

WESTERN AUSTRALIA

**GOVERNMENT EMPLOYEES
SUPERANNUATION AMENDMENT
ACT**

No. 44 of 1989

AN ACT to amend the *Government Employees Superannuation Act 1987*, to vary provision made by that Act for certain retrenched contributors, and to enable the Board to enter into an agreement relating to contributors employed by the Rural and Industries Bank of Western Australia.

[Assented to 28 December 1989]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Government Employees Superannuation Amendment Act 1989*.

Commencement

2. (1) Sections 4 (a) (v), 15 (b), 20 (1) (b) and (c), 22 (a), 31 (a) (ii), 31 (b), 31 (d) and 31 (e) (iii) are deemed to have come into operation on 1 July 1987.

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

Principal Act

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

[*Act No. 25 of 1987; amended by Acts Nos. 83 and 91 of 1987, 52 of 1988 and 5 of 1989.]

Section 3 amended

4. Section 3 of the principal Act is amended—

(a) in subsection (1)—

(i) in the definition of “contributor” and “contributory membership” by inserting after “section 19” the following—

“ or 19A ”;

(ii) by deleting the definition of “employee” and substituting the following definition—

“ “employee” means—

(a) a person who is employed by an employer under a contract of employment, including persons appointed under—

(i) section 30 (1) (a), 40 (1), 42C or 42D of the *Public Service Act 1978*; or

(ii) Part I of the *Police Act 1892*;

(b) a statutory office-holder for the time being declared under subsection (5) to be an employee of an employer for the purposes of this Act; and

(c) an employee on the Governor’s Establishment; ”;

- (iii) in the definition of “entry date”, in paragraph (b), by deleting “election” in the second place where it appears and substituting the following—

“ elections ”;

- (iv) in the definition of “exit date” by deleting “who continues to be an employee of an employer but whose contributory membership terminates under section 19 (1) or (2), “exit date” means the day on which the contributory membership terminates” and substituting the following—

“ whose contributory membership terminates—

(aa) because he or she becomes ineligible under section 17 (3) or (4) for membership of the scheme; or

(bb) by notice of termination lodged with the Board and who does not become a non-contributory member,

“exit date” means the day on which the contributory membership terminates ”;

- (v) in the definition of “final salary”—

(A) by deleting “during” in both places where it appears and substituting the following—

“ in respect of ”; and

(B) by deleting “in the last” and substituting the following—

“ in respect of the last ”;

- (vi) in the definition of “membership period” by inserting after “exit date” the following—

“ , but does not include any period of unrecognized no-pay leave that commences after the day on which section 4 (a) (vi) of the *Government Employees Superannuation Amendment Act 1989* came into operation ”;

and

(b) by inserting after subsection (4) the following subsections—

“ (5) Subject to section 17 (3), the Treasurer may, by order published in the *Gazette*, declare—

- (a) that a person appointed to an office created by a specified provision of a written law is an employee of an employer, either conditionally or unconditionally, for the purposes of this Act; and
- (b) for the purposes of the discharge of the employer’s duties under this Act, the particular person, department or authority that is to be treated as the employer of a particular employee or office-holder or class or description of employees or office-holders; and
- (c) that a person, department or authority declared under paragraph (b) is deemed to be listed in Part B of Schedule 1.

(6) An order under subsection (5)—

- (a) may be amended or revoked by further order published in the *Gazette* but not to the prejudice of any existing member; and
- (b) may specify the day on which the order takes effect, which may be before the day on which the order is published in the *Gazette* and any time after the commencement of this Act.

(7) Subject to subsection (5), a public service department established under the *Public Service Act 1978* in which an employee performs his or her duties is to be treated as the employer of that employee for the purposes of the discharge of the employer’s duties under this Act.

(8) Without limiting subsection (5) (b), where a person appointed to an office created by a specified provision of a written law is declared under subsection (5) (a) to be an employee of an employer, the Government of Western Australia is deemed for the purposes of this Act to be the employer of that person while he holds that office. ”.

Section 4 amended

5. Section 4 of the principal Act is amended—

(a) in paragraph (b)—

(i) in subparagraph (ii) by deleting “relieving” and substituting the following—

“ higher duties ”;

and

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

“ (iv) an allowance that the Board determines, having regard to and consistently with subparagraphs (i) to (iii), is to be treated as salary for the purposes of this Act; and ”;

and

- (b) in paragraph (c)—

- (i) in subparagraph (ii) by deleting “relieving” and substituting the following—

“ higher duties ”;

and

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

“ (vii) an allowance that the Board determines, having regard to and consistently with subparagraphs (i) to (vi), is to be treated as salary for the purposes of this Act. ”.

Section 17 amended

6. Section 17 of the principal Act is amended—

- (a) in subsection (3) by inserting after paragraph (d) the following paragraph—

“ (da) is a member of a superannuation scheme, in the State or elsewhere in Australia, that provides for benefits that are funded wholly or partly by his or her employer; ”;

and

- (b) in subsection (4) by deleting paragraph (b) and substituting the following paragraph—

“ (b) employed on a full-time basis or on a part-time basis under which the employee—

(i) regularly works not less than 35% of the hours worked in a week; or

(ii) works not less than 35% of the hours worked in a year,

by a comparable employee in full-time employment, exclusive of overtime. ”.

Section 19 repealed and sections 19, 19A, and 19B substituted

7. Section 19 of the principal Act is repealed and the following sections are substituted—

Automatic termination of contributory membership

“ 19. If a member who is a contributor ceases under section 17 to be eligible for membership of the scheme, the member thereupon ceases to be a contributor entitled to contribute to the scheme.

Termination of contributory membership by notice

19A. (1) A contributor may at any time terminate his or her membership by lodging with the Board a notice to that effect in a form approved by the Board.

(2) A member who terminates his or her contributory membership under subsection (1) but continues to be eligible to be a member may lodge with the Board in the form approved by the Board an election to become a non-contributor.

Re-entry after termination of contributory membership

19B. (1) Except as provided in subsections (2), (3) and (4), a contributor who terminates his or her membership by notice under section 19A (1) cannot further elect to become a contributor.

(2) A person who has terminated his or her membership by notice under section 19A (1) may further elect to become a contributor if the person is otherwise eligible to be a member and he or she satisfies the Board that—

- (a) the contract of employment applicable to him or her at the time when the notice was lodged has been terminated by resignation, dismissal, discharge or retrenchment; and
- (b) the contract of employment applicable to him or her at the time of the further election to become a contributor is a new contract of employment; and
- (c) that such termination and new contract have not been brought about solely or principally for the purpose of enabling the person to have the benefit of the exception to the prohibition in subsection (1) provided for by paragraphs (a) and (b).

(3) A person who ceased to be a contributor before 1 July 1989 by virtue of a notice given under section 19 (2) of this Act as in force before the commencement of section 7 of the *Government Employees Superannuation Amendment Act 1989* may, subject to subsection (5), further elect to become a contributor if he or she otherwise remains eligible to be a member.

(4) A person who was a contributor on 1 July 1989 may, if he or she—

- (a) has lodged with the Board, during the prescribed period, a notice under section 19A (1) terminating his or her contributory membership; and
- (b) otherwise remains eligible to be a member,

further elect to become a contributor but subject to subsection (5) and not sooner than 2 years after the day on which the notice of termination was lodged with the Board.

(5) The right of election conferred by subsection (3) or (4)—

- (a) is exercisable once and is then spent; and
- (b) does not affect the operation of section 18 (3) to (7) in respect of that election.

(6) For the purposes of subsection (4) (a)—

- (a) the prescribed period in relation to a contributor is the period of 6 months following the day on which the contributor attained the 24 month membership qualification required for a benefit under section 35 (3);
- (b) a notice lodged with the Board before a contributor attained that membership qualification is to be taken to have been lodged during the prescribed period if it expressly states that it does not have effect until the contributor attains that membership qualification; and
- (c) the Board shall treat as valid a notice lodged on or after 1 July 1989 but before the commencement of section 7 of the *Government Employees Superannuation Amendment Act 1989* if the Board is satisfied that the notice is intended to have effect for the purposes of that subsection. ”.

Section 21 repealed and a section substituted

8. Section 21 of the principal Act is repealed and the following section is substituted—

Inward portability

“ 21. (1) In this section—

“portable benefit” means a benefit—

- (a) accrued to a contributor to another superannuation or similar scheme in respect of the period immediately preceding the employment of that person by an employer; 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 as a deferred benefit under this Act or in accordance with subsection (6).

(2) An employee who elects—

- (a) to become a contributor, and whose election is accepted by the Board; or
- (b) to become a non-contributor,

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 member has caused a portable benefit to be paid into the Fund under subsection (2); and
- (b) a benefit under this Act, other than a benefit under section 35 (3) (b), is subsequently payable to the contributor or his personal representative,

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 member has caused a portable benefit to be paid into the Fund under subsection (2) and he or she subsequently becomes entitled to a deferred benefit under section 35 (3) (b), the amount of that benefit is, subject to subsections (5) and (6), payable to him or her as a deferred benefit 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 contributor requests payment within 2 months after an entitlement to a benefit under section 35 (3) (b) arises; and
- (b) the benefit is not a conditional portable benefit,

be paid to the contributor 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 scheme if the Board is satisfied that under the rules of that other scheme the amount so paid can only be paid out of that scheme as a deferred benefit.

(7) For the purposes of subsection (6), a deferred benefit is one that cannot be paid to a member before he or she attains the age of 55 or retires, whichever last occurs, except in the event of the member's earlier death or disability. ”.

Section 22 amended and application provision

9. (1) Section 22 of the principal Act is amended—

(a) in subsection (5)—

(i) by deleting “payable to the contributor on the first mentioned adjustment day” and substituting the following—

“ determined in accordance with subsection (5a) ”;
and

(ii) by deleting “subsection (6)” and substituting the following—

“ subsections (6) and (6a) ”;

(b) by inserting after subsection (5) the following subsection—

“ (5a) For the purposes of subsection (5) the amount of salary is that payable to the contributor on—

(a) the 1st day of the penultimate month before the month in which the contributor’s birthday falls if that birthday is on any of the first 15 days of that month; and

(b) in every other case, the 16th day of the penultimate month referred to in paragraph (a). ”;

(c) in subsection (6) by deleting “not less than 3 months before an adjustment day” and substituting the following—

“ during the period allowed under subsection (6a) ”;

(d) by inserting after subsection (6) the following subsection—

“ (6a) An election under subsection (6) has effect in respect of contributions payable on and after an adjustment day if it is made before or not later than the allowed period after that day, which period is 3 months or such other period as the Board may in a particular case allow on the grounds of financial hardship. ”;

and

- (e) by repealing subsection (8) and substituting the following subsection—

“ (8) The contributions of a contributor shall continue to be payable until the last superannuation fortnight before the contributor—

(a) ceases to be a contributory member of the scheme;
or

(b) ceases to be an employee,

whichever first occurs. ”.

(2) Contributions calculated before the commencement of subsection (1) (a) (i) and (b) in accordance with the principal Act as amended by those provisions are deemed to be and always to have been validly calculated if they would have been validly calculated had those provisions been in force.

Section 23 amended

10. Section 23 of the principal Act is amended—

- (a) by repealing subsections (1), (2) and (3) and substituting the following subsections—

“ (1) Subject to subsections (2) and (3a) a contributor who is on leave of absence—

(a) must contribute to the scheme in respect of the period of leave to the same extent as if not on leave; and

(b) must make contributions to the Board in advance or within 7 days after the end of each superannuation fortnight.

(2) Notwithstanding subsection (1), a contributor who is on maternity or paternity leave, sick leave or other leave of absence of a prescribed description may if the period of leave is for 3 months or more either—

(a) contribute to the scheme to the same extent as if not on leave; or

(b) within one month of the commencement of the leave, elect to suspend contributions in respect of superannuation fortnights within the period of leave.

(3) Notwithstanding section 51, an election under subsection (2) is irrevocable.

(3a) Without limiting section 23A, a contributor who is on unrecognized no-pay leave is not entitled to contribute in respect of the period of such leave. ”;

(b) in subsection (4) (c) by deleting “a period not exceeding the length of the period of leave” and substituting the following—

“ the allowed period ”;

and

(c) by repealing subsection (5) and substituting the following subsections—

“ (5) The allowed period under subsection (4) (c) is a period not exceeding the length of the leave or such other period as the Board may in a particular case allow on the grounds of financial hardship.

(6) If any contribution that is payable under this section by a contributor is not paid before a benefit becomes payable to or in respect of that contributor, the Board shall—

(a) calculate the benefit as if those contributions had been paid; and

(b) deduct the amount unpaid (including interest payable under subsection (4) (c)) from the benefit. ”.

Section 23A inserted

11. After section 23 of the principal Act the following section is inserted—

Death and disability cover for unrecognized leave

“ 23A. The Board may, subject to such terms and conditions as it thinks fit and on payment of such amount in lieu of contributions as it may determine, grant to a contributor, in respect of a period of unrecognized no-pay leave, an exemption

from the operation of paragraph (c) of section 31 (1) and paragraph (cc) of each of sections 32 (1) and 33 (1), and a person to whom such an exemption is granted is not subject to the exclusion in those paragraphs in respect of that period. ”.

Section 24 amended

12. Section 24 of the principal Act is amended by repealing subsection (3) and substituting the following subsections—

“ (3) Where—

- (a) the employment of a contributor who is employed on a part-time basis is increased, or becomes full-time employment; and
- (b) there is a reasonable expectation on the part of the employer and the contributor that the increase or the full-time employment is not of a temporary nature,

the contributions of the contributor shall, if the Board so determines and subject to subsections (3a) and (3b), be varied with effect from the first complete superannuation fortnight after the Board’s determination to take into account the salary payable to the contributor after the increase.

(3a) If the employment of a contributor employed on a part-time basis is increased and contributions are varied under subsection (3), the Board may require the contributor to comply with section 18 (3) (a) and (b) as if he or she had lodged an election under section 18 (1) and, if it does so, section 18 (5) and (7) applies, with all necessary changes, but only in respect of the increased employment.

(3b) If the Board makes a determination to vary the contributions of a contributor under subsection (3) in reliance on a statement made by an employee relevant to that employee’s health or medical history and that statement is false to the knowledge of the employee or misleading because it omitted material matter of which the employee at any time had knowledge, the Board may revoke the determination or vary it so as to impose one of the conditions referred to in section 18 (5). ”.

Section 25 amended

13. Section 25 of the principal Act is amended by repealing subsection (3).

Section 26 repealed and a section substituted

14. Section 26 of the principal Act is repealed and the following section is substituted—

Contributions and benefits on salary reduction

“ 26. (1) If the salary of a contributor is reduced, the contributor shall, notwithstanding section 22 (3) but subject to subsection (2), contribute to the scheme at his or her elected rate applied to the amount of the reduced salary.

(2) If the Board is satisfied that the reduction of salary is not attributable to the misconduct or inefficiency of the contributor the Board may permit the contributor to contribute at his or her elected rate applied to the amount of—

- (a) the former salary so long as that salary exceeds the actual salary of the contributor;
- (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.

(3) If a contributor contributes to the scheme under subsection (2), any benefits provided to or in respect of the contributor shall be assessed as if the salary attributed to the contributor under that subsection were his or her salary during the period for which contributions under that subsection were made.

(4) Subsections (1) and (2) do not affect a contributor's right to vary a contribution rate under section 22.

(5) This section does not apply to a reduction of salary that arises from a variation of employment—

- (a) from a full-time basis to a part-time basis; or
- (b) by which the number of hours worked in part-time employment is decreased. ”.

Section 27 amended

15. Section 27 of the principal Act is amended—

(a) by repealing subsection (2) and substituting the following subsection—

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

(a) is or is deemed to be listed in Part B of Schedule 1, 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 this section contributions to the Fund in respect of the salary of the member so seconded. ”;

(b) by inserting after subsection (2), the following subsection—

“ (2a) Employer contributions in respect of a non-contributory member shall be—

(a) adjusted on the day that would be an adjustment day for that member; and

(b) calculated on the amount of salary on which his or her contributions would be calculated,

under section 22 if he or she were a contributory member. ”;

(c) in subsection (6) by deleting ”, except where the Treasurer authorizes, on such terms as to payment of interest or otherwise as the Treasurer may direct, the deferment of a specified payment by a specified employer” and substituting the following—

“ unless payment is deferred under subsection (7) ”;

and

(d) by inserting after subsection (6) the following subsection—

“ (7) The Treasurer may by instrument in writing allow the deferral of payment due under subsection (6) 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* applies to such an instrument as if it were subsidiary legislation. ”.

Section 30 amended

16. Section 30 of the principal Act is amended—

(a) by repealing subsection (1) and substituting the following subsection—

“ (1) The benefit provided by this section is payable by the Board to a member who after attaining the age of 55 years ceases to be an employee of an employer and is not entitled by reason of that cessation to any other benefit under this Act. ”;

(b) in subsection (3) by deleting “Subject to subsection (4), the” and substituting the following—

“ The ”;

and

(c) by repealing subsection (4).

Section 31 amended

17. Section 31 of the principal Act is amended—

(a) in subsection (1) (c) by inserting before “a contributory member” the following—

“ subject to section 23A, ”;

and

(b) by inserting after subsection (1) the following subsection—

“ (1a) Subsection (1) is subject to the further exception that where a contributory member’s contributions were varied under section 24 (3)—

(a) conditionally on limitation of death and disability benefits as to part of the member’s employment and he or she dies in circumstances where the Board is not satisfied that the cause of the contributor’s death was not due to or did not arise from the physical or mental defect or condition that was the reason for the conditional variation; or

- (b) on condition that no death or disability benefit is payable as to part of the member's employment,

the part of the benefit provided by this section that corresponds to that part of the member's employment is not payable. ”.

Section 32 amended

18. Section 32 of the principal Act is amended—

- (a) in subsection (1) (cc) by inserting before “a contributory member” the following—

“ subject to section 23A, ”;

and

- (b) by inserting after subsection (1) the following subsection—

“ (1a) Subsection (1) is subject to the further exception that where a contributory member's contributions were varied under section 24 (3)—

- (a) conditionally on limitation of death and disability benefits as to part of the member's employment and the Board is not satisfied that the cause of the contributor's incapacity to perform his or her duties was not due to or did not arise from the physical or mental defect or condition that was the reason for the conditional variation; or

- (b) on condition that no death or disability benefit is payable as to part of the member's employment,

the part of the benefit provided by this section that corresponds to that part of the member's employment is not payable. ”.

Section 33 amended

19. Section 33 of the principal Act is amended—

- (a) in subsection (1) (cc) by inserting before “a contributory member” the following—

“ subject to section 23A, ”;

and

(b) by inserting after subsection (1) the following subsection—

“ (1a) Subsection (1) is subject to the further exception that where a contributory member’s contributions were varied under section 24 (3)—

(a) conditionally on limitation of death and disability benefits as to part of the member’s employment and the Board is not satisfied that the cause of the contributor’s incapacity to perform his or her duties was not due to or did not arise from the physical or mental defect or condition that was the reason for the conditional variation; or

(b) on condition that no death or disability benefit is payable as to part of the member’s employment,

the part of the benefit provided by this section that corresponds to that part of the member’s employment is not payable. ”.

Section 35 amended and transitional provision

20. (1) Section 35 of the principal Act is amended—

(a) by repealing subsection (1) and substituting the following subsection—

“ (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) in the case of a contributor, where his or her contributory membership terminates in circumstances where no other benefit is payable to the member under this Part. ”;

(b) in subsection (3) by inserting after “24 months” the following—

“ or to whom subsection (5) applies ”;

(c) by inserting after subsection (4) the following subsection—

“ (5) If—

- (a) the employment of an employee who is a contributor ceases on account of the resignation of the employee;
- (b) the membership period of the contributor is less than 24 months; and
- (c) within 3 months after that employment ceases he or she becomes a contributory member of another public sector superannuation scheme in respect of which no agreement is in force under section 57,

the membership period of that contributor is deemed for the purposes of subsection (3) to be not less than 24 months. ”;

and

(d) by inserting after subsection (5) the following subsections—

“ (6) Where the amount of a benefit under this section does not exceed \$500, or such other amount as is prescribed, the benefit shall be paid to the person entitled but without interest under this section and notwithstanding that it is provided that the benefit is a deferred benefit.

(7) Notwithstanding section 51, an exercise of an option under subsection (3) is irrevocable. ”.

(2) Notwithstanding section 35 of the principal Act, the Board shall, as soon as is practicable after the commencement of subsection (1) (d), pay each deferred benefit held by it at the commencement of that subsection to the person entitled, together with interest accrued under that section to the date of payment, if the amount of the benefit at the time when it arose did not exceed \$500.

Section 37 amended

21. Section 37 of the principal Act is amended in subsection (1) by deleting “and enters other employment”.

Section 38 amended

22. Section 38 of the principal Act is amended—

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

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

(aa) ceases to be an employee of an employer after attaining the age of 55 years; ”;

and

(b) by repealing subsections (2) and (3) and substituting the following subsections—

“ (2) The Board shall, when a member or former member who is entitled to a deferred benefit attains the age of 55 years, send a written notice to the person’s last known address setting out the effect of subsection (1) (a) and (aa).

(3) If—

(a) a person has an entitlement to a deferred benefit under section 35 (3) (b);

(b) that entitlement arose from the termination of the person’s contributory membership by a notice referred to in subsection (4) of section 19B; and

(c) the person—

(i) subsequently elects under that subsection to become a contributor and the election is accepted by the Board; or

(ii) becomes a non-contributory member,

the entitlement to the deferred benefit ceases to exist, but the former contributions to the scheme, elected rates of contributions and contributory period of that contributor shall be taken into account in relation to any further benefit that may become payable to or in respect of that contributor.

(4) If—

(a) a person has an entitlement to a deferred benefit under section 35 (3) (b) or 35 (4); and

- (b) that entitlement arose from the cessation of employment with an employer,

the entitlement to the deferred benefit is not affected by the fact that the person lodges a further election to become, and is again accepted as, a contributory or non-contributory member but—

- (aa) in calculating any further deferred benefit on the cessation of employment with an employer the definition of “final salary” in section 3 shall be read as if “exit date” in that definition referred to the day on which that cessation of employment with an employer occurred; and

- (bb) the 24 month membership qualification required for a benefit under section 35 (3) in respect of that contributory membership runs from the time when that election takes effect.

(5) If a person has entitlement to more than one deferred benefit referred to in subsection (4) that subsection applies to each of those deferred benefits separately. ”.

Section 40 repealed and sections 40 and 40A substituted

23. Section 40 of the principal Act is repealed and the following sections are substituted—

Interest on benefits

“ 40. (1) Where a provision of this Act provides for a benefit to include interest payable in respect of some amount, the interest shall, subject to this Act, accrue until the date of payment of the benefit.

(2) Where a benefit, other than a benefit to which subsection (1) applies, becomes payable, the Board may pay interest on the amount of the benefit for such period as it thinks fit 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 1%.

(3) Subject to this Act, the Board shall determine the manner in which interest is calculated for the purposes of this Act.

Disposal of unclaimed benefits

40A. Any law of general application requiring the payment of unclaimed moneys to the Consolidated Revenue Fund shall not apply to unclaimed benefits, the amount of which shall remain within the Fund. ”.

Section 46 amended

24. Section 46 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting “and” after the semicolon in paragraph (a);

and

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

“ (aa) the notional period referred to in section 31 (2) as “NP” were a period expressed in complete months that bears the same proportion to the period that would have been the notional period but for this paragraph as the number of hours customarily worked in the relevant period referred to in section 17 (4) (b) by the contributor bears to the number of hours worked in that period (exclusive of overtime) by a comparable employee in full-time employment. ”;

and

(b) in subsection (2) (b) by inserting after “31 (5)” the following—

“ as “NP” ”.

Section 47 amended

25. Section 47 of the principal Act is amended by inserting after “non-contributory member” the following—

“ immediately ”.

Section 48 repealed and a section substituted

26. Section 48 of the principal Act is repealed and the following section is substituted—

Amendment of Schedule 1

“ 48. (1) The Treasurer may, by order published in the *Gazette*, amend Schedule 1.

(2) An order under subsection (1) may be made—

- (a) to take effect on a day specified in the order, whether or not the day specified is earlier than the day of publication of the order in the *Gazette*;
- (b) to provide for the inclusion of an employer in Schedule 1 with such limitations as are specified in the order, being limitations that do not operate to the prejudice of any existing member. ”.

Section 52A inserted

27. After section 52 of the principal Act the following section is inserted—

Treasurer's instructions

“ 52A. (1) The Treasurer may prepare and issue, and amend, instructions to employers with respect to the principles, practices and procedures to be observed by employers for the efficient functioning of the scheme.

(2) Instructions issued under this section must not be inconsistent with this Act.

(3) Instructions may be issued under this section—

(a) so as to apply—

(i) at all times or at a specified time;

(ii) to all employers or to specified employers;

- (b) so as to require a matter affected by the instructions to be—
 - (i) in accordance with a specified requirement;
 - (ii) approved by or to the satisfaction of a specified person or body or a specified class of person or body;
- (c) so as to confer a discretionary authority on a specified person or body or a specified class of person or body;
- (d) so as to empower the Treasurer to supplement the requirements of the instructions by written direction issued generally, or in a particular case, or to resolve a particular issue that has arisen; and
- (e) so as to provide, or to empower the Treasurer to provide by written direction, in a specified case or class of case for the exemption of employers or a class of employers from the provisions of the instructions, whether unconditionally or on specified conditions or conditions additionally imposed and either wholly or to such an extent as is specified or otherwise determined.

(4) Subject to this Act, every employer shall comply with instructions issued under this section.

(5) In subsection (3) “specified” means specified in the instructions. ”.

Section 56A inserted

28. After section 56 of the principal Act the following section is inserted—

Restriction on establishment of schemes by public authority

“ 56A. (1) A public authority that is empowered or required by a written law to establish a superannuation scheme for the benefit of its employees, whether the power is in specific or general terms, shall not exercise the power or perform the duty except—

- (a) with the approval of the Treasurer; and
- (b) on such terms and conditions as the Treasurer may specify.

(2) Subsection (1) has effect notwithstanding a provision, express or implied, in a written law, but does not affect the operation of a superannuation scheme that was established before the commencement of section 28 of the *Government Employees Superannuation Amendment Act 1989*.

(3) In subsection (1) “public authority” means a public statutory body established by or under a written law. ”.

Section 59 amended

29. Section 59 of the principal Act is amended by deleting “any” and substituting the following—

“ are ”.

Schedule 3 amended

30. Schedule 3 to the principal Act is amended—

(a) in clause 4, by inserting after “done” in each place where it appears the following—

“ or omitted to be done ”;

and

(b) in clause 5 in subclauses (4) and (5) by inserting after “(1)” in each place where it appears the following—

“ , (2) ”.

Schedule 4 amended

31. Schedule 4 to the principal Act is amended—

(a) in clause 1 (1)—

(i) in the definition of “election to transfer” by deleting “or 7” and substituting the following—

“ , 7 or 7A ”;

and

(ii) in the definition of “final salary”—

(A) by deleting “during” in both places where it appears and substituting the following—

“ in respect of ”;

and

(B) by deleting “in the last” and substituting the following—

“ in respect of the last ”;

(b) in clause (1) by inserting after subclause (2) the following subclause—

“ (2a) A reference in this Schedule to contributions made to the S and FB scheme shall be taken to exclude an amount paid by the State to the Fund as contributions on behalf of a transferred contributor under section 20 (3) of the *Perth Mint Act 1970*, notwithstanding that section 22 (1) of that Act deemed the contributor to have completed payment of those contributions. ”;

(c) by inserting after clause 7 the following clause—

Further option of S and FB subscribers
and contributors to transfer to scheme

“ 7A. (1) Every person who on 1 January 1990 is—

(a) an S and FB contributor who is contributing under the S and FB Act for units of pension;

(b) a subscriber or contributor to the Provident Account; or

(c) an S and FB contributor who has made an election under section 60AA (1) of the S and FB Act and has not become eligible for a pension under that Act,

may, in the manner and on the terms provided for by this clause, elect to transfer from the S and FB scheme and become a contributor to the scheme under this Act.

(2) An election to transfer by a person to whom subclause (1) applies—

- (a) must be signed by that person;
- (b) must be lodged with the Board not later than 31 March 1990; and
- (c) when so lodged is irrevocable, notwithstanding section 51,

but the Treasurer may exercise the power described in clause 9 in respect of an election to transfer under this clause lodged with the Board after 31 March 1990. ”;

(d) in clause 11 (1), by deleting “amount of the contributions made by that contributor to the S and FB scheme” and substituting the following—

“ total of the amounts of—

- (a) the contributions made by that contributor to the S and FB scheme; and
- (b) the interest referred to in clauses 12 (2) (a) (i), 13 (2) (a) and 13 (3) (a) ”;

(e) in clause 13—

(i) in subclause (4) by deleting paragraphs (a) and (b) and substituting the following paragraphs—

“ (a) whichever one of the following benefits is payable under subclause (5)—

- (i) the benefit provided under subclause (3); or
- (ii) the benefit provided under subclause (3) but payable as a deferred benefit together with a continuation of compound interest as provided for by subclause (3);

and

- (b) subject to subclause (6), a deferred benefit being an amount calculated in accordance with the formula—

$$\text{DTCB} = \text{FS} \times \frac{\text{TS}}{12} \times \frac{\text{C}}{5} \times \frac{12}{100}$$

where—

DTCB represents the amount of the deferred benefit of the transferred contributor to be ascertained;

FS represents the contributor's final salary ascertained in accordance with the definition in clause 1;

TS represents the number of complete months of the contributor's transferred service;

C represents the contributor's average contribution rate ascertained in accordance with the definition in section 3,

together with compound interest on that amount calculated with effect from the prescribed day 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 1%. ”;

- (ii) by inserting after subclause (4) the following subclauses—

“ (5) The benefit referred to in subclause (4) (a) (i) is payable in the case of—

(a) a transferred contributor who was a contributor on 1 July 1989 and who lodged with the Board a notice referred to in section 19B (4) (a);

(b) a transferred contributor, not coming within paragraph (a), who lodges with the Board a notice under section 19A (1) and who in that notice opts for that benefit; and

- (c) any other transferred contributor who comes within subclause (1) and who opts for that benefit,

but otherwise the benefit referred to in subclause (4) (a) (ii) is payable in the case of a transferred contributor who lodges a notice under section 19A (1) or who otherwise comes within subclause (1).

(6) The benefit referred to in subclause (4) (b) is not payable in the case of a transferred contributor who under subclause (5) (b) has opted for the benefit referred to in subclause (4) (a) (i).

(7) For the purposes of subclause (4) (b) the prescribed day—

- (a) in relation to a deferred benefit of a transferred contributor who has made a further election under section 19B (4) to become a contributor is the day on which that election is accepted by the Board; and
- (b) in relation to any other deferred benefit, the exit date of the transferred contributor or where a transferred contributor has more than one exit date, the first of those exit dates. ”; and

(iii) by inserting after subclause (7) the following subclause—

“ (8) If—

- (a) the employment of an employee who is a transferred contributor ceases on account of the resignation of the employee;
- (b) the membership period of the transferred contributor is less than 24 months; and
- (c) within 3 months after that employment ceases he or she becomes a contributory member of another public sector superannuation scheme in respect of which no agreement is in force under section 57,

the membership period of that transferred contributor is deemed for the purposes of subclause (4) to be not less than 24 months. ”;

(f) by inserting after clause 14 the following clause—

Entry to scheme of part-time employee who becomes ineligible under S and FB scheme

“ 14A. (1) If an employee—

- (a) ceases to be a contributor within the definition of that term in section 6 (1) of the S and FB Act and that cessation occurs because the employee is no longer required by the terms of the employment to give his or her whole time to the duties of the employment as mentioned in that definition;
- (b) is eligible for membership of the scheme; and
- (c) within 6 months after the cessation referred to in paragraph (a) lodges with the Board an election under section 18 to become a contributor which is accepted by the Board,

the employee is deemed to be a transferred contributor within the meaning of clauses 12 and 13.

(2) For the purposes of clauses 12 and 13 the transferred service of the contributor is—

- (a) the full-time service of the contributor completed before the election under subclause (1) takes effect; and
- (b) that number of complete months of full-time service that the Board considers equivalent to the number of months of part-time service so completed,

being service that constituted service for the purposes of the S and FB Act. ”;

(g) in clause 15 (3), by deleting “provisions for benefits in section 34” and substituting the following—

“ provision for a benefit in section 34 (1) and (2) (a) ”;

and

(h) by repealing clause 16 and substituting the following clause—

Deemed employers

“ 16. The Curtin University of Technology and the Western Australian College of Advanced Education shall for the purposes of this Act be deemed to be employers listed in Part B of Schedule 1 with respect only to their respective employees who—

- (a) on the commencement of this Act are S and FB contributors and under this Schedule elect to transfer from the S and FB scheme and become contributors to the scheme under this Act; or
- (b) become employees after the commencement of this Act, were contributors under this Act in their previous employment, and comply with section 20. ”.

Variation of benefit in respect of certain retrenched contributors

32. (1) In respect of any transferred contributor who is retrenched before 1 January 1990 and who opts or has opted for a benefit under section 35 (3) (b) the provisions of clause 13 of Schedule 4 to the principal Act do not apply but that clause shall instead be read, as from the commencement of the principal Act, as if it provided for—

- (a) the amount of one of the following benefits at the option of the contributor—
 - (i) the benefit provided for under subclause (3) of that clause; or
 - (ii) the benefit provided under subclause (3) of that clause but payable as a deferred benefit together with a continuation of compound interest as provided for by that subclause;

and

- (b) a deferred benefit being an amount calculated in accordance with the formula—

$$\text{DTCB} = \text{FS} \times \frac{\text{TS}}{12} \times \frac{\text{C}}{5} \times \frac{12}{100}$$

where—

DTCB represents the amount of the deferred benefit of the transferred contributor to be ascertained;

FS represents the contributor's final salary ascertained in accordance with the definition in Clause 1;

TS represents the number of complete months of the contributor's transferred service;

C represents the contributor's average contribution rate ascertained in accordance with the definition in section 3,

together with compound interest on that amount calculated with effect from the exit date of the transferred contributor 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 1%.

(2) The provisions of subsection (1) extend to a person who becomes a transferred contributor by operation of clause 7A inserted in Schedule 4 of the principal Act by section 31 (c) and for that purpose subsection (1) shall be read as if—

- (a) the date "1 January 1990" were "1 April 1992"; and
- (b) the passage " , as from the commencement of the principal Act," did not appear in the subsection.

R & I Bank employees—transfer to Bank scheme

33. (1) The Board may, with the approval of the Treasurer, enter into an agreement with the person or persons responsible for the management of the scheme established for the benefit of employees of the Rural and Industries Bank of Western Australia (“the Bank scheme”) to provide—

- (a) for an employee who is a contributor under the *Superannuation and Family Benefits Act 1938* or the *Government Employees Superannuation Act 1987* to have an option to terminate his or her status as a contributor under that Act and transfer to the Bank scheme; and
- (b) for matters that are incidental to any such transfer.

(2) In subsection (1) “agreement” includes a further agreement varying—

- (a) the original agreement; or
- (b) a previous variation agreement.

(3) An agreement under subsection (1)—

- (a) may relate to events that have occurred or to things done before the commencement of this section;
- (b) shall include provision by which the Board is liable to pay from the Fund (as defined in the principal Act) to the Bank scheme amounts—
 - (i) for contributions paid by employees who transfer to that scheme together with interest on those amounts; and
 - (ii) for employer contributions paid by the Bank in respect of employees who so transfer, discounted for insurance cover provided and administration costs incurred by the Board.

(4) If there is any issue relating to the transfer referred to in subsection (1) that cannot be settled by agreement between the Board and the person or persons responsible for the management of the Bank scheme either the Board or such person or persons may refer the issue for determination by the Treasurer and the Treasurer’s determination of the issue shall be given effect to.