

WESTERN AUSTRALIA

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**SUPERANNUATION LEGISLATION  
AMENDMENT ACT 1993**

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**No. 8 of 1993**

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**AN ACT to amend the *Government Employees Superannuation Act 1987* and the *Superannuation and Family Benefits Act 1938* and for related purposes.**

*[Assented to 28 September 1993.]*

The Parliament of Western Australia enacts as follows:

**PART 1 — PRELIMINARY**

**Short title**

1. This Act may be cited as the *Superannuation Legislation Amendment Act 1993*.

**Commencement**

2. (1) Subject to subsection (2), this Act comes into operation on the day on which it receives the Royal Assent.

(2) Sections 50 (c), 52, 59, 60 (b) and 63 are deemed to have come into operation immediately after the commencement of the *Government Employees Superannuation Amendment Act 1992*.

**PART 2 — AMENDMENTS TO DO WITH THE  
SUPERANNUATION GUARANTEE CHARGE**

***Division 1 — Government Employees Superannuation  
Act 1987***

**Principal Act**

3. In this Division the *Government Employees Superannuation Act 1987\** is referred to as the principal Act.

[\* *Reprinted as at 15 November 1991.*

*For subsequent amendments see 1992 Index to  
Legislation of Western Australia, Table 1, p. 88.]*

**Long title amended**

4. The long title to the principal Act is amended by deleting “a superannuation scheme for employees of the Government and certain public authorities” and substituting the following —

“  
    **superannuation schemes for employees of the  
    Government and certain public authorities and  
    for certain other persons**  
”

**Section 3 amended**

5. (1) Section 3 (1) of the principal Act is amended —

(a) in the definition of “employee”, by inserting after paragraph (a) the following paragraph —

“  
    (aa) a person engaged under a contract for  
    services where at least 50% of the  
    amount payable to the person under  
    the contract is in respect of the  
    person’s labour;  
”

- (b) in the definition of “exit date” —
- (i) by inserting after “member” in the first place where it occurs the following —
- “ of the contributory scheme ”; and
- (ii) by deleting from “except that” to the end of the definition and substituting the following —
- “
- except that, in relation to a person who ceases to be a member of the contributory scheme because, under section 17B or 17C, he or she becomes ineligible for membership, it means the day on which the membership ceases;
- ”;
- (c) in the definition of “final salary”, by inserting after “member” the following —
- “ of the contributory scheme ”;
- (d) in the definition of “membership period” —
- (i) by inserting after “member” the following —
- “ of the contributory scheme ”; and
- (ii) by deleting “, in the case of a contributor,”;
- (e) by deleting the definitions of “contributor” and “contributory membership”, “entry date”, “member”, “non-contributor” and “non-contributory member”, and “scheme”; and

- (f) by inserting in the appropriate alphabetical positions the following definitions —

“

**“Commonwealth Act”** means the  
*Superannuation Guarantee*  
*(Administration) Act 1992* of the  
Commonwealth;

”;

“

**“complying superannuation fund”** and  
**“complying superannuation  
scheme”** have the same meanings as  
they have in the Commonwealth Act;

”;

“

**“contributory scheme”** means the  
scheme of superannuation and other  
benefits provided for by this Act for  
and in respect of employees who  
contribute towards those benefits;

”;

“

**“entry date”**, in relation to a person who  
is a member of the contributory  
scheme, means the date as at which  
the person’s election to become a  
member took effect, that election  
being —

(a) the only such election made by  
the member; or

(b) where the member made more  
than one such election, the later  
or latest of those elections;

”;

“

“**member**” means a member of whichever scheme is indicated by the context or, where the context indicates, a member of either scheme;

”;

“

“**non-contributory scheme**” means the scheme of superannuation and other benefits provided for in Part VIIA;

”;

“

“**scheme**” —

(a) when used in Part IV, V, VI, or VII, means the contributory scheme;

(b) when used in Part VIIA, means the non-contributory scheme; and

(c) otherwise, means whichever of those schemes is indicated by the context or, where the context indicates, either or both of those schemes;

”.

(2) Section 3 of the principal Act is amended by inserting after subsection (3) the following subsection —

“

(4) For the purposes of this Act, the Commonwealth Act is to be taken to apply to each employer as if the employer’s annual national payroll for the base year, as referred to in that Act, exceeded \$1 000 000.

”.

**Section 4A amended**

6. (1) Section 4A (1) of the principal Act is amended by inserting after "member" in the first place where it occurs the following —

“ of the contributory scheme ”.

(2) Section 4A of the principal Act is amended by inserting after subsection (4) the following subsections —

“ (5) For the purposes of this section the Board is required to include, in ascertaining the rate at which a member was paid salary on a particular day, an amount of higher duties allowance that has been paid continuously for a period of at least 12 months that includes that day.

(6) Subsection (5) only applies if a further amount is contributed to the scheme by or on behalf of the member equal to the amount that would have been required to have been additionally contributed by the member if the allowance had been taken into account as salary for the purposes of calculating contributions with respect to that period.

(7) If a further amount is contributed in accordance with subsection (6), a corresponding adjustment is to be made to any contribution required under Part VI to be made by an employer.

”.

**Section 4B inserted**

7. After section 4A of the principal Act the following section is inserted —

“

**Persons in more than one employment**

4B. (1) If a person is in more than one employment by one or more employers, this Act

applies, unless in the context it would be inappropriate, as if the person were, in respect of each employment, a separate person.

(2) Without limiting the generality of subsection (1), if a person is in more than one employment an exclusion from being a member of a scheme that applies to a person in connection with one employment does not prevent the person from being a member of a scheme as a person in another employment.

”

### **Section 8B amended**

8. Section 8B (3) of the principal Act is amended in the definition of “member” by deleting “the scheme” in paragraph (a) and substituting the following —

“ a scheme ”.

### **Section 8C inserted**

9. After section 8B of the principal Act the following section is inserted —

“

#### **Information for members**

8C. (1) The Board shall as soon as is practicable after a person becomes a member of the contributory or the non-contributory scheme send to the person a written statement describing the kind of benefits provided for by this Act for a member of the scheme and the conditions relating to, and the method of determining, those benefits.

(2) The Board shall in respect of each financial year send to each member of the contributory or the non-contributory scheme a written statement setting out the prescribed information about contributions to the Fund by or in respect of the member and the benefits provided for by this Act as they relate to the member.

(3) A statement required by subsection (2) to be sent to a member of the contributory scheme in respect of a financial year shall be sent on, or as soon as is practicable after, the next adjustment day of the member following that financial year.

(4) A statement required by subsection (2) to be sent to a member of the non-contributory scheme in respect of a financial year shall be sent as soon as is practicable after the end of that financial year.

(5) Where a person ceases to be a member of a scheme, the Board shall as soon as is practicable after the cessation of membership send to the person, or the personal representative (if any) of the person, a written statement setting out the prescribed information about the entitlement under this Act of the member or the member's estate, as the case may be.

”.

### **Section 10 amended**

**10.** Section 10 (3) of the principal Act is amended —

(a) by deleting “the scheme” in the first place where it occurs and substituting the following —

“ each scheme ”; and

(b) by inserting after “the amount” the following —

“ of ”.

**Section 13A amended**

11. Section 13A (1) (a) of the principal Act is amended by deleting “the scheme” and substituting the following —

“ a scheme ”.

**Sections 13B and 13C inserted**

12. After section 13A of the principal Act the following sections are inserted —

“

**Inward portability**

13B. (1) In this section —

**“portable benefit”** means a benefit —

- (a) accrued to a member of another superannuation or similar scheme but not paid out under that scheme; and
- (b) able to be paid into the Fund under the rules of that scheme;

**“conditional portable benefit”** means a portable benefit that is paid into the Fund on condition that it is only paid out of the Fund —

- (a) as a deferred benefit under this Act;
- (b) at the time when a benefit provided for by Part VIIA is payable in accordance with section 38K; or
- (c) in accordance with subsection (6).

(2) An employee —

- (a) who elects to become a member of the contributory scheme and whose election is accepted by the Board; or
- (b) who becomes a member of the non-contributory scheme,

may cause to be paid into the Fund the amount of a portable benefit that has accrued to the employee, if that benefit exceeds \$500 or such other amount as is prescribed.

(3) Where —

- (a) a person has caused a portable benefit to be paid into the Fund under subsection (2); and
- (b) the person or the personal representative of the person subsequently becomes entitled to a benefit under this Act that is payable at the time when the entitlement arises,

the benefit referred to in paragraph (b) shall, subject to subsection (6), include the amount of that portable benefit together with compound interest on that amount calculated with effect from the date of payment into the Fund at a rate determined by the Board from time to time to be the sum of the CPI rate (as determined under section 3 (2)) and 2%.

(4) Where a person has caused a portable benefit to be paid into the Fund under subsection (2) and subsequently becomes entitled to a benefit under this Act that is only payable at a time after the time when the entitlement arises, the amount of the portable benefit is, subject to subsections (5) and (6), payable to the person at the time when the benefit under this Act

is payable, together with compound interest on that amount calculated in the manner described in subsection (3).

(5) Notwithstanding subsection (4), a portable benefit paid into the Fund under subsection (2) shall, if —

- (a) the person requests payment within 2 months after an entitlement arises to a benefit under this Act that is only payable at a time after the time when the entitlement arises; and
- (b) the portable benefit is not a conditional portable benefit,

be paid to the person together with compound interest on that amount calculated in the manner described in subsection (3).

(6) Where a person has caused a conditional portable benefit to be paid into the Fund and the person resigns, is dismissed or discharged from employment with an employer or is retrenched, the Board shall on the application of the person pay the amount, together with compound interest on that amount calculated in the manner described in subsection (3), to another superannuation fund if the Board is satisfied that the other fund is a complying superannuation fund.

### **Outward portability**

**13C.** (1) Without limiting the operation of section 13B (6) in respect of a conditional portable benefit, where a member of the non-contributory scheme becomes entitled to a benefit under Part VIIA that has not yet become payable, the member may

request the Board to transfer to another superannuation fund the amount of the member's transfer value.

(2) For the purposes of this section, a member's transfer value is the value of the member's benefit under Part VIIA discounted, where the Board, on the advice of an actuary, thinks fit, as determined by the Board in accordance with that advice, and, where applicable, any amount paid into the Fund by the member under subsection (2) of section 13B, together with compound interest on the amount paid into the Fund calculated in the manner described in subsection (3) of that section.

(3) The Board shall transfer the amount to which such a request relates if a request is not made under section 13B (5) and the terms applying to the other superannuation fund are such that a payment in respect of the amount, if transferred, cannot be made to the member before the member attains the age of 55 or retires, whichever last occurs, except in the event of —

- (a) the member's earlier death or disability;
- (b) the member's earlier permanent departure from Australia; or
- (c) the occurrence of other prescribed circumstances.

(4) The transfer is not required to be made until a period of 12 months has elapsed since the date on which the person ceased to be an employee of an employer.

**Heading amended**

13. The heading to Part IV of the principal Act is amended by inserting before "SCHEME" the following —

" CONTRIBUTORY "

**Section 17 repealed and a section substituted**

14. Section 17 of the principal Act is repealed and the following section is substituted —

"

**Membership**

17. A person who is an employee of an employer, including a person who is already a member of the non-contributory scheme, is eligible to elect to become a member of the contributory scheme unless excluded from membership by section 17B or 17C.

"

**Section 17A repealed**

15. Section 17A of the principal Act is repealed.

**Section 17B amended**

16. Section 17B of the principal Act is amended —

- (a) in subsection (1), by deleting "as either a contributor or a non-contributor"; and

(b) in subsection (2) —

(i) by deleting paragraph (g); and

(ii) by inserting after paragraph (h) the following paragraph —

“

(ha) is an employee by reason only of paragraph (aa) of the definition of “employee” in section 3 (1);

”

### **Section 17C amended**

17. Section 17C (1), (2) (c) and (3) of the principal Act are amended by deleting “contributory” in each place where it occurs.

### **Section 17D repealed**

18. Section 17D of the principal Act is repealed.

### **Section 19B amended**

19. Section 19B (6) (a) of the principal Act is amended by inserting after “required” the following —

“

before the commencement of section 29 of the *Superannuation Legislation Amendment Act 1993*

”

### **Sections 21 and 21A repealed**

20. Sections 21 and 21A of the principal Act are repealed.

**Section 24 amended**

21. Section 24 of the principal Act is amended by repealing subsection (4).

**Section 27 amended**

22. Section 27 of the principal Act is amended —

- (a) in subsection (1), by deleting “contributory members and non-contributory members” and substituting the following —

“ members of the contributory scheme ”;

- (b) by repealing subsection (2a); and

- (c) in subsection (4), by deleting “and 3% of the salaries of non-contributory members”.

**Heading amended**

23. The heading to Part VII of the principal Act is amended by inserting after “BENEFITS” the following —

“ UNDER CONTRIBUTORY SCHEME ”.

**Section 30 amended**

24. Section 30 of the principal Act is amended —

- (a) in subsection (1), by inserting after “member” the following —

“ of the contributory scheme ”;

- (b) in subsection (2), by deleting “in relation to a contributory member”; and
- (c) by repealing subsection (3).

**Section 31 amended**

**25.** Section 31 of the principal Act is amended —

(a) in subsection (1) —

- (i) by inserting after “member” in the second place where it occurs the following —

“ of the contributory scheme ”;

- (ii) by inserting after paragraph (b) the following —

“ or ”;

- (iii) by deleting “; or” at the end of paragraph (c) and substituting a fullstop; and

- (iv) by deleting paragraph (d);

and

- (b) by repealing subsections (5) and (6).

**Section 32 amended**

**26.** Section 32 of the principal Act is amended —

(a) in subsection (1) —

- (i) by inserting after “member” in the first place where it occurs the following —

“ of the contributory scheme ”;

- (ii) by inserting after paragraph (bb) the following —  
“ or ”;
  - (iii) by deleting “; or” at the end of paragraph (cc) and substituting a fullstop; and
  - (iv) by deleting paragraph (dd);  
and
- (b) in subsection (2), by deleting “31 (2), (4) or (5)” and substituting the following —  
“ 31 (2) or (4) ”.

**Section 33 amended**

**27.** Section 33 (1) of the principal Act is amended —

- (a) by inserting after “member” in the first place where it occurs the following —  
“ of the contributory scheme ”;
- (b) by inserting after paragraph (bb) the following —  
“ or ”;
- (c) by deleting “; or” at the end of paragraph (cc) and substituting a fullstop; and
- (d) by deleting paragraph (dd).

**Section 34 amended**

**28.** Section 34 of the principal Act is amended —

- (a) in subsection (1) (a), by inserting after “a member” the following —  
“ of the contributory scheme ”;

- (b) in subsection (2), by deleting “in relation to a contributory member”;
- (c) in subsection (2) (b) —
- (i) in the formula, by deleting “3.3” and substituting the following —
- “ PC ”;
- (ii) by deleting the fullstop after “years” and substituting a semicolon; and
- (iii) by inserting at the end of the paragraph the following —
- “ PC represents the number that would have been the employer’s charge percentage in respect of the member for the quarter during which the member died or retired according to section 20 or 21 of the Commonwealth Act before applying any reduction under section 22 or 23 of that Act.
- and ”;
- (d) by repealing subsection (3).

**Section 35 amended**

**29.** Section 35 of the principal Act is amended —

- (a) in subsection (1) —
- (i) by inserting after “a member” the following —
- “ of the contributory scheme ”;

- (ii) by inserting after paragraph (a) the following —
    - “ or ”;
  - (iii) in paragraph (b), by deleting “in the case of a contributor,”;
  - (iv) by deleting “; or” at the end of paragraph (b) and substituting a fullstop; and
  - (v) by deleting paragraph (c);
- (b) by repealing subsection (2);
- (c) in subsection (3) —
- (i) by deleting “with a membership period of not less than 24 months or to whom subsection (5) applies is, at the option of the contributor” and substituting the following —
    - “ is ”; and
  - (ii) by deleting paragraph (a) and “or” after that paragraph;
- (d) by repealing subsections (4) and (5); and
- (e) in subsection (7), by inserting after “subsection (3)” the following —
- “
- as in force before the commencement of section 29 of the *Superannuation Legislation Amendment Act 1993*

**Section 36 amended**

**30.** Section 36 of the principal Act is amended —

- (a) in subsection (1), by inserting after “a member” the following —  
“ of the contributory scheme ”;
- (b) in subsection (2), by deleting “(regardless of the length of the contributor’s contributory period)”; and
- (c) by repealing subsection (3).

**Section 37 repealed and a section substituted**

**31.** Section 37 of the principal Act is repealed and the following section is substituted —

“

**Benefits of members formerly non-contributors**

**37.** (1) In this section “**the previous law**” means this Act as in force before the commencement of Part 2 of the *Superannuation Legislation Amendment Act 1993*.

(2) Where a benefit is payable to a member of the contributory scheme who under the previous law was a non-contributory member of the scheme immediately before electing to become a contributory member, in calculating the benefit —

- (a) the former membership period as a non-contributor, in accordance with the previous law, is to be taken into account as a contributory period; but
- (b) so far as it applies to any part of that former membership period as a non-contributor that was —
  - (i) before 1 July 1992, the factor C in the formula to be used for calculating the benefit (representing the contributor’s

average contribution rate) is to be regarded as one quarter of 3.3 (i.e. 0.825);

- (ii) on or after 1 July 1992, the factor C in the formula to be used for calculating the benefit (representing the contributor's average contribution rate) is to be regarded as one quarter of the number that would have been the employer's charge percentage in respect of the member for the quarter during which the member elected to become a contributory member according to section 20 or 21 of the Commonwealth Act before applying any reduction under section 22 or 23 of that Act.

”.

### **Section 38 amended**

**32.** Section 38 of the principal Act is amended —

- (a) in subsection (1), by deleting “Subject to section 37, where” and substituting the following —

“ Where ”;

- (b) by deleting subsection (3) (c) and substituting the following paragraph —

“

- (c) the person subsequently elects under that subsection to become a member and the election is accepted by the Board,

”.

- (c) by repealing subsection (3a); and
- (d) in subsection (4) —
  - (i) in paragraph (a), by deleting “or 35 (4)”;
  - (ii) by deleting “contributory member or subsequently becomes a non-contributory member” and substituting the following —

“ member of the contributory scheme ”;
  - (iii) by deleting “; and” at the end of paragraph (aa) and substituting a fullstop; and
  - (iv) by deleting paragraph (bb).

**Part VIIA and heading to Part VIIB inserted**

**33.** After section 38 of the principal Act the following Part and heading are inserted —

“

**PART VIIA — THE NON-CONTRIBUTORY  
SCHEME**

**Interpretation**

**38A.** In this Part, unless the contrary intention appears —

“**contribution period**”, in relation to —

- (a) an employee who is paid periodically at intervals of less than 3 months, means the employee’s pay period;
- (b) any other employee, means a quarter;

**“member’s account”** means the account maintained under this Part by the Board for the purpose of accumulating the member’s entitlement under this Part;

**“member’s total account balance”** means the balance of the member’s account or the total of the balances where the member has more than one account;

**“quarter”** means the period of 3 months commencing on 1 July 1992 and each successive period of 3 months after that period.

### **Membership**

**38B.** (1) A person who is an employee of an employer is, by virtue of that employment, a member of the non-contributory scheme unless, in respect of that employment, the person is —

- (a) a member of the contributory scheme;
- (b) a contributor under the *Superannuation and Family Benefits Act 1938* who is contributing under that Act;
- (c) any other person in respect of whom the employer makes contributions to a complying superannuation fund or complying superannuation scheme other than under this Part; or
- (d) a member of a class of persons prescribed for the purposes of this section.

(2) Subsection (1) extends to a person who was an employee of an employer at any time after 1 July 1992

and the obligations of an employer under this Part are to be read accordingly.

(3) In determining, for the purposes of subsection (1) (c), whether an employer has, for any period, made contributions to a complying superannuation fund or complying superannuation scheme in respect of a person, if —

- (a) a defined benefit superannuation scheme (within the meaning given to that expression by the Commonwealth Act) operates for the benefit of that person as an employee of that employer; and
- (b) a benefit certificate (within the meaning given to that expression by the Commonwealth Act) relating to the scheme and having effect for the period specifies a notional employer contribution rate in relation to a class of persons that includes that person,

the employer is to be taken to have made contributions for that period in respect of that person.

### **Individual account**

**38C.** (1) The Board is to establish and maintain for each person who becomes a member an account in the Fund for the purpose of accumulating the person's entitlement under this Act.

(2) Instead of keeping one account for a person the Board may keep 2 or more accounts for the person.

(3) The Board may keep contributions made in respect of a member, together with contributions made in respect of other members, in an account maintained

for that purpose until the amount of the contributions is credited to the member's account.

**Employer contributions**

**38D.** (1) An employer is to contribute to the Fund, for each contribution period in which an employee of the employer is a member, an amount in respect of the employee calculated in accordance with the formula —

$$A = S \times \frac{PC}{100}$$

where —

- A is the amount of the contribution that the employer is to make;
- S is the amount of the salary paid by the employer to the employee for the contribution period or, where applicable, the part of it during which the employee was a member;
- PC is the number that would be the employer's charge percentage for the relevant quarter according to section 20 or 21 of the Commonwealth Act before applying any reduction under section 22 or 23 of that Act (the relevant quarter being the quarter in which the employee earned the salary).

(2) If the salary mentioned in subsection (1) was earned partly in one quarter and partly in another, the amount of the contribution is to be calculated by separately applying the formula to the amount of salary that was earned in each quarter, in each case using the charge percentage for that quarter, and

aggregating the amounts resulting from the separate calculations.

(3) The amount of a contribution required by subsection (1) to be made by an employer is to be paid to the Board within the period specified in subsection (4) if —

- (a) the employer is or is deemed to be listed in Part B of Schedule 1; or
- (b) the contribution is in respect of the service of an employee while seconded to an employer who —
  - (i) is or is deemed to be listed in Part B of Schedule 1; or
  - (ii) is not an employer for the purposes of this Act,

and in any other case the employer is required, within that period, to give to the Board notice in writing of the amount of the contribution including such other information, if any, relating to the contribution as the Board may from time to time specify.

(4) The period within which a contribution is required to be paid or notice of a contribution is required to be given, as the case requires, under subsection (3) is —

- (a) if the contribution period is the employee's pay period, the period of 7 days after the last day of the pay period;
- (b) if the contribution period is a quarter, the period of 28 days after the last day of the quarter.

(5) Where the contribution is for a period ending on or before the day on which Part 2 of the *Superannuation Legislation Amendment Act 1993* commences, the payment or notice required by subsection (3) is made or given in sufficient time if it is made or given on or before the day fixed under subsection (6) but this subsection does not affect —

- (a) the member's account being credited with the amount of the contribution; and
- (b) interest being calculated on the amount of the contribution,

with effect from the time mentioned in subsection (4) in relation to the contribution.

(6) The day fixed for the purposes of subsection (5) for an employer is the day specified by the Board by notice in writing given to the employer, being a day that is not less than 2 weeks after the day on which the notice is given.

(7) Interest calculated as the Board thinks fit is payable by an employer to the Board on the amount of any contribution that it has not yet paid, with effect from the time by which payment or notice of the contribution is required by subsection (4) until the amount is paid.

### **Additional contributions**

**38E.** The Board may, with the approval in writing of the Treasurer, permit an employer to make contributions in respect of an employee in addition to those which the employer is required by this Part to make and this Part applies to any additional contributions accordingly made in the same way as it applies to the required contributions.

## **Returns**

**38F.** (1) As soon as practicable after the end of each financial year in which an employer was an employer to whom this Part applies, the employer is required to give to the Board a return relating to each contribution period ending not later than the end of that financial year in which an employee of the employer was a member except a contribution period that has been the subject of a previous return under this section.

(2) As soon as practicable after an employer ceases to be an employer to whom this Part applies, the employer is required to give to the Board a return relating to each contribution period in which an employee of the employer was a member except a contribution period that has been the subject of a previous return under this section.

(3) The return is to be in a form approved by the Board and include all of the information necessary to enable the Board to calculate the contributions required from that employer under this Part, and any further amounts that may be payable under section 38Q, for the contribution periods to which it relates.

## **Adjustment notice**

**38G.** (1) An employer required by this Part to give the Board a return may be given notice by the Board, in writing —

- (a) that the amount of contributions made, or any further amount paid, by the employer under this Part differs from the required amount; and

- (b) where the amount of the contributions or further payment made is less than is required, that the difference is required to be paid to the Board within a period of 7 days after the day on which the notice is received.

(2) The employer may request the Board to review the basis on which the notice was given but, subject to any variation that the Board may make upon the review, is required to pay the amount of any difference of which notice is given, in accordance with the notice.

#### **Balance of member's account**

**38H.** (1) A member's account is to be credited with the amount of —

- (a) the employer's contributions required under this Part; and
- (b) where applicable, any additional contributions made under section 38E.

(2) The amount of a contribution required under this Part is to be credited not later than the day by which the contribution is required to be paid, or notice of the contribution is required to be given, under section 38D (4).

(3) Where the contribution is for a period ending on or before the day on which Part 2 of the *Superannuation Legislation Amendment Act 1993* commences, the account is credited in sufficient time if it is credited on or before the day fixed under section 38D (6) but the account is to be credited with, and interest is to be calculated on, the amount of the

contribution with effect from the time mentioned in section 38D (4) in relation to the contribution.

### **Interest**

**38I.** (1) A member's account is to be credited with interest on the balance of the account at a rate determined by the Board from time to time to be the sum of the CPI rate (as determined under section 3 (2)) and 2%.

(2) Interest is to be calculated and credited as determined by the Board, but at least once a year.

### **Cost of insurance and administration**

**38J.** The Board may, on the advice of an actuary, debit each member's account with any fee for —

- (a) insuring for the cost of paying any benefit under this Part in excess of the balance of the member's account; or
- (b) administrative costs associated with the scheme,

as it considers appropriate.

### **Payment of benefits**

**38K.** (1) Subject to section 13C, a benefit provided for by this Part is payable by the Board when the member or former member, as the case may be —

- (a) attains the age of 55 years if he or she is not then an employee of an employer;

- (b) ceases to be an employee of an employer after attaining the age of 55 years;
- (c) dies;
- (d) satisfies the Board of his or her inability, whether total or partial, to work on the ground of physical or mental incapacity that the Board is satisfied, after considering any evidence referred to in section 38N (1) (b), that the member has, and until attaining the age of 60 years will continue to have;
- (e) satisfies the Board that he or she has permanently departed from Australia or will do so within a period of 3 months; or
- (f) satisfies the Board that prescribed circumstances have occurred,

whichever occurs first or, if the amount of the benefit payable is not more than the amount that, under subsection (2), is the prescribed amount, when any of those circumstances occurs or a period of 12 months elapses since the entitlement to the benefit arose, whichever occurs first.

(2) For the purposes of subsection (1) the prescribed amount is \$500 or such greater amount as is for the time being approved by the Treasurer.

(3) When a member or former member who is entitled to a benefit under this Part that has not yet become payable attains the age of 55 years, the Board shall send to the person a written notice setting out the effect of subsection (1) (a) and (b).

(4) If —

- (a) a person has an entitlement to a benefit under this Part that has not yet become payable; and
- (b) the person again becomes a member,

the entitlement to the benefit is to be accumulated with the amount of any other benefit to which the person subsequently becomes entitled under this Part.

### **Benefit on age retirement**

**38L.** (1) The benefit provided by this section is payable by the Board to a member who on or after attaining the age of 55 years ceases to be an employee of an employer in circumstances where no benefit is payable under section 38M, 38N or 38O.

(2) The benefit provided by this section in relation to a member is an amount equal to the member's total account balance.

### **Death benefit**

**38M.** (1) The benefit provided by this section is payable by the Board to the personal representative of the member, or if appropriate in accordance with section 44 or 45, where a member dies during employment with an employer.

(2) The benefit provided by this section in relation to a member who dies before attaining the age of 60 years is —

- (a) an amount equal to the member's total account balance; and

- (b) a further benefit calculated in accordance with the formula —

$$FB = \frac{S}{2} \times \frac{PC}{100} \times \frac{M}{12}$$

where —

FB is the amount of the further benefit to be ascertained;

S is the total salary paid by an employer to the member in respect of the last 2 years preceding the member's death or, if the person had not been a member for all of that time, the amount that the Board considers the member would have received as salary in respect of those 2 years if the circumstances of the person when a member had existed for that time;

PC is the number that would have been the employer's charge percentage in respect of the member for the quarter during which the member died according to section 20 or 21 of the Commonwealth Act before applying any reduction under section 22 or 23 of that Act;

M is the period expressed in complete months from the date of death of the member to the date when the member would have attained the age of 60 years.

(3) The benefit provided by this section in relation to a member who dies after attaining the age of 60 years is an amount equal to the member's total account balance.

**Total and permanent disability benefit**

**38N.** (1) The benefit provided by this section is payable by the Board to a member where the member is retired from employment with an employer before attaining the age of 60 years and —

- (a) the Board is satisfied that the member was retired on the ground of physical or mental incapacity to perform his or her duties;
- (b) the Board is satisfied, after considering any medical or other evidence that it considers to be relevant, that the member is, and until attaining the age of 60 years will continue to be, physically or mentally incapable of performing the duties of any employment with an employer that in the opinion of the Board the member is suited to undertake by education, training or experience or for which in the opinion of the Board the member would be suited as a result of retraining; and
- (c) the member applies for the benefit within 12 months after retirement.

(2) The benefit provided by this section is —

- (a) an amount equal to the member's total account balance; and

- (b) if the Board is satisfied that —
- (i) the member has not received and is not entitled to receive any other benefit under this Act in respect of the incapacity; or
  - (ii) although the member has received or is entitled to receive another benefit under this Act in respect of the incapacity, it is appropriate that the member be paid the further benefit provided by this section,

a further benefit calculated in accordance with the formula —

$$FB = \frac{S}{2} \times \frac{PC}{100} \times \frac{M}{12}$$

where —

FB is the amount of the further benefit to be ascertained;

S is the total salary paid by an employer to the member in respect of the last 2 years preceding the member's retirement or, if the person had not been a member for all of that time, the amount that the Board considers the member would have received as salary in respect of those 2 years if the circumstances of the person when a member had existed for that time;

PC is the number that would have been the employer's charge percentage in respect of the member for the quarter during which the member retired according to section 20 or 21 of the Commonwealth Act before applying any reduction under section 22 or 23 of that Act;

M is the period expressed in complete months from the date of retirement of the member to the date when the member would attain the age of 60 years.

### **Partial and permanent disability benefit**

**380.** (1) The benefit provided by this section is payable by the Board to a member where the member is retired from employment with an employer before attaining the age of 60 years and —

- (a) the Board is satisfied that the member was retired on the ground of physical or mental incapacity to perform his or her duties;
- (b) although the Board is satisfied, after considering any evidence referred to in section 38N (1) (b), that the member has, and until attaining the age of 60 years will continue to have, an incapacity, a total and permanent disability benefit is not payable to the member under section 38N; and
- (c) the member applies for the benefit within 12 months after retirement.

- (2) The benefit provided by this section is —
- (a) an amount equal to the member's total account balance; and
  - (b) if the Board is satisfied that —
    - (i) the member has not received and is not entitled to receive, under this Act or otherwise, any other benefit in respect of the incapacity; or
    - (ii) although the member has received or is entitled to receive another benefit in respect of the incapacity, it is appropriate that the member be paid the further benefit provided by this section,

a further benefit calculated in accordance with the formula —

$$FB = \left( \frac{S}{2} - LS \right) \times \frac{PC}{100} \times \frac{M}{12}$$

where —

FB is the amount of the further benefit to be ascertained;

S is the total salary paid by an employer to the member in respect of the last 2 years preceding the member's retirement or, if the person had not been a member for all of that time, the amount that the Board considers the member would have received as salary in respect of those 2 years if the

circumstances of the person when a member had existed for that time;

LS is the annual salary that the Board considers the member has the capacity to earn after retirement in circumstances that the Board considers appropriate for the purposes of the calculation;

PC is the number that would have been the employer's charge percentage in respect of the member for the quarter during which the member retired according to section 20 or 21 of the Commonwealth Act before applying any reduction under section 22 or 23 of that Act;

M is the period expressed in complete months from the date of retirement of the member to the date when the member would attain the age of 60 years.

(3) In determining and assessing an entitlement to a benefit under this section, the Board —

- (a) may obtain and have regard to advice from any person or source that the Board considers appropriate; and
- (b) shall take into account in assessing the member's earning capacity the possibility of employment in either the public sector or the private sector.

**Benefit in other cases of termination of membership**

**38P.** (1) The benefit provided by this section is payable by the Board to a member —

- (a) where before attaining the age of 55 years, the member resigns, is dismissed or is discharged from employment with an employer; or
- (b) where the person's membership otherwise terminates in circumstances where no other benefit is payable under this Part.

(2) The benefit provided by this section in relation to a member is an amount equal to the member's total account balance.

**Additional amounts payable by certain employers**

**38Q.** (1) In addition to contributions that it is required to make under this Part, an employer must pay to the Board in accordance with any direction under this section further amounts to the Fund in respect of the salaries of all members who are employees of that employer.

(2) Where an employer to whom a member is seconded —

- (a) is an employer for the purposes of this Act, that employer; or
- (b) is not an employer for the purposes of this Act, the employer from whose employment he or she was seconded,

must pay to the Board in accordance with any direction under this section further amounts to the Fund in respect of the salary of the member so seconded.

(3) The Treasurer may, from time to time after consultation with an actuary, direct the Board in writing as to the amounts to be paid under this section and the time when, and the manner in which, the amounts are to be paid, and the Treasurer may make different provision in respect of different employers.

(4) The Treasurer may by instrument in writing allow the deferral of payment due under this section on such terms as to payment of interest or otherwise as the Treasurer may direct and section 43 (7) and (8) of the *Interpretation Act 1984* apply to such an instrument as if it were subsidiary legislation.

(5) An amount required by this section to be paid to the Board is not to be credited to a member's account.

(6) The appropriation made by section 28 (2), as applied by this Part, extends also, so far as is necessary, to amounts required by this section to be paid to the Board.

### **Regulations as to funding and State guarantee of benefits**

**38R.** Sections 28 and 29 apply also in relation to the funding of benefits payable under the non-contributory scheme, payments to be made for the purposes of funding those benefits, and the payment and guarantee of those benefits.

## **PART VIIB — GENERAL PROVISIONS AS TO BENEFITS**

**Section 39A amended**

34. Section 39A (1) of the principal Act is amended by deleting “non-contributory member” and substituting the following —

“ member of the non-contributory scheme ”.

**Section 46 amended**

35. Section 46 of the principal Act is amended by repealing subsections (2) and (4).

**Section 47 repealed**

36. Section 47 of the principal Act is repealed.

**Section 49 amended**

37. Section 49 (2) and (3) of the principal Act are amended by inserting before “scheme” in each case the following —

“ contributory ”.

**Section 52A amended**

38. Section 52A (1) of the principal Act is amended by deleting “scheme” and substituting the following —

“ schemes ”.

**Section 57 amended**

**39.** Section 57 of the principal Act is amended —

(a) in subsection (1) —

(i) in paragraph (a), by deleting “contributors to the scheme” and substituting the following —

“  
persons who are members of the  
contributory scheme  
”;

(ii) in paragraph (b), by deleting “contributors to those other schemes” and substituting the following —

“  
persons who are contributors to those  
other schemes  
”;

and

(iii) in paragraph (b), by inserting before “scheme” the following —

“ contributory ”;

(b) in subsection (2) —

(i) by deleting “contributor” and substituting the following —

“ person ”; and

(ii) by deleting “contributor’s” and substituting the following —

“ person’s ”;

- (c) in subsection (5), by deleting “contributors” and substituting the following —

“ members of the contributory scheme ”; and

- (d) in subsection (6), by deleting “contributors” in both places where it occurs and in each case substituting the following —

“ members of the contributory scheme ”.

### **Schedule 2 amended**

40. Schedule 2 to the principal Act is amended in clause 4 (1) by deleting “the scheme” and substituting the following —

“ a scheme ”.

### **Schedule 3 amended**

41. Schedule 3 to the principal Act is amended in clause 5 (7) (a) by deleting “the scheme” and substituting the following —

“ a scheme ”.

### **Schedule 4 amended**

42. Schedule 4 to the principal Act is amended —

- (a) in clause 1 (1), in the definition of “transferred contributor”, by deleting “contributory member who has become a contributor” and substituting the following —

“  
member of the contributory scheme who has  
become a member

”;

- (b) in clause 1A, by inserting after subclause (4) the following subclauses —

“

(5) For the purposes of this clause the Board is required to include, in ascertaining the rate at which a member was paid salary on a particular day, an amount of higher duties allowance that has been paid continuously for at least 12 months before that day.

(6) Subclause (5) only applies if a further amount is contributed to the scheme by or on behalf of the member equal to the amount that would have been required to have been additionally contributed by the member if the allowance had been taken into account as salary for the purposes of calculating contributions with respect to those 12 months.

(7) If a further amount is contributed in accordance with subclause (6), a corresponding adjustment is to be made to any contribution required under Part VI to be made by an employer.

”;

- (c) in clauses 4, 5, 6 (1), 7, 7A (1), 8 (1), 10 (1) and (3) by deleting “contributor to the scheme” or “contributory member of the scheme” and in each case substituting the following —

“ member of the contributory scheme ”;

- (d) in clause 13 —

(i) by repealing subclause (3); and

(ii) in subclause (4) —

(I) by deleting “, if the contributor opts for a benefit under section 35 (3) (b)”;

(II) in paragraph (a) (i), by inserting after “subclause (3)” the following —

“  
of this clause as in force before the  
commencement of section 42 of the  
*Superannuation Legislation  
Amendment Act 1993*  
”;

and

(III) in paragraph (a) (ii), by inserting after “subclause (3)” in both places where it occurs the following —

“ of this clause as so in force ”;

(e) in clause 14 (1) (c), by deleting “under this Act as a contributor” and substituting the following —

“ of the contributory scheme ”;

(f) in clause 14 (1) (d), by deleting “contributory member of the scheme” and substituting the following —

“ member of the contributory scheme ”;

(g) in clause 14A (1) (b), by inserting before “scheme” the following —

“ contributory ”;

(h) in clause 15 (4), in the description of X, by inserting before “scheme under this Act” the following —

“ contributory ”;

- (i) in clause 16 (a), by deleting “contributors to the scheme” and substituting the following —

“ members of the contributory scheme ”; and

- (j) in clause 16 (b), by deleting “contributors” and substituting the following —

“ members of the contributory scheme ”.

### **Various references to “contributory member” or “contributor” amended**

**43.** The principal Act is amended by deleting “contributory member” or “contributor” in each place where either of them occurs that is mentioned in the Table to this section and in each case substituting the following —

“ member of the contributory scheme ”.

#### **TABLE**

Section 3 (1) (in the definitions of “average contribution rate”, “contributory period” and “elected rate” in the first place where “contributor” occurs in each of those definitions);  
section 18 (1), (4), (5), (6) and in the first place where “contributor” occurs in section 18 (7);  
section 19A (1);  
section 19B (1), (2), (3), (4) and in the first place where “contributor” occurs in each of section 19B (6) (a) and (b);  
section 31 (2), (3) and (4) (in the first place where “contributor” occurs in each of those subsections);  
section 46 (1) (in the first place where “contributor” occurs);  
section 49 (1) (a) and (2);  
section 51;  
section 52 (2) (a);  
section 53 (1) and (4) (a);  
section 57 (4);

Schedule 4 clauses 10 (2) (in the second place where “contributor” occurs), 13 (5) (a) and (7) (a) (in the second place where “contributor” occurs in each of those paragraphs), 14A (1) (c), 15 (1), (2) and (3) (except in the first and second places where “contributor” occurs in clause 15 (1), the first, second and third places where it occurs in clause 15 (2) and (3), and where it occurs in clause 15 (3) (a) and (b)).

### **Various references to “contributor” amended**

44. The principal Act is amended by deleting “contributor” in each place where it occurs that is mentioned in the Table to this section and in each case substituting the following —

“ member ”.

#### **TABLE**

Section 3 (1) (in the definitions of “average contribution rate”, “contributory period” and “elected rate” except in the first place where it occurs in each of those definitions);  
section 18 (7) (except in the first place where it occurs);  
section 19B (6) (a) and (b) (except in the first place where it occurs in each of those paragraphs);  
section 30 (2);  
section 31 (1) (a) and (b), (2) (except in the first place where it occurs), (3) (in the second place where it occurs), and (4) (except in the first place where it occurs);  
section 32 (1) (aa), (bb), and (cc);  
section 33 (1) (aa), (bb), and (cc);  
section 34 (2) (a) and (b);  
section 35 (3);  
section 36 (2);  
section 38 (3) (other than paragraph (c));  
section 46 (1) (a), (aa), and (b), and (3);  
Schedule 4 clause 10 (2) (in the third and fourth places where it occurs).

**Various references to “contributor’s” amended**

**45.** The principal Act is amended by deleting “contributor’s” in each place where it occurs that is mentioned in the Table to this section and in each case substituting the following —

“ member’s ”.

**TABLE**

Section 30 (2);  
section 31 (1) (a), (1a) (a), (2), (3) and (4);  
section 32 (1) (aa) and (1a) (a);  
section 33 (1) (aa) and (1a) (a);  
section 34 (2) (a) and (b);  
section 35 (3);  
section 36 (2);  
section 46 (1) (a) and (b).

**Various references to “contributory” deleted**

**46.** The principal Act is amended by deleting “contributory” in each place where it occurs that is mentioned in the Table to this section.

**TABLE**

Section 19B (4) (a);  
section 27 (4) (in both places);  
section 31 (1) (a), (b) and (c), (1a), (2) (in the first place where it occurs), (3) (in the first place where it occurs), and (4);  
section 32 (1) (aa), (bb), and (cc), and (1a);  
section 33 (1) (aa), (bb), and (cc), and (1a);  
section 38 (3) (b);  
Schedule 4 clauses 12 (1) (a) and 13 (1).

***Division 2 — Superannuation and Family Benefits Act 1938***

**Principal Act**

47. In this Division the *Superannuation and Family Benefits Act 1938\** is referred to as the principal Act.

[\* *Reprinted as at 9 August 1989.  
For subsequent amendments see 1992 Index to  
Legislation of Western Australia, Table 1, p. 205.*]

**Part VB inserted**

48. After Part VA of the principal Act the following Part is inserted —

“

**PART VB — SUPERANNUATION GUARANTEE  
SCHEME**

**Interpretation**

83M. In this Part, unless the contrary intention appears —

“**contributor**” means an employee who is contributing under this Act;

“**contributor’s notional account**” means the account referred to in section 83N (2) (a) in relation to the contributor;

“**guaranteed benefit**” means the benefit under the non-contributory scheme to which a person who is a contributor would have become entitled as mentioned in section 83N if the person had been a member of

that scheme in respect of the employment by reason of which the person is a contributor;

**“non-contributory scheme”** means the scheme of superannuation and other benefits provided for in Part VIIA of the *Government Employees Superannuation Act 1987*;

**“State share of the pension scheme entitlement”** means any part of a person’s entitlement to a benefit under this Act, other than under this Part, that, in the opinion of the Board, is not attributable to the contributor’s contributions;

**“top-up benefit”** means an entitlement under section 83N (1) (c).

### **Guaranteed benefits**

**83N.** (1) If circumstances arise or have, on or after 1 July 1992, arisen as a result of which a contributor, or the personal representative of a contributor who dies, would have become entitled to a benefit under the non-contributory scheme had the contributor been a member of that scheme —

- (a) the amount of that benefit (**“the guaranteed benefit”**) is to be calculated in accordance with subsection (2);
- (b) the amount, if any, by which the guaranteed benefit exceeds the amount of any State share of the pension scheme entitlement that is payable at the same time as, or after, the time mentioned in paragraph (d) is to be calculated;

- (c) the contributor or personal representative, as the case requires, becomes entitled under this paragraph to payment of the amount, if any, calculated under paragraph (b) (“**the top-up benefit**”); and
  - (d) the top-up benefit, if any, is payable at the time when the guaranteed benefit would have been payable under the non-contributory scheme.
- (2) The guaranteed benefit is to be calculated as if —
- (a) the person who is a contributor had been a member of the non-contributory scheme since 1 July 1992 and contributions in respect of the employment by reason of which the person is a contributor had accordingly been credited under that scheme to an account for the person; and
  - (b) other amounts that would be credited or debited to it as a member’s account under that scheme had been credited or debited to the contributor’s notional account.

**Effect on other benefits under this Act**

**830.** (1) If a person becomes entitled under section 83N (1) (c) to a top-up benefit, any State share of the pension scheme entitlement payable before the time mentioned in section 83N (1) (d) is reduced by the amount of the top-up benefit or, if it is less than the top-up benefit, is extinguished.

(2) Subsection (1) does not apply to any State share of the pension scheme entitlement payable before 1 July 1994 but in calculating whether there is

an entitlement to a top-up benefit, or the amount of a top-up benefit, a deduction is to be made for any State share of the pension scheme entitlement so payable.

**Actuarial adjustments**

**83P.** In performing any calculation involving entitlements to amounts that are payable at different times (whether by way of pension or otherwise) the Board is to make such adjustment as it considers, on the advice of an actuary, to be necessary to allow for the difference.

”

**PART 3 — OTHER AMENDMENTS**

***Division 1 — Government Employees Superannuation  
Act 1987***

**Principal Act**

49. In this Division the *Government Employees Superannuation Act 1987\** is referred to as the principal Act.

[\* *Reprinted as at 15 November 1991.  
For subsequent amendments see 1992 Index to  
Legislation of Western Australia, Table 1, p. 88.*]

**Section 3 amended**

50. Section 3 of the principal Act is amended —

- (a) in subsection (1), by deleting the definition of “employed in a permanent capacity”;
- (b) in subsection (1), in the definition of “employee”, by deleting paragraph (b) and substituting the following paragraph —

“

- (b) the holder of an office who is, under subsection (5), for the time being an employee of an employer for the purposes of this Act;

”;

- (c) by repealing subsection (4); and

- (d) by repealing subsections (5), (6), (7) and (8) and substituting the following subsections —

“

(5) A person who is appointed to an office established —

- (a) by the Governor or a Minister;
- (b) under a provision of a written law; or
- (c) by any person who is an employee under this subsection or otherwise,

is an employee of an employer for the purposes of this Act.

(6) For the purpose of the discharge of the employer's duties under this Act, the Minister having general responsibility for the office, or another person, a department, or an authority specified by the Treasurer by order published in the *Gazette*, is to be treated as the employer of the office-holder.

(7) A person, a department, or an authority required by subsection (6) to be treated as the employer of an office-holder is, as such employer, deemed to be listed in Part B of Schedule 1 unless the Treasurer, by order published in the *Gazette*, otherwise specifies.

(8) An order under subsection (6) or (7) may be amended or revoked by the Treasurer by further order published in the *Gazette*.

(9) Without limiting subsection (6), where a person appointed to an office is an employee of an employer by reason of subsection (5), the Government of Western Australia is deemed for the purposes of this Act to be the employer of that person while the person holds that office.

**Section 4 amended**

**51.** Section 4 (1) of the principal Act is amended —

(a) by deleting paragraph (b) (ii), (iii) and (iv) and substituting the following subparagraphs —

“

(ii) a shift allowance or an allowance instead of overtime;

(iii) in relation to a member of the non-contributory scheme, a higher duties allowance or an amount paid as annual leave loading or as compensation in lieu of the opportunity for private practice;

(iv) any other allowance except to the extent that this section otherwise provides;

and

(b) in paragraph (c) —

(i) in subparagraph (i), by deleting “or as an allowance instead of overtime”;

- (ii) by deleting subparagraph (ii) and substituting the following subparagraph —

“

- (ii) an amount paid in lieu of recreation leave, long service leave or any other period of leave, or paid as a consequence of terminating a member's employment;

”;

- (iii) by deleting subparagraph (vi) and substituting the following subparagraph —

“

- (vi) in relation to a member of the contributory scheme, a higher duties allowance or an amount paid as annual leave loading or as compensation in lieu of the opportunity for private practice;

”;

and

- (iv) by deleting subparagraph (vii) and substituting the following subparagraph —

“

- (vii) an allowance or part of an allowance that the Board determines, having regard to and consistently with subparagraphs (i) to (vi), is not to be treated as salary for the purposes of this Act.

”.

**Section 4A amended**

**52.** Section 4A of the principal Act is amended —

- (a) in subsection (3) (b), by inserting before “adjustment day but one” the following —

“ salary ”; and

- (b) by inserting at the end of the section the following subsection —

“

(8) Where the rate at which a member was paid on a particular day is relevant to a calculation under subsection (3) of the amount of salary deemed to have been paid to the member and the Board is satisfied that on that day the member was not paid or was paid at a rate that was less than the member’s normal rate, the member is, for the purpose of the calculation, to be taken to have been paid on that day at the rate that the Board considers to have been the member’s normal rate.

”

**Section 17B amended**

**53.** Section 17B (2) (e) of the principal Act is amended by inserting after “employer” the following —

“

, except that this paragraph does not apply to a member of such a scheme who, by reason of being on leave or for any other reason, is not for the time being accruing such benefits as a member of the scheme

”

**Section 17C amended**

54. Section 17C of the principal Act is amended by inserting after subsection (3) the following subsection —

“

(4) This section also applies to an employee who has not worked, and cannot reasonably expect to work, in that employment for a period of at least 12 months without at any time during that period being excluded from membership by operation of subsections (2) and (3).

”.

**Sections 30 and 31 amended**

55. Sections 30 (2) and 31 (2) and (3) of the principal Act are each amended, in the description of FS, by deleting “the definition in section 3” and substituting the following —

“ section 4A ”.

**Section 32 amended**

56. Section 32 of the principal Act is amended in subsection (1) (b) by inserting after “for which” the following —

“ in the opinion of the Board ”.

**Section 33 amended**

57. Section 33 of the principal Act is amended —

(a) in subsection (1), by deleting paragraph (b) and substituting the following paragraph —

“ (b) although the Board is satisfied, after considering any evidence referred to

in section 32 (1) (b), that the member has, and until attaining the age of 60 years will continue to have, an incapacity, a total and permanent disability benefit is not payable to the member under section 32;

”;

and

- (b) by repealing subsection (2) and substituting the following subsection —

“

(2) The benefit provided by this section is an amount calculated in accordance with the formula —

$$PPDB = FS \times \frac{CP}{12} \times \frac{C}{5} \times \frac{20}{100} + (FS - LS) \times \frac{NP}{12} \times \frac{C}{5} \times \frac{20}{100}$$

where —

PPDB represents the amount of the partial and permanent disability benefit to be ascertained;

FS represents the member's final salary ascertained in accordance with section 4A;

CP represents the member's contributory period expressed in completed months;

C represents the member's average contribution rate ascertained in accordance with the definition in section 3;

LS represents the annual salary that the Board considers the member has the capacity to earn after retirement in circumstances that the Board considers appropriate for the purposes of the calculation;

NP represents the period expressed in complete months from the date of retirement of the member to the date when the member would attain the age of 60 years.

”

### **Section 34 amended**

**58.** Section 34 of the principal Act is amended in subsection (1) by deleting paragraph (b) and substituting the following paragraph —

“

- (b) to a member of the contributory scheme where the Board —
- (i) is satisfied that the member was retired on the ground of physical or mental incapacity to perform his or her duties; and
  - (ii) after considering any evidence referred to in section 32 (1) (b), is satisfied that the member has, and until attaining the age of 60 years will continue to have, an incapacity,

but a benefit is not payable under section 32 or 33.

”

**Sections 34 and 35 amended**

**59.** Sections 34 (2) (a) and (b) and 35 (3) (b) of the principal Act are each amended, in the description of FS, by deleting “the definition in section 3” and substituting the following —

“ section 4A ”.

**Section 38 amended**

**60.** Section 38 of the principal Act is amended —

- (a) in subsection (1), by deleting paragraph (c) and substituting the following paragraph —

“

- (c) satisfies the Board of his or her inability, whether total or partial, to work on the ground of physical or mental incapacity that the Board is satisfied, after considering any evidence referred to in section 32 (1) (b), that the member has, and until attaining the age of 60 years will continue to have;

”;

and

- (b) in subsection (4) (aa), by deleting “definition of **“final salary”** in section 3 shall be read as if **“exit date”** in that definition” and substituting the following —

“

person’s final salary shall be ascertained as if **“exit date”** in section 4A

”.

**Section 52 amended**

**61.** Section 52 of the principal Act is amended by repealing subsection (1) and substituting the following subsection —

“

(1) An employer must, in accordance with directions given by the Board, submit to the Board any information or evidence specified in the directions relating to employees of the employer who have elected to become, or are, members.

”

**Schedule 3 amended**

**62.** Schedule 3 to the principal Act is amended by repealing clause 1.

**Schedule 4 amended**

**63.** Schedule 4 to the principal Act is amended —

- (a) by deleting clause 1 (3);
- (b) in clause 1A, by inserting at the end of the clause the following subclause —

“

(8) Where the rate at which a member was paid on a particular day is relevant to a calculation under subclause (3) of the amount of salary deemed to have been paid to the member and the Board is satisfied that on that day the member was not paid or was paid at a rate that was less than the member's normal rate, the member is, for the purpose of the calculation, to be taken to have been paid on that day at the rate that the Board considers to have been the member's normal rate.

”

- (c) in clauses 12 (2) (c), 13 (4) (b) and 15 (4), in the description of FS, by deleting “the definition in clause 1” and substituting the following —

“ clause 1A ”; and

- (d) in clause 15 (4), in the description of FS, by deleting “the definition in section 3” and substituting the following —

“ section 4A ”.

## ***Division 2 — Superannuation and Family Benefits Act 1938***

### **Principal Act**

**64.** In this Division the *Superannuation and Family Benefits Act 1938*\* is referred to as the principal Act.

[\* *Reprinted as at 9 August 1989.*

*For subsequent amendments see 1992 Index to Legislation of Western Australia, Table 1, p. 205.]*

### **Section 6AA inserted**

**65.** After section 6 of the principal Act the following section is inserted —

“

#### ***De facto spouses***

**6AA.** (1) For the purposes of this Act a man and a woman ordinarily living together as spouses on a *bona fide* domestic basis are to be regarded as spouses.

(2) For the purposes of this Act the relationship is to be regarded as a marriage that took place at the time when the persons commenced to so live together and the cessation of those persons so living together, other than by reason of death, is to be regarded as a divorce.

(3) For the purposes of this section, persons are not to be regarded as having ceased to ordinarily live together as spouses on a *bona fide* domestic basis by reason only of separation due to imprisonment.

(4) The operation of this section is not affected by the fact that, at any relevant time, a person in the relationship that is to be regarded as a marriage may have been legally married to another person.

(5) References in this Act to a person related to another person by marriage (whether it is the marriage of those persons or any other persons) are to be construed as if persons who, under this section, are to be regarded as spouses were married.

(6) Where, as a result of this section —

- (a) more than one person is entitled as a spouse to a benefit under this Act; or
- (b) children of different spouses are entitled to a benefit under this Act,

the Board may determine that the amount of the benefit to which each person is entitled is such portion as it considers just of the benefit that would be payable if there had been only one spouse.

**Section 30 amended**

66. Section 30 of the principal Act is amended in subsection (5) by deleting "ascertained in accordance with the prescribed formula to be" and substituting the following —

"

that the Treasurer, on the advice of an actuary, considers it appropriate to regard as

".

**Section 37A amended**

67. Section 37A of the principal Act is amended —

- (a) in subsection (3a), by deleting "determine that the higher primary unit entitlement formerly held by the contributor" and substituting the following —

"

, in accordance with subsection (3b), determine that a higher primary unit entitlement

";

- (b) by inserting after subsection (3a) the following subsection —

"

(3b) A primary unit entitlement determined by the Board under subsection (3a) may be the primary unit entitlement applicable to —

- (a) the higher rate of salary that the contributor had previously received;

- (b) a notional salary representing the salary from time to time attributable to the post occupied by the contributor immediately before the reduction; or
- (c) some other notional salary that the Board considers appropriate.

”;

and

- (c) in the table to subsection (5), by deleting “80,”.

### **Section 38 amended**

**68.** Section 38 (2) of the principal Act is amended by deleting “shall be held in the Fund” and substituting the following —

“

may, at the discretion of the Board, either be paid to the contributor or be held in the Fund

”.

### **Section 41 amended**

**69.** Section 41 (3a) of the principal Act is amended by deleting “shall be held in the Fund” and substituting the following —

“

may, at the discretion of the Board, either be paid to the contributor or be held in the Fund

”.

### **Section 46B amended**

**70.** Section 46B of the principal Act is amended, in the table to subsection (3), by deleting “80,”.

**Section 62A inserted**

**71.** After section 62 of the principal Act the following section is inserted —

“

**Widow's pension enhanced initially**

**62A.** Where column 2 of Part I of the Sixth Schedule provides for a rate of pension (in this section called “**the reversionary pension**”) to be at the rate of  $\frac{2}{3}$  of a pension referred to in that column (in this section called “**the contributor's pension**”), it is taken to also provide that the reversionary pension is to be at the full rate of, instead of  $\frac{2}{3}$  of, the contributor's pension for the first 7 fortnightly payments of pension.

”

**Section 80 repealed**

**72.** Section 80 of the principal Act is repealed.

**Sixth Schedule amended**

**73.** The Sixth Schedule to the principal Act is amended in Part I —

- (a) by deleting column 5;
- (b) in item 1, by deleting paragraph (a) in column 4; and
- (c) in item 2 —
  - (i) in column 3, by deleting paragraphs (a) and (b) and substituting the following paragraphs —

“

- (a) As from day after former contributor's death if widow then aged 55 or more.

(b) If widow is aged less than 55 on day of former contributor's death and he was aged less than 65 on day of his marriage to her —

(i) as from day she attains age of 55; or

(ii) as from day after former contributor's death if Board satisfied that the marriage was of a *bona fide* nature.

(c) If widow is aged less than 55 on day of former contributor's death and he was aged 65 or more on day of his marriage to her —

(i) as from day she attains age of 55; or

(ii) as from such earlier day after former contributor's death as, in the opinion of the Board, the circumstances of the case warrant.

”  
”

and

(ii) in column 4, by deleting “or on her re-marriage”.

## PART 4 — TRANSITIONAL PROVISIONS

### Definitions

74. In this Part —

“**previous law**” means the principal Act as in force before the transition day;

“**principal Act**” means the *Government Employees Superannuation Act 1987\**;

“**new law**” means the principal Act as amended by this Act;

“**transition day**” means the day on which Part 2 and this Part come into operation.

[\* *Reprinted as at 15 November 1991.*

*For subsequent amendments see 1992 Index to Legislation of Western Australia, Table 1, p. 88.]*

### Continuity of contributory scheme

75. The contributory scheme provided for by the new law is a continuation, with amendments, of the scheme provided for by the previous law so far as it related to contributory members.

### Transfer of former non-contributory members

76. (1) A person who, immediately before the transition day, was a non-contributory member of the scheme provided for by the previous law ceases to be a member of that scheme on the transition day and instead becomes a member of the non-contributory scheme provided for by the new law.

(2) Instead of any entitlement that would have arisen because the person was a non-contributory member of the scheme provided for by the previous law, that person's account as a member of the non-contributory scheme provided for by the new law is to be credited with an amount calculated in accordance with the formula —

$$TB = S \times \frac{3.3}{100} \times \frac{MP}{12} \times D$$

where —

TB is the amount of the credit to be ascertained;

S is the annual salary of the member calculated at the rate at which the member was paid by an employer on the last salary adjustment day before 1 July 1993;

MP is the membership period of the person as a non-contributory member of the scheme under the previous law, expressed in completed months, before 1 July 1992;

D is a factor determined by the Board in accordance with subsection (3).

(3) The Board, on the advice of an actuary, is to determine a factor for the purpose of subsection (2) which is to have the effect that the amount of the credit to be made to the member's account is such that, when the account is credited with interest in accordance with section 38I of the principal Act, it would have the same balance by the time the member attained the age of 55 years as if an interest rate that is 1% lower were used but the factor used were 1.

**Deferred benefits of persons who had previously ceased to be non-contributors**

77. (1) If, immediately before the transition day, a person had an entitlement to a deferred benefit calculated in the manner described in section 35 (4) of the previous law and any part of the membership period from which the benefit arose was not before 1 July 1992 —

- (a) the Board is to obtain advice from an actuary as to the extent to which the entitlement would have to be increased, having regard to section 3 (4) of the principal Act, in order to avoid an individual superannuation guarantee shortfall being incurred under the Commonwealth Act in respect of the person; and
- (b) the entitlement is increased to the extent specified in the advice of the actuary.

(2) If, after 1 July 1992 but before the transition day, a person had become entitled to a deferred benefit calculated in the manner described in section 35 (4) of the previous law and the entitlement had been paid before the transition day, the Board is to —

- (a) obtain the advice of an actuary as to the amount that would have been payable to the person if the transition day had been immediately before the entitlement was paid; and
- (b) if the amount that would have been payable under this section exceeds the amount that was paid, pay the difference between those amounts, with interest calculated at the rate determined under section 38I of the principal Act.

**Deferred benefits of certain persons who had previously ceased to be contributors**

**78.** (1) If, immediately before the transition day, a person had an entitlement to a deferred benefit calculated in the manner described in section 35 (2) (b) of the previous law and any part of the membership period from which the benefit arose was not before 1 July 1992 —

- (a) the Board is to obtain advice from an actuary as to the extent to which the entitlement would have to be increased, having regard to section 3 (4), in order to avoid an individual superannuation guarantee shortfall being incurred under the Commonwealth Act in respect of the person; and
- (b) the entitlement is increased to the extent specified in the advice of the actuary.

(2) If, after 1 July 1992 but before the transition day, a person had become entitled to a deferred benefit calculated in the manner described in section 35 (2) (b) of the previous law and the entitlement had been paid before the transition day, the Board is to —

- (a) obtain the advice of an actuary as to the amount that would have been payable to the person if the transition day had been immediately before the entitlement was paid; and
- (b) if the amount that would have been payable under this section exceeds the amount that was paid, pay the difference between those amounts, with interest calculated at the rate determined under section 38I of the principal Act.

**Minimum benefits, generally**

**79.** (1) If the Board is satisfied, on the advice of an actuary, that any entitlement under the principal Act that has arisen or may arise in the future in respect of a person would have to be increased, having regard to section 3 (4) of that Act, in order to avoid an individual superannuation guarantee shortfall being incurred under the Commonwealth Act in respect of the person, the entitlement is increased to the extent that the actuary specifies is necessary to avoid the shortfall being incurred.

(2) Subsection (1) extends to the case of a member whose entitlement under the principal Act is nil.

(3) If —

- (a) before the transition day, payment has been made of an entitlement under this Act in respect of a person all or any of which relates to a period that was not before 1 July 1992; and
- (b) the Board is satisfied, on the advice of an actuary, that the entitlement would have to be increased, having regard to section 3 (4), in order to avoid an individual superannuation guarantee shortfall being incurred under the Commonwealth Act in respect of the person,

the entitlement is increased to the extent that the actuary specifies is necessary to avoid the shortfall being incurred and the amount of the increase is payable forthwith, with interest calculated at the rate determined under section 38I of the principal Act.

**Certain obligations and entitlements not affected**

**80.** Except as otherwise provided, the previous law continues to apply in relation to contributions in respect of a period before 1 July 1992 and benefits to which a person is entitled under the previous law.

**Certain benefits arising during transitional period**

**81.** If on or after 1 July 1992 but before all of the provisions of this Act commenced, circumstances occurred that would, if all of the provisions of this Act had commenced, have entitled a person to a benefit or payment, the person is entitled to the benefit or payment as if all of the provisions of this Act had already commenced when the circumstances occurred.