

# State Authorities Superannuation Act 1987 No 211

[1987-211]



New South Wales

## Status Information

### Currency of version

Historical version for 6 September 2002 to 7 November 2002 (accessed 16 July 2024 at 4:52)

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.

### Notes—

- **Does not include amendments by**
  - [Greyhound Racing Act 2002 No 38](#) (not commenced)
  - [Harness Racing Act 2002 No 39](#) (not commenced)

### Authorisation

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File last modified 10 September 2002

# State Authorities Superannuation Act 1987 No 211



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## Contents

<b>Long title</b> .....	6
<b>Part 1 Preliminary</b> .....	6
1 Name of Act .....	6
2 Commencement .....	6
2A Closure of scheme to new entrants on and from 19 December 1992 .....	6
2B Employee may resume contributions after break in employment .....	6
2C Employee over 55 years may contribute after election to preserve benefit after salary reduction ...	6
3 Definitions .....	7
4 Salary .....	12
4A Salary of executive officers .....	15
5 Secondment of employee otherwise than to employer .....	16
6 Part-time employment with more than one employer .....	16
7 Employees of Crown etc .....	17
8 Provisions respecting certain employees .....	17
9 Persons not subject to Act .....	17
10 Savings and transitional provisions .....	17
<b>Part 2 The State Authorities Superannuation Fund</b> .....	17
11 Establishment of the Fund .....	17
12 Contributors' accounts .....	18
13 Additional Benefit Reserve Fund .....	18
14 Reserves for employers .....	18

14A Additional payments by certain employers .....	19
14B Source of administration costs payments .....	19
15 Other accounts and reserves.....	20
16 Adjustment of accounts and reserves for interest etc .....	20
17 Funds, accounts and reserves generally.....	20
18 Actuarial investigation .....	20
<b>Part 3 Contributions by employees .....</b>	<b>21</b>
19 Election to contribute to the Fund .....	21
20 Additional benefit .....	22
21 Medical examination.....	23
22 Approval of application .....	23
23 Refusal of application .....	24
24 Revocation of approval .....	24
25 Liability to contribute .....	24
26 Salary basis for contributions .....	25
27 Variations of contribution rate .....	26
28 Variations of contribution rate: hardship .....	27
29 Contributions during leave without pay and other matters .....	27
29A Other contributions by contributors .....	29
30 Resumption of contributions after break in employment.....	29
30A Contributor who is executive officer .....	30
<b>Part 4 Contributions by employers .....</b>	<b>32</b>
31 Contributions by employer under Part 1 of Schedule 1 (The Crown and other employers) .....	32
32 Contributions by employer under Part 2 of Schedule 1 (Local government and other authorities) .....	32
33 Contributions by employer under Part 3 of Schedule 1 (Hospitals and other bodies).....	32
34 Basis and making of contributions.....	32
34A Variation of employer contributions .....	33
35 Transfers of credits between employers of transferred contributors .....	33
35A Acceptance of contributions .....	33
<b>Part 5 Benefits .....</b>	<b>34</b>
36 Definitions .....	34

37 Benefit at or after early retirement or on death at or after early retirement age .....	36
38 Benefit on death before early retirement age .....	37
39 Benefit on total and permanent invalidity before early retirement age.....	38
40 Benefit on partial and permanent invalidity before early retirement age.....	39
41 Benefit on resignation, dismissal or discharge before early retirement age.....	40
42 Benefit on retrenchment before early retirement age .....	41
42A Benefit on attaining 65 or 70.....	42
42AA Deferral of benefit on retrenchment before early retirement age .....	42
42AB Compulsory preservation of benefits after changeover day.....	42
42AC Payment of compulsorily preserved benefit .....	43
42AD Preserved benefits .....	43
43 Deferred benefit .....	43
43AA Deferral of benefit for contributors aged 55 years and over in certain circumstances .....	46
43AAA (Repealed) .....	46
43A Power of STC to purchase annuities etc out of benefit payable under this Act.....	46
43AB Competing claims for spouses' or de facto partners' benefits .....	47
43B Release of benefit on grounds of severe financial hardship .....	48
43C Release of benefit on compassionate grounds .....	49
43D Effect on benefits .....	49
44 Application for payment of benefit .....	50
45 Interest .....	50
45A Power of STC to reduce benefits to offset certain tax liabilities of the Fund .....	50
45B, 45C (Repealed).....	52
45D Compliance with superannuation guarantee legislation .....	52
45E Application of section 45D to period from 1.7.1992 .....	53
<b>Part 5A Provisions relating to privatisation of employers.....</b>	<b>53</b>
46AA Removal of employers from Act on privatisation.....	53
46AB Preservation of benefit for contributors affected by privatisation .....	53
46AC Adjustment of employer liability on privatisation .....	54
46AD Employer liabilities after privatisation.....	54
<b>Part 6 Miscellaneous .....</b>	<b>54</b>
46 Employers and employees .....	54
47 Employer to provide information .....	55

48 Employee or claimant to provide information.....	56
49 Making of elections and applications.....	57
50 Assignment etc of benefit.....	58
51 Payment without grant of probate etc .....	58
51A Restriction on manner of payment of benefit.....	59
52 Recovery of money owing to Fund.....	59
52A Payments to cover superannuation contributions surcharge.....	59
52B Repayment of excess payments.....	60
53 Restoration of lost right etc under Act.....	60
53A Payment where beneficiary is missing .....	60
54 Payment where beneficiary incapable .....	61
54A Information that must be disclosed to contributors.....	61
55 Regulations.....	61
56 Savings and transitional provisions .....	61
<b>Schedule 1 Employers .....</b>	<b>61</b>
<b>Schedule 2 Excluded persons .....</b>	<b>68</b>
<b>Schedule 3 Savings and transitional provisions .....</b>	<b>69</b>
<b>Schedule 4 Transitional provisions for certain other schemes .....</b>	<b>71</b>
<b>Schedule 5 Special provisions for deferring the benefits of certain contributors</b> .....	<b>72</b>
<b>Schedule 6 Savings and transitional provisions .....</b>	<b>76</b>

# State Authorities Superannuation Act 1987 No 211



New South Wales

An Act to establish a superannuation scheme for certain employees in the public sector; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *State Authorities Superannuation Act 1987*.

### 2 Commencement

This Act shall commence on 1 April 1988.

### 2A Closure of scheme to new entrants on and from 19 December 1992

- (1) Despite any other provision of this Act, an employee is not entitled to make an election to contribute to the Fund on or after 19 December 1992 (the **closure date**).
- (2) However, a person who lodged an election to contribute to the Fund with the Board, or with the person's employer, before the closure date is taken to have elected to contribute to the Fund before that date and this Act applies accordingly.
- (3) An election that was sent to the Board or employer, by post or otherwise, before the closure date is taken to have been lodged with the Board before that date.

### 2B Employee may resume contributions after break in employment

- (1) Despite section 2A, an employee who resumes employment as an employee in the circumstances set out in section 30 may make an application under that section and may resume contributions.
- (2) Section 2A does not prevent an employee from exercising a transfer option conferred under section 128A of the *Superannuation Administration Act 1996*.

### 2C Employee over 55 years may contribute after election to preserve benefit after salary

## **reduction**

- (1) Despite section 2A, an employee who has elected under Part 3 of Schedule 5 to make provision for a preserved benefit before the commencement of this section, or who so elects after the commencement of this section, is entitled to elect to contribute to the Fund.
- (2) Despite section 2A, an employee who has elected under Division 3B of Part 4 of the [Superannuation Act 1916](#) to defer or preserve a benefit before the commencement of this section, or who so elects after the commencement of this section, is entitled to elect to contribute to the Fund.
- (3) The election to contribute to the Fund must be made when the employee elects to make provision for a preserved benefit or to defer or preserve a benefit.
- (4) Despite subsection (3), an employee who elected to make provision for a preserved benefit or to defer or preserve a benefit before the commencement of that subsection may elect to contribute to the Fund at any time within 3 months after the commencement of that subsection.

## **3 Definitions**

- (1) In this Act:

**additional benefit** has the meaning given by section 36.

**additional benefit levy** means the levy that, in order to attract the additional benefit for a contributor, is paid to the Fund by transfer from the contributor's account under section 22 (2) (b).

**Administration Account** means the STC Administration Account maintained under the [Superannuation Administration Act 1996](#).

**applicable contribution period** has the meaning given by section 36.

**appointed day** means 1 April 1988.

**attributed salary**, in relation to a contributor at any time, means:

- (a) where the contributor is a full-time employee at that time—the salary of the contributor at that time, or
- (b) where the contributor is a part-time employee at that time—the salary that would be payable to the contributor at that time if employed as a full-time employee.

**benefit** means a benefit payable under this Act.

**Board** means the State Authorities Superannuation Board referred to in section 4 of the [Superannuation Administration Act 1991](#).

**chief executive officer** means:

- (a) a chief executive officer within the meaning of the [Public Sector Management Act 1988](#), or
- (b) an employee (not being an officer referred to in paragraph (a)) of an employer specified in Schedule 1, being an employee who holds an office designated by the Director-General of the Premier's Department as the office of a chief executive officer.

**Commonwealth taxation law** means a law of the Commonwealth that provides for the levying and collection of a tax.

**contribution period** means a named month or such other period as may be prescribed.

**contributor** means an employee whose election to contribute to the Fund has taken effect.

**contributor-financed benefit**, in relation to a benefit payable to, or in relation to, a contributor, means the balance at credit in the contributor's account at the time the benefit is paid.

**contributor's account** means the account established and maintained under section 12 in respect of the contributor.

**de facto partner** of a deceased contributor or deceased former contributor means, if the contributor or former contributor was, at the time of his or her death, in a de facto relationship, within the meaning of the [Property \(Relationships\) Act 1984](#), with a person, that person.

**deferred benefit**, in relation to a contributor, means a benefit deferred under section 42AA, 43 or 43AA.

**discharge**, in relation to a contributor, means the cessation of the contributor's employment expressed by the employer to be on the ground that the period, or successive periods, for which the contributor was employed has or have ended.

**dismissal** means the termination by an employer of the employment of a contributor with the employer, but does not include retrenchment or discharge or a retirement on the grounds of incapacity in circumstances which entitle the employee to a benefit.

**early retirement age** means the age of 59 years or, if some lower age (but not lower than the age of 55) is prescribed, that lower age.

**employee** means a person who is employed by an employer and who is the subject of a certificate by the employer to the effect that:



- (a) if the regulations prescribe any class of persons as not being employees—the person is not within any such class, and
- (b) if the regulations prescribe any requirement with which a person must comply in order to be an employee—the person complies with the requirement (specifying the requirement),

but does not include an excluded person referred to in Schedule 2.

**employer** means:

- (a) the Crown, the Government or a Minister of the Crown, or
- (b) an authority specified in Schedule 1,

and a reference to employment with an employer includes a reference to employment with successive employers.

**employer-financed benefit**, in relation to a benefit payable to, or in relation to, a contributor, means so much of the benefit as is paid from the reserve for that employer.

**employer reserve** means a reserve established and maintained under section 14.

**entry date**, in relation to a contributor, means the date as at which the contributor's election to contribute to the Fund took effect, that election being:

- (a) the only such election made by the contributor, or
- (b) where the contributor has made more than one such election—the later or latest of those elections.

**executive officer** means a contributor who is:

- (a) a chief executive officer, or
- (b) a senior executive officer, or
- (c) a police executive officer, or
- (d) an office holder nominated for the purposes of section 11A of the *Statutory and Other Offices Remuneration Act 1975*.
- (e) (Repealed)

**exit date**, in relation to a contributor, means the date on which the contributor ceases employment with an employer, that cessation of employment being:

- (a) the only such cessation of employment of the contributor, or

(b) where there has been more than one such cessation of employment of the contributor—the later or latest of those cessations of employment.

**First State Superannuation Fund** means the First State Superannuation Fund established under the [First State Superannuation Act 1992](#).

**full-time employee** means an employee whose salary ratio is equal to 1.

**Fund** means the State Authorities Superannuation Fund established under this Act.

**maximum benefit points** has the meaning given by section 36.

**part-time employee** means an employee whose salary ratio is less than 1 but at least 0.1.

**penalty**, in relation to a Commonwealth taxation law, includes (but is not limited to):

- (a) a penalty rate of taxation under that law, and
- (b) the loss of a concessional rate of taxation under that law.

**police executive officer** means an executive officer within the meaning of Part 5 of the [Police Service Act 1990](#).

**preserved benefit**, in relation to a contributor, means a benefit preserved under section 43AAA.

**prospective benefit points** has the meaning given by section 36.

**relevant Commonwealth superannuation standard** means a standard that would be applicable under the [Superannuation Industry \(Supervision\) Act 1993](#) of the Commonwealth if the Fund was a regulated superannuation fund under that Act.

**resign** means cease to be employed by an employer, but does not include:

- (a) retrenchment, discharge or dismissal, or
- (b) ceasing to be employed because of death, or
- (c) ceasing to be employed on the privatisation of an employer, or
- (d) ceasing to be employed on the grounds of incapacity in circumstances which entitle the employee to a benefit.

**retire** means cease (otherwise than by reason of death) in any manner to be employed by an employer on or after reaching the early retirement age.

**retrenchment**, in relation to a contributor, means the termination of the employment of the contributor with an employer where the employment is expressed by the employer to be:

- (a) compulsorily terminated by the employer on the ground that:
- (i) the employer no longer requires the contributor's services and, on termination of the contributor's employment, does not propose to fill the contributor's position,
  - (ii) the work that the contributor was engaged to perform has been completed, or
  - (iii) the amount of work that the employer requires to be performed has diminished and, due to that fact, it has become necessary to reduce the number of employees employed by the employer, or
- (b) terminated as a result of the acceptance by the contributor of an offer by the employer of terms of retrenchment made on a ground specified in paragraph (a).

**salary**, in relation to a contributor, means salary of the contributor, determined in accordance with section 4 or 4A and expressed as an annual rate.

**salary ratio**, in relation to a contributor at any time during a contribution period, means the number ascertained by dividing the salary of the contributor at the commencement of the contribution period by the attributed salary of the contributor at that commencement.

**senior executive officer** means:

- (a) a senior executive officer within the meaning of the [Public Sector Management Act 1988](#), or
- (b) an employee (not being an officer referred to in paragraph (a)) of an authority specified in Schedule 1, being an employee who holds an office designated by the Director-General of the Premier's Department as the office of a senior executive officer.

**spouse** of a deceased contributor or deceased former contributor means the widow or widower, as the case may be, of the contributor or former contributor.

**STC** means the SAS Trustee Corporation established under the [Superannuation Administration Act 1996](#).

**superannuation contributions surcharge** means the superannuation contributions surcharge imposed under the [Superannuation Contributions Tax Imposition Act 1997](#) of the Commonwealth.

**superannuation guarantee shortfall** has the same meaning as in the [Superannuation Guarantee \(Administration\) Act 1992](#) of the Commonwealth.

**superannuation scheme** means a scheme, fund or arrangement (whether or not established by an Act) under which any superannuation or retirement benefits are

provided by an employer.

**superannuation year** means the year commencing on 1 April 1988 and each subsequent year commencing on 1 April.

**this Act** includes the regulations.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) A reference in this Act to an authority where used in or in connection with the definition of **employer** is a reference to an authority, organisation, corporation, person or other entity.

(4) If the inclusion of an employer in Schedule 1 is expressed to be limited in any respect, this Act has effect in relation to the employer subject to the limitation.

#### 4 Salary

(1) For the purposes of this Act, **salary**, in relation to a contributor (other than an executive officer) means the sum of:

- (a) the remuneration, salary or wages payable in money to the contributor in the contributor's capacity as a contributor, as reported to STC from time to time by the contributor's employer, including:
  - (i) a loading in respect of any shift allowance, as determined in accordance with the regulations, and
  - (ii) other allowances payable in money that are of a kind included within the value of leave paid on termination of employment, and
  - (iii) weekly workers compensation paid to the contributor as from a date determined by STC under subsection (1B),

but not including the excluded amounts or allowances referred to in subsection (2), and

- (b) if approved employment benefits are provided to the contributor, the cost of providing the approved employment benefits, as determined by the Minister, with the concurrence of the Treasurer.

(1A) The weekly workers compensation to be treated as salary for the purposes of this Act does not include any amount by which the aggregate of:

- (a) the weekly workers compensation paid to an injured contributor, and
  - (b) the salary actually paid to the contributor while partially incapacitated, exceeds the salary that the contributor would probably have been earning but for the injury (assuming the contributor had continued to be employed in the same or some comparable employment).
- (1B) STC may determine a date as from which weekly workers compensation paid to a contributor is to be treated as salary for the purposes of this Act, being a date not earlier than:
- (a) 1 April 1988 (the date of commencement of this Act), or
  - (b) if the liability to pay weekly workers compensation in respect of the contributor first arose on a date later than 1 April 1988—that later date.
- (2) The excluded amounts or allowances are:
- (a) an amount paid for overtime or as a bonus, or an allowance instead of overtime,
  - (b) except to the extent determined in accordance with the regulations, as referred to in subsection (1) (a)—an amount paid as shift allowance,
  - (c) except to the extent that this section otherwise provides—a relieving allowance,
  - (d) an expense allowance or an allowance for travelling, subsistence or other expenses,
  - (e) an equipment allowance,
  - (f) an amount paid for rent or as a residence, housing or quarters allowance, and
  - (g) an amount of weekly workers compensation excluded by subsection (1A).
- (3) If a contributor's employer, or a person authorised to do so on behalf of the employer, certifies in writing to STC that a relieving allowance to be, or being, paid to the contributor in the contributor's capacity as an employee is likely to be paid for a continuous period of 1 year (whether or not the period is partly before the date of the certificate), the allowance is, as from:
- (a) the date on which the certificate is lodged with STC, or
  - (b) the date from which the allowance becomes payable,
- whichever is the later, salary for the purposes of this Act.
- (4) If a relieving allowance has been paid to a contributor in the contributor's capacity as an employee for a continuous period of 1 year that ends after the appointed day and, during that period, the allowance has not been treated as part of the contributor's

salary in accordance with subsection (3), the allowance shall, as from the expiration of that period of 1 year, be treated as part of the contributor's salary while its payment to the contributor continues.

- (4A) For the purposes of subsection (4), a reference to a continuous period of 1 year in relation to a contributor who is employed in an educational institution is to be read as a reference to the academic year of the institution.
- (5) If a contributor is on secondment to another employer, the salary of the contributor for the purposes of this Act is the salary paid or payable to the contributor by the other employer.
- (6) The Governor may, by order in writing, declare unconditionally, or subject to conditions, that subsection (7) applies:
- (a) to a contributor specified in the order who is on secondment but not to another employer, and
  - (b) generally during the period of that secondment, or during such period as is specified in the order, being, in either case, a period commencing before, on or after the date of the order.
- (7) During the period in which this subsection is declared pursuant to subsection (6) to apply to a contributor on secondment, the contributor's salary shall, for the purposes of this Act, be that paid or payable in respect of the employment to which he or she is seconded.
- (8) In this section:

**academic year**, in relation to an educational institution, means a continuous period commencing on the first day of any academic term of the institution and ending on the day before the first day of the corresponding academic term in the following calendar year.

**approved employment benefit** means a benefit provided to a contributor at the cost of the contributor's employer (being a benefit of a private nature) that is approved by the Minister, with the concurrence of the Treasurer, for the purposes of this section in relation to the contributor or a class of employees of which the contributor is a member.

**shift allowance** means an allowance paid to an employee in respect of shift work performed by the employee, and includes amounts paid as penalty rates.

**weekly workers compensation**, in relation to a contributor, means weekly payments of compensation under the *Workers Compensation Act 1987* (or the provisions of the *Workers Compensation Act 1926* as applied by that Act) payable to the contributor because the contributor is partially incapacitated for work through

injury.

#### **4A Salary of executive officers**

- (1) **Definition of salary** For the purposes of this Act, the **salary** of an executive officer is the salary as last nominated or changed in accordance with this section.
- (2) **Nomination of salary on initial and subsequent appointments** An amount of salary for the purposes of this Act must be nominated to an executive officer's employer by the officer, on, or as soon as practicable after, being appointed as an executive officer. An amount may also be nominated to the officer's employer by the officer on, or as soon as practicable after, being reappointed, or appointed to another position, as an executive officer.
- (3) **Amount of salary** The amount nominated is to be not less than the monetary remuneration payable to the executive officer at the date of nomination and not more than the total value of the remuneration package paid to the officer (less the cost of providing employer's contributions to superannuation and any performance-related incentive payment).
- (4) **Failure to nominate salary** If an executive officer fails to nominate an amount of salary within 28 days of first being appointed as an executive officer or within such further period as STC may allow, the officer is taken to have nominated an amount of salary that is equal to the monetary remuneration payable to the officer at the end of the applicable period.
- (5) **Reduction in nominated salary** An executive officer may, from time to time, by notice to the officer's employer elect to reduce the amount of salary nominated under this section, but not so that the amount is less than the monetary remuneration payable to the officer at the date of the election.
- (6) **Increase in nominated salary** An executive officer may, from time to time, by notice to the officer's employer elect to increase the amount of salary nominated under this section, but not so as to increase the amount nominated by a percentage of that amount that is more than the percentage by which the remuneration package of the officer has increased since the amount of salary was last nominated or changed.
- (7) **Nominations and elections** An employer must notify STC of a nomination or election under this section. Any such nomination or election takes effect on the date of notification to STC or on such other date as STC may determine with the consent of the executive officer concerned.
- (8) **Effect of changes in packages** Nothing in this section requires the nominated amount of salary to be increased if, because of a variation in the remuneration package of an executive officer or in the proportions of the remuneration package comprising monetary remuneration and employment benefits of the officer, the amount of salary

as last nominated or changed for the purposes of this section is less than the monetary remuneration of the officer.

- (9) **Transitional provision relating to nomination of salary by executive officers** An executive officer may, within 3 months after the commencement of this subsection, nominate a new amount of salary in accordance with this section if, immediately before the commencement of this subsection, the officer was an executive officer.
- (10) **Monetary remuneration** In this section, the **monetary remuneration** payable to an executive officer is:
- (a) if the officer is a chief executive officer or senior executive officer, within the meaning of the *Public Sector Management Act 1988*, or a police executive officer, the monetary remuneration payable in accordance with the *Public Sector Management Act 1988* or the *Police Service Act 1990*, as the case requires, or
  - (b) if the officer is an office holder nominated for the purposes of section 11A of the *Statutory and Other Offices Remuneration Act 1975*, the remuneration payable to the officer as reduced under that section by the cost of employment benefits provided to the officer, or
  - (c) in the case of any other executive officer, the monetary remuneration payable to the officer.

## 5 Secondment of employee otherwise than to employer

- (1) The Governor may, by order in writing, declare unconditionally or subject to conditions that subsection (2) applies:
- (a) to a contributor specified in the order who is on secondment but not to another employer, and
  - (b) generally during the period of that secondment, or during such period as is specified in the order being, in either case, a period commencing before, on or after the date of the order.
- (2) During the period in which this subsection is declared under subsection (1) to apply to a contributor, the employer specified in the declaration shall be deemed to be the employer from whose employment the contributor is seconded.

## 6 Part-time employment with more than one employer

- (1) Where a contributor is in part-time employment with more than one employer at the same time, this Act applies to the contributor separately in relation to each such employment as if, in relation to each such employment, the contributor were a different person.
- (2) (Repealed)



## **7 Employees of Crown etc**

An employee of the Crown, the Government or a Minister of the Crown shall, for the purposes of this Act, be deemed to be employed by such person or organisation as may be prescribed.

## **8 Provisions respecting certain employees**

(1) Members of the Police Service are, for the purposes of this Act, to be taken to be employed in the Police Service by the Crown.

(2) (Repealed)

## **9 Persons not subject to Act**

Schedule 2 has effect.

## **10 Savings and transitional provisions**

Schedules 3 and 4 have effect.

# **Part 2 The State Authorities Superannuation Fund**

## **11 Establishment of the Fund**

(1) The Board shall establish, and shall maintain and administer, the State Authorities Superannuation Fund.

(2) The Public Authorities Superannuation Fund established under the *Public Authorities Superannuation Act 1985* is amalgamated with, and forms part of, the Fund.

(3) STC shall cause to be paid to the Fund:

(a) contributions or payments made by employers and employees,

(b) income derived from investment of the Fund, and any profit made from realisation of any investment of the Fund,

(c) money borrowed for the purposes of the Fund, and

(d) any other amounts payable to the Fund.

(4) STC shall cause to be paid from the Fund:

(a) by transfer from the Fund to the Administration Account—administration costs incurred by STC under the *Superannuation Administration Act 1996*,

(b) such amounts as are necessary to satisfy any liability of the Fund with respect to tax payable under any Commonwealth taxation law or an amount of superannuation contributions surcharge payable,

- (c) the benefits payable under this Act and any other prescribed superannuation scheme, and
  - (d) any other amounts payable from the Fund.
- (5) If a loss is incurred in realising any investment forming part of the assets of the Fund, the Fund is accordingly reduced by the amount of that loss.

## **12 Contributors' accounts**

- (1) STC shall establish and maintain within the Fund a separate account for each contributor.
- (2) There shall be credited to a contributor's account the contributions made by the contributor to the Fund.
- (3) There shall be debited to a contributor's account:
  - (a) where the contributor is covered for the additional benefit—the amount of the additional benefit levy,
  - (b) such part of the amount of any benefit paid to the contributor as comprises the contributor-financed benefit, and
  - (c) administration costs incurred by STC under the *Superannuation Administration Act 1996* in relation to the contributor.

## **13 Additional Benefit Reserve Fund**

- (1) STC shall establish and maintain an Additional Benefit Reserve Fund.
- (2) There shall be credited to the Reserve Fund the amounts debited under section 12 (3) (a).
- (3) There shall be debited to the Reserve Fund one-quarter of any payment of any additional benefits.

## **14 Reserves for employers**

- (1) STC shall, in relation to each employer specified in Part 1 of Schedule 1, establish and maintain within the Fund a separate employer reserve.
- (2) STC shall, in relation to each of Parts 2 and 3 of Schedule 1, establish and maintain within the Fund a separate employer reserve.
- (3) There shall be credited to such an employer reserve the contributions made by the employer or employers to whom the reserve relates.
- (4) There shall be debited to such an employer reserve:

- (a) the amount of the employer-financed benefit (including three-quarters of any payment of any additional benefits) included in the amount of any benefit paid to, or in relation to, a contributor who, immediately before the benefit became payable, was an employee of the employer or an employer to whom the reserve relates, and
  - (b) administration costs incurred by STC under the *Superannuation Administration Act 1996* in relation to the employer or an employer to whom the reserve relates.
- (5) If the amount standing to the credit of the employer reserve established for Part 3 of Schedule 1 is insufficient to meet the amounts payable from the reserve, the deficiency shall be recouped from the Consolidated Fund which is, to the necessary extent, appropriated accordingly.
- (6) STC may, with the concurrence of the Treasurer and after obtaining actuarial advice, adjust the amount credited to an employer reserve by crediting or debiting an amount, if it appears to STC appropriate to do so because of a change in the constitution or nature of an employer.
- (7) Subsection (6) does not apply to a change in the constitution or nature of an employer because of a Government privatisation initiative.

#### **14A Additional payments by certain employers**

- (1) If the amount credited to an employer's reserve maintained for an employer specified in Part 1 of Schedule 1 is insufficient to meet the amounts payable from the reserve in respect of the employer, STC may require the employer to pay an amount into the Fund that is equal to the deficiency.
- (2) Any amount that is not paid by an employer within 14 days of written notice of the requirement to pay the amount being given by STC to the employer is a debt owed to STC and may be recovered by STC accordingly.
- (3) This section does not apply to a change in the constitution or nature of an employer because of a Government privatisation initiative.

#### **14B Source of administration costs payments**

- (1) The administration costs payable in respect of the superannuation scheme established under this Act are to be paid from employer reserves and contributors' accounts established in accordance with this Act.
- (2) The administration costs payable in respect of deferred benefits or preserved benefits are to be paid from contributors' accounts established in accordance with this Act.
- (3) The administration costs payable in respect of pensions provided under this Act are to be paid from employer reserves established in accordance with this Act.

## **15 Other accounts and reserves**

STC may establish and maintain within the Fund such other accounts and reserves as, in the opinion of STC, are necessary or convenient for the administration of the Fund and this Act.

## **16 Adjustment of accounts and reserves for interest etc**

- (1) STC shall, from time to time, adjust each of the accounts and reserves established under this Part at a rate fixed by STC, having regard to the income of the Fund and such other matters as STC considers relevant.
- (2) STC may, for the purpose of adjusting a contributor's account before paying out the balance at credit in the account, fix a rate for that purpose only.

## **17 Funds, accounts and reserves generally**

- (1) There may be credited to any fund, account or reserve established by or under this Act any amount that is required or permitted by or under this or any other Act to be credited to it.
- (2) There may be debited to any fund, account or reserve established by or under this Act any amount that is required or permitted by or under this or any other Act to be debited to it.

## **18 Actuarial investigation**

- (1) An investigation as to the state and sufficiency of the funds established under this Act shall:
  - (a) as at the appointed day, and
  - (b) as at 30 June 1994 and at the end of each succeeding period of 3 years,be made by an actuary or actuaries appointed by STC.
- (2) Actuaries appointed under this section shall complete their investigation, and shall report the result to STC, not later than 6 months after the date as at which the investigation is made.
- (2A) The report referred to in subsection (2) must:
  - (a) include a statement of the value of the assets of the Fund, and
  - (b) include a statement of any liability for benefit payments that are not expected to be covered by:
    - (i) the assets of the Fund, or
    - (ii) any future contributions to, or earnings of, the Fund, or

- (iii) any guarantee by the Government or by any of its agencies, or
  - (iv) an appropriation in respect of the Fund.
- (3) STC shall, not later than 1 month after it receives a report under this section, forward the report to the Minister with such comments as it thinks fit.
- (4) The Minister may, in relation to a particular investigation, extend or further extend the period referred to in subsection (2) if the Minister considers that special circumstances exist to justify an extension or further extension.
- (5) The Minister may, in relation to a particular investigation, extend or further extend the period referred to in subsection (3) if the Minister considers that special circumstances exist to justify an extension or further extension.

### **Part 3 Contributions by employees**

#### **19 Election to contribute to the Fund**

- (1) An employee may at any time lodge with STC an election to contribute to the Fund.
- (2) An election under subsection (1) shall:
- (a) be in a form approved by STC for the purposes of this section,
  - (b) specify the rate at which the employee desires, subject to this Act, to contribute to the Fund, being the rate of 1, 2, 3, 4, 5, 6, 7, 8 or 9 per cent of the employee's salary,
  - (c) be supported by the certificate by the employee's employer referred to in the definition of **employee** in section 3 (1), and
  - (d) be supported by a further certificate by the employee's employer that is in a form approved by STC.
- (3) The further certificate must state:
- (a) the date of birth of the employee,
  - (b) the salary (and, in the case of a part-time employee, the attributed salary) of the employee,
  - (c) that the employer has no reason to believe that the employee will not continue to be an employee within the meaning of this Act for at least 1 year from the date of the certificate, and
  - (d) such other matters as STC considers necessary or convenient for the purposes of this section.

- (4) A failure to comply with subsection (2) (b) does not invalidate an election and, in the event of such a failure, the form of election shall be deemed to specify a rate of 1 per cent.
- (5) An election made by an employee under subsection (1) is ineffective if, at the time the election would take effect, the employee would be of or above the age of 70 years.
- (6) An election made by an employee under subsection (1) (other than an election referred to in subsection (5)) takes effect not later than the first day of the second contribution period after that in which the election is received in the office of STC, but, if an employee makes a subsequent election under section 27 (Variations of contribution rate), ceases to be in force immediately before the subsequent election takes effect.
- (7) If STC approves, an employee may, before an election made under this section takes effect, vary the election.
- (8) If a contributor to another superannuation scheme would become (but for being such a contributor) entitled to elect to contribute to the Fund by reason of a change of work category or for any other reason:
  - (a) the contributor shall be deemed not to be a contributor to the other superannuation scheme for the purposes of making the election,
  - (b) the contributor may make the election on condition that STC approves an application made by the person under section 20 to be covered for the additional benefit, and
  - (c) the election takes effect as at a date determined by STC.

## **20 Additional benefit**

- (1) An employee under the early retirement age may lodge with STC an application to be covered for the additional benefit.
- (2) Such an application may be made:
  - (a) by an employee who is not a contributor—at the time the employee makes an election under section 19 (Election to contribute to the Fund), or
  - (b) except to the extent that section 23 or 24 (5) otherwise provides—at any time by a contributor.
- (3) Such an application shall:
  - (a) be in a form approved by STC for the purposes of this section, and
  - (b) be accompanied by such documents, evidence and information as STC may

require for the purposes of this section.

## **21 Medical examination**

- (1) This section applies to an application made under section 20 by a person to be covered for the additional benefit.
- (2) STC may require the applicant:
  - (a) to submit to such medical examinations as may be required by STC, and
  - (b) to provide such medical reports, evidence and information as are specified by STC.
- (3) Where the applicant:
  - (a) fails, in the opinion of STC, to pass a medical examination to which the applicant has submitted in accordance with a requirement under this section, or
  - (b) fails to comply with a requirement under this section,STC shall refuse the application.
- (4) For the purpose of deciding whether or not to approve the application, STC:
  - (a) may, under subsection (2), require the applicant to submit to further medical examinations or provide further medical reports, and
  - (b) may obtain such evaluations of medical examinations or medical reports as it thinks fit.

## **22 Approval of application**

- (1) If STC approves an application made under section 20:
  - (a) STC shall appoint the day on and from which the applicant's cover for the additional benefit is to commence and shall notify the applicant accordingly, and
  - (b) the applicant becomes, and remains, liable for payment of the additional benefit levy in accordance with subsection (2).
- (2) Payment by a contributor of the additional benefit levy:
  - (a) shall commence on a date appointed by STC and shall be made at a rate determined by STC and at times so determined,
  - (b) shall be effected by transfer from the contributor's account, and
  - (c) shall cease when the contributor no longer has available to be taken into account any prospective benefit points.

### **23 Refusal of application**

If an application made under section 20 is refused, the applicant may not again make such an application before the expiration of:

- (a) the period of 3 years that next succeeds the refusal, or
- (b) in a particular case—such shorter period as STC may decide.

### **24 Revocation of approval**

- (1) If, after approving an application made under section 20, STC forms the opinion that, in relation to the application, or to a medical examination of the applicant, an untrue statement within the meaning of section 48 was made and that its approval would not have been given had the untrue statement not been made, STC shall, subject to this section, revoke the approval.
- (2) For the purpose of deciding whether or not, in relation to an application or a medical examination of an applicant, it is of the opinion referred to in subsection (1), STC may, if it thinks fit, require the applicant, within a time specified by STC or within such further time as STC may allow, to provide information, or to undergo a medical examination, or to provide medical reports, as specified by STC.
- (3) On the expiration of the time, or further time, referred to in subsection (2), STC may, whether or not the requirement so referred to is complied with, proceed to decide whether or not it is of the opinion referred to in subsection (1).
- (4) If the applicant fails to comply with a requirement under subsection (2), STC may revoke the approval.
- (4A) An approval may be revoked whether it relates to a contributor or a former contributor and the revocation has effect as if the contributor or former contributor had never been entitled to the cover.
- (5) If, under subsection (1) or (4), STC revokes its approval of an application:
  - (a) the applicant (if a contributor) ceases to be covered for the additional benefit and ceases to be liable to pay the additional benefit levy,
  - (b) the applicant (if a contributor) is disqualified for 3 years from again applying to be covered for the additional benefit, and
  - (c) the amount of any additional benefit levy paid by the applicant (whether a contributor or a former contributor) before revocation of the approval is not recoverable.

### **25 Liability to contribute**

- (1) Where an election under section 19 takes effect, the person who made the election



becomes, and remains, liable to pay to the Fund the contributions prescribed by this Part and, except as provided by sections 27, 28, 29 and 35A, to pay those contributions in respect of successive contribution periods:

- (a) commencing with the contribution period in which the contributor's entry date occurs, and
  - (b) ending with the last complete contribution period ending on or before the contributor's exit date.
- (2) A contributor's contributions to the Fund shall be calculated on the basis of the contribution periods applicable to the contributor and a contribution payable in respect of a contribution period shall be paid to STC within 7 days after the last day of that period.
- (3) A contributor's contributions to the Fund are payable to STC by the employer by which the contributor is employed and the employer is entitled to deduct those contributions from any amount or amounts that may become payable by the employer to the contributor, whether as salary or otherwise.
- (4) STC may, in a particular case, charge interest calculated on a daily basis at a rate determined by STC on a contribution to the Fund for any period during which the contribution remains unpaid after the time allowed for payment under subsection (2) and any such interest:
- (a) shall be paid to STC by the employer in default, and
  - (b) is not chargeable against any employee.
- (5) An employee is not entitled to contribute to the Fund, and STC is not to accept a contribution to the Fund offered by an employee, unless the employee is under 70 years of age.
- (6) A contributor is not entitled to accrue benefit points after attaining the age of 70 years.

## **26 Salary basis for contributions**

A contributor's contributions to the Fund during a superannuation year shall be based on the salary paid to the contributor by his or her employer at the rate applicable as at:

- (a) 31 December last preceding the commencement of the superannuation year, or
- (b) the contributor's entry date,

whichever is the later.

## **27 Variations of contribution rate**

- (1) A contributor may, during the period that commences at the beginning of a superannuation year and ends on the next succeeding 31 December or such later date as STC may approve, lodge with STC an election to vary the rate per cent of the contributor's salary to be paid to the Fund.
- (2) An election under subsection (1):
  - (a) shall be in a form approved by STC for the purposes of this section,
  - (b) shall specify the varied rate per cent (being 1, 2, 3, 4, 5, 6, 7, 8 or 9 per cent) of the contributor's salary to be paid to the Fund, and
  - (c) takes effect on 1 April next succeeding receipt of the election in the office of STC.
- (3) Where the nature of the employment of a contributor changes from full-time to part-time or from part-time to full-time, or the amount of time worked part-time by a contributor changes, the amount of the contributor's contribution to the Fund in respect of the contribution period during which the change operates, and each succeeding contribution period until varied in accordance with this Act, is the amount calculated by multiplying by the contributor's salary ratio at the commencement of the period the amount of the contribution that would be payable on the basis of the contributor's attributed salary last applicable for the purpose of calculating contributions to the Fund.
- (4) Except as provided by subsection (3) or to the extent that STC upon the application of a contributor otherwise directs, a reduction in the salary of the contributor below that upon which his or her contributions are based does not, until the beginning of the superannuation year that next succeeds the reduction, affect the amount of the contribution that the contributor is required to pay to the Fund.
- (5) Except in the case of a contributor who applies for a direction of STC under subsection (4), where a contributor's attributed salary is reduced as a consequence of the contributor's ill-health or in circumstances considered by the contributor to be special, the contributor may apply to STC in a form that:
  - (a) is approved by STC for the purposes of this subsection, and
  - (b) is accompanied by such evidence of the cause of the reduction in salary as STC requires,for the application of subsection (6) to the contributor.
- (6) Where STC approves an application by a contributor under subsection (5), the attributed salary of the contributor shall, for the purposes of this Act, be deemed to be the same as the contributor's attributed salary immediately before the reduction until:

(a) the beginning of the superannuation year that next succeeds a 31 December as at which the contributor's attributed salary is equal to or greater than his or her attributed salary immediately before the reduction, or

(b) STC's approval is revoked on the application of the contributor,

whichever first occurs.

(7) Subject to section 28, an election that takes effect under this section remains in force until a further election made under this section takes effect.

## **28 Variations of contribution rate: hardship**

(1) Despite section 27 (1), STC may, if it is satisfied that a continuation of a contributor's rate of contribution to the Fund would result in financial hardship for the contributor, accept at any time an election under that subsection to reduce, as from a date determined by STC having regard to the circumstances of the contributor, the rate per cent of the contributor's salary to be paid to the Fund.

(2) Despite section 27 (1), an election referred to in subsection (1) may specify as the varied rate the rate of 0 per cent.

(3) During a period when a rate of 0 per cent is in force, no contributions are payable by the contributor.

(4) After an election referred to in subsection (1) is accepted by STC, STC shall refund any resulting excess of contributions made by the contributor to the Fund after the date determined by STC for commencement of the new rate.

(5) STC's acceptance of an election for a rate of 0 per cent shall be given for a limited period or periods.

## **29 Contributions during leave without pay and other matters**

(1) In this section:

**leave without pay** means a period of leave from employment with an employer (otherwise than on secondment as referred to in section 4) during which the contributor is not entitled to receive payment of salary from the employer.

**prescribed leave** means leave without pay during which the contributor on leave is absent from employment with an employer:

(a) pursuant to a grant of sick leave,

(b) for a period during which the contributor receives periodic payments under an Act relating to workers' compensation,

(c) pursuant to a grant of maternity leave,

- (d) pursuant to an agreement with the employer for the secondment of the contributor to employment that is not employment with an employer,
  - (e) to enable the contributor to perform union duties unless, in a particular case, the employer certifies that this paragraph is not to apply,
  - (f) to enable the contributor to perform duties that the employer certifies to be in the interests of the employer or the State,
  - (g) on service with the naval, military or air forces of the Commonwealth, or
  - (h) in circumstances approved by STC for the purposes of this section.
- (2) A contributor who takes leave without pay that is prescribed leave is liable to make contributions to the Fund in respect of the contribution periods occurring wholly or partly while on prescribed leave.
- (2A) However, a contributor who takes a single period of prescribed leave that is sick leave or maternity leave is not liable to make contributions to the Fund in respect of any contribution periods during the period of leave occurring wholly or partly more than 2 years after the period of leave commences.
- (3) A contributor who takes leave without pay that is not prescribed leave:
- (a) is liable to make contributions to the Fund in respect of:
    - (i) a contribution period that begins before but finishes after the start of that leave, and
    - (ii) a contribution period that begins before but finishes after the end of that leave, and
  - (b) is not liable or entitled to make contributions to the Fund in respect of:
    - (i) a contribution period that begins on the first day of that leave and finishes before the end of that leave, or
    - (ii) a contribution period that, having begun after the start of that leave, finishes on the last day of that leave, or
    - (iii) a contribution period that falls between a contribution period referred to in paragraph (a) (i) or subparagraph (i) and a contribution period referred to in paragraph (a) (ii) or subparagraph (ii) (whichever is relevant).
- (3A) For the purposes of this Act, a contributor who is employed by an employer for less than 10 hours a week for a single period of more than 2 years is not liable to make contributions to the Fund in respect of any contribution periods occurring wholly or partly more than 2 years after the period commences and while the contributor is so employed for less than 10 hours a week.

- (4) A contributor liable to make contributions under subsection (2) or (3) shall pay to the Fund in accordance with directions given by STC such contributions as would have been deducted from the salary of the contributor in accordance with section 25 if the contributor had continued to be paid salary by the employer during the contribution period or periods concerned at the rate at which the contributor would have been paid but for being on leave without pay.
- (5) A contribution period in respect of which a contributor is not liable to make contributions to the Fund under this section is not an applicable contribution period in relation to the contributor.

### **29A Other contributions by contributors**

- (1) A contributor, who is not required by this Act to contribute to the Fund under this Act merely because the contributor is on authorised leave without pay as an employee, is entitled to remain a contributor to the Fund even though the contributor is not contributing to the Fund.
- (2) This section applies to a contributor only if:
  - (a) the leave is for the purposes of raising children of whom the contributor is a parent, or for whom he or she has assumed the responsibility of a parent, and
  - (b) he or she has been on that leave for less than 7 years consecutively, and
  - (c) he or she has a statutory or contractual right to resume employment at the end of the leave.
- (3) A contribution period in respect of which a contributor is a contributor to whom this section applies is not an applicable contribution period in relation to the contributor.
- (4) This section has effect despite section 29.
- (5) In this section:

**authorised leave** means:

  - (a) leave approved by the contributor's employer, or
  - (b) leave authorised by an agreement certified, or an award made, by a tribunal or body having the authority to do so under a law of the State or the Commonwealth.

### **30 Resumption of contributions after break in employment**

- (1) This section applies to a contributor where the employment of the contributor with an employer:
  - (a) ceases in circumstances entitling the contributor to be paid a benefit under section 40 (Benefit on partial and permanent invalidity before early retirement

age),

- (b) ceases in circumstances entitling the contributor to be paid a benefit under section 41 (Benefit on resignation, dismissal or discharge before early retirement age) but the contributor does not elect to make provision for a deferred benefit, or
- (c) ceases in circumstances entitling the contributor to be paid a benefit under section 42 (Benefit on retrenchment before early retirement age),

and the contributor has not made an application for payment of the benefit.

- (2) If the contributor resumes employment as an employee (with the same or any other employer) before the end of the period of 3 months after the contributor ceased employment in circumstances referred to in subsection (1), the contributor may apply to STC to resume making contributions to the Fund.
- (3) If STC approves the application:
  - (a) any intervening contribution period is taken to be an applicable contribution period in relation to the contributor as an employee of the employer with whom the contributor resumed employment, and
  - (b) the contributor and the employer with whom the contributor has resumed employment are liable to make contributions to the Fund in respect of the intervening contribution period or periods, as if the contributor had been employed with the employer for the duration of the intervening contribution period or periods.
- (4) A contribution in respect of any intervening contribution period is payable in accordance with such directions as may be given by STC.
- (5) In this section, an ***intervening contribution period*** means any contribution period that:
  - (a) begins before a contributor ceases employment in the circumstances referred to in subsection (1) and has not finished when the contributor ceases that employment, or
  - (b) begins after a contributor ceases employment in the circumstances referred to in subsection (1) and finishes before the contributor's application under subsection (2) takes effect.

### **30A Contributor who is executive officer**

- (1) When a contributor becomes an executive officer, the contributor must:
  - (a) elect to continue to contribute to the Fund, or
  - (b) elect to make provision for a benefit provided by section 43 (6).

- (2) If a contributor fails to make an election under subsection (1) within 2 months of being required to make that election, the contributor, for the purposes of this section, is to be taken to have elected to continue to contribute to the Fund.
- (3) Nothing in this Act prevents a contributor who elects to continue to contribute to the Fund from also contributing to the First State Superannuation Fund or another superannuation scheme and such a contributor is entitled to benefits in accordance with this Act despite being a member of that Fund or another scheme.
- (4) If a contributor elects to continue to contribute to the Fund, the contributor may, at any time thereafter while being an executive officer, elect to make provision for a benefit provided by section 43 (6).
- (5) A contributor who elects, under this section, to make provision for a benefit provided by section 43 (6):
  - (a) is entitled to make provision for the benefit even though he or she is not entitled to a benefit (including any interest paid by STC) of or exceeding the amount prescribed for the purposes of section 43 (1), and
  - (b) is not entitled to a benefit payable under any other provision of this Act, and
  - (c) is not entitled to elect to take the benefit provided by section 43 (7), and
  - (d) is not entitled to be paid the benefit provided by section 43 (6) until on or after first ceasing to be an employee after making the election and unless there exist the circumstances set out in section 43 (3) or paragraph (e), and
  - (e) may elect at any time before the benefit is paid to have the benefit paid to the credit of the contributor in the First State Superannuation Fund, if the contributor is a member or is eligible to become a member of that Fund.
- (6) If a contributor makes an election under subsection (5) (e):
  - (a) the contributor is entitled to be paid the benefit provided by section 43 (6), but only in accordance with subsection (5) (d) or this subsection, and
  - (b) STC must, as soon as practicable thereafter, pay to the FSS Trustee Corporation established under the [Superannuation Administration Act 1996](#) the amount of the benefit to which the contributor is entitled, and
  - (c) the FSS Trustee Corporation must credit the amount to the account established or to be established for the person in the First State Superannuation Fund.
- (7) If a contributor makes an election under subsection (1) (b) or (4) within 12 months after being:
  - (a) appointed as a chief executive officer or senior executive officer or a police

executive officer, or

(b) nominated as an office holder for the purposes of section 11A of the *Statutory and Other Offices Remuneration Act 1975*,

the salary of the contributor, for the purpose of determining the amount of the benefit to which the election relates, is to be taken to be his or her salary immediately before that appointment or nomination took effect.

## **Part 4 Contributions by employers**

### **31 Contributions by employer under Part 1 of Schedule 1 (The Crown and other employers)**

Where a contributor is employed by an employer specified in Part 1 of Schedule 1, the employer shall pay to the Fund an amount equal to a multiple of the contributions payable to the Fund by the contributor, being a multiple determined by STC, in relation to the employer, with the concurrence of the Treasurer.

### **32 Contributions by employer under Part 2 of Schedule 1 (Local government and other authorities)**

- (1) If a contributor is employed by an employer specified in Part 2 of Schedule 1, the employer must pay to the Fund contributions at a rate determined by STC.
- (2) The rate is to be determined by STC with the concurrence of the Treasurer and after obtaining actuarial advice.
- (3) In determining the contributions payable by an employer specified in Part 2 of Schedule 1, STC is to have regard to the amount required to meet the full costs of the liabilities under this Act of all employers specified in Part 2 of Schedule 1.
- (4) STC may, with the concurrence of the Treasurer, require any such employer to pay into the Fund additional contributions for a specified period if it appears to STC that there is insufficient money in the reserve for employers specified in Part 2 of Schedule 1 to meet the employers' liabilities under this Act.

### **33 Contributions by employer under Part 3 of Schedule 1 (Hospitals and other bodies)**

Where a contributor is employed by an employer specified in Part 3 of Schedule 1, the employer shall pay to the Fund an amount equal to 1.0 (or such higher number as may be prescribed with the concurrence of the Treasurer) times the contributions payable to the Fund by the contributor while employed by the employer.

### **34 Basis and making of contributions**

Contributions under this Part shall be calculated on the basis of contribution periods, and the contributions payable in respect of a contribution period shall be paid to STC within 7



days after the last day of the contribution period to which they relate.

#### **34A Variation of employer contributions**

- (1) Despite any other provision of this Part, STC may determine that the contributions payable by an employer specified in Part 1 of Schedule 1 in respect of a contributor are to be determined, or are payable, on a basis other than that set out in this Part.
- (2) STC may only make such a determination with the concurrence of the Treasurer.

#### **35 Transfers of credits between employers of transferred contributors**

- (1) In this section:

**transferred contributor** means a contributor who ceases to be employed by an employer and becomes employed by another employer and who does not apply for payment of a benefit under this Act in respect of the former employment.

**transfer value**, in relation to a transferred contributor, means an amount equal to the benefit that would have been payable if the transferred contributor, on becoming employed by the new employer, had elected to make provision for a deferred benefit under section 43 (1) and the benefit provided by section 43 (6) (b) had thereupon become payable.

- (2) STC shall debit the employer reserve of the former employer with the transfer value referable to a transferred contributor and shall credit the employer reserve of the new employer with that value.
- (3) (Repealed)

#### **35A Acceptance of contributions**

- (1) Despite any other provision of this Act, an employer is not required to make a contribution to the Fund in respect of an employee, and an employee may not contribute to the Fund, during any period specified by STC for which STC determines that it must not accept contributions in respect of the employee.
- (2) STC may only make such a determination if it is of the opinion that it is necessary to do so in order to be consistent with a relevant Commonwealth superannuation standard.
- (3) A contribution period in respect of which a contributor may not contribute to the Fund under this section is not an applicable contribution period in relation to the contributor.

## Part 5 Benefits

### 36 Definitions

For the purposes of this Act:

**accrued benefit points**, in relation to a contributor at the contributor's exit date, means:

- (a) the maximum benefit points for the contributor, or
- (b) if the number ascertained by adding together all the contributed points figures for the contributor is less than the maximum benefit points for the contributor—that lesser number.

**additional benefit**, in relation to a contributor, means the amount calculated in accordance with the formula:

$$L = S \times P \times 0.04$$

where:

**L** represents the amount to be ascertained,

**S** represents the higher of the contributor's final salary or the contributor's final average salary, and

**P** represents the prospective benefit points for the contributor at the contributor's exit date.

**applicable contribution period**, in relation to a contributor, means a contribution period that occurs during the period that commences on the contributor's entry date and ends on the contributor's final contribution date, except where the contributor was not liable to contribute to the Fund in respect of that contribution period because it occurred during leave without pay.

**average contribution rate per cent**, in relation to a contributor at the contributor's exit date, means the lesser of:

- (a) 6 per cent, and
- (b) the rate per cent calculated in accordance with the formula:

$$R = \frac{S}{N}$$

where:

**R** represents the rate per cent to be ascertained,

**S** represents the sum of the rates per cent of salary at which the contributor was liable to pay a contribution for each applicable contribution period for the contributor, and

**N** represents the number of those applicable contribution periods.

**contributed points figure**, in relation to a contributor, means the figure that, in relation to each applicable contribution period for the contributor, is calculated in accordance with the formula:

$$F = \frac{P \times R}{N}$$

where:

**F** represents the figure to be ascertained,

**P** represents the rate per cent of salary at which the contributor elected to pay the contribution to the Fund for that contribution period,

**R** represents the salary ratio applicable to the contributor on the first day of that contribution period, and

**N** represents the number of contribution periods in a year.

**final average salary**, in relation to a contributor, means the average of the attributed salaries paid or payable to the contributor at the rates applicable:

- (a) on the contributor's exit date,
- (b) on 31 December last preceding the contributor's exit date, and
- (c) on 31 December last preceding the 31 December referred to in paragraph (b).

**final contribution date**, in relation to a contributor, means the last day in respect of which the contributor is liable to contribute to the Fund.

**final salary**, in relation to a contributor, means the rate of attributed salary paid or payable to the contributor on the contributor's exit date.

**maximum benefit points**, in relation to a contributor at the contributor's exit date, means:

- (a) 180, or
- (b) if the number ascertained by the formula:

$$M = \frac{6 \times S}{N}$$

where:

**M** represents the number to be ascertained,

**S** represents the sum of the salary ratios for the contributor in respect of each applicable contribution period for the contributor, and

**N** represents the number of contribution periods in a year,

is less than 180—the number so ascertained.

**prospective benefit points**, in relation to a contributor at the contributor's exit date, means:

(a) the number calculated in accordance with the formula:

$$P = \frac{C \times R \times S}{N}$$

where:

**P** represents the number to be ascertained,

**C** represents the contributor's average contribution rate per cent,

**R** represents the salary ratio applicable to the contributor's exit date,

**S** represents the number of applicable contribution periods for the contributor that would occur during the period that commences immediately after the contributor's final contribution date and ends immediately before the early retirement age, and

**N** represents the number of contribution periods in a year, or

(b) if it is a lesser number than that calculated under paragraph (a)—the number of benefit points that, when added to the number of the contributor's accrued benefit points at the exit date, would produce a number equal to the maximum benefit points that would have been attributable to the contributor if contributions had continued at the average contribution rate per cent, the salary ratio had remained constant until the exit date and the exit date had immediately preceded the early retirement age.

### **37 Benefit at or after early retirement or on death at or after early retirement age**

(1) The benefit provided by this section is payable by STC when a contributor retires from

employment with an employer on or after reaching the early retirement age or dies during employment with an employer on or after reaching that age and is so payable:

- (a) where the benefit becomes payable on the contributor retiring—to the contributor,
- (b) where the benefit becomes payable on the death of the contributor and the contributor is survived by a spouse or de facto partner—to the contributor's spouse or de facto partner, or
- (c) where the benefit becomes payable on the death of the contributor and the contributor is not survived by a spouse or de facto partner—to the personal representatives of the contributor or, if appropriate, in accordance with section 51 (Payment without grant of probate etc).

(2) The benefit provided by this section is an amount equal to the sum of:

- (a) the amount of the contributor-financed benefit, and
- (b) an amount of employer-financed benefit calculated in accordance with the formula:

$$E = F \times A \times 0.025$$

where:

**E** represents the amount to be ascertained,

**F** represents the contributor's final average salary, and

**A** represents the accrued benefit points for the contributor at the contributor's exit date.

(3) If STC makes a determination under section 45A in relation to a benefit to be provided by this section, the amount of that benefit is reduced by the amount specified in STC's determination.

### **38 Benefit on death before early retirement age**

(1) The benefit provided by this section is payable by STC where a contributor dies before attaining the early retirement age during employment with an employer and is so payable:

- (a) where the contributor is survived by a spouse or de facto partner—to the contributor's spouse or de facto partner, or
- (b) where the contributor is not survived by a spouse or de facto partner—to the personal representatives of the contributor or, if appropriate, in accordance with section 51 (Payment without grant of probate etc).

(2) The benefit provided by this section in relation to a contributor is an amount equal to the sum of:

- (a) the amount of the contributor-financed benefit,
- (b) an amount of employer-financed benefit calculated in accordance with the formula:

$$E = S \times A \times 0.025$$

where:

**E** represents the amount to be ascertained,

**S** represents the higher of the contributor's final salary or the contributor's final average salary, and

**A** represents the accrued benefit points for the contributor at the contributor's exit date, and

- (c) where an approval under section 20 (Additional benefit) is in force—the amount of the additional benefit.

(3) If STC makes a determination under section 45A in relation to a benefit to be provided by this section, the amount of that benefit is reduced by the amount specified in STC's determination.

### **39 Benefit on total and permanent invalidity before early retirement age**

(1) The benefit provided by this section is payable by STC to a contributor where, before attaining the early retirement age, the contributor ceases to be employed by an employer and STC is satisfied:

- (a) that the contributor's cessation of employment was due, directly or indirectly, to the permanent physical or mental incapacity of the contributor (not caused by any act or default of the contributor intended to produce that incapacity), and
- (b) that the contributor is, when the contributor ceases to be employed by the employer, permanently unable, by reason of that incapacity, to be engaged, or to be employed, in any remunerative occupation in which, in the opinion of STC, it would otherwise be reasonable to expect the contributor to engage.

(2) The benefit provided by this section is an amount equal to the sum of:

- (a) the amount of the contributor-financed benefit,
- (b) an amount of employer-financed benefit calculated in accordance with the formula:

$$E = S \times A \times 0.025$$

where:

**E** represents the amount to be ascertained,

**S** represents the higher of the contributor's final salary or the contributor's final average salary, and

**A** represents the accrued benefit points for the contributor at the contributor's exit date, and

(c) where an approval under section 20 (Additional benefit) is in force—the amount of the additional benefit.

(3) STC is entitled to rely on a certificate by an employer as to any matter mentioned in subsection (1) (a) if it thinks fit.

(4) If STC makes a determination under section 45A in relation to a benefit to be provided by this section, the amount of that benefit is reduced by the amount specified in STC's determination.

#### **40 Benefit on partial and permanent invalidity before early retirement age**

(1) The benefit provided by this section is payable by STC to a contributor where, before attaining the early retirement age, the contributor ceases to be employed by an employer and STC is satisfied:

(a) that the contributor's cessation of employment was due, directly or indirectly, to the permanent physical or mental incapacity of the contributor (not caused by any act or default of the contributor intended to produce that incapacity), and

(b) that the contributor is, when the contributor ceases to be employed by the employer, permanently unable, by reason of that incapacity, to perform the duties that the contributor was required to perform before the contributor suffered the incapacity.

(2) The benefit provided by this section for a contributor is an amount equal to the sum of:

(a) the amount of the contributor-financed benefit, and

(b) an amount of employer-financed benefit calculated in accordance with the formula:

$$E = S \times A \times 0.025$$

where:

**E** represents the amount to be ascertained,

**S** represents the higher of the contributor's final salary or the contributor's final average salary, and

**A** represents the accrued benefit points for the contributor at the contributor's exit date.

- (3) STC is entitled to rely on a certificate by an employer as to any matter mentioned in subsection (1) if it thinks fit.
- (4) If STC makes a determination under section 45A in relation to a benefit to be provided by this section, the amount of that benefit is reduced by the amount specified in STC's determination.

#### **41 Benefit on resignation, dismissal or discharge before early retirement age**

- (1) The benefit provided by this section is payable by STC to a contributor:
  - (a) if, before attaining the early retirement age, the contributor, having resigned, or having been dismissed or discharged, from employment with an employer, elects under section 43 (1) to take that benefit and no other benefit is payable under this Act, or
  - (b) if the amount of that benefit is less than the prescribed amount referred to in section 43 (1).
- (2) The benefit provided by this section for a contributor for whom the period commencing on entry date and ending on exit date is 10 years or more is an amount equal to the sum of:
  - (a) the amount of the contributor-financed benefit, and
  - (b) an amount of employer-financed benefit calculated in accordance with the formula:

$$W = V \times R \times \frac{A}{V} \times 0.025$$

where:

**W** represents the amount to be ascertained,

**V** represents the period (expressed in years with any fractional part of a year being calculated on a basis of complete contribution periods) that commenced on the contributor's entry date and ended on the contributor's exit date,

**R** represents the amount of the contributor-financed benefit,

**A** represents the accrued benefit points for the contributor at the contributor's exit date, and



**Y** represents the number ascertained by adding together all the contributor's contributed points figures calculated in relation to the contributor for the applicable contribution periods for the contributor.

(2A) If STC makes a determination under section 45A in relation to a benefit to be provided by this section, the amount of that benefit is reduced by the amount specified in STC's determination.

(3) The benefit provided by this section for a contributor for whom the period commencing on entry date and ending on exit date is less than 10 years is the amount of the contributor-financed benefit.

#### **42 Benefit on retrenchment before early retirement age**

(1) The benefit provided by this section is payable by STC to a contributor if, before attaining the early retirement age:

(a) the contributor is retrenched, and

(b) no other benefit is payable under this Act, and

(c) STC is provided with a certificate from the contributor's employer confirming that the contributor has been retrenched and specifying the ground for the retrenchment.

(2) The benefit provided by this section for a contributor is an amount equal to the sum of:

(a) the contributor-financed benefit, and

(b) an amount of employer-financed benefit calculated in accordance with the formula:

$$E = S \times A \times 0.025$$

where:

**E** represents the amount to be ascertained,

**S** represents the higher of the contributor's final salary or the contributor's final average salary, and

**A** represents the accrued benefit points for the contributor at the contributor's exit date.

(2A) If STC makes a determination under section 45A in relation to a benefit to be provided by this section, the amount of that benefit is reduced by the amount specified in STC's determination.

(3) (Repealed)

**42A Benefit on attaining 65 or 70**

- (1) A contributor who attains 70 years of age must be paid any benefit to which the contributor would be entitled on retirement at that age but may elect to preserve the whole of the benefit.
- (2) (Repealed)
- (2A) An employee may elect, at any time on or after attaining 65 years and before attaining 70 years:
  - (a) to be paid any benefit to which the employee is entitled at the time of the election, or
  - (b) to preserve the whole of the benefit, even though the employee is not retired.
- (3) STC is to adjust the amount of a benefit payable under this section, having regard to any adjustment of a contributor's account under section 16.
- (4) If an amount is preserved under this section, it is payable in the same way as a benefit under section 43.
- (5) A person paid a benefit under this section is not entitled:
  - (a) to any further benefit under this Act in respect of the same period of service, or
  - (b) to contribute to the Fund or to accrue any further benefits under this Act.

**42AA Deferral of benefit on retrenchment before early retirement age**

- (1) A contributor who becomes entitled to be paid a benefit under section 42 may elect:
  - (a) to take the benefit as provided by that section, or
  - (b) to defer in the Fund a benefit calculated in the same way as the benefit provided by that section.
- (2) The provisions of section 43 (except section 43 (6)) apply in relation to a benefit deferred under this section in the same way as they apply in relation to a benefit deferred under that section.
- (3) (Repealed)

**42AB Compulsory preservation of benefits after changeover day**

- (1) STC must, when a benefit becomes payable under this Act (including a benefit provided by section 42AA, 43 or 43AA), preserve all or so much of the benefit as is

required to be preserved so as to be consistent with a relevant Commonwealth superannuation standard.

- (2) For the purpose of preserving a benefit under this section, STC may convert to a lump sum so much of a superannuation allowance as is required to be preserved. The remainder of the superannuation allowance is to be dealt with as otherwise required or permitted by or under this Act.
- (3) The amount of the benefit to be preserved in respect of a former contributor for the purposes of subsection (1) is as determined by STC, after obtaining actuarial advice.
- (4) The amount of a benefit that must be preserved for the purposes of subsection (1) is to be preserved in the Fund and is to be adjusted, having regard to any adjustment of the contributor's account under section 16 or is to be preserved under section 42AD.

#### **42AC Payment of compulsorily preserved benefit**

- (1) The whole or part of a benefit preserved under section 42AB is payable by STC in the circumstances in which the whole or part of a benefit may be paid under a relevant Commonwealth superannuation standard.
- (2) The whole or part of a benefit preserved under section 42AB must be paid by STC, if it is required to be paid under a relevant Commonwealth superannuation standard.
- (3) The benefit is payable:
  - (a) unless the former contributor has died—to the former contributor, or
  - (b) if the former contributor has died and is survived by a spouse or de facto partner—to the surviving spouse or de facto partner, or
  - (c) if the former contributor has died and is not survived by a spouse or de facto partner—to the personal representatives of the former contributor or, if appropriate, in accordance with section 51 (Payment without grant of probate etc).

#### **42AD Preserved benefits**

- (1) Any amounts preserved by STC under section 42AB may be preserved in such funds, accounts or reserves as STC determines, whether established under this Act or the [Superannuation Administration Act 1996](#) or for the purposes of any other superannuation scheme administered by STC.
- (2) Any such preserved amounts payable by STC under section 42AB are to be paid from the appropriate fund, account or reserve referred to in this section.

#### **43 Deferred benefit**

- (1) A contributor who resigns, or is dismissed or discharged, from employment with an employer before attaining the early retirement age may elect to take the benefit

provided by section 41 or (if that benefit, including any interest paid by STC, is not less than the prescribed amount) to make provision for a benefit provided by this section.

- (1A) A contributor who is under 65 years of age may, instead of taking the benefit payable under section 37, elect to make provision for a benefit provided by this section (but only if that benefit, including any interest paid by STC, is not less than the prescribed amount).
- (2) Where an election to make provision for a benefit provided by this section made by a contributor under subsection (1) or (1A) takes effect, a benefit is not payable to, or in relation to, the contributor under any provision of this Act other than this section.
- (2A) A contributor who, being entitled to make an election under subsection (1) or (1A), does not make such an election before the end of the prescribed period is taken to have elected to have made provision for a benefit provided by this section.
- (3) The benefit provided by subsection (6) or section 42A must be paid by STC:
- (a) if the former member:
    - (i) elected under subsection (1) or section 30A, or is taken under subsection (2A) to have elected, to defer the benefit, and
    - (ii) attains the early retirement age, and
    - (iii) applies to STC in writing for payment of the benefit, or
  - (b) if the former member:
    - (i) elected under subsection (1A) or section 42A to defer the benefit, and
    - (ii) applies to STC in writing for payment of the benefit, or
  - (c) if the former member dies without making an application for payment of the benefit, or
  - (d) except in the case of a benefit provided under subsection (1A) or section 42A—on STC being satisfied that the former member is incapable, from infirmity of body or mind, of being employed in any remunerative occupation in which, in the opinion of STC, it would otherwise be reasonable to expect the former member to engage, or
  - (e) on STC being satisfied that the former member has attained the age of 65 years and is employed for less than 10 hours a week, or
  - (f) on STC being satisfied that the former member has attained the age of 70 years even though the former member is employed for more than 10 but less than 30 hours a week,

(g) on STC being satisfied that the former member has retired from the work force.

(3A) The benefit provided by subsection (6) is not payable under subsection (3) to a person who elected to provide for the benefit under section 30A unless the additional requirements of section 30A (5) (d) are satisfied.

(4) Subject to subsection (3), the benefit provided by subsection (6) is payable:

(a) except where the contributor has died, to the contributor,

(b) if the contributor has died and is survived by a spouse or de facto partner, to the spouse or de facto partner, or

(c) if the contributor has died but is not survived by a spouse or de facto partner:

(i) to the contributor's personal representatives, or

(ii) where section 51 (Payment without grant of probate etc) applies and STC has made a decision under subsection (1) of that section, in accordance with subsection (2) of that section.

(5) The benefit provided by subsection (7) is payable to a contributor by STC if:

(a) the contributor has elected to take that benefit, and

(b) the election takes effect before the benefit provided by subsection (6) becomes payable to or in respect of the contributor.

(6) Subject to subsection (6A), the benefit provided by this subsection is an amount equal to the sum of:

(a) the contributor-financed benefit at exit date, and

(b) an amount of employer-financed benefit calculated in accordance with the formula:

$$E = F \times A \times 0.025 \times K^n$$

where:

**E** represents the amount to be ascertained,

**F** represents the contributor's final average salary,

**A** represents the accrued benefit points for the contributor at the contributor's exit date,

**K** represents a discount factor determined by STC after seeking actuarial advice, and

***n*** represents the period (expressed in years with any fractional part of a year being calculated on the basis of complete contribution periods) between the contributor's age at exit date and the early retirement age,

as adjusted under subsection (7B).

- (6A) For the purposes of calculating the benefit provided under subsection (6) in the case of a contributor who has attained the early retirement age, ***K*** in the formula in subsection (6) is to equal 1.
- (7) The benefit provided by this subsection is an amount equal to the amount of the benefit under section 41 or 42 that would have been payable to the contributor at the contributor's exit date if the contributor had not made the election under subsection (1), as adjusted under subsection (7B).
- (7A) If STC makes a determination under section 43D or 45A in relation to a benefit to be provided by this section, the amount of that benefit is reduced by the amount specified in STC's determination.
- (7B) STC is to adjust the amount of a benefit payable under this section, having regard to any adjustment of a contributor's account under section 16.
- (8) A contributor (other than a contributor who is an executive officer) who becomes a contributor to another superannuation scheme while employed by the same employer:
- (a) is required to make provision for a benefit provided by this section despite anything to the contrary in subsection (1),
  - (b) shall be deemed to have elected under subsection (1) to make provision for that benefit on becoming a contributor to that other superannuation scheme, and
  - (c) is not entitled to elect to take the benefit provided by subsection (7) while employed by that same employer.
- (9) Part 1 of Schedule 5 has effect with respect to contributors who are transferred as a consequence of a Government initiative (other than a Government privatisation initiative) or who, while remaining with their existing employer, elect or are required to become contributors to another superannuation scheme.

**43AA Deferral of benefit for contributors aged 55 years and over in certain circumstances**

Part 3 of Schedule 5 has effect with respect to the deferral of the benefit of a contributor of or above the age of 55 years in the circumstances specified in that Part.

**43AAA (Repealed)**

**43A Power of STC to purchase annuities etc out of benefit payable under this Act**

Whenever a benefit becomes payable to or in respect of a contributor under this Act, STC

must, if requested to do so:

- (a) by the contributor, or
- (b) where the contributor has died, by the spouse or de facto partner or personal representatives of the contributor, as the case requires,

apply the benefit, or such part of it as is specified by the contributor, spouse or de facto partner or personal representatives, in purchasing for the contributor or, as the case may be, for the spouse or de facto partner or the beneficiaries of the contributor's estate, a right to an annuity or other form of pension from a person nominated by the contributor, spouse or de facto partner or personal representatives.

**43AB Competing claims for spouses' or de facto partners' benefits**

- (1) This section applies to a benefit which is payable to the spouse or de facto partner of a deceased contributor or deceased former contributor.
- (2) If a benefit would be payable to more than one person because a deceased contributor or deceased former contributor has left more than one spouse or de facto partner, then, despite any other provision of this Act:
  - (a) the benefit is payable in accordance with a determination made by STC, and not otherwise, and
  - (b) the total amount of benefit payable to those persons at any time is not to exceed the amount of benefit that would be payable if there were only one spouse or de facto partner.
- (3) For the purposes of subsection (2) (a), STC may determine in relation to a benefit:
  - (a) that the benefit is not payable to such of the persons concerned as it specifies, or
  - (b) that the amount of the benefit is to be apportioned between the persons concerned in such manner as it specifies.
- (4) STC may withhold the payment of any part of a benefit:
  - (a) until after 30 days after the death of the contributor or former contributor in respect of which the benefit is payable, or
  - (b) if an application has been made for the benefit by more than one person, until it is satisfied that only one of those persons is entitled to the benefit or until a determination is made in relation to the matter by STC under this section.
- (5) If, after 30 days from the death of a contributor or former contributor, the whole or part of a benefit is paid to a spouse or de facto partner of the deceased contributor or deceased former contributor:

- (a) a benefit is not payable to any other spouse or de facto partner of the deceased contributor or deceased former contributor if the whole of the benefit is paid, or
  - (b) so much of a benefit as is equal to the amount of the benefit so paid is not payable to any other spouse or de facto partner of the deceased contributor or deceased former contributor if part of the benefit is paid.
- (6) For the purposes of subsection (5), an amount paid in good faith by STC to a person purporting to be the spouse or de facto partner of a deceased contributor or deceased former contributor is taken to have been paid to the spouse or de facto partner of the contributor or former contributor.
- (7) If, after 30 days from the death of a contributor or former contributor, any amount is paid under this Act to the contributor's personal representatives or to such other persons as STC may determine, any benefit which is payable to the spouse or de facto partner of the contributor or former contributor is to be reduced by the amount so paid.

#### **43B Release of benefit on grounds of severe financial hardship**

- (1) STC may, on the written election of a contributor, or former contributor who has provided for a deferred benefit, release to the contributor or former contributor a benefit on the grounds of the contributor's or former contributor's severe financial hardship.
- (2) STC may release the benefit only if STC is satisfied that the circumstances are such that a benefit would be payable on the grounds of severe financial hardship if the contributor or former contributor were a member of a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.
- (3) The amount paid:
- (a) is to be the amount payable for the purpose of complying with the requirements of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth for payment of such a benefit from a regulated superannuation fund, and
  - (b) is not to exceed the amount of any accrued or deferred benefit under this Act that would be payable to the contributor or former contributor, if the contributor or former contributor were eligible to be paid such a benefit.
- (4) A contributor or former contributor may, at any time before the release of a benefit under this section, vary or revoke an election under this section.
- (5) An amount may not be paid under this section unless any applicable requirements of any regulations made under section 43D have been complied with.



### **43C Release of benefit on compassionate grounds**

- (1) STC may, on the written election of a contributor, or former contributor who has provided for a deferred benefit, release to the contributor or former contributor a benefit on compassionate grounds.
- (2) STC may release the benefit only if STC is satisfied that the circumstances are such that the Regulator (within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth) would be entitled to determine that the amount could be released on compassionate grounds if the contributor or former contributor were a member of a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.
- (3) The amount paid:
  - (a) is to be the amount payable for the purpose of complying with the requirements of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth for payment of such a benefit from a regulated superannuation fund, and
  - (b) is not to exceed the amount of any accrued or deferred benefit under this Act that would be payable to the contributor or former contributor, if the contributor or former contributor were eligible to be paid such a benefit.
- (4) A contributor or former contributor may, at any time before the release of a benefit under this section, vary or revoke an election under this section.
- (5) An amount may not be paid under this section unless any applicable requirements of any regulations made under section 43D have been complied with.

### **43D Effect on benefits**

- (1) Regulations may be made for or with respect to the payment and calculation of future benefits where part of a benefit has been released to a person under section 43B or 43C.
- (2) Without limiting subsection (1), regulations may be made for or with respect to the following matters:
  - (a) the adjustment by STC of a benefit that is paid to a person to whom an amount has been previously released under section 43B or 43C, including interest payable in respect of the amount released,
  - (b) the obtaining of consent to any such adjustment,
  - (c) the obtaining of actuarial advice by STC for the purpose of any such adjustment,
  - (d) enabling the payment to STC of amounts to set-off amounts released under section 43B or 43C against benefits that would otherwise accrue,

- (e) any matter ancillary to or consequential on the matters set out in paragraphs (a)–(d).

#### **44 Application for payment of benefit**

- (1) An application for payment of a benefit to, or in relation to, a contributor shall be made in writing in a form approved by STC for the purpose, shall be signed by the applicant and shall be accompanied by:
  - (a) except in the case of a benefit payable under section 42AC, 43, 43B or 43C—a certificate by the contributor’s employer at the contributor’s exit date, specifying the exit date and the manner of cessation of the contributor’s employment and such other particulars as may be prescribed, and
  - (b) such other documents as STC reasonably requires in order to determine the application.
- (2) A benefit shall not be paid by STC before subsection (1) has been complied with.
- (3) STC is entitled to act on the information provided pursuant to subsection (1).

#### **45 Interest**

STC may, when paying a benefit under this Act, pay interest at such rates, for such periods and in such circumstances as in its absolute discretion it thinks appropriate.

#### **45A Power of STC to reduce benefits to offset certain tax liabilities of the Fund**

- (1) Whenever:
  - (a) a right to a benefit under this Act accrues to or in respect of a contributor or former contributor, and
  - (b) STC has paid or is liable to pay income tax under a Commonwealth taxation law in respect of employers’ contributions to the Fund, and
  - (c) a portion of that tax is referable to the employer-financed portion of that benefit, STC must, subject to subsection (2):
    - (d) calculate the amount necessary to offset STC’s liability to pay tax so far as it is referable to the employer-financed portion of that benefit, and
    - (e) accordingly make a determination reducing the employer-financed portion of that benefit by the amount so calculated.
- (1A) Whenever:
  - (a) a right to a benefit under this Act accrues to or in respect of a contributor or former contributor, and

- (b) STC has paid or is liable to pay an amount of superannuation contributions surcharge in respect of the employer contributions paid or payable to the Fund, or in respect of contributions made under the *State Authorities Non-contributory Superannuation Act 1987*, on behalf of the contributor or former contributor,

STC must determine in writing the surcharge deduction amount that, in the opinion of STC, it would be fair and reasonable to take into account in working out the amount of the benefit and must make a determination reducing the benefit accordingly.

- (1B) In determining the surcharge deduction amount in respect of a benefit payable to a contributor or former contributor, STC may have regard to any or all of the following matters:
    - (a) the amount of superannuation contributions surcharge payable or paid by STC in respect of the contributor or former contributor,
    - (b) the amount by which the contributor's or former contributor's surcharge debt account is in debit when the benefit emerges or commences to be paid,
    - (c) the value of the employer-financed portion of the benefit,
    - (d) the value of the benefits that, for the purpose of working out (under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth) the notional surchargeable contribution factors applicable to the contributor or former contributor, were assumed to be likely to be payable to the person on his or her ceasing to be an employee,
    - (e) whether the contributor or former contributor has qualified for a benefit that includes an employer-financed component,
    - (f) the amount of any payments under section 52A,
    - (g) any other matter STC considers relevant.
  - (1C) The surcharge deduction amount determined by STC must not exceed an amount that is 15% of the employer-financed portion of that part of the benefit payable to the contributor or former contributor that accrued after 20 August 1996.
  - (1D) For the purpose of determining the surcharge deduction amount, STC may obtain actuarial advice or advice from any other persons, as STC thinks fit.
  - (1E) The balance of any additional amount payable by STC for superannuation contributions surcharge in respect of a contributor or former contributor, after payment of the balance of the relevant surcharge debt account, is to be paid by STC from the Fund under section 11 (4) and debited to the appropriate employer reserve.
- (2) Subsection (1) does not authorise the reduction of a benefit, unless:

- (a) the benefit is of a kind prescribed by the regulations for the purpose of this section, and
  - (b) the method of calculating the reduction is so prescribed, and
  - (c) the reduction is calculated according to that method.
- (3) Subsection (1A) does not authorise the reduction of a benefit as a result of a liability for superannuation contributions surcharge unless the benefit is of a kind prescribed by the regulations for the purposes of this subsection.
- (3A) If STC determines a surcharge deduction amount in respect of a contributor or former contributor under this section, STC may, on the application of the contributor or former contributor, apply the benefit that accrues to or in respect of the contributor or former contributor under the *State Authorities Non-contributory Superannuation Act 1987* toward payment of the surcharge deduction amount, and make a determination reducing the benefit payable under that Act accordingly. In such a case, STC may make a determination reducing the benefit payable under this Act to the extent necessary (if any) to pay the balance of the surcharge deduction amount.
- (4) In this section:
- surcharge debt account**, in relation to a contributor or former contributor, means the surcharge debt account kept for the contributor or former contributor (while an employee) under section 16 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth.

#### **45B, 45C (Repealed)**

#### **45D Compliance with superannuation guarantee legislation**

- (1) **Minimum benefits** STC must, after obtaining actuarial advice, determine what the minimum **employer-financed benefit** would have to be to ensure that there is no **superannuation guarantee shortfall**.
- (2) **Increase in benefits** An employer-financed benefit provided by an employer is, despite any other provision of this or any other Act, not to be less than the minimum benefit determined under subsection (1). The benefit that would otherwise be payable under this Act is increased to the extent necessary for the purposes of complying with this section.
- (3) **Increase in benefit to be paid from non-contributory scheme** The amount of any increase in benefit is to be debited by STC from the employer reserve of the employer concerned established under the *State Authorities Non-contributory Superannuation Act 1987*.
- (4) **Definition** In this section, **employer-financed benefit** means the sum of the employer-financed benefit under this Act, any basic benefit under the *State Authorities*

*Non-contributory Superannuation Act 1987* and any employer-financed benefit of a kind provided by the *State Authorities Non-contributory Superannuation Act 1987*.

**45E Application of section 45D to period from 1.7.1992**

A benefit that is:

(a) preserved under this Act after 1 July 1992 and before the commencement of the *First State Superannuation Act 1992*, or that is paid after 1 July 1992 and before that commencement, or

(b) is preserved under section 2B,

is to be adjusted by STC in accordance with section 45D.

**Part 5A Provisions relating to privatisation of employers**

**46AA Removal of employers from Act on privatisation**

(1) The Governor may, by order published in the Gazette, amend Schedule 1 by omitting the name of an employer if the Minister has certified that the removal is a consequence of a Government privatisation initiative affecting the employer.

(2) An order under this section, and any order revoking or varying such an order, may be made to take effect on and from a day specified in the order, whether or not the day specified is earlier than the day of publication of the order.

**46AB Preservation of benefit for contributors affected by privatisation**

(1) Part 2 (Preservation of benefit on privatisation) of Schedule 5 has effect with respect to contributors if, as a consequence of a Government privatisation initiative affecting the relevant employer:

(a) the contributors are transferred or elect to transfer to employment other than with an employer and the Minister certifies that the transfer is a consequence of a Government privatisation initiative affecting the employer, or

(b) the employer of the contributors ceases to be an employer under this Act by virtue of an order under this Part.

(2) A benefit is not required to be preserved under this section if a benefit is payable under another provision of this Act because the contributor has been retrenched.

(3) In this section and Schedule 5, **contributor** includes a participant in a superannuation scheme referred to in clause 1 (1) of Schedule 4 (which provides for the transfer of contributors to the scheme from closed schemes).

#### **46AC Adjustment of employer liability on privatisation**

- (1) STC must, on or before, or as soon as practicable after, an order under this Part removing an employer takes effect, determine the net liability of the employer in respect of employees of the employer who are contributors and who are affected by the initiative.
- (2) STC is to seek actuarial advice as to the net liability of the employer and is to consult with the Treasurer before determining the liability.
- (3) The amount of the net liability of the employer, as certified by STC, is a debt due for payment to STC by the employer or the employer's successor, on and from the date the initiative takes effect, as so certified.
- (4) STC may whenever it thinks fit, with the concurrence of the Treasurer, adjust the amount that is currently standing to the credit or debit of an employer's reserve in the Fund to reflect STC's determination of the net liability of the employer.
- (5) For the purposes of this section, the **net liability** of an employer is the total liability of the employer for present and future employer-financed benefits (accrued as at the date at which the liability is determined), contributions and administrative costs and any other liability under this Act in respect of the employees concerned, less the amount determined by STC as being credited to the employer in the Fund.

#### **46AD Employer liabilities after privatisation**

- (1) On and from a transfer of contributors that the Minister certifies under this Part is a consequence of a Government privatisation initiative affecting an employer, the employer's liability with respect to the contributors for present and future employer-financed benefits, contributions and administrative costs and any other liability under this Act vests in the Crown.
- (2) On and from the removal of an employer by virtue of an order under this Part, the employer's liability for present and future employer-financed benefits, contributions and administrative costs and any other liability under this Act vests in the Crown.
- (3) Any surplus after meeting any liability vested in the Crown by this section is vested in the Crown.

## **Part 6 Miscellaneous**

### **46 Employers and employees**

- (1) The Governor may, by order published in the Gazette:
  - (a) amend Schedule 1 by inserting the name of an organisation or corporation or a description of a class of organisations or corporations, or by transferring such a name or description from one Part of that Schedule to another Part,

- (b) amend Schedule 1 by omitting the name of an employer that has changed its name and inserting instead the new name of the employer,
  - (c) amend Schedule 1 by omitting the name of an employer that has ceased to exist but has been replaced as an employer by another organisation or corporation and by inserting instead the name of that other organisation or corporation,
  - (d) amend Schedule 1 by omitting the name of an employer that has ceased to exist and is not referred to in paragraph (c),
  - (d1) amend Schedule 1 by omitting the name of an employer if the employer no longer employs any employees who are contributors,
  - (e) amend Schedule 1 by adding a Part for the purposes of paragraph (a), or
  - (f) amend Schedule 2.
- (1A) The Governor may, by order published in the Gazette, make an order amending Schedule 1 by inserting, in relation to an employer listed in Schedule 1, such limitations as are specified in the amendment.
- (1B) An order under subsection (1A) may not impose limitations that operate to the prejudice of an existing contributor.
- (2) An order under subsection (1), and any other order revoking or varying such an order, may be made:
- (a) to take effect on and from a day specified in the order, whether or not the day specified is earlier than the day of publication of the order, and
  - (b) to effect the amendment to which it relates with such limitations as are specified in the amendment, being limitations that do not operate to the prejudice of an existing contributor.

#### **47 Employer to provide information**

- (1) An employer shall submit to STC such information or evidence relating to employees of the employer who may elect to become, or are, contributors as STC requires.
- (2) Where an employer fails to comply with subsection (1) in relation to an employee or contributor, STC may:
  - (a) refuse an application by an employee to contribute for the additional benefit if the information sought is relevant to such an application, or
  - (b) defer payment of a benefit to, or in relation to, a contributor where the information sought is relevant to the right to receive the benefit.

#### **48 Employee or claimant to provide information**

- (1) STC may require an employee or a claimant for payment of a benefit under this Act:
  - (a) to provide STC with specified information or evidence referred to in subsection (2),
  - (b) to provide STC with an authority to obtain from a third person any such information or evidence, or
  - (c) in the case of a claimant for a benefit under section 39 or 40—to undergo one or more medical examinations.
- (2) A requirement under subsection (1) may be made only:
  - (a) in the case of an employee—in relation to information or evidence that is relevant to the assessment of an application by the employee to be covered for the additional benefit, or
  - (b) in the case of a claimant for payment of a benefit—in relation to information, evidence or a medical examination that is relevant to the assessment of an application made by the claimant for payment of the benefit.
- (3) Where:
  - (a) the employee or claimant to whom a requirement under subsection (1) relates fails to comply with the requirement or, in purported compliance with the requirement, makes or provides an untrue statement, or
  - (b) a person referred to in subsection (1) (b) fails to provide information or evidence that STC has been authorised to obtain from the person or, in purported compliance with the request by STC for the information or evidence, makes or provides an untrue statement,

STC may:

- (c) where the information or evidence is required in relation to an application to contribute for the additional benefit—refuse the application, or
  - (d) where the information is required in relation to a claim for a benefit—take such action in relation to the benefit as, in the opinion of STC, would place the claimant as nearly as possible in the same position as the claimant would be if the information or evidence had been provided or the medical examination made or if the statement had not been untrue.
- (3A) Nothing in this section prevents STC from deferring, for such time as it thinks fit, consideration of an application to contribute for a benefit or a claim for payment of a benefit if it has not received the information or evidence required by STC under subsection (1).



- (4) For the purposes of this section, **untrue**, in relation to a statement, includes:
- (a) misleading in the form and context in which the statement appears, and
  - (b) misleading by reason of the omission from the statement of matter that is material.

#### **49 Making of elections and applications**

- (1) An election or application under this Act shall be in writing signed by the person entitled to make the election or application.
- (2) An election or application under this Act is not, subject to this section, validly made unless it is received in the office of STC:
- (a) where, by or under this Act (paragraph (b) excepted), a day is specifically prescribed for the receipt in the office of STC of an election or application of that class—not later than that day, or
  - (b) in any other case—not later than the expiration of the period of 2 months that next succeeds the vesting of the right to make the election or application.
- (3) An election or application under this Act takes effect:
- (a) where, by or under this Act (paragraph (b) excepted), a day is specifically prescribed for the taking effect of an election of the same class—on that day, or
  - (b) in any other case—on a day determined by STC, being a day that is not earlier than the date of receipt of the election or application in the office of STC.
- (4) An election or application under this Act may, with the approval of STC, be amended or revoked subject to such conditions as STC may impose, which may include:
- (a) in the case of an amendment of an election—conditions as to the day or days on which, or the manner in which, the election is to take effect, and
  - (b) in the case of revocation of an election—the day on which the revocation takes effect.
- (5) Where:
- (a) an election or application is not received in the office of STC within the time prescribed by subsection (2) for the receipt of the election or application, and
  - (b) STC is satisfied that, in all the circumstances of the case, it is desirable that the election or application should be accepted,

STC may, subject to such terms and conditions as it may impose, accept the election or application and deal with it as if it had been received within the time so prescribed.

- (6) Where STC is satisfied that, in all the circumstances of the case, it is desirable that an election or application should take effect on a day that is earlier than the date of receipt of the election or application in the office of STC:
- (a) STC may, subject to such terms and conditions as it may impose, determine that the election or application shall be deemed to have taken effect on such an earlier day determined by STC, and
  - (b) the election or application takes effect accordingly.

#### **50 Assignment etc of benefit**

- (1) A purported assignment of, or purported charge over, a benefit is void.
- (2) Where, but for this subsection, a benefit would pass by operation of law to a person other than a person to whom the benefit is payable under this Act, the benefit does not so pass.
- (3) A benefit payable on the death of a contributor is not an asset in the contributor's estate that is applicable in payment of the debts and liabilities of the deceased.
- (4) Nothing in this section prevents STC from making, at the request of a person to whom an amount by way of a benefit is payable, a payment of the whole or a part of the amount on behalf of the person.
- (5) Any payment made under subsection (4) shall be deemed to have been made to the person entitled to the benefit.

#### **51 Payment without grant of probate etc**

- (1) Where a person dies and:
  - (a) a benefit is or becomes payable from the Fund in relation to the deceased,
  - (b) production to STC of probate of the will, or letters of administration of the estate, of the deceased has not been arranged, and
  - (c) STC has not, within the period of 3 months that next succeeds the death of the deceased, received a notice of intention to apply for a grant of probate of the will, or letters of administration of the estate, of the deceased,

STC may, if it so decides, make a payment of the whole or any part of the benefit in accordance with subsection (2), being a payment that does not exceed \$50,000 or, where some other amount is prescribed for the purposes of this section, that other amount.

- (2) Where STC makes a decision under subsection (1), STC may:
  - (a) pay the whole or any part of the amount of the benefit to an eligible person within

the meaning of the *Family Provision Act 1982*,

- (b) after paying the funeral expenses of the deceased or reimbursing a person who has paid those expenses—pay the whole or any part of the balance to any person referred to in paragraph (a), or
  - (c) in special circumstances, pay the whole or any part of the amount of the benefit, or the balance referred to in paragraph (b), to some other person.
- (3) Where a contributor or former contributor dies and STC is of the opinion that proceedings might be instituted under the *Family Provision Act 1982* in relation to the estate, or notional estate, of the deceased, STC may, despite any other provision of this Act, pay to the personal representatives of the deceased any benefit that, but for this subsection, would have been paid to some other person.

#### **51A Restriction on manner of payment of benefit**

STC must not pay, in cash or by a cheque which authorises payment in cash on presentation, a benefit or part of a benefit payable under this Act.

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

- (1) STC may recover any money owing to the Fund by a contributor, employer or other person, together with interest thereon as provided by subsection (3):
  - (a) except in the case of unpaid contributions—as a debt in a court of competent jurisdiction,
  - (b) where any amount is, or becomes, payable from the Fund to the contributor, employer or other person—by deduction from that amount, or
  - (c) in the case of a contributor who is an employee—by deduction from the contributor's salary in accordance with subsection (2) by such instalments and at such times as STC determines.
- (2) An employer shall, at the written request of STC, make deductions from a contributor's salary as referred to in subsection (1) (c) and pay the amount thereof to STC, and an amount so deducted and paid shall be deemed to have been paid to the Fund by the contributor from whose salary the deduction was made.
- (3) Interest at a rate from time to time determined by STC is payable on any amount owing to the Fund calculated from the date on which the amount became due for payment until the date on which the amount is recovered under subsection (1) or is otherwise paid.

#### **52A Payments to cover superannuation contributions surcharge**

- (1) A contributor may at any time lodge with STC an election to pay amounts to the Fund

in respect of the superannuation contributions surcharge payable in respect of the contributor.

- (2) Payments may be made on a periodic or a single payment basis.
- (3) An election is to specify the amounts to be paid and the manner in which the payments are to be made.
- (4) A contributor may, at any time, lodge with STC an election to vary or revoke an election under this section.
- (5) An election under this section is to be in a form approved by STC for the purposes of this section.
- (6) An election under this section remains in force until a subsequent election under this section takes effect.

### **52B Repayment of excess payments**

STC must refund to a contributor or former contributor any excess amount of payments made under section 52A remaining after payment of the debt (including accrued interest) owed for superannuation contributions surcharge in respect of the contributor or former contributor, together with interest on the excess amount at a rate determined by STC.

### **53 Restoration of lost right etc under Act**

- (1) Where a person is entitled to exercise a right or enjoy a privilege or benefit under this Act and, without having exercised the right or enjoyed the privilege or benefit, the person ceases to be entitled to do so, the person may exercise the right or enjoy the privilege or benefit if:
  - (a) STC, being satisfied that it is just and equitable that it should do so, gives its consent to the exercise by the person of the right or the enjoyment by the person of the privilege or benefit, and
  - (b) the person fulfils any conditions imposed, and complies with any requirements made, by STC in giving its consent.
- (2) Where pursuant to subsection (1) STC consents to an election, or an application to STC, being made after the time before which, but for that consent, it should have been made, STC may, if it thinks fit, deal with the election or application as if it had been made before that time.

### **53A Payment where beneficiary is missing**

- (1) If STC is unable, after reasonable inquiry, to find a person to whom a benefit is payable, STC may pay the benefit to someone else to be applied wholly for the care, maintenance, benefit and support of any person wholly or partly dependent on the

person who would otherwise be entitled to the benefit.

- (2) Any payment made under this section is taken to have been made to the person who, but for this section, would be entitled to the benefit.

#### **54 Payment where beneficiary incapable**

- (1) Where a person to whom a benefit under this Act is payable is, in the opinion of STC, incapable of administering his or her own affairs by reason of illness, imprisonment or any other cause, STC may pay the benefit to some other person to be applied wholly for the care, maintenance, benefit and support of the person to whom, but for this section, the benefit would be payable, or of any person wholly or partly dependent on him or her.
- (2) Any payment made under this section shall be deemed to have been made to the person entitled to the benefit.

#### **54A Information that must be disclosed to contributors**

- (1) STC must from time to time give to a contributor or other person such information as STC determines under this section.
- (2) STC must determine, having regard to the information required to be provided by the trustee of a regulated superannuation fund within the meaning of the [Superannuation Industry \(Supervision\) Act 1993](#) of the Commonwealth, the information to be provided by STC to contributors and other persons and the circumstances in which information must or may be provided.

#### **55 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

#### **56 Savings and transitional provisions**

Schedule 6 has effect.

### **Schedule 1 Employers**

(Sections 3, 46)

#### **Part 1 The Crown and other employers**

A Government Department or Administrative Office  
Police Service  
Health Administration Corporation  
Water Administration Ministerial Corporation  
Sydney Water Corporation  
Hunter Water Corporation

Upper Parramatta River Catchment Trust  
Western Lands Commissioner  
Australian Museum Trust  
Pacific Power  
New South Wales Treasury Corporation  
Judicial Commission of New South Wales  
Independent Commission Against Corruption  
Bathurst-Orange Development Corporation  
Clann Limited  
Greyhound Racing Authority (NSW)  
Harness Racing New South Wales  
Homebush Abattoir Corporation  
Hunter Valley Catchment Management Trust  
Justice and Police Museum Limited  
Waste Recycling and Processing Corporation  
New South Wales Film and Television Office  
State Rail Authority of New South Wales  
The Trustees of the Anzac Memorial Building  
The University of Sydney  
The University of New England  
University of New England, Armidale Union (limited to persons who were contributors to the Fund immediately before becoming employed by the University of New England, Armidale Union)  
The University of New South Wales  
The Macquarie University  
The University of Newcastle  
The University of Wollongong  
Australian College for Seniors Incorporated  
Charles Sturt University  
University of Technology, Sydney  
University of Western Sydney  
Southern Cross University  
Children's Medical Research Foundation (limited to the employees whose names were specified in the Order made under the [Public Authorities Superannuation Act 1985](#) dated 16 April 1986 and published in the Gazette of 18 April 1986 at p 1694)  
Garvan Institute of Medical Research (limited to those persons:  
  
(a) who were employees of that Institute immediately before 6 March 1998, and  
  
(b) who were members of the Fund immediately before that date)  
  
Hospitals of Australia Ltd. (limited to persons who were contributors immediately before 1 April 1989)  
St. Luke's Hospital (limited to persons who, immediately before the appointed day, were employees of the Hospital and also contributors within the meaning of the [Public Authorities Superannuation Act 1985](#))  
The New South Wales Teachers' Federation  
Public Service Association of New South Wales  
Murray-Darling Basin Commission (limited to persons who were contributors to the State Authorities Superannuation Scheme immediately before becoming officers of the Commission and in respect of whom the Commission makes provision for superannuation in accordance with this Act)

Australian Transport Officers Federation (New South Wales Division)  
The Water and Sewerage Employees Union (Salaried Division and Wages Division)  
Australian Railways Union  
The Australian Tramway and Motor Omnibus Employees' Association  
Australian Federated Union of Locomotive Enginemen  
Construction Forestry Mining Energy Union (limited to the employee whose name was specified in the Order made under the [Public Authorities Superannuation Act 1985](#) dated 3 June 1987 and published in the Gazette of 5 June 1987 at p 2710)  
The Police Association of New South Wales  
Trustees of Arakoon State Recreation Area  
Trustees of Bent's Basin State Recreation Area  
Trustees of Burrendong State Recreation Area  
Trustees of Burrinjuck State Recreation Area  
Trustees of Copeton State Recreation Area  
Trustees of Lake Glenbawn State Recreation Area  
Trustees of Grabine State Recreation Area  
Trustees of Killalea State Recreation Area  
Trustees of Lake Keepit State Recreation Area  
Trustees of Wyangala State Recreation Area  
The Sydney Opera House Trust  
Wentworth Park Trust  
Zoological Parks Board of New South Wales  
The Roads and Traffic Authority of New South Wales  
The State Transit Authority of New South Wales  
Home Care Service of New South Wales  
The Hills Centre Limited (limited to those employees who became employees after 1 July 1997 and before the commencement of the [State Authorities Superannuation \(Local Government and Energy Employers\) Order 2002](#))  
Parramatta Park Reserve Trust  
Parramatta Stadium Trust  
Ambulance Service of New South Wales  
University of Wollongong Recreation and Sports Association  
The Trustees of the Roman Catholic Church of the Diocese of Lismore (limited to persons:  
(a) who were employees of St. Vincent's Hospital, Lismore, and contributors to the State Authorities Superannuation Scheme immediately before 31 October 1990, and  
(b) who continue after that date to be employees of the Hospital and contributors to that Scheme)  
Australian Securities Commission (limited to those persons who:  
(a) immediately before 1 January 1991, were employed in the Government Department known as Business and Consumer Affairs, and  
(b) immediately before the date of assent to the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 1991](#), were employed in the service of the Commission, and  
(c) on being employed in that service, have elected to remain contributors to the Fund)  
New South Wales Lotteries Corporation

TAFE Commission  
Wild Dog Destruction Board  
Auditor-General's Office  
Lord Howe Island Board  
New South Wales Casino Control Authority  
Internal Audit Bureau of New South Wales  
Australian Industrial Registry (limited to those persons:

- (a) who on 3 February 1993 were employed by the Joint Coal Board constituted under the [Coal Industry Act 1946](#) as officers or employees of the Coal Industry Tribunal also constituted under that Act, and
- (b) who, before becoming employed in the Australian Industrial Registry, have not elected to make provision for a preserved benefit as referred to in clause 3 (1) of Schedule 5)

Independent Living Centre (limited to Concetta de Bonis, Ann Louise Gibson, Jocelyn Frances Sloane and Melba Wu)  
Public Transport Union NSW Branch (limited to existing employees of the Public Transport Union NSW Branch who were contributors to the Fund as at 1 March 1993 and employees who become employees on or after 1 March 1993 and who are contributors to the Fund immediately before becoming employees)  
Government Pricing Tribunal of New South Wales  
Financial Institutions Commission (limited to those persons:

- (a) who, being contributors, were employed in the Registry of Co-operatives, Department of Local Government and Co-operatives, immediately before the transfer date specified in the order by which their employment was transferred to that Commission in accordance with clause 3 of Schedule 3 to the [Financial Institutions Commission Act 1992](#), and
- (b) who did not, before that transfer date, exercise their entitlement under this Act to make provision for a preserved benefit provided by section 43)

Sydney Organising Committee for the Olympic Games  
New South Wales Aboriginal Land Council  
Hawkesbury-Nepean Catchment Management Trust  
TransGrid (limited to those employees who became employees after 1 July 1997 and before the commencement of the [State Authorities Superannuation \(Local Government and Energy Employers\) Order 2002](#))  
The Northcott Society (limited to:

- (a) contributors in respect of any period during which they have been employees of the employer from and including 14 October 1988 (but only if they were employees of the employer on 18 December 1992), and
- (b) other contributors in respect of any period during which they were employees of the employer from and including 14 October 1988 and before 18 December 1992)

Newcastle Port Corporation  
Port Kembla Port Corporation  
Sydney Ports Corporation  
Waterways Authority



Port Macquarie Base Hospital (limited to those persons:

- (a) who were, immediately before 2 November 1994:
  - (i) employees of Hastings District Hospital, Port Macquarie, and
  - (ii) contributors to the State Authorities Superannuation Fund, and
- (b) who, on that date:
  - (i) transferred their employment to Port Macquarie Base Hospital, and
  - (ii) did not cease to be contributors to that Fund)

Sustainable Energy Development Authority

Great Southern Energy (limited to those employees who became employees after 1 July 1997 and before the commencement of the *State Authorities Superannuation (Local Government and Energy Employers) Order 2002*)

Delta Electricity

Macquarie Generation

Advance Energy (limited to those employees who became employees after 1 July 1997 and before the commencement of the *State Authorities Superannuation (Local Government and Energy Employers) Order 2002*)

Australian Inland Energy Water Infrastructure (limited to those employees who became employees after 1 July 1997 and before the commencement of the *State Authorities Superannuation (Local Government and Energy Employers) Order 2002*)

EnergyAustralia (limited to those employees who became employees after 1 July 1997 and before the commencement of the *State Authorities Superannuation (Local Government and Energy Employers) Order 2002*)

Integral Energy Australia (limited to those employees who became employees after 1 July 1997 and before the commencement of the *State Authorities Superannuation (Local Government and Energy Employers) Order 2002*)

NorthPower (limited to those employees who became employees after 1 July 1997 and before the commencement of the *State Authorities Superannuation (Local Government and Energy Employers) Order 2002*)

FSS Trustee Corporation

SAS Trustee Corporation

The Corporation constituted under the *Superannuation Administration Authority Corporatisation Act 1999*

Rail Infrastructure Corporation

Hawkesbury District Health Service Limited (limited to persons:

- (a) who were, immediately before 7 August 1996, employees of the Hawkesbury District Hospital, Windsor and contributors to the State Authorities Superannuation Fund, and
- (b) who, on that date, transferred their employment to Hawkesbury District Health Service Limited and did not cease to be contributors to that Fund)

Resource NSW

Benevolent Society of New South Wales (limited to Genoveva Almeida, Robyn Brooks, Adrian Ford, Caroline Lynn, Lynne Perl, Angela Plant, Elizabeth Sawtell, Beulah Warren, Pauline Wells and Barbara Wittig while continually employed by the Society)

Olympic Roads and Transport Authority  
Australian Prudential Regulation Authority (limited to those persons:

- (a) who, being contributors, were employed by the Financial Institutions Commission immediately before they became employees of the Authority under section 32 of the *Financial Sector Reform (New South Wales) Act 1999*, and
- (b) who did not, before becoming employees of the Authority, exercise their entitlement to make provision for a preserved benefit under clause 3 (1) of Schedule 5)

Sydney Catchment Authority  
Eraring Energy

Parramatta Rail Link Company Pty Limited

Catholic Health Care Services Limited (limited to those persons who were employed at the Bodington Hospital, Wentworth Falls, immediately before 1 September 2001)

Mercy Care Centre Young Limited (limited to those persons who were employed at the Mt St Joseph's Residential Care Facility, Young, immediately before 1 September 2001)

The Trustees of the Roman Catholic Church for the Diocese of Lismore (limited to those persons who were employed at the St Joseph's Nursing Home, Lismore, immediately before 1 September 2001)

Landcom

National Rail Consortium (SSL) Pty Limited (limited to those persons who were, immediately before 21 February 2002, employees of the Freight Rail Corporation)

A body corporate constituted under the *Local Government Act 1993* as a council or a county council (limited to those employees who became employees after 1 July 1997 and before the commencement of the *State Authorities Superannuation (Local Government and Energy Employers) Order 2002*, not being employees referred to in clause 11 of the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997*)

A rural lands protection board constituted under the *Rural Lands Protection Act 1998*

The N.S.W. Local Government Industry Training Committee Incorporated

Local Government Association of New South Wales (limited to those employees who became employees after 1 July 1997 and before the commencement of the *State Authorities Superannuation (Local Government and Energy Employers) Order 2002*)

Shires Association of New South Wales (limited to those employees who became employees after 1 July 1997 and before the commencement of the *State Authorities Superannuation (Local Government and Energy Employers) Order 2002*)

Electricity Association of New South Wales (limited to those employees who became employees after 1 July 1997 and before the commencement of the *State Authorities Superannuation (Local Government and Energy Employers) Order 2002*)

Health Services Association of New South Wales

Institute of Municipal Management (limited to those employees who became employees after 1 July 1997 and before the commencement of the *State Authorities Superannuation (Local Government and Energy Employers) Order 2002*)

New South Wales Nurses' Association

State Sports Centre Trust

Sydney Cricket and Sports Ground Trust

Australian Catholic University (limited to:

- (a) contributors in respect of any period during which they have been employees of the employer from and including 1 April 1988 (but only if they were employees of the employer on 18 December

1992), and

- (b) other contributors in respect of any period during which they were employees of the employer from and including 1 April 1988 and before 18 December 1992)

Government Employees Health Club (limited to:

- (a) contributors in respect of any period during which they have been employees of the employer from and including 1 April 1988 (but only if they were employees of the employer on 18 December 1992), and
- (b) other contributors in respect of any period during which they were employees of the employer from and including 1 April 1988 and before 18 December 1992)

Electrical Trades Union of Australia (New South Wales Branch) (limited to:

- (a) contributors in respect of any period during which they have been employees of the employer from and including 1 April 1988 (but only if they were employees of the employer on 18 December 1992), and
- (b) other contributors in respect of any period during which they were employees of the employer from and including 1 April 1988 and before 18 December 1992)

Little Company of Mary, Calvary Hospital, Wagga Wagga (limited to:

- (a) contributors in respect of any period during which they have been employees of the employer from and including 1 April 1988 (but only if they were employees of the employer on 18 December 1992), and
- (b) other contributors in respect of any period during which they were employees of the employer from and including 1 April 1988 and before 18 December 1992)

New South Wales State Cancer Council (limited to:

- (a) contributors in respect of any period during which they have been employees of the employer from and including 1 April 1988 (but only if they were employees of the employer on 18 December 1992), and
- (b) other contributors in respect of any period during which they were employees of the employer from and including 1 April 1988 and before 18 December 1992)

Sydney Credit Union (limited to:

- (a) contributors in respect of any period during which they have been employees of the employer from and including 1 April 1988 (but only if they were employees of the employer on 18 December 1992), and
- (b) other contributors in respect of any period during which they were employees of the employer from and including 1 April 1988 and before 18 December 1992)

Waverley-Woollahra Destruction Committee (limited to those employees who became employees after 1 July 1997 and before the commencement of the *State Authorities Superannuation (Local Government and Energy Employers) Order 2002*)

Richmond-Tweed Regional Library (limited to those employees who became employees after 1 July

1997 and before the commencement of the *State Authorities Superannuation (Local Government and Energy Employers) Order 2002*)

Richmond-Upper Clarence Regional Library (limited to those employees who became employees after 1 July 1997 and before the commencement of the *State Authorities Superannuation (Local Government and Energy Employers) Order 2002*)

Northern Area Regional Organisation of Councils (limited to those employees who became employees after 1 July 1997 and before the commencement of the *State Authorities Superannuation (Local Government and Energy Employers) Order 2002*)

Health and Research Employees' Association of New South Wales

Health and Building Surveyors Association of New South Wales (limited to those employees who became employees after 1 July 1997 and before the commencement of the *State Authorities Superannuation (Local Government and Energy Employers) Order 2002*)

Federated Municipal and Shire Council Employees' Union of Australia, New South Wales Division (limited to those employees who became employees after 1 July 1997 and before the commencement of the *State Authorities Superannuation (Local Government and Energy Employers) Order 2002*)

## **Part 2 Local government and other authorities**

## **Part 3 Public health organisations**

A public health organisation within the meaning of the *Health Services Act 1997*

## **Schedule 2 Excluded persons**

(Sections 3, 9, 46)

### **1 General exclusion**

- (1) For the purposes of the definition of **employee** in section 3 (1), a person is an excluded person if he or she:
  - (a) is a full-time employee and is a contributor to a superannuation scheme other than the superannuation scheme established by this Act,
  - (b) has received a benefit under, or is in receipt of periodic payments under, such a superannuation scheme as a consequence of ill health, not being a benefit or payment based on an elapsed period,
  - (c) is a person who was a contributor and received a benefit under this Act where prospective benefit points were a factor in the calculation of the amount of the benefits, or
  - (d) is a Judge within the meaning of the *Judges' Pensions Act 1953*, a master within the meaning of the *Supreme Court Act 1970*, the Solicitor General or the Director of Public Prosecutions.
- (2) Clause 1 (a) does not apply to an employee:
  - (a) who is an executive officer, and

(b) who was, at the time of becoming an executive officer, and who continues to be, a contributor to the Fund.

(3) Clause 1 (1) (a) does not apply to an employee for whom additional pre-tax employer contributions are made to another superannuation scheme.

## 2 Disqualification of contributor

(1) In this clause, **university** means a university established by an Act.

(2) A person who is appointed on or after the appointed day as a professor of a university and becomes a contributor ceases to be a contributor if he or she becomes a party to any scheme or arrangement to which the university is also a party and under which he or she is, or may become, entitled to any pension, annuity, lump sum or other payment on retirement from professorship.

(3) A person:

(a) who is an employee of a university and a contributor, and

(b) who becomes a party to any scheme or arrangement to which the university is also a party and under which he or she is, or may become, entitled to any pension, annuity, lump sum or other payment on retirement as such an employee,

ceases to be a contributor on becoming a party to that scheme or arrangement.

(4) Subclauses (2) and (3) have effect in relation to a person who ceases to be a contributor as if the person had ceased to be a contributor by reason of resignation from the service of an employer.

## 3 (Repealed)

## Schedule 3 Savings and transitional provisions

(Section 10)

### 1 Definitions

(1) In this Schedule:

**earlier Act** means the *Public Authorities Superannuation Act 1985*.

**earlier Fund** means the Public Authorities Superannuation Fund.

**transferred contributor** means:

(a) an employee who becomes a contributor pursuant to an election referred to in clause 2, or

(b) an employee who becomes a contributor pursuant to clause 3.

- (2) This Schedule operates in addition to, and has effect despite, the other provisions of this Act.

## **2 Elections under earlier Act**

- (1) Where an employee who, before the appointed day, made an election under the earlier Act to contribute to the earlier Fund had not, before that day, become a contributor to the earlier Fund, the election shall be deemed to have been an election under section 19 (Election to contribute to the Fund) that:
  - (a) specifies under section 19 (2) (b) a rate per cent of salary determined by the Board having regard to the level of contribution to the earlier Fund selected by the employee, and
  - (b) takes effect on a date determined by the Board.
- (2) An employee referred to in subclause (1) may, before becoming a contributor, make an application under section 20 (Additional benefit) but, subject to that section, this subclause does not operate to prevent an employee so referred to from making such an application after becoming a contributor.
- (3) An election referred to in subclause (1) is ineffective for the purposes of the earlier Act.

## **3 Transfer of contributors under earlier Act**

- (1) An employee who, immediately before the appointed day, was a contributor to the earlier Fund shall be deemed to have made an election under section 19 (Election to contribute to the Fund) which took effect on the appointed day and to which section 19 (2) did not apply.
- (2) Where, pursuant to subclause (1), an employee becomes a contributor:
  - (a) the employee ceases to be a contributor to the earlier Fund, and
  - (b) a benefit under the earlier Act is not payable to or in relation to the contributor.
- (3) An application under section 20 (Additional benefit) may, subject to that section, be made at any time by an employee who, pursuant to this clause, becomes a contributor.

## **4 Transitional regulations may be made**

- (1) The regulations may make provision for or with respect to the rights and obligations of transferred contributors and, without affecting the generality of the foregoing, may affect or preserve rights and obligations accrued or accruing before the appointed day.
- (2) A provision referred to in subclause (1) may not restrict or remove any rights a transferred contributor has as a contributor under this Act (other than this Schedule),

but may confer additional rights, having regard to the rights and obligations under any previous superannuation scheme to which the transferred contributor was a party.

- (3) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the appointed day or a later day.
- (4) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **5 Actuarial investigation**

The actuarial investigation required to be made under section 8 of the *Public Authorities Superannuation Act 1985* as at 31 March 1988 in relation to the Public Authorities Superannuation Fund shall be deemed to be that required to be made under section 18 of this Act as at the appointed day in relation to the State Authorities Superannuation Fund.

## **Schedule 4 Transitional provisions for certain other schemes**

(Section 10)

### **1 Transfers from certain other superannuation schemes**

- (1) The regulations may make provision for or with respect to the transfer to the superannuation scheme constituted by this Act of participants in any superannuation scheme constituted by the *Local Government and Other Authorities (Superannuation) Act 1927* (Part 3D excepted), or the participants in any other superannuation scheme, and the consequential termination of those schemes.
- (2) A regulation made pursuant to subclause (1) has effect despite any of the provisions of the *Local Government and Other Authorities (Superannuation) Act 1927* or any other Act.

### **2 Transitional regulations may be made**

- (1) The regulations may make provision for or with respect to the rights and obligations of any such participants and, without affecting the generality of the foregoing, may affect or preserve rights and obligations accrued or accruing before the publication of the provision.

- (2) A provision referred to in subclause (1) may not restrict or remove any rights any such participant has as a contributor under this Act (other than this Schedule), but may confer additional rights, having regard to the rights and obligations under any previous superannuation scheme to which the participant was a party.
- (3) A provision referred to in subclause (1) may, if the regulations so provide, take effect from a day that is earlier than the date of its publication or a later day.
- (4) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Schedule 5 Special provisions for deferring the benefits of certain contributors**

(Sections 43 (9), 43AA)

### **Part 1 Transferred contributors or contributors electing or required to join another superannuation scheme**

#### **1 Transferred contributors to whom this Part applies**

- (1) This Part applies:
  - (a) to contributors:
    - (i) who are employed in an area of an employer's activities that is, or is to be, transferred to another employer who is not, in respect of the contributor, an employer under this Act, and
    - (ii) who have elected or are required to transfer to the employment of that other employer, and
    - (iii) whose transfer of employment is declared by the regulations to be a transfer of employment to which this Part applies, and
  - (b) to contributors:
    - (i) who, while remaining with their existing employer, have elected or are required to become contributors to another superannuation scheme, and



(ii) whose transfer to that scheme is declared by the regulations to be a transfer of superannuation coverage to which this Part applies.

(2) The regulations may:

(a) for the purposes of subclause (1) (a) (iii), declare that the transfer of employment of any specified contributors or former contributors is a transfer of employment to which this Part applies, or

(b) for the purposes of subclause (1) (b) (ii), declare that the transfer of any specified contributors or former contributors to another superannuation scheme is a transfer of superannuation coverage to which this Part applies,

but only if the Minister has certified that the transfer of employment or, as the case may be, the transfer of superannuation coverage is a consequence of a Government initiative.

(3) A reference in section 43 (9) and this clause to a contributor includes a reference to a participant in a superannuation scheme referred to in clause 1 (1) of Schedule 4.

(4) This Part does not apply to contributors transferred as a consequence of a Government privatisation initiative.

## **2 Contributor entitled to deferred benefit despite having contributed less than the prescribed amount**

A contributor to whom this Part applies is entitled to make provision for a deferred benefit even though he or she is not entitled to a benefit of or exceeding the amount prescribed for the purposes of section 43 (1).

## **3 Contributor entitled to immediate payment of deferred benefit (including employer-financed component)**

(1) A contributor to whom this Part applies and who elects to make provision for a deferred benefit is entitled to be paid the benefit provided by section 43 (6) on ceasing to be a contributor, despite anything to the contrary in section 43.

(2) A deferred benefit is payable under this clause if, and only if:

(a) STC is satisfied that the benefit will be applied to the credit of the contributor in another superannuation scheme, and

(b) any requirements made by the regulations with respect to the payment of the benefit are complied with.

## **4 Regulations**

(1) The Governor may make regulations for the purposes of this Part and, in particular, for or with respect to:

- (a) the application of a deferred benefit payable under clause 3, and
  - (b) the entitlements and obligations of a contributor to whom this Part applies under any superannuation scheme to which any such deferred benefit is credited.
- (2) Where a contributor to whom this Part applies is a participant in a superannuation scheme referred to in clause 1 (1) of Schedule 4 but is not a contributor to the superannuation scheme constituted by this Act, the regulations under this Part may make provision for or with respect to the transfer of the participant to the superannuation scheme constituted by this Act and may, for that purpose, apply (with or without modifications) the provisions of or made under Schedule 4.

## **Part 2 Deferral of benefit on privatisation**

### **4A Application of Part**

By virtue of section 46AB, this Part applies to contributors referred to in that section and so applies on and from transfer, or an employer ceasing to be an employer, as referred to in that section.

### **4B Contributor entitled to defer benefit**

Despite any provision of section 43, a contributor is taken to have made provision for a deferred benefit under that section on the date when this Schedule first applies to the contributor.

### **4C Contributor entitled to immediate payment of deferred benefit after ceasing to contribute**

- (1) A contributor to whom this Part applies who has a deferred benefit is entitled to be paid a benefit under section 43 (6) when or at any time after the contributor ceases to contribute to the Fund if STC is satisfied that the benefit is to be paid or applied in accordance with subclause (2).
- (2) The benefit is to be paid or applied as follows:
  - (a) to another superannuation fund approved by STC,
  - (b) to an approved deposit fund approved by STC,
  - (c) to purchase a deferred annuity.
- (3) A contributor is entitled to be paid the benefit under this clause despite any provision of section 43.
- (4) Nothing in this clause affects any other entitlement of a contributor to payment of a benefit under section 43 (6).
- (5) In this clause:

**approved deposit fund** means an approved deposit fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

**deferred annuity** means a deferred annuity within the meaning of Part 5 of the *Superannuation Industry (Supervision) Regulations* of the Commonwealth.

#### **4D Contributor only entitled to withdrawal benefit on or after ceasing to be employed by privatised employer**

A contributor to whom this Part applies who has a deferred benefit may elect to take a benefit under section 43 (7) only if the election is made on or after the contributor ceases to be employed by the employer of the contributor as at the day on which this Part first applied to the contributor.

### **Part 3 Deferral of benefit for contributors aged 55 years and over in certain circumstances**

#### **5 Eligible contributors**

(1) This Part applies to a contributor:

- (a) who is of or above the age of 55 years, and
- (b) who, as a result of a single reduction of salary, has undergone a reduction of 20% or more in attributed salary after reaching that age, and
- (c) whose employer certifies the matters referred to in paragraphs (a) and (b).

(2) The fact that a person undergoes more than one attributed salary reduction of 20% or more does not mean that the person ceases to be a person to whom this Part applies.

#### **6 Exit date**

In this Part, **exit date**, in relation to an employee to whom this Part applies, means the day immediately preceding the day of the reduction in attributed salary in relation to which the employee makes an election under clause 7.

#### **7 Election to preserve benefit**

(1) A contributor to whom this Part applies may elect to make provision for a benefit under section 43.

(2) An employee may make only one election under this clause but the election may relate to any single reduction in attributed salary of 20% or more that occurs after the employee reaches 55 years of age (not just the first reduction that occurs).

#### **8 Date of deferral of benefit**

The benefit is deferred from the exit date.

## 9 Calculation of value of deferred benefit

- (1) The initial value of a deferred benefit is to be calculated in accordance with section 43 as if the contributor had ceased employment.
- (2) If a contributor has attained the early retirement age before the exit date, for the purpose of calculating the value of the employer-financed benefit to be deferred under subclause (1), **K** in the formula in section 43 (6) (b) is to equal one.

## 10 When deferred benefit is payable

A benefit deferred under this Part may only be paid in accordance with section 43 and then only if the person in respect of whom the benefit is payable has ceased employment or has died.

# Schedule 6 Savings and transitional provisions

(Section 56)

## Part 1 Regulations

### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Superannuation Legislation (Further Amendment) Act 1993*

*Superannuation Legislation Amendment Act 1997*

*Superannuation Legislation Further Amendment Act 1997*

*Superannuation Legislation Amendment Act 1998*

*Superannuation Legislation Further Amendment Act 1998*

*Superannuation Legislation Further Amendment Act 1999*

*Superannuation Legislation Amendment Act 2000*

*Superannuation Legislation Amendment (Same Sex Partners) Act 2000*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its

publication, or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Superannuation Legislation (Further Amendment) Act 1993**

### **2 Part-time employment**

Section 6 (2), as in force before the date of assent to the *Superannuation Legislation (Further Amendment) Act 1993*, applies to a contribution period commencing before that date but not completed on that commencement.

### **3 Payment of contributions during leave without pay**

Section 29, as amended by the *Superannuation Legislation (Further Amendment) Act 1993*, applies to a period of leave without pay commenced before 1 January 1994 and not completed immediately before that date.

### **4 Spouses' benefits**

The amendments made by the *Superannuation Legislation (Further Amendment) Act 1993* do not entitle any spouse to benefits in respect of the death of a contributor or former contributor occurring before 1 January 1994.

## **Part 3 Superannuation Legislation Further Amendment Act 1997**

### **5 Authorised leave**

A person who commenced a period of authorised leave before the commencement of section 29A (as inserted by the *Superannuation Legislation Further Amendment Act 1997*) is entitled to the benefit of that section if the person was still on leave immediately before the commencement of that section.

## **Part 4 Superannuation Legislation Amendment Act 1998**

### **6 Application of amendments to section 30**

- (1) The amendments made to section 30 by the *Superannuation Legislation Amendment Act 1998* apply to any resumption in employment as an employee by a contributor on or after the date of assent to that Act, even if the contributor's previous employment with an employer ceased, in the circumstances referred to in section 30 (1), before that date.
- (2) Section 30, as in force immediately before the date of assent to the *Superannuation Legislation Amendment Act 1998*, continues to apply in respect of any resumption in employment by a contributor before that date.

## Part 5 Superannuation Legislation Further Amendment Act 1998

### 7 Payment of previously preserved benefits

A benefit preserved under section 43AAA, as in force immediately before its repeal by the *Superannuation Legislation Further Amendment Act 1998*, is payable as if section 43AAA had not been repealed.

## Part 6 Superannuation Legislation Amendment (Same Sex Partners) Act 2000

### 8 Spouse or de facto partner entitlements

- (1) The definitions of **de facto partner** and **spouse** inserted by the *Superannuation Legislation Amendment (Same Sex Partners) Act 2000* apply only to or in respect of contributors or former contributors who die on or after the commencement of the amendment substituting the definition of **spouse**.
- (2) The definition of **spouse**, as in force immediately before its substitution by that Act, applies to or in respect of contributors or former contributors who die before the commencement of the amendment substituting the definition of **spouse**.