

Western Australia

Superannuation and Family Benefits Act 1938

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Superannuation and Family Benefits Act 1938

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Superannuation and Family Benefits Act 1938

An Act to provide Superannuation Benefits for persons permanently employed by or under the Government of the State and to make provision for the families of those persons and for incidental and other purposes.

[Long title amended by No. 13 of 1968 s.2.]

1. Short title

This Act may be cited as the *Superannuation and Family Benefits Act 1938*^{1, 1a}.

2. Commencement

- (1) This Act shall, except where otherwise provided, commence on a date to be fixed by proclamation¹.
- (2) The date so fixed is, in this Act, referred to as “the commencement of this Act”.

[3. Repealed by No. 57 of 1986 s.4.]

Part I — Preliminary

4. Construction

This Act shall be construed subject to the Commonwealth of Australia Constitution Act, to the *National Health and Pensions Insurance Act 1938*, of the Commonwealth and to any Acts of the Parliament of the Commonwealth with which this Act is or shall be or may be deemed to be inconsistent, and so as not to exceed the legislative power of the Parliament of the State, to the intent that any portion of this Act which may be held to be in excess of that power or which may be held to be inconsistent with any Acts aforesaid shall, to the extent to which it is so in excess or so inconsistent, be deemed to be severable from the other portions of this Act and not to affect the validity or operations thereof.

5. Saving provisions

This Act shall not (except insofar as it expressly or impliedly indicates a contrary intention) affect the provisions of the *Superannuation Act 1871 (35 Victoriae No. 7)*² in relation to employees employed at the commencement of this Act but no person who becomes an employee after the commencement of this Act shall be eligible for any benefit, under the said Act notwithstanding anything to the contrary contained in the said Act.

6. Interpretation

(1) In this Act, subject to the context —

“**Actuary**” means a Fellow or Associate of the Institute of Actuaries (London) or a Fellow or Associate of the Faculty of Actuaries (Edinburgh), or any other person of whose actuarial knowledge and experience the Governor approves;

“**actuarial reserve portion of contributions**” means the balance deemed to remain in the Fund to meet future risks after the estimated value of the risks carried by the Fund

during the period of contributions has been assessed on an actuarial basis;

“children” includes children adopted by a contributor or by a pensioner who has been a contributor and dependent on him at the time of his death;

“contributor” means an employee who is or has been contributing under this Act otherwise than as a qualified contributor;

“department” means any department under the administration of a Minister of the Crown in the Government of the State and includes the Western Power Corporation, the Water Corporation³, every State trading concern, every port authority, every college (within the meaning of the *Vocational Education and Training Act 1996*), and every Crown instrumentality the employees whereof are remunerated with moneys (other than grants) appropriated by the Parliament of the State for the purpose of such Crown instrumentality.

The term **“department”** shall, subject as hereinafter provided, also include the board of management of a public hospital financed either wholly or partly with moneys from the Hospital Fund established under the *Hospital Fund Act 1930*, every hospital board constituted under the *Hospitals and Health Services Act 1927*⁴, and any other corporate body, being a Crown instrumentality established by or under any Act of the Parliament of the State, the inclusion of which board of management, hospital board or other corporate body in the said term is recommended by the Minister and is approved by the Treasurer.

Provided that —

- (i) before approving the inclusion in the term **“department”** as aforesaid of any such board of management, hospital board or other corporate body, the Treasurer may require such board of management, hospital board or other corporate body

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to make arrangements satisfactory to the Treasurer whereby such board of management, hospital board or other corporate body is bound to pay and will pay to the Board on behalf of the State during the employment of its employees who become contributors under this Act and thereafter will continue to pay to the Board on behalf of the State so long as may be necessary progressively by way of fortnightly contributions commencing from the date or dates when its employees become contributors under the Act as aforesaid, and payable fortnightly on the days when the contributions by such employees are payable or otherwise on the days when in accordance with section 43 and section 44 payments of its share of the pensions are payable by the Government of the State as the case may be, such amounts in respect of each and every one of its employees who become contributors as aforesaid as are and will be, in the opinion of the Board, sufficient to meet and recoup to the Government of the State the amounts which in accordance with section 43 and section 44 the Government will be liable to pay as its share of the pension or other benefits to which the employees of such board of management, hospital board or other corporate body and their dependants will be or are entitled by virtue of being or having been contributors under this Act; and

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

“employee” means a person employed in a permanent capacity under the State in any department who is by the terms of his employment required to give his whole time to the duties of his employment, but does not include the Chief Justice or any Judge of the Supreme Court or the President or any

member of the Court of Arbitration⁵, and does not include a person who is a contributor to any Superannuation Fund to which contributions are made by the Crown other than the Crown in right of Western Australia.

For the purposes of this definition —

- (a) a person shall be deemed to be employed in a permanent capacity when he is regularly employed in the ordinary work of the department in which he is employed in circumstances which justify an expectation that, subject to good conduct and efficiency, his employment will be continuous and permanent;
- (aa) a person who is an executive officer within the meaning of the *Public Sector Management Act 1994* shall be deemed to be employed in a permanent capacity;
- (b) a person shall not be deemed to be employed in a permanent capacity when he is employed casually or in connection with a particular work or undertaking, the completion of which will put an end to his employment;

“member of the Police Force” includes the Commissioner of Police, a commissioned officer, a non-commissioned officer, a constable and an aboriginal aide, but excludes a special constable;

“Minister” means the Minister of the Crown from time to time charged with the administration of this Act;

“Police Benefit Fund” means the Police Benefit Fund as established and administered under the *Police Benefit Fund Ordinance 1866 30 Victoriae No. 10* and its amendments⁶;

“qualified contributor” means an employee who elects to contribute to the Fund the special contribution in respect of a pension to his widow and children as provided for in section 34(2) and (4);

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“Railway Death Benefit and Endowment Fund” means the Western Australian Government Railways and Tramways Employees’ Death Benefit and Endowment Fund as established and administered under the authority of section 76⁷ of the *Government Railways Act 1904*;

“salary” means salary or wages and includes the value of allowances such as allowances for rent, house allowed rent free, light, fuel, rations and fees allowed regularly, as emoluments of office, but does not include bonuses, overtime payments or allowances for forage, equipment, climatic disadvantages or travelling expenses;

“service” means service under or employment by or under the State in any department;

“student child” means a child who is not less than 16 years of age but is less than 25 years of age and is receiving full-time education at a school, college or university;

“term appointee” means an employee whose appointment, whether or not to a statutory office, is for a determinate period but does not include an employee to whom subsection (3) applies;

“the Board” means the Government Employees Superannuation Board under the *State Superannuation Act 2000*;

“the Fund” means the Superannuation Fund established by this Act;

“the Provident Account” means the Provident Account established under Part VA;

“the maximum age for retirement” means the age of 65 years, or, in the case of a contributor, the age for whose retirement is fixed by law at an earlier age than 65 years, the age so fixed;

“the 1987 Act” means the *Government Employees Superannuation Act 1987*.

- (2) References in this Act to the retirement of an employee upon his attaining the age of 65 years shall include the case of an employee whose retirement takes place on the day before he attains the age of 65 years.

- (3) Where an employee has been or is appointed, whether before or after the commencement of this Act, for a term of years to a statutory office under the Government of the State he shall for the purposes of this Act be deemed, so long as he continues to be employed in the office (whether during or after the expiration of the term for which he was appointed) to continue to be an employee, and the cessation of his employment under the Government of the State (otherwise than by retrenchment, discharge, dismissal or resignation) shall, if he has completed an aggregate period of 7 years' service under the State at the time of such cessation, be deemed to be retirement within the meaning of this Act, and, if it takes place at an earlier age than 65 years, be deemed to be, within the meaning of section 60, the retirement of a contributor, the age for whose retirement is fixed by law at an earlier age than 65 years.

Provided that where an employee who is the holder of a statutory office became a contributor before the commencement of the *Acts Amendment (Superannuation and Pensions) Act 1960*, the requirement of completion of an aggregate period of 7 years' service under the State shall not apply in respect of that employee if the cessation of his employment (otherwise than by retrenchment, discharge, dismissal or resignation) occurs after he attains the age of 60 years.

- (4) Notwithstanding anything contained in the last preceding subsection, if an employee who is the holder of a statutory office notifies in writing to the authority administering the Act under which he was appointed, that he does not desire reappointment at the expiration of the term for which he was appointed the notice shall, unless —
 - (a) he has attained the age of 55 years; or
 - (b) he has attained the age for retirement fixed by law,

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be deemed to be resignation within the meaning of this Act.

[Section 6 amended by No. 43 of 1939 s.3; No. 55 of 1945 s.2; No. 65 of 1947 s.3; No. 39 of 1950 s.4; No. 61 of 1960 s.3; No. 50 of 1961 s.3; No. 43 of 1963 s.2; No. 101 of 1964 s.2; No. 75 of 1973 s.3; No. 134 of 1976 s.3; No. 76 of 1979 s.2; No. 23 of 1982 s.2; No. 30 of 1984 s.3; No. 17 of 1987 s.4; No. 6 of 1994 s.13; No. 32 of 1994 s.16; No. 89 of 1994 s.109; No. 14 of 1995 s.44; No. 73 of 1995 s.188; No. 14 of 1996 s.4; No. 57 of 1997 s.117(1); No. 5 of 1999 s.25; No. 58 of 1999 s.108; No. 24 of 2000 s.14(13); amendeded in Gazette 16 Feb 2001 p.1017; 30 Dec 2003 p. 5726; 25 Jun 2004 p. 2232-3.]

6AA. De facto spouses

- (1) For the purposes of this Act de facto partners are to be regarded as spouses.
- (2) For the purposes of this Act a de facto relationship is to be regarded as a marriage that took place when the relationship commenced and the cessation of the relationship, other than by reason of death, is to be regarded as a divorce.

[(3)-(5) repealed]

- (6) Where, as a result of this section —
 - (a) more than one person is entitled as a spouse to a benefit under this Act; or
 - (b) children of different spouses are entitled to a benefit under this Act,

the Board may determine that the amount of the benefit to which each person is entitled is such portion as it considers just of the benefit that would be payable if there had been only one spouse.

[Section 6AA inserted by No. 8 of 1993 s.65; amended in Gazette 28 June 2002 p.3033.]

6A. Admission to Fund of certain employees of Civil Service Association

(1) In this section —

“the Association” means the body corporate under the name of The Civil Service Association of Western Australia;

“the existing Association scheme” means the scheme established by deed of trust made on 23 June 1966 between the Association and certain other parties for the purpose of making provision for retiring pensions and benefits to present and future employees of the Association.

(2) Upon the execution by the Treasurer pursuant to the authority of this section of an agreement with the Association and subject to any term of the agreement —

(a) any employee of the Association who is at the time of the execution of the agreement a contributor to the existing Association scheme shall become a contributor under this Act and shall be deemed —

(i) to have become such a contributor on the day on which he became a contributor to the existing Association scheme; and

(ii) to have contributed for units of pension under this Act at the same time as he respectively contributed for units of pension under the existing association scheme;

and

(b) any person who, after the execution of the agreement, becomes a full-time employee of the Association is eligible to become a contributor under this Act if he would be eligible at that time to become a contributor had he become an employee in a department on that date.

(3) For the purposes of any provision of this Act in which the length of service of a contributor is relevant for the purpose of

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ascertaining the benefits to be paid under this Act, any period of full-time service by an employee with the Association —

- (a) for which the employee also was a contributor to the existing Association scheme; or
- (b) for which the employee makes contributions under this Act,

shall be deemed to be service with the State.

- (4) The Treasurer is hereby authorized on behalf of the State to execute an agreement with the Association and the Trustees of the existing Association scheme for the purposes of giving effect to the provisions of this section, but any such agreement shall contain, *inter alia*, provisions —
 - (a) requiring the Association or the Trustees to pay to the Fund the total of all contributions made by employees of the Association under the existing Association scheme and held by the Association or the Trustees on the date of execution of the agreement;
 - (b) requiring the Association or the Trustees to pay to the Treasurer the total amount of all contributions which were required to be provided to the Trustees by the Association to meet the Association's liability under the existing Association scheme in respect of employees who are members of the existing Association scheme on the date of execution of the agreement;
 - (c) requiring the Association to pay to the Board for transmission to the Treasurer each fortnight after the date of execution of the agreement a sum equal to 2½ times the aggregate of its employees' contributions in respect of the first 20 units and 5 times the aggregate of its employees' contributions in respect of all other units.

[Section 6A inserted by No. 75 of 1973 s.4.]

6B. Eligibility of certain statutory office holders to contribute

- (1) Where, before or after the coming into operation of the *Superannuation and Family Benefits Amendment Act 1982*¹, a person not being an employee for the purposes of this Act was or is appointed for a term of years to a statutory office under the Government of the State in a department, that person shall be deemed upon his appointment to have been or to be employed in a permanent capacity for the purposes of the definition of “employee” in section 6(1) notwithstanding paragraph (a) of that definition.
- (2) Where, before the coming into operation of the *Superannuation and Family Benefits Amendment Act 1982*¹ a person who was not an employee for the purposes of this Act was appointed for a term of years to a statutory office under the Government of the State in a Department and that person elected or purported to elect to become a contributor for units of a pension under this Act and the Board accepted or purported to accept his election, the election of that person and the acceptance of the Board shall be deemed to be and always to have been valid and that person shall be deemed to have become a contributor and as such in all respects to have become subject to and bound by this Act.

[Section 6B inserted by No. 23 of 1982 s.3.]

7. Certain employees who become part-time may continue as contributors or subscribers

- (1) In this section —
“**accepted part-time employee**” means a person in respect of whom there is a declaration in force under subsection (2).
- (2) The Board may declare a contributor for units of pension or a contributor or subscriber to the Provident Account to be an accepted part-time employee if —
 - (a) the employee’s hours of work are reduced so that he or she is no longer required to give his or her whole time to the duties of his or her employment; and

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- (b) the Board is satisfied that the reduction is necessary or desirable—
 - (i) in the interests of the contributor's health; or
 - (ii) for some other special reason that the Board considers to be adequate.
- (2a) A declaration under subsection (2) comes into force, or is taken to have come into force, on the day on which the person's hours of work are or were so reduced.
- (2b) The Board may make a declaration under subsection (2) in respect of a person who was formerly a contributor for units of pension or a contributor or subscriber to the Provident Account and any such declaration comes into force and has effect as if this section had been in operation on the day on which the person's hours of work were so reduced.
- (3) Notwithstanding the definition of "employee" in section 6(1), while a person is an accepted part-time employee he or she does not cease to be an employee only because he or she is not required to give his or her whole time to the duties of his or her employment.
- (4) For the purposes of this Act, while a person is an accepted part-time employee his or her salary is to be taken to be the amount the Board determines to be the salary he or she would earn if he or she gave his or her whole time to the duties of his or her employment.
- (5) For the purposes of calculating the length of an accepted part-time employee's service, the period during which the employee is not required to give his or her whole time to the duties of his or her employment is to be counted as if he or she had given his or her whole time to the duties of his or her employment during that period.
- (6) The Board may, at any time, revoke a declaration under subsection (2) if it is satisfied that it is no longer necessary or

desirable for the employee to work the reduced hours he or she is then working.

- (7) A declaration under subregulation (2) remains in force until —
- (a) it is revoked by the Board;
 - (b) the employee is again required to give his or her whole time to the duties of his or her employment; or
 - (c) the contributor ceases to be an employee.

*[Section 7 inserted in Gazette 16 February 2001 pp.1017-19;
amended in Gazette 29 June 2001 p.3106.]*

[Part II (Sections 8-23). Repealed by No. 17 of 1987 s.6.]

Part III — The Superannuation Fund

24. Establishment of the Fund

- (1) For the purposes of this Act there shall be a fund, to be called The Superannuation Fund, and to be administered by the Board, to which shall be credited the contributions of contributors or qualified contributors and payments by the State under this Act, and any “employer” payments made on behalf of the State for the purposes of this Act in pursuance of paragraph (i) of the proviso to the second paragraph of the definition of “department” in section 6 and to which shall be charged the benefits provided for in this Act.
- (2) The Fund shall form, and be maintained and managed as part of, the Government Employees Superannuation Fund under the *State Superannuation Act 2000*.
- (3) The income of the Fund shall not be subject to taxation by the State.

[Section 24⁸ amended by No. 55 of 1945 s.8; No. 17 of 1987 s.7; No. 49 of 1996 s.64; amended in Gazette 16 February 2001 p.1019.]

24A. Establishment of Indexation Account

- (1) For the purposes of this Act, there shall be an Indexation Account which shall form part of the Fund and to which shall be credited —
 - (a) the surplus disclosed by the investigation made under section 30 as to the state and sufficiency of the Fund as at 30 June 1983;
 - (b) any surpluses that may be disclosed by investigations as to the state and sufficiency of the Fund made under section 30 in respect of annual periods after 30 June 1983; and
 - (c) income in respect of amounts from time to time standing to the credit of the Indexation Account calculated at the

average rate of investment income earned during the relevant period by the assets of the Fund and, in the case of an amount that is a surplus credited to the Indexation Account in respect of an annual period ending on 30 June in a year, the income shall be calculated on that amount from 1 July in that year.

- (2) Subject to subsection (3), payments in respect of benefits payable under section 46C or payable under the Sixth Schedule by reason of the operation of section 46C or item 1A of Part III of that Schedule shall be made, to the extent that the available funds in the Indexation Account permit, from the Indexation Account.
- (3) The amount credited to the Indexation Account under subsection (1)(a) shall remain standing to the credit of that account and is not available to be applied in the manner provided by subsection (2).
- (4) Notwithstanding subsection (3), when a benefit is increased under the *Superannuation Regulations 2001*, Schedule 2 Part 1 clause 3 the amount of interest included in that benefit by virtue of paragraph (b)(ii) of the definition of “transferred contributions” in clause 1(1) of that Schedule shall be charged against the amount credited to the Indexation Account under subsection (1)(a).

[Section 24A inserted by No. 30 of 1984 s.5; amended by No. 78 of 1985 s.3; No. 17 of 1987 s.8; No. 49 of 1996 s.64; amended in Gazette 16 February 2001 p.1019.]

[25, 26, 27. Repealed by No. 17 of 1987 s.9.]

[28. Repealed by No. 98 of 1985 s.3]

[29. Repealed by No. 17 of 1987 s.9.]

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30. Investigation by actuary

- (1) Investigations shall be made as to the state and sufficiency of the Fund as at 30 June 1984 and as at 30 June in every succeeding year.
- (2) The investigation shall be made by the State Government Actuary or by an actuary appointed by the Board.
- (2a) Where an investigation as to the state and sufficiency of the Fund as at 30 June in a year is carried out under section 17 of the *State Superannuation Act 2000*, that investigation shall be deemed for the purposes of this section to be an investigation made under subsection (1).
- (3) For the purposes of the investigation, the rate of interest assumed to be earned by the assets of the Fund shall be not less than 3¾ % per annum.
- (4) The State Government Actuary or the actuary, as the case may be, making the investigation shall report to the Board the result of his investigation, and shall state whether any reduction or increase is necessary in the rates of contributions payable to the Fund or in the proportion payable by the State in respect of any pension.
- (5) Where in relation to any financial year the amount that the Treasurer, on the advice of an actuary, considers it appropriate to regard as the amount earned by the Fund is less than the amount required to provide the rate specified in subsection (3), the State shall credit to the Fund an amount equal to the difference between those amounts.
- (6) If any investigation made under this section discloses a surplus of assets over liabilities of the Fund, the amount of the surplus shall be set off against the amount or amounts otherwise payable by the State to the Fund under subsection (5).
- (7) The remuneration paid to any actuary appointed by the Board in relation to any investigation made by him under this section

shall be deemed to be part of the general expenses of the Board incurred in the administration of this Act.

[Section 30 amended by No. 65 of 1947 s.4; No. 106 of 1965 s.3; No. 134 of 1976 s.5; No. 30 of 1984 s.6; No. 17 of 1987 s.10; No. 8 of 1993 s.66; No. 49 of 1996 s.64; amended in Gazette 16 February 2001 p.1019.]

Part IV — Contributions

Division 1 — Contributions by employees

31. Continuation of contributions

- (1) Unless he or she makes an election under section 39A or becomes a member of the Gold State Super Scheme under the *State Superannuation Act 2000*, an employee who was a contributor under this Act at the commencement of the 1987 Act shall continue to be a contributor while he continues to be an employee and is in all respects subject to and bound by this Act as a contributor.
- (2) Subject to section 39A, an employee who becomes a contributor under this Act after the commencement of the 1987 Act shall continue to be a contributor while he continues to be an employee and is in all respects subject to and bound by this Act as a contributor.

[Section 31 inserted by No. 17 of 1987 s.11; amended in Gazette 16 February 2001 p.1020.]

32. Election to become a contributor

- (1) Subject to this section —
 - (a) an employee who is a contributor to the Provident Account under Division 3 of Part VA may, in accordance with section 83C(2), elect to become a contributor for units of pension under this Act;
 - (b) an employee who —
 - (i) is a subscriber to the Provident Account under section 83B or is a member of the Western Australian Public Hospitals (Medical Officers) Superannuation Scheme established under section 12A of the *Hospitals and Health Services Act 1927*; and

- (ii) was such a subscriber or member at the commencement of the 1987 Act,
may, within 6 months after that commencement, elect to become a contributor for units of pension under this Act.
- (1a) An election under subsection (1) shall be in writing in a form approved by the Board.
- (2) An employee is not entitled to become a contributor for units of pension under this Act if he is of an age which will prevent him from completing an aggregate period of 7 years' service under the State before attaining the age for retirement for which he desires to contribute.
- (3) The Board may require any employee who has made an election under subsection (1) to undergo such medical examination or examinations as it directs.
- (4) Where, after considering the report or reports of the medical examination or examinations of an employee who has made an election under this section, the Board is of opinion that the employee is not suffering from any physical or mental defect or condition which is likely to render him incapable, before his attaining his maximum age for retirement, of performing his duties as an employee, the Board shall accept the election.
- (5) Where, after considering the report or reports of the medical examination or examinations undergone by an employee who has made an election under this section, the Board is of opinion that the employee is suffering from any physical or mental defect or condition which is likely to render him incapable, before his attaining his maximum age for retirement, of performing his duties as an employee, the Board shall —
- (a) refuse to accept the election of that employee to become a contributor; or

- (b) accept the election, but on condition that the employee shall be a contributor for limited benefits under and for the purposes of section 61.
- (6) An employee who is a contributor for limited benefits under and for the purposes of section 61 shall cease to be subject to limited benefits for the purposes of that section and for the purposes of the Sixth Schedule —
 - (a) at the expiration of the period of 13 years after he became such a contributor; or
 - (b) upon his satisfying the Board that he is no longer suffering from any physical or mental defect or condition which is likely to render him incapable, before his attaining his maximum age for retirement, of continuing to perform his duties as an employee,whichever first occurs.
- (7) Where a person has been accepted as a contributor for limited benefits pursuant to an election made under this section the Board shall record any defect or condition, the existence of which was disclosed in the report or reports furnished to the Board, by reason of which the Board declined to accept him as a contributor for ordinary benefits, but accepted him as a contributor for limited benefits.

[Section 32 inserted by No. 134 of 1976 s.6; amended by No. 57 of 1986 s.6; No. 17 of 1987 s.12; No. 103 of 1994 s.18.]

32A. Contributions where employee formerly contributed to similar fund in the service of the Commonwealth and certain States

- (1) In this section —
 - “former employee”** means a person who immediately prior to his becoming an employee within the meaning of this Act, was a contributor to a similar fund for standard benefits which were not liable to be reduced for ill-health or other reason;

“former employment” means employment by the Commonwealth or any other State;

“similar fund” means a fund or account established under the law applying to the former employment and providing for superannuation or other like benefits for persons employed in the former employment similar to the purposes of the Fund established pursuant to this Act.

- (2) Notwithstanding the provisions of section 35 but subject to section 60(9), a former employee —
- (a) who has received or is entitled to receive payment of an amount which is in satisfaction of contributions made by him to a similar fund and which is in lieu of pension or like benefits;
 - (b) who is appointed as an employee within the meaning of this Act;
 - (c) who, within 3 months of that appointment, elects to contribute under the provisions of this Act to the Fund,

may, within that period, credit that amount, or cause that amount to be credited, to the Fund, and thereupon —

- (d) that amount shall be applied in the redemption forthwith of all further contributions which would otherwise be payable fortnightly in respect of the number of whole units for which that amount is, in the opinion of an Actuary, sufficient, and any surplus therefrom shall be refunded;
- (e) the former employee shall be entitled to pension and benefits pursuant to the provisions of this Act as if he had become a contributor to the Fund on the date of his initial contribution to the similar fund.

[Section 32A inserted by No. 15 of 1973 s.5; amended by No. 134 of 1976 s.7; No. 49 of 1996 s.64.]

33. Provisions in relation to contributors who are also contributors to certain statutory funds

[(1) repealed]

- (2) Where an employee, who elects to become a contributor under this Act, is employed in the Police Department of the State and is liable to contribute to the Police Benefit Fund, such employee shall, as from the date when he becomes a contributor under this Act, cease to be liable or to be entitled or permitted to contribute further to the Police Benefit Fund; but such amount as shall be certified in writing by the Government Actuary to be equivalent to the share of the moneys in or the investments representing the moneys in the Police Benefit Fund to which on the date when the employee became a contributor under this Act such employee would have been entitled as a contributor to the Police Benefit Fund if on such date the Police Benefit Fund had been dissolved and the moneys therein distributed amongst all the then contributors to the Police Benefit Fund upon the basis and in the proportions which, in the opinion of the Government Actuary, would be fair and just, shall be paid forthwith out of the Police Benefit Fund by the authority controlling the same to the Board, and by the Board to be held to the credit of the employee as such contributor under this Act and be applied at the option of the employee for either of the following purposes, that is to say —
- (a) in satisfaction of the contributions from time to time payable by the contributor under this Act until such time as the amount has been fully applied in such manner; or
 - (b) subject to the regulations and provided the amount is sufficient, in payment forthwith by one lump sum of such sum as may be certified by the State Government Actuary to be required to redeem forthwith all future contributions which would be payable fortnightly under this Act by the contributor in respect of the number of

units of pension stated by the State Government Actuary in his certificate:

Provided that —

- (i) where the amount held by the Board as aforesaid can be applied only as to a part thereof for the purpose mentioned in paragraph (b), the amount shall, at the option of the employee, be applied as to such part for the purpose mentioned in paragraph (b) and hereafter the balance of such amount shall be applied for the purpose mentioned in paragraph (a); and
 - (ii) where payment in full for one or more units of pensions has been made in accordance with the provisions of paragraph (b), the number of units of pension in respect of which the contributor shall be liable under this Act to contribute by fortnightly payments shall be the number of units of pension appropriate to his rate of salary from time to time less the number of units of pension paid for in full as aforesaid; and
 - (iii) if any balance of the amount held by the Board as aforesaid remains not applied for any of the purposes aforesaid when the employee for any reason ceases to be a contributor of fortnightly payments of contributions under this Act, such balance shall be paid by the Board to the employee or to his legal representative as the case may require.
- (3) Where an employee who elects to become a contributor under this Act is employed in the Government Railways and Tramways Department and is liable to contribute to the Railway Death Benefit and Endowment Fund, such employee may, notwithstanding anything to the contrary contained in the *Government Railways Act 1904*, or in any regulation or by-law made under that Act, elect at any time after he has become a contributor under this Act to cease to contribute to the Railway Death Benefit and Endowment Fund by a notice in writing signed by him and served upon the authority charged with the

administration of or having the management and control of such lastmentioned Fund; and where such an election is made the following provisions shall apply: —

- (a) As from the receipt of the notice of election by the authority required to be served with such notice the employee shall no longer be liable to contribute to the Railway Death Benefit and Endowment Fund; and
- (b) the employee shall be entitled to be paid out of moneys standing to the credit of the said Fund and the authority aforesaid shall be and is hereby authorized to pay and shall pay out of moneys standing to the credit of the said Fund to the employee in respect of the contributions then previously made by him to the said Fund such amount as upon an actuarial determination by the Government Actuary is a reasonable surrender value for such contributions; or
- (c) at the option of the employee, the amount to which he is entitled as mentioned in paragraph (b) shall, instead of being paid to the employee, be paid to the Board and, when paid to the Board, shall be held to the credit of the employee as such contributor under this Act, and be applied at the option of the employee for either of the following purposes, that is to say —
 - (a) in satisfaction of the contributions from time to time payable by the contributor under this Act until such time as the amount has been fully applied in such manner; or
 - (b) subject to the regulations and provided the amount is sufficient, in payment forthwith by one lump sum of such sum as may be certified by the State Government Actuary to be required to redeem forthwith all future contributions which would be payable fortnightly under this Act by the contributor in respect of the number of units of pension stated by the State Government Actuary in his certificate:

Provided that —

- (i) where the amount held by the Board as aforesaid can be applied only as to a part thereof for the purpose mentioned in subparagraph (b), the amount shall, at the option of the employee, be applied as to such part for the purpose mentioned in subparagraph (b), and thereafter the balance of such amount shall be applied for the purpose mentioned in subparagraph (a); and
 - (ii) where payment in full for one or more units of pension has been made in accordance with the provisions of subparagraph (b), the number of units of pension in respect of which the contributor shall be liable under this Act to contribute by fortnightly payments shall be the number of units of pension appropriate to his rate of salary from time to time less the number of units of pension paid for in full as aforesaid; and
 - (iii) if any balance of the amount held by the Board as aforesaid remains not applied for any of the purposes aforesaid when the employee for any reason ceases to be a contributor of fortnightly payments of contributions under this Act, such balance shall be paid by the Board to the employee or to his legal representative as the case may require.
- (4) Nothing in subsection (3) shall operate or be deemed to operate so as to preclude any employee to whom the subsection applies continuing to contribute to the Railway Death Benefit and Endowment Fund after he has become, and while he continues to be, a contributor under this Act, if he so desires.

[Section 33⁸ amended by No. 65 of 1947 s.5; No. 49 of 1996 s.64.]

34. Provisions relating to employees who are qualified for superannuation allowance under the *Superannuation Act 1871*

- (1) Where an employee employed at the commencement of this Act is qualified by length of service for a superannuation allowance under the provisions of the *Superannuation Act 1871*², and does not become a contributor under this Act this Act shall not operate so as to deprive him of any eligibility for superannuation allowance under the *Superannuation Act 1871*².
- (2) Where an employee employed at the commencement of this Act, is qualified by length of service for a superannuation allowance under the provisions of the *Superannuation Act 1871*², such employee may elect to become either a contributor or a qualified contributor under this Act and section 32 shall, with such adaptations as are necessary, apply.
- (3) Where an employee mentioned in subsection (2) elects to become a contributor under this Act he shall be liable to contribute to the Fund under this Act as if he were contributing for the full benefits of a pensioner under this Act, and subject thereto the following provisions shall apply: —
 - (a) If when such employee reaches the maximum age for retirement under this Act he is still a person to whom the Governor may lawfully grant a superannuation allowance under the *Superannuation Act 1871*², such employee may, at his option, take any one of the following benefits, namely —
 - (i) accept the pension benefits of a contribution under this Act, and relinquish all qualification or eligibility for a superannuation allowance under the *Superannuation Act 1871*²; or
 - (ii) accept a superannuation allowance under and in accordance with the provisions of the *Superannuation Act 1871*², and a refund from

the Board of the amount of the contributions made by him as a contributor in accordance with his obligation under this Act to make such contributions; or

- (iii) accept from the Board a refund of a sum equal to the difference between the aggregate amount of the contributions made by him as a contributor as aforesaid and the amount determined actuarially to be necessary to pay in full the amount of all the contributions which he would have been liable to make as a qualified contributor, if in the first instance he had elected to become a qualified contributor instead of electing to become a contributor.

- (b) When any employee elects to take the benefit provided in paragraph (a)(iii) —

- (i) subject to the *Superannuation Act 1871*², he will continue to be qualified and eligible for the grant of a superannuation allowance under that Act;
- (ii) he shall not be entitled to any benefits personally as a pensioner under this Act; and
- (iii) upon his death his widow and children shall be entitled in respect of the units of pension for which the employee was contributing as a contributor under this Act to receive from moneys standing to the credit of the Fund in accordance with this Act the same benefits to which they would have been entitled if the employee had elected to take the benefit provided in paragraph (a)(i);

and

- (c) The employee shall make his choice of the benefit under paragraph (a) which he desires to take and shall give notice thereof in writing in the prescribed form to the Board not later than one month after he is notified that

he is qualified and eligible for a superannuation allowance under the *Superannuation Act 1871*², or within such further period as the Board may allow.

- (4) Where an employee mentioned in subsection (2) elects under this section to become a qualified contributor the following provisions shall apply: —
- (a) Subject to the *Superannuation Act 1871*², the employee will continue to be qualified and eligible for the grant of a superannuation allowance under that Act;
 - (b) the employee shall not be entitled to any benefits personally as a pensioner under this Act;
 - (c) the employee shall contribute to the Fund at a rate to be prescribed by regulations for any number of units of pension for which under this Act he may contribute as a contributor; and
 - (d) upon the death of the employee his widow and children shall be entitled in respect of the units of pension for which the employee was contributing as a qualified contributor in accordance with this Act the same benefits to which they would have been entitled if the employee had been a contributor or a pensioner under this Act.

[Section 34⁸ amended by No. 65 of 1947 s.5; No. 49 of 1996 s.64.]

[35. Repealed by No. 134 of 1976 s.8.]

36. Commencement and cessation of contributions

- (1) Subject to this Act and except as otherwise provided in this Act, every employee who becomes a contributor or a qualified contributor shall contribute to the Fund from such date (not being more than 6 months after the commencement of this Act) as the Governor notifies in the *Government Gazette* in the case of an employee employed at the commencement of this Act or

after commencement of this Act and on or before the date notified as aforesaid, or, in the case of an employee whose employment commences after the date so notified, from the date of the employee's election to become a contributor.

- (2) An employee in the service at the commencement of this Act who at that date had not reached his maximum age for retirement and in accordance with the provisions of section 32, and within the period prescribed by that section gave the necessary notice of his election to become a contributor or a qualified contributor, but who attained his maximum age for retirement before the date notified for the commencement of contributions pursuant to subsection (1), shall, subject to payment of his initial contribution on the date appointed under this Act for the payment thereof, be deemed actually to have become a contributor or a qualified contributor, as the case may be, within the meaning and for the purposes of this Act and to have paid his initial contribution within 12 months before he attained his maximum age for retirement as aforesaid and shall be bound by the provisions of this Act, and shall be entitled to the benefits provided by this Act accordingly, notwithstanding that after attaining his maximum age for retirement he ceased to be an employee.
- (3) The following provisions shall apply in relation to the cessation of payments of contributions, that is to say —
 - (a) the contributions of a contributor and of a qualified contributor shall, subject to the next succeeding paragraph, cease to be paid when he ceases to be employed in the service, or immediately after the last periodical payment of contribution before the anniversary of his initial contribution next preceding the attainment by him of the maximum age for retirement, whichever first happens; and
 - (b) in the case of a contributor or of a qualified contributor whose initial contribution is paid within 12 months before he attains the maximum age for retirement

26 contributions at the periodical rates applicable to the contributor or to the qualified contributor shall be paid before pension in respect of superannuation shall become payable.

- (c) For the purposes of paragraph (a) and paragraph (b), the initial contribution of an employee in respect of any additional unit or part thereof for which he has elected to contribute shall be deemed to have been made on the date as from which the contribution in respect of such additional unit or part became payable.

- (4) A contributor or a qualified contributor —

- (a) who elects or is called upon to retire on or after attaining the age of 60 years; or
- (b) whose maximum age for retirement is fixed at an earlier age than 65 years, but not less than 60 years, and who retires on attaining the age so fixed

may, notwithstanding anything contained in this section, contribute in a lump sum or in such smaller sums and at such periods as the Board approves, the actuarial equivalent of the amount necessary to complete his payments to the Fund up to a later age (not exceeding the age of 65 years).

- (5) A contributor or pensioner or a qualified contributor —

- (a) who was, at the time of his retirement, contributing for a number of units not less than his primary unit entitlement;
- (b) whose salary has been increased subsequently but from a date prior to his retirement to a higher salary group in column one of the scale contained in section 37(1) than the salary group in which it fell prior to the increase

may elect to contribute such an amount as will provide additional units of pension but so that the total number of units shall not exceed the number specified in column 2 of the scale contained in section 37(1) opposite to that higher salary group.

Provided that in respect of those units 26 contributions at the rate applicable to his age at retirement shall be made before pension in respect of superannuation shall become payable and upon payment of those contributions the pension shall become payable as from the date of retirement in the case of a contributor, and, in the case of a qualified contributor, the pension to his widow shall become payable after the death of the qualified contributor following the payment of the contributions.

[Section 36⁸ amended by No. 43 of 1939 s.7; No. 39 of 1950 s.6; No. 25 of 1951 s.2; No. 36 of 1955 s.2; No. 75 of 1973 s.6.]

36A. Contributions under salary sacrifice agreement

- (1) If a contributor has entered into a salary sacrifice agreement with the contributor's employer, contributions made by the employer under the agreement are, for the purposes of this Act, to be taken to have been made by the contributor.

- (2) In this section —

“salary sacrifice agreement” means an agreement under which a contributor's employer agrees to pay, as part of a contributor's remuneration, contributions that would otherwise be payable by the contributor under this Act.

[Section 36A inserted in Gazette 16 February 2001 p.1020.]

Division 2 — Scale of units

37. Scale of units of pension

- (1) Subject to this Act, contributions by a contributor and by a qualified contributor shall be in respect of units of pension as defined in section 58, and the maximum number of units in respect of which a contributor or a qualified contributor may contribute shall have relation to the salary of the employee

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- (a) in accordance with scale A appended to this subsection if the employee commenced contributing before 1 January 1958; or
- (b) in accordance with column 2 of scale B appended to this subsection if the employee
- (i) commences contributing on or after that day; or
 - (ii) having commenced contributing before that day in respect of any number of units elects to contribute after that day for an increase in the number of units, in which case scale B applies only in respect of the increase in the number of units.

Scale A

Column 1		Column 2
Where the annual salary of the employee in terms of the currency existing at 1 January 1958		The employee may contribute the amount necessary to provide units of pension as under
exceeds	does not exceed	
£	£	
—	130	2
130	156	2½
156	208	3
208	260	4
260	312	5
312	364	6
364	416	7
416	468	8
468	520	9
520	572	10
572	624	11
624	676	12
676	728	13
728	780	14
780	832	15
832	884	16
884	936	17

Superannuation and Family Benefits Act 1938

Contributions

Part IV

Scale of units

Division 2**s. 37**

Column 1		Column 2
Where the annual salary of the employee in terms of the currency existing at 1 January 1958		The employee may contribute the amount necessary to provide units of pension as under
exceeds	does not exceed	
£	£	
936	988	18
988	1 040	19
1 040	1 144	20
1 144	1 248	21
1 248	1 352	22
1 352	1 456	23
1 456	1 560	24
1 560	1 664	25
1 664	—	26

Superannuation and Family Benefits Act 1938**Part IV** Contributions**Division 2** Scale of units**s. 37****Scale B**

Column 1		Column 2	Column 3	Column 4
where annual salary exceeds \$	does not exceed \$	total unit entitlement	primary unit entitlement	non- contributory unit entitlement
-	324	2	2	—
324	390	2½	2½	—
390	520	3	3	—
520	650	4	4	—
650	780	5	5	—
780	910	6	6	—
910	1 040	7	7	—
1 040	1 170	8	8	—
1 170	1 300	9	9	—
1 300	1 430	10	10	—
1 430	1 560	11	11	—
1 560	1 690	12	12	—
1 690	1 820	13	13	—
1 820	1 950	14	14	—
1 950	2 080	15	15	—
2 080	2 210	16	16	—
2 210	2 340	17	17	—
2 340	2 470	18	18	—
2 470	2 600	19	19	—
2 600	2 860	20	20	—
2 860	3 120	22	21	1
3 120	3 380	24	22	2
3 380	3 640	26	23	3
3 640	3 900	28	24	4
3 900	4 160	30	25	5
4 160	4 420	32	26	6
4 420	4 680	34	27	7
4 680	4 940	36	28	8
4 940	5 200	38	29	9
5 200	5 460	40	30	10
5 460	5 720	42	31	11

Column 1		Column 2	Column 3	Column 4
where annual salary exceeds \$	does not exceed \$	total unit entitlement	primary unit entitlement	non- contributory unit entitlement
5 720	5 980	44	32	12
5 980	6 240	46	33	13
6 240	6 500	48	34	14
6 500	6 760	50	35	15
6 760	7 020	52	36	16
7 020	7 280	54	37	17
7 280	7 540	56	38	18
7 540	7 800	58	39	19

and thereafter total unit entitlement is increased by 2, primary unit entitlement by 1, and non-contributory unit entitlement by 1, units respectively for each \$260 of annual salary, or part thereof, above \$7 800.

[(2) repealed]

- (3) A contributor or a qualified contributor whose salary does not exceed \$416 per annum may elect to contribute in respect of additional units or half units to make up a total number of 2½, 3, or 4 units.
- (4) Where an employee enters the service after the commencement of this subsection and becomes a contributor, the Board may grant an application by him for a number of units less than the relative number for his salary group as shown in the scale in subsection (1).
- (5) Subject to subsection (9), if the salary of a contributor is increased and by reason of that increase falls within a higher salary group in column one of the scale contained in subsection (1) than the salary group in which it fell prior to the increase, the following provisions shall apply to the contributor —

- (a) if he has attained the age of 40 years, or, being an employee at the commencement of this Act, was not less than 30 years of age when he became a contributor, he may increase the amount of his contribution to an amount not exceeding the sum which will provide units of pension to the number specified in column 2 opposite to that higher salary group; and
- (b) in all other cases he may increase the amount of his contribution to such a sum as will provide units of pension to the number so specified. Any such increased contribution shall be payable as from the date upon which the contributor elects to increase the amount of his contribution:

Provided that —

- (i) where any increase of salary is due to the operation of an award of a court or body having power to fix rates of pay, which award makes the amount of salary liable to be increased if an increase occurs in a declared basic wage, and by reason of such increase the salary of a contributor or of a qualified contributor falls within a higher salary group than the salary group in which it fell prior to the increase, the contributor or the qualified contributor may elect to increase the amount of his contribution accordingly; and
- (ii) in any instance in which a declaration of the basic wage as mentioned in paragraph (i) of this proviso has the effect of placing employees in the service outside the metropolitan area in a salary group higher than that for the same grade or class of employees in the service within the metropolitan area, the employees in the service outside the metropolitan area who are contributors or qualified contributors may, at their option, continue to contribute in respect of the same number of units for which they were contributing prior to such declaration of the basic wage, or may contribute for the additional unit or units prescribed for the higher salary group in which

they have been placed by reason of the operation of the declaration of the basic wage as aforesaid; and

- (iii) for the purpose of paragraph (ii) of this proviso the **“metropolitan area”** means that portion of the State comprised within an imaginary circle having a radius of 50 kilometres from the General Post Office, at Perth, as the centre of such circle.
- (6) An employee employed in the service at the commencement of this Act who, when he becomes a contributor, is not less than 30 years of age shall not in any case be compelled to contribute for more than 2 units but may, within 6 months after he becomes a contributor, elect to take the benefit of this subsection and thereupon the following provisions shall apply to him: —
- (a) Subject to paragraph (c) he may elect within the said 6 months to contribute, at the rates prescribed for the age of 30 years, for 2, 2½, 3 or 4 units; and
 - (b) if his period of his service under the State is not less than 10 years, he may elect within the said 6 months to contribute at the rate appropriate to his age as provided in the Schedules for units additional to those contributed for under the last preceding paragraph: Provided that —
 - (i) the total number of units contributed for by any such employee shall not exceed the number of units prescribed for the salary group to which, according to the scale contained in subsection (1) he belongs or the number of 4 units, whichever is the greater;
 - (ii) where an employee satisfies the Board that he has failed to make an election under paragraph (a) within the time specified in that paragraph owing to circumstances not within his own control, the employee may —
 - (a) contribute for 2 units as at the rate for the age of 30, as from the commencement of his contributions under this Act; and

- (b) elect, within such further time as is prescribed, to contribute as at the rate for the age of 30 for additional units so that the total number of units for which he contributes at that rate is either 2½, 2, 3 or 4 units;

or

- (c) if the period of his service under the State is less than 10 years he may, in addition to his election under paragraph (a), but subject as hereinafter provided, elect to contribute from the date on which his period of service will be not less than 10 years at the rate appropriate to his age at that date for units additional to those for which he has elected to contribute under paragraph (a).

Provided that —

- (i) he shall make his election under this paragraph within 2 months after the date on which his period of service under the State will be not less than 10 years as aforesaid; and
 - (ii) the total number of units contributed for by such employee shall not exceed the number of units prescribed for the salary group to which, according to the scale contained in subsection (1) he belongs.
- (7) An employee employed in the service at the commencement of this Act who, when he becomes a contributor, is not less than 30 years of age, and who has not elected to take the benefit of the last preceding subsection, may, subject to subsection (2), elect to contribute for any number of units not being less than 2 and not exceeding the number prescribed for the salary-group to which, according to the scale contained in subsection (1), he belongs.
 - (8) An employee who has exercised any power of election in pursuance of either of the last 2 preceding subsections, shall pay, as from the date when he became a contributor, his contributions for the units for which he has elected to contribute.

Provided that where the employee exercises a power of election within a further prescribed time, the employee shall pay as from the first day of the month in which he makes the election his contributions for the units for which he has so elected to contribute.

- (9) The provisions of subsection (5) do not apply to or in relation to an election made by a contributor on or after 1 January 1971 for units in accordance with Scale B.
- (10) Where the salary of a contributor is increased and by reason of that increase there is an increase in his total unit entitlement, he may, within 2 months from the day upon which payment of his salary at the increased rate is approved or the day upon which the increased salary is payable, whichever is the later, elect to contribute for any number of additional units that does not exceed the number of units by which his total unit entitlement was so increased.
- (10a) Without limiting, the operation of subsection (10), a contributor may, under and subject to the regulations, elect to contribute for the whole of any increase in his total unit entitlement, or the whole of any increase in his primary unit entitlement, which may, from time to time, occur by reason of any increase in his salary which occurs while the election remains in force.
- (10b) Regulations made for the purposes of subsection (10a) may —
 - (a) provide that units of pension to which the election related are, in the prescribed circumstances, valid for the purposes of this Act in the event of the death or invalidity of the contributor, notwithstanding that no contributions have been made in respect of those units;
 - (b) specify the times at which contributions in respect of those units shall commence and the ages upon which the rates of contribution are to be assessed;
 - (ba) provide that the operation of an election in relation to increases in primary unit entitlement made by a

contributor who, at the time of the election, is contributing for a number of units exceeding his primary unit entitlement shall, if the contributor so requests, be deferred until it becomes necessary for the contributor to contribute for additional units in order to continue contributing for not less than his primary unit entitlement;

- (c) provide for the manner of making and revoking elections and the limiting of the circumstances in which contributors, having revoked an election, may subsequently make further elections; and
- (d) prescribe any other matter necessary or convenient for giving effect to the purposes of subsection (10a),

but nothing in subsection (10a), or this subsection shall relieve the contributor of the obligation (except in relation to the payment of pension in respect of units in cases of death or invalidity) to make not less than 26 fortnightly contributions in relation to any unit of pension.

- (11) Subject to subsections (12), (12c) and (12d) and section 38(3), a contributor who is not contributing for a number of units equal to his total unit entitlement may at any time elect to contribute for an additional number of units so that his total number of units will be equal to, or less than, his total unit entitlement but, except where —

- (a) the election is made under subsection (10); or
- (b) because of the impending retirement of the contributor, the Board dispenses with the succeeding requirements of this subsection,

the election is not effective unless the Board, after having considered the report or reports of such medical examination or examinations as it directs the contributor to undergo, or such other information or evidence as to the health of the contributor as it directs the contributor to provide, is satisfied that the contributor is not suffering from any physical or mental defect or condition which is likely to render him incapable, before his

attaining his maximum age for retirement, of performing his duties as an employee.

- (12) Subject to subsection (12a) on and from the expiration of the relevant period the number of additional units for which a contributor who was a contributor at the commencement of that period may elect to contribute under subsection (11) is reduced by the number (if any) by which the contributor's total unit entitlement at the commencement of that period exceeds the sum of —

- (a) the number of units for which the contributor was contributing at the commencement of that period; and
- (b) the number of additional units (if any) for which the contributor elected to contribute during that period.

- (12a) Subsection (12) does not apply to a contributor if at any time during the relevant period the sum of the units referred to in subsection (12)(a) and (b) was —

- (a) a number of units not less than his primary unit entitlement as at the commencement of that period; or
- (b) a number of units not less than the smallest number of units that would render him liable to make fortnightly contributions of at least 5% of his normal fortnightly salary as at the commencement of that period,

and does not apply to any contributor for limited benefits under section 61.

- (12b) For the purposes of subsections (12) and (12a) a reference in subsection (12)(b) to units for which a contributor has elected to contribute includes a reference to units that are the subject of an election that is not effective by reason only of his suffering from a physical or mental defect or condition, but does not include a reference to units that comprise any part of an increase in the contributor's total unit entitlement that occurs during the relevant period.

(12c) Where, after the commencement of the 1987 Act, a person elects under section 32(1) to become a contributor for a number of units that is —

- (a) less than his primary unit entitlement; and
- (b) less than the smallest number of units that would render him liable to make fortnightly contributions of at least 5% of his normal fortnightly salary,

the number of additional units for which the contributor may subsequently elect to contribute under subsection (11) is reduced by the number by which the contributor's total unit entitlement at the time when he becomes a contributor exceeds the number of units for which he elects under section 32(1) to become a contributor.

(12d) Where —

- (a) an increase in the total unit entitlement of a contributor occurs after the relevant time;
- (b) the contributor does not elect under subsection (10) to contribute for at least the increase in his primary unit entitlement; and
- (c) no election is in force under subsection (10a) in respect of the contributor,

then on and from the expiration of the period of 2 months mentioned in subsection (10) the number of additional units for which the contributor may elect to contribute under subsection (11) is reduced by the number by which that increase in his total unit entitlement exceeds the number of additional units (if any) for which he elected to contribute under subsection (10).

(12e) In subsection (12d) **“the relevant time”** means —

- (a) in the case of a contributor who became a contributor after the commencement of the 1987 Act — the time at which he became a contributor;

- (b) in any other case — the commencement of the relevant period.
- (12f) In subsections (12), (12a), (12b) and (12e) **“the relevant period”** means the period of 12 months that commences 6 months after the commencement of the 1987 Act.
- (13) Subject to subsection (14), in subsections (9) to (12d), and in section 37A —
- “non-contributory unit”** means a unit of pension as defined by section 37A;
- “primary unit entitlement”**, in relation to a contributor, means the number of units specified in column 3 of Scale B opposite to the salary group in column one within which the contributor’s salary falls;
- “Scale B”** means Scale B appended to subsection (1);
- “total unit entitlement”**, in relation to a contributor, means the number of units specified in column 2 of Scale B opposite to the salary group in column one within which the contributor’s salary falls.
- (14) In subsections (10a), (10b), (12a), (12c) and (12d) **“primary unit entitlement”** in relation to a contributor to whom section 60(4) or (7) applies means the smallest number of units for which the contributor would need to be contributing in order to receive an annual pension on retirement of which the share payable by the State would be not less than the amount calculated in accordance with the formula —

$$F \times \frac{(Y + S)}{T}$$

where —

F is the amount of the share of the pension payable by the State that would be payable, but for section 60(4) or (7), if the contributor —

- (a) was eligible to retire immediately;

- (b) had completed an aggregate period of 7 years service with the State; and
- (c) was contributing for a number of units equal to the number specified in column 3 of Scale B appended to subsection (1) opposite to the salary group in column 1 within which the contributor's salary falls;

- Y** is the number of months of aggregate service that the contributor has served with the State;
- S** is the number of months remaining until the contributor attains the age at which he has elected to retire; and
- T** is 240 in the case of a contributor to whom section 60(4) applies and 360 in the case of a contributor to whom section 60(7) applies.

[Section 37⁸ amended by No. 43 of 1939 s.8; No. 55 of 1945 s.10; No. 65 of 1947 s.8; No. 35 of 1950 s.7; No. 25 of 1951 s.2; No. 36 of 1955 s.3; No. 55 of 1957 s.2; No. 61 of 1960 s.3; No. 43 of 1963 s.4; No. 101 of 1964 s.3; No. 106 of 1965 s.4; No. 27 of 1969 s.4; No. 108 of 1970 s.4; No. 75 of 1973 s.4; No. 47 of 1974 s.5; No. 134 of 1976 s.9; No. 17 of 1987 s.13; No. 73 of 1994 s.4.]

37A. Non-contributory units of pension

- (1) The provisions of this section apply to and in relation to all contributors who retire on or after 1 January 1971, other than contributors referred to in section 46B(1)(b).
- (2) Where the number of units for which a contributor has contributed and which he holds on retirement is equal to or less than his primary unit entitlement at the time of his retirement, the contributor is also entitled to receive pension in respect of such number, if any, of non-contributory units as are specified in column 4 of Scale B opposite to the number of units so contributed for and so held by him.

- (3) Where the number of units for which a contributor has contributed and which he holds on retirement is more than his primary unit entitlement at the time of his retirement, the contributor is also entitled to receive pension in respect of such number, if any, of non-contributory units as equals the difference between his total unit entitlement and the number of units so contributed for and so held by him.
- (3a) For the purposes of subsections (2) and (3), where —
- (a) the primary unit entitlement of a contributor at the time of his retirement is less than his primary unit entitlement at some time prior thereto; and
 - (b) the Board is satisfied that the reduction in the primary unit entitlement of the contributor arose from the acceptance by the contributor of employment at a lesser rate of salary for reasons connected with the contributor's health or for other good reasons not associated with any misconduct by the contributor,
- the Board may, in accordance with subsection (3b), determine that a higher primary unit entitlement shall be deemed to be his primary unit entitlement at the time of his retirement.
- (3b) A primary unit entitlement determined by the Board under subsection (3a) may be the primary unit entitlement applicable to —
- (a) the higher rate of salary that the contributor had previously received;
 - (b) a notional salary representing the salary from time to time attributable to the post occupied by the contributor immediately before the reduction; or
 - (c) some other notional salary that the Board considers appropriate.
- (4) The unit of non-contributory pension payable under this section is \$65 per annum.
- (5) Subject to subsection (6), non-contributory pension provided for in this section is payable on the same conditions and in the same

circumstances and manner as is that part of the share of pension under this Act which the State is liable to contribute to the Fund, and for that purpose the provisions set out in the following table apply, *mutatis mutandis*, to the payment of non-contributory pension —

Provision of Act to be applied to payment of non-contributory pension

Section 32A, section 52(2), sections 53, 54, 57, section 59 except paragraph (c), section 60, sections 61, 62, 63, 64, 66, 69, 70, 71, 72, 73, 75, 76, 77, 78, 79, 84, 85 and 87.

- (6) The regulations may modify or vary the conditions on which, and the circumstances and manner in which, pension is payable, notwithstanding the provisions of subsection (5).
- (7) The State shall credit to the Fund the amount of any pension payable under this section, and the Consolidated Fund is hereby permanently appropriated to the extent necessary.

[Section 37A inserted by No. 108 of 1970 s.5; amended by No. 75 of 1973 s.8; No. 6 of 1993 s.11; No. 8 of 1993 s.67; No. 49 of 1996 s.64.]

[37B. Repealed by No. 17 of 1987 s.14.]

38. Units in excess of 2 units optional

- (1) Notwithstanding anything to the contrary in this Act, an employee who becomes or is a contributor may at his option contribute for more than 2 units of pension but so that the total number of units shall not exceed the prescribed number of units for the salary received by the employee as shown in the scale in section 37(1) and no election to contribute shall be made contrary to section 37(12), (12c) or (12d) or subsection (3).
- (2) Where a contributor contributes for more than 2 units of pension and elects to reduce the number of units of pension to any lesser number of units of pension, being any number of units not less than 2, any contributions paid by him prior to such reduction in

respect of units in excess of the reduced number shall be credited as contributions in respect of the reduced pension and any surplus thereafter (if any) may, at the discretion of the Board, either be paid to the contributor or be held in the Fund to the credit of the contributor together with compound interest thereon at a rate per centum per annum determined by the Board from time to time.

- (3) Where a contributor makes an election under subsection (2) after the commencement of the 1987 Act then on and from the making of that election the number of additional units for which the contributor may elect to contribute under section 37(11) is reduced by the number of units to which the election under subsection (2) applied.

[Section 38 inserted by No. 9 of 1981 s.3; amended by No. 17 of 1987 s.15; No. 8 of 1993 s.68.]

39. Employee reduced in salary

Where the salary of a contributor is or has been reduced from one salary-group to another salary-group the Board may, upon application by the contributor, reduce the number of units of pension in respect of which he shall contribute to the number appropriate to the salary-group to which his salary has been reduced, and any contributions paid by him prior to such reduction in respect of units in excess of the reduced number shall be credited as contributions in respect of the reduced pension or be refunded to him as the Board may determine.

[Section 39⁸ amended by No. 55 of 1945 s.12.]

39A. Withdrawal from the Fund

- (1) A contributor may elect to cease contributing for units of pension under this Act.
- (2) An election may be made under subsection (1) if, and only if, it is made in respect of all of the units for which the contributor was contributing at the time of the election.

- (3) Where a contributor makes an election under subsection (1) —
- (a) the contributor is entitled —
 - (i) to have refunded to him the amounts of contributions made by him under this Act in respect of the units for which he was contributing at the time of the election together with compound interest thereon at the rate per centum per annum fixed by the Board from time to time; and
 - (ii) to have paid to him any amount that is held in the Fund to his credit under this Act;
 - and
 - (b) the contributor shall no longer be subject to or bound by the provisions of this Act.

[(4) repealed]

- (5) This section does not affect the operation of the provisions of section 38(2) enabling a contributor to reduce the number of units of pension for which he is contributing.
- (6) Without limiting the operation of sections 68 and 77 those sections are hereby declared to apply to refunds under subsection (3).

[Section 39A inserted by No. 57 of 1986 s.7; amended by No. 17 of 1987 s.16.]

Division 3 — Scale of contributions by employees

40. Contributions according to scale graduated by age at commencement

The amount of contribution which shall be paid by a contributor shall, except where otherwise provided in this Act, be based upon —

- (a) the number of units or half units of pension in respect of which the employee contributes;

- (b) sex; and
- (c) the age at which the employee commences to contribute for each unit or half unit,

and shall be in accordance with the tables of contributions prescribed by or under this Act.

Provided that where an employee elects to become a qualified contributor as provided for in section 34 the amount of contribution which shall be paid by such qualified contributor shall be in accordance with a table to be prescribed by the regulations.

Provided also, that in those cases in which the retiring age is amended from 65 years to an age between 60 years and 65 years, as provided for in section 41(2), the amount of contribution which shall be paid by the contributor shall be based upon the equivalent, determined actuarially, of the amount necessary to pay the higher rate of contribution consequent upon the amendment of the retiring age as aforesaid, together with interest at the rate of 4 % per annum compounded annually on the amounts of the increase in the contributions as from the dates when such contributions were due respectively.

[Section 40⁸ amended by No. 43 of 1939 s.9; No. 65 of 1947 s.10; No. 39 of 1950 s.8; No. 106 of 1965 s.6.]

41. Election to contribute for full pension at 60 years of age

- (1) An employee who, when he becomes a contributor, is less than 60 years of age may, within 6 months after he becomes a contributor, elect to contribute at such rates specified in the Third or Fourth Schedule as are applicable.

Provided that this subsection shall not in any circumstances apply to a contributor who, when he becomes a contributor, is of an age which will prevent him completing an aggregate period of 7 years' service under the State before attaining the age of retirement for which he desires to contribute.

- (2) Any employee, who, although entitled to do so, has not in accordance with subsection (1) made the election provided for in such subsection and any employee who is of an age which will permit him to complete an aggregate period of 7 years' service under the State before attaining the age for retirement for which he desires to contribute and who at the commencement of this Act was an employee and was not less than 60 years of age when he became a contributor may at any time after the period prescribed in subsection (1) elect to contribute for a full pension upon retirement at the age of 60 years or at any later age up to and including the age of 64 years, but in such case the amount of further or higher contribution payable by him shall be assessed in the manner prescribed in the second proviso to section 40:

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

- (3) The rates of contribution to be paid by employees electing under subsection (2) to contribute for full pension upon retirement at the ages of 61, 62, 63 and 64 years, respectively, shall be determined by the Board.
- (3a) Where a contributor has made an election to contribute for a pension upon retirement at an age earlier than 65 years, the Board may, upon application by the contributor, permit him to elect to contribute for a full pension upon retirement at a later age up to 65 years and in such case his contributions shall be adjusted accordingly and any excess in contributions arising as a consequence of the election of the contributor to retire at a later age may, at the discretion of the Board, either be paid to the contributor or be held in the Fund to the credit of the contributor together with compound interest thereon at a rate per centum per annum determined by the Board from time to time.
- (4) Where a contributor in accordance with subsection (1), elects to contribute at rates specified in the Third or Fourth Schedule, the rates at which he shall contribute shall, where he has elected

under section 37(6) to contribute for units at the rates prescribed for the age of 30 years, be, in respect of those units, the rate prescribed in the Third or Fourth Schedule for the age of 30 years and, in respect of other units, shall be at the rate in those Schedules which is appropriate to his age at the date when he elects under this section.

- (5) Any contributor who makes an election in accordance with this section shall be entitled upon retirement on attaining the age of retirement in respect of which he has elected to contribute and has contributed to receive full pension according to the number of units for which he was contributing at the time of his retirement.
- (6) For the purposes of this Act the maximum age for retirement of a contributor who makes an election under this section shall be 60 years, or the later age for which he elects under and in accordance with subsection (2), as the case may require.
- (7) Subject as hereinafter provided, where a contributor who has made an election under this section to contribute for full pension upon retirement at the age of 60 years, or at a later age less than 65 years, does not retire upon attaining the age of retirement for which he has contributed as aforesaid, he shall not be required to make contributions after he has attained the age of retirement for which he has contributed as aforesaid, and he shall not be entitled to receive pension until his retirement. Provided that if such contributor has elected to make contributions in respect of units of pension at the rates prescribed for the age of 30 years in accordance with section 37(6)(a), then, notwithstanding anything to the contrary contained in this subsection or elsewhere in this Act, such contributor shall be liable to make and shall make his contributions in respect of the said units of pension at the prescribed rate for a period of 5 years from the date when he commenced to make contributions in respect of such units of pension or until he retires when he retires before the completion of such period of 5 years, and shall not be entitled to receive pension until after his retirement.

[Section 41⁸ amended by No. 43 of 1939 s.10; No. 65 of 1947 s.11; No. 61 of 1960 s.3; No. 134 of 1976 s.10; No. 9 of 1981 s.4; No. 8 of 1993 s.69.]

42. Tables of contributions in Schedules

- (1) During the 5 years next following the commencement of this Act and until other tables of contribution are prescribed as hereinafter provided, the tables of contributions for men and women according to ages, set out in the Schedules respectively, shall be in force.
- (2) The Governor may from time to time, on the joint recommendation of the State Government Actuary and the Board, make regulations prescribing tables of contributions for the purposes of this Act.

[Section 42⁸ amended by No. 134 of 1976 s.11.]

Division 3A — Reserve units of pension

[Heading inserted by No. 65 of 1947 s.12.]

42A. Reserve units of pension

- (1) There shall be a Reserve Units of Pension Account (in this Division referred to as “**the Account**”), which shall form part of the Fund and to which shall be credited all contributions made by contributors under this Division.
- (2) A contributor who is contributing for the number of units of pension corresponding to the salary group within which his salary falls may, from time to time, elect to contribute, in accordance with this Division for one or more reserve units of pension, with a maximum of 8.
- (3) Contributions in respect of a reserve unit of pension shall, subject to section 42(2), be in accordance with the rate prescribed in the appropriate Schedule, and shall be payable as from the date on which the contributor elects to contribute for that reserve unit of pension.

- (4) Where a contributor who is contributing for one or more reserve units of pension becomes eligible to contribute for one or more additional units of pension in pursuance of the provisions of this Act, he may elect to transfer to the Fund the contributions credited by him to the Account in respect of a number of reserve units of pension not exceeding the number of those additional units of pension.
- (5) Where a contributor so elects, no further contributions shall be credited to the Account in respect of the reserve units of pension to which the election applies and the contributions payable by the contributor in respect of the additional units of pension equal to the number of those reserve units of pension shall be at the same rate as the contributions credited to the Account in respect of those reserve units of pension.
- (6) Where a contributor is contributing for one or more reserve units of pension, he may, subject to subsection (7), elect to discontinue his contributions in respect of any number or all of those units. In that event or if he ceases to be an employee, there shall be paid to him or to his personal representatives, from moneys standing to the credit of the Account, the amount of the contributions made by him in respect of those reserve units of pension, together with interest, compounded annually, on those contributions, at the rate determined by the Board in respect of the period or periods concerned.
- (7) A contributor who has made an election to reduce the number of reserve units under subsection (6) shall not again be eligible to elect to contribute for reserve units of pension.
- (8) Notwithstanding the foregoing provisions of this section —
 - (a) no further elections under subsection (2) may be made on or after 1 January 1977;
 - (b) a contributor who was, on that day, contributing to the Account shall, not later than 30 June 1977, make an election under subsection (4) or subsection (6) or under both of those subsections, which election or elections

shall be such as to apply to all reserve units of pension for which he was contributing; and

- (c) where a contributor fails to make an election or elections in accordance with paragraph (b) he shall be deemed to have made an election on 30 June 1977 under subsection (6) in respect of each reserve unit of pension for which he was so contributing.

[Section 42A inserted by No. 65 of 1947 s.12; amended by No. 134 of 1976 s.12; No. 49 of 1996 s.64.]

Division 4 — Contributions by the State

43. Payments by State where contributions by employee are at rate for age

- (1) Where units of pension are charged to the Fund on or after 1 January 1958 on the basis of contribution corresponding to the rate prescribed for the age of the contributor at the date upon which he commenced to pay the contribution, the State shall, in respect of each unit or part of a unit of pension
 - (a) credit to the Fund a sum equal to $\frac{2}{3}$ of the payment charged to the Fund on or after that day if payment of the pension commenced before that day; and
 - (b) credit to the Fund a sum equal to $\frac{5}{7}$ of the payment charged to the Fund on or after that day in respect of each pension payment of which commences on or after that day; and
 - (c) credit to the Fund in addition to the sum mentioned in paragraph (a) or (b), the difference between the amount that was payable from moneys standing to the credit of the Fund in respect of each unit of pension or part thereof immediately before the date of the coming into operation of the *Acts Amendment (Superannuation and Pensions) Act 1962*¹, less the supplementation at the rate of \$104 per annum in terms of the currency then existing in the cases in which it was payable by the

State, and the amount that is so payable from moneys standing to the credit of the Fund in respect of that unit or part immediately after that date, and for that purpose the Consolidated Fund is, to the extent necessary, hereby permanently appropriated accordingly.

[(2) repealed]

- (3) Where in accordance with paragraph (i) of the proviso to the second paragraph of the definition of “department” in section 6, fortnightly payments have been made to the Board on behalf of the State on account of the pension to which such contributor is entitled under this Act, the liability of the State in respect of the pension payable to such contributor under this section and section 44 shall be deemed to be satisfied and discharged to the extent to which the fortnightly payments have already been made as aforesaid.
- (4) Where a contributor, under section 36 or section 60, elects or is called upon to retire at age 60 years or later age and elects to continue to pay contributions at the lower rate until he attains the age of 65 years, the employing department shall continue to pay the “employer” contributions for the corresponding period to the Board on behalf of the State.

[Section 43⁸ amended by No. 55 of 1945 s.13; No. 65 of 1947 s.13; No.25 of 1951 s.2; No. 55 of 1957 s.2; No. 65 of 1962 s.4; No. 106 of 1965 s.7; No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

43A. Special provisions for certain contributors

Where a contributor elected for a number of units less than 8 and, on or before 31 December 1957, attained the retiring age for which he elected, but benefits under this Act became payable after that day, he shall, notwithstanding any of the provisions of this Act to the contrary, but subject to those of section 59, be entitled after that day to the rate of benefits which would have been payable to him had entitlements to payment of benefits commenced on or before that day.

[Section 43A inserted by No. 19 of 1958 s.2.]

44. Payments by State where contributions by employee are not at rate for age

- (1) Subject to this Act, in respect of each unit or portion of a unit of pension charged to the Fund on the basis of a contribution corresponding to the rate prescribed for an age younger than that of the contributor at the date upon which he commenced to pay the contribution, a sum ascertained in the manner provided in this section shall be credited by the State to the Fund.
- (2)(a) In order to determine the sum payable in each case by the State under this section —
 - (i) in respect of pensions payment of which commenced before 1 January 1958, the rate of contribution actually payable by the contributor shall be subtracted from 3 times the rate prescribed for the age of the contributor on the date on which he commenced to pay the contribution, and the ratio of that difference to 3 times the rate so prescribed shall be computed; or
 - (ii) in respect of pensions payment of which commences on or after that day, the provisions of subparagraph (i) shall be applied but with the substitution of 3½ times the rate so prescribed for 3 times that rate.
- (b) Subject to this Act, the ratio so computed represents such part of the pension payment charged to the Fund as the State shall credit to the Fund.
- (3) Where a pension calculated in accordance with this Act is less than the prescribed minimum and where this Act provides that the prescribed minimum shall be paid, the amount necessary to bring the pension up to the minimum shall be credited by the State to the Fund in addition to the sums payable by the State under this Division.
- (4) The State shall credit to the Fund in addition to any sum payable by the State under the foregoing provisions of this section, the difference between the amount that was payable from moneys standing to the credit of the Fund in respect of

such unit of pension or part thereof immediately before the date of the coming into operation of the *Acts Amendment (Superannuation and Pensions) Act 1962*¹ less the supplementation at the rate of \$104 per annum in terms of the currency then existing in the cases in which it was payable by the State, and the amount that is so payable from moneys standing to the credit of the Fund in respect of that unit or part immediately after that date and for that purpose the Consolidated Fund is, to the extent necessary, hereby permanently appropriated accordingly.

[Section 44⁸ amended by No. 39 of 1950 s.9; No. 25 of 1951 s.2; No. 55 of 1957 s.2; No. 65 of 1962 s.5; No. 106 of 1965 s.8; No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

45. No payment by the State in respect of pension to widow of qualified contributor

Subject to this Act, in respect of each unit or portion of a unit of pension charged to the Fund and paid to the widow of an employee who has contributed as a qualified contributor on the basis of the contributions paid by such qualified contributor no payment whatever shall be required from or be payable by the State.

[Section 45⁸ amended by No. 49 of 1996 s.64.]

46. Payments from Consolidated Fund

- (1) Payments by the State to the credit of the Fund and to contributors under section 34(3), for the purposes of this Act, shall be charged to the Consolidated Fund which is hereby permanently appropriated accordingly.
 - (2) The payments to the credit of the Fund shall be made in such manner and at such periods as are prescribed by the regulations.
- [Section 46⁸ amended by No. 6 of 1993 s.11; No. 49 of 1996 s.64.]*

46A. Increase of pension

- (1) Where a contributor is entitled to an amount of pension according to the number of units of pension held by him on retirement, he is entitled, in addition to the amount to which he is entitled under

section 58, to an additional amount of pension in accordance with the scale set forth in the Fifth Schedule, namely —

- (a) with respect to the number of units of pension for which he has contributed at any time before 1 July 1964 up to the time he became entitled to pension in respect thereof the amount shown opposite the number of those units in the second column of Part 1 of the Fifth Schedule;
 - (b) with respect to the number of units of pension held by him at the time he becomes or became entitled to pension in respect thereof, the amount, if any, shown opposite the number of those units in the second column of Part 2 of the Fifth Schedule.
- (2) The amount of increase of pension payable under subsection (1)(a) shall be charged to the Fund.
- (3) The State shall credit to the Fund the amount of increase of pension payable under subsection (1)(b).
- (4) The Consolidated Fund is hereby permanently appropriated to the extent necessary to give effect to subsection (3).
- (5) The provisions of this section apply —
 - (a) in respect of the first fortnightly payment of pension made in the month of January 1967, and in respect of such subsequent payments;
 - (b) to a widow who is entitled to receive an amount of pension under this Act and in accordance with the rate of pension payable to the widow as referred to in this Act.

[Section 46A inserted by No. 78 of 1967 s.4; amended by No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

46AB. Increase in Fund share of pension

- (1) Where a contributor or former contributor is entitled to an amount of pension according to the number of units held by him on retirement, he is entitled, in addition to the amount of pension to which he is otherwise entitled, to an amount of

10 cents per fortnight in respect of each unit for which he has contributed at any time prior to 1 July 1969 up to the time he became entitled to pension in respect thereof.

- (2) The amount of increase of pension payable under subsection (1) shall be charged to the Fund.
- (3) The provisions of subsections (1) and (2) apply —
 - (a) in respect of the first fortnightly payment of pension made in the month of January 1974, and in respect of such subsequent payments;
 - (b) to a widow who is entitled to receive an amount of pension under this Act and in accordance with the rate of pension payable to the widow as referred to in this Act.
- (4) Where a contributor or former contributor is entitled to an amount of pension according to the number of units held by him on retirement, he is entitled, in addition to the amount of pension to which he is otherwise entitled, to an amount of 10 cents per fortnight in respect of each unit for which he has contributed at any time prior to 1 July 1974 up to the time he became entitled to pension in respect thereof.
- (5) The amount of increase in pension payable under subsection (4) shall be charged to the Fund.
- (6) The provisions of subsections (4) and (5) apply —
 - (a) in respect of the first fortnightly payment of pension made in the month of January 1977 and in respect of such subsequent payments; and
 - (b) to a widow who is entitled to receive an amount of pension under this Act, and in accordance with the rate of pension payable to the widow as referred to in this Act.
- (7) Subject to subsections (10) and (11), where a contributor or former contributor is entitled to an amount of pension according to the number of units held by him on retirement, he is entitled, in addition to the amount of pension to which he is otherwise entitled, to an amount of 10 cents per fortnight in respect of each unit for

which he has contributed at any time prior to 1 July 1977 up to the time he became entitled to pension in respect thereof.

- (8) The amount of increase in pension payable under subsection (7) shall be charged to the Fund.
- (9) The provisions of subsections (7) and (8) apply —
 - (a) in respect of the first fortnightly payment of pension made in the month of January 1980 and in respect of such subsequent payments;
 - (b) to a widow who is entitled to receive an amount of pension under this Act, and in accordance with the rate of pension payable to the widow as referred to in this Act.
- (10) A person entitled to an amount of pension under this Act who prior to 1 July 1974 commuted —
 - (a) the whole of the Fund share of the pension payable to him, is not entitled to any increase in pension under subsections (7) to (9) (inclusive);
 - (b) part of the Fund share of the pension payable to him, is entitled to receive such part of the increase in pension payable under subsections (7) to (9) (inclusive) as the Board may determine.
- (11) A widow or widower who is entitled to receive an amount of pension under this Act who is the widow or widower of a person who has commuted either the whole or part of the Fund share of the pension payable under this Act is entitled to receive such part of the increase in pension payable under subsections (7) to (9) (inclusive) as the Board may determine.

[Section 46AB inserted by No. 75 of 1973 s.10; amended by No. 134 of 1976 s.13; No. 76 of 1979 s.3; No. 49 of 1996 s.64.]

46B. Supplementary units of pension

- (1) Subject to the remaining provisions of this section, where —
 - (a) a contributor or former contributor who retired before 1 January 1971; or

- (b) a contributor or former contributor who retired on or after 1 January 1971 but attained his maximum age for retirement before that day,

is entitled to an amount of pension according to the number of units of pension for which he has contributed and which were held by him on retirement, he is also entitled to receive pension in respect of such number, if any, of supplementary units of pension as are ascertained in accordance with the table to this subsection if the number of units so contributed for and held by the contributor did not exceed 40, and in any other case to such number of supplementary units of pension as is determined by the Treasurer.

Number of units of pension contributed for by contributor and held by him on retirement	Number of additional supplementary units of pension to which contributor is entitled
21	1
22	2
23	3
24	4
25	5
26	6
27	7
28	8
29	9
30	10
31	11
32	12
33	13
34	14
35	15
36	16
37	17
38	18

Superannuation and Family Benefits Act 1938

Part IV Contributions

Division 4 Contributions by the State

s. 46C

Number of units of pension contributed for by contributor and held by him on retirement	Number of additional supplementary units of pension to which contributor is entitled
39	19
40	20

- (2) The unit of supplementary pension is \$65 per annum.
- (3) Subject to subsection (4), supplementary pension provided for in this section is payable on the same conditions and in the same circumstances and manner as is that part of the share of pension under this Act which the State is liable to contribute to the Fund, and for that purpose the provisions of this Act set out in the following table apply, *mutatis mutandis*, to the payment of supplementary pension —

Provisions of Act to be applied to payment of supplementary pension

Section 32A, 52(2), sections 53, 54, 57, section 59 except paragraph (c), section 60, sections 61, 62, 63, 64, 66, 69, 70, 71, 72, 73, 75, 76, 77, 78, 79, 84, 85 and 87.

- (4) The regulations may modify or vary the conditions on which, and the circumstances and manner in which, pension is payable, notwithstanding the provisions of subsection (3).
- (5) The provisions of this section apply in respect of the first fortnightly payment of pension in the month of January 1971, and in respect of every such subsequent payment.
- (6) The State shall credit to the Fund the amount of any pension payable under this section, and the Consolidated Fund is hereby permanently appropriated to the necessary extent.

[Section 46B inserted by No. 108 of 1970 s.6; amended by No. 6 of 1993 s.11; No. 8 of 1993 s.70; No. 49 of 1996 s.64.]

46C. Alteration of rates of certain pensions

- (1) In this section, unless the contrary intention appears —

“Index” means the table described as the Consumer Price Index Numbers — All Groups, Perth that is published by the Commonwealth Statistician under the authority of the *Census and Statistics Act 1905* (as amended or re-enacted from time to time) of the Commonwealth;

“pay-day” means a day on which a fortnightly instalment of a pension is payable.

- (2) Subject to this section, every pension payable under this Act to a former contributor shall be adjusted by the Board in the period of 6 months ending on 31 December 1985 and thereafter in each period of 6 months ending on 30 June or 31 December, in accordance with this section.
- (3) The percentage (if any) by which pensions shall be adjusted in each period referred to in subsection (2) shall be that which the Board declares, as soon as is practicable in that period, to be the percentage by which the Index for the quarter ending at the commencement of that period is greater than the Index for the quarter ending 6 months before the commencement of that period.
- [(4) *repealed*]
- (5) The adjustment of a pension under this section in any period shall be made —
 - (a) subject to subsection (7), by increasing the rate at which, immediately before the making of the adjustment, the pension was payable by the percentage declared under subsection (3) in that period; and
 - (b) so as to operate from and including the first pay-day occurring not less than 3 months after the commencement of that period.
- (6) An adjustment of a pension shall not be made under this section in a period if the pension comes into force in that period or less than 3 months before the commencement of that period.

- (7) Where a pension comes into force not less than 3 months but less than 6 months before the commencement of a period, the adjustment of the pension under this section in that period shall be by one-half of the amount of the increase that would otherwise apply under subsection (5)(a).
- (8) Where the Index for the quarter ending at the commencement of a period referred to in subsection (2) is not greater than the Index for the quarter ending 6 months before the commencement of that period, the Board shall declare that it is the same or, the percentage by which it is less, as the case may be, and —
 - (a) no adjustment in pensions shall be made under this section in that period; and
 - (b) where applicable, the percentage by which it is less shall first be taken into account before making a subsequent adjustment in pensions under this section.

[(9) repealed]

- (10) The State shall credit to the Fund the balance of the amount required for the payment of any increase in pension provided for by this section after first taking into account all amounts available for the purpose in the Indexation Account.
- (11) The Consolidated Fund is hereby permanently appropriated to the extent necessary for the purposes of this section.

[Section 46C inserted by No. 75 of 1973 s.11; amended by No. 30 of 1984 s.7; No. 78 of 1985 s.4; No. 6 of 1993 s.11; No. 49 of 1996 s.64; No. 57 of 1997 s.117(2) and (3).]

Division 5 — General provisions as to contributions

47. Employees on leave of absence

A contributor or a qualified contributor who is on leave of absence either with or without pay, shall pay his contributions

during or in respect of the period of leave, as for a period of service, without reduction⁸.

48. Lump sum payments in redemption of future contributions

- (1) The Board may accept lump sum payments to redeem forthwith all future contributions which would be payable fortnightly under this Act by a contributor.
- (2) The amount of the lump sum payment to be made under this section shall be determined by the Board which may allow any discount or other allowance it thinks fit.

[Section 48⁸ inserted by No. 43 of 1939 s.11.]

49. Interest payable on contributions in arrears

Outstanding and unpaid contributions may be chargeable with interest upon the amounts thereof as from the date when they fell due for payment at such rate as the Board shall from time to time determine.

[Section 49⁸ inserted by No. 43 of 1939 s.11; amended by No. 106 of 1965 s.9; No. 47 of 1974 s.6.]

50. Manner of payment — deduction from salary

The contributions of contributors and of qualified contributors shall be deducted from their salaries at each payment of salaries, and shall be paid without deduction for postage, forwarding or exchange, to the Board.

Provided that where a contributor or a qualified contributor is on leave of absence through illness, either without pay or at less than full pay, the Board may upon his application, permit the contributions falling due during his absence to be paid by him in such smaller sums and at such periods as the Board may approve⁸.

51. Continuance of contributions by qualified contributor

Notwithstanding anything to the contrary contained in Part V, where an employee becomes a qualified contributor, and before he reaches the maximum age for retirement applicable to him, such employee is retired on the ground of invalidity or of physical or mental incapacity or is retrenched, discharged or dismissed or resigns, he may nevertheless continue until he reaches the maximum age for retirement to contribute to the Fund as such qualified contributor at the rate of contribution at which he was so contributing at the time of the retirement, retrenchment, discharge, dismissal or resignation; or he may at any time after such retirement, retrenchment, discharge, dismissal or resignation after notice in writing in the prescribed form given to the Board, discontinue payment of such contributions ⁸.

Part V — Pensions and benefits

Division 1 — Retirement on pension

52. Age of compulsory retirement

Subject to section 60(5) or (8), every contributor shall be entitled to a pension on his retirement on or after attaining the maximum age for retirement.

[Section 52 inserted by No. 75 of 1973 s.12; amended by No. 134 of 1976 s.14.]

53. Breakdown retirement

A contributor who is retired on the ground of invalidity or of physical or mental incapacity to perform his duties shall be entitled to a pension ⁸.

54. Retrenchment and discharge

- (1) The compulsory termination of the service of a contributor or of a qualified contributor for the reason that his service or position is not necessary, or for the reason that the work for which he was engaged is finished, or for the reason that the quantity of work has diminished and has rendered necessary a reduction in the number of employees —
 - (a) shall be deemed to be “retrenchment” if the contributor or qualified contributor has been in the Service for not less than 10 years; and
 - (b) shall be deemed to be “discharge” if the contributor or qualified contributor has been in the Service for less than 10 years.
- (2) The compulsory termination of the service of a contributor who is a term appointee for the reason that the term of his appointment has expired and a further term is not available to him —
 - (a) shall be deemed to be “retrenchment” if —
 - (i) the contributor has been in the Service for not less than 10 years; and

- (ii) the contributor would not have been eligible for a pension under this Act if at the time of compulsory termination of his service he had terminated his service voluntarily; and
- (iii) the Board is satisfied that the contributor is ready and willing to accept a further term of appointment to his office;

and

- (b) in any other case shall be deemed to be “discharge”.

[Section 54⁸ amended by No. 23 of 1982 s.4.]

55. Dismissal

Compulsory termination of the service of a contributor or qualified contributor, however expressed, other than —

- (a) retirement on pension as provided in this Act or retirement without personal pension in the case of a qualified contributor; or
- (b) retirement through invalidity or physical or mental incapacity; or
- (c) retrenchment or discharge

shall be deemed to be dismissal for the purposes of this Act ⁸.

56. Resignation

- (1) Voluntary termination of service (however expressed) by a contributor, who is not entitled to retire on pension, or by a qualified contributor, shall be deemed to be resignation.
- (2) A female employee who marries shall for the purposes of this Act, be deemed to have resigned on the date of her marriage, unless she is continued in service upon her marriage.

[Section 56⁸ amended by No. 65 of 1947 s.15; No. 78 of 1967 s.5.]

Division 2 — Grant of pensions and benefits

[57. *Repealed by No. 75 of 1973 s.13.*]

58. Pension units

- (1) Subject to the provisions of this Act, the unit of pension as from the coming into operation of the *Superannuation and Family Benefits Act Amendment Act 1965*, is —
- (a) \$149.50 per annum for each of the first 2 units of pension;
 - (b) \$78 per annum for each of the next 5 units of pension; and
 - (c) \$91 per annum for each additional unit of pension over the number of 7 units.
- (2) Subject to section 33 the minimum amount of pension to any contributor shall, except where this Act requires a pension to be actuarially determined, be 2 units, and the minimum amount of pension to the widow of a contributor or pensioner or to the widow of a qualified contributor shall be one unit.

[Section 58⁸ amended by No. 65 of 1947 s.16; No. 25 of 1951 s.2; No. 55 of 1957 s.2; No. 65 of 1962 s.9; No. 106 of 1965 s.11; No. 78 of 1967 s.6.]

59. Commencing dates for payment of pension

Notwithstanding anything to the contrary contained in this Act —

- (a) the commencing date for payment of any pension or superannuation allowance under this Act to a contributor shall, subject to paragraph (c), be the day following the day when such contributor ceased duty on or after either attaining the age for which he elected to retire or becoming otherwise entitled to retire under this Act, as the case may be;

[(b) deleted]

- (c) a personal pension or superannuation allowance shall not be payable to a contributor (other than a contributor whose pension is granted under section 61) until the completion of payment of the equivalent of 26 contributions at the periodical rates applicable to that contributor.

[Section 59⁸ inserted by No. 43 of 1939 s.13; amended by No. 39 of 1950 s.12; No. 61 of 1960 s.3; No. 50 of 1961 s.4; No. 101 of 1964 s.6; No. 75 of 1973 s.14; No. 30 of 1984 s.8.]

60. Amount of pension on retirement

- (1) Subject to this Act, a contributor shall upon retirement be entitled to receive a pension according to the number of units for which he was contributing at the time of his retirement:

Provided that any contributor —

- (a) who has attained the age of 60 years and elects, or is called upon to retire before he attains the maximum age for retirement; or
- (b) the age for whose retirement is fixed by law at an earlier age than 65 years, who retires on attaining the age so fixed

shall as from the date of his retirement be entitled to a pension calculated by adding the actuarial equivalent of the contributions made or to be made by him to the share of pension which would have been payable by the State if he had continued to pay contributions until he attained the maximum age for retirement:

Provided further that a contributor, other than a contributor who is a member of the Police Force at the time of his retirement, who has attained the age of 55 years and elects to retire before attaining the age of 60 years shall as from the date of his retirement be entitled to a pension calculated by adding —

- (a) the actuarial equivalent of the contributions made or to be made by him; and

- (b) the actuarial equivalent of the share of pension which would have been payable by the State but for section 24A if he had continued to pay contributions until he attained the age of 60 years, having regard in the determination of such an actuarial equivalent to —
 - (i) subsections (4) and (7);
 - (ii) the earlier payment of the pension permitted by this proviso; and
 - (iii) reduction in the period of service during which the State's share of pension would have been funded if the State were to have funded its liabilities throughout the contributor's potential service to a maximum of 30 years:

Provided further that a contributor, being a member of the Police Force and having completed 30 years of aggregate service with the State at the time of his retirement, who has attained the age of 55 years and elects to retire before attaining the age of 60 years shall, as from the date of his retirement but subject to this section, be entitled to a pension calculated by adding the actuarial equivalent of the contributions made or to be made by him to the share of pension which would have been payable by the State if he had continued to pay contributions until he attained the maximum age for retirement:

Provided further that a contributor, being a member of the Police Force but not having completed 30 years of aggregate service with the State at the time of his retirement, who has attained the age of 55 years and elects to retire before attaining the age of 60 years shall, as from the date of his retirement but subject to this section, be entitled to a pension calculated by adding —

- (a) the amount of the pension to which he would be entitled under this section if at the time of his retirement he had not been a member of the Police Force; and

- (b) a supplement calculated in accordance with the formula —

$$S = \frac{C}{D} \times (A - B)$$

where —

- S is the amount of the supplement payable under this paragraph as part of the State share of the pension;
- A is the amount of the share of the pension which would have been payable by the State in like circumstances to the contributor if he had attained the age of 60 years at the time of his retirement;
- B is the amount of the share of the pension payable by the State in like circumstances to a contributor other than a contributor who is a member of the Police Force at the time of his retirement;
- C is the number of months of aggregate service that the contributor served with the State prior to his retirement; and
- D is 360:

Provided also that, where a contributor has elected to contribute under section 41(2) for an age of retirement between 60 years and 65 years and has contributed a higher rate of contribution assessed in accordance with the second proviso to section 40, and such contributor elects or is called upon to retire before he attains the age of retirement for which he has elected to contribute and has contributed as aforesaid, he may either —

- (a) continue to pay contributions at the higher rate until he reaches the age of retirement for which he has elected to contribute and has contributed and thereafter receive the full pension to which he is entitled as such contributor; or

- (b) as from the date of his actual retirement continue to pay contributions at the lower rate prescribed in respect of retirement at 65 years of age until he attains the age of 65 years, and thereafter receive the full pension to which he is entitled as such contributor.

Provided further that, subject to the proviso to section 6(3), a contributor who is an employee appointed for a term of years to a statutory office under the Government of the State shall upon the cessation of his employment, and as from the date of that cessation —

- (a) if he has not attained the age of 55 years but has completed an aggregate period of 7 years' service under the State, be entitled to a pension which is the actuarial equivalent of the contributions made or to be made by him and of the share of pension payable by the State and accruing to him under this Act; or
 - (b) if he has not completed an aggregate period of 7 years' service under the State, be entitled to a refund of the actual amount of the contributions made by him as a contributor.
- (2) As an alternative to the acceptance by him of a pension according to the number of units for which he was contributing at the time of his retirement, a contributor may either —
- (a) accept a pension for 2 or more units with a refund of the actual amount of his contributions for the units in excess of the number of units represented by such reduced pension; or
 - (b) waive his entitlement to a pension under this Act and accept from the Board a refund of the actual amount of the contributions made by him as a contributor.
- (2a) Where a contributor is entitled to a pension in respect of his employment by the State in the Government department known as the London Agency, the provisions of subsection (2) shall not apply to him so far as concerns that part of the pension which

qualifies as equivalent pension benefits within the meaning of Part II of the *National Insurance Act 1959* (7 and 8 Eliz. 2, c.47) of the United Kingdom as amended from time to time or within the meaning of any Act of the United Kingdom in substitution for the *National Insurance Act 1959*, as so amended.

- (3) The contributor shall make his choice of the benefit under this section which he desires to take, and shall give to the Board notice thereof in writing in the prescribed form within one month after he is notified of the proposed retirement, or within such further period as the Board may allow, but no benefit shall be payable in respect of any unit for which the contributor has not paid the equivalent of 26 fortnightly contributions at the rate applicable in respect of that unit.
- (4) Notwithstanding any other provision of the Act, the amount of the share of the pension payable by the State to a contributor who retires after not less than 7 but less than 20 years of aggregate service with the State shall not exceed the amount calculated in accordance with the formula —

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

where —

- F is the amount of the share of the pension payable by the State that would have been payable, but for this subsection, to the contributor if he had been contributing, immediately prior to his retirement, for a number of units equal to his primary entitlement; and
- Y is the number of months of aggregate service that the contributor served with the State prior to his retirement.
- (5) Where a person becomes a contributor after the commencement of subsection (4) and upon retirement he has not completed an aggregate period of 7 years service, he is entitled to a refund of the actual amount of the contributions made by him as a contributor.

- (6) The provisions of subsections (4) and (5) do not apply to a person where the period of continuous service of that person that is terminated by his retirement commenced on or before 28 December 1967 or commenced on or after the date on which the *Superannuation and Family Benefits Act Amendment Act 1976* received the Royal Assent¹.
- (7) Notwithstanding any other provision of the Act, the amount of the share of the pension payable by the State to a contributor who retires after not less than 7 but less than 30 years of aggregate service with the State shall not exceed the amount calculated in accordance with the formula —

$$\frac{F \times Y}{360}$$

where —

- F is the amount of the share of the pension payable by the State that would have been payable, but for this subsection, to the contributor if he had been contributing, immediately prior to his retirement, for a number of units equal to his primary entitlement; and
- Y is the number of months of aggregate service that the contributor served with the State prior to his retirement.
- (8) Where a person becomes a contributor after the commencement of subsection (7) and upon retirement he has not completed an aggregate period of 7 years service, he is entitled to a refund of the actual amount of the contributions made by him as a contributor.
- (9) Where —
- (a) before a person became a contributor, he had been employed by the Crown in right of the Commonwealth or of this or any other State or by any agency or instrumentality thereof; and
 - (b) as a consequence of that employment he had received a pension or like benefit included in which was an amount

or component representing payments or contributions made by or on behalf of the Crown, agency or instrumentality,

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

- (10) The provisions of subsections (7), (8) and (9) do not apply to a person where the period of continuous service of that person that is terminated by his retirement commenced before the date on which the *Superannuation and Family Benefits Act Amendment Act 1976* received the Royal Assent ¹.
- (11) In the case of a contributor —
- (a) who is a member of the Police Force at the time of his retirement;
 - (b) who elects to retire before he attains the age of 60 years; and
 - (c) whose annual salary is increased, by reason of promotion to a higher rank, within the period of 12 months immediately prior to his retirement,

the annual salary of that contributor immediately prior to his retirement shall for the purposes of this Act be deemed to be —

- (d) the aggregate amount of salary received by the contributor during such period of 12 months; or
- (e) an amount equal to the aggregate amount of salary that the contributor would have received during such period

of 12 months if salaries pertaining to the ranks held substantively by the contributor during such period had been at the same levels throughout that period as they were immediately prior to the retirement of the contributor,

whichever is the greater.

[Section 60⁸ amended by No. 43 of 1939 s.14; No. 55 of 1945 s.14; No. 39 of 1950 s.13; No. 61 of 1960 s.3; No. 50 of 1961 s.5; No. 43 of 1963 s.6; No. 101 of 1964 s.7; No. 78 of 1967 s.7; No. 27 of 1969 s.8; No. 75 of 1973 s.15; No. 134 of 1976 s.15; No. 30 of 1984 s.9; No. 6 of 1993 s.11.]

60AA. Certain contributors may elect to determine pension rights prior to retirement

- (1) Any person contributing for a full pension upon retirement at the age of 65 years (not being a person to whom section 60(4), (5), (7) or (8) applies) who —

- (a) has attained the age of 60 years; and
- (b) is contributing for a number of units not less than his primary entitlement,

may, by notice in writing in a form approved by the Board, served on the Board, elect to —

- (c) cease to pay contributions on the units for which he was contributing at the time of his election; and
- (d) have the pension to be paid to him upon his retirement determined under the provisions of this section.

- (2) Where an election is made under this section —

- (a) no further contributions are payable by the contributor except —
 - (i) in relation to any units for which he has not completed the payment of 26 regular fortnightly contributions or the equivalent amount, in respect of which units the contributor shall pay to the

- Board in the manner approved by the Board the amount necessary to complete that payment; or
- (ii) in relation to units contributed for in accordance with subsection (5);
 - (b) the election has the effect of cancelling any units of pension for which the contributor was contributing in excess of his primary unit entitlement and there shall be refunded to the contributor the total of the contributions paid by him in respect of the units so cancelled;
 - (c) except as provided in subsection (5), the contributor is not entitled to elect to contribute for any further units of pension.
- (3) The pension payable from the time of the retirement of a contributor who made an election under this section shall be paid at the rate at which pension would have become payable to him by that time had he actually retired on the day on which his election was served on the Board, together with the further amount calculated in accordance with subsection (4).
- (4) The further amount referred to in subsection (3) —
- (a) shall be the amount of pension determined by an Actuary to be the equivalent of the aggregate amount of Fund share of pension that would have been payable to the person during the period commencing on the day on which he made his election and ending on the day on which he actually retired, together with interest thereon at the rate from time to time determined by the Board, had he retired on the day on which he made his election; and
 - (b) may not be commuted under the provisions of section 60D.

- (5) Where the salary of a contributor who has made an election under this section is increased subsequently but with effect from a day prior to the date on which the election was lodged with the Board —
- (a) the contributor may elect to contribute for such further units of pension as represent the increase in his primary unit entitlement so occasioned;
 - (b) if he so elects and pays to the Board 26 regular fortnightly contributions in respect of those units or the equivalent amount, he shall be deemed for the purposes of this section to have been contributing for those units at the time that he lodged his election with the Board and those units shall be deemed to have formed part of his primary unit entitlement at that time.
- (6) Where a contributor who has made an election under this section dies prior to his retirement —
- (a) the pension which he would have received under this section had he retired on the date of his death (excluding any further amount referred to in subsection (3) and (4)) shall be deemed to be the pension for which he was contributing at the date of his death for the purposes of calculating any reversionary pension or children's allowance payable under the Sixth Schedule; and
 - (b) there shall be added to the widow's pension calculated in accordance with paragraph (a) an annuity payable fortnightly at a rate determined by an Actuary to be the equivalent of the aggregate amount of the Fund share of pension that would have been payable to the contributor during the period commencing on the day on which he made his election and ending on the day on which he died, together with interest thereon at the rate from time to time determined by the Board had he retired on the day on which he made his election.
- (7) Section 61 shall not apply to a contributor who has made an election under this section.

Superannuation and Family Benefits Act 1938

Part V Pensions and benefits

Division 2 Grant of pensions and benefits

s. 60A

- (8) Any election made under subsection (1) —
- (a) is irrevocable; and
 - (b) subject to subsection (9), takes effect on the day on which it is lodged with the Board.
- (9) A contributor entitled to make an election on the date of the commencement of this section may, if his election is lodged on or before 30 June 1975, specify that his election shall take effect on such earlier date as is specified therein, being a date that is not earlier than 31 December 1974, nor earlier than the first day on which he would have been entitled to so elect if this section had been in operation on 31 December 1974.
- (10) Without affecting the operation of subsection (2)(b), there shall, in determining for the purposes of subsections (1) and (9) whether a contributor was on any relevant day contributing for a number of units equal to or in excess of his primary entitlement, be disregarded any increase in salary which first became payable to that contributor within the period of 2 months immediately preceding that day.

[Section 60AA inserted by No. 4 of 1975 s.2; amended by No. 134 of 1976 s.16.]

60A. Contributor remaining in service after 65 years of age

- (1) Subject to subsection (3), where a contributor who has attained the age of 65 years remains in the Service for not less than one year after attaining that age, the pension which would be payable to him under the provisions of this Act, other than this section, shall be increased by an amount ascertained by multiplying the portion of the pension equivalent to the contributions made by him by a percentage ascertained in accordance with the table appended to this section.

Table

Age Attained on Retirement	Percentage
66 years	7
67 years	15

68 years	23
69 years	32
70 years	42

- (2) The amount by which a pension is increased pursuant to the provisions of subsection (1) is payable from moneys standing to the credit of the fund without contribution by the State.

- (2a) Notwithstanding the provisions of section 46C, the pension payable to a former contributor who continued in service after attaining the age of 65 years —
- (a) in respect of the period which commences on the day after his retirement and ends on the next succeeding 31 December, shall, after taking into account any increase resulting from subsection (1), be increased by a further amount which represents the aggregate of the increases in the rates of pension which he would have received pursuant to section 46C if he had retired on attaining the age of 65 years; and
 - (b) shall thereafter be increased from time to time in accordance with the provisions of section 46C as if he had retired in the month of December of the year preceding the year in which he actually retired.
- (3) Subsections (1) and (2) do not apply to or in relation to the pension of a contributor who has received any benefits under section 60B or 60C.

[Section 60A inserted by No. 61 of 1960 s.3; amended by No. 27 of 1969 s.9; No. 47 of 1974 s.7; No. 49 of 1996 s.64.]

60B. Election by contributors remaining in service after 65 years of age

- (1) Where a contributor who attains the age of 65 years on or after the coming into operation of this section is continued in service after attaining that age, he shall, unless he elects within 3 months of his attaining that age not to receive benefits under this subsection, receive until he retires from service the amount

of pension to which he would be entitled if he had so retired at that age, less the amount of the share of the pension that the State would be required to credit to the Fund under this Act had the contributor so retired at that age.

- (2) Where a contributor who made an election under subsection (1) retires before attaining the age of 66 years, he shall be paid an amount equal to the aggregate of the amounts that he would have received under subsection (1) if he had not made that election.

[Section 60B inserted by No. 27 of 1969 s.10; amended by No. 49 of 1996 s.64.]

60C. Payment of portion of pension in certain cases

- (1) A contributor who —
- (a) attained the age of 65 years on or after 1 June 1967; and
 - (b) was continued in service after attaining that age, and is still continuing in service on the date of the coming into operation of this section,

shall, subject to subsection (3), unless he elects within one month of the coming into operation of this section not to receive benefits under this subsection, receive —

- (c) in respect of the period that commenced on the day after the date on which he attained that age and ended on the day immediately preceding the coming into operation of this section — an amount, together with interest at such rate as the Board determines, equal to the amounts of pension to which the contributor would have been entitled if he had retired at that age, less the amounts of the share of the pension that the State would have been required to credit to the Fund under this Act in respect of that period, if the contributor had retired at that age; and
- (d) in respect of the period commencing on the date of the commencement of this section and ending on the date of his retirement, the amount of pension to which he would

be entitled if he had retired at that age less the amount of the share of the pension that the State would be required to credit to the Fund under this Act had the contributor retired at that age.

- (2) Where a contributor who made an election under subsection (1) retires before attaining the age of 66 years, he shall be paid an amount equal to the aggregate of the amounts that he would have received under subsection (1) if he had not made that election.
- (3) A contributor who was, prior to the commencement of this section, receiving pension under section 60B as in force at that time, is not entitled —
 - (a) to receive any amount under subsection (1)(c); or
 - (b) to make an election under subsection (1).

[Section 60C inserted by No. 27 of 1969 s.11; amended by No. 49 of 1996 s.64.]

60D. Commutation of Fund share of pension

- (1) Subject to this section, a contributor who retires on or after the appointed day and thereby becomes entitled to receive pension under section 60, may, within the period commencing one month prior to and ending 3 months after the date of his retirement, elect to commute the whole or any part of the Fund share of his pension to an equivalent entitlement by way of a lump sum payment.
- (2) A person who, on or after the appointed day but before the assent day, became the widow of a contributor or pensioner may, within the period of 6 months after the death of her husband or within the period of 3 months after her attaining the age of 60 years, whichever is the later, elect to commute the whole or any part of the Fund share of her widow's pension to an equivalent entitlement by way of a lump sum payment.
- (3) A person who —

- (a) was immediately prior to the appointed day the widow of a contributor or pensioner; and
 - (b) attains the age of 60 years on or after the appointed day, may, within the period of 3 months after her attaining the age of 60 years, elect to commute the whole or any part of the Fund share of her widow's pension to an equivalent entitlement by way of a lump sum payment.
- (3a) A person who becomes a widow of a contributor or pensioner on or after the date of commencement of this subsection may, within 6 months after the death of her husband, elect to commute not more than $\frac{1}{4}$ of the Fund share of her widow's pension to an equivalent entitlement by way of a lump sum payment.
- (3b) A person who, on or after the assent day, becomes the widow of a contributor or pensioner may, within 6 months after the death of her husband, elect to commute the whole or any part of the Fund share of her widow's pension to an equivalent entitlement by way of a lump sum payment.
- (3c) A person who becomes the widower of a contributor or pensioner may, within 6 months after the death of the contributor or pensioner, elect to commute the whole or any part of the Fund share of the widower's pension to an equivalent entitlement by way of a lump sum payment.
- (4) Subject to the succeeding provisions of this section, an election that is made in accordance with this section takes effect —
 - (a) 30 days after it is received by the Board; or
 - (b) on such date as is expressed therein for that purpose by the contributor,whichever is the later date, and the lump sum payment to which the contributor becomes entitled by reason of the making of the election is payable to the person by whom the election was made on that later date.

- (5) Where an election made in accordance with this section is received by the Board —
- (a) it may not be revoked by the person by whom it was made; and
 - (b) it is revoked if the person by whom it was made dies prior to the day on which the lump sum payment is payable pursuant to subsection (4),
- but where that person dies on or after the day on which the lump sum payment is so payable but before payment of the lump sum has actually been made, the lump sum payment shall be paid to that person's personal representatives.
- (6) A person is not entitled, except in the prescribed circumstances, to make more than one election under this section, but nothing in this subsection shall be construed as preventing —
- (a) a person who has made an election under subsection (3a) from making a further election under subsection (2); or
 - (b) a person who becomes entitled to more than one pension from making an election in respect of each pension.
- (7) Where a lump sum payment becomes payable to a person pursuant to an election made under subsection (1), (2), (3), (3a) or (3b), that person ceases to be entitled to be paid pension in respect of that part of the Fund share of the pension to which the election related, but an election made by a person under subsection (1) does not affect or reduce any pension which may become payable to the widow of that person.
- (8) An election made by a person under subsection (1) is of no effect insofar as it seeks to commute any part of the Fund share of a pension that is payable in respect of an ineligible unit.
- (9) An election made under subsection (1) by a person who elects to retire before the age for which he elected to contribute is of no effect unless he has contributed in respect of each ineligible unit, the same contributions which he would have paid if he had not retired until he attained that age.

(10) In this section —

“appointed day” means 31 December 1973;

“assent day” means the day on which the *Superannuation and Family Benefits Amendment Act 1985* receives the Royal Assent;

“equivalent entitlement by way of a lump sum payment” in relation to a commutation of part of the pension payable to a person means such lump sum payment as is determined by the Board on the recommendation of an Actuary to be the equivalent, in a lump sum form of the part of the pension which after commutation will cease to be payable to that person;

“Fund share”, in relation to a pension, means the part of the pension which is certified by the Board to be attributable to the contributions made by the contributor for that pension;

“ineligible unit” means any unit for which less than 5 years’ regular fortnightly contributions have been made prior to retirement, except where —

- (a) the election to contribute for the unit is validly made under section 37(10) or under subsection (11) of that section as in force prior to the date on which the *Superannuation and Family Benefits Act Amendment Act 1976* received the Royal Assent¹; or
- (b) the contributor has not less than 3 years prior to the date of his retirement completed the payment of all contributions which would have been payable in respect of the unit if the contributor had retired at the age for which he elected to contribute.

[Section 60D inserted by No. 75 of 1973 s.16; amended by No. 134 of 1976 s.17; No. 78 of 1985 s.5; amended in Gazette 26 May 2006 p. 1932²².]

60E. Increase in pension for contributors receiving special allowances

(1) In this section —

“pension calculation day” means —

- (a) in the case of a contributor who has made an election under section 60AA, the day on which notice of the election was served on the board; or
- (b) otherwise, the day on which the contributor retires;

“relevant contributor” means a contributor who has been in receipt of a special allowance for a continuous period of not less than 12 months immediately before the pension calculation day;

“special allowance” means —

- (a) a higher duties allowance;
- (b) a temporary special allowance;
- (c) a temporary increase in salary as a result of a contributor being appointed to a different position for a fixed term on the expiry of which the contributor will return to the contributor’s usual position;
- (d) a temporary increase in salary paid to a contributor while he or she is on secondment; or
- (e) any other temporary allowance, by whatever name called —
 - (i) paid to a contributor as a result of the contributor carrying out duties different from, or additional to, those normally carried out by a person in the contributor’s position; and
 - (ii) approved by the Board.

(2) For the purpose of determining whether a person is a relevant contributor, the taking of leave by the person during a period in which the person is in receipt of a special allowance —

- (a) does not break the continuity of that period; but

- (b) the period of leave is not to be counted in determining the length of that period.
- (3) Subject to subsection (4), the pension to be paid to a relevant contributor is to be calculated as if, for the 12 months immediately before the pension calculation day —
 - (a) the contributor's salary had included the special allowance;
 - (b) the contributor had been the age he or she was on the pension calculation day; and
 - (c) the contributor had contributed to the Fund in respect of the maximum number of additional units for which the contributor could have contributed had the contributor's salary included the special allowance.
- (4) Subsection (3) does not apply unless the relevant contributor pays to the Fund an amount equal to the amount the contributor would have paid if the contributor had made the contributions referred to in subregulation (3)(c).

[Section 60E inserted in Gazette 16 February 2001 pp.1021-3.]

60F. Pensioner liable to pay contributions tax may commute part of State share of pension

- (1) A pensioner who —
 - (a) is in receipt of a pension; and
 - (b) is liable to pay contributions tax as a result of becoming entitled to that pension,may apply to the Board to commute part of the State share of that pension.
- (2) On receipt of an application under subsection (1) and a copy of the pensioner's assessment notice the Board is to —
 - (a) commute so much of the State share of the pension as the Board, on the advice of an actuary, determines is necessary to provide a lump sum of an amount equal to

- the amount of contributions tax payable by the pensioner;
- (b) pay the commuted amount to the pensioner as a lump sum benefit; and
 - (c) adjust the amount of the pensioner's pension accordingly.
- (3) The Board may reject an application under subregulation (1) if it is not satisfied that, if the application were accepted, the lump sum benefit that would become payable under subregulation (2)(b) will be used to pay the contributions tax.
- (4) In this section —
- “assessment notice”** means a notice given by the Commissioner of Taxation to a pensioner under section 15(7) of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Imposition Act 1997* of the Commonwealth;
- “contributions tax”** means the tax imposed by the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Imposition Act 1997* of the Commonwealth.

[Section 60F inserted in Gazette 28 June 2002 p. 3026-7.]

61. Retirement through invalidity

- (1) Where —
- (a) a contributor, not being a contributor for limited benefits, is retired on the ground of invalidity or physical or mental incapacity to perform his duties; or
 - (b) a contributor for limited benefits is retired on the ground of invalidity or physical or mental incapacity to perform his duties and the Board is satisfied that the invalidity or incapacity is not due to, and did not arise from, a physical or mental defect or condition recorded in relation to him under section 32(7),

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

- (2) Except as provided in subsection (1)(b), where a contributor for limited benefits is retired, prior to attaining the age of 60 years, on the ground of invalidity or physical or mental incapacity to perform his duties, he shall —

- (a) if his retirement occurs not later than 3 years after the day on which he became a contributor for limited benefits — be entitled to receive from the Fund a refund of the contributions paid by him and from the State a sum equal to $2\frac{1}{2}$ such of those contributions as represent fortnightly contributions made by him in respect of units not exceeding his primary entitlement up to the time of his retirement;
- (b) if his retirement occurs after he has contributed to the Fund as a contributor for limited benefits for more than 3 years — be entitled to pension calculated in accordance with the formula —

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

where —

- P** is the pension to which he would have been entitled under this section if he were a contributor referred to in subsection (1)(a); and
- X** is the number of complete months for which he has contributed as a contributor for limited benefits in excess of the period of 3 years commencing on the date on which he became a contributor for limited benefits.

- (3) Except as provided in subsection (1)(b), where a contributor for limited benefits is retired, on or after attaining the age of 60 years, on the ground of invalidity or physical or mental incapacity to perform his duties, he shall be entitled to the same pension as that to which he would have been entitled had he

retired other than on that ground and not under this section, but for the purposes of calculating the State share of that pension, he shall be deemed to have continued in service until attaining the age of 65 years.

- (4) A contributor shall not be deemed to have been retired on the ground of invalidity or physical or mental incapacity to perform his duties within the meaning of this section for the reason merely that he is suffering from a particular physical defect which renders him incapable of performing a particular duty which he has been performing as an employee if such physical defect does not in fact disable him from performing another duty, which he is competent to perform, and employment in the performance of such lastmentioned duty is available to him as an employee.
- (5) Where a contributor for limited benefits dies within 3 years of becoming such a contributor but prior to attaining the age of 60 years, there shall, except where the Board is satisfied that his death was not due to and did not arise from, a physical or mental defect or condition recorded in relation to him under section 32(7) be paid to his widow from moneys standing to the credit of the Fund and from the State the same amounts as would have been paid to the contributor had he retired on the ground of invalidity or incapacity on the same day as that on which he died.
- (6) Any pension paid under subsection (2)(b) or to the spouse of a contributor for limited benefits shall be apportioned as between the Fund and the State in the same respective proportions as are pensions paid under subsection (1) or to the spouses of other contributors, as the case requires.
- (7) Notwithstanding the foregoing provisions of this section, a contributor who has been retired on the ground of invalidity or physical or mental incapacity to perform his duties is, not entitled to pension under this section —
 - (a) if the invalidity or incapacity which was the ground of his retirement was due to wilful action on the part of the contributor for the purpose of obtaining pension under this section; or

(b) if —

- (i) his retirement occurs within 3 years of his becoming a contributor; and
- (ii) the invalidity or incapacity is due to, or arose from, a physical or mental defect or condition known to the contributor at the time when he underwent a medical examination for the purposes of becoming eligible to become a contributor and he failed to disclose the existence of that condition or defect,

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

[Section 61 inserted by No. 134 of 1976 s.18; amended by No. 49 of 1996 s.64.]

62. Widow's and children's benefits, etc.

- (1) The pensions and allowances payable under this Act at any time (in the Sixth Schedule referred to as "the relevant time") to the widows, widowers and children of contributors and former contributors, and the rates of those pensions and allowances, shall, on and from the first fortnightly payment of pension in the year 1974, be those respectively set out in the Sixth Schedule.
- (2) A person is eligible to receive a pension or allowance under the Sixth Schedule whether the circumstances or events which gave rise to the eligibility occurred before, on or after the date on which the Sixth Schedule comes into operation.
- (3) The Consolidated Fund is hereby permanently appropriated to the extent necessary for the purpose of crediting to the Fund such amounts as are to be charged under this Act to the Consolidated Fund in respect of the pensions and allowances referred to in this section.

[Section 62 inserted by No. 75 of 1973 s.17; amended by No. 78 of 1985 s.6; No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

62A. Widow's pension enhanced initially

Where column 2 of Part I of the Sixth Schedule provides for a rate of pension (in this section called “**the reversionary pension**”) to be at the rate of two-thirds of a pension referred to in that column (in this section called “**the contributor's pension**”), it is taken to also provide that the reversionary pension is to be at the full rate of, instead of two-thirds of, the contributor's pension for the first 7 fortnightly payments of pension.

[Section 62A inserted by No. 8 of 1993 s.71.]

[63. Repealed by No. 75 of 1973 s.18.]

64. Pension to orphan on death of contributor or pensioner

[(1) repealed]

(1a) For the purposes of subsection (1), the amount per week payable for the benefit of a child referred to therein is —

- (i) \$10; or
- (ii) \$4, together with the amount ascertained by dividing by 4 (or, if the number of eligible children of the contributor or pensioner in respect of whom the payment is to be made under subsection (1) is greater than 4, by the number of those children) the amount of the weekly equivalent of the rate of the pension that, but for the death or divorce of the wife of the contributor or pensioner, would, by virtue of section 62(1), have been payable to her,

whichever is the greater amount per week.

- (2) Where a male contributor or a male pensioner whose wife is dead or divorced has died leaving children of himself or of his wife who were under the age of 16 years or were student children at the time of his death, and all such children have ceased to be entitled to the benefit of the pension referred to in subsection (1), and the total amount of the Fund's share of any pensions paid to the contributor or pensioner and in respect of the children is less

than the total amount of the contributions credited to the Fund by the contributor or pensioner, the Board shall pay a sum equal to the amount by which the Fund's share of those pensions is less than those contributions, together with compound interest on that amount at a rate per centum determined by the Board, to the children in equal shares, or to the guardian (if any) of the children or to some other person approved by the Board, to be used for the support and education of the children.

[Section 64⁸ amended by No. 65 of 1947 s.19; No. 36 of 1955 s.9; No. 55 of 1957 s.2; No. 101 of 1964 s.9; No. 106 of 1965 s.13; No. 108 of 1970 s.9; No. 75 of 1973 s.19; No. 49 of 1996 s.64.]

64A. Discretionary powers in respect of increases

- (1) Where the Board is of the opinion that any person to whom an increase in pension is payable under this Act would be prejudicially affected by such increase, the Board may determine that no increase is payable to that person or that the amount of the increase payable to that person shall be such lesser amount as the Board may from time to time determine; and the Board may (but not with retrospective effect) vary or revoke any determination made by it under this subsection.
- (2) An increase or part of an increase that is not paid because of a determination of the Board under subsection (1) shall be taken into account as if it had been paid in relation to the calculation of any further increase in pension payable under this Act.

[Section 64A inserted by No. 76 of 1979 s.4; amended by No. 78 of 1985 s.7.]

65. Payment of contributions of deceased contributor to personal representatives in certain cases

Where a contributor who is unmarried, or is a widower or widow without children who are under the age of 16 years or student children, dies before his or her retirement, the contributions made by him or her, together with compound

interest thereon at a rate per centum determined from time to time by the Board, shall be paid to the personal representatives of the contributor, or failing them, to such person or persons (if any) as the Board determines.

[Section 65 inserted by No. 101 of 1964 s.10; amended by No. 75 of 1973 s.20.]

66. Retrenchment of contributor

- (1) In the event of the retrenchment of a contributor —
 - (a) he shall be entitled to receive the contributions paid by him and from the State a sum equal to 2½ times such of those contributions as represent fortnightly contributions made by him in respect of units not exceeding his primary entitlement up to the time of his retrenchment, but may elect within 3 months after his retrenchment to receive in lieu of those sums an equivalent pension determined by an Actuary; or
 - (b) if at the time of retrenchment he has attained the age of 55 years, he shall be entitled to elect within 3 months after his retrenchment to receive a pension under this Act in accordance with section 60 as if he had elected to retire.
- (2) In default of an election that may be made under subsection (1), the Board shall determine in which form payment shall be made.
- (3) Where a contributor who has been retrenched and is in receipt of a pension under this section, re-enters the service, the following provisions shall apply: —
 - (a) the pension shall not cease to be payable; and
 - (b) he may elect to contribute as provided in Part IV but shall not be entitled to claim any further benefit in respect of his previous service.
- (4) Where a contributor who has been retrenched and has received payment in the form of a lump sum under this section re-enters

the service, he may elect to contribute as provided in Part IV, but shall not, unless he has repaid to the Board for transmission to the Treasurer ⁵/₇ of the lump sum so previously paid to him, be entitled to claim any further benefit in respect of his previous service.

- (5) Where a contributor who has been retrenched re-enters the service, he shall, upon re-entry into the service as aforesaid, be deemed to be a person entering the service after the commencement of this Act for the purposes of Part IV.

[Section 66⁸ amended by No. 75 of 1973 s.21; No. 134 of 1976 s.19; No. 30 of 1984 s.10.]

66A. Preserved pensions for retrenched persons

- (1) In this section —

“**retrenched person**” means a person who ceases to be an employee in circumstances such that the person is retrenched within the meaning given to that term in regulation 19(2) of the *State Superannuation Regulations 2001*, and includes a person to whom this section applies because of subsection (7).

- (2) If a retrenched person —

- (a) has not received any payment under section 66 of this Act; and
- (b) has not applied under regulation 19(1)(c) of the *State Superannuation Regulations 2001* to become a Gold State Super Member within the meaning of those regulations,

the person may, by notice in writing in a form approved by the Board, request particulars of the preserved pension that the person may become entitled to under this section.

- (3) When a person makes a request under subsection (2), the Treasurer, on the advice of an actuary, is to determine —

- (a) the method of calculating the amount of the preserved pension;
 - (b) the circumstances in which, and time when, the preserved pension would be payable on the ground of invalidity or physical or mental incapacity to work, and the method of calculating the preserved pension in those circumstances; and
 - (c) the circumstances in which, and time when, benefits would be payable to a widow, widower, child, or personal representative as a result of the death of the person entitled to the preserved pension, and the methods of calculating those benefits.
- (4) The retrenched person is to be notified of the Treasurer's determination and if, within such time as the Treasurer allows, the person agrees in writing to accept the preserved pension, the person becomes entitled to the preserved pension.
- (5) If a person becomes entitled to a preserved pension the person ceases to have any entitlement under section 66, and cannot make an application under regulation 19(1)(c) of the *State Superannuation Regulations 2001*.
- (6) The preserved pension is not payable until the person —
 - (a) attains the age of 55 years; and
 - (b) ceases to be a worker as defined in the *State Superannuation Regulations 2001*,except if it is payable in circumstances referred to in subsection (3)(b), in which case it is payable when specified in the Treasurer's determination.
- (7) This section also applies to a person who, on or after 12 June 1995 but before the commencement of the *Government Employees Superannuation Legislation Amendment Act 1995*, ceased to be an employee in circumstances such that the person would have been retrenched within the meaning given to that term in clause 7B of Schedule 4 to the *Government Employees*

Superannuation Act 1987 if that clause had then been in operation.

[Section 66A inserted by No. 62 of 1995 s.5; amended in Gazette 16 February 2001 pp.1023-4.]

67. Resignation, dismissal or discharge of contributor

- (1) Where a contributor resigns or is dismissed or discharged (including discharge within the meaning of section 33(1)) from the service, there shall be paid to him the amount of the contributions paid by him under this Act, irrespective of the cause of his resignation, dismissal or discharge except where the contributor is dismissed after having attained his elected retiring age, in which case his entitlement to a pension shall be such as would have applied had he retired when so dismissed.
- (1a) Notwithstanding any other provision of this Act, a person who —
 - (a) was appointed before 1 March 1969 to the academic staff of the Institute established by the *Curtin University of Technology Act 1966*¹³;
 - (b) was a contributor prior to and at the time of that appointment and has since that appointment continued to be a contributor and a member of the academic staff of that Institute; and
 - (c) by notice in writing delivered to the Board within 3 months of the commencement of this subsection, elects to withdraw from the Fund,shall, for all of the purposes of this Act, be deemed to have ceased to be a contributor at the time the notice is received by the Board and thereupon is entitled to receive a refund of all contributions made by him to the Fund and is not entitled to any other right or benefit under this Act.
- (2) Where any employee, who has resigned or been dismissed or discharged and has received a refund of the amount of his contributions, re-enters the service he may elect to contribute as

provided in Part IV, but shall not, except as provided in section 66(4), be entitled to claim any further benefit in respect of his previous service.

- (3) An employee of the kind mentioned in the last preceding subsection shall, upon re-entering the service aforesaid, be deemed to be a person entering the service after the commencement of this Act for the purposes of Part IV.

[Section 67⁸ amended by No. 55 of 1945 s.15; No. 36 of 1955 s.10; No. 108 of 1970 s.10; No. 75 of 1973 s.22.]

68. Refunds

Notwithstanding anything to the contrary contained in this Act or in any other Act and save and except as regards refunds of contributions made under the provisions of section 60(2) and section 61(4), wherever in any provision in this Act it is enacted that a contributor shall be entitled to have refunded or paid to him or to his personal representative (as the case may be) the amount or amounts of contributions made by such contributor in accordance with the provisions of this Act, the refund or payment made to such contributor or to his personal representative shall represent the actuarial reserve portion of such contributions. Provided that before any such refund or payment is made by the Board there shall be deducted therefrom —

- (a) any sum of money due and payable by or in respect of the contributor to the Board or to the State; and
- (b) any sum received by the contributor as pension under section 61; but such deduction shall not in any case reduce the sum to be paid to the contributor below the amount of the actuarial reserve portion of the contributions made by the contributor subsequently to the receipt by him of the amount then last paid to him as pension.

[Section 68⁸ inserted by No. 55 of 1945 s.16; amended by No. 65 of 1947 s.20; No. 101 of 1964 s.11.]

69. Desertion by male pensioner of wife or child

- (1) Where a male pensioner deserts his wife, the wife may from time to time apply to any court of competent jurisdiction and on proof of such desertion the court may order the payment, during such period as it thinks desirable, of pension in accordance with the provisions contained in the Sixth Schedule, as if the male pensioner were dead. The Board shall comply with any such order and shall discontinue payment of pension to the pensioner during the period mentioned in the order.
- (2) Where a pensioner whose spouse is dead or divorced deserts any of his or her children who are dependent on him or her, the guardian of the children or the Board may apply to any court of competent jurisdiction, and, on proof of the desertion the court may order the payment during such period as it thinks desirable of pension in accordance with the provisions contained in Part II of the Sixth Schedule as if the pensioner were dead, and in that event —
 - (a) the Board shall comply with the order; and
 - (b) the Board shall, unless in the particular circumstances of the case it considers it unreasonable so to do, deduct from the pension paid to the pensioner the increase in children's allowance which becomes payable pursuant to the order.

[Section 69⁸ amended by No. 75 of 1973 s.23.]

70. Imprisonment of pensioners

- (1) Where a male pensioner is sentenced to imprisonment for any period exceeding one month, payment of his pension under this Act shall be discontinued during the period of his imprisonment; and —
 - (a) if his wife is alive she shall, during that period, be entitled in accordance with the provisions of the Sixth Schedule, as if the pensioner were dead, to pension for herself and for children who were dependent upon the pensioner unless the Board is satisfied after making such

inquiry as it thinks fit that payment to the wife is undesirable.

- (b) if his wife is dead or divorced, pensions for children dependent upon the pensioner shall, during that period, be payable in accordance with the provisions of the Sixth Schedule as if the pensioner were dead.
- (2) Where a female pensioner is sentenced to imprisonment for any period exceeding one month, payment of her pension under this Act shall be discontinued during the period of her imprisonment: Provided that any pension payable to her in respect of children shall be payable under the Sixth Schedule as if she were dead.

[Section 70⁸ amended by No. 75 of 1973 s.24.]

71. Insanity of pensioners

- (1) Where a male pensioner is detained as a patient in a hospital for the insane, the Board may cause his pension or any part thereof to be paid during the period of detention to his wife, if alive, or, if his wife is dead or divorced, to some person for the use of such of the children of himself or of his late wife as are under the age of 16 years or are student children in such proportions as the Board may think fit.
- (2) Where a female pensioner is detained as a patient in a hospital for the insane, the Board may cause her pension or any part thereof to be paid during the period of detention to some person in such proportion as the Board thinks fit for the use of such of the children of the pensioner or of her late husband as are under the age of 16 years or are student children.
- (3) This section shall apply and have effect notwithstanding anything to the contrary contained in the *Guardianship and Administration Act 1990*.

[Section 71⁸ amended by No. 55 of 1945 s.17; No. 101 of 1964 s.12; No. 24 of 1990 s.123.]

72. Payments to children

- (1) Where pensions in respect of children are payable under this Act to a widow, the pensions shall, if the widow dies, be payable to the guardians of the children.
- (2) Notwithstanding anything contained in this Act, any money payable out of the Fund in respect of a child who is under the age of 16 years or is a student child may, at the discretion of the Board, be paid to the guardian of the child or expended by the Board for the benefit of the child.

[Section 72⁸ amended by No. 101 of 1964 s.13.]

73. Pensions payable for life except in the case of children

- (1) Except where otherwise provided in this Act, a pension shall be payable during the life of the person entitled thereto.
- (2) Pensions in respect of children who are under the age of 16 years shall be payable until they attain, or die before attaining, that age, and in respect of student children, until they cease to be student children within the meaning of this Act.

[Section 73⁸ amended by No. 101 of 1964 s.14.]

74. Provision in case of qualified contributor ceasing to contribute

- (1) Where a qualified contributor is retired on the ground of invalidity or mental or physical infirmity, or is retrenched, or discharged, or dismissed or resigns before he has reached the maximum age for retirement applicable to him, and at any time thereafter before the maximum age for retirement which would have been applicable to him if he had continued to be an employee is reached he ceases to contribute as a qualified contributor, such qualified contributor shall, after ceasing to contribute as aforesaid, be entitled to be paid out of moneys standing to the credit of the Fund the amount of the actual

contributions paid by him as a qualified contributor under this Act.

- (2) Where a qualified contributor to whom subsection (1) relates has ceased to contribute as a qualified contributor, and thereafter re-enters the service, he shall be deemed to be a person entering the service after the commencement of this Act; he shall not be entitled to claim any further benefit in respect of his previous service, but he may elect to contribute to the Fund as a contributor under section 32.

[Section 74⁸ amended by No. 49 of 1996 s.64.]

75. Payment of pension instalments

- (1) Pensions shall be paid in fortnightly instalments.
- (2) In order to ascertain the amount of an instalment of a pension covering a period of a fortnight the annual pension shall be divided by 26⁸.

[76. Repealed by No. 78 of 1985 s.8.]

77. Payment to person other than the pensioner

Where, in the opinion of the Board, payment of pension, refund of contributions or other benefit under this Act should be made to a person other than the pensioner or beneficiary, the Board may, subject to this Act, authorize payment to such other person accordingly⁸.

Division 3 — Break-down pensioners

78. Break-down pensioner to be deemed to be on leave

- (1) Any pensioner who is in receipt of a pension under section 61 shall, for the purposes of this Act, be deemed to be on leave of absence without pay, and shall not be required to contribute in respect of the period of that leave; but, notwithstanding the fact that he is deemed to be on leave of absence, his office or

position shall be held to be vacant and may be filled by the appointment thereto of some other person.

- (2) In the event of the re-employment in the service of a person who has retired on a pension under section 61, the period during which he was retired shall not, for the purposes of this Act, be deemed to be a break in the continuity of his service.
- (3) Any such pensioner shall submit himself for medical examination as and when required by the Board, and if he makes default in complying with such requirement the pension shall cease to be payable to him so long as he continues in default.
- (4) Before any such pensioner shall leave this State, he shall submit to the Board a certificate from a duly qualified medical practitioner indicating the need of the pensioner to leave the State; and in any such case the continuance of the payment of pension to the pensioner shall be subject to the approval of the Board to the pensioner leaving this State being first obtained.
- (5) If a person who has retired through invalidity as provided for in section 61, engages in employment, or in any occupation or business on his own account, the Board may, if it thinks fit, cancel the pension payable to such person or reduce the amount of such pension to any amount which in its opinion the circumstances of the case warrant.
- (6) Where a pension is cancelled by the Board under this section, the pensioner shall be regarded as a contributor and notwithstanding the provisions of subsection (1) he shall be required to pay his contributions in accordance with section 47.

[Section 78⁸ amended by No. 55 of 1945 s.18; No. 65 of 1947 s.21.]

79. Pensioner restored to health may be recalled to the service

- (1) If in the opinion of the Board the health of any pensioner to whom a pension under section 61 is being paid or is to be paid is

such as to enable him to perform suitable duties, the Board shall so inform a prescribed authority with a view to suitable employment being found for the pensioner.

- (2) If suitable employment is offered to such pensioner at a salary not less than two-thirds of his salary at the time of his retirement, or at such salary as is agreed upon between him and a prescribed authority, the Board may cancel the pension and thereupon it shall cease to be payable.
- (3) In the event of the recurrence of his infirmity any contributor who has been re-employed in the service shall be entitled to pension at a rate not less than the amount of the pension on which he was first retired.
- (4) If, in the opinion of the Board, the health of any pensioner to whom a pension under section 61 is being paid, has become so restored as to enable him to perform his duties and suitable permanent employment in the Service cannot be offered to him but the pensioner is engaged in temporary employment by or under the State at a remuneration not less than two-thirds of his salary at the time of his retirement the Board may suspend the pension, and thereupon it shall cease to be payable so long as the pensioner continues in such employment.
- (5) In the event of the recurrence of this infirmity of the pensioner, or in the event of his ceasing to be so engaged in temporary employment by or under the State or in other employment as aforesaid the pensioner shall from the date of such recurrence or the cessation of such employment, as the case may be, be entitled to pension at the same rate as that on which he was retired from the service.

[Section 79⁸ amended by No. 43 of 1939 s.17.]

[80. Repealed by No. 8 of 1993 s.72.]

80AA. Reduced pension for pensioner under another scheme

- (1) In this section —

“another scheme” means a superannuation fund scheme to which contributions are made by the Crown other than the Crown in right of the State of Western Australia;

“Crown share” means the share of pension or other benefit paid or payable by the Crown under another scheme;

“pensioner” means a person who is eligible to receive a pension from another scheme on grounds of invalidity or physical or mental incapacity to perform his duties.

- (2) Notwithstanding any other provision of this Act, where a pension becomes payable to a pensioner, or to the widow or widower of the pensioner, as the case requires, under this Act and the pensioner, or the widow or widower of the pensioner, receives or has received a pension or other benefit under another scheme, the State share of pension payable under this Act to the pensioner, or to the widow or widower of the pensioner, shall be reduced by an amount equal to the full amount of the Crown share of the pension or other benefit that the pensioner, or the widow or widower of the pensioner, receives or has received under that other scheme.

[Section 80AA inserted by No. 76 of 1979 s.5.]

80A. Increases effected by Acts Amendment (Superannuation and Pensions) Act 1951

The increase effected by the *Acts Amendment (Superannuation and Pensions) Act 1951*, in the rates of pensions shall be deemed to have commenced to apply in respect of the payments of pension which fell due on 5 October 1951.

[Section 80A inserted by No. 25 of 1951 s.2.]

80B. Increases effected by Acts Amendment (Superannuation and Pensions) Act 1957

The increases effected by the *Acts Amendment (Superannuation and Pensions) Act 1957*, in the rates of pensions and benefits commence to apply from and including 1 January 1958.

[Section 80B inserted by No. 55 of 1957 s.2.]

80C. Increases effected by Acts Amendment (Superannuation and Pensions) Act 1960

The increases effected by the *Acts Amendment (Superannuation and Pensions) Act 1960*, in the rates of pensions and benefits commence to apply in respect of the payments of pension and benefits which fall due on and after 1 January 1961.

[Section 80C amended by No. 61 of 1960 s.3.]

Division 4 — Existing assurance policies

81. Assurance policies may be continued or discontinued at option of contributor

Notwithstanding anything to the contrary contained in any other Act of the State, it shall not be compulsory for any employee who is a contributor under this Act to assure his life, or to continue in force any policy of assurance on his life effected before the commencement of this Act, and any policy held by any authority prescribed under any Act of the State relating to the Public Service of the State shall be placed at the disposal of the employee⁸.

82. Transfer of policies to Board

- (1) Any employee, who is a contributor under this Act and whose life is assured at the commencement of this Act may, with the consent of the Board, transfer the policy (if unencumbered) to the Board or to a person approved by the Board and request the Board to continue, the payment of the premiums under the policy.

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Part V Pensions and benefits

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- (2) Where a transfer is made under subsection (1) the Board shall duly pay the premiums, and, on the maturity of the policy, shall pay to the employee or to his legal representatives to be administered as part of his estate any sums received on the policy, less the amount of the premiums paid by the Board with compound interest thereon at the rate of 4% per annum from the respective dates of payment.
- (3) Where an employee has transferred his policy in pursuance of subsection (1), and thereafter he desires that his policy be retransferred to him before maturity, or resigns or retires from the service, the Board may, on receipt of a request for retransfer or upon his resignation or retirement, retransfer the policy to the employee upon payment to the Board of the amount of premiums paid by the Board with compound interest thereon at the rate of 4 % per annum from the respective dates of payment.

[Section 82⁸ amended by No. 106 of 1965 s.14.]

**Division 5 — Provisions relating to the Western Australian
Government Railways and Tramways Employees' Death
Benefit and Endowment Fund**

**83. An employee contributing to Railway Death Benefit and
Endowment Fund may transfer rights to Board**

- (1) Where a contributor under this Act is at the time when he becomes a contributor liable to contribute to the Railway Death Benefit and Endowment Fund, and, as provided for in section 33, he continues, after he has become a contributor under this Act, to contribute to the Railway Death Benefit and Endowment Fund, such contributor under this Act may, at any time with the consent of the Board, and notwithstanding any law, regulation or by-law regulating or affecting the Railway Death Benefit and Endowment Fund to the contrary, transfer or assign his rights (if any) as a contributor to the Railway Death Benefit and Endowment Fund to the Board and request the

Board to continue payment of contributions to such Fund for and on behalf of the contributor.

- (2) Where a transfer or assignment is made under subsection (1) the Board shall duly pay the contributions necessary to protect and preserve the rights transferred or assigned, and upon such rights maturing or accruing shall pay to the contributor or to his legal representatives to be administered as part of his estate any sums received by the Board in satisfaction of the rights transferred or assigned, less the amount of the contributions paid by the Board with compound interest thereon at the rate of 4% per annum from the respective dates of payment.
- (3) This section shall not apply where the contributor has, in accordance with the regulations or by-laws relating to the Railway Death Benefit and Endowment Fund, nominated some person or persons other than himself to receive from such Fund the benefits attributable to the contributions credited by the contributor to such Fund unless and until such person or persons join with the contributor in the transfer or assignment to the Board of the rights referred to in subsections (1) and (2).

[Section 83⁸ amended by No. 106 of 1965 s.15; No. 49 of 1996 s.64.]

Part VA — The Provident Account

[Heading inserted by No. 50 of 1961 s.6.]

Division 1 — General

[Heading inserted by No. 50 of 1961 s.6.]

83A. The Provident Account

There shall be a Provident Account which shall form part of the Fund and to which shall be credited —

- (a) all moneys credited to the Fund by, or by authorization of, any subscriber under Division 2; and
- (b) all contributions of employees and payments by the State under Division 3.

[Section 83A inserted by No. 50 of 1961 s.7; amended by No. 49 of 1996 s.64.]

83AA. Payments by State into Provident Account

- (1) Payments by the State to the credit of the Provident Account shall be made from the Consolidated Fund and that Fund is hereby permanently appropriated accordingly.
- (2) Payments in respect of benefits under Division 3 shall be made from moneys standing to the credit of the Provident Account.
- (3) Payments by the State to the credit of the Provident Account shall be made whenever and as often as benefits become payable to a contributor under the provisions of Division 3.
- (4) No payment whatever shall be required from or be payable by the State in respect of subscribers to the Provident Account under the provisions of Division 2.

[Section 83AA inserted by No. 50 of 1961 s.8; amended by No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

Division 2 — Subscribers

[Heading inserted by No. 50 of 1961 s.8.]

[83AB. Repealed by No. 17 of 1987 s.17.]

83B. Female subscribers to Provident Account

- (1) Unless she makes an application under subsection (5) or becomes a member of the Gold State Super Scheme under the *State Superannuation Act 2000* a female employee who is a subscriber to the Provident Account under this section at the commencement of the 1987 Act shall continue to contribute to the Provident Account while she continues to be an employee.
- (2) A subscriber is not entitled, so long as she continues to contribute to the Provident Account —
 - (a) to withdraw any moneys contributed to the Provident Account after 1 July 1973; or
 - (b) to contribute to the Provident Account at a rate exceeding 10 cents for each complete amount of \$2 of her gross fortnightly salary.

[(3), (4) repealed]

- (5) A subscriber to the Provident Account may, at any time, by making application to the Board, withdraw from that Account the whole of the moneys standing to her credit in that Account together with compound interest thereon at the rate per centum per annum fixed by the Board from time to time.
- (6) A subscriber who makes an application under subsection (5) shall cease to make contributions to the Provident Account.
- (7) Where a subscriber makes an election under section 32(1)(b) —
 - (a) to withdraw any moneys contributed to the Provident Account after 1 July 1973; or
 - (b) if she elects to contribute to the Superannuation Fund at the rate of contribution prescribed for her age at the date

of commencing to subscribe to the Provident Account, and payable from that date, there shall be paid to her the amount, if any, which represents the surplus remaining after there is deducted from the moneys standing to her credit in the Provident Account the amount necessary to meet arrears of contributions.

[Section 83B inserted by No. 65 of 1947 s.23; amended by No. 36 of 1955 s.12; No. 50 of 1961 s.9; No. 43 of 1963 s.10; No. 106 of 1965 s.17; No. 16 of 1973 s.4; No. 57 of 1986 s.8; No. 17 of 1987 s.18; amended in Gazette 16 February 2001 p.1024.]

Division 3 — Contributors

[Heading inserted by No. 50 of 1961 s.10.]

83C. Contributors to the Provident Account

- (1) Any employee referred to in section 32(1)(b) who is ineligible to become a contributor for units of pension under this Act by reason only of suffering from a physical or mental defect or condition may, within 6 months after the commencement of the 1987 Act, apply to become a contributor to the Provident Account.
- (1a) Subject to subsections (3)(a) and (5) and to clause 10 of Schedule 4 to the 1987 Act an employee who —
 - (a) was a contributor to the Provident Account under this Division at the commencement of the 1987 Act; or
 - (b) applies under subsection (1) to become a contributor to the Provident Account,

shall make contributions to the Provident Account in accordance with this Division.

- (2) Where, after a person has become a contributor under this Division, he furnishes evidence to the satisfaction of the Board that his mental and physical health are such as to entitle or render him eligible to become a contributor under Part IV, the

Board may upon application by that person permit him to contribute to the Fund under that Part.

- (3) A person who is permitted by the Board in pursuance of subsection (2) to contribute to the Fund under Part IV —
- (a) shall not, as from the date of the decision of the Board, make any further contributions under this Division to the Provident Account, and ceases to be entitled to any benefit (not being a refund of contributions) that would otherwise be payable from moneys standing to the credit of the Provident Account;
 - (b) is entitled to a refund of the contributions made under this Division to the Provident Account, together with compound interest on those contributions at the rate per centum per annum fixed by the Board from time to time; and
 - (c) shall contribute to the Fund under Part IV as from the date of the decision of the Board or, if that date is not a pay-day, the next succeeding pay-day.
- (4) A contributor to the Provident Account under this Division may, by making application to the Board, withdraw from moneys standing to the credit of that Account an amount equal to the amount of the contributions credited by that contributor to that Account under this Division together with compound interest on those contributions at the rate per centum per annum fixed by the Board from time to time.
- (5) An employee who makes an application under subsection (4) shall cease to make contributions to the Provident Account.

[Section 83C inserted by No. 50 of 1961 s.10; amended by No. 19 of 1962 s.3; No. 134 of 1976 s.20; No. 57 of 1986 s.9; No. 17 of 1987 s.19; No. 49 of 1996 s.64.]

83D. Contributions to the Provident Account

- (1) The contributions of a contributor to the Provident Account under this Division shall —

(a) be at the rate of 10 cents for each complete amount of \$2 of his gross fortnightly salary; and

(b) be deducted from his salary at each payment of salary,

and where his salary is increased the additional contributions for which he is liable shall be payable as from the date upon which payment of salary at the increased rate is approved, or from the date upon which that increased salary becomes payable, whichever is the later.

- (2) A contributor to the Provident Account under this Division who is on leave of absence on the ground of illness, either without pay or at less than full pay, is liable to pay the contributions that he would have been liable to pay under this section if he had not been absent, but the Board may, upon his application permit him to pay those contributions in such smaller sums and during such periods as the Board approves.

[Section 83D inserted by No.50 of 1961 s.10; amended by No. 106 of 1965 s.18.]

83E. Payments on retirement

Subject to this Act a contributor to the Provident Account under this Division who retires or is retired on or after having attained the age of 55 years, or whose services are terminated on the ground of invalidity or owing to retrenchment, shall be paid a sum equal to 3½ times the amount which comprises the aggregate of his contributions to the Provident Account under this Division together with compound interest on those contributions at the rate per centum per annum fixed by the Board from time to time.

[Section 83E inserted by No. 50 of 1961 s.10; amended by No. 134 of 1976 s.21; No. 30 of 1984 s.11.]

83F. Payments on death of contributor with dependants

Where a contributor to the Provident Account under this Division dies before retirement, a sum equal to 3½ times the

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

[Section 83F inserted by No. 134 of 1976 s.22.]

83G. Payment on death of contributor without dependants

Where a contributor to the Provident Account under this Division dies before retirement and no sum or sums are payable under section 83F, there shall be paid to the personal representatives of that contributor, or failing them to such persons (if any) as the Board determines, an amount equal to the amount of the contributions credited by that contributor to the Provident Account under this Division together with compound interest on those contributions at the rate per centum per annum fixed by the Board from time to time.

[Section 83G inserted by No. 50 of 1961 s.10; amended by No. 101 of 1964 s.16; No. 134 of 1976 s.23; No. 49 of 1996 s.64.]

83H. Payment on resignation, etc.

Where a contributor to the Provident Account under this Division resigns or is discharged or is dismissed, there shall be paid to him an amount equal to the amount of the contributions credited by him to, the Provident Account under this Division together with compound interest thereon at the rate per centum per annum fixed by the Board from time to time.

[Section 83H inserted by No. 50 of 1961 s.10; amended by No. 49 of 1996 s.64.]

83I. Retrenchment and discharge

The compulsory termination of the service of a contributor to the Provident Account under this Division for the reason that his service or position is not necessary, or for the reason that the work for which he was engaged is finished, or for the reason that the quantity of work has diminished and has rendered necessary a reduction in the number of employees —

- (a) shall be deemed to be retrenchment if the contributor has been in the Service for not less than 10 years; and
- (b) shall, in any other case, be deemed to be discharge.

[Section 83I inserted by No. 50 of 1961 s.10.]

83J. Payment to another person

Where in the opinion of the Board any payment under this Part should be made to a person other than the person specified, the Board may, subject to this Act, authorize payment to that other person accordingly.

[Section 83J inserted by No. 50 of 1961 s.10.]

83K. Payments by State

- (1) For the purpose of determining the sum payable under the provisions of section 83E or section 83F, the amount of contributions referred to in those sections shall include, and on and from the coming into operation of the *Superannuation and Family Benefits Act Amendment Act 1961*¹, be deemed to have included, the subscriptions that prior to that date the contributor subscribed to the Provident Account in accordance with the requirements of the terms of his employment.
- (2) In respect of each payment made in accordance with section 83E or section 83F to a contributor to the Provident

Account under this Division, or to his widow or children, the State shall credit to the Provident Account an amount equal to $\frac{5}{7}$ of that payment.

[Section 83K inserted by No. 19 of 1962 s.4; amended by No. 134 of 1976 s.24; No. 49 of 1996 s.64.]

83L. Contributor under this Division not entitled to other benefits

A contributor to the Provident Account under this Division shall not be entitled to any payment or benefit under this Act, other than as provided in this Part, in respect of moneys credited to the Provident Account.

[Section 83L inserted by No. 50 of 1961 s.10.]

Part VB — Superannuation guarantee scheme

[Heading inserted by No. 8 of 1993 s.48.]

83M. Interpretation

In this Part, unless the contrary intention appears —

“1993 scheme” means the superannuation scheme continued by section 29(a) of the *State Superannuation Act 2000*;

“contributor” means an employee who is contributing under this Act;

“contributor’s notional account” means the account referred to in section 83N(2)(a) in relation to the contributor;

“employer’s compulsory contribution” means a compulsory contribution within the meaning of Part 3 of the *State Superannuation Regulations 2001*;

“guaranteed benefit” means the benefit under the 1993 scheme to which a person who is a contributor would have become entitled as mentioned in section 83N if the person had been a member of that scheme in respect of the employment by reason of which the person is a contributor;

“State share of the pension scheme entitlement” means any part of a person’s entitlement to a benefit under this Act, other than under this Part, that, in the opinion of the Board, is not attributable to the contributor’s contributions;

“top-up benefit” means an entitlement under section 83N(1)(c).

[Section 83M inserted by No. 8 of 1993 s.48; amended by No. 60 of 1995 s.25; amended in Gazette 16 February 2001 p.1024.]

83N. Guaranteed benefits

- (1) If circumstances arise or have, on or after 1 July 1992, arisen as a result of which a contributor, or the personal representative of a contributor who dies, would have become entitled to a benefit

under the 1993 scheme had the contributor been a member of that scheme —

- (a) the amount of that benefit (“**the guaranteed benefit**”) is to be calculated in accordance with subsection (2);
 - (b) the amount, if any, by which the guaranteed benefit exceeds the amount of any State share of the pension scheme entitlement that is payable at the same time as, or after, the time mentioned in paragraph (d) is to be calculated;
 - (c) the contributor or personal representative, as the case requires, becomes entitled under this paragraph to payment of the amount, if any, calculated under paragraph (b) (“**the top-up benefit**”); and
 - (d) the top-up benefit, if any, is payable at the time when the guaranteed benefit would have been payable under the 1993 scheme.
- (2) The guaranteed benefit is to be calculated as if —
- (a) the person who is a contributor had been a statutory member of the 1993 scheme since 1 July 1992 and employer’s compulsory contributions in respect of the employment by reason of which the person is a contributor, but no other contributions, had accordingly been credited under that scheme to an account for the person;
 - (aa) the earning rate applicable to the contributor for the purposes of regulation 69 of the *State Superannuation Regulations 2001* was the CPI rate (as defined in those regulations) plus 2%; and
 - (b) other amounts that would be credited or debited to it as a member’s account under that scheme had been credited or debited to the contributor’s notional account.

[Section 83N inserted by No. 8 of 1993 s.48; amended by No. 60 of 1995 s.25; amended in Gazette 29 June 2001 p.3106.]

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83O. Effect on other benefits under this Act

- (1) If a person becomes entitled under section 83N(1)(c) to a top-up benefit, any State share of the pension scheme entitlement payable before the time mentioned in section 83N(1)(d) is reduced by the amount of the top-up benefit or, if it is less than the top-up benefit, is extinguished.
- (2) Subsection (1) does not apply to any State share of the pension scheme entitlement payable before 1 July 1994 but in calculating whether there is an entitlement to a top-up benefit, or the amount of a top-up benefit, a deduction is to be made for any State share of the pension scheme entitlement so payable.

[Section 83O inserted by No. 8 of 1993 s.48.]

83P. Actuarial adjustments

In performing any calculation involving entitlements to amounts that are payable at different times (whether by way of pension or otherwise) the Board is to make such adjustment as it considers, on the advice of an actuary, to be necessary to allow for the difference.

[Section 83P inserted by No. 8 of 1993 s.48.]

Part VI — Miscellaneous

84. Questions as to invalidity, etc., determined by Board on medical officer's report

Whenever any question arises under this Act as to whether a contributor is an invalid or is physically or mentally incapable of performing his duties, or whether the death, invalidity or incapacity of a contributor for limited benefits was due to or arose from a defect or condition recorded in relation to him under section 32(7), the question shall be determined by the Board (whether before or after the retirement of the contributor) upon a report from a duly qualified medical practitioner appointed by the Governor for the purposes of this Act.

Provided that upon the receipt of an adverse report by the Board, and before a determination is arrived at, the contributor shall have the right to a second medical report from a duly qualified medical practitioner mutually agreed upon by the contributor and the Board.

[Section 84⁸ amended by No. 134 of 1976 s.25.]

85. Settlement of disputes

- (1) Any dispute under this Act shall be determined in the first place by the Board.

Provided that any person aggrieved by a decision of the Board may, in accordance with the regulations, appeal to a judge of the Supreme Court sitting in Chambers who shall have jurisdiction to hear and determine such appeal.

- (2) The decision of the judge hearing and determining an appeal under this section shall be final and conclusive and without further appeal and effect shall be given thereto according to the tenor thereof⁸.

s. 85A

85A. Discretionary powers of Board

- (1) Where the Board is satisfied, after such inquiry as it thinks necessary, that a person has, otherwise than through his own fault, lost or ceased to be entitled to a right, privilege, or benefit under this Act to which he was otherwise entitled or might have obtained, and that it is just and equitable that he should be allowed to have the enjoyment of the right, privilege, or benefits, the Board may permit the person to exercise the right or grant to him 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.
- (3) Notwithstanding anything contained in this Act, where an application, election or notice under this Act has been or is made or given to the Board before the commencement, or after the expiration, of the period prescribed therefor by or under this Act, and the Board is satisfied that —
 - (a) hardship would accrue to a person or his dependants if the same were not recognized; and
 - (b) in all the circumstances of the case it is desirable that the same should be recognized,

the Board may recognize the application, election or notice, as the case may be, as if it had been made within the prescribed period.

[Section 85A inserted by No. 75 of 1973 s.25.]

86. Returns

- (1) The Board may at any time require the State and any department to furnish such returns with respect to contributors and qualified contributors as the Board may decide, and may at any time require any contributor or qualified contributor to furnish such

information as the Board may deem necessary for the purpose of any investigation in connection with the Fund.

- (2) Any contributor or qualified contributor who, without reasonable excuse (proof whereof shall lie with him) fails to furnish the information required of him under this Act shall be guilty of an offence.

Penalty: \$20.

- (3) Prosecutions for offences under this section may be commenced by a complaint made by the Secretary of the Board and may be dealt with summarily under the provisions of the *Justices Act 1902*.

[Section 86⁸ amended by No. 106 of 1965 s.19.]

87. Assignment of pensions

Pensions and other benefits under this Act shall not be in any way assigned or charged or passed by operation of law to any person other than the pensioner or beneficiary, and any moneys payable out of moneys standing to the credit of the Fund on the death of a contributor or beneficiary shall not be assets for the payment of his debts or liabilities.

Provided that nothing in this section shall prevent the making of an order in the nature of a garnishee against any instalment of pension payable to a person who has been a contributor.

[Section 87⁸ amended by No. 49 of 1996 s.64.]

88. Power to recover

The Board may recover contributions under this Act as a debt owing to the Board in any court of competent jurisdiction⁸.

89. Regulations

The Governor may, on the recommendation of the Board, make regulations not inconsistent with this Act prescribing all matters required or permitted to be prescribed, or necessary or

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convenient to be prescribed for carrying out or giving effect to this Act, and without in any way limiting the generality of the power hereby conferred, in particular —

- (a) for prescribing in respect of contributors suffering from invalidity or physical or mental incapacity to perform their duties all or any of the following matters: —
 - (i) conditions of retirement;
 - (ii) pensions or other benefits;
 - (iii) provisions for cancellation of pensions or other benefits; and
 - (iv) conditions of compulsory re-employment;
- (b) for prescribing the data in respect of birth, mortality, conjugal condition, dependent children, invalidity and rate of interest to be employed in determining actuarial equivalent for the purposes of this Act, and for prescribing the incidence on the several benefits of the commutations involved in determining such actuarial equivalents;
- (c) where, under this Act, an employee may make any election or choice and the time within which it may be made is not stated in the Act, for prescribing the time within which it must be made and the conditions upon which it may be made;
- (ca) for prescribing the cases in which, and the rate or rates at which, interest is payable to persons or contributors where a refund is made from moneys standing to the credit of the Fund of contributions credited to the Fund;
- (d) for prescribing the practice in respect of appeals against the determination of disputes by the Board; and
- (e) for prescribing penalties not exceeding \$100 for an offence against the regulations.

[Section 89⁸ amended by No. 43 of 1939 s.18; No. 106 of 1965 s.20; No. 108 of 1970 s.12; No. 49 of 1996 s.64.]

90. Transitional provisions relating to former Superannuation Board

The Seventh Schedule shall have effect.

[Section 90 inserted by No. 17 of 1987 s.20.]

First Schedule

First Schedule

Males

Retiring Age of 65

Age next birthday	Fortnightly Contribution	
	Contribution on first 2 units	Contribution for each additional unit
	\$	\$
16	0.25	0.12
17	0.27	0.13
18	0.27	0.13
19	0.30	0.14
20	0.32	0.15
21	0.33	0.15
22	0.35	0.16
23	0.37	0.17
24	0.39	0.18
25	0.39	0.18
26	0.41	0.19
27	0.43	0.20
28	0.45	0.21
29	0.46	0.22
30	0.49	0.23
31	0.50	0.24
32	0.53	0.25
33	0.55	0.26
34	0.59	0.28
35	0.61	0.29
36	0.63	0.30
37	0.67	0.32
38	0.71	0.34
39	0.73	0.35
40	0.80	0.38

First Schedule

Age next birthday	Fortnightly Contribution	
	Contribution on first 2 units	Contribution for each additional unit
	\$	\$
41	0.83	0.40
42	0.89	0.43
43	0.93	0.45
44	0.99	0.48
45	1.05	0.51
46	1.13	0.55
47	1.19	0.58
48	1.28	0.63
49	1.39	0.68
50	1.51	0.74
51	1.63	0.80
52	1.78	0.88
53	1.97	0.97
54	2.18	1.08
55	2.42	1.20
56	2.72	1.35
57	3.12	1.55
58	3.60	1.79
59	4.26	2.12
60	5.14	2.56
61	6.43	3.21
62	8.53	4.26
63	12.71	6.35
64	24.99	12.49
65	25.41	12.70

[First Schedule inserted by No. 106 of 1965 s.21.]

Second Schedule

Second Schedule

Females

(2 units)

Retiring Age of 65

Age next birthday	Contribution for each unit of pension \$
16	0.10
17	0.10
18	0.11
19	0.12
20	0.13
21	0.14
22	0.15
23	0.16
24	0.17
25	0.18
26	0.18
27	0.19
28	0.20
29	0.21
30	0.23
31	0.23
32	0.25
33	0.26
34	0.28
35	0.29
36	0.30
37	0.32
38	0.34
39	0.36
40	0.38
41	0.40

Second Schedule

Age next birthday	Contribution for each unit of pension \$
42	0.43
43	0.45
44	0.48
45	0.51
46	0.55
47	0.59
48	0.64
49	0.69
50	0.75
51	0.83
52	0.91
53	1.01
54	1.13
55	1.28
56	1.46
57	1.70
58	1.99
59	2.38
60	2.92
61	3.64
62	4.73
63	6.60
64	12.54
65	12.68

[Second Schedule inserted by No. 106 of 1965 s.21.]

Third Schedule

Third Schedule

Males

Retiring Age of 60

Fortnightly Contribution

Age next birthday	Fortnightly Contribution	
	Contribution on first 2 units	Contribution for each additional unit
	\$	\$
16	0.31	0.15
17	0.33	0.16
18	0.36	0.17
19	0.38	0.18
20	0.38	0.18
21	0.40	0.19
22	0.42	0.20
23	0.46	0.22
24	0.49	0.23
25	0.51	0.24
26	0.52	0.25
27	0.54	0.26
28	0.59	0.28
29	0.61	0.29
30	0.63	0.30
31	0.67	0.32
32	0.69	0.33
33	0.73	0.35
34	0.79	0.38
35	0.83	0.40
36	0.88	0.42
37	0.93	0.45
38	0.99	0.48
39	1.04	0.50
40	1.11	0.54
41	1.20	0.58

Third Schedule

Age next birthday	Fortnightly Contribution	
	Contribution on first 2 units	Contribution for each additional unit
	\$	\$
42	1.27	0.62
43	1.37	0.67
44	1.47	0.72
45	1.59	0.78
46	1.74	0.85
47	1.89	0.93
48	2.09	1.03
49	2.31	1.14
50	2.60	1.28
51	2.93	1.45
52	3.35	1.66
53	3.91	1.94
54	4.66	2.32
55	5.73	2.85
56	7.32	3.65
57	9.83	4.90
58	14.66	7.32
59	28.88	14.43
60	29.28	14.63

[Third Schedule inserted by No. 106 of 1965 s.21.]

Fourth Schedule

Fourth Schedule

Females

(2 units)

Retiring age of 60

Age next birthday	Contribution for each unit of pension \$
16	0.12
17	0.13
18	0.14
19	0.15
20	0.16
21	0.18
22	0.18
23	0.20
24	0.21
25	0.22
26	0.23
27	0.24
28	0.26
29	0.27
30	0.29
31	0.30
32	0.32
33	0.34
34	0.36
35	0.38
36	0.40
37	0.43
38	0.45
39	0.48
40	0.52
41	0.55

Fourth Schedule

Age next birthday	Contribution for each unit of pension \$
42	0.59
43	0.64
44	0.69
45	0.75
46	0.81
47	0.89
48	0.98
49	1.08
50	1.21
51	1.36
52	1.56
53	1.81
54	2.15
55	2.62
56	3.33
57	4.50
58	6.81
59	13.65
60	13.78

[Fourth Schedule inserted by No. 106 of 1965 s.21.]

Fifth Schedule

Fifth Schedule			
Part 1		Part 2	
Units of pension contributed for before 1 July 1964	Increase in pension to be paid by the Fund per fortnight	Units of pension held by contributor upon retirement	Increase in pension to be paid by Consolidated Fund per fortnight
	\$		\$
2	0.20	2	1.80
2½	0.25	2½	1.75
3	0.30	3	1.70
4	0.40	4	1.60
5	0.50	5	1.50
6	0.60	6	1.40
7	0.70	7	1.30
8	0.80	8	1.20
9	0.90	9	1.10
10	1.00	10	1.00
11	1.10	11	0.90
12	1.20	12	0.80
13	1.30	13	0.70
14	1.40	14	0.60
15	1.50	15	0.50
16	1.60	16	0.40
17	1.70	17	0.30
18	1.80	18	0.20
19	1.90	19	0.10
20	2.00	20 or more	Nil
21	2.10		
22	2.20		
23	2.30		
24	2.40		
25	2.50		
26	2.60		
27	2.70		
28	2.80		
29	2.90		
30	3.00		
31	3.10		

Fifth Schedule

Part 1		Part 2	
Units of pension contributed for before 1 July 1964	Increase in pension to be paid by the Fund per fortnight	Units of pension held by contributor upon retirement	Increase in pension to be paid by Consolidated Fund per fortnight
	\$		\$
32	3.20		
33	3.30		
34	3.40		
35	3.50		
36	3.60		
37	3.70		
38	3.80		
39	3.90		
40	4.00		
41	4.10		
42	4.20		

[Fifth Schedule inserted by No. 78 of 1967 s.9; amended by No. 6 of 1993 s.11.]

Sixth Schedule

Sixth Schedule

Part I

Reversionary Pensions

Column 1		Column 2	Column 3	Column 4
Item No.	Eligible person	Rate of pension or benefit	Commencement of pension	Termination of pension
1.	Widow or widower of former contributor who died after his or her retirement, if their marriage took place prior to retirement.	$\frac{2}{3}$ of the pension that would at the relevant time, have been payable to the former contributor if he or she — (a) had not died; and (b) had not commuted any of the Fund share of his or her pension that he or she in fact commuted.	As from day after former contributor's death.	(a) <i>deleted</i> (b) On death of widow or widower.
2.	Widow or widower of former contributor who died after his or her retirement, if their marriage took place after retirement.	As in item 1.	(a) As from day after former contributor's death if widow or widower then aged 55 or more. (b) If widow or widower is aged less than 55 on day of former contributor's death and he or she was aged less than 65 on day of their marriage — (i) as from day she or he attains age of 55; or (ii) as from day after former contributor's death if Board satisfied that the marriage was of a <i>bona fide</i> nature. (c) If widow or widower is aged less than 55 on day of former contributor's death and he or she was aged 65 or more on day of their marriage — (i) as from day she or he attains age of 55; or	On death of widow or widower.

Sixth Schedule

Column 1		Column 2	Column 3	Column 4
Item No.	Eligible person	Rate of pension or benefit	Commencement of pension	Termination of pension
			(ii) as from such earlier day after former contributor's death as, in the opinion of the Board, the circumstances of the case warrant.	
3.	Widow or widower of contributor (not being a contributor for limited benefits under and for the purposes of section 61) who died prior to his or her retirement.	<p>(a) $\frac{2}{3}$ of the pension that would, at the relevant time, have been payable to the former contributor if, on the day on which he or she in fact died, he or she had retired on the grounds of invalidity or incapacity and had not since died.</p> <p align="center">OR</p> <p>(b) If widow or widower so elects in writing to Board within 3 months of former contributor's death, a lump sum refund of contributions paid by contributor plus compound interest thereon at rate determined by Board, in lieu of (a).</p>	As in item 1.	As in item 1.
3A.	Widow or widower of contributor for limited benefits under and for the purposes of section 61 who died prior to his or her retirement.	<p>(a) $\frac{2}{3}$ of the pension that would, at the relevant time, have been payable to the former contributor if, on the day on which he or she in fact died, he or she had retired on the grounds of invalidity or incapacity due to, or arising from, a cause that in fact resulted in his or her death, and he or she had not since died.</p> <p align="center">OR</p> <p>(b) If widow or widower so elects in writing to Board within 3 months of former contributor's death, a lump sum refund of contributions paid by contributor plus compound interest</p>	As in item 1.	As in item 1.

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Sixth Schedule

Column 1		Column 2	Column 3	Column 4
Item No.	Eligible person	Rate of pension or benefit	Commencement of pension	Termination of pension
		thereon at rate determined by Board, in lieu of (a).		
<i>[4, 5 deleted]</i>				

Part II — Children's allowances

Eligibility and Rate of Benefit, etc.

Item 1:

- (1) Subject to the following, upon the death of a contributor, or of a former contributor who was in receipt of pension under this Act, an allowance of \$25.00 per week is payable in respect of each of his or her children who was at that time wholly or substantially dependent upon the contributor or former contributor.
- (2) Allowance is payable under this item only during any period when the child
 - (a) is wholly or substantially dependent upon the surviving parent or other person having the care of the child; and
 - (b) is under the age of 16 years or is a student child under the age of 25 years.

Item 2:

- (1) Subject to the following, an allowance at the rate fixed by sub-item (2) is payable in respect of the child of a contributor, or of a former contributor who was in receipt of pension under this Act, where —
 - (a) the contributor or former contributor had died and was at the date of his or her death a widower or widow or divorced, in which case the allowance is payable as from the day after the death of the contributor or former contributor; or
 - (b) the contributor or former contributor had died and was survived by a widow or widower who has since died, in which case the allowance is payable from the day after the death of that widow or widower.
- (2) Subject to the following, the rate per week at which allowance is payable under this item at any time is the greater of the following rates —
 - (a) \$50.00; or

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- (b) the amount calculated in accordance with the formula —

$$A + \frac{R}{4}$$

where —

A is \$14.00; and

R is the rate of reversionary pension that would, at the relevant time, have been payable to the spouse of the contributor or former contributor if the spouse had not died and had been eligible to receive the reversionary pension.

- (3) Allowance is payable under this item only during any period when the child is under the age of 16 years or is a student child under the age of 25 years.
- (4) Allowance is not payable under this item in respect of a child who was not, at the date of the death of the contributor, wholly, or substantially dependent upon him or her.

Part III — General provisions

Item 1:

Where a person is entitled under the foregoing provisions of this Schedule to receive more than one pension or child's allowance, or both such a pension and allowance, only the greatest of them shall be paid to that person.

Item 1A:

The amounts prescribed in item 1(1) and 2(2)(a) of Part II and the amount represented by A in the formula set out in item 2(2)(b) of that Part shall be adjusted on 1 October 1986 and thereafter on 1 April and 1 October in each year, with effect from and including the first fortnightly payment of allowance after the adjustment, by multiplying each of those amounts by the fraction

$$\frac{I}{I_B}$$

where —

I is the Index referred to in section 46C for the quarter ending on the 30 June or 31 December last preceding the date of the adjustment;

and

I_B is the Index referred to in section 46C for the quarter ending on 31 December 1985,

except that an adjustment shall only be made if it would result in an increase over the amount applicable before the adjustment.

Item 2:

Any child's allowance payable under the provisions of Part II may be paid to the parent or other person or body having the care or support of the child, or directly to the child, as the Board may determine.

Item 3:

Subject to the following and to adjustment pursuant to section 44 if applicable, payment of each child's allowance shall be made up as follows —

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- (a) in the case of an allowance payable under item 1 of Part II — as to \$4.75 per week, from moneys standing to the credit of the Fund and as to the balance, from the Consolidated Fund; and
- (b) in the case of an allowance payable under item 2 of Part II — as to \$10.75 per week, from moneys standing to the credit of the Fund and as to the balance, from the Consolidated Fund.

Item 4:

- (1) The State shall credit to the Fund the balance of the amount of any increase in the rate of a reversionary pension under Part I provided for by the application of section 46C to the notional pension on which the reversionary pension is based and any increase in the rate of an allowance provided for by item 1A or by the application of section 46C to the reversionary pension referred to in item 2(2)(b) of Part II, after first taking into account all amounts available for the purpose in the Indexation Account.
- (2) The State shall credit to the Fund the difference between the amount that would be payable from moneys standing to the credit of the Fund by way of reversionary pension and allowance if the amendments made by sections 4(1)(c) and 9(1)(a) of the *Superannuation and Family Benefits Amendment Act 1985* had not been enacted and the amount that is so payable.

[Sixth Schedule inserted by No. 75 of 1973 s.26; amended by No. 134 of 1976 s.26; No. 76 of 1979 s.6; No. 78 of 1985 s.9; No. 6 of 1993 s.11; No. 8 of 1993 s.73; No. 49 of 1996 s.64; amended in Gazette 16 February 2001 p.1025.]

Seventh Schedule

(Section 90)

Transitional provisions relating to the abolition of the Superannuation Board formerly constituted under this Act

1. Terms used

In this Schedule —

“**commencement**” means the commencement of the 1987 Act;

“**Superannuation Board**” means the Superannuation Board constituted by this Act as enacted before the commencement.

2. Transfer of assets, liabilities and records

On the commencement —

- (a) all rights, property and assets that were, immediately before the commencement, vested in, under the control of, or standing to the credit of the Superannuation Board are, by force of this clause, vested in the Board;
- (b) the Board becomes, by force of this clause, liable to pay, bear or discharge all the debts, liabilities and obligations of the Superannuation Board that existed immediately before the commencement; and
- (c) the Board shall take delivery of all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to the operations of the Superannuation Board.

3. Agreements, instruments and proceedings

- (1) Any agreement or instrument subsisting immediately before the commencement to which the Superannuation Board was a party, has effect after the commencement as if —
 - (a) the Board were substituted for the Superannuation Board as a party to the agreement or instrument; and
 - (b) any reference in the agreement or instrument to the Superannuation Board were (unless the context otherwise requires) a reference to the Board.

Seventh Schedule

- (2) Where anything has been lawfully commenced by or under the authority of the Superannuation Board before the commencement that thing may be carried on and completed by or under the authority of the Board.
- (3) Without limiting the generality of subclause (2), any proceedings pending immediately before the commencement day to which the Superannuation Board was a party may be continued on or after that day with the Board, by force of this subclause, substituted as a party thereto in lieu of the Superannuation Board.

4. Final reports on the operations of the Superannuation Board

- (1) If sections 66, 67 and 68 of the *Financial Administration and Audit Act 1985* have not been complied with before the commencement in relation to the Superannuation Board in respect of the year ending on 30 June 1987, the Board shall cause those sections to be complied with in respect of that year as soon as practicable after the commencement.
- (2) If the commencement is after 1 July 1987 the Board shall cause sections 66, 67 and 68 of the *Financial Administration and Audit Act 1985* to be complied with in relation to the Superannuation Board in respect of the period between 1 July 1987 and the commencement as soon as practicable after the commencement.
- (3) A report prepared under subclause (2) shall be deemed to be an annual report for the purposes of section 69 of the *Financial Administration and Audit Act 1985*.

5. Consents to investments

A consent given by the Treasurer under section 25(2) as enacted before the commencement shall continue to have effect after the commencement under and subject to section 13 of the 1987 Act as if it were an approval given under that section.

6. Staff

A person who is a member of the staff of the Superannuation Board immediately before the commencement shall, after the commencement, be deemed to have been appointed in accordance with section 8 of the 1987 Act.

7. References to the Superannuation Board in laws

- (1) Subject to subclause (2) references to the Superannuation Board in an enactment as enacted immediately before the commencement shall, unless because of the context it would be inappropriate so to do, be read and construed as references to the Board.
- (2) Subclause (1) does not apply to a reference that is amended by this Act or the *Acts Amendment (Superannuation) Act 1987*.

[Seventh Schedule inserted by No. 17 of 1987 s.21.]

Notes

- ^{1a} This Act was repealed by the *State Superannuation Act 2000* s. 39 but its provisions continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26 and those provisions may be amended by regulations under subsection (3) of that section.
- ¹ This is a compilation of the *Superannuation and Family Benefits Act 1938* and includes the amendments made by the other written laws referred to in the following table ²².

Compilation table

Short Title	Number and Year	Assent	Commencement	Miscellaneous
<i>Superannuation and Family Benefits Act 1938</i>	34 of 1938	31 January 1939	1 March 1939 (except where otherwise provided) (see section 2 and <i>Gazette</i> 24 February 1939 p.319)	
<i>Superannuation and Family Benefits Act Amendment Act 1939</i>	43 of 1939	20 December 1939	1 March 1939 (see section 2)	
<i>Amending proclamation</i>		14 December 1945 pp.1168-9	Superannuation Fortnight No. 172 ending on 1 February 1976	

Short Title	Number and Year	Assent	Commencement	Miscellaneous
<i>Superannuation and Family Benefits Act Amendment Act 1945</i>	55 of 1945	30 January 1946	Section 2(1)(b), 8(1), 13(1): deemed operative 20 December 1939 (see subsection (2) of each of those sections); sections 3(1), 9(1), 10(1), 11(1), 14(1), 16(1): 1 March 1946 (see section 1 and <i>Gazette</i> 22 February 1946 p.179); balance: 30 January 1946	Section 20: validation ⁹
<i>Superannuation and Family Benefits Act Amendment Act 1947</i>	65 of 1947	10 January 1948	31 January 1948 (see section 2 and <i>Gazette</i> 30 January 1948 p.207)	Section 25: validation ¹⁰
<i>Superannuation and Family Benefits Act Amendment Act 1950</i>	39 of 1950	18 December 1950	13 January 1951 (see section 2 and <i>Gazette</i> 12 January 1951 p.41)	
<i>Acts Amendment (Superannuation and Pensions) Act 1951, section 2</i>	25 of 1951	12 December 1951	12 December 1951	
<i>Superannuation and Family Benefits Act Amendment Act 1955</i>	36 of 1955	28 November 1955	9 December 1955 (see section 1(1) and <i>Gazette</i> 9 December 1955 p.2961)	
<i>Acts Amendment (Superannuation and Pensions) Act 1957, section 2</i>	55 of 1957	6 December 1957	1 January 1958 (see section 1(2))	

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Short Title	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Superannuation and Pensions) Act 1958, section 2</i>	19 of 1958	22 October 1958	22 October 1958	
<i>Acts Amendment (Superannuation and Pensions) Act 1960, section 3</i>	61 of 1960	2 December 1960	1 January 1961 (see section 2)	
<i>Superannuation and Family Benefits Act Amendment Act 1961</i>	50 of 1961	23 November 1961	23 November 1961	
<i>Superannuation and Family Benefits Act Amendment Act 1962</i>	19 of 1962	1 October 1962	1 October 1962	
<i>Acts Amendment (Superannuation and Pensions) Act 1962, Part 1</i>	65 of 1962	30 November 1962	29 December 1962 (see section 2)	
<i>Superannuation and Family Benefits Act Amendment Act 1963</i>	43 of 1963	3 December 1963	3 December 1963	
<i>Superannuation and Family Benefits Act Amendment Act 1964</i>	21 of 1964	15 October 1964	15 October 1964	
<i>Superannuation and Family Benefits Act Amendment Act (No. 2) 1964</i>	101 of 1964	23 December 1964	23 December 1964	Section 6(2): transitional ¹¹
<i>Superannuation and Family Benefits Act Amendment Act 1965</i>	106 of 1965	17 December 1965	14 February 1966 (see section 2)	

Short Title	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Superannuation and Pensions) Act 1967, Part 1</i>	78 of 1967	11 December 1967	29 December 1967 (see section 2 and <i>Gazette</i> 29 December 1967 p.3607)	
<i>Superannuation and Family Benefits Act Amendment Act 1968</i>	13 of 1968	8 October 1968	8 October 1968	
<i>Acts Amendment (Superannuation) Act 1969, Part 1</i>	27 of 1969	16 May 1969	Section 8: 28 December 1967 (see section 2(2)); balance: 16 May 1969	
<i>Superannuation and Family Benefits Act Amendment Act 1970</i>	22 of 1970	8 May 1970	1 January 1970 (see section 2)	
<i>Acts Amendment (Superannuation and Pensions) Act 1970, Part 1</i>	108 of 1970	8 December 1970	1 January 1971 (see section 2(1))	
<i>Superannuation and Family Benefits Act Amendment Act 1973</i>	16 of 1973	30 May 1973	1 July 1973 (see section 2)	
<i>Superannuation and Family Benefits Act Amendment Act (No. 2) 1973</i>	75 of 1973	17 December 1973	Sections 7, 11: 1 January 1974 (see section 2(2)); sections 3, 10, 12, 13, 14(a), 17, 18, 19, 20, 23, 24, 26: 11 January 1974 (see section 2(3)); balance: 17 December 1973 (see section 2(1))	

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Short Title	Number and Year	Assent	Commencement	Miscellaneous
<i>Superannuation and Family Benefits Act Amendment Act 1974</i>	47 of 1974	26 November 1974	Act, except section 5: 18 April 1975 (see section 2 and <i>Gazette</i> 18 April 1975 p.1145); section 5: 23 May 1975 (see section 2 and <i>Gazette</i> 23 May 1975 p.1393)	
<i>Superannuation and Family Benefits Act Amendment Act 1975</i>	4 of 1975	9 May 1975	9 May 1975	
<i>Superannuation and Family Benefits Act Amendment Act 1976</i>	134 of 1976	9 December 1976	Sections 6, 8, 9, 18, 20, 21, 22, 23, 24, 25, and 26(c)(i), (d), (e)(i), and (f): 3 June 1977 (see section 2 and <i>Gazette</i> 3 June 1977 p.1633); balance: 9 December 1976	Section 15(2): transitional ¹²
<i>Superannuation and Family Benefits Act Amendment Act 1979</i>	76 of 1979	6 December 1979	6 December 1979	Section 6(2): further commencement provision ¹⁴
<i>Superannuation and Family Benefits Amendment Act 1981</i>	9 of 1981	22 May 1981	Deemed operative 13 April 1981 (see section 2)	Section 5: validation ¹⁵
<i>Superannuation and Family Benefits Amendment Act 1982</i>	23 of 1982	27 May 1982	27 May 1982	
<i>Superannuation and Family Benefits Amendment Act 1984</i>	30 of 1984	8 June 1984	1 July 1984 (see section 2)	

Short Title	Number and Year	Assent	Commencement	Miscellaneous
<i>Superannuation and Family Benefits Amendment Act 1985</i>	78 of 1985	20 November 1985	20 November 1985 (see section 2)	Section 9(2): further commencement provision ¹⁷ ; Section 4(2): transitional ¹⁶
<i>Acts Amendment (Financial Administration and Audit) Act 1985, section 3</i>	98 of 1985	4 December 1985	1 July 1986 (see section 2)	
<i>Superannuation and Family Benefits Amendment Act 1986</i>	57 of 1986	26 November 1986	26 November 1986 (see section 2)	
<i>Superannuation and Family Benefits Amendment Act 1987</i>	17 of 1987	25 June 1987	1 July 1987 (see section 2)	
<i>Guardianship and Administration Act 1990, section 123</i>	24 of 1990	7 September 1990	20 October 1992 (see section 2 and <i>Gazette</i> 2 October 1992 p.4811)	
<i>Financial Administration Legislation Amendment Act 1993, section 11</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993 (see section 2(1))	

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Short Title	Number and Year	Assent	Commencement	Miscellaneous
<i>Superannuation Legislation Amendment Act 1993</i>	8 of 1993	28 September 1993	Sections 50(c), 52, 59, 60(b) and 63: deemed operative 1 July 1992 (see section 2(2)); balance: 28 September 1993	Part 4: transitional ¹⁸
<i>R & I Bank Amendment Act 1994, section 13</i>	6 of 1994	11 April 1994	Section 13 proclaimed 26 April 1994 (see section 2(2) and <i>Gazette</i> 26 April 1994 p.1743)	
<i>Acts Amendment (Public Sector Management) Act 1994, section 16</i>	32 of 1994	29 June 1994	1 October 1994 (see section 2 and <i>Gazette</i> 30 September 1994 p.4948)	
<i>Statutes (Repeals and Minor Amendments) Act 1994, section 4</i>	73 of 1994	9 December 1994	9 December 1994 (see section 2)	
<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</i>	103 of 1994	11 January 1995	3 February 1995 (see section 2 and <i>Gazette</i> 3 February 1995 p.333)	
<i>Bank of Western Australia Act 1995, section 44</i>	14 of 1995	4 July 1995	1 December 1995 (see section 2(3) and <i>Gazette</i> 29 November 1995 p.5529)	Schedule 2, Part B, clause 2: transitional ¹⁹

Short Title	Number and Year	Assent	Commencement	Miscellaneous
<i>Government Employees Superannuation Amendment Act (No.2) 1995, section 25</i>	60 of 1995	21 December 1995	30 December 1995 (see section 2 and <i>Gazette</i> 29 December 1995 p.6287)	
<i>Government Employees Superannuation Legislation Amendment Act 1995, section 5</i>	62 of 1995	9 January 1996	9 January 1996 (see section 2)	
<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 and <i>Gazette</i> 29 December 1995 p.6291)	
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 June 1996	1 July 1996 (see section 2)	
<i>Financial Legislation Amendment Act 1996, section 64</i>	49 of 1996	25 October 1996	25 October 1996 (see section 2(1))	
<i>Statutes (Repeals and Minor Amendments) Act 1997, section 117</i>	57 of 1997	15 December 1997	15 December 1997 (see section 2)	
<i>Port Authority (Consequential Provisions) Act 1999, section 25</i>	5 of 1999	13 April 1999	13 April 1999 (see section 2(1))	

Superannuation and Family Benefits Act 1938

Short Title	Number and Year	Assent	Commencement	Miscellaneous
<i>Gas Corporation (Business Disposal) Act 1999</i> , section 108	58 of 1999	24 December 1999	16 December 2000 (see section 2(5) and <i>Gazette</i> 15 December 2000 p.7201)	
<i>Statutes (Repeals and Minor Amendments) Act 2000</i> , section 14(13)	24 of 2000	4 July 2000	4 July 2000 (see section 2)	
<i>State Superannuation Act 2000</i> , s. 39 ^{1a}	42 of 2000	2 November 2000	17 February 2001 (see section 2 and <i>Gazette</i> 16 February 2001 p. 903)	
<i>State Superannuation Regulations 2001</i>		16 February 2001 pp.923-1074	17 February 2001 (see regulation 2 and <i>Gazette</i> 16 February 2001 p.903)	Regulation 267(3): transitional ²⁰
<i>State Superannuation Amendment Regulations 2001</i>		29 June 2001 pp.3077-107	1 July 2001 (see regulation 2)	
<i>State Superannuation Amendment Regulations (No. 2) 2002</i> , r. 29		28 June 2002 p. 3007-28	1 July 2002 (see regulation 2)	
<i>State Superannuation Amendment Regulations (No. 3) 2002</i> r. 7		28 June 2002 p. 3029-33	21 September 2002 (see regulation 2 and <i>Gazette</i> 20 September 2002 p.4693)	
<i>State Superannuation Amendment Regulations (No. 4) 2003</i> r. 3		30 Dec 2003 p. 5726	30 Dec 2003	
<i>State Superannuation Amendment Regulations 2004</i> r.13		25 Jun 2004 p. 2228-33	25 Jun 2004	
<i>State Superannuation Amendment Regulations 2006</i> Pt. 4 ²¹		26 May 2006 p. 1915-33	26 May 2006	

N.B. The *Superannuation and Family Benefits Act 1938* is affected by section 15 of the *District Court of Western Australia Act 1969* (No. 84 of 1969).

² Repealed by the *Miscellaneous Repeals Act 1991* (No. 10 of 1991).

³ Reference amended under section 7(5)(a) of the *Reprints Act 1984* to give effect to section 5(2) of the *Water Authority Act 1984* (No. 3 of 1984).

⁴ Formerly *Hospitals Act 1927*. Title changed by the *Hospitals Amendment Act 1994* (No. 103 of 1994, section 5).

⁵ Abolished by section 37 of the *Industrial Arbitration Act Amendment Act (No. 2) 1963*. See now sections 8 and 85 of the *Industrial Relations Act 1979* (No. 114 of 1979) which provide for the Western Australian Industrial Commission and the Western Australian Industrial Appeal Court respectively.

⁶ Repealed by the *Police Benefit Fund Abolition Act 1939* (No. 40 of 1939).

⁷ Reference was originally to section 68A. That section was renumbered as section 76 in 1949 reprint of the *Government Railways Act 1904* (No. 23 of 1904) pursuant to section 4(g) of the *Amendments Incorporation Act 1938*.

⁸ In the reprint of 20 July 1999 the numbering of Parts, sections, Divisions, etc., effected in the first reprint (not in a volume), the 1950 reprint (in Volume 2 of the Reprinted Acts of the Parliament of Western Australia) and subsequent reprints has again been retained. References to the original numbering are contained in those reprints.

⁹ Section 20 of the *Superannuation and Family Benefits Act Amendment Act 1945* (No. 55 of 1945) reads as follows —

“

20. Validation

- (1) Insofar as any matter or thing has been done in pursuance of the provisions of the principal Act prior to the passing of this Act which at the time of the doing thereof was not or may not have been authorised by the principal Act as then in force, but which if done after the relevant provisions of this Act shall have come into operation and taken effect would be authorised by the principal Act as amended by this Act, the doing of such matter or thing shall be and is hereby confirmed and validated.
- (2) Any adjustments and other arrangements in relation to any matter or thing, which by subsection (1) of this section is confirmed or validated, may be made or effected after the relevant provisions of this Act shall have come into operation and taken effect wherever necessary in order to give effect retrospectively to the provisions of the principal Act as amended by this Act.

”.

¹⁰ Section 25(1) of the *Superannuation and Family Benefits Act Amendment Act 1947* (No. 65 of 1947) reads as follows —

“

25. Validation

- (1) Insofar as any matter or thing has been done in purported pursuance of the provisions of the principal Act prior to the commencement of this, the *Superannuation and Family Benefits Act Amendment Act 1947*, which at the time of the doing thereof was not or may not have been authorised by the principal Act as then in force, but which if done after the relevant provisions of this, the *Superannuation and Family Benefits Act Amendment Act 1947*, shall have come into operation, would be authorised by the principal Act as amended by this, the *Superannuation and Family Benefits Act Amendment Act 1947*, the doing of such matter or thing is confirmed and validated.
- (2) Any adjustments and other arrangements in relation to any matter or thing, which by subsection (1) of this section is confirmed and validated, may be made or effected after the relevant provisions of this, the *Superannuation and Family Benefits Act Amendment Act 1947*, shall have come into operation wherever necessary in order to give effect retrospectively to the provisions of the principal Act as amended by this, the *Superannuation and Family Benefits Act Amendment Act 1947*.

”

¹¹ Section 6(2) of the *Superannuation and Family Benefits Act Amendment Act (No. 2) 1964* (No. 101 of 1964) reads as follows —

“

- (2) The provisions of paragraph (a) of this subsection of this section shall operate and have effect, and shall be deemed to have operated and to have had effect, from and including the first day of January, nineteen hundred and sixty-four.

”

¹² Section 15(2) of the *Superannuation and Family Benefits Act Amendment Act 1976* (No. 134 of 1976) reads as follows —

“

- (2) The State share of pension payable to a person to whom subsection (4) of section sixty of the principal Act applied immediately before the date on which the *Superannuation and Family Benefits Act Amendment Act 1976* received the Royal Assent shall, with effect from the first pension pay day after that date, be increased to the amount which it would have been had the amendments to that subsection effected by that Act been in operation when the person retired.

13 Previously *Western Australian Institute of Technology Act 1966* (short title changed by No. 96 of 1986 section 11.)

14 Section 6(2) of the *Superannuation and Family Benefits Act Amendment Act 1979* (No. 76 of 1979) reads as follows —

- “(2) The amendments effected by subsection (1) of this section have effect in respect of the first fortnightly payment of the allowance payable under item 1 and item 2 of Part II of the Sixth Schedule to the principal Act made in the month of January, 1980 and in respect of every such subsequent payment.

15 Section 5 of the *Superannuation and Family Benefits Act Amendment Act 1981* (No. 9 of 1981) reads as follows —

“**5. Validation**

Any refund of contributions or refusal to refund contributions by the Board prior to the date of the coming into operation of this Act in respect of an election made by a contributor before that date to —

- (a) reduce the number of units of pension held by him; or
- (b) retire at a later age than the age in respect of which he was making his contributions,

or both, is hereby declared to be and to have been valid.

16 Section 4(2) of the *Superannuation and Family Benefits Act Amendment Act 1985* (No. 78 of 1985) reads as follows —

- “(2) Nothing in subsection (1) or the principal Act shall be taken to prevent the amount of an adjustment of pension that operates from and including the first pay-day occurring on or after 1 October 1985 from being first paid in the period of 6 months commencing on 1 January 1986 with arrears to the day on and from which the adjustment operates.

¹⁷ Section 9(2) of the *Superannuation and Family Benefits Act Amendment Act 1985* (No. 78 of 1985) reads as follows —

“

- (2) The amendments made by subsection (1)(a) and (b) have effect in respect of every fortnightly payment of a pension or allowance that is payable under the principal Act on or after 1 January 1986.

”

¹⁸ Part 4 of the *Superannuation Legislation Amendment Act 1993* (No. 8 of 1993) provides for transitional arrangements as a consequence of that Act and, in particular, section 81 of that Act reads as follows —

“

81. Certain benefits arising during transition period

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, 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.

”

¹⁹ Clause 2 of Part B of Schedule 2 of the *Bank of Western Australia Act 1995* (No. 14 of 1995) reads as follows —

“

2. Provisions relating to *Superannuation and Family Benefits Act 1938*

- (1) Despite the amendment made by item 13 of Part A of this Schedule, the Bank is to be deemed to be a department under section 6(1) of the Act in respect of any employee who was a contributor under that Act immediately before the day of privatisation.
- (2) A person who was such a contributor may continue to be a contributor after the day of privatisation so long as the person remains an employee of the Bank.
- (3) The Bank, the Government Employees Superannuation Board and the Treasurer are to enter into an agreement —
- (a) defining the entitlement to benefits that are to have effect for the purposes of the Act in respect of contributors referred to in subclause (1) and persons referred to in section 62 of the Act in relation to such contributors; and
 - (b) fixing the value of the amount required to fund those benefits.

- (4) To the extent that any matter referred to in subclause (3) is not agreed under that subclause within a period that the Treasurer thinks is reasonable the matter is to be determined by the Treasurer.
- (5) The Bank is to pay to the Treasurer the amount agreed under subclause (3)(b) or determined under subclause (4) at such time as is provided for in the agreement or determination.
- (6) Subclauses (1) to (5) and any agreement under subclause (3) or determination under subclause (4) have effect despite any provision of the Act.
- (7) In subclauses (1) to (6) —
“**Act**” means the *Superannuation and Family Benefits Act 1938*;
“**Bank**” has the meaning given by section 19 and includes the Bank in its capacity as trustee of the BankWest State Superannuation Scheme;
“**employee**” has the same meaning as it has in the Act.

20 Regulation 267(3) of the *State Superannuation Regulations 2001* read as follows:

- “(3) A widower is eligible to receive a pension under the Sixth Schedule as amended by this regulation on and from the day this regulation comes into operation, whether the circumstances or events which gave rise to the eligibility occurred before, on or after that day.”

21 The *State Superannuation Amendment Regulations 2006* r. 30(3) reads as follows:

- “(3) If a person became entitled to a widower’s pension before this regulation came into operation (the “**commencement day**”) section 60D(3c) (as inserted by subregulation (2)) applies in relation to that person as if the contributor or pensioner had died on the commencement day.”

22 The *Superannuation Legislation Amendment and Validation Act 2006* s. 17 and 20 read as follows:

17. Validation of certain payments

- (1) In this section —

“Superannuation Act” means the *State Superannuation Act 2000*, the *Government Employees Superannuation Act 1987* or the *Superannuation and Family Benefits Act 1938*.

- (2) A payment or purported payment of a benefit under the *State Superannuation Act 2000*, the *Government Employees Superannuation Act 1987* or the *Superannuation and Family Benefits Act 1938* that was —

- (a) made before this section came into operation; and
- (b) invalid or ineffective because of the *Administration Act 1903* section 10,

is, and is to be taken always to have been, as valid and effective as it would have been if the *State Superannuation Act 2000* section 40, as inserted by section 15 of this Act, had been in operation in respect of each Superannuation Act at the time of the payment.

- (3) If —

- (a) a benefit under the *State Superannuation Act 2000*, the *Government Employees Superannuation Act 1987* or the *Superannuation and Family Benefits Act 1938* was paid to an executor or administrator of the estate of a deceased person before this section came into operation; and
- (b) the executor or administrator paid, or purportedly paid, some or all of the benefit to another person before this section came into operation; and
- (c) the payment was invalid or ineffective because of the *Administration Act 1903* section 10,

the executor or administrator is, and is to be taken always to have been, as liable for the payment referred to in paragraph (b) as the executor or administrator would have been if the *State Superannuation Act 2000* section 40, as inserted by section 15 of this Act, had been in operation in respect of each Superannuation Act at the time of the payment referred to in paragraph (a).

20. Validation of certain things done under the *Superannuation and Family Benefits Act 1938*

A thing done or purportedly done —

- (a) under the *Superannuation and Family Benefits Act 1938* (whether as continued in force by the *State Superannuation (Transitional and Consequential Provisions) Act 2000* section 26 or not); and

(b) before the *State Superannuation Amendment Regulations (No. 4) 2003* came into operation,

is, and is to be taken always to have been, as valid and effective as it would have been if the definition of “department” in the *Superannuation and Family Benefits Act 1938* section 6(1) had been amended on 1 January 1997 by inserting after “port authority” —

“

, every college (within the meaning of the *Vocational Education and Training Act 1996*)

”

”