

WESTERN AUSTRALIA

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# **SUPERANNUATION AND FAMILY BENEFITS AMENDMENT ACT**

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**No. 17 of 1987**

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

[Assented to 25 June 1987]

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

## **Short title**

**1.** This Act may be cited as the *Superannuation and Family Benefits Amendment Act 1987*.

## **Commencement**

2. This Act shall come into operation on the day on which the *Government Employees Superannuation Act 1987* comes into operation.

## **Principal Act**

3. In this Act the *Superannuation and Family Benefits Act 1938\** is referred to as the principal Act.

[\*Reprinted as approved 1 October 1976 and amended by Acts Nos. 134 of 1976, 76 of 1979, 9 of 1981, 23 of 1982, 30 of 1984, 78 and 98 of 1985 and 57 of 1986.]

## **Section 6 amended**

4. Section 6 of the principal Act is amended in subsection (1)—

(a) by deleting the definition of “the Board” and substituting the following definition—

“ “the Board” means the Government Employees Superannuation Board established by section 5 of the 1987 Act; ”; and

(b) after the definition of “the maximum age for retirement” by deleting the full stop and substituting a semicolon and by inserting the following definition—

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

## **Section 7 repealed**

5. Section 7 of the principal Act is repealed.

## **Part II repealed**

6. Part II (sections 8 to 23) of the principal Act is repealed.

## **Section 24 amended**

7. Section 24 of the principal Act is amended—

- (a) in subsection (1), by deleting “to be kept at the Treasury” and “employees who become”; and
- (b) by repealing subsection (2) and substituting the following subsection—

“ (2) The Fund shall form, and be maintained and managed as part of, the Government Employees Superannuation Fund established under the 1987 Act. ”.

## **Section 24A amended**

8. Section 24A of the principal Act is amended by inserting after subsection (3) the following subsection—

“ (4) Notwithstanding subsection (3), payment of any amount payable by way of compound interest under clause 12 (2) (a) (i), 13 (2) (a) or 13 (3) (a) of Schedule 4 to the 1987 Act shall be made from the amount paid into the Indexation Account under subsection (1) (a). ”.

## **Sections 25, 26, 27 and 29 repealed**

9. Sections 25, 26, 27 and 29 of the principal Act are repealed.

## **Section 30 amended**

10. Section 30 of the principal Act is amended by inserting after subsection (2) the following subsection—

“ (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 11 of the 1987 Act, that investigation shall be deemed for the purposes of this section to be an investigation made under subsection (1). ”.

## **Section 31 repealed and a section substituted**

11. Section 31 of the principal Act is repealed and the following section is substituted—

### **Continuation of contributions**

“ 31. (1) Subject to section 39A and to clauses 6 and 10 of Schedule 4 to the 1987 Act, 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 32 amended**

**12.** Section 32 of the principal Act is amended by repealing subsection (1) and substituting the following subsections—

“ (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 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. ”.

### **Section 37 amended**

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

(a) in subsection (10a) by deleting “or one-half of any increase in his total unit entitlement” and substituting the following—

“ of any increase in his total unit entitlement, or the whole of any increase in his primary unit entitlement, ”;

(b) in subsection (10b) by inserting after paragraph (b) the following paragraph—

“ (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) in subsection (11)—

(i) by deleting “A” and substituting the following—

“ Subject to subsections (12), (12c) and (12d) and section 38 (3), a ”; and

(ii) by inserting after “undergo” the following—

“ , or such other information or evidence as to the health of the contributor as it directs the contributor to provide ”;

(d) by inserting after subsection (11) the following subsections—

“ (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. ”;

- (e) in subsection (13) by deleting “In subsections (9), (10) and (11)” and substituting the following—

“ Subject to subsection (14), in subsections (9) to (12d) ”;

and

- (f) by inserting after subsection (13) the following subsection—

“ (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 37B repealed**

- 14. Section 37B of the principal Act is repealed.

### **Section 38 amended**

- 15. Section 38 of the principal Act is amended—

- (a) in subsection (1) by deleting “of this Act” and substituting the following—

“ and no election to contribute shall be made contrary to section 37 (12), (12c) or (12d) or subsection (3) ”; and

- (b) by inserting after subsection (2) the following subsection—

“ (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 39A amended**

- 16. Section 39A of the principal Act is amended—

- (a) in subsection (3) (b) by deleting “other than subsection (4)”;
- (b) by repealing subsection (4).



## Section 83AB repealed

**17.** Section 83AB of the principal Act is repealed.

## Section 83B amended

**18.** Section 83B of the principal Act is amended—

- (a) by repealing subsections (1), (2), (3) and (4) and substituting the following subsections—

“(1) Subject to subsections (6) and (7) (a) and to clause 10 of Schedule 4 to the 1987 Act 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. ”; and

- (b) by repealing subsections (5a) and (6) and substituting the following subsections—

“(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 83C amended**

**19.** Section 83C of the principal Act is amended—

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

“ (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. ”; and

(b) by repealing subsection (5) and substituting the following subsection—

“ (5) An employee who makes an application under subsection (4) shall cease to make contributions to the Provident Account. ”.

**Section 90 inserted**

**20.** After section 89 of the principal Act the following section is inserted—

Transitional provisions relating to  
former Superannuation Board

“ 90. The Seventh Schedule shall have effect. ”.

**Seventh Schedule inserted**

**21.** After the Sixth Schedule to the principal Act the following Schedule is inserted—

“ SEVENTH SCHEDULE (section 90)

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

## Terms used

1. 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.

### Transfer of assets, liabilities and records

2. 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.

## Agreements, instruments and proceedings

3. (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.

(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.

#### Final reports on the operations of the Superannuation Board

4. (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*.

#### Consents to investments

5. 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.

#### Staff

6. 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.

#### References to the Superannuation Board in laws

7. (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*. "