

# Parliamentary Contributory Superannuation Act 1971 No 53

[1971-53]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Superannuation Legislation Amendment \(Family Law\) Act 2003 No 77](#) (not commenced)
- **See also**  
[Relationships Register Bill 2010](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Parliamentary Contributory Superannuation Act 1971 No 53



New South Wales

An Act to establish a contributory superannuation scheme for members of the Legislative Council and the Legislative Assembly in substitution for the scheme contained in the *Legislative Assembly Members Superannuation Act 1946*; to repeal that Act and certain other Acts; and for purposes connected therewith.

## Part 1 Preliminary

### 1 Name of Act and commencement

- (1) This Act may be cited as the *Parliamentary Contributory Superannuation Act 1971*.
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

### 2 (Repealed)

### 3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**actuary** means a person who is a Fellow or Accredited Member of the Institute of Actuaries of Australia.

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

**contributions**, in relation to a person, means amounts deducted from that person's salary pursuant to the provisions of this Act.

**de facto partner** of a member, or former member, who has died means, if the member or former member 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.

**designated employer** has the same meaning as in the *Parliamentary Remuneration*

[Act 1989](#).

**federal member** means a member of either House of the Parliament of the Commonwealth.

**financial year** means the period commencing on the first day of July in any year and ending on the thirtieth day of June in the next following year.

**general election** means a general election of Members of the Legislative Assembly.

**Insurance and Superannuation Commissioner** means the Insurance and Superannuation Commissioner holding office under the [Insurance and Superannuation Commissioner Act 1987](#) of the Commonwealth, and includes a person acting in that office.

**member** means member of the Legislative Council or the Legislative Assembly or a person who has ceased to be such a member but is in receipt of salary.

**other benefits** includes a refund of contributions, and any interest payable thereon.

**Parliamentary Contributory Superannuation Scheme** means the contributory superannuation scheme established by this Act.

**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.

**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.

**salary**, in relation to a member or a former member, means:

- (a) all moneys payable, whether before or after the commencement of this Act, by way of salary or special allowance to him or her under the [Constitution Act 1902](#), the [Parliamentary Allowances and Salaries Act 1956](#) or any corresponding previous enactment, and
- (b) all remuneration payable to him or her under the [Parliamentary Remuneration Tribunal Act 1975](#), excluding any portion specified under section 7A of that Act as being in the nature of an allowance for electoral or other expenses, and
- (c) all remuneration payable to him or her under the [Parliamentary Remuneration Act 1989](#) by way of basic salary or additional salary, and
- (d) the cost of any employment benefits (within the meaning of the [Parliamentary Remuneration Act 1989](#)) provided to the member or former member (as

determined by the designated employer), and

- (e) if salary sacrifice contributions are made in respect of the member or former member under this Act, the amounts payable for those contributions under section 18AA, and
- (f) if salary sacrifice contributions are made in respect of the member or former member under section 14F of the *Parliamentary Remuneration Act 1989*, the amounts of those contributions,

and includes any allowance (other than a living away from home allowance) payable to a member under section 17G or 28 of the *Constitution Act 1902*, as in force at any time before the commencement of the *Parliamentary Allowances and Salaries (Amendment) Act 1966*, but does not include any electoral allowance payable under section 28 of the *Constitution Act 1902*, as in force at any time before the commencement of section 15 of the *Parliamentary Remuneration Tribunal Act 1975*.

**salary sacrifice contribution**—see section 18AA.

**spouse** of a member, or former member, who has died means the widow or widower, as the case may be, of the member or former member.

**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 it has in the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth.

**the former Act** means the *Legislative Assembly Members Superannuation Act 1946*.

**the Fund** means the Parliamentary Contributory Superannuation Fund maintained under this Act.

**triennial actuarial investigation** means an actuarial investigation under section 10 (1).

**trustees** means the Trustees of the Parliamentary Contributory Superannuation Fund constituted by this Act.

(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.



#### **4 Amendments require certificate of approval**

It is not lawful for the Legislative Assembly to originate or pass any vote, resolution or Bill for the amendment of this Act unless a certificate approving the amendment made by the vote, resolution or Bill has been first issued by the Parliamentary Remuneration Tribunal, or any successor of the Tribunal, during the Session in which the vote, resolution or Bill is proposed to be passed.

### **Part 1A Closure of Scheme from 2007 general election**

#### **4A Closure of Parliamentary Contributory Superannuation Scheme**

- (1) The Parliamentary Contributory Superannuation Scheme is closed to members elected at or after the 2007 general election, other than continuing members.
- (2) Accordingly, a member elected at or after the 2007 general election who is not a continuing member is not entitled:
  - (a) to have deductions made from the member's salary under this Act, or
  - (b) to have any period of service during which the member is not a continuing member after that election taken into account in determining any benefit payable to or in respect of the member under this Act.
- (3) For the purposes of this Act, a person is a **continuing member** if:
  - (a) the person was a member of either House of Parliament at any time within the period of 3 months before polling day at the 2007 general election, and
  - (b) the person was elected to either House of Parliament at the 2007 general election or within 3 months after polling day at that election, and
  - (c) since polling day at that election, the person has not ceased to be a member of either House of Parliament for a continuous period exceeding 3 months.
- (4) In this Part, **2007 general election** means the first State general election held after the commencement of this section.

### **Part 2 Administration**

#### **Division 1 The Parliamentary Contributory Superannuation Fund**

##### **5 Parliamentary Contributory Superannuation Fund**

The trustees must maintain in the Treasury, or in such other place as the trustees determine, a fund to be called the Parliamentary Contributory Superannuation Fund.

## **6 Payments into and out of Fund**

- (1) The Fund shall consist of:
  - (a) the moneys and investments that immediately before the commencement of this Act constituted the Legislative Assembly Members Provident Fund under the *Legislative Assembly Members Superannuation Act 1946*,
  - (b) all deductions from the salaries of members and salary sacrifice contributions made pursuant to Part 3 and any payments made by members under section 31A,
  - (c) payments, advances and loans made by the Treasurer as provided for by this Act, and
  - (d) all moneys howsoever arising by reason of investment of the Fund.
- (2) There shall be paid from the Fund all pensions and other benefits, lump sums, interest payable on preserved benefits, allowances and other payments provided for in this Act.

## **7 Financial accommodation and investment**

- (1) The trustees may, under and subject to the *Public Authorities (Financial Arrangements) Act 1987*:
  - (a) obtain financial accommodation, and
  - (b) make financial arrangements, and
  - (c) make investments.
- (2) The trustees must invest money standing to the credit of the Fund that is available for investment through an investment manager or managers who undertake to invest and manage that money on behalf of the trustees.
- (3) The trustees may appoint one or more investment managers for the purposes of this section.
- (4) The trustees must not, from the assets of the Fund or in obtaining financial accommodation:
  - (a) lend money to a contributor for, or to a person entitled to or receiving, a benefit under this Act, either by lending the money directly or by lending it under arrangements entered into in the exercise of a general power of investment of the assets of the Fund, or
  - (b) borrow money or maintain an existing borrowing of money, whether by way of a secured or unsecured loan, otherwise than to obtain temporary finance, or

(c) invest any of the assets of the Fund otherwise than on an arms-length basis, unless it is an investment in an in-house asset within the meaning of Part 8 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

(5) The trustees are taken to have complied with subsection (4) from 1 July 1990 to the commencement of that subsection.

## **8 Investment strategy**

- (1) The trustees must determine and give effect to an investment strategy for the Fund (the **investment strategy**) and a strategy for the prudential management of any reserves of the Fund (the **reserves strategy**).
- (2) The investment strategy must have regard to the circumstances of the Fund, including but not limited to the following:
  - (a) the risk involved in making, holding and realising, and the likely return from, the investments having regard to the schemes' objectives and their cash flow requirements,
  - (b) the composition of the investments as a whole, including the extent to which the investments are diverse or involve exposure to risks from inadequate diversification,
  - (c) the liquidity of the investments having regard to the schemes' cash flow requirements,
  - (d) the ability of the Fund to discharge its existing and prospective liabilities,
  - (e) any other matter which a trustee is required to consider in determining an investment strategy under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.
- (3) The reserves strategy must be consistent with the investment strategy and the ability to discharge the existing and prospective liabilities of the Fund (whether actual or contingent) as and when they fall due.
- (4) In determining the reserves strategy, the trustees must have regard to any other matter which a trustee is required to consider in determining a reserves strategy under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

## **9 (Repealed)**

## **10 Actuarial investigations**

- (1) An investigation as to the state and sufficiency of the Fund shall be made as at the thirtieth day of June, one thousand nine hundred and seventy-two, and as at the expiration of each period of three years thereafter.

- (2) Any such investigation shall be made by an actuary appointed by the trustees.
- (2A) The actuary must complete the investigation, and report the result to the trustees, not later than 6 months after the date as at which the investigation is made.
- (2B) The Minister may, in relation to a particular investigation, extend or further extend the period referred to in subsection (2A) if the Minister considers that special circumstances exist to justify an extension or further extension.
- (2C) The trustees must, not later than 3 months (or such other period as is approved by the Minister) after receiving a report under this section, forward the report to the Minister with such comments as the trustees think fit.
- (3) The actuary must recommend to the trustees the amount that, in addition to any other money payable into the Fund, should, in the actuary's opinion, be paid into the Fund in respect of each financial year during the period of 3 years following the completion of the investigation to enable the Fund to meet its liabilities.
- (3A) In subsection (3), the reference to money payable into the Fund includes a reference to any interim advances:
- (a) that were paid into the Fund before completion of the investigation, or
  - (b) that an actuary has recommended, under subsection (4), should be paid into the Fund.
- (3B) The report referred to in subsection (2A) must:
- (a) include a statement of the value of the assets of the Fund and its liabilities, 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, and
  - (c) state the number of members of the Parliamentary Contributory Superannuation Scheme, and
  - (d) state the amount of benefit payments, investment earnings and administrative expenses since the last triennial actuarial investigation, and
  - (e) summarise the major economic, demographic and legislative changes affecting the Fund since the last triennial actuarial investigation, and

- (f) include a statement on the impact of the matters referred to in paragraphs (b)-(e) on the assets and liabilities of the Fund, and
  - (g) include such other matters as are referred to the actuary by the Minister or trustees.
- (4) If the trustees are of the opinion that investments may have to be realised to pay current liabilities of the Fund before any of the annual amounts recommended or to be recommended in accordance with subsection (3) are paid, the trustees may at any time appoint an actuary to make recommendations in relation to amounts that may need to be paid into the Fund by way of interim advances.

#### **10A Interim actuarial investigation**

- (1) The Minister may appoint an actuary to make an interim actuarial investigation between triennial actuarial investigations.
- (2) The Minister must not appoint an actuary to make an interim actuarial investigation within a period of 3 months after the completion of an actuarial investigation or within a period of 6 months before the next triennial actuarial investigation.
- (3) The actuary must complete the investigation, and report the result to the Minister, not later than on the date appointed by the Minister or such later date or dates as the Minister may appoint if the Minister considers that special circumstances exist to justify an extension or further extension.

#### **11 Payments by Treasurer into the Fund**

- (1) After considering any relevant recommendations of actuaries under section 10 (3) or (4), the trustees must give to the Treasurer advice in relation to the contributions and interim advances that may need to be paid into the Fund.
- (2) The Treasurer is to pay into the Fund annual contributions and interim advances as determined by the Treasurer after considering the advice of the trustees.
- (3) Payments to be made under this Act by the Treasurer into the Fund shall be paid from the Consolidated Fund which is hereby appropriated accordingly.

#### **12 (Repealed)**

#### **13 Cheques**

Cheques drawn on any account containing moneys belonging to the Fund in any bank, building society or credit union shall be signed as prescribed by the regulations.

## **Division 2 The Trustees of the Fund**

### **14 Trustees of the Fund**

- (1) The trustees of the Fund shall be:
  - (a) two members of the Legislative Council who shall be appointed and may be removed by order of the Legislative Council,
  - (b) five members of the Legislative Assembly (of whom at least one shall be a Minister of the Crown) who shall be appointed and may be removed by order of the Legislative Assembly, and
  - (c) the Secretary of the Treasury.
- (2) A person holding office as trustee vacates that office on ceasing to be a member.
- (3)-(6) (Repealed)

### **14A Trustees to be a body corporate**

- (1) There is constituted by this Act a body corporate with the corporate name of the Trustees of the Parliamentary Contributory Superannuation Fund.
- (2) The body corporate is to consist of the trustees who are holding office under section 14.

### **15 Functions of trustees**

- (1) The functions of the trustees are:
  - (a) to administer the Parliamentary Contributory Superannuation Scheme, and
  - (b) to ensure that the Fund is invested and managed in accordance with this Act, and
  - (c) to pay benefits to or in respect of members and former members, and
  - (d) to make such other payments as are provided for by this Act.
- (2) The trustees are trustees for the purposes of the [Trustee Act 1925](#) and are required to hold in trust for the persons entitled to benefits under this Act all contributions and other money paid or payable to the trustees.
- (3) The trustees must use the assets of the Fund to pay benefits to or in respect of the members and former members and to pay the costs and expenses of the investment and management of the Fund.
- (4) The trustees have power in New South Wales and elsewhere to do all things necessary or convenient to be done for, or in connection with, the exercise of the functions specified in subsection (1) and, in particular, may:

- (a) engage investment advisers and other kinds of consultants, and
  - (b) appoint agents and attorneys and act as agent for others, and
  - (c) take action to control or manage, or to enhance or protect, the value of any investment made out of the Fund, or to enhance or protect the return on any such investment.
- (5) In exercising their functions, the trustees must:
- (a) have regard to the interests of members and other persons entitled to benefits under this Act, and
  - (b) have regard to the Heads of Government Agreement, that commenced on 1 July 1996, relating to the exemption of certain State public sector superannuation schemes from the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth, and
  - (c) have regard to the future liabilities of the fund.

#### **15A Trustees may delegate their functions**

The trustees may delegate to:

- (a) a trustee, or
  - (b) a committee that consists of or includes one or more trustees, or
  - (c) a person whose services are made use of under section 15B,
- any of their functions, other than this power of delegation.

#### **15B Staff of the trustees**

The trustees may, with the approval of the Minister or authority concerned, arrange for the use of the services of any staff, or the facilities, of a Government department, an administrative office or a public or local authority.

#### **15C Trustees may establish committees**

- (1) The trustees may establish committees to assist them in exercising their functions.
- (2) A person may be appointed as a member of such a committee even though he or she may not be a trustee.
- (3) The procedure for calling meetings of such a committee and for the conduct of business at those meetings may be decided by the trustees or, subject to any decision of the trustees, by the committee.

## **16 Meetings of trustees**

- (1) There shall be a chairperson and a vice-chairperson of the trustees, each of whom shall be appointed by the trustees.
- (1A) The chairperson shall be a member of the Legislative Assembly who is also a Minister of the Crown.
- (2) The chairperson, or in his or her absence from any meeting, the vice-chairperson, shall preside at any meetings of the trustees and in the absence from any meeting of both the chairperson and the vice-chairperson the trustees may elect one of their number to preside at that meeting.
- (3) The trustees may act by a majority of those present at any meeting of the trustees at which a quorum is present.
- (4) The procedure at any meeting of the trustees shall, subject to the provisions of the regulations, be such as the trustees may determine, and the quorum for any meeting of the trustees shall be 4 trustees.
- (5) A direction of the trustees shall continue in force until revoked by a subsequent direction of the trustees, notwithstanding any changes in the persons who are trustees and notwithstanding that, by reason of the dissolution or expiry of the Legislative Assembly or for any other reason, there are for a time no trustees.

## **17 Appointment of person to act in absence of Secretary of the Treasury**

The Minister may appoint the Deputy Secretary of the Treasury or some other officer of the Treasury to act in place of the Secretary of the Treasury as trustee during the illness or absence of the Secretary of the Treasury, and any person so appointed shall while so acting exercise and perform all the powers, authorities, duties, functions and obligations of a trustee.

### **17A Indemnification of trustees etc**

- (1) Any matter or thing done, or omitted to be done, in good faith by:
  - (a) a trustee in the exercise of the trustee's functions under this Act, or
  - (b) a person acting in accordance with the directions of the trustees,does not subject the trustee or person personally to any action, liability, claim or demand.
- (2) Subsection (1) does not preclude the trustees from being subject to any action, liability, claim or demand.



## Part 3 Contributions, pensions and benefits

### 18 Deductions from salaries of members

From each instalment of salary payable to a member, commencing with the first instalment paid after the commencement of the *Parliamentary Contributory Superannuation (Amendment) Act 1979*, there shall be deducted an amount equal to 12½ per cent of the gross amount of the instalment before any deductions.

#### 18AA Salary sacrifice contributions

- (1) The whole or part of the amount required to be deducted from the salary of a member under this Act may be paid by salary sacrifice contributions, if the member elects to make salary sacrifice contributions and the designated employer and the trustees approve of the election.
- (2) A **salary sacrifice contribution** is a contribution paid in accordance with an approval by the designated employer under which the member elects to forgo remuneration yet to be earned and the remuneration foregone is to be applied by the designated employer to the amount required to be deducted from the salary of a member under this Act.
- (3) The amount payable for a salary sacrifice contribution to meet the requirement for a salary deduction under this Act is to comprise the following:
  - (a) the amount necessary (taking into account any deductions not made on a salary sacrifice basis) to meet the required deductions under this Act (the **contribution element**),
  - (b) the amount necessary to meet any tax payable under Commonwealth taxation law in respect of the amount paid under paragraph (a).
- (4) A salary sacrifice contribution is to be paid within the same period as a deduction from salary under section 18.
- (5) An election under this section:
  - (a) may be made only in respect of future salary instalments, and
  - (b) is to be in writing to the designated employer, and
  - (c) is to be accompanied by any information required by the trustees and the designated employer, and
  - (d) takes effect when it is approved by the designated employer and the trustees, and
  - (e) may be varied or revoked by notice in writing to the designated employer and the trustees.

- (6) In this Act and the regulations, a reference (however expressed) to any of the following is taken to include a reference to the contribution element of a salary sacrifice contribution in accordance with an election under this section:
- (a) a deduction from salary,
  - (b) a contribution by or in respect of a member.
- (7) In this Act and the regulations, a reference (however expressed) to:
- (a) an employer-financed component of a benefit does not include a reference to a salary sacrifice contribution or any part of a benefit financed by a salary sacrifice contribution, and
  - (b) an employee-financed component of a benefit includes a reference to a contribution element of a salary sacrifice contribution and any part of a benefit financed by the contribution element of a salary sacrifice contribution.
- (8) This section has effect despite any other provision of this Act.

**18A Acceptance of contributions**

- (1) Despite any other provision of this Act, deductions from a member's salary are not required to be made during any period specified by the trustees for which the trustees determine that they must not accept contributions in respect of the member.
- (2) The trustees may make such a determination only if they are of the opinion that it is necessary to do so in order to be consistent with a relevant Commonwealth superannuation standard.
- (3) A period in respect of which deductions are not made under this section is not to be taken into account when determining the member's superannuation benefit under section 19.

**18B Election to cease salary deductions on reaching age 65**

- (1) A member may elect, by notice in writing served on the trustees, to cease to have deductions from salary instalments made under section 18 if:
  - (a) the member is 65 years or more of age, and
  - (b) the member has been entitled to salary in respect of an aggregate period of 20 years or more (including any period before the commencement of this section).
- (2) A member may not revoke an election made under this section.
- (3) An election made under this section takes effect when it is approved by the trustees.
- (4) On the election taking effect, deductions from the member's salary are not required to

be made under this Act.

- (5) An election under this section continues to have effect if, after ceasing to be a member, the person again becomes a member.
- (6) A benefit payable under this Act to or in respect of a member who makes an election under this section is to be calculated as if the member ceased to be entitled to receive salary on the day the election took effect.
- (7) A benefit is not payable under this Act to or in respect of a member who makes an election under this section until it is payable under another provision of this Act.

### 19 Members' superannuation benefit

- (1) Subject to this Act, a person who has been entitled to salary (either after or partly before and partly after the commencement of this Act) in respect of an aggregate period of 7 years or more shall, on ceasing to be a member and to be entitled to salary, be entitled to be paid out of the Fund until death an annual pension at the rate ascertained in accordance with the formula:

$$A \times \frac{B}{C}$$

where:

**A** is an amount calculated at the rate equal to the aggregate of 48.8 per cent of current basic salary and, in respect of each month during which the person was entitled to receive salary as a member exceeding in the aggregate 7 years, 0.2 per cent of current basic salary, or the rate of 80 per cent of current basic salary, whichever is the lesser,

**B** is the total salary received by that person, and

**C** is the total basic salary in respect of that person.

(1A), (1B) (Repealed)

- (2) For the purpose of calculating any instalment of pension payable under subsection (1) at any particular time, **current basic salary** means:
  - (a) where the person entitled to the instalment last served as a member in the Legislative Council—the salary payable at that particular time to a member of the Legislative Council (other than a Minister of the Crown or a recognised office holder within the meaning of the [Parliamentary Remuneration Tribunal Act 1975](#) and other than a recognised office holder within the meaning of the [Parliamentary Remuneration Act 1989](#)) and expressed at an annual rate, or
  - (b) where the person entitled to the instalment last served as a member in the

Legislative Assembly—the salary payable at that particular time to a member of the Legislative Assembly (other than a Minister of the Crown or a recognised office holder within the meaning of the *Parliamentary Remuneration Tribunal Act 1975* and other than a recognised office holder within the meaning of the *Parliamentary Remuneration Act 1989*) and expressed at an annual rate.

- (3) For the purpose of subsection (1), the total salary received by a person shall not include any salary which that person received in respect of any period before the first day of January, one thousand nine hundred and fifty-two.
- (4) For the purpose of subsection (1), the total basic salary of a person who is entitled to a pension and who last served in the Legislative Council is the sum of the following amounts:
- (a) the total amount (if any) that, during any period (not being a period before 1 January 1952) during which that person was entitled to salary, was payable from time to time as salary or allowances to a member of the Legislative Council under section 17G of the *Constitution Act 1902* other than:
    - (i) any expense allowance or living away from home allowance, or
    - (ii) any amount payable as an allowance to that member only in his or her capacity as the person recognised as the principal representative of the members of the Legislative Council not being supporters of the Government or as salary to that member only in his or her capacity as the President, or Chair of Committees, of the Legislative Council, and
  - (b) the total amount (if any) that, during any period during which that person was entitled to salary, was payable from time to time as remuneration under the *Parliamentary Remuneration Tribunal Act 1975* to a member of the Legislative Council (other than a Minister of the Crown or a recognised office holder within the meaning of that Act), excluding any portion thereof specified under section 7A of that Act as being in the nature of an allowance for expenses, and
  - (c) the total amount (if any) that, during any period during which that person was entitled to salary, was payable from time to time as remuneration by way of basic salary or additional salary under the *Parliamentary Remuneration Act 1989* to a member of the Legislative Council (other than a recognised office holder within the meaning of that Act).
- (4A) For the purpose of subsection (1), the total basic salary of a person who is entitled to a pension and who last served in the Legislative Assembly is the sum of the following amounts:
- (a) the total amount (if any) that, during any period (not being a period before 1 January 1952) during which that person was entitled to salary, was payable from time to time as salary or allowances to a member of the Legislative Assembly

under section 28 of the *Constitution Act 1902*, other than any electoral allowance, special expenses allowance or additional allowance, and

- (b) the total amount (if any) that, during any period during which that person was entitled to salary, was payable from time to time as remuneration under the *Parliamentary Remuneration Tribunal Act 1975* to a member of the Legislative Assembly (other than a Minister of the Crown or a recognised office holder within the meaning of that Act), excluding any portion thereof specified under section 7A of that Act as being in the nature of an allowance for electoral or other expenses, and
  - (c) the total amount (if any) that, during any period during which that person was entitled to salary, was payable from time to time as remuneration by way of basic salary or additional salary under the *Parliamentary Remuneration Act 1989* to a member of the Legislative Assembly (other than a recognised office holder within the meaning of that Act).
- (5) Notwithstanding anything contained in this section, other than this subsection, where the annual pension of a former member who last served in the Legislative Council would, but for this subsection, be greater than his or her entitlement to the annual pension ascertained on the basis of this subsection, he or she shall be entitled to an annual pension at the rate to which he or she would have been entitled:
- (a) had he or she been a member of the Legislative Assembly during the whole of the period he or she was a member of the Legislative Council,
  - (b) had he or she held an office in the Legislative Assembly of the like nature to that which he or she held in the Legislative Council (the office of Vice-President of the Executive Council being regarded for the purpose of this paragraph as the office of a Minister) for any period during which he or she held such an office in the Legislative Council, and
  - (c) had his or her total salary included, if he or she held at any time the office of Leader or Deputy Leader of the Government in the Legislative Council, any salary which he or she was entitled to receive as the holder of that office.
- (6) If the trustees have made a determination under section 26D in relation to a benefit provided by this section, the amount of the benefit is reduced by the amount specified in the trustees' determination.
- (7) (Repealed)
- (8) Where by the operation of section 13A of the *Constitution Act 1902* the seat of a member becomes vacant, the member shall not be entitled to a pension under this Act but shall be entitled to have refunded to him or her the amounts deducted under this Act or the former Act from salary paid to him or her less any amount previously

refunded to him or her under this subsection or under the former Act and the amount of any reduction resulting from a determination under section 26D.

- (9) Notwithstanding anything contained in this Part, other than this subsection, where a former member has served in both the Legislative Council and the Legislative Assembly and the trustees are satisfied that the annual pension (in this subsection referred to as **basic annual pension**) of that former member is less than the annual pension to which he or she would have been entitled under this Part, other than this subsection, had that former member not served in the Legislative Council, the trustees may in their absolute discretion direct payment to that former member of an annual pension, additional to his or her basic annual pension, of such amount as the trustees think fit, but so that the aggregate of the amount of the basic annual pension and the amount of the additional annual pension under this subsection does not exceed the annual pension that would have been payable to him or her under this Part had that former member not served in the Legislative Council.

**19AA Person ceasing to be a member while criminal proceedings pending**

- (1) This section applies in respect of a person who ceases to be a member while proceedings for a serious offence are pending against the person.
- (2) Any entitlement of such a person as a former member to receive a pension under this Part is suspended while proceedings for the serious offence are pending against the former member.
- (3) If the finalisation of the proceedings results in the person not being convicted of any serious offence, the suspension of pension entitlement is lifted and the person's entitlement to a pension is reinstated.
- (4) If the finalisation of the proceedings results in the person being convicted of a serious offence:
- (a) the person ceases to have any entitlement to receive a pension under this Part, and
  - (b) the person's net contributions are to be refunded to him or her.
- (5) If proceedings for a serious offence cease to be pending before the proceedings are finalised, the suspension of pension entitlement is lifted and the person's entitlement to a pension is reinstated.
- (6) If a person's entitlement to a pension is reinstated following the lifting of a suspension:
- (a) the reinstatement has effect from immediately before the suspension began and as if the entitlement had not been suspended, and
  - (b) an election may be made under section 20 (2) within 3 months after the

entitlement is reinstated.

- (7) While a former member's entitlement to a pension is suspended under this section, the trustees may authorise payment to the former member from the Fund of an advance on the refund of the former member's net contributions under subsection (4) (b). However, if the suspension of the former member's entitlement to a pension is lifted, any such advance is to be repaid or recouped by the trustees by deduction from any pension or other payment due to the former member on the lifting of the suspension.
- (8) Criminal proceedings are not considered **finalised** for the purposes of this section until the end of the appeal period and until any appeal against conviction or acquittal, lodged within the appeal period, has been determined or has lapsed or been withdrawn. The **appeal period** is the period within which an appeal may be lodged, but does not include any extension of a period that a court may grant.
- (9) This section extends to proceedings taken outside New South Wales.
- (10) In this section:

**net contributions** means the amounts deducted under this Act or the former Act from salary paid to the person less any amount previously refunded to him or her (under this section or otherwise) and less the amount of any reduction resulting from a determination under section 26D.

**serious offence** means:

- (a) an offence committed in New South Wales that is punishable by imprisonment for life or for a term of 5 years or more or an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be an offence so punishable, or
- (b) an infamous crime.

#### **19A Variation of certain annual pensions**

- (1) In this section:

**former member** means a person who:

- (a) last served as a member of the Legislative Council, and
- (b) ceased to be such a member on or before 6 November 1978.

**prescribed time** means:

- (a) 1 January 1980, and
- (b) any time after 1 January 1980 at which the salary payable to a member of the

Legislative Assembly (other than a Minister of the Crown or a recognised office holder within the meaning of the *Parliamentary Remuneration Tribunal Act 1975* and other than a recognised office holder within the meaning of the *Parliamentary Remuneration Act 1989*) is varied.

- (2) Notwithstanding anything in section 19 or 23, where:
- (a) a former member is entitled to an annual pension under section 19, or
  - (b) the spouse or de facto partner of a former member is entitled to an annual pension under section 23,

the amount of the annual pension payable from the Fund to that former member or to that spouse or de facto partner, as the case may be, immediately before a prescribed time is varied at and from that prescribed time in the same manner and by the same percentage as the variation at that prescribed time of the salary payable to a member of the Legislative Assembly other than a Minister of the Crown or a recognised office holder within the meaning of the *Parliamentary Remuneration Tribunal Act 1975* and other than a recognised office holder within the meaning of the *Parliamentary Remuneration Act 1989*.

- (3) The amount of the annual pension payable from the Fund to a person to whom subsection (2) applies may be varied only in accordance with that subsection.

### **19B Deferral of certain pensions**

- (1) Despite any other provision of this Act, a pension, or part of a pension, payable under section 19 to a former member is payable by the trustees to the former member only if:
- (a) the former member has attained the age of 55 years, or
  - (b) a pension is payable under section 19D or 19E.
- (2) (Repealed)
- (3) In this section, and sections 19C–19F, a pension, or part of a pension, that is not payable because of this section is a **deferred pension**.
- (4) This section applies to a former member who first becomes a member after the date of assent to the *Parliamentary Contributory Superannuation Amendment Act 1999*.

### **19C Calculation of deferred pension**

- (1) The value of a deferred pension when it first becomes payable is to be calculated in accordance with section 19 as at the date the former member ceased to be a member, except that the current basic salary for the purpose of that section is to be calculated as at the date the deferred pension becomes payable under section 19B.



- (2) If a former member in respect of whom a pension has been deferred under section 19B dies:
  - (a) section 23 (2) applies in respect of the spouse or de facto partner of the former member in the same way as it applies in respect of the spouse or de facto partner of a member who has been entitled to salary for an aggregate period of 7 years or more, and
  - (b) section 23B applies in respect of a dependent child of the former member in the same way as it applies in respect of a dependent child of a deceased member or former member.

**19D Payment of deferred pension in cases of hardship**

- (1) The trustees may, on the written application of a former member, pay the former member the former member's deferred pension on the ground of the former member's financial hardship.
- (2) In determining whether a pension is payable to a former member under this section, the trustees must have regard to the following matters:
  - (a) the financial circumstances of the former member and his or her capacity to meet reasonable and immediate financial commitments,
  - (b) any other matters the trustees think relevant and appropriate.

**19E Payment on grounds of ill-health or incapacity**

- (1) The trustees may, on the written application of a former member, pay the former member the former member's deferred pension on the ground of the former member's ill-health or physical or mental incapacity.
- (2) The trustees must not determine that a pension is payable under this section unless the trustees are satisfied that the former member would, if still a member, be incapable of performing the duties of a member because of ill-health or physical or mental incapacity.
- (3) For the purposes of satisfying the trustees that a pension is payable under this section, the former member must provide such medical and other evidence or information as the trustees require.
- (4) In particular, the medical evidence must include a certificate or certificates acceptable to the trustees, signed by 2 medical practitioners, certifying that the former member would, if still a member, be incapable of performing the duties of a member due to ill-health or physical or mental incapacity.

### **19F Applications for payment of deferred pensions**

- (1) A former member may, at any time, lodge with the trustees an application to vary or revoke an application under section 19D or 19E.
- (2) An application under section 19D or 19E is to be in a form approved by the trustees for the purposes of this section.

### **20 Right to convert pension to lump sum entitlement**

- (1) In this section:

**entitled** to a pension means that a pension is payable by the trustees under this Part.

**former member** does not include a person who is entitled to a pension under section 22.

- (2) Despite anything in this Act, except subsection (2A), the following former members may elect, by notice in writing served on the trustees, to convert the whole or part of the former members' pension entitlements to lump sum entitlements determined in accordance with subsection (3):
  - (a) a former member who is entitled to a pension under this Part but who is not a former member referred to in paragraph (b) or (c),
  - (b) a former member who becomes, on ceasing to be a person whose right to a pension is suspended under section 25 (2), entitled to a pension under this Part,
  - (c) a former member who is entitled to a pension as a result of a direction given by the trustees under section 26 (2).
- (2A) Notwithstanding subsection (2), a former member referred to in subsection (2) (b) or (c) is not entitled to make an election under subsection (2) if he or she has in respect of any previous event had an opportunity to make an election under subsection (2) since he or she last ceased to be a member.
- (2B) For the purposes of subsection (2A), where any event has occurred which entitled a former member to make an election under subsection (2) within the period of three months after the occurrence of that event, as referred to in subsection (11), that former member shall be deemed to have had, in respect of that event, an opportunity to make an election under subsection (2) if:
  - (a) his or her right to receive a pension under this Part was not suspended under section 25 (2) or section 26 (1) within the period of three months after the occurrence of that event, or
  - (b) having made an election under subsection (2) within the period of three months after the occurrence of that event, that election was not, by subsection (9),

deemed never to have been made.

- (3) A lump sum payment referred to in subsection (2) shall be the amount that is ten times the amount of the annual pension entitlement in respect of which the election is made.
- (3A) For the purposes of subsection (2), the maximum amount of pension entitlement that may be the subject of an election under that subsection by a former member referred to in subsection (2) (c), is the lesser of the following amounts:
- (a) the pension entitlement of the former member, if the entitlement had not been suspended under section 26 (1),
  - (b) the annual pension entitlement directed to be paid to the former member under section 26 (2) as at the date from which a pension is first payable to the former member under section 26 (2),
  - (c) the annual pension entitlement of the former member as at the date immediately before the election under this section is received by the trustees.
- (4) A former member who makes an election under subsection (2) shall be entitled to receive from the trustees a lump sum payment calculated under subsection (3) and any pension payable under this Part to that former member in respect of any period which commenced on or after the day on which the election is received by the trustees shall (except a pension payable pursuant to a pension entitlement arising by virtue of a direction given under section 26 (2) the amount of which has been reduced by reason of his or her having received that lump sum) be reduced in accordance with section 21B.
- (5) Notwithstanding any other provision of this section, any lump sum payment under this section shall first be applied by the trustees in or towards paying into the Fund the outstanding amount of any repayment under section 24 by the former member who made the election under this section in respect of that lump sum.
- (6) Notwithstanding anything in this section, where the trustees are of the opinion that a former member:
- (a) who has become entitled to a pension under this Part, and
  - (b) who has, under subsection (2), made an election in respect of a prescribed part of his or her pension entitlement,
- would, within twelve months after his or her so becoming entitled, be likely to have his or her pension cease or suspended under section 25, the operation of that election shall, subject to subsection (7), be deferred for such period not exceeding twelve months as the trustees may determine.

- (7) The trustees may at any time reduce the period of deferment of an election under subsection (6).
- (8) During the period of deferment of his or her election, a former member is entitled to payment of his or her annual pension entitlement under this Part.
- (9) If, during the period of deferment of his or her election, the pension of a former member ceases or is suspended under section 25, that election shall be deemed never to have been made.
- (10) Where, during the period of deferment of his or her election, the pension of a former member does not cease or is not suspended under section 25, the lump sum that would have been payable under subsection (3) but for the deferment shall become payable to him or her less payments made to him or her pursuant to subsection (8) in respect of that part of his or her annual pension entitlement that was the subject of his or her election.
- (11) An election under subsection (2) must be made:
  - (a) in the case of a former member referred to in subsection (2) (a)—not later than 3 months after the former member becomes entitled to a pension under this Part,
  - (b) in the case of a former member referred to in subsection (2) (b)—not later than 3 months after the former member ceases to be a person whose right to a pension is suspended under section 25 (2),
  - (c) in the case of a former member referred to in subsection (2) (c)—not later than 3 months after the giving of the direction under section 26 (2) that resulted in the former member first becoming entitled to a pension under section 26 (2) and that was given after the former member's pension was last suspended under section 26 (1).

**21 Provisions applicable when the person becomes a member after receiving a pension as a former member**

Notwithstanding anything in this Act where a person who on ceasing to be a member converted part of his or her pension entitlement to a lump sum payment under section 20 and again becomes a member and that person again becomes entitled to a pension under this Part, the amount of the annual pension payable to him or her shall be reduced in accordance with section 21B.

**21A Interpretation of annual pension entitlement for purposes of secs 20, 21 and 25**

For the purposes of sections 20, 21 and 25:

- (a) the total annual pension to which a former member referred to in subsection (9) of section 19 is entitled, or

- (b) the annual pension for the time being directed to be paid to a person under subsection (2) of section 26,

shall be deemed to be the annual pension entitlement of that former member or that person, as the case may be.

**21B Calculation of pensions following conversion to lump sum**

- (1) This section applies where the amount of pension payable to a person is to be reduced, under section 20 (4) or 21, because of an election under section 20 to convert part of a pension entitlement to a lump sum.

- (2) The annual pension is to be reduced:

(a) in the case of a person who, immediately before the commencement of the *Parliamentary Contributory Superannuation (Amendment) Act 1989*, was a member or in receipt of a pension under this Part—by the amount of annual pension in respect of which the election was made, or

(b) in any other case—by an amount calculated in accordance with the following formula:

$$R = \frac{C}{E} \times F$$

where:

**R** represents the amount of the reduction.

**C** represents the amount of annual pension in respect of which the election concerned was made.

**E** represents the annual pension entitlement immediately before the election concerned was made.

**F** represents the amount that would be the current annual pension entitlement of the former member if he or she had not made the election concerned.

- (3) In the event that any person:

(a) by becoming a member on a second or subsequent occasion, has become for a second or subsequent time entitled to a pension under this Part, and

(b) has made an election or elections under section 20,

the person's pension is to be reduced in accordance with subsection (2) in respect of the first and any subsequent election made.

- (4) In the case of a person to whom subsection (3) applies who makes more than one election:

- (a) successive reductions of pension are to be calculated using the formula given in subsection (2) (a), in the case of a member referred to in subsection (2) (a), or subsection (2) (b), in the case of a member referred to in subsection (2) (b), and
- (b) for the purposes of any such calculation, the values to be assigned to the symbols E and F in that formula are to reflect any reduction of annual pension entitlement resulting from previous calculations.

## **22 Pension on retirement on grounds of ill-health**

- (1) Where a member produces to the trustees such medical and other evidence as satisfies them that he or she has ceased to be a member because he or she has been rendered incapable of performing the duties of a member by reason of ill-health or physical or mental incapacity, he or she shall if he or she is not entitled to a pension under this Part other than this section, be entitled to a pension calculated in accordance with the formula specified in subsection (1) of section 19.
- (1A) The medical evidence referred to in subsection (1) must include a certificate or certificates acceptable to the trustees, signed by 2 medical practitioners, certifying that the member is incapable of performing the duties of a member due to ill-health or physical or mental incapacity.
- (2) Notwithstanding the provisions of subsection (1), a person who, after the commencement of this Act, becomes, on any occasion, a member otherwise than by reason of his or her re-election at a general election immediately before which he or she was a member shall not be entitled to a pension under that subsection upon his or her next ceasing after that occasion to be a member unless between that occasion and his or her so next ceasing to be a member he or she has furnished to the trustees a certificate approved by the trustees of a medical practitioner so approved certifying that a medical practitioner authorised by the trustees for the purposes of this subsection has reported to the medical practitioner so approved that the medical practitioner so authorised has examined that person in accordance with the requirements of the trustees and that the medical practitioner so approved is satisfied that that person is not suffering from any physical or mental condition that is likely to render him or her incapable, before the expiration of 7 years from the date of the certificate, of performing the duties of a member.
- (3) If the trustees have made a determination under section 26D in relation to a benefit provided by this section, the amount of the benefit is reduced by the amount specified in the trustees' determination.

### **22A Contributors not entitled to pension**

- (1) In this section:

***refund of contributions***, in relation to a person who ceases to be a member, means a refund of that person's contributions and any contributions made by the person

under the former Act less any amount (not being an amount which that person has contracted to repay to the Fund pursuant to section 24) previously paid to the person under this Act or under the former Act as a refund of contributions.

**supplementary benefit**, in relation to a person who ceases to be a member, means the amount that is two and one-third times:

- (a) in the case of a person who has been entitled to salary for an aggregate period of less than 7 years—the amount of the refund of contributions in relation to that person, or
  - (b) in any other case—the amount that would be the amount of the refund of contributions in relation to that person if the last 7 years during which the person was entitled to salary was the only period during which the person was entitled to salary.
- (2) A person who ceases to be a member after the date of assent to the *Parliamentary Contributory Superannuation (Amendment) Act 1981*, otherwise than by reason of death or by reason of the operation of section 13A of the *Constitution Act 1902*, and who is not entitled to a pension under this Part shall be entitled to a refund of contributions and:
- (a) where the person ceases to be a member involuntarily within the meaning of subsection (3)—payment of the supplementary benefit, or
  - (b) in any other case—payment of one-half of the supplementary benefit.
- (3) For the purposes of subsection (2), a person ceases to be a member involuntarily if:
- (a) notwithstanding anything in this subsection, the person has attained the age of 60 years at the time when the person ceases to be a member,
  - (b) the person ceases to be a member by reason of resignation for reasons which to the trustees appear to be good and sufficient, or
  - (c) the person ceases to be a member by reason of the termination, either by dissolution or expiry, of a Legislative Assembly and the person:
    - (i) does not become a candidate at the general election next following that termination by reason of not securing the support of the political party to which the person belonged immediately before so ceasing to be a member,
    - (ii) becomes a candidate but is defeated at that general election, or
    - (iii) does not stand for election at that general election for reasons which to the trustees appear to be good and sufficient.
- (4) Where:

- (a) a person ceases to be a member after the date of assent to the *Parliamentary Contributory Superannuation (Amendment) Act 1981* by reason of death,
- (b) that person is not survived by a widow or widower or, if that person died on or after the commencement of Schedule 1.4 [3] to the *Superannuation Legislation Amendment Act 1996*, by a spouse or de facto partner, and
- (c) no pension is payable under section 23B in respect of a dependent child of that person,

the personal representative of that person shall be entitled to the amount, if any, by which the aggregate of the refund of contributions and payment of the supplementary benefit in relation to that person exceeds the aggregate of any instalments of pension and any other benefit (except a refund of contributions and any interest thereon) paid or payable under this Part in relation to that person.

- (5) Notwithstanding any other provision of this section, any payment under this section shall first be applied by the trustees in or towards paying into the Fund the outstanding amount of any repayment under section 24 by the person to whom or in respect of whom that payment is required to be made.
- (6) If the trustees have made a determination under section 26D in relation to a benefit provided by this section, the amount of the benefit is reduced by the amount specified in the trustees' determination.

## **22B Compulsory preservation of benefits**

- (1) The trustees must, when a lump sum becomes payable under this Act, preserve all or so much of the lump sum as is required to be preserved so as to be consistent with a relevant Commonwealth superannuation standard.
- (2) The amount of the lump sum that must be preserved under this section in respect of a former member is the amount determined by the trustees, after obtaining actuarial advice.
- (3) The amount of a benefit that must be preserved under this section is to be preserved in the Fund together with interest from the member's exit date to the date of payment at a rate determined by the trustees.
- (4) The trustees may establish and maintain within the Fund such accounts and reserves as, in the opinion of the trustees, are necessary or convenient for the administration of this section.
- (5) The trustees may, from time to time, adjust any account or reserve established under this section by:
  - (a) deducting amounts for the trustees' administration costs in respect of the



preserved benefit, and

- (b) adjusting it for interest at a rate determined by the trustees, having regard to the income of the Fund and such other matters as the trustees consider relevant.

**22BA Payment of compulsorily preserved benefit**

- (1) The whole or part of a benefit preserved under section 22B is payable by the trustees 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 22B must be paid by the trustees, if it is required to be paid under a relevant Commonwealth superannuation standard.
- (3) The benefit is payable:
  - (a) unless the former member has died—to the former member, or
  - (b) if the former member 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 member has died and is not survived by a spouse or de facto partner—to the personal representatives of the former member or such other persons as the trustees direct.
- (4) Nothing in this section affects payment of a benefit under section 28A or 28B.
- (5) Without limiting subsection (1) or (2), the whole or part of a benefit preserved under section 22B may, at any time, on the election of the former member in respect of whom it is preserved, be paid in one or more of the following ways:
  - (a) to a regulated superannuation fund,
  - (b) to an approved deposit fund,
  - (c) to an RSA,
  - (d) to a life insurance company or a registered organisation, for the purchase of a deferred annuity, if the conditions set out in subsection (6) are satisfied.
- (6) A deferred annuity may be purchased if it is issued by a life insurance company or a registered organisation for the benefit of the person or for the benefit of the dependants of the person in the event of the death of the person and:
  - (a) the annuity cannot be surrendered or assigned before the person is aged 55 years, and
  - (b) the annuity does not provide for the payment of amounts except in the following

circumstances:

- (i) the person retires from the workforce after reaching 55 years,
- (ii) the person retires from the workforce before reaching 55 years on the ground of permanent incapacity or invalidity,
- (iii) the person dies,
- (iv) in such other circumstances as are approved by the trustees.

(7) In this section:

**approved deposit fund** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

**dependant** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

**life insurance company** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

**registered organisation** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

**regulated superannuation fund** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

**RSA** has the same meaning as in the *Retirement Savings Accounts Act 1997* of the Commonwealth.

## **22C (Repealed)**

## **23 Pension for spouses or de facto partners**

- (1) On the death of a former member who immediately before his or her death was receiving, or was entitled to receive, a pension under this Part, the spouse or de facto partner (not being a person who became the spouse or de facto partner of the former member after the former member became entitled to that pension) of the former member shall be entitled to an annual pension at the rate of:
  - (a) three-quarters of the pension that would have been payable from time to time to the former member but for his or her death or if the former member, pursuant to section 20, had converted part of his or her pension entitlement to a lump sum payment, three-quarters of the pension that would have been payable to the former member but for his or her death and if the former member had not so converted part of his or her pension entitlement, or
  - (b) forty-five per cent of current basic salary,

according to whichever rate of pension calculated under paragraph (a) or (b) would have been greater at the date of the former member's death.

(1A) On the death of a former member who, immediately before his or her death on or after the commencement of this subsection, was receiving or was entitled to receive a pension under this Part, an eligible spouse or de facto partner of the former member is entitled:

(a) if the former member and the eligible spouse or de facto partner had been married or living in the relationship for 3 years or more immediately before the death—to an annual pension calculated in accordance with subsection (1), or

(b) if the former member and the eligible spouse or de facto partner had been married or living in the relationship for less than 3 years immediately before the death—to an annual pension calculated in accordance with subsection (1), but reduced on a pro rata basis according to the proportion that the period of the marriage or relationship bears to 3 years.

(2) On the death of a member who has been entitled to salary for an aggregate period of 7 years or more, the spouse or de facto partner of the member shall be entitled to an annual pension at the rate of:

(a) three-quarters of the pension that would have been payable from time to time to the member but for his or her death if the member had ceased to be a member on the date of his or her death and been entitled to a pension under section 19 (1), or

(b) forty-five per cent of current basic salary,

according to whichever rate of pension calculated under paragraph (a) or (b) would have been the greater at the date of the member's death.

(3) On the death of a member who has been entitled to salary for an aggregate period of less than 7 years, the spouse or de facto partner of the member shall be entitled to an annual pension at the rate of forty-five per cent of current basic salary.

(3A) A pension to which the spouse or de facto partner of a former member or of a member is entitled under this section shall cease on the death of that spouse or de facto partner.

(4) For the purposes of subsections (1), (2) and (3), **current basic salary** means:

(a) where the member who has died last served in the Legislative Council—the salary payable from time to time to a member of the Legislative Council (other than a Minister of the Crown or a recognised office holder within the meaning of the [Parliamentary Remuneration Tribunal Act 1975](#) and other than a recognised office holder within the meaning of the [Parliamentary Remuneration Act 1989](#)) and expressed at an annual rate, or

(b) where the member who has died last served in the Legislative Assembly—the salary payable from time to time to a member of the Legislative Assembly (other than a Minister of the Crown or a recognised office holder within the meaning of the *Parliamentary Remuneration Tribunal Act 1975* and other than a recognised office holder within the meaning of the *Parliamentary Remuneration Act 1989*) and expressed at an annual rate.

(4A) For the purposes of subsection (1) a former member shall be deemed to have been entitled to receive a pension under this Part at any time if he or she would, but for the provisions of section 25 (2) or 26 (1), have been entitled to receive a pension under this Part at that time.

(5) For the purposes of subsection (1A):

**eligible spouse or de facto partner** of a former member means a person:

(a) who became the spouse or de facto partner of the former member after the former member became entitled to a pension, and

(b) who has or had in his or her marriage or relationship with the former member a child, being:

(i) a child of the eligible spouse or de facto partner and the former member who was, in the opinion of the trustees, wholly or substantially dependent on the former member at any time during the marriage or relationship, or

(ii) a child of the former member who was conceived before and born alive after the death of the former member.

(6) (Repealed)

(7) Where a spouse or de facto partner would, but for the provisions of this subsection, be entitled under this section to more than one pension, that spouse or de facto partner shall, subject to this Act, be entitled to the pension which is the higher or highest, or the equal higher or highest, of those pensions.

(8) Where but for this subsection a person entitled to a pension under this section by reason of being the spouse or de facto partner of a former member becomes entitled to a pension under section 19 in respect of service as a member, that person shall, subject to this Act, only be entitled to receive such one of those pensions as that person elects, by notice in writing served on the trustees within one month after becoming entitled to a pension as a former member, to receive.

(9) Notwithstanding anything contained in this Part, other than this subsection, where a former member has served in both the Legislative Council and the Legislative Assembly and the trustees are satisfied that the annual pension (in this subsection referred to as **basic annual pension**) of the spouse or de facto partner of that former

member is less than the annual pension to which that spouse or de facto partner would have been entitled under this Part, other than this subsection, had that former member not served in the Legislative Council, the trustees may in their absolute discretion direct payment to that spouse or de facto partner of an annual pension, additional to her or his basic annual pension, of such amount as the trustees think fit, but so that the aggregate of the amount of the basic annual pension and the amount of the additional annual pension under this subsection does not exceed the annual pension that would have been payable to that spouse or de facto partner under this Part had that former member not served in the Legislative Council.

- (10) Where a member dies before the commencement of the *Parliamentary Contributory Superannuation (Amendment) Act 1979*, or a former member who had ceased to be a member before that commencement dies before the commencement of Schedule 1.4 [5] to the *Superannuation Legislation Amendment Act 1996*:
- (a) a pension is not payable under this section to the widower of the member or former member, and
  - (b) the pension payable to the widow of the member or former member is the pension to which she was entitled under this section, as in force immediately before the commencement of the *Parliamentary Contributory Superannuation (Amendment) Act 1979*.
- (11) Where a former member who had ceased to be a member before the commencement of the *Parliamentary Contributory Superannuation (Amendment) Act 1979* dies on or after the commencement of Schedule 1.4 [5] to the *Superannuation Legislation Amendment Act 1996*:
- (a) a pension is not payable under the preceding provisions of this section to the spouse or de facto partner of the former member, but
  - (b) a pension is payable to the spouse or de facto partner if the spouse or de facto partner became the spouse or de facto partner of the former member before the former member became entitled to a pension, being the pension to which a widow of the former member was or would have been entitled under this section, as in force immediately before the commencement of the *Parliamentary Contributory Superannuation (Amendment) Act 1979*.
- (12) If the trustees have made a determination under section 26D in relation to a benefit provided by subsection (1) (paragraph (a) excepted), (2) or (3), the amount of the benefit is reduced by the amount specified in the trustees' determination.

### **23A Right of certain spouses or de facto partners to convert part of pension entitlement to lump sum entitlement**

- (1) In this section, **pensioner** means a spouse or de facto partner who is, after the commencement of the *Parliamentary Contributory Superannuation (Amendment) Act*

1979, entitled to a pension under section 19C (2) (a) or 23 (2) or, where that pension is suspended under section 26, entitled to a pension under section 26 (2).

- (2) The provisions of this Part apply to and in respect of a pensioner in the same way as they apply to and in respect of a former member.
- (3) For the purposes of subsection (2), a reference in section 20 to a former member ceasing to be a member shall be construed as a reference to a pensioner becoming entitled to a pension.

### **23B Pension for children**

- (1) In this section:

**child** means a child:

- (a) who has not attained the age of 18 years, or
- (b) who has attained the age of 18 years but has not attained the age of 25 years and who is receiving full-time education from a school, college or university approved by the trustees.

**current basic salary** means:

- (a) in relation to a deceased member or former member who last served as a member in the Legislative Council—the salary payable from time to time to a member of the Legislative Council (other than a Minister of the Crown or a recognised office holder within the meaning of the *Parliamentary Remuneration Tribunal Act 1975* and other than a recognised office holder within the meaning of the *Parliamentary Remuneration Act 1989*) and expressed at an annual rate, or
- (b) in relation to a deceased member or former member who last served as a member in the Legislative Assembly—the salary payable from time to time to a member of the Legislative Assembly (other than a Minister of the Crown or a recognised office holder within the meaning of the *Parliamentary Remuneration Tribunal Act 1975* and other than a recognised office holder within the meaning of the *Parliamentary Remuneration Act 1989*) and expressed at an annual rate.

**dependent child of a deceased member or former member** means:

- (a) a child of a deceased member or former member, or
- (b) a child of a surviving spouse or de facto partner, or any former spouse or de facto partner, of the deceased member or former member,

being:

- (c) a child who was, in the opinion of the trustees, wholly or substantially dependent on the deceased member immediately before his or her death or, as the case may

be, wholly or substantially dependent on the deceased former member immediately before he or she last ceased to be a member, or

- (d) a child of the deceased member who was conceived before but born after his or her death or, as the case may be, a child of the deceased former member who was conceived before but born after he or she last ceased to be a member.

(2) On the death of:

(a) a member, or

(b) a former member who immediately before his or her death was receiving, or was entitled to receive, a pension under this Part,

there shall be payable from the Fund in respect of each dependent child of the deceased member or former member an annual pension at the rate of:

(c) where the deceased member or former member is not survived by a spouse or de facto partner—10 per cent of current basic salary,

(d) subject to paragraph (e), where the deceased member or former member is survived by a spouse or de facto partner—5 per cent of current basic salary, or

(e) where the deceased member or former member is survived by a spouse or de facto partner but that spouse or de facto partner dies—10 per cent of current basic salary.

(3) A pension payable under this section in respect of a dependent child shall cease on his or her death or on the day he or she ceases to be a child.

(4) For the purposes of subsection (2), a former member shall be deemed to have been entitled to receive a pension under this Part at any time if he or she would, but for the provisions of section 25 (2) or 26 (1), have been entitled to receive a pension under this Part at that time.

(5) A pension payable under this section in respect of a dependent child of a deceased member or former member continues to be payable notwithstanding that the surviving spouse or de facto partner, if any, of the deceased member or former member remarries.

(6) A pension payable under this section in respect of a dependent child of a deceased member or former member shall be paid to:

(a) the surviving spouse or de facto partner, if any, of the deceased member or former member,

(b) the guardian of the dependent child,

(c) the dependent child, or

(d) some other person,

as the trustees in their discretion direct.

(7) A pension is not payable under this section in respect of a dependent child of a deceased member or former member if:

(a) in the case of a deceased member—he or she died before the date of assent to the *Parliamentary Contributory Superannuation (Amendment) Act 1981*, or

(b) in the case of a deceased former member—he or she last ceased to be a member before that date.

#### **24 Repayments where person again becomes member**

Where a person has received under this Act or the former Act an amount, being a refund of contributions (with or without interest) or a payment of the whole or a part of a supplementary benefit under section 22A, or both, and that person again becomes a member, any part of the period during which the person was entitled to salary before the person became entitled to that amount shall not be taken into account for the purposes of determining the person's or any other person's entitlement to a pension under this Part unless, within 3 months, or, if the trustees so allow, 6 months, after the person again becomes a member, the person contracts with the trustees, in the manner required by the trustees, to repay that amount to the Fund within 3 years.

#### **25 Termination or suspension of pension if recipient becomes a member of Parliament**

(1) If a person who is receiving or is entitled to receive a pension under this Part in respect of his or her service as a member, or in respect of whom payment of a pension has been deferred under this Part, again becomes a member his or her right to that pension shall cease.

(2) If a person who is receiving or is entitled to receive a pension under this Part, or in respect of whom payment of a pension has been deferred under this Part:

(a) becomes a member of the Parliament of the Commonwealth or of any other State,  
or

(b) becomes a member (not being a person to whom subsection (1) applies),

the right of that person to receive a pension under this Part shall be suspended while that person continues to be such a member.

(3) (Repealed)

#### **26 Suspension of pension where another parliamentary pension received**

(1) Where any person to whom a pension would be payable under this Part but for the provisions of this section, or in respect of whom payment of a pension has been



deferred under this Part, has become entitled to payment of any pension by reason of having been a member or being the spouse or de facto partner of a member of the Parliament of the Commonwealth or of any other State, that person's right to payment of a pension under this Part shall be suspended while that person is so entitled.

- (2) Notwithstanding subsection (1), where a person has received a pension or other benefit pursuant to an entitlement referred to in subsection (1), the trustees may in their absolute discretion direct payment to that person of an annual pension of such amount as the trustees think fit, but so that the aggregate of the amount of the annual pension so directed to be paid and the amount of the annual pension, or the annual pension equivalent of the other benefit, that the person has received pursuant to that entitlement does not exceed the annual pension that would be payable under this Part but for the provisions of this section.
- (3) A direction given by the trustees under subsection (2) may be amended or revoked at any time.
- (4) This section does not apply so as to suspend a person's rights under this Part on account of the person's entitlement to a pension under the *Parliamentary Contributory Superannuation Act 1948* of the Commonwealth if the person (or the person's spouse or de facto partner, in a case where the entitlement concerned is that of a spouse or de facto partner):
  - (a) made an election under section 20A (1AC) of that Act, or
  - (b) became a federal member on or after 1 July 1994.
- (5) This section does not apply so as to suspend a person's rights under this Part on account of the person's entitlement to a retiring allowance under the *Parliamentary Contributory Superannuation Act 1948* of the Commonwealth if the person pays an amount under section 26B in respect of the commuted value of the retiring allowance.

## **26A (Repealed)**

## **26B Payment of benefit to Fund by former federal members**

- (1) This section applies to a member:
  - (a) who is entitled to, or has received, a retiring allowance or other benefit under a superannuation scheme applicable to federal members, and
  - (b) who became a member on or after 1 January 1996.
- (2) A member may elect, not later than 3 months after the date of becoming a member, or within such further period as the trustees may determine in respect of the member, to pay to the Fund an amount of lump sum benefit received by the member as a federal member under a superannuation scheme applicable to federal members. The amount must be paid within the period of 3 months or the further period determined

by the trustees.

- (3) A member who was a member on the commencement of this section may elect, not later than 3 months after that commencement, or within such further period as the trustees may determine in respect of the member, to pay to the Fund an amount of lump sum benefit received by the member as a federal member under a superannuation scheme applicable to federal members. The amount must be paid within the period of 3 months or the further period determined by the trustees.
- (4) The election must be in writing and given to the trustees.

#### **26BA Other payments to Fund by former federal members**

- (1) This section applies to a member:
  - (a) whose combined years of actual service as a member and former federal member will be at least 7 years on the day for the taking of the poll at the next general election following the date when the member became a member (the **general election day**), and
  - (b) who, under section 26B, paid into the Fund an amount of lump sum benefit received by the member as a federal member, and
  - (c) whose period of service as a member for the purposes of this Act (including any additional period as referred to in section 26C (2)) as at the general election day is less than 7 years.
- (2) On the written application of a member to whom this section applies, the trustees must determine, after receiving actuarial advice, the additional amount that would be payable (the **additional amount**) in order to increase the aggregate period of service of the member as a member to 7 years on the general election day.
- (3) A member to whom this section applies may pay to the Fund an amount that is, or amounts that in total are, equal to the additional amount.
- (4) A payment under this section must be made:
  - (a) if the member was a member on the commencement of this section—not later than 3 months after that commencement, or
  - (b) if the member was not a member on the commencement of this section—not later than 3 months after the date of becoming a member, or
  - (c) within such further period as the trustees may determine in respect of the member.

#### **26C Calculation of benefits for former federal members**

- (1) On payment of an amount under section 26B or 26BA, the trustees must determine,

after receiving actuarial advice and, for the purposes of paragraph (b), after obtaining the advice of the trustees of the member's former superannuation scheme:

- (a) the additional period of service as a member attributable to the member in respect of the amount paid, and
  - (b) the amounts attributable to employee-financed and employer-financed components of the amount paid for the purposes of this Act.
- (2) For the purposes of this Act, the period of service of the member is taken to be increased by the additional period attributable to the member under this section.
- (3) For the purposes of section 19:
- (a) the total salary of the member in respect of the additional period of service is taken to be the same as the total basic salary attributable to that member for that period, and
  - (b) the amount of total basic salary calculated in respect of a member under section 19 is to be increased by the amount of total basic salary under this subsection.
- (4) For the purposes of section 22A, a member to whom section 26B or 26BA applies who is entitled to a benefit under section 22A or any other person to whom the benefit in respect of the member is payable:
- (a) is not entitled to receive a supplementary benefit in respect of any amount paid under section 26B or 26BA, but
  - (b) is entitled to be refunded the whole of any amount paid under section 26B or 26BA.

#### **26D Power of trustees to adjust benefits in relation to certain liabilities**

- (1) Whenever:
- (a) a right to a benefit under this Act accrues to or in respect of a member or former member, and
  - (b) the trustees have paid or are liable to pay an amount of superannuation contributions surcharge in respect of the employer contributions paid to the Fund on behalf of the member or former member,

the trustees must determine in writing the surcharge deduction amount that, in the opinion of the trustees, 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.

- (2) In determining the surcharge deduction amount in respect of a benefit payable to a member or former member, the trustees may have regard to any or all of the

following matters:

- (a) the amount of superannuation contributions surcharge payable or paid by the trustees in respect of the member or former member,
  - (b) the amount by which the member's or former member'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 member or former member, were assumed to be likely to be payable to the member or former member on his or her ceasing to hold office as a member of the Legislative Council or Legislative Assembly,
  - (e) whether the member or former member has qualified for a benefit after having been a member for an aggregate period of 7 years or more,
  - (f) the amount of any payments under section 31A,
  - (g) any other matter the trustees consider relevant.
- (3) The surcharge deduction amount determined by the trustees must not exceed:
- (a) an amount that is 15% of the employer-financed portion of that part of the benefit payable to the member or former member that accrued after 20 August 1996, or
  - (b) such other amount of the employer-financed portion of a benefit as is prescribed by the regulations in relation to the period when the benefit payable to the member or former member accrued.
- (4) For the purpose of determining the surcharge deduction amount, the trustees may obtain actuarial advice or advice from any other persons, as the trustees think fit.
- (5) The balance of any additional amount payable by the trustees for superannuation contributions surcharge in respect of a member or former member, after payment of the balance of the relevant surcharge debt account, is to be paid by the trustees from the Fund under section 6 (2).
- (6) Subsection (1) does not authorise the reduction of a benefit as a result of a liability for superannuation contributions surcharge unless the benefit is a benefit under section 19, 22, 22A, 23 (1) (paragraph (a) excepted), (2) or (3) or 27.
- (7) In this section:

**surcharge debt account**, in relation to a member or former member, means the surcharge debt account kept for the member or former member (while holding office

as a member) under section 16 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth.

- (8) Despite subsection (1), the benefit of a former member who has commenced to be paid that benefit may be adjusted by the trustees in accordance with the regulations if the former member receives (before, on or after the commencement of this subsection) notice of an assessment of superannuation contributions surcharge under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth in respect of the employer contributions paid to the Fund on behalf of the former member.
- (9) The regulations may make provision for or with respect to the following:
  - (a) the circumstances in which the trustees may or may not pay superannuation contributions surcharge on behalf of a former member,
  - (b) adjusting the amounts of benefits that have commenced to be paid or paying amounts in relation to a surcharge deduction amount or an assessment of superannuation contributions surcharge received by a former member before, on or after the commencement of this subsection.
- (10) Without limiting subsection (9), the regulations may make provision for the payment by the trustees of an amount of additional surcharge payable by a former member above the amount determined under subsection (3).

## **27 Minimum benefit**

- (1) Where the aggregate of instalments of pension and any other benefit paid or payable under this Part in respect of any member who ceased to be a member after the date of assent to the *Parliamentary Contributory Superannuation (Amendment) Act 1981* is less than the amount to which his or her personal representative would have been entitled under section 22A (4) had he or she ceased to be a member in the circumstances specified in section 22A (4), the difference shall, as soon as practicable after the death of the member and the member's spouse or de facto partner (if any) and after any pensions under section 23B in respect of the dependent children of the member cease to be payable, be paid out of the Fund to such person or persons as the trustees direct.
- (1A) (Repealed)
- (2) A reference in subsection (1) to a member is, in the case of instalments of pension or other benefit paid or payable as determined under subsection (7) or (8) of section 23, a reference only to the member in respect of whom those instalments or that other benefit are or is paid or payable.

## **27A Power of trustees to adjust benefits to comply with certain standards relating to**

**superannuation**

(1) If:

- (a) a member or former member becomes entitled to receive a pension under this Act, other than a pension under section 22, and
- (b) payment of the pension to the member or former member would, but for this subsection, not be consistent with relevant Commonwealth superannuation standards,

the member or former member may, by notice in writing given to the trustees before the pension starts to be paid, elect to receive the pension:

- (c) in a form that complies with those standards, or
  - (d) in a form that is in accordance with this Act (apart from this section).
- (2) Even after such a pension has started to be paid to a member or former member in a form that is not consistent with relevant Commonwealth superannuation standards, the member or former member is, by notice in writing given to the trustees, entitled to make an election or a further election to receive payment of the pension in a form that is consistent with any relevant Commonwealth superannuation standards.
- (3) An election made and notified to the trustees in accordance with this section is sufficient authority for the trustees to pay a pension in accordance with the election of the member or former member concerned.
- (4) An election under this section to receive a pension in a form that is consistent with any relevant Commonwealth superannuation standards is irrevocable.
- (5) A member or former member who does not notify the trustees of an election made by the member or former member under this section before the pension concerned starts to be paid is, subject to subsection (2), to be regarded as having elected to receive payment of the pension in the form provided by this Act (apart from this section).
- (6) If a member or former member makes an election under this section to receive a pension in a form that is consistent with any relevant Commonwealth superannuation standards, the trustees must ensure that the pension is varied only to the extent necessary to comply with those standards.
- (7) An election under this section to receive a pension in a form that is consistent with any relevant Commonwealth superannuation standards is binding not only on the member or former member who made the election but also on any person claiming a benefit under this Act through that member or former member.
- (8) If an election is made under this section to receive a pension in a form that is consistent with any relevant Commonwealth superannuation standards, the pension is

payable in that form despite any other provision of this Act to the contrary.

**27B, 27C (Repealed)**

**28 Pensions to be paid by instalments**

Pensions payable under this Part shall be paid by instalments at such intervals as the trustees may from time to time determine.

**28A Payment or release of benefit in other circumstances**

- (1) The trustees may, on the written application of a former member who has preserved a benefit in the Fund, and who is not otherwise entitled to be paid a benefit under this Act, pay the former member a benefit on the grounds of the former member's severe financial hardship.
- (2) The trustees may only pay the benefit if they are satisfied that the circumstances are such that a benefit would be payable on the grounds of severe financial hardship if the former member were a member of a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.
- (3) The amount of the benefit:
  - (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 benefit preserved by the former member.
- (4) A former member may, at any time, lodge with the trustees 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 the trustees for the purposes of this section.

**28B Payment or release of benefit on compassionate grounds**

- (1) The trustees may, on the written election of a former member who has preserved a benefit in the Fund, and who is not otherwise entitled to be paid a benefit under this Act, pay the former member a benefit on compassionate grounds.
- (2) The trustees may only pay the benefit if they are satisfied that the circumstances are such that the Australian Prudential Regulation Authority would be entitled to determine that the amount could be released on compassionate grounds if the former member were a member of a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.
- (3) The amount of the benefit:

- (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 benefit preserved by the former member.
- (4) A former member may, at any time, lodge with the trustees 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 the trustees for the purposes of this section.

### **28C Adjustment of benefit**

If a benefit is paid to a person under section 28A or 28B, and the person subsequently becomes entitled to another benefit under this Act, the trustees must make a determination reducing the amount of the subsequent benefit to take into account any benefits previously paid under section 28A or 28B. The trustees may for that purpose obtain actuarial advice.

### **28D Commutation of pensions for adjustment of benefit**

- (1) If a determination reducing a benefit that may be taken in the form of a pension is made under section 26D, the trustees may, at their discretion and with the consent of the member or former member concerned, commute part of the pension to a lump sum for the purposes of payment to the trustees of the amount of the reduction.
- (2) Commutation of part of a pension under this section:
- (a) does not affect any other right that the member or former member has to commute the pension under this Act, and
  - (b) is not to be taken into account for the purpose of determining whether, and to what extent, any such other right may be exercised, and
  - (c) is to be done on a basis determined by the trustees for the purposes of this section.
- (3) The trustees may obtain actuarial advice for the purpose of determining the basis on which part of a pension is to be commuted under this section.
- (4) This section has effect despite any other provision of this Act.

### **28E Payment of benefit to members who have attained 65 years**

Despite any provision of this Act, the trustees must pay a member who has attained the age of 65 years the whole or part of the member's benefit under this Act if the trustees are of the opinion that it is necessary to do so in order to be consistent with a relevant Commonwealth superannuation standard.



## **Part 4 Transitional provisions**

### **29 Continuation of former Act in certain circumstances**

- (1) Subject to subsection (2), this section applies to:
- (a) any person who immediately before the commencement of this Act was receiving or entitled to receive a pension, allowance or other benefit under the former Act,
  - (b) any person who upon the death, after the commencement of this Act, of a person referred to in paragraph (a) would, but for the enactment of this Act, have been entitled to receive a pension, allowance or other benefit under the former Act,
  - (c) any person whose pension under the former Act was, at the commencement of this Act, suspended, and
  - (d) a person who:
    - (i) immediately before the commencement of this Act was a member to whom the former Act applied or, after that commencement, becomes the widow of such a person,
    - (ii) would, but for the enactment of this Act, have become at any time after that commencement entitled to a pension, allowance or other benefit under the former Act,
    - (iii) would, but for his or her being a person to whom this section applies by reason of this paragraph, have become at any time after that commencement entitled to a pension or other benefit under Part 3, and
    - (iv) elects, within one month after the time referred to in subparagraph (iii), by notice in writing served on the relevant person, to receive a pension, allowance or other benefit under the former Act,and so applies as on and from the time referred to in subparagraph (iii).
- (2) Where a person to whom this section applies becomes a member or the wife of a member after the commencement of this Act, any pension to which that person was entitled under the former Act immediately before he or she so became a member or, in the case of a person who was a widow when she so became a member, any pension or allowance to which she was entitled under the former Act immediately before she so became a member, shall be deemed to be a pension or other benefit payable to him or her under this Act and shall in all respects be subject to the provisions of Part 3 accordingly.
- (3) Except as provided by subsections (2) and (6), the provisions of the former Act continue to apply to a person to whom this section applies to the exclusion of Part 3 in all respects as if the former Act had not been repealed and continue to apply in

respect of any pension, allowance or other benefit for which the fund under the former Act was, immediately before the commencement of this Act, liable, and for the purpose of the application of those provisions a reference in those provisions to the trustees, the custodian trustee and the managing trustees shall respectively be construed as a reference to the relevant persons under this Act and any pension, allowance or other benefit payable under those provisions shall be paid out of the Fund under this Act.

- (4) The reference in subsection (1) (d) (iv) to the relevant person is a reference:
  - (a) during the period beginning on 1 January 1972 and ending with 30 September 1991—to the custodian trustee within the meaning of this Act as then in force, and
  - (b) on and after 1 October 1991—to the trustees.
- (5) The reference in subsection (3) to the relevant persons is a reference:
  - (a) during the period beginning on 1 January 1972 and ending with 30 September 1991—to the trustees and to the custodian trustee and the managing trustees within the meaning of this Act as then in force, and
  - (b) on and after 1 October 1991—to the trustees.
- (6) Schedule 2 applies in respect of a pension or allowance referred to in subsection (3) but does not apply in respect of a pension or allowance referred to in subsection (2).

## Part 5 Miscellaneous

### 30 Compliance with superannuation guarantee legislation

- (1) **Minimum benefits** The trustees 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** So much of a pension or lump sum as is employer-financed is, despite any other provision of this or any other Act, not to be less than the minimum benefit determined under subsection (1). The pension or lump sum that would otherwise be payable under this Act is increased to the extent necessary for the purpose of complying with this section.
- (3) **Increase in benefit to be paid from Fund** The amount of any increase in benefit is to be debited by the trustees from the Fund.
- (4) **Definition** In this section, **employer-financed benefit** means the sum of so much of a pension or lump sum as is determined by the trustees to be employer-financed under this Act.

**30A Application of section 30 to period from 1.7.1992**

A benefit that is paid after 1 July 1992 and before the commencement of section 30 is to be adjusted by the trustees in accordance with that section.

**30B Competing claims for spouses' or de facto partners' benefits**

- (1) This section applies to a benefit (including a pension) under this Act that is payable to the spouse or de facto partner of a deceased person.
- (2) Where, but for this subsection, a benefit to which this section applies would be payable to more than one person (because a deceased person has left more than one spouse or de facto partner):
  - (a) the benefit is payable in accordance with a determination made by the trustees, and not otherwise, and
  - (b) the total amount of benefit payable to those persons at any time must not exceed the amount of a single benefit.
- (3) For the purposes of subsection (2) (a), the trustees may determine in relation to a benefit to which this section applies:
  - (a) that the benefit is payable to such of the persons concerned as the trustees specify, or
  - (b) that, subject to subsection (2) (b), the amount of the benefit is to be apportioned between the persons concerned in such manner as the trustees specify.
- (4) The trustees may withhold the payment of the whole or any part of a pension to which this section applies by reason of the death of a person or, if any such pension is commuted, withhold the payment of the whole or any part of the amount commuted:
  - (a) until the expiration of the period of 30 days after the death of the person, or
  - (b) if application has been made for the pension by more than one person, until the trustees are satisfied that only one of those persons is entitled to the pension or until a determination is made in relation to the matter by the trustees under this section.
- (5) If, after the expiration of 30 days following the death of a person, a pension to which this section applies is paid in respect of any period to a spouse or de facto partner of the deceased person, a pension to which this section applies is not payable to any other spouse or de facto partner of the deceased person in respect of that period.
- (6) If, after the expiration of 30 days following the death of a person, the whole or part of a pension to which this section applies is commuted by a spouse or de facto partner of the deceased person:

- (a) where the whole of the pension is commuted—a pension to which this section applies is not payable to any other spouse or de facto partner of the deceased person, or
  - (b) where part of the pension is commuted—so much of a pension to which this section applies as is equal to the amount of the pension so commuted is not payable to any other spouse or de facto partner of the deceased person.
- (7) For the purposes of subsections (5) and (6), an amount paid in good faith by the trustees to a person purporting to be the spouse or de facto partner of a deceased person is taken to have been paid to such a spouse or de facto partner.
- (8) If, after the expiration of 30 days following the death of a person, any amount is paid under this Act to the person's personal representatives or to such other persons as the trustees may determine, any pension to which this section applies that is payable to the spouse or de facto partner of the deceased person is to be reduced, in the prescribed manner, by the amount so paid.
- (9) For the purposes of subsection (8), the prescribed manner of reducing a pension to which this section applies by a particular amount is:
- (a) the manner prescribed by the regulations, or
  - (b) where no manner is prescribed by the regulations, such manner as the trustees determine.

### **31 Exemption from stamp duty**

No stamp duty shall be payable on any instrument in respect of which the trustees would, but for the provisions of this subsection, be liable as the persons primarily liable for stamp duty under the *Stamp Duties Act 1920*.

### **31A Payments to cover superannuation contributions surcharge**

- (1) A member may at any time lodge with the trustees an election to pay amounts to the Fund in respect of the superannuation contributions surcharge payable in respect of the member.
- (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 member may, at any time, lodge with the trustees 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 the trustees for the purposes of this section.

- (6) An election under this section remains in force until a subsequent election takes effect.

### **31B Repayment of excess payments**

The trustees must refund to a member or former member any excess amount of payments made under section 31A remaining in the Fund after payment of the debt owed for superannuation contributions surcharge in respect of the member or former member, together with interest on that excess amount at a rate determined by the trustees.

### **32 Non-assignability of benefits**

Pensions and other benefits under this Act shall not be in any way assigned or charged or passed by operation of law to any person other than the person who is entitled thereto under this Act.

### **32A Information that must be disclosed to members**

- (1) The trustees must from time to time give to a member or other person such information as the trustees determine under this section.
- (2) The trustees 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 the trustees to members and other persons and the circumstances in which information must or may be provided.

### **32B Provision of information to Insurance and Superannuation Commissioner**

The trustees must furnish to the Insurance and Superannuation Commissioner such information relating to the general administration and operation of the Fund as the Commissioner may reasonably require for the purpose of monitoring the Heads of Government Agreement, that commenced on 1 July 1996, relating to the exemption of certain State public sector superannuation schemes from the [Superannuation Industry \(Supervision\) Act 1993](#) of the Commonwealth.

### **32C Member who dies on polling day**

For the purposes of this Act and the regulations, a person is taken to have been a member at the time of his or her death if:

- (a) the person dies on the day of, and before the close of, a poll for an election of one or more members of the Legislative Assembly or the Legislative Council, and
- (b) the person was a member for the purposes of the [Parliamentary Remuneration Act 1989](#) immediately before the day of the poll, and
- (c) the person was seeking election on that day as a member (whether or not to

represent the same electorate or to the same House of Parliament).

### **32D Nominating commencement date of pension**

- (1) Despite any other provision of this Act, the payment period of a pension under this Act to which a person is entitled to payment commences on:
  - (a) if a date is nominated in accordance with this section—the date so nominated, or
  - (b) in any other case—the default date.
- (2) A person who is, or is to be, entitled to be paid a pension under this Act may, by notice in writing served on the trustees, nominate the date on which the payment period commences, if such a nomination is not inconsistent with a relevant Commonwealth superannuation standard.
- (3) A notice under this section must:
  - (a) nominate the date on which the payment period commences, and
  - (b) be in the form approved by the trustees, and
  - (c) be served on the trustees not later than the expiry date.
- (4) A notice under this section must not nominate a date earlier than the default date.
- (5) A notice under this section is irrevocable.
- (6) This section does not affect whether any person is entitled to a pension or when any person becomes entitled to a pension.
- (7) A person is not entitled to payment of a pension under this Act in respect of any period earlier than the commencement of the payment period of the pension.
- (8) In this section:

**default date** means, in respect of a pension under this Act, the date on which the payment period of the pension would, but for this section, commence.

**expiry date** means, in respect of a pension under this Act, the date that is 3 months after the default date in respect of the pension.

**payment period** means, in respect of a pension under this Act, the period for which the pension is to be paid.

### **33 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for the carrying out or giving effect to this Act.

### **34 Savings and transitional provisions consequent on [Superannuation Legislation Amendment Act 1996](#)**

The amendments made by Schedule 1.4 to the [Superannuation Legislation Amendment Act 1996](#) do not confer a right to a benefit under this Act on a person in relation to the death of a person that occurred before the commencement of this section.

### **35 Savings, transitional and other provisions**

Schedule 1 has effect.

## **Schedule 1 Savings, transitional and other provisions**

(Section 35)

### **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 1997](#)

[Parliamentary Contributory Superannuation Amendment Act 1999](#)

[Superannuation Legislation Amendment \(Same Sex Partners\) Act 2000](#)

[Superannuation Legislation Amendment Act 2002](#)

[Parliamentary Superannuation Legislation Amendment Act 2005](#)

[Parliamentary Contributory Superannuation Amendment \(Criminal Charges and Convictions\) Act 2006](#)

[Parliamentary Remuneration Amendment \(Salary Packaging\) Act 2009](#)

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (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.

## 2 Lump sum benefits

Section 20, as amended by the *Parliamentary Contributory Superannuation Amendment Act 1999*, applies:

- (a) to and in respect of any entitlement to commute a pension under this Act that emerges after the commencement of this clause, and
- (b) to and in respect of any entitlement to commute a pension (including a pension suspended under section 25 or paid under section 23 or 26) under this Act that existed immediately before the commencement of this clause and that had not been exercised before that commencement.

## 3 Payment of previously preserved benefits

- (1) A benefit preserved under section 22B, as in force immediately before its repeal by the *Parliamentary Contributory Superannuation Amendment Act 1999*, is payable as if section 22B had not been repealed.
- (2) The circumstances in which a benefit may be paid under a relevant Commonwealth superannuation standard, as referred to in section 22B as so in force, are taken to include, and to have always included, the payment of a benefit to an eligible rollover fund in accordance with the facility provided under Part 24 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth and other relevant Commonwealth superannuation standards.

## 4 Spouse entitlements

The definition of **spouse** inserted by the *Superannuation Legislation Amendment (Same Sex Partners) Act 2000* applies only to or in respect of members or former members who die on or after the commencement of the amendment inserting the definition.

## 5 Payments by Treasurer into Fund of amounts certified by actuary

The duty of the Treasurer under section 11 (1) to pay into the Fund the annual amounts from time to time last certified in accordance with section 10 (3) (as those sections were in force immediately before their amendment, respectively, by Schedules 4 [10] and 4 [4] to the *Superannuation Legislation Amendment Act 2002*) ceases on the day the trustees give to the Treasurer, under section 11 (1) as amended, the first recommendation in relation to contributions after the commencement of those amendments.

## 6 Benefits on attaining age 65 or 70

- (1) A pension that was being paid under section 22C immediately before its repeal by Schedule 4 [11] to the *Superannuation Legislation Amendment Act 2002*, being a pension that, but for the repeal, would have continued to be payable under this Act, continues to be payable as if section 22C had not been repealed.



- (1A) Sections 21A, 21B and 23 apply, and are taken always to have applied, to and in respect of a person paid a pension under section 22C before its repeal (and to any such pension continued by this clause) in the same way as those sections apply to and in respect of a person who commutes a pension under section 20.
- (1B) Nothing in subclause (1A) limits the operation of any other provision of this clause or clause 7.
- (2) An election made under section 22C before its repeal by Schedule 4 [11] to the [Superannuation Legislation Amendment Act 2002](#) continues to be valid, and a benefit preserved as a result of such an election is payable, as if section 22C had not been repealed.
- (3) This clause has effect subject to sections 25 and 26.

#### **7 Further benefits or contributions not allowed**

- (1) A member who had been paid or who preserved a benefit under section 22C before its repeal by Schedule 4 [11] to the [Superannuation Legislation Amendment Act 2002](#) is not entitled to any further benefit under this Act or to contribute to the Fund.
- (2) This clause does not affect any requirement to contribute to the Fund in respect of the member to comply with section 30, or the payment of any benefit resulting from such a contribution.

#### **8 Validation of certain reductions of benefits**

A reduction of a benefit under section 22C before its repeal by Schedule 4 [11] to the [Superannuation Legislation Amendment Act 2002](#) or of a benefit under section 27 before the commencement of that Schedule, being a reduction that was not authorised under section 26D in respect of a liability for superannuation contributions surcharge, is validated.

#### **9 Other payments to Fund by former federal members**

Section 26C (1) (a) applies to a payment into the Fund of an amount, or so much of an amount, made by a member before the commencement of section 26BA that would have been a payment under section 26BA (3) if the payment had been made on or after that commencement.

#### **10 Surcharge reductions for certain spouse pensions**

A reduction of a benefit payable under section 23 (1) (paragraph (a) excepted), on the basis set out in section 26D, that is made before the commencement of this clause is taken to have been validly made, if it would have been valid if made after the commencement of the [Parliamentary Superannuation Legislation Amendment Act 2005](#).

## 11 Criminal charges and convictions—section 19AA

- (1) Section 19AA extends to a person who ceased to be a member before the commencement of that section (and to any entitlement of the person to a pension that accrued before that commencement), but only if proceedings for a serious offence were pending against the person:
  - (a) when the person ceased to be a member, and
  - (b) on that commencement.
- (2) If the person's entitlement to such a pension is suspended:
  - (a) any election under section 20 (Right to convert pension to lump sum entitlement) in respect of the pension is of no effect and is taken never to have been made, and
  - (b) any lump sum payment made under this Part pursuant to any such election is to be repaid to the Fund.

## 12 Repeal of Acts does not affect operation of savings and transitional provisions

- (1) Despite the repeal of the Acts listed in Column 1 of the Table to this subclause, the provisions listed in Column 2 continue to have effect and are taken to have been transferred to this Act.

### Table

Column 1	Column 2
<i>Parliamentary Contributory Superannuation (Amendment) Act 1981</i>	Section 4
<i>Parliamentary Contributory Superannuation (Constitution) Amendment Act 1979</i>	Section 4
<i>Superannuation Legislation (Amendment) Act 1991</i>	Part 2 of Schedule 11

- (2) The provisions listed in Column 2 of the Table to subclause (1) are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

## Schedule 2 Provisions relating to pensions and allowances under former Act

(Section 29 (6))

### 1 Application of Schedule

This Schedule applies in respect of:

- (a) a pension payable to a person under the former Act, as continued by section 29 (3), immediately before 1 July 1994, and
- (b) a pension payable, because of section 29, to the spouse or de facto partner of any such person on or after 1 July 1994.

## 2 Definitions

- (1) In this Schedule:

**adjustment date** for a year means 1 October in that year.

**adjustment percentage** for a year means (subject to clause 3 (2)) the percentage for that year, calculated in accordance with clause 3.

**amending Act** means the [Parliamentary Contributory Superannuation Amendment Act 1999](#).

**Index number**, in relation to a June quarter, means the number for that June quarter appearing in the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician under the [Census and Statistics Act 1905](#) of the Commonwealth.

**June quarter** of a year means the period commencing on and including 1 April in that year and ending on and including 30 June in that year.

**year** means:

- (a) the period of a year commencing on and including 1 July 1994, or
  - (b) a subsequent period commencing on and including 1 July and ending on and including the next following 30 June.
- (2) If a pension is to be adjusted under this Schedule by reference to the adjustment percentage for a year, a reference (however expressed) in this Schedule to adjusting the pension is a reference to:
- (a) if the adjustment percentage is calculated in accordance with the formula set out in clause 3 (1) (a)—increasing the pension, or
  - (b) if the adjustment percentage is calculated in accordance with the formula set out in clause 3 (1) (b)—reducing the pension.

## 3 Calculation of adjustment percentage

- (1) For the purposes of the definition of **adjustment percentage** in clause 2 (1), the percentage for a year is to be calculated:
- (a) if the Index number for the June quarter in that year is greater than the Index number for the immediately preceding June quarter—in accordance with the

following formula:

$$P = \frac{100(C - L)}{L}$$

- (b) if the Index number for the June quarter in that year is less than the Index number for the immediately preceding June quarter—in accordance with the following formula:

$$P = \frac{100(L - C)}{L}$$

where:

**P** is the percentage to be obtained, and

**C** is the Index number for the June quarter in that year, and

**L** is the Index number for the immediately preceding June quarter.

(2) If:

- (a) the percentage calculated for a year in accordance with this clause is less than 1 per cent, or
- (b) the Index number for the June quarter in that year is the same as the Index number for the immediately preceding June quarter,

there is taken to be no adjustment percentage for that year.

(3) If there is taken to be no adjustment percentage for a year, then, for the purposes of calculating the percentage for the next year:

- (a) the Index number for the June quarter in the firstmentioned year is taken not to have been published, and
- (b) the Index number for that quarter is taken to be the same as the Index number for the June quarter in the last year for which there was an adjustment percentage.

(4) If at any time, whether before or after the commencement of this Schedule, the Australian Statistician has published in respect of a particular June quarter an Index number in substitution for an Index number previously published by the Australian Statistician in respect of that quarter:

- (a) except as provided by paragraph (b), the publication of the later number is to be disregarded, or
- (b) if the Minister so directs, regard is to be had, after the direction is given, to the later and not the earlier number,

for the purposes of this Schedule.

- (5) Despite subclause (4), if at any time after the commencement of this Division, the Australian Statistician changes the reference base for the Consumer Price Index (All Groups Index) for Sydney, then, for the purposes of the application of this Schedule after the change takes place, regard is to be had only to Index numbers published in terms of the new reference base.

#### **4 Adjustment of pensions**

If there is an adjustment percentage for a year, the pension payable on the adjustment date for that year to a person is adjusted, on and from that adjustment date, by that percentage.

#### **5 Minimum amount to which pensions may be reduced**

Despite anything in this Schedule, a pension must not be reduced below the amount that would have been payable if this Schedule had not been enacted.

#### **6 Calculation of percentages**

If a percentage that is to be calculated under this Schedule is or includes a fraction of one-tenth of 1 per cent:

- (a) if that fraction is less than one-half of one-tenth, that fraction is to be disregarded, and
- (b) if that fraction is not less than one-half of one-tenth, that fraction is to be treated as one-tenth.

#### **7 Adjustments before commencement of Schedule**

- (1) Adjustments to pensions paid to any person in respect of the period commencing 1 July 1994 and ending on the commencement of this Schedule are taken to have been made in accordance with this Schedule.
- (2) No further amount is payable, and no recovery of amounts paid may be required, in respect of any amount paid in respect of the adjustment of a pension for the period referred to in subclause (1).
- (3) The payment of any amount, by or on behalf of the trustees with the approval of the Minister, in respect of pension payable during that period that is additional to the pension otherwise payable under section 29 is validated.