

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SUPERANNUATION BILL 1990

EXPLANATORY MEMORANDUM

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



SUPERANNUATION BILL 1990

GENERAL OUTLINE

The purpose of this Bill is to establish a new Superannuation Scheme for Commonwealth employees to be implemented from 1 July 1990.

The Bill provides for:

- (a) a Trust Deed, the form of which is set out in the Schedule to the Bill, and which is to be executed by the Minister on behalf of the Commonwealth;
- (b) certain Commonwealth employees to be, or to become, members of the Scheme;
- (c) contributions to be made by members and employers and benefits to be paid to members;
- (d) financial arrangements between the Fund set up under the Trust Deed and the Commonwealth;
- (e) the appointment of a Board of Trustees;
- (f) the Commissioner for Superannuation to be responsible for the provision of administrative services to the Board; and
- (g) the Superannuation Fund Investment Trust to manage the moneys in the Fund for the first five years.

The Bill adopts the approach used for private sector superannuation schemes, which use a Trust Deed administered by Trustees to set up the scheme.

The Trust Deed sets out the powers and duties of the Board of Trustees and the Rules, which are contained in a schedule to the Deed, specify the detail of contributions to be made and benefits to be provided.

In accordance with the requirements of the Occupational Superannuation Standards Act 1987, the Board of Trustees will have responsibility for the Scheme.

The administration of invalidity retirement has been tightened, with the Board of Trustees having a greater part in the invalidity retirement process. Employers have a requirement not to retire a person on invalidity grounds unless the Board has certified that the person will receive invalidity benefits.

While the employer part of the benefits is largely unfunded, the 3 per cent productivity benefit will be funded from 1 July 1990 onwards.

Regulations under the Superannuation Act 1976 will give members of the current Commonwealth Superannuation Scheme (CSS) 12 months from 1 July 1990 in which to decide whether to join the new Scheme.

FINANCIAL IMPACT

The new superannuation Scheme has a number of financial impacts because of:

- (a) the change in the form of primary benefit from a pension in the current Commonwealth Superannuation Scheme (CSS) to a lump sum in the new Scheme;
- (b) the funding of the 3 per cent "productivity" benefit in the new arrangements from 1 July 1990 onwards;
- (c) changes in the timing of taxation revenue arising from the funding of the 3 per cent "productivity" benefit;
- (d) increased administrative costs associated with the change-over and provision of advice to members about their options;
- (e) the extension of superannuation coverage to those presently not eligible to join the CSS; and
- (f) longer-term effects on Commonwealth outlays (gross and net of taxation and social security "clawbacks") for both the existing workforce and future staff.

It should be recognised that the costings are dependent on assumptions made about future circumstances, many of which will not be able to be tested against actual experience for many years to come.

(Employees of Telecom and Australia Post have been excluded from the analysis because those enterprises will be setting up their own scheme.)

Short-term Impacts

The net overall effect on Budgetary outlays and revenue and the Net Financing Requirement in 1989-90 prices are set out below:

	<u>1989-90</u> \$m	<u>1990-91</u> \$m	<u>1991-92</u> \$m	<u>1992-92</u> \$m
Net Increase in Budget Outlays	7.5	131.8	147.6	179.2
Less: Increase in tax revenue	-	-0.7	-20.0	-22.7
Net reduction in Budget Surplus	7.5	131.1	127.6	156.5
Plus: Below-the-line costs	-	10.7	12.3	15.3
Total Increase in Net Financing Requirement	7.5	141.8	139.9	171.8

Longer-term Impacts - Current Workforce

The Australian Government Actuary and Consulting Actuaries TPF&C, have certified that, to the extent of accuracy that is possible, the expected net long-term employer costs for the existing workforce (ie existing members of the CSS and persons currently not eligible to join the CSS) after implementation of the proposed changes are equivalent to the expected net long-term costs (ie after tax and social security clawbacks) of the proposed changes are equivalent to the expected net long-term costs of the existing CSS.

The details (which include the 3 per cent "productivity" benefit in the heading "Current CSS before transfers") are set out below under three headings.

Employer Rates for Future Service of Existing Workforce

<u>Superannuation</u> <u>Arrangement</u>	<u>Net Cost</u> <u>(% of salary)</u>
Current CSS before transfers	12.9
Both schemes after transfers	12.9
Plus: Extension of cover	<u>0.2</u>
Total including cost of extension of cover	13.1
Total increase in cost	0.2

Employer Cost of Past Service of Existing CSS Members

The costs in present value terms (1 July 1990 prices) for the past service of current CSS members are:

Superannuation arrangement	Net Cost \$m
Current CSS before transfers	6957
Both schemes after transfers	6701
Reduction in Cost	256

The reduction in net past service cost of \$256 million is equivalent to about 0.4 per cent of the salaries prospectively payable to current CSS members.

Longer-term Impacts - Future Staff

Significant savings, which will only be fully realised after many years, are expected in respect of future staff who will join the new Scheme as opposed to joining the CSS.

Scheme	Net Cost (% of salary)
Current CSS	13.1
New scheme Rate	10.5
Plus: Extension of cover	<u>0.2</u>
Total including cost of extension of cover	10.7
Difference in rates	2.4

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clauses 1 and 2 - Short Title and Commencement

These clauses provide for the short title and the commencement of the legislation.

2. The provisions of the Bill are to come into operation on Royal Assent except for Parts 3, 4 and 5, clauses 35 to 42 and clause 44 which are to come into operation on 1 July 1990, the date of commencement of the Superannuation Scheme. These two commencement dates will ensure that the Scheme does not commence until 1 July 1990 but will enable the appointment of the Board of Trustees in advance of the commencement of the Scheme so that the necessary arrangements will be able to be made for that commencement.

Clause 3 - Interpretation

3. This clause defines terms used in the Bill. In particular, it defines the terms "approved authority", "permanent employee", "statutory office" and "temporary employee" which are important in establishing who are to, or may, be members of the Scheme.

PART 2 - THE TRUST DEED

Clause 4 - Deed to Establish Superannuation Scheme etc

4. **Subclause 4(1)** provides that, not later than 30 days after the Act receives Royal Assent, the Minister for Finance must, on behalf of the Commonwealth, establish the Superannuation Scheme by a Trust Deed. **Subclause 4(2)** provides that the Trust Deed must be in the form set out in the Schedule to the Bill.

Clause 5 - Amendment of Trust Deed

5. **Subclause 5(1)** enables the Minister for Finance to amend the Trust Deed by a signed instrument which, in accordance with paragraph 45(1)(e) of the Bill would be a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

6. **Subclause 5(2)** provides that, where an amendment under subclause 5(1) would have the effect that the relevant provision of the Trust Deed would cease to comply with requirements under the Occupational Superannuation Standards Act 1987, that provision would be rendered invalid.

PART 3 - MEMBERS OF SUPERANNUATION SCHEME

Clause 6 - Membership of Superannuation Scheme

7. Subclause 6(1) sets out the persons who are required to be members of the Superannuation Scheme. They are:

- (a) permanent employees of the Commonwealth or an approved authority (as defined in clause 3);
- (b) the Commissioner for Superannuation (unless excluded from being a member by a determination under paragraph 6(2)(c));
- (c) the holder of a statutory office (as defined in clause 3) who had elected to become a member under clause 7;
- (d) a temporary employee who had elected to become a member under clause 8 and where that election had come into effect;
- (e) the holder of a statutory office or a temporary employee who, immediately before his or her appointment or employment, was in receipt of an invalidity pension under the Rules of the Scheme and who the Board of Trustees is satisfied has been restored to health to the extent that he or she can perform the duties of the appointment or employment;
- (f) the holder of a statutory office or a temporary employee who, immediately before his or her appointment or employment, had a preserved benefit applicable under the rules of the Scheme; or
- (g) a person in one of the above categories who immediately before becoming such a person was in one of the other categories;
- (h) a person to whom Division 2 or 3 of Part IV of the Public Service Act 1922 applies; and
- (j) any person whom the Minister for Finance declares to be a member (in accordance with paragraph 45(1)(f) of the Bill, such a declaration would be a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901).

8. Subclause 6(2) provides that notwithstanding subclause 6(1) the following persons are not to be members of the Superannuation Scheme:

- (a) members of the superannuation scheme established under the Superannuation Act 1976;

- (b) persons to whom the Judges' Pensions Act 1968 applies; or
- (c) persons, including person referred to in subclause 6(1), whom the Minister for Finance declares is not to be members. (In accordance with paragraph 45(1)(g) of the Bill, such a declaration would be a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.)

Clause 7 - Election by Holder of Statutory Office to be Member

9. This clause would enable the holder of a statutory office, other than a statutory office-holder who is required to be a member under the provisions of subclause 6(1), to elect to become a member of the Scheme. If such an election is made, subclause 6(1) would operate so that such a person would become a member from the date of the election.

Clause 8 - Election by Temporary Employee to be Member

10. Subclause 8(1) would enable a temporary employee, other than a temporary employee who is required to be a member under the provisions of subclause 6(1), to elect to become a member of the Scheme.

11. Subclause 8(2) provides that an election under subclause 8(1) will take effect from and including the day on which it is made where the person who made the election:

- (a) is employed under contract for a term of at least 3 months;
- (b) has been a temporary employee, a permanent employee or the holder of a statutory office for a period of, or periods aggregating, at least 3 months during the preceding period of 2 years; or
- (c) intends paying into the Superannuation Scheme, a transfer value from another superannuation scheme (other than the scheme established under the Superannuation Act 1976).

12. Subclause 8(3) provides that in cases where subclause 8(2) does not apply, the election will come into operation upon the person completing a period of 3 months employment, either as a single period or as an aggregate of a number of periods, over the preceding period of 2 years.

Clause 9 - Employees on probation

13. This clause provides that the fact that a person has been appointed on probation does not affect his or her status as a permanent employee for the purposes of the legislation.

Clause 10 - Members of Australian Federal Police

14. This clause ensures that a member, or staff member, of the Australian Federal Police will be treated as a Commonwealth employee for the purposes of the legislation.

Clause 11 - Director of Company etc

15. This clause enables the Minister for Finance to determine that, for the purpose of the Act, a director of a company or other body corporate that is an approved authority (as defined in clause 3), is an employee of the company or body corporate and thus eligible to become a member of the Scheme.

Clause 12 - Cases Where Person Taken Not to Have Ceased to be a Member

16. This clause ensures that a person will be treated as not having ceased to be a member where he or she ceases to be a member and, immediately after, again becomes a member.

Clause 13 - Member Not to be Retired on Grounds of Invalidity Without Certificate from Board

17. The effect of this clause is that an employer will not be permitted to retire a member who has not reached the age of 60 years on the ground of mental or physical incapacity unless the Board of Trustees has issued a certificate that, in the event that the member is retired, he or she will be entitled to invalidity benefits under the Rules. For the person to be so entitled, the Board of Trustees will, under the Rules, need to be satisfied that because of a physical or mental condition the person is unlikely ever to work again in a job for which he or she is reasonably qualified by education, training or experience or could be so qualified after retraining.

PART 4 - CONTRIBUTIONS

Clause 14 - Contributions of Members of Scheme etc to be Deducted from Salary

18. This clause enables a member's contributions to the Scheme or premiums for additional death and invalidity cover under the Scheme to be deducted from his or her salary payments. They are then to be paid to the Board of Trustees.

Clause 15 - Contributions to Superannuation Scheme etc by Employer

19. This clause requires the employer of a member to pay to the Board of Trustees and employer contributions and premiums for additional death and invalidity cover under the Scheme, that are required by the Rules to be paid in relation to the member. Provision is included for interest to be charged on overdue payments.

PART 5 - PAYMENTS RELATING TO BENEFITS

Clause 16 - Payments to and by Commonwealth in respect of benefits payable under Superannuation Scheme

20. Subclauses 16(1) and (2) relate to the financial arrangements between the Commonwealth and the Fund set up under the Trust Deed (Superannuation Fund No. 1) when benefits are payable on the termination of a person's membership. The effect of the subclauses is that:

- (a) where the amount of benefit payable to, or in respect of, a member exceeds the amount in the Fund for that member and/or pension benefits are to be paid, the Board of Trustees has to pay the amount in the Fund to the Commonwealth and the Commonwealth pays back to the Board the amount needed to pay the benefit and/or instalments of pension as they fall due; and
- (b) in any other case, the lump sum benefit payable will be paid directly from the Fund (because it can be met from moneys in the Fund for the member).

21. Subclause 16(3) relates to the financial arrangements between the Commonwealth and the Fund when a partial invalidity pension is payable to a member. The subclause requires the Commonwealth to pay to the Board the amount of each instalment of partial invalidity pension and, where the partial invalidity pension becomes payable because an invalidity pensioner is partially restored to health, the payments that would be made where an invalidity pensioner again becomes a member.

22. Subclauses 16(4) and (5) relate to the financial arrangements between the Commonwealth and the Superannuation Fund No. 1 when preserved benefits become payable. The effect of the subclauses is that:

- (a) where the amount of preserved benefit payable to, or in respect of, a member exceeds the amount in the Fund for that member or pension benefits are to be paid, the Board of Trustees has to pay the amount in the Fund to the Commonwealth and the Commonwealth pays back to the Board the amount needed to pay the benefit; and
- (b) in any other case, the lump sum preserved benefit payable will be paid directly from the Fund (because it can be met from moneys in the Fund for the member).

23. Subclause 16(6) provides that the Board must pay into Superannuation Fund No. 1 any amounts paid to it by the Commonwealth under subclause 16(1), (3) or (4).

24. There is nothing in clause 16 that would prevent the Board and the Commonwealth netting off the amounts to be transferred between the Superannuation Fund No. 1 and the Commonwealth in order to reduce the administrative load.

Clause 17 - Payments by Commonwealth to Board When an Invalidity Pensioner Again Becomes Member

25. This clause provides that where a person who is an invalidity pensioner again becomes a member, the Commonwealth is to pay to the Board (which will pay to Superannuation Fund No. 1):

- (a) where the pension was the only benefit payable to the person on the invalidity retirement - the amount of the person's accumulated funded contributions; or
- (b) where the benefit was a pension and a lump sum - an amount equal to the difference between the person's accumulated funded contributions and the lump sum benefit.

Clause 18 - Appropriation

26. This clause appropriates the Consolidated Revenue Fund in relation to payments from the Commonwealth to the Board under clauses 16 and 17.

Clause 19 - Payments by Approved Authorities Etc to the Commonwealth in Respect of Benefits Payable to Members Employed Etc by Authorities

27. Subclauses 19(1), (2) and (3) provide that:

- (a) an approved authority (as defined in clause 3);
- (b) an authority or body whose staff are employed under the Public Service Act 1922 and which has been declared to be an authority or body to which the provisions of the clause are applicable, must, where the Minister so determines make such payments as the Minister determines to the Commonwealth in respect of present or past staff who are, or have been, members of the Superannuation Scheme. The payments are to be made at such times and in such amounts as the Minister determines.

28. Subclause 19(4) provides for the authority or body to make the payments from moneys under its control.

29. Subclause 19(5) provides for the holder of a statutory office whose salary is paid by an authority or body to be treated as an employee of the authority or body for the purposes of clause 19.

PART 6 - THE COMMONWEALTH SUPERANNUATION BOARD
OF TRUSTEES NO. 1

Clause 20 - Establishment

30. This clause establishes the Board of Trustees for the Superannuation Scheme, to be known as the Commonwealth Superannuation Board of Trustees No. 1.

Clause 21 - Incorporation etc

31. Subclause 21(1) provides for the Board to be a body corporate with the usual features of a statutory body.

32. Subclauses 21(2) and (3) contain provisions in relation to the Board's common seal.

Clause 22 - Functions etc

33. This clause provides for the Board's functions to be set out in the Trust Deed and for the Board to be responsible for the general administration of the legislation.

Clause 23 - Membership of the Board

34. This clause provides for the Board of Trustees to comprise a part-time Chairperson and 4 other part-time Trustees who are to be appointed, and hold office, in accordance with the Trust Deed.

Clause 24 - Defective Appointment Not Invalid etc

35. This clause provides that the appointment of a person to as Chairperson or Trustee, or to act as Chairperson or Trustee, is not to be invalid because of a defect in the appointment, and actions of a person acting as Chairperson or Trustee are not invalid on certain grounds.

Clause 25 - Trustee Ordinance of ACT to Apply

36. This clause provides for the Trustee Act 1957 of the Australian Capital Territory to apply in relation to the Board of Trustees.

Clause 26 - Exemption from Taxation

37. Subclauses 26(1) and 3 the Board of Trustees and Superannuation Fund No. 1 (established under the Trust Deed) are not liable to taxation under:

- (a) a law of the Commonwealth other than the Income Tax Assessment Act 1936; or
- (b) a law of a State or Territory to which the Commonwealth is not subject,

except where otherwise provided in regulations.

38. Subclause 26(2) provides that income derived by the Board from its management and investment of the Fund is not taxable under a State or Territory law.

Clause 27 - Application of Division 2 of Part XI of Audit Act

39. **Clause 27** of the Bill provides for Division 2 of Part XI of the Audit Act 1901 to apply to the Board of Trustees as if sections 63E (investment of moneys) and 63H (annual report and financial statements) were omitted. The effect is that the provisions of the Audit Act relating to bank accounts (section 63D), the keeping of proper accounts (section 63F) and audit (section 63G) apply to the Board. The application of 63E and 63H is inappropriate because the investment powers of the Board are contained in the Trust Deed and clause 28 of the Bill contains specific provisions in relation to the Board's annual report and financial statements.

40. **Subclause 28(1)** of the Bill requires the Board, as soon as practicable after the end of the financial year ending on 30 June 1991 and of each financial year thereafter give to the Minister a report on the performance of its functions during that year and financial statements in relation to its management of Superannuation Fund No. 1 during the year in a form approved by the Minister.

41. **Subclause 28(2)** requires the financial statements to be submitted to the Auditor-General before being given to the Minister. The Auditor-General is required to report to the Minister on a number of specified matters in relation to the financial statements.

42. **Subclause 28(3)** requires the Minister to table copies of the Board's report and financial statements and the Auditor-General's report before each House of the Parliament within 15 sitting days after receiving the last of them.

43. **Subclause 28(4)** provides that where the Board has not complied with subclause 28(1) within 6 months after the end of the particular financial year, it must within 14 days after the end of the 6 month period, give to the Minister a report on the performance of its functions during the financial year and interim financial statements for the year.

44. Under **subclause 28(5)**, the interim financial statements are to be in the form approved by the Minister for the substantive financial statements but need not be accompanied by a report by the Auditor-General.

45. **Subclause 28(6)** requires the Minister to table copies of a report and financial statements under subclause 28(5) in both Houses of the Parliament within 15 sitting days of receiving them. The Minister is also required to give copies to the ACTU and, upon request, to a relevant organisation.

46. **Subclause 28(7)** defines the term relevant organisation for the purposes of subclause 28(6).

47. **Subclause 28(8)** requires that the report of the Board include particulars of any statement of Government policy given to the Board during the year in accordance with the Trust Deed, the consideration given by the Board to that policy and any action taken by the Board as in result of that consideration.

PART 7 - COMMISSIONER FOR SUPERANNUATION

48. The Commissioner for Superannuation, an office established under the Superannuation Act 1976, is responsible for the general administration of that Act except the management and investment of the Superannuation Fund under that Act. The Commissioner will continue to have that function and, in addition, will provide administrative services to the Board of Trustees in the performance of its functions.

Clause 29 - Functions of Commissioner

49. **Subclause 29(1)** provides for the Commissioner to provide those services and **subclause 29(2)** requires the Commissioner to act in accordance with any policies determined, or directions given by the Board in discharging his or her functions under the Act. In accordance with **subclause 29(3)** anything done by the Commissioner in the name of, or on behalf of, the Board is to be taken to have been done by the Board.

Clause 30 - Other Functions of Commissioner Not To Be Prejudiced

50. This clause provides that the Commissioner is not required to do anything in connection with his or her responsibilities under clause 29 that would prejudice the performance of his or her functions under any other Act or regulations under an Act.

PART 8 - THE TRUST

51. The Superannuation Fund Investment Trust, a body established under the Superannuation Act 1976, is responsible for the management and investment of the Superannuation Fund established under that Act. The Board of Trustees will, under the Trust Deed, be responsible for the management and investment of Superannuation Fund No. 1 established under the Trust Deed and the Superannuation Fund Investment Trust is to act as the Board's investment manager for the period 1 July 1990 to 30 June 1995.

Clause 31 - Trust as Investment Manager of Fund

52. This clause provides for the Superannuation Fund Investment Trust to be the Board's investment manager during the period 1 July 1990 to 30 June 1995 and enables it to accept appointments as investment manager after that period.

Clause 32 - Powers of Trust

53. This clause enables the Superannuation Fund Investment Trust to do all things necessary or convenient to be done in relation to its duties as the Board's investment manager including, for instance, appointing, subject to the Board's approval, other persons as investment managers.

Clause 33 - Duties of Investment Manager

54. Under this clause, an investment manager appointed by the Board is to manage and invest moneys placed with it for investment.

PART 9 - MISCELLANEOUS

Clause 34 - Cost of Administration of Act etc

55. **Subclause 34(1)** provides for the costs of administration of the Act and the Trust Deed (other than the costs of and incidental to the Board's management and investment of the Fund) to be met from moneys appropriated from time to time by the Parliament for the purpose.

56. **Subclause 34(2)** provides for the costs of administration for the purposes of subclause 34(1) to include the cost of any medical examination and test that a person is required to undergo on joining the Scheme. This does not apply to a new member who is the holder of a statutory office or an employee of an authority (see clause 36).

Clause 35 - Approved Authorities to Pay Part of Costs of Administration

57. **Subclause 35(1)** provides for the Board to prepare an estimate of the costs of administration referred to in subclause 34(1) for the ensuing financial year.

Subclause 35(2) then provides for the Minister for Finance to require an approved authority (as defined in clause 3), or an authority or body that is a "declared authority" in the terms of clause 35(4), that employs members, to pay to the Commonwealth such part of those estimated costs as is determined by the Minister. In accordance with **subclause 35(3)**, the authority or body may apply any money under its control for the purpose of making those payments.

58. **Subclause 35(4)** defines the term "declared authority" for the purposes of subclause 35(2) as an authority (other than an approved authority) or body whose staff are appointed or employed under the Public Service Act 1922 and that has been a declared by the Minister for Finance to be a declared authority.

Clause 36 - Cost of Medical Examination on Entry Into Superannuation Scheme

59. This clause provides for authorities or bodies to meet directly the cost of the medical examination and any tests of their employees who intend to become, or have become, members of the Superannuation Scheme.

Clause 37 - Cost of Medical Examination etc of Incapacitated Member

60. This clause appropriates moneys from the Consolidated Revenue Fund to meet the cost of:

- (a) determining whether a member should be retired on the grounds of invalidity; or
- (b) providing a course of rehabilitation for the member rather than retiring the member on invalidity grounds.

Clause 38 - Pre-assessment Payments

61. **Clause 38** provides for the Commonwealth to pay to the Board the amounts of any pre-assessment payments paid and appropriates the Consolidated Revenue Fund accordingly. (Pre-assessment payments are the partial income maintenance payments payable while a decision is being taken on whether a person is a total and permanent invalid.)

Clause 39 - Recovery of Unpaid Contribution etc

62. **Subclause 39(1)** provides that the Board of Trustees may recover any moneys owing to it (including unpaid contributions) in a court of competent jurisdiction.

63. **Subclause 39(2)** enables any contributions remaining unpaid by a person at the time he or she ceases to be a member to be deducted by the Board of Trustees from the amount of any benefit payable to, or in respect of, the person.

64. **Subclause 39(3)** provides that where, for any reason, the Board of Trustees has paid to a person an amount of benefit that was not payable, the Board may recover that amount from the person.

Clause 40 - Payment of Fees

65. This clause provides for the payment of a fee prescribed in the Regulation to the Commonwealth by a person who, under the Rules, asks the Board of Trustees to reconsider one of its decision (as opposed to a delegate's decision which are reviewable without any fee being paid). The Regulations may also provide for the refund of a fee.

Clause 41 - Assignment of Benefits

66. This clause prevents a person from assigning a pension or other benefit payable under the Superannuation Scheme.

Clause 42 - Member etc Bound by the Rules

67. This clause provides that, to the extent that the rules of the Superannuation Scheme are applicable to them, the following are bound by the Rules:

- (a) a person who is, or has been, a member of the Scheme;
- (b) an approved authority (as defined in clause 3); and
- (c) the Commonwealth as an employer.

Clause 43 - Indemnification of Trustees etc

68. This clause indemnifies against personal liability for anything done, or not done, in good faith by the following in the performance of their functions or duties:

- (a) a member of the Board of Trustees;
- (b) the Commissioner for Superannuation; and
- (c) staff assisting the Commissioner.

This does not, however, preclude the Board of Trustees itself from being subject to any action, liability, claim or demand.

Clause 44 - Financial Institution Not Liable in respect of Certain Payments out of Account of Deceased Pensioner

69. Where a pensioner dies and is survived by a spouse, the rate of pension payable to the spouse would normally be 67 per cent of the pension that would have been payable to the pensioner. However, the Rules will provide for the spouse's pension to be at 100 per cent of the pensioner's rate for six full fortnights.

70. Where a pensioner dies and pension payments are continued by the Board to the pensioner's account with a financial institution (because the Board has not been notified of the pensioner's death), the usual practice would be to recover from the financial institution the overpayment in respect of the pensioner and then pay the amount recovered to the surviving spouse.

71. The Rules provide for the Board to net off amounts paid by the financial institution to a surviving spouse from the pensioner's account during the six full fortnights after the date of the pensioner's death against the pension payments payable to that spouse. **Clause 44** indemnifies the financial institution against any liability for payments (not exceeding the amount of the instalments of pension paid in the six fortnights after the death of the pensioner) it makes from the pensioner's account to the surviving spouse in such circumstances.

Clause 45 - Disallowable instruments

72. **Subclause 45(1)** provides for a number of declarations and instruments provided for under the Rules of the Scheme to be disallowable instruments for the purposes of section 36A of the Acts Interpretation Act 1901. Under **subclause 45(2)**, certain of those instruments are to be Statutory Rules for the purposes of the Statutory Rules Publication Act 1903.

73. **Subclause 45(3)** enables a declaration under paragraph (b) of the definition of "approved authority" in clause 3 that a particular authority or body is an approved authority to be made retrospective to a day not earlier than 12 months before the date of the declaration.

Clause 46 - Tabling statement of Government Policy

74. Under subclause 3(2) of the Trust Deed the Minister for Finance may furnish to the Board of Trustees a statement of Government policy relevant to any of the functions of the Board with a request that the Board consider that policy in exercising those powers or functions.

75. **Clause 46** requires the Minister to table any such statement before both Houses of the Parliament within 15 sitting days of having given the statement to the Board.

Clause 47 - Delegation by Minister

76. This clause enables the Minister for Finance to delegate any of his or her powers or functions under the Act or regulations to the Board of Trustees or certain specified persons.

Clause 48 - Regulations

77. This clause enables regulations to be made under the Act.

SCHEDULE
FORM OF TRUST DEED

Recitals

78. As provided for in clause 4 of the Bill, the Minister for Finance, by Deed for and on behalf of the Commonwealth, is required to establish within 30 days of the commencement of the Act (on Royal Assent) a superannuation scheme for certain employees of the Commonwealth and for certain other persons.

Clause 1 - Interpretation

79. Subclause 1(1) provides for the Rules of the Superannuation Scheme set out in the Schedule to the Deed to form part of the Deed. Where there is an inconsistency between the Deed and the Rules, the Deed is to prevail.

80. Subclause 1(2) provides that, where the context requires or admits, terms defined in the Act, the Deed or the Rules have the meaning so ascribed to them where they are used in the Deed.

81. Subclause 1(3) defines the term "Minister".

Clause 2 - Establishment of Superannuation Scheme

82. This clause:

- (a) establishes the Superannuation Scheme and provides for it to come into operation on 1 July 1990; and
- (b) establishes Superannuation Fund No. 1 and provides for it to be vested in the Board of Trustees.

The Fund will not form part of the Commonwealth Public Account.

Clause 3 - Functions and Powers of the Board

83. Clause 20 of the Bill establishes the Board of Trustees and provides for it to be called Commonwealth Superannuation Board of Trustees No. 1.

84. Subclause 3(1) of the Deed requires the Board to administer the Superannuation Scheme and to manage and invest the Fund (the Superannuation Fund No. 1) in accordance with the Superannuation Act 1990 and the Deed and mentions three specific functions without limiting the generality of its functions.

85. It should be noted that the requirement to administer the Superannuation Scheme will mean that the Trustees will have to make information available to members, and potential members, to enable them to make informed choices about the options that are available to them.

86. Subclause 3(2) empowers the Board of Trustees to do anything necessary or convenient in connection with the performance of its functions and particularises certain specific powers of the Board.

87. Subclause 3(3) provides that in exercising its functions and powers the Board of Trustees is to have regard to:

- (a) the interests of members and their employers; and
- (b) any statement of Government policy relevant to the Board's functions, duties and powers that is furnished to the Board by the Minister with a request that the Board consider that policy.

88. The subclause also provides that, in spite of anything contained in the Deed or the Statement of Government policy, the Board is to comply with the requirements of the Occupational Superannuation Standards Act 1987 and regulations under that Act.

Clause 4 - Appointment of Trustees

89. Clause 23 of the Bill provides for the Board of Trustees to consist of a part-time Chairperson and 4 other part-time trustees.

90. Subclause 4(1) of the Deed provides that the Minister shall appoint four Trustees (other than the Chairperson) having regard to the following:

- (a) two Trustees are to be persons with experience in, and knowledge of, the formulation of government policy and public administration; and
- (b) the other two Trustees shall be persons nominated by the ACTU after consultation with relevant organisations (as defined in subclause 28(7) of the Bill).

91. Subclause 4(2) provides for the remaining Trustee to be Chairperson of the Board and that he or she be appointed by the Minister after consultation with the other four trustees.

92. Subclause 4(3) provides for the Chairperson and the 2 Trustees appointed from persons nominated by the ACTU to hold office for a period not exceeding 3 years and for the 2 Trustees who are persons with experience in, and knowledge of, the formulation of government policy and public administration to hold office at the Minister's pleasure.

93. Subclauses 4(4) to 4(9) make provision in relation to various matters affecting the Trustees such as remuneration and leave of absence.

Clause 5 - Termination of Appointment

94. Subclause 5(1) provides for the termination of a Trustee's appointment by the Minister for misbehaviour, physical or mental incapacity or inefficiency or incompetence.

95. Subclause 5(2) provides other grounds upon which a Trustee's appointment may be terminated.

Clause 6 - Acting Appointments

96. This clause contains provisions relating to the appointment of acting Trustees. Specifically:

- (a) a person may be appointed by the Minister to act as Chairperson or a Trustee where there is a vacancy in the office or where the occupant is absent from Australia or for any other reason unable to perform his or her duties. It is intended that there be standing appointments of 4 persons to act as Trustees and that they meet the same criteria as for the Trustees (subclauses 6(1), (2) and (3));
- (b) appointments of an acting Chairperson or Trustee may be expressed to have effect only in such circumstances as are specified in the instrument of appointment (subclause 6(4));
- (c) a person who is acting may exercise all the powers of, and perform the duties of the person for whom he or she is acting (subclause 6(5));
- (d) the Minister is to determine the terms and conditions of appointment of acting appointees and may terminate the appointment at any time and the appointee may resign by notice in writing to the Minister (subclauses 6(6) and (7)).

Clause 7 - Disclosure of Interests

97. Subclause 7(1) provides for each Trustee, on appointment and annually thereafter to present to a meeting of the Board of Trustees a statement setting out particulars of any interests, direct or indirect, that could reasonably be expected to conflict with the proper performance by the Trustee of his or her duties as a Trustee. In accordance with subclause 7(2) any such statement is to be incorporated in the minutes of the meeting.

98. Subclause 7(3) requires a Trustee who acquires an interest of a kind referred to in subclause 7(1) to, as soon as possible, present a statement of particulars of the interest to a meeting of the Board.

99. Subclause 7(4) provides that a Trustee who has a direct pecuniary interest in a matter being considered by the Board of Trustees to disclose that interest to the Board.

100. **Subclause 7(5)** provides that the disclosure is to be recorded in the minutes of the meeting and the Trustee is to take not to be present at or take any part in consideration of the matter unless the Board or Minister otherwise determines.

101. **Subclause 7(6)** provides similarly in relation to any determination by the Board in relation to a Trustee who has made a disclosure under subclause 7(5).

102. **Subclause 7(7)** provides that the fact that a Trustee has made a statement under subclause 7(1) or 7(3) in relation to a particular interest does not relieve the Trustee of his or her obligations under subclause 7(4).

Clause 8 - Meetings of the Board of Trustees

103. This clause provides for:

- (a) the Board of Trustees to held such meetings as are necessary for the conduct of its affairs and for the Chairperson to convene a meeting at the request of another Trustee (**subclauses 8(1) and (2)**);
- (b) the Chairperson to preside at all meetings at which present and, for, in his or her absence, one of the other Trustees to preside on the nomination of the Chairperson or, in the absence of a nomination, on election by the other Trustees (**subclause 8(3)**);
- (c) 4 Trustees to constitute a quorum and for decisions to require a majority of 4 Trustees present and voting (**subclause 8(4)**). This provision is consistent with the requirements of the Occupational Superannuation Standards which require a majority of three-quarters of the Trustees for decisions to be carried; and
- (d) the Board of trustees to keep accurate records of all meetings (**subclause 8(5)**).

Clause 9 - Operation of the Fund

104. **Subclause 9(1)** provides for Superannuation Fund No. 1 to be managed by the Board in accordance with the Act and the Deed and for all contributions and other moneys paid to the Board to be held in trust by the Board in the Fund.

105. The amount of the Fund will be the value of the moneys and investments that the Fund holds. Where losses are incurred on investments, such losses would reduce the amount in the Fund.

106. Subclause 9(2) provides that the composition of the Fund can arise from a number of sources, namely contributions by members and employers, other moneys or assets paid to the Board under the Act and the Deed, income from investments, profits from the sale of investments and other moneys etc that become subject to the Deed.

107. Subclause 9(3) provides that the Fund shall be used by the Board to pay benefits and the costs and expenses of managing and investing the Fund.

Clause 10 - Investment of the Fund

108. Subclause 10(1) defines the terms "invest" and "profit" for the purposes of the clause to clarify that "invest" means the expenditure of moneys with a view to a present or future financial return whether by way of income, profit (including capital profit) or otherwise.

109. Subclause 10(2) provides for Fund moneys not required for the time being for the making of payments under the Act and Deed to be invested in accordance with the Act and Deed and for the Fund to be managed so that money will be available as required from time to time to pay benefits.

110. Subclause 10(3) enables the Board to invest the Fund in any manner including jointly with another person.

111. Subclause (4) requires the Board to determine an investment strategy and policy, to review them regularly and, where necessary or desirable, to change them.

112. Subclause (5) requires the Board to invest the Fund only through an investment manager or managers and notes that, as provided for in clause 31 of the Bill, the Superannuation Fund Investment Trust is to be the investment manager for the period 1 July 1990 to 30 June 1995.

113. Clause 10(6) provides that the Board is to ensure that its investment manager operates within the Board's investment powers, strategy and policy and reports to the Board as required on the state of the Board's investments and the investment market.

Clause 11 - Requests by Minister for Information

114. Under this clause the Board is required to furnish to the Minister such information as he or she might require in relation to the general administration and operation of the Superannuation Scheme.

Clause 12 - Delegation by Board

115. This clause enables the Board to delegate all or any of its powers under the Deed to any person, including the Commissioner for Superannuation and a Trustee, other than the power of delegation and its power under the Rules to review decisions.

THE SCHEDULE

RULES FOR THE ADMINISTRATION OF THE
SUPERANNUATION SCHEME

OVERVIEW OF RULES

116. In brief, the Superannuation Scheme provides for:

- (a) lump sum benefits, with a pension option; and
- (b) benefits based on a member's average annual salary on the three anniversaries of birth on or prior to his or her termination of employment; and
- (c) optional contribution rates by members within the range 2 to 10 per cent of salary; and
- (d) levels of benefit which are linked to the rate of member contribution; and
- (e) benefits payable to a member on age retirement, early retirement after reaching the minimum retiring age under a person's terms and conditions of employment, invalidity retirement and partial invalidity pensions where a person suffers a permanent reduction in salary because of a medical condition; and
- (f) benefits that have to be preserved until genuine retirement from the workforce payable in respect of persons who resign before reaching their minimum retiring age - entitlement to the employer share of benefits will be phased in from 25 per cent after one year's contributory membership to 100 per cent after four years' contributory membership; and
- (g) benefits payable to surviving spouses and children of a member or pensioner who are eligible to receive benefits; and
- (h) funding arrangements under which:
 - (i) part of the benefit will be provided through regular fortnightly contributions paid into a fund and invested (the funded portion); and
 - (ii) the balance of the benefit will be paid from the Consolidated Revenue Fund when the benefit becomes payable (the unfunded portion); and
- (i) administration of the Scheme to be undertaken by a Board of five Trustees, with two Trustees being employer nominations, two Trustees being member nominations (through the Australian Council of Trade Unions) and an independent Chairperson. The Trust Deed provides for the setting up of the Board of Trustees.

117. The option for most members of the current Commonwealth Superannuation Scheme (established under the Superannuation Act 1976)) to transfer to the new Scheme will be provided through amendments to that Act.

118. The amount of lump sum benefit to be provided is termed a member's "final benefit accrual" or during membership "benefit accrual". It will be calculated by multiplying a member's average salary on termination of membership by a benefit factor, subject to upper limits on benefits.

119. The benefit factor will increase with each contribution paid by the member and the amount of the increase will include an employer component.

120. There could also be other additions to a member's benefit factor, eg an addition for the credit a person transferring from the current Commonwealth Superannuation Scheme brings across to the new Scheme. The various components that make up a member's benefit factor are termed "multiples" in the Rules.

121. Benefits under the Scheme will be subject to maxima which reflect the reasonable benefit limits under the Occupational Superannuation Standards Act 1987 and its Regulations. The maxima under the Scheme will move in line with the indexation of the reasonable benefit limits.

122. The Scheme is based on contributory fortnights. Benefits accrue as each fortnight's contribution is paid by a member. Member's entitlements to the employer share of the benefits generally increase with each fortnight's contribution paid.

123. The Scheme provides for the Board of Trustees to be involved in the invalidity retirement process and obtain advice from private sector experts with experience in the assessment of total and permanent invalidity.

124. The administration of the Scheme by a Board of Trustees, which will be required to take decisions having regard to the interests of members and employers, should eliminate many of the problems that can arise with a fully legislatively based scheme. This approach has enabled the Rules to provide the Board of Trustees with discretion to resolve unusual cases, rather than try to foresee every possible contingency and legislate for it.

125. The Occupational Superannuation Standards Act 1987 provides for the administration of superannuation schemes to be vested in trustees. This requirement means that powers of review have to be vested in the trustees rather than external review bodies (although the Courts are available as a final resort). Accordingly the Rules of the Scheme provide for a comprehensive review procedure to be available to members.

PART 1 - PRELIMINARY
DIVISION 1 - INTERPRETATION

126. Rule 1.1.1 contains the definitions that are used in the Rules. They are largely self-explanatory but an explanation of the background to some definitions may assist understanding.

127. Some of the definitions depend on the funding arrangements to be adopted. These are briefly summarised.

128. Member contributions will be fully funded and the definition of "accumulated member contributions" includes those contributions plus interest (based on the earning rate of the Superannuation Fund No. 1).

129. Funded employer contributions in respect of the 3 per cent "productivity" benefit will be made prospectively from 1 July 1990 and the term "accumulated funded employer contributions" means those contributions and interest thereon.

130. For members of the existing scheme who transfer to the new Scheme the unfunded 3 per cent "productivity" benefits accrued under the Superannuation Benefit (Interim Arrangement) Act 1988 (proposed legislation will rename this Act as the Superannuation (Productivity Benefit) Act 1988) will be replaced by an equivalent unfunded credit in the new Scheme which will then be increased by notional interest based on the earning rate of the Fund. This amount is termed the "accumulated unfunded employer contribution".

131. The term "accumulated employer contributions" means the sum of the "accumulated funded employer contributions" and the "accumulated unfunded employer contributions".

132. The balance of the benefit to be provided (by the employer) is unfunded and the term "unfunded benefit accrual" refers to this amount.

133. If lump sum benefits were to be provided to all existing employees from the start of the new Scheme, there could be a significant impact on the Budget. In order to limit this impact, access to lump sums will be phased in over a period of five years.

134. In the first year of operation, immediate access to lump sums will only be available those persons who are age 64 or more. This age will be reduced each year and the term "qualifying age" is used to describe the age at which the unfunded component of any lump sum benefit can be taken. (Persons who retire before the qualifying age can take the funded part of their benefit immediately but would have to wait until they attain the qualifying age before they could take the unfunded component as a lump sum.)

135. Rules 1.1.2 to 1.1.5 relate to the anniversary of a member's birth and are self-explanatory.

136. Members of the existing Commonwealth Superannuation Scheme (CSS) will have 12 months from 1 July 1990 to decide whether they want to join the new Scheme. If they decide to join, they will be deemed to have joined from 1 July 1990. Rule 1.1.6 provides for contributions made to the CSS by, or in respect of, these transferring members after 1 July 1990 up to the date of deciding to transfer to be contributions to the new Scheme.

137. Rules 1.1.7 and 1.1.8 provide for "accumulated funded employer contributions" and "accumulated member contributions" to include, in appropriate circumstances, additional amounts relating to prior periods of membership of superannuation schemes, including membership of the CSS prior to 1 July 1990.

DIVISION 2 - MEDICAL EXAMINATIONS

138. This Division relates to the medical evidence that will be required on entry to the Scheme and for persons to be treated as "limited benefits members" for the purposes of the Rules where appropriate.

139. In essence, if a person is found to be fit for 3 years prospective employment (the current test for permanent appointment to the Australian Public Service), he or she will be entitled to full benefits on invalidity retirement or death from the start of his or her membership. (Full invalidity and death benefits are based on the person's contributions during his or her membership of the Scheme plus an additional amount in respect of the period from date of invalidity retirement or death to the date on which he or she would reach, or would have reached, age 60.)

140. Other persons who are not found fit for three years employment (either because of medical conditions or a refusal to undergo a medical examination or test) will have to be a member for 3 years before being entitled to full benefits on invalidity retirement or death. (Should these members become invalids or die within the first 3 years, whether the invalidity or death is related to medical conditions existing at entry or otherwise, their benefits will be restricted to the amount of the benefits arising from the contributions made during their period of membership.)

141. Rule 1.2.1 gives the Board of Trustees power to require a person to undergo medical examinations and tests within 60 days after becoming a member or such other period as it may allow.

142. Rules 1.2.1, 1.2.2 and 1.2.3 operate to entitle a person to full benefits until the date the Board of Trustees notifies the person that he or she is a limited benefits member. Once a limited benefits member completes three years membership of the Scheme, he or she ceases to be limited benefits member.

143. Provision is made in rule 1.2.1 for the Board of Trustees to set a period other than 60 days within which a person is to undergo a medical examination and/or test. This enables the Board to extend the period in cases where a person is genuinely unable to undergo a medical examination and/or test in that period. Conversely, it enables the Board to set a shorter period, should the Board become aware that a person with a terminal condition or a serious injury or illness that may lead to invalidity retirement or death has joined the Scheme.

144. Rule 1.2.4 provides for a person who does not undergo a medical examination or test required by the Board of Trustees to be treated as a limited benefits member from the end of the period set in rule 1.2.1 until the date 3 years after his or her first day of membership. However, should such a person later undergo the medical examination or test, the rule enables the Board to decide not to treat him or her as a limited benefits member from an earlier date.

DIVISION 3 - BENEFIT ACCRUAL

145. This Division provides for the calculation of a member's benefits under the new Scheme, except where the maximum benefits that can be provided apply to the person.

146. Rule 1.3.1 provides the basis of calculation of the benefit accrual that will apply to members on a particular day. A person's benefit accrual is obtained by multiplying the average of a person's annual salary for superannuation purposes at the three anniversaries of birth on or preceding the particular day by the person's benefit factor. (Other rules provide whether the person is entitled to the full amount of his or her benefit accrual on termination of membership.)

147. Rule 1.3.2 provides for the situation where a member's benefit accrual as calculated by rule 1.3.1 first reaches or exceeds the maximum levels permitted under the Rules. When this happens:

- (a) the member will become a maximum benefits member (definition of maximum benefits member); and
- (b) he or she will cease contributions at that time (rule 3.1.6); and
- (c) when he or she becomes entitled to benefits, he or she will receive the maximum benefits provided under the Rules (rule 1.4.1).

148. Rule 1.3.3 specifies the components of the benefit factor which, as set out in rule 1.3.1, is multiplied by a the average of a person's annual salary at the 3 anniversaries of birth on or preceding the relevant day to calculate the person's benefit accrual.

Ongoing multiple

149. Rules 1.3.4 to 1.3.8 provide the method of calculation of the component of the benefit factor described as the "ongoing multiple". This relates to the benefits accruing from a person's current (or if he or she has ceased to be a member, the most recent) period of membership.

150. The addition to a person's ongoing multiple varies with:

- (a) the rate of member contribution; and
- (b) whether the member is a full-time or permanent part-time employee (the addition to a part-time employee's ongoing multiple needs to take account of the fact that he or she would be contributing a percentage of a part-time salary but his or her average salary would be an average of the full-time salaries that he or she would earn if he or she worked full-time); and
- (c) whether the member is a regular (ie full-time permanent or temporary employee or full-time permanent employee) or casual employee. (Casual employees may not receive the same salary each pay-period or may not work at all for some pay-periods and the addition to a casual employee's ongoing multiple needs to take account of this fact).

151. The formula in paragraph 1.3.4(a) relies on the annual full-time basis for accruing benefits being able to be described as:

11 per cent (of average salary at retirement) plus
2 per cent (of average salary at retirement) for each
1 per cent of member contribution rate.

The formula provides for additions to the ongoing multiple on a fortnightly basis.

152. In essence, the first term in the formula prorates the 11 per cent for the proportion of the year contributed for by a person, eg a part-time employee working 50 per cent of full-time hours would get 50 per cent of the 11 per cent or a casual working 17 fortnights in the year would get 17/25ths of the 11 per cent. The second term in the formula reflects the rate at which a person contributes (between 2 and 10 per cent of salary at the member's option) and the use of contributions paid in the second term enables changes in contribution rate during the year and part-time and casual employees' contributions to be equitably incorporated into the calculations.

153. For a full-time employee, an alternative way of expressing the annual addition to his or her ongoing multiple for a particular percentage of salary contribution by the member for the whole of that year is set out in the following table:

Member rate of contribution for whole year (% of Salary)	Yearly addition to ongoing multiple
2	0.15
3	0.17
4	0.19
5	0.21
6	0.23
7	0.25
8	0.27
9	0.29
10	0.31

154. Paragraph 1.3.4(a) makes special provision for persons receiving a partial invalidity pension who would be contributing on a reduced salary. The use of the salary on which contributions are based in the second term of the formula ensures that the person would accrue benefits on the higher salary, as intended.

155. The Scheme is designed to provide maximum benefits for members spend their career working for the Commonwealth and who contribute an average of 5 per cent of salary over a that career of 35 to 40 years. The optional member contribution rates enable members to adjust their contributions as their other financial commitments vary.

156. Paragraph 1.3.4(b) limits the ongoing multiple to a maximum being the multiple that would result if a member had contributed throughout his or her first 260 contributory fortnights at the rate of 5 per cent of salary and 10 per cent for contributory fortnights thereafter.

157. A maximum member rate of 5 per cent of salary in respect of the first 10 years of membership protects the Commonwealth from possible exploitation by short-term members. Members are always entitled to their own contributions plus interest on leaving the Scheme. Without the ten-year restriction on member contributions attracting employer benefits (referred to elsewhere in this explanatory memorandum as the "10 year 5 per cent contribution limit"), a member who knows that he or she will be leaving the Scheme a few years after joining could pay at, say the maximum rate of 10 per cent, to obtain high employer benefits (these would be preserved in the Scheme until retirement) for short service. If permitted, this could advantage short-term employees over those who have spent a career working for the Commonwealth.

158. Paragraph 1.3.4(b) operates at the date of termination of membership and applies the test for the maximum multiple irrespective of the actual pattern of member contribution. For example, a person who contributed at 10 per cent for the first 10 years and 5 per cent for the second 10 years would be treated no differently from a person who contributed 5 per cent for the first 10 years and 10 per cent for the second 10 years.

159. Any contributions above the "10 year 5 per cent contribution limit" are regarded as excess contributions and they are dealt with under Division 6 of Part 4.

160. Rules 1.3.5 to 1.3.8 have the effect of taking periods of membership of the CSS (if any) and previous periods of membership of the new Scheme (if any) into account for the purposes of the "10 year 5 per cent contribution limit" in paragraph 1.3.4(b) and applying the 5 per cent limit to less than 260 fortnights or not applying the limit at all, depending on the length of earlier membership.

161. Rule 1.3.5 has the effect of reducing the period of 260 fortnights in the "10 year 5 per cent contribution limit" in paragraph 1.3.4(b) by the number of contributory fortnights in any previous periods of membership of the Superannuation Scheme.

162. Rules 1.3.6 and 1.3.7 have the effect of reducing the period of 260 fortnights in the "10 year 5 per cent contribution limit" in paragraph 1.3.4(b) for persons transferring from the current Commonwealth Superannuation Scheme (CSS) by the number of contributory fortnights in the period of membership of the CSS immediately preceding a person's first day of membership in the new Scheme.

163. Rule 1.3.8 has the effect of reducing the period of 260 fortnights in the "10 year 5 per cent contribution limit" in paragraph 1.3.4(b) for a member who returns from invalidity retirement by the number of contributory fortnights in any previous periods of membership of the Superannuation Scheme and the the number of fortnights during which he or she received the invalidity pension.

Prospective multiple

164. Rules 1.3.9 to 1.3.18 describe the applicability and calculation of the component of the benefit factor, described as the "prospective multiple", that would apply where a person (not being a limited benefits member) ceases membership because of invalidity retirement or death.

165. In effect, the prospective multiple provides benefits for the period from the date of invalidity retirement or death up to the date on which the member would have reached the age of 60 years as if the member had not retired or died until age 60 and had made contributions for, and received an ongoing multiple for, that period.

166. Rule 1.3.9 sets out the circumstances in which the prospective multiple is applicable. The rule refers to the "relevant day" in relation to a person (defined in rule 1.1.1) which is the day at which the test whether the person is a limited benefits member or not is applied.

167. It is intended that the relevant day be the day when the illness or injury that led to death or invalidity retirement occurred, so that a person is not able to increase his or her contributions after that day and therefore receive higher benefits in respect of the future years to age 60. The definition of relevant day enables the Board of Trustees to determine the relevant day in cases where a person who had been ill returned to work for a brief period or periods after increasing his or her contributions in an attempt to obtain higher benefits after becoming aware of his or her possible impending invalidity retirement or death.

168. Rule 1.3.10 provides for the calculation of the amount of the prospective multiple. In effect, the basis of calculation assumes, for the future years to age 60:

- (a) where, on the relevant day, a person was in:
 - (i) full-time employment, that employment status would be continued until age 60; or
 - (ii) permanent part-time employment, that status would be continued at the average of the hours worked used in deciding the amount of member contribution over the preceding three years; or
 - (iii) casual employment, the history of the ratio of salary received to the salary on which benefit were accruing and contribution payments over the preceding three years would be continued; and
- (b) the average percentage of salary at which a person made contributions on the 78 contributory fortnights preceding the relevant day or, for casual employees, the contributory fortnights in a period of three years preceding the relevant day would be continued.

169. Paragraph 1.3.10(c) specifies the number of contributory fortnights (the term used in the Rules is "contribution due days") to be assumed in the future years to age 60. For a casual employee, it is assumed that the average annual number of contributory fortnights over the previous three years will be continued throughout the future years to age 60.

170. Paragraph 1.3.10(d) specifies the proportion of the full-time factor in the formula in paragraph 1.3.4(a) that is to be used in calculating the prospective multiple.

171. Paragraphs 1.3.10(e) and (f) specify the rate of member contribution to be used in the calculation of the prospective multiple. These paragraphs provide protection for persons who become invalids or die while contributing less than 5 per cent and for persons who were contributing above 5 per cent at the relevant date in order to make up for the years when they may have contributed below 5 per cent.

172. Paragraph 1.3.10(e) provides that, in the calculation of the prospective multiple, the member is assumed to contribute 5 per cent of salary for any part of the 260 contributory fortnights in the "10 year 5 per cent contribution limit" in paragraph 1.3.4(b) not used in the ongoing multiple.

173. Paragraph 1.3.10(f) provides that, in the calculation of the prospective multiple, the member is assumed to contribute for the part (if any) of the future years after 260 contributory fortnights at the higher of:

- (a) 5 per cent; and
- (b) the average member contribution rate over the preceding 3 years.

174. Paragraph 1.3.10(g) specifies the salaries on which contributions are to be based for the calculation of the prospective multiple.

175. Rules 1.3.11 to 1.3.14 and rule 1.3.16 provide that, where a person has not got 78 contributory fortnights of membership, or for a casual employee 78 fortnights of membership, the most recent period of membership of the Commonwealth Superannuation Scheme (CSS) are to be included in calculating the various averages required under rule 1.3.10.

176. Because it is possible for a person transferring from the CSS to have an average percentage of contribution in excess of 10 per cent, rule 1.3.15 limits the maximum average contribution rate for the purpose of subparagraph 1.3.10(f)(ii) to a maximum of 10 per cent of salary (the maximum contribution rate under the Scheme).

177. Rule 1.3.17 provides that where a person has been on leave of absence and has not paid contributions, that period of leave of absence is not to count towards the three year period preceding the relevant day used to calculate averages for use in the prospective multiple.

178. Rule 1.3.18 gives the Board a limited discretion to decide what is an appropriate period over which to take an average for use in the calculation of the prospective multiple. The discretion is limited to those cases where a person was a regular employee on the relevant day but earlier had been a casual employee. The application of the previous rules which refer to the status of the employee at the date of invalidity in order to ascertain the average pattern of employment could disadvantage such employees.

Additional cover multiple

179. Rules 1.3.19 and 1.3.20 provide for an additional cover multiple to be applicable where a person has taken out additional death and invalidity cover under Part 10 of the Rules. The basis of calculation of the multiple gives the person full value in his or her additional cover multiple for the additional cover purchased, although the overall benefit would still be subject to the maximum benefits under the Rules.

Preserved multiple

180. On termination of membership, most members resigning from employment will be entitled to a preserved benefit under the Scheme. Should a member to whom a preserved benefit is applicable subsequently rejoin the Scheme, the amount of the preserved benefit immediately before rejoining will be converted into a preserved multiple, as provided for in Rules 1.3.21 to 1.3.24.

181. Rule 1.3.21 sets out the circumstance when a preserved multiple applies.

182. Rule 1.3.22 sets out the basis for calculating the amount of the preserved multiple. For most persons, the preserved multiple would be calculated by taking the amount that would have been the amount of their preserved benefit twelve months after rejoining the Scheme and dividing by the average salary on that day. (Where a person terminates membership before completing twelve months' membership, the date of termination would be used as the date of calculation of the preserved multiple.)

183. However, rules 1.3.23 and 1.3.24 operate in relation to a person who had previously resigned after less than 4 years' membership and would not have been entitled to the full value of the benefit provided by the employer. The effect of the rules is to restore the amount of the preserved benefit to that which would have applied had the person had at least 4 years' membership at the time of his or her previous resignation.

184. Rule 1.3.23 caters for the case where a person resigned after at least one year's (but less than four years') membership and rule 1.3.24 caters for the case where a person resigned after less than one year's membership. These rules mean that the pattern of a person's employment with the Commonwealth does not affect his or her entitlement, ie a person who works four years in two periods of say 2 years and 2 years is treated equitably with the person who has worked 4 years continuously.

Transfer multiple

185. Rule 1.3.25 provides for a transfer multiple to apply to a person who joins the Scheme and pays into the Fund a transfer amount from a previous superannuation scheme or arrangement (other than the current Commonwealth Superannuation Scheme).

186. Rules 1.3.26 to 1.3.29 set out the method of calculation of the transfer multiple. In brief, the basis is the amount of the payment, less any tax payable, plus interest to a date twelve months after payment divided by the member's average annual salary at that date.

CSS transfer multiple

187. Rules 1.3.29 to 1.3.33 provide for a CSS transfer multiple to apply to a person who transfers from the current Commonwealth Superannuation Scheme (CSS) to the new Scheme. The CSS transfer multiple represents the starting credit in the new Scheme in lieu of benefits accrued under the CSS and under the Superannuation Benefit (Interim) Arrangement Act 1988 (proposed legislation renames this Act as the Superannuation (Productivity Benefit) Act 1988).

188. Rule 1.3.29 sets out when a CSS transfer multiple applies.

189. Rule 1.3.30 specifies the basis for calculating the CSS transfer multiple ie by dividing the person's "CSS transfer credit" by his or her "CSS average salary". The CSS transfer credit is based on the amount of the normal transfer value payable under the Superannuation Act 1976 when a person transfers to what is termed an "eligible superannuation scheme" (ie a scheme that has reciprocal portability arrangements with the current CSS). However, there will be an additional credit in lieu of benefits that would otherwise have been provided under what will be called the Superannuation (Productivity Benefit) Act 1988.

190. However, whereas the normal transfer value would be paid in cash, the CSS transfer credit will only partially be represented by a cash payment. The member's accumulated contributions plus interest will be paid from the current CSS to the new Scheme; the balance of the CSS transfer credit will be unfunded. To pay the full CSS transfer credit as a cash payment would have a very significant Budgetary impact.

191. Because the CSS transfer multiple will be calculated on the first day of membership of the Superannuation Scheme and this could be a date before the person decides to cease to be a member of the current CSS (ie the calculation is retrospective), the CSS transfer multiple calculation includes any payments in respect of membership of other superannuation arrangements made under the Superannuation Act 1976 after a person's first day of membership under the Superannuation Scheme.

192. "CSS average salary" is calculated in a manner similar to that to be used in the new Scheme, using salaries for superannuation purposes at the three preceding birthdays under the Superannuation Act 1976.

193. **Rule 1.3.30** also provides the Board with a discretion to use an alternative salary where the use of an average would lead to inappropriate results. An example of a situation where this discretion might be exercised would be where a person has been brought into the service of an employer at a low level for administrative reasons and gets an immediate promotion to a position which represents his or her true value to the employer.

194. Where the Board exercises the discretion under rule 1.3.30 described in the previous paragraph, **rule 1.3.31** requires the member to be informed of the effect of the exercise of the discretion and requires the member to be provided with an opportunity to reconsider his or her decision to transfer to the new Scheme.

195. **Rule 1.3.32** adjusts the basis of calculation of a person's transfer credit, where the person had brought a transfer value into the current CSS. The effect of the adjustment is to base the CSS transfer amount for the member on the total of:

- (a) member contributions paid to the CSS up to his or her first day of membership in the new Superannuation Scheme plus interest thereon; and
- (b) an additional amount for the transfer value plus interest.

196. This adjustment avoids persons who brought transfer values into the CSS from receiving windfall gains or losses on transfer to the new Scheme. For example, without the adjustment a person who brought into the CSS a transfer value with no employee component would receive no credit for that transfer value on transfer to the new Scheme.

197. **Rule 1.3.33** is similar in effect to rule 1.3.32 but caters for the case where an invalidity pensioner under the CSS is restored to health. If the person had taken his or her contributions plus interest as a lump sum when invalidated out, the employer share of the CSS transfer credit would greatly understate the value of the employer benefit otherwise to be provided in the CSS. The rule adjusts the CSS transfer credit to be the amount to which the person would have been entitled if he or she had not taken his or her contributions and interest as a lump sum when invalidated out of the CSS.

Restoration multiple

198. **Rules 1.3.34 to 1.3.37** provide for the situation where a person is retired as an invalid but subsequently is restored to health and rejoins the Scheme. The restoration multiple restores to the person the benefit accrual which would have resulted had the person not been retired but had continued as a member of the Scheme.

199. Rule 1.3.34 describes when a restoration multiple applies.

200. Rules 1.3.35 to 1.3.37 provide for the restoration multiple to be the sum of:

- (a) the benefit factor that would have applied at the date of invalidity retirement if, in fact, the person had not been retired as an invalid, adjusted for any cash payments received by the member at that time; and
- (b) a further multiple for the period from the date of invalidity retirement to his or her first day of membership after returning from invalidity retirement. This multiple assumes the person had remained a member and contributed at 5 per cent of salary (or a higher average percentage if applicable) during that period.

Excess Contribution Multiple

201. Rules 1.3.38 and 1.3.39 provide the basis for entitlement to, and calculation of, an excess contribution multiple. This multiple reflects member contributions which do not attract an employer benefit, ie contributions which are in excess of the "10 year 5 per cent contribution limit" in paragraph 1.3.4(b).

202. Rule 1.3.38 sets out the circumstances when an excess contribution multiple applies.

203. Rule 1.3.39 provides the basis for the calculation of the excess contribution multiple. In effect the rule provides that the amount of the excess contribution multiple is half the difference between the ongoing multiple that accrued under paragraph 1.3.4(a) for the contributions paid by the member and the multiple permitted under rule 1.3.4(b).

Unfunded Transfer Multiple

204. Rule 1.3.40 sets out the applicability of an unfunded transfer multiple. The multiple applies where a person had an entitlement under the interim arrangement for the 3 per cent productivity benefit and joined the Superannuation Scheme without first joining either the current CSS or an industry superannuation fund. The multiple has the effect of replacing the accrued benefit under the interim arrangement with an equivalent amount under the Scheme.

205. Rules 1.3.41 to 1.3.43 set out the basis for calculation of the amount of the unfunded transfer multiple. In operation, the basis of calculation mirrors the calculation where a cash transfer value is paid to the Superannuation Scheme. In brief, the basis is the amount of the credit under the interim arrangement plus interest to a date twelve months after joining the new Scheme divided by the member's average annual salary at that date.

DIVISION 4 - MAXIMUM BENEFIT

206. This Division sets out the maximum benefits that are applicable under the Superannuation Scheme. The maximum benefits under the Scheme are based on the provisions of the reasonable benefit limits under the Occupational Superannuation Standards Act 1987. These provisions are extremely complex and a simplified approach has been adopted in the new Scheme.

207. Rule 1.4.1 includes a Table which provides a simplified formula for maximum benefits which is broadly equivalent to the reasonable benefit limits under the Occupational Superannuation Standards Act 1987.

208. Rule 1.4.2 provides for the maximum benefits according to the Table in rule 1.4.1 to be reduced where a person is entitled to an adjustment payment under the Australian Federal Police Act 1979. The adjustment payment was provided under that Act on the basis that the adjustment payment plus superannuation benefits would not exceed the reasonable benefit limits.

209. Rule 1.4.3 modifies the formula for the calculation of a person's maximum benefits to ensure that persons whose average salary over the preceding 3 years is less than \$25,000 do not receive pensions on invalidity retirement which could exceed 100 per cent of their salary. The rule limits the invalidity pension to the limits generally applicable under the Scheme (ie 72.7 per cent of average salary) or to any higher amount which the member may have accrued before his or her invalidity retirement. A similar provision applies on the death of a member.

210. Rules 1.4.4 to 1.4.6 cater for members of the current Commonwealth Superannuation Scheme (CSS) who transfer to the new Scheme with a starting benefit that is greater than the usual maximum benefits under the Scheme. The rules operate to give such members full value for their starting credits, having regard to the limitations placed on members generally.

211. Rule 1.4.4 identifies which members have starting benefits greater than the usual maximum benefit under the Scheme and provides for their benefits to be calculated under rule 1.4.5.

212. Rule 1.4.5 provides for the benefits in respect of members identified in rule 1.4.4 to be calculated by multiplying the usual maximum benefit for a person's average salary when a benefit becomes payable by a ratio calculated in accordance with rule 1.4.6.

213. Rule 1.4.6 provides for the ratio to be used in rule 1.4.5 to be the ratio, on the day that the person decided not to stay in the current CSS, of the member's starting benefit to the usual maximum benefit.

214. The effect of rules 1.4.4, 1.4.5 and 1.4.6 is that if, on the day a person decided not to stay in the current CSS, a person's starting benefit was, say, 25 per cent higher than the usual maximum benefit, then when the person finally received his or her benefit it would be an amount 25 per cent higher than the usual maximum benefit for his or her average salary at retirement.

215. It is possible that a person with a preserved benefit could return to Commonwealth employment on a lower salary than would have been applicable if he or she had continued in Commonwealth employment. In such cases, it is possible that the person's preserved benefit could be in excess of the normal maximum benefit under the Table in rule 1.4.1. Rule 1.4.7 enables the Board to determine the maximum benefit that is to be applicable to a person in circumstances where the preserved benefit is in excess of the normal maximum benefit.

216. Rule 1.4.8 sets out the maximum benefit that is to apply to a person who, as a maximum benefits member, became an invalidity pensioner and subsequently was restored to health and rejoined Commonwealth employment.

217. Rule 1.4.9 provides for the table of maximum benefits in rule 1.4.1 and the dollar amounts in rule 1.4.3 to be updated each year, including from 1 July 1990, as the amounts under the reasonable benefit limits are indexed.

218. Rule 1.4.10 is included to prevent some persons benefitting from windfall gains or suffering windfall losses should the basis for the reasonable benefit limits be altered (other than by the yearly indexation). If the basis for the reasonable benefits limits were to be altered, the Board of Trustees has power to determine the benefits that should be paid to a person who had previously reached the maximum benefits under the Scheme and whether he or she should make any further contributions.

PART 2 - SALARY

DIVISION 1 - ANNUAL RATE OF SALARY

219. This Division establishes the annual rate of salary of a member for the purposes of the Rules. Annual rate of salary is used for the determination of a member's average salary in accordance with Division 2. The establishment of the annual rate of salary may use one or more of three other types of salary, namely:

- (a) the member's annual rate of superannuation salary. This is the salary for superannuation purposes that a member would receive in a year, including those allowances recognised at the start of that year, except for a casual employee where it is defined as the salary that the employee would receive if he or she were working full-time throughout the year; and
- (b) the member's annual rate of notional superannuation salary. This is the salary that a member who has suffered a reduction in superannuation salary would receive if he or she had continued to receive the superannuation salary for the position (or level) he or she was in at the time of the reduction. A different method of calculation is adopted where a partial invalidity pension was payable in respect of the reduction and where no such pension was payable; and
- (c) the member's annual rate of CSS salary. This is the annual rate of salary that would have applied to a former eligible employee under the current Commonwealth Superannuation Scheme (CSS) on a particular anniversary of birth had he or she continued to be an eligible employee under the CSS and been entitled to benefits under the CSS on that anniversary.

220. Rule 2.1.1 defines terms used in the Part. These include "basic salary", "recognised allowance" and "superannuation salary" which is the sum of basic salary and recognised allowance or allowances. Basic salary and recognised allowances are both to be determined by the Board of Trustees in accordance with principles advised by the Minister and after having regard to matters taken into account in the determination of salary and annual rate of salary under the Superannuation Act 1976.

221. Rule 2.1.1 also defines annual rates of basic salary, recognised allowances and superannuation salary which is the sum of basic salary and recognised allowance or allowances. It should be noted that the definitions as they apply to a regular employee (ie full-time or permanent part-time employees) refer to the amount of annual salary received in a year. However, the definition of annual rate of salary for a casual employee on a particular day is the annual rate that he or she would have received if he or she had been working full-time throughout the year and receiving the hourly rate that he or she was receiving on the day or, if not working on that day, the hourly rate on the day, applicable to the duties that he or she next undertook.

222. **Rule 2.1.2** sets out the basis for the annual rate of salary for a member who is a permanent full-time or temporary full-time employee. It is the greatest of:

- (a) the member's annual rate of superannuation salary; and
- (b) the annual rate of notional superannuation salary (if any) applicable to the member; and .
- (c) the annual rate of CSS salary (if any) applicable to the member.

223. **Rule 2.1.3** sets out the basis for the annual rate of salary for a member who is a permanent part-time employee. It is similar to the basis for a full-time employee, except that the annual rate of superannuation salary that would be applicable if the person had been working full-time instead of part-time is to be used instead of the annual rate of salary itself.

224. **Rule 2.1.4** sets out the basis for the annual rate of salary for a member who is a casual employee. It is the greater of:

- (a) the annual rate of superannuation salary for the member; and
- (b) the annual rate of salary that applied to a person on the immediately preceding anniversary of birth.

225. **Rule 2.1.5** defines the fortnightly rate of salary as one twenty-sixth of the annual rate of salary.

226. **Rules 2.1.6 and 2.1.7** set out the circumstances where a notional superannuation salary applies to a member. These are:

- (a) where the member is not a casual employee; and
- (b) his or her superannuation salary reduces for reasons other than a reduction in working hours or for a reason which attracts a compensation payment.

227. **Rule 2.1.6** caters for the situation where no partial invalidity pension is payable in respect of the reduction in superannuation salary. **Rule 2.1.7** caters for the situation where a partial invalidity pension is payable in respect of the reduction in superannuation salary.

228. It is not appropriate to use a notional superannuation salary for casual employees, because the nature of casual employment is that a person could undertake a series of duties at different rates of pay. The use of the annual rate of salary on the preceding anniversary of birth in rule 2.1.4 means that a person's salary for benefit purposes is not reduced.

229. **Rules 2.1.8 and 2.1.9** set out the basis for calculation of the annual rate of notional superannuation salary.

230. **Rule 2.1.8** caters for the calculation of the annual rate of notional superannuation salary where no partial invalidity pension is payable. It provides for a person's notional superannuation salary to be the sum of the basic salary (updated in line with general wage movements) of the position held by the person before the reduction in salary plus the dollar amount of any recognised allowances applicable to the member before the reduction. If a notional superannuation salary calculated under a basis that applied immediately before the reduction is higher than this amount, then the higher notional superannuation salary would be used.

231. **Rule 2.1.9** caters for the case where a partial invalidity pension is payable in respect of the reduction in superannuation salary. It provides for a person's notional superannuation salary to be the sum of the basic salary (updated in line with general wage movements) of the position held by the person before the reduction in salary plus the level (updated from time to time) of recognised allowances applicable to the member before the reduction. This rule differs from rule 2.1.8 because only the dollar amount of recognised allowances would be maintained where no partial invalidity pension is payable. If a notional superannuation salary calculated under a basis that applied immediately before the reduction is higher than this amount, then the higher notional salary would be used.

232. **Rule 2.1.10** provides that a notional superannuation salary is to cease to be applicable to a person when the annual rate of superannuation salary of the person, or if the person is a permanent part-time employee the annual rate of superannuation salary if the person was working full-time, exceeds the annual rate of notional superannuation salary. However, a notional superannuation salary could again be applicable to a member if he or she suffered another reduction in superannuation salary.

233. **Rule 2.1.11** sets out the circumstances when a CSS salary is applicable to a member. It provides for a CSS salary to apply where a person had a partial invalidity pension under the Superannuation Act 1976 (the basis for the current Commonwealth Superannuation Scheme) or the annual rate of salary under that Act at the appropriate anniversary of birth is greater than the person's superannuation salary on that anniversary.

234. **Rule 2.1.12** sets out the amount of the annual rate of CSS salary that is applicable to a member. The annual rate of CSS salary on a particular day is the annual rate of salary that would have applied to the person under the Superannuation Act 1976 if he or she had not ceased to be an eligible employee for the purposes of that Act or, where the person had been entitled to a partial invalidity pension prior to transfer, the annual rate of salary that would have applied had he or she continued to be an eligible employee for the purposes of that Act and ceased to be an eligible employee on that day.

235. Rule 2.1.13 provides that a CSS salary is to cease to be applicable to a person when the annual rate of superannuation salary of the person, or if the person is a permanent part-time employee the annual rate of superannuation salary if the person was working full-time, or the annual rate of notional superannuation salary exceeds the annual rate of CSS salary

DIVISION 2 - AVERAGE SALARY

236. Rule 2.2.1 provides for the determination of a member's average salary which is one of the components in the calculation of most benefits provided for under the Rules.

237. A person's average salary is the average of the annual rates of salary on the three anniversaries of a person's birth on or immediately preceding that day. Where a person's period of membership does not encompass three anniversaries of birth, the average of the annual rates of salary on the anniversaries in that period plus the first day of membership if not an anniversary.

DIVISION 3 - CONTRIBUTION SALARY

238. Rule 2.3.1 sets out the basis for determining the fortnightly salary on which a member's contributions are to be based. The amount of fortnightly contribution salary depends on the employment status of a person on a contribution due day. In summary:

- (a) a casual employee contributes on the basis of the actual superannuation salary received by him or her in respect of the fortnight to which that contribution due day refers; and
- (b) a person who was a casual employee on his or her preceding anniversary of birth but has since become a regular employee shall contribute on the basis applicable to his or her status on becoming a regular employee using the annual rate of salary applicable at the preceding anniversary of birth; and
- (c) a person who was a full-time employee on the anniversary of birth preceding the contribution due day and was not in receipt of a partial invalidity pension on that anniversary shall contribute at the fortnightly rate of salary applicable on that anniversary of birth; and
- (d) a person who was a full-time employee on the anniversary of birth preceding the contribution due day and was in receipt of a partial invalidity pension on that anniversary shall contribute at one twenty-sixth of his or her annual rate of contribution salary on that anniversary; and

- (e) a person who was a permanent part-time employee on the anniversary of birth preceding the contribution due day and was not in receipt of a partial invalidity pension on that anniversary shall contribute at the fortnightly rate of salary applicable on that anniversary of birth reduced in the ratio on that anniversary that the part-time hours worked, or to be worked, bears to full-time hours; and
- (f) a person who was a permanent part-time employee on the anniversary of birth preceding the contribution due day and was in receipt of a partial invalidity pension on that anniversary shall contribute at one twenty-sixth of his or her annual rate of superannuation salary on that anniversary; and
- (g) notwithstanding the provisions summarised in paragraphs (d) and (f) above, where:
 - (i) a person was a regular employee on the anniversary of birth preceding the contribution due day; and
 - (ii) his or her annual rate of salary on that anniversary had been an annual rate of notional superannuation salary or annual rate of CSS salary; and
 - (iii) a partial invalidity pension was applicable to him or her on that anniversary; and
 - (iv) that partial invalidity pension became applicable at a time when his or her annual rate of salary was determined by an annual rate of notional superannuation salary,

the Board shall determine the amount of fortnightly contribution salary applicable to the member, having regard to the principles in rule 2.3.1 and the need for equity between members.

239. **Rule 2.3.2** provides that a reference in rule 2.3.1 to part-time hours worked is to include any hours in respect of which compensation payments are payable.

240. **Rule 2.3.3** provides that the annual rate of contribution salary on a particular day for a person who is a regular employee is twenty-six times the fortnightly contribution salary on that day.

241. **Rule 2.3.4** provides that the annual rate of contribution salary on a particular day for a person who is a casual employee is the annual rate of salary applicable to the person on the anniversary of birth immediately preceding that day.

DIVISION 4 - MISCELLANEOUS

242. This Division (rules 2.4.1 to 2.4.6) relate to circumstances where rates of salary under the Superannuation Act 1976 can apply to a member and cases where the Trustees are empowered to determine the appropriate rates of salary.

243. Rule 2.4.1 provides that, where a person immediately before his or her first day of membership was an eligible employee for the purposes of the Superannuation Act 1976, references to annual rates of salary in these Rules are to include annual rates of salary for the purposes of that Act.

244. Where, on an anniversary, a person was entitled to a partial invalidity pension under the Superannuation Act 1976, a reference to the annual rate of salary on that anniversary shall be read as a reference to the annual rate of salary that would have applied if the person had ceased to be an eligible employee on that anniversary.

245. Rules 2.4.2 and 2.4.3 complement rule 2.4.1 by providing that the salary on which a person was making contributions under the Superannuation Act 1976 may be treated as the annual rate of superannuation salary for the new Scheme.

246. Rule 2.4.4 provides that where a person had been an eligible employee for the purposes of that Act on more than one occasion only the last period shall be used for the purposes of rules 2.4.1 and 2.4.2.

247. Rules 2.4.5 to 2.4.6 give the Board discretion to decide the annual rate of salary and fortnightly contribution salary that are to apply to a member when unusual or exceptional circumstances exist.

248. Rule 2.4.5 caters for the circumstance where a person has suffered a reduction in salary but his or her former position or classification has been abolished. The Board may determine an appropriate salary or salaries for him or her.

249. Rule 2.4.6 caters for the situation where a regular employee who is entitled to a partial invalidity pension becomes a casual employee. The Board is to determine the annual rate of salary and the fortnightly contribution salary to be applicable to the person.

PART 3 - CONTRIBUTIONS

DIVISION 1 - CONTRIBUTIONS BY MEMBERS

250. This Division, which comprises rules 3.1.1 to 3.1.19, provides for the contributions that are payable by a member.

251. Rule 3.1.1 provides that, except in certain circumstances specified in the Division, a member is required to pay contributions each fortnight during his or her membership.

252. Rule 3.1.2 provides that a member is to contribute at a rate, selected by the member, of his or her fortnightly contribution salary. The percentage chosen can be any whole number percentage from 2 to 10 per cent inclusive. The chosen percentage can be varied at any time.

253. Rules 3.1.3 and 3.1.4 provide that where a member does not elect to contribute at a specific rate, he or she shall pay contributions at the rate of 5 per cent or, in the case of a person who was an eligible employee for the purposes of the Superannuation Act 1976 immediately before becoming a member, at the rate paid under that Act provided that the rate is not to exceed 10 per cent.

254. Rule 3.1.5 provides that members who are on compensation leave are required to contribute at a minimum of 5 per cent of salary. However, where the member was contributing at a lower rate before going on compensation leave, the member is to contribute at the highest of the rates at which he or she contributed on the four contribution due days prior to going on compensation leave.

255. Rule 3.1.6 provides that, where a member becomes a maximum benefits member, no further contributions are payable by the member, except as provided for in rule 1.4.10, ie except where the maximum benefits under the Scheme are amended other than by indexation in line with movements in Average Weekly Ordinary Time Earnings.

256. Contributions are not payable and may not be paid by a member in respect of a period of leave of absence without pay exceeding 6 fortnights (rule 3.1.7) except where:

- (a) the leave is maternity or parental leave and the member has elected to contribute; or
- (b) the period of leave is a period during which contributions are deferred because of the person's membership of the Defence Force Retirement and Death Benefits Scheme; or
- (c) the Board of Trustees otherwise directs.

257. A direction by the Board of Trustees for the purposes of rule 3.1.7 in relation to a period of leave is to be in accordance with principles advised to the Board by the Minister and may specify conditions including a condition that a specified amount be paid to the Commonwealth by or on behalf of the person on leave. Rules 3.1.8 to 3.1.12 set out technicalities related to rule 3.1.7.

258. Rules 3.1.13 to 3.1.15 provide that contributions are not payable by a member in respect of any contribution day during a period of unpaid maternity or parental leave except where the member elects in advance to do so.

259. Rule 3.1.16 provides that the Board of Trustees may permit a member, other than a member on maternity or parental leave, who is required to pay contributions during a period of leave, either without pay or with less than full pay, to pay those contributions in such instalments and at such times as the Board approves.

260. The Rules make provision for the deferral of contributions due by members who become liable to contribute under the Defence Force Retirement and Death Benefits Act 1973 (DFRDB Act) other than those who are entitled to retirement pay or a pension in respect of previous membership of the scheme under the Defence Forces Retirement Benefits Act 1948 or the DFRDB Act. Except where the person becomes entitled to retirement pay on ceasing to be liable to contribute under the DFRDB Act, the deferred contributions shall be paid to the Board of Trustees on that liability ceasing or the person ceasing to be a member (rules 3.1.17 to 3.1.19).

DIVISION 2 - CONTRIBUTIONS BY EMPLOYERS

261. This Division (rules 3.2.1 to 3.2.7) provides for the contributions required to be paid by designated employers (designated employer is defined in the Bill; in effect it is the employer which pays a person's salary).

262. Rule 3.2.1 provides that a designated employer is required to pay an amount as specified in the Rules on each day on which the member is required or elects, to contribute.

263. Rule 3.2.2 contains a Table which specifies the amount of fortnightly employer contribution for relevant rates of salary. The Table is based on the annual rate of contribution formerly provided for in the Superannuation Benefit (Interim Arrangement) Act 1988.

264. The Table in rule 3.2.2 will be amended annually with effect from 1 July each year, including July 1990, to reflect changes in the general salary levels of members (rule 3.2.3).

265. **Rule 3.2.4** provides that the amount of employer contribution on a contribution due day for a person who is a regular employee on that day and was a full-time employee on the preceding anniversary of birth is to be the fortnightly amount that would apply in the Table in rule 3.2.2 if the fortnightly rate of salary on the person's preceding anniversary of birth was the relevant rate of salary for the purposes of the Table.

266. **Rule 3.2.5** caters for the person who is a regular employee on the contribution due day and was a permanent part-time employee on the previous anniversary of birth. The employer contribution is a proportion of the fortnightly amount that would apply in the Table in rule 3.2.2 if the fortnightly rate of salary on the person's preceding anniversary of birth was the relevant rate of salary for the purposes of the Table. The proportion is the ratio on the previous anniversary of part-time hours worked (including hours not worked but for which a partial invalidity pension or compensation payments are being paid) to full-time hours.

267. **Rule 3.2.6** sets out the amount of employer contribution for a person who is a casual employee on the contribution due day. The relevant rate of salary depends on the employment history of the person with his or her designated employer. Having determined the relevant rate of salary, the fortnightly amount from the Table in rule 3.2.2 for that rate of salary is multiplied by the ratio on that contribution due day of the person's fortnightly contribution salary on that day to the relevant rate of salary.

268. **Rule 3.2.7** sets out the method of determining the employer contribution on a contribution due day for a person who was casual employee on the preceding anniversary of birth but has changed to a regular employee by that contribution due day. The relevant rate of salary is the fortnightly rate of salary on the preceding anniversary of birth. The fortnightly amount for that rate of salary would be the employer contribution for a full-time employee, but would be reduced in the ratio of part-time hours to full-time hours for a permanent part-time employee as in rule 3.2.5.

DIVISION 3 - PAYMENT OF CONTRIBUTIONS

269. This Division (rules 3.3.1 to 3.3.2) provides that contributions payable under Division 1 and Division 2 shall be paid to the Board and paid by the Board into the Fund.

DIVISION 4 - PREMIUMS FOR ADDITIONAL DEATH AND
INVALIDITY COVER

270. This Division (rules 3.4.1 to 3.4.3) provides for member and employer premiums payable in respect of additional death and invalidity cover applicable to a member under Part 10.

271. The amount required to be paid by a member (rule 3.4.1) is:

- (a) one-half of the fortnightly premium; or
- (b) if the member has not been assessed as a standard risk (ie the member is in poor health or suffers from some medical condition), the sum of:
 - (i) one-half of the fortnightly premium that would have applied had the person been assessed as a standard risk; and
 - (ii) any additional premium applicable because the member was assessed as other than a standard risk.

272. The employer of the member is required to pay the remainder of the premium (rule 3.4.2).

273. Rule 3.4.3 provides that premiums are payable to the Board of Trustees and the Board will pay premiums to the life office which is providing the cover. The rule enables the Board to arrange for the premiums to be paid directly to the life office by the employer or for premiums to be paid into the Fund and then paid from the Fund to the life office.

PART 4 - MEMBERS' BENEFITS

DIVISION 1 - AGE RETIREMENT BENEFIT

274. This Division (rules 4.1.1 to 4.1.8) provides the benefits for a persons who cease to be a members on or after reaching their minimum retiring age other than those who cease because of:

- (a) invalidity retirement before age 60; or
- (b) involuntary retirement; or
- (c) death.

275. Normally (see next paragraph), a person so ceasing has the option of taking either:

- (a) under rule 4.1.1, a lump sum of the member's final benefit accrual; or
- (b) under paragraph 4.1.3(a), a preserved benefit of that benefit accrual; or
- (c) under paragraph 4.1.3(b):
 - (i) to convert a portion of his or her final benefit accrual to a pension, the amount being nominated by the member but being not less than half the amount of the person's final benefit accrual; and
 - (ii) a lump sum of the remainder of that benefit accrual.

276. Rule 4.1.5 restricts access to lump sums until a person has reached the qualifying age for lump sum benefits under the phased-in access to lump sums (qualifying age is defined in rule 1.1.1). A person who ceases before 1 July 1995 and who has not reached the qualifying age for the financial year during which he or she ceased to be a member, has the option of:

- (a) under rule 4.1.5, a preserved benefit of his or her final benefit accrual; or
- (b) under paragraph 4.1.7(a):
 - (i) a lump sum nominated by the person but not exceeding the amount of his or her accumulated member and accumulated employer contributions; and
 - (ii) a preserved benefit of his or her final benefit accrual less the amount in (b)(i); or

(c) under paragraph 4.1.7(b):

- (i) to convert a portion of his or her final benefit accrual to a pension, the amount being nominated by the member but being not less than the amount of the person's unfunded benefit accrual; and
- (ii) a lump sum of the remainder of that benefit accrual.

277. Rule 4.1.4 sets out the basis for converting a lump sum to a pension. The lump sum is divided by a factor which is determined from a Table of factors contained in the rule, according to the person's age in years and days.

DIVISION 2 - INVOLUNTARY RETIREMENT BENEFIT

278. This Division defines "involuntary retirement" for the purposes of the Rules and provides for the benefits available to a person who ceases to be a member on involuntary retirement.

279. Rule 4.2.1 sets out the circumstances in which cessation as a member is to be regarded as involuntary retirement for the purposes of the Rules.

280. Rules 4.2.2 to 4.2.7 provide the benefits for a member who ceases on involuntary retirement at or after reaching his or her minimum retiring age. A distinction is made between persons who lose their jobs and those who technically lose their jobs with the Commonwealth (or other agency) because of a sale of an organisation, business, service or asset or transfer of function but are offered equivalent jobs with the new owner.

281. Rules 4.2.2 to 4.2.5 cater for the person who has reached his or her minimum retiring age and genuinely lost his or her job. The benefits available to such persons are equivalent to the age retirement benefits available under Division 1, with the exception that the provisions applying to a person who ceases before reaching the qualifying age for the financial year in which he or she ceased to be a member do not apply (ie lump sums are available even if the qualifying age for lump sums has not been reached).

282. Rules 4.2.6 and 4.2.7 (rule 4.2.7 makes the options under rule 4.2.10 available) set out the benefits available to a person who retains his or her job on the sale of an organisation, business, service or asset or transfer of function but is deemed to have retired involuntarily after reaching his or her minimum retiring age.

283. The option chosen by the person may be:

- (a) a preserved benefit within the Scheme (rule 4.2.6);
or
- (b) a preserved benefit with another scheme or approved deposit fund or the benefit used to purchase a deferred annuity (rules 4.2.7 - 4.2.10(a)); or
- (c) a refund of up to the amount of his or her accumulated member contributions (including interest) and the remainder of the benefit as a preserved benefit within the Scheme (rule 4.2.7 - 4.2.10(b));
or
- (d) a refund of up to the amount of his or her accumulated member contributions (including interest) and the remainder of the benefit as a preserved benefit with another scheme or approved deposit fund or the remainder of the benefit used to purchase a deferred annuity (rule 4.2.7 - 4.2.10(c)); or
- (e) a refund of up to the amount of his or her accumulated member contributions (including interest) and the remainder of the benefit converted into a pension under the Scheme (rule 4.2.7 - 4.2.10(d)).

284. Rules 4.2.8 to 4.2.11 provide the benefits for a member who ceases on involuntary retirement before minimum retiring age and does not elect under Part 8 that a transfer value be payable to an eligible superannuation scheme. They provide the person with the option of having:

- (a) under rule 4.2.8, a preserved benefit of his or her final benefit accrual; or
- (b) under paragraph 4.2.10(a), that final benefit accrual being paid to a preservation fund of his or her choice or used to purchase a deferred annuity; or
- (c) under paragraph 4.2.10(b):
 - (i) a lump sum of an amount nominated by the person but not exceeding his or her accumulated member contributions; and
 - (ii) a preserved benefit of his or her final benefit accrual less the amount in (c)(i);
- (d) under paragraph 4.2.10(c):
 - (i) a lump sum of an amount nominated by the person but not exceeding his or her accumulated member contributions; and
 - (ii) an amount equal to his or her final benefit accrual less the amount of the lump sum in (d)(i) paid to a preservation fund of his or her choice or used to purchase a deferred annuity;

(e) under paragraph 4.2.10(d):

- (i) a lump sum of an amount nominated by the person but not exceeding his or her accumulated member contributions; and
- (ii) to convert the balance of his or her final benefit accrual to a pension.

(f) under rules 4.2.12 and 4.2.13, in the case of a person who ceases before 1 July 2000:

- (i) where his or her accumulated employer contributions are \$500 or more:
 - (A) those contributions being paid to a preservation fund of his or her choice or used to purchase or deferred annuity; and
 - (B) a lump sum of his or her final benefit accrual less the amount in (A); or
- (ii) in any other case, a lump sum of his or her final benefit accrual.

285. Rule 4.2.5 mirrors rule 4.1.4 in setting out the basis for converting a lump sum to a pension and rule 4.2.11 also uses the same basis of conversion.

286. Although members retiring involuntarily before 1 July 2000 normally will have the option of taking their final benefit accrual as a lump sum, rule 4.2.14 provides that this additional option is not available to those persons who are retired involuntarily because of a sale of an organisation, business, service or asset or transfer of function and who continue in equivalent employment with the new employer.

DIVISION 3 - INVALIDITY RETIREMENT BENEFIT

287. This Division (rules 4.3.1 to 4.3.5) provides the benefits payable to a member on invalidity retirement.

288. The benefits provided are:

- (a) if the member has reached age 60 at the time of retirement (rule 4.3.1), age retirement benefits in accordance with Division 1 of Part; or
- (b) if the member is a limited benefits member and has not reached age 60 (rule 4.3.2), a lump sum of his or her final benefit accrual; or
- (c) in all other cases (rule 4.3.5), the option of either:
 - (i) a pension at an annual rate calculated by dividing his or her final benefit accrual by 11 (rule 4.3.3); or
 - (ii) (A) a lump sum of an amount nominated by the person but not exceeding his or her accumulated member contributions; and
 - (B) a pension calculated by dividing by 11 the amount of his or her final benefit accrual less the amount in (A).

DIVISION 4 - CESSATION AS MEMBER NOT OTHERWISE ENTITLED TO BENEFIT UNDER RULES

289. This Division (rules 4.4.1 to 4.4.6) provides the benefits available to a person who ceases to be a member before minimum retiring age, is not entitled to benefits under the preceding provisions of the Part and does not elect under Part 8 for a transfer value to be payable to an eligible superannuation scheme.

290. Where the member has less than 26 contributory fortnights in his or her period of membership, including fortnights relating to previous membership that are included for this purpose, he or she has the option of:

- (a) a preserved benefit of accumulated member and accumulated employer contributions (rule 4.4.1); or
- (b) (i) where his or her accumulated employer contributions are less than \$500 (paragraph 4.4.2(a)), a lump sum of accumulated member and accumulated employer contributions; or

(ii) in any other case (paragraph 4.4.2(b)):

(A) a lump sum of accumulated member contributions; and

(B) accumulated employer contributions paid to a preservation fund or used to purchase a deferred annuity.

291. Where the member has 26 or more contributory fortnights in his or her period of membership, including fortnights relating to previous membership that are included for this purpose, he or she has the option of:

(a) under rule 4.4.3, a preserved benefit of all (where the person has at least 104 contributory fortnights), or a proportion (if less than 104 contributory fortnights), of his or her final benefit accrual; or

(b) (i) a lump sum of accumulated member contributions; and

(ii) a preserved benefit of the amount in (a) less the amount of the lump sum in (b)(i) (rule 4.4.4).

292. Rule 4.4.3 provides that a person is always entitled to his or her accumulated contributions and the accumulated employer contributions applicable to him or her. It is the entitlement to the unfunded employer benefit (ie the unfunded benefit accrual) that depends on the number of contributory fortnights, the entitlement increasing from 25 per cent after 26 contributory fortnights to 100 per cent after 104 contributory fortnights.

293. Rules 4.4.5 and 4.4.6 relate to casual employees who have ceased employment.

294. Rule 4.4.5 provides that a casual employee does not become entitled to benefits simply because he or she has ceased employment. Normally, there has to be a period of a year during which the employee has not contributed before the Board of Trustees can pay benefits. However, an employee can receive a benefit before the year is completed if he or she can certify to the Board that he or she will not be resuming employment with the Commonwealth or an approved authority for at least a year and the Board accepts that certification.

295. Rule 4.4.6 provides that a casual employee who has not contributed for at least a year will be deemed to have ceased membership from the day he or she was last employed.

DIVISION 5 - PARTIAL INVALIDITY PENSION

296. This Division (rules 4.5.1 to 4.5.18) provides a partial invalidity pension for persons who suffer a permanent reduction in salary because of a physical or mental incapacity.

297. Rule 4.5.1 provides that a partial invalidity pension is payable where an invalidity pensioner returns to work and suffers a permanent reduction in salary compared to the employment he or she was undertaking at the time of invalidity retirement and that reduction is caused by a physical or mental incapacity. In calculating the salary for the employment previously undertaken, only the allowances, etc recognised at the date of invalidity retirement are taken into account and the person is assumed to remain on the increment point he or she was on at the date of invalidity.

298. Rule 4.5.2 provides that, where an invalidity pensioner returns to work under different terms and conditions and does not suffer a permanent reduction in salary caused by a physical or mental incapacity but would have if he or she had resumed on the previous terms and conditions of work, the Board of Trustees can decide that a partial invalidity pension is to be payable.

299. Rule 4.5.3, which is similar to rule 4.5.1, caters for the case where a member (rather than a returning invalidity pensioner) suffers a reduction in salary without being invalidated out. A person who is a limited benefits member and who suffers a reduction in salary caused by a physical or mental incapacity is not entitled to a partial invalidity pension.

300. Rule 4.5.4 mirrors rule 4.5.2 for the case of a member rather than an invalidity pensioner.

301. Rule 4.5.5 provides that a partial invalidity pension is not payable for a reduction in salary that is caused by a compensable condition.

302. Rule 4.5.6 provides that where a person has failed to disclose a medical or other condition and the Board of Trustees is satisfied that if it had known of that condition, the member could have been treated as limited benefits member, no partial invalidity pension is payable in respect of any reduction occurring within three years of a person's first day of membership.

303. Rule 4.5.7 provides the basis for calculation of the amount of the partial invalidity pension where the entitlement to the pension arises under rules 4.5.1 or 4.5.3.

304. The amount of the pension is calculated by multiplying together:

- (a) the difference in the annual rates of superannuation salary; and
- (b) the proportion that is the ratio that the invalidity pension that would have been payable if the person had retired on invalidity grounds bears to the person's average salary at the date of invalidity.

305. **Rule 4.5.8** provides for the basis of calculating the difference in annual rates of superannuation salary. In calculating the salary for the position previously occupied, only the allowances, etc recognised at the date of invalidity or reduction in salary are taken into account and the person is assumed to remain on the increment point he or she was on at the date of invalidity.

306. **Rule 4.5.9** provides for payments of invalidity pension to be made on contribution days and for the Board to make arrangements with employers to make such payments.

307. **Rule 4.5.10** provides for the Board of Trustees to determine the amount of partial invalidity pension where there is another reduction in salary for a physical or mental condition.

308. **Rule 4.5.11** provides for partial invalidity pensions to be adjusted at such times as the Board determines.

309. **Rule 4.5.12** provides that the Board may suspend payment when a person takes a period of leave without pay (other than a period of sick leave without pay). It could be anomalous for the partial invalidity pension (from a reduction in salary) to be payable when the member has voluntarily elected to receive no salary.

310. **Rule 4.5.13** provides for the partial invalidity pension to be suspended if the person does not commence or continue a program of rehabilitation required by the Board or did not provide such medical evidence as required by the Board.

311. **Rule 4.5.14** provides for an extension of time for a person to comply with the requirements of rule 4.5.13.

312. **Rule 4.5.15** provides for the resumption of the invalidity pension where the Board is satisfied that the person will comply with all future requirements.

313. **Rule 4.5.16** provides for a partial invalidity pension to be cancelled when the salary of the person exceeds the former level or the person ceases to be a member.

314. Rule 4.5.17 provides for partial invalidity pensions payable under the Superannuation Act 1976 to be partial invalidity pensions and Board is to have regard to the basis under which the partial invalidity pensions were calculated under that Act in adjusting the amount of partial invalidity pension or recalculating the amount after a subsequent reduction in salary because of a medical condition.

315. Rule 4.5.18 provides that the Board of Trustees can determine the amount of partial invalidity pension where the entitlement to that pension arises under rules 4.5.2 or 4.5.4.

DIVISION 6 - REFUND OF EXCESS CONTRIBUTIONS

316. This Division (rules 4.6.1 to 4.6.7) provides for the treatment of contributions that are in excess of the contributions allowed under the "10 year 5 per cent contribution limit" in paragraph 1.3.4(b). Excess contributions result in a person being entitled to an excess contribution multiple under rule 1.3.38.

317. Rule 4.6.1 provides for the excess contribution multiple to be included in the benefit factor of a person who has elected for a transfer value under rule 8.2.9.

318. Rules 4.6.2 and 4.6.3 provide for the excess contribution multiple to be included in a person's benefit factor, when the person is terminating his or her employment other than by resignation and the inclusion of the multiple would not result in excessive benefits. Where part of the excess contribution multiple can be included, that part is to be included.

319. Rule 4.6.4 provides that the excess contribution multiple is not to be included in a person's benefit factor if the person is a maximum benefits member or if the person has resigned from his or her employment. In these cases, benefits for excess contributions are to be provided under rule 4.6.5.

320. Rule 4.6.5 provides that where the whole or part of the excess contribution multiple is not included in a person's benefit factor, there is payable a lump sum benefit obtained by multiplying the person's average salary by the whole or appropriate part of the excess contribution multiple.

321. Rule 4.6.6 provides that where a payment is made under rule 4.6.5, the amount of the accumulated member contributions otherwise applicable to the person is to be reduced accordingly.

322. Rule 4.6.7 provides that where benefits under rule 4.6.5 are payable on the death of a member, the Board may pay them to any of the persons to whom it would pay the other benefits payable on death.

PART 5 - SPOUSES' AND CHILDREN'S BENEFITS

DIVISION 1 - DEATH OF A PENSIONER

323. This Division (rules 5.1.1 to 5.1.6) provides for pensions to be paid to certain dependants of a former member who was receiving a pension under the Rules when he or she died.

324. Rule 5.1.1 provides for a reversionary pension to be payable where the deceased pensioner is survived by;

- (a) a spouse; and/or
- (b) eligible children; and/or
- (c) partially dependent children.

325. Rule 5.1.2 sets out the basis of calculation of the amount of the reversionary pension on the death of a pensioner.

326. Paragraph 5.1.2(a) gives the calculation of benefits when the deceased pensioner is survived by a spouse. A surviving spouse is entitled to a pension equal to 67 per cent of the deceased pensioner's pension with this amount being increased by 11 per cent for each eligible child, up to a maximum of 100 per cent of the pension previously payable.

327. Paragraph 5.1.2(b) sets out the calculation of benefits when the deceased pensioner is not survived by a spouse but is survived by eligible children or partially dependent children. The amount of the reversionary pension payable increases with the number of such children up to a maximum of 100 per cent of the deceased pensioner's pension.

328. The rule operates, in respect of partially dependent children, to include the lesser of the additional pension payable if each partially dependent child were treated as an eligible child and the amount of maintenance being paid in respect of that partially dependent child by the deceased pensioner.

329. Rules 5.1.3 to 5.1.5 provide for the payment of the amount of the reversionary pension in circumstances where the persons surviving the deceased person and eligible to receive benefits are confined to one family unit ordinarily living together.

330. Rule 5.1.6 provides for the Board of Trustees to apportion the amount of reversionary pension calculated in rule 5.1.2 between dependants of the deceased pensioner where they come from more than one family unit or where an eligible child of a surviving spouse does not ordinarily live with that surviving spouse or partially dependent children are not ordinarily living together.

331. The rule also provides for some restrictions on the Board of Trustees' apportionment of the benefit, so that a dependant cannot receive more than he or she would have got if he or she had been the only dependant.

DIVISION 2 - DEATH OF A MEMBER

332. Division 2 (rules 5.2.1 to 5.2.9) specifies the benefits payable where a pension dies while still a member.

333. Rules 5.2.1 to 5.2.3 set out the applicability of, and the basis of calculation of, the amount of the reversionary pension, and the persons to whom it may be paid.

334. For other than limited benefits members, the pensions payable on the death of a member are the pensions that would have been payable if the deceased member had retired as an invalid on the date of his or her death and then died as a pensioner (or as an age pensioner if over age 60) (rule 5.2.2).

335. Rule 5.2.3 provides that a pension benefit is payable. A lump sum benefit may be payable in some cases, but the benefits payable to, or in respect of, children who are not effectively under the care of a person who meets the definition of a spouse of the deceased member are to be paid as pensions.

336. Rule 5.2.4 provides a spouse of a deceased member who is entitled to a pension with the option to take his or her benefit in an alternative form.

337. Rule 5.2.5 sets out the options available to the spouse of a deceased member who does not want to take the whole of his or her entitlement as a pension. If a pension is to be taken, at least half of the benefit must be taken as a lump sum. The rule also sets out the basis for calculation of the amounts of any lump sums that may be payable to such a spouse.

338. The basis of calculation of any lump sum payable to a spouse or spouses means that the full value of the deceased member's benefit accrual is payable either as pensions and/or as lump sums to the spouse or spouses.

339. Rules 5.2.6 and 5.2.7 provide that, where there is no surviving spouse of a deceased member, the full value of the deceased member's benefit accrual is payable as pensions (if any) to children and a lump sum to the deceased member's personal representatives.

340. Rule 5.2.8 enables the Board of Trustees, at its discretion, to pay any lump sum under rule 5.2.6 or 5.2.7 directly to a dependant or dependants of the deceased member where the dependant or dependants have been nominated to the Board by the deceased member as a person or persons whom he or she has recognised in his or her will. The Board of Trustees can make the payment to such dependants, even though the provision in the will does not specifically refer to the deceased member's superannuation entitlements.

341. Rule 5.2.9 provides that, where the deceased member was a limited benefits member at the time of his or her death, the benefit payable is a lump sum of the deceased member's benefit accrual. The benefit is to be paid to the same person or persons that would have received benefits if the deceased member had died as a retirement pensioner.

DIVISION 3 - OTHER PROVISIONS

342. Rule 5.3.1 provides that where a pensioner dies and is survived by a spouse or spouse and associated children, 100 per cent of the pension that would have been payable to the pensioner if he or she had not died will be payable for a period of six full fortnights after the pensioner's death, before reducing to any lower entitlement under Division 1 of this Part. The rule also provides that the Trustees may offset payments made to a pensioner's bank, credit union or building society account and paid to the surviving spouse may be offset against the reversionary pension payable to that spouse during the period of six fortnights after the pensioner's death.

343. Rules 5.3.2 to 5.3.6 provide for pensions payable to dependants of a deceased retirement pensioner or member to be reduced as the dependants cease to meet the definitions that entitle them to benefits. The reductions follow the basis for calculation of the amount of reversionary pension, which had regard to the number of dependants eligible for benefits.

344. Rule 5.3.7 enables the Board of Trustees to adjust the amount of reversionary pension payable when further persons are found to be eligible, or become eligible, for benefits.

345. Rule 5.3.8 enables the Board of Trustees to vary the allocation of the amount of reversionary pension in special circumstances.

346. Rules 5.3.9 and 5.3.10 provide a minimum level of benefit to be payable in aggregate, after having regard to payments already made. Where payments already made do not aggregate this minimum amount, a further payment is to be made.

347. Rule 5.3.9 provides that the aggregate of payments made to, or in respect of, a pensioner (other than an invalidity pensioner) is to be the sum of the accumulated member contributions and accumulated employer contributions.

348. Rule 5.3.10 provides that the aggregate of payments made to, or in respect of, an invalidity pensioner is to be the amount of the benefit accrual of the member at the date of invalidity, excluding those parts of the benefit relating to future service or additional death and invalidity cover. This provision means that the payments to, or in respect of, a person who is retired on invalidity grounds and forced to take a pension are at least equal to the payment that would have been made if he or she had resigned and taken a deferred benefit which had become payable immediately.

PART 6 - PRESERVED BENEFITS

DIVISION 1 - GENERAL

349. This Division (rules 6.1.1 to 6.1.15) provides for the circumstances in which preserved benefits that are applicable in accordance with earlier provisions become payable and for the calculation of the amount of the benefits in such circumstances.

350. Under rule 6.1.1, a preserved benefit applicable to a person under the Rules will be payable on the earliest of the following dates:

- (a) the date the person reaches age 65;
- (b) the date selected by the person, being a date not earlier than:
 - (i) the date on which the Trustees are notified by the person; and
 - (ii) the date that would have been the person's minimum retiring age if he or she had continued to be a member; and
 - (ii) if the preserved benefit is to be paid at least in part as a lump sum, the date on which the person attains the qualifying age (the age at which lump sum benefits become payable under the phased-in access to lump sum benefits) for the financial year in which that date occurs;
- (c) the date the Board of Trustees decides that the person has become unlikely to work again in an appropriate job;
- (d) the date of the person's death;
- (e) the date the Board of Trustees is satisfied the person will leave Australia permanently; and
- (f) a date relevant to any other circumstances approved by the Insurance and Superannuation Commissioner.

351. Rule 6.1.2 sets out the amount of the preserved benefit.

352. Where a former member has applicable to him or her a preserved benefit including part or the whole of his or her accumulated member contributions, he or she may at any time elect to receive payment of those contributions, in which case a new preserved benefit equivalent to the original preserved benefit less the amount of the payment received will become applicable (rules 6.1.3 and 6.1.4).

353. Rule 6.1.5 provides that a person to whom preserved benefit becomes payable may be paid the benefit as a lump sum.

354. Rules 6.1.6 and 6.1.7 provide that where a person's preserved benefit contains the updated value of the maximum amount of the accumulated member contributions that he or she was permitted to preserve, the person may elect to:

- (a) convert an amount of the lump sum preserved benefit specified in the election (this amount is subject to minima specified in rule 6.1.7) to an annual pension; and
- (b) receive a lump sum benefit of the remainder of the preserved benefit.

355. Rule 6.1.8 sets out the basis for the calculation of the amount of pension applicable when a person elects to convert at least half of his or her preserved benefit to a pension.

356. Rule 6.1.9 provides that the benefit payable on the death of a former member to whom a preserved benefit is applicable is a lump sum equal to the amount of the preserved benefit.

357. Under rules 6.1.10 and 6.1.11, the lump sum payable under rule 6.1.9 will be payable to a spouse, eligible child or partially dependent child of the former member who would have been entitled to a benefit under Division 1 of Part 5 of the Rules if the person had died as a retirement pensioner or may be apportioned by the Board of Trustees between 2 or more such persons. Where there is no spouse, eligible child or partially dependent child, the Board of Trustees may apportion the lump sum between a person or persons previously nominated by the deceased former member and the deceased person's personal representatives.

358. Rules 6.1.12 to 6.1.14 provide that where:

- (a) a person to whom a preserved benefit is applicable dies; and
- (b) the preserved benefit includes the whole of the accumulated member contributions when the person last ceased to be a member,

the surviving spouse (if any) has an option of converting the whole or part (being at least half) of that lump sum to a pension.

359. Rule 6.1.14 sets out the basis for calculation of the pension payable. In effect, the rule operates as if the person to whom the preserved benefit was applicable had exercised the option to take the pension (on the same basis as the spouse) and then died. The reversionary pension payable under those circumstances is the amount of pension option available to the surviving spouse.

360. Rule 6.1.15 provides that a preserved benefit ceases to be applicable to a person on the preserved benefit becoming payable or upon the person again becoming a member.

DIVISION 2 - TRANSITIONAL PROVISIONS

361. This Division (rules 6.2.1 to 6.2.7) makes special provisions in relation to preserved benefits applicable or payable to a person who ceases to be a member in the period ending on 30 June 1996 on or after his or her minimum retiring age but before reaching the qualifying age for the financial year during which he or she so ceased.

362. Where the preserved benefit applicable to such a person includes accumulated employer contributions the person may elect at any time to receive payment of the sum of those contributions and the person's accumulated member contributions (if any), in which case a new preserved benefit equivalent to the original preserved benefit less the amount of the payment received will become applicable (rules 6.2.1 and 6.2.2).

363. Under rule 6.2.3, where the preserved benefit applicable to a person provided for in this Division becomes payable because the person has reached age 65 or a selected date on or after the date which would have been his or her minimum retiring age had he or she remained a member, the person is entitled to:

- (a) convert part of the amount of the preserved benefit applicable to him or her (being an amount not less than the amount of the unfunded preserved benefit) to a pension; and
- b) a lump benefit of the amount of the preserved benefit less the amount converted to a pension.

364. Rule 6.2.4 specifies the basis for calculating the amount of the pension referred to in rule 6.2.3.

365. Rules 6.2.5 to 6.2.7 provide an option for a surviving spouse (on the death of a person to whom there was applicable a preserved benefit to which this Division applies) to take a pension benefit rather than a lump sum.

366. Rule 6.2.5 specifies when the option is applicable.

367. Under rule 6.2.6, where the preserved benefit applicable to a person provided for in this Division becomes payable because the person has died, a surviving spouse to whom the preserved benefit would be payable is entitled to:

- (a) convert part of the amount of the preserved benefit payable to him or her (being an amount not less than the amount of the unfunded preserved benefit) to a pension; and
- (b) a lump benefit of the amount of the preserved benefit payable to him or her less the amount converted to a pension.

368. Rule 6.2.7 specifies the basis for calculating the amount of the pension.

DIVISION 3 - OTHER PROVISIONS

369. Where a person to whom a preserved benefit was applicable has elected to take a pension and the person dies and no further reversionary pensions are payable, rule 6.3.1 provides that a residual payment may be made to the person's estate pensioner's estate or to other persons. The payment would only be made if the total of the payments to, or in respect of, the person is less the sum of the accumulated member contributions and accumulated employer contributions included in the preserved benefit. The amount of the payment would be the difference in the two aggregates.

PART 7 - PENSION AND UNFUNDED PRESERVED BENEFIT
INCREASES

370. It is intended that pensions payable under the Rules and preserved benefits that are applicable to former members be updated annually. The annual amount of a pension and the unfunded preserved benefit (as defined in rule 1.1.1) will, under Part 7, be increased in July each year in line with the percentage increase in the all groups consumer price index (CPI) number for the weighted average of the 8 capital cities during the 12 months ending on the previous 31 March. Where the preserved benefit includes accumulated member or accumulated funded employer contributions, these will have remained in Superannuation Fund No 1 and will have continued to earn interest.

371. Rule 7.1.1 defines terms used in Part 7 including the term "prescribed year" which means the year commencing on 1 July 1991 or a subsequent year.

372. Rule 7.1.2 provides that only the Consumer Price Index (CPI) figures first published by the Australian Statistician for a March quarter will be used for the purposes of Part 7.

373. Rule 7.1.3 provides that where a new reference base is adopted by the Australian Statistician for the CPI, regard will be had only to CPI figures in the terms of that new reference base in subsequent applications of Part 7.

374. Rule 7.1.4 provides that, where the prescribed percentage calculated in accordance with rule 7.1.6 is, or includes, a fraction of one-tenth of one percent, it shall be treated as one-tenth where it is equal to or greater than one-half of one-tenth and shall otherwise be disregarded.

375. Rule 7.1.5 provides that an increase may be applied to a pension payable to a person under the Rules immediately before the commencement of a prescribed year and an unfunded preserved benefit in relation to a person to whom a preserved benefit is applicable at that time. An increase will be applied where the all groups CPI number for the weighted average of the 8 capital cities published in respect of the March quarter of the year immediately preceding the prescribed year exceeds that CPI number for the March quarter in any earlier year not earlier than the year that commenced on 1 July 1989.

376. Rule 7.1.6 provides that the increase to be applied in accordance with rule 7.1.5 will be the percentage increase in the CPI between the two March quarters referred to in that rule.

377. Rule 7.1.7 ensures that a reversionary pension that becomes payable at the commencement of a prescribed year following the death of a retirement pensioner on 30 June may be increased as if it had become payable on 30 June.

378. Rule 7.1.8 enables the Board of Trustees to determine that a proportion only of the increase provided for in rule 7.1.5 be applied to a pension that becomes payable, or the unfunded preserved benefit that becomes applicable, during the year preceding the year of the increase.

379. Rule 7.1.9 enables the Board of Trustees to further increase the unfunded preserved benefit applicable to a person where the preserved benefit becomes payable to a person or is converted to a pension during the year of an increase.

380. Rule 7.1.10 provides that an increase in a pension is payable on the first pension payday after the commencement of the year of the increase and each subsequent pension payday.

381. Rule 7.1.11 provides that an increase in an unfunded preserved benefit applies from 1 July in the year of the increase or, in the case of an increase under rule 7.1.9, from the date the preserved benefit becomes payable.

382. Rule 7.1.12 provides that the accumulated unfunded employer contributions included in a preserved benefit are increased with interest at rates determined by the Board.

PART 8 - TRANSFER VALUES

DIVISION 1 - INWARDS TRANSFER VALUES

383. This Division (rules 8.1.1 to 8.1.4) makes provision in relation to transfer values received by the Board of Trustees.

384. In accordance with rule 8.1.1 a transfer value in respect of a member is:

- (a) an eligible termination payment other than a payment under the Superannuation Act 1976; or
- (b) a payment from a superannuation scheme applicable to previous employment payable on the termination of that employment on grounds other than invalidity retirement; or
- (c) a payment under the Superannuation Act 1976 in relation to a person who was a member of the current Commonwealth Superannuation Scheme immediately before becoming a member.

385. The Board of Trustees shall accept the payment of a transfer value where it is received within 3 months, or such longer period as the Board allows, of the person becoming a member, returning from leave without pay, or in the case of an eligible employee under the Superannuation Act 1976 electing to become a member, the later of 30 June 1991 or the person's first day of membership (rule 8.1.2).

386. A transfer value accepted by the Board of Trustees is to be paid to the Fund and the member shall have applicable to him or her a transfer multiple or a CSS transfer multiple, as appropriate (rules 8.1.3 and 8.1.4).

DIVISION 2 - OUTWARDS TRANSFER VALUES

387. This Division (rules 8.2.1 to 8.2.20) makes provision in relation to transfer values payable in respect of persons who cease to be members.

388. In accordance with rule 8.2.9, a person who ceases to be a member otherwise than by reason of death, age or invalidity retirement or involuntary retirement after minimum retiring age may elect within 21 days after so ceasing to be a member that this Division apply to him or her.

389. Under rules 8.2.12 and 8.2.13, where a member who has so elected under rule 8.2.9 becomes a member of an eligible superannuation scheme, the Board of Trustees is to pay a transfer value to the administrators of that scheme provided the administrators agree to accept the payment.

390. Where a person to whom a preserved benefit which includes the person's accumulated member contributions is applicable and has never been payable is or becomes a member of an eligible superannuation scheme, the person may elect that, instead of the preserved benefit remaining applicable, a transfer value be payable to that scheme (rules 8.2.14 and 8.2.16). Where a person so elects the Board is to pay a transfer value to the administrators of that scheme, provided the administrators agree to accept the payment, and the preserved benefit shall cease to be applicable (rules 8.2.15, 8.2.17 and 8.2.18).

391. In accordance with rules 8.2.5 and 8.2.6, an eligible scheme is a superannuation scheme applicable to persons employed in public employment and which is declared by the Board of Trustees, in accordance with any principles advised by the Minister for Finance, to be such a scheme.

392. In accordance with any principles advised by the Minister for Finance, the Board of Trustees may also declare employment, including certain specified employment by the Government of the United Kingdom of Great Britain and Northern Ireland, to be public employment for the purposes of the Division (rules 8.2.1 to 8.2.4).

393. Under rule 8.2.7, the amount of a transfer value payable under the Division is:

- (a) in the case where the election is made at the time of ceasing to be a member - the amount of the person's final benefit accrual; or
- (b) where the election is made by a person to whom a preserved benefit is applicable -
 - (i) if the preserved benefit relates to a period of membership which included at least 104 contributory fortnights - the amount of the preserved benefit applicable immediately before the payment of the transfer value; or
 - (ii) if the preserved benefit relates to a period of membership which included less than 104 contributory fortnights - the amount of preserved benefit that would have been so applicable to the person if it had related to a period of membership which included at least 104 contribution due days.

394. Rule 8.2.8 provides that, in the calculation of a transfer value in respect of a person whose contributions were deferred because he or she was liable to contribute under the Defence Force Retirement and Death Benefits Scheme and who is still an eligible member under that scheme, or in relation to whom a transfer value is payable from that scheme, the period during which that liability was deferred shall be disregarded and the person shall not be required or permitted to pay those contributions.

395. Rule 8.2.19 provides that where a person makes an election for a transfer value and the transfer value is not payable, the Rules operate as if the election had not been made.

396. Rule 8.2.20 is a provision designed to stop a run on the assets of the Superannuation Fund (and claims on the Consolidated Revenue Fund) when an authority sets up a separate superannuation scheme for its staff and permits its Superannuation Scheme members to transfer to that new scheme. Should that new scheme be declared an eligible scheme, the former members of the Superannuation Scheme could be entitled to request transfer values.

397. The rule operates to enable the Board to make it a condition of declaring the new scheme to be an eligible scheme that transfer values would not be payable. The rule enables the Board of Trustees to make such arrangements for the transfer of assets as are approved by the Minister for Finance.

PART 9 - MISCELLANEOUS PROVISIONS

DIVISION 1 - GENERAL PROVISIONS IN RELATION TO
ELECTIONS AND BENEFITS

398. Rules 9.1.1 to 9.1.5 relate to elections under the Rules.

399. Rule 9.1.1 enables a person who is entitled to make an election under Part 4 in relation to the benefits payable under that Division to make the election up to 3 months before, or up to 3 months after, becoming so entitled.

400. Rule 9.1.2 provides that the Board may recognise an election made after the period in rule 9.1.1 has expired where it considers it appropriate. Rule 9.1.3 provides that the Board may allow another person to make an election on behalf of a person who is unable to do so because of a physical or mental incapacity.

401. Rule 9.1.4 enables an election under Part 4, 5, 6 or 8 to be cancelled at the person's request where the Board considers it appropriate. Where an election is cancelled, the Rules have effect as if the election had not been made.

402. Rule 9.1.5 provides that, where a person who is entitled to make an election under Part 4, 5, 6 or 8 dies before making the election, the spouse or, where there is no spouse but there is an eligible child or children, such person as the Board permits, may make the election.

403. Under rule 9.1.6, the Board may pay whole or part of the amount of a benefit payment to a person other than the person entitled in certain circumstances.

404. Rule 9.1.7 provides for pensions to be paid in fortnightly instalments with such instalments being one twenty-sixth of the annual rate of the pension.

405. Rule 9.1.8 make special provision in relation to members who are also members of the Defence Force Retirement and Death Benefits Scheme to ensure that such persons do not receive benefits under both schemes in relation to the same period of service.

406. Rule 9.1.9 enables the Board to withhold whole or part of a benefit from a person who does not provide information required by the Board in relation the person's entitlement to the benefit.

407. Rule 9.1.10 allows the Board to determine the amount of the components of the benefit factor (multiples), the salary for benefit purposes, the salary for contribution purposes, the amount of partial invalidity pension payable, the amount of pre-assessment payments payable and the amount of benefits to be paid to persons that the Board of Trustees decide should receive a benefit. The rule also permits the Board to permit a member to contribute below the usual minimum of 2 per cent of salary or to contribute above the usual maxima and receive an appropriate employer benefit in such circumstances.

408. However, this discretion by the Trustees can only be exercised where the Board considers that the Rules produce a result not in the spirit of the Rules and the circumstances of the case are unusual or exceptional. Moreover, in exercising its discretion, the Board is required to have regard to the principles underlying the Rules.

409. In accordance with rule 9.1.11 an invalidity pension is to be cancelled where the recipient again becomes a member.

410. Rule 9.1.12 gives the Board of Trustees discretion to decide the composition of any part payments of benefits to a person. The tax treatment of benefits attributable to member contributions, funded benefits and unfunded benefits is complex and it may be in members' interests to have benefits paid from specific parts of the benefits. The rule enables the Board to make determinations as to the composition of benefits, whether in a specific case or more generally, and to be able to revoke, vary or confirm such determinations, subject only to any requirements of the Income Tax Assessment Act 1936 and the over-riding requirement to comply with the Occupational Superannuation Standards.

411. Rule 9.1.13 makes it clear that the Board of Trustees has the power to determine the administrative detail of the administration of the Rules.

DIVISION 2 - CERTAIN PERSONS RE-APPOINTED OR RE-EMPLOYED

412. Under rule 9.2.1, where a person is re-appointed or re-employed in certain circumstances, he or she is to be deemed for the purposes of the Rules to have been on leave without pay during the period from the earlier termination of employment to the re-appointment or re-employment. An example is where a person's employment is terminated because of a conviction, the conviction is later quashed and, as a consequence, the person is reinstated in his or her employment. In accordance with rule 9.2.2, any benefit paid to the person on the termination of his or her employment is to be repaid to the Board.

DIVISION 3 - CANDIDATES AT PARLIAMENTARY ELECTIONS

413. Rules 9.3.1 to 9.3.5 contain provisions in relation persons who resign to contest an election for a Commonwealth, State or Territorial legislature and who, if unsuccessful, could be expected to return to their employment. The provisions give protection in the event of invalidity or death in a number of circumstances.

DIVISION 4 - REDUCTION OF INVALIDITY PENSIONS BECAUSE OF EARNINGS

414. This Division (rules 9.4.1 to 9.4.13) provides for the reduction of an invalidity pension in certain cases where the pensioner is in receipt of personal earnings and for the suspension and cancellation of invalidity pension in certain circumstances.

415. Under rule 9.4.3 the Board of Trustees may require a pensioner to provide it with information on any employment undertaken by the pensioner or particulars of the person's personal earnings. Under rules 9.4.11 and 9.4.12, where a pensioner fails to provide such information without reasonable excuse the Board may suspend the pension until the person complies with the Board's requirement. Under rule 9.4.13, the Board may cancel any pension which remains suspended for 12 months provided the pensioner has not reached age 65.

416. Rule 9.4.9 provides that, where a pensioner is in receipt of personal earnings, he or she shall provide the Board of Trustees with an estimate of the amount of earnings expected to be received in the next 12 months. Rule 9.4.10 allows that estimate to be revised at any time. From this information the Board, in accordance with rule 9.4.4, is to estimate the annual rate of the personal earnings of the pensioner. Rule 9.4.1 provides that "personal earnings" means salary, wages, fees or other amounts received by the pensioner for services rendered, or work performed by the pensioner and includes remuneration as a director of a company and commission for canvassing, collecting or similar activities.

417. Rule 9.4.5 provides that, where the aggregate of the relevant pension rate of the pensioner and the annual rate of the pensioner's personal earnings exceeds the relevant maximum rate for the pensioner:

- (a) where the lesser of the amount of the excess or the annual rate of the pensioner's personal earnings is less than the amount of the annual rate of his or her pension, the pension is to be reduced by the lesser of the amount of the excess or the amount of the annual amount of personal earnings; and

- (b) where the lesser of the amount of the excess or the annual rate of the pensioner's personal earnings is equal to or greater than the annual rate of his or her pension, the pension is to be suspended.

418. In accordance with rule 9.4.1, "relevant pension rate" means the annual rate of the invalidity pension payable to the person, or the amount that would have been payable if the person had not made an election to receive an invalidity benefit partly in the form of pension and partly in the form of a lump sum. The "relevant maximum rate" for the pensioner means whichever is the greater of:

- (a) the "prescribed maximum rate"; or
- (b) 75 per cent of the amount per annum that the Board of Trustees determines would have been the annual rate of salary of the pensioner if the pensioner had not ceased to be a member and had continued to occupy the position held before ceasing. In making the determination, the Board is to have regard to any changes in rates of remuneration since the pensioner ceased to be a contributor and to any other matters that the Board considers relevant.

419. "Prescribed maximum rate" for the purposes of paragraph (a) of the definition of "relevant maximum rate" means the amount of \$23,597 per annum increased by the percentage increase in the all groups Consumer Price Index for the 8 capital cities (rules 9.4.1 and 9.4.2).

420. This Division is modelled on section 73A of the Superannuation Act 1976. The amount of \$23,597 is the relevant maximum rate applying under that provision at this time. This figure has derived from the amount of \$19,200 which represented approximately 85 per cent of the annual amount of the May 1986 full-time adults average weekly total earnings updated since that time by movements in the Consumer Price Index.

421. Rule 9.4.6 provides that, where, as a result of a calculation made by the Board under rule 9.4.5, a person's pension should have been reduced or suspended in accordance with that rule from an earlier date, the Board would not recover from the person the overpayments of pension.

422. Rule 9.4.7 empowers the Board to pay arrears of pension to a person where the person's pension has been reduced or suspended under rule 9.4.5 and, as a result of a subsequent calculation by the Board under that rule, the pension should have been reinstated in whole or in part from an earlier date.

423. Rule 9.4.10 would ensure that, for the purposes of the application at any time of the pension increase provisions of Part 7 of the Rules or of the reversionary benefits provisions of Part 5 of the Rules, in relation to an invalidity pensioner whose pension has been reduced or suspended under rule 9.4.5, the pension will be taken to have been payable at that time at the rate at which it would have been payable if not reduced or suspended.

DIVISION 5 - NON-DISCLOSURE OF INFORMATION
IN CONNECTION WITH MEDICAL EXAMINATION

424. This Division comprises rules 9.5.1 and 9.5.2 and makes provision in relation to certain persons who fail to disclose information at, or in connection with, the medical examination that he or she was required to undergo for the purposes of the Rules.

425. In accordance with rule 9.5.1, these provisions apply to:

- (a) a member who has not reached age 60, is not a limited benefits member and whose period of membership is less than 3 years; and
- (b) a person who has ceased to be a member before reaching age 60 on invalidity ground after less than 3 years of membership and who was not a limited benefits member.

426. Rule 9.5.2 provides that, where the Board of Trustees are of the opinion that the person failed to give information or gave false or misleading information and would, if he or she had not done so, have been a limited benefits member, the Rules shall apply as if he or she were, or had been, a limited benefits member. Any benefit entitlement of or in respect of the person is to be adjusted accordingly and excess payments recovered.

PART 10 - ADDITIONAL DEATH AND INVALIDITY COVER

427. The Rules include an option for members to take additional death and invalidity cover. This additional cover is effectively private insurance, but it will attract an employer subsidy and will be arranged through the Board of Trustees. Part 10 relates to the provision of the additional cover.

428. Rules 10.1.1 to 10.1.3 provide for the Board of Trustees to effect policies to provide the additional death and invalidity cover for which members of the Scheme may elect.

429. Rules 10.1.4 to 10.1.9 set out the basis under which members may elect for the additional cover and the restrictions on the amount of cover that might be taken.

430. Rule 10.1.10 provides for the additional death and invalidity cover to be provided after the consideration by the life office of such medical evidence as may be required.

431. Rule 10.1.11 provides for any additional premium required because of a member's state of health or participation in any hazardous occupation or pursuit to be identified.

432. Rules 10.1.12 and 10.1.13 provide for the Board of Trustees to claim on the policy in appropriate circumstances and pay any amounts received from the life office into the Fund. (The person then has an additional cover multiple applicable to him or her in accordance with rule 1.3.19.)

PART 11 - REVIEW OF DECISIONS

433. The Administrative Appeals Tribunal Act 1975 is not to apply in relation to decisions under the Rules, because the Board of Trustees will be making decisions on the merits of the case and to have the Board subject to external review could result in the Board having to breach its trustee responsibilities and/or the Scheme not complying with the Occupational Superannuation Standards Act 1987 which requires the Board to control the Scheme. There is, however, to be an internal review mechanism which is provided under this Part.

DIVISION 1 - PRELIMINARY

434. This Division (rule 11.1.1) defines terms used in Part 11. The definition of "decision" is modelled on the definition of that term used in the Administrative Appeals Tribunal Act 1975.

DIVISION 2 - RECONSIDERATION ADVISORY COMMITTEES

435. This Division (rules 11.2.1 to 11.2.4) provides for the Board of Trustees to establish a Reconsideration Advisory Committee or Committees comprising such persons as the Board determines. The Board may refer to a Committee any request received in accordance with Division 3 or 4 for reconsideration of a decision of a delegate of the Board or of the Board itself and the Committee shall make recommendations to the Board on the reconsideration of such decisions.

DIVISION 3 - REVIEW OF DECISIONS MADE BY DELEGATES

436. This Division (rules 11.3.1 to 11.3.5) provides that a person affected by a decision of a delegate of the Board may apply to the Board of Trustees for reconsideration of that decision.

437. The Board may affirm, vary or set aside the decision or substitute another decision for that decision but in any case shall advise the person concerned of the results of, and reasons for, its decision.

DIVISION 4 - REVIEW OF DECISIONS MADE BY THE BOARD

438. This Division (Rules 11.4.1 to 11.4.8) provides that the Board of Trustees shall, on the request of a person affected by a decision of the Board and subject to the payment of any fee provided for in regulations under the Superannuation Act 1990, reconsider that decision.

439. A request for reconsideration must specify the grounds for the request and the Board may decide not to proceed with the reconsideration if no new evidence is provided. Where the Board decides not to proceed with a reconsideration, the fee paid for that reconsideration may be refunded to the person.

440. The Board may confirm, vary or set aside its original decision or substitute another decision for that decision and shall advise the person concerned of the results of and reasons for its decision. It is intended that, where a decision is varied, substituted or set aside to the person's advantage (ie the original decision disadvantaged the person unfairly), the amount of the fee would be refunded to the person.

DIVISION 5 - RECONSIDERATION OF DECISIONS ON THE BOARD'S OWN MOTION

441. This Division (rule 11.5.1) empowers the Board of Trustees, on its own motion, to reconsider, vary or set aside a decision or substitute a new decision for any decision of the Board or a delegate of the Board without the person concerned seeking such action.

PART 12 - INVALIDITY RETIREMENT PROCESS

DIVISION 1 - MEDICAL ASSESSMENT

442. Division 1 of Part 12 deals with the administration of invalidity retirement which is to be in line with private sector practice. Employers are not permitted to retire persons as invalids unless they have the Board of Trustees' certification that invalidity retirement benefits would be payable. Private sector expertise will be used to assist the Board.

443. Rules 12.1.1 to 12.1.6 provide for the creation of an assessment panel or panels to assist the Board in deciding whether a person is a total and permanent invalid and whether it will issue a certificate that invalidity retirement benefits would be payable in the event that the person was retired on invalidity grounds.

444. Rules 12.1.7 to 12.1.9 set out the procedure to be followed by the Board of Trustees before the Board can issue the certificate, that invalidity retirement benefits would be payable that is required before a person can be retired as an invalid.

445. The rules provide for the decision to issue the certificate to be made by the Board after receiving the recommendation of the assessment panel, but rule 12.1.9 enables the Board to take decisions without the advice of the panel where it is beyond reasonable doubt that the person is a total and permanent invalid.

446. Rule 12.1.10 provides for the Board of Trustees' decision, with reasons, to be communicated to the member concerned and his or her employer.

DIVISION 2 - PRE-ASSESSMENT PAYMENTS

447. The adoption of the assessment procedures used in the private sector means that there could be lengthy periods from the date of request for invalidity retirement until a decision is made. Division 2 of Part 12 deals with the partial income maintenance payments (termed pre-assessment payments) that are to be provided during the period when the assessment process is being undertaken.

448. Rules 12.2.1 to 12.2.4 set out the conditions under which pre-assessment payments will be payable. Pre-assessment payments will be payable where:

- (a) the member has been off work for at least 28 days from an illness or injury that is not compensable; and

- (b) the person has been examined by a medical practitioner and the Board of Trustees is satisfied that there is a real likelihood that he or she could be totally and permanently incapacitated; and
- (c) the person has exhausted his or her sick leave or has been off work for at least six months, whichever occurs first.

449. Rules 12.2.5 and 12.2.6 set out the amount of the pre-assessment payments. They provide that amount of pre-assessment payments will generally be the amount required to top up payments of sick leave, partial invalidity pension and compensation in relation to illnesses or injuries other than the illness or injury making the person a potential candidate for invalidity retirement to the level of 50 per cent of the person's fortnightly rate of salary for a full-time employee and proportionately less for permanent part-time and casual employees depending on their pattern of work over the three years prior to becoming ill.

450. The rules provide that, after the person has been off work for six months, the pre-assessment payments would be increased to the amount which, with the other payments being made to the member, would provide the person with a total benefit equal to the amount of invalidity pension that would become payable should the person be invalided out, if this is greater than the 50 per cent level.

451. Rule 12.2.7 provides that pre-assessment payments will be made on contribution due days and the Board of Trustees shall deduct the member contributions and member premiums (if any) required to be made by the member under Part 3.

DIVISION 3 - PROGRAM OF REHABILITATION

452. Rule 12.3.1 provides for the Board of Trustees to arrange and pay for a program of rehabilitation for a person who may become a total and permanent invalid, if it considers that this is likely to be cost-effective in reducing the likelihood of that total and permanent invalidity.



