

# Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997

[1997-295]



New South Wales

## Status Information

### Currency of version

Historical version for 14 December 2001 to 27 March 2002 (accessed 19 November 2024 at 17:45)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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File last modified 21 December 2001

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New South Wales

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# Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997*.

### 2 Commencement

This Regulation commences on 1 July 1997.

### 3 Definitions

In this Regulation:

**First State Superannuation Scheme** means the superannuation scheme established under the *First State Superannuation Act 1992*.

**local government superannuation scheme** means the superannuation scheme established under a trust deed entered into by the Treasurer and LGSS Pty Ltd, as trustee, in accordance with section 127 of the Act.

**Public Sector Executives Superannuation Scheme** means the superannuation scheme established under the *Public Sector Executives Superannuation Act 1989*.

**State Authorities Non-contributory Superannuation Scheme** means the superannuation scheme established under the *State Authorities Non-contributory Superannuation Act 1987*.

**State Authorities Superannuation Scheme** means the superannuation scheme established under the *State Authorities Superannuation Act 1987*.

**State Superannuation Scheme** means the superannuation scheme established under the *Superannuation Act 1916*.

**the Act** means the *Superannuation Administration Act 1996*.

**transfer day** means:

- (a) except as provided by paragraphs (b) and (c), 1 July 1997, or
- (b) in relation to an employee referred to in clause 11 (1), the day the employee transfers to the county council referred to in clause 11 (2), or
- (c) in relation to a person who becomes a transferred member as a result of amendments made to this Regulation by the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Amendment Regulation 1997*, 1 July 1997 or the day on which that Regulation commences, whichever is the later.

**transferred employer** means an employer listed in Schedule 1 who is bound by the terms of the trust deed establishing the local government superannuation scheme.

**transferred member** means a person transferred to the local government superannuation scheme under clause 5 or 11 or a person to whom a pension referred to in clause 12 (1) (a), (b) or (c) is payable.

#### 4 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

## Part 2 Transfer of employees and other beneficiaries

### 5 Transfer of employees

- (1) On and from the transfer day, the persons described in clauses 6, 7, 8, 9 and 10 are transferred from the superannuation schemes referred to in those clauses to the local government superannuation scheme.
- (2) The persons so transferred are to be members of the following Divisions of the local government superannuation scheme, to the extent that they are described in the clause concerned:
  - (a) a person described in clause 6 is to be a member of Division A,
  - (b) a person described in clause 7 is to be a member of Division B,
  - (c) a person described in clause 8 is to be a member of Division C,
  - (d) a person described in clause 9 is to be a member of Division D,
  - (e) a person described in clause 10 is to be a member of Division E.
- (3) A person who is a person described in more than one of clauses 6, 7, 8, 9 or 10 may

be a member of one or more Divisions of the local government superannuation scheme.

## **6 Members of First State Superannuation Scheme**

- (1) For the purposes of clause 5, this clause describes the following persons:
  - (a) a person who was, at any time within the period of 6 months immediately preceding the transfer day, a full member of the First State Superannuation Scheme who was employed solely by a transferred employer,
  - (b) a person who was, at any time within the period of 6 months immediately preceding the transfer day, a full member of the First State Superannuation Scheme who was employed by a transferred employer and who was also employed by one or more other employers under the *First State Superannuation Act 1992*,
  - (c) an optional member of the First State Superannuation Scheme who is also a person referred to in clause 7 or 9.
- (2) Despite subclause (1), this clause does not describe members of the First State Superannuation Scheme whose accounts consist of amounts contributed in respect of employment with a transferred employer and other employers if, at the transfer day:
  - (a) the total amount in the member's account relating to employment with transferred employers is less than \$500 and the total amount relating to employment with other employers is \$500 or more,
  - (b) the total amount in the member's account relating to employment with transferred employers is less than the total amount relating to employment with other employers and each such total amount is less than \$500.
- (3) On and from the transfer day, the entitlement of a person referred to in subclause (1) (b) to preserved amounts related to previous employment by one or more other employers under the *First State Superannuation Act 1992* is to be paid from the local government superannuation scheme if, at the transfer day:
  - (a) the total amount in the member's account relating to employment with transferred employers is \$500 or more and the total preserved amount relating to employment with other employers is less than \$500, or
  - (b) the total amount in the member's account relating to employment with transferred employers is more than the total preserved amount relating to employment with other employers and each such total amount is less than \$500.
- (4) Despite subclause (1), this clause does not describe a member of the First State Superannuation Scheme if the member has ceased to be employed by a transferred employer before the transfer day and notice has been received of the cessation by

FTC before the transfer day.

(5) Except as provided by subclause (3) in respect of preserved amounts, this Regulation does not transfer a person from the First State Superannuation Scheme in respect of contributions that are or have been made by or on behalf of the person in respect of the person's employment by an employer that is not a transferred employer.

(6) In this clause:

**transferred employer** includes a predecessor of a transferred employer.

## **7 Contributors to State Authorities Superannuation Scheme**

For the purposes of clause 5, this clause describes the following persons:

- (a) a person who, immediately before the transfer day, was a contributor to the State Authorities Superannuation Scheme who was employed by a transferred employer,
- (b) a person who, immediately before the transfer day, had a preserved benefit under the [State Authorities Superannuation Act 1987](#), the [Public Authorities Superannuation Act 1985](#) or the [State Public Service Superannuation Act 1985](#) and who, immediately before the benefit was preserved, was employed by a transferred employer or a predecessor of a transferred employer.

## **8 Employees under State Authorities Non-contributory Superannuation Scheme**

For the purposes of clause 5, this clause describes the following persons:

- (a) a person who, immediately before the transfer day, was a contributing employee, under the State Authorities Non-contributory Superannuation Scheme, within the meaning of section 26C of the [State Authorities Non-contributory Superannuation Act 1987](#) and who is a person described in clause 7 or 9,
- (b) a person who, immediately before the transfer day, had a preserved benefit in the State Authorities Non-contributory Superannuation Scheme and who is a person described in clause 7 or 9.

## **9 Contributors to State Superannuation Scheme**

For the purposes of clause 5, this clause describes the following persons:

- (a) a person who, immediately before the transfer day, was a contributor to the State Superannuation Scheme who was employed by a transferred employer,
- (b) a person who, immediately before the transfer day, had a preserved or deferred benefit under Division 3A or 3B of Part 4 of the [Superannuation Act 1916](#) and who, immediately before the benefit was preserved or deferred, was employed by a transferred employer or a predecessor of a transferred employer.



## **10 Members of Public Sector Executives Superannuation Scheme**

For the purposes of clause 5, this clause describes a person who was, immediately before the transfer day:

- (a) employed by a transferred employer, and
- (b) a member of the Public Sector Executives Superannuation Scheme.

## **11 Employees of new county councils**

- (1) On and from the day an employee described in subclause (2) transfers from a body referred to in that subclause to a county council referred to in that subclause, the employee is transferred from the superannuation scheme referred to in subclause (2) to the local government superannuation scheme.
- (2) For the purposes of this clause, the employees to be transferred are:
  - (a) employees of Great Southern Energy who transfer to the Riverina Water County Council and who, if Great Southern Energy were treated as a transferred employer as at the date of transfer, would be persons described in clause 6, 7, 8, 9 or 10 in respect of a superannuation scheme referred to in any of those clauses,
  - (b) employees of North Power who transfer to the MidCoast County Council and who, if North Power were treated as a transferred employer as at the date of transfer, would be persons described in clause 6, 7, 8, 9 or 10 in respect of a superannuation scheme referred to in any of those clauses,
  - (c) employees of the Department of Public Works and Services who transfer to the Goldenfields Water County Council and who, if the Department were treated as a transferred employer as at the date of transfer, would be persons described in clause 6, 7, 8, 9 or 10 in respect of a superannuation scheme referred to in any of those clauses,
  - (d) employees of Great Southern Energy who transfer to the Goldenfields Water County Council and who, if Great Southern Energy were treated as a transferred employer as at the date of transfer, would be persons described in clause 6, 7, 8, 9 or 10 in respect of a superannuation scheme referred to in any of those clauses.
- (3) An employee so transferred is to be a member of the Division of the local government superannuation scheme applicable if the assumptions set out in subclause (2) applied.
- (4) An employee cannot transfer to a superannuation scheme under this clause after 1 October 1997.

## **12 Transfer of payment of certain pensions**

- (1) On and from the transfer day, the following pensions are payable under the local

government superannuation scheme:

(a) a pension payable to a person who, immediately before the transfer day, received a pension under any of the following Acts or regulation:

(i) *New South Wales Retirement Benefits Act 1972*,

(ii) *Local Government and Other Authorities (Superannuation) Act 1927*,

(iii) *Public Authorities Superannuation Act 1985*,

(iv) *Transport Employees Retirement Benefits Act 1967*,

(v) Part 2, 3 or 6 of the *State Authorities Superannuation (Transitional Provisions) Regulation 1988*,

and who was employed by a transferred employer, or a predecessor of the employer, immediately before becoming entitled to the pension, or a pension payable (before or after the transfer day) to the spouse or a child of such a person,

(b) a pension payable to a person who, immediately before the transfer day, received a pension under the *Superannuation Act 1916* and who was employed by a transferred employer, or a predecessor of the employer, immediately before becoming entitled to the pension, or a pension payable (before or after the transfer day) to the spouse or a child of such a person,

(c) a pension payable (before or after the transfer day) under section 15BV (14) of the *Local Government and Other Authorities (Superannuation) Act 1927*.

(2) For the purposes of the local government superannuation scheme:

(a) a person to whom a pension referred to in subclause (1) (a) or (c) is payable is taken to be a member of Division B of that scheme, and

(b) a person to whom a pension referred to in subclause (1) (b) is payable is taken to be a member of Division D of that scheme.

### **13 Effect of transfers**

(1) On transfer under this Part, a transferred member (except as provided by clause 14) ceases to have any entitlements, rights and obligations under the scheme from which the member was transferred to the extent to which the member is transferred.

(2) A right of appeal available to a transferred member before the transfer of the member under this Part in respect of a matter involving a dispute with the trustee of the member's previous superannuation scheme, and not finally dealt with before the transfer day, is to be dealt with in accordance with procedures under the local government superannuation scheme as if the dispute were with LGSS Pty Ltd.

#### **14 Adjustment of transfers**

- (1) Despite any other provision of this Regulation, a person who has been mistakenly identified as a transferred member within the meaning of this regulation and transferred to or dealt with under the local government superannuation scheme may be transferred back to or dealt with under the scheme from which the person was originally transferred.
- (2) Any person referred to in subclause (1) is taken to have always been a member of or to have been dealt with under the original superannuation scheme and FTC and STC must make any necessary adjustments to contributions, accounts and benefits accordingly.
- (3) Despite any other provision of this Regulation, a person who has been mistakenly not identified as a transferred member within the meaning of this regulation and has not been transferred to or dealt with under the local government superannuation scheme may be transferred to or dealt with under the local government superannuation scheme.
- (4) Any person referred to in subclause (3) is taken to have been a member of or to have been dealt with under the local government superannuation scheme on and from the transfer day for the person and LGSS Pty Ltd must make any necessary adjustments to contributions, accounts and benefits accordingly.
- (5) Despite any other provision of this Regulation, a person described in clause 6 may, if so permitted by LGSS Pty Ltd, elect to transfer back to the First State Superannuation Scheme and subclause (2) applies to any such person in the same way it applies to a person mistakenly transferred.
- (6) For the purposes of clause 15 (1), a person who makes an election referred to in subclause (5) is not a transferred member.

#### **15 Status of employers**

- (1) A transferred employer is taken not to be an employer in respect of a transferred member for the purposes of an Act establishing an STC scheme or FTC scheme.
- (2) This clause applies only to a transferred employer who is an “Employer” within the meaning of the trust deed establishing the local government superannuation scheme and who is bound by the terms of the trust deed.

### **Part 3 Transfer of assets and liabilities**

#### **16 Transfer of assets to LGSS**

- (1) FTC and STC must transfer to LGSS Pty Ltd, as the trustee of the local government superannuation scheme, assets equivalent to an amount calculated in accordance

with this clause in respect of the assets of the FTC or STC scheme or fund attributable in respect of the transferred members and the transferred employers covered by the local government superannuation scheme and transferred under Part 2.

- (2) The assets are to be transferred and calculated in accordance with the transfer agreements entered into between FTC and STC with LGSS Pty Ltd, in connection with the transfer of transferred members under this Regulation.
- (3) Every asset of FTC and STC in the nature of a right, entitlement, privilege, claim or chose in action against a person who is:
  - (a) a transferred member, or
  - (b) a former member of or contributor to a scheme referred to in Part 2, or
  - (c) a claimant against FTC or STC through any such member, former member or contributor,

that arises by virtue of the employment of the member, former member or contributor by a transferred employer is by this subclause transferred to LGSS Pty Ltd as the trustee of the local government superannuation scheme.

- (4) Every asset of FTC and STC in the nature of a right, entitlement, privilege, claim or chose in action against a transferred employer is by this subclause transferred to LGSS Pty Ltd as the trustee of the local government superannuation scheme.
- (5) In this clause, **transferred employer** includes a predecessor of a transferred employer.
- (6) Nothing in this clause transfers a right, entitlement, privilege, claim or chose in action for the enforcement of which any proceedings were instituted before the commencement of this subclause.

#### **16A Transfer of liabilities**

- (1) A liability of a superannuation scheme referred to in Part 2 to pay any amount that is due and payable under the scheme to a former member of or contributor to the scheme by virtue of his or her employment by a transferred employer is by this subclause transferred to LGSS Pty Ltd.
- (2) Assets transferred under clause 16, and assets derived from the investment of such assets, may be applied to meet any liability transferred by this clause.
- (3) In this clause, **transferred employer** includes a predecessor of a transferred employer.

## **Part 4 Administration and investment services**

### **17 Provision of superannuation scheme administration services**

- (1) LGSS Pty Ltd, as the trustee of the local government superannuation scheme, must enter into a contract or arrangement with the SAA for the provision by the SAA of superannuation scheme administration services for the local government superannuation scheme.
- (2) The contract or arrangement is to cover a period commencing on or before the transfer day and ending on 31 December 1997.
- (3) The superannuation scheme administration services that may be provided under the contract or arrangement include (but are not limited to) the following:
  - (a) collecting contributions to superannuation schemes,
  - (b) keeping and maintaining member records,
  - (c) providing information and advice to members,
  - (d) preparing financial statements on behalf of the trustee,
  - (e) processing of claims and payment of benefits.
- (4) On or after the end of the contract or arrangement referred to in subclause (1), LGSS Pty Ltd is not required to enter into a further contract or arrangement with the SAA but may enter into a contract or arrangement with the SAA (or its successors) or any other person for the provision of superannuation scheme administration services.

### **18 Provision of superannuation investment management services**

- (1) The trustee of the local government superannuation scheme must enter into a contract or an arrangement with AFML (or its successors) for the provision by AFML of superannuation investment management services for Divisions B, C and D of the local government superannuation scheme.
- (2) The contract or arrangement is to cover a period commencing on or before the transfer day and ending on a date determined by the Minister (not being a date later than 30 June 2002) for the purposes of this clause.
- (3) Any such contract or arrangement may provide for the circumstances in which it may be ended before that period expires. Any such termination of the contract has no effect unless it is approved in writing by the Minister.
- (4) On or after the end of the contract or arrangement referred to in subclause (1), LGSS Pty Ltd is not required to enter into a further contract or arrangement with AFML but may enter into a contract or arrangement with AFML (or its successors) or any other

person for the provision of superannuation investment management services.

(5) For the purposes of this clause:

**AFML** means Axiom Funds Management Limited.

**superannuation investment management services** include (but are not limited to) the following:

- (a) acting as investment manager for any superannuation fund or funds concerned or part of any such fund,
- (b) advising on investments and investment strategies and other related strategies for any superannuation fund or funds concerned or part of any such fund.

## Part 5 Mobility between schemes

### Division 1 Preliminary

#### 19 Definitions

In this Regulation:

**appointed day** means 1 October 1999.

**election** means an election under Division 4 to exercise a transfer option referred to in section 128A of the Act.

**STC employer** means an employer responsible for making contributions under a superannuation scheme of which STC is trustee.

**transferee scheme** means the superannuation scheme to which a person elects to transfer in accordance with this Part.

**transferor scheme** means the superannuation scheme from which a person elects to transfer in accordance with this Part.

### Division 2 Eligibility to exercise transfer option

#### 20 Relevant public sector employment

- (1) For the purposes of section 128A (2) (a) of the Act, a prescribed public sector employer is an employer listed in Schedule 3 to the [Superannuation Act 1916](#) or in Schedule 1 to the [State Authorities Superannuation Act 1987](#).
- (2) For the purposes of section 128A (3) (b) of the Act, a prescribed public sector employer is an employer:
  - (a) listed in Schedule 3 to the [Superannuation Act 1916](#) or in Schedule 1 to the [State Authorities Superannuation Act 1987](#), and

- (b) that is responsible for making contributions under an STC scheme of which the employee concerned was previously a member or to which the employee concerned previously contributed.

**Note—**

Subsections (2) and (3) of section 128A of the Act limit the transfer option available under that section to a class of employees who are employed by a “prescribed public sector employer”.

## **21 Eligible employees and contributors**

The following persons are eligible to exercise a transfer option:

- (a) a **Category 1 elector**—that is, a person who, on the appointed day, was a contributor to the State Superannuation Scheme or to the State Authorities Superannuation Scheme and who, in accordance with clause 23, is taken to have transferred employment,
- (b) a **Category 2 elector**—a person who, on the appointed day, was a contributor to Division B or D of the local government superannuation scheme and who, in accordance with clause 24, is taken to have transferred employment,
- (c) a **Category 3 elector**—a person who, on the appointed day, held deferred benefits in both the State Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme in relation to the same period of employment and who, in accordance with clause 25, is taken to have transferred employment,
- (d) a **Category 4 elector**—a person who, on the appointed day, held deferred benefits in both the State Authorities Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme in relation to the same period of employment and who, in accordance with clause 26, is taken to have transferred employment,
- (e) a **Category 5 elector**—a person who, on the appointed day, held deferred benefits in each of Divisions B and C of the local government superannuation scheme in relation to the same period of employment and who, in accordance with clause 27, is taken to have transferred employment,
- (f) a **Category 6 elector**—a person who, on the appointed day, held deferred benefits in each of Divisions C and D of the local government superannuation scheme in relation to the same period of employment and who, in accordance with clause 28, is taken to have transferred employment.

**Note—**

This clause allows (subject to the employment continuity restrictions imposed by Division 3):

- (a) transfers from STC schemes to the local government superannuation scheme by a member of an STC scheme who leaves a public sector employer prescribed for the purposes of the relevant STC scheme to take

up employment with a local government employer, and

- (b) transfers from the local government superannuation scheme to STC schemes by a member of the local government superannuation scheme who was previously a member of an STC scheme and who leaves a local government employer to take up employment with a public sector employer prescribed for the purposes of the relevant STC scheme.

## **Division 3 Transfer of employment**

### **22 Application of Division**

The provisions of this Division define, for the purposes of section 128A (2) (b) and (3) (b) of the Act, the circumstances in which a transfer of employment is taken to have occurred.

### **23 Contributors to SSS or SASS**

A person who is a Category 1 elector is taken to have transferred employment if:

- (a) the person has ceased, on or after the appointed day, to be a contributor to the State Superannuation Scheme or to the State Authorities Superannuation Scheme, and
- (b) within 3 months after ceasing to be a contributor to that scheme, the person has become an employee of an employer under the local government superannuation scheme.

### **24 Contributors to the local government superannuation scheme**

A person who is a Category 2 elector is taken to have transferred employment if:

- (a) the person has ceased, on or after the appointed day, to be a contributor to Division B or D of the local government superannuation scheme, and
- (b) within 3 months after ceasing to be such a contributor, the person has become an employee of an STC employer.

### **25 Holders of deferred benefits in SSS and SANCSS**

(1) A person who is a Category 3 elector is taken to have transferred employment if:

- (a) within the prescribed time after the person's benefits in the State Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme were deferred, the person has become an employee of an employer under the local government superannuation scheme, and
- (b) the person has thereafter remained an employee of that employer, or been employed by a succession of employers under the local government superannuation scheme or STC employers (or any combination of both), with no break in service longer than the prescribed time.

(2) In this clause, the **prescribed time** means the time allowed for the purposes of



section 38C (2) of the *Superannuation Act 1916*.

## **26 Holders of deferred benefits in SASS and SANCSS**

- (1) A person who is a Category 4 elector is taken to have transferred employment if:
  - (a) within the prescribed time after the person's benefits in the State Authorities Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme were deferred, the person has become an employee of an employer under the local government superannuation scheme, and
  - (b) the person has thereafter remained an employee of that employer, or been employed by a succession of employers under the local government superannuation scheme or STC employers (or any combination of both), with no break in service longer than the prescribed time.
- (2) In this clause, the **prescribed time** means the time allowed for the purposes of section 30 (2) of the *State Authorities Superannuation Act 1987*.

## **27 Holders of deferred benefits in Divisions B and C of local government superannuation scheme**

- (1) A person who is a Category 5 elector is taken to have transferred employment if:
  - (a) within the prescribed time after the person's benefits in Divisions B and C of the local government superannuation scheme were deferred, the person has become an employee of an STC employer, and
  - (b) the person has thereafter remained an employee of that employer, or been employed by a succession of STC employers or employers under the local government superannuation scheme (or any combination of both), with no break in service longer than the prescribed time.
- (2) In this clause, the **prescribed time** means the time allowed for the purposes of section 30 (2) of the *State Authorities Superannuation Act 1987*.

## **28 Holders of deferred benefits in Divisions C and D of local government superannuation scheme**

- (1) A person who is a Category 6 elector is taken to have transferred employment if:
  - (a) within the prescribed time after the person's benefits in Divisions C and D of the local government superannuation scheme were deferred, the person has become an employee of an STC employer, and
  - (b) the person has thereafter remained an employee of that employer, or been employed by a succession of STC employers or employers under the local government superannuation scheme (or any combination of both), with no break in service longer than the prescribed time.

- (2) In this clause, the **prescribed time** means the time allowed for the purposes of section 38C (2) of the [Superannuation Act 1916](#).

## **Division 4 Exercise of transfer option**

### **29 Manner and form of exercising option**

An election to exercise a transfer option is to be given in writing to the trustee of the transferee scheme, using a form approved by that trustee.

### **30 Provision of information**

- (1) An elector must provide such information as may be required to complete the election form, being information that the trustees of the transferor or transferee schemes may reasonably require to give effect to the election.
- (2) Either trustee is entitled to require the other to provide information (including members' files) reasonably necessary to give effect to the election.
- (3) Either trustee is entitled to require an employer, under a scheme for which it is trustee, to provide such information as may be reasonably necessary to the trustee in order to give effect to the election.

### **31 Time within which option may be exercised**

- (1) An election by a Category 1 or 2 elector who, in accordance with clause 23 or 24, is taken to have transferred employment must be made within 3 months after the transfer of employment.
- (2) An election by a Category 3, 4, 5 or 6 elector who, in accordance with clause 25, 26, 27 or 28, is taken to have transferred employment before the appointed day must be made within 12 months after that day.
- (3) An election by a Category 3, 4, 5 or 6 elector who, in accordance with clause 25, 26, 27 or 28, is taken to have transferred employment on or after the appointed day must be made within 12 months after the transfer of employment.
- (4) An election takes effect when the election form, duly completed, is received by the trustee of the transferee scheme.
- (5) However, an election does not take effect if an elector has applied for a payment of a benefit (including a deferred benefit) under the transferor scheme before the election is received by the trustee of the transferee scheme.
- (6) Despite any other provision of this clause, the trustee of the transferee scheme may allow an elector an additional period, not exceeding 12 months, in which to make an election if the trustee thinks it appropriate in the circumstances.

## **Division 5 Transfer of assets on exercise of transfer option**

### **32 Amounts transferable on exercise of option**

- (1) On the exercise by a person of a transfer option, there is payable by the trustee of the transferor scheme to the trustee of the transferee scheme:
  - (a) an eligible termination payment calculated in accordance with clause 33, and
  - (b) the difference between:
    - (i) the sum of the primary and supplementary amounts calculated in accordance with clauses 34 and 35, and
    - (ii) the eligible termination payment referred to in paragraph (a).
- (2) It is the duty of scheme trustees to ensure that the payments prescribed by this clause are duly made and credited to the appropriate accounts for the employee concerned in the transferee scheme.

### **33 Eligible termination payment**

- (1) For a Category 1 or 2 elector, the eligible termination payment is the amount that would have been immediately payable to the person, in accordance with the rules of the transferor scheme, on the person's resignation from his or her employment.
- (2) For a Category 3 elector, the eligible termination payment is the sum of:
  - (a) the amount that would have been payable if, on the date the election takes effect, the person had elected to take the benefit payable under section 52I of the [Superannuation Act 1916](#), and
  - (b) the amount of benefit to which the person was entitled on that date under the [State Authorities Non-contributory Superannuation Act 1987](#).
- (3) For a Category 4 elector, the eligible termination payment is the sum of:
  - (a) the amount that would have been payable if, on the date the election takes effect, the person had elected to take the benefit payable under section 43 (7) of the [State Authorities Superannuation Act 1987](#), and
  - (b) the amount of benefit to which the person was entitled on that date under the [State Authorities Non-contributory Superannuation Act 1987](#).
- (4) For a Category 5 elector, the eligible termination payment is the sum of:
  - (a) the amount of benefit to which the elector would have been entitled under subrule 5.10.10 of Schedule 2 to the trust deed governing the local government superannuation scheme if the elector had resigned from employment and had, on the date the election takes effect, made any necessary election under that

Schedule, and

(b) the amount of benefit to which the person was entitled on that date under Schedule 3 to the trust deed governing the local government superannuation scheme.

(5) For a Category 6 elector, the eligible termination payment is the sum of:

(a) the amount of cash termination benefit to which the elector would have been entitled under subrule 16.11 of Schedule 4 to the trust deed governing the local government superannuation scheme if the elector had resigned from employment and had, on the date the election takes effect, made any necessary election under that Schedule, and

(b) the amount of benefit to which the person was entitled on that date under Schedule 3 to the trust deed governing the local government superannuation scheme.

#### **34 Primary amount**

(1) For a Category 1, 3 or 4 elector, the primary amount is the amount determined by STC on actuarial advice to be the value of the person's accrued benefit in the State Superannuation Scheme or the State Authorities Superannuation Scheme at the time of the election.

(2) For a Category 2, 5 or 6 elector, the primary amount is the amount determined by the trustee of the transferor scheme on actuarial advice to be the value of the person's accrued benefit in Division B or D of the local government superannuation scheme, as the case may be, at the time of the election.

#### **35 Supplementary amount**

(1) For a Category 1, 3 or 4 elector, the supplementary amount is the amount of benefit to which the person was entitled under the [State Authorities Non-contributory Superannuation Act 1987](#) on the date the election takes effect.

(2) For a Category 2, 5 or 6 elector, the supplementary amount is the amount of benefit to which the person was entitled under Schedule 3 to the trust deed governing the local government superannuation scheme on the date the election takes effect.

### **Division 6 Rights of persons exercising transfer option**

#### **36 Duty of trustees to electors**

(1) It is the duty of the trustee of the transferee scheme under an election made by an eligible person to establish the person as a member of or contributor to the scheme.

(2) An elector transferring from Divisions B and C in the local government superannuation

scheme is to be established in the State Authorities Superannuation Scheme and in the State Authorities Non-contributory Superannuation Scheme.

- (3) An elector transferring from Divisions C and D in the local government superannuation scheme is to be established in the State Superannuation Scheme and in the State Authorities Non-contributory Superannuation Scheme.
- (4) An elector transferring from the State Authorities Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme is to be established in Divisions B and C of the local government superannuation scheme.
- (5) An elector transferring from the State Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme is to be established in Divisions C and D of the local government superannuation scheme.

### **37 Trustees to determine rights of electors**

- (1) The trustee of the transferee scheme is to determine, with actuarial advice, the rights of the elector in the scheme.
- (2) Regard must also be had to any rights the elector had in the transferor scheme and the rights established in the transferee scheme must be as near as possible to them.
- (3) In particular, the trustee is to take into account the following:
  - (a) the elector's accrued benefits in the transferor scheme, as certified by the trustee of that scheme,
  - (b) the benefits that the elector could have accrued by normal retirement age in the transferor scheme,
  - (c) the elector's employment status (including salary and whether full-time or part-time) in the transferee scheme, on commencement or recommencement of membership of the scheme,
  - (d) the amounts being transferred under Division 5.
- (4) In the case of a Category 3, 4, 5 or 6 elector, the trustee must also take into account:
  - (a) the period of employment, with any employer responsible for making contributions under either the transferor or transferee scheme, in the period between the date the benefit was deferred and the date that the elector again becomes a member of the transferee scheme, and
  - (b) any employer contributions made by any such employer to any complying superannuation fund within the meaning of the *Income Tax Assessment Act 1997* of the Commonwealth in respect of the elector during that period.

### **38 Automatic accrual of certain rights**

- (1) A person who by election rejoins the State Superannuation Scheme is taken to have met the medical requirements of Part 2A of the *Superannuation Act 1916*.
- (2) A person who by election joins or rejoins Division D of the local government superannuation scheme is taken to have met the medical requirements of clause 3 of Schedule 4 of the trust deed governing the local government superannuation scheme.
- (3) A person who was covered for additional benefits in Division B of the local government superannuation scheme and who by election rejoins the State Authorities Superannuation Scheme is taken to have submitted an application for additional benefit cover under section 20 (1) of the *State Authorities Superannuation Act 1987*, and STC is taken to have approved that application.
- (4) A person who was covered for additional benefits in the State Authorities Superannuation Scheme and who by election joins or rejoins Division B of the local government superannuation scheme is taken to have submitted an application for additional benefit cover under subrule 3.2.1 of Schedule 2 to the trust deed governing that scheme, and the trustee of that scheme is taken to have approved that application.
- (5) Additional benefit cover imputed by subclause (3) or (4) may be revoked in accordance with the rules of the relevant transferee scheme.

### **39 Effect of transfers**

On an election taking effect under this Part, and subject to any appeal rights referred to in this Part, the elector ceases to have any entitlements, rights and obligations under the scheme from which the person transferred to the extent to which the member is transferred.

### **40 Appeal rights**

- (1) The rights of appeal available to an elector before a transfer option takes effect continue to apply in respect of:
  - (a) matters or disputes arising before that option takes effect, and
  - (b) any matters or disputes arising from determinations by the trustee of the transferor scheme under this Part or in relation to any payment from the transferor scheme.
- (2) An elector who transfers to a transferee scheme has, in respect of any determination by the trustee of the transferee scheme as to the elector's rights in that scheme on transfer to the scheme, the same rights of appeal as in respect of a determination by a trustee under the superannuation scheme concerned.

## Part 6 Determination of disputes

### 19 Disputes concerning entitlements or obligations of transferred members or associated beneficiaries under FTC schemes

A dispute concerning the entitlements or obligations of a transferred member or beneficiary arising in respect of service by the transferred member, before the transfer day, with a transferred employer who was responsible for the payment of benefits under an FTC scheme in respect of that service are to be determined, not by FTC, but by the trustee of the local government superannuation scheme.

**Editorial note—**

This Part was amended by Sch 2.35 to the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2001 No 112](#). The text of the amendment reads as follows:

**[2] Part 6 (as renumbered)**

Renumber clauses 18 and 19 as clauses 41 and 42.

### 20 Disputes concerning entitlements or obligations of transferred members or associated beneficiaries under STC schemes

A dispute concerning the entitlements or obligations of a transferred member or beneficiary arising in respect of service by the transferred member, before the transfer day, with a transferred employer who was responsible for the payment of benefits under an STC scheme in respect of that service are to be determined, not by STC, but by the trustee of the local government superannuation scheme.

**Editorial note—**

This Part was amended by Sch 2.35 to the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2001 No 112](#). The text of the amendment reads as follows:

**[2] Part 6 (as renumbered)**

Renumber clauses 18 and 19 as clauses 41 and 42.

## Schedule 1 Transferred employers

(Clause 3)

A body corporate constituted, or taken to be constituted, under the [Local Government Act 1993](#) as a council or a county council

Local Government Association of New South Wales

Shires Association of New South Wales

Health and Building Surveyors Association of New South Wales

Institute of Municipal Management

Northern Area Regional Organisation of Councils

Waverley-Woollahra Destruction Committee

Richmond-Upper Clarence Regional Library

Richmond-Tweed Regional Library

The Hills Centre Limited

Federated Municipal and Shire Council Employees' Union of Australia, New South Wales Division