

SUPERANNUATION AND FAMILY BENEFITS.

3° and 4° GEO. VI., No. XLIII.

No. 43 of 1939.

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

[Assented to 20th December, 1939.]

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

Short title.

1. This Act may be cited as the *Superannuation and Family Benefits Act Amendment Act*, 1939, and shall be read as one with the *Superannuation and Family Benefits Act*, 1938 (No. 34 of 1938), hereinafter referred to as the principal Act.

Operation.

2. (1) This Act shall have effect and shall be deemed to have had effect and to have been in operation as from and including the date of the commencement of the principal Act.

(2) Any adjustments, extensions of time, and other arrangements in relation to any matter or thing done under the principal Act prior to the passing of this Act

and in relation to any matter or thing which would or could have been done if this Act had been passed at the time of the commencement of the principal Act may be done after the passing of this Act, wherever necessary to give effect to the provisions of the principal Act as amended retrospectively by this Act.

(3) In so far as any matter or thing has been done under the principal Act prior to the passing of this Act which at the time of the actual doing of the same was not authorised by the principal Act as then in force but which if done after the passing of this Act would have been authorised by the principal Act, the doing of such matter or thing is hereby confirmed and validated.

3. Section six of the principal Act is amended by adding to the definition of "Department" a paragraph as follows:—

Amendment
of s. 3.

The term "Department" shall, subject as herein-after provided, also include the board of management of a public hospital financed either wholly or partly with moneys from the Hospital Fund established under the Hospital Fund Act, 1930-1937, and any other corporate body, being a Crown instrumentality established by or under any Act of the Parliament of the State, the inclusion of which board of management or other corporate body aforesaid in the said term is recommended by the Minister and is approved by the Treasurer.

Provided that—

- (i) the Treasurer shall not approve of the inclusion in the term "Department" as aforesaid of any such board of management or other corporate body aforesaid, unless and until such board of management or other corporate body has entered into a proper written agreement with the Treasurer and has made arrangements satisfactory to the Treasurer whereby such board of management or other corporate body is bound to pay and will pay to the Treasurer during the employment of its employees who become contributors under this Act and thereafter will continue to pay to the Treasurer

so long as may be necessary progressively by way of fortnightly contributions commencing from the date or dates when its employees become contributors under the Act as aforesaid, and payable fortnightly on the days when the contributions by such employees are payable or otherwise on the days when in accordance with section forty-two of this Act payments of its share of the pensions are payable by the Government of the State as the case may be, such amounts in respect of each and every one of its employees who become contributors as aforesaid as are and will be, in the opinion of the Board, sufficient to meet and recoup to the Government of the State the amounts which in accordance with section forty-two of this Act the said Government will be liable to pay as its share of the pension or other benefits to which the employees of such board of management or other corporate body aforesaid and their dependants will be or are entitled by virtue of being or having been contributors under this Act; and

- (ii) as and when any board of management or other corporate body aforesaid is approved by the Treasurer as a department for the purposes of this Act, notification of such approval shall be published in the *Government Gazette*.

4. Section twenty-four of the principal Act is repealed and a new section is inserted in lieu thereof, as follows:—

24. (1) The fund may and shall, as far as practicable, but subject to subsection (2) of this section, be invested in investments of the following kinds, that is to say:—

- (a) any investments which are from time to time authorised by any Act of the State for the investment of trust funds; and
- (b) any debentures or other securities issued or given by any corporate body constituted or established by any law of the Commonwealth of Australia or of any State in the

Amendment
of s. 24.
Repeal and
new section.

Investment of
fund.

said Commonwealth which authorises the issue of such debentures or the giving of such other securities, and provides that the said debentures or other securities are guaranteed by the Government of the Commonwealth or of the State, as the case may be, under the laws whereof the said debentures are issued or the said other securities are given as aforesaid.

(2) The Board shall not invest the fund or any portion thereof in any investment of any kind whatever without the consent of the Treasurer being first obtained.

5. Section thirty-three of the principal Act is amended by deleting the whole of subsection (3) and the proviso thereto and inserting in lieu thereof a subsection as follows:—

Amendment
of s. 33.

(3) Where an employee mentioned in subsection (2) of this section elects to become a contributor under this Act he shall be liable to contribute to the fund under this Act as if he were contributing for the full benefits of a pensioner under this Act, and subject thereto the following provisions shall apply:

(a) If when such employee reaches the maximum age for retirement under this Act he is still a person to whom the Governor may lawfully grant a superannuation allowance under the Superannuation Act, 1871, such employee may, at his option, take any one of the following benefits, namely:—

(i) accept the pension benefits of a contributor under this Act and relinquish all qualification or eligibility for a superannuation allowance under the Superannuation Act, 1871; or

(ii) accept a superannuation allowance under and in accordance with the provisions of the Superannuation Act, 1871, and a refund from the Board of the amount of the contributions made by him as a contributor in accordance with his obligation under this Act to make such contributions; or

(iii) accept from the Board a refund of a sum equal to the difference between the

aggregate amount of the contributions made by him as a contributor as aforesaid and the amount determined actuarially to be necessary to pay in full the amount of all the contributions which he would have been liable to make as a qualified contributor, if in the first instance he had elected to become a qualified contributor instead of electing to become a contributor.

(b) When any employee aforesaid elects to take the benefit provided in subparagraph (iii) of paragraph (a) hereof—

(i) subject to the Superannuation Act, 1871, he will continue to be qualified and eligible for the grant of a superannuation allowance under that Act;

(ii) he shall not be entitled to any benefits personally as a pensioner under this Act; and

(iii) upon his death his widow and children shall be entitled in respect of the units of pension for which the employee was contributing as a contributor under this Act to receive from the fund in accordance with this Act the same benefits to which they would have been entitled if the employee had elected to take the benefit provided in subparagraph (i) of paragraph (a) hereof; and

(c) The employee shall make his choice of the benefit under paragraph (a) which he desires to take and shall give notice thereof in writing in the prescribed form to the Board not later than one month after he is notified that he is qualified and eligible for a superannuation allowance under the Superannuation Act, 1871, or within such further period as the Board may allow.

Amendment
of s. 34.

6. Section thirty-four of the principal Act is amended by adding thereto a proviso as follows:—

Provided that an employee who has been an employee in the Service for a period of not less than ten years at the time when he elects to become a con-

tributor or a qualified contributor under this Act shall not be required to submit himself for examination by a medical practitioner as aforesaid and shall, subject to this Act, be eligible to become a contributor or a qualified contributor, as the case may be, without such examination.

7. Section thirty-five of the principal Act is amended as follows:— Amendment
of s. 35.

(a) by inserting in subsection (1) after the word “and” in line eight of the said subsection the words “on or”;

(b) by inserting after subsection (1) a new subsection as follows:—

(1a) An employee in the Service at the commencement of this Act who at that date had not reached his maximum age for retirement and in accordance with the provisions of section thirty-one of this Act, and within the period prescribed by that section gave the necessary notice of his election to become a contributor or a qualified contributor, but who attained his maximum age for retirement before the date notified for the commencement of contributions pursuant to subsection (1) hereof, shall, subject to payment of his initial contribution on the date appointed under this Act for the payment thereof, be deemed actually to have become a contributor or a qualified contributor, as the case may be, within the meaning and for the purposes of this Act and to have paid his initial contribution within twelve months before he attained his maximum age for retirement as aforesaid and shall be bound by the provisions of this Act, and shall be entitled to the benefits provided by this Act accordingly, notwithstanding that after attaining his maximum age for retirement he ceased to be an employee.

8. Section thirty-six of the principal Act is amended as follows:— Amendment
of s. 36.

(a) by deleting paragraph (a) of subsection (5) and inserting in lieu thereof a paragraph as follows:—

(a) if he has attained the age of forty years,

or, being an employee at the commencement of this Act, was not less than thirty years of age when he became a contributor, he may increase the amount of his contribution to an amount not exceeding the sum which will provide units of pension to the number specified in column two opposite to that higher salary group; and

(b) by adding to subsection (5) a proviso as follows:—

Provided that—

(i) where any increase of salary is due to the operation of an award of a court or body having power to fix rates of pay, which award makes the amount of salary liable to be increased if an increase occurs in a declared basic wage, and by reason of such increase the salary of a contributor or of a qualified contributor falls within a higher salary group than the salary group in which it fell prior to the increase, the contributor or the qualified contributor may elect to increase the amount of his contribution accordingly; and

(ii) in any instance in which a declaration of the basic wage as mentioned in paragraph (i) of this proviso has the effect of placing employees in the Service outside the metropolitan area in a salary group higher than that for the same grade or class of employees in the Service within the metropolitan area, the employees in the Service outside the metropolitan area who are contributors or qualified contributors may, at their option, continue to contribute in respect of the same number of units for which they were contributing prior to such declaration of the basic wage, or may contribute for the additional unit or units prescribed for the higher salary group in which they have been placed by reason of the operation of the said declaration of the basic wage as aforesaid; and

(iii) for the purpose of paragraph (ii) of this proviso the “metropolitan area” means that portion of the State comprised within an

imaginary circle having a radius of thirty miles from the General Post Office, at Perth, as the centre of such circle;

- (c) by deleting from paragraph (b) of subsection (6) the word "continuous" in line one of the said paragraph;
- (d) by adding at the end of paragraph (b) of subsection (6) after the word "units" in the last line of the said paragraph the word "or";
- (e) by inserting in subsection (6) after paragraph (b) a new paragraph as follows:—

(b1) if the period of his service under the State is less than ten years he may, in addition to his election under paragraph (a) of this subsection, but subject as hereinafter provided, elect to contribute from the date on which his period of service will be not less than ten years at the rate appropriate to his age at that date for units additional to those for which he has elected to contribute under paragraph (a) of this subsection.

Provided that—

- (i) he shall make his election under this paragraph within two months after the date on which his period of service under the State will be not less than ten years as aforesaid; and
 - (ii) the total number of units contributed for by such employee shall not exceed the number of units prescribed for the salary group to which, according to the scale contained in subsection (1) of this section he belongs;
- (f) by deleting from subsection (7) the word "forty" in line three of the said subsection and inserting in lieu thereof the word "thirty";
 - (g) by adding at the end of the section a new subsection as follows:—
- (9) Subject as hereinafter provided, where a contributor or a qualified contributor has not elected to take the full benefit available to

shall be assessed in the manner prescribed in the second proviso to section thirty-nine of this Act:

Provided that an employee shall not in any case be entitled to elect to contribute for retirement at an age earlier than that which he will attain after the date when he makes his election.

(1b) The rates of contribution to be paid by employees electing under subsection (1a) hereof to contribute for full pension upon retirement at the ages of sixty-one, sixty-two, sixty-three, and sixty-four years respectively shall be determined by the Board;

- (c) by deleting from subsection (3) the words "sixty years" in line three of the said subsection and inserting in lieu thereof the words "retirement in respect of which he has elected to contribute and has contributed";
- (d) by adding at the end of subsection (4) the words "or the later age for which he elects under and in accordance with subsection (1a) of this section, as the case may require";
- (e) by deleting subsection (5) and inserting in lieu thereof a new subsection as follows:—

(5) Subject as hereinafter provided, where a contributor who has made an election under this section to contribute for full pension upon retirement at the age of sixty years, or at a later age less than sixty-five years does not retire upon attaining the age of retirement for which he has contributed as aforesaid he shall not be required to make contributions after he has attained the age of retirement for which he has contributed as aforesaid, and he shall not be entitled to receive pension until his retirement. Provided that if such contributor has elected to make contributions in respect of units of pension at the rates prescribed for the age of thirty years in accordance with paragraph (a) of subsection (6) of section thirty-six of this Act, then, notwithstanding anything to the contrary contained in this subsection or elsewhere in this

Act, such contributor shall be liable to make and shall make his contributions in respect of the said units of pension at the prescribed rate for a period of five years from the date when he commenced to make contributions in respect of such units of pension or until he retires when he retires before the completion of such period of five years, and shall not be entitled to receive pension until after his retirement.

11. New sections are inserted in the principal Act after section forty-six as follows:— New sections.

46A. (1) The Board may accept lump sum payments to redeem forthwith all future contributions which would be payable fortnightly under this Act by a contributor. Lump sum payments in redemption of future contributions.

(2) The amount of the lump sum payment to be made under this section shall be determined by the Board which may allow any discount or other allowance it thinks fit.

46B. Outstanding and unpaid contributions shall be chargeable with interest upon the amounts thereof as from the date when they fell due for payment at such rate (not exceeding five pounds per centum per annum) as the Board shall from time to time determine. Interest payable on contributions in arrear.

12. Section forty-nine of the principal Act is amended as follows:— Amendment of s. 49.

(a) by inserting after the section number at the commencement of the section the following figure and words:—“(1) Subject to subsection (2) of this section”;

(b) by adding to the section a subsection as follows:—

(2) In the event of the death of a male contributor before reaching his maximum age for retirement, whose widow is then a pensioner in her own right under this Act by reason of having been a contributor under this Act, such widow shall not be entitled to receive concurrently more than one pension under this Act, but shall be paid either the pension to which she is en-

titled in her own right as aforesaid, or the pension to which she is entitled as the widow of the deceased male contributor, whichever is the greater.

New section.

13. A section is inserted in the principal Act after section fifty-five, as follows:—

Commencing
dates for
payment of
pension.

55A. Notwithstanding anything to the contrary contained in this Act—

- (a) the commencing date for payment of any pension or superannuation allowance under this Act to a contributor shall, subject to paragraph (c) hereof, be the day following the day when such contributor ceased to be an employee, or the day next following the day upon which any leave of absence in respect of which the contributor has been paid the equivalent in money when he ceased to be an employee would, if taken by the contributor, have expired, whichever of the said dates is the later;
- (b) the commencing date for payment of any pension or superannuation allowance under this Act to the widow or children of a contributor (including a qualified contributor) following the death of such contributor shall be the day following the day of the death of the contributor, or the day next following the day upon which any leave of absence represented by the payment of an equivalent in money made to such widow or children would, if taken by the contributor, have expired, whichever of the said dates is the later; and
- (c) a personal pension or superannuation allowance shall not in any circumstances be payable to a contributor before the expiration of twelve months after the prescribed date for the payment of his initial contribution, and then only upon the completion of the payment of twenty-six contributions at the periodical rates applicable to such contributor.

14. Section fifty-six of the principal Act is amended Amendment
of s. 56.
by adding thereto a further proviso as follows:—

Provided also that, where a contributor has elected to contribute under subsection (1a) of section forty of this Act for an age of retirement between sixty years and sixty-five years and has contributed a higher rate of contribution assessed in accordance with the second proviso to section thirty-nine of this Act, and such contributor elects or is called upon to retire before he attains the age of retirement for which he has elected to contribute and has contributed as aforesaid, he may either—

- (a) continue to pay contributions at the higher rate aforesaid until he reaches the age of retirement for which he has elected to contribute and has contributed and thereafter receive the full pension to which he is entitled as such contributor; or
- (b) as from the date of his actual retirement continue to pay contributions at the lower rate prescribed in respect of retirement at sixty-five years of age until he attains the age of sixty-five years, and thereafter receive the full pension to which he is entitled as such contributor.

15. Section fifty-seven of the principal Act is amended Amendment
of s. 57.
as follows:—

- (a) by inserting in paragraph (b) of subsection (1) after the word “retirement” in line four of the said paragraph the words “or, at his option, to the payment to him out of the Fund of a sum equal to the actual amount of all the contributions paid by him to the Fund; and”;

- (b) by inserting in subsection (1) after paragraph (b) and before the proviso following paragraph (b) a new paragraph, as follows:—

(c) if the invalidity or incapacity is shown by the medical report obtained by the Board as provided for in section seventy-nine of this Act to be partly due to his own fault, or to have been aggravated by the conduct or action of the contributor, be entitled to such reduced pension or

other benefit as the Board may determine to be reasonable, having regard to the circumstances of the particular case;

(c) by adding at the end of the section a new subsection as follows:—

(3) Subject to this Act, a pension payable to any contributor under subsection (1) of this section shall be paid from such date, being not later than the maximum age for retirement of the contributor, except in the case of a contributor governed by paragraph (b) of subsection (2) of section thirty-five of this Act, as the Board may determine.

Amendment
of s. 61.
Repeal and
new section.

16. Section sixty-one of the principal Act is repealed and a section is inserted in lieu thereof as follows:—

Payment of
contributions
of deceased
contributor
to personal
representa-
tives in cer-
tain cases.

61. Where a contributor who is unmarried, or is a widower without children under the age of sixteen years, or is a widow, dies before his or her retirement, the contributions made by him or her shall be paid to his or her personal representatives, or, failing them, to such persons (if any) as the Board determines.

Amendment
of s. 74.

17. Section seventy-four of the principal Act is amended by deleting subsection (1) and inserting in lieu thereof a subsection as follows:—

(1) If in the opinion of the Board the health of any pensioner to whom a pension under section fifty-seven of this Act is being paid or is to be paid is such as to enable him to perform suitable duties, the Board shall so inform a prescribed authority with a view to suitable employment being found for the pensioner.

Amendment
of s. 84.

18. Section eighty-four of the principal Act is amended by deleting from paragraph (b) the word “dates” in line one of the said paragraph and inserting in lieu thereof the word “data.”

Citation of
principal Act
as amended.

19. The principal Act as amended by this Act may be cited as the Superannuation and Family Benefits Act, 1938-1939.