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WESTERN AUSTRALIA

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# GOVERNMENT EMPLOYEES SUPERANNUATION ACT 1987

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# GOVERNMENT EMPLOYEES SUPERANNUATION ACT 1987

**AN ACT to provide superannuation schemes for employees of the Government and certain public authorities and for certain other persons; 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.**

*[Long title amended by No. 8 of 1993 s.4.]*

**PART I — PRELIMINARY**

**Short title**

1. This Act may be cited as the *Government Employees Superannuation Act 1987*<sup>1, 1a</sup>.

**Commencement**

2. This Act shall come into operation on a day to be fixed by proclamation<sup>1</sup>.

**Interpretation**

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

“**1987 scheme**” means the scheme of superannuation and other benefits provided for in Parts IV, V, VI, and VII;

“**1993 scheme**” means the scheme of superannuation and other benefits provided for in Part VIIA;

“**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 member of the 1987 scheme, 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 or in respect of the member;

N represents the number of superannuation fortnights for which contributions have been paid or are payable by or in respect of the member and, in the case of a member 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;

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

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

**“contributory period”** in relation to a member of the 1987 scheme, means the number of completed months in respect of which contributions to the scheme have been made by or in respect of the member;

**“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;

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**“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 1987 scheme for a particular period, means the percentage rate of relevant remuneration elected by the member under section 22 having effect in respect of that period;

**“elective contribution”** means a contribution to the 1987 scheme for which a member has elected under section 22, regardless of whether the contribution is payable by the member or as part of the member’s remuneration;

**“employee”** means —

- (a) a person who is employed by an employer under a contract of employment, including persons appointed under —
  - (i) <sup>2</sup>section 64 (1) or 100 (2) of the *Public Sector Management Act 1994*; or
  - (ii) Part I of the *Police Act 1892*;
- (aa) a person engaged under a contract for services where at least 50% of the relevant remuneration of the person under the contract is in respect of the person’s labour;
- (b) the holder of an office who is, under subsection (5), for the time being an employee of an employer for the purposes of this Act;

- (c) a member of the Governor's Establishment within the meaning of the *Governor's Establishment Act 1992*; and
- (d) a member of a department of the staff of Parliament referred to in the *Parliamentary and Electorate Staff (Employment) Act 1992*;

**“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<sup>3</sup>,

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

**“entry date”**, in relation to a person who is a member of the 1987 scheme, means the date as at which the person's election to become a member took effect, that election being —

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

**“exit date”** in relation to a member of the 1987 scheme, 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

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- (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 person who ceases to be a member of the 1987 scheme because, under section 17B or 17C, he or she becomes ineligible for membership, it means the day on which the membership ceases;

**“final remuneration”**, in relation to a member of the 1987 scheme, has the meaning given to it by section 4A;

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

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

**“membership period”** in relation to a member of the 1987 scheme, means the period that commences on the member’s entry date and ends on the member’s exit date, but does not include any period of unrecognized no-pay leave that commences after the day on which section 4 (a) (vi) of the *Government Employees Superannuation Amendment Act 1989*<sup>1</sup> came into operation if he or she is not entitled to contribute to, or have contributions made to, the scheme for that period;

**“relevant remuneration”** —

- (a) in relation to a member other than a statutory member of the 1993 scheme, has the meaning given in section 4; and

- (b) in relation to a statutory member of the 1993 scheme, has the meaning given in section 4AA;

**“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;

**“scheme”** —

- (a) when used in Part IV, V, VI, or VII, means the 1987 scheme;
- (b) when used in Part VIIA, means the 1993 scheme; and
- (c) otherwise, means whichever of those schemes is indicated by the context or, where the context indicates, either or both of those schemes;

**“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

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

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

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

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

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

(7) A person, a department, or an authority required by subsection (6) to be treated as the employer of an office-holder is, as such employer, deemed to be listed in Part B of Schedule 1<sup>3</sup>

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unless the Treasurer, by order published in the *Gazette*, otherwise specifies.

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

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

*[Section 3 amended by No. 44 of 1989 s.4; No. 25 of 1992 s.4; No. 40 of 1992 s.5; No. 8 of 1993 ss.5, 43, 44 and 50; No. 32 of 1994 s.13; No. 60 of 1995 ss.5, 23, 24, 26 and 52.]*

**Relevant remuneration of member other than statutory member of 1993 scheme**

4. (1) For the purposes of this Act “**relevant remuneration**” in relation to a member other than a statutory member of the 1993 scheme means —

- (a) any remuneration or benefit to which the member is entitled in the member’s capacity as an employee that is payable in money; and
- (b) the value of any remuneration or benefit to which the member is so entitled that is not payable in money,

if the remuneration or benefit is not excluded under subsection (4) and the member’s employer, or a person duly authorized to certify on behalf of the employer, has certified the member to be entitled to that remuneration or benefit on a continuing basis.



(2) The remuneration or benefit is on a continuing basis if the member is likely to continue to be entitled to it while the member continues to occupy the position occupied at the time of the certification or would be likely to continue to be entitled to it if the member were to continue to occupy that position.

(3) If the member is entitled to —

- (a) an expense of office allowance of a kind that is subject to income tax;
- (b) a shift allowance or an allowance instead of overtime; or
- (c) any other allowance that is not excluded under subsection (4),

the member is to be regarded as being entitled to it on a continuing basis.

(4) The remuneration and benefits that are excluded for the purposes of subsection (1) are —

- (a) any benefits to the member under this Act or contributions in respect of the member under this Act except —
  - (i) elective contributions to the 1987 scheme that are not payable by the member but are payable in respect of the member as part of the member's remuneration; and
  - (ii) contributions to the 1993 scheme, other than employer's compulsory contributions, payable in respect of the member as part of the member's remuneration;
- (b) anything given —
  - (i) as reward for overtime (other than as an allowance instead of overtime) or as a bonus;

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- (ii) in lieu of recreation leave, long service leave or any other period of leave, or as a consequence of terminating the member's employment;
- (iii) as an allowance for travelling, subsistence or other expenses;
- (iv) for rent or as a residence, housing or quarters allowance;
- (v) as a climatic allowance or an allowance for equipment;
- (vi) as a higher duties allowance, by way of annual leave loading, or as compensation in lieu of the opportunity for private practice; or
- (vii) as an allowance or part of an allowance that the Board determines, having regard to and consistently with subparagraphs (i) to (vi), is to be excluded;

and

- (c) any remuneration or benefit of a class that the Treasurer has for the time being determined to be excluded.

(5) The value of any remuneration or benefit not payable in money that is to be included in determining relevant remuneration is its value as from time to time determined by the employer.

(6) If —

- (a) a determination is made under subsection (4) (c) excluding any class of remuneration or benefit for the purposes of subsection (1); or

- (b) a determination is made under subsection (5) reducing the value of any remuneration or benefit as previously determined under that provision,

the determination does not apply to a member whose relevant remuneration before the determination has effect would be reduced by it unless the member, by notice in writing to the Board, consents to its application to the member.

*[Section 4 inserted by No. 60 of 1995 s.27.]*

### **Relevant remuneration of statutory member of 1993 scheme**

**4AA.** (1) For the purposes of this Act “**relevant remuneration**” in relation to a statutory member of the 1993 scheme means any remuneration or benefit to which the member is entitled in the member’s capacity as an employee that is payable in money to the member by way of salary, wages or allowance, if —

- (a) the remuneration or benefit is not excluded under subsection (4); and
- (b) the member’s employer, or a person duly authorized to certify on behalf of the employer, has certified the member to be entitled to that remuneration or benefit on a continuing basis.

(2) The remuneration or benefit is on a continuing basis if the member is likely to continue to be entitled to it while the member continues to occupy the position occupied at the time of the certification or would be likely to continue to be entitled to it if the member were to continue to occupy that position.

(3) If the member is entitled to —

- (a) an expense of office allowance of a kind that is subject to income tax;

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- (b) a shift allowance or an allowance instead of overtime;
- (c) a higher duties allowance or an amount paid as annual leave loading or as compensation in lieu of the opportunity for private practice; or
- (d) any other allowance that is not excluded under subsection (4),

the member is to be regarded as being entitled to it on a continuing basis.

(4) The remuneration and benefits that are excluded for the purposes of subsection (1) are —

- (a) an amount paid for overtime or as a bonus;
- (b) an amount paid in lieu of recreation leave, long service leave or any other period of leave, or paid as a consequence of terminating the member's employment;
- (c) an allowance for travelling, subsistence or other expenses;
- (d) an amount paid for rent or as a residence, housing or quarters allowance;
- (e) a climatic allowance or an allowance for equipment; and
- (f) an allowance or part of an allowance that the Board determines, having regard to and consistently with paragraphs (a) to (e), is to be excluded.

*[Section 4AA inserted by No. 60 of 1995 s.27.]*

### **Allowance may be certified as a percentage**

**4AB.** (1) An employer or other person who gives a certificate under section 4 (1) or 4AA (1) may, instead of certifying an actual amount for an allowance to which an employee, or a particular class of employee, is entitled, express the allowance in terms of a percentage of all or any part of the other relevant remuneration.

(2) Where, under subsection (1), an allowance is certified in terms of a percentage, the amount to be included in the employee's relevant remuneration because of the allowance is, unless the employee shows otherwise, the amount represented by the percentage certified.

*[Section 4AB inserted by No. 60 of 1995 s.27.]*

### **Meaning of "final remuneration"**

**4A.** (1) For the purposes of this Act, except Schedule 4, "**final remuneration**" in relation to a member of the 1987 scheme —

- (a) means the average annual amount of the member's relevant remuneration in respect of the membership period of 2 years immediately preceding the member's exit date; or
- (b) where the membership period is less than 2 years, means the average annual amount of the member's relevant remuneration calculated in accordance with the formula —

$$FR = TR \times \frac{26}{NP}$$

where —

FR represents the final remuneration to be ascertained;

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TR represents the amount deemed by subsection (3) to have been the member's relevant remuneration;

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).

(2) For the purposes of subsection (1) (a) the average annual amount of the member's relevant remuneration shall be calculated by dividing by 2 the total of the amounts deemed by subsection (3) to have been the member's relevant remuneration in respect to 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).

(3) For the purposes of subsection (2), the member's relevant remuneration is conclusively deemed to have been —

- (a) in respect of the period from the member's exit date to the last remuneration adjustment day, an amount calculated at the rate of the member's relevant remuneration on the exit date;
- (b) in respect of the period from the last remuneration adjustment day to the last remuneration adjustment day but one, an amount calculated at the rate of the member's relevant remuneration on the last remuneration adjustment day; and
- (c) in respect of the balance of the 52 complete fortnightly pay periods, an amount calculated at the rate of the member's relevant remuneration on the last remuneration adjustment day but one.

(4) In subsection (3) "**remuneration adjustment day**" means the day that applied to the member by operation of section 22 (5a).

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

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

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

(8) Where the rate of a member's relevant remuneration on a particular day is relevant to a calculation under subsection (3) of the amount deemed to have been the member's relevant remuneration and the Board is satisfied that on that day the member had no relevant remuneration or the member's relevant remuneration was at a rate that was less than the member's normal rate, the member's relevant remuneration on that day is, for the purpose of the calculation, to be taken to have been at the rate that the Board considers to have been the member's normal rate.

*[Section 4A inserted by No. 25 of 1992 s.6; amended by  
No. 8 of 1993 ss.6 and 52; No. 60 of 1995 s.28.]*

### **Persons in more than one employment**

**4B.** (1) If a person is in more than one employment by one or more employers, this Act applies, unless in the context it would be inappropriate, as if the person were, in respect of each employment, a separate person.

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

*[Section 4B inserted by No. 8 of 1993 s.7.]*



**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) 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.

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(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.

(3) The Minister may give directions in writing to the Board with respect to its functions and powers, either generally or with respect to a particular matter, and the Board shall give effect to any such direction.

(4) The text of any direction received by the Board under subsection (3) shall be included in the annual report submitted by the accountable authority of the Board under section 66 of the *Financial Administration and Audit Act 1985*.

[Section 6 amended by No. 5 of 1989 s.10.]

## **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 Commissioner<sup>5</sup>.

## **Staff and consultants**

8. (1) There may be appointed from time to time under and subject to Part 3 of the *Public Sector Management Act 1994* 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 Part 3 of the *Public Sector Management Act 1994* 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.

[Section 8 amended by No. 32 of 1994 s.13.]

## **Minister to have access to information**

8A. (1) For parliamentary purposes or for the proper conduct of the Minister's public business, the Minister is entitled —

- (a) to have information in the possession of the Board;  
and
- (b) where the information is in or on a document, to have,  
and make and retain copies of, that document.

(2) For the purposes of subsection (1) the Minister may —

- (a) request the Board to furnish information to the  
Minister;

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- (b) request the Board to give the Minister access to information;
- (c) for the purposes of paragraph (b) make use of the staff of the Board to obtain the information and furnish it to the Minister.

(3) The Board shall comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

(4) In this section —

**“document”** includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

**“information”** means information specified, or of a description specified, by the Minister that relates to the functions or powers of the Board;

**“parliamentary purposes”** means the purpose of —

- (a) answering a question asked in a House of Parliament; or
- (b) complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament.

[Section 8A inserted by No. 25 of 1992 s.8.]

**Confidential information**

**8B.** (1) Nothing in this Act entitles the Minister to have information in the possession of the Board in a form that —

- (a) discloses information about a member or a beneficiary;  
or

- (b) might enable information about a member or a beneficiary to be ascertained,

being information that the Board considers to be confidential.

(2) Subsection (1) does not apply where disclosure of the information —

- (a) is authorized or required by some other written law;  
or
- (b) is authorized by the member or beneficiary.

(3) In subsection (1) —

**“beneficiary”** means a person to whom a benefit is payable or has been paid under this Act or the *Superannuation and Family Benefits Act 1938*;

**“member”** means a person who is or has been —

- (a) a member of a scheme; or
- (b) a contributor, qualified contributor or subscriber under the *Superannuation and Family Benefits Act 1938*.

[Section 8B inserted by No. 25 of 1992 s.8; amended by No. 8 of 1993 s.8.]

### **Information for members**

**8C.** (1) The Board shall as soon as is practicable after a person becomes a member of the 1987 or the 1993 scheme send to the person a written statement describing the kind of benefits provided for by this Act for a member of the scheme and the conditions relating to, and the method of determining, those benefits.

(2) The Board shall in respect of each financial year send to each member of the 1987 or the 1993 scheme a written statement setting out the prescribed information about contributions to the Fund by or in respect of the member and the benefits provided for by this Act as they relate to the member.

(3) A statement required by subsection (2) to be sent to a member of the 1987 scheme in respect of a financial year shall be sent on, or as soon as is practicable after, the next adjustment day of the member following that financial year.

(4) A statement required by subsection (2) to be sent to a member of the 1993 scheme in respect of a financial year shall be sent as soon as is practicable after the end of that financial year.

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

*[Section 8C inserted by No. 8 of 1993 s.9; amended by  
No. 60 of 1995 ss.23 and 24.]*

**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 each scheme under this Act and the scheme under the *Superannuation and Family Benefits Act 1938* in the same proportions as the amount of each such element bears to the total amount.

[Section 10 amended by No. 8 of 1993 s.10.]

**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.

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(5a) The Board shall not make a delegation under subsection (5) unless the form and maximum duration of the proposed delegation have been approved by 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.

[Section 13 amended by No. 5 of 1989 s.11.]

**Investment, particular limitations imposed**

**13A.** (1) Notwithstanding anything in section 13, the Board shall not —

- (a) make a loan out of moneys of the Fund to any member of a scheme; or
- (b) invest moneys of the Fund otherwise than in accordance with the standards for the time being prescribed by regulations made under the *Occupational Superannuation Standards Act 1987*<sup>6</sup> of the Commonwealth, so far as they apply to the Fund.

(2) The Board shall not make an investment of moneys in the Fund that would result in a breach of subsection (3) and if at any time it appears to the Board that the Fund is invested in breach of that subsection it shall take such steps as are necessary to remedy the breach.

(3) This subsection is breached if the cost of investments of the Fund in debt paper or securities of an employer exceeds 10%, or such other percentage as is prescribed, of the cost of all investments of the Fund.

(4) Debt paper of the Western Australian Treasury Corporation is not to be treated as debt paper of an employer for the purposes of subsection (3).

[Section 13A inserted by No. 25 of 1992 s.7; amended  
by No. 8 of 1993 s.11.]

**Inward portability**

**13B.** (1) In this section —

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

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

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

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

(2) An employee —

- (a) who elects to become a member of the 1987 scheme and whose election is accepted by the Board; or
- (b) who becomes a member of the 1993 scheme,

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

(3) Where —

- (a) a person has caused a portable benefit to be paid into the Fund under subsection (2); and

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- (b) the person or the personal representative of the person subsequently becomes entitled to a benefit under this Act that is payable at the time when the entitlement arises,

the benefit referred to in paragraph (b) shall, subject to subsection (6), include the amount of that portable benefit together with compound interest on that amount calculated with effect from the date of payment into the Fund at a rate determined by the Board from time to time to be the sum of the CPI rate<sup>4</sup> (as determined under section 3 (2)) and 2%.

(4) Where a person has caused a portable benefit to be paid into the Fund under subsection (2) and subsequently becomes entitled to a benefit under this Act that is only payable at a time after the time when the entitlement arises, the amount of the portable benefit is, subject to subsections (5) and (6), payable to the person at the time when the benefit under this Act is payable, together with compound interest on that amount calculated in the manner described in subsection (3).

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

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

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

(6) Where a person has caused a conditional portable benefit to be paid into the Fund and the person resigns, is dismissed or discharged from employment with an employer or is retrenched, the Board shall on the application of the person pay the amount, together with compound interest on that amount calculated in

the manner described in subsection (3), to another superannuation fund if the Board is satisfied that the other fund is a complying superannuation fund.

*[Section 13B inserted by No. 8 of 1993 s.12; amended by No. 60 of 1995 ss.23 and 24.]*

**Outward portability — members of 1987 scheme**

**13C.** (1) Without limiting the circumstances in which a payment may be made under section 13B, where a member of the 1987 scheme —

- (a) resigns, is dismissed or discharged from employment with an employer, or is retrenched; and
- (b) as a result becomes entitled to a benefit under this Act that has not yet become payable,

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

(2) For the purposes of this section, a member's transfer value is —

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

(3) The Board shall transfer the amount to which such a request relates if —

- (a) the Treasurer approves;

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- (b) a request is not made under section 13B (5); and
- (c) the terms applying to the other superannuation fund are such that a payment in respect of the amount, if transferred, cannot be made to the member contrary to subsection (4).

(4) A payment to a member is contrary to this subsection if it is made before the member attains the age of 55 years or retires, whichever last occurs, except in the event of —

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

*[Section 13C inserted by No. 60 of 1995 s.55.]*

**Outward portability — members of 1993 scheme but not 1987 scheme**

**13D.** (1) Without limiting the circumstances in which a payment may be made under section 13B, where a member of the 1993 scheme who is not a member of the 1987 scheme becomes entitled to a benefit under the 1993 scheme that has not yet become payable, the member may request the Board to transfer to another superannuation fund the amount of the member's transfer value.

(2) For the purposes of this section, a member's transfer value is —

- (a) the value of the member's benefit under the 1993 scheme discounted, where the Board, on the advice of an actuary, thinks fit, as determined by the Board in accordance with that advice; and

- (b) where applicable, any amount paid into the Fund by the member under subsection (2) of section 13B, together with compound interest on the amount paid into the Fund calculated in the manner described in subsection (3) of that section.
- (3) The Board shall transfer the amount to which such a request relates if —
- (a) a request is not made under section 13B (5); and
  - (b) the terms applying to the other superannuation fund are such that a payment in respect of the amount, if transferred, cannot be made to the member contrary to section 13C (4).
- (4) The transfer is not required to be made until a period of 12 months has elapsed since the date on which the person ceased to be an employee of an employer.

*[Section 13D inserted by No. 60 of 1995 s.55.]*

### **Power to borrow**

14. (1) Subject to this Act, the Board may, 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,

for the purpose of overcoming any cash flow problem in the payment of superannuation benefits, and for no other purpose.

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(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 for the purpose described in subsection (1), and for no other purpose.

(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.

*[Section 14 amended by No. 25 of 1992 s.9.]*

**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 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 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 Fund.

*[Section 15 amended by No. 6 of 1993 s.11.]*

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

**16.** (1) The Board may recover any money owing to the Fund by a member, 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 member, employer, beneficiary or other person, by deduction from that amount; or
- (c) in the case of a member who is an employee, by deduction from the member's pay in accordance with subsection (2) by such instalments, and at such times, as the Board determines.

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(2) An employer shall, at the written request of the Board, make deductions from a member's pay 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 member from whose pay 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.

*[Section 16 amended by No. 60 of 1995 ss.29, 50  
and 51.]*

## **PART IV — MEMBERSHIP OF THE 1987 SCHEME**

*[Heading amended by No. 8 of 1993 s.13; No. 60 of 1995 s.23.]*

### **Membership**

17. A person who is an employee of an employer, including a person who is already a member of the 1993 scheme, is eligible to elect to become a member of the 1987 scheme unless excluded from membership by section 17B or 17C.

*[Section 17 inserted by No. 8 of 1993 s.14; amended by No. 60 of 1995 ss.23 and 24.]*

### **Closure of scheme**

17A. (1) In this section —

“**closure day**” means the day on which section 4 of the *Government Employees Superannuation Amendment Act (No. 2) 1995*<sup>1</sup> commenced.

(2) Despite anything else in this Act, a person cannot become a member of the 1987 scheme after the closure day unless this section allows the Board to accept the person’s election to become a member.

(3) The Board is allowed to accept a person’s election to become a member of the 1987 scheme if it was lodged before the closure day.

(4) The Board is allowed to accept a person’s election to become a member of the 1987 scheme if —

(a) the person became an employee eligible for membership only after the closure day;

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- (b) the person's eligibility results from the acceptance of an offer that the employer certifies to the Board was made before the closure day; and
  - (c) the election is lodged within 1 month after the person became eligible for membership.
- (5) The Board is allowed to accept a person's election to become a member of the 1987 scheme if —
- (a) it is made under Schedule 4, clause 7B;
  - (b) the Treasurer, acting under Schedule 4, clause 9, has directed the Board to accept it; or
  - (c) it is made in the circumstances described in Schedule 4, clause 14A.
- (6) The Board is allowed to accept a person's election to become a member of the 1987 scheme if the Board is satisfied that the person was not, and could not reasonably be expected to have been, aware of this section before the closure day because the person has been away from the person's usual place of employment.
- (7) This section does not prevent a person's membership from continuing in accordance with section 20.

[Section 17A inserted by No. 60 of 1995 s.4.]

**Exclusions from membership in any capacity**

**17B.** (1) A person cannot become a member if the person is a person to whom this section applies, and if a person is a member his or her membership ceases upon his or her becoming a person to whom this section applies.

- (2) This section applies to a person who —
  - (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, other than the 1993 scheme;
- [(e) *deleted*]
- (f) receives remuneration from the employer that includes a component in substitution for superannuation;
- [(g) *deleted*]
- (h) is a casual employee within the meaning in subsection (3);
- (ha) is an employee by reason only of paragraph (aa) of the definition of "employee" in section 3 (1);
- (i) 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
- (j) is a member of a class of persons prescribed for the purposes of this section.

(3) For the purposes of subsection (2) (h) a person is a casual employee in relation to an employer if the person is engaged by that employer on terms that —

- (a) the employee is not required to work in that employment at some time during 2 successive superannuation fortnights; and

- (b) the employee's remuneration in that employment is expected to be less than \$250, or such other amount as is prescribed, for any period of one month.

*[Section 17B inserted by No. 25 of 1992 s.10; amended by No. 8 of 1993 ss.16 and 53; No. 60 of 1995 ss.6 and 30.]*

**Further exclusion from membership**

17C. (1) A person cannot become a member if he or she is a person to whom this section applies and if a person is a member his or her membership ceases on his or her becoming a person to whom this section applies.

(2) This section applies to an employee who is employed on a part-time basis —

- (a) if the number of hours worked in each week is less than 10 or such other number as is prescribed;
- (b) if the basis of the part-time work does not conform to any standard that is prescribed by regulations for the purposes of this subsection; or
- (c) if, being a member, he or she becomes excluded from membership by subsection (3).

(3) If an employee is not excluded from membership by operation of subsection (2) (a) or (b) at the time he or she elects to become a member he or she is not so excluded subsequently unless and until the basis of the part-time work falls below any standard that is prescribed by regulations for the purposes of this subsection.

(4) This section also applies to an employee who has not worked, and cannot reasonably expect to work, in that employment for a period of at least 12 months without at any

time during that period being excluded from membership by operation of subsections (2) and (3).

*[Section 17C inserted by No. 25 of 1992 s.10; amended by No. 8 of 1993 ss.17 and 54.]*

*[17D. Repealed by No. 8 of 1993 s.18.]*

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

**18.** (1) An employee who comes within section 17 may at any time lodge with the Board an election to become a member of the 1987 scheme.

*[(2) repealed]*

(3) The Board may require an employee who lodges an election under subsection (1) —

- (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 member of the 1987 scheme 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 member of the 1987 scheme 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 member of the 1987 scheme 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 member of the 1987 scheme subject to one of the conditions referred to in subsection (5) and subsequently the member 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 member, 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 member is limited.

*[Section 18 amended by No. 25 of 1992 s.11; No. 8 of 1993 ss.43 and 44; No. 60 of 1995 s.23.]*

*[19. Section 19 repealed by No. 25 of 1992 s.12.]*



### **Termination of membership by notice**

**19A.** (1) A member of the 1987 scheme may at any time terminate his or her membership by lodging with the Board a notice to that effect in a form approved by the Board.

*[(2) repealed]*

*[Section 19A inserted by No. 44 of 1989 s.7; amended by No. 25 of 1992 s.13; No. 8 of 1993 s.43; No. 60 of 1995 s.23.]*

### **Re-entry after termination of membership**

**19B.** (1) Except as provided in subsections (2), (3) and (4), a member of the 1987 scheme who terminates his or her membership by notice under section 19A (1) cannot further elect to become a member of the 1987 scheme.

(2) A person who has terminated his or her membership by notice under section 19A (1) may further elect to become a member of the 1987 scheme if the person is otherwise eligible to be a member and he or she satisfies the Board that —

- (a) the contract of employment applicable to him or her at the time when the notice was lodged has been terminated by resignation, dismissal, discharge or retrenchment; and
- (b) the contract of employment applicable to him or her at the time of the further election to become a member of the 1987 scheme is a new contract of employment; and
- (c) that such termination and new contract have not been brought about solely or principally for the purpose of enabling the person to have the benefit of the exception to the prohibition in subsection (1) provided for by paragraphs (a) and (b).

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(3) A person who ceased to be a member of the 1987 scheme before 1 July 1989 by virtue of a notice given under section 19 (2) as in force before the commencement of section 7 of the *Government Employees Superannuation Amendment Act 1989*<sup>1</sup> may, subject to subsection (5), further elect to become a member of the 1987 scheme if he or she otherwise remains eligible to be a member.

(4) A person who was a member of the 1987 scheme on 1 July 1989 may, if he or she —

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

further elect to become a member of the 1987 scheme but subject to subsection (5) and not sooner than 2 years after the day on which the notice of termination was lodged with the Board.

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

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

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

- (a) the prescribed period in relation to a member of the 1987 scheme is the period of 6 months following the day on which the member attained the 24 month membership qualification required before the commencement of section 29 of the *Superannuation Legislation Amendment Act 1993*<sup>1</sup> for a benefit under section 35 (3);
- (b) a notice lodged with the Board before a member of the 1987 scheme attained that membership qualification

is to be taken to have been lodged during the prescribed period if it expressly states that it does not have effect until the member attains that membership qualification; and

- (c) the Board shall treat as valid a notice lodged on or after 1 July 1989 but before the commencement of section 7 of the *Government Employees Superannuation Amendment Act 1989*<sup>1</sup> if the Board is satisfied that the notice is intended to have effect for the purposes of that subsection.

[Section 19B inserted by No. 44 of 1989 s.7; amended by No. 8 of 1993 ss.19, 43, 44 and 46; No. 60 of 1995 s.23.]

### **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;

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- (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.

**[21, 21A. Repealed by No. 8 of 1993 s.20.]**

## **PART V — ELECTIVE CONTRIBUTIONS**

*[Heading amended by No. 60 of 1995 s.31.]*

### **Rates and payment of members' contributions**

**22.<sup>7</sup>** (1) Subject to this section, a member may elect for contributions to the scheme at the rate of 3%, 4% or 5% of relevant remuneration and, subject to subsections (6) and (7), contributions under this Part cannot be made at any other rate.

(1a) If elective contributions in respect of a member are not payable as part of the member's remuneration, they are payable by the member.

(2) Elective contributions in respect of a member are 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 the relevant remuneration of the member and rounded up or down to the nearest whole dollar.

(3) The amount of a 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 member.

(4) The birthday of a member 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 relevant remuneration determined in accordance with subsection (5a) and if the member

so elects, may be adjusted as to the rate of contributions in accordance with subsections (6) and (6a).

(5a) For the purposes of subsection (5) the amount of relevant remuneration is the member's relevant remuneration on —

- (a) the 1st day of the penultimate month before the month in which the member's birthday falls if that birthday is on any of the first 15 days of that month; and
- (b) in every other case, the 16th day of the penultimate month referred to in paragraph (a).

(6) A member may, during the period allowed under subsection (6a), elect for contributions at a rate of 3%, 4%, 5%, 6% or 7% of relevant remuneration whether the new rate is higher or lower than the elected rate before the election is made and an election under this subsection shall be given effect to under subsection (5), except that a member with an average contribution rate of 5% may not elect for contributions at a rate of 6% or 7% of relevant remuneration.

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

(7) If contributions at a rate of 6% or 7% of relevant remuneration for a number of superannuation fortnights produce an average contribution rate of 5%, the contribution rate shall with effect from the next superannuation fortnight be reduced to 5% of relevant remuneration.

(8) The contributions in respect of a member shall continue to be payable until the last superannuation fortnight before the member —

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

(b) ceases to be an employee,

whichever first occurs.

(9) To the extent that the contributions are not payable in respect of the member as part of the member's remuneration, an election for contributions 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 member's pay and to remit the amounts so deducted to the Board.

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

*[Section 22 amended by No. 44 of 1989 s.9; No. 60 of  
1995 ss.32, 50, 51 and 52.]*

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

**23.** (1) Subject to subsections (2) and (3a), if a member is on leave of absence elective contributions to the scheme in respect of the period of leave —

- (a) are required to the same extent as if the member were not on leave; and
- (b) are required to be made to the Board in advance or within 7 days after the end of each superannuation fortnight.

(2) Notwithstanding subsection (1), a member who is on maternity or paternity leave, sick leave or other leave of absence of a prescribed description may, if —

- (a) the period of leave is for 3 months or more; and

- (b) the member does not wish elective contributions to the scheme to continue under subsection (1),

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

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

(3a) Without limiting section 23A, if a member is on unrecognized no-pay leave for a period of 3 months or more elective contributions cannot be made in respect of the period of the leave.

(4) Elective contributions made in respect of a period of leave of absence without pay may be made in advance or within 7 days after the end of each superannuation fortnight except that a member may defer the making of elective contributions by the member until the member resumes duty and then pay the amount of the contributions in arrear, together with interest at a rate determined from time to time by the Board, over the allowed period.

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

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

- (a) calculate the benefit as if those contributions had been paid; and
- (b) deduct the amount unpaid (including interest payable under subsection (4)) from the benefit.

*[Section 23 amended by No. 44 of 1989 s.10; No. 25 of 1992 s.16; No. 60 of 1995 ss.33 and 50.]*



### **Death and disability cover for unrecognized leave**

**23A.** The Board may, subject to such terms and conditions as it thinks fit and on payment of such amount in lieu of contributions as it may determine, grant to a member, in respect of a period of unrecognized no-pay leave for a period of 3 months or more, an exemption from the operation of paragraph (c) of section 31 (1) and paragraph (cc) of each of sections 32 (1) and 33 (1), and a person to whom such an exemption is granted is not subject to the exclusion in those paragraphs in respect of that period.

*[Section 23A inserted by No. 44 of 1989 s.11; amended by No. 25 of 1992 s.17; No. 60 of 1995 s.50.]*

### **Contributions of part-time employees**

**24.** (1) Calculation of the contributions in respect of a member who is employed on a part-time basis shall be based on the actual relevant remuneration of the member and not the relevant remuneration of a comparable full-time employee.

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

(3) Where —

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

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the contributions in respect of the member shall, if the Board so determines and subject to subsections (3a) and (3b), be varied with effect from the first complete superannuation fortnight after the Board's determination to take into account the relevant remuneration of the member after the increase.

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

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

*[Section 24 amended by No. 44 of 1989 s.12; No. 8 of 1993 s.21; No. 60 of 1995 ss.34 and 50.]*

**Contributions of seconded contributor**

**25.** (1) If a member is seconded to the employment of another employer or another Government, public authority or local government, the elective contributions in respect of the member shall be calculated in accordance with section 22, but the member's relevant remuneration shall be taken to be the member's relevant remuneration 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 elective

contributions in respect of the member shall be calculated in accordance with section 22, but the member's relevant remuneration shall be taken to be the member's relevant remuneration in respect of the employment from which the member was seconded.

*[(3) repealed]*

(4) A member who is seconded to other employment may not contribute to a superannuation scheme administered by or for employees of that employment.

*[Section 25 amended by No. 44 of 1989 s.13; No. 25 of 1992 s.18; No. 60 of 1995 ss.35 and 50.]*

### **Contributions and benefits on remuneration reduction**

**26.** (1) If a member's relevant remuneration is reduced, the elective contributions in respect of the member shall, notwithstanding section 22 (3) but subject to subsection (2), be calculated at his or her elected rate applied to the amount of the reduced relevant remuneration.

(2) If the Board is satisfied that the reduction of relevant remuneration is not attributable to the misconduct or inefficiency of the member the Board may permit contributions in respect of the member at his or her elected rate applied to the amount of—

- (a) the former relevant remuneration so long as that relevant remuneration exceeds the actual relevant remuneration of the member;
- (b) a notional relevant remuneration representing the relevant remuneration from time to time attributable to the post occupied by the member immediately before the reduction; or

- (c) some other notional relevant remuneration that the Board considers appropriate.

(3) If contributions in respect of a member are permitted under subsection (2), any benefits provided to or in respect of the member shall be assessed as if the relevant remuneration attributed to the member under that subsection were his or her relevant remuneration during the period for which contributions under that subsection were made.

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

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

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

*[Section 26 inserted by No. 44 of 1989 s.14; amended by No. 60 of 1995 ss.36, 50, 51 and 52.]*

**PART VI — CONTRIBUTIONS BY CERTAIN EMPLOYERS  
AND THE STATE**

**Employers' contributions**

27. (1) An employer listed in Part B of Schedule 1<sup>3</sup> must pay to the Board in accordance with this section contributions to the Fund in respect of the relevant remuneration of all members of the 1987 scheme who are employees of that employer.

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

- (a) is or is deemed to be listed in Part B of Schedule 1<sup>3</sup>, that employer; or
- (b) is not an employer for the purposes of this Act, the employer from whose employment he or she was seconded,

must pay to the Board in accordance with this section contributions to the Fund in respect of the relevant remuneration of the member so seconded.

[(2a) *repealed*]

(3) The Treasurer may, from time to time after consultation with an actuary, inform the Board in writing of the percentages of relevant remuneration 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 relevant remuneration of members who have elected for contributions at the rate of 5% of their relevant remuneration (and proportionately less or more in respect of members who have elected for contributions at the rate of 3%, 4%, 6% or 7% of their relevant remuneration).

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(5) The Board shall assess amounts payable under this section by employers and in so doing shall take into account the percentages of relevant remuneration 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 unless payment is deferred under subsection (7).

(7) The Treasurer may by instrument in writing allow the deferral of payment due under subsection (6) on such terms as to payment of interest or otherwise as the Treasurer may direct and section 43 (7) and (8) of the *Interpretation Act 1984* applies to such an instrument as if it were subsidiary legislation.

[Section 27 amended by No. 44 of 1989 s.15; No. 8 of 1993 ss.22 and 46; No. 60 of 1995 ss.23, 37 and 52.]

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

*[Section 28 amended by No. 6 of 1993 s.11.]*

**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 Fund which is hereby appropriated accordingly.

*[Section 29 amended by No. 6 of 1993 s.11.]*

**PART VII — BENEFITS UNDER 1987 SCHEME**

*[Heading amended by No. 8 of 1993 s.23; No. 60 of 1995 s.23.]*

**Age retirement benefit**

**30.** (1) The benefit provided by this section is payable by the Board to a member of the 1987 scheme who after attaining the age of 55 years ceases to be an employee of an employer and is not entitled by reason of that cessation to any other benefit under this Part.

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

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

where —

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

FR represents the member's final remuneration ascertained in accordance with section 4A;

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

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

*[Section 30 amended by No. 44 of 1989 s.16; No. 8 of 1993 ss.24, 44, 45 and 55; No. 60 of 1995 ss.7, 23, 52 and 53.]*



**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 of the 1987 scheme dies during employment with an employer, except that no benefit is payable under this section in respect of —

- (a) a member whose election to become a member 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 member'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 member's election to become a member;
- (b) a member whose election to become a member was accepted on condition that no death or disability benefit is payable; or
- (c) subject to section 23A, a member who dies while on unrecognized no-pay leave for the period of which elective contributions cannot be made.

(1a) Subsection (1) is subject to the further exception that where contributions in respect of a member were varied under section 24 (3) —

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

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

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

(2) The benefit provided by this section in relation to a member whose election to become a member of the 1987 scheme 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 —

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

where —

- DB represents the amount of the death benefit of the member to be ascertained;
- FR represents the member's final remuneration ascertained in accordance with section 4A;
- CP represents the member's contributory period expressed in completed months;
- NP represents the period expressed in complete months from the date of death of the member to the date when the member would have attained the age of 60 years;
- C represents the member's average contribution rate ascertained in accordance with the definition in section 3.

(3) The benefit provided by this section in relation to a member whose election to become a member of the 1987 scheme 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 —

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

where —

DB represents the amount of the death benefit of the member to be ascertained;

FR represents the member's final remuneration ascertained in accordance with section 4A;

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

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

(4) The benefit provided by this section in relation to a member whose election to become a member of the 1987 scheme was accepted by the Board conditionally on limitation of death and disability benefits and where the Board is satisfied that the cause of the member'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 member's election to become a member is an amount calculated in accordance with the formula in subsection (2) (if death occurred before the member attained the age of 60 years) or subsection (3) (if death occurred after the member attained the age of 60 years) as the case may be.

*[Section 31 amended by No. 44 of 1989 s.17; No. 25 of 1992 s.19; No. 8 of 1993 ss.25, 43, 44, 45, 46 and 55; No. 60 of 1995 ss.23, 38, 52 and 53.]*

**Total and permanent disability benefit**

**32.** (1) The benefit provided by this section is payable by the Board to a member of the 1987 scheme where the member is retired from employment with an employer before attaining the age of 60 years and —

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

except that no benefit is payable under this section to —

- (aa) a member whose election to become a member 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 member'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 member's election to become a member;
- (bb) a member whose election to become a member was accepted on condition that no death or disability benefit is payable; or

- (cc) subject to section 23A, a member who is retired from employment while on unrecognized no-pay leave for the period of which elective contributions cannot be made.

(1a) Subsection (1) is subject to the further exception that where contributions in respect of a member were varied under section 24 (3) —

- (a) conditionally on limitation of death and disability benefits as to part of the member's employment and the Board is not satisfied that the cause of the member's incapacity to perform his or her duties was not due to or did not arise from the physical or mental defect or condition that was the reason for the conditional variation; or
- (b) on condition that no death or disability benefit is payable as to part of the member's employment,

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

(2) The benefit provided by this section is an amount calculated in accordance with section 31 (2) or (4), 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.

*[Section 32 amended by No. 44 of 1989 s.18; No. 25 of 1992 s.20; No. 8 of 1993 ss.26, 44, 45, 46 and 56; No. 60 of 1995 ss.23 and 39.]*

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

**33.** (1) The benefit provided by this section is payable by the Board to a member of the 1987 scheme where the member is

retired from employment with an employer before attaining the age of 60 years and —

- (a) the Board is satisfied that the member was retired on the ground of physical or mental incapacity to perform his or her duties;
- (b) although the Board is satisfied, after considering any evidence referred to in section 32 (1) (b), that the member has, and until attaining the age of 60 years will continue to have, an incapacity, a total and permanent disability benefit is not payable to the member under section 32;
- (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 member whose election to become a member 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 member'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 member's election to become a member;
- (bb) a member whose election to become a member was accepted on condition that no death or disability benefit is payable; or
- (cc) subject to section 23A, a member who is retired from employment while on unrecognized no-pay leave for the period of which elective contributions cannot be made.

(1a) Subsection (1) is subject to the further exception that where contributions in respect of a member were varied under section 24 (3) —

- (a) conditionally on limitation of death and disability benefits as to part of the member's employment and the Board is not satisfied that the cause of the member's incapacity to perform his or her duties was not due to or did not arise from the physical or mental defect or condition that was the reason for the conditional variation; or
- (b) on condition that no death or disability benefit is payable as to part of the member's employment,

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

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

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

where —

- PPDB represents the amount of the partial and permanent disability benefit to be ascertained;
- FR represents the member's final remuneration ascertained in accordance with section 4A;
- CP represents the member's contributory period expressed in completed months;
- C represents the member's average contribution rate ascertained in accordance with the definition in section 3;

- LR represents the annual amount of the relevant remuneration that the Board considers the member has the capacity to earn after retirement in circumstances that the Board considers appropriate for the purposes of the calculation;
- NP represents the period expressed in complete months from the date of retirement of the member to the date when the member would attain the age of 60 years.

(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.

*[Section 33 amended by No. 44 of 1989 s.19; No. 25 of 1992 s.21; No. 8 of 1993 ss.27, 44, 45, 46 and 57; No. 60 of 1995 ss.23, 39, 40, 52 and 53.]*

### **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 of the 1987 scheme who is not entitled to a death benefit under section 31 dies during employment with an employer; or
- (b) to a member of the 1987 scheme where the Board —
  - (i) is satisfied that the member was retired on the ground of physical or mental incapacity to perform his or her duties; and



- (ii) after considering any evidence referred to in section 32 (1) (b), is satisfied that the member has, and until attaining the age of 60 years will continue to have, an incapacity,

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

(2) The benefit provided by this section is —

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

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

where —

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

FR represents the member's final remuneration ascertained in accordance with section 4A;

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

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

and

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

$$TB = FR \times \frac{NP}{12} \times \frac{PC}{100}$$

where —

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

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- FR represents the member's final remuneration ascertained in accordance with section 4A;
- NP represents the period expressed in complete months from the death or retirement of the member to the date when the member would have attained or would attain the age of 60 years;
- PC represents the number that would have been the employer's charge percentage in respect of the member for the quarter during which the member died or retired according to section 20 or 21 of the Commonwealth Act before applying any reduction under section 22 or 23 of that Act.

*[Section 34 amended by No. 8 of 1993 ss.28, 44, 45, 58 and 59; No. 60 of 1995 ss.23, 52 and 53.]*

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

**35.<sup>8</sup>** (1) The benefit provided by this section is payable by the Board to a member of the 1987 scheme —

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

*[(2) repealed]*

(3) The benefit provided by this section for a member is —

*[(a) deleted]*

(b)<sup>8</sup> a deferred benefit being an amount calculated in accordance with the formula —

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

where —

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

FR represents the member's final remuneration ascertained in accordance with section 4A;

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

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

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<sup>4</sup> (as determined under section 3 (2)) and 1%.

[(4) and (5) repealed]

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

(7) Notwithstanding section 51, an exercise of an option under subsection (3) as in force before the commencement of section 29 of the *Superannuation Legislation Amendment Act 1993*<sup>1</sup> is irrevocable.

[Section 35 amended by No. 44 of 1989<sup>8, 9</sup> s.20; No. 25 of 1992 s.22; No. 8 of 1993 ss.29, 44, 45 and 59; No. 60 of 1995 ss.23, 52 and 53.]

**Benefit on retrenchment**

**36.** (1) The benefit provided by this section is payable by the Board to a member of the 1987 scheme 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 member is the same as the benefit provided for a member under section 35 (3).

[Section 36 amended by No. 8 of 1993 ss.30, 44 and 45;  
No. 60 of 1995 s.23.]

**Benefits of members formerly non-contributors**

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

(2) Where a benefit is payable to a member of the 1987 scheme who under the previous law was a non-contributory member of the scheme immediately before electing to become a contributory member, in calculating the benefit —

- (a) the former membership period as a non-contributor, in accordance with the previous law, is to be taken into account as a contributory period; but
- (b) so far as it applies to any part of that former membership period as a non-contributor that was —
  - (i) before 1 July 1992, the factor C in the formula to be used for calculating the benefit (representing the member’s average contribution rate) is to be regarded as one quarter of 3.3 (i.e. 0.825);
  - (ii) on or after 1 July 1992, the factor C in the formula to be used for calculating the benefit

(representing the member's average contribution rate) is to be regarded as one quarter of the number that would have been the employer's charge percentage in respect of the member for the quarter during which the member elected to become a contributory member according to section 20 or 21 of the Commonwealth Act before applying any reduction under section 22 or 23 of that Act.

*[Section 37 inserted by No. 8 of 1993 s.31; amended by No. 60 of 1995 ss.23 and 51.]*

### **Deferred benefits**

**38.** (1) 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 if he or she is not then an employee of an employer;
- (aa) ceases to be an employee of an employer after attaining the age of 55 years;
- (b) dies;
- (c) satisfies the Board of his or her inability, whether total or partial, to work on the ground of physical or mental incapacity that the Board is satisfied, after considering any evidence referred to in section 32 (1) (b), that the member has, and until attaining the age of 60 years will continue to have;
- (d) satisfies the Board that he or she has permanently departed from Australia; or
- (e) satisfies the Board that prescribed circumstances have occurred,

whichever occurs first.

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

(3) If —

- (a) a person has an entitlement to a deferred benefit under section 35 (3) (b);
- (b) that entitlement arose from the termination of the person's membership by a notice referred to in subsection (4) of section 19B; and
- (c) the person subsequently elects under that subsection to become a member and the election 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 member shall be taken into account in relation to any further benefit that may become payable to or in respect of that member.

*[(3a) repealed]*

(4) If —

- (a) a person has an entitlement to a deferred benefit under section 35 (3) (b); and
- (b) that entitlement arose from the cessation of employment with an employer,

the entitlement to the deferred benefit is not affected by the fact that the person subsequently lodges an election to become and is accepted as a member of the 1987 scheme but —

- (aa) in calculating any further deferred benefit on the cessation of employment with an employer the

person's final remuneration shall be ascertained as if "exit date" in section 4A referred to the day on which that cessation of employment with an employer occurred.

*[(bb) deleted]*

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

*[Section 38 amended by No. 44 of 1989 s.22; No. 25 of 1992 s.24; No. 8 of 1993 ss.32, 44, 46 and 60; No. 60 of 1995 ss.23 and 41.]*

**PART VIIA — THE 1993 SCHEME**

*[Heading inserted by No. 8 of 1993 s.33; amended by  
No. 60 of 1995 s.24.]*

**Interpretation**

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

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

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

**“employer’s compulsory contribution”** means a contribution that an employer is required by section 38D to make;

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

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

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

**“statutory member”** means a person who, under section 38B (1), is a member of the 1993 scheme by virtue of the person’s employment, whether or not the person has elected to make contributions to the scheme;



**“voluntary member”** means a person who is a member of the 1993 scheme other than a statutory member;

*[Section 38A inserted by No. 8 of 1993 s.33; amended by No. 60 of 1995 s.8.]*

## **Membership**

**38B.** (1) A person who is an employee of an employer is, by virtue of that employment, a statutory member of the 1993 scheme unless, in respect of that employment, the person is —

- (a) a member of the 1987 scheme;
- (b) a contributor under the *Superannuation and Family Benefits Act 1938* who is contributing under that Act;

*[(c) deleted]*

- (d) a member of a class of persons prescribed for the purposes of this section.

(2) Subsection (1) extends to a person who was an employee of an employer at any time after 1 July 1992 and the obligations of an employer under this Part are to be read accordingly.

*[(3) repealed]*

(4) A person who is not a statutory member is a voluntary member of the 1993 scheme if —

- (a) the person has for the time being elected to make contributions to the scheme; or
- (b) the person’s employer makes contributions in respect of the person under section 38E (b).

*[Section 38B inserted by No. 8 of 1993 s.33; amended by No. 60 of 1995 ss.9, 23, 24 and 42.]*

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**Individual account**

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

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

(3) The Board may keep contributions made in respect of a member, together with contributions made in respect of other members, in an account maintained for that purpose until the amount of the contributions is credited to the member's account.

*[Section 38C inserted by No. 8 of 1993 s.33.]*

**Employer contributions**

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

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

where —

A is the amount of the contribution that the employer is to make;

R is the amount of the relevant remuneration paid by the employer to the employee for the contribution period or, where applicable, the part of it during which the employee was a statutory member;

PC is the number that would be the employer's charge percentage for the relevant quarter according to

section 20 or 21 of the Commonwealth Act before applying any reduction under section 22 or 23 of that Act (the relevant quarter being the quarter in which the employee earned the relevant remuneration).

(2) If the relevant remuneration mentioned in subsection (1) was earned partly in one quarter and partly in another, the amount of the contribution is to be calculated by separately applying the formula to the amount of relevant remuneration that was earned in each quarter, in each case using the charge percentage for that quarter, and aggregating the amounts resulting from the separate calculations.

(3) The amount of an employer's compulsory contribution is to be paid to the Board within the period specified in subsection (4) if —

- (a) the employer is or is deemed to be listed in Part B of Schedule 1<sup>3</sup>; or
- (b) the contribution is in respect of the service of an employee while seconded to an employer who —
  - (i) is or is deemed to be listed in Part B of Schedule 1<sup>3</sup>; or
  - (ii) is not an employer for the purposes of this Act,

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

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

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

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- (b) if the contribution period is a quarter, the period of 28 days after the last day of the quarter.

(5) Where the contribution is for a period ending on or before the day on which Part 2 of the *Superannuation Legislation Amendment Act 1993*<sup>1</sup> commences, the payment or notice required by subsection (3) is made or given in sufficient time if it is made or given on or before the day fixed under subsection (6) but this subsection does not affect —

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

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

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

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

*[Section 38D inserted by No. 8 of 1993 s.33; amended by No. 60 of 1995 ss.10, 43 and 52.]*

**Voluntary employer contributions**

**38E.** The Board may, with the approval in writing of the Treasurer, permit an employer —

- (a) to make contributions under this Part in respect of a statutory member in addition to the employer's compulsory contributions; and

- (b) to make contributions under this Part in respect of any other employee, whether or not the employee is already a voluntary member.

[Section 38E inserted by No. 60 of 1995 s.11.]

### **Voluntary employee contributions**

**38EA.** (1) A person, whether or not a statutory member, who is an employee of an employer, may elect to contribute to the scheme in accordance with this section if —

- (a) the person has not, within the last year, revoked an election to contribute to the scheme; and
- (b) the Board, with the approval in writing of the Treasurer, permits the election.

(2) A person can only elect to contribute to the scheme at a rate approved by the Board and the rate of contributions that the Board may approve need not be related to the amount that the person earns.

(3) A person may alter the rate at which the person elects to contribute under this section to another rate approved by the Board but, if the rate has already been altered within the last year, it can only be again altered with the approval of the Board.

(4) A person may at any time revoke an election to contribute to the scheme.

(5) The way in which a person elects to contribute to the scheme, alters the rate at which the person elects to contribute, or revokes an election to contribute, is by giving to the Board notice of the election in writing in a form approved by the Board and signed by the person.

(6) An election to contribute at a particular rate authorizes the employer to deduct amounts at that rate from the

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contributor's salary and to remit the amounts so deducted to the Board.

(7) An employer is to remit to the Board the amount of contributions deducted from contributors' salaries within 7 days of the end of the contribution period to which the contributions relate.

*[Section 38EA inserted by No. 60 of 1995 s.12.]*

**Returns**

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

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

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

*[Section 38F inserted by No. 8 of 1993 s.33; amended by  
No. 60 of 1995 s.13.]*

**Adjustment notice**

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

- (a) that the amount of contributions made, or any further amount paid, by the employer under this Part differs from the required amount; and
- (b) where the amount of the contributions or further payment made is less than is required, that the difference is required to be paid to the Board within a period of 7 days after the day on which the notice is received.

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

*[Section 38G inserted by No. 8 of 1993 s.33.]*

**Balance of member's account**

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

- (a) the employer's compulsory contributions; and
- (b) where applicable, any additional contributions made under section 38E or 38EA.

(2) The amount of an employer's compulsory contribution is to be credited not later than the day by which the contribution is required to be paid, or notice of the contribution is required to be given, under section 38D (4).

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(3) Where the contribution is for a period ending on or before the day on which Part 2 of the *Superannuation Legislation Amendment Act 1993*<sup>1</sup> commences, the account is credited in sufficient time if it is credited on or before the day fixed under section 38D (6) but the account is to be credited with, and interest is to be calculated on, the amount of the contribution with effect from the time mentioned in section 38D (4) in relation to the contribution.

(4) The amount of a contribution made under this Part other than an employer's compulsory contribution is to be credited when it is received by the Board.

*[Section 38H inserted by No. 8 of 1993 s.33; amended by No. 60 of 1995 s.14.]*

**Interest**

**38I.** (1) A member's account is to be credited with interest on the balance of the account at a rate determined by the Board from time to time to be the sum of the CPI rate<sup>4</sup> (as determined under section 3 (2)) and 2%.

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

*[Section 38I inserted by No. 8 of 1993 s.33.]*

**Cost of insurance and administration**

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

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

as it considers appropriate.

*[Section 38J inserted by No. 8 of 1993 s.33.]*



**Payment of benefits**

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

- (a) attains the age of 55 years if he or she is not then an employee of an employer;
- (b) ceases to be an employee of an employer after attaining the age of 55 years;
- (c) dies;
- (d) satisfies the Board of his or her inability, whether total or partial, to work on the ground of physical or mental incapacity that the Board is satisfied, after considering any evidence referred to in section 38N (1) (b), that the member has, and until attaining the age of 60 years will continue to have;
- (e) satisfies the Board that he or she has permanently departed from Australia or will do so within a period of 3 months; or
- (f) satisfies the Board that prescribed circumstances have occurred,

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

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

(3) When a member or former member who is entitled to a benefit under this Part that has not yet become payable attains

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the age of 55 years, the Board shall send to the person a written notice setting out the effect of subsection (1) (a) and (b).

(4) If —

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

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

*[Section 38K inserted by No. 8 of 1993 s.33; amended by No. 60 of 1995 s.56.]*

**Benefit on age retirement**

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

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

*[Section 38L inserted by No. 8 of 1993 s.33; amended by No. 60 of 1995 s.15.]*

**Death benefit**

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

statutory member or voluntary member dies during employment with an employer.

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

- (a) an amount equal to the member's total account balance; and
- (b) a further benefit calculated in accordance with the formula —

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

where —

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

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

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

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

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

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

*[Section 38M inserted by No. 8 of 1993 s.33; amended by  
No. 60 of 1995 ss.16, 44 and 52.]*

**Total and permanent disability benefit**

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

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

(2) The benefit provided by this section is —

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

a further benefit calculated in accordance with the formula —

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

where —

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

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

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

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

*[Section 38N inserted by No. 8 of 1993 s.33; amended by No. 60 of 1995 ss.17, 44 and 52.]*

**Partial and permanent disability benefit**

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

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

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

a further benefit calculated in accordance with the formula —

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

where —

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

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

LR is the annual amount of the relevant remuneration that the Board considers the member has the capacity to earn after retirement in circumstances that the Board considers appropriate for the purposes of the calculation;

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

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

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

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

*[Section 38O inserted by No. 8 of 1993 s.33; amended by No. 60 of 1995 ss.18, 45 and 52.]*

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

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

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



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

*[Section 38P inserted by No. 8 of 1993 s.33; amended by No. 60 of 1995 s.19.]*

### **Treasurer may increase employer contributions**

**38PA.** (1) The Treasurer may, in respect of a specified employee or an employee of a specified class, by notice in writing given to the employer, increase the amount that an employer is to contribute to the Fund under section 38D.

(2) The increase applies for any contribution period ending after the day specified in the notice, which may be a day that is before the notice was given.

(3) If the increase applies for a contribution period that ends before the notice was given, the period applicable under section 38D (4), in so far as it applies to the increase, is to be measured from the day on which the notice was given.

(4) The Treasurer may, by notice in writing given to the employer, revoke a notice given under subsection (1).

(5) The Treasurer is to give to the Board a copy of a notice under subsection (1) or (4).

(6) In subsection (1), "**specified**" means specified by the Treasurer in the notice.

*[Section 38PA inserted by No. 60 of 1995 s.57.]*

### **Treasurer may increase other benefits**

**38PB.** (1) The Treasurer may, in respect of a specified employee or an employee of a specified class, by notice in writing

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given to the Board, increase the amount of any benefit under this Part that is in excess of the balance of the member's account.

(2) The Treasurer may, by notice in writing given to the Board, revoke a notice given under subsection (1).

(3) In subsection (1), "**specified**" means specified by the Treasurer in the notice.

*[Section 38PB inserted by No. 60 of 1995 s.57.]*

**Additional amounts payable by certain employers**

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

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

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

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

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

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

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

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

*[Section 38Q inserted by No. 8 of 1993 s.33; amended by No. 60 of 1995 ss.20, 46 and 52.]*

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

**38R.** Sections 28 and 29 apply also in relation to the funding of benefits payable under the 1993 scheme, payments to be made for the purposes of funding those benefits, and the payment and guarantee of those benefits.

*[Section 38R inserted by No. 8 of 1993 s.33; amended by No. 60 of 1995 s.24.]*

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

*[Heading inserted by No. 8 of 1993 s.33.]*

**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 relevant remuneration shall, for the purpose of calculating the amount of a benefit payable to or in respect of the member, be taken to be the relevant remuneration 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 relevant remuneration shall, for the purpose of calculating the amount of a benefit payable to or in respect of the member, be taken to be the relevant remuneration in respect of the employment from which the member was seconded.

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

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

*[Section 39 amended by No. 25 of 1992 s.25; No. 60 of  
1995 ss.47 and 52.]*

**Reduction in relevant remuneration of statutory member of 1993 scheme**

**39A.** (1) If the relevant remuneration of a statutory member of the 1993 scheme is reduced and the Board is satisfied that the reduction of relevant remuneration is not attributable to the misconduct or inefficiency of the member, the Board may assess any benefit provided to or in respect of the member as if his or her relevant remuneration during any period determined by the Board were —

- (a) the former relevant remuneration so long as that relevant remuneration exceeds the actual relevant remuneration of the member;
- (b) a notional relevant remuneration representing the relevant remuneration from time to time attributable to the post occupied by the member immediately before the reduction; or
- (c) some other notional relevant remuneration that the Board considers appropriate.

(2) This section does not apply to a reduction of relevant remuneration that arises from a variation of employment —

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

*[Section 39A inserted by No. 25 of 1992 s.26; amended by No. 8 of 1993 s.34; No. 60 of 1995 ss.21, 24 and 52.]*

**Interest on benefits**

**40.** (1) Where a provision of this Act provides for a benefit to include interest payable in respect of some amount, the interest

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shall, subject to this Act, accrue until the date of payment of the benefit.

(2) Where a benefit, other than a benefit to which subsection (1) applies, becomes payable, the Board may pay interest on the amount of the benefit for such period as it thinks fit at a rate determined by the Board from time to time to be the sum of the CPI rate<sup>4</sup> (as determined under section 3 (2)) and 1%.

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

*[Section 40 inserted by No. 44 of 1989 s.23.]*

**Disposal of unclaimed benefits**

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

*[Section 40A inserted by No. 44 of 1989 s.23; amended  
by No. 6 of 1993 s.11.]*

**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 any person authorized by or under a written law to administer the person's estate;

- (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.

*[Section 41 amended by No. 24 of 1990 s.123.]*

### **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 member of the 1987 scheme 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 member'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 member;
- (aa) the notional period referred to in section 31 (2) as "NP" were a period expressed in complete months that bears the same proportion to the period that would have been the notional period but for this paragraph as the number of hours customarily worked in 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;

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- (b) the member's final remuneration were that amount which would have been the member's final remuneration if he or she had been employed on a full-time basis during the period taken into account in ascertaining the final remuneration.

[(2) *repealed*]

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

*[Section 46 amended by No. 44 of 1989 s.24; No. 25 of 1992 s.27; No. 8 of 1993 ss.35, 43, 44 and 45; No. 60 of 1995 ss.23 and 48.]*

[47. *Repealed by No. 8 of 1993 s.36.*]

**PART VIII — MISCELLANEOUS**

**Amendment of Schedule 1<sup>3</sup>**

**48.** (1) The Treasurer may, by order published in the *Gazette*, amend Schedule 1<sup>3</sup>.

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

- (a) to take effect on a day specified in the order, whether or not the day specified is earlier than the day of publication of the order in the *Gazette*;
- (b) to provide for the inclusion of an employer in Schedule 1<sup>3</sup> with such limitations as are specified in the order, being limitations that do not operate to the prejudice of any existing member.

[*Section 48 inserted by No. 44 of 1989 s.26.*]

**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 member of the 1987 scheme 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.

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(2) Where the Treasurer by notice to the Board deems a member of the 1987 scheme 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 1987 scheme at a specified rate of relevant remuneration that is higher than 5%.

(3) Where a member is required to contribute to the 1987 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 relevant remuneration.

(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.

*[Section 49 amended by No. 8 of 1993 ss.37 and 43;  
No. 60 of 1995 ss.23 and 52.]*

### **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 of the 1987 scheme or a member who has made an election or application to the Board under this Act other than under section 38EA may revoke the election or application if —

- (a) in the case of an election to become a member of the 1987 scheme 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.

*[Section 51 amended by No. 25 of 1992 s.28; No. 8 of 1993 s.43; No. 60 of 1995 ss.22 and 23.]*

### **Employer to provide information**

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

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(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 member of the 1987 scheme 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.

*[Section 52 amended by No. 8 of 1993 ss.43 and 61;  
No. 60 of 1995 s.23.]*

**Treasurer's instructions**

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

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

(3) Instructions may be issued under this section —

- (a) so as to apply —
  - (i) at all times or at a specified time;
  - (ii) to all employers or to specified employers;
- (b) so as to require a matter affected by the instructions to be —
  - (i) in accordance with a specified requirement;

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

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

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

*[Section 52A inserted by No. 44 of 1989 s.27; amended by No. 8 of 1993 s.38.]*

### **Employees and members to provide information**

**53.** (1) An employee who lodges with the Board an election to become a member of the 1987 scheme 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 of the 1987 scheme, 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.

*[Section 53 amended by No. 25 of 1992 s.29; No. 8 of 1993 s.43; No. 60 of 1995 s.23.]*

## **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.

### **Restriction on establishment of schemes by public authority**

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

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

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

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

[Section 56A inserted by No. 44 of 1989 s.28.]

### **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) persons who are members of the 1987 scheme under this Act to transfer accrued superannuation rights in the event of transferring employment to employers responsible for those other schemes; and
- (b) persons who are contributors to those other schemes to transfer accrued superannuation rights to the 1987 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 person making use of the facility both the person’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.

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(4) The election to become a member of the 1987 scheme 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 members of the 1987 scheme 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 members of the 1987 scheme transferring to or from public sector superannuation schemes that differ from the provisions applicable under this Act to other members of the 1987 scheme.

(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.

*[Section 57 amended by No. 8 of 1993 ss.39 and 43;  
No. 60 of 1995 s.23.]*

**[58.** *Repealed by No. 25 of 1992 s.30.]*

## **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 are necessary or convenient to be prescribed for giving effect to this Act.

*[Section 59 amended by No. 44 of 1989 s.28.]*

## **Transitional**

**60.** Schedule 4 has effect.

SCHEDULE 1<sup>3</sup>

[Section 3]

LIST OF EMPLOYERS

Part A

All public service departments established or continued under the *Public Sector Management Act 1994*, 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 and Health Services Act 1927* and the Minister in relation to any public hospital controlled by him under section 7 of that Act.

Agent General, London  
Commissioner for Equal Opportunity  
Commissioner of Police  
Governor or his or her delegate under the *Governor's Establishment Act 1992*  
Information Commissioner  
Official Representative, North Asia  
Parliamentary Commissioner for Administrative Investigations  
President of the Legislative Council or Speaker of the Legislative Assembly or President of the Legislative Council and Speaker of the Legislative Assembly, acting jointly, as the case requires, under the *Parliamentary and Electorate Staff (Employment) Act 1992*  
The Western Australian Electoral Commission (on and from 30 October 1987)  
The Western Australian Government Railways Commission (until 30 June 1988)  
Western Australian Industrial Relations Commission  
Western Australian Office of Higher Education (on and from 1 January 1990)  
Western Australian Post Secondary Education Commission<sup>10</sup> (until 31 December 1989)

Part B

Aboriginal Affairs Planning Authority  
Agriculture Protection Board  
Albany Port Authority  
Animal Resources Authority (on and from 1 January 1988)  
Bunbury Port Authority  
Burswood Park Board  
Bush Fires Board  
Commissioner of Main Roads  
Commissioner of Workplace Agreements  
Construction Industry Long Service Leave Payments Board (on and from 1 August 1991)  
Country High School Hostels Authority (on and from 1 January 1988)

Dairy Industry Authority of Western Australia  
Dampier Port Authority (on and from 28 February 1989)  
Department of Conservation and Land Management  
Department of Planning and Urban Development (on and from  
12 September 1989 until 31 March 1990)  
Department of Services — State Printing Division (until 30 July 1990)  
Department of State Services — State Print (on and from 31 July 1990)  
Department of Transport  
Disability Services Commission  
Eastern Goldfields Transport Board (on and from 1 January 1988)  
East Perth Redevelopment Authority  
Electricity Corporation  
Esperance Port Authority  
Family Court  
Fremantle Cemetery Board (on and from 22 March 1991)  
Fremantle Port Authority  
Gas Corporation  
Gascoyne Development Commission  
Geraldton Port Authority  
Goldfields-Esperance Development Commission  
Government Employees' Housing Authority  
Government Employees Superannuation Board  
Great Southern Development Commission  
Hedland College  
Herd Improvement Service of Western Australia  
Homes of Peace Inc.  
Hospital Laundry and Linen Service of Western Australia  
Industrial and Commercial Employees' Housing Authority  
Kalgoorlie College  
Karratha College  
Keep Australia Beautiful Council (W.A.)  
Kimberley Development Commission  
King's Park Board  
Legal Aid Commission of Western Australia  
Library Board of Western Australia  
Lotteries Commission (on and from 1 January 1988)  
Metropolitan Cemeteries Board (on and from 22 March 1991)  
Metropolitan Market Trust (until 31 December 1990)  
Metropolitan (Perth) Passenger Transport Trust  
Mid West Development Commission  
Ministry of Economic Development and Trade — Technology and  
Industry Development Authority<sup>11</sup> (on and from 25 October 1988  
until 31 March 1990)  
National Trust of Australia (W.A.)  
Nurses Board of Western Australia  
PathCentre (on and from 10 April 1995)  
Peel Development Commission  
Perth International Centre for Application of Solar Energy  
Perth Market Authority (on and from 1 January 1991)  
Perth Theatre Trust  
Pilbara Development Commission  
Port Hedland Port Authority

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Potato Marketing Corporation of Western Australia (on and from 1 January 1988)  
Public Trust Office  
R & I Bank of Western Australia Ltd (on and from 1 January 1991 until 30 June 1991)  
Rottneest Island Authority (on and from 30 May 1988)  
Rottneest Island Board (until 29 May 1988)  
Rural Adjustment and Finance Corporation  
Rural Housing Authority  
Secondary Education Authority  
Small Business Development Corporation (on and from 1 January 1988)  
South-West Development Commission  
State Emergency Services — Unexploded Ordinances Division (on and from 1 May 1991)  
State Employment and Skills Development Authority (on and from 19 March 1991)  
State Government Insurance Commission  
State Housing Commission  
State Planning Commission (until 11 September 1989)  
Subiaco Redevelopment Authority  
Technology and Industry Development Authority<sup>11</sup> (until 24 October 1988)  
The Art Gallery of Western Australia  
The Commissioners of the Rural and Industries Bank of Western Australia (until 31 March 1988)  
The Rural and Industries Bank of Western Australia (on and from 1 April 1988 until 31 December 1990)  
The Western Australian Egg Marketing Board (on and from 1 January 1988)  
The Western Australian Government Railways Commission (on and from 1 July 1988)  
The Western Australian Meat Commission (on and from 1 January 1988)  
The Western Australian Meat Marketing Corporation (on and from 1 January 1988)  
Totalisator Agency Board (on and from 1 January 1988)  
Town Planning Appeal Committee (until 31 March 1990)  
Water Corporation  
Water and Rivers Commission  
Western Australian Alcohol and Drug Authority  
Western Australian Coastal Shipping Commission  
Western Australian Development Corporation (on and from 31 March 1991)  
Western Australian Fire Brigades Board  
Western Australian Greyhound Racing Association  
Western Australian Health Promotion Foundation (on and from 1 May 1991)  
Western Australian Land Authority  
Western Australian Mint  
Western Australian Museum  
Western Australian Sports Centre Trust  
Western Australian Tourism Commission  
Western Australian Treasury Corporation (on and from 15 June 1995)



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Wheatbelt Development Commission  
Workers' Compensation and Rehabilitation Commission  
Zoological Gardens Board (on and from 22 March 1991).

*[Schedule 1 inserted in Gazette 28 June 1991 pp.3131-3; amended by No. 62 of 1991 s.59; No. 35 of 1992 s.49; No. 40 of 1992 s.6; No. 76 of 1992 s.114; No. 13 of 1993 s.103; No. 36 of 1993 s.58; No. 47 of 1993 s.11; No. 53 of 1993 s.44; No. 32 of 1994 s.13; No. 35 of 1994 s.67; No. 36 of 1994 s.35; No. 89 of 1994 s.109; No. 103 of 1994 s.18; No. 11 of 1995 s.58(3); No. 73 of 1995 s.188; amended in Gazette 15 September 1995 pp.4301-2; 22 March 1996 p.1428.]*

**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, in the event of an office becoming vacant before an election is held, as soon as practicable, and in any case not later than 60 days, 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 a scheme to fill the vacancy until the appointee's successor is elected.

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

*[Schedule 2 amended by No. 25 of 1992 s.31; No. 8 of 1993 s.40.]*

**SCHEDULE 3**

[Section 6 (2)]

**CONSTITUTION AND PROCEEDINGS OF THE BOARD**

[Clause 1 repealed]

**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 or omitted to be done by the Board, and no matter or thing done or omitted to be 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 or omitted to be 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), (2) 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), (2) 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 a 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. A quorum for a meeting of the Board is 5 members.

**Voting**

9. (1) The person presiding at a meeting of the Board shall have a deliberative vote only.

(2) A decision supported by 5 members of the Board is 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 3 amended by No. 44 of 1989 s.30; No. 25 of 1992 s.32; No. 8 of 1993 ss.41 and 62.]*

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, 7, 7A or 7B and become a member of the 1987 scheme;

**“final remuneration”**, in relation to a transferred contributor, has the meaning given by clause 1A;

**“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 member of the 1987 scheme who has become a member 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.

(2a) A reference in this Schedule to contributions made to the S and FB scheme shall be taken to exclude an amount paid by the State to the Fund as contributions on behalf of a transferred contributor under section 20 (3) of the *Perth Mint Act 1970*<sup>12</sup>, notwithstanding that section 22 (1) of that Act deemed the contributor to have completed payment of those contributions.

### **Meaning of "final remuneration"**

**1A.** For the purposes of this Schedule "final remuneration" in relation to a transferred contributor has the meaning that term would have under section 4A if references in that section to the member's membership period were references to the member's employment period.

### **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<sup>13</sup> 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<sup>4</sup>**

3. The CPI rate<sup>4</sup> 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 member of the 1987 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 member of the 1987 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 member of the 1987 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

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- (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 member of the 1987 scheme under this Act.

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

- 7A. (1) Every person who on 1 January 1990 is —
- (a) an S and FB contributor who is contributing under the S and FB Act for units of pension;
  - (b) a subscriber or contributor to the Provident Account; or
  - (c) an S and FB contributor who has made an election under section 60AA (1) of the S and FB Act and has not become eligible for a pension under that Act,

may, in the manner and on the terms provided for by this clause, elect to transfer from the S and FB scheme and become a member of the 1987 scheme under this Act.

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

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

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

**Certain contributors or subscribers about to be retrenched may transfer to scheme**

**7B.** (1) In this clause —

“**employee**” has the same meaning as it has in the S and FB Act;

“**retrench**” has the meaning given by subclauses (2) and (3);

“**S and FB scheme member**” means a person who is —

- (a) an S and FB contributor who is contributing under the S and FB Act for units of pension;
- (b) a subscriber or contributor to the Provident Account; or
- (c) an S and FB contributor who has made an election under section 60AA (1) of the S and FB Act and has not become eligible for a pension under that Act.

(2) Unless subclause (3) provides otherwise, a person is retrenched for the purposes of this clause if the person ceases to be an employee —

- (a) in circumstances in which the person —
  - (i) becomes eligible to receive a payment under regulations made in accordance with section 94 of the *Public Sector Management Act 1994*; or
  - (ii) would have become eligible as mentioned in subparagraph (i) if the person’s service as an employee had all been service in the Public Sector as a result of which the regulations referred to in subparagraph (i) applied;
- (b) on the expiry of the term of, or other termination of, the person’s contract of employment; or
- (c) in any other circumstances that the Treasurer approves under this paragraph.

(3) A person is not retrenched for the purposes of this clause when —

- (a) the person retires or is retired from employment on the grounds of ill health, whether under section 39 of the *Public Sector Management Act 1994* or otherwise;
- (b) the person’s employment is terminated because of misconduct or substandard or unsatisfactory performance; or

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- (c) the person is dismissed under Division 3 of Part 5 of the *Public Sector Management Act 1994* or, if the person is not subject to that Division, is otherwise dismissed on disciplinary grounds.
- (4) An S and FB scheme member who is to be or has been retrenched with effect on or after 12 June 1995 may, in the manner and on the terms provided for by this clause, elect to transfer from the S and FB scheme and become a member of the contributory scheme under this Act.
- (5) This clause does not permit a person to remain a member of the contributory scheme after the person ceases to be eligible for membership of the scheme.
- (6) An election to transfer under this clause —
  - (a) must be signed by the person electing;
  - (b) must be lodged with the Board before the retrenchment has effect or within such further time as the Treasurer may allow; and
  - (c) when so lodged is irrevocable, notwithstanding section 51.
- (7) An election lodged in accordance with this clause is deemed to have been lodged immediately before the retrenchment has effect.
- (8) The benefit provided by clause 13 for a person who becomes a member of the contributory scheme because of an election under this clause is as provided for in clause 13 (4) even though the membership period under this Act is less than 24 months.
- (9) The average contribution rate of a person electing under this clause is to be taken to be 5% if no contributions have been paid or are payable under this Act by the person.

**Exercise of transfer option**

- 8. (1) A person who is entitled under clause 4, 5 or 7 to elect to transfer and become a member of the 1987 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 member of the 1987 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 member of the 1987 scheme shall for the purposes of Part VII be taken to be a member whose election to become a member 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 member of the 1987 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

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contributor to the Provident Account, an account within the Fund to which shall be credited a sum equal to the total of the amounts of —

- (a) the contributions made by that contributor to the S and FB scheme; and
- (b) the interest referred to in clauses 12 (2) (a) (i), 13 (2) (a) and 13 (3) (a)<sup>14</sup>.

(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 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<sup>4</sup> (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<sup>4</sup> (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 —

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

where —

TCB represents the amount of the benefit of a transferred contributor to be ascertained;

FR represents the contributor's final remuneration ascertained in accordance with clause 1A;

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.<sup>9</sup> (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 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

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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<sup>4</sup> (as determined under section 3 (2)) and 2%.

[(3) *repealed*]

(4) The benefit provided by this clause for a contributor with a membership period under this Act of not less than 24 months is —

- (a) whichever one of the following benefits is payable under subclause (5) —
  - (i) the benefit provided under subclause (3)<sup>15</sup> of this clause as in force before the commencement of section 42 of the *Superannuation Legislation Amendment Act 1993*<sup>1</sup>; or
  - (ii) the benefit provided under subclause (3)<sup>15</sup> of this clause as so in force but payable as a deferred benefit together with a continuation of compound interest as provided for by subclause (3)<sup>15</sup> of this clause as so in force;

and

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

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

where —

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



- FR represents the contributor's final remuneration ascertained in accordance with clause 1A;
- TS represents the number of complete months of the contributor's transferred service;
- C represents the contributor's average contribution rate ascertained in accordance with the definition in section 3,

together with compound interest on that amount calculated with effect from the prescribed day at a rate determined by the Board from time to time to be the sum of the CPI rate<sup>4</sup> (as determined under section 3 (2)) and 1%.

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

- (a) a transferred contributor who was a member of the 1987 scheme on 1 July 1989 and who lodged with the Board a notice referred to in section 19B (4) (a);
- (b) a transferred contributor, not coming within paragraph (a), who lodges with the Board a notice under section 19A (1) and who in that notice opts for that benefit; and
- (c) any other transferred contributor who comes within subclause (1) and who opts for that benefit,

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

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

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

- (a) in relation to a deferred benefit of a transferred contributor who has made a further election under section 19B (4) to become a member of the 1987 scheme is the day on which that election is accepted by the Board; and
- (b) in relation to any other deferred benefit, the exit date of the transferred contributor or where a transferred contributor has more than one exit date, the first of those exit dates.

(8) If —

- (a) the employment of an employee who is a transferred contributor ceases on account of the resignation of the employee;

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

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

**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 of the 1987 scheme; and
  - (d) within 6 months after the commencement of this Act elects to become a member of the 1987 scheme.

(2) A member 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 member shall be taken to include the full-time service of the member 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 member before the commencement of this Act.

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

- 14A. (1) If an employee —
- (a) ceases to be a contributor within the definition of that term in section 6 (1) of the S and FB Act and that cessation

occurs because the employee is no longer required by the terms of the employment to give his or her whole time to the duties of the employment as mentioned in that definition;

- (b) is eligible for membership of the 1987 scheme; and
- (c) within 6 months after the cessation referred to in paragraph (a) lodges with the Board an election under section 18 to become a member of the 1987 scheme which is accepted by the Board,

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

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

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

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

### **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 member of the 1987 scheme whose election to become a member of the 1987 scheme 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 member of the 1987 scheme whose election to become a member of the 1987 scheme 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 provision for a benefit in section 34 (1) and (2) (a) shall apply as if the transferred contributor were a member of the 1987 scheme whose election to become a member of the 1987 scheme was accepted by the Board conditionally on limitation of death and

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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 —

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

where —

- LDDDB represents the amount of the limited death or disability benefit of the transferred contributor for limited benefits to be ascertained;
- FR represents the contributor’s final remuneration ascertained in accordance with section 4A (and not clause 1A);
- 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 0.5 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 elective contributions have been made in respect of the contributor to the 1987 scheme under this Act.

### Deemed employers

16. The Curtin University of Technology and the Edith Cowan University<sup>16</sup> shall for the purposes of this Act be deemed to be employers listed in Part B of Schedule 1 with respect only to their respective employees who —

- (a) on the commencement of this Act are S and FB contributors and under this Schedule elect to transfer from the S and FB scheme and become members of the 1987 scheme under this Act; or
- (b) become employees after the commencement of this Act, were members of the 1987 scheme under this Act in their previous employment, and comply with section 20.

### 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.

[*Schedule 4 amended by No. 44 of 1989 s.31; No. 25 of 1992 s.33; No. 8 of 1993 ss.42, 43, 44, 46 and 63; No. 73 of 1994 s.4; No. 60 of 1995 ss.23, 49, 50, 52 and 53; No. 62 of 1995 s.4.*]

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**NOTES**

<sup>1</sup> This reprint is a compilation as at 27 May 1996 of the *Government Employees Superannuation Act 1987* and includes the amendments effected by the Acts referred to in Part I of the following Table<sup>1a</sup> and by the Orders referred to in Part II of the following Table.

**Table of Acts and Orders**

**PART I — ACTS**

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Government Employees Superannuation Act 1987</i>	25 of 1987	26 June 1987	1 July 1987 (see <i>Gazette</i> 30 June 1987 p.2545)	
<i>The Rural and Industries Bank of Western Australia Act 1987</i> , section 38	83 of 1987	1 December 1987	1 April 1988 (see section 2)	Repealed by Act No. 73 of 1990 s.43
<i>Rottneest Island Authority Act 1987</i> , section 51	91 of 1987	9 December 1987	30 May 1988 (see <i>Gazette</i> 30 May 1988 p.1823)	
<i>Official Corruption Commission Act 1988</i> , section 13(1)	52 of 1988	8 December 1988	11 August 1989 (see <i>Gazette</i> 11 August 1989 p.2693)	
<i>Acts Amendment (Accountability) Act 1989</i> , Part 3	5 of 1989	26 April 1989	1 July 1989 (see <i>Gazette</i> 30 June 1989 p.1893)	
<i>Government Employees Superannuation Amendment Act 1989</i>	44 of 1989	28 December 1989	Sections 4 (a) (v), 15 (b), 20 (1) (b) and (c), 22 (a), 31 (a) (ii), 31 (b), (d) and (e) (iii) deemed operative 1 July 1987 (see section 2 (1)); balance: 28 December 1989	Section 9 (2) validation <sup>7</sup> ; section 20 (2) and section 32 transitional <sup>8, 9</sup> ; section 33 enabling provision <sup>17</sup>

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment and Repeal (Post-Secondary Education) Act 1989, section 25</i>	48 of 1989	9 January 1990	1 January 1990 (see section 2)	Sections 4 and 5 transitional <sup>10</sup>
<i>Acts Amendment (Perth Market Authority) Act 1990, Part 5</i>	6 of 1990	12 July 1990	1 January 1991 (see <i>Gazette</i> 21 December 1990 p.6211)	
<i>Guardianship and Administration Act 1990, section 123</i>	24 of 1990	7 September 1990	20 October 1992 (see <i>Gazette</i> 2 October 1992 p.4811)	
<i>Tobacco Control Act 1990, section 37</i>	104 of 1990	2 January 1991	8 February 1991 (see <i>Gazette</i> 8 February 1991 p.575)	
<i>East Perth Redevelopment Act 1991, section 59</i>	62 of 1991	30 December 1991	1 July 1992 (see <i>Gazette</i> 1 July 1992 p.2945)	
<i>Government Employees Superannuation Amendment Act 1992</i>	25 of 1992	19 June 1992	1 July 1992 (see <i>Gazette</i> 26 June 1992 p.2649)	Section 15 (2) transitional
<i>Western Australian Land Authority Act 1992, section 49</i>	35 of 1992	23 June 1992	1 July 1992 (see section 2 (2) and <i>Gazette</i> 30 June 1992 p.2869)	
<i>Acts Amendment (Parliamentary, Electorate and Gubernatorial Staff) Act 1992, Part 3</i>	40 of 1992	2 October 1992	3 November 1992 (see section 2 and <i>Gazette</i> 3 November 1992 p.5389)	
<i>Freedom of Information Act 1992, section 114</i>	76 of 1992	15 December 1992	1 November 1993 (see <i>Gazette</i> 29 October 1993 p.5881)	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Financial Administration Legislation Amendment Act 1993, section 11</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993 (see section 2)	
<i>Superannuation Legislation Amendment Act 1993</i>	8 of 1993	28 September 1993	Sections 50 (c), 52, 59, 60 (b) and 63 deemed to have come into operation on 1 July 1992 (see section 2 (2)); balance: 28 September 1993	Part 4 transitional <sup>18</sup>
<i>Workplace Agreements Act 1993, section 103</i>	13 of 1993	23 November 1993	1 December 1993 (see <i>Gazette</i> 30 November 1993 p.6439)	
<i>Disability Services Act 1993, section 58</i>	36 of 1993	16 December 1993	23 December 1993 (see section 2)	
<i>Acts Amendment (Department of Transport) Act 1993, section 11</i>	47 of 1993	20 December 1993	1 January 1994 (see section 2 and <i>Gazette</i> 31 December 1993 p.6861)	
<i>Regional Development Commissions Act 1993, section 44</i>	53 of 1993	22 December 1993	8 April 1994 (see <i>Gazette</i> 8 April 1994 p.1462)	Section 43 transitional
<i>Acts Amendment (Public Sector Management) Act 1994, section 13</i>	32 of 1994	29 June 1994	1 October 1994 (see <i>Gazette</i> 30 September 1994 p.4948)	Section 13 (2) saving <sup>2</sup> ; section 13 (1) (b) amendment not included
<i>Subiaco Redevelopment Act 1994, section 67</i>	35 of 1994	8 July 1994	24 August 1994 (see <i>Gazette</i> 23 August 1994 p.4364)	



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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Perth International Centre for Application of Solar Energy Act 1994, section 35</i>	36 of 1994	8 July 1994	22 July 1994 (see <i>Gazette</i> 22 July 1994 p.3727)	
<i>Statutes (Repeals and Minor Amendments) Act 1994; section 4</i>	73 of 1994	9 December 1994	9 December 1994	
<i>Energy Corporations (Transitional and Consequential Provisions) Act 1994, section 109</i>	89 of 1994	15 December 1994	1 January 1995 (see section 2 (2) and <i>Gazette</i> 23 December 1994 p.7069)	
<i>Hospitals Amendment Act 1994, section 18 item 7 of Table</i>	103 of 1994	11 January 1995	3 February 1995 (see <i>Gazette</i> 3 February 1995 p.333)	
<i>Marketing of Potatoes Amendment Act 1995, section 58 (3)</i>	11 of 1995	30 June 1995	4 September 1995 (see <i>Gazette</i> 1 September 1995 p.4063)	
<i>Government Employees Superannuation Amendment Act (No. 2) 1995</i>	60 of 1995	21 December 1995	30 December 1995 (see <i>Gazette</i> 29 December 1995 p.6287)	Section 58 validation <sup>19</sup>
<i>Government Employees Superannuation Legislation Amendment Act 1995</i>	62 of 1995	9 January 1996	9 January 1996	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995, section 188</i>	73 of 1995	27 December 1995	1 January 1996 (see section 2 (2) and <i>Gazette</i> 29 December 1995 p.6291)	

**PART II — ORDERS**

Orders	Gazettal	Commencement	Miscellaneous
<i>Government Employees Superannuation Act (Amendment of Schedule 1) Order 1991</i>	28 June 1991 pp.3131-3	1 July 1987 (see clause 2)	Clause 4 saving <sup>3</sup>
<i>Government Employees Superannuation Act (Amendment of Schedule 1) Order 1995</i>	15 September 1995 pp.4301-2	15 September 1995	
<i>Government Employees Superannuation Act (Amendment of Schedule 1) Order 1996</i>	22 March 1996 p.1428	Deemed effective 23 November 1995 (see clause 2)	

N.B. The *Government Employees Superannuation Act 1987* is affected by the *Financial Administration and Audit Act 1985* (Act No. 117 of 1985).

<sup>1a</sup> As at 27 May 1996 the following had not come into operation —

(a) Section 11(1) of the *Meat Industry Legislation (Amendment and Repeal) Act 1993* (Act No. 32 of 1993) which reads as follows —

“ **Certain Acts amended**

**11.** (1) Schedule 1 to each of the *Financial Administration and Audit Act 1985* and the

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*Government Employees Superannuation Act 1987* is amended by deleting the item relating to the Western Australian Meat Commission. ”.

- (b) Section 80(5) of the *Health Services (Conciliation and Review) Act 1995* (Act No. 75 of 1995) which reads as follows —

“ (5) The *Government Employees Superannuation Act 1987* is amended, in Schedule 1, by inserting in Part B in the appropriate alphabetical position the following —

“ Office of Health Review ”. ”.

- <sup>2</sup> Section 13 (2) of the *Acts Amendment (Public Sector Management) Act 1994* (Act No. 32 of 1994) reads as follows —

“ (2) The amendment made by subsection (1) (a) does not prevent a person who was, immediately before the commencement of this section, an employee from continuing to be an employee for the purpose of the *Government Employees Superannuation Act 1987* for so long as the person would have been an employee if the amendment had not been made. ”.

- <sup>3</sup> Clause 4 of the *Government Employees Superannuation Act (Amendment of Schedule 1) Order 1991* reads as follows —

“ **Saving**

4. Notwithstanding the provisions of Schedule 1, as inserted by clause 3, employees of the R&I Bank of Western Australia Ltd. who are members on 30 June 1991 shall be deemed to remain members while they remain employed by that body and continue to have an entitlement under the Act, and during such time, that body remains an employer and the Act otherwise continues to apply to and in relation to those members. ”.

- <sup>4</sup> The CPI figure determined by the Board for the period 1 July 1987 to 30 June 1988 was 10.3%.

- <sup>5</sup> Title amended pursuant to section 7 (5) (a) of the *Reprints Act 1984* to give effect to section 31 (1) (g) of the *Acts Amendment (Public Service) Act 1987*. Under section 112 (2) of the *Public Sector Management Act 1994* this is to be read as a reference to the Minister for Public Sector Management.

- <sup>6</sup> Now see *Superannuation Entities (Taxation) Act 1987*. Short title amended by the *Occupational Superannuation Standards Amendment Act 1993* of the Commonwealth (Act No. 84 of 1993) section 4.

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<sup>7</sup> Section 9 (1) of the *Government Employees Superannuation Amendment Act 1989* (Act No. 44 of 1989) amended section 22, and section 9 (2) reads as follows —

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

<sup>8</sup> Section 20 (2) of the *Government Employees Superannuation Amendment Act 1989* (Act No. 44 of 1989) reads as follows —

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

<sup>9</sup> Section 32 of the *Government Employees Superannuation Amendment Act 1989* (Act No. 44 of 1989) reads as follows —

“ **Variation of benefit in respect of certain retrenched contributors**

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

(a) the amount of one of the following benefits at the option of the contributor —

(i) the benefit provided for under subclause (3) of that clause; or

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

and

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

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

where —

- DTCB represents the amount of the deferred benefit of the transferred contributor to be ascertained;
- FS represents the contributor's final salary ascertained in accordance with the definition in Clause 1;
- TS represents the number of complete months of the contributor's transferred service;
- C represents the contributor's average contribution rate ascertained in accordance with the definition in section 3,

together with compound interest on that amount calculated with effect from the exit date of the transferred contributor at a rate determined by the Board from time to time to be the sum of the CPI rate<sup>4</sup> (as determined under section 3(2)) and 1%.

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

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

<sup>10</sup> Sections 4 and 5 of the *Acts Amendment and Repeal (Post-Secondary Education) Act 1989* (Act No. 48 of 1989) read as follows —

" **Savings and transitional**

4. (1) In this section and in section 5 —

**"commencement day"** means the day on which this Act comes into operation;

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“the former Commission” means the Western Australian Post-Secondary Education Commission established under the *Western Australian Post-Secondary Education Commission Act 1970*;

“the Minister” means the Minister of Education a body corporate established under the *Education Act 1928*.

(2) On and from the commencement day —

- (a) all property held and used for the purposes of the former Commission shall be vested in the Minister;
- (b) any moneys appropriated for the purposes of the former Commission or standing to any account in the name of the former Commission and unexpended at the commencement date shall be held in an account at the Treasury and be dealt with in accordance with the directions of the Minister;
- (c) all liabilities incurred by or on behalf of the former Commission shall be transferred to the Minister;
- (d) all charges, fees and moneys due and payable by or on behalf of the former Commission shall be paid into the account held at the Treasury and received, levied and recovered by the Minister;
- (e) all contracts made by the former Commission or by any Minister of the Crown on behalf of the former Commission shall have effect as contracts by and with the Minister and may be enforced against the Minister accordingly;
- (f) all books, documents, records and papers used by or on behalf of the former Commission shall be handed over to the Minister.
- (g) in respect of the matters referred to in paragraphs (a) to (f) the Minister shall for the purposes of the *Financial Administration and Audit Act 1985* be a statutory authority.

(3) As soon as practicable after the commencement date the Minister shall cause sections 66, 67, 68 and 69 of the *Financial Administration and Audit Act 1985* to be complied with in relation to the former Commission for the period 1 January 1989 to 31 December 1989, and a report prepared under this subsection shall be deemed to be an annual report for the purposes of section 69 of that Act.

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**Former employees**

5. (1) A person who was immediately before the commencement day a permanent employee of the former Commission shall by force of this section and without further appointment be a permanent officer of the Public Service of the State and shall be entitled to receive a salary not less than the salary received by that person as an employee of the Commission immediately before the commencement day.

(2) Where a person becomes an officer of the Public Service of the State pursuant to subsection (1) —

- (a) he or she shall retain his or her existing and accruing rights, and in particular any rights under the *Government Employees Superannuation Act 1987*; and
- (b) for the purposes of determining those rights, his or her service as an employee of the former Commission shall be taken into account as if it were service with the Public Service of the State.

<sup>11</sup> The former Western Australian Technology Development Authority was replaced by a body corporate comprising the Minister, and its staff were absorbed into the Public Service. See section 5 *Technology and Industry Development Act 1983*, as amended by Act No. 32 of 1987, and Schedule 1 clause 1 of Act No. 32 of 1987.

<sup>12</sup> Repealed by the *Gold Banking Corporation Act 1987* (Act No. 99 of 1987) section 78.

<sup>13</sup> Repealed by the *Superannuation Legislation Amendment Act 1993* (Act No. 8 of 1993) section 62.

<sup>14</sup> Repealed by the *Superannuation Legislation Amendment Act 1993* (Act No. 8 of 1993) section 42 (d) (i).

<sup>15</sup> Repealed by the *Superannuation Legislation Amendment Act 1993* (Act No. 8 of 1993) section 42. Subclause (3) of clause 13 of Schedule 4 read as follows —

“ (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

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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<sup>4</sup> (as determined under section 3(2)) and 2%.

”.

<sup>16</sup> Title amended under section 7 (5) (a) of the *Reprints Act 1984* to give effect to section 4 (2) of the *Edith Cowan University Act 1984* (as inserted by the *Western Australian College of Advanced Education Amendment Act 1990* (Act No. 63 of 1990) section 6).

<sup>17</sup> Section 33 the *Government Employees Superannuation Amendment Act 1989* (Act No. 44 of 1989) reads as follows —

“ **R & I Bank employees — transfer to Bank scheme**

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

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

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

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



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- (3) An agreement under subsection (1) —
- (a) may relate to events that have occurred or to things done before the commencement of this section;
  - (b) shall include provision by which the Board is liable to pay from the Fund (as defined in the principal Act) to the Bank scheme amounts —
    - (i) for contributions paid by employees who transfer to that scheme together with interest on those amounts; and
    - (ii) for employer contributions paid by the Bank in respect of employees who so transfer, discounted for insurance cover provided and administration costs incurred by the Board.

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

<sup>18</sup> Part 4 of the *Superannuation Legislation Amendment Act 1993* (Act No. 8 of 1993) reads as follows —

“ **PART 4 — TRANSITIONAL PROVISIONS**

**Definitions**

74. In this Part —

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

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

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

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

**Continuity of contributory scheme**

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

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**Transfer of former non-contributory members**

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

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

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

where —

- TB is the amount of the credit to be ascertained;
- S is the annual salary of the member calculated at the rate at which the member was paid by an employer on the last salary adjustment day before 1 July 1993;
- MP is the membership period of the person as a non-contributory member of the scheme under the previous law, expressed in completed months, before 1 July 1992;
- D is a factor determined by the Board in accordance with subsection (3).

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

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

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

- (a) the Board is to obtain advice from an actuary as to the extent to which the entitlement would have to be increased, having regard to section 3 (4) of the principal Act, in order to

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avoid an individual superannuation guarantee shortfall being incurred under the Commonwealth Act in respect of the person; and

- (b) the entitlement is increased to the extent specified in the advice of the actuary.

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

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

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

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

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

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

- (a) obtain the advice of an actuary as to the amount that would have been payable to the person if the transition day had been immediately before the entitlement was paid; and

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- (b) if the amount that would have been payable under this section exceeds the amount that was paid, pay the difference between those amounts, with interest calculated at the rate determined under section 38I of the principal Act.

**Minimum benefits, generally**

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

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

(3) If —

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

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

**Certain obligations and entitlements not affected**

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

**Certain benefits arising during transitional period**

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

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the person is entitled to the benefit or payment as if all of the provisions of this Act had already commenced when the circumstances occurred. ”.

<sup>19</sup> Section 58 of *Government Employees Superannuation Amendment Act (No. 2) 1995* (Act No. 60 of 1995) reads as follows —

“     **Validation**

**58.** Any notice that, before the commencement of this Act, was purportedly given to the Board under section 49 of the principal Act but was not within the powers given by that section is, and is deemed always to have been, as valid and effective as if it was authorized by that section. ”.

