

# State Public Service Superannuation Act 1985 No 45

[1985-45]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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### Authorisation

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# State Public Service Superannuation Act 1985 No 45



New South Wales

An Act to constitute the State Public Service Superannuation Board and to establish and provide for the investment and administration of the State Public Service Superannuation Fund; to provide a superannuation scheme for certain employees of the Government and of certain other employers; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *State Public Service Superannuation Act 1985*.

### 2 Commencement

(1) Parts 1, 2, 6, (section 36 (4) excepted) and 7, and Schedules 2, 3, 4, 5 and 6 shall commence on the date of assent to this Act.

(2) (Repealed)

(3) Except as provided by subsections (1) and (2), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

### 3 Persons not subject to Act

Schedule 4 has effect.

### 3A Closure of scheme to new entrants

Notwithstanding any other provision of this Act (including section 54), an employee's election to contribute to the Fund is not operative unless the election is or was lodged:

- (a) in the case of a person who became an employee before 1 February 1988—before 1 April 1988, or
- (b) in the case of a person who became an employee between 1 February 1988 and 31 March 1988 (both dates inclusive)—not later than 2 months after the person became

an employee.

#### 4 Transitional provisions

Schedule 6 has effect.

#### 5 Definitions

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

**adjustment date** means the date specified in an order under section 15 as the date in each year that is the adjustment date for the purposes of this Act.

**administration levy** means the amount of a contributor's share of management costs calculated in accordance with the [Superannuation Administration Act 1996](#).

**applicable superannuation period** has the meaning ascribed thereto in section 25.

**appointed day** means the day appointed and notified under section 2 (3).

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

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

as certified by the contributor's employer.

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

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

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

**contributor's account** means the account established and maintained under section 9 (2) in respect of the contributor.

**contributor's component** has the meaning ascribed thereto in section 25.

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

**employee** means a person (other than an excluded person referred to in Schedule 4)

who is employed by an employer and is the subject of a certificate by the employer to the effect that, for the time being, the person:

- (a) is employed by the employer under a contract of employment,
- (b) is so employed otherwise than on a casual or temporary basis,
- (c) if the regulations prescribe a class of persons as not being employees—is not within that class (specifying the class), and
- (d) if the regulations prescribe any requirement with which a person must comply in order to be an employee—complies with the requirement (specifying the requirement).

**employer** means:

- (a) the Government of New South Wales, or
- (b) an authority specified in Schedule 3,

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

**employer-financed benefit**, in relation to a contributor, means:

- (a) an employer's component payable to, or in relation to, the contributor under Part 5,
- (b) a benefit payable to the contributor under section 32 (2) (b), or
- (c) a benefit (including interest) payable to, or in relation to, the contributor under section 34 (5) (b),

whichever is applicable and, where the supplementary benefit is payable to, or in relation to, the contributor, includes an amount equal to 75 per cent of the supplementary benefit.

**employer's account** means the account established and maintained under section 9 (4) in respect of the employer.

**employer's component** has the meaning ascribed thereto in section 25.

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

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

an election made by the contributor for the purposes of section 18 (resumption of contributions after break in employment) or section 19 (resumption of contributions after preservation of benefit) being disregarded.

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

- (a) the only such cessation of employment of the contributor, or
- (b) where there has been more than one such cessation of employment of the contributor—the later or latest of them,

any cessation of employment following which the contributor again commenced employment with an employer as referred to in section 18 (resumption of contributions after break in employment) or section 19 (resumption of contributions after preservation of benefit) being disregarded.

**final contribution date**, in relation to a contributor, means the last day of the superannuation period that ends on, or last precedes, the contributor's exit date in respect of which the contributor is liable to contribute to the Fund.

**financial year** means the financial year of the Board specified in section 45.

**first contribution date**, in relation to a contributor, means the first day of the superannuation period referred to in section 14 (a).

**full-time employee** means an employee who is not a part-time employee.

**Fund** means the State Public Service Superannuation Fund established, maintained and administered by the Board in accordance with this Act.

**maximum benefit points** has the meaning ascribed thereto in section 25.

**part-time employee** means an employee certified under section 12 (2) to be a part-time employee.

**preserved benefit**, in relation to a contributor, means a benefit for which the contributor has made provision under section 34.

**prospective benefit points** has the meaning ascribed thereto in section 25.

**regulations** means regulations made under, or for the purposes of, this Act.

**retire** includes cease (otherwise than by reason of death) in any manner to be employed by an employer.

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



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

**review date** means the date specified in an order under section 15 as the date in each year that is the review date for the purposes of this Act.

**salary**, in relation to a contributor, means salary of the contributor, determined in accordance with section 6 and expressed as an annual rate.

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

**superannuation period** means a period commencing on and including a date specified in Column 2 of Schedule 5 and ending on and including the date specified opposite thereto in Column 3 of that Schedule.

**superannuation scheme** means a retirement scheme, fund or arrangement (whether or not established by an Act) to or in respect of which an employer or a public or local authority constituted by an Act makes, or is liable to make, a payment in respect of a person who retires from the service of the employer or authority, whether or not any other payment may be made under the scheme, fund or arrangement on the occurrence of an event other than retirement.

**supplementary benefit** has the meaning ascribed thereto in section 25.

**supplementary levy** means the levy that, in order to attract the supplementary benefit, is paid by transfer from a contributor's account under section 13 (7) (b).

**this Act** includes regulations.

**union** means an industrial union registered as such under the [Industrial Arbitration Act 1940](#), or an association of employees registered as an organization under the [Conciliation and Arbitration Act 1904](#) of the Commonwealth as subsequently amended.

- (2) Where a contributor is in part-time employment with more than one employer at the same time, this Act applies to the contributor separately in relation to each employment as if, in relation to each employment, the contributor were a different person, except that the maximum benefit points for the contributor when taken into account in relation to all employments of the contributor shall not exceed in number the number that would have been the number of the contributor's maximum benefit points if the contributor had been a full-time employee.
- (3) A reference in this Act:
- (a) to a function includes a reference to a power, authority and duty, and
  - (b) to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
- (4) (Repealed)

## 6 Salary

- (1) For the purposes of this Act, **salary**, in relation to a contributor, means the remuneration, salary or wages payable in money to the contributor in the contributor's capacity as an employee, as reported to the Board from time to time by the contributor's employer, including:
- (a) a loading in respect of any shift allowance, as determined in accordance with the regulations, and
  - (b) other allowances payable in money that are of a kind included within the value of leave paid on termination of employment,
- but does not include the excluded amounts or allowances referred to in subsection (2).
- (2) The excluded amounts or allowances are:
- (a) an amount paid for overtime or as a bonus, or an allowance instead of overtime,
  - (b) except to the extent determined in accordance with the regulations, as referred to in subsection (1) (a)—an amount paid as shift allowance,
  - (c) except to the extent that this section otherwise provides—a relieving allowance,
  - (d) an expense allowance or an allowance for travelling, subsistence or other expenses,
  - (e) an equipment allowance, and
  - (f) an amount paid for rent or as a residence, housing or quarters allowance.
- (3) If a contributor's employer, or a person authorised to do so on behalf of the employer,

certifies in writing to the Board that a relieving allowance to be, or being, paid to the contributor in the contributor's capacity as an employee is likely to be paid for a continuous period of 1 year (whether or not the period is partly before the date of the certificate), the allowance is, as from:

- (a) the date on which the certificate is lodged with the Board, or
- (b) the date from which the allowance becomes payable,

whichever is the later, salary for the purposes of this Act.

- (4) If a relieving allowance has been paid to a contributor in the contributor's capacity as an employee for a continuous period of 1 year that ends after the commencement of this section and, during that period, the allowance has not been treated as part of the contributor's salary in accordance with subsection (3), the allowance shall, as from the expiration of that period of 1 year, be treated as part of the contributor's salary while its payment to the contributor continues.
- (5) If a contributor is on secondment to another employer, the salary of the contributor for the purposes of this Act is the salary paid or payable to the contributor by the other employer.
- (6) The Governor may, by order in writing, declare unconditionally, or subject to conditions, that subsection (7) applies:
  - (a) to a contributor specified in the order who is on secondment but not to another employer, and
  - (b) generally during the period of that secondment, or during such period as is specified in the order, being, in either case, a period commencing before, on or after the date of the order.
- (7) During the period in which this subsection is declared pursuant to subsection (6) to apply to a contributor on secondment, the contributor's salary shall, for the purposes of this Act, be that paid or payable in respect of the employment to which he or she is seconded.
- (8) In this section, **shift allowance** means an allowance paid to an employee in respect of shift work performed by the employee, and includes amounts paid as penalty rates.
- (9) Any allowances or other kinds of remuneration treated as salary immediately before the commencement of this section in relation to a contributor shall continue to be treated as salary for the purposes of this Act, but only in relation to that contributor.

## **Part 2 The State Public Service Superannuation Fund**

### **7 Establishment of the Fund**

- (1) The Board shall establish, and shall maintain and manage, the State Public Service Superannuation Fund.
- (2) The Board shall:
  - (a) cause to be paid to the Fund:
    - (i) contributions made by employers and employees,
    - (ii) income derived from investment of the Fund, and any profit made from realisation of any investment of the Fund,
    - (iii) money borrowed for the purposes of the Fund, and
    - (iv) any other amounts payable to the Fund, and
  - (b) cause to be paid from the Fund:
    - (i) by transfer from the Fund to the Management Account—management costs relating to investment of the Fund as referred to in section 46 (1),
    - (ia) the amount of any loss made from realisation of any investment of the Fund,
    - (ii) the benefits payable under this Act, and
    - (iii) any other amounts payable from the Fund.

### **8 (Repealed)**

### **9 Certain accounts to be kept**

- (1) (Repealed)
- (2) The Board shall establish and maintain within the Fund a separate account for each contributor:
  - (a) to which shall be credited:
    - (i) the contributions made by the contributor to the Fund, and
    - (ii) the contributor's component of a refund of benefit made by a contributor pursuant to section 18 (resumption of contributions after break in employment), and
  - (b) to which shall be debited:
    - (i) where the contributor is covered for the supplementary benefit—the amount of

- the supplementary levy,
- (ii) the amount of the contributor's component of any benefit paid to, or in relation to, the contributor, and
  - (iii) the administration levy.
- (3) The Board shall establish and maintain within the Fund a Supplementary Levy Account:
- (a) to which shall be credited the amounts debited pursuant to subsection (2) (b) (i), and
  - (b) to which shall be debited 25 per cent of any supplementary benefit paid to, or in relation to, a contributor.
- (4) The Board shall establish and maintain within the Fund a separate account for each employer:
- (a) to which shall be credited:
    - (i) the contributions or other payments made by the employer to the Fund, and
    - (ii) so much of a benefit paid to a contributor as was paid by the employer and refunded by the contributor pursuant to section 18 (resumption of contributions after break in employment), and
    - (iii) (Repealed)
  - (b) to which shall be debited:
    - (i) so much of any benefit payable to, or in relation to, a contributor employed by the employer as comprises the employer-financed benefit, the amount payable where 2 or more employers employed the contributor between entry date and exit date being calculated as prescribed,
    - (ii) the amount of the employer's share of management costs referred to in section 46 (2), and
    - (iii) interest payable by the employer under section 58.
- (5) The Board shall establish and maintain within the Fund such other accounts as, in the opinion of the Board, are necessary or convenient for the management of the Fund and the administration of this Act.

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

- (1) The Board shall, from time to time, adjust each of the accounts and reserves established under this Part at a rate fixed by the Board, having regard to the income

of the Fund and such other matters as the Board considers relevant.

- (2) The Board may, for the purpose of adjusting a contributor's account before paying out the balance at credit in the account, fix a rate for that purpose only.

### **11 Actuarial investigation of the Fund**

- (1) An investigation as to the state and sufficiency of the Fund shall, as at 31 March 1988 and at the expiration of each succeeding period of 3 years, be made by not less than 2 actuaries appointed by the Board.
- (2) Actuaries appointed under subsection (1) shall complete their investigation, and shall report the result to the Board, not later than 13 months after the date as at which the investigation is made.
- (3) The Board shall, not later than 2 months after it receives a report under subsection (2), forward the report to the Minister with such comments thereon as it thinks fit.
- (4) The Minister may, in relation to a particular investigation, extend or further extend a period referred to in subsection (2) or (3) if the Minister considers that special circumstances exist to justify such an extension or further extension.

## **Part 3 Contributions by employees**

### **12 Election to contribute to the Fund**

- (1) An employee may lodge with the Board an election to contribute to the Fund.
- (2) An election under subsection (1) shall:
  - (a) be in a form approved by the Board for the purposes of this section,
  - (b) specify the rate at which the employee desires, subject to this Act, to contribute to the Fund, being the rate of 2, 3, 4, 5, 6, 7, 8 or 9 per cent of the employee's salary,
  - (c) be accompanied by the certificate by the employee's employer referred to in the definition of **employee** in section 5 (1), and
  - (d) be accompanied by a certificate by the employee's employer that is in a form approved by the Board for the purposes of this section and specifies:
    - (i) the date of birth of the employee,
    - (ii) whether the employee is a part-time employee,
    - (iii) the salary, and the attributed salary, of the employee, and
    - (iv) such other matters as the Board considers to be necessary or convenient for

the purposes of this section.

- (3) A failure to comply with subsection (2) (b) does not invalidate an election and, in the event of such a failure, the form of election shall be deemed to specify a rate of 2 per cent.
- (4) Subject to this Act, an election under subsection (2) takes effect:
  - (a) in the case of an election by a person who was an employee at the commencement of this Act and whose election is received in the office of the Board not later than 2 months after that commencement—as at that commencement,
  - (b) in the case of an election by a person who becomes an employee after that commencement and whose election is received in the office of the Board not later than 2 months after the person becomes an employee—as at the date on which the person became an employee, or
  - (c) in any other case—as at the date on which the election is received in the office of the Board.
- (5) An election by an employee under this section takes effect only if, at the time for its taking effect, the employee has not attained the age of 60 years.
- (6) The Board is entitled to act on information provided under subsection (2).
- (7) Where a contributor to another superannuation scheme becomes (but for being such a contributor) entitled also to elect to contribute to the Fund by reason of a change of work category or for any other reason:
  - (a) that contributor shall be deemed not to be a contributor to that other superannuation scheme for the purposes of making that election,
  - (b) that contributor may make that election on condition that the Board approves an application made by the person under section 13 to be covered for the supplementary benefit, and
  - (c) that election takes effect as at the date determined by the Board.

### **13 Supplementary benefit**

- (1) Application to be covered for the supplementary benefit may be made to the Board:
  - (a) by an employee who has not attained the age of 53 years and is not a contributor—at the time the employee makes an election under section 12 (election to contribute to the Fund), or
  - (b) except to the extent that subsection (8) or (12) otherwise provides—at any time by a contributor who has not attained the age of 53 years.

- (2) An application under subsection (1) shall:
  - (a) be in a form approved by the Board for the purposes of this section, and
  - (b) be accompanied by such documents and evidence as the Board considers to be necessary or convenient for the purposes of this section.
- (3) The Board may require an applicant under subsection (1):
  - (a) to submit to such a medical examination as may be required by the Board, and
  - (b) to provide such medical reports as are specified by the Board.
- (4) Where an application is made under subsection (1) and the applicant:
  - (a) fails, in the opinion of the Board, to pass a medical examination to which the applicant has submitted in accordance with a requirement under subsection (3), or
  - (b) fails to comply with a requirement under subsection (3),the Board shall refuse the application.
- (5) For the purpose of deciding whether or not to approve an application under subsection (1), the Board:
  - (a) may, under subsection (3), require the applicant to submit to further medical examinations or provide further medical reports, and
  - (b) may obtain such evaluations of medical examinations or medical reports as it thinks fit.
- (6) Where the Board approves an application under subsection (1):
  - (a) the Board shall appoint the day on and from which the applicant's cover for the supplementary benefit is to commence, and
  - (b) subject to subsection (7), the applicant becomes, and remains, liable for payment of the supplementary levy.
- (7) Subject to subsection (12), payment by a contributor of the supplementary levy:
  - (a) shall commence on a date appointed by the Board and shall be made at the prescribed rate and at the prescribed times,
  - (b) shall be effected by transfer from the contributor's account, and
  - (c) shall cease when the contributor no longer has available to be taken into account any prospective benefit points.
- (8) Where an application under subsection (1) is refused, the applicant may not again make such an application before the expiration of:



- (a) the period of 3 years that next succeeds the refusal, or
  - (b) in a particular case—such shorter period as the Board may decide.
- (9) Where, after approving an application under subsection (1), the Board forms the opinion that, in relation to the application, or to a medical examination of the applicant, an untrue statement within the meaning of section 53 was made and that its approval would not have been given had the untrue statement not been made, the Board shall, subject to subsection (10), revoke the approval.
- (10) For the purpose of deciding whether or not, in relation to an application or a medical examination of an applicant, it is of the opinion referred to in subsection (9), the Board may, if it thinks fit, require that applicant within a time specified by the Board or within such further time as the Board may allow, to provide information, or to undergo a medical examination, or to provide medical reports, as specified by the Board.
- (11) Upon the expiration of the time, or further time, referred to in subsection (10), the Board may, whether or not the requirement so referred to is complied with, proceed to decide whether or not it is of the opinion referred to in subsection (9).
- (12) Where, pursuant to subsection (9), the Board revokes its approval of an application:
- (a) the applicant (if a contributor) ceases to be covered for the supplementary benefit and ceases to be liable to pay the supplementary levy,
  - (b) the applicant (if a contributor) is disqualified for 3 years from again applying to be covered for the supplementary benefit, and
  - (c) the amount of any supplementary levy paid by the applicant (whether a contributor or a former contributor) prior to revocation of the approval is not recoverable.

#### **14 Liability to contribute following election by employee**

Where an election under section 12 takes effect, the person who made the election becomes, and remains, liable to pay to the Fund the contributions prescribed by this Part and to pay those contributions in respect of:

- (a) the superannuation period prescribed by the regulations as the superannuation period in respect of which contributions by that person are to commence,
  - (b) the superannuation period that ends on, or last precedes, the contributor's exit date, and
  - (c) each intervening superannuation period,
- not in any case being:
- (d) a superannuation period in respect of which the contributor is not, by reason of

section 17 (3) liable or entitled to make a contribution, or

- (e) a superannuation period in respect of which the contributor is not, by reason of a cessation of employment as referred to in sections 18 (resumption of contributions after break in employment) and 19 (resumption of contributions after preservation of benefit), liable or entitled to make a contribution to the Fund.

## 15 Review dates and adjustment dates

The Board shall, by order specified in the Gazette, declare:

- (a) that a specified date in each year is the review date for the purposes of this Act, and
- (b) that a specified later date in each year is the adjustment date for the purposes of this Act.

### Editorial note—

Review date 31 March in each year; adjustment date 1 July in each year—see GG No 176 of 20.12.1985, p 6647.

## 16 Amount of contributions

- (1) Until varied as provided by this section, the contribution payable to the Fund by a contributor in respect of a superannuation period is the amount calculated in accordance with the formula:

$$C = \frac{R \times E \times S}{2600}$$

where:

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

**R** represents the rate per cent of salary at which the contributor elected under section 12 to contribute to the Fund,

**E** represents the contributor's attributed salary specified in the certificate given under section 12 (2) (d) in relation to the contributor, and

**S** represents the contributor's salary ratio as at the contributor's entry date calculated on the basis of the information in the certificate provided under section 12 (2) (d) in relation to the contributor.

- (2) A contributor may, within the prescribed time after a review date (other than a review date that occurs less than 3 months after the contributor's first contribution date), lodge with the Board an election to vary the rate per cent of the contributor's salary to be paid to the Fund.
- (3) An election under subsection (2):

- (a) shall be in a form approved by the Board for the purposes of this section,
  - (b) shall specify the varied rate per cent (being 2, 3, 4, 5, 6, 7, 8 or 9 per cent) of the contributor's salary to be paid to the Fund, and
  - (c) takes effect on the adjustment date that next succeeds that review date.
- (4) The contribution payable to the Fund by a contributor on and from each adjustment date commencing with the adjustment date that next succeeds the first review date that is not less than 3 months later than the contributor's first contribution date is the amount calculated in accordance with the formula:

$$C = \frac{R \times E \times S}{2600}$$

where:

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

**R** represents the rate per cent of salary at which the contributor has for the time being elected to contribute to the Fund,

**A** represents the contributor's attributed salary as at the review date that last preceded the adjustment date in relation to which the calculation is made, and

**S** represents the contributor's salary ratio as at that adjustment date.

- (5) Where the nature of the employment of a contributor changes from full-time to part-time or from part-time to full-time, or the amount of time worked part-time by a contributor changes, the amount of the contributor's contribution to the Fund in respect of the first complete superannuation period during which the change operates, and each succeeding superannuation period until varied in accordance with this Act, is the amount calculated by multiplying by the contributor's salary ratio at the commencement of the superannuation period the amount of the contribution that would be payable on the basis of the contributor's attributed salary last applicable for the purpose of calculating contributions to the Fund.
- (6) Except as provided by subsection (5) or to the extent that the Board upon the application of a contributor otherwise directs, a reduction in the salary of the contributor below that upon which his or her contributions are based does not, until the adjustment date next after the review date that next succeeds the reduction, affect the amount of the contribution that the contributor is required to pay to the Fund.
- (7) Except in the case of a contributor who applies for a direction of the Board under subsection (6), where a contributor's attributed salary is reduced as a consequence of the contributor's ill-health or in circumstances that are considered by the contributor to justify the application of this subsection and are approved by the Board, the

contributor may apply to the Board in a form that:

- (a) is approved by the Board for the purposes of this subsection, and
- (b) is accompanied by such evidence of the cause of the reduction in salary as the Board requires,

for the application of subsection (8) to the contributor.

- (8) Where the Board approves an application by a contributor under subsection (7), the attributed salary of the contributor shall, for the purposes of this Act and notwithstanding any intervening review date, be deemed to be the same as the contributor's attributed salary immediately before the reduction until:
  - (a) the contributor's attributed salary is equal to or greater than his or her attributed salary immediately before the reduction, or
  - (b) the Board's approval is revoked on the application of the contributor,whichever first occurs.
- (9) The result of a calculation of the amount of a contribution to be made under this section shall, where a number of cents included in the result is not an even number of whole cents, be rounded to the nearest higher number that is an even whole number of cents.

## **17 Contributions during leave without pay**

- (1) In this section:

***initial period***, in relation to leave without pay that is not prescribed leave, means the period that commences on the first day of the leave without pay and ends:

- (a) where the period of leave without pay does not exceed 3 months—on the day on which the period of leave without pay ends, or
- (b) where the period of leave without pay exceeds 3 months—on the day that is 3 months after that first day.

***leave without pay*** means a period of leave from employment with an employer (otherwise than on secondment as referred to in section 6 (7) or 6 (8)) during which the contributor is not entitled to receive payment of salary from the employer.

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

- (a) pursuant to a grant of sick leave,
- (b) for a period during which the contributor receives periodic payments under an Act relating to workers' compensation,

- (c) pursuant to a grant of maternity leave,
- (d) pursuant to an agreement with the employer for the secondment of the contributor to employment that is not employment with an employer,
- (e) to enable the contributor to perform union duties, unless, in a particular case, the employer certifies that this paragraph is not to apply,
- (f) to enable the contributor to perform duties that the employer certifies to be in the interests of the employer or the State,
- (g) on service with the naval, military or air forces of the Commonwealth, or
- (h) in circumstances approved by the Board for the purposes of this section.

(2) A contributor who takes leave without pay shall:

- (a) where the leave without pay is not prescribed leave—during the initial period of the leave, or
- (b) where the leave without pay is prescribed leave—during the whole of the period of the leave,

pay to the Fund in accordance with directions given by the Board such contributions as would have been deducted from the salary of the contributor in accordance with section 20 if the contributor had continued to be paid salary by the employer during the initial period or period of prescribed leave, as the case may be, at the rate at which the contributor would have been paid but for being on leave without pay.

- (3) Except as provided by subsection (2) (a), a contributor is not liable or entitled to make a contribution to the Fund in respect of a superannuation period that is included in a period of leave without pay that is not prescribed leave.
- (4) For the purpose of determining the initial period in relation to a contributor who is on part-time leave without pay, a reference in the definition of **initial period** in subsection (1) to 3 months shall be read as a reference to the number of months (rounded off to the nearest whole number) calculated in accordance with the formula:

$$C = \frac{R \times E \times S}{2600}$$

where:

**EIP** represents the number of months to be ascertained, and

**S** represents the contributor's salary ratio.

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

- (1) This section applies to a contributor where:
- (a) the employment of the contributor with an employer ceases in circumstances entitling the contributor to be paid a benefit under section 32 (benefit on resignation, dismissal or discharge before age 55) or under section 33 (benefit on retrenchment before age 55), but the contributor does not provide for a preserved benefit,
  - (b) not later than the expiration of the period of 3 months that next succeeds that cessation of employment, the contributor again commences employment as an employee,
  - (c) the contributor makes an election under section 12 that takes effect as provided by section 12 (4) (b), and
  - (d) if the contributor has been paid a benefit as a consequence of the cessation of employment—the amount of the benefit has been repaid to the Fund with interest as provided by subsection (2).
- (2) Interest referred to in subsection (1) (d) is payable at a rate specified by the Board on so much of the benefit so referred to as was not represented by the contributor's component and is so payable from the time of the payment of the benefit to the contributor to the time of its repayment to the Fund.
- (3) A contributor to whom this section applies shall be deemed, on the cessation of employment referred to in subsection (1), to have provided under section 34 for a preserved benefit.

## **19 Resumption of contributions after preservation of benefit**

Where:

- (a) the employment of a contributor with an employer ceases and the contributor provides under section 34 for a preserved benefit,
- (b) the contributor again commences employment with an employer and elects under section 12 to contribute to the Fund, and
- (c) that election takes effect without a benefit having been paid under section 34 (3) or (4) to, or in relation to, the contributor,

section 34 ceases to apply to, or in relation to, the contributor.

## **20 Deduction of contributions from salary**

- (1) From each payment of a contributor's salary an employer shall deduct an amount sufficient to pay the contributions that the contributor is liable to make to the Fund

and shall, within the prescribed time, pay the amount deducted to the Board.

- (2) An amount deducted and paid to the Board under subsection (1) (whether or not it is so paid within the prescribed time) shall be deemed to have been paid to the Fund by the contributor from whose salary the deduction was made.
- (3) An employer shall, if the Board so directs in a particular case, pay interest in accordance with section 58 on any amount required to be deducted by the employer under subsection (1) that is not paid to the Board within the prescribed time, and the amount of any interest paid by an employer in relation to a contributor is not chargeable by the employer against the contributor.
- (4) Where a change occurs in the amount deducted from a contributor's salary in respect of a superannuation period, the contributor's employer shall, within the prescribed time, provide the Board in writing with the prescribed information relating to the change.
- (5) The amount of any overpayment of contributions to the Fund by a contributor shall:
  - (a) if it exceeds the prescribed amount—be refunded by the Board to the contributor, or
  - (b) if it does not exceed the prescribed amount—be credited by the Board to the contributor's account.
- (6) Where contributions are paid to the Fund at a rate in excess of the rate at which the contributor has for the time being elected to contribute to the Fund, the excess shall be disregarded for the purpose of calculating the contributor's contributed points figure under Part 5.

## **21 Arrears of contributions**

- (1) The Board may enter into an arrangement with a contributor, or may require a contributor to enter into an arrangement with the Board, for the payment of arrears of contributions to the Fund that have been incurred, or are expected to be incurred, by the contributor.
- (2) Where a contributor:
  - (a) fails to comply with a requirement under subsection (1) to enter into an arrangement referred to in that subsection, or
  - (b) having entered into such an arrangement, fails to comply with its terms,the Board may direct that any superannuation period in respect of which any such arrears are outstanding is not an applicable superannuation period for the contributor.

## **Part 4 Contributions and other payments by employers**

## 22 Contribution rates and times

- (1) An employer shall pay to the Fund in accordance with subsection (2) an amount equal to one-half of the amount of the contributions payable to the Fund by contributors employed by the employer.
- (2) The times at which contributions under subsection (1) are payable, and the basis on which the amount of each contribution is to be calculated, shall be as decided by the Board.
- (3) Where a benefit becomes payable to, or in relation to, a contributor, the employer or employers, as the case may be, who employed the contributor between entry date and exit date shall pay to the Fund within a time notified by the Board so much of the employer-financed benefit payable as, in the opinion of the Board, is not provided for by way of contributions under subsection (1), the amount payable by each employer where there was more than one employer being calculated as prescribed.
- (4) (Repealed)

## 22A Transfers of credits between employers of transferred contributors

- (1) In this section:

**transferred contributor** means a contributor who ceases to be employed by an employer and becomes employed by another employer and a benefit is not paid to the contributor.

**transfer value**, in relation to a transferred contributor, means an amount equal to the benefit that would have been payable if the transferred contributor, on becoming employed by the new employer, had elected to make provision for a preserved benefit under section 34 (1) and the benefit provided by section 34 (5) (b) had thereupon become payable.

- (2) The Board shall debit the former employer's account with the transfer value referable to a transferred contributor and shall credit the new employer's account with that value.
- (3) For the purposes of the definition of **transfer value** in subsection (1), the transferred contributor shall be deemed to have elected to make provision for a preserved benefit under section 34 (1), even though less than 3 years have elapsed since the transferred contributor's entry date.

## 23 (Repealed)

## 24 Secondment of employee otherwise than to employer

- (1) The Governor may, by order in writing made under section 6 (8) or by a different order, declare unconditionally or subject to conditions that subsection (2) applies:



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

## Part 5 Benefits

### 25 Definitions

- (1) For the purposes of this Act:

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

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

**adjusted length**, in relation to a contributor's membership period, means the adjusted length of the membership period ascertained as provided by section 26.

**applicable superannuation period**, in relation to a contributor, means a superannuation period that occurs during the period that commences on the contributor's first contribution date and ends on the contributor's final contribution date, except where:

- (a) a direction by the Board under section 21 (arrears of contributions) is in force in relation to the superannuation period, or
- (b) the contributor was not liable to contribute to the Fund in respect of the superannuation period by reason that it occurred during leave without pay or between a cessation and resumption of employment with an employer.

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

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

$$C = \frac{R \times E \times S}{2600}$$

where:

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

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

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

**contributed points figure**, in relation to a contributor, means the figure that, in relation to each applicable superannuation period for the contributor that occurs before the contributor attains the age of 60 years, is ascertained in accordance with the formula:

$$C = \frac{R \times E \times S}{2600}$$

where:

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

**K** represents the rate per cent of salary at which the contributor had elected to pay the contribution to the Fund for the superannuation period, and

**R** represents the salary ratio applicable to the contributor at the commencement of the superannuation period.

**contributor's component**, in relation to a benefit payable to, or in relation to, a contributor, means the amount certified by the Board as the balance at credit in the contributor's account at the time the benefit is paid.

**employer's component**, in relation to a benefit payable to, or in relation to, a contributor, means the amount calculated in accordance with the formula:

$$C = \frac{R \times E \times S}{2600}$$

where:

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

**S** represents the final salary of the contributor, and

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

**final salary**, in relation to a contributor, means the amount calculated as provided by section 27.

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

- (a) where the contributor has not attained the age of 55 years at the exit date:
  - (i) 150, or
  - (ii) if the number prescribed by subsection (2) (a) for the contributor is less than 150—the number so prescribed,
- (b) where, at the exit date, the contributor has attained the age of 55 years but has not attained the age of 60 years—the number prescribed by subsection (2) (b) for the contributor, or
- (c) where the contributor is of or over the age of 60 years at the exit date:
  - (i) 180, or
  - (ii) if the number prescribed by subsection (2) (c) for the contributor is less than 180—the number so prescribed.

**membership period**, in relation to a contributor, means, subject to section 33 (4), the period that commenced on the contributor's entry date and ended on the contributor's exit date, any period during which the contributor provided for preservation of a benefit being disregarded.

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

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

$$C = \frac{R \times E \times S}{2600}$$

where:

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

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

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

**H** represents the number of complete superannuation periods that would occur during the period that commences immediately after the contributor's final contribution date and ends immediately before the 55th anniversary of the contributor's birth, or

- (b) if it is a lesser number than that calculated under paragraph (a)—the number that, when added to the number of the contributor's accrued benefit points at the exit

date, would produce a number equal to the maximum benefit points that would have been attributable to the contributor if contributions had continued at the contributor's average contribution rate per cent, the salary ratio had remained constant until the exit date and the exit date had immediately preceded the 55th anniversary of the contributor's birth.

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

$$C = \frac{R \times E \times S}{2600}$$

where:

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

**S** represents the final salary for the contributor, and

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

- (2) For the purposes of the definition of **maximum benefit points** in subsection (1), the number prescribed by this subsection in relation to a contributor is:
- (a) where the contributor has not attained the age of 55 years—the number ascertained by multiplying by 6 the adjusted length of the contributor's membership period,
  - (b) where the contributor has attained the age of 55 years but has not attained the age of 60 years—the sum of:
    - (i) the maximum benefit points ascertained in relation to the contributor as if the contributor's exit date had immediately preceded the contributor's attainment of the age of 55 years, and
    - (ii) the number ascertained by multiplying by 0.5 the number of completed months that have elapsed since the contributor attained the age of 55 years, or
  - (c) where the contributor is of or over the age of 60 years—the sum of:
    - (i) the maximum benefit points ascertained in relation to the contributor as if the contributor's exit date had immediately preceded the contributor's attainment of the age of 55 years, and
    - (ii) 30.
- (3) For the purposes of this Part, the length of a period shall be expressed:

- (a) where it is less than one year—as a fractional part of a year,
  - (b) where it is a whole number of years—as that number of years, or
  - (c) where it is a whole number of years and a fractional part of a year—as that number of years and that fractional part of a year,
- any such fractional part being calculated on a daily basis to 4 decimal places.

## 26 Adjustment of length of membership period

- (1) In this section:

**distinct period**, in relation to a contributor's membership period, means a part of the membership period during which the contributor's salary ratio remained constant.

**notional length**, in relation to a distinct period, means the length ascertained by multiplying the actual length of the distinct period by the salary ratio that was applicable to the distinct period.

- (2) For the purposes of this Act, the adjusted length of a contributor's membership period is:
- (a) where the contributor's salary ratio remained constant throughout the contributor's membership period—the length of the contributor's membership period multiplied by that salary ratio, or
  - (b) where the contributor's salary ratio did not remain constant throughout the contributor's membership period—the length of the period ascertained by adding together the notional lengths of the distinct periods that made up the membership period.
- (3) In calculating the adjusted length of a contributor's membership period under this section, the salary ratio of the contributor during any period that is not an applicable superannuation period shall be deemed to be zero.

## 27 Final salary

- (1) In this section:

**base date**, in relation to a contributor, means:

- (a) where, during the period of 3 years that last preceded the contributor's exit date, the contributor was continuously a contributor in the employment of an employer—the date that preceded the exit date by 3 years,
- (b) where, during the period of 3 years that last preceded the contributor's exit date, the contributor ceased to be a contributor, and subsequently again became a contributor—the date of the last or only resumption as a contributor, or

(c) in any other case—the contributor’s entry date.

**index number**, in relation to a quarter, means the number for that 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 Parliament of the Commonwealth.

**last quarter**, in relation to a contributor, means the quarter relevant to the index number last published before, or published on, the contributor’s exit date.

**quarter** means a period of 3 months commencing on 1 January, 1 April, 1 July or 1 October.

**relevant index number**, in relation to a contributor, means the index number for the quarter that immediately preceded the contributor’s last quarter by the number of quarters calculated in accordance with the formula:

$$C = \frac{R \times E \times S}{2600}$$

where:

**Q** represents the number of quarters to be ascertained, any fraction being disregarded, and

**M** represents the number of whole months included in the period that commenced on the contributor’s base date and ended on the contributor’s exit date.

(2) For the purposes of this Part, the amount of a contributor’s final salary is the lesser of:

(a) the amount of the attributed salary of the contributor applicable as at the contributor’s exit date, and

(b) the amount calculated in accordance with the formula:

$$C = \frac{R \times E \times S}{2600}$$

where:

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

**B** represents the amount of the attributed salary of the contributor applicable as at the contributor’s base date,

**C** represents the index number for the last quarter for the contributor, and

**D** represents the relevant index number for the contributor.

## **28 Benefit on retirement or death at or after age 55**

- (1) The benefit provided by this section is payable by the Board where, immediately before, or on or at any time after, attaining the age of 55 years, a contributor retires from, or dies during, employment with an employer and is so payable:
  - (a) where the benefit becomes payable on retirement of the contributor—to the contributor, or
  - (b) where the benefit becomes payable on the death of the contributor—to the personal representatives of the contributor or, if appropriate, in accordance with section 57 (payment without grant of probate etc).
- (2) The benefit provided by this section is an amount equal to the sum of:
  - (a) the amount of the contributor's component, and
  - (b) the amount of the employer's component.

## **29 Benefit on death before age 55**

- (1) The benefit provided by this section is payable by the Board where a contributor dies before attaining the age of 55 years during employment with an employer and is so payable to the personal representatives of the contributor or, if appropriate, in accordance with section 57 (payment without grant of probate etc).
- (2) The benefit provided by this section in relation to a contributor is an amount equal to the sum of:
  - (a) the amount of the contributor's component,
  - (b) the amount of the employer's component, and
  - (c) where the contributor was, at the date of death, covered for the supplementary benefit—the amount of the supplementary benefit.

## **30 Benefit on total and permanent invalidity before age 55**

- (1) The benefit provided by this section is payable by the Board to a contributor who is covered for the supplementary benefit where:
  - (a) before attaining the age of 55 years, the contributor is retired from employment with an employer,
  - (b) the employer certifies to the Board that the contributor was retired on the ground of physical or mental incapacity to perform his or her duties, and
  - (c) the Board is satisfied, after taking into account any medical opinion that it considers to be relevant, that the contributor is, and until attaining the age of 55 years will continue to be, physically or mentally incapable of performing the duties

of any employment with an employer that, in the opinion of the Board, it would be reasonable for the contributor to undertake.

- (2) The benefit provided by this section is an amount equal to the sum of:
  - (a) the amount of the contributor's component,
  - (b) the amount of the employer's component, and
  - (c) the amount of the supplementary benefit.
- (3) Where the Board is not satisfied as referred to in subsection (1) (c), the contributor is entitled to the benefit provided by section 31.
- (4) A contributor entitled to payment of a benefit under this section is not entitled to payment of any other benefit under this Act.

### **31 Benefit on partial and permanent invalidity before age 55**

- (1) The benefit provided by this section is payable by the Board to a contributor where:
  - (a) before attaining the age of 55 years, the contributor is retired from employment with an employer, and
  - (b) the employer certifies to the Board that the contributor was retired on the ground of physical or mental incapacity to perform his or her duties.
- (2) The benefit provided by this section for a contributor is an amount equal to the sum of:
  - (a) the amount of the contributor's component, and
  - (b) the amount of the employer's component.

### **32 Benefit on resignation, dismissal or discharge before age 55**

- (1) The benefit provided by this section is payable by the Board to a contributor where, before attaining the age of 55 years, the contributor resigns, or is dismissed or discharged, from employment with an employer and no other benefit is payable under this Act.
- (2) The benefit provided by this section for a contributor with a membership period of 10 years or more is the sum of:
  - (a) the amount of the contributor's component, and
  - (b) the amount calculated in accordance with the formula:

$$C = \frac{R \times E \times S}{2600}$$



where:

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

**V** represents the length of the contributor's membership period,

**T** represents the amount of the contributor's component,

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

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

- (3) The benefit provided by this section for a contributor with a membership period of less than 10 years is the amount of the contributor's component.
- (4) In subsection (1), **discharged** includes ceasing to be employed by an employer by reason of the expiration of the period, or successive periods, of employment.

### **33 Benefit on retrenchment before age 55**

- (1) The benefit provided by this section is payable by the Board to a contributor where, before attaining the age of 55 years, the contributor is retrenched by his or her employer and no other benefit is payable under this Act.
- (2) The benefit provided by this section for a contributor with a membership period of 3 years or more is an amount equal to the sum of:
  - (a) the contributor's component, and
  - (b) the employer's component.
- (3) The benefit provided by this section for a contributor with a membership period of less than 3 years is the amount of the contributor's component.
- (4) In ascertaining whether or not a contributor has a membership period of 3 years or more for the purposes of this section, such a period shall be taken to include any period during which he or she was a contributor to the Public Authorities Superannuation Fund provided that:
  - (a) the contributor's membership of the Fund and the Public Authorities Superannuation Fund was continuous, and
  - (b) the contributor was, by virtue of a provision of the *Public Authorities Superannuation Act 1985*, required to make provision for the preservation of a benefit under that Act in respect of employment by an employer within the meaning of that Act.

### 34 Preserved benefit

- (1) A contributor who has:
- (a) not less than 3 years after his or her entry date become entitled to be paid a benefit under section 32 (benefit on resignation, dismissal or discharge before age 55), or
  - (b) become entitled to be paid a benefit under section 33 (2) (benefit on retrenchment before age 55),
- may elect to make provision instead for a benefit provided by this section.
- (2) Where an election made by a contributor under subsection (1) takes effect, a benefit is not payable to, or in relation to, the contributor under any provision of this Act other than this section.
- (3) The benefit provided by subsection (5) is payable by the Board upon the contributor attaining the age of 55 years or earlier suffering death or upon the Board being satisfied as referred to in section 30 (1) (c) and is so payable:
- (a) except in the case of the death of the contributor—to the contributor, or
  - (b) in the case of the death of the contributor—to the personal representatives of the contributor or, if appropriate, in accordance with section 57 (payment without grant of probate etc).
- (4) The benefit provided by subsection (6) is payable by the Board to the contributor upon the contributor electing to take that benefit and the election taking effect:
- (a) after the election made under subsection (1) takes effect, and
  - (b) before the benefit provided by subsection (5) becomes payable to, or in relation to, the contributor.
- (5) The benefit provided by this subsection is an amount equal to the sum of:
- (a) the amount of the contributor's component at exit date, and
  - (b) the amount calculated in accordance with the formula,

$$C = \frac{R \times E \times S}{2600}$$

where:

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

**S** represents the final salary of the contributor,

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

**Z** represents the figure calculated by raising 0.98 to a power the magnitude of which is the number obtained by deducting from 55 the contributor's age at exit date expressed in years, any fractional part of a year being calculated on a daily basis.

together with interest as provided by section 10 from the exit date to the date of payment.

- (6) The benefit provided by this subsection is an amount equal to the sum of:
- (a) the amount of the benefit under section 32 (benefit on resignation, dismissal or discharge before age 55) or under section 33 (benefit on retrenchment before age 55) that would have been payable to the contributor at the contributor's exit date if the contributor had not made the election under subsection (1), and
  - (b) interest as provided by section 10 from the contributor's exit date to the date of payment.
- (7) A contributor who ceases to be an employee within the meaning of this Act while employed by the same employer:
- (a) is required to make provision for a benefit provided by this section notwithstanding anything to the contrary in subsection (1),
  - (b) shall be deemed to have elected under subsection (1) to make provision for that benefit on so ceasing to be an employee, and
  - (c) is not entitled to elect to take the benefit provided by subsection (6) while employed by that same employer.
- (8) Schedule 7 has effect with respect to contributors transferred as a result of Government initiatives.

### **35 Application for payment or preservation of benefit**

- (1) An application for payment of a benefit to or in relation to, a contributor or for preservation of a benefit under section 34 shall be made in writing in a form approved by the Board for the purpose, shall be signed by the applicant and shall be accompanied by:
- (a) except in the case of a benefit payable under section 34—a certificate by the contributor's employer at the contributor's exit date, specifying the exit date and the manner of cessation of the contributor's employment and such other particulars as may be prescribed, and
  - (b) such other documents as may be prescribed.
- (2) A benefit shall not be paid or preserved by the Board before subsection (1) has been

complied with.

- (3) The Board is entitled to act on the information provided pursuant to subsection (1).

### **35A Interest**

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

## **Part 6**

### **36-50 (Repealed)**

## **Part 7 Miscellaneous**

### **51 Employers and employees**

- (1) The Governor may, by order published on the NSW legislation website:
- (a) amend Schedule 3 by inserting therein the name of an organisation or corporation,
  - (b) amend Schedule 3 by omitting therefrom the name of an employer that has changed its name and by inserting instead the new name of the employer,
  - (c) amend Schedule 3 by omitting therefrom the name of an employer that has ceased to exist but has been replaced as an employer by another organisation or corporation and by inserting instead the name of that other organisation or corporation,
  - (d) amend Schedule 3 by omitting therefrom the name of an employer that has ceased to exist but is not an employer referred to in paragraph (c), or
  - (e) amend Schedule 4.
- (2) An order under subsection (1), and any order revoking or varying such an order, may be made:
- (a) to take effect on and from a day specified in the order, whether or not the day specified is earlier than the day of publication of the order, and
  - (b) to effect the amendment to which it relates with such limitations as are specified in the amendment, being limitations that do not operate to the prejudice of any existing contributor or any person having rights under this Act.

### **52 Employer to provide information**

- (1) An employer shall, at the prescribed times, or in prescribed circumstances, submit to the Board the prescribed information or evidence relating to employees of the employer who may elect to become, or are, contributors.

- (2) Where an employer fails to comply with subsection (1) in relation to an employee or contributor, the Board may:
  - (a) refuse an application by an employee to be covered for the supplementary benefit if the information sought is relevant to such an application, or
  - (b) defer payment of a benefit to, or in relation to, a contributor where the information sought is relevant to the right to receive the benefit or to the amount of the benefit.

### **53 Employee or contributor to provide information**

- (1) For the purposes of this section, ***untrue***, in relation to a statement, includes:
  - (a) misleading in the form and context in which the statement appears, and
  - (b) misleading by reason of the omission from the statement of matter that is material and of which the person making the statement has, or at any time had, knowledge.
- (2) The Board may require an employee or a claimant for payment of a benefit under this Act:
  - (a) to provide the Board with specified information or evidence referred to in subsection (3),
  - (b) to provide the Board with an authority to obtain from a third person any such information or evidence, or
  - (c) in the case of a claimant for payment of a benefit under section 30—to undergo a medical examination.
- (3) A requirement under subsection (2) may be made only:
  - (a) in the case of an employee—in relation to information or evidence that is relevant to the assessment of an application by the employee to be covered for the supplementary benefit, or
  - (b) in the case of a claimant for payment of a benefit—in relation to information, evidence or a medical examination that is relevant to the assessment of an application made by the claimant for payment of the benefit.
- (4) Where:
  - (a) the employee or claimant to whom a requirement under subsection (2) (a) or (2) (c) relates fails to comply with the requirement or, in purported compliance with the requirement, makes or provides an untrue statement, or
  - (b) a person referred to in subsection (2) (b) fails to provide information or evidence

that the Board has been authorised to obtain from the person or, in purported compliance with the request by the Board for the information or evidence, makes or provides an untrue statement,

the Board may:

- (c) where the information or evidence is required in relation to an application to be covered for the supplementary benefit—refuse the application, or
- (d) where the information or evidence is required in relation to a claim for a benefit—take such action in relation to the benefit as, in the opinion of the Board, would place the claimant as nearly as possible in the same position as the claimant would have been if the information or evidence had been provided or the medical examination made, or if the statement had not been untrue.

#### **54 Making of elections and applications**

(1) An election or application under this Act:

- (a) shall be in writing signed by the person entitled to make the election or application,
- (b) subject to subsection (2), is not validly made unless it is received in the office of the Board:
  - (i) where, by or under this Act (subparagraph (ii) excepted), a day is specifically prescribed for the receipt in the office of the Board of an election or application of that class—not later than that day, or
  - (ii) in any other case—not later than the expiration of the period of 2 months that next succeeds the time at which the right to make the election or application arises,
- (c) takes effect:
  - (i) where, by or under this Act (subparagraph (ii) excepted), a day is specifically prescribed for the taking effect of an election of the same class—on that day, or
  - (ii) in any other case—on a day determined by the Board, being a day that is not earlier than the day of receipt of the election or application in the office of the Board, and
- (d) may, with the approval of the Board, be amended or revoked subject to such conditions as the Board may impose, which may include:
  - (i) in the case of an amendment of an election—conditions as to the day or days on which, or the manner in which, the election is to take effect, and

(ii) in the case of revocation of an election—a condition as to the day on which the revocation takes effect.

- (2) Where an election or application is not received in the office of the Board within the time prescribed by subsection (1) (b) for the election or application and the Board is satisfied that, in all the circumstances of the case, it is desirable that the election or application should be accepted, the Board may, subject to such terms and conditions as it may impose, accept the election or application and deal with it as if it had been received within the time so prescribed.
- (3) Where the Board is satisfied that, in all the circumstances of the case, it is desirable that an election or application should take effect on a day that is earlier than the date of receipt of the election or application in the office of the Board:
- (a) the Board may, subject to such terms and conditions as it may impose, determine that the election or application shall be deemed to have taken effect on such an earlier day determined by the Board, and
- (b) the election or application takes effect accordingly.

#### **55 Assignment etc of benefit**

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

#### **56 (Repealed)**

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

- (1) Where a person dies and:
- (a) a benefit is or becomes payable from the Fund in relation to the deceased,
- (b) production to the Board of probate of the will, or letters of administration of the estate, of the deceased has not been arranged, and

(c) the Board has not, within the period of 3 months that next succeeds the death of the deceased, received a notice of intention to apply for a grant of probate of the will, or letters of administration of the estate, of the deceased,

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

- (2) Where the Board makes a decision under subsection (1), the Board may:
- (a) pay the whole or any part of the amount of the benefit to an eligible person within the meaning of Chapter 3 of the *Succession Act 2006*,
  - (b) after paying the funeral expenses of the deceased or reimbursing a person who has paid those expenses—pay the whole or any part of the balance to any person referred to in paragraph (a), or
  - (c) in special circumstances, pay the whole or any part of the amount of the benefit, or the balance referred to in paragraph (b), to some other person.
- (3) Where a contributor or former contributor dies and the Board is of the opinion that proceedings might be instituted under Chapter 3 of the *Succession Act 2006* in relation to the estate, or notional estate, of the deceased, the Board may, despite any other provision of this Act, pay to the personal representatives of the deceased any benefit that, but for this subsection, would have been paid to some other person.

#### **57A Payment where beneficiary incapable**

- (1) If the Board is of the opinion that a person to whom a benefit is payable is incapable of administering his or her affairs because of illness, imprisonment or for any other cause, the Board may pay the benefit to someone else to be applied wholly for the care, maintenance, benefit and support of the person otherwise entitled to the benefit, or any person wholly or partly dependent on the person.
- (2) Any payment made under this section is taken to have been made to the person who, but for this section, would be entitled to the benefit.

#### **57B Payment where beneficiary is missing**

- (1) If the Board is unable, after reasonable inquiry, to find a person to whom a benefit is payable, the Board may pay the benefit to someone else to be applied wholly for the care, maintenance, benefit and support of any person wholly or partly dependent on the person who would otherwise be entitled to the benefit.
- (2) Any payment made under this section is taken to have been made to the person who, but for this section, would be entitled to the benefit.



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

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

## **59 (Repealed)**

## **60 Foreign contributors**

Regulations may be made for and with respect to the payment of contributions by, and benefits to, or in relation to, contributors who are paid salary in a currency that is not Australian currency, and for related purposes.

## **61 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A provision of a regulation may:
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

## **Schedules 1, 2 (Repealed)**

### **Schedule 3 Employers**

(Section 5 (1))

Water Administration Ministerial Corporation.  
The Board of Fire Commissioners of New South Wales.  
Western Lands Commissioner.  
The University of Sydney.  
Australian Museum Trust.  
Roads and Maritime Services.  
Pacific Power.  
The University of New England.  
The University of New South Wales.  
The New South Wales Teachers' Federation.  
Public Service Association of New South Wales.  
The Macquarie University.  
The University of Newcastle.  
Mitchell College of Advanced Education.  
The University of Technology Sydney.  
Northern Rivers College of Advanced Education.  
Newcastle College of Advanced Education.  
Cumberland College of Health Sciences.  
Kuring-gai College of Advanced Education.  
The University of Wollongong.  
Nepean College of Advanced Education.  
Riverina-Murray Institute of Higher Education.  
Joint Coal Board.  
Hawkesbury Agricultural College.  
Macarthur Institute of Higher Education.  
Sydney College of the Arts.  
Armidale College of Advanced Education.  
Sydney College of Advanced Education.  
Orange Agricultural College.  
State Superannuation Board.  
State Public Service Superannuation Board.  
River Murray Commission (Note—limited to particular employees as specified in the Order inserting the name of the employer).  
New South Wales Investment Corporation.  
New South Wales Institute of the Arts.  
Judicial Commission of New South Wales.

An incorporated hospital, separate institution or associated organisation within the meaning of the [Public Hospitals Act 1929](#) or an area health service within the meaning of the [Area Health Services Act 1986](#) in respect of those persons employed by the incorporated hospital, separate institution, associated organisation or area health service who:

- (a) were employed at a hospital listed in the Fifth Schedule to the *Public Hospitals Act 1929* at some time on or after 16 September 1987 but before the date of the repeal of that Act by the *Health Services Act 1997*, and
- (b) in consequence of the closure or impending closure of the hospital so listed, accepted on or after that date and while still employed at that hospital an offer of employment by the incorporated hospital, separate institution, associated organisation or area health service, and
- (c) were, on the last day of their employment at the hospital so listed, contributors to the Fund.

An incorporated hospital, separate institution or associated organisation within the meaning of the *Public Hospitals Act 1929* or an area health service within the meaning of the *Area Health Services Act 1986* in respect of those persons employed by the incorporated hospital, separate institution, associated organisation or area health service on or after 1 August 1988 but before the date of the repeal of those Acts by the *Health Services Act 1997*.

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

## Schedule 4 Excluded persons

(Section 3)

### 1 General exclusions

For the purposes of the definition of **employee** in section 5 (1), a person is an excluded person if he or she:

- (a) is a full-time employee and is a contributor to a superannuation scheme other than the superannuation scheme established by this Act,
- (b) received a benefit under, or is in receipt of periodic payments under, such a superannuation scheme as a consequence of ill-health, not being a benefit or payments based on an elapsed period of membership,
- (c) is a person who was a contributor and received a benefit under this Act where prospective benefit points were a factor in the calculation of the amount of the benefit, or
- (d) is a Judge within the meaning of the *Judges' Pensions Act 1953*, or a master within the meaning of the *Supreme Court Act 1970*, or is Solicitor General.

### 2 Disqualification of contributor

- (1) In this clause, **University** means a university established by an Act.
- (2) A person who is appointed after the commencement of this Act as a professor of a University and becomes a contributor ceases to be a contributor if he or she becomes a party to any scheme or arrangement to which that University is also a party and under which he or she is, or may become, entitled to any pension, annuity, lump sum or other payment on retirement from the professorship.

(2A) A person:

- (a) who is an employee of a University and a contributor, and
- (b) who, on or after the 1st September 1987, becomes a party to any scheme or arrangement to which that University is also a party and under which he or she is, or may become, entitled to any pension, annuity, lump sum or other payment on retirement as such an employee,

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

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

## Schedule 5 Superannuation periods

(Section 5 (1))

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Period No</b>	<b>Commencing Date</b>	<b>Terminating Date</b>
1	1st July	14th July
2	15th July	28th July
3	29th July	11 August
4	12th August	25th August
5	26th August	8th September
6	9th September	22nd September
7	23rd September	6th October
8	7th October	20th October
9	21st October	3rd November
10	4th November	17th November
11	18th November	1st December
12	2nd December	15th December
23	16th December	29th December
14	30th December	12th January
15	13th January	26th January
16	27th January	9th February
17	10th February	23rd February

18	24th February	9th March
19	10th March	23rd March
20	24th March	6th April
21	7th April	20th April
22	21st April	4th May
23	5th May	18th May
24	19th May	1st June
25	2nd June	15th June
26	16th June	30th June

## Schedule 6 Transitional provisions

(Section 4)

### 1, 2 (Repealed)

#### 2A State Public Service Superannuation (Amendment) Act 1985

An election made under section 12, an application made under section 13 or a medical examination undergone under section 13, before the date of assent to the *State Public Service Superannuation (Amendment) Act 1985* shall be deemed to have been duly made or undergone notwithstanding the amendments made by Schedule 1 (5) and (6) to that Act.

### 3 Regulations

- (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequential upon the enactment of this Act or upon the enactment of the *State Public Service Superannuation (Amendment) Act 1985*.
- (2) (Repealed)
- (3) A provision made under subclause (1) may be made to take effect on and from the date of assent to this Act or on and from a later date.
- (4) To the extent to which a provision made under subclause (1) takes effect on and from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:
  - (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 publication, or
  - (b) to impose a liability on any person (other than the State or an authority of the

State) in respect of any thing done or omitted before the date of publication.

## **Schedule 7 Preserved benefit—contributors transferred as a result of Government initiatives**

(Section 34 (8))

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

- (1) This Schedule applies to a contributor:
  - (a) who is employed in an area of an employer's activities that is, or is to be, transferred to another employer who is not, in respect of the contributor, an employer under this Act,
  - (b) who elected or is required to transfer to the employment of that other employer, and
  - (c) whose transfer of employment is declared by the regulations to be a transfer of employment to which this Schedule applies.
- (2) The regulations may, for the purposes of subclause (1) (c), declare that the transfer of employment of any specified contributors or former contributors is a transfer of employment to which this Schedule applies if the Minister has certified that the transfer is a consequence of a Government initiative.

### **2 Transferred contributor entitled to preserved benefit despite having less than 3 years' service**

A transferred contributor to whom this Schedule applies is entitled to make provision for a preserved benefit even though less than 3 years have elapsed since the transferred contributor's entry date.

### **3 Transferred contributor entitled to immediate payment of preserved benefit (including employer-financed component)**

- (1) A transferred contributor to whom this Schedule applies and who elects to make provision for a preserved benefit is entitled to be paid the benefit provided by section 34 (5) on ceasing to be a contributor, despite anything to the contrary in section 34.
- (2) A preserved benefit is payable under this clause if, and only if:
  - (a) the Board is satisfied that the benefit will be applied to the credit of the transferred contributor in another superannuation scheme, and
  - (b) any requirements made by the regulations with respect to the payment of the benefit are complied with.

#### **4 Regulations**

The Governor may make regulations for the purposes of this Schedule and, in particular, for or with respect to:

- (a) the application of a preserved benefit payable under clause 3, and
- (b) the entitlements and obligations of a transferred contributor under any superannuation scheme to which any such preserved benefit is credited.