

WESTERN AUSTRALIA

# GOVERNMENT EMPLOYEES SUPERANNUATION ACT 1987

(No. 25 of 1987)

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WESTERN AUSTRALIA

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# GOVERNMENT EMPLOYEES SUPERANNUATION ACT

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No. 25 of 1987

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**AN ACT to provide a superannuation scheme for employees of the Government and certain public authorities; to constitute the Government Employees Superannuation Board; to constitute and provide for the administration and investment of the Government Employees Superannuation Fund and for connected purposes.**

*[Assented to 26 June 1987]*

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

## PART I—PRELIMINARY

### Short title

1. This Act may be cited as the *Government Employees Superannuation Act 1987*.

### **Commencement**

2. This Act shall come into operation on a day to be fixed by proclamation.

### **Interpretation**

3. (1) In this Act unless the contrary intention appears—

“actuary” means a Fellow of the Institute of Actuaries of Australia or any other person of whose actuarial knowledge and experience the Governor approves;

“adjustment day” has the meaning given in section 22 (4);

“average contribution rate” in relation to a contributor, is the lesser of 5% or the percentage rate calculated in accordance with the formula—

$$R = \frac{P}{N}$$

where—

R represents the rate to be calculated;

P represents the sum of the elected rates paid or payable in respect of each superannuation fortnight for which a contribution has been paid or is payable by the contributor;

N represents the number of superannuation fortnights for which contributions have been paid or are payable by the contributor and, in the case of a contributor who suspends contributions within the period of leave under section 23 (2), includes the number of superannuation fortnights for which contributions are suspended;

“Board” means the Government Employees Superannuation Board established by section 5;

“benefit” means benefit payable under this Act;

“chairman” means the chairman of the Board;

“contributor” and “contributory membership” include an employee who has elected to contribute to the scheme and whose election to contribute has been accepted by the Board unconditionally or conditionally and an employee who has under Schedule 4 lodged an election to transfer to the scheme with the Board, but excludes a person whose contributory membership has ceased under section 19;

“contributory period” in relation to a contributor, means the number of completed months in respect of which the contributor has contributed to the scheme;

“death benefit” is a benefit payable under section 31;

“deferred benefit” is a benefit under this Act the payment of which is deferred and is payable in accordance with section 38;

“deputy chairman” means the deputy chairman (if a person is so appointed) of the Board;

“disability benefit” is a benefit payable under section 32 or 33;

“elected rate” in relation to the contributions payable to the Fund by a contributor for a particular period, means the percentage rate of salary elected by the contributor under section 22 having effect in respect of that period;

“employed in a permanent capacity” in relation to an employee, means regularly employed in the ordinary work of the employer in circumstances which justify an expectation that, subject to good conduct and efficiency, the employment will be continuous and permanent, and excludes casual employment;

“employee” means a person who is employed by an employer under a contract of employment;

“employer” means—

- (a) the Government of Western Australia;
- (b) a Minister of the Crown in right of the State; or
- (c) an authority listed in Schedule 1,

and a reference to employment by an employer includes a reference to employment by successive employers;

“entry date” in relation to a member, means the date as at which the member’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 election;

“exit date” in relation to a member, means the day on which the member ceases employment with an employer, that cessation of employment being—

- (a) the only such cessation of employment of the member; or
- (b) where there has been more than one such cessation of employment of the member the later or latest of them,

except that, in relation to a contributor 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;

“final salary” except in Schedule 4, means, in relation to a member, the average annual salary paid to the member during the membership period of 2 years immediately preceding the member’s exit date calculated by dividing by 2 the total salary paid to the member in the last 52 complete fortnightly pay periods preceding the member’s exit date (or the equivalent number if the member’s pay periods are of another duration) or where the membership period is less than 2 years, means the average annual salary calculated in accordance with the formula—

$$AS = TS \times \frac{26}{NP}$$

where—

- AS represents the average annual salary to be ascertained;
- TS represents the total salary paid to the member during pay periods taken into account in NP;
- NP represents the number of complete fortnightly pay periods within the member’s membership period or the equivalent number if the member’s pay periods are of another duration.

“Fund” means the Government Employees Superannuation Fund established, maintained and managed by the Board in accordance with this Act;

“member” means a member of the scheme whether a contributor or a non-contributor;

“membership period” in relation to a member, means the period that commences on the member’s entry date and ends on the member’s exit date;

“non-contributor” and “non-contributory member” mean an employee who has elected to become a non-contributory member of the scheme;

“retrench” in relation to a member, means compulsorily terminate the employment of the member by an employer where the termination is expressed to be on the ground that—

- (a) the employment of the member is not necessary and his or her position is not to be filled;
- (b) the work for which the member was engaged is finished;  
or
- (c) the quantity of work required by the employer to be undertaken has diminished and has rendered necessary a reduction in the number of employees;

“salary” in relation to a member, means salary determined in accordance with section 4;

“scheme” means the scheme of superannuation and other benefits provided for by this Act for and in respect of certain employees of employers;

“spouse” in relation to a deceased member, means—

- (a) if the deceased member was survived by a widow or widower, the widow or widower, as the case may be, of the member; or
- (b) if the deceased member was not survived by a widow or widower—
  - (i) where the member was a man and, at the time of his death, he was living with a woman as his wife on a *bona fide* domestic basis, the woman with whom he was so living; or
  - (ii) where the member was a woman and, at the time of her death, she was living with a man as her husband on a *bona fide* domestic basis, the man with whom she was so living;

“superannuation fortnight” means the period of a fortnight prescribed as the first superannuation fortnight for the purposes of this Act and every succeeding period of a fortnight;

“the Acts” means this Act and the *Superannuation and Family Benefits Act 1938*;

“unrecognized no-pay leave” means leave of absence without pay which the employer has not undertaken to recognize as a period during which leave and other employee benefits may accrue.

(2) A reference in this Act to interest at the CPI rate shall be construed as a reference to the rate of interest determined by the Board in accordance with the following paragraphs—

- (a) in this subsection, “Index” means the table described as the Consumer Price Index Numbers (All Groups Index) for Perth published by the Commonwealth Statistician under the *Census and Statistics Act 1905* of the Commonwealth;
- (b) the CPI rate shall be determined before each 1 July to take effect for the following year from 1 July to 30 June;
- (c) the percentage rate determined under paragraph (b) shall be that which the Board declares to be the percentage by which the Index for the quarter ending in March of the current year is greater than the Index for the quarter ending in March of the previous year; and
- (d) if the Index for the quarter ending in March of the current year is not greater than the Index for the quarter ending in March of the previous year, the CPI rate for the following year from 1 July shall be nil.

(3) Where an employee is retired from employment by an employer, the employee is retired for the purposes of this Act on the day when the termination of employment is effective without regard to the day when the employer acted to terminate the employment.

(4) References in the definition of “final salary” in subsection (1) to salary paid to the member shall, in relation to any period for which the member was not paid full salary, be taken to include any amount of money that may be deemed by the Board for the purposes of that definition to have been paid as salary to the member.

## Salary

4. Subject to this section, for the purposes of this Act “salary” in relation to a member—

- (a) includes any remuneration or benefit by way of salary, wages or allowance that is payable in money to the member in the

member's capacity as an employee and is certified by the member's employer, or by a person duly authorized to do so on behalf of the employer, to be so payable, and to be likely to continue to be so payable, while the employee continues to occupy the position he or she occupies at the time of the certification;

(b) includes—

- (i) an expense of office allowance of a kind that is subject to income tax;
- (ii) a relieving allowance that has been paid continuously for 12 months;
- (iii) a shift allowance payable and likely to continue to be payable for not less than 3 out of every 4 weeks while the employee occupies the position for which the allowance is payable;
- (iv) an allowance prescribed for the purposes of this paragraph; and

(c) does not include—

- (i) an amount paid for overtime or as a bonus or as an allowance instead of overtime;
- (ii) except to the extent that this section otherwise provides, a relieving allowance;
- (iii) an allowance for travelling, subsistence or other expenses;
- (iv) an amount paid for rent or as a residence, housing or quarters allowance;
- (v) a climatic allowance or an allowance for equipment;
- (vi) an amount paid as compensation in lieu of the opportunity for private practice;
- (vii) an allowance prescribed for the purposes of this paragraph.

## PART II—THE GOVERNMENT EMPLOYEES SUPERANNUATION BOARD

### **The Board**

5. (1) There is established a board to be called the Government Employees Superannuation Board.

(2) The Board is a body corporate with perpetual succession and a common seal and, subject to this Act, is capable of—

- (a) acquiring, holding and disposing of real and personal property;

- (b) suing and being sued; and
- (c) doing and suffering all that bodies corporate may do or suffer.

(3) The Board shall consist of—

- (a) a chairman who shall be appointed subject to subsection (6) of this section by the Governor on the recommendation of the Treasurer for a term of not more than 5 years after consulting such unions or associations of unions as appear to the Treasurer to be broadly representative of employees;
- (b) 3 persons appointed by the Governor for a term of not more than 5 years as representatives of the employers; and
- (c) 3 persons elected in accordance with the regulations as representatives of the members.

(4) Schedule 2 has effect with respect to elections and the elected members of the Board.

(5) All members of the Board shall hold their offices on a part-time basis.

(6) Employees of the Board shall not be eligible for appointment as the chairman.

### **Functions of the Board**

6. (1) The Board shall—

- (a) determine policies for the administration of the Acts having regard to the need for equity among members and beneficiaries under this Act and among contributors and beneficiaries under the *Superannuation and Family Benefits Act 1938*;
- (b) adopt strategies to achieve its policy objectives;
- (c) ensure that decisions and operations of the Board are directed towards achieving its objectives;
- (d) ensure that members and contributors under the Acts are kept informed about the Board's operations; and
- (e) ensure that the Board operates effectively and efficiently.

(2) Schedule 3 has effect with respect to the constitution and proceedings of the Board.

## Remuneration

7. A member of the Board is entitled to such remuneration and allowances as the Minister from time to time determines on the recommendation of the Public Service Board.

## Staff and consultants

8. (1) There may be appointed from time to time under and subject to the *Public Service Act 1978* such persons as may be required for the purposes of assisting the Board in the effective administration of the Acts.

(2) The Board may appoint and employ on such terms and conditions as it thinks fit persons to whom the *Public Service Act 1978* does not apply.

(3) The Board may engage under contract for services such professional, technical or other assistance as the Board considers necessary to assist it in the effective administration of the Acts.

## PART III—THE GOVERNMENT EMPLOYEES SUPERANNUATION FUND

### Establishment of Fund

9. (1) There shall be a Fund, to be known as the Government Employees Superannuation Fund, which shall, subject to this Act, be maintained and managed by the Board.

(2) The Board shall cause to be paid or credited to the Fund—

- (a) contributions made by employers and contributors;
- (b) income derived from the investment of the Fund and any profit made from realisation of any investment of the Fund;
- (c) moneys constituting the Superannuation Fund established under the *Superannuation and Family Benefits Act 1938*;
- (d) moneys borrowed for the purposes of the Fund; and
- (e) any other amounts payable to the Fund.

(3) The Board shall cause to be paid from the Fund—

- (a) the costs of the administration of the Acts;
- (b) the benefits payable under this Act; and
- (c) any other amounts payable from the Fund under this Act or under the *Superannuation and Family Benefits Act 1938*.

### Accounts and records

10. (1) The Board shall establish and maintain within the Fund such accounts as, in the opinion of the Board, are necessary or convenient for the management of the Fund, and its separate elements, and the administration of the Acts.

(2) The Board may maintain its accounts and other records in or upon any medium, or combination of mediums, capable of recording information and may, from time to time, vary the manner or form in which the accounts or other records are maintained.

(3) The income arising from the investment of the Fund shall be apportioned by the Board in its accounts between the elements of the Fund relating to the scheme under this Act and the scheme under the *Superannuation and Family Benefits Act 1938* in the same proportions as the amount each such element bears to the total amount.

### Actuarial investigation of Fund

11. (1) An actuary appointed by the Board shall carry out an investigation as to the state and sufficiency of the Fund and its separate elements as at the date that is 12 months after the commencement of this Act and at such dates, not being less than once in every 3 years, as may subsequently be directed by the Treasurer.

(2) The actuary shall complete an investigation and report the result to the Board not later than one year after the date as at which the investigation is to be made and if the actuary is unable to complete and report on an investigation within that period the actuary shall inform the Treasurer of the reasons for the delay and the Treasurer may extend the period as he thinks fit.

**Application of *Financial Administration and Audit Act 1985***

12. The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Board and its operations.

**Investment of the Fund**

13. (1) The Board shall manage the Fund so as to maximize returns and shall have regard to the continuing need—

- (a) to exercise care and prudence to maintain the integrity of the Fund; and
- (b) to provide for the payment of benefits under the Acts.

(2) Moneys standing to the credit of the Fund may, until otherwise required for the purposes of the Acts and with the approval of the Treasurer, be invested by the Board in any manner in which the Board thinks fit.

(3) The Treasurer may give approval for the purposes of subsection (2) in such manner and at such times as he thinks fit and may require the Board to submit for approval specific investments or classes of investments or the Treasurer may issue guidelines to be followed by the Board as to the range of permitted investments or the limits to be adhered to in relation to specified investments or kinds of investments.

(4) The Board may, on such terms and conditions as the Board thinks fit, appoint a person approved by the Treasurer as investment manager for the Board.

(5) The Board may delegate to such an investment manager the powers and duties of the Board under this section with respect to all or part of the moneys of the Fund available for investment and investments made by such an investment manager shall not require the approval of the Treasurer.

(6) Whether or not the Board appoints an investment manager, it must conduct a review every 3 months of its broad investment policy and the management and performance of its investments.

**Power to borrow**

**14.** (1) Subject to this Act, the Board may, for the purpose of performing its functions and with the specific approval of the Treasurer,—

- (a) borrow, or re-borrow, moneys;
- (b) obtain credit; or
- (c) arrange for financial accommodation to be extended to the Board in ways additional to or other than borrowing moneys or obtaining credit.

(2) Any moneys borrowed by, credit obtained by, or financial accommodation extended to, the Board under this section may be raised or entered into, either in Australia or elsewhere, as one loan or transaction or as several loans or transactions.

(3) The Treasurer may, on the application of the Board and on such terms and conditions as the Treasurer thinks fit, lend moneys to the Board.

(4) The Board may give security for the purposes of this section and may create and execute such mortgages, charges, liens, bills or other debt paper and may encumber the property of the Board, or any part of such property, as the Board thinks fit.

**Treasurer's guarantees**

**15.** (1) The Treasurer on behalf of the State may guarantee the performance by the Board, in the State or elsewhere, of any obligation of the Board, however or wherever arising, entered into or to be entered into by the Board.

(2) An instrument of guarantee given pursuant to subsection (1) shall be executed by—

- (a) the Treasurer; or
- (b) a person authorized—
  - (i) by the Treasurer in writing; or
  - (ii) by operation of law.

(3) The liability of the State pursuant to a guarantee under this section shall not be affected or discharged by the granting to the Board of any time or other indulgence or consideration, or by reason of any transaction that may take place between the Board and any person having the benefit of the guarantee, or by any other act or omission of the person having the benefit of the guarantee, whereby the liability of the State as guarantor would but for this provision have been affected or discharged.

(4) The due performance of a guarantee given by the Treasurer on behalf of the State under the authority of this Act is hereby authorized, and the due payment of moneys payable thereunder with all interest thereon shall be payable out of the Consolidated Revenue Fund which is hereby to the extent necessary appropriated accordingly, and any sums received or recovered by the Treasurer from the Board or otherwise in respect of payment so made shall be paid into the Consolidated Revenue Fund.

(5) The Treasurer may by notice in writing served on the Board require the Board to pay such fees, if any, in respect of a guarantee arising by virtue of subsection (1) as the Treasurer thinks fit, and shall pay any such fees recovered or received from the Board into the Consolidated Revenue Fund.

### **Recovery of money owing to Fund**

**16.** (1) The Board may recover any money owing to the Fund by a contributor, employer, beneficiary or other person, together with interest as provided by subsection (3)—

- (a) except in the case of unpaid contributions, as a debt in a court of competent jurisdiction;
- (b) where any amount is, or becomes, payable from the Fund to the contributor, employer, beneficiary or other person, by deduction from that amount; or
- (c) in the case of a contributor who is an employee, by deduction from the contributor's salary in accordance with subsection (2) by such instalments, and at such times, as the Board determines.

(2) An employer shall, at the written request of the Board, make deductions from a contributor's salary as referred to in subsection (1) (c) and pay the amount to the Board, and an amount so deducted and paid shall be deemed to have been paid to the Fund by the contributor from whose salary the deduction was made.

(3) Interest at a rate from time to time determined by the Board is payable, unless the Board decides otherwise, on any amount owing to the Fund calculated from the date on which the amount becomes due for payment until the date on which the amount is recovered under subsection (1) or is otherwise paid.

#### PART IV—MEMBERSHIP OF THE SCHEME

##### Eligibility for membership

17. (1) Subject to this section, a person who is an employee of an employer is eligible to elect to become a member of the scheme.

(2) A member may be a contributor or a non-contributor.

(3) A person is not eligible for membership of the scheme if the person—

- (a) is a judge or other person with an entitlement or an expectation of an entitlement to a pension under the *Judges' Salaries and Pensions Act 1950*;
- (b) is receiving a pension under the *Superannuation and Family Benefits Act 1938*, other than as a widow or widower of a contributor under that Act;
- (c) is a contributor for units of pension under the *Superannuation and Family Benefits Act 1938*, or a subscriber or contributor to the Provident Account under that Act, or a person who has made an election under section 60AA of that Act;
- (d) is a contributor to a public sector (including local government) superannuation scheme in the State or elsewhere in Australia;
- (e) although eligible under subsection (4) (b)—
  - (i) receives remuneration that includes a component in substitution for superannuation; or
  - (ii) is already a member of the scheme by virtue of other full-time employment;
- (f) is receiving or has received invalid or disability benefits under a public sector (including local government) superannuation scheme in the State or elsewhere in Australia, except that the Board may, where it thinks fit, decide that this paragraph shall not apply to a particular person; or
- (g) is a member of a class of persons prescribed for the purposes of this section.

(4) Subject to subsection (3), an employee is eligible for membership of the scheme if—

(a) employed by an employer—

(i) in a permanent capacity; or

(ii) for a continuous period of not less than 12 months or in circumstances where the employer and the employee have a reasonable expectation that the employment will be for a continuous period of not less than 12 months; and

(b) employed on a full-time basis or on a part-time basis under which the employee regularly works not less than 35% of the hours worked in a week (exclusive of overtime) by a comparable employee in full-time employment.

### **Election to become a member**

**18.** (1) An employee who is eligible for membership of the scheme may lodge with the Board an election—

(a) to become a contributor; or

(b) to become a non-contributor.

(2) An employee who is a non-contributor may at any time lodge with the Board an election to become a contributor.

(3) In the case of an election to become a contributor, the Board may require the employee—

(a) to undergo a medical examination (or examinations) and provide information relevant to the employee's health and medical history; and

(b) to procure and submit to the Board a medical report as the Board may require.

(4) Where upon consideration of an election to become a contributor and any medical report or other information submitted to the Board, the Board is satisfied that the employee is not suffering from any physical or mental defect or condition that is likely to prevent the employee from satisfactorily performing his or her duties until attaining the age of 60 years, the Board shall accept the election.

(5) Where upon consideration of an election to become a contributor and any medical report or other information submitted to the Board, the Board is not satisfied that the employee is not suffering from any physical or mental defect or condition that is likely to prevent the employee from satisfactorily performing his or her duties until attaining the age of 60 years, the Board may accept the election subject to the condition that—

- (a) the death or disability benefit available to or in respect of the employee is limited; or
- (b) no death or disability benefit is available to or in respect of the employee.

(6) If the Board accepts an election to become a contributor in reliance on a statement made by an employee relevant to that employee's health or medical history and that statement was 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 acceptance or vary the acceptance so as to impose one of the conditions referred to in subsection (5).

(7) Where the Board accepts an election to become a contributor subject to one of the conditions referred to in subsection (5) and subsequently the contributor furnishes evidence to the satisfaction of the Board that his or her mental and physical health are such as to justify the removal or variation of the condition previously imposed, the Board may, upon application by that contributor, remove the condition imposed or may remove a condition that no death or disability benefit is available and impose instead a condition that the death or disability benefit available to or in respect of the contributor is limited.

(8) An election to become a non-contributor can not have effect before 1 January 1988.

### **Cessation of contributory membership**

**19.** (1) If a member who is a contributor ceases under section 17 to be eligible for membership of the scheme, the member shall thereupon cease to be a contributor entitled to contribute to the scheme.

(2) A contributor may at any time lodge with the Board a notice, in a form approved by the Board, terminating his or her contributory membership.

(3) A member who terminates his or her contributory membership under subsection (2) 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.

(4) A contributor who lodges with the Board a notice under subsection (2) terminating his or her contributory membership but remains eligible (but for this subsection) to be a member may not further elect to become a contributor until 2 years after the date on which the notice of termination was lodged with the Board.

### **Transfer of contributors between employers**

**20.** (1) A member who ceases to be an employee of one employer and becomes an employee of another employer without a break in service shall continue to be a member.

(2) A member who ceases to be an employee of one employer and becomes an employee of another employer after a break in service not exceeding 3 months during which period the member did not engage in any employment or occupation may elect to continue to be a member of the scheme by lodging a notice to that effect with the Board and his or her membership of the scheme shall continue subject to compliance with the following conditions—

- (a) all contributions and interest refunded and paid to the member shall be repaid to the Board together with interest at a rate determined by the Board;
- (b) the period of the break in service shall not be taken into account in the assessment of any entitlement to a benefit;
- (c) no contributions may be paid during or in respect of the period of the break in service;
- (d) any election made by the member on the cessation of his or her employment for a deferred benefit shall be treated as void; and
- (e) a declaration made by the employee to the effect that his or her health has not altered in a material respect since the date when employment ceased shall be submitted to the Board.

**Inward portability**

**21.** (1) An employee who elects to become a contributor and whose election is accepted by the Board may pay or cause to be paid into the Fund the benefit that employee has accrued and is entitled to receive in lieu of a pension or other benefits as a contributor to another superannuation or similar scheme or fund during the period immediately preceding the employment of that employee by an employer.

(2) Where a contributor has paid or caused to be paid into the Fund an amount under this section and 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 shall include the amount that the contributor paid or caused to be paid under this section into the Fund 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%.

(3) Where a contributor has paid or caused to be paid into the Fund an amount under this section and a deferred benefit under section 35 (3) (b) is subsequently payable to the contributor or his personal representative, the deferred benefit shall include the amount that the contributor paid or caused to be paid under this section into the Fund 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 1%.

**PART V—CONTRIBUTIONS BY MEMBERS****Rates and payment of members' contributions**

**22.** (1) Subject to this section, a contributor may elect to contribute to the scheme at the rate of 3%, 4% or 5% of salary and, subject to subsections (6) and (7), may not contribute at any other rate.

(2) The contributions of a contributor shall be payable at the elected rate from the first complete superannuation fortnight that occurs after the election is lodged with the Board and shall be calculated with respect to the amount of salary payable to the contributor and rounded up or down to the nearest whole dollar.

(3) The amount of a contributor's contribution payable under subsection (2) with respect to the first complete superannuation fortnight shall be payable also in respect of every ensuing superannuation fortnight until but not including the first superannuation fortnight following the next adjustment day of the contributor.

(4) The birthday of a contributor shall be his or her adjustment day for the purposes of this Act, except that no adjustment day shall occur before the expiry of 6 months after the commencement of this Act.

(5) Contributions payable for the first superannuation fortnight beginning on or after an adjustment day and for every ensuing superannuation fortnight until but not including the first superannuation fortnight after the next adjustment day shall be calculated with respect to the amount of salary payable to the contributor on the first mentioned adjustment day and if the contributor so elects, may be adjusted as to the rate of contributions in accordance with subsection (6).

(6) A contributor may, not less than 3 months before an adjustment day, elect to contribute at a rate of 3%, 4%, 5%, 6% or 7% of salary whether the new rate is higher or lower than the rate at which the contributor has been contributing and an election under this subsection shall be given effect to under subsection (5), except that a contributor with an average contribution rate of 5% may not elect to contribute at a rate of 6% or 7% of salary.

(7) If a contributor contributes at a rate of 6% or 7% of salary for a number of superannuation fortnights that produces an average contribution rate of 5%, the contribution rate shall with effect from the next superannuation fortnight be reduced to 5% of salary.

(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;
- (b) ceases to be an employee; or
- (c) attains the age of 65 years,

whichever first occurs.

(9) An election to contribute at a particular rate shall be taken to be authority for the employer to deduct amounts at that rate, or any lower rate that may become applicable under subsection (7), from the contributor's salary and to remit the amounts so deducted to the Board.

(10) An employer must remit to the Board the amount of contributions deducted from contributors' salaries within 7 days of the end of the superannuation fortnight to which the contributions relate.

### **Contributions for periods of leave**

**23.** (1) A contributor who is on leave of absence on full pay or pay that is less than full pay must contribute to the scheme in respect of that period of leave to the same extent as if not on leave and must make contributions to the Board in advance or within 7 days after the end of each superannuation fortnight.

(2) Notwithstanding subsection (1) but subject to subsection (3), a contributor who is on maternity or paternity leave, sick leave or other leave of absence of a prescribed description may either contribute to the scheme to the same extent as if not on leave or, within one month of the commencement of the leave, elect to suspend contributions in respect of superannuation fortnights within the period of leave.

(3) A contributor who is on leave of absence without pay for a period not exceeding 3 months must contribute to the scheme in respect of that period of leave to the same extent as if not on leave.

(4) A contributor who is on leave of absence without pay and who is required or entitled to contribute to the scheme in respect of that period of leave may—

- (a) make contributions in advance;
- (b) make contributions within 7 days after the end of each superannuation fortnight; or
- (c) defer the making of contributions until the contributor resumes duty when the amount of the contributions in arrear, together with interest at a rate determined from time to time by the Board, may be paid over a period not exceeding the length of the period of leave.

(5) Subject to subsection (3), a contributor who is on unrecognized no-pay leave is not entitled to contribute in respect of the period of such leave.

**Contributions of part-time employees**

24. (1) Calculation of the contributions of a contributor who is employed on a part-time basis shall be based on the actual salary payable to the contributor and not the salary payable to a comparable full-time employee.

(2) If the employment of a contributor employed on a full-time basis is varied to employment on a part-time basis, the contributions of the contributor shall, with effect from the first complete superannuation fortnight after the variation of the employment basis, be varied to take into account the actual salary payable to the contributor.

(3) If the terms of employment of a contributor who is employed on a part-time basis are varied so that a different proportion of full-time employment is provided for, the variation shall be given effect to for the purposes of this Act on the contributor's next adjustment day.

(4) A contributor who is employed on a full-time or part-time basis in more than one employment by one or more employers may not contribute to the scheme to a greater extent than would be permissible under the scheme if the contributor were employed full-time in any one of such employments.

**Contributions of seconded contributor**

25. (1) If a contributor is seconded to the employment of another employer or another Government, public authority or local government, the contributions of the contributor shall be calculated in accordance with section 22, but the contributor's salary shall be taken to be the salary payable in respect of the employment from which the contributor was seconded or the employment to which the contributor is seconded, whichever is the higher.

(2) If a contributor is seconded to employment other than employment to which subsection (1) refers, the contributions of the contributor shall be calculated in accordance with section 22, but the contributor's salary shall be taken to be the salary payable in respect of the employment from which the contributor was seconded.

(3) If the circumstances of the secondment of a contributor are such that section 27 requires employer contributions to be paid to the Board in respect of that contributor for the period of secondment and such contributions are for any reason not paid to the Board, the contributor is not entitled to contribute to the scheme for that period.

(4) A contributor who is seconded to other employment may not contribute or otherwise participate in or benefit from a superannuation scheme administered by or for employees of that employment.

### **Contributions and benefits on salary reduction**

**26.** (1) Notwithstanding section 22 (3), if the salary of a contributor is reduced, the contributor may after the reduction—

- (a) contribute to the scheme at the rate previously elected by the contributor applied to the amount of the reduced salary; or
- (b) if the Board is satisfied that the reduction of salary is not attributable to the misconduct or inefficiency of the contributor and permits the contributor to do so, contribute to the scheme at the rate previously elected by the contributor applied to a notional salary of the amount representing from time to time the amount of the salary attributable to the post occupied by the contributor immediately before the reduction or such other notional salary as the Board considers appropriate.

(2) If a contributor contributes to the scheme under subsection (1) (b), any benefits provided to or in respect of the contributor shall be assessed as if the notional salary attributed to the contributor under that provision was his or her salary during the period that contributions under that subsection were made.

(3) Subsection (1) does not apply where the salary of a contributor is reduced by reason only of the loss of an allowance that constituted salary for the purposes of section 4, but if the salary of a contributor is so reduced, the contributor shall, after the reduction and notwithstanding section 22 (3), contribute to the scheme at the rate previously elected by the contributor applied to the amount of the reduced salary.

(4) Subsections (1) and (3) shall not be construed so as to affect a contributor's right to vary a contribution rate under section 22.

PART VI—CONTRIBUTIONS BY CERTAIN EMPLOYERS AND THE  
STATE

**Employers' contributions**

27. (1) An employer listed in Part B of Schedule 1 must pay to the Board in accordance with this section contributions to the Fund in respect of the salaries of all contributory members and non-contributory members who are employees of that employer.

(2) In the case of members who are seconded to employment, other than where the employer to whose employment the member is seconded is listed in Part A of Schedule 1, the employer to whose employment the member is seconded must pay to the Board in accordance with this section contributions to the Fund in respect of the salaries of all contributory members and non-contributory members so seconded.

(3) The Treasurer may, from time to time after consultation with an actuary, inform the Board in writing of the percentages of salary declared to be appropriate for the purposes of assessing employers' contributions under this section and the Treasurer may declare different percentages to apply in respect of different employers.

(4) Until a declaration is made by the Treasurer under subsection (3), contributions to be made to the Fund by an employer shall be at the rate of 12% of the salaries of contributory members who have elected to contribute at the rate of 5% of their salaries (and proportionately less or more in respect of contributory members who have elected to contribute at the rate of 3%, 4%, 6% or 7% of their salaries) and 3% of the salaries of non-contributory members.

(5) The Board shall assess amounts payable under this section by employers and in so doing shall take into account the percentages of salary applicable under subsection (3) or (4).

(6) The Board shall at the end of every period of 3 months notify in writing every employer to whom this section applies of the amount payable under this section in respect of that period and payments must be made to the Board by employers within 7 days of receiving notice of the amount payable, 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.

### Regulations as to funding of benefits

**28.** (1) The Governor may make regulations with respect to the funding of benefits payable under this Act and in particular—

- (a) apportioning responsibility for the funding of benefits including interest that are to be met from the Fund and prescribing the respective obligations as to funding that are to be met from the Fund without reimbursement and those that are to be met by way of payment or reimbursement to the Fund from the Consolidated Revenue Fund and by certain employers; and
- (b) prescribing when payments to the Fund are to be made for the purpose of satisfying funding obligations.

(2) The Consolidated Revenue Fund is hereby appropriated to the extent necessary to meet payments required by regulations under subsection (1) to be made from the Consolidated Revenue Fund to the Fund for the purpose of funding benefits payable under this Act.

### Benefits guaranteed by the State

**29.** Payment of every benefit to which a member or other person is entitled under this Act is guaranteed by the Treasurer on behalf of the State and to the extent necessary for the purpose payment shall be paid out of the Consolidated Revenue Fund which is hereby appropriated accordingly.

## PART VII—BENEFITS

### Age retirement benefit

**30.** (1) The benefit provided by this section is payable by the Board to a member where the member retires from employment with an employer at any time after attaining the age of 55 years.

(2) The benefit provided by this section in relation to a contributory member is an amount calculated in accordance with the formula—

$$AB = FS \times \frac{CP}{12} \times \frac{C}{5} \times \frac{20}{100}$$

where—

AB represents the amount of the age retirement benefit of the contributor to be ascertained;

FS represents the contributor's final salary ascertained in accordance with the definition in section 3;

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

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

(3) Subject to subsection (4), the benefit provided by this section in relation to a non-contributory member is an amount calculated in accordance with the formula—

$$AB = FS \times \frac{MP}{12} \times \frac{3.3}{100}$$

where—

AB represents the amount of the age retirement benefit of the non-contributor to be ascertained;

FS represents the final salary of the non-contributor ascertained in accordance with the definition in section 3;

MP represents the membership period of the non-contributor expressed in completed months.

(4) The benefit provided by subsection (3) in relation to a non-contributory member cannot exceed the amount that would be provided for when the member attains the age of 65 years.

## **Death benefit**

**31.** (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, except that no benefit is payable under this section in respect of—

- (a) a contributory member whose election to become a contributor was accepted by the Board conditionally on limitation of death and disability benefits and who 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 acceptance of the contributor's election to become a contributor;

- (b) a contributory member whose election to become a contributor was accepted on condition that no death or disability benefit is payable;
- (c) a contributory member who dies while on unrecognized no-pay leave for the period of which the member is not entitled to contribute to the scheme; or
- (d) a non-contributory member who dies while on unrecognized no-pay leave.

(2) The benefit provided by this section in relation to a contributory member whose election to become a contributor was accepted unconditionally by the Board and who dies before attaining the age of 60 years is an amount calculated in accordance with the formula—

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

where—

- DB represents the amount of the death benefit of the contributor to be ascertained;
- FS represents the contributor's final salary ascertained in accordance with the definition in section 3;
- CP represents the contributor's contributory period expressed in completed months;
- NP represents the period expressed in complete months from the date of death of the contributor to the date when the contributor would have attained the age of 60 years;
- C represents the contributor's average contribution rate ascertained in accordance with the definition in section 3.

(3) The benefit provided by this section in relation to a contributory member whose election to become a contributor was accepted unconditionally by the Board and who dies after attaining the age of 60 years is an amount calculated in accordance with the formula—

$$DB = FS \times \frac{CP}{12} \times \frac{C}{5} \times \frac{20}{100}$$

where—

- DB represents the amount of the death benefit of the contributor to be ascertained;
- FS represents the contributor's final salary ascertained in accordance with the definition in section 3;
- CP represents the contributor's contributory period expressed in completed months;
- C represents the contributor's average contribution rate ascertained in accordance with the definition in section 3.

(4) The benefit provided by this section in relation to a contributory member whose election to become a contributor was accepted by the Board conditionally on limitation of death and disability benefits and where the Board is 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 acceptance of the contributor's election to become a contributor is an amount calculated in accordance with the formula in subsection (2) (if death occurred before the contributor attained the age of 60 years) or subsection (3) (if death occurred after the contributor attained the age of 60 years) as the case may be.

(5) The benefit provided by this section in relation to a non-contributory member who dies before attaining the age of 60 years is an amount calculated in accordance with the formula—

$$DB = FS \times \frac{(MP + NP)}{12} \times \frac{3.3}{100}$$

where—

- DB represents the amount of the death benefit of the non-contributor to be ascertained;
- FS represents the non-contributor's final salary ascertained in accordance with the definition in section 3;
- MP represents the membership period of the non-contributor expressed in completed months;
- NP represents the period expressed in complete months from the date of death of the non-contributor to the date when the non-contributor would have attained the age of 60 years.

(6) The benefit provided by this section in relation to a non-contributory member who dies after attaining the age of 60 years is an amount calculated in accordance with the formula—

$$DB = FS \times \frac{MP}{12} \times \frac{3.3}{100}$$

where—

DB represents the amount of the death benefit of the non-contributor to be ascertained;

FS represents the non-contributor's final salary ascertained in accordance with the definition in section 3;

MP represents the membership period of the non-contributor expressed in completed months.

### **Total and permanent disability benefit**

**32.** (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 the member would be suited as a result of retraining; and
- (c) the member applies for the benefit within 12 months after retirement,

except that no benefit is payable under this section to—

- (aa) a contributory member whose election to become a contributor was accepted by the Board conditionally on limitation of death and disability benefits and where 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 acceptance of the contributor's election to become a contributor;

- (bb) a contributory member whose election to become a contributor was accepted on condition that no death or disability benefit is payable;
- (cc) a contributory member who is retired from employment while on unrecognized no-pay leave for the period of which the contributor is not entitled to contribute to the scheme; or
- (dd) a non-contributory member who is retired from employment while on unrecognized no-pay leave.

(2) The benefit provided by this section is an amount calculated in accordance with section 31 (2), (4) or (5), as the circumstances may require, as if the member had died on the date on which he was retired from the employment of an employer.

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

**33.** (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) a total and permanent disability benefit is not payable to the member under section 32; and
- (c) the member applies for the benefit within 12 months after retirement,

except that no benefit is payable under this section in respect of—

- (aa) a contributory member whose election to become a contributor was accepted by the Board conditionally on limitation of death and disability benefits and where 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 acceptance of the contributor's election to become a contributor;
- (bb) a contributory member whose election to become a contributor was accepted on condition that no death or disability benefit is payable;

- (cc) a contributory member who is retired from employment while on unrecognized no-pay leave for the period of which the contributor is not entitled to contribute to the scheme; or
- (dd) a non-contributory member who is retired while on unrecognized no-pay leave.

(2) The benefit provided by this section is whichever is the greater of—

- (a) an amount that bears the same proportion to the amount that would have been payable to the member if he or she were eligible for a total and permanent disability benefit under section 32 as the amount of the difference between the member's salary at the date of retirement and the salary that the Board considers the member has the capacity to earn after retirement bears to the amount of the member's salary before retirement; or
- (b) an amount calculated—
  - (i) in the case of a contributory member, in accordance with the formula—

$$\text{PPDB} = \text{FS} \times \frac{\text{CP}}{12} \times \frac{\text{C}}{5} \times \frac{20}{100}$$

where—

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

FS represents the contributor's final salary ascertained in accordance with the definition in section 3;

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

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

- (ii) in the case of a non-contributory member, in accordance with the formula—

$$\text{PPDB} = \text{FS} \times \frac{\text{MP}}{12} \times \frac{3.3}{100}$$

where—

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

FS represents the non-contributor's final salary ascertained in accordance with the definition in section 3;

MP represents the membership period of the non-contributor expressed in completed months.

(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.

### **Termination benefit on death or disability**

34. (1) The benefit provided by this section is payable by the Board—

- (a) to the personal representative of the member, or if appropriate in accordance with section 44 or 45, where a member who is not entitled to a death benefit under section 31 dies during employment with an employer; or
- (b) to a member where the Board is satisfied that the member was retired on the ground of physical or mental incapacity to perform his or her duties, but a benefit is not payable under section 32 or 33.

(2) The benefit provided by this section in relation to a contributory member is—

- (a) an amount calculated in accordance with the formula—

$$\text{TB} = \text{FS} \times \frac{\text{CP}}{12} \times \frac{\text{C}}{5} \times \frac{20}{100}$$

where—

TB represents the amount of the termination benefit of the contributor under this paragraph to be ascertained;

FS represents the contributor's final salary ascertained in accordance with the definition in section 3;

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

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

and

- (b) where the contributor dies or is retired before attaining the age of 60 years, an amount calculated in accordance with the formula—

$$TB = FS \times \frac{NP}{12} \times \frac{3.3}{100}$$

where—

TB represents the amount of the termination benefit of the contributor under this paragraph to be ascertained;

FS represents the contributor's final salary ascertained in accordance with the definition in section 3;

NP represents the period expressed in complete months from the death or retirement of the contributor to the date when the contributor would have attained or would attain the age of 60 years.

- (3) The benefit provided by this section in relation to a non-contributory member is an amount calculated in accordance with the formula—

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

where—

TB represents the amount of the termination benefit of the non-contributor to be ascertained;

FS represents the non-contributor's final salary ascertained in accordance with the definition in section 3;

MP represents the membership period of the non-contributor expressed in completed months.

**Benefit on resignation, dismissal, discharge  
or termination of contributory membership**

35. (1) The benefit provided by this section is payable by the Board to a member where, before attaining the age of 55 years, the member resigns, is dismissed or is discharged from employment with an employer or, if a contributor, his or her contributory membership terminates in circumstances where no other benefit is payable to the member under this Part.

(2) The benefit provided by this section for a contributor with a membership period of less than 24 months is—

- (a) the amount of the contributions made to the scheme by the contributor together with compound interest on those contributions calculated 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%; and
- (b) a deferred benefit being an amount calculated in accordance with the formula—

$$DB = FS \times \frac{CP}{12} \times \frac{3.3}{100}$$

where—

DB represents the deferred benefit of the contributor to be ascertained;

FS represents the contributor's final salary ascertained in accordance with the definition in section 3; and

CP represents the contributor's contributory period expressed in completed months,

together with compound interest on that amount calculated 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) The benefit provided by this section for a contributor with a membership period of not less than 24 months is, at the option of the contributor—

- (a) the benefit provided for under subsection (2); or
- (b) a deferred benefit being an amount calculated in accordance with the formula—

$$DB = FS \times \frac{CP}{12} \times \frac{C}{5} \times \frac{20}{100}$$

where—

DB represents the amount of the deferred benefit to be ascertained;

FS represents the contributor's final salary ascertained in accordance with the definition in section 3;

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

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 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%.

(4) The benefit provided by this section for a non-contributor is a deferred benefit being an amount calculated in accordance with the formula—

$$DB = FS \times \frac{MP}{12} \times \frac{3.3}{100}$$

where—

DB represents the deferred benefit of the non-contributor to be ascertained;

FS represents the non-contributor's final salary ascertained in accordance with the definition in section 3;

MP represents the membership period of the non-contributor expressed in completed months,

together with compound interest on that amount calculated 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%.

**Benefit on retrenchment**

**36.** (1) The benefit provided by this section is payable by the Board to a member where, before attaining the age of 55 years, the member is retrenched by his or her employer and no other benefit is payable to the member under this Part.

(2) The benefit provided by this section for a contributor (regardless of the length of the contributor's contributory period) is the same as the benefit provided for a contributor under section 35 (3).

(3) The benefit provided by this section for a non-contributor is the same as that provided for a non-contributor under section 35 (4).

**Outward portability**

**37.** (1) Where a member becomes entitled to a deferred benefit calculated in the manner described in section 35 (2) (b) (in the case of a contributory member) or section 35 (4) (in the case of a non-contributory member) and enters other employment, the member may request the Board to pay the amount of that deferred benefit to another superannuation scheme.

(2) If the terms of the other superannuation scheme are such that the deferred benefit, if transferred, cannot be paid to the 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, the Board shall transfer the amount accordingly.

**Deferred benefits**

**38.** (1) Subject to section 37, where a deferred benefit is provided for by this Act, the benefit is payable by the Board when the member or former member, as the case may be—

- (a) attains the age of 55 years;
- (b) dies; or
- (c) satisfies the Board of his or her inability to work on the ground of physical or mental incapacity,

whichever occurs first.

(2) The Board shall notify a member or former member of entitlement to a deferred benefit when the member or former member attains the age of 55 years by sending a written notice to that person's last known address.

(3) If a person who has an entitlement to a deferred benefit under section 35 (3) (b) lodges an election to become a contributor that is accepted by the Board, 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.

### **Calculation of benefit of seconded member**

**39.** (1) If a member is seconded to the employment of another employer or another Government, public authority or local government, the member's salary shall, for the purpose of calculating the amount of a benefit payable to or in respect of the member, be taken to be the salary payable in respect of the employment from which the member was seconded or the employment to which the member is seconded, whichever is the higher.

(2) If a member is seconded to employment other than employment to which subsection (1) refers, the member's salary shall, for the purpose of calculating the amount of a benefit payable to or in respect of the member, be taken to be the salary payable in respect of the employment from which the member was seconded.

(3) If the circumstances of the secondment of a contributor are such that section 27 requires employer contributions to be paid to the Board in respect of that contributor for the period of secondment and such contributions are for any reason not paid to the Board, the contributor's salary shall, for the purpose of calculating the amount of a benefit payable to or in respect of the contributor, be taken to be the salary payable in respect of the employment from which the contributor was seconded.

**Calculation of interest and disposal of unclaimed 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 be calculated in the manner determined by the Board and, subject to this Act, shall accrue until the date of payment of the benefit or the expiry of 3 months after the entitlement to payment of the benefit arises, whichever occurs first.

(2) For the purposes of subsection (1) and without prejudice to section 38 (1), an entitlement to payment of a deferred benefit shall be deemed to arise when the entitled member attains the age of 65 years.

(3) Notwithstanding subsection (1), the Board may in a particular case extend the period during which interest may accrue after the entitlement to payment of a benefit arises.

(4) 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.

**Payment of benefit where beneficiary incapable**

41. (1) Where after obtaining and considering such medical or other advice as the Board considers necessary the Board is of the opinion that a person to whom a benefit is payable is incapable of managing his or her own affairs by reason of illness, the Board may—

- (a) withhold payment of the benefit;
- (b) pay all or part of the benefit to the person's committee or manager;
- (c) pay all or part of the benefit to be applied wholly for the care, maintenance, benefit and support of the person to whom, but for this section, the benefit would be payable or any other person dependent on him or her.

(2) A payment made under subsection (1) (b) or (c) shall be deemed to have been made to the person entitled to the benefit.

**Payment where beneficiary bankrupt**

42. (1) Where the person to whom a benefit is payable is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy, the benefit is, subject to this section, forfeited.

(2) The Board may pay an amount or amounts, not exceeding in total the amount of the benefit, to or for the benefit of the person who but for this section would have been entitled to the benefit or to any dependant of such person.

**Assignment etc. of benefit**

43. (1) A purported assignment of, or purported charge over, a benefit is void.

(2) Where, but for this subsection, a benefit would pass by operation of law to a person other than the person to whom the benefit is payable under this Act, the benefit does not so pass.

(3) A benefit payable upon the death of a member is not an asset in the member's estate that is applicable in payment of the debts and liabilities of the deceased member.

**Payment without grant of probate or administration**

44. (1) Where a member or former member dies and—

- (a) a benefit not exceeding \$10 000 (or, where some other amount is prescribed for the purposes of this paragraph, that other amount) is payable from the Fund;
- (b) production to the Board of probate of the will, or letters of administration of the estate, has not been arranged; and
- (c) the Board has not, within 3 months after the death of the member, received notice of intention to apply for a grant of probate of the will, or letters of administration of the estate, of the deceased,

the Board may, if it so decides, apply the amount of the benefit in accordance with subsection (2).

(2) Where the Board makes a decision under subsection (1), the Board may—

- (a) pay the amount of the benefit to the spouse or a relative of the deceased;
- (b) after paying the funeral expenses of the deceased or reimbursing a person who has paid those expenses, pay the balance to a person referred to in paragraph (a); or
- (c) in special circumstances, pay the amount of the benefit, or the balance referred to in paragraph (b), to some other person.

### **Payment of benefit in cases of hardship**

45. (1) Where a member or former member dies and a benefit is payable from the Fund, the Board may, if it so decides, apply all or part of the benefit in accordance with and subject to subsections (2) and (3) without requiring the production of probate or letters of administration.

(2) An amount may be applied under this section to the spouse or a relative or dependant of the deceased where the Board is satisfied that payment is desirable to relieve or avoid hardship.

(3) The Board must not pay in any one case under this section more than \$10 000 or, if some other amount is prescribed for the purposes of this section, more than that other amount.

### **Benefits and part-time employees**

46. (1) In assessing the amount of a benefit to which a contributor is entitled who is or has for any period been employed on a part-time basis, the benefit shall be calculated as if—

- (a) the contributor's contributory period consisted of or included that number of completed months of full-time service that the Board considers is equivalent to the number of months of part-time service actually completed by the contributor; and
- (b) the contributor's final salary were that amount which would have been payable to the contributor if he or she had been employed on a full-time basis during the period taken into account in ascertaining the final salary.

(2) In assessing the amount of a benefit to which a non-contributor is entitled who is or has for any period been employed on a part-time basis, the benefit shall be calculated as if—

- (a) in respect of the period of part-time service, the non-contributor's membership period were that number of completed months of full-time service that the Board considers is equivalent to the number of months of part-time service actually completed by the non-contributor; and
- (b) the notional period referred to in section 31 (5) were a period 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 a week by the member bears to the number of hours worked in a week (exclusive of overtime) by a comparable employee in full-time employment.

(3) For the purposes of section 35, a reference in this Act to a membership period of a contributor shall, in relation to the part-time service of a contributor, be taken to be that period of part-time service that has actually elapsed.

(4) Notwithstanding any other provision of this Act, a member who is employed on a full-time or part-time basis in more than one employment by one or more employers may not receive a benefit under this Act greater than would be payable if the member were employed full-time in any one of such employments.

### **Benefits of contributors formerly non-contributors**

47. Where a benefit is payable to a contributory member who was a non-contributory member before electing to become a contributory member, the benefit shall include the benefit appropriate in the circumstances in respect of the non-contributory period of the contributor's membership.

## **PART VIII—MISCELLANEOUS**

### **Schedule of employers**

48. (1) The Governor may by regulation amend Schedule 1.

(2) A regulation under subsection (1) may be made—

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

### **Treasurer's discretion**

49. (1) The Treasurer may, where he considers there are special circumstances, by notice in writing given to the Board—

- (a) deem a contributory member to have a greater contributory period than the member would have;
- (b) deem an employee to be eligible to be a member;
- (c) deem a member, a former member or the personal representative of a member or former member to be eligible for payment of a benefit to which that person is not otherwise entitled under this Act,

and the Board shall give effect to such a notice.

(2) Where the Treasurer by notice to the Board deems a contributory member to have a greater contributory period than the member would otherwise have, the Treasurer may, as a condition of the notice and notwithstanding section 22, require the member to contribute to the scheme at a specified rate of salary that is higher than 5%.

(3) Where a member is required to contribute to the scheme at a rate higher than 5%, the member shall for the purposes of calculating his or her average contribution rate be deemed to have contributed at the rate of 5% of salary.

(4) Any cost to the Fund arising from any exercise of the Treasurer's discretion under subsection (1) must be assessed by an actuary and paid to the Fund by the employer of the employee concerned.

**Making of elections and applications**

**50.** (1) An election or application under this Act—

- (a) must be in writing signed by the person entitled to make the election or application and in such form as the Board determines;
- (b) subject to subsection (3), is not validly made unless it is received in the office of the Board;
- (c) takes effect when it is received at the office of the Board, except that the Board may if it thinks fit accept that an election or application lodged with an employer for the Board takes effect from the date it is so lodged.

(2) The Board may approve the form of medical certificates or other documents required for the purposes of this Act.

(3) Where an election or application is not received in the office of the Board within the time prescribed for the election or application and the Board is satisfied that, in all the circumstances of the case, it is desirable that the election or application should be accepted, the Board may, subject to such terms and conditions as it may impose, accept the election or application and deal with it as if it had been received within the time so prescribed.

**Revocation of elections and applications**

**51.** An employee who has elected to become a member or a member who has made an election or application to the Board under this Act may revoke the election or application if—

- (a) in the case of an election to become a member or an application to vary a rate of contribution, the revocation is lodged with the Board not later than 2 months after the date the election or application was received by the Board; and
- (b) in the case of an application for a benefit, the benefit has not been paid.

**Employer to provide information**

**52.** (1) An employer must, at the prescribed times or in prescribed circumstances, or in accordance with directions given by the Board, submit to the Board the prescribed information or evidence relating to employees of the employer who have elected to become, or are, members.

(2) Where an employer fails to comply with subsection (1) in relation to an employee or member, the Board may—

- (a) refuse an election by an employee to be a contributor if the information sought is relevant to such an application; or
- (b) defer payment of a benefit to or in relation to a member where the information sought is relevant to the entitlement to receive the benefit or to the amount of the benefit.

**Employees and members to provide information**

**53.** (1) An employee who lodges with the Board an election to become a member must provide to the Board such information as the Board requires to enable it to determine the employee's eligibility for membership and benefits.

(2) A member who lodges with the Board an application for a benefit must provide to the Board such information as the Board requires to enable it to determine the member's entitlement to a benefit.

(3) A member who applies for a total or partial permanent disability benefit must—

- (a) undertake such medical examinations as the Board requires;
- (b) authorize the Board to obtain such medical, personal and other information or evidence with respect to the member as the Board considers relevant to the application;
- (c) undertake assessment for job retraining and undertake job retraining, including attendance at educational and other institutions, as the Board may require; and
- (d) facilitate any investigation undertaken, or caused to be undertaken, by the Board with respect to the capacity of the member to undertake employment or employment of a particular kind.

(4) Where an employee or member refuses or fails to comply with a requirement of the Board under subsection (1), (2) or (3), the Board may—

- (a) in the case of an election to become a member, decline to accept the election or accept the election subject to one of the conditions referred to in section 18 (5); or
- (b) in the case of an application for a benefit, reject the application.

(5) Where an employee or a member provides the Board with information containing a statement that is—

- (a) misleading in the form and context in which the statement appears;
- (b) misleading because it omits matter that is material and of which the employee or member has, or at any time had, knowledge; or
- (c) false to the knowledge of the employee or member,

the Board may, as it thinks appropriate—

- (aa) reject any application, or subsequent application, for a benefit the entitlement to which may have been affected by the false or misleading information provided; or
- (bb) provide such a benefit or entitlement to the employee or member as, in the opinion of the Board would have been provided if false or misleading information had not been provided.

## **Review**

**54.** (1) An employee or a member or former member or the personal representative of a member or former member who is aggrieved by a decision of the Board may make representations in writing to the Board requesting the Board to review the decision.

(2) Subject to subsection (3), the decision of the Board on a review under subsection (1) is final and conclusive.

(3) A decision of the Board on a review under subsection (1) may be referred for independent review in accordance with the regulations.

### **Discretionary powers of Board**

55. (1) Where the Board is satisfied, after such inquiry as it thinks necessary, that a person has, otherwise than through that person's own fault, lost or ceased to be entitled to a right, privilege, or benefit under this Act to which he or she was otherwise entitled or might have obtained, and that it is just and equitable that the person should be allowed to have the enjoyment of the right, privilege, or benefit, the Board may permit the person to exercise the right or grant to him or her the privilege or benefit notwithstanding that the time prescribed by or under this Act for doing any action in relation thereto may have expired.

(2) The Board may, in the exercise of its powers under subsection (1), impose such conditions and requirements as it thinks just.

### **Delegation**

56. The Board may, either generally or as otherwise provided by the instrument of delegation, delegate in writing to the chairman or an officer of the Board any of the Board's powers and duties under this Act, other than this power of delegation.

### **Reciprocity with other funds**

57. (1) The Treasurer may enter into agreements with bodies responsible for the management of public sector superannuation schemes to provide on a reciprocal basis the facility for—

- (a) contributors to the scheme under this Act to transfer accrued superannuation rights in the event of transferring employment to employers responsible for those other schemes; and
- (b) contributors to those other schemes to transfer accrued superannuation rights to the scheme under this Act in the event of transferring employment to an employer under this Act.

(2) An agreement made under this section must provide for the payment from one fund to another of an amount representing in the case of every contributor making use of the facility both the contributor's contributions and the employer's contributions to the relevant fund.

(3) The Treasurer shall not enter an agreement under this section unless satisfied that amounts paid to a public sector superannuation scheme from the Fund cannot be paid to or in respect of contributors before they attain the age of 55 years, except in the case of death or disability.

(4) The election to become a contributor of an employee with accrued benefits transferred from a public sector superannuation scheme shall be accepted by the Treasurer unconditionally or conditionally (as provided in section 18 (5)) having regard to the comparable classification of the employee under that public sector superannuation scheme from which the accrued benefits were transferred.

(5) The Governor may make regulations to give effect to agreements made by the Treasurer under this section and to provide for and regulate transfers from the Fund of amounts payable to public sector superannuation funds in accordance with such agreements and benefits to be granted to contributors with accrued benefits from public sector superannuation funds.

(6) Regulations under this section may authorize payments and benefits and impose conditions and limitations with respect to contributors transferring to or from public sector superannuation schemes that differ from the provisions applicable under this Act to other contributors.

(7) In this section—

“public sector superannuation scheme” means a superannuation scheme established for the benefit of its employees by the Government of the Commonwealth, a Territory, a State other than Western Australia or by a public authority, including local government, established under the law of any such Government.

### **Recovery of money owing to employers**

**58.** For the purposes of recovering money owing by a member to his or her employer, the employer may request the Board to deduct all or part of the amount owing to the employer from any moneys to which the member, or his personal representative, is entitled under this Act and the Board shall give effect to such a request and remit moneys deducted in accordance with the request to the employer.

## Regulations

59. The Governor may make regulations prescribing all matters and things that by this Act are required or permitted to be prescribed or that any necessary or convenient to be prescribed for giving effect to this Act.

## Transitional

60. Schedule 4 has effect.

### SCHEDULE 1

(Section 3)

#### LIST OF EMPLOYERS

##### *Part A*

All public service departments established under the *Public Service Act 1978*, or deemed to have been so established for the purposes of that Act, other than a department or part of a department specified in Part B.

Hospital Boards constituted under section 15 of the *Hospitals Act 1927* and the Minister in relation to any public hospital controlled by him under section 7 of that Act.

Agriculture Protection Board of Western Australia  
 Albany Port Authority  
 Bunbury Port Authority  
 Commissioner of Main Roads  
 Commissioner for Equal Opportunity  
 Director of Equal Opportunity in Public Employment  
 Environmental Protection Authority  
 Esperance Port Authority  
 Fremantle Port Authority  
 Geraldton Port Authority  
 Herd Improvement Service of Western Australia  
 Hospital Laundry and Linen Service of Western Australia  
 Joint House Committee  
 Joint Library Committee  
 Joint Printing Committee  
 Legal Aid Commission of Western Australia  
 Legislative Assembly  
 Legislative Council  
 Metropolitan (Perth) Passenger Transport Trust  
 Nurses Board of Western Australia  
 Parliamentary Commissioner for Administrative Investigations  
 Perth Theatre Trust  
 Port Hedland Port Authority  
 Rottnest Island Board  
 Rural Youth Movement Council  
 Secondary Education Authority  
 State Engineering Works of Western Australia

State Library Service of Western Australia  
Technology Development Authority  
The Art Gallery of Western Australia  
The Kings Park Board  
The National Trust of Australia (WA)  
The Western Australian Government Railways Commission  
The Western Australian Museum  
Waterways Commission  
Western Australian Alcohol and Drug Authority  
Western Australian Tourism Commission  
Western Australian Post Secondary Education Commission

*Part B*

Dairy Industry Authority of Western Australia  
Government Employees Superannuation Board  
Hedland College  
Kalgoorlie College  
Karratha College  
Metropolitan Market Trust  
Public Trust Office  
Rural and Industries Bank of Western Australia  
State Energy Commission of Western Australia  
State Government Insurance Commission  
Water Authority of Western Australia  
Western Australian Coastal Shipping Commission  
Western Australian Meat Commission  
Western Australian Meat Marketing Corporation  
Western Australian Mint  
Workers' Assistance Commission

SCHEDULE 2

(Section 5 (4))

PROVISIONS RELATING TO ELECTIONS AND  
ELECTED MEMBERS OF THE BOARD

**Elections**

1. Elections shall be held from time to time in accordance with and in the manner prescribed by regulations under this Act for the purpose of electing 3 members of the Board.

**Time for holding elections**

2. (1) The first elections for the 3 elected members of the Board shall be held within 6 months after the commencement of this Act.

(2) After the first elections, the elections for the elected members shall be held within the period of 6 months that precedes the expiry of the term of office of the existing elected members or, subject to clause 4, in the event of an office becoming vacant before an election is held, as soon as practicable after the office becomes vacant.

**Term of office**

3. An elected member holds office for a term of 3 years and, if otherwise qualified, is eligible for re-election.

**Casual vacancies**

4. (1) Where from any cause a casual vacancy occurs in the office of an elected member, the Minister may appoint a member of the scheme to fill the vacancy until—

- (a) the appointee's successor is elected; or
- (b) the expiration of the term of office of the appointee's predecessor.

(2) The Minister shall, before making an appointment under subclause (1) consult such persons, organizations and associations as the Minister thinks fit.

**SCHEDULE 3**

(Section 6 (2))

**CONSTITUTION AND PROCEEDINGS OF THE BOARD****Age of members**

1. A person of or over the age of 65 years is not eligible to be appointed as or to hold office as a member of the Board.

**Deputy chairman**

2. (1) The Governor may appoint a person to act in the office of the chairman when the chairman is ill or absent and a person so appointed shall be known as the deputy chairman and while so acting shall have and may exercise all the functions of the chairman.

(2) The Governor may remove any person from the office of deputy chairman.

(3) No person shall be concerned to inquire whether or not an occasion has arisen requiring or authorizing the deputy chairman to act in the office of chairman.

**Vacation of office**

3. The office of a member of the Board becomes vacant if—

- (a) the member resigns his or her office by written notice addressed to the Minister;
- (b) the member is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;

- (c) the member is removed from office by the Minister on the grounds of neglect of duty, misbehaviour, incompetence or mental or physical incapacity impairing the performance of his or her duties; or
- (d) the member is absent without leave of the Board from 4 consecutive meetings of the Board of which he or she has had notice.

### Liability of members

4. No matter or thing done by the Board, and no matter or thing done by any member of the Board or by any person acting under the direction of the Board, shall, if the matter or thing was done in good faith for the purposes of this Act, subject a member of the Board personally or a person so acting personally to any action, liability, claim or demand.

### Disclosure of pecuniary interests

5. (1) A member of the Board who has a direct or indirect pecuniary interest—

- (a) in a matter that is being considered, or is about to be considered, at a meeting of the Board; or
- (b) in a thing being done or about to be done by the Board,

shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A member of the Board who has given advice for remuneration to the Board or to the Superannuation Board constituted under the *Superannuation and Family Benefits Act 1938* with respect to—

- (a) a matter that is being considered, or is about to be considered, at a meeting of the Board; or
- (b) a thing being done or about to be done by the Board,

shall, notwithstanding that for the purposes of subclause (1) the member no longer has a direct or indirect pecuniary interest in that matter or thing, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(3) A disclosure by a member of the Board at a meeting of the Board that the member—

- (a) is a member, or is in the employment, of a specified company or other body;
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or a specified person,

shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(4) The Board shall cause particulars of any disclosure made under subclause (1) or (3) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Board from time to time.

(5) After a member of the Board has, or is deemed to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (3), the member shall not—

- (a) be present during any deliberation of the Board, or take part in any decision of the Board, with respect to that matter; or
- (b) exercise any functions under this Act with respect to that thing,

as the case may require.

(6) Notwithstanding that a member of the Board contravenes the provisions of this clause, that contravention does not invalidate any decision of the Board or the exercise of any function under this Act.

(7) Nothing in this clause applies to or in respect of an interest of a member of the Board in a matter or thing which arises by reason only that the member is—

- (a) a member of the scheme;
- (b) an employee of an employer;
- (c) a member of the board or other body responsible for the control or direction of an employer;
- (d) an employee of a union or association of unions; or
- (e) a member of a corporation listed on a stock exchange in Australia and the member's interest may properly be regarded as not being a material interest.

(8) A contravention of this clause constitutes misbehaviour for the purposes of clause 3 (c).

### **Presiding member**

6. At a meeting of the Board—

- (a) the chairman;
- (b) in the absence of the chairman, the deputy chairman; or
- (c) in the absence of the chairman or a deputy chairman (if one has been appointed), a person elected by the members of the Board present at the meeting from among their number,

shall preside.

### **General procedure concerning meetings**

7. The procedure for the calling of meetings of the Board and the conduct of business at those meetings shall, subject to this schedule and any regulations, be as determined by the Board.

### **Quorum**

8. At a meeting of the Board 4 members shall form a quorum but, if when a meeting of the Board is held only 4 or 5 persons hold office as members of the Board, 3 members shall form a quorum.

**Voting**

9. (1) The person presiding at a meeting of the Board shall have a deliberative vote only.
- (2) A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present shall be the decision of the Board.

**Minutes**

10. The Board shall cause accurate minutes of each meeting of the Board to be recorded and preserved.

**Common seal**

11. The common seal of the Board shall—
- (a) be in a form determined by the Board;
  - (b) be kept in such custody as the Board directs;
  - (c) not be used except as authorized by the Board.

**SCHEDULE 4**

(Section 60)

**TRANSITIONAL PROVISIONS****Interpretation**

1. (1) In this schedule—

“contributor to the Provident Account” means a contributor to that account under Division 3 of Part VA of the S and FB Act;

“election to transfer” means the election form signed by a person who is entitled to elect to transfer from the S and FB scheme under clause 4, 5 or 7 and become a contributor to the scheme under this Act;

“final salary” in relation to a transferred contributor, means the average annual salary paid to the member during the period of 2 years immediately preceding the member’s exit date calculated by dividing by 2 the total salary paid to the member in the last 52 complete fortnightly pay periods preceding the member’s exit date (or the equivalent number if the member’s pay periods are of another duration) or where the employment period is less than 2 years, means the average annual salary calculated in accordance with the formula—

$$AS = TS \times \frac{26}{NP}$$

TS represents the total salary paid to the member during fortnightly pay periods taken into account in NP;

NP represents the number of complete fortnightly pay periods within the member’s employment period or the equivalent number if the member’s pay periods are of another duration;

“Provident Account” means the Provident Account established by Part VA of the S and FB Act;

“S and FB Act” means the *Superannuation and Family Benefits Act 1938*;

“S and FB contributor” means a contributor as defined in section 6 (1) of the S and FB Act;

“S and FB scheme” means the scheme of superannuation and family benefits provided for under the S and FB Act;

“subscriber to the Provident Account” means a subscriber to that account under section 83B of the S and FB Act;

“Superannuation Board” means the Board constituted by that name under the S and FB Act;

“transferred contributor” means a contributory member who has become a contributor by lodging an election to transfer with the Board;

“transferred contributor for limited benefits” means a transferred contributor who was prior to lodging an election to transfer with the Board a contributor for limited benefits under and for the purposes of section 61 of the S and FB Act;

“transferred service” in relation to a transferred contributor, means the period of service or employment of the contributor that constituted service for the purposes of the S and FB Act before the day on which the contributor’s election to transfer was lodged or deemed to have been lodged with the Board.

(2) A reference in this schedule to contributions made to the S and FB scheme shall be taken to exclude moneys held in the Fund to the credit of a contributor under section 38 (2) or 41 (3a) of the S and FB Act.

(3) References in the definition of “final salary” in subclause (1) to salary paid to the member shall, in relation to any period for which the member was not paid full salary, be taken to include any amount of money that may be deemed by the Board for the purposes of that definition to have been paid as salary to the member.

### **Initial membership of Board**

2. (1) The persons who are, immediately before the commencement of this Act, the 2 members of the Superannuation Board other than the member elected by S and FB contributors shall be deemed on the commencement of this Act to have been appointed by the Governor under section 5 (3) (b) as members of the Board for terms consisting in each case of that period which on the commencement of this Act remains unexpired of the term for which the person was appointed a member of the Superannuation Board.

(2) Until 3 members of the Board are elected as provided for under section 5 (3) (c) or until the expiry of 6 months from the commencement of this Act, whichever occurs first, the initial members’ representatives on the Board shall be—

- (a) the person who is immediately before the commencement of this Act the member of the Superannuation Board elected by S and FB contributors; and

- (b) 2 persons appointed by the Governor on the recommendation of the Minister.

(3) Subject to clause 1 of Schedule 3, a person appointed or deemed to be appointed a member of the Board under this clause is eligible for re-appointment or election at the end of his or her term.

#### **Initial CPI rate**

3. The CPI rate that is to take effect from the day of commencement of this Act until the next succeeding 30 June shall be determined in accordance with section 3 (2) except that the rate shall be determined by the Board as soon as practicable after the commencement of this Act and shall be the percentage by which the Index for the quarter ending in the last preceding March is greater than the Index for the quarter ending in March the year before.

#### **Option of S and FB contributors to transfer to scheme**

4. Subject to clause 6, every S and FB contributor who is contributing under the S and FB Act for units of pension on the commencement of this Act may, in the manner and on the terms set out in this schedule, elect to transfer from the S and FB scheme and become a contributor to the scheme under this Act.

#### **Option of Provident Account subscribers and contributors to transfer to scheme**

5. Subject to clause 6, every person who is a subscriber or a contributor to the Provident Account on the commencement of this Act may, in the manner and on the terms set out in this schedule, elect to transfer from the S and FB scheme and become a contributor to the scheme under this Act.

#### **Post 15 August 1986 S and FB contributors**

6. (1) An S and FB contributor who elected to become a contributor for units of pension under the S and FB Act after 15 August 1986 and is contributing for such units on the commencement of this Act shall be deemed for the purposes of this Act to have lodged with the Board on the day of commencement of this Act an election to become a contributor to the scheme under this Act and ceases to have any obligations or entitlements under the S and FB Act with effect from that commencement.

(2) The amount of the contributions for units of pension made to the S and FB scheme by an S and FB contributor to whom subclause (1) applies shall, on the commencement of this Act, be refunded to that contributor together with compound interest on that amount at a rate fixed by the Board.

(3) The Treasurer may, where he considers there are special circumstances, by notice in writing given to the Board, declare that subclause (1) shall not apply with respect to an S and FB contributor identified in the notice.

(4) Where a person was on 15 August 1986—

- (a) a subscriber or contributor to the Provident Account; or
- (b) a member of the Western Australian Public Hospitals (Medical Officers) Superannuation Scheme,

and was such a subscriber or contributor or member immediately before electing to become a contributor for units of pension under the S and FB Act, subclause (1) does not apply to or with respect to that person.

**Option of section 60AA contributors  
to transfer to scheme**

7. Every 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 on the commencement of this Act may, in the manner and on the terms set out in this schedule, elect to transfer from the S and FB scheme and become a contributor to the scheme under this Act.

**Exercise of transfer option**

8. (1) A person who is entitled under clause 4, 5 or 7 to elect to transfer and become a contributor to the scheme under this Act may do so by lodging with the Board an election to transfer signed by the person.

(2) Notwithstanding section 51, an election to transfer that has been lodged with the Board is irrevocable.

(3) An election to transfer must be lodged with the Board within 6 months after the commencement of this Act.

**Treasurer's discretion as to time  
of election to transfer**

9. Notwithstanding clause 8 (3), the Treasurer may, where he considers there are special circumstances, by notice in writing given to the Board, direct the Board to accept an election to transfer lodged with the Board after the expiry of the period of 6 months provided for in that provision and the Board shall give effect to any such direction.

**Election to transfer**

10. (1) A person who transfers under this schedule from the S and FB scheme to the scheme under this Act ceases to have any obligations or entitlements under the S and FB Act with effect from the time when the election to transfer is lodged with the Board and from that time the person becomes a contributory member of the scheme subject in all respects to the obligations imposed and the entitlements conferred by this Act.

(2) A contributor to the Provident Account who under this schedule transfers to the scheme under this Act and becomes a contributor shall for the purposes of Part VII be taken to be a contributor whose election to become a contributor was accepted on condition that no death or disability benefit is payable.

(3) A subscriber to the Provident Account who elects to transfer from the S and FB scheme and become a contributor to the scheme under this Act may be required by the Board—

- (a) to undergo a medical examination (or examinations) and provide information relevant to the subscriber's health and medical history; and
- (b) to procure and submit to the Board a medical report as the Board may require.

(4) Where upon consideration of any medical report or other information submitted to the Board, the Board is not satisfied that the subscriber is not suffering from any physical or mental defect or condition that is likely to prevent the subscriber from satisfactorily performing his or her duties until attaining the age of 60 years, the Board may accept the election subject to the condition that—

- (a) the death or disability benefit available to or in respect of the subscriber is limited; or
- (b) no death or disability benefit is available to or in respect of the subscriber.

### **Transfer records**

11. (1) The Board shall maintain in respect of each transferred contributor, other than a contributor who was a subscriber or contributor to the Provident Account, an account within the Fund to which shall be credited a sum equal to the amount of the contributions made by that contributor to the S and FB scheme.

(2) The Board shall maintain in respect of each transferred contributor who was a subscriber or contributor to the Provident Account an account within the Fund to which shall be credited a sum equal to the amount of the moneys standing to his or her credit (including interest) in the Provident Account at the time his or her election to transfer was lodged with the Board.

(3) The Board shall establish a record in respect of each transferred contributor of the number of completed months of the contributor's transferred service.

### **Transfer benefit on death, retirement etc.**

12. (1) The benefit provided by this clause is in addition to the benefit payable under Part VII and is payable by the Board—

- (a) to a transferred contributor who becomes entitled to a benefit other than a benefit under section 35 or 36 (which refer to resignation, dismissal, discharge, termination of contributory membership or retrenchment before attaining the age of 55 years); or
- (b) to the personal representative of a transferred contributor who becomes entitled to a benefit under section 31 or 34 (which refer to the benefit payable on death).

(2) The benefit provided by this clause is—

- (a) in the case of a transferred contributor who was not a subscriber or contributor to the Provident Account, the amount of the contributions made to the S and FB scheme by the transferred contributor together with—
  - (i) compound interest on those contributions calculated at the rate of 10% until the day on which the contributor's election to transfer was lodged with the Board; and

- (ii) compound interest on the amount that is the sum of the contributions and interest accruing under subparagraph (i) calculated with effect from the day on which the contributor's election to transfer was lodged with the Board 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%; or
- (b) in the case of a transferred contributor who was a subscriber or contributor to the Provident Account, the amount that was standing to the credit of the subscriber or contributor in the Provident Account (including interest) at the time the contributor's election to transfer was lodged with the Board together with compound interest on that amount calculated with effect from the day on which the contributor's election to transfer was lodged with the Board 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%; and
- (c) in the case of all transferred contributors to whom this clause applies, an amount calculated in accordance with the formula—

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

where—

TCB represents the amount of the benefit of a 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.

#### **Transfer benefit on resignation, discharge etc.**

13. (1) The benefit provided by this clause is payable by the Board to a transferred contributor who becomes entitled to a benefit under section 35 or 36 (which refer to resignation, dismissal, discharge, termination of contributory membership or retrenchment before attaining the age of 55 years) and is in addition to the benefit payable under those sections.

(2) The benefit provided by this clause for a contributor with a membership period under this Act of less than 24 months is—

- (a) in the case of a transferred contributor who was not a subscriber or contributor to the Provident Account, the amount of the contributions made to the S and FB scheme by the transferred contributor together with compound interest on those contributions to the date when the contributor's election to transfer was lodged with the Board calculated at the rate and in the manner that would be applicable if those contributions were refunded to the contributor under the S and FB Act; or

- (b) in the case of a transferred contributor who was a subscriber or contributor to the Provident Account, the amount that was standing to the credit of the subscriber or contributor in the Provident Account (including accrued interest) at the time the contributor's election to transfer was lodged with the Board,

together with compound interest on the amount referred to in paragraph (a) or (b) (including interest), as the case may be, calculated with effect from the day on which the contributor's election to transfer was lodged with the Board 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%.

(3) The benefit provided by this clause for a contributor with a membership period under this Act of not less than 24 months is, if the contributor opts for a benefit under section 35 (3) (a)—

- (a) in the case of a transferred contributor who was not a subscriber or contributor to the Provident Account, the amount of the contributions made to the S and FB scheme by the transferred contributor together with compound interest on those contributions calculated at the rate of 10% until the day on which the contributor's election to transfer was lodged with the Board; or
- (b) in the case of a transferred contributor who was a subscriber or contributor to the Provident Account, the amount that was standing to the credit of the subscriber in the Provident Account (including accrued interest) at the time the contributor's election to transfer was lodged with the Board,

together with, in the case of all transferred contributors to whom this subclause applies, compound interest on the amount referred to in paragraph (a) or (b) (including interest), as the case may be, calculated with effect from the day on which the contributor's election to transfer was lodged with the Board 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) The benefit provided by this clause for a contributor with a membership period under this Act of not less than 24 months is, if the contributor opts for a benefit under section 35 (3) (b)—

- (a) the benefit provided under subclause (3); and
- (b) a deferred benefit being an amount calculated in accordance with the formula—

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

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.

**Recognition of certain pre-commencement service of part-time employees**

14. (1) This clause applies to an employee who—

- (a) was formerly an S and FB contributor;
- (b) ceased to be an S and FB contributor upon the variation of the employee's terms of employment so that the employee was no longer required to give his or her whole time to the duties of the employment;
- (c) at the time of commencement of this Act is employed by an employer on a part-time basis and is eligible for membership under this Act as a contributor; and
- (d) within 6 months after the commencement of this Act elects to become a contributory member of the scheme.

(2) A contributor to whom this clause applies shall for the purposes of this schedule be deemed to be a transferred contributor subject to the following conditions—

- (a) no benefit shall arise in respect of contributions made to the S and FB scheme;
- (b) the transferred service of the contributor shall be taken to include the full-time service of the contributor and that number of complete months of full-time service that the Board considers equivalent to the number of months of part-time service actually completed by the contributor before the commencement of this Act.

**Limited benefit contributors**

15. (1) The provisions for benefits in sections 31, 32 and 33 shall apply to a transferred contributor for limited benefits as if the transferred contributor were a contributory member whose election to become a contributor was accepted by the Board conditionally on limitation of death and disability benefits.

(2) Where a transferred contributor for limited benefits dies or is retired on the ground of physical or mental incapacity to perform his or her duties not later than 3 years after becoming a contributor for limited benefits, the provisions for benefits in section 34 shall apply as if the transferred contributor were a contributory member whose election to become a contributor was accepted by the Board conditionally on limitation of death and disability benefits.

(3) Where a transferred contributor for limited benefits dies or is retired on the ground of physical or mental incapacity to perform his or her duties later than 3 years after becoming a contributor for limited benefits, the provisions for benefits in section 34 shall apply as if the transferred contributor were a contributory member whose election to become a contributor was accepted by the Board conditionally on limitation of death and disability benefits and, in addition, the benefit provided by subclause (4) is payable by the Board—

- (a) to the personal representative of the transferred contributor for limited benefits, or if appropriate in accordance with section 44 or 45, where the transferred contributor who is not entitled to a death benefit under section 31 dies during employment with an employer; or
- (b) to a transferred contributor for limited benefits where the employer certifies to the Board that the contributor was retired on the ground of physical or mental incapacity to perform his or her duties, but a benefit is not payable under section 32 or 33.

(4) The benefit provided by this subclause in relation to a transferred contributor for limited benefits in the circumstances referred to in subclause (3) is—

$$\text{LDDDB} = \text{FS} \times \frac{\text{NP}}{12} \times \frac{\text{C}}{5} \times \frac{20}{100} \times \frac{\text{X}}{100}$$

where—

- LDDDB represents the amount of the limited death or disability benefit of the transferred contributor for limited benefits to be ascertained;
- FS represents the contributor's final salary ascertained in accordance with the definition in section 3 (and not the definition in clause 1);
- NP represents the period expressed in complete months from the date of death or retirement of the contributor to the date when the contributor would have attained or would attain the age of 60 years;
- C represents the contributor's average contribution rate ascertained in accordance with the definition in section 3;
- X represents a number ascertained by adding to 40 the number .5 for each complete month in excess of 36 (but not in excess of 120) commencing on the date on which the contributor became a contributor for limited benefits under the S and FB Act for which the contributor has contributed as a contributor for limited benefits under that Act or contributed to the scheme under this Act.

### 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 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.

### Regulations

17. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequential upon the enactment of this Act.

(2) A provision made under subclause (1) may be made to take effect on the date of assent to this Act or on a later date.

(3) To the extent to which a provision made under subclause (1) takes effect on and from a date that is earlier than the date of its publication in the *Gazette*, the provision does not operate—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the date of publication; or
- (b) to impose a liability on any person (other than the State or an authority of the State) in respect of any thing done or omitted before the date of publication.