



Financial Framework Legislation Amendment Act (No. 2) 2012

No. 82, 2012

**An Act to amend the law relating to finance, and
for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Financial Framework Legislation Amendment Act (No. 2) 2012

No. 82, 2012

An Act to amend the law relating to finance, and for other purposes

[Assented to 28 June 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Financial Framework Legislation
Amendment Act (No. 2) 2012*.

2 Commencement

- (1) Each provision of this Act 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
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 June 2012
2. Schedule 1	The day after this Act receives the Royal Assent.	29 June 2012
3. Schedule 2	The day after this Act receives the Royal Assent.	29 June 2012

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Australian Animal Health Council (Live-stock Industries) Funding Act 1996

1 Before subsection 4(1)

Insert:

Commonwealth payments to Australian Animal Health Council

2 Subsection 4(2)

Omit “less the Commonwealth’s costs in collecting or recovering those amounts and in administering this subsection”.

3 After subsection 4(2)

Insert:

Conditions of Commonwealth payment

- (2A) The payments made under subsection (2) are subject to the condition that the Australian Animal Health Council will pay to the Commonwealth an amount equal to the Commonwealth’s costs in:
- (a) collecting or recovering the amounts of levy, charge or penalty to which the payments relate; and
 - (b) administering subsection (2) in relation to the making of the payments.

4 Subsection 4(3)

Omit “subsections (4)”, substitute “subsections (3A), (4)”.

5 After subsection 4(3)

Insert:

- (3A) The first priority is to apply the Commonwealth payment in making a payment to the Commonwealth for the purpose of discharging any liability of the Australian Animal Health Council under subsection (2A).

6 Subsection 4(4)

Omit “first priority”, substitute “second priority”.

7 Subsection 4(5)

Omit “second priority”, substitute “third priority”.

8 Subsections 4(6) and (7)

Omit “third priority”, substitute “fourth priority”.

9 At the end of section 4

Add:

Recovery of Commonwealth costs

- (9) An amount payable by the Australian Animal Health Council under subsection (2A):
- (a) is a debt due to the Commonwealth; and
 - (b) may be recovered by the Minister, on behalf of the Commonwealth, by action in a court of competent jurisdiction.

Setting off Council payment to Commonwealth

- (10) The Commonwealth may set off an amount payable to it under subsection (2A) against a payment the Commonwealth must make under subsection (2).

10 Subsection 4A(1)

Omit “less the Commonwealth’s costs in collecting or recovering those amounts and in administering this subsection”.

11 After subsection 4A(1)

Insert:

Conditions of Commonwealth payment

- (1A) The payments made under subsection (1) are subject to the condition that the Australian Animal Health Council will pay to the Commonwealth an amount equal to the Commonwealth’s costs in:
- (a) collecting or recovering the amounts of levy or penalty to which the payments relate; and

(b) administering subsection (1) in relation to the making of the payments.

12 Subsection 4A(2) (heading)

Repeal the heading.

13 After subsection 4A(2)

Insert:

First priority for applying Commonwealth payment

(2A) As first priority, the Australian Animal Health Council is to apply the Commonwealth payment in making a payment to the Commonwealth for the purpose of discharging any liability of the Australian Animal Health Council under subsection (1A).

14 Subsection 4A(3) (heading)

Repeal the heading, substitute:

Second priority for applying Commonwealth payment

15 Subsection 4A(3)

Omit “first priority”, substitute “second priority”.

16 Subsection 4A(4) (heading)

Repeal the heading, substitute:

Third priority for applying Commonwealth payment

17 Subsection 4A(4)

Omit “second priority”, substitute “third priority”.

18 Subsection 4A(5) (heading)

Repeal the heading, substitute:

Fourth priority for applying Commonwealth payment

19 Subsection 4A(5)

Omit “third priority”, substitute “fourth priority”.

20 After subsection 4A(7)

Insert:

Recovery of Commonwealth costs

- (7A) An amount payable by the Australian Animal Health Council under subsection (1A):
- (a) is a debt due to the Commonwealth; and
 - (b) may be recovered by the Minister, on behalf of the Commonwealth, by action in a court of competent jurisdiction.

Setting off Council payment to Commonwealth

- (7B) The Commonwealth may set off an amount payable to it under subsection (1A) against a payment the Commonwealth must make under subsection (1).

21 Subsection 4A(8) (heading)

Repeal the heading.

22 Subsections 6(5) and 7(5)

Omit “third priority”, substitute “fourth priority”.

23 Application—sections 4 and 4A of the *Australian Animal Health Council (Live-stock Industries) Funding Act 1996*

- (1) The amendments of subsections 4(2) and 4A(1) of the *Australian Animal Health Council (Live-stock Industries) Funding Act 1996* made by this Schedule apply in relation to payments made to the Australian Animal Health Council during:
- (a) the month next following the month in which this item commences; or
 - (b) a later month.
- (2) Subsections 4(2A) and 4A(1A) of the *Australian Animal Health Council (Live-stock Industries) Funding Act 1996* as amended by this Schedule apply in relation to payments made to the Australian Animal Health Council during:
- (a) the month next following the month in which this item commences; or

(b) a later month.

Australian Maritime Safety Authority Act 1990

24 Subsection 48(1)

Repeal the subsection, substitute:

- (1) There are to be paid to the Authority amounts equal to:
- (a) amounts of levy received, or purportedly received, by the Commonwealth under:
 - (i) the *Marine Navigation Levy Act 1989*; and
 - (ii) the *Marine Navigation (Regulatory Functions) Levy Act 1991*; and
 - (iii) the *Protection of the Sea (Shipping Levy) Act 1981*; and
 - (b) amounts received, or purportedly received, by the Commonwealth, under section 8 of the *Protection of the Sea (Shipping Levy Collection) Act 1981*, as amounts on account of levy; and
 - (c) amounts of penalty received, or purportedly received, by the Commonwealth under:
 - (i) the *Marine Navigation Levy Collection Act 1989*; and
 - (ii) the *Marine Navigation (Regulatory Functions) Levy Collection Act 1991*; and
 - (iii) the *Protection of the Sea (Shipping Levy Collection) Act 1981*.
- (1A) If an amount referred to in paragraph (1)(a), (b) or (c) is refunded, the Authority must pay to the Commonwealth an amount equal to the refund.
- (1B) The Minister may, on behalf of the Commonwealth, set off an amount payable by the Authority under subsection (1A) against an amount that is payable to the Authority under subsection (1).

25 Section 57

After “34”, insert “, 48”.

26 Application—section 48 of the *Australian Maritime Safety Authority Act 1990*

- (1) Despite the repeal of subsection 48(1) of the *Australian Maritime Safety Authority Act 1990* by this Schedule, that subsection continues to apply, after the commencement of this item, in relation to amounts received by the Commonwealth before the commencement of this item, as if that repeal had not happened.
- (2) Subsection 48(1) of the *Australian Maritime Safety Authority Act 1990* as amended by this Schedule applies in relation to amounts received by the Commonwealth after the commencement of this item.

Australian Meat and Live-stock Industry Act 1997

27 Subsection 66(3)

Repeal the subsection, substitute:

- (3) The payments made under subsection (1) to the industry research body during a particular financial year are subject to the condition that, if:
 - (a) before the end of 31 October next following the financial year, the Secretary determines the amount of the gross value of production of the industry for the financial year; and
 - (b) as at the end of 31 October next following the financial year, the sum of the amounts that were paid to the industry research body under subsection (1) during the financial year exceeds 0.5% of the amount of the gross value of production of the industry for the financial year as determined by the Secretary;

the industry research body will pay to the Commonwealth an amount equal to the excess.

Note: This ensures that the sum of the amounts that are retained by the industry research body in relation to the financial year does not exceed 0.5% of the amount of the gross value of production of the industry for the financial year as determined by the Secretary.

- (3A) If:
 - (a) before the end of 31 October next following a financial year, the Secretary has not determined under subsection (3) the amount of the gross value of production of the industry for the financial year; and
 - (b) the Secretary has determined under subsection (3) the amount of the gross value of production of the industry for the previous financial year;

the Secretary is taken to have made, immediately before the end of that 31 October, a determination under subsection (3) that the amount of the gross value of production of the industry for the financial year is equal to the amount of the gross value of production of the industry determined under subsection (3) for the previous financial year.

- (3B) An amount payable under subsection (3) by the industry research body:
- (a) is a debt due to the Commonwealth; and
 - (b) may be recovered by the Minister, on behalf of the Commonwealth, by action in a court of competent jurisdiction.
- (3C) A determination made under subsection (3) is not a legislative instrument.

28 At the end of section 66

Add:

(5) If:

- (a) an amount (the *first amount*) is payable by the industry research body under subsection (3); and
- (b) another amount (the *second amount*) is payable by the Commonwealth to the industry research body under subsection (1);

the Minister may, on behalf of the Commonwealth, set off the whole or a part of the first amount against the whole or a part of the second amount.

29 Before paragraph 67(3)(a)

Insert:

- (aa) in making payments to the Commonwealth under subsection 66(3); and

30 Application—section 66 of the *Australian Meat and Live-stock Industry Act 1997*

- (1) Despite the amendments of the *Australian Meat and Live-stock Industry Act 1997* by this Schedule, section 66 of that Act continues to apply,

after the commencement of this item, in relation to amounts paid to the industry research body during:

- (a) the financial year in which this item commences; or
- (b) an earlier financial year;

as if those amendments had not been made.

- (2) Subsection 66(3) of the *Australian Meat and Live-stock Industry Act 1997* as amended by this Schedule applies in relation to amounts paid to the industry research body during:

- (a) the financial year next following the financial year in which this item commences; or
- (b) a later financial year.

31 Transitional—determinations made under section 66 of the *Australian Meat and Live-stock Industry Act 1997*

Subsection 66(3A) of the *Australian Meat and Live-stock Industry Act 1997* as amended by this Schedule has effect as if a determination under repealed subsection 66(3) of the *Australian Meat and Live-stock Industry Act 1997* had been made under subsection 66(3) of that Act as amended by this Schedule.

ComSuper Act 2011

32 Subsection 25(1)

After “this Act”, insert “or any other law of the Commonwealth”.

Dairy Produce Act 1986

33 Paragraph 5(2)(b)

Repeal the paragraph, substitute:

- (b) matching payments are spent by the body on:
 - (i) research and development activities for the benefit of the Australian dairy industry and the Australian community generally; and
 - (ii) making payments to the Commonwealth under subsection 6(4).

34 Section 6 (heading)

Repeal the heading, substitute:

6 Appropriation for payments under funding contract etc.**35 Subsection 6(4)**

Repeal the subsection, substitute:

Matching payments—retention limit

- (4) The matching payments made to the eligible body during a particular financial year are subject to the condition that, if:
- (a) before the end of 31 October next following the financial year, the Minister determines the amount of the gross value of whole milk produced in Australia in the financial year; and
 - (b) as at the end of 31 October next following the financial year, the sum of the matching payments that were paid to the eligible body during the financial year exceeds the lesser of:
 - (i) 0.5% of the amount of the gross value of whole milk produced in Australia in the financial year as determined by the Minister; and
 - (ii) 50% of the amount spent by the eligible body in the financial year on activities that qualify, under the funding contract, as research and development activities;

the eligible body will pay to the Commonwealth an amount equal to the excess.

Note: This ensures that the sum of the matching payments that are retained by the eligible body in relation to the financial year does not exceed the lesser of the amounts calculated under subparagraphs (b)(i) and (b)(ii).

- (4A) If:
- (a) before the end of 31 October next following a financial year, the Minister has not determined under subsection (4) the amount of the gross value of whole milk produced in Australia in the financial year; and
 - (b) the Minister has determined under subsection (4) the amount of the gross value of whole milk produced in Australia in the previous financial year;

the Minister is taken to have made, immediately before the end of that 31 October, a determination under subsection (4) that the amount of the gross value of whole milk produced in Australia in the financial year is equal to the amount of the gross value of

whole milk produced in Australia determined under subsection (4) for the previous financial year.

- (4B) An amount payable under subsection (4) by the eligible body:
- (a) is a debt due to the Commonwealth; and
 - (b) may be recovered by the Minister, on behalf of the Commonwealth, by action in a court of competent jurisdiction.
- (4C) A determination made under subsection (4) is not a legislative instrument.

36 Subsection 6(6) (note)

Omit “cap in paragraph (4)(a)”, substitute “condition in subparagraph (4)(b)(i)”.

37 Paragraph 6(7)(b)

Omit “paragraph (4)(a)”, substitute “subparagraph (4)(b)(i)”.

38 Paragraph 6(7)(b)

Omit “matching payments”, substitute “net matching payments”.

39 Subsection 6(7) (formula)

Repeal the formula, substitute:

$$\text{R\&D spend amount in the financial year} - \left(2 \times \frac{\text{The amount of the net matching payments for the financial year}}{\text{The amount of the net matching payments for the financial year}} \right)$$

40 At the end of section 6

Add:

Set off

- (8) If:
- (a) an amount (the **first amount**) is payable by the eligible body under subsection (4); and
 - (b) another amount (the **second amount**) is payable by the Commonwealth to the eligible body under the funding contract;

the Minister may, on behalf of the Commonwealth, set off the whole or a part of the first amount against the whole or a part of the second amount.

Net matching payments

- (9) For the purposes of this section, *net matching payments* for a financial year means the total of the matching payments made to the eligible body during the financial year, less the amount payable by the eligible body under subsection (4) as a condition of those matching payments.

41 Application—section 6 of the *Dairy Produce Act 1986*

- (1) Despite the amendments of the *Dairy Produce Act 1986* by this Schedule, section 6 of that Act continues to apply, after the commencement of this item, in relation to matching payments made to the eligible body during:
- (a) the financial year in which this item commences; or
 - (b) an earlier financial year;
- as if those amendments had not been made.
- (2) Subsection 6(4) of the *Dairy Produce Act 1986* as amended by this Schedule applies in relation to matching payments made to the eligible body during:
- (a) the financial year next following the financial year in which this item commences; or
 - (b) a later financial year.

42 Transitional—determinations made under section 6 of the *Dairy Produce Act 1986*

Subsection 6(4A) of the *Dairy Produce Act 1986* as amended by this Schedule has effect as if a determination under repealed subsection 6(4) of the *Dairy Produce Act 1986* had been made under subsection 6(4) of that Act as amended by this Schedule.

Defence Force Retirement and Death Benefits Act 1973

43 After section 124A

Insert:

124B Recoverable payments

- (1) If, apart from this subsection, the Commonwealth does not have power, under this Act or the previous legislation, to pay an amount (the *relevant amount*) to a person (the *recipient*) purportedly as a benefit, then the Commonwealth may pay the relevant amount to the recipient.

Recovery

- (2) If a payment is made under subsection (1) to the recipient, the relevant amount:
- (a) is a debt due to the Commonwealth by the recipient; and
 - (b) may be recovered by the Chief Executive Officer of ComSuper, on behalf of the Commonwealth, in a court of competent jurisdiction.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

- (3) If:
- (a) a payment is made under subsection (1) to the recipient; and
 - (b) the recipient is receiving, or is entitled to receive, a benefit;
- then:
- (c) the relevant amount; or
 - (d) such part of the relevant amount as the Chief Executive Officer of ComSuper determines;
- may, if the Chief Executive Officer of ComSuper so directs, be recovered by deduction from that benefit.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

- (4) For the purposes of subsections 126(4) and (5), in determining whether an amount is payable, disregard subsection (1) of this section.
- (5) If the relevant amount is recovered under subsection 126(4) or (5), the relevant amount cannot be recovered under subsection (2) or (3) of this section.
- (6) If the relevant amount is recovered under subsection (2) or (3) of this section, the relevant amount cannot be recovered under subsection 126(4) or (5).

Benefit

- (7) For the purposes of this section, *benefit* includes pension or other money payable under the previous legislation.

124C Recoverable death payments

- (1) If, apart from this subsection, the Commonwealth does not have power, under this Act or the previous legislation, to pay an amount (the *relevant amount*) in any of the following circumstances:
- (a) the relevant amount is deposited to an account kept in the name of a deceased person;
 - (b) the relevant amount is deposited to an account kept in the names of a deceased person and another person;
 - (c) the relevant amount is paid by way of a cheque made out to a deceased person;
- the Commonwealth may pay the relevant amount in the circumstances mentioned in paragraph (a), (b) or (c), so long as:
- (d) on the last day on which changes could reasonably be made to the payment of the relevant amount, the Chief Executive Officer of ComSuper did not know that the deceased person had died; and
 - (e) apart from this subsection, the relevant amount would have been payable as a benefit to the deceased person if the deceased person had not died.
- (2) If a payment is made under subsection (1), the relevant amount is taken to have been paid to the deceased person's estate.

Recovery

- (3) If a payment is made under subsection (1), the relevant amount:
- (a) is a debt due to the Commonwealth by the legal personal representative of the deceased person; and
 - (b) may be recovered by the Chief Executive Officer of ComSuper, on behalf of the Commonwealth, in a court of competent jurisdiction.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

- (4) For the purposes of subsections 126(4) and (5), in determining whether an amount is payable, disregard subsection (1) of this section.
- (5) If the relevant amount is recovered under subsection 126(4) or (5), the relevant amount cannot be recovered under subsection (3) of this section.
- (6) If the relevant amount is recovered under subsection (3) of this section, the relevant amount cannot be recovered under subsection 126(4) or (5).

Benefit

- (7) For the purposes of this section, *benefit* includes pension or other money payable under the previous legislation.

124D Reports about recoverable payments and recoverable death payments

- (1) During the applicable publication period for a reporting period, the Secretary of the Department must cause to be published, in such manner as the Secretary thinks fit, a report that sets out:
 - (a) both:
 - (i) the number of payments made under subsection 124B(1) during the reporting period; and
 - (ii) the total amount of those payments; and
 - (b) both:
 - (i) the number of payments made under subsection 124C(1) during the reporting period; and
 - (ii) the total amount of those payments.
- (2) However, a report is not required if:
 - (a) the number mentioned in subparagraph (1)(a)(i) is zero; and
 - (b) the number mentioned in subparagraph (1)(b)(i) is zero.

Deferred reporting

- (3) Paragraph (1)(a) of this section does not require a report to deal with a payment unless, before the preparation of the report, a Departmental official was aware the payment was made under subsection 124B(1).

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- (4) Paragraph (1)(b) of this section does not require a report to deal with a payment unless, before the preparation of the report, a Departmental official was aware the payment was made under subsection 124C(1).
- (5) For the purposes of this section, if:
- (a) a payment was made under subsection 124B(1) or 124C(1) in a reporting period; and
 - (b) either:
 - (i) because of subsection (3) of this section, paragraph (1)(a) of this section did not require a report to deal with the payment; or
 - (ii) because of subsection (4) of this section, paragraph (1)(b) of this section did not require a report to deal with the payment; and
 - (c) during a later reporting period, a Departmental official becomes aware that the payment was made under subsection 124B(1) or 124C(1), as the case may be;
- the payment is subject to a *deferred reporting obligation* in relation to the later reporting period.
- (6) If one or more payments made under subsection 124B(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the Secretary of the Department must, during the applicable publication period for the later reporting period:
- (a) prepare a report that sets out:
 - (i) the number of those payments; and
 - (ii) the total amount of those payments; and
 - (iii) the reporting period during which the payments were made; and
 - (b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and
 - (c) if paragraph (b) does not apply—publish, in such manner as the Secretary thinks fit, the paragraph (a) report.
- (7) If one or more payments made under subsection 124C(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the Secretary of the Department

must, during the applicable publication period for the later reporting period:

- (a) prepare a report that sets out:
 - (i) the number of those payments; and
 - (ii) the total amount of those payments; and
 - (iii) the reporting period during which the payments were made; and
- (b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and
- (c) if paragraph (b) does not apply—publish, in such manner as the Secretary thinks fit, the paragraph (a) report.

Reporting period

- (8) For the purposes of this section, a **reporting period** is:
 - (a) a financial year; or
 - (b) if a shorter recurring period is specified in a legislative instrument made by the Minister—that period.

Applicable publication period

- (9) For the purposes of this section, the **applicable publication period** for a reporting period is the period of:
 - (a) 4 months; or
 - (b) if a lesser number of months is specified, in relation to the reporting period, in a legislative instrument made by the Minister—that number of months;beginning immediately after the end of the reporting period.

Departmental official

- (10) For the purposes of this section, **Departmental official** means an official (within the meaning of the *Financial Management and Accountability Act 1997*) who is in the Department or is part of the Department.

Egg Industry Service Provision Act 2002

44 Paragraph 7(2)(c)

Repeal the paragraph, substitute:

- (c) matching payments are spent by the body on:
 - (i) research and development activities for the benefit of the Australian egg industry and the Australian community generally; and
 - (ii) making payments to the Commonwealth under subsection 8(3).

45 Section 8 (heading)

Repeal the heading, substitute:

8 Appropriation for payments under funding contract etc.

46 Subsection 8(3)

Repeal the subsection, substitute:

Matching payments—retention limit

- (3) The matching payments made to the industry services body during a particular financial year are subject to the condition that, if:
 - (a) before the end of 31 October next following the financial year, the Minister determines the amount of the gross value of egg production in Australia in the financial year; and
 - (b) as at the end of 31 October next following the financial year, the sum of the matching payments that were paid to the industry services body during the financial year exceeds the lesser of:
 - (i) 0.5% of the amount of the gross value of egg production in Australia in the financial year as determined by the Minister; and
 - (ii) 50% of the amount spent by the industry services body in the financial year on activities that qualify, under the funding contract, as research and development activities;

the industry services body will pay to the Commonwealth an amount equal to the excess.

Note: This ensures that the sum of the matching payments that are retained by the industry services body in relation to the financial year does not exceed the lesser of the amounts calculated under subparagraphs (b)(i) and (b)(ii).

(3A) If:

- (a) before the end of 31 October next following a financial year, the Minister has not determined under subsection (3) the amount of the gross value of egg production in Australia in the financial year; and
- (b) the Minister has determined under subsection (3) the amount of the gross value of egg production in Australia in the previous financial year;

the Minister is taken to have made, immediately before the end of that 31 October, a determination under subsection (3) that the amount of the gross value of egg production in Australia in the financial year is equal to the amount of the gross value of egg production in Australia determined under subsection (3) for the previous financial year.

(3B) An amount payable under subsection (3) by the industry services body:

- (a) is a debt due to the Commonwealth; and
- (b) may be recovered by the Minister, on behalf of the Commonwealth, by action in a court of competent jurisdiction.

(3C) A determination made under subsection (3) is not a legislative instrument.

47 Subsection 8(5) (note)

Omit “or (3)(a)”, substitute “or the condition in subparagraph (3)(b)(i)”.

48 Paragraph 8(6)(b)

Omit “or paragraph (3)(a)”, substitute “or subparagraph (3)(b)(i)”.

49 Paragraph 8(6)(b)

Omit “matching payments”, substitute “net matching payments”.

50 Subsection 8(6) (formula)

Repeal the formula, substitute:

$$\text{R\&D spend amount in the financial year} - \left(2 \times \frac{\text{The amount of the net matching payments for the financial year}}{\text{The amount of the net matching payments for the financial year}} \right)$$

51 At the end of section 8

Add:

Set off

(7) If:

- (a) an amount (the **first amount**) is payable by the industry services body under subsection (3); and
- (b) another amount (the **second amount**) is payable by the Commonwealth to the industry services body under the funding contract;

the Minister may, on behalf of the Commonwealth, set off the whole or a part of the first amount against the whole or a part of the second amount.

Net matching payments

- (8) For the purposes of this section, **net matching payments** for a financial year means the total of the matching payments made to the industry services body during the financial year, less the amount payable by the industry services body under subsection (3) as a condition of those matching payments.

52 Application—section 8 of the *Egg Industry Service Provision Act 2002*

- (1) Despite the amendments of the *Egg Industry Service Provision Act 2002* by this Schedule, section 8 of that Act continues to apply, after the commencement of this item, in relation to matching payments made to the industry services body during:
 - (a) the financial year in which this item commences; or
 - (b) an earlier financial year;as if those amendments had not been made.
- (2) Subsection 8(3) of the *Egg Industry Service Provision Act 2002* as amended by this Schedule applies in relation to matching payments made to the industry services body during:
 - (a) the financial year next following the financial year in which this item commences; or
 - (b) a later financial year.

**53 Transitional—determinations made under section 8 of the
*Egg Industry Service Provision Act 2002***

Subsection 8(3A) of the *Egg Industry Service Provision Act 2002* as amended by this Schedule has effect as if a determination under repealed subsection 8(3) of the *Egg Industry Service Provision Act 2002* had been made under subsection 8(3) of that Act as amended by this Schedule.

***Forestry Marketing and Research and Development Services
Act 2007***

54 Section 7

Omit “cannot exceed limits”, substitute “are subject to limits”.

55 Paragraph 8(2)(b)

Omit “or both”, substitute “or more”.

56 After subparagraph 8(2)(b)(i)

Insert:

- (ia) payments by the company to the Commonwealth under subsection 9(4);

57 Section 9 (heading)

Repeal the heading, substitute:

9 Appropriation for payments under funding contract etc.

58 Subsection 9(4)

Repeal the subsection, substitute:

Matching payments—retention limit

- (4) The matching payments made to the company during a particular financial year are subject to the condition that, if:
 - (a) before the end of 31 October next following the financial year, the Minister determines the amount of the gross value of production of the Australian forestry industry in the financial year; and

- (b) as at the end of 31 October next following the financial year, the sum of the matching payments that were paid to the company during the financial year exceeds the lesser of:
- (i) 0.5% of the amount of the gross value of production of the Australian forestry industry in the financial year as determined by the Minister; and
 - (ii) 50% of the amount spent by the company in the financial year on activities that qualify, under the funding contract, as research and development activities;

the company will pay to the Commonwealth an amount equal to the excess.

Note: This ensures that the sum of the matching payments that are retained by the company in relation to the financial year does not exceed the lesser of the amounts calculated under subparagraphs (b)(i) and (b)(ii).

(4A) If:

- (a) before the end of 31 October next following a financial year, the Minister has not determined under subsection (4) the amount of the gross value of production of the Australian forestry industry in the financial year; and
- (b) the Minister has determined under subsection (4) the amount of the gross value of production of the Australian forestry industry in the previous financial year;

the Minister is taken to have made, immediately before the end of that 31 October, a determination under subsection (4) that the amount of the gross value of production of the Australian forestry industry in the financial year is equal to the amount of the gross value of production of the Australian forestry industry determined under subsection (3) for the previous financial year.

(4B) An amount payable under subsection (4) by a company:

- (a) is a debt due to the Commonwealth; and
- (b) may be recovered by the Minister, on behalf of the Commonwealth, by action in a court of competent jurisdiction.

(4C) A determination made under subsection (4) is not a legislative instrument.

59 Subsection 9(6) (note)

Omit “cap in paragraph (4)(a)”, substitute “condition in subparagraph (4)(b)(i)”.

60 Paragraph 9(7)(b)

Omit “paragraph (4)(a)”, substitute “subparagraph (4)(b)(i)”.

61 Paragraph 9(7)(b)

Omit “matching payments”, substitute “net matching payments”.

62 Subsection 9(7) (formula)

Repeal the formula, substitute:

$$\text{R and D spend amount in the financial year} - \left(2 \times \frac{\text{The amount of the net matching payments for the financial year}}{\text{The amount of the net matching payments for the financial year}} \right)$$

63 At the end of section 9

Add:

Set off

(8) If:

- (a) an amount (the **first amount**) is payable by the company under subsection (4); and
 - (b) another amount (the **second amount**) is payable by the Commonwealth to the company under the funding contract;
- the Minister may, on behalf of the Commonwealth, set off the whole or a part of the first amount against the whole or a part of the second amount.

Net matching payments

(9) For the purposes of this section, **net matching payments** for a financial year means the total of the matching payments made to the company during the financial year, less the amount payable by the company under subsection (4) as a condition of those matching payments.

64 Application—section 9 of the *Forestry Marketing and Research and Development Services Act 2007*

-
- (1) Despite the amendments of the *Forestry Marketing and Research and Development Services Act 2007* by this Schedule, section 9 of that Act continues to apply, after the commencement of this item, in relation to matching payments made to the company during:
- (a) the financial year in which this item commences; or
 - (b) an earlier financial year;
- as if those amendments had not been made.
- (2) Subsection 9(4) of the *Forestry Marketing and Research and Development Services Act 2007* as amended by this Schedule applies in relation to matching payments made to the company during:
- (a) the financial year next following the financial year in which this item commences; or
 - (b) a later financial year.

65 Transitional—determinations made under section 9 of the *Forestry Marketing and Research and Development Services Act 2007*

Subsection 9(4A) of the *Forestry Marketing and Research and Development Services Act 2007* as amended by this Schedule has effect as if a determination under repealed subsection 9(4) of the *Forestry Marketing and Research and Development Services Act 2007* had been made under subsection 9(4) of that Act as amended by this Schedule.

Governor-General Act 1974

66 After section 4B

Insert:

4C Recoverable payments

- (1) If, apart from this subsection, the Commonwealth does not have power under this Act to pay an amount (the *relevant amount*) to a person (the *recipient*) purportedly as a benefit, then the Commonwealth may pay the relevant amount to the recipient.

Recovery

- (2) If a payment is made under subsection (1) to the recipient, the relevant amount:

- (a) is a debt due to the Commonwealth by the recipient; and
- (b) may be recovered by the designated Secretary, on behalf of the Commonwealth, in a court of competent jurisdiction.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

- (3) If:
- (a) a payment is made under subsection (1) to the recipient; and
 - (b) the recipient is receiving, or is entitled to receive, a benefit;
- then:
- (c) the relevant amount; or
 - (d) such part of the relevant amount as the designated Secretary determines;
- may, if the designated Secretary so directs, be recovered by deduction from that benefit.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

Appropriation

- (4) For the purposes of subsection 4AA(5), if a payment under subsection (1) of this section relates to a benefit under subsection 4AA(2), the payment is taken to be a benefit under subsection 4AA(2).
- (5) For the purposes of section 5, if a payment under subsection (1) of this section relates to an allowance under section 4, the payment is taken to be an allowance under section 4.

Benefit

- (6) For the purposes of this section, ***benefit*** means:
 - (a) an allowance under section 4; or
 - (b) a benefit under subsection 4AA(2).

Designated Secretary

- (7) For the purposes of this section, ***designated Secretary*** means the Secretary of the Department administered by the Minister who administers sections 4 and 4AA.

4D Recoverable death payments

- (1) If, apart from this subsection, the Commonwealth does not have power under this Act to pay an amount (the *relevant amount*) in any of the following circumstances:
- (a) the relevant amount is deposited to an account kept in the name of a deceased person;
 - (b) the relevant amount is deposited to an account kept in the names of a deceased person and another person;
 - (c) the relevant amount is paid by way of a cheque made out to a deceased person;
- the Commonwealth may pay the relevant amount in the circumstances mentioned in paragraph (a), (b) or (c), so long as:
- (d) on the last day on which changes could reasonably be made to the payment of the relevant amount, the designated Secretary did not know that the deceased person had died; and
 - (e) apart from this subsection, the relevant amount would have been payable as a benefit to the deceased person if the deceased person had not died.
- (2) If a payment is made under subsection (1), the relevant amount is taken to have been paid to the deceased person's estate.

Recovery

- (3) If a payment is made under subsection (1), the relevant amount:
- (a) is a debt due to the Commonwealth by the legal personal representative of the deceased person; and
 - (b) may be recovered by the designated Secretary, on behalf of the Commonwealth, in a court of competent jurisdiction.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

Appropriation

- (4) For the purposes of subsection 4AA(5), if a payment under subsection (1) of this section relates to a benefit under subsection 4AA(2), the payment under subsection (1) of this section is taken to be a benefit under subsection 4AA(2).

- (5) For the purposes of section 5, if a payment under subsection (1) of this section relates to an allowance under section 4, the payment is taken to be an allowance under section 4.

Benefit

- (6) For the purposes of this section, **benefit** means:
- (a) an allowance under section 4; or
 - (b) a benefit under subsection 4AA(2).

Designated Secretary

- (7) For the purposes of this section, **designated Secretary** means the Secretary of the Department administered by the Minister who administers sections 4 and 4AA.

4E Reports about recoverable payments and recoverable death payments

- (1) During the applicable publication period for a reporting period, the designated Secretary must cause to be published, in such manner as the designated Secretary thinks fit, a report that sets out:
- (a) both:
 - (i) the number of payments made under subsection 4C(1) during the reporting period; and
 - (ii) the total amount of those payments; and
 - (b) both:
 - (i) the number of payments made under subsection 4D(1) during the reporting period; and
 - (ii) the total amount of those payments.
- (2) However, a report is not required if:
- (a) the number mentioned in subparagraph (1)(a)(i) is zero; and
 - (b) the number mentioned in subparagraph (1)(b)(i) is zero.

Deferred reporting

- (3) Paragraph (1)(a) of this section does not require a report to deal with a payment unless, before the preparation of the report, a designated Department official was aware the payment was made under subsection 4C(1).

-
- (4) Paragraph (1)(b) of this section does not require a report to deal with a payment unless, before the preparation of the report, a designated Department official was aware the payment was made under subsection 4D(1).
- (5) For the purposes of this section, if:
- (a) a payment was made under subsection 4C(1) or 4D(1) in a reporting period; and
 - (b) either:
 - (i) because of subsection (3) of this section, paragraph (1)(a) of this section did not require a report to deal with the payment; or
 - (ii) because of subsection (4) of this section, paragraph (1)(b) of this section did not require a report to deal with the payment; and
 - (c) during a later reporting period, a designated Department official becomes aware that the payment was made under subsection 4C(1) or 4D(1), as the case may be; the payment is subject to a *deferred reporting obligation* in relation to the later reporting period.
- (6) If one or more payments made under subsection 4C(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the designated Secretary must, during the applicable publication period for the later reporting period:
- (a) prepare a report that sets out:
 - (i) the number of those payments; and
 - (ii) the total amount of those payments; and
 - (iii) the reporting period during which the payments were made; and
 - (b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and
 - (c) if paragraph (b) does not apply—publish, in such manner as the designated Secretary thinks fit, the paragraph (a) report.
- (7) If one or more payments made under subsection 4D(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the designated Secretary must,

during the applicable publication period for the later reporting period:

- (a) prepare a report that sets out:
 - (i) the number of those payments; and
 - (ii) the total amount of those payments; and
 - (iii) the reporting period during which the payments were made; and
- (b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and
- (c) if paragraph (b) does not apply—publish, in such manner as the designated Secretary thinks fit, the paragraph (a) report.

Reporting period

- (8) For the purposes of this section, a **reporting period** is:
 - (a) a financial year; or
 - (b) if a shorter recurring period is specified in a legislative instrument made by the designated Minister—that period.

Applicable publication period

- (9) For the purposes of this section, the **applicable publication period** for a reporting period is the period of:
 - (a) 4 months; or
 - (b) if a lesser number of months is specified, in relation to the reporting period, in a legislative instrument made by the designated Minister—that number of months;beginning immediately after the end of the reporting period.

Designated Department

- (10) For the purposes of this section, **designated Department** means the Department administered by the designated Minister.

Designated Department official

- (11) For the purposes of this section, **designated Department official** means an official (within the meaning of the *Financial Management and Accountability Act 1997*) who is in the designated Department or is part of the designated Department.

Designated Minister

- (12) For the purposes of this section, *designated Minister* means the Minister who administers sections 4 and 4AA.

Designated Secretary

- (13) For the purposes of this section, *designated Secretary* means the Secretary of the designated Department.

***Horticulture Marketing and Research and Development
Services Act 2000***

67 Subsections 16(3) and (4)

Repeal the subsections.

68 After subsection 16(7)

Insert:

- (7A) Payments made to the industry services body during a particular financial year under subsection (2) are subject to the condition that, if:

- (a) before the end of 31 October next following the financial year, the Secretary determines the amount of the gross value of production of the horticultural industry for the financial year; and
- (b) as at the end of 31 October next following the financial year, the sum of the matching payments that were paid to the industry services body during the financial year exceeds 0.5% of the amount of the gross value of production of the horticultural industry for the financial year as determined by the Secretary;

the industry services body will pay to the Commonwealth an amount equal to the excess.

Note 1: This ensures that the sum of the matching payments that are retained by the industry services body in relation to the financial year does not exceed 0.5% of the amount of the gross value of production of the horticultural industry for the financial year as determined by the Secretary.

Note 2: For the meaning of *horticultural industry*, see section 4.

- (7B) If:

- (a) before the end of 31 October next following a financial year, the Secretary has not determined under subsection (7A) the amount of the gross value of production of the horticultural industry for the financial year; and
 - (b) the Secretary has determined under subsection (7A) the amount of the gross value of production of the horticultural industry for the previous financial year;
- the Secretary is taken to have made, immediately before the end of that 31 October, a determination under subsection (7A) that the amount of the gross value of production of the horticultural industry for the financial year is equal to the amount of the gross value of production of the horticultural industry determined under subsection (7A) for the previous financial year.
- (7C) A determination made under subsection (7A) is not a legislative instrument.
 - (7D) The regulations may provide for the way in which the Secretary is to determine the amount of the gross value of production of the horticultural industry for a financial year.

69 After subsection 16(8)

Insert:

Recovery

- (8A) An amount payable under subsection (7A) by the industry services body:
 - (a) is a debt due to the Commonwealth; and
 - (b) may be recovered by the Minister, on behalf of the Commonwealth, by action in a court of competent jurisdiction.

Set off

- (8B) If:
 - (a) an amount (the ***first amount***) is payable by the industry services body under subsection (7A); and
 - (b) another amount (the ***second amount***) is payable by the Commonwealth to the industry services body under subsection (1) or (2);

the Minister may, on behalf of the Commonwealth, set off the whole or a part of the first amount against the whole or a part of the second amount.

70 Application—section 16 of the *Horticulture Marketing and Research and Development Services Act 2000*

- (1) Despite the amendments of the *Horticulture Marketing and Research and Development Services Act 2000* by this Schedule, section 16 of that Act continues to apply, after the commencement of this item, in relation to matching payments made to the industry services body during:
- (a) the financial year in which this item commences; or
 - (b) an earlier financial year;
- as if those amendments had not been made.
- (2) Subsection 16(7A) of the *Horticulture Marketing and Research and Development Services Act 2000* as amended by this Schedule applies in relation to matching payments made to the industry services body during:
- (a) the financial year next following the financial year in which this item commences; or
 - (b) a later financial year.

71 Transitional—determinations made under section 16 of the *Horticulture Marketing and Research and Development Services Act 2000*

Subsection 16(7B) of the *Horticulture Marketing and Research and Development Services Act 2000* as amended by this Schedule has effect as if a determination under repealed subsection 16(3) of the *Horticulture Marketing and Research and Development Services Act 2000* had been made under subsection 16(7A) of that Act as amended by this Schedule.

Local Government (Financial Assistance) Act 1995

72 After section 18

Insert:

18A Recoverable payments

- (1) If, apart from this subsection, the Commonwealth does not have power under this Act to pay an amount (the *relevant amount*) to a State purportedly as an amount under this Act, then the Commonwealth may pay the relevant amount to the State.

Recovery

- (2) If:
- (a) a payment is made under subsection (1) to a State; and
 - (b) the State is entitled to receive an amount under this Act;
- then:
- (c) the relevant amount; or
 - (d) such part of the relevant amount as the Minister determines; may, if the Minister so directs, be recovered by deduction from the amount mentioned in paragraph (b).

18B Reports about recoverable payments

- (1) During the applicable publication period for a reporting period, the Secretary of the Department must cause to be published, in such manner as the Secretary thinks fit, a report that sets out:
- (a) the number of payments made under subsection 18A(1) during the reporting period; and
 - (b) the total amount of those payments.
- (2) However, a report is not required if the number mentioned in paragraph (1)(a) is zero.

Deferred reporting

- (3) Subsection (1) of this section does not require a report to deal with a payment unless, before the preparation of the report, a Departmental official was aware the payment was made under subsection 18A(1).
- (4) For the purposes of this section, if:
- (a) a payment was made under subsection 18A(1) in a reporting period; and

-
- (b) because of subsection (3) of this section, subsection (1) of this section did not require a report to deal with the payment; and
 - (c) during a later reporting period, a Departmental official becomes aware that the payment was made under subsection 18A(1);
- the payment is subject to a *deferred reporting obligation* in relation to the later reporting period.
- (5) If one or more payments made under subsection 18A(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the Secretary of the Department must, during the applicable publication period for the later reporting period:
- (a) prepare a report that sets out:
 - (i) the number of those payments; and
 - (ii) the total amount of those payments; and
 - (iii) the reporting period during which the payments were made; and
 - (b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and
 - (c) if paragraph (b) does not apply—publish, in such manner as the Secretary thinks fit, the paragraph (a) report.

Reporting period

- (6) For the purposes of this section, a *reporting period* is:
- (a) a financial year; or
 - (b) if a shorter recurring period is specified in a legislative instrument made by the Minister—that period.

Applicable publication period

- (7) For the purposes of this section, the *applicable publication period* for a reporting period is the period of:
- (a) 4 months; or
 - (b) if a lesser number of months is specified, in relation to the reporting period, in a legislative instrument made by the Minister—that number of months;
- beginning immediately after the end of the reporting period.
-

Departmental official

- (8) For the purposes of this section, ***Departmental official*** means an official (within the meaning of the *Financial Management and Accountability Act 1997*) who is in the Department or is part of the Department.

Military Superannuation and Benefits Act 1991

73 After section 16A

Insert:

16B Recoverable payments

- (1) If, apart from this subsection, the Commonwealth does not have power, under this Act, to pay an amount (the ***relevant amount***) to a person (the ***recipient***) purportedly as a benefit under the Rules, then the Commonwealth may pay the relevant amount to the recipient.

Recovery

- (2) If a payment is made under subsection (1) to the recipient, the relevant amount:
- (a) is a debt due to the Commonwealth by the recipient; and
 - (b) may be recovered by the Chief Executive Officer of ComSuper, on behalf of the Commonwealth, in a court of competent jurisdiction.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

- (3) If:
- (a) a payment is made under subsection (1) to the recipient; and
 - (b) the recipient is receiving, or is entitled to receive, a benefit under the Rules;
- then:
- (c) the relevant amount; or
 - (d) such part of the relevant amount as the Chief Executive Officer of ComSuper determines;
- may, if the Chief Executive Officer of ComSuper so directs, be recovered by deduction from that benefit.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

16C Recoverable death payments

- (1) If, apart from this subsection, the Commonwealth does not have power under this Act to pay an amount (the *relevant amount*) in any of the following circumstances:
- (a) the relevant amount is deposited to an account kept in the name of a deceased person;
 - (b) the relevant amount is deposited to an account kept in the names of a deceased person and another person;
 - (c) the relevant amount is paid by way of a cheque made out to a deceased person;
- the Commonwealth may pay the relevant amount in the circumstances mentioned in paragraph (a), (b) or (c), so long as:
- (d) on the last day on which changes could reasonably be made to the payment of the relevant amount, the Chief Executive Officer of ComSuper did not know that the deceased person had died; and
 - (e) apart from this subsection, the relevant amount would have been payable as a benefit to the deceased person if the deceased person had not died.
- (2) If a payment is made under subsection (1), the relevant amount is taken to have been paid to the deceased person's estate.

Recovery

- (3) If a payment is made under subsection (1), the relevant amount:
- (a) is a debt due to the Commonwealth by the legal personal representative of the deceased person; and
 - (b) may be recovered by the Chief Executive Officer of ComSuper, on behalf of the Commonwealth, in a court of competent jurisdiction.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

16D Reports about recoverable payments and recoverable death payments

- (1) During the applicable publication period for a reporting period, the Secretary of the Department must cause to be published, in such manner as the Secretary thinks fit, a report that sets out:
 - (a) both:
 - (i) the number of payments made under subsection 16B(1) during the reporting period; and
 - (ii) the total amount of those payments; and
 - (b) both:
 - (i) the number of payments made under subsection 16C(1) during the reporting period; and
 - (ii) the total amount of those payments.
- (2) However, a report is not required if:
 - (a) the number mentioned in subparagraph (1)(a)(i) is zero; and
 - (b) the number mentioned in subparagraph (1)(b)(i) is zero.

Deferred reporting

- (3) Paragraph (1)(a) of this section does not require a report to deal with a payment unless, before the preparation of the report, a Departmental official was aware the payment was made under subsection 16B(1).
- (4) Paragraph (1)(b) of this section does not require a report to deal with a payment unless, before the preparation of the report, a Departmental official was aware the payment was made under subsection 16C(1).
- (5) For the purposes of this section, if:
 - (a) a payment was made under subsection 16B(1) or 16C(1) in a reporting period; and
 - (b) either:
 - (i) because of subsection (3) of this section, paragraph (1)(a) of this section did not require a report to deal with the payment; or
 - (ii) because of subsection (4) of this section, paragraph (1)(b) of this section did not require a report to deal with the payment; and

-
- (c) during a later reporting period, a Departmental official becomes aware that the payment was made under subsection 16B(1) or 16C(1), as the case may be; the payment is subject to a *deferred reporting obligation* in relation to the later reporting period.
- (6) If one or more payments made under subsection 16B(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the Secretary of the Department must, during the applicable publication period for the later reporting period:
- (a) prepare a report that sets out:
 - (i) the number of those payments; and
 - (ii) the total amount of those payments; and
 - (iii) the reporting period during which the payments were made; and
 - (b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and
 - (c) if paragraph (b) does not apply—publish, in such manner as the Secretary thinks fit, the paragraph (a) report.
- (7) If one or more payments made under subsection 16C(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the Secretary of the Department must, during the applicable publication period for the later reporting period:
- (a) prepare a report that sets out:
 - (i) the number of those payments; and
 - (ii) the total amount of those payments; and
 - (iii) the reporting period during which the payments were made; and
 - (b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and
 - (c) if paragraph (b) does not apply—publish, in such manner as the Secretary thinks fit, the paragraph (a) report.

Reporting period

- (8) For the purposes of this section, a *reporting period* is:
-

- (a) a financial year; or
- (b) if a shorter recurring period is specified in a legislative instrument made by the Minister—that period.

Applicable publication period

- (9) For the purposes of this section, the ***applicable publication period*** for a reporting period is the period of:
 - (a) 4 months; or
 - (b) if a lesser number of months is specified, in relation to the reporting period, in a legislative instrument made by the Minister—that number of months;beginning immediately after the end of the reporting period.

Departmental official

- (10) For the purposes of this section, ***Departmental official*** means an official (within the meaning of the *Financial Management and Accountability Act 1997*) who is in the Department or is part of the Department.

74 After section 51A

Insert:

51B Transitional—recoverable payments relating to retention benefit

- (1) If, apart from this subsection, the Commonwealth does not have power, under repealed Part 8 of this Act as continued in force by item 4 of Schedule 4 to the *Defence Legislation Amendment Act (No. 1) 2005*, to pay an amount (the ***relevant amount***) to a person (the ***recipient***) purportedly as a retention benefit, then the Commonwealth may pay the relevant amount to the recipient.

Recovery

- (2) If a payment is made under subsection (1) to the recipient, the relevant amount:
 - (a) is a debt due to the Commonwealth by the recipient; and
 - (b) may be recovered by the Secretary of the Department, on behalf of the Commonwealth, in a court of competent jurisdiction.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

- (3) If:
- (a) a payment is made under subsection (1) to the recipient; and
 - (b) the recipient is receiving, or is entitled to receive, an amount under a determination made under Part IIIA of the *Defence Act 1903*;
- then:
- (c) the relevant amount; or
 - (d) such part of the relevant amount as the Secretary of the Department determines;
- may, if the Secretary of the Department so directs, be recovered by deduction from the amount mentioned in paragraph (b).

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

Appropriation

- (4) For the purposes of repealed section 39 of this Act as continued in force by item 4 of Schedule 4 to the *Defence Legislation Amendment Act (No. 1) 2005*, a payment under subsection (1) of this section is taken to be a retention benefit.

Retention benefit

- (5) For the purposes of this section, ***retention benefit*** means retention benefit under repealed Part 8 of this Act as continued in force by item 4 of Schedule 4 to the *Defence Legislation Amendment Act (No. 1) 2005*.

51C Transitional—reports about recoverable payments

- (1) During the applicable publication period for a reporting period, the Secretary of the Department must cause to be published, in such manner as the Secretary thinks fit, a report that sets out:
- (a) the number of payments made under subsection 51B(1) during the reporting period; and
 - (b) the total amount of those payments.
- (2) However, a report is not required if the number mentioned in paragraph (1)(a) is zero.

Deferred reporting

- (3) Subsection (1) of this section does not require a report to deal with a payment unless, before the preparation of the report, a Departmental official was aware the payment was made under subsection 51B(1).
- (4) For the purposes of this section, if:
 - (a) a payment was made under subsection 51B(1) in a reporting period; and
 - (b) because of subsection (3) of this section, subsection (1) of this section did not require a report to deal with the payment; and
 - (c) during a later reporting period, a Departmental official becomes aware that the payment was made under subsection 51B(1);the payment is subject to a *deferred reporting obligation* in relation to the later reporting period.
- (5) If one or more payments made under subsection 51B(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the Secretary of the Department must, during the applicable publication period for the later reporting period:
 - (a) prepare a report that sets out:
 - (i) the number of those payments; and
 - (ii) the total amount of those payments; and
 - (iii) the reporting period during which the payments were made; and
 - (b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and
 - (c) if paragraph (b) does not apply—publish, in such manner as the Secretary thinks fit, the paragraph (a) report.

Reporting period

- (6) For the purposes of this section, a *reporting period* is:
 - (a) a financial year; or
 - (b) if a shorter recurring period is specified in a legislative instrument made by the Minister—that period.

Applicable publication period

- (7) For the purposes of this section, the *applicable publication period* for a reporting period is the period of:
- (a) 4 months; or
 - (b) if a lesser number of months is specified, in relation to the reporting period, in a legislative instrument made by the Minister—that number of months;
- beginning immediately after the end of the reporting period.

Departmental official

- (8) For the purposes of this section, *Departmental official* means an official (within the meaning of the *Financial Management and Accountability Act 1997*) who is in the Department or is part of the Department.

National Residue Survey Administration Act 1992

75 Paragraph 8(1)(a)

Omit “, in accordance with an expenditure program approved by the Minister,”.

76 Subparagraphs 8(1)(a)(ii), (iii) and (iv)

Omit “if the relevant body (as determined by the Minister) in the industry concerned agrees to the program extending to expenditure under this subparagraph—”.

Parliamentary Contributory Superannuation Act 1948

77 Subsection 24(2)

Repeal the subsection, substitute:

- (2) Subsection (1) has effect subject to subsection 24AA(4).

78 After section 24

Insert:

24AA Recoverable payments

- (1) If, apart from this subsection, the Commonwealth does not have power under this Act to pay an amount (the *relevant amount*) to a person (the *recipient*) purportedly as a benefit, then the Commonwealth may pay the relevant amount to the recipient.

Recovery

- (2) If a payment is made under subsection (1) to the recipient, the relevant amount:
- (a) is a debt due to the Commonwealth by the recipient; and
 - (b) may be recovered by the Secretary of the Department, on behalf of the Commonwealth, in a court of competent jurisdiction.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

- (3) If:
- (a) a payment is made under subsection (1) to the recipient; and
 - (b) the recipient is receiving, or is entitled to receive, a benefit;
- then:
- (c) the relevant amount; or
 - (d) such part of the relevant amount as the Secretary of the Department determines;
- may, if the Secretary of the Department so directs, be recovered by deduction from that benefit.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

Benefit

- (4) For the purposes of this section, *benefit* means a retiring allowance, annuity or other benefit under this Act.

24AB Recoverable death payments

- (1) If, apart from this subsection, the Commonwealth does not have power under this Act to pay an amount (the *relevant amount*) in any of the following circumstances:
- (a) the relevant amount is deposited to an account kept in the name of a deceased person;

- (b) the relevant amount is deposited to an account kept in the names of a deceased person and another person;
 - (c) the relevant amount is paid by way of a cheque made out to a deceased person;
- the Commonwealth may pay the relevant amount in the circumstances mentioned in paragraph (a), (b) or (c), so long as:
- (d) on the last day on which changes could reasonably be made to the payment of the relevant amount, the Secretary of the Department did not know that the deceased person had died; and
 - (e) apart from this subsection, the relevant amount would have been payable as a benefit to the deceased person if the deceased person had not died.
- (2) If a payment is made under subsection (1), the relevant amount is taken to have been paid to the deceased person's estate.

Recovery

- (3) If a payment is made under subsection (1), the relevant amount:
- (a) is a debt due to the Commonwealth by the legal personal representative of the deceased person; and
 - (b) may be recovered by the Secretary of the Department, on behalf of the Commonwealth, in a court of competent jurisdiction.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

Benefit

- (4) For the purposes of this section, **benefit** means a retiring allowance, annuity or other benefit under this Act.

24AC Reports about recoverable payments and recoverable death payments

- (1) During the applicable publication period for a reporting period, the Secretary of the Department must cause to be published, in such manner as the Secretary thinks fit, a report that sets out:
- (a) both:
 - (i) the number of payments made under subsection 24AA(1) during the reporting period; and

- (ii) the total amount of those payments; and
- (b) both:
 - (i) the number of payments made under subsection 24AB(1) during the reporting period; and
 - (ii) the total amount of those payments.
- (2) However, a report is not required if:
 - (a) the number mentioned in subparagraph (1)(a)(i) is zero; and
 - (b) the number mentioned in subparagraph (1)(b)(i) is zero.

Deferred reporting

- (3) Paragraph (1)(a) of this section does not require a report to deal with a payment unless, before the preparation of the report, a Departmental official was aware the payment was made under subsection 24AA(1).
- (4) Paragraph (1)(b) of this section does not require a report to deal with a payment unless, before the preparation of the report, a Departmental official was aware the payment was made under subsection 24AB(1).
- (5) For the purposes of this section, if:
 - (a) a payment was made under subsection 24AA(1) or 24AB(1) in a reporting period; and
 - (b) either:
 - (i) because of subsection (3) of this section, paragraph (1)(a) of this section did not require a report to deal with the payment; or
 - (ii) because of subsection (4) of this section, paragraph (1)(b) of this section did not require a report to deal with the payment; and
 - (c) during a later reporting period, a Departmental official becomes aware that the payment was made under subsection 24AA(1) or 24AB(1), as the case may be; the payment is subject to a *deferred reporting obligation* in relation to the later reporting period.
- (6) If one or more payments made under subsection 24AA(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the Secretary of the Department

must, during the applicable publication period for the later reporting period:

- (a) prepare a report that sets out:
 - (i) the number of those payments; and
 - (ii) the total amount of those payments; and
 - (iii) the reporting period during which the payments were made; and
 - (b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and
 - (c) if paragraph (b) does not apply—publish, in such manner as the Secretary thinks fit, the paragraph (a) report.
- (7) If one or more payments made under subsection 24AB(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the Secretary of the Department must, during the applicable publication period for the later reporting period:
- (a) prepare a report that sets out:
 - (i) the number of those payments; and
 - (ii) the total amount of those payments; and
 - (iii) the reporting period during which the payments were made; and
 - (b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and
 - (c) if paragraph (b) does not apply—publish, in such manner as the Secretary thinks fit, the paragraph (a) report.

Reporting period

- (8) For the purposes of this section, a **reporting period** is:
- (a) a financial year; or
 - (b) if a shorter recurring period is specified in a legislative instrument made by the Minister—that period.

Applicable publication period

- (9) For the purposes of this section, the **applicable publication period** for a reporting period is the period of:

- (a) 4 months; or
 - (b) if a lesser number of months is specified, in relation to the reporting period, in a legislative instrument made by the Minister—that number of months;
- beginning immediately after the end of the reporting period.

Departmental official

- (10) For the purposes of this section, ***Departmental official*** means an official (within the meaning of the *Financial Management and Accountability Act 1997*) who is in the Department or is part of the Department.

Pig Industry Act 2001

79 Paragraph 9(2)(c)

Repeal the paragraph, substitute:

- (c) matching payments are spent by the body on:
 - (i) research and development activities for the benefit of the Australian pig industry and the Australian community generally; and
 - (ii) making payments to the Commonwealth under subsection 10(8).

80 Section 10 (heading)

Repeal the heading, substitute:

10 Appropriation for payments under funding contract etc.

81 Subsection 10(8)

Repeal the subsection, substitute:

Retention limit for matching payments

- (8) The matching payments made to the eligible body during a particular financial year are subject to the condition that, if:
- (a) before the end of 31 October next following the financial year, the Minister determines the amount of the gross value of pig meat production in Australia in the financial year; and

- (b) as at the end of 31 October next following the financial year, the sum of the matching payments that were paid to the eligible body during the financial year exceeds the lesser of:
- (i) 0.5% of the amount of the gross value of pig meat production in Australia in the financial year as determined by the Minister; and
 - (ii) 50% of the amount spent by the eligible body in the financial year on activities that qualify, under the funding contract, as research and development activities;

the eligible body will pay to the Commonwealth an amount equal to the excess.

Note: This ensures that the sum of the matching payments that are retained by the eligible body in relation to the financial year does not exceed the lesser of the amounts calculated under subparagraphs (b)(i) and (b)(ii).

(8A) If:

- (a) before the end of 31 October next following a financial year, the Minister has not determined under subsection (8) the amount of the gross value of pig meat production in Australia in the financial year; and
- (b) the Minister has determined under subsection (8) the amount of the gross value of pig meat production in Australia in the previous financial year;

the Minister is taken to have made, immediately before the end of that 31 October, a determination under subsection (8) that the amount of the gross value of pig meat production in Australia in the financial year is equal to the amount of the gross value of pig meat production in Australia determined under subsection (8) for the previous financial year.

(8B) An amount payable under subsection (8) by the eligible body:

- (a) is a debt due to the Commonwealth; and
- (b) may be recovered by the Minister, on behalf of the Commonwealth, by action in a court of competent jurisdiction.

(8C) A determination made under subsection (8) is not a legislative instrument.

82 Subsection 10(10) (note)

Omit “paragraph (8)(a)”, substitute “the condition in subparagraph (8)(b)(i)”.

83 Paragraph 10(11)(b)

Omit “paragraph (8)(a)”, substitute “subparagraph (8)(b)(i)”.

84 Paragraph 10(11)(b)

Omit “matching payments”, substitute “net matching payments”.

85 Subsection 10(11) (formula)

Repeal the formula, substitute:

$$\text{R\&D spend amount in the financial year} - \left(2 \times \frac{\text{The amount of the net matching payments for the financial year}}{\text{The amount of the net matching payments for the financial year}} \right)$$

86 After subsection 10(11)

Insert:

- (11A) For the purposes of subsection (11), *net matching payments* in respect of a financial year means the total of the matching payments made to the eligible body during the financial year, less the amount payable by the eligible body under subsection (8) as a condition of those matching payments.

87 At the end of section 10

Add:

Set off

(15) If:

- (a) an amount (the *first amount*) is payable by the eligible body under subsection (8); and
- (b) another amount (the *second amount*) is payable by the Commonwealth to the eligible body under the funding contract;

the Minister may, on behalf of the Commonwealth, set off the whole or a part of the first amount against the whole or a part of the second amount.

88 Application—section 10 of the *Pig Industry Act 2001*

-
- (1) Despite the amendments of the *Pig Industry Act 2001* by this Schedule, section 10 of that Act continues to apply, after the commencement of this item, in relation to matching payments made to the eligible body during:
- (a) the financial year in which this item commences; or
 - (b) an earlier financial year;
- as if those amendments had not been made.
- (2) Subsection 10(8) of the *Pig Industry Act 2001* as amended by this Schedule applies in relation to matching payments made to the eligible body during:
- (a) the financial year next following the financial year in which this item commences; or
 - (b) a later financial year.

89 Transitional—determinations made under section 10 of the *Pig Industry Act 2001*

Subsection 10(8A) of the *Pig Industry Act 2001* as amended by this Schedule has effect as if a determination under repealed subsection 10(8) of the *Pig Industry Act 2001* had been made under subsection 10(8) of that Act as amended by this Schedule.

Primary Industries and Energy Research and Development Act 1989

90 Paragraph 30A(2)(a)

Omit “total GVP” (wherever occurring), substitute “interim total GVP”.

91 Paragraph 30A(2)(b)

Omit “total GVP” (first occurring), substitute “interim total GVP”.

92 Subparagraph 30A(2)(b)(i)

Omit “total GVP”, substitute “interim total GVP”.

93 Subparagraph 30A(2)(b)(i)

Omit “Commonwealth GVP”, substitute “interim Commonwealth GVP”.

94 Subparagraph 30A(2)(b)(ii)

Omit “total GVP” (first occurring), substitute “interim total GVP”.

95 Subparagraph 30A(2)(b)(ii)

Omit “Commonwealth GVP”, substitute “interim Commonwealth GVP”.

96 Subparagraph 30A(2)(b)(ii)

Omit “total GVP” (last occurring), substitute “interim total GVP”.

97 Paragraph 30A(2)(c)

Omit “total GVP” (first occurring), substitute “interim total GVP”.

98 Subparagraph 30A(2)(c)(i)

Omit “total GVP”, substitute “interim total GVP”.

99 Subparagraph 30A(2)(c)(i)

Omit “State or Territory GVP”, substitute “interim State or Territory GVP”.

100 Subparagraph 30A(2)(c)(ii)

Omit “total GVP” (first occurring), substitute “interim total GVP”.

101 Subparagraph 30A(2)(c)(ii)

Omit “State or Territory GVP”, substitute “interim State or Territory GVP”.

102 Subparagraph 30A(2)(c)(ii)

Omit “total GVP” (last occurring), substitute “interim total GVP”.

103 After subsection 30A(2A)

Insert:

(2B) If:

- (a) an amount is paid to the Corporation under paragraph (1)(b) in a financial year; and
- (b) the amount was calculated, in whole or in part, under subsection (2) on the basis of:
 - (i) interim Commonwealth GVP for the financial year; or

-
- (ii) interim State or Territory GVP for the financial year for a State or Territory; or
 - (iii) interim total GVP for the financial year; and
 - (c) before the end of 31 October next following the financial year, the Minister determines an amount that is:
 - (i) if subparagraph (b)(i) applies—the final Commonwealth GVP for the financial year; or
 - (ii) if subparagraph (b)(ii) applies—the final State or Territory GVP for the financial year for that State or Territory; or
 - (iii) if subparagraph (b)(iii) applies—the final total GVP for the financial year; and
 - (d) as at the end of 31 October next following the financial year, the total amount paid to the Corporation under paragraph (1)(b) in the financial year exceeds the amount that would have been paid to the Corporation under that paragraph in the financial year if:
 - (i) each reference in subsection (2) to interim Commonwealth GVP were a reference to the amount of final Commonwealth GVP so determined; and
 - (ii) each reference in subsection (2) to interim State or Territory GVP were a reference to the amount of final State or Territory GVP so determined; and
 - (iii) each reference in subsection (2) to interim total GVP were a reference to the amount of final total GVP so determined;

the Corporation must pay to the Commonwealth an amount equal to the excess.

(2C) If:

- (a) an amount is paid to the Corporation under paragraph (1)(b) in a financial year; and
- (b) the amount was calculated, in whole or in part, under subsection (2) on the basis of:
 - (i) interim Commonwealth GVP for the financial year; or
 - (ii) interim State or Territory GVP for the financial year for a State or Territory; or
 - (iii) interim total GVP for the financial year; and
- (c) before the end of 31 October next following the financial year, the Minister determines an amount that is:

- (i) if subparagraph (b)(i) applies—the final Commonwealth GVP for the financial year; or
 - (ii) if subparagraph (b)(ii) applies—the final State or Territory GVP for the financial year for that State or Territory; or
 - (iii) if subparagraph (b)(iii) applies—the final total GVP for the financial year; and
- (d) as at the end of 31 October next following the financial year, the total amount paid to the Corporation under paragraph (1)(b) in the financial year falls short of the amount that would have been paid to the Corporation under that paragraph in the financial year if:
- (i) each reference in subsection (2) to interim Commonwealth GVP were a reference to the amount of final Commonwealth GVP so determined; and
 - (ii) each reference in subsection (2) to interim State or Territory GVP were a reference to the amount of final State or Territory GVP so determined; and
 - (iii) each reference in subsection (2) to interim total GVP were a reference to the amount of final total GVP so determined;

the Commonwealth must pay to the Corporation an amount equal to the shortfall.

(2D) If:

- (a) before the end of 31 October next following a financial year, the Minister has not determined under subsection (4) an amount that is final Commonwealth GVP for the financial year; and
- (b) the Minister has determined under subsection (4) the amount that is final Commonwealth GVP for the previous financial year;

the Minister is taken to have made, immediately before the end of that 31 October, a determination under subsection (4) that the amount of final Commonwealth GVP for the financial year is equal to the amount of the final Commonwealth GVP determined under subsection (4) for the previous financial year.

(2E) If:

- (a) before the end of 31 October next following a financial year, the Minister has not determined under subsection (4) the

amount that is final State or Territory GVP for the financial year for a State or a Territory; and

- (b) the Minister has determined under subsection (4) the amount that is final State or Territory GVP for the previous financial year for the State or Territory;

the Minister is taken to have made, immediately before the end of that 31 October, a determination under subsection (4) that the amount of final State or Territory GVP for the financial year for the State or Territory is equal to the amount of the final State or Territory GVP determined under subsection (4) for the previous financial year for the State or Territory.

(2F) If:

- (a) before the end of 31 October next following a financial year, the Minister has not determined under subsection (4) the amount that is final total GVP for the financial year; and

- (b) the Minister has determined under subsection (4) the amount that is final total GVP for the previous financial year;

the Minister is taken to have made, immediately before the end of that 31 October, a determination under subsection (4) that the amount that is final total GVP for the financial year is equal to the amount of the final total GVP determined under subsection (4) for the previous financial year.

- (2G) The Minister may, on behalf of the Commonwealth, set off an amount payable by an R&D Corporation under this section against an amount that is payable to the Corporation under subsection (1) or (2C).

- (2H) A determination made under this section is not a legislative instrument.

104 Subsection 30A(3)

After “subsection (1)”, insert “or (2C)”.

105 Subsection 30A(4)

Repeal the subsection, substitute:

- (4) In this section:

final Commonwealth GVP, in relation to a financial year, means the amount that the Minister determines to be the amount of the

gross value of production for that financial year of the goods that are the produce of that part of the fishing industry that is managed by or on behalf of the Commonwealth.

final State or Territory GVP, in relation to a financial year and in relation to a State or Territory, means the amount that the Minister determines to be the amount of the gross value of production for that financial year of the goods that are the produce of that part of the fishing industry that is managed by or on behalf of the State or Territory.

final total GVP, in relation to a financial year, means the amount that the Minister determines to be the amount of the gross value of production for that financial year of the goods that are the produce of all parts of the fishing industry, whether managed by or on behalf of the Commonwealth, a State or a Territory.

interim Commonwealth GVP, in relation to a financial year, means the final Commonwealth GVP for the previous financial year.

interim State or Territory GVP, in relation to a financial year and in relation to a State or Territory, means the final State or Territory GVP for the previous financial year for the State or Territory.

interim total GVP, in relation to a financial year, means the final total GVP for the previous financial year.

106 Section 32 (heading)

Repeal the heading, substitute:

32 Retention limit for Commonwealth's matching payments

107 Subsection 32(1)

Repeal the subsection, substitute:

- (1) For the purposes of this section, *gross value of production*, in relation to a levy for a financial year, means the gross value of production, for that financial year, of the goods that are the produce of the primary industry, or class of primary industries, to which the levy relates.

(1A) If:

- (a) a levy is attached an R&D Corporation; and
- (b) before the end of 31 October next following a financial year, the Minister determines the amount of the gross value of production in relation to the levy for the financial year; and
- (c) as at the end of 31 October next following the financial year, the sum of the amounts that were paid to the Corporation during the financial year under paragraph 30(1)(b) exceeds 0.5% of the amount of the gross value of production in relation to the levy for the financial year as determined by the Minister;

the Corporation must pay to the Commonwealth an amount equal to the excess.

(1B) If:

- (a) before the end of 31 October next following a financial year, the Minister has not determined under subsection (1A) the amount of the gross value of production in relation to a levy for the financial year; and
- (b) the Minister has determined under subsection (1A) the amount of the gross value of production in relation to the levy for the previous financial year;

the Minister is taken to have made, immediately before the end of that 31 October, a determination under subsection (1A) that the amount of the gross value of production in relation to the levy for the financial year is equal to the amount of the gross value of production in relation to the levy determined under subsection (1A) for the previous financial year.

(1C) The Minister may, on behalf of the Commonwealth, set off an amount payable by the R&D Corporation under subsection (1A) against an amount that is payable to the Corporation under paragraph 30(1)(b).

(1D) A determination made under subsection (1A) is not a legislative instrument.

108 After paragraph 33(1)(c)

Insert:

- (ca) in payment to the Commonwealth of amounts payable under subsection 30A(2B) or 32(1A); and

109 Paragraph 108(1)(b)

Omit “sections 109 and 110”, substitute “section 109”.

110 Paragraph 108(1)(b)

Omit “paragraph 112(1)(d)”, substitute “paragraphs 112(1)(ca) and (d)”.

111 Section 110 (heading)

Repeal the heading, substitute:

110 Retention limit for Commonwealth’s matching payments

112 Subsection 110(1)

Repeal the subsection, substitute:

- (1) For the purposes of this section, *gross value of production*, in relation to a levy for a financial year, means the gross value of production, for that financial year, of the goods that are the produce of the primary industry, or class of primary industries, to which the levy relates.

(1A) If:

- (a) a levy is attached to an R&D Fund; and
- (b) before the end of 31 October next following a financial year, the Minister determines the amount of the gross value of production in relation to the levy for the financial year; and
- (c) as at the end of 31 October next following the financial year, the sum of the amounts that were paid into the R&D Fund during the financial year under paragraph 108(1)(b) exceeds 0.5% of the amount of the gross value of production in relation to the levy for the financial year as determined by the Minister;

the RIR&D Corporation must pay to the Commonwealth, out of the R&D Fund, an amount equal to the excess.

(1B) If:

- (a) before the end of 31 October next following a financial year, the Minister has not determined under subsection (1A) the amount of the gross value of production in relation to the levy for the financial year; and

-
- (b) the Minister has determined under subsection (1A) the amount of the gross value of production in relation to the levy for the previous financial year;
- the Minister is taken to have made, immediately before the end of that 31 October, a determination under subsection (1A) that the amount of the gross value of production in relation to the levy for the financial year is equal to the amount of the gross value of production in relation to the levy determined under subsection (1A) for the previous financial year.
- (1C) The Minister may, on behalf of the Commonwealth, set off an amount payable out of an R&D Fund under subsection (1A) against an amount that is payable into the R&D Fund under paragraph 108(1)(b).
- (1D) A determination made under subsection (1A) is not a legislative instrument.

113 After paragraph 112(1)(c)

Insert:

- (ca) in payment to the Commonwealth of amounts payable under subsection 110(1A); and

114 Application—section 30A of the *Primary Industries and Energy Research and Development Act 1989*

- (1) Despite the amendments of the *Primary Industries and Energy Research and Development Act 1989* by this Schedule, section 30A of that Act continues to apply, after the commencement of this item, in relation to payments made to an R&D Corporation during:
- (a) the financial year in which this item commences; or
- (b) an earlier financial year;
- as if those amendments had not been made.
- (2) Subsections 30A(2B) and (2C) of the *Primary Industries and Energy Research and Development Act 1989* as amended by this Schedule apply in relation to payments made to an R&D Corporation during:
- (a) the financial year next following the financial year in which this item commences; or
- (b) a later financial year.

115 Application—section 32 of the *Primary Industries and Energy Research and Development Act 1989*

- (1) Despite the amendments of the *Primary Industries and Energy Research and Development Act 1989* by this Schedule, section 32 of that Act continues to apply, after the commencement of this item, in relation to payments made to an R&D Corporation during:
 - (a) the financial year in which this item commences; or
 - (b) an earlier financial year;as if those amendments had not been made.
- (2) Subsection 32(1A) of the *Primary Industries and Energy Research and Development Act 1989* as amended by this Schedule applies in relation to payments made to an R&D Corporation during:
 - (a) the financial year next following the financial year in which this item commences; or
 - (b) a later financial year.

116 Application—section 110 of the *Primary Industries and Energy Research and Development Act 1989*

- (1) Despite the amendments of the *Primary Industries and Energy Research and Development Act 1989* by this Schedule, section 110 of that Act continues to apply, after the commencement of this item, in relation to payments made into an R&D Fund during:
 - (a) the financial year in which this item commences; or
 - (b) an earlier financial year;as if those amendments had not been made.
- (2) Subsection 110(1A) of the *Primary Industries and Energy Research and Development Act 1989* as amended by this Schedule applies in relation to payments made into an R&D Fund during:
 - (a) the financial year next following the financial year in which this item commences; or
 - (b) a later financial year.

117 Transitional—determinations made under section 30A of the *Primary Industries and Energy Research and Development Act 1989*

Section 30A of the *Primary Industries and Energy Research and Development Act 1989* as amended by this Schedule has effect:

- (a) in the case of a determination of an amount of Commonwealth GVP under repealed subsection 30A(4) of the *Primary Industries and Energy Research and Development Act 1989*—as if the determination had been made as a determination of an amount of final Commonwealth GVP under subsection 30A(4) of that Act as amended by this Schedule; and
- (b) in the case of a determination of an amount of State or Territory GVP for a State or Territory under repealed subsection 30A(4) of the *Primary Industries and Energy Research and Development Act 1989*—as if the determination had been made as a determination of an amount of final State or Territory GVP for the State or Territory under subsection 30A(4) of that Act as amended by this Schedule; and
- (c) in the case of a determination of an amount of total GVP under repealed subsection 30A(4) of the *Primary Industries and Energy Research and Development Act 1989*—as if the determination had been made as a determination of an amount of final total GVP under subsection 30A(4) of that Act as amended by this Schedule.

118 Transitional—determinations made under section 32 of the *Primary Industries and Energy Research and Development Act 1989*

Subsection 32(1B) of the *Primary Industries and Energy Research and Development Act 1989* as amended by this Schedule has effect as if a determination under repealed subsection 32(1) of the *Primary Industries and Energy Research and Development Act 1989* had been made under subsection 32(1A) of that Act as amended by this Schedule.

119 Transitional—determinations made under section 110 of the *Primary Industries and Energy Research and Development Act 1989*

Subsection 110(1B) of the *Primary Industries and Energy Research and Development Act 1989* as amended by this Schedule has effect as if a determination under repealed subsection 110(1) of the *Primary Industries and Energy Research and Development Act 1989* had been made under subsection 110(1A) of that Act as amended by this Schedule.

Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008

120 After section 4

Insert:

5 Recoverable payments

- (1) If, apart from this subsection, the Commonwealth does not have power under section 4 to pay an amount (the ***relevant amount***) to a person (the ***recipient***) purportedly as a benefit, then the Commonwealth may pay the relevant amount to the recipient.

Recovery

- (2) If a payment is made under subsection (1) to the recipient, the relevant amount:
- (a) is a debt due to the Commonwealth by the recipient; and
 - (b) may be recovered by the Chief Executive Officer of ComSuper, on behalf of the Commonwealth, in a court of competent jurisdiction.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

- (3) If:
- (a) a payment is made under subsection (1) to the recipient; and
 - (b) the recipient is receiving, or is entitled to receive, a benefit;
- then:
- (c) the relevant amount; or
 - (d) such part of the relevant amount as the Chief Executive Officer of ComSuper determines;
- may, if the Chief Executive Officer of ComSuper so directs, be recovered by deduction from that benefit.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

Appropriation

- (4) For the purposes of subsection 4(7), a payment under subsection (1) of this section is taken to be a replacement payment made under section 4.

Benefit

- (5) For the purposes of this section, **benefit** means a replacement payment under section 4.

6 Recoverable death payments

- (1) If, apart from this subsection, the Commonwealth does not have power under section 4 to pay an amount (the **relevant amount**) in any of the following circumstances:
- (a) the relevant amount is deposited to an account kept in the name of a deceased person;
 - (b) the relevant amount is deposited to an account kept in the names of a deceased person and another person;
 - (c) the relevant amount is paid by way of a cheque made out to a deceased person;
- the Commonwealth may pay the relevant amount in the circumstances mentioned in paragraph (a), (b) or (c), so long as:
- (d) on the last day on which changes could reasonably be made to the payment of the relevant amount, the Chief Executive Officer of ComSuper did not know that the deceased person had died; and
 - (e) apart from this subsection, the relevant amount would have been payable as a benefit to the deceased person if the deceased person had not died.
- (2) If a payment is made under subsection (1), the relevant amount is taken to have been paid to the deceased person's estate.

Recovery

- (3) If a payment is made under subsection (1), the relevant amount:
- (a) is a debt due to the Commonwealth by the legal personal representative of the deceased person; and

- (b) may be recovered by the Chief Executive Officer of ComSuper, on behalf of the Commonwealth, in a court of competent jurisdiction.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

Appropriation

- (4) For the purposes of subsection 4(7), a benefit under subsection (1) of this section is taken to be a replacement payment made under section 4.

Benefit

- (5) For the purposes of this section, *benefit* means a replacement payment under section 4.

7 Reports about recoverable payments and recoverable death payments

- (1) During the applicable publication period for a reporting period, the Chief Executive Officer of ComSuper must cause to be published, in such manner as the Chief Executive Officer thinks fit, a report that sets out:
 - (a) both:
 - (i) the number of payments made under subsection 5(1) during the reporting period; and
 - (ii) the total amount of those payments; and
 - (b) both:
 - (i) the number of payments made under subsection 6(1) during the reporting period; and
 - (ii) the total amount of those payments.
- (2) However, a report is not required if:
 - (a) the number mentioned in subparagraph (1)(a)(i) is zero; and
 - (b) the number mentioned in subparagraph (1)(b)(i) is zero.

Deferred reporting

- (3) Paragraph (1)(a) of this section does not require a report to deal with a payment unless, before the preparation of the report, a

ComSuper official was aware the payment was made under subsection 5(1).

- (4) Paragraph (1)(b) of this section does not require a report to deal with a payment unless, before the preparation of the report, a ComSuper official was aware the payment was made under subsection 6(1).
- (5) For the purposes of this section, if:
- (a) a payment was made under subsection 5(1) or 6(1) in a reporting period; and
 - (b) either:
 - (i) because of subsection (3) of this section, paragraph (1)(a) of this section did not require a report to deal with the payment; or
 - (ii) because of subsection (4) of this section, paragraph (1)(b) of this section did not require a report to deal with the payment; and
 - (c) during a later reporting period, a ComSuper official becomes aware that the payment was made under subsection 5(1) or 6(1), as the case may be;
- the payment is subject to a *deferred reporting obligation* in relation to the later reporting period.
- (6) If one or more payments made under subsection 5(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the Chief Executive Officer of ComSuper must, during the applicable publication period for the later reporting period:
- (a) prepare a report that sets out:
 - (i) the number of those payments; and
 - (ii) the total amount of those payments; and
 - (iii) the reporting period during which the payments were made; and
 - (b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and
 - (c) if paragraph (b) does not apply—publish, in such manner as the Chief Executive Officer thinks fit, the paragraph (a) report.

- (7) If one or more payments made under subsection 6(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the Chief Executive Officer of ComSuper must, during the applicable publication period for the later reporting period:
- (a) prepare a report that sets out:
 - (i) the number of those payments; and
 - (ii) the total amount of those payments; and
 - (iii) the reporting period during which the payments were made; and
 - (b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and
 - (c) if paragraph (b) does not apply—publish, in such manner as the Chief Executive Officer thinks fit, the paragraph (a) report.

Reporting period

- (8) For the purposes of this section, a **reporting period** is:
- (a) a financial year; or
 - (b) if a shorter recurring period is specified in a legislative instrument made by the Finance Minister—that period.

Applicable publication period

- (9) For the purposes of this section, the **applicable publication period** for a reporting period is the period of:
- (a) 4 months; or
 - (b) if a lesser number of months is specified, in relation to the reporting period, in a legislative instrument made by the Finance Minister—that number of months;
- beginning immediately after the end of the reporting period.

ComSuper official

- (10) For the purposes of this section, **ComSuper official** means an official (within the meaning of the *Financial Management and Accountability Act 1997*) who is in ComSuper or is part of ComSuper.

Finance Minister

- (11) For the purposes of this section, ***Finance Minister*** means the Minister who administers the *Financial Management and Accountability Act 1997*.

Superannuation Act 1976**121 Subsections 156(4) and (5)**

Omit “an amount of benefit has been paid”, substitute “CSC has paid an amount of benefit”.

122 After section 156A

Insert:

156B Recoverable payments

- (1) If, apart from this subsection, the Commonwealth does not have power, under this Act or the superseded Act, to pay an amount (the ***relevant amount***) to a person (the ***recipient***) purportedly as a benefit, then the Commonwealth may pay the relevant amount to the recipient.

Recovery

- (2) If a payment is made under subsection (1) to the recipient, the relevant amount:
- (a) is a debt due to the Commonwealth by the recipient; and
 - (b) may be recovered by the Chief Executive Officer of ComSuper, on behalf of the Commonwealth, in a court of competent jurisdiction.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

- (3) If:
- (a) a payment is made under subsection (1) to the recipient; and
 - (b) the recipient is receiving, or is entitled to receive, a benefit;
- then:
- (c) the relevant amount; or
 - (d) such part of the relevant amount as the Chief Executive Officer of ComSuper determines;

may, if the Chief Executive Officer of ComSuper so directs, be recovered by deduction from that benefit.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

Appropriation

- (4) For the purposes of subsection 112(2), if a payment under subsection (1) of this section relates to a benefit (within the meaning of this Act), the payment is taken to be a benefit.
- (5) For the purposes of section 134 of the superseded Act, if a payment under subsection (1) of this section relates to a pension or other money payable under the superseded Act, the payment is taken to be an amount of pension or other money payable under the superseded Act.

Benefit

- (6) For the purposes of this section (other than subsection (4)), **benefit** includes pension or other money payable under the superseded Act.

156C Recoverable death payments

- (1) If, apart from this subsection, the Commonwealth does not have power, under this Act or the superseded Act, to pay an amount (the **relevant amount**) in any of the following circumstances:
 - (a) the relevant amount is deposited to an account kept in the name of a deceased person;
 - (b) the relevant amount is deposited to an account kept in the names of a deceased person and another person;
 - (c) the relevant amount is paid by way of a cheque made out to a deceased person;the Commonwealth may pay the relevant amount in the circumstances mentioned in paragraph (a), (b) or (c), so long as:
 - (d) on the last day on which changes could reasonably be made to the payment of the relevant amount, the Chief Executive Officer of ComSuper did not know that the deceased person had died; and
 - (e) apart from this subsection, the relevant amount would have been payable as a benefit to the deceased person if the deceased person had not died.

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- (2) If a payment is made under subsection (1), the relevant amount is taken to have been paid to the deceased person's estate.

Recovery

- (3) The amount of a benefit under subsection (1):
- (a) is a debt due to the Commonwealth by the legal personal representative of the first person; and
 - (b) may be recovered by the Chief Executive Officer of ComSuper, on behalf of the Commonwealth, in a court of competent jurisdiction.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

Appropriation

- (4) Subsection 112(2) does not apply to a payment under subsection (1) of this section if the payment relates to a pension or other money payable under the superseded Act.
- (5) For the purposes of section 134 of the superseded Act, if a payment under subsection (1) of this section relates to a pension or other money payable under the superseded Act, the payment is taken to be an amount of pension or other money payable under the superseded Act.

Benefit

- (6) For the purposes of paragraph (1)(e), **benefit** includes pension or other money payable under the superseded Act.

156D Reports about recoverable payments and recoverable death payments

- (1) During the applicable publication period for a reporting period, the Chief Executive Officer of ComSuper must cause to be published, in such manner as the Chief Executive Officer thinks fit, a report that sets out:
- (a) both:
 - (i) the number of payments made under subsection 156B(1) during the reporting period; and
 - (ii) the total amount of those payments; and

- (b) both:
 - (i) the number of payments made under subsection 156C(1) during the reporting period; and
 - (ii) the total amount of those payments.
- (2) However, a report is not required if:
 - (a) the number mentioned in subparagraph (1)(a)(i) is zero; and
 - (b) the number mentioned in subparagraph (1)(b)(i) is zero.

Deferred reporting

- (3) Paragraph (1)(a) of this section does not require a report to deal with a payment unless, before the preparation of the report, a ComSuper official was aware the payment was made under subsection 156B(1).
- (4) Paragraph (1)(b) of this section does not require a report to deal with a payment unless, before the preparation of the report, a ComSuper official was aware the payment was made under subsection 156C(1).
- (5) For the purposes of this section, if:
 - (a) a payment was made under subsection 156B(1) or 156C(1) in a reporting period; and
 - (b) either:
 - (i) because of subsection (3) of this section, paragraph (1)(a) of this section did not require a report to deal with the payment; or
 - (ii) because of subsection (4) of this section, paragraph (1)(b) of this section did not require a report to deal with the payment; and
 - (c) during a later reporting period, a ComSuper official becomes aware that the payment was made under subsection 156B(1) or 156C(1), as the case may be;
the payment is subject to a *deferred reporting obligation* in relation to the later reporting period.
- (6) If one or more payments made under subsection 156B(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the Chief Executive Officer of ComSuper must, during the applicable publication period for the later reporting period:

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- (a) prepare a report that sets out:
 - (i) the number of those payments; and
 - (ii) the total amount of those payments; and
 - (iii) the reporting period during which the payments were made; and
 - (b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and
 - (c) if paragraph (b) does not apply—publish, in such manner as the Chief Executive Officer thinks fit, the paragraph (a) report.
- (7) If one or more payments made under subsection 156C(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the Chief Executive Officer of ComSuper must, during the applicable publication period for the later reporting period:
- (a) prepare a report that sets out:
 - (i) the number of those payments; and
 - (ii) the total amount of those payments; and
 - (iii) the reporting period during which the payments were made; and
 - (b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and
 - (c) if paragraph (b) does not apply—publish, in such manner as the Chief Executive Officer thinks fit, the paragraph (a) report.

Reporting period

- (8) For the purposes of this section, a **reporting period** is:
- (a) a financial year; or
 - (b) if a shorter recurring period is specified in a legislative instrument made by the Finance Minister—that period.

Applicable publication period

- (9) For the purposes of this section, the **applicable publication period** for a reporting period is the period of:
- (a) 4 months; or

- (b) if a lesser number of months is specified, in relation to the reporting period, in a legislative instrument made by the Finance Minister—that number of months; beginning immediately after the end of the reporting period.

ComSuper official

- (10) For the purposes of this section, **ComSuper official** means an official (within the meaning of the *Financial Management and Accountability Act 1997*) who is in ComSuper or is part of ComSuper.

Finance Minister

- (11) For the purposes of this section, **Finance Minister** means the Minister who administers the *Financial Management and Accountability Act 1997*.

Superannuation Act 1990

123 After section 39

Insert:

39A Recoverable payments

- (1) If, apart from this subsection, the Commonwealth does not have power under this Act to pay an amount (the **relevant amount**) to a person (the **recipient**) purportedly as a benefit under the Rules, then the Commonwealth may pay the relevant amount to the recipient.

Recovery

- (2) If a payment is made under subsection (1) to the recipient, the relevant amount:
- (a) is a debt due to the Commonwealth by the recipient; and
 - (b) may be recovered by the Chief Executive Officer of ComSuper, on behalf of the Commonwealth, in a court of competent jurisdiction.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

- (3) If:
- (a) a payment is made under subsection (1) to the recipient; and
 - (b) the recipient is receiving, or is entitled to receive, a benefit under the Rules;

then:

- (c) the relevant amount; or
- (d) such part of the relevant amount as the Chief Executive Officer of ComSuper determines;

may, if the Chief Executive Officer of ComSuper so directs, be recovered by deduction from that benefit.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

Appropriation

- (4) For the purposes of section 18, a payment under subsection (1) of this section is taken to be a payment by the Commonwealth under section 16 or 16A.

39B Recoverable death payments

- (1) If, apart from this subsection, the Commonwealth does not have power under this Act to pay an amount (the ***relevant amount***) in any of the following circumstances:
- (a) the relevant amount is deposited to an account kept in the name of a deceased person;
 - (b) the relevant amount is deposited to an account kept in the names of a deceased person and another person;
 - (c) the relevant amount is paid by way of a cheque made out to a deceased person;
- the Commonwealth may pay the relevant amount in the circumstances mentioned in paragraph (a), (b) or (c), so long as:
- (d) on the last day on which changes could reasonably be made to the payment of the relevant amount, the Chief Executive Officer of ComSuper did not know that the deceased person had died; and
 - (e) apart from this subsection, the relevant amount would have been payable as a benefit to the deceased person if the deceased person had not died.

- (2) If a payment is made under subsection (1), the relevant amount is taken to have been paid to the deceased person's estate.

Recovery

- (3) If a payment is made under subsection (1), the relevant amount:
- (a) is a debt due to the Commonwealth by the legal personal representative of the deceased person; and
 - (b) may be recovered by the Chief Executive Officer of ComSuper, on behalf of the Commonwealth, in a court of competent jurisdiction.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

Appropriation

- (4) For the purposes of section 18, a benefit under subsection (1) of this section is taken to be a payment by the Commonwealth under section 16 or 16A.

39C Reports about recoverable payments and recoverable death payments

- (1) During the applicable publication period for a reporting period, the Chief Executive Officer of ComSuper must cause to be published, in such manner as the Chief Executive Officer thinks fit, a report that sets out:
- (a) both:
 - (i) the number of payments made under subsection 39A(1) during the reporting period; and
 - (ii) the total amount of those payments; and
 - (b) both:
 - (i) the number of payments made under subsection 39B(1) during the reporting period; and
 - (ii) the total amount of those payments.
- (2) However, a report is not required if:
- (a) the number mentioned in subparagraph (1)(a)(i) is zero; and
 - (b) the number mentioned in subparagraph (1)(b)(i) is zero.

Deferred reporting

- (3) Paragraph (1)(a) of this section does not require a report to deal with a payment unless, before the preparation of the report, a ComSuper official was aware the payment was made under subsection 39A(1).
- (4) Paragraph (1)(b) of this section does not require a report to deal with a payment unless, before the preparation of the report, a ComSuper official was aware the payment was made under subsection 39B(1).
- (5) For the purposes of this section, if:
 - (a) a payment was made under subsection 39A(1) or 39B(1) in a reporting period; and
 - (b) either:
 - (i) because of subsection (3) of this section, paragraph (1)(a) of this section did not require a report to deal with the payment; or
 - (ii) because of subsection (4) of this section, paragraph (1)(b) of this section did not require a report to deal with the payment; and
 - (c) during a later reporting period, a ComSuper official becomes aware that the payment was made under subsection 39A(1) or 39B(1), as the case may be;the payment is subject to a *deferred reporting obligation* in relation to the later reporting period.
- (6) If one or more payments made under subsection 39A(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the Chief Executive Officer of ComSuper must, during the applicable publication period for the later reporting period:
 - (a) prepare a report that sets out:
 - (i) the number of those payments; and
 - (ii) the total amount of those payments; and
 - (iii) the reporting period during which the payments were made; and
 - (b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and

- (c) if paragraph (b) does not apply—publish, in such manner as the Chief Executive Officer thinks fit, the paragraph (a) report.
- (7) If one or more payments made under subsection 39B(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the Chief Executive Officer of ComSuper must, during the applicable publication period for the later reporting period:
- (a) prepare a report that sets out:
 - (i) the number of those payments; and
 - (ii) the total amount of those payments; and
 - (iii) the reporting period during which the payments were made; and
 - (b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and
 - (c) if paragraph (b) does not apply—publish, in such manner as the Chief Executive Officer thinks fit, the paragraph (a) report.

Reporting period

- (8) For the purposes of this section, a **reporting period** is:
- (a) a financial year; or
 - (b) if a shorter recurring period is specified in a legislative instrument made by the Finance Minister—that period.

Applicable publication period

- (9) For the purposes of this section, the **applicable publication period** for a reporting period is the period of:
- (a) 4 months; or
 - (b) if a lesser number of months is specified, in relation to the reporting period, in a legislative instrument made by the Finance Minister—that number of months;
- beginning immediately after the end of the reporting period.

ComSuper official

- (10) For the purposes of this section, **ComSuper official** means an official (within the meaning of the *Financial Management and Accountability Act 1997*) who is in ComSuper or is part of ComSuper.

Finance Minister

- (11) For the purposes of this section, **Finance Minister** means the Minister who administers the *Financial Management and Accountability Act 1997*.

Taxation Administration Act 1953

124 After section 15A

Insert:

15B Recoverable advances

- (1) The Commissioner may make an advance to a person (the **recipient**) on account of an amount to which the recipient may become entitled under a taxation law.
- (2) The Commissioner must not make an advance under subsection (1) unless:
- (a) if the advance is made in conjunction with other advances under that subsection—the Commissioner is satisfied that the total of the costs that would be likely to be incurred by:
 - (i) the Commonwealth; and
 - (ii) the recipients; and
 - (iii) persons other than the Commonwealth or the recipients; if the advance and the other advances were not made is likely to exceed the total of the advance and the other advances; or
 - (b) otherwise—the Commissioner is satisfied that the total of the costs that would be likely to be incurred by:
 - (i) the Commonwealth; and
 - (ii) the recipient; and
 - (iii) persons other than the Commonwealth or the recipient; if the advance were not made is likely to exceed the amount of the advance.

- (3) An advance under subsection (1) may:
- (a) be recovered under subsection (4); or
 - (b) be the subject of a determination under subsection (5).
- (4) If an advance is made under subsection (1) to a person (the *recipient*), the advance:
- (a) is a debt due to the Commonwealth by the recipient; and
 - (b) is payable to the Commissioner; and
 - (c) may be recovered in a court of competent jurisdiction by the Commissioner, or by a Deputy Commissioner, suing in his or her official name;
- whether or not the recipient has become entitled to an amount under a taxation law.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

Advance may discharge Commonwealth liability

- (5) If:
- (a) an advance is made to a person (the *recipient*) under subsection (1); and
 - (b) the advance has not been fully recovered under subsection (4); and
 - (c) an amount is payable to the recipient by the Commonwealth under a taxation law (the *Commonwealth liability*);
- the Commissioner may, by written notice given to the recipient, determine that the making of the advance is taken to have discharged so much of the Commonwealth liability as equals the whole, or a specified part, of the amount of the advance.
- (6) A part of an advance must not be specified in a determination under subsection (5) if it has already been specified in a previous determination under subsection (5).
- (7) If the whole, or a part, of an advance is the subject of a determination under subsection (5), the whole, or the part, as the case may be, of the advance is not recoverable under subsection (4).
- (8) Subsection (5) does not limit Part IIB.

- (9) For the purposes of section 47 of the *Financial Management and Accountability Act 1997*, a determination under subsection (5) of this section is taken to be a method of debt recovery.

15C Recoverable payments

- (1) If, apart from this subsection, the Commissioner does not have power under a taxation law to pay an amount (the *relevant amount*) to a person (the *recipient*) purportedly as an amount to which the recipient is entitled to under a taxation law, then the Commissioner may pay the relevant amount to the recipient.

Recovery

- (2) If a payment is made under subsection (1) to the recipient, the relevant amount:
- (a) is a debt due to the Commonwealth by the recipient; and
 - (b) is payable to the Commissioner; and
 - (c) may be recovered in a court of competent jurisdiction by the Commissioner, or by a Deputy Commissioner, suing in his or her official name.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

- (3) If:
- (a) a payment is made under subsection (1) to the recipient; and
 - (b) an amount is payable to the recipient by the Commonwealth under a taxation law (the *Commonwealth liability*);

then:

- (c) the relevant amount; or
- (d) such part of the relevant amount as the Commissioner determines;

may, if the Commissioner so directs, be recovered by deduction from the Commonwealth liability.

Note: See also section 47 of the *Financial Management and Accountability Act 1997* (duty to pursue recovery of a debt).

- (4) For the purposes of a designated recovery provision, in determining whether an amount is payable, disregard subsection (1) of this section.

- (5) If the relevant amount is recovered under a designated recovery provision, the relevant amount cannot be recovered under subsection (2) or (3) of this section.
- (6) If the relevant amount is recovered under subsection (2) or (3) of this section, the relevant amount cannot be recovered under a designated recovery provision.
- (7) Except as provided by subsection (6), subsection (3) does not limit Part IIB.

Designated recovery provisions

- (8) For the purposes of this section, each of the following provisions is a **designated recovery provision**:
 - (a) section 8AAZN of this Act;
 - (b) section 70 of the *Superannuation Guarantee (Administration) Act 1992*;
 - (c) section 50 of the *First Home Saver Accounts Act 2008*;
 - (d) section 24 of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*;
 - (e) a similar provision of a taxation law.
- (9) For the purposes of a designated recovery provision, in determining:
 - (a) whether a person is entitled to an amount; or
 - (b) whether an amount is payable;disregard subsection (1).

15D Reports about recoverable advances and recoverable payments

- (1) During the applicable publication period for a reporting period, the Commissioner must publish, in such manner as the Commissioner thinks fit, a report that sets out:
 - (a) both:
 - (i) the number of advances made under subsection 15B(1) during the reporting period; and
 - (ii) the total amount of those advances; and
 - (b) both:
 - (i) the number of payments made under subsection 15C(1) during the reporting period; and

-
- (ii) the total amount of those payments.
- (2) However, a report is not required if:
- (a) the number mentioned in subparagraph (1)(a)(i) is zero; and
 - (b) the number mentioned in subparagraph (1)(b)(i) is zero.

Deferred reporting

- (3) Paragraph (1)(b) of this section does not require a report to deal with a payment unless, before the preparation of the report, an Australian Taxation Office official was aware the payment was made under subsection 15C(1).
- (4) For the purposes of this section, if:
- (a) a payment was made under subsection 15C(1) in a reporting period; and
 - (b) because of subsection (3) of this section, paragraph (1)(b) of this section did not require a report to deal with the payment; and
 - (c) during a later reporting period, an Australian Taxation Office official becomes aware that the payment was made under subsection 15C(1);
- the payment is subject to a *deferred reporting obligation* in relation to the later reporting period.
- (5) If one or more payments made under subsection 15C(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the Commissioner must, during the applicable publication period for the later reporting period:
- (a) prepare a report that sets out:
 - (i) the number of those payments; and
 - (ii) the total amount of those payments; and
 - (iii) the reporting period during which the payments were made; and
 - (b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and
 - (c) if paragraph (b) does not apply—publish, in such manner as the Commissioner thinks fit, the paragraph (a) report.

Reporting period

- (6) For the purposes of this section, a **reporting period** is:
- (a) a financial year; or
 - (b) if a shorter recurring period is specified in a legislative instrument made by the Minister—that period.

Applicable publication period

- (7) For the purposes of this section, the **applicable publication period** for a reporting period is the period of:
- (a) 4 months; or
 - (b) if a lesser number of months is specified, in relation to the reporting period, in a legislative instrument made by the Minister—that number of months;
- beginning immediately after the end of the reporting period.

Australian Taxation Office official

- (8) For the purposes of this section, **Australian Taxation Office official** means an official (within the meaning of the *Financial Management and Accountability Act 1997*) who is in the Australian Taxation Office or is part of the Australian Taxation Office.

Wool Services Privatisation Act 2000

125 Paragraph 31(2)(b)

Repeal the paragraph, substitute:

- (b) category B payments are spent by the research body on:
 - (i) research and development activities for the benefit of Australian woolgrowers and the Australian community generally; and
 - (ii) making payments to the Commonwealth under subsection (7).

126 Subsection 31(7)

Repeal the subsection, substitute:

Retention limit for category B payments

- (7) The category B payments made to the research body during a particular financial year are subject to the condition that, if:
- (a) before the end of 31 October next following the financial year, the Minister determines the amount of the gross value of eligible wool produced in Australia in the financial year; and
 - (b) as at the end of 31 October next following the financial year, the sum of the category B payments that were paid to the research body during the financial year exceeds the lesser of:
 - (i) 0.5% of the amount of the gross value of eligible wool produced in Australia in the financial year as determined by the Minister; and
 - (ii) 50% of the amount spent by the research body in the financial year on activities that qualify, under the contract, as research and development activities;

the research body will pay to the Commonwealth an amount equal to the excess.

Note: This ensures that the sum of the category B payments that are retained by the research body in relation to the financial year does not exceed the lesser of the amounts calculated under subparagraphs (b)(i) and (b)(ii).

(7A) If:

- (a) before the end of 31 October next following a financial year, the Minister has not determined under subsection (7) the amount of the gross value of eligible wool produced in Australia in the financial year; and
- (b) the Minister has determined under subsection (7) the amount of the gross value of eligible wool produced in Australia in the previous financial year;

the Minister is taken to have made, immediately before the end of that 31 October, a determination under subsection (7) that the amount of the gross value of eligible wool produced in Australia in the financial year is equal to the amount of the gross value of eligible wool produced in Australia determined under subsection (7) for the previous financial year.

- (7B) An amount payable under subsection (7) by the research body:
- (a) is a debt due to the Commonwealth; and

(b) may be recovered by the Minister, on behalf of the Commonwealth, by action in a court of competent jurisdiction.

(7C) A determination made under subsection (7) is not a legislative instrument.

127 Subsection 31(8A) (note)

Omit “paragraph (7)(a)”, substitute “the condition in subparagraph (7)(b)(i)”.

128 Paragraph 31(8B)(b)

Omit “paragraph (7)(a)”, substitute “subparagraph (7)(b)(i)”.

129 Paragraph 31(8B)(b)

Omit “category B payments”, substitute “net category B payments”.

130 Subsection 31(8B) (formula)

Repeal the formula, substitute:

$$\text{R\&D spend amount in the financial year} - \left(2 \times \frac{\text{The amount of the net category B payments for the financial year}}{\text{The amount of the net category B payments for the financial year}} \right)$$

131 After subsection 31(8B)

Insert:

Set off

(8C) If:

- (a) an amount (the **first amount**) is payable by the research body under subsection (7); and
- (b) another amount (the **second amount**) is payable by the Commonwealth to the research body under the funding contract;

the Minister may, on behalf of the Commonwealth, set off the whole or a part of the first amount against the whole or a part of the second amount.

Net category B payments

- (8D) For the purposes of this section, *net category B payments* for a financial year means the total of the category B payments made to the research body during the financial year, less the amount payable by the research body under subsection (7) as a condition of those category B payments.

132 Application—section 31 of the *Wool Services Privatisation Act 2000*

- (1) Despite the amendments of the *Wool Services Privatisation Act 2000* by this Schedule, section 31 of that Act continues to apply, after the commencement of this item, in relation to category B payments made to the research body during:
- (a) the financial year in which this item commences; or
 - (b) an earlier financial year;
- as if those amendments had not been made.
- (2) Subsection 31(7) of the *Wool Services Privatisation Act 2000* as amended by this Schedule applies in relation to amounts paid to the research body during:
- (a) the financial year next following the financial year in which this item commences; or
 - (b) a later financial year.

133 Transitional—determinations made under section 31 of the *Wool Services Privatisation Act 2000*

Subsection 31(7A) of the *Wool Services Privatisation Act 2000* as amended by this Schedule has effect as if a determination under repealed subsection 31(7) of the *Wool Services Privatisation Act 2000* had been made under subsection 31(7) of that Act as amended by this Schedule.

Schedule 2—Validation of certain benefits under the Defence Force Retirement and Death Benefits Act 1973

1 Definitions

In this Schedule:

contributing member has the same meaning as in the *Defence Force Retirement and Death Benefits Act 1973*.

CSC has the same meaning as in the *Defence Force Retirement and Death Benefits Act 1973*.

MSB scheme has the same meaning as in the *Defence Force Retirement and Death Benefits Act 1973*.

2 Validation of certain pensions—members of DFRDB scheme

Scope

- (1) This item applies if:
- (a) during the period:
 - (i) beginning on 1 October 1991; and
 - (ii) ending immediately before the commencement of this item;a pension commenced to be paid to a person; and
 - (b) throughout a period (the *interim period*) ending at or before the commencement of this item, the following conditions were satisfied:
 - (i) the pension purported to be a benefit payable to the person under the *Defence Force Retirement and Death Benefits Act 1973*;
 - (ii) the whole or a part of the pension (which whole or part is in this item called the *relevant portion*) was not payable; and
 - (c) at a particular time before 1 July 2008:
 - (i) the person purported to make an election, in accordance with subsection 61B(1) of the *Defence Force*

-
- Retirement and Death Benefits Act 1973*, to become a contributing member; or
- (ii) the person purported to make an election, in accordance with subsection 61B(3) of the *Defence Force Retirement and Death Benefits Act 1973*, not to become a member of the MSB scheme; and
- (d) the election was invalid; and
- (e) the relevant portion would have been payable if:
- (i) if subparagraph (c)(i) of this item applies—the election had been made in accordance with subsection 61B(1) of the *Defence Force Retirement and Death Benefits Act 1973*; or
 - (ii) if subparagraph (c)(ii) of this item applies—the election had been made in accordance with subsection 61B(3) of the *Defence Force Retirement and Death Benefits Act 1973*; and
- (f) the relevant portion was not recovered in whole or in part, before the commencement of this item, under subsection 126(4) or (5) of the *Defence Force Retirement and Death Benefits Act 1973*.

Recovery of overpayment

- (2) The total amount of the relevant portion paid to the person during the interim period:
 - (a) is a debt due to the Commonwealth; and
 - (b) may be recovered by CSC, on behalf of the Commonwealth, in a court of competent jurisdiction.
- (3) An amount recoverable under subitem (2) is not recoverable under subsection 126(4) or (5) of the *Defence Force Retirement and Death Benefits Act 1973*.

Substitute payment

- (4) There is payable to the person a benefit equal to the total amount of the relevant portion that would have been payable to the person during the interim period if:
 - (a) if subparagraph (1)(c)(i) of this item applies—the election had been made in accordance with subsection 61B(1) of the *Defence Force Retirement and Death Benefits Act 1973*; or

- (b) if subparagraph (1)(c)(ii) of this item applies—the election had been made in accordance with subsection 61B(3) of the *Defence Force Retirement and Death Benefits Act 1973*.

Set-off

- (5) The amount payable by the person under subitem (2) may be set off against the amount payable to the person under subitem (4).

Deemed election under section 61B of the Defence Force Retirement and Death Benefits Act 1973 etc.

- (6) The *Defence Force Retirement and Death Benefits Act 1973* and the *Military Superannuation and Benefits Act 1991* have, and are taken to have had, effect as if:
 - (a) if subparagraph (1)(c)(i) of this item applies—the election had been made in accordance with subsection 61B(1) of the *Defence Force Retirement and Death Benefits Act 1973*; or
 - (b) if subparagraph (1)(c)(ii) of this item applies—the election had been made in accordance with subsection 61B(3) of the *Defence Force Retirement and Death Benefits Act 1973*.

- (7) However, the person is not entitled during:
 - (a) the interim period; or
 - (b) if the interim period ends before the commencement of this item—the period:
 - (i) beginning at the end of the interim period; and
 - (ii) ending at the commencement of this item;

to so much of a pension under the *Defence Force Retirement and Death Benefits Act 1973* as corresponds to the relevant portion.

Substitute payment taken to be a benefit under the Defence Force Retirement and Death Benefits Act 1973 etc.

- (8) The payment under subitem (4):
 - (a) is taken (except for the purposes of subitem (7)) to be a benefit payable under the *Defence Force Retirement and Death Benefits Act 1973*; and
 - (b) is taken, for the purposes of subsection 125(3) of the *Defence Force Retirement and Death Benefits Act 1973*, to be a payment made by the Commonwealth under that Act.

3 Validation of certain lump sums—members of DFRDB scheme

Scope

- (1) This item applies if:
- (a) during the period:
 - (i) beginning on 1 October 1991; and
 - (ii) ending immediately before the commencement of this item;a lump sum was paid to a person; and
 - (b) the lump sum purported to be a benefit payable to the person under the *Defence Force Retirement and Death Benefits Act 1973*; and
 - (c) the whole or a part of the lump sum (which whole or part is in this item called the **relevant portion**) was not payable; and
 - (d) at a particular time before 1 July 2008:
 - (i) the person purported to make an election, in accordance with subsection 61B(1) of the *Defence Force Retirement and Death Benefits Act 1973*, to become a contributing member; or
 - (ii) the person purported to make an election, in accordance with subsection 61B(3) of the *Defence Force Retirement and Death Benefits Act 1973*, not to become a member of the MSB scheme; and
 - (e) the election was invalid; and
 - (f) the relevant portion would have been payable if:
 - (i) if subparagraph (d)(i) of this item applies—the election had been made in accordance with subsection 61B(1) of the *Defence Force Retirement and Death Benefits Act 1973*; or
 - (ii) if subparagraph (d)(ii) of this item applies—the election had been made in accordance with subsection 61B(3) of the *Defence Force Retirement and Death Benefits Act 1973*; and
 - (g) the relevant portion was not recovered in whole or in part, before the commencement of this item, under subsection 126(4) or (5) of the *Defence Force Retirement and Death Benefits Act 1973*.

Recovery of overpayment

- (2) The amount of the relevant portion:
 - (a) is a debt due to the Commonwealth; and
 - (b) may be recovered by CSC, on behalf of the Commonwealth, in a court of competent jurisdiction.
- (3) An amount recoverable under subitem (2) is not recoverable under subsection 126(4) or (5) of the *Defence Force Retirement and Death Benefits Act 1973*.

Substitute payment

- (4) There is payable to the person a benefit equal to the relevant portion that would have been payable to the person if:
 - (a) if subparagraph (1)(d)(i) of this item applies—the election had been made in accordance with subsection 61B(1) of the *Defence Force Retirement and Death Benefits Act 1973*; or
 - (b) if subparagraph (1)(d)(ii) of this item applies—the election had been made in accordance with subsection 61B(3) of the *Defence Force Retirement and Death Benefits Act 1973*.

Set-off

- (5) The amount payable by the person under subitem (2) may be set off against the amount payable to the person under subitem (4).

Deemed election under section 61B of the Defence Force Retirement and Death Benefits Act 1973 etc.

- (6) The *Defence Force Retirement and Death Benefits Act 1973* and the *Military Superannuation and Benefits Act 1991* have, and are taken to have had, effect as if:
 - (a) if subparagraph (1)(d)(i) of this item applies—the election had been made in accordance with subsection 61B(1) of the *Defence Force Retirement and Death Benefits Act 1973*; or
 - (b) if subparagraph (1)(d)(ii) of this item applies—the election had been made in accordance with subsection 61B(3) of the *Defence Force Retirement and Death Benefits Act 1973*.
 - (7) However, the person is not entitled to so much of a lump sum under the *Defence Force Retirement and Death Benefits Act 1973* as corresponds to the relevant portion.
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Substitute payment taken to be a benefit under the Defence Force Retirement and Death Benefits Act 1973 etc.

- (8) The payment under subitem (4):
- (a) is taken (except for the purposes of subitem (7)) to be a benefit payable under the *Defence Force Retirement and Death Benefits Act 1973*; and
 - (b) is taken, for the purposes of subsection 125(3) of the *Defence Force Retirement and Death Benefits Act 1973*, to be a payment made by the Commonwealth under that Act.

4 Validation of certain pensions—associates of members of DFRDB scheme

Scope

- (1) This item applies if:
- (a) during the period:
 - (i) beginning on 1 October 1991; and
 - (ii) ending immediately before the commencement of this item;a pension commenced to be paid to a person (the ***first person***); and
 - (b) throughout a period (the ***interim period***) ending at or before the commencement of this item, the following conditions were satisfied:
 - (i) the pension purported to be a benefit payable to the first person under the *Defence Force Retirement and Death Benefits Act 1973*;
 - (ii) the whole or a part of the pension (which whole or part is in this item called the ***relevant portion***) was not payable; and
 - (c) at a particular time before 1 July 2008:
 - (i) another person (the ***second person***) purported to make an election, in accordance with subsection 61B(1) of the *Defence Force Retirement and Death Benefits Act 1973*, to become a contributing member; or
 - (ii) another person (the ***second person***) purported to make an election, in accordance with subsection 61B(3) of the *Defence Force Retirement and Death Benefits Act 1973*, not to become a member of the MSB scheme; and

- (d) the election was invalid; and
- (e) the relevant portion would have been payable if:
 - (i) if subparagraph (c)(i) applies—the election had been made in accordance with subsection 61B(1) of the *Defence Force Retirement and Death Benefits Act 1973*; or
 - (ii) if subparagraph (c)(ii) applies—the election had been made in accordance with subsection 61B(3) of the *Defence Force Retirement and Death Benefits Act 1973*; and
- (f) the relevant portion was not recovered in whole or in part, before the commencement of this item, under subsection 126(4) or (5) of the *Defence Force Retirement and Death Benefits Act 1973*.

Recovery of overpayment

- (2) The total amount of the relevant portion paid to the first person during the interim period:
 - (a) is a debt due to the Commonwealth; and
 - (b) may be recovered by CSC, on behalf of the Commonwealth, in a court of competent jurisdiction.
- (3) An amount recoverable under subitem (2) is not recoverable under subsection 126(4) or (5) of the *Defence Force Retirement and Death Benefits Act 1973*.

Substitute payment

- (4) There is payable to the first person a benefit equal to the total amount of the relevant portion that would have been payable to the first person during the interim period if:
 - (a) if subparagraph (1)(c)(i) of this item applies—the election had been made in accordance with subsection 61B(1) of the *Defence Force Retirement and Death Benefits Act 1973*; or
 - (b) if subparagraph (1)(c)(ii) of this item applies—the election had been made in accordance with subsection 61B(3) of the *Defence Force Retirement and Death Benefits Act 1973*.

Set-off

- (5) The amount payable by the first person under subitem (2) may be set off against the amount payable to the first person under subitem (4).

Deemed election under section 61B of the Defence Force Retirement and Death Benefits Act 1973 etc.

- (6) The *Defence Force Retirement and Death Benefits Act 1973* and the *Military Superannuation and Benefits Act 1991* have, and are taken to have had, effect as if:

- (a) if subparagraph (1)(c)(i) of this item applies—the election had been made in accordance with subsection 61B(1) of the *Defence Force Retirement and Death Benefits Act 1973*; or
- (b) if subparagraph (1)(c)(ii) of this item applies—the election had been made in accordance with subsection 61B(3) of the *Defence Force Retirement and Death Benefits Act 1973*.

- (7) However, the first person is not entitled during:

- (a) the interim period; or
- (b) if the interim period ends before the commencement of this item—the period:
 - (i) beginning at the end of the interim period; and
 - (ii) ending at the commencement of this item;

to so much of a pension under the *Defence Force Retirement and Death Benefits Act 1973* as corresponds to the relevant portion.

Substitute payment taken to be a benefit under the Defence Force Retirement and Death Benefits Act 1973 etc.

- (8) The payment under subitem (4):
- (a) is taken (except for the purposes of subitem (7)) to be a benefit payable under the *Defence Force Retirement and Death Benefits Act 1973*; and
 - (b) is taken, for the purposes of subsection 125(3) of the *Defence Force Retirement and Death Benefits Act 1973*, to be a payment made by the Commonwealth under that Act.

5 Validation of certain lump sums—associates of members of DFRDB scheme

Scope

- (1) This item applies if:
- (a) during the period:
 - (i) beginning on 1 October 1991; and
 - (ii) ending immediately before the commencement of this item;a lump sum was paid to a person (the **first person**); and
 - (b) the lump sum purported to be a benefit payable to the first person under the *Defence Force Retirement and Death Benefits Act 1973*; and
 - (c) the whole or a part of the lump sum (which whole or part is in this item called the **relevant portion**) was not payable; and
 - (d) at a particular time before 1 July 2008:
 - (i) another person (the **second person**) purported to make an election, in accordance with subsection 61B(1) of the *Defence Force Retirement and Death Benefits Act 1973*, to become a contributing member; or
 - (ii) another person (the **second person**) purported to make an election, in accordance with subsection 61B(3) of the *Defence Force Retirement and Death Benefits Act 1973*, not to become a member of the MSB scheme; and
 - (e) the election was invalid; and
 - (f) the relevant portion would have been payable if:
 - (i) if subparagraph (d)(i) applies—the election had been made in accordance with subsection 61B(1) of the *Defence Force Retirement and Death Benefits Act 1973*; or
 - (ii) if subparagraph (d)(ii) applies—the election had been made in accordance with subsection 61B(3) of the *Defence Force Retirement and Death Benefits Act 1973*; and
 - (g) the relevant portion was not recovered in whole or in part, before the commencement of this item, under subsection 126(4) or (5) of the *Defence Force Retirement and Death Benefits Act 1973*.

Recovery of overpayment

- (2) The amount of the relevant portion:
-

- (a) is a debt due to the Commonwealth; and
 - (b) may be recovered by CSC, on behalf of the Commonwealth, in a court of competent jurisdiction.
- (3) An amount recoverable under subitem (2) is not recoverable under subsection 126(4) or (5) of the *Defence Force Retirement and Death Benefits Act 1973*.

Substitute payment

- (4) There is payable to the first person a benefit equal to the relevant portion that would have been payable to the first person if:
 - (a) if subparagraph (1)(d)(i) of this item applies—the election had been made in accordance with subsection 61B(1) of the *Defence Force Retirement and Death Benefits Act 1973*; or
 - (b) if subparagraph (1)(d)(ii) of this item applies—the election had been made in accordance with subsection 61B(3) of the *Defence Force Retirement and Death Benefits Act 1973*.

Set-off

- (5) The amount payable by the first person under subitem (2) may be set off against the amount payable to the first person under subitem (4).

Deemed election under section 61B of the Defence Force Retirement and Death Benefits Act 1973 etc.

- (6) The *Defence Force Retirement and Death Benefits Act 1973* and the *Military Superannuation and Benefits Act 1991* have, and are taken to have had, effect as if:
 - (a) if subparagraph (1)(d)(i) of this item applies—the election had been made in accordance with subsection 61B(1) of the *Defence Force Retirement and Death Benefits Act 1973*; or
 - (b) if subparagraph (1)(d)(ii) of this item applies—the election had been made in accordance with subsection 61B(3) of the *Defence Force Retirement and Death Benefits Act 1973*.
- (7) However, the first person is not entitled to so much of a lump sum under the *Defence Force Retirement and Death Benefits Act 1973* as corresponds to the relevant portion.

Substitute payment taken to be a benefit under the Defence Force Retirement and Death Benefits Act 1973 etc.

- (8) The payment under subitem (4):
- (a) is taken (except for the purposes of subitem (7)) to be a benefit payable under the *Defence Force Retirement and Death Benefits Act 1973*; and
 - (b) is taken, for the purposes of subsection 125(3) of the *Defence Force Retirement and Death Benefits Act 1973*, to be a payment made by the Commonwealth under that Act.

6 Compensation for acquisition of property

- (1) If the operation of this Schedule would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this item:
- acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.
- just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*[Minister's second reading speech made in—
House of Representatives on 30 May 2012
Senate on 20 June 2012]*

(100/12)
