

**WESTERN AUSTRALIA**

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**GOVERNMENT EMPLOYEES  
SUPERANNUATION AMENDMENT  
ACT (No. 2) 1995**

**(No. 60 of 1995)**

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WESTERN AUSTRALIA

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**GOVERNMENT EMPLOYEES  
SUPERANNUATION AMENDMENT  
ACT (No. 2) 1995**

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**No. 60 of 1995**

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**AN ACT to amend the *Government Employees Superannuation Act 1987* and, in consequence, other Acts.**

*[Assented to 21 December 1995.]*

The Parliament of Western Australia enacts as follows:

## **PART 1 — PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Government Employees Superannuation Amendment Act (No. 2) 1995*.

### **Commencement**

2. This Act comes into operation on such day as is fixed by proclamation.

### **Principal Act**

3. In this Act the *Government Employees Superannuation Act 1987\** is referred to as the principal Act.

[\* *Reprinted as at 3 October 1994.*

*For subsequent amendments see 1994 Index to  
Legislation of Western Australia, Table 1, pp. 89-90  
and Act No. 103 of 1994.]*

## **PART 2 — AMENDMENT CLOSING 1987 SCHEME**

### **Section 17A inserted**

4. After section 17 of the principal Act the following section is inserted —

“

#### **Closure of scheme**

**17A.** (1) In this section —

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

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

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

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

- (a) the person became an employee eligible for membership only after the closure day;
- (b) the person's eligibility results from the acceptance of an offer that the employer certifies to the Board was made before the closure day; and
- (c) the election is lodged within 1 month after the person became eligible for membership.

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

- (a) it is made under Schedule 4, clause 7B;
- (b) the Treasurer, acting under Schedule 4, clause 9, has directed the Board to accept it; or
- (c) it is made in the circumstances described in Schedule 4, clause 14A.

(6) The Board is allowed to accept a person's election to become a member of the 1987 scheme if the Board is satisfied that the person was not, and could not reasonably be expected to have been, aware of this section before the closure day because the person has been away from the person's usual place of employment.

(7) This section does not prevent a person's membership from continuing in accordance with section 20.

”.

**PART 3 — AMENDMENTS TO ENABLE EMPLOYEE  
CONTRIBUTIONS TO 1993 SCHEME**

**Section 3 amended**

**5.** Section 3 (1) of the principal Act is amended —

- (a) by deleting the definitions of “contributory scheme” and “non-contributory scheme”; and
- (b) by inserting before the definition of “actuary” the following definitions —

“

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

”;

“

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

”.

**Section 17B amended**

**6.** Section 17B (2) (d) of the principal Act is amended by inserting after “Australia” the following —

“ , other than the 1993 scheme ”.

**Section 30 amended**

**7.** Section 30 (1) of the principal Act is amended by deleting “under this Act” and substituting the following —

“ under this Part ”.



**Section 38A amended**

8. Section 38A of the principal Act is amended by inserting the following definitions in their appropriate alphabetical positions —

“

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

”;

“

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

”;

“

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

”.

**Section 38B amended**

9. Section 38B of the principal Act is amended —

(a) in subsection (1), by deleting “by virtue of that employment, a member” and substituting the following —

“

by virtue of that employment, a statutory member

”;

and

- (b) by inserting after subsection (3) the following subsection —

“

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

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

”.

### **Section 38D amended**

10. Section 38D of the principal Act is amended —

- (a) in subsection (1), by inserting before “member” in both places where it occurs the following —

“ statutory ”; and

- (b) in subsection (3), by deleting “a contribution required by subsection (1) to be made by an employer” and substituting the following —

“ an employer's compulsory contribution ”.

### **Section 38E substituted**

11. Section 38E of the principal Act is repealed and the following section is substituted —

“

#### **Voluntary employer contributions**

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

- (a) to make contributions under this Part in respect of a statutory member in addition

to the employer's compulsory contributions;  
and

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

”

### **Section 38EA inserted**

**12.** After section 38E of the principal Act the following section is inserted —

“

#### **Voluntary employee contributions**

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

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

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

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

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

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

(6) An election to contribute at a particular rate authorizes the employer to deduct amounts at that rate from the contributor's salary and to remit the amounts so deducted to the Board.

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

”.

### **Section 38F amended**

**13.** Section 38F of the principal Act is amended —

(a) in subsections (1) and (2), by inserting before “member” in each case the following —

“ statutory ”; and

(b) in subsection (3), by deleting “contributions required from that employer under this Part” and substituting the following —

“ employer's compulsory contributions ”.

### **Section 38H amended**

**14.** Section 38H of the principal Act is amended —

(a) in subsection (1) (a), by deleting “contributions required under this Part” and substituting the following —

“ compulsory contributions ”;

- (b) in subsection (1) (b), by inserting after “38E” the following —

“ or 38EA ”;

- (c) in subsection (2), by deleting “a contribution required under this Part” and substituting the following —

“ an employer’s compulsory contribution ”; and

- (d) by inserting after subsection (3) the following subsection —

“

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

”.

### **Section 38L amended**

**15.** Section 38L (1) of the principal Act is amended by inserting before “member” the following —

“ statutory member or voluntary ”.

### **Section 38M amended**

**16.** Section 38M of the principal Act is amended —

- (a) in subsection (1), by inserting before “member”, in the second place where it occurs, the following —

“ statutory member or voluntary ”;

- (b) in subsection (2), by inserting before “member” in the first place where it occurs the following —

“ statutory ”;

- (c) in subsection (3), by inserting before “member” the following —

“ statutory ”; and

- (d) by inserting after subsection (3) the following subsection —

“

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

”.

### **Section 38N amended**

**17.** Section 38N (1) of the principal Act is amended by inserting before “member”, in the first place where it occurs, the following —

“ statutory ”.

### **Section 38O amended**

**18.** Section 38O (1) of the principal Act is amended by inserting before “member”, in the first place where it occurs, the following —

“ statutory ”.

### **Section 38P amended**

**19.** Section 38P (1) of the principal Act is amended by inserting before “member”, in the first place where it occurs, the following —

“ statutory member or voluntary ”.

**Section 38Q amended**

**20.** Section 38Q of the principal Act is amended —

- (a) in subsection (1), by inserting before “members” the following —

“        statutory        ”; and

- (b) in subsection (2), by inserting before “member”, in the first place where it occurs, the following —

“        statutory        ”.

**Section 39A amended**

**21.** Section 39A (1) of the principal Act is amended by deleting “a member” and substituting the following —

“        a statutory member        ”.

**Section 51 amended**

**22.** Section 51 of the principal Act is amended by inserting after “under this Act” the following —

“        other than under section 38EA        ”.

**Various references to contributory scheme amended**

**23.** The principal Act is amended by deleting “contributory” or “**CONTRIBUTORY**” in each place where it occurs that is mentioned in the Table to this section and in each case substituting the following —

“        1987        ”.

TABLE

section 3 (1)  
    in the definition of “average contribution rate”,  
    in the definition of “contributory period”, before “scheme”,  
    in the definition of “elected rate”,  
    in the definition of “entry date”,  
    in the definition of “exit date”,  
    in the definition of “final salary”,  
    in the definition of “membership period”,  
    in the definition of “scheme”, in paragraph (a);  
section 8C (1), (2), and (3);  
section 13B (2) (a);  
the heading to Part IV;  
section 17;  
section 18 (1), (4), (5), (6), and (7);  
section 19A (1);  
section 19B (1), (2), (3), (4), and (6);  
section 27 (1);  
the heading to Part VII;  
section 30 (1);  
section 31 (1) and (4), and in the first place where it occurs in  
    each of section 31 (2) and (3);  
section 32 (1);  
section 33 (1);  
section 34 (1) (a) and (b);  
section 35 (1), in the first place where it occurs;  
section 36 (1);  
section 37 (2), in the first place where it occurs;  
section 38 (4);  
section 38B (1) (a);  
section 46 (1), in the first place where it occurs;  
section 49 (1) (a), in the first place where it occurs;  
section 49 (2), in the first and third places where it occurs;  
section 49 (3);  
section 51;  
section 52 (2) (a);  
section 53 (1) and (4) (a);  
section 57 (1) (a) and (b), (4), (5), and (6);



**Schedule 4**

clause 1 (1), in the definition of “transferred contributor”;  
clause 4;  
clause 5;  
clause 6 (1);  
clause 7;  
clause 7A (1);  
clause 8 (1);  
clause 10 (1), (2), and (3);  
clause 13 (5) (a), (7) (a);  
clause 14 (1) (c) and (d);  
clause 14A (1) (b) and (c);  
clause 15 (1), (2), (3), and (4);  
clause 16 (a) and (b).

**Various references to non-contributory scheme amended**

**24.** The principal Act is amended by deleting “non-contributory” or “**NON-CONTRIBUTORY**” in each place where it occurs that is mentioned in the Table to this section and in each case substituting the following —

“ 1993 ”.

**TABLE**

Section 3 (1), in the definition of “scheme”, in paragraph (b);  
section 8C (1), (2), and (4);  
section 13B (2) (b);  
section 13C (1);  
section 17;  
the heading to Part VIIA;  
section 38B (1);  
section 38R;  
section 39A (1).

***Superannuation and Family Benefits Act 1938 amended***

**25.** (1) In this section the *Superannuation and Family Benefits Act 1938*\* is referred to as the 1938 Act.

[\* *Reprinted as at 9 August 1989.*

*For subsequent amendments see 1994 Index to  
Legislation of Western Australia, Table 1, pp. 208-9  
and Act No. 103 of 1994.]*

(2) Section 83M of the 1938 Act is amended —

- (a) in the definition of “guaranteed benefit”, by deleting “non-contributory scheme” and substituting the following —

“ 1993 scheme ”;

- (b) by deleting the definition of “non-contributory scheme”;

- (c) by inserting before the definition of “contributor” the following definition —

“

**“1993 scheme”** means the scheme of superannuation and other benefits provided for in Part VIIA of the *Government Employees Superannuation Act 1987*;

”;

and

- (d) by inserting before the definition of “guaranteed benefit” the following definition —

“

**“employer’s compulsory contribution”** has the same meaning as it has in Part VIIA of the *Government Employees Superannuation Act 1987*;

”.

(3) Section 83N (1) of the 1938 Act is amended by deleting “non-contributory scheme” in both places where it occurs and in each case substituting the following —

“ 1993 scheme ”.

(4) Section 83N (2) of the 1938 Act is amended by deleting paragraph (a) and substituting the following paragraph —

“

- (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;

”.

**PART 4 — AMENDMENTS FOR REMUNERATION  
PACKAGING**

**Section 3 amended**

**26.** Section 3 (1) of the principal Act is amended —

- (a) in the definition of “average contribution rate”, by inserting after “payable by” in both places where it occurs the following —

“ or in respect of ”;

- (b) in the definition of “contributory period”, by deleting “the member has contributed to the scheme” and substituting the following —

“  
contributions to the scheme have been  
made by or in respect of the member  
”;

- (c) in the definition of “elected rate”, by deleting “the Fund by a member of”;

- (d) in the definition of “employee”, in paragraph (aa), by deleting “amount payable to” and substituting the following —

“ relevant remuneration of ”;

- (e) in the definition of “final salary”, by deleting “**salary**” and substituting the following —

“ **remuneration** ”;

- (f) in the definition of “membership period”, by inserting after “contribute to” the following —

“ , or have contributions made to, ”;

- (g) by deleting the definition of “salary”; and

- (h) by inserting the following definitions in their appropriate alphabetical positions —

“

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

”;

“

**“relevant remuneration” —**

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

”.

**Section 4 repealed and sections 4, 4AA, and 4AB substituted**

**27.** Section 4 of the principal Act is repealed and the following sections are substituted —

“

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

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

- (a) any remuneration or benefit to which the member is entitled in the member’s

capacity as an employee that is payable in money; and

- (b) the value of any remuneration or benefit to which the member is so entitled that is not payable in money,

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

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

(3) If the member is entitled to —

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

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

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

- (a) any benefits to the member under this Act or contributions in respect of the member under this Act except —
  - (i) elective contributions to the 1987 scheme that are not payable by the member but are payable in respect of

the member as part of the member's remuneration; and

- (ii) contributions to the 1993 scheme, other than employer's compulsory contributions, payable in respect of the member as part of the member's remuneration;

(b) anything given —

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

and

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

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

(6) If —

- (a) a determination is made under subsection (4) (c) excluding any class of remuneration or benefit for the purposes of subsection (1); or
- (b) a determination is made under subsection (5) reducing the value of any remuneration or benefit as previously determined under that provision,

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

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

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

- (a) the remuneration or benefit is not excluded under subsection (4); and



- (b) the member's employer, or a person duly authorized to certify on behalf of the employer, has certified the member to be entitled to that remuneration or benefit on a continuing basis.

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

(3) If the member is entitled to —

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

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

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

- (a) an amount paid for overtime or as a bonus;

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

**Allowance may be certified as a percentage**

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

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

**Section 4A amended**

**28.** Section 4A of the principal Act is amended —

- (a) by repealing subsection (1) and substituting the following subsection —

“

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

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

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

where —

FR represents the final remuneration to be ascertained;

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

NP represents the number of complete fortnightly pay periods within the member's membership period (or the equivalent number if the member's pay periods are of another duration).

”;

(b) in subsection (2) —

(i) by deleting “average annual salary” and substituting the following —

“

average annual amount of the  
member's relevant remuneration

”;

and

(ii) by deleting “paid to the member as salary” and substituting the following —

“ the member's relevant remuneration ”;

(c) by repealing subsection (3) and substituting the following subsection —

“

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

(a) in respect of the period from the member's exit date to the last

remuneration adjustment day,  
an amount calculated at the rate  
of the member's relevant  
remuneration on the exit date;

- (b) in respect of the period from the  
last remuneration adjustment  
day to the last remuneration  
adjustment day but one, an  
amount calculated at the rate of  
the member's relevant  
remuneration on the last  
remuneration adjustment day;  
and

- (c) in respect of the balance of the  
52 complete fortnightly pay  
periods, an amount calculated at  
the rate of the member's  
relevant remuneration on the  
last remuneration adjustment  
day but one.

”;

- (d) in subsection (4), by deleting “salary” and  
substituting the following —

“ **remuneration** ”;

- (e) in subsection (5) —

- (i) by deleting “rate at which a member was paid  
salary” and substituting the following —

“

rate of a member's relevant  
remuneration

”;

and

- (ii) by deleting “that has been paid” and substituting the following —

“

to which the member has been  
entitled

”;

- (f) in subsection (6) —

- (i) by deleting “by the member”; and

- (ii) by deleting “salary” and substituting the following —

“

part of the member’s relevant  
remuneration

”;

and

- (g) by repealing subsection (8) and substituting the following subsection —

“

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

that day is, for the purpose of the calculation, to be taken to have been at the rate that the Board considers to have been the member's normal rate.

”.

**Section 16 amended**

**29.** Section 16 (1) (c) and (2) of the principal Act are amended by deleting “salary” in the 3 places where it occurs and substituting the following —

“        pay        ”.

**Section 17B amended**

**30.** Section 17B (2) of the principal Act is amended by deleting paragraph (e).

**Heading to Part V amended**

**31.** The heading to Part V of the principal Act is amended by deleting “**CONTRIBUTIONS BY MEMBERS**” and substituting the following —

“        **ELECTIVE CONTRIBUTIONS**        ”.

**Section 22 amended**

**32.** Section 22 of the principal Act is amended —

- (a) by repealing subsections (1) and (2) and substituting the following subsections —

“

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

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

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

”;

- (b) in subsection (3), by deleting “contributor's”;
- (c) in subsection (5a), by deleting “salary is that payable to the contributor” and substituting the following —

“

relevant remuneration is the member's relevant remuneration

”;



- (d) by repealing subsection (6) and substituting the following subsection —

“

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

”;

- (e) by repealing subsection (7) and substituting the following subsection —

“

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

”;

- (f) in subsection (8) —

- (i) by deleting “of a” and substituting the following —

“ in respect of a ”; and

- (ii) in paragraph (a), by deleting “contributory”;

- (g) in subsection (9), by deleting “An election to contribute” and substituting the following —

“

To the extent that the contributions are not payable in respect of the member as part of the member’s remuneration, an election for contributions

”;

- (h) in subsections (9) and (10), by deleting “salary” and “salaries” and in each case substituting the following —

“ pay ”; and

- (i) in subsection (10), by deleting “contributors’ ” and substituting the following —

“ members’ ”.

### **Section 23 amended**

**33.** Section 23 of the principal Act is amended —

- (a) by repealing subsections (1) and (2) and substituting the following subsections —

“

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

- (a) are required to the same extent as if the member were not on leave; and

- (b) are required to be made to the Board in advance or within 7 days after the end of each superannuation fortnight.

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

- (a) the period of leave is for 3 months or more; and
- (b) the member does not wish elective contributions to the scheme to continue under subsection (1),

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

”;

- (b) by repealing subsections (3a) and (4) and substituting the following subsections —

“

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

(4) Elective contributions made in respect of a period of leave of absence without pay may be made in advance or within 7 days after the end of each superannuation fortnight except that a member may defer the making of elective

contributions by the member until the member resumes duty and then pay the amount of the contributions in arrear, together with interest at a rate determined from time to time by the Board, over the allowed period.

”;

and

- (c) in each of subsection (5) and subsection (6) (b), by deleting “(c)”.

### **Section 24 amended**

**34.** Section 24 of the principal Act is amended —

- (a) by repealing subsections (1) and (2) and substituting the following subsections —

“

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

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

”;

(b) in subsection (3) —

(i) by inserting after “contributions” the following —

“ in respect ”; and

(ii) by deleting “salary payable to” and substituting the following —

“ relevant remuneration of ”;

and

(c) in subsection (3b), by inserting after “contributions” the following —

“ in respect ”.

### **Section 25 amended**

**35.** Section 25 (1) and (2) of the principal Act are each amended —

(a) by deleting “contributions” and substituting the following —

“ elective contributions in respect ”;

(b) by deleting “contributor’s salary” and substituting the following —

“ member’s relevant remuneration ”; and

(c) by deleting “salary payable” and substituting the following —

“ member’s relevant remuneration ”.

**Section 26 amended**

**36.** Section 26 of the principal Act is amended —

- (a) by repealing subsection (1) and substituting the following subsection —

“

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

”;

- (b) in subsection (2) —

- (i) by inserting after “permit” the following —

“ contributions in respect of ”; and

- (ii) by deleting “to contribute”;

and

- (c) by repealing subsection (3) and substituting the following subsection —

“

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

for which contributions under that subsection were made.

”.

### **Section 27 amended**

**37.** Section 27 of the principal Act is amended —

- (a) in subsections (1) and (4), by deleting “salaries” in each place where it occurs and substituting the following —

“ relevant remuneration ”; and

- (b) in subsection (4), by deleting “to contribute” and substituting the following —

“ for contributions ”.

### **Section 31 amended**

**38.** Section 31 of the principal Act is amended —

- (a) in subsection (1) (c), by deleting “the member is not entitled to contribute to the scheme” and substituting the following —

“ elective contributions cannot be made ”; and

- (b) in subsection (1a), by deleting “a member’s contributions” and substituting the following —

“ contributions in respect of a member ”.

**Sections 32 and 33 amended**

**39.** Sections 32 and 33 of the principal Act are each amended —

- (a) in subsection (1) (cc), by deleting “the member is not entitled to contribute to the scheme” and substituting the following —

“ elective contributions cannot be made ”; and

- (b) in subsection (1a), by deleting “a member’s contributions” and substituting the following —

“ contributions in respect of a member ”.

**Section 33 amended**

**40.** Section 33 (2) of the principal Act is amended —

- (a) by deleting “LS” in both places where it occurs and in each case substituting the following —

“ LR ”; and

- (b) in the description of LS, by deleting “annual salary” and substituting the following —

“  
annual amount of the relevant  
remuneration  
”.



**Section 38 amended**

**41.** Section 38 (4) (aa) of the principal Act is amended by deleting “salary” and substituting the following —

“ remuneration ”.

**Section 38B amended**

**42.** Section 38B of the principal Act is amended —

- (a) in subsection (1), by deleting paragraph (c); and
- (b) by repealing subsection (3).

**Section 38D amended**

**43.** Section 38D (1) of the principal Act is amended by deleting “S” in the formula and after the description of A and in each case substituting the following —

“ R ”.

**Sections 38M and 38N amended**

**44.** Sections 38M (2) (b) and 38N (2) (b) of the principal Act are each amended by deleting “S” in the formula and after the description of FB and in each case substituting the following —

“ R ”.

**Section 38O amended**

**45.** Section 38O (2) (b) of the principal Act is amended —

- (a) by deleting “LS” in both places where it occurs and in each case substituting the following —

“ LR ”;

- (b) by deleting “S” in the first place where it occurs in the formula and in the first place where it occurs after the description of FB and in each case substituting the following —

“ R ”; and

- (c) in the description of LS, by deleting “annual salary” and substituting the following —

“  
annual amount of the relevant  
remuneration  
”.

**Section 38Q amended**

**46.** Section 38Q (1) of the principal Act is amended by deleting “salaries” and substituting the following —

“ relevant remuneration ”.

**Section 39 amended**

**47.** Section 39 (1), (2), and (3) of the principal Act are each amended by deleting “payable in respect of” and substituting the following —

“ in respect of ”.

**Section 46 amended**

**48.** Section 46 (1) (b) of the principal Act is amended —

- (a) by deleting “salary” in both places where it occurs and in each case substituting the following —

“ remuneration ”; and

- (b) by deleting “payable to the member” and substituting the following —

“ the member’s final remuneration ”.

**Schedule 4 amended**

**49.** (1) In this section —

“**clause**” means a clause of Schedule 4 to the principal Act.

(2) Clause 1 (1) is amended —

- (a) in the definition of “election to transfer”, by deleting “contributor to the scheme under this Act” and substituting the following —

“ member of the 1987 scheme ”; and

- (b) in the definition of “final salary”, by deleting “salary” and substituting the following —

“ **remuneration** ”.

(3) Clause 1A is repealed and the following clause is substituted —

“

**Meaning of “final remuneration”**

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

”.

(4) Clause 15 (4) is amended in the description of X by deleting “contributed to” and substituting the following —

“

elective contributions have been made in respect of the contributor to

”.

**Various references to “contributor” amended**

50. The principal Act is amended by deleting “contributor” in each place where it occurs that is mentioned in the Table to this section and in each case substituting the following —

“        member        ”.

## TABLE

section 16 (1) and (2);  
section 22 (3), (4), (5), and (8);  
section 23 (6);  
section 23A;  
section 24 (3), (3a), and (3b);  
section 25 (1), (2), and (4);  
section 26 (2);  
Schedule 4, in clause 14 (2) (except in the second place where it occurs).

**Various references to “contributor’s” amended**

**51.** The principal Act is amended by deleting “contributor’s” in each place where it occurs that is mentioned in the Table to this section and in each case substituting the following —

“     member’s     ”.

## TABLE

section 16 (1) (c) and (2);  
section 22 (5a) (a) and (9);  
section 26 (4);  
section 37 (2) (b) (i) and (ii).

**Various references to “salary” amended**

**52.** (1) The principal Act is amended by deleting “salary” in each place where it occurs that is mentioned in the Table to this subsection and in each case substituting the following —

“     relevant remuneration     ”.

TABLE

section 3 (1), in the definition of “elected rate”;  
section 22 (5);  
section 26 (2) and (5);  
section 27 (2), (3), and (5);  
section 38D (1), in the descriptions of S and PC, and (2);  
section 38M (2) (b), in the description of S;  
section 38N (2) (b), in the description of S;  
section 38O (2) (b), in the description of S;  
section 38Q (2);  
section 39 (1), (2), and (3);  
section 39A (1) and (2);  
section 49 (2) and (3).

(2) The principal Act is amended by deleting “salary” in the description of FS in each place where it occurs that is mentioned in the Table to this subsection and in each case substituting the following —

“ remuneration ”.

TABLE

section 30 (2);  
section 31 (2) and (3);  
section 33 (2);  
section 34 (2) (a) and (b);  
section 35 (3) (b);  
Schedule 4  
    in clause 12 (2) (c);  
    in clause 13 (4) (b);  
    in clause 15 (4).

**Various references to “FS” amended**

**53.** The principal Act is amended by deleting “FS” in each place where it occurs that is mentioned in the Table to this section and in each case substituting the following —

“      FR      ”.

TABLE

section 30 (2);  
section 31 (2) and (3);  
section 33 (2);  
section 34 (2) (a) and (b);  
section 35 (3) (b);  
Schedule 4  
    in clause 12 (2) (c);  
    in clause 13 (4) (b);  
    in clause 15 (4).

***Director of Public Prosecutions Act 1991* amended**

**54.** The *Director of Public Prosecutions Act 1991*\* is amended in Schedule 1, clause 3 (3), by deleting “contributor” and substituting the following —

“      member of the 1987 scheme      ”.

[\* *Act No. 12 of 1991.*

*For subsequent amendments see 1994 Index to  
Legislation of Western Australia, Table 1, p. 59.]*

**PART 5 — MISCELLANEOUS AMENDMENTS AND  
VALIDATION**

**Section 13C repealed and sections 13C and 13D  
substituted**

**55.** Section 13C of the principal Act is repealed and the following sections are substituted —

“

**Outward portability — members of 1987 scheme**

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

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

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

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

- (a) the value of the member's benefit under this Act discounted, where the Board, on the advice of an actuary, thinks fit, as determined by the Board in accordance with that advice; and
- (b) where applicable, any amount paid into the Fund by the member under subsection (2)



of section 13B, together with compound interest on the amount paid into the Fund calculated in the manner described in subsection (3) of that section.

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

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

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

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

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

**13D.** (1) Without limiting the circumstances in which a payment may be made under section 13B, where a member of the 1993 scheme who is not a member of the 1987 scheme becomes entitled to a

benefit under the 1993 scheme that has not yet become payable, the member may request the Board to transfer to another superannuation fund the amount of the member's transfer value.

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

- (a) the value of the member's benefit under the 1993 scheme discounted, where the Board, on the advice of an actuary, thinks fit, as determined by the Board in accordance with that advice; and
- (b) where applicable, any amount paid into the Fund by the member under subsection (2) of section 13B, together with compound interest on the amount paid into the Fund calculated in the manner described in subsection (3) of that section.

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

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

(4) The transfer is not required to be made until a period of 12 months has elapsed since the date on which the person ceased to be an employee of an employer.

**Section 38K amended**

**56.** Section 38K (1) of the principal Act is amended by deleting “section 13C” and substituting the following —

“      sections 13C and 13D      ”.

**Sections 38PA and 38PB inserted**

**57.** After section 38P of the principal Act the following sections are inserted —

“

**Treasurer may increase employer contributions**

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

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

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

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

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

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

**Treasurer may increase other benefits**

**38PB.** (1) The Treasurer may, in respect of a specified employee or an employee of a specified class, by notice in writing given to the Board, increase the amount of any benefit under this Part that is in excess of the balance of the member’s account.

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

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

”;

**Validation**

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