (the Act implicitly uses the term "government body" to describe such employers) that have set up their own superannuation schemes but still have some CSS members.

53. The terms defined in subsection 62A(1) are:

"accumulated government body contributions" - essentially the term is the rate of employer productivity contribution payable under the government body scheme (also defined) applied to the salary for superannuation purposes in the CSS together with interest at rates applicable in the CSS. This is a notional amount which enables the additional amount to be preserved under the CSS to be determined. The definition applies in relation to the person's relevant period of employment (also defined). Interpretation of the definition is supported by subsections 62A(2), (3) and (4);

"government body scheme" - the term refers to a superannuation scheme set up by an employer which provides the productivity benefit for its remaining CSS members in that scheme and not the CSS;

"notional accumulated SG contributions" - the term is used in all the formulae in section 62B which may be used to calculate the amount of the lump sum benefit to be preserved. Essentially it is a notional amount representing the minimum employer contribution required under the SG legislation based on the salary for superannuation purposes in the CSS less a deduction for the pro rata cost of death and invalidity cover (as worked out by the Australian Government Actuary under subsection 62A(5)) and interest at the rates applying in the CSS. The definition applies in relation to the person's relevant period of employment (also defined);

"period of actual contributory service" - this refers to a person's period of contributory service under the 1976 Act other than any periods credited to the person for a transfer value paid to the Commissioner in respect of membership of a superannuation scheme other than the scheme under the 1976 Act;

"productivity contribution" - the term refers to a productivity contribution paid under the CSS or, in relation to a person in respect of whom such contributions are not paid, an amount similar in kind to such a productivity contribution. This applies whether or not productivity contributions are paid to a fund;

"rate of fund contribution tax" - employer contributions paid to a superannuation fund are part of the assessable income of the fund and, as such, are subject to tax at a rate before any allowance for franked dividends and other allowable deductions. The term refers to the rate that applies before allowance for franked dividends and other allowable deductions. The term is defined as 15 per cent (the current rate) and the proposed section 110SD (see clause 26) provides for the Minister to vary the defined rate should the tax rate change in future;

"relevant period of employment" - this refers to that part of a person's period of actual contributory service that occurs after 30 June 1993 (when the superannuation guarantee preservation arrangements for existing benefits commence) other than a period when the person was a CSS member by reason of being engaged exclusively for employment outside Australia;

"SG minimum contribution" - this refers to the notional contribution provided for in section 110SC in Part VIAA of the 1976 Act as inserted by clause 26. It is the minimum rate of employer contribution required under the SG legislation; and

"top-up benefit" - This refers to the superannuation guarantee top-up benefit provided for in section 110SE of the 1976 Act as inserted by clause 26.

54. Subsection 62A(2) includes provisions for the purposes of the definition of "accumulated government body contributions" in subsection 62A(1).

55. There are three basic approaches which government bodies with their own superannuation scheme may take to the provision in their scheme of a productivity benefit for their CSS members, namely:

- (a) they may provide a contribution accumulation benefit under which the same rate of employer contribution as a percentage of salary is provided for all CSS members in that scheme; or
- (b) they may provide a contribution accumulation benefit under which different rates of employer contribution as a percentage of salary may be provided for CSS members in that scheme (eg a skewed productivity contribution depending on salary, as in the CSS); or
- (c) they may provide a productivity benefit that is defined in terms of salary or average salary over a number of years.

56. The provisions of subsection 62A(2) are designed to cater for each of the above cases, as follows:

- (a) paragraph 62A(2)(a) caters for case (a) above where a single rate of contribution applies; and
- (b) paragraph 62A(2)(b) caters for case (b) above where more than one rate of contribution applies. The lowest percentage that applies to any class of CSS member in the government body scheme (classes would normally be determined by salaries) would be used for all CSS members (the adoption of the lowest rate ensures that the Superannuation Guarantee requirements are met); and
- (c) paragraph 62A(2)(c) caters for case (c) above where the average rate of contribution required to provide the defined productivity benefit could be determined by an actuary and used as the rate of productivity contribution.

57. As mentioned earlier, the rate of employer productivity contribution applicable to a particular government body scheme would be applied to the person's fortnightly rate of salary as a CSS member on the person's previous birthday to calculate the notional contributions.

58. Subsection 62A(3) provides that the percentage referred to in paragraph 62A(2)(c) in relation to a defined benefit scheme must be certified by an actuary. Subsection 62A(4) provides that where the scheme is a contribution accumulation scheme the percentage is to be certified by the person's employer.

59. Subsection 62A(5) provides that, for the purposes of the definition of "notional accumulated SG contributions" in subsection 62A(1), the death and invalidity cover deduction from SG minimum contributions is to be determined by the Australian Government Actuary or worked out by a method determined by the Actuary.

Section 62B

60. Section 62B provides for the amount to be preserved. It also sets out the means by which that amount is to be preserved and certain exceptions from preservation.

61. Subsection 62B(1) provides that that part of a retrenchment cash lump sum benefit normally payable under subsection 62(2) worked out under subsection (3) or (4) is to be paid to a preservation fund for the benefit of the person or applied to the purchase of a deferred annuity on behalf of the person.

62. Where the person does not nominate a preservation fund or a deferred annuity within 2 months, the amount is to be paid, for the benefit of the person, to a preservation fund nominated by the Commissioner.

63. Subsection 62B(2) provides that the preservation requirements in subsection 62B(1) are not to apply in certain circumstances. These reflect the exceptions to preservation presently applying under the occupational superannuation standards which are likely to be adopted for superannuation guarantee preservation requirements. Those exceptions are where:

- (a) the person has attained age 65;
- (b) the person has attained age 55 and advised the Commissioner that he or she has retired from the workforce;
- (c) the person is departing Australia permanently; and
- (d) the amount calculated under the section, together with the person's accumulated employer contributions (productivity benefit) is less than \$500.

64. Subsection 62B(3) provides a formula for the calculation of the amount to be preserved where the person was not a member of a government body scheme during his or her relevant period of employment. The formula calculates the additional amount to be preserved as:

- (a) the notional accumulation of the Superannuation Guarantee minimum employer contribution for the relevant period after 30 June 1993 plus notional interest at the CSS rates (NASGC):

- the CSS retrenchment employer benefit is mainly an unfunded benefit so no allowance for contribution tax is to be made on the notional accumulation;

less

- (b) the actual productivity contributions paid to the CSS Fund for the same period plus actual interest thereon (AEC).

- Because employer contributions paid to a fund are subject to tax, the formula provides for the actual value of the productivity contributions in the CSS Fund (ie an after contribution tax value) to be grossed up to approximate the pre contribution tax situation, so that the correct unfunded amount can be preserved.

65. Subsection 62B(4) provides three formulae for the calculation of the amount to be preserved for persons whose employer does not provide for productivity benefits under the CSS. There are three basic administrative options as to how the additional amount to be preserved will be calculated which can be discussed between the Commissioner and the government body by which the person is employed as being the most suitable.

66. The amount calculated under the formula would be:

- (a) the notional accumulation of the Superannuation Guarantee minimum employer contribution for the relevant period of employment after 30 June 1993 plus notional interest at the CSS rates (NASGC) in respect of the person;

less

- (b) for the same period, either:

- (i) the person's accumulated government body contributions (AGBC):

- this formula would apply where the government body nominates (or an actuary certifies where applicable) a rate of contribution applicable to its CSS members; or

- (ii) the benefit (GBB) paid in respect of the person by the government body scheme (an after contribution tax benefit) grossed up to approximate the pre-contribution tax situation:

- this formula would apply where the government body is unable or unwilling to nominate a rate of contribution applicable to all its CSS members and the actual benefit paid is to be used. Where the person continues as a CSS member after the benefit has been paid from the government body scheme, notional interest at the CSS rates would be added to the amount paid for the period from the date of payment by the government body scheme to the date the CSS retrenchment benefit becomes payable; or

- (iii) the amount of productivity benefit received from a government body scheme and paid to the Commissioner under the section 110MA (an after contribution tax amount) plus actual interest earned while in the CSS Fund (GBPROD) grossed up to approximate the pre-contribution tax situation:

- this formula would apply where a person leaves the government body scheme but continues as a CSS member (eg the person takes a job with another employer with CSS members) and the government body pays the productivity benefit under its scheme to the CSS.

67. Subsection 62B(5) provides that details of a benefit received by a person from a government body scheme may be obtained from the trustees or the administrator of the scheme.

Section 62C

68. Because of variations which may occur to a person's employment or the rate of fund contribution tax or any other matter, more than one formula or application of the one formula may be necessary to calculate the preserved amount. Section 62C caters for this situation.

Clause 19 - Procedure where pension exceeds reasonable benefit limits

69. Clause 19 inserts section 80A in the 1976 Act.

70. The OSS Act currently requires the Commissioner to commute to a lump sum any amount of pension that is in excess of the reasonable benefit limit that is applicable to the recipient, if requested to do so by the Insurance and Superannuation Commissioner under subsection 15S(4) of the OSS Act.

71. Section 80A gives the Commissioner this power and provides a mechanism for the necessary calculations so that the CSS can comply with the OSS Act.

72. Subsection 80A(1) provides that the section applies where the Insurance and Superannuation Commissioner has determined that all or part of a pension exceeds the reasonable benefit limits within the meaning of the OSS Act.

73. Paragraph 80A(2)(a) provides that the Commissioner must convert the excess pension as advised by the Insurance and Superannuation Commissioner to a lump sum and pay that amount to the person. Paragraph 80A(2)(b) provides that the Commissioner must work out the reduced rate of pension that will not be in excess of the limits and pay that rate (if any) to the person.

74. Subsection 80A(3) provides that the reduced rate of pension shall be worked out in accordance with rules determined by the Minister.

75. Subsection 80A(4) provides that the Minister's determination under subsection 80A(3) is a disallowable instrument.

Clause 20 - Interpretation

76. Clause 20 amends section 110A of the 1976 Act. That section includes definitions for the purposes of Part VIA of the Act which concerns productivity contributions and benefits.

77. The clause remakes the definition of "designated employer", inserts a definitions of "LWOP employee" and makes a technical change to the definition of "productivity related benefit".

78. The definition of "designated employer" is used to identify the employer person who is required to pay productivity contributions to the Superannuation Fund on behalf of each CSS member.

79. Paragraph 20(a) omits the definition of "designated employer", which can be ambiguous, and inserts a new definition to make it clear that the designated employer of a person on leave without pay (LWOP) is to be determined by the Minister.

80. The revised definition of "designated employer" refers to a LWOP employee. Paragraph 20(a) also inserts a definition of this term.

81. Paragraph (a) of the definition of "LWOP employee" describes a person who is on LWOP for a period in respect of which the CSS Board has directed that subsection 51(1) does not apply thus requiring the person to continue to make contributions to the scheme.

82. Paragraph (b) of the definition includes a person who is on maternity or parental leave without pay and who elects under subsection 51A(3) to contribute to the scheme on any contribution day during the period of leave without pay.

83. Paragraph 20(b) makes a technical change to the definition of "productivity related benefit" to clarify that a transfer value (as defined in section 127 of the 1976 Act) which includes a productivity component is not a productivity related benefit. A productivity related benefit is to be an amount worked out by reference to productivity contributions and not by reference to other contributions.

Clause 21 - Rate of salary

84. Section 110B of the 1976 Act provides for the fortnightly rate of salary used in the calculation of productivity contributions payable under the Act.

85. Clause 21 amends that section to provide that the rate of salary used for the purposes of calculating the rate of productivity contributions payable on behalf of a CSS member is the rate of salary used for the purposes of calculating the amount of the employee contributions payable under section 46 of the Act. That is, it will include any salary deemed to apply for the purposes of that section by the operation of section 47 where the person's annual rate of salary has decreased.

Clause 22 - Insertion of new section - section 110MA - Payments of productivity related benefits to Fund by certain eligible employees

86. Clause 22 inserts section 110MA in the 1976 Act.

87. Section 110MA will enable a person who receives a productivity benefit from a government body scheme while he or she is a CSS member to pay that benefit to the Commissioner within three months of receipt of the benefit or such longer period as the Commissioner allows.

Clause 23 - Commissioner to pay Fund

88. Clause 23 amends section 110N of the 1976 Act. Section 110N includes provisions in relation to productivity benefits paid to the Commissioner under various provisions in Part VIA of the 1976 Act. The clause makes two changes to section 110N.

89. Subsection 110N(1) provides for the amounts received by the Commissioner to be paid to the Superannuation Fund. Paragraph 23(1)(a) amends that subsection by the addition of a reference to amounts received under the new section 110MA.

90. Subsection 110N(2) provides for certain productivity amounts paid to the Commissioner to be treated as supplementary contributions instead of productivity contributions.

91. By being treated as supplementary contributions those amounts could continue to be accessible to a person in all circumstances on ceasing to be a CSS member. That is, they would not be subject to the preservation rules applying to the productivity benefit in compliance with the Occupational Superannuation Standards(OSS) preservation requirements.

92. However, the SG preservation requirements will apply beyond the productivity benefit and the test will now be whether the sum of additional benefits required by the SG legislation and productivity benefits is \$500 or more. Accordingly subsection 110N(2) is removed by paragraph 23(1)(b).

93. However amounts already treated as supplementary contributions will continue to be treated as supplementary contributions in accordance with subclause 23(2).

Clause 24 - Accumulated employer contributions

94. Paragraph 110Q(1)(e) describes part of a person's accumulated employer contributions (productivity benefit). Clause 24 remakes paragraph 110Q(1)(e) as a consequence of the insertion of the new section 110MA and the omission of subsection 110N(2).

95. The revised paragraph will ensure that an amount paid to the Commissioner under section 110MA will be included in a person's accumulated employer contributions. Also the reference to subsection 110N(2) in that paragraph is removed as a consequence of the omission of that subsection by clause 23.

Clause 25 - Payment of productivity benefit

96. Clause 25 makes a number of amendments to section 110R of the 1976 Act as a consequence of the new Part VIAA and also to remove the reference to specific PSS Rules. Section 110R sets out the arrangements for the payment of a productivity benefit to or in respect of a person.

97. Paragraphs 25(a) to (d) inclusive amend subsections 110R(4) and 110R(4A) to provide that, in the circumstances envisaged in those paragraphs, preservation of the productivity benefit must occur where the total benefit required under the SG legislation is \$500 or more. This introduces a new concept of aggregate benefit. The aggregate benefit is defined in a new subsection 110R(9) inserted by paragraph 25(f). The existing provisions require preservation where the productivity benefit is \$500 or more.

98. Paragraph 25(e) amends subsection 110R(7) which allows amounts that would normally be required to be preserved to be paid to the person. This may occur where the person is leaving Australia permanently or where the Insurance and Superannuation Commissioner approves the payment. The existing subsection makes these provisions by reference to the provisions in the PSS Rules which include equivalent provisions. The amendment spells out these circumstances in subsection 110R(7) to avoid the need to change the provisions each time changes are made to the numbering in the PSS Rules.

99. The aggregate benefit for the purposes of subsections 110R(4) and 110R(4A) is defined in the new subsection 110R(9) as inserted by paragraph 25(f). It is the aggregate of:

- (a) the person's accumulated employer contributions (productivity benefit);
- (b) the person's superannuation guarantee top-up benefit; and
- (c) any part of a transfer value paid to the Commissioner which has been paid to the CRF and which is vested in the person but required to be preserved in accordance with subsection 128(4A).

Clause 26 - Insertion of new Part - Part VIAA - Superannuation Guarantee Top-up Benefit

100. Clause 26 inserts a new Part VIAA (sections 110SA to 110SJ) in the 1976 Act after Part VIA.

101. Part VIAA will commence from 1 July 1992 which is the date from which the Superannuation Guarantee minimum benefit arrangements commenced.

Section 110SA

102. The purpose of Part VIAA, as stated in section 110SA, is to establish an entitlement to a superannuation guarantee top-up benefit (top-up benefit) for CSS members in certain circumstances so that an employer of that person may avoid an individual superannuation guarantee shortfall under the SG(A) Act in respect of the person. Generally speaking, the benefits under the CSS would more than meet the quantum requirements of the SG legislation and it is only in certain circumstances that an additional benefit need be paid.

Section 110SB

103. Subsection 110SB(1) includes definitions of terms used in the new Part. Most of the terms are required for the application of the formulae in section 110SE which calculate the top-up benefit. Subsections 110SB(2), (3), (4) and (5) include provisions which support some of the definitions.

104. The terms defined are:

"accumulated government body contributions" - essentially the term is the rate of employer productivity contribution payable under the government body scheme (also defined) applied to the salary for superannuation purposes in the CSS together with interest at rates applicable in the CSS. This is a notional amount which enables the additional benefit to be paid under the CSS to be determined. The definition applies in relation to the person's relevant period of employment (also defined). Interpretation of the definition is supported by subsections 110SB(2), (3) and (4);

"government body scheme" - the term refers to a superannuation scheme set up by an employer which provides the productivity benefit for its remaining CSS members in that scheme and not the CSS;

"notional accumulated SG contributions" - the term is used in all the formulae in section 110SE which may be used to calculate the amount of the additional lump sum benefit to be paid. Essentially it is a notional amount representing the minimum employer contribution required under the SG legislation based on the salary for superannuation purposes in the CSS less a deduction for the pro rata cost of death and invalidity cover (as worked out by the Australian Government Actuary under subsection 110SB(5)) and interest at the rates applying in the CSS. The definition applies in relation to the person's relevant period of employment (also defined);

"other vested benefit" - this term is used in all the formulae in section 110SE which may be used to calculate the top-up benefit. It refers to the value of a person's benefits under the 1976 Act in respect of the person's relevant period of employment (also defined) other than any productivity benefit or employee-financed benefit in relation to that period;

"period of actual contributory service" - this refers to a person's period of contributory service under the 1976 Act other than any periods credited to the person for a transfer value paid to the Commissioner in respect of membership of a superannuation scheme other than the scheme under the 1976 Act;

"productivity contribution" - this refers to a productivity contribution paid under the 1976 Act or, in relation to a person in respect of whom such contributions are not paid, an amount similar in kind to such productivity contributions. This applies whether or not productivity contributions are paid to a fund;

"rate of fund contribution tax" - employer contributions paid to a superannuation fund are part of the assessable income of the fund and, as such, are subject to tax at a rate before any allowance for franked dividends and other allowable deductions. The term refers to the rate that applies before allowance for franked dividends and other allowable deductions. The term is defined as 15 per cent (the current rate) and section 110SD provides for the Minister to vary the defined rate should the tax rate change in future;

"relevant period of employment" - this refers to that part of a person's period of actual contributory service that occurs after 30 June 1992 (when the Superannuation Guarantee arrangements for new benefits commenced) other than a period when the person was a CSS member by reason of being engaged exclusively for employment outside Australia;

"SG minimum contribution" - this refers to the notional contribution provided for in section 110SC; and

"top-up benefit" - this refers to the superannuation guarantee top-up benefit provided for in section 110SE.

105. Subsection 110SB(2) includes provisions for the purposes of the definition of "accumulated government body contributions" in subsection 110SB(1).

106. There are three basic approaches which government bodies with their own superannuation scheme may take to the provision in their scheme of a productivity benefit for their CSS members, namely:

- (a) they may provide a contribution accumulation benefit under which the same rate of employer contribution as a percentage of salary is provided for all CSS members in that scheme; or
- (b) they may provide a contribution accumulation benefit under which different rates of employer contribution as a percentage of salary may be provided for CSS members in that scheme (eg a skewed productivity contribution depending on salary as in the CSS); or
- (c) they may provide a productivity benefit that is defined in terms of salary or average salary over a number of years.

107. The provisions of subsection 110SB(2) are designed to cater for each of the above cases, as follows:

- (a) paragraph 110SB(2)(a) caters for case (a) above where a single rate of contribution applies; and
- (b) paragraph 110SB(2)(b) caters for case (b) above where more than one rate of contribution applies. The lowest percentage that applies to any class of CSS member in the government body scheme (classes would normally be determined by salaries) would be used for all CSS members (the adoption of the lowest rate ensures that the Superannuation Guarantee (SG) requirements are met); and
- (c) paragraph 110SB(2)(c) caters for case (c) above where the average rate of contribution required to provide the defined productivity benefit could be determined by an actuary and used as the rate of productivity contribution.

108. As mentioned earlier, the rate of employer productivity contribution applicable to a particular government body scheme would be applied to the person's fortnightly rate of salary as a CSS member on the person's previous birthday to calculate the notional contributions.

109. Subsection 110SB(3) provides that the percentage referred to in paragraph 110SB(2)(c) in relation to a defined benefit scheme must be certified by an actuary. Subsection 110SB(4) provides that where the scheme is a contribution accumulation scheme the percentage is to be certified by the person's employer.

110. Subsection 110SB(5) provides that, for the purposes of the definition of "notional accumulated SG contributions" in subsection 110SB(1), the death and invalidity cover deduction from the SG minimum contributions is to be determined by the Australian Government Actuary or worked out by a method determined by the Actuary.

Section 110SC

111. Section 110SC provides for the SG minimum contribution in respect of a CSS member to be 4 per cent of the CSS member's fortnightly rate of salary or deemed fortnightly rate of salary (that is, the same salary on which employee and productivity contributions are based) on the person's previous birthday. The contribution is a notional contribution but will be worked out in respect of each contribution day on which the person pays a contribution to the scheme.

112. The rate of SG minimum contribution may be varied by the Minister having regard to the charge percentages set out in the SG(A) Act.

113. The Minister's determination is to be a disallowable instrument and a Statutory Rule.

Section 110SD

114. Section 110SD provides that the Minister may vary the percentage mentioned in the definitions of the term "rate of fund contribution tax" in subsections 62A(1) and 110SB(1). Those definitions set a percentage of 15 per cent but the Minister may vary the percentage after having regard to the rate of tax payable on employer contributions paid to a superannuation fund.

115. The Minister's determination is to be a disallowable instrument and a Statutory Rule.

Section 110SE

116. Section 110SE provides for the superannuation guarantee top-up benefit (top-up benefit).

117. Subsection 110SE(1) provides for the top-up benefit to be payable in respect of a person's relevant period of employment if a person ceases to be a CSS member and an amount greater than nil is worked out under subsection 110SE(3) or 110SE(4) in respect of the person.

118. Subsection 110SE(2) provides that the top-up benefit is to be a lump sum benefit.

119. Subsection 110SE(3) provides a formula for the calculation of the additional amount to be paid where the person was not a member of a government body scheme during his or her relevant period of employment. The formula calculates the additional benefit to be paid as:

(a) the notional accumulation of the Superannuation Guarantee minimum employer contribution for the relevant period of employment after 30 June 1992 plus notional interest at the CSS rates (NASGC):

- the additional employer benefit would be an unfunded benefit so no allowance for contribution tax is to be made on the notional accumulation; and

less

(b) the sum of:

(i) the actual productivity contributions paid to the CSS Fund after 30 June 1992 plus actual interest thereon (AEC)

- because employer contributions paid to a fund are subject to tax, the formula provides for the actual value of the productivity contributions in the CSS Fund (ie an after-tax value) to be grossed up to approximate the pre-tax situation, so that the correct unfunded amount can be calculated; and

(ii) the other vested benefit for the same period (OVb).

- In most circumstances the other vested benefit alone would exceed the amount in (a) and no additional benefit would be payable.

120. Subsection 110SE(4) effectively provides four formulae for the calculation of the additional benefit to be paid for persons whose employer does not provide for productivity benefits under the 1976 Act. There are four basic administrative options as to how the additional amount to be paid will be calculated which can be discussed between the Commissioner and the government body by which the person is employed as being the most suitable.

121. One administrative approach is for the government body to provide any additional benefit in the government body scheme. This would mean that no additional benefit need be provided in the CSS to enable the government body to comply with the Superannuation Guarantee requirements.

122. The other three administrative approaches require an additional benefit from the CSS and the calculation of the amount of that benefit involves formulae which are set out in paragraphs 110SE(4)(b), (c) and (d).

123. The amount calculated under the formula would be:

- (a) the notional accumulation of the Superannuation Guarantee minimum employer contribution for the relevant period of employment after 30 June 1992 plus notional interest at the CSS rates (NASGC) in respect of the person;

less

- (b) the sum of:

- (i) the other vested benefit for the same period (OVV); and

- (ii) for the same period, either:

- (A) the person's accumulated government body contributions (AGBC):

- this formula would apply where the government body nominates (or an actuary certifies where applicable) a rate of contribution applicable to its CSS members; or

- (B) the benefit (GBB) paid in respect of the person by the government body scheme (an after contribution tax benefit) grossed up to approximate the pre-contribution tax situation:

- this formula would apply where the government body is unable or unwilling to nominate a rate of contribution applicable to all remaining CSS members and the actual productivity benefit paid is to be used. Where the person continues as a CSS member after the productivity benefit has been paid from the government body scheme, notional interest at the CSS rates would be added to the amount paid for the period from the date of payment by the government body scheme to the date any CSS benefit becomes payable; or

- (C) the amount of productivity benefit received from a government body scheme and paid to the Commissioner under section 110MA (an after contribution tax amount) plus actual interest earned while in the CSS Fund (GBPROD) grossed up to approximate the pre-contribution tax situation:

- this formula would apply where a person leaves the government body scheme but continues as a CSS member (eg the person takes a job with another employer with CSS members) and the government body pays the productivity benefit under the government body scheme to the CSS.

124. Subsection 110SE(5) provides that details of a benefit received by a person from a government body scheme may be obtained from the trustees or the administrator of the scheme.

125. Subsection 110SE(6) confirms that a top-up benefit will not be payable if there is no individual superannuation guarantee shortfall within the meaning of the SG (Administration) Act.

Section 110SF

126. Because of variations which may occur to a person's employment or the rate of fund contribution tax or any other matter, more than one formula or more than one application of a formula may be necessary to calculate the preserved amount. Section 110SF caters for this situation.

Section 110SG

127. Section 110SG provides that any amount of top-up benefit must be paid to a preservation fund for the benefit of the person or applied to the purchase of a deferred annuity on behalf of the person. Where the person does not nominate which of these is to apply, it must be paid to a preservation fund nominated by the Commissioner.

Section 110SH

128. Section 110SH provides that the preservation requirements in section 110SG are not to apply in certain circumstances. These reflect the exceptions to preservation applying under the superannuation guarantee preservation requirements. Those exceptions are where:

- (a) the person has attained age 65;
- (b) the person has attained age 55 and advised the Commissioner that he/she has retired from the workforce;
- (c) the person has died or has retired on invalidity grounds;

- (d) the person is departing Australia permanently; and
 - (e) the total of:
 - (i) the person's top-up benefit; and
 - (ii) the person's accumulated employer contributions (productivity benefit); and
 - (iii) any part of a transfer value paid to the Commissioner which has been paid to the CRF which is vested in the person but required to be preserved in accordance with subsection 128(4A)
- is less than \$500.

Section 110SJ

129. Section 110SJ provides that if the benefit does not have to be preserved it will be paid to the person or, if the person has died, to the personal representatives of the person or such person or persons as the Commissioner determines.

Clause 27 - Payment of accumulated contributions where no other benefit payable etc.

130. Clause 27 amends section 111 of the 1976 Act to correct a reference that is incorrect because of earlier amendments of the section.

Clause 28 - Payments into and out of Consolidated Revenue Fund

131. Section 112 of the 1976 Act provides for:

- (a) the retention in the Superannuation Fund of a person's accumulated contributions where the person becomes eligible for deferred benefits or postponed benefits; and
- (b) the payment of amounts out of the Superannuation Fund into the Consolidated Revenue Fund (CRF) when benefits become payable to enable payment of benefits directly to the person out of CRF; and
- (c) in certain limited circumstances the payment of amounts out of the Superannuation Fund directly to the person.

132. Clause 28 makes several amendments to section 112 of the 1976 Act.

133. The amendments treat Fund accumulated employer contributions in a manner consistent with the treatment of accumulated contributions.

Clause 29 - Physical or mental incapacity of person to whom Part applies before declaration of result of election etc.

134. Clause 29 makes amendments to section 122 of the 1976 Act. Section 122 makes provisions where a person has ceased to be a CSS member by resigning from employment in order to contest an election but becomes an invalid before resuming as a Commonwealth employee.

135. Subclause 29(1) amends paragraphs 122(1)(a) and 122(2)(b) and subsections 122(4) and 122(5) to transfer the decision-making power under the section from the Commissioner to the CSS Board.

136. Subclause 29(1) also inserts subsection 122(6) which provides that the Board may only be satisfied that a person would have been retired on invalidity grounds if it is satisfied that the person was totally and permanently incapacitated within the meaning of Part IVA of the 1976 Act.

137. Subclause 29(2) provides that section 122 prior to amendment will continue to have effect in relation to any persons who have ceased to be CSS members prior to the commencement date of the amendments to section 122.

Clause 30 - Modification of Act in relation to former eligible employees who become members of a superannuation scheme

138. Clause 30 amends section 126A of the 1976 Act. Section 126A provides that regulations may modify the Act in relation to former CSS members who become members of another scheme.

139. The modifications allowed by the section may include arrangements for payments to be made from the CSS Fund, or the transfer of assets from the CSS Fund, to the other scheme in respect of the former CSS members in exchange for benefits for those former CSS members in the other scheme.

140. Paragraph 126A(3)(a) provides that the amount of these payments should be based on the whole, or part, of the accumulated contributions of the CSS members transferring to the approved scheme.

141. Paragraph 30(a) amends paragraph 126A(3)(c) to include the Fund accumulated employer contributions which gives effect to the intention that all amounts held in the Fund should be taken into account.

142. Paragraph 30(b) amends paragraph 126A(3)(d) to replace the reference to the Trust with a reference to the CSS Board. This reflects the transfer of responsibility for the investment of the Superannuation Fund from the Superannuation Fund Investment Trust to the CSS Board.

Clause 31 - Transfer value payable in relation to certain employment

143. Clause 31 amends section 127 of the 1976 Act by omitting subsections 127(1) and 127(1AB) and replacing them with new subsections 127(1) and 127(1AAA). Section 127 defines the term "transfer value" for the purposes of Division 2 of Part IX of the 1976 Act which includes provisions about persons who have benefits from previous employment which they wish to transfer to the CSS.

144. This amendment is made to enable, in addition to amounts already treated as transfer values, amounts paid from other superannuation schemes as a consequence of the SG(A) Act to be treated as transfer values in certain circumstances.

145. The definition will also provide that certain amounts received from a superannuation scheme and applied to a purchase of a deferred annuity may, if the annuity is surrendered, be treated as a transfer value. This will apply even when the surrender value does not equal the amount paid from the superannuation scheme because of interest payments or deductions for administration costs.

146. Amounts received from membership of a superannuation scheme while the person was a CSS member, eg, while on leave without pay, will also be included in the new definition.

147. The new subsection 127(1AAA) includes provisions included in the omitted subsection 127(1) which provide that amounts based on voluntary contributions are not to form part of a transfer value.

Clause 32 - Payment of transfer values to Commissioner

148. Clause 32 makes a number of amendments to section 128 of the 1976 Act which deals with the arrangements for a person to elect to pay a transfer value to the Commissioner and the subsequent treatment of that transfer value.

149. The amendments include some required as a consequence of the new arrangements provided for in the SG(A) Act. They also make a number of corrections to section 128 and include some provisions which improve equity.

150. Subsection 128(1) provides for a person who has entitlement to a transfer value to elect to pay that transfer value to the Commissioner. Paragraph 32(a) remakes subsection 128(1). The revised subsection 128(1) provides, in addition to those provisions, for persons who become entitled to a transfer value while a CSS member to be able to elect to pay that transfer value to the Commissioner.

151. Subsection 128(2) provides for the Commissioner to pay certain parts of the transfer value to the CRF and certain parts to the CSS Fund. The productivity component of a transfer value is paid to the CSS Fund and will form part of the person's productivity benefit on ceasing to be a CSS member. The remainder of the employer contributed portion of the transfer value is paid to the CRF and a credit of contributory service is given to the person based on that amount.

152. Paragraph 32(b) amends subsection 128(2) to provide that where there is no productivity component because the employer did not pay productivity contributions in respect of the employee, a notional productivity component (called the notional productivity amount) is to be identified and a portion of the transfer value equal to that amount is to be paid to the CSS Fund and treated as productivity contributions. This will apply where the person's employer was an employer to whom the SG(A) Act applies. It will ensure equivalent treatment of persons whose employer provided productivity contributions for their employees and those who did not.

153. Subsection 128(3) includes provisions for the calculation of certain lump sum benefits available under the 1976 Act where the person has paid a transfer value to the Commissioner. Paragraph 32(c) amends the subsection to ensure that the whole of the transfer value (other than the productivity component) is included in the lump sum benefit. The paragraph inserts a reference to a lump sum benefit under subsection 62(2A). Subsection 62(2A) was inserted in the 1976 Act by the Superannuation Legislation Amendment Act 1991 and the need for the consequential change to subsection 128(3) was overlooked at that time.

154. Paragraph 32(d) also amends subsection 128(3). The amendment removes the productivity component from the calculation of the lump sum benefits referred to in the subsection so that that amount is not paid twice to the person. The productivity component of a transfer value is treated as productivity contributions for the purposes of Part VIA. It is included therefore in the person's productivity benefit which is payable separately from the lump sum benefits mentioned in subsection 128(3) on the person ceasing to be a CSS member.

155. Subsection 128(4) includes provisions to ensure that any portion of the employer contributed component of a transfer value that was vested in a person remains vested in them if they cease to be a CSS member with no employer-financed entitlements from the CSS other than a productivity benefit.

156. Paragraph 32(e) amends subsection 128(4) to provide that the provision will apply to a person even where that benefit was not paid directly to the person but was paid in respect of them. This amendment is necessary now that many benefits from superannuation schemes are subject to the preservation requirements of the OSS Act.

157. Paragraph 32(f) also amends subsection 128(4). The amendment provides for interest to be calculated on the amount paid to the person in accordance with the subsection at rates that would have applied had the amount been held in the CSS Fund instead of the CRF. This will apply to any amount paid under the subsection after the commencement of the amendment irrespective of when the transfer value was paid to the Commissioner.

158. Paragraph 32(g) inserts new subsections 128(4A), (4B) and (4C). These new subsections include provisions in recognition of the fact that the vested amount or part of the amount referred to in subsection 128(4) may have been subject to the preservation requirements of the OSS Act. Where the amount is such an amount subsection (4A) provides that, unless subsection (4B) or subsection (4C) applies, the amount is to be paid to a preservation fund or applied to the purchase of a deferred annuity nominated by the person.

159. Subsection 128(4B) provides that the amount need not be preserved if:

- (a) the person has reached age 55 and has advised the Commissioner that he or she has retired from the workforce; or
- (b) the person has died; or
- (c) the person is departing Australia permanently; or
- (d) the total of -
 - (i) the amount otherwise required to be preserved; and
 - (ii) the person's superannuation guarantee top-up benefit; and
 - (iii) the person's productivity benefit
 is less than \$500.

160. Subsection 128(4C) provides that subsection 128(4A) does not apply to a benefit, or part of a benefit, where the person can establish to the Commissioner's satisfaction that the benefit, or part thereof, is not required to be preserved under the OSS Act.

161. Subsection 128(6) describes the employee and employer components of a transfer value. Paragraph 32(b) excludes from the employer component any productivity related benefit. Paragraph 32(h) amends subsection 128(6) to provide that the notional productivity amount referred to in paragraph 128(2)(c) is also to be excluded from the employer component. This is appropriate as that amount will be paid to the CSS Fund in accordance with subsection 128(2) and be treated as productivity contributions.

162. Paragraph 32(i) inserts new subsection 128(8) which defines the term "notional productivity amount" for the purposes of subsections 128(2) and (6). That amount is to be three percent of the person's earnings while a member of the scheme for which the transfer value was paid. The person's earnings are to be determined in the same way as earnings are determined for the purposes of the SG(A) Act. This will apply only to that part of the person's employment to which the SG(A) Act applied.

Section 33 - Public employment

163. Clause 33 amends section 133 of the 1976 Act. Section 133 provides that the CSS Board may declare employment with certain persons to be public employment for the purposes of Division 3 of Part IX of the Act.

164. Paragraph 33(a) inserts subsection 133(1AA) which provides that a declaration may be expressed to apply only to a specific class of persons.

165. Paragraph 33(b) inserts subsection 133(1D) which provides that, where employment with a person or class of persons is to cease to be public employment for the purposes of the section, the CSS Board may declare that that employment continues to be public employment in relation to a certain person, or a person included in a class of persons. This provision would ensure that employees who have not fulfilled the service qualifications for eligibility for deferred benefits are not disadvantaged when an asset is sold or a function transferred and the employment otherwise would cease to be public employment.

166. Paragraph 33(c) amends subsection 133(2) to include a reference to a declaration under subsection 133(1D).

167. Paragraph 33(d) inserts subsection (2A) which provides that a declaration under this section may be expressed to expire at a specified time.

168. Paragraph 33(e) remakes subsection 133(3) to provide that a person may only be taken to be in public employment at a particular time if that person or that person's employer is covered by a declaration under either subsection 133(1) or 133(1D) at the time.

Clause 34 - Deferred benefits

169. Clause 34 amends section 136 of the 1976 Act. Section 136 makes provision for the amount of deferred benefit when such a benefit becomes payable.

170. Paragraph 34(a) remakes paragraph 136(2)(b) to provide for two methods of calculating a deferred benefit by way of additional age benefit depending upon whether the portion of the benefit that results from the person's accumulated employer contributions (productivity benefit) is to be payable to the person. This amendment is necessary as a consequence of the insertion of section 139AA by clause 36 which applies the OSS Act preservation requirements to the productivity component of the deferred benefit.

171. Paragraph 34(b) provides that, on the death of a person in receipt of deferred pension under the 1976 Act, any spouse's pension payable as a result of the death of the person should be paid at the full rate that was payable to the pensioner for seven pay-days after the date of death.

Clause 35 - Circumstances in which person entitled to deferred benefits

172. Clause 35 amends section 139 of the 1976 Act. Section 139 provides for the circumstances in which a deferred benefit becomes applicable and payable to a person.

173. Paragraph 139(2)(a) provides that a deferred benefit may become payable if the Commissioner is satisfied that the person is totally and permanently incapacitated within the meaning of Part IVA of the Act. Paragraph 35(a) amends paragraph 139(2)(a) to transfer the decision-making power from the Commissioner to the CSS Board.

174. Paragraph 35(b) makes a consequential change to paragraph 139(3)(a) to provide that it does not apply to a person unless that person was in public employment at the time he or she became totally and permanently incapacitated or had at that time completed five years eligible employment.

175. Paragraph 35(c) remakes subsection 139(5) to provide that a deferred benefit is not payable under paragraph 139(2)(a) unless the person has made a written application to the CSS Board and provided all the necessary information to the Board in support of the application. Applications for payment of deferred benefits in other circumstances may continue to be made to the Commissioner.

Clause 36 - Deferral of benefit payable under section 110P

176. Clause 36 inserts section 139AA into the 1976 Act. This section provides that the productivity portion of a deferred benefit under the Act should not become payable to a person unless the person has retired from the workforce. This is included in compliance with the preservation requirements under the OSS Act.

177. Subsection 139AA(1) provides that when a person has requested the payment of a deferred benefit under paragraph 139(2)(c) the portion of the benefit that results from his or her accumulated employer contributions should be paid to a preservation fund or applied to the purchase of a deferred annuity unless an event described in subsection 139AA(2) has occurred or the amount is less than \$500.

178. Subsection 139AA(2) provides that subsection 139AA(1) does not apply if:

- (a) the person has retired from the workforce; or
- (b) the Commissioner is satisfied that the person is leaving Australia permanently; or
- (c) the Insurance and Superannuation Commissioner has approved the release of the benefit.

Clause 37 - Person who is entitled to rights under Division not entitled to rights under other provisions of Act

179. Clause 37 amends section 140 of the 1976 Act by remaking subsection 140(2) and amending subsection 140(3).

180. These subsections cater for persons changing their mind as to the form of benefit. They require a person who later elects to preserve his or her superannuation benefits under the 1976 Act to repay any benefits already received and provide for those benefits to be repaid to the CSS Fund or the CRF, as appropriate.

181. The subsections are amended to include a reference to the superannuation guarantee top-up benefit provided for in the new Part VIAA as a benefit to be repaid before a preservation election can have effect. That benefit will be repaid to the CRF. Consequential changes are also made in recognition of that fact that, where the benefit to be repaid is an amount payable under subsection 62(2), part of that benefit may have been preserved or applied to the purchase of a deferred annuity in accordance with the new Division 2A in Part V.

Clause 38 - Certain former eligible employees not entitled to benefits under Division

182. Clause 38 amends section 141 of the 1976 Act to provide that a decision made under paragraph (1)(c) of that section should be made by the CSS Board rather than the Commissioner.

Clause 39 - Interpretation

183. Clause 39 amends section 153AA of the 1976 Act to include in the list of decisions of the CSS Board which may be subject to a request for reconsideration, decisions under section 122, paragraph 139(2)(a) and paragraph 141(1)(c).

184. The power to make these decisions is transferred from the Commissioner to the Board by clauses 29, 35 and 38 of this Bill.

Clause 40 - Decision to be referred to panel in certain circumstances

185. Clause 40 amends section 153AJ of the 1976 Act to provide that the section is to be subject to section 153ALA which is inserted by clause 42.

Clause 41 - Decision to be referred to Committee

186. Clause 41 amends section 153AK of the 1976 Act to provide that the section is to be subject to section 153ALA which is inserted by clause 42.

Clause 42 - Reconsideration of certain decisions by a delegate relating to invalidity

187. Clause 42 inserts section 153ALA into the 1976 Act to provide that the CSS Board may set aside a decision, made by a delegate, not to approve the retirement of a person and decide to approve the retirement of that person, without referring the decision to an assessment panel or a Reconsideration Advisory Committee.

Clause 43 - Decision to be referred to panel in certain circumstances

188. Clause 43 amends section 153AQ of the 1976 Act to provide that the section is subject to section 153AT which is inserted by clause 45.

Clause 44 - Decision to be referred to Committee

189. Clause 44 amends section 153AR of the 1976 Act to provide that the section is subject to section 153AT which is inserted by clause 45.

Clause 45 - Reconsideration of certain decisions by the Board relating to invalidity

190. Clause 45 inserts section 153AT into the 1976 Act to provide that the CSS Board may set aside its own decision not to approve the retirement of a person and approve the retirement of that person without referring the decision to an assessment panel or a Reconsideration Advisory Committee.

Clause 46 - Determinations with respect to interest or notional interest

191. Section 154A of the 1976 Act includes provisions in relation to the determination of interest payable under the 1976 Act.

192. Clause 46 inserts new subsection 154A(1A) which provides for notional interest provided for in the 1976 to be calculated in accordance with a determination by the CSS Board. Notional interest is referred to in various provisions in Division 2A of Part V (as inserted by clause 18) and Part VIAA (as inserted by clause 26).

Clause 47 - Modification of Act in relation to persons who cease to be eligible employees in certain circumstances

193. Clause 47 amends section 155B of the 1976 Act. Section 155B provides a power to modify the Act in relation to persons who cease to be CSS members as a result of the sale or transfer of an asset or the transfer of a function.

194. Subclause 47(1) remakes subsection 155B(1) to restrict the operation of the section to persons who cease to be CSS members as a result of the sale or transfer and who are offered employment with the new organisation and take up the offer of employment.

195. Subclause 47(2) provides that regulations made under section 155B in respect of former Housing Loan Insurance Corporation employees should have effect as if the amendments were in place when those regulations were made.

Clause 48 - Insertion of new sections

196. Clause 48 inserts new sections 155C and 155D in the 1976 Act.

Section 155C - Regulations relating to the operation of the Occupational Superannuation Standards Act 1987

197. In order to gain taxation concessions on the earnings of the CSS Fund the CSS has to comply with the OSS Act and regulations. While the OSS Act regulations can be made fairly quickly, it is a lengthier process to alter the 1976 Act. It is highly desirable that the CSS comply with the OSS regulations as quickly as possible.

198. Subsection 155C(1) provides that regulations may be made to enable the Superannuation Fund or any other scheme or arrangement established by or under the 1976 Act to satisfy any conditions or requirements specified under the OSS Act.

199. Subsection 155C(2) provides that if the regulations made under subsection 155C are inconsistent with any other provisions of the Act, the regulations prevail to the extent of the inconsistency.

Section 155D - Death may be presumed in certain cases

200. Section 155D provides that the Commissioner may direct that the death of a person be presumed. The Act will then apply as if the person died on the date determined by the Commissioner.

201. This power is provided to enable payment of benefits to eligible dependants to be made more quickly where a pensioner disappears in circumstances where death reasonably can be presumed but cannot be proved, eg persons lost at sea.

Clause 49 - Refund of money paid by mistake etc.

202. Clause 49 inserts section 156A into the 1976 Act to provide that, if an amount of money (other than a productivity contribution) has been paid incorrectly to the Commissioner as a contribution by a person who is not a CSS member, the Commissioner may repay that money together with interest.

Clause 50 - Directions etc. to be in writing

203. Clause 50 amends section 164 of the 1976 Act to provide that any direction, determination or declaration by the CSS Board shall be in writing.

Clause 51 - Regulations

204. Clause 51 amends section 168 of the 1976 Act, which includes provisions in relation to regulations made under the 1976 Act, by inserting subsections 168(11) and (12).

205. Subsection 168(11) provides that regulations made for the purposes of section 6A within two years after the commencement of the subsection may commence from a day not earlier than the date of commencement of the subsection.

206. The proposed section 6A (refer clause 8) provides that where a CSS member has two (or more) jobs they will be treated separately. However, it may not be appropriate to treat the jobs separately in all circumstances. Subsection 168(11) will enable regulations to be made to modify the Act to provide for circumstances where the arrangements provided for in section 6A may need to be varied to have regard to the fact that the person has more than one job.

207. Subsection 168(12) provides that regulations made under sections 14A, 51, 126, 155, 180 and 183 within 12 months after the commencement of the subsection may commence from a day not earlier than the date of commencement of the subsection.

208. Many of the regulations under the 1976 Act modify provisions of the 1976 Act as they apply to certain classes of persons. This will enable the regulations to be amended to reflect the provisions of the Bill with effect from the same date as the commencement of those amendments.

Clause 52 - Transfer of assets etc. to approved superannuation Schemes

209. Clause 52 amends section 240 of the 1976 Act. Section 240 provides for the transfer of assets and liabilities from the CSS Fund to an approved superannuation scheme in respect of persons transferring from the CSS to that scheme.

210. The clause amends paragraph 240(1)(a) to make it clear that only those productivity contributions held in the CSS Fund may be transferred from the Fund to the the approved scheme.

Clause 53 - Election to join Superannuation (1990) Scheme

211. Clause 53 amends section 244 of the 1976 Act which provides for the period during which a CSS member may elect to join the scheme under the 1990 Act (the PSS).

212. The amendment clarifies the intention that all CSS members who are given an opportunity to decide whether or not to join the scheme under the 1990 Act, have a period of at least three months in which to make the choice.

Clause 54 - Transfer of assets etc. to Superannuation (1990) Scheme

213. Clause 54 amends section 248 of the 1976 Act. Section 248 provides for the transfer of assets and liabilities from the Superannuation Fund to the PSS in respect of persons transferring from the CSS to that scheme.

214. The clause amends paragraph 248(1)(a) to make it clear that only those productivity contributions held in the Superannuation Fund may be transferred from the Fund to the PSS.

Clause 55 - Amendments consequential upon the enactment of the Military Superannuation and Benefits Act 1991

215. Clause 55 amends the 1976 Act as provided in the Schedule to the Bill. The 1976 Act refers to the Defence Force Retirement and Death Benefits Act 1973 and, with the introduction of the Military Superannuation and Benefits Act 1991, consequential changes are needed.

PART 4 - AMENDMENTS OF THE SUPERANNUATION ACT 1990Clause 56 - Principal Act

216. Clause 56 defines "Principal Act" for the purposes of Part 3 to be the Superannuation Act 1990 (the 1990 Act).

Clause 57 - Interpretation

217. Clause 57 amends the definition of "approved authority" in section 3 of the 1990 Act by inserting a reference in sub-subparagraph (b)(v)(A) of the definition to an authority or body defined in paragraph (a) of the definition.

218. The amendment enables a company or other body corporate to be an approved authority under the 1990 Act if another authority (which is an approved authority under the 1990 Act because it was an approved authority under the 1976 Act) has a direct or indirect controlling interest in it. The effect of a body being an approved authority is that its employees can be PSS members.

Clause 58 - Membership of Superannuation Scheme

219. Clause 58 amends section 6 of the 1990 Act. Subsection 6(1) of the 1990 Act specifies the categories of persons who are either required to be PSS members or who may elect to become PSS members.

220. Paragraphs 6(1)(e) and (f) presently provide for statutory office-holders and temporary employees who were PSS invalidity pensioners or have a preserved benefit in the PSS before being appointed or employed, automatically to be PSS members on their appointment or employment.

221. Clause 58 amends paragraphs 6(1)(e) and (f) to restrict the compulsory membership provisions to those statutory office-holders or temporary employees who return to the particular office or the same employment that they had before they became invalidity pensioners or left the PSS and had a preserved benefit in the scheme.

222. Clause 58 also omits paragraph 6(1)(g) which requires a person to be a PSS member if the person is a statutory office-holder or a temporary employee who was a PSS member immediately before being appointed to the office or employed in that employment.

223. The effects of the amendments to paragraphs 6(1)(e), (f) and (g) are to remove or limit the requirements that certain categories of statutory office-holders and temporary employees must be members of the PSS. Those persons who are freed of these requirements may still elect to become members in relation to holding the offices or being engaged in the temporary employment, as provided in paragraphs 6(1)(c) and (d).

224. The changes recognise that casual employees or part-time office-holders may only be working intermittently or for a small number of hours in relation to particular positions or offices and may not wish to be required to pay member contributions to the PSS. At the same time, any requirement on the person's employer to provide minimum superannuation coverage in relation to that office or employment can be provided under the Superannuation (Productivity Benefit) Act 1988.

225. Subsection 6(2) of the 1990 Act excludes certain categories of persons from being PSS members. Paragraph 6(2)(a) excludes from PSS membership persons who are CSS members under the 1976 Act.

226. Paragraph 58(1)(d) amends section 6 of the 1990 Act by adding subsection (3). That subsection provides that paragraph 6(2)(a) does not exclude a person from being a PSS member in relation to particular employment if the person is a CSS member in relation to other employment.

227. The effect of subsection 6(3) is to enable a CSS member to be a PSS member in relation to the holding of a statutory office or being engaged in particular employment where the person is not already a CSS member in relation to that office or that employment.

228. Subclause 58(2) provides that the amendments made to paragraphs 6(1)(e) and (f) and the removal of paragraph 6(1)(g) will have prospective effect. That is, the subclause provides that persons who have become PSS members under those paragraphs will continue to be PSS members despite the amendments.

Clause 59 - Election by holder of statutory office to be a member

229. Clause 59 replaces section 7 of the 1990 Act with a new section 7.

230. The new section omits the present reference to paragraph 6(1)(g) because of the amendment to section 6 which deletes that paragraph (refer clause 58).

231. The new section 7 also makes it clear that:

- (a) the effect of a statutory office-holder electing to become a PSS member is that the person only becomes a PSS member in relation to the particular office to which the election relates; and
- (b) the section does not prevent the person from becoming a PSS member in respect of other employment.

Clause 60 - Election by temporary employee to be a member

232. Clause 60 amends section 8 of the 1990 Act by replacing subsection 8(1) with a new subsection 8(1) and adding subsections 8(4) and (5).

233. The new subsection 8(1) omits the present reference to paragraph 6(1)(g) because of the amendment to section 6 which deletes that paragraph.

234. The new subsection provides that a person who is a temporary employee in relation to particular employment (except for the limited categories of temporary employees specified in paragraphs 6(1)(e) and (f) who must be PSS members if they return to the same position), may elect to become a PSS member in relation to that employment.

235. By relating the membership election to particular employment, the new subsection 8(1) enables a person who is a temporary employee in relation to particular employment to have a choice of whether or not be a PSS member in relation to that employment even if the person is already a member as a result of some other employment.

236. The new subsection 8(4) makes it clear that the effect of a person who is a temporary employee electing to become a PSS member is that the person only becomes a PSS member in respect of the particular employment to which the election relates.

237. The new subsection 8(5) makes it clear that the section does not prevent the person from becoming a PSS member in respect of other employment.

Clause 61 - Contributions to Superannuation Scheme etc by employer

238. Clause 61 replaces the definition of "designated employer" in subsection 15(1) of the 1990 Act with a new definition and adds a definition of "LWOP member".

239. The new definition of "designated employer" is largely similar to the existing definition, but excludes "LWOP members" from the existing categories of PSS members that are specified in the definition according to the type of their employment and the source of funds for their remuneration. The new definition includes an additional category of "LWOP member" and provides that the designated employer in relation to such a member shall be determined by the Minister.

240. The definition of "LWOP member" covers PSS members who are:

- (a) on leave of absence without pay and who, because of a direction given under the PSS Rules by the PSS Board, are required to pay contributions in respect of the period of leave of absence without pay; or

- (b) on leave of absence without pay or other unpaid leave in the nature of maternity or parental leave and who are making contributions in relation to that leave.

241. The effect of the changes to the definition of "designated employer" and the addition of the definition of "LWOP member" is to enable the Minister to determine the employers who are required to pay the employer contributions to the PSS Board in relation to the categories of members covered by the definition of "LWOP member".

Clause 62 - Payments to and by Commonwealth in respect of benefits payable under Superannuation Scheme

242. Clause 62 amends section 16 of the 1990 Act in relation to the payment of benefits under the PSS.

243. Where benefits become payable in respect of a person, except where the benefit is a lump sum of not more than the person's accumulated funded contributions, section 16 of the 1990 Act presently provides for:

- (a) the PSS Board to pay an amount equal to the person's accumulated funded contributions out of the PSS Fund to the CRF;
- (b) the Commonwealth to pay amounts equal to the benefits under the PSS Rules from the CRF to the Board; and
- (c) the Board to pay the amounts received from the Commonwealth into the PSS Fund.

244. The PSS Rules provide for the benefits to be paid to the recipient from the PSS Fund.

245. Under the CSS, the arrangement is for step (a) above to occur and the Commonwealth would then pay the benefits from the CRF to the recipient.

246. The intention behind the current section 16 was for the PSS Board to have full administrative responsibilities for paying benefits.

247. However, the experience has been that steps (b) and (c) above add an unnecessary step to the process (the payments from the CRF to the PSS Fund and then from the PSS Fund to the member effectively take place simultaneously). The Defence Force Retirement and Death Benefits scheme provides for payments from CRF to the member and, in setting up the Military Superannuation and Benefits Scheme (MSBS), the procedure for the CSS was adopted. The PSS, therefore, is the odd one out in the process of paying benefits.

248. Clause 62 amends section 16 to provide for the Commonwealth to pay the benefits from the CRF direct to the persons specified in the PSS Rules, so that the payment procedures for the CSS, the MSBS and the PSS are the same and the administration of the schemes can be simplified. Where benefits do not exceed the accumulated funded contributions, the existing arrangements will continue to apply and benefits would be paid direct from the PSS Fund to the member.

Clause 63 - Cost of administration of Act etc

249. Clause 63 replaces subsection 34(1) of the 1990 Act with new subsections 34(1) and (1A).

250. The existing subsection 34(1) provides for the costs of the administration of the Act, except for the costs related to the management and investment of the PSS Fund, to be paid out of money appropriated by Parliament for the purpose.

251. The PSS is a partly funded superannuation scheme, with member contributions and employer productivity contributions being paid into the PSS Fund and invested. The balance of the employer component is unfunded and is met from the CRF at the time the benefit is paid.

252. There are various costs relating to the PSS, in addition to the management and investment of the PSS Fund, that might appropriately be shared on some basis between the employer and the Fund, or be met wholly by the employer or by the Fund. These include costs associated with a range of information that is required by the OSS Act and the its regulations to be disseminated to members of superannuation schemes.

253. The present provisions of the Act and the Trust Deed (authorised by the Act) allow the costs of disseminating information to PSS members in relation to the activities of the PSS Board in respect of the management and investment of the PSS Fund to be charged against the Fund, but the costs of such dissemination must not be paid out of an appropriation.

254. The new subsections 34(1) and (1A) will enable the Minister to determine which of the various costs associated with the administration of the PSS and with the management of the PSS Fund are to be met by the Commonwealth by appropriation from the CRF and which of the costs are to be met from the PSS Fund.

Clause 64 - Certain authorities to pay part of costs of administration

255. Clause 64 inserts an additional subsection (1A) in section 35 of the 1990 Act.

256. Section 35 presently provides for:

- (a) the PSS Board to prepare an estimate of the costs referred to in subsection 34(1) that are likely to be incurred in respect of a financial year; and
- (b) the Minister to be able to direct authorities or bodies that employ PSS members to pay to the Commonwealth such part of the costs estimated by the PSS Board as is determined by the Minister.

257. The new subsection 35(1A) requires the PSS Board, if directed to do so by the Minister, to prepare an estimate containing such information as required by the Minister on such of the costs as the Minister specifies. This is a consequence of the changes made to section 34 of the 1990 Act.

258. Subsection 35(1A) will allow the kind of information that is required to be provided on some of the costs to be specified and facilitate the determination of those parts of the costs that are to be paid to the Commonwealth by those authorities or bodies that employ PSS members.

Clause 65 - Costs - Board being assisted by panel of persons

259. Clause 65 replaces section 37 of the 1990 Act with a new section 37.

260. Section 37 presently provides for:

- (a) any costs incurred in relation to the assessment panel that is engaged under the PSS Rules to assist the PSS Board in deciding whether or not to approve invalidity retirement for a PSS member;
- (b) the costs of any medical examination required to provide the assessment panel with medical evidence; and
- (c) the costs of any rehabilitation program undertaken where invalidity retirement is not approved for the member,

to be payable from the CRF which is appropriated accordingly.

261. The new section 37 continues those provisions and, in addition, provides for costs associated with the assessment panel and of medical examinations in relation to:

- (a) the payment of preserved benefits; and
- (b) the payment of an invalidity retirement benefit where a person was totally and permanently incapacitated on his or her last day as a PSS member but did not claim invalidity benefits,

also to be paid from the Consolidation Revenue Fund.

262. These changes reflect changes that were made to the PSS Rules with effect 1 July 1992 to subject applications for:

- (a) the payment of preserved benefits on the grounds of invalidity; and
- (b) the provision of an invalidity retirement benefit where a person has left the PSS, has a preserved benefit in the PSS and was totally and permanently incapacitated at the time the person left the PSS,

to the invalidity retirement assessment processes.

PART 5 - AMENDMENTS OF THE SUPERANNUATION

(PRODUCTIVITY BENEFIT) ACT 1988

Clause 66 - Principal Act

263. Clause 66 defines the "Principal Act" for the purposes of Part 4 to mean the Superannuation (Productivity Benefit) Act 1988.

Clause 67 - Interpretation

264. Clause 67 will amend section 3 of the Principal Act by extending the definition of "qualified employee" at paragraph 3(1)(d) to include employees of approved authorities which pay benefits to one or more employees under the Superannuation Benefits (Supervisory Mechanisms) Act 1990.

Clause 68 - Rates of salary

265. Clause 68 inserts paragraph 3B(1A) which provides a method of determining a rate of salary where employees work other than on a full time basis. The new paragraph will ensure that compensation payments in the nature of income maintenance may be treated as salary for contribution purposes.

Clause 69 - Continuing contributions

266. Clause 69 inserts a new subsection 3C(2A) which provides a formula for the reduction of the continuing contribution for a person on leave without pay for all or part of a pay period.

Clause 70 - Arrangements for certain employers

267. Clause 70 amends Section 4A (1) to allow the Minister to declare scheme employees a class of employees who are neither fund employees nor interim arrangement employees.

SCHEDULE TO THE BILL

268. The schedule contains consequential amendments to the 1976 Act as provided for in clause 55.



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