

# SUPERANNUATION AND FAMILY BENEFITS.

---

No. 134 of 1976.

---

**AN ACT to amend the Superannuation and Family  
Benefits Act, 1938-1975.**

*[Assented to 9th December, 1976.]*

**B**E 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:—

1. (1) This Act may be cited as the *Superannuation and Family Benefits Act Amendment Act, 1976.*

Short title  
and citation.

Vol. 20 Reprinted Acts. Approved for reprint 16th August, 1966 and amended by Acts Nos. 78 of 1967, 13 of 1968, 27 of 1969, 22 and 108 of 1970, 16 and 75 of 1973, 47 of 1974 and 4 of 1975.

(2) In this Act the Superannuation and Family Benefits Act, 1938-1975 is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Superannuation and Family Benefits Act, 1938-1976.

Commencement.

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

(2) Sections 6, 8, 9, 18, 20, 21, 22, 23, 24 and 25, and subparagraph (i) of paragraph (c), paragraph (d), subparagraph (i) of paragraph (e) and paragraph (f) of section 26 of this Act shall come into operation on such date or dates as is or are, respectively, fixed by proclamation.

Section 6 amended.

3. Subsection (3) of section 6 of the principal Act is amended by deleting the word "ten" where it occurs in line twelve, and again in line twenty-six, and substituting the word "seven" in both cases.

Section 25 amended.

4. Section 25 of the principal Act is amended—

(a) by deleting paragraph (c) of subsection (1) and substituting the following paragraph—

(c) the acquisition or taking on lease of any land and the construction of buildings and effecting of other improvements thereon; and ; and

(b) by adding after subsection (3) the following subsection—

(4) The Board may sell, alienate, mortgage, charge and lease any land acquired or leased by it pursuant to paragraph (c) of subsection (1) of this section. .

5. Subsection (1) of section 30 of the principal Act is repealed and re-enacted as follows—

Section 30  
amended.

(1) Investigations shall be made as to the state and sufficiency of the Fund as at the thirtieth day of June, 1977 and as at the expiration of each three years thereafter. .

6. Section 32 of the principal Act is repealed and re-enacted as follows—

Section 32  
repealed  
and re-  
enacted.

32. (1) Subject to this section, any employee may elect in writing in a form approved by the Board to become a contributor for units of pension under this Act.

Election to  
become a  
contributor.

(2) An employee is not entitled to become a contributor for units of pension under this Act if he is of an age which will prevent him from completing an aggregate period of seven years' service under the State before attaining the age for retirement for which he desires to contribute.

(3) The Board may require any employee who has made an election under subsection (1) of this section to undergo such medical examination or examinations as it directs.

(4) Where, after considering the report or reports of the medical examination or examinations of an employee who has made an election under this section, the Board is of opinion that the employee is not suffering from any physical or mental defect or condition which is likely to render him incapable, before his attaining his maximum age for retirement, of performing his duties as an employee, the Board shall accept the election.

(5) Where, after considering the report or reports of the medical examination or examinations undergone by an employee who has made

an election under this section, the Board is of opinion that the employee is suffering from any physical or mental defect or condition which is likely to render him incapable, before his attaining his maximum age for retirement, of performing his duties as an employee, the Board shall—

- (a) refuse to accept the election of that employee to become a contributor; or
- (b) accept the election, but on condition that the employee shall be a contributor for limited benefits under and for the purposes of section sixty-one of this Act.

(6) An employee who is a contributor for limited benefits under and for the purposes of section sixty-one of this Act shall cease to be subject to limited benefits for the purposes of that section and for the purposes of the Sixth Schedule to this Act—

- (a) at the expiration of the period of thirteen years after he became such a contributor; or
- (b) upon his satisfying the Board that he is no longer suffering from any physical or mental defect or condition which is likely to render him incapable, before his attaining his maximum age for retirement, of continuing to perform his duties as an employee,

whichever first occurs.

(7) Where a person has been accepted as a contributor for limited benefits pursuant to an election made under this section the Board shall record any defect or condition, the existence of which was disclosed in the report or reports furnished to the Board, by reason of which the Board declined to accept him as a contributor for ordinary benefits, but accepted him as a contributor for limited benefits. .

7. Subsection (2) of section 32A of the principal Act is amended by adding after the word "Act" in line two the passage "but subject to subsection (9) of section sixty of this Act".

Section 32A  
amended.

8. Section 35 of the principal Act is repealed.

Section 35  
repealed.

9. Section 37 of the principal Act is amended—

Section 37  
amended.

(a) by repealing subsections (11) and (12) and substituting the following subsection—

(11) A contributor who is not contributing for a number of units equal to his total unit entitlement may at any time elect to contribute for an additional number of units so that his total number of units will be equal to, or less than, his total unit entitlement but, except where—

(a) the election is made under subsection (10) of this section; or

(b) because of the impending retirement of the contributor, the Board dispenses with the succeeding requirements of this subsection,

the election is not effective unless the Board, after having considered the report or reports of such medical examination or examinations as it directs the contributor to undergo, is satisfied that the contributor is not suffering from any physical or mental defect or condition which is likely to render him incapable, before his attaining his maximum age for retirement, of performing his duties as an employee. ; and

(b) by deleting the passage ", (11) and (12)" in lines one and two of subsection (13) and substituting the passage "and (11)".

Section 41  
amended.

10. Section 41 of the principal Act is amended by deleting the word "ten" where it occurs in line ten of subsection (1), and again in line six of subsection (2), and substituting the word "seven" in both cases.

Section 42  
amended.

11. Subsection (2) of section 42 of the principal Act is repealed and re-enacted as follows—

(2) The Governor may from time to time, on the joint recommendation of the State Government Actuary and the Board, make regulations prescribing tables of contributions for the purposes of this Act. .

Section 42A  
amended.

12. Section 42A of the principal Act is amended by adding at the end thereof the following subsection—

(8) Notwithstanding the foregoing provisions of this section—

- (a) no further elections under subsection (2) of this section may be made on or after the first day of January, 1977;
- (b) a contributor who was, on that day, contributing to the Account shall, not later than the thirtieth day of June, 1977, make an election under subsection (4) or subsection (6) of this section or under both of those subsections, which election or elections shall be such as to apply to all reserve units of pension for which he was contributing; and
- (c) where a contributor fails to make an election or elections in accordance with paragraph (b) of this subsection he shall be deemed to have made an election on the thirtieth day of June, 1977 under subsection (6) of this

section in respect of each reserve unit of pension for which he was so contributing.

13. Section 46AB of the principal Act is amended— Section 46AB amended.

- (a) by adding after the word “provisions” in line one of subsection (3) the passage “of subsections (1) and (2)”; and
- (b) by adding at the end thereof the following subsections—

(4) Where a contributor or former contributor is entitled to an amount of pension according to the number of units held by him on retirement, he is entitled, in addition to the amount of pension to which he is otherwise entitled, to an amount of ten cents per fortnight in respect of each unit for which he has contributed at any time prior to the first day of July, 1974 up to the time he became entitled to pension in respect thereof.

(5) The amount of increase in pension payable under subsection (4) of this section shall be paid by the Fund.

(6) The provisions of subsections (4) and (5) of this section apply—

- (a) in respect of the first fortnightly payment of pension made in the month of January, 1977 and in respect of such subsequent payments; and
- (b) to a widow who is entitled to receive an amount of pension under this Act, and in accordance with the rate of pension payable to the widow as referred to in this Act. .

Section 52  
amended.

14. Section 52 of the principal Act is amended by adding after the passage "subsection (5)" in line one the passage "or subsection (8)".

Section 60  
amended.

15. (1) Section 60 of the principal Act is amended—

- (a) by deleting the word "ten" where it occurs in line three of paragraph (a) of the third proviso to subsection (1), and again in line two of paragraph (b) of that proviso, and substituting the word "seven" in both cases;
- (b) by substituting for the word "ten" in line four of subsection (4) the word "seven";
- (c) by deleting the expression—

$$\frac{F \times Y}{20}$$

20

in subsection (4) and substituting the following expression—

$$\frac{F \times Y}{240}$$

240

;

- (d) by deleting the passage "Y is the number of years" in the third last line of subsection (4) and substituting the passage "Y is the number of months";
- (e) by deleting the word "ten" in line four of subsection (5) and substituting the word "seven";
- (f) by adding after the word "sixty-seven", being the last word in subsection (6) the passage "or commenced on or after the date on which the Superannuation and Family Benefits Act Amendment Act, 1976 received the Royal Assent"; and



(g) by adding after subsection (6) the following subsections—

(7) Notwithstanding any other provision of the Act, the amount of the share of the pension payable by the State to a contributor who retires after not less than seven but less than thirty years of aggregate service with the State shall not exceed the amount calculated in accordance with the formula—

$$\frac{F \times Y}{360}, \text{ where—}$$

F is the amount of the share of the pension payable by the State that would have been payable, but for this subsection, to the contributor if he had been contributing, immediately prior to his retirement, for a number of units equal to his primary entitlement; and

Y is the number of months of aggregate service that the contributor served with the State prior to his retirement.

(8) Where a person becomes a contributor after the commencement of subsection (7) of this section and upon retirement he has not completed an aggregate period of seven years service, he is entitled to a refund of the actual amount of the contributions made by him as a contributor.

(9) Where—

(a) before a person became a contributor, he had been employed by the Crown in right of the Commonwealth or of this

or any other State or by any agency or instrumentality thereof; and

- (b) as a consequence of that employment he had received a pension or like benefit included in which was an amount or component representing payments or contributions made by or on behalf of the Crown, agency or instrumentality,

the period of service of that person with the Crown, agency or instrumentality prior to his becoming a contributor under this Act shall not be regarded as service for the purposes of this Act unless he pays to the Fund for transmission to the Consolidated Revenue Fund a sum equal to the value of that amount or component, but if that person subsequently ceases to be a contributor under this Act and no pension becomes payable to him, his spouse or any of his dependants, he is entitled to be repaid by the State an amount equal to any sum previously paid by him pursuant to this subsection together with interest thereon at such rate as the Treasurer determines.

(10) The provisions of subsections (7), (8) and (9) of this section do not apply to a person where the period of continuous service of that person that is terminated by his retirement commenced before the date on which the Superannuation and Family Benefits Act Amendment Act, 1976 received the Royal Assent. .

(2) The State share of pension payable to a person to whom subsection (4) of section sixty of the principal Act applied immediately before the date on which the Superannuation and Family Benefits Act Amendment Act, 1976 received the Royal Assent shall, with effect from the first pension

pay day after that date, be increased to the amount which it would have been had the amendments to that subsection effected by that Act been in operation when the person retired.

16. Subsection (1) of section 60AA of the principal Act is amended by deleting the passage "or (5)" in line four and substituting the passage ", (5), (7) or (8)".

Section 60AA  
amended.

17. Section 60D of the principal Act is amended—

Section 60D  
amended.

- (a) by deleting the word "three" in line three of subsection (2) and substituting the word "six";
- (b) by adding after subsection (3) the following subsection—

(3a) A person who becomes a widow of a contributor or pensioner on or after the date of commencement of this subsection may, within six months after the death of her husband, elect to commute not more than one-quarter of the Fund share of her widow's pension to an equivalent entitlement by way of a lump sum payment. ;

- (c) by adding after the word "section", being the last word in subsection (6), the following passage—

, but nothing in this subsection shall be construed as preventing—

- (a) a person who has made an election under subsection (3a) of this section from making a further election under subsection (2) of this section; or
- (b) a person who becomes entitled to more than one pension from making an election in respect of each pension. ;

- (d) by deleting the passage “or (3)” in line three of subsection (7) and substituting the passage “, (3) or (3a)”; and
- (e) by deleting the passage “or subsection (11) of section thirty-seven of this Act” in lines three, four and five of the interpretation “ineligible unit” in subsection (10) and substituting the passage “of section thirty-seven of this Act or under subsection (11) of that section as in force prior to the date on which the Superannuation and Family Benefits Act Amendment Act, 1976 received the Royal Assent” .

Section 61  
repealed  
and re-  
enacted.

18. Section 61 of the principal Act is repealed and re-enacted as follows—

61. (1) Where—

- (a) a contributor, not being a contributor for limited benefits, is retired on the ground of invalidity or physical or mental incapacity to perform his duties; or
- (b) a contributor for limited benefits is retired on the ground of invalidity or physical or mental incapacity to perform his duties and the Board is satisfied that the invalidity or incapacity is not due to, and did not arise from, a physical or mental defect or condition recorded in relation to him under subsection (7) of section thirty-two of this Act,

he shall be entitled to the full pension for which he was contributing at the time of his retirement.

(2) Except as provided in paragraph (b) of subsection (1) of this section, where a contributor for limited benefits is retired, prior

to attaining the age of sixty years, on the ground of invalidity or physical or mental incapacity to perform his duties, he shall—

- (a) if his retirement occurs not later than three years after the day on which he became a contributor for limited benefits—be entitled to receive from the Fund a refund of the contributions paid by him and from the State a sum equal to two and one-half times such of those contributions as represent fortnightly contributions made by him in respect of units not exceeding his primary entitlement up to the time of his retirement;
- (b) if his retirement occurs after he has contributed to the Fund as a contributor for limited benefits for more than three years—be entitled to pension calculated in accordance with the formula—

$$\frac{2P}{5} + \left( \frac{3P}{5} \times \frac{X}{120} \right)$$

where—

P is the pension to which he would have been entitled under this section if he were a contributor referred to in paragraph (a) of subsection (1) of this section; and

X is the number of complete months for which he has contributed as a contributor for limited benefits in excess of the period of three years commencing on the date on which he became a contributor for limited benefits.

(3) Except as provided in paragraph (b) of subsection (1) of this section, where a contributor for limited benefits is retired, on or after attaining the age of sixty years, on the ground of invalidity or physical or mental incapacity to perform his duties, he shall be entitled to the same pension as that to which he would have been entitled had he retired other than on that ground and not under this section, but for the purposes of calculating the State share of that pension, he shall be deemed to have continued in service until attaining the age of sixty-five years.

(4) A contributor shall not be deemed to have been retired on the ground of invalidity or physical or mental incapacity to perform his duties within the meaning of this section for the reason merely that he is suffering from a particular physical defect which renders him incapable of performing a particular duty which he has been performing as an employee if such physical defect does not in fact disable him from performing another duty, which he is competent to perform, and employment in the performance of such lastmentioned duty is available to him as an employee.

(5) Where a contributor for limited benefits dies within three years of becoming such a contributor but prior to attaining the age of sixty years, there shall, except where the Board is satisfied that his death was not due to and did not arise from, a physical or mental defect or condition recorded in relation to him under subsection (7) of section thirty-two of this Act, be paid to his widow from the Fund and from the State the same amounts as would have been paid to the contributor had he retired on the ground of invalidity or incapacity on the same day as that on which he died.

(6) Any pension paid under paragraph (b) of subsection (2) of this section or to the spouse of a contributor for limited benefits shall be

apportioned as between the Fund and the State in the same respective proportions as are pensions paid under subsection (1) of this section or to the spouses of other contributors, as the case requires.

(7) Notwithstanding the foregoing provisions of this section, a contributor who has been retired on the ground of invalidity or physical or mental incapacity to perform his duties is not entitled to pension under this section—

(a) if the invalidity or incapacity which was the ground of his retirement was due to wilful action on the part of the contributor for the purpose of obtaining pension under this section; or

(b) if—

(i) his retirement occurs within three years of his becoming a contributor; and

(ii) the invalidity or incapacity is due to, or arose from, a physical or mental defect or condition known to the contributor at the time when he underwent a medical examination for the purposes of becoming eligible to become a contributor and he failed to disclose the existence of that condition or defect,

but shall receive in lieu of pension a refund of his contributions together with interest thereon at the rate or rates fixed by the Board from time to time.

19. Section 66 of the principal Act is amended by deleting the words “a further sum equal to two and one-half times those contributions” in lines four and five of subsection (1) and substituting the passage “from the State a sum equal to two and

Section 66  
amended.

one-half times such of those contributions as represent fortnightly contributions made by him in respect of units not exceeding his primary entitlement up to the time of his retrenchment”.

Section 83C  
amended.

20. Section 83C of the principal Act is amended by repealing subsection (1) and substituting the following subsections—

(1) Any employee who is ineligible to become a contributor for units of pension under this Act by reason only of his suffering from a physical or mental defect or condition may apply to become a contributor to the Provident Account and in that event he shall make contributions to the Provident Account in accordance with the provisions of this Division.

(1a) Any employee who—

(a) pursuant to subsection (2) of section thirty-two of this Act is not entitled to become a contributor for units of pension under this Act; and

(b) is bound by the conditions of his service to make contributions to the Provident Account,

shall become a contributor under this Division and shall make contributions to the Provident Account in accordance with the provisions of this Division. .

Section 83E  
amended.

21. Section 83E of the principal Act is amended by deleting the word “three” in line six and substituting the words “three and one-half”.

Section 83F  
repealed and  
re-enacted.

22. Section 83F of the principal Act is repealed and re-enacted as follows—

Payments on  
death of  
contributor  
with depen-  
dants.

83F. Where a contributor to the Provident Account under this Division dies before retirement, a sum equal to three and one-half times the amount which comprises the aggregate of his contributions to the Provident Account under this Division together with



compound interest on those contributions at the rate from time to time fixed by the Board, shall be paid to such person, if any, as would be entitled to receive pension under Part I of the Sixth Schedule to this Act if the contributor had been a contributor for units of pension under this Act, and if there is no such person but the contributor is survived by a child or children who would have been entitled to an allowance under item 2 of Part II of the Sixth Schedule to this Act, that sum shall be paid to that child, or, as the case may be, those children, and in the latter case, divided equally among them. .

23. Section 83G of the principal Act is amended by deleting the passage commencing with the word "who" in line two and ending with the passage "retirement," in line eleven and substituting the passage "dies before retirement and no sum or sums are payable under section eighty-three F of this Act,".

Section 83G  
amended.

24. Subsection (2) of section 83K of the principal Act is amended by deleting the word "two-thirds" in the last line and substituting the word "five-sevenths".

Section 83K  
amended.

25. Section 84 of the principal Act is amended by deleting the passage ", and whether the invalidity or incapacity is due to his fault" in lines four and five and substituting the passage "or whether the death, invalidity or incapacity of a contributor for limited benefits was due to or arose from a defect or condition recorded in relation to him under subsection (7) of section thirty-two of this Act".

Section 84  
amended.

Sixth  
Schedule  
amended.

26. The Sixth Schedule to the principal Act is amended—

(a) as to item 1 of Part I—by adding in column 5, after paragraph (b), the following—

(c) On attaining the age of 55 years. ;

(b) as to item 2 of Part I—

(i) by deleting the word “As” in paragraph (a) under column 3 and substituting the passage “If she has not re-married, as”;

(ii) by adding after the word “widow” in column 4 the words “or on her re-marriage”;

as to item 3 of Part I—

(i) by adding under column 1 after the word “contributor” in line one, the passage “(not being a contributor for limited benefits under and for the purposes of section 61)”;

(ii) by adding under column 2 after the passage “60(4)” in line six of paragraph (a), the passage “or (7)”;

(d) by adding after item 3 of Part I the following new item—

3A. Widow of contributor for limited benefits under and for the purposes of section 61 who died prior to his retirement

(a) 22/35 of pension which husband would have received had he retired on the grounds of invalidity or incapacity on the same day as that on which he died.

As in item 1.

As in item 1.

As in Item 1.

OR

(b) If widow so elects in writing to Board within three months of husband's death, a lump sum refund of contributions paid by contributor plus compound interest thereon at rate determined by Board, in lieu of (a).

(e) as to item 4 of Part I—

- (i) by adding under column 1 after the word “contributor” in line two, the passage “(not being a contributor for limited benefits under 37.1 for the purposes of section 61)”; and
- (ii) by adding under column 2 after the passage “60(4)” in line five, the passage “or (7)”; and

(f) by adding at the end of Part I the following item—

5. Widower of former female contributor for limited benefits under and for purposes of section 61 if the widower is not in receipt of any other pension under this Act and satisfies the Board that at the date of wife’s death, because of invalidity or for other good reason, fully or substantially dependent upon her.
- |  |  |   |          |
|--|--|---|----------|
| <p>22/35 of pension which wife would have received had she retired on the grounds of invalidity or incapacity on the same day as that on which she died.</p> | <p>As from day after death of female contributor or former female contributor.</p> | <p>(a) When in Board’s opinion, circumstances no longer warrant its continuance.</p> <p>(b) On death of widower</p> | <p>—</p> |
|--|--|---|----------|

- (g) by deleting the passage “\$8.00” in line four of sub-item (1) of item 1 of Part II and substituting the passage “\$12.00”;
- (h) by deleting the passage “\$10.00” in paragraph (a) of sub-item (2) of item 2 of Part II and substituting the passage “\$20.00”;
- (i) by deleting the passage “\$4.00” in line one of paragraph (b) of sub-item (2) of item 2 of Part II and substituting the passage “\$14.00”; and
- (j) by deleting paragraphs (a) and (b) of item 3 of Part III and substituting the following—
  - (a) in the case of an allowance payable under item 1 of Part II—as to \$4.75 per week, from the Fund and as to the balance, from the Consolidated Revenue Fund; and
  - (b) in the case of an allowance payable under item 2 of Part II—as to \$10.75 per week, from the Fund and as to the balance, from the Consolidated Revenue Fund.