

# EXPOSURE DRAFT



EXPOSURE DRAFT

## Income Tax Assessment Regulations 2020

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2020

David Hurley  
Governor-General

By His Excellency's Command

Michael Sukkar [**DRAFT ONLY—NOT FOR SIGNATURE**]  
Minister for Housing and Assistant Treasurer

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## Chapter 1—Introduction and core provisions

### 1 Name

This instrument is the *Income Tax Assessment Regulations 2020*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

- (1) Subject to subsection (2), this instrument is made under the *Income Tax Assessment Act 1997*.
- (2) Sections 291-170.05 and 291-170.07 are made under the *Income Tax (Transitional Provisions) Act 1997*.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 26** Some amounts you cannot deduct, or cannot deduct in full

Section 26-85.01

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## **Chapter 2—Liability rules of general application**

### **Part 2-5—Rules about deductibility of particular kinds of amounts**

#### **Division 26—Some amounts you cannot deduct, or cannot deduct in full**

##### **26-85.01 Borrowing costs on loans to pay life insurance premiums—term insurance policy etc.**

For the purposes of subsection 26-85(2) of the Act, the risk component of a premium received in respect of a life insurance policy that is:

- (a) a term insurance policy; or
- (b) a rider or supplementary benefit attached to another policy where the sum insured is payable on death within a specified term;

is an amount that is equal to the whole of the amount of the premium.

## **Division 30—Gifts or contributions**

### **30-212.01 Valuation of gifts**

For the purposes of section 30-212 of the Act, this Division sets out:

- (a) the procedure for seeking a valuation from the Commissioner of a gift mentioned in that section; and
- (b) the amounts that the Commissioner may charge for making the valuation; and
- (c) arrangements for payment of those amounts.

Note: Subsection 30-212(1) of the Act applies to a person who makes a gift that is covered by a provision of Division 30 of the Act that refers to the value of property as determined by the Commissioner.

### **30-212.02 Application for valuation**

An application for a valuation must:

- (a) be in the approved form; and
- (b) be lodged with the Commissioner; and
- (c) include the deposit towards the charge for making the valuation required by the approved form, which must not be more than \$1,000.

Note: For *approved form*, see subsection 995-1(1) of the Act.

### **30-212.03 Charge for making valuation**

- (1) The amount of the charge for making the valuation is an amount equal to the sum of the actual cost of the valuation and all other costs to the Commissioner in obtaining the valuation.
- (2) However, if the Commissioner starts the valuation but the application for the valuation is withdrawn or treated as having no effect under subsection 30-212.06(2), the amount of the charge for making the valuation is an amount equal to the costs to the Commissioner in obtaining the incomplete valuation.

### **30-212.04 Advance payment of charge**

- (1) The Commissioner may give the applicant a written statement:
  - (a) requiring the applicant to give the Commissioner an advance payment of the charge that may be payable for making the valuation; and
  - (b) stating the amount of the payment; and
  - (c) explaining how the amount was worked out.
- (2) The Commissioner may ask for more than one advance payment from the applicant under subsection (1).
- (3) The applicant must give the Commissioner the advance payment within 14 days after receiving the statement asking for the payment or within such longer period as the Commissioner allows.

Section 30-212.05

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**30-212.05 Commissioner not required to consider application until advance payment is paid**

If the Commissioner has required an advance payment of the charge under section 30-212.04, the Commissioner is not required to consider the application until the payment is paid.

**30-212.06 Applications treated as having no effect**

- (1) If the application does not comply with section 30-212.02, the Commissioner must:
  - (a) treat the application as having no effect; and
  - (b) give the applicant a written statement that the application is being treated that way.
- (2) If the Commissioner has required an advance payment of the charge under section 30-212.04, and the payment is not paid within the time mentioned in subsection 30-212.04(3):
  - (a) the Commissioner must treat the application as having no effect after that time; and
  - (b) the Commissioner must give the applicant a written statement that the application is being treated that way.

Note: For an application that is treated as having no effect under subsection (2), see subsection 30-212.03(2).

**30-212.07 Crediting and repaying valuation charges**

- (1) The deposit paid under section 30-212.02 is to be credited against the charge for making the valuation.
- (2) An advance payment of the charge paid under section 30-212.04 is to be credited against the charge for making the valuation.
- (3) The charge payable for making the valuation is a debt due to the Commonwealth and recoverable in a court of competent jurisdiction.
- (4) However, if the total of the amounts paid under subsections (1) and (2) is more than the charge payable for making the valuation, the Commissioner must pay the difference to the applicant as soon as practicable.

**30-212.08 Valuation certificates**

- (1) If the Commissioner completes the valuation, the Commissioner must give a valuation certificate to the applicant for the valuation.
- (2) The Commissioner must approve, in writing, one or more forms of a valuation certificate for the purposes of subsection (1).
- (3) The certificate must include the following information:
  - (a) the date on which the valuation was completed;

- (b) a description of any real property (including a lot and plan number, title reference and the location of the property);
  - (c) a full description of property other than real property;
  - (d) the period for which the valuation is in force;
  - (e) a statement of the valuation.
- (4) The certificate may include other information.
- (5) The Commissioner must not give a valuation certificate to the applicant until:
- (a) the valuation has been completed; and
  - (b) the Commissioner has received the full amount of the charge payable for making the valuation.

Section 31-15.01

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## **Division 31—Conservation covenants**

### **31-15.01 Valuation of land**

For the purposes of section 31-15 of the Act, this Division sets out:

- (a) the procedure for seeking a valuation from the Commissioner of the change in the market value of the land mentioned in that section; and
- (b) the amounts that the Commissioner may charge for making the valuation; and
- (c) arrangements for payment of those amounts.

Note: Section 31-15 of the Act applies to a person who enters into a conservation covenant over land owned by the person, if the conditions mentioned in subsection 31-5(2) of the Act are met.

### **31-15.02 Application for valuation**

An application for a valuation must:

- (a) be in the approved form; and
- (b) be lodged with the Commissioner; and
- (c) include a copy of the conservation covenant; and
- (d) include the deposit towards the charge for making the valuation required by the approved form, which must not be more than \$1,000.

Note: For *approved form*, see subsection 995-1(1) of the Act.

### **31-15.03 Charge for making valuation**

- (1) The amount of the charge for making the valuation is an amount equal to the sum of the actual cost of the valuation and all other costs to the Commissioner in obtaining the valuation.
- (2) However, if the Commissioner starts the valuation but the application for the valuation is withdrawn or treated as having no effect under subsection 31-15.06(2), the amount of the charge for making the valuation is an amount equal to the costs to the Commissioner in obtaining the incomplete valuation.

### **31-15.04 Advance payment of charge**

- (1) The Commissioner may give the applicant a written statement:
  - (a) requiring the applicant to give the Commissioner an advance payment of the charge that may be payable for making the valuation; and
  - (b) stating the amount of the payment; and
  - (c) explaining how the amount was worked out.
- (2) The Commissioner may ask for more than one advance payment from the applicant under subsection (1).



- (3) The applicant must give the Commissioner the advance payment within 14 days after receiving the statement asking for the payment or within such longer period as the Commissioner allows.

### **31-15.05 Commissioner not required to consider application until advance payment is paid**

If the Commissioner has required an advance payment of the charge under section 31-15.04, the Commissioner is not required to consider the application until the payment is paid.

### **31-15.06 Applications treated as having no effect**

- (1) If the application for the valuation does not comply with section 31-15.02, the Commissioner must:
  - (a) treat the application as having no effect; and
  - (b) give the applicant a written statement that the application is being treated that way.
- (2) If the Commissioner has required an advance payment of the charge under section 31-15.04, and the payment is not paid within the time mentioned in subsection 31-15.04(3), the Commissioner must:
  - (a) treat the application as having no effect after that time; and
  - (b) give the applicant a written statement that the application is being treated that way.

Note: For an application that is treated as having no effect under subsection (2), see subsection 31-15.03(2).

### **31-15.07 Crediting and repaying valuation charges**

- (1) The deposit paid under section 31-15.02 is to be credited against the charge for making the valuation.
- (2) An advance payment of the charge paid under section 31-15.05 is to be credited against the charge for making the valuation.
- (3) The charge payable for making the valuation is a debt due to the Commonwealth and recoverable in a court of competent jurisdiction.
- (4) However, if the total of the amounts paid under subsections (1) and (2) is more than the charge payable for making the valuation, the Commissioner must pay the difference to the applicant as soon as practicable.

### **31-15.08 Valuation certificates**

- (1) If the Commissioner completes the valuation, the Commissioner must give a valuation certificate to the applicant for the valuation.
- (2) The Commissioner must approve, in writing, one or more forms of a valuation certificate for the purposes of subsection (1).

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**Division 31** Conservation covenants

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- (3) The certificate must include the following information:
  - (a) the date on which the valuation was completed;
  - (b) a description of the land (including a lot and plan number, title reference and the location of the land);
  - (c) a statement of the market value of the land immediately before the conservation covenant was entered into;
  - (d) a statement of the market value of the land immediately after the conservation covenant was entered into;
  - (e) a statement of the difference between the market values mentioned in paragraphs (c) and (d);
  - (f) a statement of the extent to which the difference mentioned in paragraph (e) is attributable to the conservation covenant being entered into.
- (4) The certificate may include other information.
- (5) The Commissioner must not give a valuation certificate to the applicant until:
  - (a) the valuation has been completed; and
  - (b) the Commissioner has received the full amount of the charge payable for making the valuation.

**Part 2-15—Non-assessable income****Division 50—Exempt entities****Subdivision 50-A—Various exempt entities****50-50.01 Prescribed institutions located outside Australia**

For the purposes of paragraph 50-50(1)(c) of the Act, each institution specified in an item in the following table is a prescribed institution.

**Prescribed institutions located outside Australia**

<b>Item</b>	<b>Name of institution</b>
1	Catholic Bishops' Conference of the Pacific (Fiji)
2	Catholic Diocese of Rarotonga (Cook Islands)
3	Catholic Diocese of Bougainville (Papua New Guinea)
4	Catholic Diocese of Port Vila (Vanuatu)
5	Catholic Diocese of Suva (Fiji)
6	Catholic Diocese of Noumea (New Caledonia)
7	Catholic Diocese of Tonga
8	Catholic Diocese of Auki (Solomon Islands)
9	Catholic Archdiocese of Rabaul (Papua New Guinea)
10	Diocese of Honiara Registered Trustees (Incorporated)

**50-50.02 Prescribed institutions pursuing objectives principally outside Australia**

For the purposes of paragraph 50-50(1)(d) of the Act, each institution specified in column 1 of an item in the following table, and each institution that is a member of that institution, is a prescribed institution until the date specified (if any) in column 2 of the item.

**Prescribed institutions pursuing objectives principally outside Australia**

<b>Item</b>	<b>Column 1 Name of institution</b>	<b>Column 2 Ending date</b>
1	Alkitab Inc	none
2	Asia-Pacific Christadelphian Bible Mission Incorporated	none
3	Australian Advisory Council of the Christian Leaders' Training College of Papua New Guinea	none
4	Australian Evangelical Alliance Incorporated (Missions Interlink)	none
5	Steer Incorporated	none
6	The Trustees of the Marist Missions of the Pacific	none

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**Prescribed institutions pursuing objectives principally outside Australia**

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<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>Name of institution</b>	<b>Ending date</b>
7	Zebedee Investments Limited	none
8	Millennium Relief and Development Services Incorporated	none
9	The MITRE Corporation	30 June 2022

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**50-55.01 Prescribed institutions for items 1.3, 1.4, 6.1 and 6.2 in Division 50**

For the purposes of paragraph 50-55(1)(c) of the Act, each institution mentioned in an item in the following table is a prescribed institution until the date specified (if any) in column 2 for the item.

**Prescribed institutions for items 1.3, 1.4, 6.1 and 6.2 in Division 50**

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<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>Name of institution</b>	<b>Ending date</b>
1	Kiribati Phoenix Islands Protected Area Conservation Trust	30 June 2023

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**Division 51—Exempt amounts****51-5.01 Defence allowances**

- (1) For the purposes of items 1.1 and 1.2 of section 51-5 of the Act, an allowance specified in an item of the following table is prescribed if the allowance is either:
- paid under the specified provision of the 2013 allowances determination; or
  - paid under the specified provision of the conditions determination.

<b>Prescribed allowances</b>		
<b>Item</b>	<b>Column 1 Allowance</b>	<b>Column 2 Provision</b>
1	Separation allowance	Division B.3 of the 2013 allowances determination
2	Disturbance allowance	Division 1 of Part 1 of Chapter 6 of the conditions determination
3	Rent allowance paid to a member without dependants or to a member with dependants (unaccompanied)	Division 1 of Part 8 of Chapter 7 of the conditions determination
4	Education assistance	Part 4 of Chapter 8 of the conditions determination
5	Transfer allowance	Division 3 of Part 3 of Chapter 14 of the conditions determination
6	Reimbursement of education costs for a child educated at the location of a member's long-term posting overseas	Part 6 of Chapter 15 of the conditions determination
7	Reimbursement of education costs for a child educated in Australia while the member is on a long-term posting overseas	Division 5 of Part 6 of Chapter 15 of the conditions determination
8	Deployment allowance	Division 1 of Part 7 of Chapter 17 of the conditions determination

- (2) In this instrument:

**2013 allowances determination** means *DFRT Determination No. 11 of 2013, ADF Allowances*, made under section 58H of the *Defence Act 1903*.

Note: The 2013 allowances determination could in 2020 be viewed on the Defence Force Remuneration Tribunal's website (<http://dfrt.gov.au>).

**conditions determination** means *Defence Determination 2016/19, Conditions of service*, made under section 58B of the *Defence Act 1903*.

## Part 2-20—Tax offsets

### Division 61—Generally applicable tax offsets

#### Subdivision 61-G—Private health insurance offset complementary to Part 2-2 of the Private Health Insurance Act 2007

##### 61-220.01 Private health insurer to provide annual statement to PHIIB if requested

- (1) If, during a financial year, a PHIIB insured during an earlier financial year under a complying health insurance policy by a private health insurer (within the meaning of the *Private Health Insurance Act 2007*) requests a statement about that policy for that earlier year, the private health insurer must provide a statement in accordance with this section.

Note: For *complying health insurance policy* and *PHIIB*, see subsection 995-1(1) of the Act.

- (2) The statement must be in the approved form, and provided to the PHIIB within 14 days after the day the request is received.

Note: For *approved form*, see subsection 995-1(1) of the Act.

- (3) The statement may include information in relation to the following:
  - (a) the complying health insurance policy held by the PHIIB and payments made under the policy;
  - (b) the premium, or amounts in respect of the premium, paid during the earlier financial year in relation to the policy;
  - (c) any reductions of the premium payable, or an amount payable, during the earlier financial year.

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**Part 2-25—Trading stock****Division 70—Trading stock****Subdivision 70-C—Accounting for trading stock you hold at the start or end of the income year****70-55.01 Cost of natural increase of live stock**

For the purposes of paragraph 70-55(1)(b) of the Act, the cost prescribed for each animal in a class of live stock specified in column 1 of an item in the following table is the amount specified in column 2 of that item.

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<b>Cost of natural increase of live stock</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>Class of live stock</b>	<b>Cost \$</b>
1	cattle	20.00
2	deer	20.00
3	emus	8.00
4	goats	4.00
5	horses	20.00
6	pigs	12.00
7	poultry	0.35
8	sheep	4.00

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## **Part 2-40—Rules affecting employees and other taxpayers receiving PAYG withholding payments**

### **Division 83A—Employee share schemes**

#### **Subdivision 83A-A—Objects of Division and key concepts**

##### **83A-5.01 Object of Division 83A**

For the purposes of Division 83A of the Act, this Division preserves rules under the former Division 13A of Part III of the *Income Tax Assessment Act 1936* about valuing unlisted rights to acquire shares under an employee share scheme.

#### **Subdivision 83A-E—Miscellaneous**

##### **83A-315.01 Value of certain ESS interests**

- (1) For the purposes of subsection 83A-315(1) of the Act, the amount specified, in relation to an ESS interest that is an unlisted right that must be exercised within 15 years after the day when the beneficial interest in the right was acquired is, at the choice of the individual:
  - (a) the market value of the right; or
  - (b) the value worked out in accordance with sections 83A-315.02 to 83A-315.09.
- (2) However, if the deferred taxing point for the ESS interest is:
  - (a) the day when the individual disposes of the interest (other than by exercising the right); or
  - (b) if the individual exercises the right—the day when the individual disposes of the beneficial interest in the share acquired by exercising the right;the amount specified in relation to the right is the market value of the right or share acquired by exercising the right.

##### **83A-315.02 Valuing unlisted rights**

- (1) The value of the unlisted right on a particular day is the greater of:
  - (a) the market value, on the particular day, of the share that may be acquired by exercising the right, less the lowest amount that must be paid to exercise the right to acquire the beneficial interest in the share; and
  - (b) subject to sections 83A-315.03 and 83A-315.04, the value, on the particular day, of the right to acquire the beneficial interest in the share worked out in accordance with sections 83A-315.05 to 83A-315.09.
- (2) In working out the value of a right for the purposes of this Division, anything that would prevent or restrict conversion of the right to money is to be disregarded.



### **83A-315.03 Exercise price of right nil or cannot be determined**

If the lowest amount that must be paid to exercise the right to acquire the beneficial interest in a share is nil or cannot be determined, the value of the right on a particular day is the same as the market value of the share on that day.

### **83A-315.04 Value of beneficial interests**

To avoid doubt, if an individual acquires the beneficial interest in a share or right, the value that is applicable for the purposes of this Division is the value of the share or right, not the value of the interest in the share or right.

### **83A-315.05 Working out the value of a right to acquire the beneficial interest in a share**

For the purposes of paragraph 83A-315.02(1)(b), work out the value, on the particular day, of the right to acquire the beneficial interest in the share, using the following method statement.

*Method statement*

Step 1: Apply the following formula. The result is the *calculation percentage*.

$$\frac{\text{Market value, on the particular day, of the share that is the subject of the right}}{\text{Amount, or lowest amount, that must be paid to exercise the right}} \times 100\%$$

Step 2: If the calculation percentage is less than 50%, the value of the right is nil.

If the calculation percentage is equal to, or greater than, 50% but less than 110%, the value of the right is the value worked out under section 83A-315.08.

If the calculation percentage is equal to, or greater than, 110%, the value of the right is the value worked out under section 83A-315.09.

### **83A-315.08 Calculation percentages of 50% or more, and less than 110%**

- (1) To work out the value of the right under this section, select the percentage (the *calculation percentage*) from an item in the following tables that corresponds to:
  - (a) the period, in months, from the particular day (referred to in section 83A-315.02) until the last day on which the right may be exercised (the *exercise period*); and
  - (b) the calculation percentage;and then multiply the amount, or lowest amount, that must be paid to exercise the right by the calculation percentage. The result is the value of the right.

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Note: The following assumptions were used to work out the calculation percentages:

- (a) a risk-free interest rate of 4%;
- (b) a dividend yield of 4%;
- (c) volatility of 12%.

**Calculation percentages 50 to 92.5**

Item	Exercise period (months)	Calculation percentages						
		50 to 60	60 to 70	70 to 75	75 to 80	80 to 85	85 to 90	90 to 92.5
1	168 to 180	0.5%	1.3%	2.6%	3.5%	4.6%	5.8%	7.1%
2	156 to 168	0.4%	1.2%	2.5%	3.4%	4.4%	5.7%	7.1%
3	144 to 156	0.4%	1.0%	2.3%	3.2%	4.3%	5.5%	7.0%
4	132 to 144	0.3%	0.9%	2.2%	3.0%	4.1%	5.4%	6.8%
5	120 to 132	0.2%	0.8%	2.0%	2.8%	3.9%	5.2%	6.6%
6	108 to 120	0.2%	0.7%	1.8%	2.6%	3.7%	4.9%	6.4%
7	96 to 108	0.1%	0.6%	1.6%	2.4%	3.4%	4.6%	6.1%
8	84 to 96	0.1%	0.4%	1.3%	2.1%	3.0%	4.3%	5.8%
9	72 to 84	0.1%	0.3%	1.1%	1.7%	2.7%	3.9%	5.4%
10	60 to 72	0.0%	0.2%	0.8%	1.4%	2.2%	3.4%	4.9%
11	48 to 60	0.0%	0.1%	0.5%	1.0%	1.7%	2.8%	4.2%
12	36 to 48	0.0%	0.0%	0.3%	0.6%	1.2%	2.1%	3.4%
13	24 to 36	0.0%	0.0%	0.1%	0.3%	0.6%	1.3%	2.4%
14	18 to 24	0.0%	0.0%	0.0%	0.1%	0.3%	0.9%	1.8%
15	12 to 18	0.0%	0.0%	0.0%	0.0%	0.1%	0.4%	1.1%
16	9 to 12	0.0%	0.0%	0.0%	0.0%	0.1%	0.2%	0.8%
17	6 to 9	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.4%
18	3 to 6	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%
19	0 to 3	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

**Calculation percentages 92.5 to less than to 110**

Item	Exercise period (months)	Calculation percentage						
		92.5 to 95	95 to 97.5	97.5 to 100	100 to 102.5	102.5 to 105	105 to 107.5	107.5 to less than to 110
20	168 to 180	7.9%	8.6%	9.4%	10.3%	11.2%	12.2%	13.3%
21	156 to 168	7.8%	8.6%	9.4%	10.3%	11.2%	12.2%	13.3%
22	144 to 156	7.7%	8.5%	9.4%	10.3%	11.2%	12.2%	13.3%
23	132 to 144	7.6%	8.4%	9.3%	10.2%	11.2%	12.2%	13.3%
24	120 to 132	7.5%	8.3%	9.2%	10.2%	11.2%	12.2%	13.3%
25	108 to 120	7.2%	8.1%	9.1%	10.0%	11.1%	12.1%	13.3%
26	96 to 108	7.0%	7.9%	8.8%	9.8%	10.9%	12.0%	13.2%

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**Calculation percentages 92.5 to less than to 110**

Item	Exercise period (months)	Calculation percentage						
		92.5 to 95	95 to 97.5	97.5 to 100	100 to 102.5	102.5 to 105	105 to 107.5	107.5 to less than to 110
27	84 to 96	6.6%	7.6%	8.5%	9.6%	10.7%	11.8%	13.0%
28	72 to 84	6.2%	7.2%	8.2%	9.2%	10.4%	11.6%	12.8%
29	60 to 72	5.7%	6.7%	7.7%	8.8%	9.9%	11.2%	12.5%
30	48 to 60	5.1%	6.0%	7.0%	8.2%	9.4%	10.7%	12.1%
31	36 to 48	4.2%	5.2%	6.2%	7.4%	8.6%	10.0%	11.4%
32	24 to 36	3.2%	4.1%	5.1%	6.3%	7.6%	9.0%	10.5%
33	18 to 24	2.5%	3.4%	4.4%	5.5%	6.8%	8.3%	9.9%
34	12 to 18	1.7%	2.5%	3.4%	4.6%	6.0%	7.5%	9.2%
35	9 to 12	1.3%	2.0%	2.9%	4.0%	5.4%	7.0%	8.8%
36	6 to 9	0.8%	1.4%	2.2%	3.3%	4.7%	6.4%	8.3%
37	3 to 6	0.3%	0.6%	1.3%	2.4%	3.8%	5.7%	7.8%
38	0 to 3	0.0%	0.1%	0.5%	1.4%	3.0%	5.1%	7.5%

(2) If, in relation to a particular right:

- (a) the exercise period; or
- (b) the calculation percentage;

is the top of one range in the table in subsection (1) and is also the bottom of another range in the table, it is taken to be in the lower range and not in the higher range.

**83A-315.09 Base percentages for calculation percentages of 110% or more**

(1) The value of the right worked out under this section, is the amount worked out using the following formula:

$$\text{Amount or lowest amount that must be paid to exercise the right} \times \left[ \text{Base percentage} + \left( \text{Excess} \times \text{Additional percentage} \right) \right]$$

where:

**additional percentage**, for a right with an exercise period specified in an item in column 1 of the table in subsection (2), is the percentage specified in column 3 of the item.

**base percentage**, for a right with an exercise period specified in an item in column 1 of the table in subsection (2), is the percentage specified in column 2 of the item.

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*excess* is the amount worked out using the following formula, disregarding any fraction:

$$100 \times \left[ \begin{array}{l} \text{Calculation} \\ \text{percentage} \end{array} - 110\% \right]$$

*exercise period* for a right is the period, in months, from the particular day (referred to in section 83A-315.02) until the last day on which the right may be exercised.

- (2) The following table sets out base percentages and additional percentages for the purposes of subsection (1).

<b>Base percentages and additional percentages</b>			
<b>Item</b>	<b>Column 1 Exercise period (months)</b>	<b>Column 2 Base percentage</b>	<b>Column 3 Additional percentage</b>
1	168 to 180	13.3%	0.5%
2	156 to 168	13.3%	0.5%
3	144 to 156	13.3%	0.5%
4	132 to 144	13.3%	0.6%
5	120 to 132	13.3%	0.6%
6	108 to 120	13.3%	0.6%
7	96 to 108	13.2%	0.6%
8	84 to 96	13.0%	0.6%
9	72 to 84	12.8%	0.7%
10	60 to 72	12.5%	0.7%
11	48 to 60	12.1%	0.7%
12	36 to 48	11.4%	0.8%
13	24 to 36	10.5%	0.8%
14	18 to 24	9.9%	0.8%
15	12 to 18	9.2%	0.9%
16	9 to 12	8.8%	0.9%
17	6 to 9	8.3%	0.9%
18	3 to 6	7.8%	0.9%
19	0 to 3	7.5%	1.0%

- Note: The following assumptions were used to work out the base percentages:
- (a) a risk-free interest rate of 4%;
  - (b) a dividend yield of 4%;
  - (c) volatility of 12%.

- (3) If the exercise period is the top of one range in the table in subsection (2) and is also the bottom of another range in the table, it is taken to be in the lower range and not in the higher range.

## Chapter 3—Specialist liability rules

### Part 3-30—Superannuation

#### Division 290—Contributions to superannuation funds

##### Subdivision 290-C—Deducting personal contributions

###### 290-155.01 Complying superannuation fund condition—prescribed superannuation funds

A superannuation fund is of a kind prescribed for the purposes of subparagraph 290-155(1)(a)(iii) of the Act if:

- (a) the fund has one or more members that have a superannuation interest in the fund that is a defined benefit interest; and
- (b) the trustee of the fund elects to have this section apply to the fund; and
- (c) the election:
  - (i) is made before the start of the income year of the fund in which the contribution is made; and
  - (ii) is not revoked before the start of that year; and
  - (iii) is made by notifying the Commissioner in the approved form.

Note: For *approved form*, see subsection 995-1(1) of the Act.

###### 290-155.05 Complying superannuation fund condition—prescribed contributions and superannuation funds

For the purposes of paragraph 290-155(1)(b) of the Act, a contribution to a superannuation fund is a prescribed kind of contribution to a prescribed kind of superannuation fund if:

- (a) the contribution is a contribution made to a defined benefit interest; and
- (b) the superannuation fund is a fund in relation to which the trustee of the fund has elected that this section apply and the election:
  - (i) is made before the start of the income year of the fund in which the contribution is made; and
  - (ii) is not revoked before the start of that year; and
  - (iii) is made by notifying the Commissioner in the approved form.

Note: For *approved form*, see subsection 995-1(1) of the Act.

###### 290-170.01 Notice of intent to deduct contributions—contributions-splitting applications

For the purposes of subparagraph 290-170(2)(d)(i) of the Act, each of the following is a contributions-splitting application:

- (a) an application under regulation 6.44 (application to roll over, transfer or allot an amount of contributions) of the SIS Regulations;

- (b) an application under regulation 4.41 (application to roll over, transfer or allot an amount of contributions) of the RSA Regulations;
- (c) an application to deal with an amount in a way that would result in the amount becoming a contributions-splitting superannuation benefit in accordance with the SIS Regulations or the RSA Regulations.

## Division 291—Excess concessional contributions

### Subdivision 291-B—Excess concessional contributions

#### 291-25.01 Concessional contributions for a financial year

- (1) For the purposes of subsection 291-25(3) of the Act, this section specifies conditions for the allocation of an amount in a complying superannuation plan.

Note: If the amount meets the conditions of this section it will be an amount covered under subsection 291-25(3) of the Act. Such amounts are counted in determining an individual's concessional contributions for a financial year.

##### *Conditions—general*

- (2) The conditions are that the amount is:
- (a) allocated under Division 7.2 of the SIS Regulations; and
  - (b) an assessable contribution; and
  - (c) not an amount mentioned in item 2 of the table in subsection 295-190(1) of the Act; and
  - (d) not an amount mentioned in subsection 295-200(2) of the Act.

##### *Conditions—amount allocated from a reserve*

- (3) If the amount is allocated from a reserve and the amount does not meet the conditions in subsection (2), the conditions are that neither subsection (4) nor (5) applies to the amount.
- (4) This subsection applies if:
- (a) the amount is allocated, in a fair and reasonable manner:
    - (i) to an account for every member of the complying superannuation plan; or
    - (ii) if the member is a member of a class of members of the complying superannuation plan, and the amount in the reserve relates only to that class of members—to an account for every member of the class; and
  - (b) the amount that is allocated for the financial year is less than 5% of the value of the member's interest in the complying superannuation plan at the time of allocation; and
  - (c) the amount would not be assessable income of the complying superannuation plan if it were made as a contribution.
- (5) This subsection applies if the amount is allocated from a reserve used solely for the purpose of enabling the complying superannuation plan to discharge all or part of its liabilities (contingent or not), as soon as they become due, in respect of superannuation income stream benefits that are payable by the complying superannuation plan at that time, and any of the following applies:
- (a) the amount has been allocated to satisfy a pension liability of the plan paid during the financial year;



- (b) on the commutation of a superannuation income stream, except as a result of the death of the primary beneficiary, the amount is allocated to the recipient of the superannuation income stream, to commence another superannuation income stream, as soon as practicable;
  - (c) on the commutation of a superannuation income stream as a result of the death of the primary beneficiary, the amount:
    - (i) is allocated to a death benefits dependant to discharge liabilities in respect of a superannuation income stream benefit that is payable by the plan as a result of the death; or
    - (ii) if subparagraph (i) does not apply—is paid as a superannuation lump sum and as a superannuation death benefit;  
as soon as practicable.
- (6) If the amount is allocated from a reserve in lieu of a contribution to the complying superannuation plan (less any allowance for tax) which would have been assessable income of the complying superannuation plan, the amount that is allocated is to be multiplied by 1.176.

Example: An employer has an obligation to make a \$1,000 contribution. Instead of the employer making a contribution to the complying superannuation plan, the trustee allocates \$850 to the member's account (which is an amount equivalent to the amount that would be credited to the account after tax was paid). Under subsection (6), the amount of \$850 is to be multiplied by 1.176 to work out the amount that is taken to be allocated.

## **Subdivision 291-C—Modifications for defined benefit interests**

### **291-170.01 Treatment of superannuation sub-funds**

If there are 2 or more superannuation sub-funds in relation to defined benefit members of a superannuation fund, apply this Subdivision and Schedule 1A to the superannuation fund separately in respect of each superannuation sub-fund.

### **291-170.02 Notional taxed contributions—contributions for funds with 5 or more defined benefit members**

- (1) For the purposes of subsection 291-170(1) of the Act, this section gives the meaning of *notional taxed contributions* for a financial year in respect of the defined benefit interest of a member of:
- (a) a superannuation fund that has 5 or more defined benefit members (other than a fund to which paragraph (6)(a) of this section applies); or
  - (b) a superannuation fund to which subsection (3), (4), (5) or (6) of this section applies.

Note: Section 291-170.04 specifies circumstances in which, despite this section, the amount of notional taxed contributions is nil.

- (2) The *notional taxed contributions* are the contributions that are determined by the trustee of the superannuation fund to be notional taxed contributions, using the method set out in Schedule 1A.

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- (3) If a superannuation fund has 5 or more defined benefit members on 1 July 2007, this subsection applies to the fund even if the number of defined benefit members of the fund becomes less than 5 at any time on or after 1 July 2007.
- (4) This subsection applies to a superannuation fund if:
- (a) the fund had 5 or more defined benefit members at any time before 1 July 2007; and
  - (b) the fund had fewer than 5 defined benefit members on 1 July 2007; and
  - (c) the fund had been in existence for 5 or more years at 1 July 2007; and
  - (d) the trustee of the fund is an RSE licensee; and
  - (e) the employer-sponsor of the fund deals with each of the defined benefit members at arm's length.
- (5) If:
- (a) subsection (3) or (4) applies to a superannuation fund (*fund 1*); and
  - (b) the defined benefit members of fund 1 are transferred to another superannuation fund (*fund 2*) on or after 1 July 2007 (whether directly or through a series of transfers between superannuation funds); and
  - (c) the trustee of fund 2 is an RSE licensee; and
  - (d) the employer-sponsor of fund 2 deals with each of the defined benefit members of fund 2 at arm's length;
- this subsection applies to fund 2.
- (6) This subsection applies to a superannuation fund if:
- (a) the fund had no defined benefit members on 30 June 2007; and
  - (b) a person became a defined benefit member of the fund after that date; and
  - (c) the number of defined benefit members of the fund (including the person) is at least 50; and
  - (d) the employer-sponsor of the fund deals with each of the defined benefit members at arm's length.

**291-170.03 Notional taxed contributions—contributions for funds to which section 291-170.02 does not apply**

- (1) For the purposes of subsection 291-170(1) of the Act, this section gives the meaning of *notional taxed contributions* for a financial year in respect of the defined benefit interest of a member of a superannuation fund (other than a superannuation fund to which section 291-170.02 of this instrument applies).

Note: Section 291-170.04 specifies circumstances in which, despite this section, the amount of notional taxed contributions is nil.

- (2) The member's *notional taxed contributions* for the financial year are:
- (a) the amounts of assessable contributions which have been allocated to the member in the financial year in accordance with subsection (3); and
  - (b) if an amount is allocated to the member from a reserve, other than in the circumstances mentioned in subsection (4):
    - (i) the amount, unless subparagraph (ii) applies; or

- (ii) if the amount is allocated in lieu of a contribution to the fund (less any allowance for tax) which would have been assessable income of the fund—the amount multiplied by 1.176.

Example: An employer has an obligation to make a \$1,000 contribution. Instead of the employer making a contribution to the fund, the trustee allocates \$850 to the member's account (which is an amount equivalent to the amount that would be credited to the account after tax was paid). For the purposes of subparagraph (b)(ii), the amount of \$850 is to be multiplied by 1.176.

- (3) An amount of assessable contributions is allocated to a member in accordance with this subsection if the trustee of the fund allocates the amount:
  - (a) to the member:
    - (i) within 28 days after the end of the month in which the trustee receives the amount; or
    - (ii) if it is not reasonably practicable to comply with subparagraph (i)—within a longer period that is reasonable in the circumstances; and
  - (b) having regard to the present and prospective liabilities of the fund to its members.
- (4) For the purposes of paragraph (2)(b), the circumstances are that:
  - (a) the amount is allocated from a reserve used solely for the purpose of enabling the fund to discharge all or part of its liabilities (contingent or not), as soon as they become due, in respect of superannuation income stream benefits that are payable by the fund at that time; and
  - (b) any of the circumstances in subsection (5) apply.
- (5) For the purposes of paragraph (4)(b), the circumstances are the following:
  - (a) the amount has been allocated to satisfy a pension liability of the fund paid during the financial year;
  - (b) on the commutation of a superannuation income stream, except as a result of the death of the primary beneficiary, the amount is allocated to the recipient of the superannuation income stream, to commence another superannuation income stream, as soon as practicable;
  - (c) on the commutation of a superannuation income stream as a result of the death of the primary beneficiary, the amount:
    - (i) is allocated to a death benefits dependant to discharge liabilities in respect of a superannuation income stream benefit that is payable by the fund as a result of the death; or
    - (ii) if subparagraph (i) does not apply—is paid as a superannuation lump sum and as a superannuation death benefit; as soon as practicable.

#### **291-170.04 Notional taxed contributions—nil amount**

- (1) For the purposes of subsection 291-170(1) of the Act, this section specifies circumstances in which the amount of notional taxed contributions for a financial year in respect of the defined benefit interest of a member of a superannuation fund is nil.

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- (2) This section applies despite sections 291-170.02 and 291-170.03.
- (3) A circumstance is that:
- (a) the defined benefit interest is held in a public sector superannuation scheme; and
  - (b) none of the interest is sourced to any extent from:
    - (i) contributions made into a superannuation fund; or
    - (ii) earnings on such contributions;unless the interest is an element taxed in the fund that is attributable to one or more roll-over superannuation benefits.
- (4) A circumstance is that, for the whole of the financial year:
- (a) section 291-170.02 applied in relation to the superannuation fund; and
  - (b) the member was a non-accruing member of the fund for the financial year (see subsections (5) to (8) of this section).
- (5) The member was a **non-accruing member** of the fund for the financial year if the member had no membership of the fund during the financial year other than membership as:
- (a) an on-hold member; or
  - (b) a pensioned member.

Note: A member could be an on-hold member of a fund for part of a financial year, and a pensioned member of the fund for another part of the financial year.

- (6) The member was an **on-hold member** of the fund if:
- (a) the member had a benefit entitlement in the fund, but no employer-provided benefits accrued to the member; and
  - (b) the rules of the fund provided that the benefit:
    - (i) was not to increase in nominal terms; or
    - (ii) was to increase at a rate reflecting general price increases (for example, in accordance with the Consumer Price Index); or
    - (iii) was to increase at a rate reflecting the general level of salary growth or salary growth for relevant fund membership (for example, in accordance with average weekly earnings, or average weekly ordinary time earnings, published by the Australian Statistician); or
    - (iv) was to increase at the rate (if any) at which the salary on which the member's benefit was based increased; or
    - (v) was to increase at a rate reflecting the earning rate of the assets of the fund or the part of the fund to which the member belonged; or
    - (vi) in the case of a deferred benefit—was to increase at a rate reflecting any reduction in the expected period in which pension payments were to be made and any deferral of the date when payments would start; or
    - (vii) was to increase at a regular rate, or a rate worked out using a formula, that an actuary considered would not result in an increase that was more than the greatest of the increases mentioned in subparagraphs (i) to (vi).
- (7) The member was a **pensioned member** of the fund if:
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- (a) the member's membership of the fund consisted only of the member receiving pension payments from the superannuation fund; and
  - (b) any of the following applied:
    - (i) the pension payments were always the same amount;
    - (ii) the pension payments were paid from an account that related only to the member, and no employer contributions were paid to the account for the benefit of the member;
    - (iii) the pension payments increased at rates that were consistent with the rates prescribed under the rules of the fund that applied when the pension commenced to be paid.
- (8) For the purposes of determining whether a defined benefit member is a non-accruing member of the fund for a period, any employer contributions paid to the fund for the period to meet partially, or wholly, unfunded benefit liabilities of the fund are not to be treated as employer contributions for the benefit of the member for the period.

**291-170.05 Notional taxed contributions—conditions for paragraph 291-170(2)(d) and subparagraph 291-170(3)(e)(ii) of the *Income Tax (Transitional Provisions) Act 1997***

- (1) For the purposes of paragraph 291-170(2)(d) and subparagraph 291-170(3)(e)(ii) of the *Income Tax (Transitional Provisions) Act 1997*, this section:
- (a) applies in relation to a superannuation fund to which section 291-170.02 of this instrument applies; and
  - (b) specifies the conditions that are to be satisfied in relation to establishing whether a defined benefit member of the fund's notional taxed contributions for a financial year in respect of a defined benefit interest in the fund are equal to the member's basic concessional contributions cap for the financial year.
- (2) A condition is that between 5 September 2006 and the time at which the new entrant rate for the defined benefit member is worked out using Schedule 1A:
- (a) the rules of any superannuation fund in which a relevant 2006 interest was held during that period have not changed to improve the member's benefit; and
  - (b) any of the following apply:
    - (i) the member has not moved to a new benefit category;
    - (ii) the member has moved to a new benefit category but the new benefit category does not provide the member with an improved level of benefit;
    - (iii) the member has moved to a new benefit category but the move was only as a result of the necessary application of the rules of a superannuation fund referred to in paragraph (a) that were, or of legislation that was, in force on 5 September 2006 and the member had no control over the application of the rules or legislation.

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- (3) A condition is that the new entrant rate for the defined benefit member, as worked out using Schedule 1A:
- (a) has not increased since it was first worked out using Schedule 1A; or
  - (b) has increased since it was first worked out using Schedule 1A only as a result of the following:
    - (i) a change to the rules of a superannuation fund in which a relevant 2006 interest is or was held that increases a benefit as a result of a change that is made to satisfy the requirements of the *Superannuation Guarantee (Administration) Act 1992*;
    - (ii) the member moving to a new benefit category because of the necessary application of the rules of a superannuation fund referred to in subparagraph (i) that were, or of legislation that was, in force on 5 September 2006, if the member had no control over the application of the rules or legislation.
- (4) A condition is that the method of calculating the defined benefit member's superannuation salary:
- (a) has not been changed, in a way that would increase the salary, since 5 September 2006; or
  - (b) has changed since 5 September 2006 only as a result of a change to the rules of a superannuation fund in which a relevant 2006 interest is or was held that increases a benefit as a result of a change that is made to satisfy the requirements of the *Superannuation Guarantee (Administration) Act 1992*.
- (5) A condition is that either:
- (a) the rate of the defined benefit member's superannuation salary has not increased, since 5 September 2006, by more than:
    - (i) 50% in 1 year; or
    - (ii) 75% over 3 years; or
  - (b) the rate of superannuation salary has increased by more than the rate in subparagraph (a)(i) or (ii) and:
    - (i) the employer-sponsor of the superannuation fund in which, immediately after the rate increase, a relevant 2006 interest was held has advised the trustee of that fund that the increase in the rate is on an arm's length basis; and
    - (ii) the trustee of a superannuation fund in which a relevant 2006 interest was held after the rate increase notified the Commissioner, in writing, of the increase in the rate as soon as practicable after the increase occurred.
- (6) A condition is that no trustee or employer-sponsor of any superannuation fund in which a relevant 2006 interest is or was held has exercised a discretion to pay a benefit that is greater than the benefit that was assumed for the purpose of calculating the new entrant rate since 5 September 2006.

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**291-170.07 Notional taxed contributions—conditions for paragraph 291-170(4)(d) and subparagraph 291-170(5)(e)(ii) of the *Income Tax (Transitional Provisions) Act 1997***

- (1) For the purposes of paragraph 291-170(4)(d) and subparagraph 291-170(5)(e)(ii) of the *Income Tax (Transitional Provisions) Act 1997*, this section:
  - (a) applies in relation to a superannuation fund to which section 291-170.02 of this instrument applies; and
  - (b) specifies the conditions that are to be satisfied in relation to establishing whether a defined benefit member of the fund's notional taxed contributions for a financial year in respect of a defined benefit interest in the fund are equal to the member's basic concessional contributions cap for the financial year.
- (2) A condition is that the new entrant rate for the defined benefit member, as worked out using Schedule 1A:
  - (a) has not increased since 12 May 2009; or
  - (b) has increased since 12 May 2009 only as a result of the following:
    - (i) a change to the rules of a superannuation fund in which a relevant 2009 interest is or was held that increases a benefit as a result of a change made to satisfy the requirements of the *Superannuation Guarantee (Administration) Act 1992*;
    - (ii) the member moving to a new benefit category because of the necessary application of the rules of a superannuation fund referred to in subparagraph (i) that were, or of legislation that was, in force on 5 September 2006, if the member had no control over the application of the rules or legislation.
- (3) A condition is that the method of calculating the defined benefit member's superannuation salary:
  - (a) has not been changed, in a way that would increase the salary, since 12 May 2009; or
  - (b) has changed since 12 May 2009 only as a result of a change to the rules of a superannuation fund in which a relevant 2009 interest is or was held that increases a benefit as a result of a change made to satisfy the requirements of the *Superannuation Guarantee (Administration) Act 1992*.
- (4) A condition is that either:
  - (a) the rate of the defined benefit member's superannuation salary has not increased, since 12 May 2009, by more than:
    - (i) 50% in 1 year; or
    - (ii) 75% over 3 years; or
  - (b) the rate of superannuation salary has increased by more than the rate in subparagraph (a)(i) or (ii) and:
    - (i) the employer-sponsor of the superannuation fund in which, immediately after the rate increase, a relevant 2009 interest was held has advised the trustee of that fund that the increase in the rate is on an arm's length basis; and

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- (ii) the trustee of a superannuation fund in which a relevant 2009 interest was held after the rate increase notified the Commissioner, in writing, of the increase in the rate as soon as practicable after the increase occurred.
- (5) A condition is that no trustee or employer-sponsor of any superannuation fund in which a relevant 2009 interest is or was held has exercised a discretion to pay a benefit that is greater than the benefit that was assumed for the purpose of calculating the new entrant rate since 12 May 2009.



## **Division 292—Excess non-concessional contributions**

### **Subdivision 292-C—Excess non-concessional contributions tax**

#### **292-90.01 Non-concessional contributions for a financial year**

- (1) For the purposes of paragraph 292-90(4)(a) of the Act, this section specifies conditions for the allocation of an amount in a complying superannuation plan.

Note: If the amount meets the conditions of this section it will be an amount covered by subsection 292-90(4) of the Act. Such amounts are counted in determining an individual's non-concessional contributions for a financial year.

- (2) The conditions are that the amount is:
- (a) allocated under Division 7.2 of the SIS Regulations; and
  - (b) not an assessable contribution; and
  - (c) not covered by subsection (3).
- (3) Each of the following amounts is covered by this subsection:
- (a) a Government co-contribution made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*;
  - (b) a contribution covered under section 292-95 of the Act;
  - (c) a contribution covered under section 292-100 of the Act, to the extent that it does not exceed the CGT cap amount when it is made;
  - (d) a contribution made to a constitutionally protected fund (other than a contribution included in the contributions segment of the member's superannuation interest in the fund);
  - (e) contributions not included in the assessable income of the superannuation provider in relation to the superannuation plan because of a choice made under section 295-180 of the Act;
  - (f) a contribution that is a roll-over superannuation benefit;
  - (g) the tax free component of a directed termination payment (within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*) made in the financial year on behalf of the member.

## **Division 293—Sustaining the superannuation contribution concession**

### **Subdivision 293-D—Modifications for defined benefit interests**

#### **293-115.05 Preliminary**

- (1) This Subdivision is made for the purposes of subsection 293-115(1) of the Act.
- (2) In this Subdivision:

*accruing member*, of a superannuation fund for a financial year, means a defined benefit member of the fund who is not a non-accruing member of the fund for the financial year.

*non-accruing member*, of a superannuation fund for a financial year, means:

- (a) a defined benefit member who is a non-accruing member of the fund for the financial year within the meaning of subsections 291-170.04(5) to (8);  
or
- (b) a member of the Governor-General Pension Scheme for the financial year, unless (for a member who is the Governor-General) the member commenced office in the financial year.

#### **293-115.10 Defined benefit contributions—non-accruing members**

- (1) This section applies if you are a non-accruing member of a superannuation fund for a financial year.
- (2) Your *defined benefit contributions* for the financial year in respect of your defined benefit interest in the fund is nil.

#### **293-115.15 Defined benefit contributions—accruing members with funded benefit interests**

- (1) This section applies if:
  - (a) you are an accruing member of a superannuation fund for the financial year; and
  - (b) your defined benefit interest in the fund for the financial year is a funded benefit interest.
- (2) The interest is a *funded benefit interest* if:
  - (a) the interest is in a complying superannuation fund that is not a constitutionally protected fund; and
  - (b) if the interest is in a public sector superannuation scheme:
    - (i) the fund trustee has certified, for the financial year, that the fund trustee considers that the scheme will only ever pay superannuation benefits from contributions made to the scheme or earnings from the contributions; and

- (ii) the fund trustee has not chosen, under section 295-180 of the Act, to have contributions made by you, or on your behalf, excluded from the assessable income of the scheme for the financial year.
- (3) Your *defined benefit contributions* for the financial year in respect of the interest is your notional taxed contributions for the year in respect of the interest.

Note: For *notional taxed contributions*, see section 291-170 of the Act and Subdivision 291-C of this instrument.

- (4) In working out your notional taxed contributions for the purposes of subsection (3), disregard Subdivision 291-C of the *Income Tax (Transitional Provisions) Act 1997*.

### **293-115.20 Defined benefit contributions—accruing members with other interests**

- (1) This section applies if:
- (a) you are an accruing member of a superannuation fund for the financial year; and
  - (b) your defined benefit interest in the fund for the financial year is an interest other than a funded benefit interest.
- (2) Your *defined benefit contributions* for the financial year in respect of the interest is the amount worked out using the method in Schedule 1AA.

### **Subdivision 293-E—Modifications for constitutionally protected State higher level office holders**

#### **293-145.01 Constitutionally protected State higher level office holders**

For the purposes of paragraph 293-145(1)(b) of the Act, the following individuals are declared:

- (a) a Minister of the government of a State;
- (b) a member of the staff of a Minister of the government of a State;
- (c) the Governor of a State;
- (d) a member of staff of the Governor of a State;
- (e) a member of the Parliament of a State;
- (f) the Clerk of a house of the Parliament of a State;
- (g) the head of a Department of the Public Service of a State or a statutory office holder of equivalent seniority, including a statutory office holder who is the head of an instrumentality or agency of a State;
- (h) a judge, justice or magistrate of the court of a State.

## Division 294—Transfer balance cap

### Subdivision 294-B—Transfer balance account

#### 294-25.01 Credit in transfer balance account—payment of consideration for interest supporting deferred superannuation income stream

- (1) For the purposes of item 5 of the table in subsection 294-25(1) of the Act, a transfer balance credit arises under this section in your transfer balance account if:
  - (a) you are the retirement phase recipient of a superannuation income stream; and
  - (b) the superannuation income stream is a deferred superannuation income stream; and
  - (c) after you start to be the retirement phase recipient of the superannuation income stream, you pay an amount of consideration for the superannuation interest that supports the superannuation income stream.
- (2) The amount of the credit is the amount of the consideration.
- (3) The credit arises at the time you pay the consideration.

### Subdivision 294-C—Transfer balance debits

#### 294-80.01 Debit in transfer balance account—reduction in amount of superannuation income stream benefit

- (1) For the purposes of item 8 of the table in subsection 294-80(1) of the Act, a transfer balance debit arises under this section in your transfer balance account if:
  - (a) you are the retirement phase recipient of a superannuation income stream; and
  - (b) the superannuation income stream is a capped defined benefit income stream that:
    - (i) is covered by item 1 or 2 of the table in subsection 294-130(1) of the Act; or
    - (ii) is prescribed by section 294-130.01 of this instrument (but is not a superannuation income stream to which subsection 294-130.01(5) of this instrument applies); and
  - (c) you are entitled to receive a superannuation income stream benefit (the *earlier benefit*) from the superannuation income stream at a time (the *earlier time*); and
  - (d) the amount of the next superannuation income stream benefit (the *later benefit*) that you are entitled to receive from the superannuation income stream falls short of the amount of the earlier benefit; and
  - (e) that shortfall is not attributable to any of the following:

- (i) circumstances that cause a transfer balance debit to arise in your transfer balance account (other than because of this section);
  - (ii) a CPI adjustment in the amount of superannuation income stream benefits that you are entitled to receive from the superannuation income stream.
- (2) The amount of the debit is:
- (a) the special value, just before the earlier time, of the superannuation interest that supports the superannuation income stream; less
  - (b) the special value, just before the time (the *later time*) at which you are entitled to receive the later benefit, of that superannuation interest.
- (3) The debit arises at the later time.

**294-80.02 Debit in transfer balance account—reduction in amount of superannuation income stream benefit**

- (1) For the purposes of item 8 of the table in subsection 294-80(1) of the Act, a transfer balance debit arises under this section in your transfer balance account if:
- (a) you are or were a retirement phase recipient of a deferred superannuation income stream to which subsection 307-205.02C(1) of this instrument applies supported by a superannuation interest; and
  - (b) but for section 294-80.03 of this instrument, a transfer balance debit would arise at a time under item 5 or 6 of the table in subsection 294-80(1) of the Act in your transfer balance account because of the superannuation income stream.
- (2) The amount of the debit is the total amount of the superannuation benefits that would be payable if you voluntarily caused the superannuation interest to cease at that time.
- (3) The debit arises at that time.

**294-80.03 Debit in transfer balance account—certain items of table in subsection 294-80(1) of the Act do not apply to certain superannuation income streams**

For the purposes of subsection 294-80(3) of the Act, items 5 and 6 of the table in subsection 294-80(1) of the Act do not apply to deferred superannuation income streams to which subsection 307-205.02C(1) of this instrument applies.

## **Subdivision 294-D—Modifications for certain defined benefit income streams**

### **294-130.01 Meaning of capped defined benefit income stream**

- (1) For the purposes of subsection 294-130(2) of the Act, a superannuation income stream is prescribed if subsection (2), (3), (4), (5) or (6) of this section applies to the superannuation income stream.

Note: A superannuation income stream prescribed under this section is a *capped defined benefit income stream* (see subsection 294-130(2) of the Act).

- (2) This subsection applies to a superannuation income stream if it is a pension for the purposes of the SIS Act that is provided under rules:
- (a) that are in existence on 29 June 2007; and
  - (b) that would meet the standards of subregulation 1.06(2) of the SIS Regulations except for the circumstances in which those rules allow for either or both of the following:
    - (i) the pension to be commuted;
    - (ii) the variation or cessation of pension payments in respect of a child of the deceased primary or reversionary beneficiary.
- (3) This subsection applies to a superannuation income stream if:
- (a) it arises as a direct result of the payment of an involuntary roll-over superannuation benefit to a successor fund; and
  - (b) it is a pension for the purposes of the SIS Act that is paid from the successor fund; and
  - (c) the rules under which a pension was provided by the fund that made the payment of the involuntary roll-over superannuation benefit satisfied subsection (2) at the time of transfer; and
  - (d) the rules of the successor fund under which the superannuation income stream is provided satisfy paragraph (2)(b).
- (4) This subsection applies to a superannuation income stream if:
- (a) it is covered by item 2 of the table in subsection 294-130(1) of the Act; and
  - (b) it starts to be in the retirement phase on or after 1 July 2017; and
  - (c) it arises as a direct result of the payment of an involuntary roll-over superannuation benefit to a successor fund.
- (5) This subsection applies to a superannuation income stream if:
- (a) it is covered by any of items 3 to 7 of the table in subsection 294-130(1) of the Act; and
  - (b) it starts to be in the retirement phase on or after 1 July 2017; and
  - (c) it arises as a direct result of the payment of an involuntary roll-over superannuation benefit to a successor fund.
- (6) This subsection applies to a superannuation income stream if it is a pension for the purposes of the SIS Act that is provided:

- (a) on the grounds of invalidity under a public sector superannuation scheme; and
- (b) under rules that would meet the standards of subregulation 1.06(2) of the SIS Regulations except to the extent that those rules allow for the variation, suspension or cessation of pension payments due to any of the following:
  - (i) the primary beneficiary's level of incapacity being reclassified;
  - (ii) the primary beneficiary's personal earnings changing;
  - (iii) the primary beneficiary being employed by a participating employer of the relevant superannuation scheme;
  - (iv) the primary beneficiary failing to provide information as required by the rules;
  - (v) the primary beneficiary reaching a particular age.

**294-135.01 Transfer balance credit—determining special value of a superannuation interest**

- (1) For the purposes of subsection 294-135(4) of the Act, the *special value*, at a particular time, of a superannuation interest that supports an income stream that is, or was at any time, a superannuation income stream prescribed by section 294-130.01 of this instrument, is the amount worked out using the formula:

Annual entitlement × 16

where:

*annual entitlement* means the amount worked out by:

- (a) dividing the amount of the first superannuation income stream benefit you are entitled to receive from the income stream just after that time by the number of whole days to which that benefit relates; and
  - (b) multiplying the result by 365.
- (2) Subsection (1) does not apply to a superannuation interest covered by subsection (3).
- (3) This subsection covers a superannuation interest that supports an income stream that is, or was at any time, a superannuation income stream prescribed by section 294-130.01 to which subsection 294-130.01(5) applies.
- (4) For the purposes of subsection 294-135(4) of the Act, the *special value*, at a particular time, of a superannuation interest covered by subsection (3) of this section is the amount worked out in respect of that time under subsection 294-135(3) of the Act.
- (5) For the purposes of subsection (4) of this section, treat the reference in subsection 294-135(3) of the Act to a capped defined benefit income stream covered by any of items 3 to 7 of the table in subsection 294-130(1) as instead being a reference to the income stream mentioned in subsection (3) of this section.

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**294-145.01 Transfer balance debits—determining debit value of a superannuation interest**

- (1) For the purposes of subsection 294-145(7) of the Act, the *debit value*, at a particular time, of a superannuation interest that supports an income stream that is, or was at any time, a superannuation income stream prescribed by section 294-130.01 of this instrument, is:
  - (a) the amount of the transfer balance credit that arose in your transfer balance account in respect of the income stream; less
  - (b) the amount of any transfer balance debits (apart from debits arising under item 4 of the table in subsection 294-80(1) of the Act) that have arisen in your transfer balance account in respect of the income stream before that time.
- (2) Subsection (1) does not apply to a superannuation interest covered by subsection (3).
- (3) This subsection covers a superannuation interest that supports an income stream that is, or was at any time, a superannuation income stream prescribed by section 294-130.01 to which subsection 294-130.01(5) applies.
- (4) For the purposes of subsection 294-145(7) of the Act, the *debit value*, at a particular time, of a superannuation interest covered by subsection (3) of this section is the amount worked out in respect of that time under subsection 294-145(6) of the Act.
- (5) For the purposes of subsection (4) of this section, treat the reference in subsection 294-145(6) of the Act to a capped defined benefit income stream covered by any of items 3 to 7 of the table in subsection 294-130(1) as instead being a reference to the income stream mentioned in subsection (3) of this section.



## **Division 295—Taxation of superannuation entities**

### **Subdivision 295-D—Contributions excluded**

#### **295-265.01 Application of pre-1 July 88 funding credits—limit on choice**

- (1) For the purposes of paragraph 295-265(7)(a) of the Act, this section prescribes the manner in which a superannuation provider in relation to a superannuation fund is to work out the amount applicable to the fund, under subsection 295-265(6) of the Act, for an income year.
- (2) The superannuation provider must use an actuary to work out the amount applicable to the fund for an income year.

##### *Method 1—Funding credit valuation process*

- (3) The method in section 295-265.02 (*method 1*) must be used for an income year, unless:
  - (a) the conditions mentioned in subsection (8) of this section for using the method in section 295-265.05 (*method 2*) are met; and
  - (b) the superannuation provider's actuary decides that using method 2 is appropriate.

##### *Amount applicable to the fund*

- (4) Subject to subsection (5), the amount applicable to the fund for an income year is the least of the following amounts:
  - (a) the amount of pre-1 July 88 funding credits unused at the end of the previous income year;
  - (b) the value of unfunded pre-1 July 88 liabilities for the income year, determined by the superannuation provider's actuary in accordance with step 3 of method 1 or method 2;
  - (c) the pre-1 July 88 taxable contributions for the income year, worked out in accordance with step 4 of method 1 or method 2.
- (5) The amount identified in accordance with subsection (4) must then be adjusted for all transfers of funding credits and relevant liabilities into or out of the fund.
- (6) The amounts mentioned in paragraphs (4)(a), (b) and (c), and the amount as adjusted under subsection (5), must be certified by the superannuation provider's actuary.
- (7) The superannuation provider must ensure that, on request, the actuary that certifies an amount under subsection (6) provides the superannuation provider with sufficient information to enable another actuary to check the certification.

##### *Method 2—Notionally updated funding credit valuation process*

- (8) The superannuation provider may use method 2 for an income year if:

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- (a) the superannuation provider's actuary can identify, at the start of the income year, that the value of unfunded pre-1 July 88 liabilities for the income year exceeds the amount that the superannuation provider wishes to specify for the purposes of subsection 295-265(1) of the Act; and
- (b) the income year is the first or second year after an income year for which method 1 was used to calculate the amount applicable to the fund.

*Professional standards must be followed etc.*

- (9) The superannuation provider must ensure that, in making a calculation under or applying method 1 or 2, the superannuation provider's actuary:
  - (a) follows any professional standards prepared by the Institute of Actuaries of Australia; and
  - (b) has regard to any professional guidance notes prepared by the Institute of Actuaries of Australia;that relate to the determination of accrued benefits mentioned in method 1 or 2.

*Superannuation provider must provide information to support working out, if requested*

- (10) The superannuation provider must, if requested to do so, provide sufficient information to support its working out of the amount applicable to the fund under subsection 295-265(6) of the Act for an income year.

### 295-265.02 Method 1—Funding credit valuation process

- (1) The following is method 1 for the purposes of section 295-265.01.

*Method statement*

Step 1: For an income year for which a superannuation provider chooses to reduce the amount of contributions that would otherwise be included in a superannuation fund's assessable income, calculate, in accordance with section 295-265.03, the discounted present value of liabilities as at the start of that income year that relates to membership completed.

The discounted present value of liabilities for all members apportioned to pre-1 July 88 membership is the *value of pre-1 July 88 liabilities* for the income year.

Step 2: Calculate, in accordance with section 295-265.04, the total amount of superannuation fund assets at their market value at the start of the income year, on the basis on which the superannuation provider's actuary would consider appropriate for a valuation under Part 9 of the SIS Regulations.

The result is the *assets available to fund pre-1 July 88 liabilities* for the income year.

Step 3: Deduct the assets available to fund pre-1 July 88 liabilities for the income year from the value of pre-1 July 88 liabilities for the income year.

The result is the *value of unfunded pre-1 July 88 liabilities* for the income year.

Step 4: The amount of taxable contributions that are allocated to fund that value of unfunded pre-1 July 88 liabilities, as notified by the superannuation provider to the actuary, are the *pre-1 July 88 taxable contributions* for the income year.

- (2) The superannuation provider's actuary must retain the following documentation for the income year for not less than 5 years:
  - (a) documentation of the liability and valuation apportionment calculations for step 1 of method 1;
  - (b) documentation to support calculations made for the asset apportionment for step 2 of method 1.
- (3) The superannuation provider must retain documentation to support calculations of pre-1 July 88 taxable contributions for the income year for not less than 5 years.

### **295-265.03 How to calculate the discounted present value of liabilities for step 1 of method 1**

- (1) This section sets out how to calculate the discounted present value of liabilities for step 1 of method 1 in section 295-265.02.
- (2) The basis for the calculation in step 1 of method 1 must be the actuarial valuation basis relevant to the income year in question which the superannuation provider's actuary would consider appropriate for a valuation under Part 9 of the SIS Regulations.
- (3) In making the calculation, exclude the following liabilities that are not provided from taxable contributions:
  - (a) liabilities representing benefits financed by undeducted contributions (within the meaning of subsection 27A(1) of the *Income Tax Assessment Act 1936* as in force just before 15 March 2007);
  - (b) liabilities representing benefits or components that are expected to be treated as paid from an untaxed source;  

Example: Pensions provided on an emerging cost or pay as you go basis, with corresponding elections being made under subsection 295-180(1) of the Act.
  - (c) liabilities for entitlements relating to membership and for which corresponding assets can be identified;  

Example: Fully funded productivity, superannuation guarantee or salary sacrifice account balances.
  - (d) liabilities representing death and disability benefits for which costs are claimed as deductible under section 295-465 or 295-470 of the Act.

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- (4) Apportion the discounted present value of the liabilities, between:
  - (a) the period of superannuation fund membership completed before 1 July 1988; and
  - (b) the period of superannuation fund membership completed on and after 1 July 1988;for each superannuation fund member or former member for whom a liability is being valued.
- (5) The apportionment must be made having regard to the following requirements and principles:
  - (a) superannuation fund membership must be consistent with the definition used by the fund to determine the benefit being valued;
  - (b) an alternative method for apportioning the discounted present value of liabilities may be used only if the superannuation provider's actuary certifies that the method will provide a reasonable approximation of the apportionment;
  - (c) a linear apportionment method will generally be used, but an apportionment method that reflects non-linear accrual of entitlements may be used if the superannuation provider's actuary considers that such a method achieves an outcome that is consistent with the principle that funding credits can only be used against contributions intended to provide for entitlements relating to membership completed before 1 July 1988.

**295-265.04 How to calculate the assets available to fund pre-1 July 88 liabilities for step 2 of method 1**

- (1) This section sets out how to calculate the assets available to fund pre-1 July 88 liabilities for step 2 of method 1 in section 295-265.02.
- (2) In making the calculation in step 2 of method 1, allow deductions for realisation costs and charges incurred in the normal course of operation of the superannuation fund.
- (3) Deduct the amount of assets that relate to excluded liabilities mentioned in subsection 295-265.03(3).
- (4) All remaining assets should be treated as available to fund pre-1 July 88 liabilities unless the superannuation provider can provide the superannuation provider's actuary with written evidence to support exclusion of both an amount of assets and a corresponding value of liabilities.

**295-265.05 Method 2—Notionally updated funding credit valuation process**

- (1) The following is method 2 for the purposes of section 295-265.01.

*Method statement*

Step 1: For an income year (the *current income year*), the superannuation provider's actuary must notionally adjust the value of pre-1 July 88

liabilities of the superannuation fund for the previous income year from the start of the previous income year to the start of the current income year, taking into account any factors likely to affect that value.

In making a calculation the actuary must have regard to the valuation basis that would be used by the fund if method 1 were being used for the current income year.

In making a calculation the actuary must have regard to actual experience gained from the operation of the fund if the experience is materially different from valuation assumptions used in the calculation of the value of pre-1 July 88 liabilities for the previous income year.

The result is the *value of pre-1 July 88 liabilities* for the current income year.

Step 2: The actuary must notionally adjust the assets available to fund pre-1 July 88 liabilities of the superannuation fund for the previous income year from the start of the previous income year to the start of the current income year, taking into account any factors likely to affect those assets, including by:

- (a) adding taxable contributions allocated to fund pre-1 July 88 taxed liabilities in the previous income year; and
- (b) deducting the employer-financed component of pre-1 July 88 taxed benefits paid out during the previous income year; and
- (c) adding actual investment earnings net of the tax and expenses relating to investment income for the previous income year using a basis that is consistent with the underlying investment earnings achieved and normal practices of the superannuation fund.

The result is the *assets available to fund pre-1 July 88 liabilities* for the current income year.

Step 3: Deduct the assets available to fund pre-1 July 88 liabilities for the current income year from the value of pre-1 July 88 liabilities for the current income year.

The result is the *value of unfunded pre-1 July 88 liabilities* for the current income year.

Step 4: The amount of taxable contributions that are allocated to fund that value of unfunded pre-1 July 88 liabilities, as notified by the superannuation provider to the actuary, are the *pre-1 July 88 taxable contributions* for the current income year.

- (2) The superannuation provider's actuary must retain the following documentation for the income year for not less than 5 years:

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- (a) documentation to support the notional updating of the value of pre-1 July 88 liabilities for step 1 of method 2;
  - (b) documentation to support the notional updating of the assets available to fund pre-1 July 88 liabilities for step 2 of method 2.
- (3) The superannuation provider must retain documentation to support calculations of pre-1 July 88 taxable contributions for the income year for not less than 5 years.

**Subdivision 295-F—Exempt income**

**295-385.01 Segregated current pension assets—prescribed superannuation income stream benefits**

For the purposes of section 295-385 of the Act, the following superannuation income stream benefits are prescribed:

- (a) an RP superannuation income stream benefit of a superannuation fund payable from:
  - (i) an allocated pension within the meaning of the SIS Regulations; or
  - (ii) a market linked pension within the meaning of the SIS Regulations; or
  - (iii) an account-based pension within the meaning of the SIS Regulations;
- (b) a superannuation benefit payable, from a superannuation interest, in respect of a right mentioned in subsection 307-70.02(2) that is covered by subsection 307-70.02(3), if, immediately before the death mentioned in paragraph 307-70.02(2)(a), the superannuation interest supported a pension mentioned in subparagraph (a)(i), (ii) or (iii) of this section payable to the deceased mentioned in paragraph 307-70.02(2)(a);
- (c) a superannuation benefit payable from a superannuation interest that supports a new superannuation income stream in relation to which subsection 307-70.02(4) applies (as affected by subsection 307-70.02(5)), if the superannuation income stream payable to the deceased mentioned in paragraph 307-70.02(4)(a) was a pension mentioned in subparagraph (a)(i), (ii) or (iii) of this section.

Note 1: Certain assets that enable a superannuation fund to discharge liabilities in respect of superannuation income stream benefits that are RP superannuation income stream benefits and are prescribed under this section are *segregated current pension assets* of the fund (see subsection 295-385(4) of the Act).

Note 2: Section 307-205.02 does not apply to a superannuation income stream mentioned in paragraph (a) of this section (see paragraph 307-205.02(2)(a)).

**Subdivision 295-G—Deductions**

**295-465.01 Complying funds—deductions for insurance premiums**

- (1) For the purposes of subsections 295-465(1B) and (2A) of the Act, the proportion specified in an item in the following table in relation to an insurance policy specified in the item may be treated:

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- (a) as being attributable to the liability of the complying superannuation fund which pays for the policy to provide benefits referred to in section 295-460 of the Act; and
- (b) as being the amount a complying superannuation fund could reasonably be expected to pay in an arm's length transaction to obtain an insurance policy to cover it for its current or contingent liabilities to provide benefits referred to in section 295-460 of the Act.

<b>Deductible portion of premiums</b>		
<b>Item</b>	<b>Insurance policy</b>	<b>Specified proportion %</b>
1	TPD any occupation	100
2	TPD any occupation with one or more of the following inclusions: (a) activities of daily living; (b) cognitive loss; (c) loss of limb; (d) domestic (home) duties	100
3	TPD own occupation	67
4	TPD own occupation with one or more of the following inclusions: (a) activities of daily living; (b) cognitive loss; (c) loss of limb; (d) domestic (home) duties	67
5	TPD own occupation bundled with death (life) cover	80
6	TPD own occupation bundled with death (life) cover with one or more of the following inclusions: (a) activities of daily living; (b) cognitive loss; (c) loss of limb; (d) domestic (home) duties	80

- (2) A proportion specified in the table in subsection (1) may be treated as referred to in subsection (1) only if the conditions to which the insurance policy that relates to the proportion is subject are either more restrictive than or have substantially the same meaning as the conditions described in the definition of the policy in subsection (5).
- (3) However, if a member is required to meet a criterion to be eligible for a benefit under an insurance policy in addition to the criteria that are essential to the matters identified in the definition of the policy in subsection (5), the additional criterion may be disregarded.

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- (4) The use of a specified proportion in the table in subsection (1) in respect of a particular insurance policy is not affected by the inclusion in the insurance policy of a benefit payable to a member because a terminal medical condition exists in relation to the member.

Note: For *terminal medical condition*, see section 995-1 of the Act and section 995-1.06 of this instrument.

- (5) In this instrument:

*activities of daily living* means a component of a disability insurance policy that insures against a disability that results in a member's total and permanent inability to perform at least 2 of the following activities without the assistance of another person:

- (a) bathing and showering;
- (b) dressing and undressing;
- (c) eating and drinking;
- (d) mobility, to the extent of being able to get in and out of bed or a chair, and move from place to place without using a wheelchair;
- (e) the ability to use a toilet.

*bundled* means a situation in which:

- (a) the TPD and death (life) components of the combined insurance premium are not separately identified; and
- (b) the amount payable to the insured person in relation to the TPD component does not exceed the amount payable in relation to the insured person in relation to the death (life) component.

*cognitive loss* means a component of a disability insurance policy that insures against a member suffering a permanent deterioration or loss of cognitive functioning or intellectual capacity that requires the person to be under the continuous care and supervision of another person.

*death (life) cover* means insurance against the liability to provide a superannuation death benefit.

Note: For *superannuation death benefit*, see subsection 995-1(1) of the Act.

*domestic (home) duties* means a component of a disability insurance policy that insures against a disability that results in a member being:

- (a) unable to perform the member's normal domestic duties; and
- (b) unable to leave the member's home unaided; and
- (c) incapacitated to such an extent that the member is unlikely to ever engage in normal domestic duties or any gainful employment.

*loss of limb* means a component of a disability insurance policy that insures against the permanent loss of:

- (a) the sight in both the member's eyes resulting in blindness; or
- (b) the use of 2 or more of the member's limbs, feet or hands; or
- (c) the sight in one of the member's eyes resulting in blindness in that eye and the use of one of the member's limbs, feet or hands.



***normal domestic duties*** means the tasks performed by an individual whose sole occupation is to maintain the individual's family home, including:

- (a) unassisted cleaning of the individual's home; and
- (b) cooking of meals for the individual's family; and
- (c) doing the laundry for the individual's family; and
- (d) shopping for food for the individual's family; and
- (e) taking care of any dependent children.

***TPD any occupation*** means insurance against the member suffering an illness or injury that is likely to result in the member's permanent inability to engage in gainful employment for which the member is reasonably qualified by education, training or experience.

***TPD own occupation*** means insurance against the member suffering an illness or injury that is likely to result in the member's permanent inability to engage in gainful employment in the member's own occupation, where inability to engage in gainful employment includes the inability to work otherwise than in a substantially reduced capacity to that in which the member worked before suffering the illness or injury.

## **Division 301—Superannuation member benefits paid from complying plans etc.**

### **Subdivision 301-D—Departing Australia superannuation payments**

#### **301-170.01 Departing Australia superannuation payments**

For the purposes of subparagraph 301-170(1)(b)(i) of the Act, the following regulations are specified:

- (a) regulations 6.20A, 6.20B and 6.24A of the SIS Regulations;
- (b) regulation 4.23A of the RSA Regulations.

Note: A superannuation lump sum paid to a person in accordance with the regulations specified in this section is a *departing Australia superannuation payment* (see subsection 301-170(1) of the Act).

### **Subdivision 301-E—Superannuation lump sum member benefits less than \$200**

#### **301-225.01 Superannuation lump sum member benefits less than \$200 are tax free**

- (1) For the purposes of paragraph 301-225(1)(d) of the Act, this section specifies requirements in relation to a superannuation member benefit.

Note: The effect of section 301-225 of the Act is that a superannuation member benefit is not assessable income and is not exempt income in certain circumstances (which include satisfying the requirements in subsection (2) of this section).

- (2) A requirement is that the member's benefit must be released under:
- (a) item 104 or 111 of Part 1 of Schedule 1 to the SIS Regulations; or
  - (b) item 211 of Part 2 of Schedule 1 to the SIS Regulations; or
  - (c) item 111 of Schedule 2 to the RSA Regulations.

## **Division 302—Superannuation death benefits paid from complying plans etc.**

### **Subdivision 302-D—Definitions relating to dependants**

#### **302-195.01 Circumstances in which a person died in the line of duty**

- (1) For the purposes of subsection 302-195(3) of the Act, this section specifies the different circumstances in which a military or police person (the *deceased person*) died in the line of duty.

Note 1: For *military or police person*, see section 995-1.01.

Note 2: However, if the deceased person died in a circumstance set out in section 302-195.02, the person has not died in the line of duty for the purposes of subsection 302-195(3) of the Act.

Note 3: This section is relevant for working out whether an individual is a death benefits dependant of a person under section 302-195 of the Act.

#### *Performance of duties*

- (2) A circumstance is that the deceased person died while performing the duties of a military or police person.
- (3) A circumstance is that:
- (a) the deceased person was off duty at the time of the deceased person's death; and
  - (b) the deceased person's death occurred:
    - (i) in the course of an attempt to arrest a suspected offender; or
    - (ii) in the course of an attempt to prevent an offence; or
    - (iii) in the course of an attempt to rescue a person; or
    - (iv) while the deceased person was travelling to a place of work as a result of being recalled to duty.

#### *Injury*

- (4) A circumstance is that the deceased person:
- (a) died within 12 months after sustaining an injury; and
  - (b) died as a result of sustaining the injury; and
  - (c) sustained the injury while performing the duties of a military or police person.
- (5) A circumstance is that the deceased person:
- (a) was off duty at the time of sustaining an injury; and
  - (b) sustained the injury:
    - (i) in the course of an attempt to arrest a suspected offender; or
    - (ii) in the course of an attempt to prevent an offence; or
    - (iii) in the course of an attempt to rescue a person; or

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- (iv) while the deceased person was travelling to a place of work as a result of being recalled to duty; and
- (c) died within 12 months after sustaining the injury; and
- (d) died as a result of sustaining the injury.

*Overseas service*

- (6) A circumstance is that the deceased person:
  - (a) was a member of the Defence Force; and
  - (b) died while serving overseas, if the service was:
    - (i) warlike service mentioned in paragraph 6(1)(a) of the *Military Rehabilitation and Compensation Act 2004*; or
    - (ii) non-warlike service mentioned in paragraph 6(1)(b) of the *Military Rehabilitation and Compensation Act 2004*.
- (7) A circumstance is that the deceased person:
  - (a) was a member of the Australian Federal Police or a protective service officer within the meaning of the *Australian Federal Police Act 1979*; and
  - (b) died while serving overseas, if the service was:
    - (i) at a place specified in a determination under subsection 40H(1) of the *Australian Federal Police Act 1979*; and
    - (ii) on a peace-keeping or capacity-building mission.
- (8) A circumstance is that the deceased person:
  - (a) was a member of a State or Territory police force; and
  - (b) died while serving overseas, if the service was:
    - (i) undertaken as a special member of the Australian Federal Police under section 40E of the *Australian Federal Police Act 1979*; and
    - (ii) on a peace-keeping or capacity-building mission.

*Consequences of duties*

- (9) A circumstance is that, as a result of action taken because the deceased person was a military or police person, the deceased person sustained an injury from which the deceased person died:
  - (a) immediately; or
  - (b) within 12 months after sustaining the injury.

Example: The deceased person was killed in retaliation for an action taken in the deceased person's capacity as a member of a State or Territory police force.

*Uncertainty about circumstances of death*

- (10) A circumstance is that:
  - (a) the deceased person has died in a circumstance in any of subsections (2) to (9); and
  - (b) it is not certain, after reasonable inquiry, whether the deceased person has died in a circumstance specified in section 302-195.02.

*Interpretation*

- (11) For the purposes of this section and section 302-195.02, the time when a person is off duty includes a time when the person is:
- (a) travelling to or from the person's place of work; or
  - (b) on a rostered day off work; or
  - (c) on leave from work.

**302-195.02 Circumstances in which a person has not died in the line of duty**

- (1) For the purposes of subsection 302-195(3) of the Act, this section specifies different circumstances in which, despite section 302.195.01, a military or police person (the *deceased person*) has not died in the line of duty.

*Off duty*

- (2) A circumstance is that:
- (a) the deceased person was off duty at the time of death; and
  - (b) none of subsections 302-195.01(3), (6), (7), (8) and (9) apply.
- (3) A circumstance is that:
- (a) the deceased person died as a result of sustaining an injury; and
  - (b) the deceased person was off duty at the time of sustaining the injury; and
  - (c) none of subsections 302-195.01(5), (6), (7), (8) and (9) apply.

*Incidental activity*

- (4) A circumstance is that:
- (a) the deceased person's death related to an activity that was not directly related to the performance of the deceased person's duties; and
  - (b) none of subsections 302-195.01(6), (7) and (8) apply.

Example: The person's death related to undertaking a sporting activity.

*Death after retirement*

- (5) A circumstance is that:
- (a) the deceased person died after retiring from being a military or police person; and
  - (b) none of subsections 302-195.01(4), (5) and (9) apply.

*Suicide*

- (6) A circumstance is that the deceased person died as a result of committing suicide.

*Natural causes or disease*

- (7) A circumstance is that:
- (a) the deceased person died as a result of:

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- (i) natural causes; or
- (ii) an illness or disease; and
- (b) none of subsections 302-195.01(6), (7) and (8) apply.

**302-200.01 What is an interdependency relationship—matters to be taken into account**

- (1) For the purposes of paragraph 302-200(3)(a) of the Act, this section specifies matters that are to be taken into account in determining whether 2 persons have an interdependency relationship under section 302-200 of the Act.
- (2) The matters are:
  - (a) all of the circumstances of the relationship between the persons, including (where relevant):
    - (i) the duration of the relationship; and
    - (ii) whether or not a sexual relationship exists; and
    - (iii) the ownership, use and acquisition of property; and
    - (iv) the degree of mutual commitment to a shared life; and
    - (v) the care and support of children; and
    - (vi) the reputation and public aspects of the relationship; and
    - (vii) the degree of emotional support; and
    - (viii) the extent to which the relationship is one of mere convenience; and
    - (ix) any evidence suggesting that the parties intend the relationship to be permanent; and
  - (b) the existence of a statutory declaration signed by one of the persons to the effect that the person is, or (in the case of a statutory declaration made after the end of the relationship) was, in an interdependency relationship with the other person.

**302-200.02 What is an interdependency relationship—existence of relationship**

- (1) For the purposes of paragraph 302-200(3)(b) of the Act, this section specifies circumstances in which 2 persons have, or do not have, an interdependency relationship under section 302-200 of the Act.

*Interdependency relationship*

- (2) Two persons have an interdependency relationship if:
  - (a) they satisfy the requirements of paragraphs 302-200(1)(a) to (c) of the Act; and
  - (b) one or both of them provides the other with support and care of a type and quality normally provided in a close personal relationship, rather than by a mere friend or flatmate.

Note: For example, care normally provided in a close personal relationship rather than by a friend or flatmate includes the following:

- (a) significant care provided for the other person when the other person is unwell;
- (b) significant care provided for the other person when the other person is suffering emotionally.

- (3) Two persons have an interdependency relationship if:
- (a) they have a close personal relationship; and
  - (b) they do not satisfy one or more of the other requirements set out in subsection 302-200(1) of the Act; and
  - (c) the reason they do not satisfy those requirements is that they are temporarily living apart.

Note: For example, 2 persons may satisfy paragraph (c) if one of the persons is temporarily working overseas or is in gaol.

- (4) Two persons have an interdependency relationship if:
- (a) they have a close personal relationship; and
  - (b) they do not satisfy one or more of the other requirements set out in subsection 302-200(1) of the Act; and
  - (c) the reason they do not satisfy those requirements is that either or both of them suffer from a disability.

*No interdependency relationship*

- (5) Two persons do not have an interdependency relationship if one of them provides domestic support and personal care to the other:
- (a) under an employment contract or a contract for services; or
  - (b) on behalf of another person or organisation such as a government agency, a body corporate or a benevolent or charitable organisation.

## Division 306—Roll-overs etc.

### 306-10.01 Roll-over superannuation benefit

For the purposes of paragraph 306-10(b) of the Act, each of the following kinds of superannuation benefit is specified:

- (a) a superannuation death benefit, unless it is paid to an entitled recipient covered by subregulation 6.21(2A) of the SIS Regulations or subregulation 4.24(3A) of the RSA Regulations;
- (b) a benefit to which section 303-10 of the Act, or section 303-10 of the *Income Tax (Transitional Provisions) Act 1997*, applies.

Note: These kinds of superannuation benefits are not *roll-over superannuation benefits* (see section 306-10 of the Act).



## **Division 307—Key concepts relating to superannuation benefits**

### **Subdivision 307-B—Superannuation lump sums and superannuation income stream benefits**

#### **307-70.01 Superannuation income stream benefits**

For the purposes of subsection 307-70(1) of the Act (definition of *superannuation income stream benefit*), all superannuation benefits are specified.

#### **307-70.02 Meaning of *superannuation income stream***

- (1) For the purposes of subsection 307-70(2) of the Act, a *superannuation income stream* is:
  - (a) an income stream that is taken to be:
    - (i) an annuity for the purposes of the SIS Act in accordance with subregulation 1.05(1) of the SIS Regulations; or
    - (ii) a pension for the purposes of the SIS Act in accordance with subregulation 1.06(1) of the SIS Regulations; or
    - (iii) a pension for the purposes of the RSA Act in accordance with regulation 1.07 of the RSA Regulations; or
  - (b) an income stream that:
    - (i) is an annuity or pension within the meaning of the SIS Act; and
    - (ii) commenced before 20 September 2007; or
  - (c) a deferred superannuation income stream that is taken to be:
    - (i) an annuity for the purposes of the SIS Act in accordance with subregulation 1.05(1) of the SIS Regulations because the contract for the provision of the income stream meets the standards of subregulation 1.06A(2) of the SIS Regulations; or
    - (ii) a pension for the purposes of the SIS Act in accordance with subregulation 1.06(1) of the SIS Regulations because the rules for the provision of the income stream meet the standards of subregulation 1.06A(2) of the SIS Regulations; or
  - (d) for the purposes of sections 295-385, 295-390, 295-395, 320-246 and 320-247 of the Act—one or more rights (whether contingent or not), to the extent that they are covered by subsection (3).
- (2) Subsection (3) applies if:
  - (a) immediately before the death of a person (the *deceased*), a superannuation interest was supporting a superannuation income stream payable to the deceased; and
  - (b) the superannuation income stream did not automatically revert to another person on the death of the deceased; and

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- (c) one or more other persons each have a right (whether contingent or not) to be paid an amount that will be a superannuation benefit from the superannuation interest; and
  - (d) each such right arises on the death of the deceased, and ceases to exist immediately after the payment of the amount mentioned in paragraph (c).
- (3) For the purposes of paragraph (1)(d), this subsection covers each such right, to the extent that the value of the superannuation interest has not increased (other than through investment earnings) on or after the deceased's death.
- (4) Subsections (5) and (6) apply if:
  - (a) immediately before the death of a person (the *deceased*), a superannuation interest was supporting a superannuation income stream payable to the deceased; and
  - (b) the superannuation income stream did not automatically revert to another person on the death of the deceased; and
  - (c) one or more persons each have a right (whether contingent or not) to commence a new superannuation income stream using an amount applied from the superannuation interest; and
  - (d) each such right arises on the death of the deceased, and ceases to exist at the time the relevant new superannuation income stream commences (disregarding paragraph (5)(a)); and
  - (e) each of the new income streams is of a kind mentioned in paragraph (1)(a).
- (5) For the purposes of sections 295-385, 295-390, 295-395, 320-246 and 320-247 of the Act, in applying paragraph (1)(a):
  - (a) treat each new superannuation income stream mentioned in paragraph (4)(c) as commencing on the death of the deceased; and
  - (b) during the period:
    - (i) starting on the death of the deceased; and
    - (ii) ending at the time the new superannuation income stream commences (disregarding paragraph (a));take account of the value of the superannuation interest only to the extent that the value has not increased (other than through investment earnings) on or after the deceased's death.
- (6) For the purposes of subsections (2) and (3), disregard a right mentioned in paragraph (4)(c).

**Subdivision 307-C—Components of a superannuation benefit**

**307-125.01 Components of member benefits accruing before 1 July 1999 paid from the Military Superannuation and Benefits Scheme**

- (1) For the purposes of paragraph 307-125(4)(a) of the Act, subsection (2) specifies an alternative method for determining components of a superannuation benefit:
  - (a) accruing before 1 July 1999; and

(b) paid from the Military Superannuation and Benefits Scheme on or after 1 July 2007 in respect of a member who is below preservation age; where the member chooses to use the alternative method.

(2) The alternative method is a method chosen by the member which complies with subsection (3).

(3) For the purposes of subsection (2), the maximum amount that the member may determine as a component of the person's member benefits accruing before 1 July 1999, whether by a single choice or cumulatively, may not exceed:

(a) for the tax free component of the person's member benefits accruing before 1 July 1999—the amount worked out under section 307-210 of the Act for the superannuation interest; and

(b) for the taxable component of the person's member benefits accruing before 1 July 1999—the amount worked out under section 307-215 of the Act for the superannuation interest.

**Example:** A member of the Military Superannuation and Benefits Scheme has an amount of member benefits accruing before 1 July 1999 of \$1,000. Just before the benefit is paid, the value of the tax free component is \$800 and the taxable component is \$200. Before reaching preservation age, the member takes a lump sum benefit of \$900.

Under subsection (2), the member is able to determine the amount of the benefit that will be the tax free component and the amount that will be the taxable component of the benefit. However, subsection (3) prevents the member from treating more than \$800 of the superannuation benefit as tax free.

**Note:** A preserved superannuation benefit paid in respect of a member of the Military Superannuation and Benefits Scheme is paid in accordance with subsection 307-125(2) of the Act.

(4) In this instrument:

***Military Superannuation and Benefits Scheme*** means the scheme that is established by clause 2 of the Military Superannuation and Benefits Trust Deed.

**Note:** The Trust Deed is made under the *Military Superannuation and Benefits Act 1991*.

### **307-125.02 Components of superannuation benefits after death of recipient of superannuation income stream**

(1) For the purposes of paragraph 307-125(4)(a) of the Act, subsection (3) specifies an alternative method for determining the components of a superannuation benefit referred to in paragraph (3)(a) or (b) if:

(a) immediately before the death of a person (the ***deceased***), a superannuation interest (the ***relevant superannuation interest***) was supporting a superannuation income stream (the ***original superannuation income stream***) payable to the deceased; and

(b) the original superannuation income stream did not automatically revert to another person on the deceased's death; and

(c) no amounts, other than investment earnings, have been added to the relevant superannuation interest on or after the deceased's death; and

(d) one or both of the following occurs after the deceased's death:

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- (i) a superannuation death benefit that is a superannuation lump sum is paid using only an amount from the relevant superannuation interest;
  - (ii) a superannuation income stream (the *new superannuation income stream*) is commenced using only an amount applied from the relevant superannuation interest.
- (2) For the purposes of paragraph (1)(c), investment earnings includes:
- (a) an amount paid under a policy of insurance on the life of the deceased; and
  - (b) an amount arising from self-insurance.
- (3) The following method sets out how to work out the tax free component and taxable component of:
- (a) a superannuation death benefit mentioned in subparagraph (1)(d)(i); or
  - (b) a superannuation benefit paid from a superannuation interest that supports the new superannuation income stream mentioned in subparagraph (1)(d)(ii).

*Method statement*

- Step 1. Reduce the amount of the benefit by the extent, if any, to which the benefit is attributable to any of the following:
- (a) an amount paid on or after the death of the deceased under a policy of insurance on the life of the deceased;
  - (b) an amount arising on or after the death of the deceased from self-insurance.
- Step 2. The tax free component of the benefit is the amount that represents the same proportion of the amount resulting from step 1 as the tax free component of the relevant superannuation interest bore to the value of the relevant superannuation interest when the original superannuation income stream commenced.
- Step 3. The taxable component of the benefit is the amount of the benefit less the tax free component of the benefit worked out under step 2.

**Subdivision 307-D—Superannuation interests**

**307-200.01 Application of sections 307-200.02 to 307-200.05 to Subdivisions 291-C and 293-D of the Act**

For the purposes of section 307-200 of the Act, sections 307-200.02 to 307-200.05 specify ways of treating superannuation interests other than for the purposes of:

- (a) calculating an amount of contributions under Subdivision 291-C of the Act; or
- (b) calculating low tax contributions under Subdivision 293-D of the Act.

**307-200.02 Meaning of superannuation interests—treating superannuation interests as 1 superannuation interest (self-managed superannuation funds)**

For the purposes of subsection 307-200(2) of the Act, 2 or more superannuation interests that a member holds in a self-managed superannuation fund are to be treated as one superannuation interest by:

- (a) treating every amount, benefit or entitlement that the member holds in the fund as one superannuation interest; but
- (b) excluding from that treatment any amount, benefit or entitlement that is to be treated as 2 or more superannuation interests in accordance with section 307-200.05.

**307-200.03 Meaning of superannuation interests—treating a superannuation interest as 2 or more superannuation interests (public sector schemes)**

- (1) For the purposes of subsection 307-200(1) of the Act, a superannuation interest in a public sector superannuation scheme is to be treated as the 2 superannuation interests referred to in subsection (3) in the circumstances specified in subsection (2).
- (2) The interest is to be treated as 2 interests if:
  - (a) the superannuation benefit that is to be paid from the scheme is sourced:
    - (i) partly from contributions made into the scheme or earnings on those contributions; and
    - (ii) partly from one or more other sources; or
  - (b) the superannuation benefits that are to be paid from the scheme are sourced:
    - (i) partly from contributions made into the scheme or earnings on those contributions; and
    - (ii) partly from one or more other sources.
- (3) The 2 interests are:
  - (a) an interest that consists of the contributions made into the scheme and the earnings on those contributions; and
  - (b) an interest that consists of the remainder of the amount sourced from the other source or sources.
- (4) For the purposes of this section, an amount specified in a notice given under subsection 307-285(1) of the Act by the trustee of a scheme is not treated as contributions made into the scheme or earnings on those contributions.

**307-200.05 Meaning of superannuation interests—treating a superannuation interest as 2 or more superannuation interests (superannuation income streams)**

For the purposes of subsection 307-200(1) of the Act, if a superannuation income stream:

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- (a) is payable; or
- (b) will be payable, and it is a deferred superannuation income stream covered by paragraph 307-70.02(1)(c);

an amount that supports the superannuation income stream is always to be treated as a separate superannuation interest.

**307-205.01 Value of superannuation interest for calculating pre-July 83 amount for members in the contributions and investment phase**

- (1) For the purposes of paragraph 307-205(1)(a) of the Act, this section specifies methods for determining the value of a superannuation interest of a member of a superannuation fund at a particular time for the purposes of calculating the pre-July 83 amount of the crystallised segment of a tax free component under section 307-225 of the Act.

Note: Calculating the pre-July 83 amount of the crystallised segment of the tax free component will require the superannuation interest to be valued before 1 July 2007. This calculation will only be performed for a superannuation interest in the accumulation phase, and only for a superannuation interest in which part of the taxable component is comprised of an element taxed in the fund.

*Defined benefit interest*

- (2) For a superannuation interest that is a defined benefit interest, the method is as follows.

*Method statement*

Step 1. Calculate, in accordance with section 307-205.01A, the value of the retirement benefit that would have been payable if the member:

- (a) had been eligible to retire immediately before 1 July 2007; and
- (b) had elected to do so.

Note: If the member is no longer in the employment which gave rise to the interest, but the interest is preserved in the scheme, retirement is taken to be the point at which the benefit is payable without penalty to the member.

Step 2. If a superannuation lump sum benefit, including a roll-over superannuation benefit, would have been payable had the member resigned, or withdrawn the benefit, immediately before 1 July 2007, calculate the value of that benefit.

Step 3. The value of the superannuation interest is the greater of the values worked out using steps 1 and 2.

If no value can be determined under step 2, the value of the superannuation interest is the value determined under step 1.

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*Interest other than defined benefit interest*

- (3) For a superannuation interest that is not a defined benefit interest, the method is as follows.

*Method statement*

- Step 1. Assume that the member was eligible to retire immediately before 1 July 2007, and work out the total amount of all the superannuation lump sums that could be payable from the interest at that time. The value of the superannuation interest is the total amount, unless step 2 applies.
- Step 2. If the total amount worked out under step 1 is less than the total amount actually or notionally allocated to the member (other than because of superannuation contributions surcharge liabilities, insurance costs or other fees, taxes and charges), the value of the superannuation interest is the amount actually or notionally allocated to the member.

**307-205.01A How to calculate the value of a retirement benefit for step 1 of the method in subsection 307-205.01(2)**

- (1) This section sets out how to calculate the value of a retirement benefit for the purposes of step 1 of the method in subsection 307-205.01(2).
- (2) If the retirement benefit depends upon the member's age, service or salary, or upon the employer's consent, the value is to be calculated on the assumption that:
- (a) the member's service was the member's actual service immediately before 1 July 2007; and
  - (b) the member's age was the greater of:
    - (i) the minimum age at which a retirement benefit could be taken without requiring the employer's consent; and
    - (ii) the member's actual age immediately before 1 July 2007; and
  - (c) the member's salary was the member's salary for superannuation purposes immediately before 1 July 2007; and
  - (d) the employer consents to the retirement.
- (3) If part or all of the retirement benefit can be paid as a superannuation income stream, then the value of that income stream is determined as the product of:
- (a) the annual rate of the superannuation income stream that would have been paid had the maximum proportion of the benefit possible been taken as an income stream; and
  - (b) the applicable factor for the superannuation income stream that would have been paid set out in clause 1 of Schedule 1B.
- (4) The total value of the retirement benefit is the sum of:
- (a) the value of the superannuation income stream so determined; and

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- (b) any lump sum that would have been payable under the assumptions described above had the member taken the maximum possible proportion of the member's benefit as an income stream.
- (5) If the superannuation benefit can only be paid as a lump sum, then the value of the retirement benefit is the amount of that lump sum.

**307-205.02 Value of superannuation interest**

- (1) For the purposes of paragraph 307-205(1)(a) of the Act, this section specifies a method for determining the value of a superannuation interest at a particular time if the interest supports a superannuation income stream to which subsection (2) applies.

Note: The proportioning rule in section 307-125 of the Act requires the tax free component and taxable component of a superannuation benefit to be paid out in the same proportion as they make up of the underlying interest. A value of the superannuation interest is required to ensure that the proportioning rule operates appropriately.

- (2) This subsection applies to a superannuation income stream or a superannuation annuity, other than:
  - (a) a superannuation income stream that is a pension mentioned in subparagraph 295-385.01(a)(i), (ii) or (iii); or
  - (b) a superannuation income stream or a superannuation annuity for which the rules providing for the income stream or annuity are based on:
    - (i) an identifiable lump sum amount; or
    - (ii) the amount available in the member's account; or
  - (c) a superannuation income stream that is supported by a superannuation interest that can be valued under paragraph 307-205.02B(a); or
  - (d) a superannuation income stream that is supported by a superannuation interest that can be valued under section 307-205.02C, 307-205.02D or 307-205.02E.
- (3) The value of the interest at a particular time is the sum of:
  - (a) the product of:
    - (i) the annual amount of the superannuation income stream payable in respect of the superannuation interest at that time; and
    - (ii) the applicable factor for the superannuation income stream set out in clause 1 of Schedule 1B; and
  - (b) the product of:
    - (i) the nominal value of the superannuation lump sum, if any, which is payable in respect of the interest at a time in the future, other than a future lump sum which is a commutation of the income stream included in subparagraph (a)(i); and
    - (ii) the applicable factor for the superannuation lump sum set out in clause 2 of Schedule 1B.



**307-205.02A Value of superannuation interest—superannuation income streams or superannuation annuities based on identifiable amounts**

For the purposes of paragraph 307-205(1)(a) of the Act, the value of an individual's superannuation interest that supports a superannuation income stream or a superannuation annuity mentioned in paragraph 307-205.02(2)(b) but not in paragraph 307-205.02(2)(d) is:

- (a) the identifiable lump sum amount; or
- (b) the amount available in the individual's account.

**307-205.02B Value of superannuation interest—public sector superannuation schemes**

For the purposes of paragraph 307-205(1)(a) of the Act, a superannuation interest in a public sector superannuation scheme is to be valued:

- (a) by using the practice for valuing a superannuation interest (other than an interest that supports a superannuation income stream mentioned in paragraph 307-205.02(2)(a)) that was used by the scheme immediately before 28 June 2007; or
- (b) if there was not a practice for valuing an interest at that time—by using the method in subsection 307-205.02(3).

**307-205.02C Value of superannuation interest—deferred superannuation income streams**

- (1) For the purposes of paragraph 307-205(1)(a) of the Act, this section specifies a method for determining the value at a particular time of an individual's superannuation interest that supports a deferred superannuation income stream that:
  - (a) is covered by paragraph 307-70.02(1)(c); and
  - (b) is neither a pooled investment pension nor a pooled investment annuity.
- (2) The value of the interest at a particular time is the greater of:
  - (a) the sum of each amount of consideration paid for the interest for the income stream, and that amount's associated notional earnings, as worked out under subsection (3) for the day that includes that time; and
  - (b) the total amount of the superannuation benefits that would become payable if the individual voluntarily caused the interest to cease at that time.

Note: Subsection (3) works out a total amount made up of the amount of consideration and its associated notional earnings.

- (3) An amount of consideration paid for the interest for the income stream, and that amount's associated notional earnings, for a particular day (the **valuing day**) is worked out by applying the following formula for each adjustment day (from the earliest to the latest):

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Compounded amount of consideration just before the adjustment day  $\times \left( 1 + \frac{\text{Applicable above threshold rate for the adjustment day}}{\text{Applicable above threshold rate for the adjustment day}} \right)$

where:

**above threshold rate**, for a particular day, is the above threshold rate determined for that day under subsection 1082(2) of the *Social Security Act 1991*.

**adjustment day** is each of the following:

- (a) each 12-month anniversary of the consideration payment day that happens before the valuing day;
- (b) the valuing day.

**applicable above threshold rate**, for a particular day, is:

- (a) if that day is a 12-month anniversary of the consideration payment day—the above threshold rate for that day; or
- (b) if that day is the valuing day—the proportion of the above threshold rate for that day equal to the number of days that the valuing day is in the 12 months starting on the day after:
  - (i) if the valuing day is at least 12 months after the consideration payment day—the most recent 12-month anniversary of the consideration payment day; or
  - (ii) otherwise—the consideration payment day.

**compounded amount of consideration just before the adjustment day** is:

- (a) for the earliest adjustment day—the amount of consideration; or
- (b) for each later adjustment day—the result of applying the formula for the most recent earlier adjustment day.

**consideration payment day** is the day the amount of consideration was paid.

**307-205.02D Value of superannuation interest—pooled investment pensions**

- (1) For the purposes of paragraph 307-205(1)(a) of the Act, the value at a particular time of an individual's superannuation interest that supports a pooled investment pension is the value of so much of the collective pool of assets in the fund at that time as is:
  - (a) attributed to the individual under the rules of the fund; and
  - (b) specified in an actuary's certificate.
- (2) A **pooled investment pension** is a superannuation income stream supported by an individual's superannuation interest if:
  - (a) the interest is in a superannuation fund; and
  - (b) the rules for the provision of the income stream ensure that, once payments of the income stream start, the income stream is to continue for the remainder of the individual's life; and
  - (c) the rules for the provision of the income stream ensure that the amounts of those payments are determined by having regard to:

- (i) the age, life expectancy or other factors relevant to the mortality of each individual who has that kind of superannuation interest in the fund; and
- (ii) the pool of assets in the fund held for the collective benefit of those individuals.

**307-205.02E Value of superannuation interest—pooled investment annuities**

- (1) For the purposes of paragraph 307-205(1)(a) of the Act, the value at a particular time of an individual's superannuation interest that supports a pooled investment annuity is the value of so much of the collective pool of assets held by the life insurance company at that time as is:
  - (a) attributed to the individual under the contract for the provision of the pooled investment annuity; and
  - (b) specified in an actuary's certificate.
- (2) A **pooled investment annuity** is a superannuation income stream supported by an individual's superannuation interest if:
  - (a) the superannuation income stream is a superannuation annuity provided by a life insurance company; and
  - (b) the contract for the provision of the income stream ensures that, once payments of the income stream start, the income stream is to continue for the remainder of the individual's life; and
  - (c) the contract for the provision of the income stream ensures that the amounts of those payments are determined by having regard to:
    - (i) the age, life expectancy or other factors relevant to the mortality of each individual who has that kind of superannuation interest with the life insurance company; and
    - (ii) the pool of assets held by the life insurance company for the collective benefit of those individuals; and
  - (d) at least 50 entities have superannuation interests (of any kind) with the life insurance company.

## **Part 3-45—Rules for particular industries and occupations**

### **Division 393—Farm management deposits**

#### **Subdivision 393-B—Meaning of farm management deposit and owner**

##### **393-20.01 Application form for a farm management deposit—information given by depositor**

For the purposes of paragraph 393-20(2)(b) of the Act, a form used to apply to an FMD provider to make a farm management deposit must require the depositor to provide the following information:

- (a) the depositor's name, address, date of birth and telephone number;
- (b) the amount of the deposit;
- (c) a description of the major commodity or commodities produced in the year of the deposit;
- (d) if the depositor is not the owner of the deposit—the owner's name, address and date of birth.

Note 1: Subsection 393-20(2) of the Act requires a depositor to apply to an FMD provider to make a farm management deposit with the FMD provider.

Note 2: Under paragraph 393-20(2)(a) of the Act, the application form must also permit the depositor to state the owner's tax file number in the form.

##### **393-20.02 Application form for a farm management deposit—information given to depositor**

For the purposes of paragraph 393-20(2)(c) of the Act, a form used to apply to an FMD provider to make a farm management deposit must contain:

- (a) one of the statements set out in Part 1 of Schedule 1C; and
- (b) statements to the effect of the statements set out in Part 2 of Schedule 1C; and
- (c) statements setting out the additional information required by Part 3 of Schedule 1C.

Note 1: Subsection 393-20(2) of the Act requires a depositor to apply to an FMD provider to make a farm management deposit with the FMD provider.

Note 2: Under paragraph 393-20(2)(c) of the Act, the statements required by this section to be included in an application form are to be read by the depositor when completing the form.

##### **393-40.01 Repayment of farm management deposit in the event of a natural disaster**

For the purposes of paragraphs 393-40(3A)(a) and (b) of the Act, the circumstances that are to be satisfied in relation to a repayment of the whole or a part of a farm management deposit are:

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- (a) recovery assistance has been provided as a Category C measure, in the form of a recovery grant for a primary producer, in accordance with the Disaster Recovery Funding Arrangements 2018, determined by the Minister for Law Enforcement and Cyber Security on 5 June 2018; and
- (b) the recovery assistance was first provided during the 12 month period mentioned in subsection 393-40(1) of the Act; and
- (c) the farm management deposit was repaid after the recovery assistance was first provided.

Note 1: A repayment that satisfies the circumstances in this section is not precluded from being a farm management deposit under subsections 393-40(1) or (2) of the Act.

Note 2: The Disaster Recovery Funding Arrangements 2018 could in 2020 be viewed on the DisasterAssist website (<https://www.disasterassist.gov.au>).

**Division 418—Exploration for minerals**

**Subdivision 418-DA—Exploration credits allocation**

**418-103.01 Meaning of annual exploration cap—2020-21 income year**

For the purposes of paragraph 418-103(1)(d) of the Act, the amount of \$5 million is prescribed.

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## **Chapter 4—International aspects of income tax**

### **Part 4-5—General**

#### **Division 775—Foreign currency gains and losses**

##### **Subdivision 775-B—Realisation of forex gains or losses**

###### **775-145.01 Application of forex events to currency and fungible rights and obligations**

- (1) For the purposes of subsection 775-145(2) of the Act:
  - (a) forex realisation event 1 applies to foreign currency, on a weighted average basis, in the circumstances in subsection (2) of this section; and
  - (b) both of forex realisation events 1 and 2 apply to a fungible right, or a part of a fungible right, to receive foreign currency, on a weighted average basis, in the circumstances in subsection (2) of this section; and
  - (c) forex realisation event 4 applies to a fungible obligation, or a part of a fungible obligation, to pay foreign currency, on a weighted average basis, in the circumstances in subsection (2) of this section.
- (2) For the purposes of paragraphs (1)(a), (b) and (c), the circumstances are that an election to use a weighted average basis:
  - (a) has been made in writing; and
  - (b) complies with subsection (3); and
  - (c) has not been withdrawn in accordance with subsection (5).

###### *Requirements for election*

- (3) An election complies with this subsection if it includes:
  - (a) a commencement date of:
    - (i) the date on which it is made; or
    - (ii) if the election is made not later than 90 days after 27 April 2005—the applicable commencement date mentioned in section 775-155 of the Act; or
    - (iii) 1 July 2004; and
  - (b) a statement that the election is for all of the forex realisation events that are applicable to the fungible thing to which the election relates to apply, on a weighted average basis, to:
    - (i) all fungible things (other than a fungible thing in relation to which a choice under Subdivision 775-E of the Act is in effect); or
    - (ii) one or more specified classes of fungible things, other than a fungible thing in relation to which a choice under Subdivision 775-E of the Act is in effect, in circumstances (explained in the statement) in which the effect of the election would reasonably be expected to be the reduction of the costs of compliance with the income tax law; or

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- (iii) one or more specified fungible things in circumstances (explained in the statement) in which the effect of the election would be consistent with the treatment of those fungible things in the accounting records of the entity making the election, if those records were prepared in accordance with generally accepted accounting principles.
- (4) An election that complies with subsection (3) takes effect in accordance with subsection (3).

*When an election may be withdrawn*

- (5) An entity may withdraw an election only if it does not appear, on reasonable grounds, that the election is being withdrawn for a principal purpose of obtaining a tax benefit and either:
  - (a) if accounting records in relation to the treatment of fungible things to which the election applies are being kept by the entity and prepared in accordance with generally accepted accounting principles—the election is being withdrawn because there has been a change to the entity’s accounting practices; or
  - (b) if:
    - (i) accounting records in relation to the treatment of fungible things to which the election applies by the entity are not being kept by the entity and prepared in accordance with generally accepted accounting principles; and
    - (ii) the election includes the statement mentioned in subparagraph (3)(b)(ii);there has been a change in the entity’s circumstances that makes the statement mentioned in subparagraph (3)(b)(ii) incorrect.

Note 1: A tax benefit may be an incidental consequence of the withdrawal of an election.

Note 2: A weighted average basis (see section 775-145 of the Act) is used to allow:

- (a) the cost of a fungible amount or part of a fungible amount; or
- (b) in the case of a fungible obligation, or a part of a fungible obligation—the proceeds of assuming the obligation or the part of the fungible obligation; at a particular time to be determined by the weighted average cost of the amounts that were previously added to the fungible amount.



## **Division 830—Foreign hybrids**

### **Subdivision 830-A—Meaning of “foreign hybrid”**

#### **830-15.01 Foreign hybrid company**

For the purposes of paragraph 830-15(3)(c) of the Act, it is a requirement for a company in relation to an income year, that the company be a limited liability partnership for the purposes of the *Limited Liability Partnerships Act 2000* (UK).

Note: This requirement must be satisfied at all times during the income year when the company is in existence (see paragraph 830-15(1)(a) of the Act).

## Chapter 6—The Dictionary

### Part 6-1—Concepts and topics

#### Division 960—General

#### Subdivision 960-C—Foreign currency

##### 960-50.01 Translation of foreign currency amounts into Australian currency— modification of special translation rules

- (1) For the purposes of subsection 960-50(7) of the Act, the table in subsection 960-50(6) of the Act is modified by omitting item 8 and substituting the following items:

8	an amount that you deduct (other than under section 25-35 or Division 40)	(a) if the amount is paid at or before the time when it became deductible—the amount is to be translated into Australian currency at the exchange rate applicable at the time of payment; or (b) in any other case—the amount is to be translated into Australian currency at the exchange rate applicable at the time when it became deductible.
8A	an amount of a debt that you deduct under section 25-35	(a) if the debt was included in your assessable income—the amount is to be translated into Australian currency at the exchange rate applicable at the time of translating the income; or (b) if the debt was in respect of money that you lent—the amount is to be translated into Australian currency at the exchange rate applicable at the time of translating the money that was lent; or (c) if you bought the debt—the amount is to be translated into Australian currency at the exchange rate applicable at the time of translating the debt that you bought.
8B	the value of an amount to which a contract (a <i>spot foreign exchange contract</i> ) for the exchange of amounts in different currencies relates if: (a) the spot foreign exchange contract includes a requirement that consideration be provided within 2 business days after the contract is entered into; and (b) that requirement is satisfied	the value of the amount to which the contract relates is to be translated into Australian currency at the exchange rate applicable at the tax recognition time (within the meaning of Division 775) referred to in the forex realisation event that happens on payment or receipt of that amount, unless the entity's usual business practice is not to translate the amount at the exchange rate applicable at the tax recognition time for the purpose of recording the transaction in the entity's accounting records.  Note: An entity's usual business practice may be to translate amounts into Australian currency at a different exchange rate because the entity recognises gains and losses under spot foreign exchange contracts in the entity's accounting records.
8C	the value of an amount to which a contract (a <i>spot</i>	the value of the amount to which the contract relates is to be translated into Australian currency at the exchange rate

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<p><b>contract</b>) for the exchange of an amount in a foreign currency and a security relates if:</p> <p>(a) the spot contract includes a requirement that consideration be provided within 2 business days after the contract is entered into; and</p> <p>(b) that requirement is satisfied</p>	<p>applicable at the tax recognition time (within the meaning of Division 775) referred to in the forex realisation event that happens on payment or receipt of that amount, unless the entity's usual business practice is not to translate the amount at the exchange rate applicable at the tax recognition time for the purpose of recording the transaction in the entity's accounting records.</p> <p>Note: An entity's usual business practice may be to translate amounts into Australian currency at a different exchange rate because the entity recognises gains and losses under spot contracts in the entity's accounting records.</p>
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(2) For the purposes of subsection 960-50(7) of the Act, the table in subsection 960-50(6) of the Act is modified by adding after item 11 the following items:

11A	an amount (other than an amount of a receipt or a payment) to which none of the above items applies	the amount is to be translated into Australian currency at an exchange rate that is reasonable having regard to the circumstances.
12	an amount to which any of items 1 to 11A (inclusive) applies	as an alternative to the result mentioned in the item, the amount may be translated into Australian currency using any of the rules set out in Schedule 2 to the <i>Income Tax Assessment Regulations 2020</i> .

(3) For the purposes of subsection 960-50(8) of the Act, Schedule 2 to this instrument sets out requirements in relation to the translation of amounts into Australian currency.

**Subdivision 960-D—Functional currency**

**960-80.01 Translation rules—translation into applicable functional currency**

For the purposes of subsection 960-80(7) of the Act, the requirements set out in Schedule 2 to this instrument in relation to the translation of amounts into Australian currency have effect in relation to the translation of amounts into the applicable functional currency as if:

- (a) each reference in that Schedule to Australian currency were a reference to the applicable functional currency; and
- (b) the modifications set out in the following table were made:

<b>Modifications to Schedule 2</b>			
<b>Item</b>	<b>Provision</b>	<b>After</b>	<b>Insert</b>
1	Subclause 2(2)	year	(or, if the entity is an attributable taxpayer in relation to a CFC, each subsequent day in the CFC's statutory accounting period)
2	Paragraph 2(3)(a)	activities	(or, if the entity is an attributable taxpayer

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**Modifications to Schedule 2**

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Item	Provision	After	Insert
			in relation to a CFC, the use of the rate would not be appropriate having regard to the CFC's business or activities)

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**960-80.02 Translation rules for an attributable taxpayer of a CFC—translation into applicable functional currency**

For the purposes of subsection 960-80(7) of the Act, if:

- (a) an entity is an attributable taxpayer in relation to a CFC; and
- (b) the CFC has prepared financial accounts in accordance with standards to which subsection 820-960(1C) or (1D) of the Act relates; and
- (c) those financial accounts translate amounts into the applicable functional currency using particular exchange rates; and
- (d) the entity wishes to translate an amount into the applicable functional currency, using the exchange rate used to translate a corresponding amount in the financial accounts;

the entity must translate all amounts into the applicable functional currency using the exchange rates that were used in the financial accounts to translate corresponding amounts.

**960-80.03 Translation rules—translation from applicable functional currency into Australian currency**

- (1) For the purposes of subsection 960-80(7) of the Act, this section provides requirements that an entity must comply with in translating an amount from the applicable functional currency into Australian currency.

*Amount that is not the attributable income of a CFC*

- (2) If, on or after 27 April 2005, an entity translates an amount that is not the attributable income of a CFC from the applicable functional currency into Australian currency on a day in accordance with an item of the table in subsection 960-80(1) of the Act, the entity must translate the amount using:
  - (a) an exchange rate that is an average of all of the exchange rates during the period, not exceeding 12 months, in which the entity carries on the relevant business or other activity; or
  - (b) if the entity makes an election in writing to use the exchange rate applicable on the last day of the entity's income year—that exchange rate.

*Amount that is the attributable income of a CFC*

- (3) If, on or after 27 April 2005, an entity that is an attributable taxpayer in relation to a CFC translates an amount that is the attributable income of a CFC from the applicable functional currency into Australian currency on a day in accordance with an item of the table in subsection 960-80(1) of the Act, the entity must translate the amount using:

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- (a) an exchange rate that is an average of all of the exchange rates during the period, not exceeding 12 months, in which the CFC carries on the relevant business or other activity; or
  - (b) if the entity makes an election in writing to use the exchange rate applicable on the last day of the CFC's statutory accounting period—that exchange rate.
- (4) An election under paragraph (2)(b) or (3)(b) is irrevocable.

## Division 974—Debt and equity interests

### Subdivision 974-F—Related concepts

#### 974-135.01 Non-cumulative redeemable preference shares issued by credit union or mutual building society

- (1) For the purposes of paragraph 974-135(8)(d) of the Act, the obligation in respect of the return of investment on the redemption of a non-cumulative redeemable preference share issued by an entity that is:
  - (a) a credit union; or
  - (b) a mutual building society that is an ADI;is not an effectively non-contingent obligation if it meets the criteria in subsection (2) of this section.
- (2) The criteria in this subsection are:
  - (a) the share is issued on or after 4 March 2003; and
  - (b) the share satisfies, at the time it is issued, the criteria set out in paragraph 1 of Attachment H to the *Banking (prudential standard) determination No. 4 of 2017*; and
  - (c) the share is issued subject to the following terms and conditions:
    - (i) the share has a minimum term of 5 years;
    - (ii) dividend payments for the share are to be paid only out of operating profits from the current year or the immediately previous year, and only to the extent that payment is permitted by law and by relevant regulatory authorities;
    - (iii) dividend payments for the share are not cumulative;
    - (iv) any payments made in relation to the share out of net profits or net assets have preferential rights over payments made in relation to ordinary shares (if any) from the same sources;
    - (v) if the share is to be redeemed—the redemption cannot be carried out without the approval of the entity's board;
    - (vi) if the share is to be redeemed, but the redemption of the share would place the entity in breach of a prudential standard made under the *Banking Act 1959*—the redemption cannot be carried out without the approval of APRA; and
  - (d) the redemption is carried out on or after 4 March 2003; and
  - (e) the share is issued only to a member of the entity; and
  - (f) a member of the entity and its connected entities can together hold not more than 10% by value of the shares of that kind issued by the entity.

Note: For *connected entity*, see subsection 995-1(1) of the Act.

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**974-135.02 Redeemable preference shares**

For the purposes of paragraph 974-135(8)(a) of the Act, an obligation to redeem or buy back a preference share in relation to a company is not a contingent obligation merely because a requirement exists, under a law, to the effect that:

- (a) the redemption or buy back must not prejudice the company's ability to pay its creditors; or
- (b) the redemption or buy back must not cause the company's remaining assets to become insufficient to pay any of the company's debts for which provision for payment has not otherwise been made.

**974-135.03 Term cumulative subordinated note with insolvency or capital adequacy conditions**

- (1) This section applies to an obligation to pay the principal or interest on a relevant term subordinated note at a particular time on or after 1 July 2001.
- (2) For the purposes of paragraphs 974-135(8)(a) and (b) of the Act, the fact that the obligation is subject to insolvency or capital adequacy conditions does not in itself prevent the obligation from being a non-contingent obligation.

*Meaning of **relevant***

- (3) A term subordinated note is **relevant** if:
  - (a) at the time of the note's issue:
    - (i) the note does not constitute or meet the requirements of a Tier 1 capital instrument; and
    - (ii) the note does not form part of the Tier 1 capital of the issuer of the note, or a connected entity, and the reason for the note not doing so is not that the instrument is in excess of the Tier 1 capital required for the purposes of prudential standards that deal with capital adequacy; and
  - (b) the note has a term of not more than 30 years; and
  - (c) the note does not include an unconditional right to extend the term of the note beyond a total term of 30 years; and
  - (d) the note is subject to a condition that any payment of the principal or interest beyond the date on which it would otherwise be payable must accumulate (with or without compounding); and
  - (e) the note does not give the issuer of the note an unconditional right to decline to provide a financial benefit that is equal in nominal value to the issue price of the note to settle the obligations under the note.

*Meaning of **insolvency or capital adequacy conditions***

- (4) Conditions applying to the obligation are **insolvency or capital adequacy conditions** if they have the effect that the issuer of the note is obliged or able to defer the payment of the principal or interest beyond the date on which it would otherwise be payable if, on that date:

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- (a) the issuer of the note is insolvent, or would become insolvent if the payment were made; or
- (b) if the issuer of the note is an entity that is regulated by APRA or a comparable foreign regulator—the issuer is in breach of its capital adequacy ratio or would be in breach if the payment were made.

*Obligations to pay before 15 April 2010*

- (5) If the obligation is an obligation to pay at a time before 15 April 2010, this section applies only to the extent that applying it would not have the result that:
  - (a) the rights of a person (other than the Commonwealth or an authority of the Commonwealth) immediately before 15 April 2010 would be affected so as to disadvantage the person; or
  - (b) liabilities would be imposed on a person (other than the Commonwealth or an authority of the Commonwealth), for anything done or omitted to be done before 15 April 2010.

**974-135.04 Perpetual cumulative subordinated note with profitability, insolvency or negative earnings conditions**

- (1) This section applies to an obligation to pay interest on a relevant perpetual subordinated note at a particular time on or after 1 July 2001.
- (2) For the purposes of paragraphs 974-135(8)(a) and (b) of the Act, the fact that the obligation is subject to profitability, insolvency or negative earnings conditions does not in itself prevent the obligation from being a non-contingent obligation.

*Meaning of relevant perpetual subordinated note*

- (3) A **relevant perpetual subordinated note** is a perpetual subordinated note that:
  - (a) at the time of the note's issue:
    - (i) does not constitute or meet the requirements of a Tier 1 capital instrument; and
    - (ii) does not form part of the Tier 1 capital of the issuer of the note, or a connected entity, and the reason for the note not doing so is not that the instrument is in excess of the Tier 1 capital required for the purposes of prudential standards that deal with capital adequacy; and
  - (b) would be a debt interest but for the obligation being subject to one or more profitability, insolvency or negative earnings conditions; and
  - (c) is subject to the condition that any deferred interest must accumulate (with or without compounding); and
  - (d) was issued by:
    - (i) an ADI that is a bank or non-mutual building society and that is regulated for prudential purposes by APRA; or
    - (ii) a subsidiary of an ADI mentioned in subparagraph (i), being a subsidiary that is regulated with the ADI for prudential purposes by APRA; or



- (iii) an entity that has undertaken to comply with prudential standards, issued by APRA, that deal with capital adequacy and is regulated for prudential purposes by APRA; or
  - (iv) a subsidiary of an entity mentioned in subparagraph (iii) that is covered by the undertaking mentioned in that subparagraph; or
  - (v) an entity that is regulated for prudential purposes by a foreign prudential regulator that has a prudential regulatory role comparable to that of APRA and under ADI capital adequacy requirements comparable to those of APRA; and
- (e) does not give the issuer of the note an unconditional right to decline to provide a financial benefit that is equal in nominal value to the issue price of the note to settle the obligations under the note.

*Meaning of profitability, insolvency or negative earnings conditions*

- (4) Conditions applying to the obligation are **profitability, insolvency or negative earnings conditions** if they have the effect that the issuer of the note is able, or obliged, to defer the payment of the interest (with or without compounding) beyond the date on which it would otherwise be payable if, on that date:
- (a) profitability does not justify the payment; or
  - (b) the issuer of the note is insolvent, or would become insolvent if the payment were made; or
  - (c) a dividend has not been declared or paid on a class or classes of share capital of the issuer during a specified period that:
    - (i) immediately precedes that date; and
    - (ii) is no more than 24 months; or
  - (d) the issuer's retained earnings are negative, or would be negative if the payment were made.

*Obligations to pay before 16 March 2011*

- (5) If the obligation is an obligation to pay at a time before 16 March 2011 this section applies only to the extent that applying it would not have the result that:
- (a) the rights of a person (other than the Commonwealth or an authority of the Commonwealth) immediately before that day would be affected so as to disadvantage that person; or
  - (b) liabilities would be imposed on a person (other than the Commonwealth or an authority of the Commonwealth) for anything done or omitted to be done before that day.

Note: The application of this section to a perpetual subordinated note does not mean that the note, together with one or more related schemes, cannot give rise to an equity interest.

**974-135.05 Term cumulative subordinated note with non-viability condition**

- (1) This section applies to an obligation to pay the principal or interest on a relevant term subordinated note at a particular time on or after 12 December 2012.

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- (2) For the purposes of paragraphs 974-135(8)(a) and (b) of the Act, the fact that the obligation is subject to a non-viability condition does not in itself prevent the obligation from being a non-contingent obligation.

*Meaning of relevant*

- (3) A term subordinated note is **relevant** if:
- (a) the note is issued by an entity regulated for prudential purposes by APRA or a subsidiary of an entity that is regulated for prudential purposes by APRA; and
  - (b) when the note is issued:
    - (i) the note does not constitute or meet the requirements of a Tier 1 capital instrument; and
    - (ii) the note does not form part of the Tier 1 capital of the issuer of the note, and the reason for the note not doing so is not that the instrument is in excess of the Tier 1 capital required for the purposes of prudential standards that deal with capital adequacy; and
  - (c) the note has a term of no more than 30 years, and the note does not include an unconditional right to extend the term of the note beyond a total term of 30 years; and
  - (d) the note is subject to a condition that, unless a non-viability trigger event occurs, any payment of the principal or interest beyond the date on which it would otherwise be payable must accumulate (with or without compounding); and
  - (e) the note does not give the issuer of the note an unconditional right to decline to provide a financial benefit that is equal in nominal value to the issue price of the note to settle the obligations under the note.

Note: Whether the note constitutes or meets the requirements of a Tier 1 capital instrument, or forms part of the Tier 1 capital of the issuer, is determined under the prudential standards that apply to the issuer.

*Meaning of non-viability condition*

- (4) A condition applying to the obligation is a **non-viability condition** if the condition has the effect that, if a non-viability trigger event occurs, the note must be:
- (a) written off; or
  - (b) converted into ordinary shares of the issuer of the note or of a parent entity of the issuer; or
  - (c) converted into mutual equity interests of the issuer of the note or of a parent entity of the issuer.

*Meaning of non-viability trigger event*

- (5) A **non-viability trigger event**, in relation to a note, is any of the following:
- (a) APRA or a comparable foreign regulator issues a notice, in writing, to the issuer of the note stating that conversion or write-off of capital instruments issued by the issuer is necessary because, without it, APRA or the foreign regulator considers that the issuer will become non-viable;

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- (b) APRA or a comparable foreign regulator determines, in writing given to the issuer of the note, that without an injection of capital, or equivalent support, from the public sector the issuer will become non-viable;
  - (c) APRA or a comparable foreign regulator issues a notice, in writing, to a parent entity of the issuer of the note stating that conversion or write-off of capital instruments is necessary because, without it, APRA or the foreign regulator considers that the parent entity or the issuer will become non-viable;
  - (d) APRA or a comparable foreign regulator determines, in writing given to a parent entity of the issuer of the note, that without an injection of capital, or equivalent support, from the public sector the parent entity or the issuer will become non-viable.
- (6) For the purposes of this section, *mutual equity interests* has the same meaning as in section 11CAA of the *Banking Act 1959*.

## Part 6-5—Dictionary definitions

### Division 995—Definitions

#### 995-1.01 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) superannuation benefit;
- (b) superannuation income stream benefit.

In this instrument:

**2013 allowances determination** has the meaning given by subsection 51-5.01(2).

**accruing member:**

- (a) for the purposes of Schedule 1A—has the meaning given by clause 1.1 of that Schedule; and
- (b) for the purposes of Subdivision 293-D and Schedule 1AA—has the meaning given by subsection 293-115.05(2).

**Act** means the *Income Tax Assessment Act 1997*.

**activities of daily living** has the meaning given by subsection 295-465.01(5).

**approved stock exchange:** see section 995-1.02.

**assessable contribution** means an amount included in the assessable income of an entity by Subdivision 295-C of the Act, disregarding item 5.3 of the table in section 50-25 of the Act (income tax exemption for constitutionally protected funds) and Subdivision 295-D of the Act (about excluded contributions).

**benefit category:**

- (a) for the purposes of Subdivision 291-C and Schedule 1A—has the meaning given by clause 1.2 of that Schedule; and
- (b) for the purposes of Schedule 1AA—has the meaning given by clause 2 of that Schedule.

**bundled** has the meaning given by subsection 295-465.01(5).

**cognitive loss** has the meaning given by subsection 295-465.01(5).

**conditions determination** has the meaning given by subsection 51-5.01(2).

**constitutionally protected fund:** see section 995-1.03.

**death (life) cover** has the meaning given by subsection 295-465.01(5).

**defined benefit fund:**

- (a) for the purposes of Schedule 1A—has the meaning given by clause 1.3 of that Schedule; and

- (b) for the purposes of Schedule 1AA—has the meaning given by clause 2A of that Schedule.

***defined benefit member:***

- (a) means a member of a superannuation fund whose entitlements to superannuation benefits (other than benefits payable on death or disability) are defined by reference to one or more of the following matters:
- (i) the member's salary, or allowance in the nature of salary, at a particular date or averaged over a period;
  - (ii) another individual's salary, or allowance in the nature of salary, at a particular date or averaged over a period;
  - (iii) a specified amount;
  - (iv) specified conversion factors;
- other than a member of a superannuation fund whose entitlements to superannuation are defined solely by reference to one or more of the following matters:
- (v) the member's disability superannuation benefits;
  - (vi) the member's superannuation death benefits;
  - (vii) payments of amounts mentioned in paragraph 307-10(a) of the Act (which relates to temporary disability payments); and
- (b) in clause 3.6 of Schedule 1A—has a meaning affected by subclause (4) of that clause; and
- (c) in clause 15 of Schedule 1AA—has a meaning affected by subclause (4) of that clause.

***domestic (home) duties*** has the meaning given by subsection 295-465.01(5).

***employer-sponsor*** has the meaning given by subsection 16(1) of the SIS Act.

***funded benefit interest*** has the meaning given by subsection 293-115.15(2).

***Governor-General Pension Scheme*** means the Governor-General Pension Scheme constituted by allowances payable under section 4 of the *Governor-General Act 1974*.

***insolvent***, for an issuer, means:

- (a) the issuer cannot pay its debts as they fall due; or
- (b) the issuer's liabilities exceed its assets.

***loss of limb*** has the meaning given by subsection 295-465.01(5).

***member contributions*** has the meaning given by subregulation 5.01(1) of the SIS Regulations.

***military or police person*** means a person mentioned in paragraph 302-195(2)(a), (b) or (c) of the Act.

***Military Superannuation and Benefits Scheme*** has the meaning given by section 307-125.01.

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***non-accruing member:***

- (a) for the purposes of section 291-170.04 and Schedule 1A—has the meaning given by subsection 291-170.04(5); and
- (b) for the purposes of Subdivision 293-D—has the meaning given by subsection 293-115.05(2).

***normal domestic duties*** has the meaning given by subsection 295-465.01(5).

***on-hold member*** has the meaning given by subsection 291-170.04(6).

***pensioned member*** has the meaning given by subsection 291-170.04(7).

***pooled investment annuity*** has the meaning given by subsection 307-205.02E(2).

***pooled investment pension*** has the meaning given by subsection 307-205.02D(2).

***registered organisation*** has the meaning given by subsection 10(1) of the SIS Act.

***relevant 2006 interest***, in relation to a member, means:

- (a) a defined benefit interest held by the member on 5 September 2006; or
- (b) any superannuation interest to which the entire value of the interest mentioned in paragraph (a) was transferred (whether directly or through a series of transfers between superannuation interests).

***relevant 2009 interest***, in relation to a member, means:

- (a) a defined benefit interest held by the member on 12 May 2009; or
- (b) any superannuation interest to which the entire value of the interest mentioned in paragraph (a) was transferred (whether directly or through a series of transfers between superannuation interests).

***RSA Act*** means the *Retirement Savings Accounts Act 1997*.

***RSA Regulations*** means the *Retirement Savings Accounts Regulations 1997*.

***RSE licensee*** has the same meaning as in the SIS Act.

***SIS Act*** means the *Superannuation Industry (Supervision) Act 1993*.

***SIS Regulations*** means the *Superannuation Industry (Supervision) Regulations 1994*.

***superannuation annuity***: see section 995-1.05.

***superannuation income stream***: see section 307-70.02.

***superannuation salary*** means the salary used to determine a person's entitlement to superannuation benefits.

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*superannuation sub-fund*, in relation to defined benefit members of a superannuation fund, means an arrangement in the fund which satisfies the following conditions:

- (a) there are separately identifiable assets and separately identifiable beneficiaries;
- (b) the interest of each beneficiary is determined by reference only to the conditions governing that arrangement;
- (c) the defined benefit members have the same employer-sponsor;
- (d) the employer-sponsor deals with each of the defined benefit members at arm's length.

*terminal medical condition*: see section 995-1.06.

*TPD any occupation* has the meaning given by subsection 295-465.01(5).

*TPD own occupation* has the meaning given by subsection 295-465.01(5).

### 995-1.02 Approved stock exchanges

The stock exchanges specified in Schedule 3 are named for the purposes of the definition of *approved stock exchange* in subsection 995-1(1) of the Act.

### 995-1.03 Constitutionally protected funds

For the purposes of the definition of *constitutionally protected fund* in subsection 995-1(1) of the Act, a fund:

- (a) of the kind to which, in the absence of item 5.3 of section 50-25 of the Act, Division 295 of the Act would apply; and
- (b) established by a State Act, or a provision of a State Act, mentioned in an item of the following table;

is declared to be a constitutionally protected fund.

State Acts or provisions of State Acts establishing constitutionally protected funds	
Item	State Act or provision of State Act
1	<i>Judges' Pensions Act 1953</i> (NSW)
2	<i>Attorney-General and Solicitor-General Act 1972</i> (Vic.)
3	<i>Coal Mines (Pensions) Act 1958</i> (Vic.)
4	<i>Constitution Act 1975</i> (Vic.)
5	<i>County Court Act 1958</i> (Vic.)
6	<i>Magistrates' Court Act 1989</i> (Vic.)
7	subsection 9(2) of the <i>Ombudsman Act 1973</i> (Vic.)
8	<i>Public Prosecutions Act 1994</i> (Vic.)
9	<i>Supreme Court Act 1986</i> (Vic.)
10	<i>Governors (Salary and Pensions) Act 2003</i> (Qld)
11	<i>Judges (Pensions and Long Leave) Act 1957</i> (Qld)
12	<i>Judges' Salaries and Pensions Act 1950</i> (WA)

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State Acts or provisions of State Acts establishing constitutionally protected funds	
Item	State Act or provision of State Act
13	<i>Parliamentary Superannuation Act 1970</i> (WA)
14	<i>State Superannuation Act 2000</i> (WA)
15	<i>Governors' Pensions Act 1976</i> (SA)
16	<i>Judges' Pensions Act 1971</i> (SA)
17	<i>Parliamentary Superannuation Act 1974</i> (SA)
18	<i>Police Superannuation Act 1990</i> (SA)
19	a provision of the <i>Southern State Superannuation Act 2009</i> (SA) (other than paragraph 30(2)(h))
20	a provision of the <i>Superannuation Act 1988</i> (SA) (other than section 52 and Schedule 3)
21	<i>Judges' Contributory Pensions Act 1968</i> (Tas.)

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**995-1.04 Definition of *contributions-splitting superannuation benefit***

For the purposes of the definition of *contributions-splitting superannuation benefit* in subsection 995-1(1) of the Act, *contributions-splitting superannuation benefit* means:

- (a) a payment made in accordance with subregulation 4.42(2) of the RSA Regulations; or
- (b) a payment made in accordance with subregulation 6.45(2) of the SIS Regulations.

**995-1.05 Meaning of *superannuation annuity***

For the purposes of the definition of *superannuation annuity* in subsection 995-1(1) of the Act, *superannuation annuity* means:

- (a) an income stream that:
  - (i) is issued by a life insurance company or registered organisation; and
  - (ii) commenced before 20 September 2007; and
  - (iii) is an annuity within the meaning of subsection 10(1) of the SIS Act or is a benefit mentioned in subregulation 1.07(1A) of the RSA Regulations; or
- (b) an income stream that:
  - (i) is issued by a life insurance company or registered organisation; and
  - (ii) is taken to be an annuity for the purposes of the SIS Act in accordance with subregulation 1.05(1) of the SIS Regulations; or
- (c) a deferred superannuation income stream that is taken to be an annuity for the purposes of the SIS Act in accordance with subregulation 1.05(1) of the SIS Regulations because the contract for the provision of the income stream meets the standards of subregulation 1.06A(2) of the SIS Regulations.



**995-1.06 Meaning of *terminal medical condition***

For the purposes of the definition of *terminal medical condition* in subsection 995-1(1) of the Act, a *terminal medical condition* exists in relation to a person at a particular time if the following circumstances exist:

- (a) 2 registered medical practitioners have certified, jointly or separately, that the person suffers from an illness, or has incurred an injury, that is likely to result in the death of the person within a period (the *certification period*) that ends not more than 24 months after the date of the certification;
- (b) at least one of the registered medical practitioners is a specialist practising in an area related to the illness or injury suffered by the person;
- (c) either:
  - (i) if there is one certification period—the certification period has not ended; or
  - (ii) otherwise—neither of the certification periods has ended.

## **Schedule 1A—Method of working out amount of notional taxed contributions**

Note: See sections 291-170.02, 291-170.05 and 291-170.07 and Schedule 1AA.

### **Part 1—Preliminary**

#### **Division 1—Definitions**

##### **1.1 Meaning of *accruing member***

An *accruing member* of a superannuation fund for a financial year is a defined benefit member of the fund who is not a non-accruing member of the fund for the financial year (within the meaning given by subsection 291-170.04(5)).

##### **1.2 Meaning of *benefit category***

- (1) A *benefit category* is a category of membership of a defined benefit fund as certified by an actuary.
- (2) An actuary must not certify a category of membership to be a benefit category unless the actuary is satisfied that:
  - (a) each hypothetical new entrant to the benefit category with the same entry age would accrue retirement benefits on substantially the same basis; or
  - (b) if any 2 hypothetical new entrants to the benefit category accrued retirement benefits on a different basis, the new entrant rates for each member calculated under Parts 2 and 3 would be equal.

##### **1.3 Meaning of *defined benefit fund***

A *defined benefit fund* is a superannuation fund in which a member has a defined benefit interest.

##### **1.4 Accruing member must not belong to more than one benefit category at the same time unless certified by an actuary**

- (1) An accruing member must not belong to more than one benefit category of the same defined benefit fund on the same day unless certified by an actuary.
- (2) An actuary must certify that a member belongs to more than one benefit category on the same day if the actuary is satisfied that the amount of notional taxed contributions to be reported will be materially different from the amount of notional taxed contributions that would have been reported had the member belonged to only one benefit category on each relevant day.

##### **1.5 Meaning of *fund benefit***

That part of a defined benefit interest which is sourced from contributions made into a superannuation fund or earnings on such contributions is referred to as the *fund benefit*.

Note: A superannuation benefit may be wholly sourced from contributions made into a superannuation fund or earnings on such contributions. A superannuation benefit paid from a public sector superannuation fund may be wholly or partly sourced, or not sourced to any extent, from contributions made into a superannuation fund or earnings on such contributions. If a superannuation benefit is not sourced to any extent from contributions made into a superannuation fund, or earnings on such contributions, the amount of the fund benefit is zero.

## Division 2—Method

### 1.6 Method of working out amount of notional taxed contributions if the fund benefit is wholly sourced from an accumulation of contributions made in respect of the member

If the fund benefit in relation to a benefit category is wholly sourced from:

- (a) an accumulation of concessional contributions made to a superannuation fund in respect of a member or earnings on such contributions; or
- (b) an accumulation of member contributions or earnings on such contributions;

the amount of NTC for the purposes of clause 1.8 for an accruing member of the benefit category for a financial year is the amount of concessional contributions made to the superannuation fund in respect of the member during the financial year.

### 1.7 Method of working out amount of notional taxed contributions in respect of a benefit category if the fund benefit is not wholly sourced from an accumulation of contributions made in respect of the member

If clause 1.6 does not apply, the method of working out the amount of NTC for the purposes of clause 1.8 for an accruing member of a benefit category of a defined benefit fund for a financial year is the following formula:

$$1.2 \times \left( \frac{\text{New entrant rate}}{\text{rate}} \times \frac{\text{Superannuation salary amount}}{\text{salary amount}} \times \frac{\text{Number of days}}{365} - \frac{\text{Member contributions amount}}{\text{amount}} \right)$$

where, for the financial year:

**member contributions amount** is the amount of member contributions:

- (a) paid by or on behalf of the member in respect of the member's defined benefit interest in the fund during that part of the financial year that the member was an accruing member of the benefit category; and
- (b) which are not assessable income of the fund.

**new entrant rate** is the new entrant rate for the benefit category worked out by an actuary under Parts 2 and 3.

**number of days** is the number of days during the financial year that the member was an accruing member of the benefit category.

**superannuation salary amount** is the member's annual superannuation salary relevant to the benefit category on the first day of the financial year on which the member had a defined benefit interest in the fund.

**1.8 Method of working out amount of notional taxed contributions**

The method of working out the notional taxed contributions for an accruing member of a defined benefit fund for a financial year is the following formula:

$$\text{Sum of NTC} + \left( 1.2 \times \left( \begin{array}{l} \text{Category change} \\ \text{or discretion} \\ \text{adjustment} \\ \text{amount} \end{array} + \begin{array}{l} \text{Governing} \\ \text{rules} \\ \text{change} \\ \text{adjustment} \\ \text{amount} \end{array} + \begin{array}{l} \text{Increased} \\ \text{exit benefit} \\ \text{adjustment} \\ \text{amount} \end{array} + \begin{array}{l} \text{Increased} \\ \text{superannuation} \\ \text{salary} \\ \text{adjustment} \\ \text{amount} \end{array} \right) \right)$$

where, for the financial year:

*category change or discretion adjustment amount* is an amount worked out on advice from an actuary under Part 5.

*governing rules change adjustment amount* is an amount worked out on advice from an actuary under Part 6.

*increased exit benefit adjustment amount* is an amount worked out on advice from an actuary under Part 4.

*increased superannuation salary adjustment amount* is an amount worked out on advice from an actuary under Part 7.

*sum of NTC* is the sum of the amounts of NTC for each benefit category that the member belongs to during the financial year calculated under clauses 1.6 and 1.7.

## Part 2—New entrant rate

### 2.1 Method of working out new entrant rate for a benefit category

- (1) The new entrant rate for a benefit category is the rate calculated under this Part and using the assumptions set out in Part 3.
- (2) The new entrant rate for a benefit category is the rate that represents the long-term cost, expressed as a percentage of superannuation salary, of providing as much of the fund benefit as is payable on a voluntary exit to a hypothetical new entrant to the benefit category.
- (3) The new entrant rate is calculated as the present value of the fund benefit payable on voluntary exit (resignation, early retirement, or retirement) under the rules of the defined benefit fund which are applicable to a new entrant to the benefit category divided by the present value of future superannuation salaries payable to the new entrant.
- (4) To avoid doubt, the new entrant rate is to be calculated assuming that the fund benefit is to be wholly sourced from concessional contributions made into the fund at the new entrant rate and earnings on those contributions.
- (5) The present value of the fund benefit is to be calculated having regard to the rules and practice of the defined benefit fund including benefit structure, caps, member options, reasonably expected discretions and member contributions, and using the economic, decrement and other parameters and the other assumptions set out in Part 3.

### 2.2 New entrant rate to be based on period of membership needed to reach maximum benefit accrual

If the rules of the defined benefit fund applicable to the benefit category provide for a maximum benefit accrual, the new entrant rate is to be calculated on the basis that the benefit is funded over the period to when maximum accrual is attained.

**Note:** This means that, for the purpose of calculating the present value of future salaries payable to the new entrant, the superannuation salary is to be assumed to be zero at those ages after reaching maximum benefit accrual.

**Example:** If maximum accrual is attained after 20 years of membership, the superannuation salary for a 30-year-old new entrant will be assumed to be zero at age 50 and above for the purpose of calculating the present value of future salaries payable to the new entrant.

### 2.3 New entrant rate to be rounded down

The new entrant rate is to be rounded down to the lower 1 percentage point.

**Example:** 10.6% would be rounded down to 10%.

## **2.4 No allowance for administration expenses or income tax on assessable contributions**

The new entrant rate is to be calculated ignoring:

- (a) administration expenses; and
- (b) income tax on assessable contributions.

Note: These items are allowed for in the formula in clause 1.7 by multiplying by 1.2.

## **2.5 Certain discretions to be allowed for**

- (1) The new entrant rate is to be calculated assuming that certain discretions are always exercised.
- (2) Subject to subclause (3), if the fund rules provide a discretion to pay, on voluntary exit, a benefit that is higher than the standard benefit, the actuary must assume that a higher benefit is always paid on voluntary exit on or after age 55.
- (3) If the higher benefit mentioned in subclause (2) exceeds the accrued retirement benefit, the actuary may assume that the benefit is an amount:
  - (a) greater than or equal to the accrued retirement benefit; and
  - (b) less than or equal to the higher benefit.
- (4) If the actuary believes that there is a reasonable expectation that a higher benefit than either the standard benefit or the accrued retirement benefit will be paid, then the actuary should assume that the benefit paid on voluntary exit on or after age 55 is always equal to the benefit reasonably expected to be paid.

Note: In considering whether there is a reasonable expectation that a higher benefit will be paid, it would generally not be appropriate to assume payment unless such an assumption was adopted in the most recent actuarial review.

## **2.6 Method of working out new entrant rate for a member**

- (1) If a member belongs to exactly one benefit category at a particular time, the new entrant rate for the member at that time is the new entrant rate for that benefit category.
- (2) If a member belongs to more than one benefit category at a particular time, the new entrant rate for the member at that time is the sum of the new entrant rates for each benefit category to which the member belongs.

Note: The new entrant rate for a member is relevant to sections 291-170.05 and 291-170.07.

## Part 3—Valuation parameters

### 3.1 Application of economic, decrement and other parameters

For the purpose of working out the new entrant rate for a benefit category mentioned in Part 1 or 2, the actuary is to apply the economic, decrement and other parameters set out in this Part.

### 3.2 Discount rate

- (1) The discount rate to be used to discount projected future benefits and salaries is 8% per year.
- (2) The discount rate is not to be adjusted for investment expenses or investment-related taxation or for any other reason.

### 3.3 Fund earning rate and crediting rate

- (1) If necessary, the fund earning rate to be assumed is 8% per year.
- (2) If necessary, the assumed crediting rate is to be based on the assumed fund earning rate.

### 3.4 Rate of future salary or wages growth

- (1) The rate of salary or wages growth to be applied is 4.5% per year.
- (2) This rate is to be used:
  - (a) to project the value of future salary or wages; and
  - (b) to project benefits that increase in accordance with a general wage index (for example, average weekly earnings).

### 3.5 Rate of increase in price indices

If a benefit is linked to an increase in a price index (for example, the Consumer Price Index), the rate of increase in the price index to be applied is 2.5% per year.

### 3.6 New entrant age

- (1) The age of new entrants to be assumed is based on the average age of entry to the fund of the persons who were defined benefit members of the fund at 1 July 2007.
- (2) The following table sets out the age of new entrants that is to be assumed.



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**New entrant age**

<b>Item</b>	<b>Average age last birthday at commencement in fund of defined benefit members of the fund at 1 July 2007</b>	<b>New entrant age to be assumed</b>
1	<30	25
2	30-34	30
3	35-39	35
4	40-44	40
5	45-49	45
6	50+	50

(3) If:

- (a) there has been a transfer of defined benefit members from a predecessor fund into the fund, or a superannuation sub-fund of the fund; and
- (b) the actuary considers it reasonable to do so;

the actuary may determine a new entrant age for the fund or superannuation sub-fund taking account of the average age of entry used for or relevant for those members in the predecessor fund.

(4) For the purposes of this clause, a defined benefit member does not include a person who:

- (a) is receiving only a pension benefit from the fund; or
- (b) has deferred the person's benefit entitlement in the fund.

(5) If the actuary believes that there is insufficient information available to calculate the average age of entry, the actuary is to assume that the age of a new entrant is 40.

### 3.7 Exit rates

(1) The following table sets out the rates of voluntary exit from the fund that are to be assumed.

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<b>Voluntary exit rates</b>		
<b>Item</b>	<b>Age band</b>	<b>Exit rate</b>
1	<40	0.05
2	40-44	0.04
3	45-49	0.04
4	50-54	0.04
5	55-59	0.08
6	60	0.12
7	61-64	0.10
8	65	1.00

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**Schedule 1A** Method of working out amount of notional taxed contributions

**Part 3** Valuation parameters

Clause 3.8

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- (2) The rate of involuntary exit (including by redundancy, death or invalidity) to be assumed is zero.

**3.8 Pensions**

- (1) If the fund benefit is a single life pension, the pension is to be valued using the assumptions set out in this Part.
- (2) If the fund benefit is a reversionary pension, the value of the pension is to be taken as the value of the pension assuming it is a single life pension, increased by 10%.

**3.9 Mortality of pensioners**

The following table sets out the rates of pensioner mortality ( $qx$ ) that are to be assumed.

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Pensioner mortality ( $qx$ ) rates		
Item	Age	$qx$
1	35-49	0.003
2	50-54	0.004
3	55	0.005
4	56	0.006
5	57	0.006
6	58	0.007
7	59	0.008
8	60	0.008
9	61	0.009
10	62	0.010
11	63	0.012
12	64	0.013
13	65	0.014
14	66	0.016
15	67	0.017
16	68	0.019
17	69	0.021
18	70	0.023
19	71	0.026
20	72	0.029
21	73	0.032
22	74	0.035
23	75	0.039
24	76	0.043
25	77	0.048

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<b>Pensioner mortality (<math>q_x</math>) rates</b>		
<b>Item</b>	<b>Age</b>	<b><math>q_x</math></b>
26	78	0.053
27	79	0.059
28	80	0.064
29	81	0.070
30	82	0.077
31	83	0.085
32	84	0.095
33	85	0.106
34	86	0.116
35	87	0.128
36	88	0.139
37	89	0.149
38	90	0.159
39	91	0.168
40	92	0.176
41	93	0.184
42	94	0.193
43	95	0.202
44	96	0.211
45	97	0.219
46	98	0.228
47	99	0.236
48	100	1.000

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### **3.10 Taxed and untaxed benefits**

If the rules of the fund provide for benefits to be paid on either a taxed or an untaxed basis, the actuary is to assume that the employer component of the fund benefit is paid as a taxed benefit.

Note: This situation applies to a small number of funds where the employer component of the fund benefit is generally met by a last-minute contribution to the superannuation fund.

### **3.11 Other assumptions to be set by the actuary**

- (1) Any other assumptions which may be necessary are to be set by the actuary responsible for calculating the new entrant rate.
- (2) The assumptions are to be based on the assumptions used in the most recent actuarial valuation of the fund, unless the actuary believes, having regard to the expected future experience of the fund, that they are no longer appropriate.

**Schedule 1A** Method of working out amount of notional taxed contributions  
**Part 3** Valuation parameters

Clause 3.11

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- (3) If the actuary believes that the assumptions used in the most recent actuarial valuation are no longer appropriate, the assumptions should be set on a best estimate basis.

## **Part 4—Exercise of discretion to pay a benefit greater than the benefit assumed in calculating the new entrant rate**

### **4.1 Method of working out the increased exit benefit adjustment amount in the formula in clause 1.8**

For the purposes of the formula in clause 1.8:

- (a) for a financial year in which the trustee of the defined benefit fund pays, as a result of an exercise of a discretion, a benefit to the member on:
  - (i) voluntary exit; or
  - (ii) redundancy that is not bona fide;  
which exceeds the benefit assumed in calculating the new entrant rate for the benefit category to which the member belongs at the time the benefit is paid—the ***increased exit benefit adjustment amount*** equals an amount worked out on advice from an actuary that represents the amount of the excess; and
- (b) for any other financial year—the ***increased exit benefit adjustment amount*** equals zero.

Note: If the trustee decides to pay an untaxed benefit rather than a taxed benefit, any excess of the amount of the untaxed benefit over the amount of the taxed benefit that would otherwise have been payable is not to be included in the increased exit benefit adjustment amount.

## Part 5—Member has changed benefit category

### 5.1 Method of working out the category change or discretion adjustment amount in the formula in clause 1.8

- (1) For the purposes of the formula in clause 1.8:
  - (a) for a financial year in which the member's accrued retirement benefit increases as a result of:
    - (i) a change of benefit category; or
    - (ii) an exercise of discretion;the *category change or discretion adjustment amount* equals an amount worked out on advice from an actuary that represents the increase in the value of the accrued retirement benefit, if any, as a result of the change in benefit category or the exercise of the discretion; and
  - (b) for any other financial year—the *category change or discretion adjustment amount* equals zero.
- (2) The economic, decrement and other parameters and the other assumptions to be used are set out in Part 3.

## **Part 6—Governing rules have changed**

### **6.1 Method of working out governing rules change adjustment amount in the formula in clause 1.8**

- (1) For the purposes of the formula in clause 1.8:
  - (a) for a financial year in which there is an amendment of the governing rules (within the meaning of subsection 10(1) of the SIS Act) of the defined benefit fund that:
    - (i) may result in an increase in the member's benefit; and
    - (ii) is made for a reason other than to satisfy a legislative requirement; the ***governing rules change adjustment amount*** equals an amount worked out on advice from an actuary that represents the increase in the value of the accrued retirement benefit, if any, that accrued to the member as a result of the amendment to the governing rules; and
  - (b) for any other financial year—the ***governing rules change adjustment amount*** equals zero.
- (2) The economic, decrement and other parameters and the other assumptions to be used are set out in Part 3.

## **Part 7—Non-arm's length increase in superannuation salary**

### **7.1 Method of working out the increased superannuation salary adjustment amount in the formula in clause 1.8**

- (1) For the purposes of the formula in clause 1.8:
  - (a) for a financial year in which the member's superannuation salary is increased in a non-arm's length way with the primary purpose of achieving an increase in superannuation benefit—the *increased superannuation salary adjustment amount* equals an amount worked out on advice from an actuary that represents the increase in the value of the accrued retirement benefit, if any, that accrued to the member as a result of the change in superannuation salary; and
  - (b) for any other financial year—the *increased superannuation salary adjustment amount* equals zero.
- (2) The economic, decrement and other parameters and the other assumptions to be used are set out in Part 3.



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## **Schedule 1AA—Working out defined benefit contributions**

Note: See subsection 293-115.20(2).

### **Part 1—Preliminary**

#### **Division 1—Definitions**

##### **1 Meaning of *accruing member***

In this Schedule, *accruing member* of a superannuation fund for a financial year, has the meaning given by subsection 293-115.05(2).

##### **2 Meaning of *benefit category***

- (1) A *benefit category* is a category of membership of a defined benefit fund as certified by an actuary.
- (2) An actuary must not certify a category of membership to be a benefit category unless the actuary is satisfied that:
  - (a) each hypothetical new entrant to the benefit category with the same entry age would accrue retirement benefits on substantially the same basis; or
  - (b) if any 2 hypothetical new entrants to the benefit category accrued retirement benefits on a different basis, the new entrant rates for each member calculated under Parts 2 and 3 would be equal.

##### **2A Meaning of *defined benefit fund***

A *defined benefit fund* is a superannuation fund in which a member has a defined benefit interest.

##### **2B Treatment of superannuation sub-funds**

If there are 2 or more superannuation sub-funds in relation to defined benefit members of a superannuation fund, apply this Schedule to the superannuation fund separately in respect of each superannuation sub-fund.

##### **3 Accruing member must not belong to more than one benefit category at the same time unless certified by an actuary**

- (1) An accruing member must not belong to more than one benefit category of the same defined benefit fund on the same day unless certified by an actuary.
- (2) An actuary must certify that a member belongs to more than one benefit category on the same day if the actuary is satisfied that the amount of defined benefit contributions to be reported will be materially different from the amount of defined benefit contributions that would have been reported had the member belonged to only one benefit category on each relevant day.

## Division 2—Method

### 4 Method of determining amount of defined benefit contributions

- (1) The *defined benefit contributions* for an accruing member of a defined benefit fund for a financial year is the amount worked out using the following formula:

$$\left( BC - NTC \right) \times 0.85 + NTC$$

where, for the financial year:

**BC** is the notional employer contribution calculated for the member under subclause (2).

**NTC** is the notional taxed contributions calculated for the member for the financial year under Schedule 1A, disregarding Subdivision 291-C of the *Income Tax (Transitional Provisions) Act 1997*.

Note 1: Section 291-170.04 sets out circumstances in which notional taxed contributions are nil.

Note 2: Salary packaged contributions which do not contribute towards funding the defined benefit interest are included in the amount calculated under step 1 of the method statement set out in section 293-105 of the Act and do not form any part of the method of determining defined benefit contributions.

- (2) The *notional employer contribution* for an accruing member of a defined benefit fund for a financial year is the amount worked out using the following formula:

$$\text{Sum of NEFC} + \left( 1.2 \times \left( \begin{array}{l} \text{Category change} \\ \text{or discretion} \\ \text{adjustment} \\ \text{amount} \end{array} + \begin{array}{l} \text{Governing} \\ \text{rules} \\ \text{change} \\ \text{adjustment} \\ \text{amount} \end{array} + \begin{array}{l} \text{Increased} \\ \text{exit benefit} \\ \text{adjustment} \\ \text{amount} \end{array} + \begin{array}{l} \text{Increased} \\ \text{superannuation} \\ \text{salary} \\ \text{adjustment} \\ \text{amount} \end{array} \right) \right)$$

where, for the financial year:

**category change or discretion adjustment amount** is an amount worked out on advice from an actuary under Part 5.

**governing rules change adjustment amount** is an amount worked out on advice from an actuary under Part 6.

**increased exit benefit adjustment amount** is an amount worked out on advice from an actuary under Part 4.

**increased superannuation salary adjustment amount** is an amount worked out on advice from an actuary under Part 7.

**sum of NEFC** is the sum of the amounts of notional employer financed contributions for each benefit category that the member belongs to during the financial year calculated under subclause (3).

- (3) The *notional employer financed contributions* for an accruing member for a benefit category of a defined benefit fund for a financial year is the amount worked out using the following formula:

$$1.2 \times \left( \text{New entrant rate} \times \text{Superannuation salary amount} \times \frac{\text{Number of days}}{365} - \text{Member contributions amount} \right)$$

where, for the financial year:

*member contributions amount* is the amount of member contributions:

- (a) paid by or on behalf of the member in respect of the member's defined benefit interest in the fund during that part of the financial year that the member was an accruing member of the benefit category; and
- (b) which are not assessable income of the fund;

but excluding any amounts which are not assessable income of the fund because of:

- (c) item 5.3 of the table in section 50-25 of the Act; or
- (d) a choice made under section 295-180 of the Act.

*new entrant rate* is the new entrant rate for the benefit category worked out by an actuary under Parts 2 and 3.

*number of days* is the number of days during the financial year that the member was an accruing member of the benefit category.

*superannuation salary amount* is the member's annual superannuation salary relevant to the benefit category on the first day of the financial year on which the member had a defined benefit interest in the fund.

## Part 2—New entrant rate

### 5 Method of working out new entrant rate for a benefit category

- (1) The new entrant rate for a benefit category is the rate calculated under this Part and using the assumptions set out in Part 3.
- (2) The new entrant rate for a benefit category is the rate that represents the long-term cost, expressed as a percentage of superannuation salary, of providing the benefits payable on a voluntary exit to a hypothetical new entrant to the benefit category.
- (3) The new entrant rate is calculated as the present value of the benefits payable on voluntary exit (resignation, early retirement, or retirement) under the rules of the defined benefit fund which are applicable to a new entrant to the benefit category divided by the present value of future superannuation salaries payable to the new entrant.
- (4) The present value of the benefits payable is to be calculated having regard to the rules and practice of the defined benefit fund including benefit structure, caps, member options, reasonably expected discretions and member contributions, and using the economic, decrement and other parameters and the other assumptions set out in Part 3.

### 6 New entrant rate to be based on period of membership needed to reach maximum benefit accrual

- (1) If the rules of the defined benefit fund applicable to the benefit category provide for a maximum benefit accrual, the new entrant rate is to be calculated on the basis that the benefit is funded over the period to when maximum accrual is attained.

Note: This means that, for the purpose of calculating the present value of future salaries payable to the new entrant, the superannuation salary is to be assumed to be zero at those ages after reaching maximum benefit accrual.

Example: If maximum accrual is attained after 20 years of membership, the superannuation salary for a 30-year-old new entrant will be assumed to be zero at age 50 and above for the purpose of calculating the present value of future salaries payable to the new entrant.

- (2) For the Governor-General Pension Scheme, the period to when maximum benefit accrual is attained for a member of the Scheme is taken to be the period:
  - (a) starting on the day the member's appointment as Governor-General starts; and
  - (b) ending at the end of the financial year in which the member's appointment as Governor-General started.

### 7 New entrant rate to be rounded down

The new entrant rate is to be rounded down to the lower 1 percentage point.

Example: 10.6% would be rounded down to 10%.

## **8 No allowance for administration expenses or income tax on assessable contributions**

The new entrant rate is to be calculated ignoring:

- (a) administration expenses; and
- (b) income tax on assessable contributions.

Note: These items are allowed for in the formula in subclause 4(3) by multiplying by 1.2.

## **9 Certain discretions to be allowed for**

- (1) The new entrant rate is to be calculated assuming that certain discretions are always exercised.
- (2) Subject to subclause (3), if the fund rules provide a discretion to pay, on voluntary exit, a benefit that is higher than the standard benefit, the actuary must assume that a higher benefit is always paid on voluntary exit on or after age 55.
- (3) If the higher benefit mentioned in subclause (2) exceeds the accrued retirement benefit, the actuary may assume that the benefit is an amount:
  - (a) greater than or equal to the accrued retirement benefit; and
  - (b) less than or equal to the higher benefit.
- (4) If the actuary believes that there is a reasonable expectation that a higher benefit than either the standard benefit or the accrued retirement benefit will be paid, then the actuary should assume that the benefit paid on voluntary exit on or after age 55 is always equal to the benefit reasonably expected to be paid.

Note: In considering whether there is a reasonable expectation that a higher benefit will be paid, it would generally not be appropriate to assume payment unless such an assumption was adopted in the most recent actuarial review.

## **Part 3—Valuation parameters**

### **10 Application of economic, decrement and other parameters**

For the purpose of working out the new entrant rate for a benefit category mentioned in Part 1 or 2, the actuary is to apply the economic, decrement and other parameters set out in this Part.

### **11 Discount rate**

- (1) The discount rate to be used to discount projected future benefits and salaries is 8% per year.
- (2) The discount rate is not to be adjusted for investment expenses or investment-related taxation or for any other reason.

### **12 Fund earning rate and crediting rate**

- (1) If necessary, the fund earning rate to be assumed is 8% per year.
- (2) If necessary, the assumed crediting rate is to be based on the assumed fund earning rate.

### **13 Rate of future salary or wages growth**

- (1) The rate of salary or wages growth to be applied is 4.5% per year.
- (2) This rate is to be used:
  - (a) to project the value of future salary or wages; and
  - (b) to project benefits that increase in accordance with a general wage index (for example, average weekly earnings).

### **14 Rate of increase in price indices**

If a benefit is linked to an increase in a price index (for example, the Consumer Price Index), the rate of increase in the price index to be applied is 2.5% per year.

### **15 New entrant age**

- (1) The age of new entrants to be assumed is based on the average age of entry to the fund of the persons who were defined benefit members of the fund at 1 July 2007.
- (2) The following table sets out the age of new entrants that is to be assumed.

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**New entrant age**

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<b>Item</b>	<b>Average age last birthday at commencement in fund of defined benefit members of the fund at 1 July 2007</b>	<b>New entrant age to be assumed</b>
1	<30	25
2	30-34	30
3	35-39	35
4	40-44	40
5	45-49	45
6	50+	50

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- (3) If:
- (a) there has been a transfer of defined benefit members from a predecessor fund into the fund, or a superannuation sub-fund of the fund; and
  - (b) the actuary considers it reasonable to do so;
- the actuary may determine a new entrant age for the fund or superannuation sub-fund taking account of the average age of entry used for or relevant for those members in the predecessor fund.
- (4) For the purposes of this clause, a defined benefit member does not include a person who:
- (a) is receiving only a pension benefit from the fund; or
  - (b) has deferred the person's benefit entitlement in the fund.
- (5) If the actuary believes that there is insufficient information available to calculate the average age of entry, the actuary is to assume that the age of a new entrant is 40.
- (6) If an actuary certifies a benefit category for the purposes of subclause 2(1) in relation to a person's membership of the Governor-General Pension Scheme, then, despite subclauses (1) to (5) of this clause, the new entrant age to be assumed for the benefit category is:
- (a) the new entrant age specified by the *Governor-General Act 1974*; or
  - (b) if that Act does not specify a new entrant age—the person's age when the person's appointment as Governor-General commences.

**16 Exit rates**

- (1) The following table sets out the rates of voluntary exit from the fund that are to be assumed.

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<b>Voluntary exit rates</b>		
<b>Item</b>	<b>Age band</b>	<b>Exit rate</b>
1	<40	0.05
2	40-44	0.04
3	45-49	0.04

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**Schedule 1AA** Working out defined benefit contributions  
**Part 3** Valuation parameters

Clause 17

**Voluntary exit rates**

Item	Age band	Exit rate
4	50-54	0.04
5	55-59	0.08
6	60	0.12
7	61-64	0.10
8	65	1.00

- (2) However, if an actuary certifies a benefit category for the purposes of subclause 2(1) in relation to a person's membership of the Governor-General Pension Scheme, then, despite subclause (1) of this clause, the voluntary exit rates to be assumed for the benefit category are:
- (a) the voluntary exit rates specified by the *Governor-General Act 1974*; or
  - (b) if that Act does not specify voluntary exit rates—the following rates:
    - (i) from the age of the person on the day the person's appointment as Governor-General commences (the *appointment day*) to the person's age on the fourth anniversary of the appointment day—0.00;
    - (ii) from the age of the person on the person's next birthday after the fourth anniversary of the appointment day to any later age—1.00.
- (3) The rate of involuntary exit (including by redundancy, death or invalidity) to be assumed is zero.

**17 Pensions**

- (1) If the benefit is a single life pension, the pension is to be valued using the assumptions set out in this Part.
- (2) If the benefit is a reversionary pension, the value of the pension is to be taken as the value of the pension assuming it is a single life pension, increased by 10%.

**18 Mortality of pensioners**

The following table sets out the rates of pensioner mortality (*qx*) that are to be assumed.

<b>Pensioner mortality (<i>qx</i>) rates</b>		
Item	Age	<i>qx</i>
1	35-49	0.003
2	50-54	0.004
3	55	0.005
4	56	0.006
5	57	0.006
6	58	0.007
7	59	0.008
8	60	0.008



<b>Pensioner mortality (<math>qx</math>) rates</b>		
<b>Item</b>	<b>Age</b>	<b><math>qx</math></b>
9	61	0.009
10	62	0.010
11	63	0.012
12	64	0.013
13	65	0.014
14	66	0.016
15	67	0.017
16	68	0.019
17	69	0.021
18	70	0.023
19	71	0.026
20	72	0.029
21	73	0.032
22	74	0.035
23	75	0.039
24	76	0.043
25	77	0.048
26	78	0.053
27	79	0.059
28	80	0.064
29	81	0.070
30	82	0.077
31	83	0.085
32	84	0.095
33	85	0.106
34	86	0.116
35	87	0.128
36	88	0.139
37	89	0.149
38	90	0.159
39	91	0.168
40	92	0.176
41	93	0.184
42	94	0.193
43	95	0.202
44	96	0.211
45	97	0.219
46	98	0.228

**Schedule 1AA** Working out defined benefit contributions  
**Part 3** Valuation parameters

Clause 19

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**Pensioner mortality ( $qx$ ) rates**

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<b>Item</b>	<b>Age</b>	<b><math>qx</math></b>
47	99	0.236
48	100	1.000

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**19 Other assumptions to be set by the actuary**

- (1) Any other assumptions which may be necessary are to be set by the actuary responsible for calculating the new entrant rate.
- (2) The assumptions are to be based on the assumptions used in the most recent actuarial valuation of the fund, unless the actuary believes, having regard to the expected future experience of the fund, that they are no longer appropriate.
- (3) If the actuary believes that the assumptions used in the most recent actuarial valuation are no longer appropriate, the assumptions should be set on a best estimate basis.

## **Part 4—Exercise of discretion to pay a benefit greater than the benefit assumed in calculating the new entrant rate**

### **20 Method of working out the increased exit benefit adjustment amount in the formula in subclause 4(2)**

For the purposes of the formula in subclause 4(2):

- (a) for a financial year in which the trustee of the defined benefit fund pays, as a result of an exercise of a discretion, a benefit to the member on:
  - (i) voluntary exit; or
  - (ii) redundancy that is not bona fide;  
which exceeds the benefit assumed in calculating the new entrant rate for the benefit category to which the member belongs at the time the benefit is paid—the *increased exit benefit adjustment amount* equals an amount worked out on advice from an actuary that represents the amount of the excess; and
- (b) for any other financial year—the *increased exit benefit adjustment amount* equals zero.

## Part 5—Member has changed benefit category

### 21 Method of working out the category change or discretion adjustment amount in the formula in subclause 4(2)

- (1) For the purposes of the formula in subclause 4(2):
  - (a) for a financial year in which the member's accrued retirement benefit increases as a result of:
    - (i) a change of benefit category; or
    - (ii) an exercise of discretion;the *category change or discretion adjustment amount* equals an amount worked out on advice from an actuary that represents the increase in the value of the accrued retirement benefit, if any, as a result of the change in benefit category or the exercise of the discretion; and
  - (b) for any other financial year—the *category change or discretion adjustment amount* equals zero.
- (2) The economic, decrement and other parameters and the other assumptions to be used are set out in Part 3.

## **Part 6—Governing rules have changed**

### **22 Method of working out governing rules change adjustment amount in the formula in subclause 4(2)**

- (1) For the purposes of the formula in subclause 4(2):
  - (a) for a financial year in which there is an amendment of the governing rules (within the meaning of subsection 10(1) of the SIS Act) of the defined benefit fund that:
    - (i) may result in an increase in the member's benefit; and
    - (ii) is made for a reason other than to satisfy a legislative requirement; the ***governing rules change adjustment amount*** equals an amount worked out on advice from an actuary that represents the increase in the value of the accrued retirement benefit, if any, that accrued to the member as a result of the amendment to the governing rules; and
  - (b) for any other financial year—the ***governing rules change adjustment amount*** equals zero.
- (2) The economic, decrement and other parameters and the other assumptions to be used are set out in Part 3.

## **Part 7—Non-arm's length increase in superannuation salary**

### **23 Method of working out the increased superannuation salary adjustment amount in the formula in subclause 4(2)**

- (1) For the purposes of the formula in subclause 4(2):
  - (a) for a financial year in which the member's superannuation salary is increased in a non-arm's length way with the primary purpose of achieving an increase in superannuation benefit—the *increased superannuation salary adjustment amount* equals an amount worked out on advice from an actuary that represents the increase in the value of the accrued retirement benefit, if any, that accrued to the member as a result of the change in superannuation salary; and
  - (b) for any other financial year—the *increased superannuation salary adjustment amount* equals zero.
- (2) The economic, decrement and other parameters and the other assumptions to be used are set out in Part 3.

## Schedule 1B—Valuation factors

Note: See sections 307-205.01A and 307-205.02.

### 1 Income stream valuation factors

- (1) For the purposes of paragraph 307-205.01A(3)(b), the applicable factor for the superannuation income stream is the factor given in the table in subclause (3) (*table 1*) at the age which is the greater of:
  - (a) the minimum age at which a retirement benefit can be taken without requiring the consent of the employer; and
  - (b) the member's actual age as at the member's last birthday before 1 July 2007.
- (2) For the purposes of subparagraph 307-205.02(3)(a)(ii), the applicable factor for the superannuation income stream is:
  - (a) if the superannuation income stream is payable for the life of the member—the factor given in the table in subclause (3) (*table 1*) for the age of the member at the member's last birthday before the day after the date on which the superannuation income stream is to be valued; or
  - (b) if the superannuation income stream is payable for a fixed term—the factor given in the table in subclause (4) (*table 2*) for the number of complete years remaining in the term of the superannuation income stream on the day preceding the date on which the superannuation income stream is to be valued.
- (3) The following is table 1.

**Table 1**

Item	Age	Factor for indexed lifetime income stream	Factor for non-indexed lifetime income stream
1	18	23.238	15.405
2	19	23.158	15.385
3	20	23.084	15.366
4	21	23.016	15.349
5	22	22.956	15.334
6	23	22.906	15.322
7	24	22.862	15.312
8	25	22.816	15.302
9	26	22.763	15.289
10	27	22.694	15.271
11	28	22.612	15.248
12	29	22.523	15.223
13	30	22.422	15.194

**Schedule 1B** Valuation factors

Clause 1

**Table 1**

<b>Item</b>	<b>Age</b>	<b>Factor for indexed lifetime income stream</b>	<b>Factor for non-indexed lifetime income stream</b>
14	31	22.310	15.160
15	32	22.193	15.124
16	33	22.076	15.086
17	34	21.950	15.045
18	35	21.821	15.002
19	36	21.691	14.958
20	37	21.553	14.911
21	38	21.410	14.861
22	39	21.266	14.809
23	40	21.113	14.754
24	41	20.956	14.695
25	42	20.790	14.632
26	43	20.609	14.562
27	44	20.421	14.487
28	45	20.229	14.409
29	46	20.030	14.326
30	47	19.823	14.239
31	48	19.610	14.148
32	49	19.391	14.052
33	50	19.164	13.950
34	51	18.931	13.844
35	52	18.691	13.732
36	53	18.443	13.615
37	54	18.189	13.492
38	55	17.927	13.364
39	56	17.659	13.230
40	57	17.383	13.089
41	58	17.100	12.943
42	59	16.810	12.790
43	60	16.513	12.631
44	61	16.209	12.465
45	62	15.891	12.287
46	63	15.558	12.099
47	64	15.213	11.900
48	65	14.861	11.693
49	66	14.506	11.480
50	67	14.144	11.260
51	68	13.775	11.032
52	69	13.396	10.794



**Table 1**

<b>Item</b>	<b>Age</b>	<b>Factor for indexed lifetime income stream</b>	<b>Factor for non-indexed lifetime income stream</b>
53	70	13.011	10.548
54	71	12.627	10.297
55	72	12.230	10.035
56	73	11.815	9.756
57	74	11.398	9.471
58	75	10.983	9.183
59	76	10.566	8.889
60	77	10.144	8.587
61	78	9.723	8.282
62	79	9.314	7.980
63	80	8.898	7.669
64	81	8.486	7.357
65	82	8.087	7.051
66	83	7.697	6.748
67	84	7.323	6.455
68	85	6.966	6.172
69	86	6.627	5.901
70	87	6.311	5.647
71	88	6.010	5.402
72	89	5.728	5.171
73	90	5.465	4.954
74	91	5.218	4.750
75	92	4.991	4.561
76	93	4.773	4.379
77	94	4.566	4.205
78	95	4.360	4.031

(4) The following is table 2.

**Table 2**

<b>Item</b>	<b>Number of years</b>	<b>Factor for indexed fixed-term income stream</b>	<b>Factor for non-indexed fixed-term income stream</b>
1	0	0.000	0.000
2	1	0.981	0.969
3	2	1.925	1.879
4	3	2.834	2.734
5	4	3.709	3.536
6	5	4.550	4.289

## Clause 2

Table 2

Item	Number of years	Factor for indexed fixed-term income stream	Factor for non-indexed fixed-term income stream
7	6	5.360	4.996
8	7	6.140	5.661
9	8	6.891	6.284
10	9	7.613	6.870
11	10	8.308	7.420
12	11	8.977	7.936
13	12	9.621	8.421
14	13	10.241	8.876
15	14	10.837	9.303
16	15	11.411	9.705
17	16	11.963	10.081
18	17	12.495	10.435
19	18	13.007	10.768
20	19	13.499	11.079
21	20	13.973	11.372
22	21	14.430	11.647
23	22	14.869	11.906
24	23	15.291	12.148
25	24	15.698	12.376
26	25	16.090	12.590
27	26	16.466	12.790
28	27	16.829	12.979
29	28	17.178	13.156
30	29	17.514	13.322
31	30	17.837	13.478

## 2 Lump sum valuation factors

- (1) For the purposes of subparagraph 307-205.02(3)(b)(ii), the applicable factor for the superannuation lump sum is the discount valuation factor mentioned in subclause (3) that applies for the minimum deferral period.
- (2) For the purposes of this clause, the *minimum deferral period* in relation to a lump sum that is to be paid at a time after the date on which the interest in respect of which the lump sum is payable is to be valued is the number of complete years between the day before the date on which the interest is to be valued and the earliest date at which the lump sum can be paid.
- (3) The following table sets out the discount valuation factors, in accordance with the following principles:
  - (a) the factors in column 2 of the table apply if the lump sum is not indexed;

- (b) the factors in column 3 of the table apply if the lump sum is indexed in accordance with the Consumer Price Index;
- (c) the factors in column 4 of the table apply if the lump sum is indexed in accordance with a general wage index (for example, average weekly earnings, or average weekly ordinary time earnings, published by the Australian Bureau of Statistics);
- (d) if the lump sum is indexed in accordance with a fund crediting rate, the factor is 1.

<b>Discount valuation factors</b>				
<b>Item</b>	<b>Column 1 Minimum deferral period</b>	<b>Column 2 Lump sum not indexed</b>	<b>Column 3 CPI indexed lump sum</b>	<b>Column 4 Wage indexed lump sum</b>
1	0	1.000	1.000	1.000
2	1	0.939	0.963	0.977
3	2	0.882	0.927	0.954
4	3	0.829	0.892	0.932
5	4	0.779	0.859	0.910
6	5	0.732	0.827	0.889
7	6	0.689	0.797	0.869
8	7	0.648	0.768	0.849
9	8	0.610	0.740	0.830
10	9	0.575	0.714	0.811
11	10	0.542	0.688	0.793
12	11	0.511	0.664	0.776
13	12	0.483	0.641	0.759
14	13	0.456	0.619	0.742
15	14	0.431	0.598	0.727
16	15	0.409	0.579	0.711
17	16	0.387	0.560	0.697
18	17	0.368	0.542	0.683
19	18	0.350	0.525	0.669
20	19	0.333	0.509	0.656
21	20	0.318	0.494	0.644
22	21	0.304	0.480	0.632
23	22	0.291	0.467	0.621
24	23	0.279	0.454	0.610
25	24	0.269	0.443	0.600
26	25	0.259	0.432	0.590
27	26	0.250	0.422	0.582
28	27	0.243	0.413	0.573
29	28	0.236	0.404	0.565

**Schedule 1B** Valuation factors

Clause 2

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<b>Discount valuation factors</b>				
<b>Item</b>	<b>Column 1</b> <b>Minimum deferral</b> <b>period</b>	<b>Column 2</b> <b>Lump sum not</b> <b>indexed</b>	<b>Column 3</b> <b>CPI indexed lump</b> <b>sum</b>	<b>Column 4</b> <b>Wage indexed lump</b> <b>sum</b>
30	29	0.229	0.397	0.558
31	30	0.224	0.390	0.552

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## **Schedule 1C—Farm management deposits— statements to be read by depositors**

Note: See section 393-20.02

### **Part 1—Statements**

#### **1 Statements for the purposes of paragraph 393-20.02(a)**

- (1) This clause sets out statements for the purposes of paragraph 393-20.02(a).

*Authorised deposit-taking institution*

- (2) The first statement is as follows:

The FMD provider issuing this application form is an authorised deposit-taking institution for the purposes of the *Banking Act 1959*.

- (3) A form used to apply to an FMD provider to make a farm management deposit may only contain the first statement if the FMD provider is an ADI.

*Financial Claims Scheme*

- (4) The second statement is as follows:

The account holder may be entitled to payment under the Financial Claims Scheme. Payments under the Financial Claims Scheme are subject to a limit for each depositor in respect of total deposits held by that depositor at a locally incorporated authorised deposit-taking institution. For further information contact the Australian Prudential Regulation Authority or visit <https://www.fcs.gov.au>.

## Part 2—Required statements

### 2 Statements for the purposes of paragraph 393-20.02(b)

- (1) This clause sets out statements for the purposes of paragraph 393-20.02(b).
- (2) The statements are as follows:

#### *Purpose of farm management deposits scheme*

The farm management deposits scheme is designed to allow individuals carrying on a primary production business in Australia to shift before-tax income from years when they need it least to years when it is most needed. The scheme helps those individuals to manage their exposure to adverse economic events and seasonal fluctuations.

Eligibility criteria apply to individuals carrying on a primary production business in Australia under the scheme.

Note: **Primary production business** and carrying on a primary production business are explained in subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

#### *Tax consequences of farm management deposits*

The scheme allows individuals carrying on a primary production business in Australia to deduct the amount of any farm management deposit they own from their assessable income for the income year in which the deposit is made. However, the amount of the deductions cannot exceed the owner's taxable primary production income for the income year.

Under the Pay As You Go system, owners may reduce their instalment income for an instalment period by the amount of farm management deposits made during that period. The reduction is limited to the amount that the owners can reasonably expect to deduct for the deposit for the income year in which the deposit is made. However, the instalment income for the period cannot be reduced below nil.

When a farm management deposit is repaid to an owner in an instalment period, the instalment income of the period will include the amount of the repayment. But the owner's instalment income will only include so much of the repayment as will be included in the owner's assessable income for the income year in which the repayment is made.

If neither the owner's tax file number nor Australian Business Number has been quoted to the FMD provider that holds the deposit, the amount repaid will also be subject to withholding at a rate equal to the sum of the top marginal tax rate and the Medicare levy.

*Important requirements for farm management deposits*

Some of the requirements for farm management deposits are summarised below. There are also other requirements set out in the *Income Tax Assessment Act 1997*. A breach of some of the requirements will result in the deposit not being treated as a farm management deposit, and the tax benefits will be lost.

- The owner must be an individual who is carrying on a primary production business in Australia when the deposit is made.
- The deposit must be made by only one individual and on behalf of only one individual.
- Rights of the depositor must not be transferable to another entity.
- The deposit must not be used as security for any amount that the depositor or any other entity owes to the FMD provider or any other entity.
- Interest or other earnings on the deposit must not be invested as a farm management deposit with the FMD provider without having first been paid to the depositor.
- If the depositor requests in writing, the FMD provider must electronically transfer the deposit, or part of the deposit, to another FMD provider that agrees to accept it as a farm management deposit.
- The FMD provider must not deduct any fees from the principal of a farm management deposit. However, it may charge fees on the deposit.

*Repayment of farm management deposits*

The tax benefits are not retained for deposit amounts repaid within the first 12 months after the deposit was made, unless the repayment is made:

- (a) because the owner:
  - (i) dies; or
  - (ii) becomes bankrupt; or
  - (iii) ceases to carry on a primary production business in Australia and does not start carrying on such a business again within 120 days; or
  - (iv) has requested the deposit, or part of the deposit, to be transferred to another FMD provider and the repayment relates to the transfer; or
- (b) because the circumstances specified in subsection 393-40(3) of the *Income Tax Assessment Act 1997* or in regulations made for the purposes of that subsection, relating to repayment in the event of severe drought, exist; or
- (c) because the circumstances specified in subsection 393-40(3A) of the *Income Tax Assessment Act 1997* or in regulations made for the purposes of that subsection, relating to repayment in the event of a natural disaster, exist.

## Part 3—Additional information

### 3 Additional information for the purposes of paragraph 393-20.02(c)

- (1) For the purposes of paragraph 393-20.02(c), a form used to apply to an FMD provider to make a farm management deposit must include statements setting out the additional information referred to in subclauses (2) to (8).
- (2) The amount that is the minimum deposit threshold (the amount stated in item 4 of the table in section 393-35 of the Act).
- (3) The amount that is the maximum deposit limit (the amount stated in item 10 of the table in section 393-35 of the Act).
- (4) An individual can own more than one farm management deposit, and can own farm management deposits with different FMD providers, but the sum of the balances of all of the farm management deposits of an owner claimed as a deduction must not be more than the maximum deposit limit.
- (5) The amount of any repayment of the deposit must be at least the amount stated in item 12 of the table in section 393-35 of the Act, except where the entire amount of the deposit is repaid.
- (6) The deposit will not be deductible if taxable non-primary production income for the year of income exceeds the amount stated in paragraph 393-5(1)(d) of the Act.
- (7) If neither the owner's tax file number nor Australian Business Number has been quoted to the FMD provider, any repayment will be subject to the withholding rate, which is the sum of:
  - (a) the top marginal tax rate for the income year in the year of deposit; and
  - (b) the Medicare levy.

Note 1: The top marginal tax rate is the maximum rate specified in the table in Part I of Schedule 7 to the *Income Tax Rates Act 1986* that relates to the income year.

Note 2: The Medicare levy is specified in subsection 6(1) of the *Medicare Levy Act 1986*.
- (8) If the deposit is used to offset a liability to pay interest on debts to the FMD provider that do not wholly relate to a primary production business that the owner (or a partnership of which the owner is a partner) carries on, the owner is liable to an administrative penalty of up to 200% of that offset.



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## **Schedule 2—Translation of currency amounts—rules and other requirements**

Note: See item 12 of the table in subsection 960-50(6) of the Act, as modified, and section 960-50.01 of this instrument.

### **Part 1—Rules and requirements for item 12 of the table in subsection 960-50(6) of the Act**

#### **1 Exchange rate—consistency with accounting standards used by entity**

For the purposes of item 12 of the table in subsection 960-50(6) of the Act, as modified by subsection 960-50.01(2) of this instrument, if:

- (a) a financial report (within the meaning of the *Corporations Act 2001*) prepared by an entity:
  - (i) complies with the accounting standards under the *Corporations Act 2001*; and
  - (ii) translates amounts into Australian currency using particular exchange rates; and
  - (iii) has been audited in accordance with the *Corporations Act 2001*; and
- (b) the entity, or another entity, wishes to translate an amount into Australian currency in accordance with that item, using the exchange rate used in that financial report to translate a corresponding amount;

the entity mentioned in paragraph (b) must translate all amounts into Australian currency using the exchange rates that were used in that financial report to translate corresponding amounts.

#### **2 Choice of daily exchange rate**

- (1) For the purposes of item 12 of the table in subsection 960-50(6) of the Act, as modified by subsection 960-50.01(2) of this instrument, an entity may translate all amounts of a particular currency, relating to a particular day, into Australian currency using an exchange rate that is applicable at a time, on that day, chosen by the entity (a **daily exchange rate**).
- (2) If the entity chooses a daily exchange rate relating to a particular day, the entity must choose a daily exchange rate relating to each subsequent day in the income year using the same time of the day as the time to which the first daily exchange rate related.
- (3) However:
  - (a) the entity is not permitted to translate amounts using a daily exchange rate if the use of the rate would not be appropriate having regard to the entity's business or activities; and
  - (b) the entity must obtain the rate from a source that is not an associate of the entity, and not the entity itself, unless the Commissioner notifies the entity that it may obtain the rate from one or more specified sources; and

**Schedule 2** Translation of currency amounts—rules and other requirements

**Part 1** Rules and requirements for item 12 of the table in subsection 960-50(6) of the Act

Clause 3

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- (c) the entity must translate amounts relating to the relevant day using that rate.

Example: If an entity is a trader that takes currency positions as part of its business, the use of a single exchange rate for its activities on a day would not be appropriate having regard to its business.

Note: For *associate*, see subsection 995-1(1) of the Act.

### 3 Choice of average exchange rate

- (1) For the purposes of item 12 of the table in subsection 960-50(6) of the Act, as modified by subsection 960-50.01(2) of this instrument, an entity may, in a period, translate an amount into Australian currency using an exchange rate that is an average of all of the exchange rates that are applicable during a period, not exceeding 12 months, that is chosen by the entity (an *average exchange rate*).
- (2) However:
- (a) the entity is not permitted to translate an amount using an average exchange rate unless it appears to the entity on reasonable grounds that the rate would be a reasonable approximation of the exchange rate or rates that the entity would have used if the entity had used the exchange rate required by another appropriate item of the table in subsection 960-50(6) of the Act; and
- (b) the entity must obtain:
- (i) all of the exchange rates that it will use to work out the average exchange rate; or
- (ii) an average exchange rate that has been worked out for a particular period;
- from one or more sources that are not associates of the entity, and not the entity itself, unless the Commissioner notifies the entity that it may obtain the rate or rates from one or more specified sources; and
- (c) the entity must translate amounts relating to the relevant period using the rate.

Note 1: Item 12 of the table in subsection 960-50(6) of the Act is available as an alternative to the special translation rules in items 1 to 11A (inclusive) in that table. Therefore, this subclause requires the entity to consider whether using the translation rules in item 12 would lead to a reasonable approximation with the translation rules in another appropriate item of the table.

Note 2: For *associate*, see subsection 995-1(1) of the Act.

## **Part 2—Translation of foreign currency amounts into Australian currency—rules and requirements for item 11A of the table in subsection 960-50(6) of the Act**

### **4 Exchange rate—consistency with an entity’s financial records**

For the purposes of item 11A of the table in subsection 960-50(6) of the Act, as modified by subsection 960-50.01(2) of this instrument, if:

- (a) an entity keeps financial records (within the meaning of the *Corporations Act 2001*) of the exchange rates that the entity uses to translate amounts into Australian currency; and
- (b) the entity, or another entity, translates an amount to which the records correspond into Australian currency in accordance with item 11A;

the exchange rate that the entity mentioned in paragraph (b) uses must be the same as the exchange rate specified in those records for translating the amount into Australian currency.

## Schedule 3 Approved stock exchanges

Clause 1

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# Schedule 3—Approved stock exchanges

Note: See section 995-1.02.

## 1 Approved stock exchanges

The following table specifies approved stock exchanges for the purposes of section 995-1.02.

<b>Approved stock exchanges</b>	
<b>Item</b>	<b>Approved stock exchange</b>
<b>Argentina</b>	
1	Buenos Aires Stock Exchange
<b>Australia</b>	
2	ASX, also known as Australian Securities Exchange
3	Chi-X Australia
4	National Stock Exchange of Australia
5	SSX, also known as Sydney Stock Exchange
<b>Austria</b>	
6	Vienna Stock Exchange
<b>Belgium</b>	
7	Euronext Brussels
<b>Bermuda</b>	
8	Bermuda Stock Exchange
<b>Brazil</b>	
9	B3, also known as B3 S.A.—Brasil, Bolsa, Balcão
<b>Canada</b>	
10	Montréal Exchange
11	Toronto Stock Exchange
12	TSX Venture Exchange
<b>Chile</b>	
13	Santiago Exchange
<b>China</b>	
14	Shanghai Stock Exchange
15	Shenzhen Stock Exchange
<b>Colombia</b>	
16	Colombia Securities Exchange
<b>Denmark</b>	
17	Nasdaq Copenhagen
<b>Finland</b>	
18	Nasdaq Helsinki

<b>Approved stock exchanges</b>	
<b>France</b>	
19	Euronext Paris
<b>Germany</b>	
20	Berlin Stock Exchange
21	Dusseldorf Stock Exchange
22	Frankfurt Stock Exchange
23	Hamburg Exchange
24	Hannover Stock Exchange
25	Munich Stock Exchange
26	Stuttgart Stock Exchange
<b>Greece</b>	
27	Athens Exchange
<b>Hong Kong</b>	
28	Hong Kong Stock Exchange
<b>Hungary</b>	
29	Budapest Stock Exchange
<b>India</b>	
30	Bombay Stock Exchange
31	Calcutta Stock Exchange
32	National Stock Exchange of India
<b>Indonesia</b>	
33	Indonesia Stock Exchange
<b>Ireland</b>	
34	Euronext Dublin
<b>Israel</b>	
35	Tel Aviv Stock Exchange
<b>Italy</b>	
36	Italian Stock Exchange
<b>Jamaica</b>	
37	Jamaica Stock Exchange
<b>Japan</b>	
38	Fukuoka Stock Exchange
39	Nagoya Stock Exchange
40	Osaka Securities Exchange
41	Sapporo Securities Exchange
42	Tokyo Stock Exchange
<b>Korea, Republic of</b>	
43	Korea Exchange
<b>Luxembourg</b>	
44	Luxembourg Stock Exchange

### Schedule 3 Approved stock exchanges

#### Clause 1

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**Approved stock exchanges**

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**Malaysia**

45 Bursa Malaysia

**Mexico**

46 Mexican Stock Exchange

**Netherlands**

47 Euronext Amsterdam

**New Zealand**

48 NZX, also known as New Zealand's Exchange

**Nigeria**

49 The Nigerian Stock Exchange

**Norway**

50 Oslo Stock Exchange

**Pakistan**

51 Pakistan Stock Exchange Limited

**Peru**

52 Lima Stock Exchange

**Philippines**

53 The Philippine Stock Exchange Inc.

**Poland**

54 Warsaw Stock Exchange

**Portugal**

55 Euronext Lisbon

**Serbia**

56 Belgrade Stock Exchange

**Singapore**

57 Singapore Exchange

**Slovakia**

58 Bratislava Stock Exchange

**Slovenia**

59 Ljubljana Stock Exchange

**South Africa**

60 Johannesburg Stock Exchange

**Spain**

61 Barcelona Stock Exchange

62 Bilbao Stock Exchange

63 Madrid Stock Exchange

64 Valencia Stock Exchange

**Sri Lanka**

65 Colombo Stock Exchange

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<b>Approved stock exchanges</b>	
<b>Sweden</b>	
66	Nasdaq Stockholm
<b>Switzerland</b>	
67	SIX Swiss Exchange
<b>Taiwan</b>	
68	Taiwan Stock Exchange Corporation
<b>Thailand</b>	
69	The Stock Exchange of Thailand
<b>Trinidad and Tobago</b>	
70	Trinidad and Tobago Stock Exchange
<b>Turkey</b>	
71	Istanbul Stock Exchange
<b>United Kingdom</b>	
72	London Stock Exchange
<b>United States</b>	
73	Chicago Stock Exchange
74	NASDAQ OMX BX
75	NASDAQ OMX PHLX
76	NASDAQ Stock Market
77	NYSE, also known as New York Stock Exchange
78	NYSE American
79	NYSE American Options
80	NYSE Arca Equities
81	NYSE Arca Options
82	NYSE National
<b>Uruguay</b>	
83	Montevideo Stock Exchange
<b>Venezuela</b>	
84	Caracas Stock Exchange
<b>Zimbabwe</b>	
85	Zimbabwe Stock Exchange Limited

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