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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SUPERANNUATION LEGISLATION AMENDMENT BILL 1991

EXPLANATORY MEMORANDUM

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



SUPERANNUATION LEGISLATION AMENDMENT BILL 1991

GENERAL OUTLINE

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

The amendments to these Acts are either changes to bring the Commonwealth superannuation schemes into line with the spirit of the Occupational Superannuation Standards, changes to streamline administration, changes to correct anomalies and provide greater equity between members (including the prevention of double payment of benefits) or changes of a technical nature.

Superannuation Act 1976

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

The Bill proposes amendments to the 1976 Act which include -

- . transferring the leave without pay and preservation functions from the Minister to the Commonwealth Superannuation Board established under that Act;
- . extending the Commissioner for Superannuation's powers to allocate reversionary benefits;
- . allowing persons who have not retired from the workforce to postpone payment of age retirement benefits;
- . extending the arrangements for persons transferring to a scheme run by their employer to include deferred benefits;
- . including a moratorium on the issue of benefit classification certificates so that members can make their choice between staying in the 1976 scheme or transferring to the scheme established under the 1990 Act with some certainty as to their benefits;
- . removing the potential for double payment of benefits;

- . allowing for the fact that certain contributions paid to the Superannuation Fund under the 1976 Act are now taxable contributions and enabling the joint employer/employee Board established under that Act to decide an appropriate treatment for that tax; and
- . ceasing, from 1 July 2000, payment of cash involuntary retirement benefits to persons who have not attained age 55.

Superannuation Act 1990

The Superannuation Act 1990 (the 1990 Act) enabled the establishment of the Public Sector Superannuation scheme for Commonwealth sector civilian employees (the 1990 scheme). The 1990 scheme commenced on 1 July 1990 and most members of the 1976 scheme have the option to transfer to the 1990 scheme before 1 July 1991.

Proposed amendments to the 1990 Act include -

- . clarifying that certain former employees with 1976 scheme entitlements should join the 1976 scheme before being able to exercise an option to transfer to the 1990 scheme; and
- . provide financial and other arrangements under which members may transfer to separate schemes established by their employer.

Superannuation Benefits (Supervisory Mechanisms) Act 1990

The Superannuation Benefits (Supervisory Mechanisms) Act 1990 sets out supervisory mechanisms to apply to the provision of superannuation benefits to Commonwealth sector employees.

Under the Act, the Minister may issue guidelines to Commonwealth employers for the provision of superannuation arrangements to their employees without specific approval.

The Bill proposes an amendment the Act to simplify the notification of changes to the guidelines to employers.

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 Act to provide that where a person covered by the Act joins the 1990 scheme, the employer is to pay the benefit (and any interest) to the 1990 scheme.

FINANCIAL IMPACT

In summary, the financial impact of the amendments to the various Acts is not able to be quantified but is expected to be negligible. The changes would affect very few persons.

That said, some of the amendments would increase costs slightly, eg, the moratorium on the issue of benefit classification certificates which could result in higher benefit entitlements and where the rate of spouse's pension is increased where a person is survived by more than one spouse.

The arrangements introduced into the Superannuation Act 1990 for bulk transfers to schemes set up by authorities and payments from the Consolidated Revenue Fund (CRF) obviously involves expenditure. However, the moneys involved would have been paid into the CRF by the authorities in past years. Moreover, the arrangements have the effect of spreading the return of those moneys over a long period, thereby preventing any significant immediate effect on Budget outlays.

The removal of the potential for double payment of benefits would tend to reduce future costs. The streamlining of administrative provisions should lead to some small savings.

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;
- "1976 scheme Board" means the Commonwealth Superannuation Board established under the Superannuation Act 1976. (This Board will be renamed the Commonwealth Superannuation Board of Trustees No 2 from 1 July 1991 under provisions of the Commonwealth Funds Management Limited Act 1990);
- "1990 scheme Board" means the Commonwealth Superannuation Board of Trustees No 1 established under the Superannuation Act 1990;
- "Commissioner" means the Commissioner for Superannuation;
- "1976 Commonwealth scheme" or "1976 scheme" means the superannuation scheme established by the Superannuation Act 1976;
- "1990 Commonwealth scheme" or "1990 scheme" means the superannuation scheme established by Trust Deed under the Superannuation Act 1976;
- "Occupational Superannuation Standards" or "Standards" means the standards under the Occupational Superannuation Standards Act 1987 and Regulations under that Act; and
- "superseded Act" means the Superannuation Act 1922;

Note: The Bill and the 1990 Act itself use the term "Superannuation Scheme " for the scheme set up under the 1990 Act. However, use of this term in the Memorandum could lead to confusion with the 1976 Commonwealth scheme.

Therefore, the terms "1990 Commonwealth scheme" and "1990 scheme" are used in this Memorandum for the scheme established under the 1990 Act. The terms "1976 Commonwealth scheme" and "1976 scheme" are used for the scheme established by the 1976 Act.

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 1991.

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 (e) below;
- (b) 18 December 1986 - clause 26;
- (c) 1 July 1990 - clauses 82, 83 and 84;
- (d) 1 April 1991 - clauses 10, 11 and 60; and
- (e) the later of Royal Assent or immediately after the commencement of section 53 of the Commonwealth Funds Management Limited Act 1990 which changes the Commonwealth Superannuation Board to the Commonwealth Superannuation Board of Trustees No 2 - clauses 13, 16, 21, 34, 46, 47, 50, 53 and 55.

PART 2 - AMENDMENTS TO THE SUPERANNUATION ACT 1976

Clause 3 - Principal Act

3. Clause 3 defines the Principal Act for the purposes of Part 2 to be the Superannuation Act 1976 (the 1976 Act).

Clause 4 - Interpretation

4. Clause 4 amends subsection 3(1) of the 1976 Act by amending or inserting definitions of a number of terms used in the Act.

5. The clause amends the definitions of "eligible employee" and "final annual rate of salary" and replaces the definition of "retirement pensioner". It also inserts definitions of the terms "deferred annuity", "extra spouse's pension" and "preservation fund".

Clause 5 - Meaning of "re-employed former contributor with preserved rights"

6. Clause 5 amends section 4B of the 1976 Act. Section 4B of the 1976 Act defines the term "re-employed former contributor with preserved rights" as used in the 1976 Act.

7. This term is used to describe Commonwealth employees who have received a superannuation payment from previous employment which includes a transfer value from the superannuation scheme under the Superannuation Act 1922 or the 1976 Act. Such persons are amongst the limited categories of persons who are entitled to join the 1976 Commonwealth scheme since the commencement of the 1990 Commonwealth scheme on 1 July 1990.

8. The clause amends section 4B to confirm the intention that all persons who cease to be contributors to the 1976 Commonwealth scheme and receive a transfer value may return to the 1976 scheme. The section is presently limited to persons who ceased to be contributors before 1 July 1990. In accordance with section 244 of the 1976 Act they will then have the right to elect to transfer to the 1990 Commonwealth scheme.

9. The clause also makes a technical change to the way in which contributors under the Superannuation Act 1922 are described in section 4B.

Clause 6 - Retirement on ground of invalidity

10. Clause 6 amends subsection 7(2) of the 1976 Act which provides that a person who has ceased to be a contributor may be taken to have retired on invalidity grounds in some circumstances. It also includes a provision to ensure that the amendment only applies to persons who cease to be contributors after the commencement of the amendment.

11. Subclause 6(1) provides for an amendment to subsection 7(2) to provide that a person who ceases to be a contributor will not be taken to have retired on the ground of invalidity unless the Commonwealth Superannuation Board (the 1976 scheme Board) is satisfied that the person is totally and permanently incapacitated. This will ensure that persons being considered for invalidity retirement under subsection 7(2) will be subject to the same considerations as all other persons who are seeking the payment of invalidity benefits under the 1976 Act.

12. Subclause 6(2) includes a savings provision to ensure that no one who has already ceased to be a contributor is disadvantaged by the amendment made by subclause 6(1).

Clause 7 - Sections 11 and 13 not applicable to certain persons employed on or after 1 July 1990

Clause 8 - Statutory office holders

Clause 9 - Persons excluded from definition of "eligible employee"

13. Clauses 7, 8 and 9 amend section 13A, subsection 14(5) and subsection 15A(2) of the 1976 Act respectively. Sections 13A and 14 describe those temporary employees and statutory office holders who may become contributors to the 1976 Commonwealth scheme since the commencement of the 1990 Commonwealth scheme. Section 15A describes those permanent employees who are excluded from becoming contributors under the 1976 Act since the commencement of the 1990 scheme.

14. The amendments contained in clauses 7, 8 and 9 will extend the classes of persons who can become contributors to the 1976 Commonwealth scheme to include persons to whom deferred benefits are applicable under the Superannuation Act 1922 (the superseded Act) as well as persons to whom deferred benefits are applicable under the 1976 Act.

15. The amendments also make technical amendments to section 13A, subsection 14(5) and subsection 15A(2) to correct the description of pensions paid under the superseded Act to persons who retired on invalidity grounds.

Clause 10 - Medical examination, and issue of benefit classification certificate, on becoming eligible employee

16. Clause 10 inserts three new subsections in section 16 of the 1976 Act.

17. Section 16 provides for the medical examination of persons who become contributors to the 1976 Commonwealth scheme. It also provides for the Commissioner for Superannuation to issue a benefit classification certificate where there is real doubt, as a result of that examination, that the person can remain a contributor until maximum retiring age. Where a certificate is issued to a person and that person ceases to be a contributor because of death or invalidity retirement or has a salary reduction for medical reasons, the benefits available to the person or the person's dependants, as the case may be, may be reduced.

18. The amendments made by this clause are intended to ensure that a benefit classification certificate can not be issued after 31 March 1991 to a person who was a contributor on 30 June 1990 and remained a contributor, except where the certificate is issued because a person has withheld information or provided false or misleading information.

19. The clause inserts subsection 16(4A) which provides that a benefit classification certificate cannot be issued under subsection 16(4) of the 1976 Act after 31 March 1991 to a person who was a contributor on 30 June 1990 and remained a contributor. This will apply in cases where the normal processes which involve a medical examination and consideration of the reports of that examination have not been completed, for example, a situation such as the loss of medical papers.

20. The amendment has been made because most contributors to the 1976 Commonwealth scheme have to decide by 30 June 1991 whether to remain in that scheme or transfer to the 1990 Commonwealth scheme. Because the issue of a certificate can affect benefits in the 1976 scheme, it was considered that persons should be able to make that decision in the knowledge that, if they have disclosed all relevant information at their entry medical examination, a certificate cannot be issued at some future time.

21. The clause also inserts subsection 16(4B) to make it clear that, although a certificate may not be issued to a person because of subsection 16(4A), if that person ceases to be a contributor and then becomes a contributor again the Commissioner is not prohibited from issuing a certificate in respect of the person.

22. The clause also inserts subsection 16(4C) to provide that the "non-disclosure" provisions in section 16AC and subsection 184(5) to (5C) continue to apply in respect of a person who is not to be issued a certificate in accordance with subsection 16(4A). Therefore, in cases where a medical examination was held, a person's benefits on death, invalidity retirement or reduction in salary could still be reduced if the Commissioner considers that the person withheld relevant information or provided false or misleading information at that medical examination.

Clause 11 - Benefit event happening before section 16 procedure completed

23. Clause 11 amends section 16AA of the 1976 Act by adding subsection 16AA(10). Section 16AA provides that the Commissioner may determine the likely outcome of the medical assessment procedures provided for in section 16 where a person dies, is retired on invalidity grounds or experiences a salary reduction before those procedures are completed. Under this section a benefit classification certificate could be issued in respect of the person which could result in the reduction of benefits payable to the person.

24. The new subsection 16AA(10) provides that where the event referred to in paragraph 23 above occurs after 31 March 1991 and the person was a contributor on 30 June 1990 and continued until 31 March 1991 to be a contributor, the Commissioner is not required to determine the likely outcome of the medical assessment procedures and a benefit classification certificate cannot be issued under the section.

Clause 12 - Commissioner for Superannuation

25. Clause 12 replaces subsection 17(2) of the 1976 Act which describes the responsibilities of the Commissioner under the 1976 Act.

26. The new subsection 17(2) provides that the Commissioner is responsible for the general administration of the Act and the Superannuation Act 1922 (the superseded Act) unless the Act provides otherwise. This variation is required to reflect the increasing responsibilities of the 1976 scheme Board under the Act.

Clause 13 - Functions

27. Clause 13 amends section 27C of the 1976 Act which describes the functions of the 1976 scheme Board.

28. The clause substitutes a new subsection 27C(1) which lists the new functions given to the 1976 scheme Board as a consequence of amendments to the Act made by clauses 13, 16, 21, 34, 46, 47, 50, 53, and 55. It also inserts a reference to the 1976 scheme Board's function under subsection 7(2) of the 1976 Act which previously had been inadvertently omitted.

29. The clause also makes a consequential amendment to subsection 27C(2) to correct a reference which is changed as a result of the substitution of a new subsection 27C(1).

Clause 14 - Indemnification of members of the Board

30. Clause 14 amends section 27R of the 1976 Act which provides for an indemnification of individual members of the 1976 scheme Board and delegates of the Board against any action, liability, claim or demand in respect of any matter or thing done, or omitted to be done, in good faith. It also provides that the 1976 scheme Board itself is not so exempt from liability.

31. The clause inserts a new subsection 27R(3) which provides for moneys payable as a result of an action, liability, claim or demand against the 1976 scheme Board to be paid from the Consolidated Revenue Fund. It also provides for the appropriation of that Fund.

Clause 15 - Decreases in salary

32. Clause 15 amends section 47 of the 1976 Act which includes provisions in relation to persons who experience a decrease in salary. Section 47 ensures that persons whose salary is decreased have the choice of having their contributions under the 1976 Act continue to be calculated on the basis of the salary before the decrease, with certain updating, or the actual salary received.

33. The clause amends both subsections 47(1) and (3) to provide that, where a person experiences a decrease in salary, the regulations may provide for some other rate to be the basis on which a person's contributions are calculated.

34. The amendment is made to cater for a future situation where a performance-based component of salary may be included in salary for superannuation purposes. It may not be appropriate for that performance-based component to be maintained when, for example, salary drops because performance drops. The amendment provides the ability to make suitable arrangements for deciding what salary may be maintained in such cases.

35. The clause also makes a technical amendment to those subsections to clarify that the rate of salary referred to in the subsections is an annual rate.

Clause 16 - Leave of absence without pay

36. Clause 16 amends section 51 of the 1976 Act which includes arrangements in relation to persons on leave without pay. Section 51 provides for the Minister to direct that a person on leave without for a period in excess of 12 weeks may continue to contribute during that leave.

37. Subclause 16(1) amends subsections 51(1), (1A) and (2) and inserts new subsections (2A), (2B) and 2(C). These provide for the Minister's power under section 51 to be transferred to the 1976 scheme Board. It also provides that the Minister may formulate principles to which the Board must have regard to while exercising that power.

38. The subclause also makes it clear that section 51 does not apply to leave without pay for reasons connected with the birth of a child. Specific provisions in relation to such leave are included in section 51A of the 1976 Act.

39. Subclause 16(2) includes a savings provision to ensure that all previous directions made by the Minister under section 51 will be taken to have been made by the 1976 scheme Board.

Clause 17 - Interpretation

Clause 18 - Board to seek recommendations

Clause 19 - Board to decide whether to approve retirement

40. Clauses 17, 18 and 19 amend sections 54D, 54G and 54H of the 1976 Act respectively to require the 1976 scheme Board, when considering a request for the approval of invalidity retirement, to seek the opinion of a body which is an administering authority for the purposes of the Commonwealth Employees' Rehabilitation and Compensation Act 1988 (the Compensation Act).

41. Clause 17 inserts a definition of the term "administering authority" in section 54D.

42. Clause 18 repeals and replaces section 54G to ensure that, if the 1976 scheme Board is considering a request for invalidity retirement for a person who is in receipt of compensation under the Compensation Act, the Board must seek the opinion of an administering authority by which the person is employed or the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees (Comcare).

43. Clause 20 makes a technical amendment to section 54H of the 1976 Act to include a reference to an administering authority as well as Comcare.

Clause 20 - Determination of requests, payments and rehabilitation programs to be in accordance with the Rules for the administration of the Superannuation (1990) Scheme

44. Clause 20 amends section 54K of the 1976 Act.

45. In accordance with section 54K of the 1976 Act, pre-assessment payments for contributors to the 1976 Commonwealth scheme are calculated and payable in accordance with the arrangements for pre-assessment payments for members of the 1990 Commonwealth scheme. These are set out in Divisions 2 and 3 of Part 12 of the Rules for the 1990 Scheme. For interpretation reasons, section 54K includes a number of variations to those provisions for the purpose of their application to contributors to the 1976 scheme.

46. The amendment to section 54K provides that a reference to an approved medical practitioner in Divisions 2 and 3 of Part 12 of the Rules for the administration of the 1990 scheme is, for the purposes of the application of those provisions to contributors to the 1976 scheme, a reference to an approved medical practitioner with the meaning of the 1976 Act.

Clause 21 - Repeal of Division

47. Clause 21 repeals Division 5 of Part IVA of the 1976 Act which provides for the reconsideration by the 1976 scheme Board of decisions made by the Board or its delegates under that Part.

48. The Bill proposes that additional functions be provided to the 1976 scheme Board which are unrelated to its functions under Part IVA. Clause 55 of the Bill also inserts a new Part XA which enables the Board to reconsider a wider range of decisions than those provided for in Division 5 of Part IVA. Those decisions include decisions under Part IVA.

49. As a consequence of the insertion of Part XA in the 1976 Act, subclause 21(1) repeals Division 5 of Part VIA.

50. Subclause 21(2) provides that a person eligible to seek reconsideration under Part IVA is eligible to seek reconsideration under Part XA.

51. Subclause 21(3) provides that where decisions are in the process of being reconsidered by the 1976 scheme Board at the time of commencement of Part XA, that reconsideration can continue under the new Part.

52. Subclause 21(4) provides that any Reconsideration Advisory Committee established under Part IVA for the purposes of assisting the Board in the reconsideration of decisions will be considered to have been established under Part XA.

Clause 22 - Entitlement to age retirement benefit

53. Clause 22 amends section 55 of the 1976 Act. Persons who cease to be contributors to the 1976 Commonwealth scheme on or after reaching age 60 are entitled to benefits in accordance with that section.

54. Currently a person who has an entitlement to benefits on ceasing to be a contributor must accept payment of those benefits at that time. Part VIB, which is inserted in the 1976 Act by clause 36, will enable persons who retire before age 65 with entitlement to an age or early retirement pension to elect to postpone the payment of those benefits.

55. This clause amends section 55 to allow benefits payable in accordance with that section to be postponed under the new Part VIB.

Clause 23 - Entitlement to early retirement benefit

56. Clause 23 amends section 59 of the 1976 Act. Persons who cease to be contributors to the 1976 Commonwealth scheme because of early retirement are entitled to benefits in accordance with section 59.

57. This clause amends section 59 to allow benefits payable on early retirement in accordance with that section to be postponed under the new Part VIB.

Clause 24 - Election for lump sum benefit in case of involuntary retirement

58. Clause 24 amends section 62 of the 1976 Act which provides that a person who is deemed to have retired involuntarily may elect to receive their total benefit as a lump sum.

59. This clause amends section 62 to provide that, from 1 July 2000, the lump sum benefit will be available to the person in cash only if the person has attained the age of 55 years and has retired from the workforce.

60. Where a person who has not attained 55 years or who has not retired from the workforce elects under section 62, the lump sum will be preserved in a preservation fund or will be applied to the purchase of a deferred annuity. Alternatively, the person may receive a lump sum of accumulated contributions in which case the balance of the lump sum will be paid to a preservation fund or applied to the purchase of a deferred annuity.

Clause 25 - Election to commute

61. Clause 25 amends section 64 of the 1976 Act which provides for the commutation of additional age retirement pension and additional early retirement pension.

62. The clause inserts a new subsection 64(2) which will provide that a person who has postponed receipt of additional age retirement pension or additional early retirement pension under the new Part VIB (inserted by clause 36) may commute that pension.

Clause 26 - Reduction of invalidity pensions because of earnings

63. Clause 26 amends section 73A of the 1976 Act which provides for the reduction of invalidity pension payable to a person under the 1976 Act when the person's earnings from personal exertion are higher than a certain limit. That limit may be based on the salary that would have been payable to the person if he or she had not been retired.

64. The clause provides that the salary taken into account for the purposes of determining the limit is the same salary that was used to calculate the invalidity pension.

65. The amendment takes effect retrospectively to the commencement of the provisions relating to earnings of invalidity pensioners. This has been done because at least one person is known to have been adversely affected by the use of different salaries for pension and earnings purposes and there may be other persons similarly affected.

Clause 27 - Reduction of invalidity pensions because of pre-assessment payments

66. Clause 27 inserts section 73B in the 1976 Act to ensure that a person will not receive both pre-assessment payments and invalidity pension in respect of the same period.

67. Pre-assessment payments may be made to persons while their case for invalidity retirement is being considered by the 1976 scheme Board. Pre-assessment payments are a form of income maintenance while the decision on invalidity benefits is being made.

68. Although the 1976 scheme Board approves invalidity retirements, the date for the retirement is set by the employer. The date set by the employer may be a date earlier than the date of the Board's decision. Therefore, it is possible that a person could be entitled to payment of both invalidity pension and pre-assessment payments for the one period.

69. Section 73B will ensure that the higher of the two payments is paid to the person for a period where there is entitlement to both invalidity pension and pre-assessment payments.

Clause 28 - Entitlement to spouse's benefit on death of pensioner

70. Clause 28 amends section 93 of the 1976 Act which describes the entitlements of a spouse on the death of a pensioner.

71. The amendment is necessary as a consequence of the provisions of Part VIB as inserted by clause 36. It will ensure that spouse's additional pension will be available to the spouse of a pensioner who had deferred his or her entitlements under that Part but died before those benefits became payable.

72. Without this amendment, spouse's additional pension would not be payable if the pensioner had elected to commute his or her additional age retirement pension or additional early retirement pension but died before the selected date for payment of the postponed benefits.

Clause 29 - Repeal and Substitution of Division 5 of Part VI - Miscellaneous

73. Clause 29 provides for the repeal of Division 5 of Part VI of the 1976 Act and substitutes a new Division 5 (sections 109AB, 110 and 110AB). These sections deal with situations where there are dependants from more than one relationship who become entitled to a benefit under the 1976 Act where a contributor or pensioner dies.

74. Spouse's pension under the 1976 Act is a percentage of the entitlement of the deceased contributor or pensioner. Where there is an eligible child or a partially dependent child of the deceased person, the spouse's pension is increased according to the number of children.

75. Where some or all of the children are not in the custody, care or control of the spouse, the Commissioner may pay that portion, or a part of the portion, of the spouse's pension which is attributable to children to a person other than the spouse for the benefit of those children.

76. Where the spouse's benefit is a lump sum payment, the Commissioner is unable to pay part of that benefit to a person other than the spouse.

77. Where there is more than one spouse, the Commissioner may allocate the spouse's pension or lump sum benefit amongst the spouses under section 110 of the 1976 Act.

78. This clause omits section 110 of the 1976 Act and inserts sections 109AB, 110 and 110AB which -

- (a) allow the Commissioner to have regard to the needs of all eligible dependants of a deceased contributor or pensioner and distribute payment of spouse's benefit accordingly; and
- (b) provide for the amount of the spouse's pension to be increased where there is more than one spouse and the amount of the spouse's pension is less than the entitlement of the deceased contributor or pensioner.

79. Section 109AB deals with the situation where a deceased contributor or pensioner is survived by one spouse and a child or children and at least one of those children is either an eligible child not in the custody, care or control of the spouse or is a partially dependent child.

80. Subsection 109AB(1) provides that, where a contributor or pensioner is survived by one spouse and at least one child not in the custody, care or control of the spouse or a partially dependent child, spouse's benefits payable under the appropriate provisions of Division 1, 2, 3 or 3A of Part VI of the 1976 Act are to be paid in accordance with section 109AB.

81. Subsections 109AB(2) and (3) provide that the amount that is to be paid to a spouse must not exceed the amount of spouse's pension that would be paid to the spouse if that pension only had regard to those children in the custody, care and control of the spouse.

82. Subsection 109AB(4) provides that the Commissioner must determine the amount of spouse's benefit that is attributable to each eligible child and each partially dependent child. This is intended to apply to all benefits available to a spouse under the Act. In making this determination the Commissioner is to have regard to the needs of the spouse and of the individual children and any other relevant matters. Where there is a child not in the custody, care and control of one of the spouses, this will enable payment of a portion of a spouse's pension to a person other than the spouse in accordance with section 114 of the 1976 Act. That payment must be applied for the benefit of the child.

83. Subsections 109AB(5) and (6) impose an upper limit on the amount of the spouse's pension that may be attributed to an eligible child not in the custody, care and control of the spouse. That upper limit is the percentage of the entitlement of the deceased contributor or pensioner that would have been payable in respect of those children had they been entitled to an orphans benefit under the Act.

84. Subsection 109AB(7) imposes an upper limit on the amount that can be attributed in the aggregate to partially dependent children. The upper limit is the lesser of the regular maintenance payments made to the children or a percentage of the entitlements of the deceased contributor or pensioner. That percentage will be 45 per cent if there is one child, 80 per cent if there are two children, 90 per cent if there are three children or 100 per cent if there are four or more children.

85. Subsection 109AB(8) provides that the Commissioner is not to determine that a portion of a spouse's additional pension is attributable to a partially dependent child.

86. Subsection 109AB(9) provides that, after the Commissioner has determined the amount of spouse's pension which is attributable to children, the spouse may make any election normally available to that spouse in respect of that portion of the spouse's benefit which is not attributable to a child not living with the spouse.

87. For example, if the spouse would normally have been entitled under section 87 of the 1976 Act to elect to convert the spouse's pension to a lump sum benefit, this election may still be made. The lump sum benefit will be a lesser amount than that normally provided for in that section having regard to the amount of the spouse's pension determined by the Commissioner to be attributable to children not in the custody, care or control of the spouse.

88. Subsection 109AB(10) provides that the Commissioner can vary a determination made under subsection 109AB(4) from time to time.

89. Subsection 109AB(11) provides that the upper limit of spouse's pension referred to in subsection (2) does not apply to spouse's additional pension.

90. Section 110 deals with the situation where a deceased contributor or pensioner is survived by more than one spouse. It also recognises that there may be children of the deceased person who are not in the custody, care and control of any of the spouses and enables the Commissioner to consider the needs of those children when determining the portion of the spouse's benefit which is to be payable to each of the surviving dependants of the contributor or pensioner

91. Subsection 110(1) provides that, where a contributor or pensioner is survived by more than one spouse, spouse's benefits payable under the appropriate provisions of Division 1, 2, 3 or 3A of Part VI of the 1976 Act in respect of the deceased person are to be paid in accordance with section 110.

92. Subsection 110(2) provides that, except where a spouse's pension is increased in accordance with section 110AB, the total benefit allocated amongst the spouses is not to exceed the benefit that would have been paid had there been only one spouse. Section 110AB provides for an increase in the annual rate of spouse's pension in certain cases where a person is survived by more than one spouse. Where section 110AB applies, the total amount to be allocated would include the additional amount worked out under that section.

93. Subsection 110(3) provides that the Commissioner must allocate any benefit amongst the spouses (other than an additional pension under section 91) after having regard to the needs of the spouses and of any eligible child or partially dependent child and any other relevant matters.

94. Subsections 110(4) and (5) provide that the amount allocated to each spouse must not exceed the amount that would have been paid to that spouse if the contributor or pensioner had been survived only by that spouse and those children living with the spouse. This will be a percentage of the entitlements of the deceased contributor or pensioner which will be 67 per cent if there are no children, 78 per cent if there is one child, 89 per cent if there are two children or 100 per cent if there are three or more children.

95. Subsection 110(6) provides that the Commissioner must determine the amount of the benefit that is attributable to a child. The Commissioner may not determine that a portion of a spouse's additional pension is attributable to a partially dependent child. Where there is a child not in the custody, care and control of one of the spouses, this will enable payment of a portion of a spouse's pension to a person other than the spouse in accordance with section 114 of the 1976 Act. That payment must be applied for the benefit of the child.

96. Subsections 110(7) and (8) impose an upper limit on the benefit that may be allocated in the aggregate to children who are not in the custody, care or control of a spouse. This will be a percentage of the contributor or pensioner's entitlements which will be 45 per cent if there is one child, 80 per cent if there are two children, 90 per cent if there are three children and 100 per cent if there are four or more children.

97. Subsection 110(9) imposes an upper limit on the amount that can be attributed in the aggregate to partially dependent children. The limit is the lesser of the regular maintenance payments made to the children or a percentage of the entitlements of the deceased contributor or pensioner. That percentage will be 45 per cent if there is one child, 80 per cent if there are two children, 90 per cent if there are three children or 100 per cent if there are four or more children.

98. Subsection 110(10) provides for the accumulated contributions of a contributor who dies after maximum retiring age to be allocated amongst the spouses for the purpose of allocating spouse's additional pension. It also relates the maximum amount of such pension that may be allocated to a spouse under section 110 to the amount of additional contributions allocated to the spouse.

99. Subsection 110(11) provides that, where a spouse's additional pension is worked out in accordance with subsection 110(10), the Commissioner may determine that a portion of that pension is attributable to an eligible child.

100. Subsection 110(12) provides that, after the Commissioner has allocated the spouse's benefit, the individual spouses may make such elections in respect of the portion to be paid to him or her as would be available under the Act where there is only one spouse.

101. Subsection 110(13) provides that the Commissioner can vary an allocation at some later time.

102. Subsection 110(14) provides that where a spouse's pension has been allocated and some but not all of the spouses have elected to take a lump sum benefit in lieu of pension, an orphan's benefit is not to be payable to the child of a spouse who makes such an election unless the Commissioner directs. If an orphan's benefit becomes payable in respect of a child of the deceased person the rate of pension is to be determined by the Commissioner.

103. Subsection 110(15) provides that orphan's benefit is not payable until the death of the last surviving spouse.

104. Subsection 110(16) provides that the upper limit of spouse's pension referred to in subsection 110(4) does not apply to spouse's additional pension.

105. Section 110AB provides for increases in the rate of spouse's pension where a person is survived by more than one spouse.

106. Subsection 110AB(1) provides that-

- (a) where a person is survived by more than one spouse; and
- (b) the amount of spouse's pension and extra spouse's pension payable is less than 100 per cent of the entitlements of the deceased contributor or pensioner,

spouse's pension or spouse's standard pension, as appropriate, may be increased.

107. Subsection 110AB(2) provides that the increase is the lesser of the applicable percentage in accordance with subsection 110AB(3) or the amount by which the entitlements of the deceased person exceeds the spouse's pension and extra spouse's pension. This will ensure that the increase does not exceed 11 percent of the entitlement of the deceased contributor or pensioner for each extra person and that the total of the spouse's pension and extra spouse's pension will not exceed 100 percent of the entitlements of the deceased contributor or pensioner.

108. Subsection 110AB(3) provides for the applicable percentage to be -

- (a) 11 per cent if there are two spouses;
- (b) 22 per cent if there are three spouses; and
- (c) 33 percent if there are four or more spouses.

Clause 30 - Interest payable to employer in certain circumstances

109. Clause 30 inserts a new section 110EA in the 1976 Act to provide for the payment of interest on certain productivity contributions paid by an employer that are refunded to the employer. This will apply where the Minister makes a retrospective declaration under section 110E of the 1976 Act.

110. Under section 110E of the 1976 Act, the Minister for Finance may declare that an employer is not required to pay productivity contributions to the Commissioner on behalf of certain classes of persons. This would be done if the employer were providing a productivity benefit through an alternative scheme and may have retrospective effect. If such a declaration is made retrospectively some contributions may already have been paid and would need to be refunded after the making of the declaration.

Clause 31 - Repayment of interim benefitsClause 32 - Payments of certain benefits to Fund by new productivity employees

111. Clauses 31 and 32 amend sections 110K and 110L of the 1976 Act.

112. Sections 110K and 110L of the 1976 Act allow persons to pay to the Commissioner an amount of productivity benefit that they have received. This benefit may have been received by them under the interim productivity arrangements for Commonwealth employees which operated before 1 July 1990 or under a separate scheme. The benefit may have been preserved in another fund for a period of time before being paid to the Commissioner and could have accrued interest in that time.

113. These clauses amend sections 110K and 110L to allow interest that may have been accrued in another fund to be paid to the Superannuation Fund to the credit of the person and to be treated as part of that person's productivity benefit.

Clause 33 - Productivity benefit

114. Clause 33 amends section 110P of the 1976 Act as a consequence of the insertion of Part VIB in the 1976 Act by clause 36. Section 110P provides that where a person ceases to be a contributor, productivity benefit is payable.

115. A person who postpones his or her age or early retirement benefits under Part VIB is not to be able to receive payment of the productivity benefit until the postponed benefits become payable. The clause amends section 110P to provide that a productivity benefit payable under that section can be postponed under the new Part VIB.

Clause 34 - Accumulated employer contributions

116. Clause 34 amends section 110Q of the 1976 Act which describes a person's accumulated employer contributions (productivity benefit).

117. The clause replaces subsection 110Q(1) and inserts new subsections 110Q(1A) and (1B). This will ensure that a person's productivity benefits will reflect the income tax payable by the Superannuation Fund in respect of productivity contributions or productivity benefits paid to the Fund in respect of the person.

118. The amount to be deducted in respect of income tax is to be calculated according to a determination of the 1976 scheme Board.

119. A determination will operate from a date specified in the determination or the date of the determination. Determinations of the 1976 scheme Board are to be notified in the Gazette.

Clause 35 - Payment of productivity benefit

120. Clause 35 amends section 110R of the 1976 Act which describes the circumstances in which a productivity benefit is paid directly to a person and those where the benefit must be preserved.

121. The amendments to section 110R will enable a productivity benefit to be paid to all persons who cease to be contributors on or after age 60, instead of being payable only to those who retire or resign on or after that stage. This will enable the benefit to be paid to a person whose employment is ceased involuntarily on or after age 60, provided they do not immediately continue in or take up other employment.

122. The amendments also provide that a productivity benefit will not be paid to a person who ceases to be a contributor but does not retire from the workforce. The productivity benefit will be preserved in a preservation fund or applied to the purchase of a deferred annuity. This amendment is necessary to bring the productivity arrangements into line with the the Occupational Superannuation Standards.

Clause 36 - Insertion of Part VIB - Postponement of benefits of retirement pensioners

123. Clause 36 inserts a new Part VIB (sections 110T-110TG) in the 1976 Act. Part VIB deals with postponement of benefits by certain persons who have entitlement to an age or early retirement pension.

124. Section 110T describes the circumstances in which benefits may be postponed and provides for an appropriate election. Those circumstances exist where the person

- (a) has reached his or her minimum retiring age but is not aged 65 or more; and
- (b) is entitled to age or early retirement pension; and
- (c) has provided the Commissioner with a statement that he or she has not retired from the workforce.

125. Section 110TA outlines the effect of an election under section 110T. Where a person makes this election, payment of standard age or early age retirement pension (as appropriate) and productivity benefit will be postponed. The person may also postpone payment of additional age retirement or additional early retirement pension (as appropriate).

126. Section 110TB provides that the postponed benefits become payable on the earlier of:

- (a) the date on which the person attains the age of 65 years; or
- (b) a day on which the person provides the Commissioner with a statement that he or she has retired from the workforce.

127. Section 110TC provides for adjustments to the rates or the amount of the benefits ultimately payable to a person who has postponed his or her benefits. In accordance with this section those benefits will be calculated on the basis of -

- (a) the person's age at the date the benefit becomes payable; and
- (b) the person's period of contributory service at the time he or she ceased to be a contributor; and
- (c) a final annual rate of salary determined by the Commissioner to be that amount that would have been the person's final annual rate of salary had the person remained a contributor. This will not include increments not earned by the person or allowances or parts of salary not recognised as salary for superannuation purposes when the person ceased to be a contributor.

128. Any productivity contributions paid in respect of the person and, where appropriate, any contributions of the person would remain in the Superannuation Fund until the payment of the postponed benefit and would continue to earn interest at rates determined by the 1976 scheme Board.

129. Section 110TD includes provisions to ensure that if a person who has postponed benefits dies before those benefits become payable, benefits may be paid to a surviving spouse or orphan under Parts VI and VIA of the Act where appropriate.

130. Section 110TE provides that a spouse of a person who dies before the postponed benefits became payable may elect to commute spouse's additional pension to a lump sum of the person's accumulated contributions.

131. Section 110TF provides that, where a person who has postponed benefits dies before those benefits become payable and is survived by a child who is entitled to orphan's benefit under the Act, there is payable in respect of the child a lump sum of the person's accumulated contributions and the person's accumulated employer contributions.

132. Section 110TG makes provisions in relation to persons who elect to postpone their benefits after payment of those benefits has commenced. The election is to have no effect unless the amounts already received are repaid. The section also ensures that those amounts are restored to the Funds in which they were originally held before payment.

Clause 37 - Payment of accumulated contributions where no other benefit payable etc

133. Clause 37 amends section 111 of the 1976 Act by replacing subsection 111(1). Subsection 111(1) provides that, where benefits are not payable to dependants on the death of a contributor, a payment of the person's accumulated contributions is made to his or her personal representatives.

134. Amendments to section 111 are required as a consequence of the insertion of Part VIB in the Act by clause 36. The revised subsection 111(1) will ensure that this provision can apply also in the case of a person who has postponed payment of his or her benefits in accordance with Part VIB and dies before those benefits become payable.

Clause 38 - Payments into and out of Consolidated Revenue Fund

135. Clause 38 amends section 112 of the 1976 Act which makes accounting arrangements in respect of payments under the 1976 Act. The amendments are required as a result of the insertion in the 1976 Act of Part VIB by clause 36.

136. The clause inserts new subsections 112(10A), (10B) and (10C). The clause also makes a consequential amendment to subsection 112(1) to include a reference to subsection 112(10A).

137. Subsection 112(10A) will ensure that where a person elects to postpone benefits and those benefits include the person's additional retirement pension or additional early retirement pension, the person's accumulated contributions will remain in the Superannuation Fund. They will continue to accumulate interest.

138. Subsections 112(10B) provides that, where subsection 112(10A) has applied, the person's accumulated contributions will be paid to the Consolidated Revenue Fund once the postponed benefits become payable. The existing provisions of section 112 then provide that the person's benefits will be paid out of that Fund.

139. Subsection 112(10C) provides that, where subsection 112(10A) has applied, the person's accumulated contributions will not be paid to the Consolidated Revenue Fund in circumstances where the only payment due in respect of the person is a lump sum paid from the Superannuation Fund.

Clause 39 - Instalments of pension

140. Clause 39 amends section 113 of the 1976 Act which includes provisions in relation to the calculation and payment of instalments of pension.

141. Subclause 39(1) inserts a new subsection 113(1A) which enables partial invalidity pensions to be paid on contribution days rather than pension pay days. These fall on alternative Thursdays. It also inserts new subsection 113(5) to enable the Commissioner to enter into arrangements with employers for the payment of those pensions.

142. Subclause 39(2) makes provision for the payment of a partial instalment to persons who are in receipt of partial invalidity pension on the day on which the new provisions take effect to ensure that no short payment may occur when the change from payment on pension paydays to payment on contribution days occurs.

Clause 40 - Payment of part of a spouse's pension etc. attributable to children

143. Clause 40 amends section 114 of the 1976 Act which includes arrangements for a part of spouse's pension which is attributable to children to be paid to a person other than the spouse.

144. Paragraph 40(a) inserts a new subsection 114(1A) in the 1976 Act to provide that, where a portion of a lump sum benefit attributable to a child who is not in the custody, care and control of a spouse becomes payable under the new Division 5 of Part VI as inserted by clause 29, the Commissioner may authorise payment of that amount to a person other than the spouse.

145. Paragraph 40(b) replaces subsection 114(2) so that the subsection will provide that any benefit paid under the section to a person other than a spouse should be applied for the maintenance, education or other benefit of the child.

Clause 41 - Payment of orphan benefit

146. Clause 41 amends section 115 of the 1976 Act as a consequence of the new section 110TF as inserted by clause 36.

147. The amendment will enable the benefit provided for in section 110TF to be paid in accordance with section 115 of the 1976 Act to a person other than a child. Where this occurs, the payment is to be applied for the benefit of the child.

Clause 42 - Transfer value payable in respect of previous employment

148. Clause 42 amends section 127 of the 1976 Act which describes a transfer value for the purposes of the preservation arrangements of the Act. In general, a transfer value is a lump sum payment received from a superannuation scheme on termination of employment which includes an employer contributed component.

149. The clause inserts a new subsection 127(1AA) to provide that a payment that consists only of productivity contributions is not to be treated as a transfer value.

150. The clause also inserts a new subsection 127(1AB) to ensure that an amount that was rolled over into a preservation fund before being paid to the Commissioner and has earned interest in that fund can still be treated as a transfer value.

Clause 43 - Payment of transfer values to Commissioner

151. Clause 43 amends section 128 of the 1976 Act which includes arrangements for persons to pay transfer values to the Commissioner.

152. The amendments extend those arrangements to include arrangements for the treatment of a productivity component of a transfer value.

153. Paragraph 43(a) amends subsection 128(2) of the 1976 Act to provide that a productivity component of a transfer value should be paid into the Fund and form part of the person's productivity contributions.

154. Paragraph 43(b) amends paragraph 128(6) of the 1976 Act to make it clear that the employer component of a transfer value does not include any productivity contributions. This will ensure that productivity contributions are not used to increase a person's period of contributory service.

Clause 44 - Payment to Commissioner under section 6A of the Superannuation Act 1990

155. Clause 44 inserts a new section 128AA in the 1976 Act as a consequence of the insertion of section 6A in the Superannuation Act 1990 (the 1990 Act) by clause 69.

156. The section includes provisions in relation to persons who become contributors to the 1976 Commonwealth scheme as a consequence of an election under section 6A of the 1990 Act.

157. It provides that amounts paid from the 1990 Commonwealth scheme in respect of them will be paid to the Superannuation Fund for the 1976 Commonwealth scheme. They will also receive a credit of service under the 1976 Act equivalent to their service in the 1990 scheme. This credit of service may be reduced where the person had been a part-time employee or had been on leave without pay during their period of membership of the 1990 scheme.

Clause 45 - Interpretation

158. Clause 45 makes a technical amendment to subsection 131(4) of the 1976 Act to replace the reference to a person in receipt of an invalidity pension under Superannuation Act 1922 (the superseded Act) with a reference to a person entitled to a pension of a kind referred to in the repealed section 64A or 65 of the superseded Act. Such pensions were paid to persons who retired on invalidity grounds. This amendment is necessary because the superseded Act does not use the term "invalidity pensions".

Clause 46 - Public Employment

159. Clause 46 amends section 133 of the 1976 Act which provides that the Minister may declare certain employment to be public employment for the purposes of the preservation arrangements.

160. Subclause 46(1) amends subsection 133(1) and inserts new subsections 134(1A), (1B) and (1C). These provide for the transfer of the Minister's power under section 133 of the 1976 Act to the 1976 scheme Board. They also provide that the Board should have regard to any principles issued by the Minister before exercising that power.

161. Subclause 46(2) provides that declarations which were made by the Minister should be taken to have been made by the 1976 scheme Board.

Clause 47 - Eligible superannuation schemes

162. Clause 47 amends section 134 of the 1976 Act which provides that the Minister may declare a superannuation scheme to be an eligible superannuation scheme for the purposes of the preservation arrangements.

163. Subclause 47(1) amends subsection 134(1) and inserts new subsections 134(1A), (1B) and (1C). These provide for the transfer of the Minister's power under section 134 of the 1976 Act to the 1976 scheme Board. They also provide that the Board should have regard to any principles issued by the Minister before exercising that power.

164. Subclause 47(2) provides that declarations made by the Minister should be taken to have been made by the 1976 scheme Board.

Clause 48 - Deferred benefits

165. Clause 48 amends section 136 of the 1976 Act which provides for the rate of deferred benefits payable under the 1976 Act.

166. This clause amends subsection 136(2) and (2B) of the 1976 Act to make it clear that a deferred benefit will always include the payment of a person's productivity benefit.

Clause 49 - Circumstances in which person entitled to deferred benefits

167. Clause 49 amends section 139 of the 1976 Act which includes provisions in relation to the payment of deferred benefits, including deferred invalidity benefits.

168. This clause amends paragraphs 139(2)(a) and (3)(a) of the 1976 Act to provide that the Commissioner must be satisfied that a person to whom a deferred benefit is applicable is totally and permanently incapacitated within the meaning of Part IVA before the benefit becomes payable under this section.

169. This will ensure that the provisions in relation to the payment of deferred benefits reflect all other provisions of the Act which relate to invalidity retirement.

Clause 50 - Election for transfer value by persons in relation to whom deferred benefits are applicable

170. Clause 50 amends section 139A of the 1976 Act which provides, inter alia, that the Minister may direct that subsection 139A(1A) does not apply to certain persons.

171. Subclause 50(1) amends subsection 139A(1A) and inserts new subsections 139A(1B), (1C) and (1D). These amendments provide for the transfer of the Minister's power under subsection 139A(1A) of the 1976 Act to the 1976 scheme Board. They also provide that the Board should have regard to any principles issued by the Minister before exercising that power.

172. Subclause 50(2) provides that directions which were made by the Minister should be taken to have been made by the 1976 scheme Board.

Clause 51 - Person who is entitled to rights under Division not entitled to rights under other provisions of Act

173. Clause 51 amends subsection 140(3) of the 1976 Act.

174. Subsection 140(2) of the 1976 Act provides that, where a person elects to preserve his or her rights and benefits have already been paid to the person, those benefits must be repaid before the election has effect. Subsection 140(3) provides for the Commissioner to pay the amounts repaid to the Fund in which those amounts were held before payment.

175. The clause makes a technical amendment to subsection 140(3) to make it clear that any previously unfunded portion of a productivity benefit should be repaid to the Consolidated Revenue Fund.

Clause 52 - Certain former eligible employees not entitled to benefits under Division

176. Clause 52 amends subsection 141(1) of the 1976 Act which provides that in certain circumstances where a person ceases to be employed in public employment an election by a person to preserve his or her rights is taken not to have been made. Those circumstances do not include cessation of that employment on invalidity grounds.

177. The clause amends subsection 141(1) so that the reference to a person ceasing employment on invalidity grounds reflects all other provisions of the Act which relate to invalidity retirement where a person must be totally and permanently incapacitated to be able to retire on those grounds.

Clause 53 - Special provisions affecting certain contributors under certain superannuation schemes

178. Clause 53 amends section 145 of the 1976 Act which provides, inter alia, for the Minister to declare superannuation schemes to be approved superannuation schemes.

179. Subclause 53(1) amends subsection 145(11) and inserts new subsections (11A), (11B) and (11C). These amendments transfer the Minister's power under section 145 of the 1976 Act to the 1976 scheme Board. They also provides that the Board should have regard to any principles issued by the Minister before exercising that power.

180. Subclause 53(2) includes a savings provision to ensure that all declarations made by the Minister under subsection 145(11) should be taken to have been made by the 1976 scheme Board.

Clause 54 - Interpretation

181. Clause 54 amends subsection 147(1) of the 1976 Act to make it clear that no additional pension is subject to annual pension updating.

Clause 55 - Part XA - Review of decisions made by the Board

182. Clause 55 inserts Part XA in the 1976 Act. Part XA deals with the review by the 1976 scheme Board of decisions made by the Board or its delegates.

183. Part XA replaces similar provisions which were included in Division 5 of Part IVA which was repealed by clause 21. That Division is replaced by Part XA because of the expansion of the 1976 scheme Board's powers as provided for in clauses 16, 46, 47, 50 and 53. Previously those powers of the Board which were subject to review were limited to decisions in relation to invalidity retirement under Part IVA of the 1976 Act.

184. As decisions taken in respect of these new powers are to be subject to review as well as decisions in relation to invalidity retirement, provision for the review of decisions is to be provided for outside Part IVA.

185. Part XA reflects the provisions of Division 5 of Part IVA except that the range of decisions which are to be subject to review are extended in Part XA and the 1976 scheme Board will be required to have regard to any principles notified by the Minister which were relevant to the decision under review.

186. The arrangements in Division 5 of Part IV are also changed to provide an indemnification for members of Reconsideration Advisory Committees and to align the arrangements with those under the 1990 Commonwealth scheme so that decisions which were previously taken after consideration by a medical assessment panel are to be referred to a panel again before review.

187. Part XA comprises section 153AA to section 153AS.

188. Section 153AA includes definitions of the terms "Committee" and "decision" as used in the Part. It also makes it clear that the 1976 scheme Board may not review a decision of the Minister taken before the transfer of powers from the Minister to the Board as provided for in clauses 16, 46, 47, 50 and 53.

189. Section 153AB provides for the Board to establish Reconsideration Advisory Committees.

190. Section 153AC provides that the Board may decide the number of members of a Committee and their qualifications.

191. Section 153AD describes the functions of a Committee which are to review decisions referred to it by the Board and to make recommendations to the Board about those decisions. In reviewing a decision a Committee must take into account all relevant evidence submitted to it and may obtain other evidence as it sees fit.

192. Section 153AE provides that a Committee may regulate its own proceedings, subject to any directions given by the Board.

193. Section 153AF provides that a member of a Committee is not subject to any action, liability, claim or demand in respect of anything done or omitted to be done in good faith in the performance of functions under the Act.

194. Section 153AG provides for the remuneration of Committee members to be determined by the Remuneration Tribunal or provided for in regulations under the Act.

195. Section 153AH provides that a person affected by a decision of a delegate of the 1976 scheme Board may apply for reconsideration of the decision. An application made for reconsideration of a decision taken by a delegate of the Board under subsection 7(2) of the 1976 Act made before the commencement of the section is taken to have been made under the section. The right for persons to seek reconsideration of decisions under subsection 7(2) in relation to invalidity retirement was inadvertently omitted from Division 5 of Part IVA.

196. Section 153AJ provides that if the delegate's decision was in relation to invalidity retirement and that decision was taken after considering the recommendations of a medical assessment panel the decision must be referred to a panel again before the reconsideration. The panel will then consider the case as if it were a request for approval of invalidity retirement and will make recommendations to the Board.

197. Section 153AK provides that the Board must refer all applications for reconsideration to a Reconsideration Advisory Committee. It may also refer decisions to a Committee without having first received an application for reconsideration.

198. Section 153AL provides that, after it has taken into account the recommendations of the Committee and any relevant principles advised to the Board by the Minister in relation to the matter under reconsideration, the Board must affirm or vary a decision or set it aside and substitute a new decision. The reasons for its decision must be recorded in an instrument in which the decision is recorded and a copy of the instrument must be made available to the person who sought the reconsideration.

199. Section 153AM provides that a person affected by a decision made by the Board may apply for reconsideration of the decision. An application made for reconsideration of a decision of the Board under subsection 7(2) of the 1976 Act made before the commencement of the section is taken to have been made under the section. The right for persons to seek reconsideration of decisions under subsection 7(2) in relation to invalidity retirement was inadvertently omitted from Division 5 of Part IVA.

200. Section 153AN provides a person who makes an application under section 153AM shall pay the Board such fees as are provided for in regulations under the Act. The regulations can also provide the circumstances in which those fees would be refunded. Any fees paid to the Board are to be paid to the Consolidated Revenue Fund.

201. Section 153AP provides that a decision is only to be reconsidered where there is new evidence that has not yet been taken into account. An application that is not supported by new evidence must be dismissed by the Board. This dismissal does not stop the applicant submitting a further application for reconsideration.

202. Section 153AQ provides that, if the Board's decision was in relation to invalidity retirement and that decision was taken after considering the recommendations of a medical assessment panel, the decision must be referred to a panel again before the reconsideration. The panel will then consider the case as if it were a request for approval of invalidity retirement and will make recommendations to the Board.

203. Section 153AR provides that the Board must refer all applications for reconsideration to a Reconsideration Advisory Committee. It may also refer decisions to a Committee without having first received an application for reconsideration.

204. Section 153AS provides that, after it has taken into account the recommendations of the Committee and any relevant principles advised to the Board by the Minister in relation to the matter under reconsideration, the Board must affirm or vary a decision or set it aside and substitute a new decision. The reasons for its decision must be recorded in an instrument in which the decision is recorded and a copy of the instrument must be made available to the person who sought the reconsideration.

Clause 56 - Review of decisions of the Commissioner

205. Clause 56 amends section 154 of the 1976 Act which deals with the review of decisions of the Commissioner. The amendments made by the clause replace the masculine gender references to the Commissioner with references which are not gender specific.

Clause 57 - General provisions in relation to elections under the Act

206. Clause 57 amends section 157 of the 1976 Act as a consequence of the provisions inserted in the 1976 Act by clause 36 which allow a person to elect under section 110T to postpone payment of an age or early retirement pension.

207. Section 157 includes general provisions in relation to elections under the Act.

208. Subsection 157(2A), which allows a spouse or child of a person who has died to make an election which was available to the deceased, is amended by paragraph 57(a) to make it subject to a new subsection 157(2B).

209. Paragraph 57(b) inserts a new subsection 157(2B). This provides that the spouse or child of a person who was entitled to elect to postpone age or early retirement pension may not make the election to postpone in the place of the pensioner if the pensioner dies.

Clause 58 - Delegation

210. Clause 58 repeals section 165 of the 1976 Act which provides that the Minister may delegate his powers under the Act to an officer of the Department and replaces it with a new section 165. It also includes a savings provision in relation to existing delegations.

211. Subclause 58(1) repeals section 165 and inserts a new section 165 which provides that the Minister may delegate his or her powers to the Board, a member of the Board, the Commissioner or a member of the Commissioner's staff as well as an officer of the Department.

212. Subclause 58(2) ensures that delegations issued by the Minister under section 165 before its replacement by subclause 58(1) continue to operate.

Clause 59 - Regulations

213. Clause 59 amends section 168 of the 1976 Act which makes provisions in relation to regulations under the 1976 Act.

214. The clause inserts a new subsection 168(10) which provides that amendments which need to be made to regulations made under the 1976 Act because of the amendments made to the Act by the Bill may be made with retrospective effect to a date no earlier than the commencement of the subsection, provided they are made within 12 months of that date.

Clause 60 - Medical examinations and benefit classification certificates

215. Clause 60 amends section 184 of the 1976 Act which includes provisions for the issue of benefit classification certificates to persons who were contributors to the Provident Account under the superseded Act (the 1922 Act).

216. This clause inserts a new subsection 184(2A) which provides that the Commissioner shall not issue a certificate to a person under subsection 184(2) to a person who ceases to be a contributor or becomes entitled to partial invalidity pension after 31 March 1991.

Clause 61 - Interpretation

217. Clause 61 amends section 237 of the 1976 Act. Section 237 is an interpretation provision for Part XIII of the Act which includes arrangements for bulk transfers of staff of certain Government authorities or bodies to a separate superannuation scheme run by their employer.

218. This clause inserts subsection 237(2) to ensure that Part XIII can apply to persons who are the holders of a statutory office as well as employees of those bodies.

Clause 62 - Loss of entitlement to benefits - eligible employee transferring to an approved superannuation scheme

219. Clause 62 amends section 238 of the 1976 Act. Section 238 provides that where a person transfers to an approved superannuation scheme under this Part, no other benefits are payable to them under the 1976 Act.

220. Instead, assets are to be transferred in respect of the person from the Superannuation Fund of the 1976 Commonwealth scheme to the approved scheme and the person will then receive appropriate credits under the rules of the approved superannuation scheme. Payments will also be made to the approved scheme from the Consolidated Revenue Fund.

221. Section 238 is amended to make it clear that the benefits referred to in that section are only benefits to which the person would otherwise be entitled in their own right as a contributor to the scheme.

Clause 63 - Insertion of Part XIIIIA - Transfers to
Authorised Superannuation Schemes

222. Clause 63 inserts Part XIIIIA (sections 242A -242E) in the 1976 Act to make arrangements for persons who transfer from the 1976 Commonwealth scheme to a separate superannuation scheme operated by a Commonwealth authority or body by which they are employed which is an authorised superannuation scheme.

223. Section 242A explains that, in Part XIIIIA, the holder of a statutory office who is paid by an authority or body is to be taken to be employed by that authority or body and may therefore be included in the arrangements provided for in the Part.

224. Section 242B provides for the Minister to declare a scheme to be an authorised superannuation scheme.

225. Where a contributor becomes a member of a superannuation scheme operated by a Commonwealth authority or body, he or she ceases to be a contributor to the 1976 scheme through the operation of the Superannuation (Eligible Employees) Regulations.

226. The new section 242C provides that, where a person ceases to be a contributor on joining an authorised superannuation scheme during a period determined by the Minister, the person is not entitled to receive any benefits under the Act in their own right other than deferred benefits.

227. Section 242C does not apply to a person who has less than one year of eligible employment. In this case the person would receive the benefits payable to a person who resigns. A determination by the Minister under section 242C is to be a disallowable instrument.

228. Section 242D provides that, except as otherwise specified, deferred benefits applicable under section 242C are the same as deferred benefits that become applicable under Part IX of the Act to a person who resigns or retires involuntarily and elects to preserve his or her superannuation rights.

229. There are two differences between deferred benefits under Part XIII A and those under Part IX. Deferred benefits under Part XIII A are available to a person with one years eligible employment whereas deferred benefits will only be payable under Part IX if the person has 5 years eligible employment or combined eligible and public employment. Deferred benefits under Part XIII A are payable on a date worked out under section 242E rather than in accordance with the arrangements for payment contained in Part IX.

230. Section 242E provides that deferred benefits applicable under Part XIII A will become payable from the earlier of:

- (a) a date selected by the person not earlier than the date that was his or her minimum retiring age while a contributor;
- (b) the date on which the person reaches age 65;
- (c) the date the Commissioner is satisfied that the person became totally and permanently incapacitated; or
- (d) the date of the person's death.

231. If, on the date referred to in paragraph 230(a) or (b) above, the person has not ceased to be employed by the authority or body by which he or she was employed at the time of joining the authorised superannuation scheme, deferred benefits will not become payable on that date. They will commence from the date the person ceases to be employed by that authority or body.

Clause 64 - Election to join Superannuation (1990) Scheme

232. Clause 64 amends section 244 of the 1976 Act which allows a person who is not on leave without pay and who is eligible to join the 1990 Commonwealth scheme to elect, within specified time limits, to cease to be a contributor for the purpose of becoming a member of the 1990 scheme.

233. This option must be exercised, in most cases, before 1 July 1991. An election may only be made after that date by a person who returns from leave without pay or again becomes an eligible employee or becomes a person who is not excluded from membership of the new scheme. It was intended that section 244 provide a minimum election period of three months for all persons eligible to elect under that section.

234. The amendments proposed by this clause are intended to make it clear that an election may not be made under section 244 while a person is covered by the mobility provisions of the Public Service Act 1922 or is a person to whom the Officers' Rights Declaration Act 1928 Act applies.

235. This will consolidate the legislative provisions which prohibit contributors covered by Part IV of the Public Service Act from joining the 1990 Commonwealth scheme. These arrangements are presently provided for in section 244 and also in a declaration under section 6 of the Superannuation Act 1990.

236. It is appropriate that persons to whom the Officers' Rights Declaration Act 1928 applies be treated in the same way as persons covered by Part IV of the Public Service Act 1922 because such persons are also likely to be in employment to which the 1990 scheme does not apply.

237. The amendments are intended to ensure also that all contributors who are eligible to join the 1990 scheme have a minimum of three months in which to make the election.

238. The amendments also make it clear that only one opportunity to transfer to the 1990 scheme is to be available for persons who have been in receipt of an invalidity pension under the 1976 Act and also for persons who have been on leave without pay or have been persons to whom Part IV of the Public Service Act 1922 or the Officers' Rights Declaration Act 1928 applied.

239. Paragraph 64(a) amends subsection 244(1) to clarify its intention that all persons precluded from joining the 1990 scheme are not entitled to make an election to cease to be an eligible employee under section 244. This will make it clear that persons excluded from membership of the scheme by a declaration made under the Superannuation Act 1990, as well as persons excluded by a provision of the Act, may not make an election under that section.

240. Paragraph 64(b) amends section 244 by replacing subsection (2) and inserting new subsections (2A), (2B), (2C), (2D) and (2E).

241. The replaced subsection 244(2) provided that a person could not make an election when on leave without pay. This included deemed leave without pay for the purposes of the mobility provisions of the Public Service Act 1922. The revised subsection (2) omits the reference to deemed leave for the purposes of the mobility provisions as this is to be dealt with in the succeeding provisions.

242. Subsection 244(2A) provides that a contributor who ceases leave without pay may only make an election if the leave commenced before 1 July 1991.

243. Subsection 244(2B) provides that persons who are covered by the mobility provisions of the Public Service Act or have certain preserved rights under the Commonwealth Legal Aid Act 1977 or the Officers' Rights Declaration Act 1928 may not make an election unless, while covered by those arrangements, they are employed in employment where they would otherwise have been eligible to join the 1990 Commonwealth scheme.

244. For example, persons working with a body which is an approved authority for the purposes of the 1990 scheme whose staff are therefore entitled to join the 1990 scheme are not subject to this restriction.

245. Subsection 244(2C) provides that when a person ceases to be subject to the arrangements described in subsection 244(2B), and therefore ceases to be excluded by that subsection from making an election under section 244, the person may only make the election if he or she became subject to those arrangements before 1 July 1991.

246. Subsection 244(2D) provides that subsection 244(2C) does not apply where the person was a person to whom the Officers' Rights Declaration Act 1928 applied immediately before becoming a person to whom the mobility provisions of the Public Service Act applied.

247. Subsection 244(2E) provides that a person to whom an invalidity pension was payable under the Act before becoming a contributor may only make an election under section 244 if he or she became entitled to that pension before 1 July 1991.

248. Paragraphs 64(c) and (d) amend subsection 244(3) to clarify the intention that all persons eligible to elect under section 244 have a minimum period of three months in which to make the election.

249. Paragraph 64(e) inserts a new paragraph 244(3)(ca) as a consequence of the insertion of subsection 244(2B) to ensure that persons described in that subsection have the same period for making the election under section 244 as other persons in similar circumstances.

Clause 65 - Loss of entitlement to benefits

250. Clause 65 amends section 246 of the 1976 Act. Section 246 provides that, where a person ceases to be a contributor because of an election under section 244, no benefits are payable to them under the Act. Instead, assets are to be transferred in respect of the person from the Superannuation Fund of the 1976 Commonwealth scheme to the Commonwealth Superannuation Board of Trustees No 1 (the 1990 scheme Board) and the person will then receive appropriate credits under the Rules of the 1990 Commonwealth scheme.

251. The clause amends section 246 to make it clear that the benefits referred to in that section are only benefits to which the person would otherwise be entitled in their own right as a contributor to the 1976 scheme.

PART 3 - AMENDMENTS OF THE SUPERANNUATION ACT 1990Clause 66 - Principal Act

252. Clause 66 defines the Superannuation Act 1990 (the 1990 Act) as being the Principal Act amended in Part 3 of the Bill.

Clause 67 - Interpretation

253. Clause 67 defines a State authority for the purposes of the 1990 Act.

Clause 68 - Membership of Superannuation Scheme

254. Clause 68 amends subsection 6(2) of the 1990 Act. Subsection 6(2) of the 1990 Act lists the groups of persons who are excluded from being members of the superannuation scheme established under the provisions of the 1990 Act (the 1990 Commonwealth scheme).

Note: The Bill and the 1990 Act itself use the term "Superannuation Scheme " for scheme set up under the 1990 Act. However, in this memorandum, use of this term may lead to confusion with the 1976 Commonwealth scheme. Therefore, the terms "1990 Commonwealth scheme" and "1990 scheme" are used in this Memorandum for the scheme established under the 1990 Act.

255. Clause 68 includes some further groups of persons who are to be excluded from membership of the 1990 Commonwealth scheme. As explained below, this exclusion can be temporary at a person's option.

256. The groups that are to be excluded are those former members of the Commonwealth superannuation schemes established by the Superannuation Acts 1922 and 1976 who, on return to employment with the Commonwealth (or with an agency that provides Commonwealth superannuation scheme membership to its staff), would have certain rights available to them under the Superannuation Act 1976 (the 1976 Act).

257. In most cases, these persons are entitled to join the 1976 Commonwealth scheme. The Bill contains amendments to the 1976 Act to enable all persons in these groups to rejoin the superannuation scheme established by the 1976 Act (the 1976 Commonwealth scheme). All the persons will then be able to access their rights under the 1976 scheme.

258. Importantly, on resuming their rights in the 1976 scheme, the persons would cease to be in the groups that are excluded from membership of the 1990 Commonwealth Scheme. The persons would then have three months in which to decide to remain in the 1976 scheme or transfer to the 1990 scheme.

259. While the preceding paragraphs refer to former members regaining their rights under the 1976 scheme, it also enables the Commonwealth to cancel a 1976 scheme invalidity pension where a 1976 scheme invalidity pensioner regains his or her health and resumes Commonwealth employment.

260. The additional exclusions do not refer to casual employees (including temporary part-time employees). They would not be eligible to join the 1976 scheme.

Clause 69 - Election by certain persons to join scheme under the Superannuation Act 1976

261. Clause 69 inserts a new section in the 1990 Act, section 6A.

262. Subsection 6A(1) provides that the new section 6A applies to persons who would have been excluded from membership of the 1990 Commonwealth scheme had the amendments proposed in clause 68 of the Bill applied from 1 July 1990 but who have joined the 1990 scheme in the absence of such an exclusion.

263. Subsection 6A(2) enables such persons to elect to cease to be a member of the 1990 scheme and declare that they wish to be a member of the 1976 scheme. The election must be made before 1 October 1991 or such later date as the Commonwealth Superannuation Board of Trustees No 1 (the 1990 scheme Board) allows having regard to all the circumstances of a particular case.

264. Subsection 6A(3) provides that a person ceases to be a member of the 1990 scheme on the day he or she makes the election.

265. Subsection 6A(4) makes arrangements for the contributions paid to the 1990 scheme (and interest thereon) by, or in respect of, a person who elects to join the 1976 scheme to be transferred to the Commissioner for Superannuation (the Commissioner is the administrator of the 1976 scheme).

Clause 70 - Director of Company etc

266. Clause 70 repeals section 11 of the 1990 Act and substitutes a new section 11 in its place.

267. The repealed section 11 provided that the Minister for Finance could determine that a director of a company (or other body corporate) that is an approved authority for the purposes of the 1990 Act is a person employed by the company for the purposes of the 1990 Act.

268. The new section 11 provides that:

- (a) a full-time director of such a company (or other body corporate) is a person employed by the company unless the Minister determines otherwise; and
- (b) a part-time director of such a company is not employed by the company unless the Minister determines otherwise.

269. The amendment aligns the administration of the 1990 Act with the administration of the 1976 Act.

270. A determination under the new section 11 is to be a disallowable instrument.

Clause 71 - Member not to be retired on grounds of invalidity without certificate from Board

271. Clause 71 amends section 13 of the 1990 Act. Section 13 provides that an employee is not able to be retired on invalidity grounds unless the 1990 scheme Board has certified in writing that, if the member is so retired, the member will be entitled to receive invalidity benefits.

272. Clause 71 inserts a new subsection 13(1A) which provides that the Board may only give a certificate (that a member will be entitled to receive invalidity benefits if retired on invalidity grounds) if the Board has approved the invalidity retirement of the member in accordance with the Rules of the 1990 Commonwealth scheme.

273. The amendment is technical in nature. It relates the certification under the Act with the approval of invalidity retirement under the Rules. It brings the administrative arrangements for invalidity retirement under the 1990 Commonwealth scheme into line with those adopted for the 1976 Commonwealth scheme.

Clause 72 - Payment by approved authorities etc to the Commonwealth in respect of benefits payable to members employed etc by authorities

274. Clause 72 amends section 19 of the 1990 Act.

275. In effect, section 19 of the 1990 Act provides that certain employers with staff covered by the 1990 scheme may be required to reimburse the Commonwealth for the costs of the benefits provided under the 1990 scheme by making payments at times and at such rates as are determined by the Minister.

276. The amendment adds a further category of employer that may be required to reimburse the Commonwealth for the cost of providing benefits under the 1990 scheme to staff of the employer who are in the 1990 scheme.

277. The additional category of employer is employers that have staff who are declared by the Minister to be members of the 1990 scheme under paragraphs 6(1)(h) or (j) of the 1990 Act.

278. The amendment effectively provides that the Minister may not require an employer that is a State authority to reimburse the Commonwealth. With such employers, reimbursement would be a matter for agreement.

Clause 73 - Delegation by Board

279. Clause 73 inserts a new section in the 1990 Act, section 28A.

280. Section 28A provides that the 1990 scheme Board may, by signed instrument, delegate all or any of its powers under the 1990 Act to a member of the Board, the Commissioner for Superannuation or a member of the staff assisting the Commissioner in the performance of the Commissioner's functions under the Act.

281. This provision complements the Board's ability to delegate all or any of its powers under the Trust Deed and Rules establishing the 1990 scheme.

Clause 74 - Transfers to approved and authorised superannuation schemes

282. Clause 74 inserts a new part into the 1990 Act, Part 8A (sections 33A to 33G).

283. Part 8A is necessary to provide a mechanism to handle bulk transfers from the 1990 Commonwealth scheme to certain schemes established by Government authorities or bodies (defined later as an approved scheme), which members of the 1990 Commonwealth scheme can join if they wish.

284. An approved scheme would provide a person transferring from the 1990 Commonwealth scheme with benefits for the years of membership in the 1990 Commonwealth scheme in lieu of benefits under the 1990 scheme.

285. The mechanism is necessary to:

- (a) provide for an orderly transfer of assets from the 1990 scheme's Fund to the fund for an approved scheme, in order to safeguard the interests of both the members joining the approved scheme and those remaining in the 1990 Commonwealth scheme; and
- (b) provide for payments from the Consolidated Revenue Fund to meet certain liabilities for benefits under the approved scheme.

286. Section 33A provides that, where the remuneration of a holder of a statutory office is paid by an authority or body, that holder is taken to be employed by that authority or body.

287. Section 33B is an interpretation clause that defines terms used in the new Part.

288. Subsection 33C(1) provides that the Minister may approve, in writing, for the purposes of Division 2 of Part 8A a superannuation scheme that provides benefits for persons who are employed by an authority or body (an approved scheme).

289. Subsection 33C(2) provides that, where an approval is given under subsection 33C(1), the Minister is to determine, in writing, the period within which a person who is a member of the 1990 scheme and employed by the authority or body may become a member of the approved scheme.

290. A determination under subsection 33C(2) is to be a disallowable instrument.

291. Where a member of the 1990 scheme becomes a member of an approved scheme, he or she ceases to be a member of the 1990 scheme by virtue of Membership Exclusion Declaration No. 1 made by the Minister under paragraph 6(2)(c) of the 1990 Act.

292. The Rules of the 1990 scheme will provide that, where a person ceases to be a member of the 1990 Commonwealth scheme because he or she becomes a member of an approved scheme within the period determined by the Minister under section 33C, no benefits are to be payable under the 1990 scheme to, or in respect of, the person.

293. The new sections 33D and 33E set out what will happen in such circumstances.

294. Section 33D provides that the 1990 scheme Board must, at such times as the Minister determines, transfer to the approved scheme in respect of such a person:

- (a) such assets of the Fund, including investment assets, as are determined by the Minister to be assets that fairly and equitably represent the person's interests in the 1990 scheme's Fund; and
- (b) such liabilities as are determined by the Minister to be liabilities relating to those assets.

295. A determination under section 33D is to be a disallowable instrument.

296. Section 33E provides that there shall be payments from the Consolidated Revenue Fund to the approved scheme, at such times as the Minister determines, of such amounts (if any) as are determined by the Minister.

297. In determining the amounts under section 33E, the Minister is to have regard to certain matters specified in the section. These matters include:

- (a) the amounts paid by the authority or body in reimbursement of the Commonwealth for benefits payable under the 1990 Commonwealth Scheme in respect of such persons;
- (b) the amount of the person's accumulated funded contributions;
- (c) the method of calculating transfer values under the Rules of the 1990 Commonwealth Scheme; and
- (d) any other matters which the Minister considers relevant. For example, where a person had previously been a contributor to the 1976 Commonwealth scheme before joining the 1990 scheme, the amounts paid under the 1976 Act in reimbursement of the Commonwealth for benefits payable under the 1976 scheme in respect of the person may be a relevant matter.

298. A determination under section 33E is to be a disallowable instrument.

299. Section 33F provides that transfers of assets in accordance with the new Part 8A are to be exempt from Commonwealth taxes (other than under the Income Tax Assessment Act 1936) and State and Territory taxes.

300. Division 3 of the new Part 8A deals with the situation where:

- (a) an authority or body sets up a new superannuation scheme (defined later as an authorised scheme); and
- (b) members of the 1990 Commonwealth scheme may join that scheme; but
- (c) there will no credit in the authorised scheme for their period of membership of the 1990 Commonwealth scheme.

301. In such circumstances, the 1990 scheme members who join the authorised scheme are to be entitled to preserved benefits in the 1990 scheme on ceasing to be a member of the 1990 scheme.

302. The Rules of the 1990 scheme will provide that the amount of the preserved benefit on such a cessation is to be equal to the full amount of the member's accrued benefit at the date of cessation of membership. The initial amount of preserved benefit would be increased in accordance with the Rules of the 1990 scheme up to the date of payment of the preserved benefit on retirement from the workforce on or after age 55 or earlier death or invalidity.

303. Subsection 33G(1) provides that the Minister may declare, in writing, that a superannuation scheme that provides benefits for persons who are employed by an authority or body is an authorised scheme for the purposes of Part 6 of the Rules of the 1990 scheme (an authorised scheme).

304. Subsection 33G(2) provides that, where a declaration is made under subsection 33G(1), the Minister is to determine, in writing, the period within which a person who is a member of the 1990 scheme and employed by the authority or body may become a member of the authorised scheme.

305. A determination under subsection 33G(2) is to be a disallowable instrument.

Clause 75 - Certain authorities to pay part of costs of administration

306. Clause 75 amends section 35 of the 1990 Act. Section 35 provides that the Minister may direct an approved authority that employs (or employed) members of the 1990 scheme or a declared authority whose staff includes (or included) members of the 1990 scheme to pay to the Commonwealth a part of the costs of administration of the 1990 scheme, as estimated by the 1990 scheme Board.

307. Paragraph 75(a) makes a technical alteration to paragraph 35(2)(b) of the 1990 Act so that the Minister may direct a declared authority whose staff includes or included members or whose employees include or included members to pay a part of the costs of administration.

308. Paragraph 75(b) amends the definition of declared authority to include an authority or body whose employees include a person or persons declared by the Minister to be members under paragraphs 6(1)(h) or (j) of the 1990 Act.

309. Clause 75 effectively provides that the Minister may not direct an employer that is a State authority to pay part of the costs of administration. The issue of payment of part of the administration costs would be a matter for agreement.

Clause 76 - Cost of medical examination on entry into superannuation scheme

310. Clause 76 amends section 36 of the 1990 Act. Section 36 provides that certain employers whose employees are, or propose to become, members of the 1990 scheme are to pay the costs of any medical examinations or tests required on entry to the 1990 scheme.

311. The clause adds to the lists of employers which are to pay the costs of such medical examinations and tests, employers of persons who are mentioned by the Minister in declarations under paragraphs 6(1)(h) and (j) and become members or propose to become members.

312. The clause effectively provides that a State authority cannot be compelled to pay the cost of medical examinations for its employees. The payment of such costs would be a matter for agreement.

Clause 77 - Indemnification of trustees etc

313. Clause 77 amends section 43 of the 1990 Act. Section 43 indemnifies a trustee, the Commissioner for Superannuation or a member of the staff of the Commissioner from any act or omission done or made in good faith in the performance of their duties under the 1990 Act, from being subject personally to any action, liability, claim or demand. Subsection 43(2) permits the 1990 scheme Board to be subject to actions, liabilities, claims and demands.

314. Paragraph 77(a) extends the persons indemnified when acting in good faith to include:

- (a) a delegate of the Board in the performance of his or her duties under the Act, the regulations or the Trust Deed; and

- (b) a person who is member of a Reconsideration Advisory Committee established under the Trust Deed in the performance of his or her functions under the Trust Deed.

315. Paragraph 77(b) adds a new subsection 43(3) which provides that any monies becoming payable by the 1990 scheme Board in respect of an action, liability, claim or demand are to be paid out of the Consolidated Revenue Fund.

Clause 78 - Disallowable instruments

316. Clause 78 amends section 45 of the 1990 Act to include in the list of disallowable instruments in that section, the determinations made by the Minister under sections 11, 33D and 33E and under subsections 33C(2) and 33G(2).

PART 4 - AMENDMENT OF THE SUPERANNUATION BENEFITS
(SUPERVISORY MECHANISMS) ACT 1990

Clause 79 - Principal Act

317. This clause defines the "Principal Act" for the purposes of Part 4 to be the Superannuation Benefits (Supervisory Mechanisms) Act 1990.

Clause 80 - Provision of superannuation in accordance with Ministerial guidelines

318. Subsection 6(3) of the Superannuation Benefits (Supervisory Mechanisms) Act 1990 allows the Minister to determine guidelines for the provision of superannuation benefits to persons employed by certain Commonwealth bodies. The Minister is able to issue guidelines determinations, which apply the same guidelines, to a number of different employers specified in a multi-employer schedule.

319. The amendment contained in clause 80 will ensure that any amendments to multi-employer guidelines determinations need not be re-issued to an employer who is not affected by those changes.

PART 5 - AMENDMENT OF THE SUPERANNUATION
(PRODUCTIVITY BENEFIT) ACT 1988

Clause 81 - Principal Act

320. This clause defines the Principal Act for the purposes of Part 5 to be the Superannuation (Productivity Benefit) Act 1988.

Clause 82 - Interpretation

321. Clause 82 makes minor amendments to the definitions section of the Principal Act.

322. Paragraph 82(a) will include a reference to the "new Superannuation Act" (that is the Superannuation Act 1990) in paragraph (d) of the definition of "qualified employee" in section 3. The effect of the amendment is to continue the productivity superannuation arrangements provided under the Principal Act for employees of approved authorities following the introduction of the 1990 Commonwealth scheme.

323. Paragraph 82(b) inserts new definitions as a consequence of the insertion of new section 4EA by clause 83.

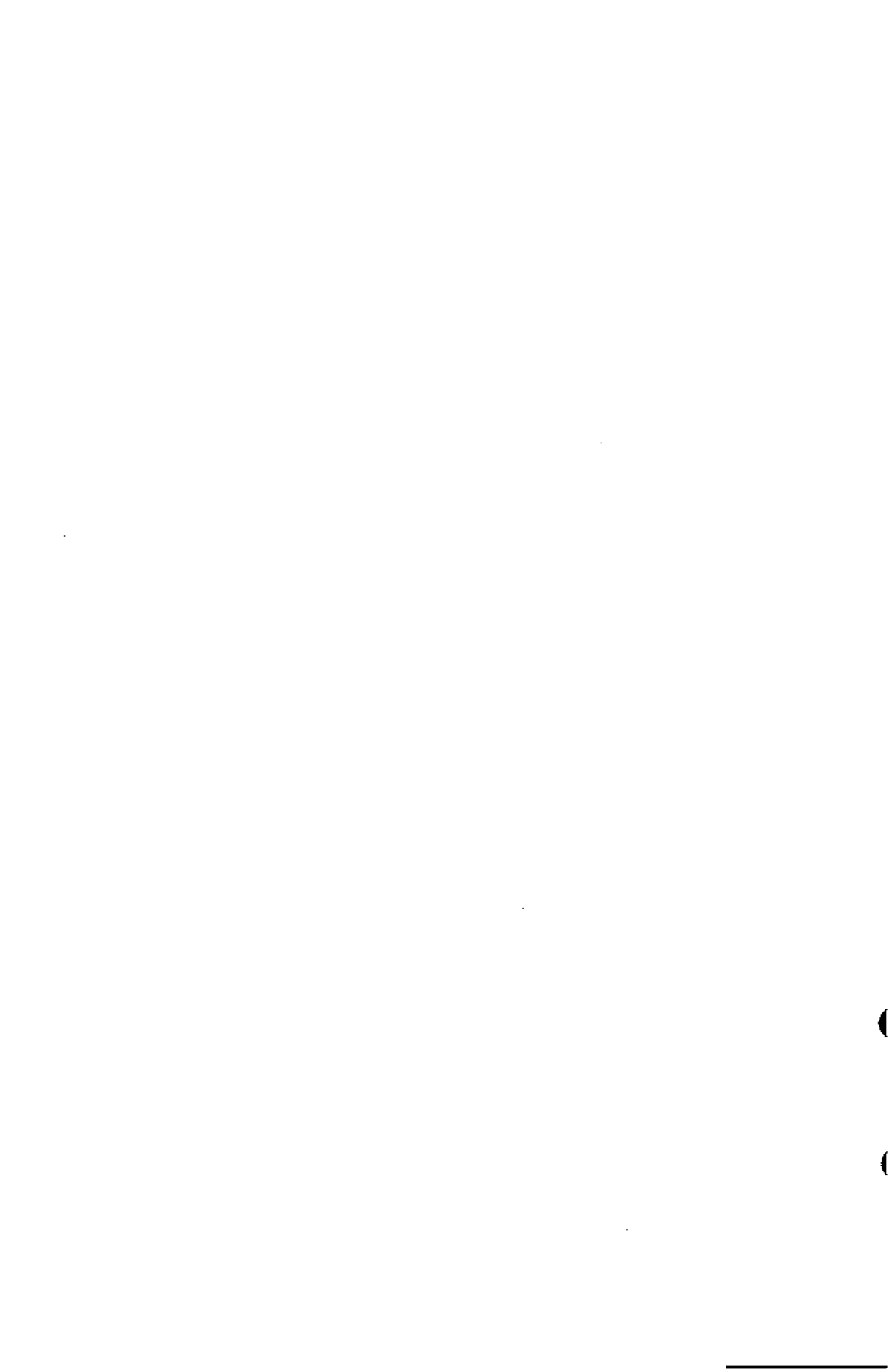
Clause 83 - Payment of equivalent benefit to Board

324. Clause 83 inserts a new section 4EA. This section will provide a more direct mechanism for those employees who have not joined a declared fund, and who elect or become eligible to join the 1990 Commonwealth scheme, to transfer productivity benefits to the 1990 scheme.

325. In future productivity benefits will be paid directly to the 1990 scheme rather than via a declared fund as currently required under the Principal Act. This will save transaction and transfer costs for members and unnecessary administration for the declared funds.

Clause 84 - Interest

326. Clause 84 amends section 4G of the Principal Act. The amendment will ensure that interest on late employer payments under the new section 4EA will be consistent with interest provisions applying to other late payments under the Principal Act.



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