

# Superannuation Act 1916 No 28

[1916-28]



New South Wales

## Status Information

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# Superannuation Act 1916 No 28



New South Wales

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# Superannuation Act 1916 No 28



New South Wales

An Act to provide a State provident fund for persons employed by the State or by certain other bodies, and for the families of such persons; to amend and repeal various Acts; and for purposes consequent thereon or incidental thereto.

## Part 1 Preliminary

### 1 Name of Act and commencement

This Act may be cited as the *Superannuation Act 1916* and shall, except where otherwise provided, come into operation on the first day of July, one thousand nine hundred and nineteen.

#### 1A Closure of Scheme to persons employed on or after 1.7.1985

- (1) Notwithstanding any other provision of this Act (except subsection (3)), a person is not required or entitled to commence contributing to the Fund on or after 1 July 1985.
- (2) Subsection (1) applies, subject to subsection (3), to a person who was previously a contributor to the Fund, whether before or after 1 July 1985.
- (3) Subsection (1) does not apply to—
  - (a) a person who was, immediately before 1 July 1985, an employee but was not contributing to the Fund, being a person to whom Schedule 21 applies and who elects to become a contributor to the Fund in accordance with that Schedule,
  - (b) a person who makes an election under section 38C and complies with that section,
  - (c) a person who is re-employed by an employer under section 51 (1) after the restoration of the person's health, or
  - (c1) a person exercising a transfer option conferred under section 128A of the *Superannuation Administration Act 1996* to rejoin the Fund,
  - (d) a person of a class prescribed by the regulations.
- (4) Schedule 21 has effect.

- (5) Regulations may be made for or with respect to elections under Schedule 21 or to any other matter necessary or convenient to be prescribed for the purposes of this section.

## 2 (Repealed)

## 3 Definitions

- (1) In this Act, unless inconsistent with the context or subject-matter—

**Abandoned unit**, in relation to an employee, means—

- (a) a unit of pension which the employee has, in accordance with this Act, elected to abandon,
- (b) a unit of pension in respect of which the employee is not to contribute, or has ceased contributing, to the Fund, by reason of electing, in accordance with this Act, to reduce the number of units of pension in respect of which the employee is to contribute,
- (c) a unit of pension in respect of which the employee has, in accordance with this Act, elected not to contribute to the Fund, or
- (d) a unit of pension the contributions for which are refunded to the employee or the employee's spouse or de facto partner under section 10AH (3),

but does not include a unit of pension to which an election under section 10W (2) relates.

**Note—**

"De facto partner" is defined in section 21C of the [Interpretation Act 1987](#).

**Annual adjustment day**, in relation to a contributor, means the day determined to be the contributor's annual adjustment day under section 10L.

**Annual review day**, in relation to a contributor, means the day determined to be the contributor's annual review day under section 10L.

**Appointed day** means the day upon which Part II of the [Currency Act 1965](#) of the Parliament of the Commonwealth of Australia commences.

**Approved deposit fund** means an approved deposit fund within the meaning of the [Superannuation Industry \(Supervision\) Act 1993](#) of the Commonwealth.

**Child** means a child who has not attained the age of 18 years and, without limiting the operation of the [Status of Children Act 1996](#), includes an ex-nuptial or adopted child (whether or not the adoption took place in Australia).

**Commonwealth taxation law** means a law of the Commonwealth that provides for

the levying and collection of a tax.

**Contribution period** means a four-weekly period commencing on and including a date specified in Column 2 of Schedule 16 and ending on and including the date specified opposite thereto in Column 3 of that Schedule.

**Contributor** means an employee and includes a person who has elected to take the benefit of Division 3A of Part 4, but does not include—

- (a) an employee while exempted from contributing to the Fund (whether before, on or after 13 January 1977),
- (b) an employee while rejected or not accepted as a contributor under this Act as in force at any time before 13 January 1977, or
- (c) an employee to whom clause 4 (1) of Schedule 17 applies.

**Contributors' reserve** means the reserve for contributors' contributions established and maintained under section 5 (1).

**Contributory unit** means a unit of pension other than a reduced value unit, an abandoned unit or a reserve unit of pension under section 15A.

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

**Discharged** has the meaning given to that expression by section 23 (2).

**Dismissed** has the meaning given to that expression by section 24.

**Employee** means person employed by an “employer,” and who is by the terms of the person’s employment required to give the person’s whole time to the duties of the person’s employment or who is a part-time employee, but does not include a Judge of the Supreme Court, or a judicial member of the Industrial Relations Commission of New South Wales, or a Judge of the District Court, or a Judge of the Compensation Court, or an associate Judge of the Supreme Court, or, subject to subsection (4B), the Solicitor General, or a professor of the University of Sydney, or a professor of the University of New England, or a professor of the Macquarie University, or a professor of the University of Newcastle, or, subject to subsection (4), a professor of The University of New South Wales, or, subject to subsection (4A), a professor of The University of Wollongong, or a person who is subject to the provisions of the *Railways Superannuation Act 1910*, or the *Transport Employees Retirement Benefits Act 1967*, or the *New South Wales Retirement Benefits Act 1972*, or the *Police Regulation (Superannuation) Act 1906*, or a person who is paid at hourly, daily, weekly, or fortnightly rates, or by piece-work, otherwise than as provided by subsection (1A).

**Employer** means—



- (a) the Crown, the Government or a Minister or other member of Parliament, or
- (b) an authority listed in Schedule 3, or
- (c) an authority to which section 3B (4) applies,

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

**Employer reserve** means a reserve referred to in section 5 (1) (b).

**Employing authority** means any person, body or organisation, whether or not constituted under an Act and whether or not an employer, who or which employs persons.

**Entry payment day**, in relation to an employee, means the day determined to be the employee's entry payment day under section 10K.

**Entry review day**, in relation to an employee, means the day determined to be the employee's entry review day under section 10K.

**Executive officer** means a contributor who is—

- (a) a Public Service senior executive within the meaning of the [Government Sector Employment Act 2013](#), or
- (b) an employee (not being a Public Service senior executive) of an employer specified in Schedule 3 and who holds an office designated by the Secretary of the Treasury as the office of an executive officer, or
- (c) a police executive officer, or
- (d) an office holder nominated for the purposes of section 11A of the [Statutory and Other Offices Remuneration Act 1975](#).
- (e) (Repealed)

**Exit day**, in relation to an employee, means the last day on which the employee is, in the opinion of STC, an employee, whether the employee is an employee for the whole or part only of that day.

**Family law superannuation legislation** has the same meaning as it has in Part 4A.

**Financial year** means the year commencing 1 July.

**First State Superannuation Fund** has the same meaning as **Fund** has in the [First State Superannuation Act 1992](#).

**Maturity age** means—

- (a) in the case of an employee who, being a woman contributor, elected to contribute at the rate prescribed for retirement at the age of 55 years—the age of 55 years, or
- (b) in the case of any other employee—the age of 60 years.

**Non-contributor spouse** has the same meaning as it has in Part 4A.

**Part-time employee** has the same meaning as it has in section 12C.

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

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

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

**Prescribed age** means—

- (a) in the case of an employee who, being a woman contributor, elected to contribute at the rate prescribed for retirement at the age of 55 years—the age of 50 years, or
- (b) in the case of any other employee—the age of 55 years.

**Reduced value unit** means a reduced value unit allocated under section 47C.

**Regulations** means regulations under this Act.

**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.

**Relieving allowance** means an allowance paid to the holder of an office or position for performing any or all of the duties of another office or position, without the person's being appointed to that other office or position on a permanent basis.

**Resigned** has the meaning given to that expression by section 25.

**Retrenched** has the meaning given to that expression by section 23 (1).

**Salary**, in relation to a contributor, means salary of the contributor, determined in accordance with section 3AA or 3A and expressed as an annual rate.

**Salary sacrifice contribution**—see section 10U (2).

**Service** means service under or employment by one or more employers.

**Spouse** of a contributor or pensioner who has died means the surviving spouse (including widow or widower) of the contributor or pensioner.

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

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

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

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

**The Fund** means the State Superannuation Fund established for the purposes of this Act.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

(1A) A person who is an employee and a contributor does not cease to be a contributor just because at any time after 30 June 1992 the person is paid at hourly, daily, weekly or fortnightly rates, or by piece-work.

(2)

(a) Notwithstanding anything in the definition of **employee** a person appointed as a professor of the University of Sydney who, at the date of the person's appointment as such, was a contributor, and who, after such appointment, in addition to such professorship, continues in the employment of an employer in some other capacity, shall be deemed to be an employee for the purposes of this Act and shall, subject to this subsection, continue to be a contributor.

(b) This subsection shall apply to and in respect of any such person appointed as a professor before as well as after the commencement of the [Superannuation \(Amendment\) Act 1944](#).

(c) Any such person appointed as a professor before such commencement shall cease to be a contributor unless, within three months after such commencement, the person satisfies STC that the person is no longer a party to any scheme or arrangement to which the University of Sydney is also a party, under which the person is or may become entitled to any pension or annuity or retiring allowance upon retirement from the person's professorship.

- (d) Any such person appointed as a professor after such commencement shall cease to be a contributor if, after such appointment, the person becomes or continues to be a party to any scheme or arrangement to which the University of Sydney is also a party, under which the person is or may become entitled to any pension or annuity or retiring allowance upon retirement from the person's professorship.

(3)

- (a) A person appointed as a professor of the University of Sydney or the University of New England may elect to contribute to the Fund, and if the person so elects shall notwithstanding the definition of **employee** contained in subsection (1) be deemed to be an employee for the purposes of this Act.

This subsection shall apply to and in respect of any such person appointed as a professor before as well as after the commencement of this subsection.

- (b) The election referred to in paragraph (a) shall be in writing and shall be forwarded so as to be received in the office of STC within a period of three months from the date on which the person is appointed as a professor or within such longer period as STC may, in special circumstances, allow, or in the case of a person appointed as a professor before the commencement of this subsection, within three months after such commencement.
- (c) (Repealed)
- (d) Any person who makes the election referred to in paragraph (a) shall cease to be a contributor unless within the time prescribed for making that election the person satisfies STC that the person is not a party to any scheme or arrangement to which the University of Sydney or the University of New England, as the case may be, is also a party and under which the person is or may become entitled to any pension or annuity or retiring allowance upon retirement from the person's professorship.
- (e) Any person appointed as a professor as aforesaid shall cease to be a contributor if the person becomes or continues to be a party to any scheme or arrangement to which the University of Sydney or the University of New England, as the case may be, is also a party and under which the person is or may become entitled to any pension or annuity or retiring allowance upon retirement from the person's professorship.
- (f) Subject to paragraphs (d) and (e), any professor who makes the election referred to in paragraph (a) shall be entitled to the rights and be subject to the obligations of an employee under this Act.
- (g) The provisions of this subsection shall apply, mutatis mutandis, to and in respect of professors of the Macquarie University.
- (h) The provisions of this subsection shall apply, mutatis mutandis, to and in respect

of professors of the University of Newcastle.

(4)

- (a) Subject to this subsection, the exclusion from the definition of **Employee** of a professor of The University of New South Wales shall not extend to a person whose rights as a contributor are continued by section 2 of the *University of New South Wales Act 1968*.
- (b) A person who is a professor of The University of New South Wales shall cease to be a contributor if, after the commencement of the *University of New South Wales Act 1968*, the person becomes or continues to be a party to any scheme or arrangement to which that University is also a party and under which the person is or may become entitled to any pension or annuity or retiring allowance upon retirement from the person's professorship.
- (c) The provisions of subsection (3) shall apply, mutatis mutandis, to professors of The University of New South Wales other than those who are employees by virtue of paragraph (a).

(4A)

- (a) Subject to this subsection the exclusion from the definition of **Employee** of a professor of The University of Wollongong shall not extend to a person whose rights as a contributor are continued by section 40 of the *University of Wollongong Act 1972*.
- (b) A person who is a professor of The University of Wollongong shall cease to be a contributor if, after the commencement of Part 3 of the *University of Wollongong Act 1972*, the person becomes, or continues to be, party to any scheme or arrangement to which that University is also a party and under which the person is or may become entitled to any pension or annuity or retiring allowance upon retirement from the person's professorship.
- (c) The provisions of subsection (3) shall apply, mutatis mutandis, to professors of The University of Wollongong other than those who are employees by virtue of paragraph (a).

(4B) A person appointed as Solicitor General who, at the date of the person's appointment, was a contributor may elect to continue to contribute to the Fund and if the person so elects shall, notwithstanding the definition of **Employee** in subsection (1), be deemed to be an employee for the purposes of this Act.

(5) (Repealed)

(6) For the purposes of this Act, the salary group within which a salary falls is—

- (a) in the case of a salary that does not exceed five thousand two hundred

- dollars—the salary group specified in the scale in paragraph (a) of subsection (1) of section 12 that is appropriate for the salary, or
- (b) in the case of a salary that exceeds five thousand two hundred dollars—the salary group in the scale in paragraph (a) of subsection (1) of section 12 in which the salary would fall if the scale were extended to express the unit entitlement for that salary as provided by paragraph (b) of that subsection.
- (7) For the purposes of this Act, the number of abandoned units of pension that a person has at a particular time after the commencement of the *Superannuation (Amendment) Act 1972* is the number (if any) by which—
- (a) the number of units of pension that, pursuant to subsection (1) of section 12, is appropriate for a salary equal to the person’s salary at that time, exceeds
- (b) the number of units of pension in respect of which pension would be paid—
- (i) if the person had reached the age entitling the person to retire under subsection (1) of section 21 and had so retired, and
- (ii) if any contributions under section 10AH, 12B or 12C outstanding at that time in respect of any of those units of pension had been paid.
- (8) Where a contributor employed at a university referred to in this section ceases to be a contributor by reason only of the operation of this section following his or her appointment as a professor at that university the person shall, for the purposes of sections 38, 38A and 38B, be deemed to have, immediately before that appointment, resigned from the service of that university.
- (9) A person who, but for this subsection, would not be an employee until salary is actually paid to the person shall, for the purposes of this Act, be deemed to become an employee as from the day when salary is or was payable to the person or such later day as STC may fix in respect of the person.
- (10) (Repealed)
- (11) A reference in this Act to a pension payable to a person who is a spouse or de facto partner is a reference to a pension payable under section 30, 31 or 52F to the person in her or his capacity as a spouse or de facto partner.
- (11A)–(11C) (Repealed)
- (12) A reference in this Act (except in sections 32C and 44 (2)) to a child in respect of whom a pension is payable (being a pension payable at a rate determined in accordance with section 61M or 61N) includes a reference to a student in respect of whom a pension is payable under section 43A or 52H at that rate.

(13) Where, under this Act, any period is required to be expressed as a fractional part of a year, the period shall be expressed as a fractional part of 365.25 days.

(14) Notes included in this Act do not form part of this Act.

### **3AAA (Repealed)**

### **3AA Salary of executive officers**

- (1) **Definition of salary** For the purposes of this Act, the **salary** of an executive officer is the salary as last nominated or changed in accordance with this section.
- (2) **Nomination of salary on initial and subsequent appointments** An amount of salary for the purposes of this Act must be nominated to an executive officer's employer by the officer, on, or as soon as practicable after, being appointed as an executive officer. An amount may also be nominated to the officer's employer by the officer on, or as soon as practicable after, being reappointed, or appointed to another position, as an executive officer.
- (3) **Amount of salary** The amount nominated is to be not less than the monetary remuneration payable to the executive officer at the date of nomination and not more than the total value of the remuneration package paid to the officer (less the cost of providing employer's contributions to superannuation, other than salary sacrifice contributions, under this Act and the [State Authorities Non-contributory Superannuation Act 1987](#) and any performance-related incentive payment).
- (4) **Failure to nominate salary** If an executive officer fails to nominate an amount of salary within 28 days of first being appointed as an executive officer or within such further period as STC may allow, the officer is taken to have nominated an amount of salary that is equal to the monetary remuneration payable to the officer at the end of the applicable period.
- (5) **Reduction in nominated salary** An executive officer may, from time to time, by notice to the officer's employer elect to reduce the amount of salary nominated under this section, but not so that the amount is less than the monetary remuneration payable to the officer at the date of the election.
- (6) **Increase in nominated salary** An executive officer may, from time to time, by notice to the officer's employer elect to increase the amount of salary nominated under this section, but not so as to increase the amount nominated by a percentage of that amount that is more than the percentage by which the remuneration package of the officer has increased since the amount of salary was last nominated or changed.
- (6A) **Change of salary on change of work** The amount of salary nominated for the purposes of this Act is, on an executive officer becoming a full-time employee after being a part-time employee or becoming a part-time employee after being a full-time employee, changed so that it is an amount equal to the same percentage of the employee's

remuneration package after the change in work as the amount previously nominated was of the remuneration package before the change. This subsection does not prevent an executive officer from making an election under subsection (5) or (6) at any time after the change in work.

- (6B) **Limit on part-time salary changes** An executive officer who is a part-time employee appointed to a full-time position may not make an election under subsection (6) nominating an amount of salary that is more than the amount of the officer's remuneration package, calculated as if the officer were employed in a part-time position (less the cost of providing employer's contributions to superannuation, other than salary sacrifice contributions, under this Act and the *State Authorities Non-contributory Superannuation Act 1987* and any performance-related incentive payment).
- (7) **Nominations and elections** An employer must notify STC of a nomination or election under this section. Any such nomination or election takes effect on the date of notification to STC or on such other date as STC may determine with the consent of the executive officer concerned.
- (8) **Effect of changes in packages** Nothing in this section requires the nominated amount of salary to be increased if, because of a variation in the remuneration package of an executive officer or in the proportions of the remuneration package comprising monetary remuneration and employment benefits of the officer, the amount of salary as last nominated or changed for the purposes of this section is less than the monetary remuneration of the officer.
- (9) **Transitional provision relating to nomination of salary by executive officers** An executive officer may, within 3 months after the commencement of this subsection, nominate a new amount of salary in accordance with this section if, immediately before the commencement of this subsection, the officer was an executive officer.
- (10) **Monetary remuneration** In this section, the **monetary remuneration** payable to an executive officer is—
- (a) if the officer is a Public Service senior executive, within the meaning of the *Government Sector Employment Act 2013*, or a police executive officer, the monetary remuneration payable in accordance with the *Government Sector Employment Act 2013* or the *Police Act 1990*, as the case requires, or
  - (b) if the officer is an office holder nominated for the purposes of section 11A of the *Statutory and Other Offices Remuneration Act 1975*, the remuneration payable to the officer as reduced under that section by the cost of employment benefits provided to the officer, or
  - (c) in the case of any other executive officer, the monetary remuneration payable to the officer.



### 3A Salary

- (1) For the purposes of this Act, **salary**, in relation to a contributor (other than an executive officer) means the sum of—
- (a) the remuneration, salary or wages payable in money to the contributor in the contributor's capacity as a contributor, as reported to STC from time to time by the contributor's employer, including—
    - (i) a loading in respect of any shift allowance, as determined by or under this Act, and
    - (ii) other allowances payable in money that are of a kind included within the value of leave paid on termination of employment, and
    - (iii) weekly workers compensation paid to the contributor as from a date determined by STC under subsection (1B),  
but not including the excluded amounts or allowances referred to in subsection (2), and
  - (a1) if salary sacrifice contributions are made in respect of the contributor, the amounts payable for those contributions under section 10U (3) (a) and (b), and
  - (b) if approved employment benefits are provided to the contributor, the cost of providing the approved employment benefits, as determined by the Minister, with the concurrence of the Treasurer.
- (1A) The weekly workers compensation to be treated as salary for the purposes of this Act does not include any amount by which the aggregate of—
- (a) the weekly workers compensation paid to an injured contributor, and
  - (b) the salary actually paid to that contributor while partially incapacitated,  
exceeds the salary that the contributor would probably have been earning but for the injury (assuming the contributor had continued to be employed in the same or some comparable employment).
- (1B) STC may determine a date as from which weekly workers compensation paid to a contributor is to be treated as salary for the purposes of this Act, being a date not earlier than—
- (a) 21 December 1984, or
  - (b) if the liability to pay weekly workers compensation in respect of the contributor first arose on a date later than 21 December 1984—that later date.
- (1C) Despite subsection (1), the regulations may provide that the **salary** of an employee

or class of employees (other than an executive officer) for the purposes of this Act is to be determined in the manner prescribed by the regulations.

- (1D) A regulation may be made under subsection (1C) only if the Minister and the Treasurer certify in writing that—
- (a) there has been a change in the basis on which the remuneration of the employee or class of employees is determined, and
  - (b) the effect of that change is to change the basis of remuneration to an annualised one, and
  - (c) the effect of the regulation is not to reduce the benefits that would have accrued under this Act to the employee or class of employees, had there been no change in the basis of remuneration, and
  - (d) the making of the regulation and associated arrangements will not result in a greater financial cost to the Government than if the regulation and associated arrangements were not made.
- (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 Schedule 24, 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,
  - (e1) in respect of any period during which the contributor takes extended leave (or leave in the nature of extended leave) otherwise than on full pay, such part of the remuneration received by the contributor as exceeds the salary (within the meaning of subsection (1)) that he or she would have received had he or she taken leave on full pay,
  - (f) an amount paid for rent or as a residence, housing or quarters allowance, and
  - (g) an amount of weekly workers compensation excluded by subsection (1A).
- (3) If a contributor's employer, or a person authorised to do so on behalf of the employer, certifies in writing to STC that a relieving allowance to be, or being, paid to the contributor in the contributor's capacity as an employee is likely to be paid for a continuous period of 1 year (whether or not the period is partly before the date of the

certificate), the allowance is, as from—

(a) the date on which the certificate is lodged with STC, or

(b) the date from which the allowance becomes payable,

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

(4) If a relieving allowance has been paid to a contributor in the contributor's capacity as an employee for a continuous period of 1 year that ends after the 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.

(4A) For the purposes of subsection (4), a reference to a continuous period of 1 year is in relation to a contributor who is employed in an educational institution to be read as a reference to the academic year of the institution.

(5) In this section—

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

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

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

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

(6) 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.

### **3B Certain persons to be regarded as employers for the purposes of this Act**

(1) An employee of the Crown, the Government or a Minister or other member of

Parliament shall, for the purposes of this Act, be treated as being employed by such person or organisation as may be specified in the regulations.

- (2) (Repealed)
- (3) Members of the NSW Police Force are, for the purposes of this Act, to be taken to be employed in the NSW Police Force by the Crown.
- (4) Where, immediately before the commencement of Schedule 2 (33) to the *Superannuation (Amendment) Act 1988*, an authority was the employer of a contributor or contributors for the purposes of this Act, but the authority is not listed in Schedule 3 to this Act (List of Employers), as in force after that commencement, that authority nevertheless continues to be an employer for those purposes but in respect of that contributor or those contributors only.

### **3C References to employers etc**

- (1) A reference in this Act to an authority, where used in or in connection with the definition of **employer**, is a reference to an authority, organisation, corporation, person or other entity.
- (2) If the inclusion of an employer's name in Schedule 3 is expressed to be limited in any respect, this Act has effect in relation to the employer subject to the limitation.

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

### **4 Reconstitution of the Fund**

- (1) There shall, for the purposes of this Act, continue to be a fund to be known as the State Superannuation Fund.
- (2) STC is responsible for maintaining and managing the Fund.
- (3) STC must ensure that there are paid into the Fund—
  - (a) contributions or payments made by employers and employees, and
  - (b) income derived from investment of the Fund, and any profit made from realising any investment of the Fund's assets, and
  - (c) money borrowed for the purposes of the Fund, and
  - (c1) fees paid to STC arising under the family law superannuation legislation or Part 4A, and
  - (d) any other amounts properly payable to the Fund.
- (4) STC must ensure that there are paid from the Fund—

- (a) the administration costs incurred by STC in relation to the administration of the Fund, including administration costs arising under the family law superannuation legislation or Part 4A, and
  - (b) the amount of any benefit payable under this Act, and
  - (c) amounts in repayment of money borrowed for the purposes of the Fund, and
  - (c1) amounts payable by STC and arising under the family law superannuation legislation or Part 4A, and
  - (d) such amounts as are necessary to satisfy any liability of the Fund with respect to tax payable under a Commonwealth taxation law or an amount of superannuation contributions surcharge payable by the Fund, and
  - (e) any other amounts that are properly payable from the Fund.
- (5) If a loss is incurred in realising any investment forming part of the assets of the Fund, the Fund is accordingly reduced by the amount of that loss.

**4A (Repealed)**

**5 STC required to establish certain reserves within the Fund**

- (1) STC must establish and maintain within the Fund the following reserves—
- (a) a reserve for contributors' contributions,
  - (b) a separate reserve for each employer specified in Schedule 3 and, after the commencement of Schedule 2 (33) to the *Superannuation (Amendment) Act 1988*, a separate reserve—
    - (i) for each employer specified in Part 1 of Schedule 3, and
    - (ii) for each group of employers specified in Parts 2 and 3 of that Schedule.
  - (c) (Repealed)
- (2) STC may also establish and maintain within the Fund such other reserves and such accounts as, in its opinion, are necessary or convenient for the proper management of the Fund and administration of this Act.
- (3) As soon as practicable after the passing of the *Superannuation (Amendment) Act 1988*, STC must appoint one or more actuaries to carry out the functions referred to in subsection (4).
- (4) As soon as practicable after being appointed under subsection (3), the actuary or actuaries concerned must—
- (a) carry out an investigation of the Fund, and

- (b) make to STC recommendations with respect to the apportionment of the Fund so as to enable STC to fix the initial values of the reserves referred to in subsection (1).
- (5) On receiving the recommendations of the actuary or actuaries in accordance with subsection (4), STC must—
  - (a) after having regard to those recommendations, fix the initial values of the reserves referred to in subsection (1), and
  - (b) publish in the Gazette the values so fixed, and
  - (c) apportion the State Superannuation Fund in accordance with those values.
- (6) STC's decision under subsection (5) is binding on all contributors and employers.

## **6 Contributors' reserve**

- (1) STC must ensure that there is credited to the contributors' reserve the contributions that contributors make or have made to the Fund on or after 1 July 1988.
- (2) STC must ensure that there is debited to the contributors' reserve that portion of any benefit payable to or in respect of a contributor from the contributors' reserve in accordance with section 33B (2) (a).
- (3) STC must ensure that there is debited to the contributors' reserve that portion of any amount arising under the family law superannuation legislation or Part 4A that is payable to or in respect of a non-contributor spouse from the contributors' reserve in accordance with section 33B (2A).

## **6A (Repealed)**

## **7 Employer reserves**

- (1) Whenever an employer makes or has made a contribution to the Fund in respect of a contribution period beginning on or after 1 July 1988, STC must ensure that the contribution is credited to the appropriate employer reserve.
- (1A) STC must ensure that there is credited to the appropriate employer reserve any fees paid to STC arising under the family law superannuation legislation or Part 4A.
- (2) STC must ensure that there is debited to the appropriate employer reserve—
  - (a) the portion of any benefit payable to or in respect of a contributor in accordance with section 33B (2) (b), and
  - (b) administration costs incurred by STC under the [Superannuation Administration Act 1996](#) or the family law superannuation legislation or Part 4A in relation to—
    - (i) the employer (or an employer to whom the reserve relates), and

- (ii) contributors who are employees of that employer, and
- (c) the amounts of tax (if any) that may become payable under a Commonwealth taxation law in respect of contributions to the reserve that are attributable to the employer or an employer to whom the reserve relates, and
- (c1) the portion of any amount under the family law superannuation legislation or Part 4A that is payable to or in respect of a non-contributor spouse from the employer reserve in accordance with section 33B (2A), and
- (d) any other amounts that are properly payable from the reserve.

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

- (1) Whenever appropriate, STC must fix a rate of interest for the purposes of subsection (2) after having regard to—
  - (a) the income of the Fund, and
  - (b) the amount of tax (if any) that has to be paid under a Commonwealth taxation law in respect of the investment income of the Fund, and
  - (c) such other matters as it considers relevant.
- (2) Whenever appropriate, STC must adjust each of the reserves and accounts established under this Part by applying the rate of interest that is currently fixed under subsection (1).
- (3) STC may fix a rate of interest for the purpose only of enabling specific reserves or accounts to be adjusted.

### **8A Source of administration costs payments**

- (1) The administration costs payable in respect of the superannuation scheme established under this Act are to be paid from employer reserves and such other reserves (the contributor's reserve excepted) and accounts in the Fund as STC considers appropriate.
- (2) The administration costs payable in respect of preserved benefits are to be paid from employer reserves in the Fund.
- (3) The administration costs payable in respect of pensions provided under this Act are to be paid from employer reserves in the Fund.

### **8B Adjustment of reserves resulting from actuarial investigation**

- (1) STC may adjust the reserves within the Fund if a report by an actuary under section 10, or by an actuary otherwise appointed by STC, recommends that the adjustment be made. The adjustment may be made as at a date determined by STC, and may be a

date before, on or after the commencement of this section.

- (2) STC may only make the adjustment with the consent of the Minister after the Minister has considered the relevant report of the actuary and with the advice of the actuary.
- (3) STC may adjust the contributors' reserve or an employer reserve under this section despite any other provision of this Act.
- (4) STC must publish in the Gazette a notice containing a description of any adjustments made to reserves under this section.
- (5) STC's decision to adjust a reserve under this section is binding on all contributors and employers, unless affected by a subsequent decision under this section.

### **8C Adjustment of employer reserves to take into account death and disability payments**

- (1) STC may obtain actuarial advice on or after 1 July in each year as to the appropriate adjustment to employer reserves in the Fund to achieve an equitable pooling of liability for payment of employer contributions to death and disability benefits among all employers in respect of the preceding financial year.
- (2) STC may adjust the amount currently standing to the credit or debit of an employer's reserve in the Fund in accordance with actuarial advice obtained under this section.
- (3) STC may adjust an employer reserve under this section despite any other provision of this Act.
- (4) In this section—

**death benefit** means a benefit payable under this Act on the death of a contributor or former contributor.

**disability benefit** means a benefit payable under this Act on the ground of invalidity or physical or mental incapacity of a contributor or former contributor.

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

- (1) STC must—
  - (a) credit to the Fund or, as the case may be, to the appropriate reserve or account any amount that is required by or under this or any other Act to be credited to the Fund or to that reserve or account, and
  - (b) debit to the Fund or to the appropriate reserve or account any amount that is required by this or any other Act to be debited to the Fund or to that reserve or account.
- (2) STC may—



- (a) credit to the Fund or, as the case may be, to the appropriate reserve or account any amount that is permitted by or under this or any other Act to be credited to the Fund or to that reserve or account, and
- (b) debit to the Fund or to the appropriate reserve or account any amount that is permitted by or under this or any other Act to be debited to the Fund or to that reserve or account.

#### **9A Unallocated amounts**

- (1) On or before 30 June 1999, STC must credit to a general employer holding reserve any amounts held in the Fund in holding accounts, other than any such amounts identified by STC as being amounts to be credited to a particular employer, contributor or Crown reserves or reserves for the purposes of superannuation schemes established under other Acts.
- (2) STC must, as soon as practicable, credit the whole of the amount held in the general employer holding reserve to the appropriate employer reserves.
- (3) The appropriate employer reserves, and the amounts to be credited to the appropriate employer reserves under this section, are to be determined by STC after obtaining actuarial advice.
- (4) Nothing in this section prevents an amount credited to a reserve under this section from being adjusted under section 8B.

#### **9B-9E (Repealed)**

#### **10 Actuary or actuaries to conduct periodic investigations into the Fund**

- (1) Whenever necessary for the purposes of this section, STC must appoint one or more actuaries to conduct an investigation as to the state and sufficiency of the Fund.
- (2) Such an investigation must be conducted—
  - (a) as at 30 June 1994, and
  - (b) as at 30 June in every subsequent third year.
- (3) An actuary or actuaries appointed under subsection (1) must—
  - (a) complete such an investigation, and
  - (b) submit a report of the result of it to STC,  
not later than 6 months after the date as at which it is required to be conducted.
- (3A) The report referred to in subsection (3) must—
  - (a) include a statement of the value of the assets of the Fund, and

- (b) include a statement of any liability for benefit payments that are not expected to be covered by—
  - (i) the assets of the Fund, or
  - (ii) any future contributions to, or earnings of, the Fund, or
  - (iii) any guarantee by the Government or by any of its agencies, or
  - (iv) an appropriation in respect of the Fund.
- (4) STC must, not later than 1 month after it receives a report under subsection (3), forward the report to the Minister and may add to the report such comments as it thinks fit.
- (5) The Minister may, in relation to a particular investigation, extend or further extend the period referred to in subsection (3) if the Minister considers that special circumstances exist to justify an extension or further extension.
- (6) The Minister may, in relation to a particular investigation, extend or further extend the period referred to in subsection (4) if the Minister considers that special circumstances exist to justify an extension or further extension.

## **Part 2A**

### **10A-10I (Repealed)**

## **Part 3 Contributions**

### **Division 1 Preliminary**

#### **10J Definitions**

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

**half-year** means a period of 6 months—

- (a) commencing on and including 1 January and ending on and including 30 June, or
- (b) commencing on and including 1 July and ending on and including 31 December.

**relevant period**, in relation to an employee, means the half-year in which the employee's birthday does not fall.

- (2) In this Part, a reference—
  - (a) to the number of units of pension for which the annual cost is equal to a particular amount includes a reference to the largest number of units of pension for which the annual cost is less than that amount, and

(b) to the annual cost to a person for a unit of pension—

- (i) where the contributions in respect of the unit are required to be made by the person in accordance with the tables of contributions fixed by or under this Act—is a reference to an amount equal to 13 of those contributions or, after the commencement of Schedule 9 to the *Superannuation (Amendment) Act 1983*, 26 of those contributions, or
- (ii) where contributions in respect of the unit are required to be made by the person by instalments under section 10AH—is a reference to an amount equal to 13 of those instalments or, after the commencement of Schedule 9 to the *Superannuation (Amendment) Act 1983*, 26 of those instalments.

**10K Determination of entry review day and entry payment day**

- (1) STC shall, in respect of a person who becomes a contributor on or after 13 January 1977, determine—
  - (a) a day to be the person’s entry review day, and
  - (b) a day to be the person’s entry payment day.
- (2) An employee’s entry payment day may be the same as, or later than, but not earlier than, his or her entry review day.
- (3) An employee’s entry review day and entry payment day shall be within the period of 12 months after the day on which the employee becomes a contributor.

**10L Determination of annual review day and annual adjustment day**

- (1) STC shall, in respect of a contributor, determine—
  - (a) a day in each relevant period to be the contributor’s annual review day, and
  - (b) a day in each relevant period to be the contributor’s annual adjustment day,but no such day shall be in a relevant period in which the contributor’s entry review day or the contributor’s entry payment day falls.
- (2) A contributor’s annual adjustment day for a relevant period may be the same as, or later than, but not earlier than, the contributor’s annual review day for that period.
- (3) A contributor may not have more than one annual review day, nor more than one annual adjustment day, in a relevant period.

**10M General provisions as to determinations under this Division**

- (1) STC may amend or revoke a determination under this Division.
- (2) A determination may be made under this Division so as to apply to a specified

employee or a specified class of employees.

## **Division 2 Liability of employees to contribute**

### **10N Requirement to contribute**

Subject to this or any other Act, every employee shall contribute to the Fund in accordance with this Act.

### **10O Existing contributors and employees**

(1) An employee who was contributing to the Fund on 12 January 1977 shall, subject to section 10W, contribute, and continue to do so, to the Fund for the number of units of pension for which, and at the rate for each such unit at which, the employee was required by or under this or any other Act to contribute on that date or at such other rates as may from time to time be fixed by or under this Act.

(2) (Repealed)

(3) Where—

(a) a contributor's first annual adjustment day falls before 31 December 1977,

(b) the contributor contributes to the Fund in respect of an additional number of units of pension as on and from that adjustment day, and

(c) the contributor was a contributor at 12 January 1977,

the contributor shall, for the purposes of section 28A, be deemed to have commenced contributing for those units as from 13 January 1976, or the day on which the contributor became a contributor, whichever is the later.

### **10P Commencement of contributions**

(1) A person who becomes a contributor on or after 13 January 1977 shall commence to contribute to the Fund as on and from the person's entry payment day.

(2) The contributions of an employee referred to in subsection (1) shall be made in accordance with this Act by reference to the rate of salary actually being paid to the employee on the employee's entry review day.

(2A) On an employee's entry review day, if the number of units of pension that, pursuant to section 12 (1), is appropriate for the salary actually being paid to the employee is in excess of the number for which the annual cost to the contributor is equal to an amount representing 6 per cent of the annual salary of the employee at the rate actually being paid, the excess units of pension are optional units of pension.

(3) An employee may, within 2 months after the employee's entry review day, elect to abandon any 1 or more of the optional units of pension in respect of which, but for the

election, the employee would be required by this section to commence contributing to the Fund.

(4) Subsection (1) does not apply to an employee referred to in section 100 (2).

**10Q Increase of contributions: annual review days**

(1) Subject to this or any other Act, where the number of units of pension that, pursuant to section 12 (1), is appropriate for the salary actually being paid to a contributor (including a contributor referred to in section 100) on the contributor's annual review day in any half-year is higher than the aggregate of—

- (a) the number of units of pension (if any) for which the contributor is contributing at that time,
- (b) the number of units of pension (if any) for which the contributor has completed contributing, and
- (c) the number of the contributor's abandoned units (if any),

the contributor shall, as on and from the contributor's annual adjustment day in that half-year, contribute to the Fund in respect of the additional number of units of pension in accordance with this Act.

(1A) On a contributor's annual review day in any half-year—

- (a) if the annual cost to the contributor for the units of pension for which contributions are payable by the contributor is not less than an amount representing 6 per cent of the annual salary of the contributor at the rate actually being paid—the additional units of pension referred to in subsection (1) are optional units of pension, and
- (b) if—
  - (i) the annual cost to the contributor for the units of pension for which contributions are payable by the contributor is less than an amount representing 6 per cent of the annual salary of the contributor at the rate actually being paid, and
  - (ii) the number of additional units of pension referred to in subsection (1) is in excess of the number for which the annual cost to the contributor is equal to the shortfall under subparagraph (i),

the excess additional units of pension are optional units of pension.

(2) A contributor may, within 2 months after the contributor's annual review day in any half-year, elect to abandon any 1 or more of the optional units of pension in respect of which, but for the election, the contributor, would be required by this section to

commence contributing to the Fund.

- (3) Where a contributor entitled to make an election under subsection (2) dies without making such an election before the expiration of the period within which, but for the contributor's death, the contributor could have made the election, the contributor's spouse or de facto partner may, before the expiration of that period, make the election.

**10QA Abandoned units to be taken up if contributions fall below 6 per cent of salary**

- (1) On a contributor's annual review day, if the contributor has abandoned units and the annual cost to the contributor for the units of pension for which contributions are payable by the contributor is less than an amount representing 6 per cent of the annual salary of the contributor at the rate actually being paid—
  - (a) where there are no additional units of pension as referred to in section 10Q (1), the contributor shall take up the lesser of all of the abandoned units and the number of abandoned units for which the annual cost is equal to the shortfall, or
  - (b) where there are additional units of pension as so referred to but the annual cost to the contributor for the additional units is less than the shortfall, the contributor shall take up the lesser of all of the abandoned units and the number of abandoned units for which the annual cost is equal to the balance of the shortfall.
- (2) Where, under this section, a contributor is required to take up an abandoned unit which the contributor had on the contributor's annual review day in any half-year—
  - (a) the contributor shall commence to contribute for the unit as from the contributor's annual adjustment day in that half-year, and
  - (b) the unit ceases to be an abandoned unit as from the annual adjustment day.

**10QB Limitation on increase in contributions by certain contributors**

- (1) This section applies to a contributor on an annual review day of the contributor if—
  - (a) the contributor's entry payment day was before 1 July 1985,
  - (b) the contributor has any abandoned units, and
  - (c) the number of units of pension for which contributions are payable by the contributor on the annual review day is less than the number for which the annual cost is equal to an amount representing 6 per cent of the annual salary of the contributor at the rate actually being paid on the next preceding annual review day of the contributor.
- (2) On an annual review day on which this section applies to a contributor, sections 10Q and 10QA shall be construed, in their application to the contributor on that day, as if

references in those sections to 6 per cent were references to the minimum prescribed percentage referred to in subsection (3).

- (3) For the purpose of subsection (2), the minimum prescribed percentage in relation to a contributor on an annual review day is—
- (a) the sum of—
    - (i) 1 per cent, and
    - (ii) the percentage, on the next preceding annual review day, of the annual salary of the contributor at the rate actually being paid at that preceding annual review day that represents the amount that is equal to the annual cost to the contributor for the units of pension for which contributions were payable by the contributor on the annual adjustment day of the contributor next following that preceding annual review day, or
  - (b) 6 per cent,
- whichever is the lesser.
- (4) In this section—
- (a) a reference to a preceding annual review day of a contributor is, if there is no such day, a reference to the contributor's entry review day, and
  - (b) a reference to the annual adjustment day of the contributor next following that annual review day is a reference to the contributor's entry payment day.

**10R Increase of contributions: exit days**

- (1) Subject to this or any other Act, where the number of units of pension that, pursuant to section 12 (1), is appropriate for the salary actually being paid to a contributor on the contributor's exit day is higher than the aggregate of—
- (a) the number of units of pension (if any) for which the contributor is contributing at that time,
  - (b) the number of units of pension (if any) for which the contributor has completed contributing, and
  - (c) the number of the contributor's abandoned units (if any),
- the former contributor or the former contributor's spouse or de facto partner shall, within one month after the contributor's exit day, or within such further period as STC may, in special circumstances, allow, contribute to the Fund in respect of the additional number of units of pension in accordance with this Act.

- (1A) On a contributor's exit day—

- (a) if the annual cost to the contributor for the units of pension for which contributions are payable by the contributor is not less than an amount representing 6 per cent of the annual salary of the contributor at the rate actually being paid—the additional units of pension referred to in subsection (1) are optional units of pension, and
- (b) if—
  - (i) the annual cost to the contributor for the units of pension for which contributions are payable by the contributor is less than an amount representing 6 per cent of the annual salary of the contributor at the rate actually being paid, and
  - (ii) the number of additional units of pension referred to in subsection (1) is in excess of the number for which the annual cost is equal to the shortfall under subparagraph (i),

the excess additional units of pension are optional units of pension.

- (2) A contributor may, within 1 month after the contributor's exit day, elect to abandon any 1 or more of the optional units of pension in respect of which, but for the election, the contributor would be required by this section to make a contribution to the Fund.
- (3) Where a person entitled to make an election under subsection (2) dies without making such an election before the expiration of the period within which, but for the contributor's death, the contributor could have made the election, the person's spouse or de facto partner may, before the expiration of that period, make the election.
- (4) This section does not apply to or in respect of a former contributor unless—
  - (a) the former contributor or the former contributor's spouse or de facto partner is entitled to a pension under this Act (other than a pension under section 28AA) consequent on the former contributor's ceasing to be an employee, or
  - (b) the former contributor elects to take the benefit of section 37.
  - (c) (Repealed)

### **10S No contributions for more than appropriate number of units**

Except in the circumstances specified in Division 3 and except in consequence of an approval under section 13A (as in force at any time before 13 January 1977), an employee shall not contribute in respect of a number of units of pension that is greater than the number that, pursuant to section 12 (1), is appropriate for the employee's salary.



### **10SA Cessation of contributions**

An employee is not entitled to contribute to the Fund, and STC is not to accept a contribution to the Fund offered by an employee, after the employee attains 70 years of age.

### **10T Exemptions from contributing**

- (1) STC may, on application made in accordance with section 10U, exempt from contributing to the Fund—
  - (a) any employee who satisfies STC that the employee has made adequate provision for the employee and the employee's family, or
  - (b) any person of or above the age of 40 years who becomes an employee.
- (2) Where the spouse or de facto partner of a male contributor is also an employee, STC may, on application made by her in accordance with section 10U, exempt her from contributing to the Fund.
- (3) STC may, on application made in accordance with section 10U, exempt from contributing to the Fund a woman employee who is eligible for a pension under section 30 or 31.
- (4) Where a person who is also an employee is entitled by the terms of the person's engagement but not as an employee within the meaning of this Act to a special pension on retirement from the person's employment, then if the value as actuarially determined of the special pension equals or exceeds the value as so determined of the pension under this Act for which the person would, but for this subsection, be entitled to contribute, the person is exempted from contributing to the Fund; but if the value as so determined of the special pension is less than the value as so determined of the pension under this Act, the person shall only be entitled to come under this Act for the purpose of the difference.
- (5) STC may exempt from contributing to the Fund any person whose application for exemption from contributing to the Fund—
  - (a) had been made but not dealt with by STC before 13 January 1977, and
  - (b) could, in the opinion of STC, have been granted by STC if the *Superannuation (Amendment) Act 1976* had not been enacted.
- (6) A person exempted from contributing to the Fund at 12 January 1977 continues to be so exempted after that date.
- (7) An exemption may not be granted or arise under this section after 1 July 1994. Any exemption in force under this section before that date continues in force.

## 10U Salary sacrifice contributions

- (1) The whole or part of an amount that is required to be contributed to the Fund by an employee under this Act may be paid by salary sacrifice contributions.
- (2) A **salary sacrifice contribution** is a contribution paid in accordance with an agreement between an employee and the employee's employer under which the employee is to forgo remuneration yet to be earned and the remuneration foregone is to be applied by the employer to the amount payable for the employee contributions under this Act.
- (3) The amount payable to the Fund for a salary sacrifice contribution to meet the requirement for an employee contribution under this Act is to comprise the following—
  - (a) the amount necessary (taking into account any contributions not made on a salary sacrifice basis) to meet the required employee contribution 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 contribution made by deduction from the salary or wage of a contributor under section 20.
- (5) 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 agreement under this section—
  - (a) a contribution by an employee or a contributor,
  - (b) the cost to an employee or a contributor of a unit of pension,
  - (c) an instalment for a unit of pension paid by an employee or a contributor.
- (6) In this Act and the regulations, a reference (however expressed) to an employer contribution or an employer-financed portion 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.
- (7) This section has effect despite any other provision of this Act.

## 10V Consequences of exemption

- (1) Where a person is exempted under this Act from contributing to the Fund, neither the person nor any other person claiming through the person is entitled to any benefit under this Act, but the contributions (if any) paid by the person so exempted shall be refunded.
- (2) Subsection (1) does not affect the entitlement of any person to any benefit under this

Act if the entitlement accrues to or in relation to a person who is or has been a contributor and who is not so exempted.

### **Division 3 Decreases in salary or unit entitlement**

#### **10W Decrease in salary**

- (1) Where the salary of a contributor is reduced, the contributor shall continue to contribute for any units of pension that are in excess of the number of units that is, pursuant to section 12 (1), appropriate to the contributor's salary as reduced.
- (2) Where the salary of a contributor is reduced (whether before, on or after 13 January 1977) and the salary as reduced is actually paid as from a date after 12 January 1977, the contributor may, within 2 months after the date on which the reduced salary is actually paid to the contributor, elect not to contribute for one or more units of pension, not exceeding the difference between—
  - (a) the number of units that is, pursuant to section 12 (1), appropriate to the contributor's salary as reduced, and
  - (b) the number of units that is, pursuant to section 12 (1), appropriate to the contributor's salary as at the latest of whichever of the following days is applicable to the contributor, namely—
    - (i) the contributor's entry review day,
    - (ii) the contributor's last annual review day,
    - (iii) 12 January 1976,
    - (iv) the day on which the contributor became a contributor, if that day fell between 13 January 1976 and 12 January 1977 (both inclusive),
    - (v) the day as from which the number of units of pension for which the contributor was contributing was reduced under section 13, if that day fell after 12 January 1976,
    - (vi) the day as from which the number of units of pension for which the contributor was contributing was last reduced under this section or section 10WB or 10WC,

but so that the number of units in respect of which the contributor contributes is not reduced to less than 6.

- (3) Where a contributor elects not to contribute for a unit of pension under subsection (2), the contributor's contributions to the Fund in respect of the unit shall cease on and from the first day of the contribution period in which the salary as reduced is actually paid and shall be refunded to the contributor.

- (4) No person has any rights in the Fund in respect of a unit of pension to which an election under subsection (2) relates.
- (5) No person has any rights in the Fund in respect of an excess unit of pension referred to in subsection (1) and not the subject of an election under subsection (2), unless STC is satisfied that the contributor's salary was reduced by reason of the contributor's ill health or for some other reason which STC, having regard to the circumstances of the case, considers warrants the retention of entitlement to benefits under this Act in respect of the unit.
- (6) Where no person has any rights in the Fund in respect of a unit of pension, as referred to in subsection (5), and the contributor ceases to be an employee, any contributions made by the contributor in respect of the unit shall be refunded to the contributor.
- (7) Where a contributor elects not to contribute for a unit of pension under subsection (2), and subsequently the contributor's salary is increased, this Act applies in relation to the increase as if the contributor had not been formerly entitled to the unit.
- (8) A unit of pension in respect of which a contributor is contributing to the Fund ceases to be an excess unit of pension, as referred to in subsection (1), if the contributor's salary is increased and that unit is one of the number of units that, pursuant to section 12 (1), is appropriate to the contributor's salary as increased.

**10WA Fluctuations in salary**

- (1) Where the number of units of pension that, pursuant to section 12 (1), was appropriate to the salary actually being paid to a contributor at any time after 12 January 1976 was higher than the number of units that, pursuant to section 12 (1), was or is appropriate to the salary actually being paid to the contributor at the contributor's next review day after that time, STC may determine that the contributor's salary as at the review day shall be treated as if it had been equal to the contributor's salary as at the earlier time.
- (2) A determination under this section shall not take effect unless the appropriate contributions in respect of the additional units of pension (being the contributions that would have been already or would be payable in accordance with this Act had the greater salary in fact been paid to the contributor at the review day) have been or are paid to STC within a period approved by STC.
- (3) Where a determination under this section has effect, then, for all purposes of this Act—
  - (a) the contributor's salary shall be treated in accordance with the determination, and
  - (b) the contributor shall be deemed to have been contributing for the additional units of pension as from the commencement of the period to which the contributions referred to in subsection (2) relate.

(4) In this section—

**contributor** includes former contributor.

**review day** means entry review day, annual review day or exit day.

**10WB Decrease in unit entitlement on taking leave of absence**

- (1) Where, on the commencement, or extension, by a contributor of a period of leave of absence, or on the commencement of a period for which a deduction factor is applied under section 12B (3A), 12BA (1) or 12C (4), the number of units of pension (if any) for which the contributor has completed contributing and the number of units of pension (if any) for which, but for this section, contributions would be payable by the contributor is greater than the number of units of pension that, pursuant to section 12 (1), is appropriate to the salary actually being paid to the contributor, the contributor shall cease to contribute for the number of units of pension equal to the difference.
- (2) On the termination of a period of leave of absence by a contributor in respect of which section 12B (1) or (3A) applies before the expiration of the period or of a period in respect of which section 12BA (1) or 12C (4) applies—
  - (a) the contributor shall be deemed not to have ceased to contribute for the number of units of pension for which the contributor ceased to contribute under subsection (1) but shall be deemed to have ceased to contribute for the number of units of pension (if any) equal to the difference between—
    - (i) the number of units of pension (if any) for which the contributor has completed contributing and the number of units (if any) for which, but for the application of subsection (1) on the commencement of the period and of this subsection on the termination, contributions would be payable by the contributor, and
    - (ii) the number of units of pension that, pursuant to section 12 (1), is appropriate to the salary actually being paid to the contributor,
  - (b) all contributions for units of pension which would have been payable, had the contributor ceased to contribute for the number of units of pension equal to the difference on the commencement of the period, shall be deemed to have been payable by the contributor, and
  - (c) any contributions for units of pension which have been refunded or applied in accordance with a direction by the contributor as referred to in subsection (3) and which are payable as referred to in paragraph (b) shall be payable in respect of those units.
- (3) Where a contributor ceases to contribute for a unit of pension under this section, the contributor's contributions to the Fund in respect of the unit shall cease, on and from the first day of the contribution period in which the period concerned commences, and

any contributions paid in respect of that unit shall, unless the contributor directs STC to apply them towards contributions payable in respect of other units of pension during the period, be refunded to the contributor.

- (4) No person has any rights in the Fund in respect of a unit of pension for which contributions have ceased under this section and have not again become payable.
- (5) Where a contributor ceases to contribute for a unit of pension under this section and subsequently the salary of the contributor is increased, this Act applies in relation to the increase as if the contributor had not been formerly entitled to the unit.

**10WC Commencement of or change to part-time employment**

- (1) In this section, a reference to a change in the employment status of a contributor is a reference—
  - (a) to a contributor who is appointed to a full-time position being appointed to a part-time position, or
  - (b) to a contributor who is appointed to a full-time position and who is on part-time leave without pay making an election under section 12C (1A) to be treated as a part-time employee, or
  - (c) to the salary ratio (as defined in section 12C (1)) of a contributor who is appointed to a part-time position changing so that it is less than it was previously, or
  - (d) to a contributor who is appointed to a full-time position and who is on part-time leave without pay making an election under section 12C (3A) in respect of a decrease in the salary ratio (as defined in section 12C (1)) of the contributor.
- (2) On a change in the employment status of a contributor, the contributor shall cease to be a contributor for the units of pension in respect of which contributions were payable by the contributor, or for which the contributor had completed contributing, before that change (other than any reserve units in respect of which contributions are payable under section 15A).
- (3) No person has any rights in the Fund in respect of units of pension for which a person has ceased to be a contributor pursuant to subsection (2).
- (4) Where a contributor whose employment status changes ceases to be a contributor for units of pension pursuant to subsection (2), the contributor's contributions to the Fund in respect of those units of pension shall cease, as on and from the first day of the contribution period in which the change occurred.
- (5) Any contributions paid in respect of units of pension for which a person has ceased to be a contributor on a change in employment status shall be allocated towards the purchase of the number of fully paid up units calculated in accordance with the

following formula—

$$PUU = TU + IU + UC$$

where—

**PUU** is the number of units purchased.

**TU** is the highest whole number obtained from the calculation of the formula

$$UHn - \frac{Cn}{Rn} \text{ (except where } \frac{Cn}{Rn} \text{ exceeds } UHn)$$

.

**UHn** is the number of units of pension for which contributions were payable by the contributor immediately before the change occurred in accordance with the tables of contributions fixed by or under this Act, but excluding—

- (a) any such units of pension which are excess units of pension referred to in section 10W (1) and in respect of which no person has any rights in the Fund, and
- (b) any such units of pension, being reserve units, for which contributions were being made under section 15A.

**Cn** is the amount of contributions due, for the contribution period preceding that in which the change occurred, in respect of that number of units of pension.

**Rn** is the relevant amount under subsection (6) in relation to the contributor for an additional unit of pension.

**IU** is the highest whole number obtained from the calculation of the formula

$$\frac{TCB}{RB}$$

.

**TCB** is the total amount paid in respect of instalments payable by the person on or before the time the change occurred for units of pension for which the contributor contributed in accordance with Division 6 (but deducting therefrom any part of that amount allocated under this Act to the purchase of fully paid up units).

**RB** is the amount specified in section 10AG (1) as the cost of a unit of pension in relation to the contributor.

**UC** is the number of units (if any) purchased by the person and credited to the person as fully paid up units under this section, section 20C, or otherwise.

- (6) For the purposes of subsection (5), the relevant amount in relation to a contributor whose employment status changes for an additional unit of pension is—
  - (a) where the contributor has attained the prescribed age on or before the last day of

the contribution period preceding that in which the change occurred, the amount which, if the contributor were required under Division 5 to commence to contribute for an additional unit of pension on that day, would be the amount payable in accordance with the tables of contributions fixed under section 10AD for that unit for a contribution period, or

- (b) where the contributor has not attained the prescribed age on or before that day, the amount equal to the sum of—
- (i) the amount payable by the contributor for any additional unit of pension for which the contributor had been required to commence contributing on and from the contributor's last annual adjustment day before the change occurred for a contribution period or, as the case may be, the amount that would have been so payable if the contributor had been so required, and
  - (ii) for each day of the period commencing on the day following that annual adjustment day and ending on the last day of the contribution period preceding that in which the change occurred, the amount equal to 1/364th part of the difference between the amount referred to in subparagraph (i) and the amount which that amount would have been if, on that annual adjustment day, the contributor had been 1 year older than the age actually attained.

- (7) Where, in relation to a contributor whose employment status has changed, the figure obtained pursuant to subsection (5) from the calculation of the formula

$$UH_n - \frac{C_n}{R_n}$$

is or includes a fraction, there shall be paid to the contributor from the Fund, as a refund of contributions not allocated towards the purchase of fully paid up units, the amount calculated in accordance with the following formula—

$$Q1 = S \times \frac{F1}{P1}$$

where—

**Q1** is the amount to be paid.

**S** is the amount of the contributions paid by the contributor in respect of the units the number of which is attributed to the symbol  $UH_n$  pursuant to subsection (5).

**F1** is the fraction which is or is included in the figure obtained.

**P1** is the figure obtained.

- (8) Where, in relation to a contributor whose employment status has changed, the figure obtained pursuant to subsection (5) from the calculation of the formula

$$\frac{TCE}{RE}$$



is or includes a fraction, there shall be paid to the contributor from the Fund, as a refund of instalments not allocated towards the purchase of fully paid up units, the amount calculated in accordance with the following formula—

$$Q2 = TCB \times \frac{F2}{P2}$$

where—

**Q2** is the amount to be paid.

**TCB** is the amount attributed to that symbol pursuant to subsection (5).

**F2** is the fraction which is or is included in the figure obtained.

**P2** is the figure obtained.

- (9) Where a person's contributions are allocated to the purchase of paid up units under this section on a change in employment status—
- (a) the person shall, on and from that change occurring, be deemed to be a contributor for the number of units purchased and to have contributed for those units for a period of 2 years and 6 months but shall not be required to make further contributions in respect of those units, and
  - (b) the employer in whose service the person is employed will not be required to make, before the retirement of the person, any further contribution in respect of those units of pension.
- (10) Subject to this or any other Act, where the number of units of pension that, pursuant to section 12 (1), is appropriate for the salary certified by the employer of a contributor to be the salary which would be paid to the contributor if employed full-time in the position in which the contributor is employed on a change in employment status is higher than the number of fully paid up units credited to the contributor under this section, the contributor shall, as on and from the first day of the contribution period in which the change occurs, contribute to the Fund in respect of the additional number of units of pension in accordance with this Act.
- (11) On the day on which the employment status of a contributor changes, if the number of additional units of pension referred to in subsection (10) is in excess of the number for which the annual cost to the contributor is equal to an amount representing 6 per cent of the annual salary of the contributor at the rate actually being paid, the excess units of pension are optional units of pension.
- (12) A contributor may, within 2 months after the day on which the employment status of the contributor changes, elect to abandon any one or more of the optional units of pension in respect of which, but for the election, the contributor would be required by this section to commence contributing to the Fund.

- (13) Where a contributor elects not to contribute for a unit of pension under subsection (12), contributions to the Fund in respect of the unit shall cease as on and from the first day of the contribution period in which the employment status of the contributor changes and any contributions paid in respect of the unit shall be refunded to the contributor.
- (14) No person has any rights in the Fund in respect of a unit of pension to which an election under subsection (12) relates.
- (15) Where no person has any rights in the Fund in respect of an excess unit of pension of a contributor referred to in section 10W (1) and the employment status of the contributor changes, any contributions made by the contributor in respect of the unit shall be refunded to the contributor.
- (16) Where a person whose contributions are allocated to the purchase of fully paid up units under this section dies, retires under section 21 (1B) before attaining the age of 60 years, or is retired under section 22 before attaining that age, STC may, except where the contributions are refunded pursuant to section 32A or 32B, determine that a specified amount, being part of those contributions, be refunded to the person or, where the person is dead, to the person's personal representatives, and may act in accordance with its determination.
- (17) Where a contributor whose employment status changes is a contributor whose entry payment day occurred before the commencement of Schedule 4 to the *Superannuation (Amendment) Act 1985* and, immediately before the change occurred—
- (a) the contributor had any abandoned units, and
  - (b) the annual cost to the contributor for the units of pension for which contributions were payable by the contributor was an amount representing a percentage which was less than 6 per cent of the annual salary of the contributor at the rate actually being paid on the contributor's previous annual review day or, if there was no such day, the contributor's entry review day, the number of those units being less than the number for which the annual cost was equal to an amount representing 6 per cent of that annual salary,

such of the additional units of pension (if any) referred to in subsection (10) as are in excess of the number for which the annual cost to the contributor is equal to an amount representing that lesser percentage of the annual salary at the rate actually being paid to the contributor on the day the change occurred are optional units of pension for the purposes of subsection (12), notwithstanding anything to the contrary in subsection (11).

#### **Division 4 Abandoned units**

**10X No contributions or rights in respect of abandoned units**

- (1) Notwithstanding anything in this Part, contributions are not payable to the Fund in respect of an abandoned unit.
- (2) No person has any rights in the Fund in respect of an abandoned unit, but nothing in this subsection affects the refund of contributions made in respect of any such unit or the operation of Division 2A of Part 4 in relation to any such unit.

**10Y Elections to take up abandoned units at annual review day**

Where an employee has an abandoned unit at the employee's annual review day in any half-year—

- (a) the employee may, within 2 months after that day, elect to take up that unit, and
- (b) if the employee so elects—
  - (i) the employee shall commence to contribute for the unit as from the employee's annual adjustment day in that half-year, and
  - (ii) the unit ceases to be an abandoned unit as from that annual adjustment day.

**10Z Elections to take up abandoned units at exit day**

- (1) Where an employee has an abandoned unit at the employee's exit day, the employee may, before the expiration of one month after that day, elect to take up that unit.
- (2) Where an employee entitled to make an election under subsection (1) dies without making such an election before the expiration of the period within which, but for the employee's death, the employee could have made the election, the employee's spouse or de facto partner may, before the expiration of that period, make the election.
- (3) Where an election has been made under this section to take up an abandoned unit—
  - (a) the contribution payable in respect of the unit shall be paid to STC within one month after the employee's exit day or within such further period as STC may, in special circumstances, allow, and
  - (b) the unit ceases to be an abandoned unit, provided the contribution is paid.
- (4) This section does not apply to or in respect of an abandoned unit unless—
  - (a) pension is payable in respect of the unit, or
  - (b) the former contributor elects to take the benefit of section 37.
  - (c) (Repealed)

**10AA Restrictions as to abandoned units**

(1) An abandoned unit may only be taken up under this Division by a person if the aggregate of—

- (a) the number of units of pension (if any) for which the person is contributing,
- (b) the number of units of pension (if any) for which the person has completed contributing, and
- (c) the number of the person's abandoned units (including the firstmentioned abandoned unit),

is equal to or less than the number of units that, pursuant to section 12 (1), is appropriate for the rate of salary actually being paid to the person at the person's annual review day or the person's exit day, as the case may require.

(2) Pension payable under section 29 or by virtue of the death of a contributor is not payable in respect of a unit of pension which a person has elected to take up under this Division unless—

- (a) contributions in respect of the unit were due, and have been paid, for at least 2 years and 6 months following the date from which the person commenced contributing for the unit, or
- (b) that person's exit day is on or after the last day of the contribution period preceding that in which the person attains the maturity age.

(3) Where a contributor's contributions in respect of a unit of pension cease on the first day of the contribution period in which the contributor ceases to be an employee or attains the maturity age, the contributor shall, for the purposes of subsection (2) (a), be deemed to have paid contributions in respect of the unit for so much of that period as precedes the contributor so ceasing to be an employee or attaining that age, as the case may be.

(4) Where—

- (a) a contributor's first annual review day falls before 31 December 1977,
- (b) the contributor elects to take up abandoned units within 2 months after that day, and
- (c) the contributor would, had Part 8 not been enacted, have been entitled to elect to take up those abandoned units during the suspension period (as defined in section 95),

the contributor shall, for the purposes of subsection (2) (a), be deemed to have commenced contributing for those units as from 13 January 1976 or the day on which

the contributor became a contributor, whichever is the later.

## **Division 5 Contributions by employees for units of pension at table rates**

### **10AB Contributions according to scale graduated by age etc**

Except where otherwise provided by this Act—

- (a) the amount of contribution to be paid by a contributor shall be based upon the number of units of pension for which the contributor contributes, upon the sex of the contributor, and, in the case of a woman contributor, upon whether she contributes for a pension payable at the age of 55 years or 60 years, and shall be in accordance with the tables of contributions fixed by or under this Act, and
- (b) the amount of contribution to be paid by the contributor in respect of—
  - (i) a unit for which the contributor commences to contribute as from the contributor's entry payment day shall be based upon the age of the contributor at the contributor's entry payment day,
  - (ii) a unit for which the contributor commences to contribute as from the contributor's annual adjustment day in any half-year shall be based upon the age of the contributor at the contributor's annual adjustment day in that half-year, or
  - (iii) a unit for which the contributor contributes as from the contributor's exit day shall be based upon the age of the contributor at the contributor's exit day.

### **10AC Units taken up after prescribed age**

Subject to section 10AF, an employee may not commence contributing for a unit of pension under this Division if the employee attains or has attained the prescribed age at the employee's entry payment day or annual adjustment day, as the case may require.

### **10AD Tables of contributions**

- (1) Until other tables of contributions are fixed under this section, the tables of contributions, payable under this Division, for men and women according to the ages set out in Schedule 7 shall be in force and apply in respect of additional units of pension for which employees who were contributors at 30 June 1963 commence to contribute on or after 13 January 1977.
- (2) Until other tables of contributions are fixed under this section, the tables of contributions, payable under this Division, for men and women according to the ages set out in Schedule 9 shall be in force and apply to employees who became or become contributors on or after 1 July 1963 and shall be paid in respect of all units of pension contributed for by those employees.

- (3) (Repealed)
- (4) Subject to section 17D, the Governor may, by order in writing, fix other tables of contributions to be paid by contributors.
- (5) The tables of contributions that may be so fixed may—
  - (a) be in substitution for any tables fixed by or under this Act in respect of the contributions payable by employees,
  - (b) be made so as to apply generally to all units of pension or to units of pension in respect of which contributions commenced before, on or after a specified date (whether those contributions are paid by employees who were contributors before or who became contributors on or after that date), and
  - (c) apply differently in respect of different classes of employees.
- (6) The substitution of Schedules 7 and 9 by the *Superannuation (Amendment) Act 1977* does not affect the rate of contribution on or after 13 January 1978 for any unit of pension where contributions for the unit have been paid, or are payable, in accordance with this Act in respect of any period before that date.

#### **10AE Cessation of contributions**

Subject to this Act, contributions payable to the Fund by a contributor under this Division in respect of any units of pension, other than those for which the contributor contributes by instalments under section 10AH, and those referred to in section 10AF, shall cease to be payable in respect of those units on the first day of the contribution period in which the contributor ceases to be an employee or attains the maturity age, whichever first occurs.

#### **10AF Units taken up at exit day**

- (1) The contribution of a former contributor referred to in section 10R (1) in respect of an additional unit of pension shall, if the former contributor's exit day is before the contribution period in which the former contributor would attain the maturity age, and whether or not the former contributor has attained the prescribed age, be the contribution payable for one contribution period in accordance with the appropriate table of contributions.
- (2) Where—
  - (a) an election by a former employee or a former employee's spouse or de facto partner under section 10Z to take up an abandoned unit takes effect, and
  - (b) the former employee's exit day is before the contribution period in which the former employee would attain the maturity age,the contribution payable in respect of the unit shall, whether or not the former

employee has attained the prescribed age, be the contribution for one contribution period in accordance with the appropriate table of contributions.

## **Division 6 Contributions by employees for units of pension otherwise than at table rates**

### **10AG Cost of units of pension**

- (1) For the purposes of this Division, and notwithstanding anything contained in this or any other Act, the cost of a unit of pension is, in relation to an employee—
  - (a) who was a contributor at 30 June 1963 and has continued to be a contributor since that date, and—
    - (i) who, being a woman contributor, elected to contribute at the rate prescribed for retirement at the age of 55 years—\$450.90,
    - (ii) who, being a woman contributor, elected to contribute at the rate prescribed for retirement at the age of 60 years—\$395.54, or
    - (iii) who is a male contributor—\$396.90, or
  - (b) who commenced or commences to contribute after 30 June 1963 and—
    - (i) who, being a woman contributor, elected to contribute at the rate prescribed for retirement at the age of 55 years—\$534.40,
    - (ii) who, being a woman contributor, elected to contribute at the rate prescribed for retirement at the age of 60 years—\$468.80, or
    - (iii) who is a male contributor—\$499.68 in respect of each of the first 2 units, and \$493.28 in respect of each subsequent unit.
- (2) Notwithstanding subsection (1), where an employee who, being a woman, elected to contribute at the rate prescribed for retirement at the age of 55 years has attained the age of 60 years on or before her entry payment day, annual adjustment day or exit day, the cost of a unit of pension for which she commences to contribute on or after that day shall, for the purposes of this Division, be the cost applicable had she elected to contribute at the rate prescribed for retirement at the age of 60 years.
- (3) Subject to section 17D, the Governor may, by order in writing, fix other amounts to be the cost of units of pension for the purposes of this Division.
- (4) The amount or amounts that may be so fixed may—
  - (a) be in substitution for any amount or amounts set out in subsection (1) or provided for in subsection (2),
  - (b) be made so as to apply generally to all units of pension or to units of pension in

respect of which contributions commenced before, on or after a specified date (whether those contributions are paid by or in respect of employees who were contributors before or who become contributors on or after that date), and

(c) apply differently in respect of different classes of employees.

**10AH Employees who have reached the prescribed age**

- (1) Subject to sections 10AF and 10AI, where an employee who has reached the prescribed age on or before the employee's entry payment day or annual adjustment day, as the case may require, is required or elects to commence contributing for a unit of pension, the employee shall, subject to this section, contribute the cost of the unit by 65 four-weekly instalments, each such instalment being equal to an amount determined by STC, being an amount that is, or is not less by more than a fraction of a cent than, one sixty-fifth of that cost.
- (2) Where an employee referred to in subsection (1) ceases to be employed by the employer prior to completion of payment of instalments pursuant to subsection (1), the following provisions apply—
  - (a) where the employee retires after reaching the maturity age, the total amount of contributions unpaid as at the date of retirement shall be paid within one month after the date upon which the employee ceases to be so employed, or within such further period as STC may, in special circumstances, allow,
  - (b) where the employee is retired in accordance with section 22, or elects to retire under section 21 (1B), or is retrenched before reaching the maturity age, the total amount of contributions unpaid as at the last day of the contribution period preceding that in which the employee ceases to be employed shall be paid within one month after the date upon which the employee ceases to be so employed, or within such further period as STC may, in special circumstances, allow,
  - (c) where the employee dies and is survived by a spouse or de facto partner, the spouse or de facto partner, if a pension is payable to the spouse or de facto partner in accordance with section 30, shall within 3 months after the death of the employee, or within such further period as STC may, in special circumstances, allow, pay the total amount of contributions unpaid as at the date of the employee's death.
- (3) Where the total amount of contributions required to be paid by subsection (2) (a), (b) or (c) is not paid within the time prescribed, or within such further period as STC may, in special circumstances, allow, the employee or the spouse or de facto partner of the employee, as the case may be, shall be refunded the amount of the instalments paid pursuant to subsection (1).
- (4) Where a refund is payable under subsection (3), no person has any rights in the Fund



in respect of the unit or units of pension to which the refund relates, but nothing in this subsection affects the operation of Division 2A of Part 4 in relation to any such unit.

- (5) A reference in subsection (2) to the total amount of contributions unpaid as at a particular date is—
- (a) in relation to an employee who ceases to be employed by the employer before attaining the maturity age and who commenced contributing for the unit of pension—
    - (i) before the contribution period in which the employee would attain the maturity age—a reference to the total amount of contributions that would have been payable up to and including that date had the tables of contributions fixed by or under this Act been applicable to the employee in respect of the unit, or
    - (ii) after the contribution period in which the employee would attain the maturity age—a reference to the cost of the unit, or
  - (b) in relation to an employee who ceases to be employed by the employer on or after attaining the maturity age—a reference to the cost of the unit, less the amount of instalments paid pursuant to subsection (1).
- (6) Where, but for this subsection, the 65 instalments payable in respect of a unit of pension pursuant to subsection (1) would be less than the cost of the unit, the 65th instalment shall, notwithstanding that subsection, be increased by the difference.

#### **10AI Units taken up at exit day**

- (1) The contribution of a contributor referred to in section 10R (1) in respect of an additional unit of pension shall, if the contributor's exit day is on or after the first day of the contribution period in which the contributor would attain or has attained the maturity age, be the cost of the unit.
- (2) Where—
- (a) an election by a former employee or a former employee's spouse or de facto partner under section 10Z to take up an abandoned unit takes effect, and
  - (b) the former employee's exit day is on or after the first day of the contribution period in which the former employee would attain or has attained the maturity age,
- the contribution payable in respect of the unit shall be the cost of the unit.

### **Division 7 Contributions by employers**

**10AJ Contributions to be made by an employer listed in Schedule 3**

- (1) An employer listed in Schedule 3 must pay to the Fund in respect of each contributor that the employer employs an amount equal to a specified multiple of the contributions payable to the Fund by that contributor.
- (2) The specified multiple referred to in subsection (1) is a multiple that STC, with the concurrence of the Treasurer, periodically fixes in respect of the employer concerned.
- (3) In determining the contributions payable by an employer specified in Part 2 of Schedule 3, STC is to have regard to the amount required to meet the full costs of the liabilities under this Act of all employers specified in Part 2 of Schedule 3.
- (4) STC may, with the concurrence of the Treasurer, require an employer specified in Part 2 of Schedule 3 to pay into the Fund additional contributions for a specified period if it appears to STC that there is insufficient money in the relevant employers' reserves for employers specified in Part 2 of Schedule 3 to meet the employers' liabilities under this Act.

**10AK Calculation of contributions and time for payment**

- (1) Contributions under this Division shall be calculated on the basis of contribution periods.
- (2) An employer must, within 7 days after the end of each contribution period, pay to STC the contributions payable by the employer in respect of that period.

**10AL Employer may be required to make further payments in certain cases**

- (1) Whenever it appears to STC that there is insufficient money in an employer reserve—
  - (a) to pay the employer-financed portion of a benefit that is due to or in respect of a contributor or former contributor under this Act, or
  - (b) to pay any other amounts that are payable from that reserve,

STC may require the contributor's employer or former employer, by notice in writing, to pay into the Fund an amount equal to the amount of the insufficiency.

- (2) If an employer fails to pay an amount required to be paid under subsection (1) within 14 days after being notified of the requirement, the amount becomes an amount owing to the Fund and STC may recover that amount accordingly.

**10AM Power of STC to adjust employer reserves**

Whenever it appears to STC that, because of a change of circumstances, it would be appropriate to adjust the amount that is currently standing to the credit or debit of an employer reserve so as to reflect the change of circumstances, STC may, with the concurrence of the Treasurer, adjust that reserve by crediting or debiting that reserve with

a specified amount of money and correspondingly debiting or crediting one or more other employer reserves.

#### **10AN Transfer of credits between employers of transferred contributors**

Whenever—

- (a) a contributor ceases to be employed by an employer and becomes employed by another employer, and
- (b) the contributor continues to be a contributor under this Act,

STC must, as soon as practicable after the contributor begins the later employment—

- (c) debit the employer reserve of the former employer with the actuarially calculated transfer value referable to the contributor, and
- (d) credit the employer reserve of the new employer with that value.

#### **10AO Variation of employer contributions**

- (1) Despite any other provision of this Division, STC may determine that the contributions payable by an employer specified in Part 1 of Schedule 3 in respect of a contributor are to be determined, or are payable, on a basis other than that set out in this Division.
- (2) STC may only make such a determination with the concurrence of the Treasurer.

### **Division 8 Ancillary provisions**

#### **11-11D (Repealed)**

#### **12 Contributions to be related to units of pension**

- (1) Subject to this Act, the contributions of an employee under this Part shall be made in respect of units of pension as provided by section 27 and—
  - (a) with respect to salaries not exceeding five thousand two hundred dollars, the number of those units shall vary in relation to salary in accordance with the following scale—

<b>Where the salary of the employee is equivalent to an annual rate</b>		<b>The employee shall contribute the amount necessary to provide units of pension as under</b>
<b>Exceeding</b>	<b>But not exceeding</b>	
<b>\$</b>	<b>\$</b>	
—	324	Two units.
324	520	Three units.

520	650	Four units.
650	780	Five units.
780	960	Six units.
960	1,140	Seven units.
1,140	1,320	Eight units.
1,320	1,500	Nine units.
1,500	1,660	Ten units.
1,660	1,820	Eleven units.
1,820	1,980	Twelve units.
1,980	2,140	Thirteen units.
2,140	2,300	Fourteen units.
2,300	2,460	Fifteen units.
2,460	2,620	Sixteen units.
2,620	2,780	Seventeen units.
2,780	2,940	Eighteen units.
2,940	3,100	Nineteen units.
3,100	3,260	Twenty units.
3,260	3,420	Twenty-one units.
3,420	3,580	Twenty-two units.
3,580	3,740	Twenty-three units.
3,740	3,980	Twenty-four units.
3,980	4,220	Twenty-five units.
4,220	4,460	Twenty-six units.
4,460	4,700	Twenty-seven units.
4,700	4,940	Twenty-eight units.
4,940	5,200	Twenty-nine units.

(b) with respect to salaries exceeding \$5,200, the number of those units, on any particular day, shall be calculated in accordance with the following formula—

$$UE = \frac{S}{260} + (9 \times CF)$$

where—

**UE** is the number of units of pension.

**S** is the annual rate of salary.

**CF** is 1 or

$\frac{a}{b}$

, whichever is the greater.

**a** is the index number appearing in the Consumer Price Index (All Groups Index) for Sydney last published before that day by the Australian Statistician under the *Census and Statistics Act 1905* of the Commonwealth.

**b** is—

(a) the number 114.6, or

(b) if, after the commencement of the amendments made to this section by the *Statute Law (Miscellaneous Provisions) Act 1991*, the Australian Statistician changes the reference base for the Consumer Price Index (All Groups Index) for Sydney—a number determined by STC, on actuarial advice, to represent what that index would have been for the June quarter 1982 if the change in the reference base had applied at that date.

- (2) Where the number of units of pension calculated in accordance with subsection (1) (b) includes a fraction of a unit, the number of units shall be deemed to be the next highest whole number.
- (3) Any Index number published by the Australian Statistician at any time (and whether before or after the commencement of this subsection) in respect of a particular quarter in substitution for an Index number previously published in respect of that quarter is to be disregarded for the purpose of ascertaining the value of the expression “a” in the formula in subsection (1), unless the Minister gives a direction to the contrary. If the Minister gives such a direction, the later Index number is to be used in the formula whenever it is applied after the direction has been given.
- (4) (Repealed)
- (5) In this section, **Index number** and **quarter** have the same meanings as in Division 6 of Part 4.
- (6)-(12) (Repealed)

## 12A Alteration of unit entitlement in certain cases

- (1) Except as provided by subsection (2), a reference (however expressed) in any other provision of this Act to the number of units of pension that, pursuant to section 12 (1), is appropriate to the salary being paid to a contributor on any particular day shall, if 1 or more deduction factors are required to be applied under this section by STC in relation to the contributor on that day, be construed as a reference to the number of units calculated in accordance with the following formula—

$$U = NU \times \frac{PFS - DT}{PFS}$$

where—

**U** is the number of units to be calculated.

**NU** is the number of units that, but for this section, would be appropriate to that salary.

**PFS** is the sum of—

- (a) the number of years, if any, (including any fractional part of a year calculated on a daily basis) of the period that commenced when the contributor last became a contributor and ended on that day (but excluding any part of that period during which the person had been on leave of absence pursuant to section 48), and
- (b) the number of years, if any, (including any fractional part of a year calculated on a daily basis) by which that day precedes—
  - (i) the date on which the person attains the maturity age, or
  - (ii) where any employment which, on that day, the contributor is entitled to count as service for the purposes of section 21 is, in total, for less than a period of 10 years—the expiration of the balance of that period of 10 years,

whichever is the later.

**DT** is the total of all deduction factors required to be applied by STC in relation to the contributor on that day.

- (2) Where the number of units of pension calculated in accordance with the formula specified in subsection (1) is or includes a fraction of a unit—
- (a) if the fraction is less than one-half—the fraction shall be disregarded, or,
  - (b) if the fraction is not less than one-half—the fraction shall be deemed to be a whole unit.

## **12B Deduction factors in relation to certain periods of leave**

- (1) Except as provided by subsection (2), on and from the commencement of a period of full-time leave of absence without pay by a contributor, STC shall apply under section 12A, in relation to the contributor, in addition to such other deduction factors (if any) as STC is required to apply in relation to the contributor, a deduction factor equal to the length of so much of that period as exceeds 3 months (expressed in terms of years, if any, and including any fractional part of a year calculated on a daily basis).
- (2) Subsection (1) does not apply in relation to a period of leave of absence by a contributor where—
  - (a) the leave is a prescribed form of leave or is leave with respect to which section 19 (2), (3) or (6) applies,
  - (b) the period commences before the commencement of Schedule 6 to the *Superannuation (Amendment) Act 1985* or is not more than 3 months, or
  - (c) before the commencement of that period, the contributor elects to have subsection (1) not apply in relation to that period.
- (2A) The reference to a prescribed form of leave in subsection (2) (a) includes (but is not limited to) a reference to maternity leave and is to be taken to have included such a reference from and including 1 July 1985.
- (3) Where a period of leave of absence to which subsection (1) applies terminates (whether by reason of death of the contributor or otherwise), on or before the expiration of 3 months of the period, STC shall, on and from that termination, cease to apply under section 12A in relation to the contributor the deduction factor required under subsection (1) to be applied on and from the commencement of that period.
- (3A) STC must apply under section 12A, in relation to a contributor who takes a single period of leave without pay that is sick leave or maternity leave, a deduction factor equal to the length of that part of the period of leave that exceeds 2 years.
- (3B) The deduction factor applied under subsection (3A) is to be expressed in terms of years and include any fractional part of a year calculated on a daily basis.
- (3C) The deduction factor applied under subsection (3A) is to be applied on and from the end of 2 years after the commencement of the single period of leave and is in addition to any other deduction factor that STC is required to apply in relation to the contributor.
- (4) Where a period of leave of absence to which subsection (1) applies terminates (whether by reason of death of the contributor or otherwise) before the expiration of the whole, but after the expiration of 3 months, of the period or a period of leave of absence is extended after the commencement of the period and the period, as

extended, is a period of leave of absence to which subsection (1) applies, STC shall, on and from that termination or extension, apply under section 12A in relation to the contributor—

- (a) instead of the deduction factor (if any) required under subsection (1) to be applied on and from the commencement of that period, and
- (b) in addition to such other deduction factors (if any) as STC is required to apply in relation to the contributor,

a deduction factor equal to the length of so much of the period of leave actually taken or the length of so much of the period of leave, as extended, as exceeds 3 months (expressed in terms of years, if any, and including any fractional part of a year calculated on a daily basis).

#### **12BA Deduction factors for periods determined by STC**

- (1) Despite any other provision of this Act, STC may apply under section 12A, in relation to a contributor specified by STC, a deduction factor equal to the length of the period for which STC determines that the deduction factor is to apply.
- (2) The deduction factor is to be expressed in terms of years and include any fractional part of a year calculated on a daily basis.
- (3) STC may only make such a determination if it is of the opinion that it is necessary to do so for the purposes of being consistent with a relevant Commonwealth superannuation standard restricting the acceptance of contributions by a superannuation fund.
- (4) The deduction factor is to be applied on and from the commencement of the period specified by STC and is in addition to any other deduction factor that STC is required to apply in relation to the contributor.

#### **12C Deduction factors in relation to part-time employment**

- (1) In this section—

***part-time employee*** means—

- (a) a person appointed to a part-time position and certified to STC by the person's employer to have a salary ratio of less than one, or
- (b) a person appointed to a full-time position and on part-time leave without pay, and certified to STC by the person's employer to have a salary ratio of less than one, who has made an election, that is in force under this section, to be treated as a part-time employee.

***salary ratio*** of a person means the ratio of the salary of the person while employed



on a part-time basis to the salary certified by the employer of the person to be the salary which would be paid to the person if employed on a full-time basis.

- (1A) A person who is appointed to a full-time position and who commences a period of part-time leave without pay may elect to be treated as a part-time employee for the purposes of this section.
- (2) Where a contributor who is not a part-time employee becomes a part-time employee or a contributor who is a part-time employee becomes a part-time employee in a position in relation to which the salary ratio is different from that of the former position, STC shall, on and from the day on which the contributor becomes a part-time employee, or the salary ratio changes, apply under section 12A, in relation to the contributor, in addition to such other deduction factors (if any) as STC is required to apply in relation to the contributor, a deduction factor equal to the figure calculated in accordance with the following formula—

$$D = PA \times (1 - SR)$$

where—

**D** is the deduction factor.

**PA** is the number of years, if any, (including any fractional part of a year calculated on a daily basis) by which the day precedes the known or estimated date on which the period of part-time employment is to cease.

**SR** is the salary ratio (expressed as a fraction) in relation to the position.

- (2A) For the purposes of item “PA” in subsection (2), the known or estimated date on which part-time employment is to cease is—
- (a) in the case of a contributor on part-time leave without pay—the date on which the period of leave approved for the contributor is to cease, or
- (b) in any other case—the date certified in writing by the contributor’s employer to STC for the purposes of this subsection.
- (3) Where a contributor who is a part-time employee ceases to be a part-time employee or the salary ratio of the employee changes, STC must, on and from the day the contributor ceases to be a part-time employee or the salary ratio changes, apply under section 12A in relation to the contributor—
- (a) instead of the deduction factor required under subsection (2) to be applied, and on and from the day the person commenced to be a part-time employee or to be employed in a position having the former salary ratio,
- (b) in addition to such other deduction factors (if any) as STC is required to apply in relation to the contributor,

a deduction factor equal to the figure which would have been calculated in accordance with subsection (2) if the figure attributed to the symbol PA were the number of years, if any, (including any fractional part of a year calculated on a daily basis) of the period during which the contributor was employed as a part-time employee or employed in a position having the salary ratio of the former position.

- (3A) However, subsection (3) does not apply in respect of a part-time employee who has made an election under subsection (1A), and whose salary ratio decreases, unless the employee elects that subsection (3) is to apply in respect of that changed salary ratio.
- (4) STC must apply under section 12A, in relation to a contributor who is employed for less than 10 hours a week for a single period of more than 2 years, a deduction factor equal to the length of that part of the period that the contributor is so employed that exceeds 2 years and ends on the date on which the contributor attains the maturity age.
- (5) The deduction factor applied under subsection (4) is to be expressed in terms of years and include any fractional part of a year calculated on a daily basis.
- (6) The deduction factor applied under subsection (4) is to be applied on and from the end of 2 years after the commencement of the period of employment and is in addition to any other deduction factor that STC is required to apply in relation to the contributor.
- (7) Subsections (1)–(3) do not apply in respect of a contributor during any period in which STC is required to apply a deduction factor under subsection (4).
- (8) However, subsection (3) applies to a contributor who, at the end of the period, commences to be employed for more than 10 hours a week in the same way as it applies to any other employee whose salary ratio changes.

#### **12CA Continuation of certain contributions**

- (1) Where a contributor completes payment of the 65 instalments under section 10AH, in respect of a unit of pension, or, pursuant to section 10AE, contributions cease to be payable in respect of a unit of pension by a contributor who attains the maturity age, contributions shall, until the contributor's next annual adjustment day or exit day (whichever first occurs), continue to be made at the rate at which the contributor was contributing for that unit.
- (2) Any continued contributions made by a contributor by virtue of subsection (1) shall be credited, in such manner as STC thinks fit, to units of pension in respect of which the contributor is contributing or may, on the contributor's next annual adjustment day or exit day, be required to contribute by instalments under section 10AH.
- (3) Subsection (1) ceases to apply to a contributor if STC so approves on application made by the contributor before the contributor's exit day.

- (4) Without affecting the operation of this section, a contributor to whom this section applies shall be deemed, for the purposes of this Act, to have ceased contributing for the unit of pension referred to in subsection (1).

### **12D Other contributions by contributors**

- (1) A contributor, who is not required by this Act to contribute to the Fund under this Act merely because the contributor is on authorised leave without pay as an employee, is entitled to remain a contributor to the Fund even though the contributor is not contributing to the Fund.
- (2) This section applies to a contributor only if—
- (a) the leave is for the purposes of raising children of whom the contributor is a parent, or for whom he or she has assumed the responsibility of a parent, and
  - (b) he or she has been on that leave for less than 7 years consecutively, and
  - (c) he or she has a statutory or contractual right to resume employment at the end of the leave.
- (3) Section 12B (1) and (2) apply to a contributor, and to the period of leave of the contributor, during any period during which this section applies to the contributor.
- (4) In this section—
- authorised leave** means—
- (a) leave approved by the contributor's employer, or
  - (b) leave authorised by an agreement certified, or an award made, by a tribunal or body having the authority to do so under a law of the State or the Commonwealth.

### **12E-15 (Repealed)**

### **15A Reserve units**

- (1) There shall be a reserve units of pension account (in this section referred to as the **reserve account**) which shall form part of the fund and into which shall be paid all contributions made by contributors under this section.
- (1A) (Repealed)
- (2) A contributor who is contributing for not less than the number of units of pension corresponding to the salary-group within which the contributor's salary falls may, by notice in writing to STC in the form prescribed, elect to contribute for reserve units of pension (hereinafter referred to as **reserve units**) in accordance with the provisions of this section.
- (2A) An election under subsection (2) may only be made by a contributor within 2 months

after the contributor's entry review day or the contributor's annual review day in any half-year.

- (3) The number of reserve units for which a contributor shall be entitled to contribute shall not exceed eight.
- (4) Contributions in respect of a reserve unit—
  - (a) shall take effect—
    - (i) where the election is made within 2 months after the contributor's entry review day—as from the contributor's entry payment day, or
    - (ii) where the election is made within 2 months after the contributor's annual review day in any half-year—as from the contributor's annual adjustment day in that half-year, and
  - (b) shall be made as if the reserve unit were a contributory unit, contributions for which are payable as from that entry payment day or annual adjustment day, as the case may be.
- (5)
  - (a) Where a contributor who has—
    - (i) contributed for at least ten years for any reserve units, or contributed for at least one year for any reserve units and has attained the age of fifty years, becomes eligible to or is required to contribute for one or more additional units of pension in pursuance of the provisions of this Act,
    - (ii) (Repealed)

the contributor may elect by notice in writing to STC in the form prescribed to appropriate to the contribution account the contributions paid by the contributor to the reserve account in respect of a number of reserve units not exceeding the number of those additional units of pension.
  - (b) Where a contributor so elects, no further contributions shall be paid into the reserve account in respect of the reserve units to which the election applies and the contributions payable by the contributor in respect of so many of the additional units of pension as is equal to the number of those reserve units shall be at the same rate as the contributions paid into the reserve account in respect of those reserve units.
- (6) A contributor who, on 1 January 1992, is contributing for any reserve units may, by notice in writing lodged with STC within 60 days after that date, elect to discontinue paying contributions in respect of those units.

- (6AA) STC must pay to a contributor who, in accordance with subsection (6), elects to discontinue the payment of contributions for reserve units the amount paid in respect of those units, together with any interest payable under subsection (6AD).
- (6AB) If a contributor who is contributing for reserve units ceases to be an employee, STC must pay to the contributor or, as the case may be, to the contributor's personal representatives the amount of the contributor's contributions paid in respect of those units, together with any interest payable under subsection (6AD).
- (6AC) In subsection (6AB), the reference to personal representatives includes a reference to a person referred to in section 88A (2).
- (6AD) A contributor is entitled to interest on contributions for reserve units paid for by the contributor, compounded annually, at the rate fixed by STC in accordance with section 86A and payable from the respective dates of payment.
- (6AE) Payments under subsections (6AA) and (6AB) are to be made from the appropriate reserve.
- (6A) For the purposes of subsections (6)–(6AE), a reference to the specified rate is—
- (a) if the rate relates to a period before the commencement of Schedule 2 (4) to the *Superannuation (Amendment) Act 1988*—6.5 per cent per annum or, where the Minister by order published in the Gazette had specified some other rate for the purposes of subsection (6) (c) (as in force before that commencement), that other rate, or
  - (b) if the rate relates to a period after that commencement—such rate as STC has fixed from time to time under section 86A for the purposes of this section.
- (7) A contributor who has made an election under subsection (6) in respect of any reserve unit or units shall not again be eligible to elect to contribute for any reserve unit or units.
- (7A) A contributor who has made an election under subsection (5) may elect to contribute for reserve units but so that the number of reserve units for which the contributor becomes a contributor by virtue of the operation of this subsection, together with the reserve units, if any, for which the contributor was contributing immediately before the election under this subsection and any reserve units which may already have been appropriated by the contributor under subsection (5) shall not exceed eight.

(8) (Repealed)

#### **16-17CB (Repealed)**

#### **17D Orders fixing different tables etc**

- (1) An order under section 10AD or 10AG does not have effect unless approved by both

Houses of Parliament.

- (2) After approval by both Houses of Parliament, such an order shall be published in the Gazette and shall take effect on and from such day as the Governor may, by proclamation published in the Gazette, specify in respect thereof, being a day not earlier than the date of publication of the order and the date of publication of the proclamation.

## **18 (Repealed)**

## **19 Employees on leave of absence**

- (1) In respect of any contributor who is on leave of absence, whether without pay or not, the contributor's contributions shall be paid during such leave of absence as for a period of service and shall become due on or before the last day of each month or four-weekly contribution period.
- (2) For the purposes of this Act, where a contributor is on leave without pay from the service of the contributor's employer and is on secondment to the service of another employer, the contributor's salary shall, notwithstanding subsection (1), be that paid or payable by that other employer.
- (3) For the purposes of this Act, where a contributor is on approved leave from the service of the contributor's employer and is not on secondment to the service of another employer and is not a contributor to and in respect of whom subsection (7) is declared pursuant to subsection (6) to apply, and STC is of the opinion that the contributor's salary would have been varied had the contributor not been on that leave, the contributor shall, unless STC otherwise determines, be deemed to have been paid by the contributor's employer salary at the rates to which and at the times at which it would have been varied.
- (4) For the purposes of subsection (3), a person is on approved leave if the person is on leave without pay from the service of the person's employer—
  - (a) by reason of—
    - (i) the person's ill health,
    - (ii) the person's secondment to the service of a public authority constituted by or under an Act,
    - (iii) the person's secondment to the service of the Government of the Commonwealth or another State or to the service of a public authority constituted by or under an Act of the Parliament of the Commonwealth or another State, or
    - (iv) the person's service with the naval, military or air forces of the Commonwealth, or

- (b) in circumstances approved by STC under subsection (5).
- (5) For the purposes of subsection (4) (b), STC may, if it thinks fit, approve of circumstances in which a person is on leave without pay from the service of the person's employer, if that employer certifies to STC that that person is, during the period of leave, acting in the interests of the employer or the State.
- (6) The Governor may, by instrument in writing, declare, either unconditionally or subject to conditions, that subsection (7) or (8) applies, or both apply—
- (a) to and in respect of a contributor specified in the instrument who is on leave of absence from the service of the contributor's employer and is on secondment but not to the service of another employer, and
- (b) generally during the period of that secondment or during such period as is specified in the instrument, being, in either case, a period commencing before or after the commencement of this subsection or the date of the declaration.
- (7) During the period in which this subsection is declared pursuant to subsection (6) to apply to and in respect of a contributor who is on secondment, the contributor's salary shall, for the purposes of this Act, be that paid or payable in respect of the service to which the contributor is seconded.
- (8) During the period in which this subsection is declared pursuant to subsection (6) to apply to and in respect of a contributor who is on secondment, the employer specified in the declaration as the employer for the purposes of this Act shall, for the purposes of this Act, be deemed to be the employer from whose service the contributor is on leave of absence.

#### **19A Deferral of payment of contributions**

STC may, in special circumstances, defer the payment of any contribution by a contributor but, where STC so defers a payment, no benefit is payable to or in respect of the contributor until the outstanding contribution and, where appropriate, interest thereon, have been paid or arrangements satisfactory to STC have been made for their payment.

#### **19B (Repealed)**

#### **20 Manner of payment—deduction from wages or salaries**

- (1) Whenever salaries or wages are paid to contributors, their employer must deduct from those salaries or wages the contributions that those contributors are required to make to the Fund.
- (2) An employer who has deducted contributions in accordance with subsection (1) must pay those contributions to STC, without deduction, within—
- (a) the period of 7 days immediately following the end of the contribution period to

which they relate, or

(b) such extended period as STC may allow in a particular case.

(3) STC may enter into an arrangement with a contributor, or may require a contributor to enter into an arrangement with STC, for the payment of arrears of contributions to the Fund that have been incurred, or are expected to be incurred, by the contributor.

(4) Where a contributor—

(a) fails to comply with a requirement under subsection (3) to enter into an arrangement referred to in that subsection, or

(b) having entered into such an arrangement, fails to comply with its terms,

STC may direct that any period in respect of which any such arrears are outstanding is not a period of service by the contributor, and the direction shall have effect according to its tenor.

(5) Arrears in employers' contributions (including arrears arising as a consequence of contributors commencing to contribute to the Fund after the date on which they were required to contribute) shall be payable, and shall be deemed always to have been payable, at such time or times as STC may determine.

#### **20A Contributor transferred to Commonwealth Public Service**

In the case of a contributor to whom the last paragraph of section 84 of the Commonwealth Constitution applies, STC shall on the contributor's transfer to the Public Service of the Commonwealth pay to the Treasurer (who may pay the same to the Commonwealth) the amount of the contributions made to the fund by such contributor. This section shall be deemed to have commenced on the first day of July, one thousand nine hundred and nineteen.

#### **20AB Contributor who is executive officer**

(1) When a contributor becomes an executive officer, the contributor must—

(a) elect to continue to contribute to the Fund, or

(b) elect to make provision for a benefit provided by Division 3A of Part 4.

(2) If a contributor fails to make an election under subsection (1) within 2 months of being required to make that election, the contributor is, for the purposes of this section, to be taken to have elected to continue to contribute to the Fund.

(3) Nothing in this Act prevents a contributor who elects to continue to contribute to the Fund from also contributing to the First State Superannuation Fund or another superannuation scheme and such a contributor is entitled to benefits in accordance with this Act despite being a member of that Fund or another scheme.



- (4) If a contributor elects to continue to contribute to the Fund, the contributor may, at any time thereafter while being an executive officer, elect to make provision for a benefit provided by Division 3A of Part 4.
- (5) A contributor who elects, under this section, to make provision for a benefit provided by Division 3A of Part 4—
  - (a) may elect to make provision for the benefit even though he or she has not completed 3 years' continuous contributory service, and
  - (b) is not entitled to a benefit payable under any other provision of this Act, and
  - (c) is not entitled to elect to take the benefit provided by section 52I, and
  - (d) except as provided by subsection (6), is not entitled to be paid the benefit provided by Division 3A of Part 4 until on or after first ceasing to be an employee after making the election and unless there exist the circumstances in which a person referred to in section 52A (1) is entitled to be paid a benefit under that Division, and
  - (e) may elect at any time before the benefit is paid to have the benefit paid to the credit of the contributor in the First State Superannuation Fund or another complying superannuation fund, complying approved deposit fund or retirement savings account.
- (6) If a contributor makes an election under subsection (5) (e), STC must, as soon as practicable after the election is made, pay to the trustee or provider of the nominated fund or account the amount of the benefit provided by Division 3A of Part 4 to which the contributor is entitled under subsections (7) and (8).
- (7) For the purposes of subsection (6), the benefit to which the contributor is entitled is an amount equal to the actuarially calculated lump sum value of the benefit provided by Division 3A of Part 4 on ceasing to be a contributor.
- (8) If a contributor makes an election under subsection (1) (b) or (4) within 12 months after being—
  - (a) appointed as a chief executive officer or senior executive officer or as a police executive officer, or
  - (b) nominated as an office holder for the purposes of section 11A of the *Statutory and Other Offices Remuneration Act 1975*,the salary of the contributor, for the purpose of determining the amount of the benefit to which the election relates, is to be taken to be his or her salary immediately before that appointment or nomination took effect.
- (9) In this section—

**complying approved deposit fund** means a complying approved deposit fund for the purposes of section 47 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

**complying superannuation fund** means a complying superannuation fund for the purposes of section 45 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

**retirement savings account** has the same meaning as in the *Retirement Savings Accounts Act 1997* of the Commonwealth.

## **Part 3A Commonwealth or other State Public Service Superannuation Fund participants becoming employees**

### **20B Definitions**

In this Part **Public Service Superannuation Fund** means a scheme, fund or arrangement established under the law of the Commonwealth or of a State to provide superannuation or similar benefits for persons employed in the Public Service of the Commonwealth or of a State and also includes the New South Wales Retirement Fund, the Local Government Provident Fund, the Superannuation Benefits Fund, the Local Government Pension Fund, the insurance arrangements effected under Part 2 of the *Local Government and Other Authorities (Superannuation) Act 1927* and such other schemes, funds or arrangements as are prescribed by regulations under this Act to be Public Service Superannuation Funds for the purposes of this Act.

For the purposes of this Part, the Public Service of the Commonwealth shall include the Public Service of Papua and New Guinea.

### **20C Public Service Superannuation Fund participants becoming employees**

- (1) Any person who immediately before the person becomes an employee within the meaning of this Act was a participant in a Public Service Superannuation Fund may, within 2 months after the date the person becomes an employee, elect to take the benefit of this section. Any employee who so elects shall pay to STC an amount equivalent to such part of the sum received by the employee by virtue of ceasing to be a participant in the Public Service Superannuation Fund as STC calculates to be necessary to purchase fully paid up units (but excluding a fraction of a unit) and such person shall be deemed to be a contributor for that number of units but shall not be required to make further contribution in respect of those units.
- (2) The amount payable to STC pursuant to subsection (1) shall not include any amount received by the person in respect of payments made by the person as a participant in the Public Service Superannuation Fund on account of reserve units of pension.
- (3) An amount paid to STC under this section shall be paid into and form part of the Fund, and shall for the purpose of this Act be deemed to be contributions made by the

employee to the Fund.

(4), (4A) (Repealed)

(5) Where a person who has exercised the right of election conferred by this section dies, or where the person retires under subsection (1B) of section 21 before the person reaches the age of sixty years, or where the person is retired under section 22 before the person reaches that age, or where, being a woman contributing for retirement at the age of fifty-five years she is retired under section 22 before reaching that age, STC may, except where the amount paid under subsection (1) is refunded pursuant to section 32A or 32B, determine that a specified amount, being part of the amount so paid, be refunded to that person or, where the person is dead, to the person's personal representatives, and may act in accordance with its determination.

#### **20D Sec 10B applicable**

Nothing in this Part shall be construed as derogating from the application of section 10B to any such employee.

### **Part 3B Conversion of existing entitlements**

#### **20E Eligible contributors**

- (1) This Part applies to a contributor who is eligible to make a conversion election.
- (2) A contributor is eligible to make a conversion election if the contributor is an employee of an employer listed in Part 1 or Part 2 of Schedule 26.
- (3) The Governor may by order published on the NSW legislation website amend Schedule 26.
- (4) An order under this section, and any order varying or revoking such an order, may be made to take effect on and from a day specified in the order, whether or not the day is earlier than the day of publication of the order.
- (5) The name of an employer may not be added to or omitted from Part 2 of Schedule 26 by an order under this section, except with the written consent of the employer.

#### **20F Conversion notice**

- (1) A conversion notice is a notification by the Treasurer to a contributor notifying the contributor of the right to make a conversion election under this Part.
- (2) The Treasurer must send to each contributor a conversion notice.
- (3) A conversion notice must be in writing in the form determined by the Treasurer and may consist of one or more documents.
- (4) A conversion notice is to be sent in the manner determined by the Treasurer.

- (5) Without limiting any other matters that may be included, a conversion notice must set out the following matters—
- (a) a statement to the effect that on taking effect a conversion election will terminate the contributor's membership of the Fund and of the Fund under the *State Authorities Non-contributory Superannuation Act 1987* and terminate any right of the contributor to any benefit (other than a conversion benefit) from those Funds,
  - (b) the estimated benefits payable in respect of the contributor under this Part on making a conversion election and the estimated amount of benefits payable under this Act if the contributor does not make the election,
  - (c) details of any benefits forgone by the contributor, whether under this Act or the *State Authorities Non-contributory Superannuation Act 1987*, on a conversion election taking effect,
  - (d) the date on which a conversion election is to take effect (in this Part referred to as the **conversion date**) and the last date for making an election,
  - (e) a statement to the effect that on and from the conversion date a contributor who makes a conversion election is required to become a member of the First State Superannuation Fund or, if the contributor is required by this Part to become a member of another specified superannuation fund or a superannuation fund of a specified kind, the fund or kind of fund to which STC is required to pay the conversion benefit,
  - (f) a statement to the effect that independent financial advice should be obtained before making a conversion election and particulars of persons who are available to provide that advice,
  - (g) a statement of the manner in which a conversion election is to be made,
  - (h) a statement of the manner in which a conversion election may be amended or revoked and the last date on which it may be amended or revoked.

## **20G Conversion election**

- (1) A contributor may make a conversion election.
- (2) A conversion election is an election—
  - (a) to make provision for the conversion benefit, and
  - (b) to cease to be a contributor, and
  - (c) to pay the conversion benefit in accordance with section 20M.
- (3) If a contributor is an executive officer, the conversion election must nominate an amount of salary or wages of the officer for the purposes of the *First State*

*Superannuation Act 1992.*

- (4) If a contributor fails to make a conversion election on or before the last date for making an election specified in the conversion notice sent to the contributor, or purports to make an election after that date, the contributor is taken to have elected not to make a conversion election.
- (5) A contributor who makes a conversion election, and anyone else who would otherwise be a beneficiary under this Act through the contributor, is not entitled to a benefit under any provision of this Act after the conversion election takes effect, other than a conversion benefit.
- (6) A conversion election made by a contributor takes effect on the conversion date specified in the conversion notice given to the contributor.
- (7) The employer of a contributor who makes a conversion election must, on being notified by a person or body determined by the Treasurer for the purposes of this subsection that the contributor has made a conversion election, provide the person or body with particulars of the contributor's salary as at the conversion date for the contributor within the period requested by the person or body.

**20H Making, amendment and revocation of conversion election**

- (1) A conversion election must be in writing in the form determined by the Treasurer.
- (2) A conversion election is not validly made, amended or revoked, by a contributor unless it is made, amended or revoked as determined by the Treasurer and as specified in the conversion notice.
- (3) A conversion election may be amended or revoked in writing at any time by a contributor on or before the last date for making an election specified in the conversion notice for the contributor but may not be amended or revoked after that date.
- (4) The Treasurer, or a person or body authorised by the Treasurer for the purposes of this subsection, must notify STC when a conversion election takes effect in respect of a contributor.
- (5) For the avoidance of doubt, section 91 (2) applies to a conversion election.

**20I Circumstances in which a conversion election revoked or may not be made**

If a benefit is paid or becomes payable or is deferred or preserved in respect of a contributor under this Act before the conversion date for the contributor—

- (a) the contributor is not eligible to make a conversion election, and
- (b) if the contributor has made a conversion election, the election is taken to be revoked.

## **20J Matters to be determined by Treasurer**

The Treasurer may, for the purposes of this Part, determine the following matters—

- (a) the form of the conversion notice and the conversion election,
- (b) the conversion date for a contributor, or class of contributors,
- (c) the information to be provided to contributors, employers and other persons in respect of the conversion benefit and related matters,
- (d) the period, or periods, within which a conversion notice is to be sent to a contributor or conversion notices are to be sent to classes of contributors,
- (e) the manner in which a conversion notice, and information about a conversion notice or the conversion benefit, is to be sent to a contributor or a class of contributors or any other persons,
- (f) the manner in which a conversion election is to be made, amended or revoked, the form of the conversion election and the period, or periods, within which a conversion election may be made, amended or revoked by a contributor or class of contributors.

## **20K Conversion benefit**

- (1) The conversion benefit provided for a contributor under this Part is the amount that is equal to the sum of the benefits set out in subsections (2), (3) and (4).
- (2) The benefit provided under this subsection is the amount of a benefit payable in respect of a contributor calculated in accordance with section 37A (4) (a) as if the contributor were retrenched on the conversion date for the contributor and was eligible for such a benefit. However, for the purposes of section 37A (5), if the contributor has reached the maturity age on or before the conversion date, item “M”, as referred to in section 37A (6), is taken to be equal in value to item “A”, as referred to in that subsection.
- (3) The benefit provided under this subsection is an amount equal to the greater of the following amounts—
  - (a) the amount of the basic benefit provided to the contributor under the *State Authorities Non-contributory Superannuation Act 1987*, calculated as if the contributor had been retrenched on the conversion date for the contributor and the benefit was payable on that date, and reduced by the amount, if any, that it would have been reduced by under section 26A of that Act if it had been so payable,
  - (b) \$18,000.
- (4) The benefit provided under this subsection is an amount equal to the amount, if any,

that would be payable under section 15A (6AB) in respect of the contributor if the contributor were retrenched on the conversion date for the contributor.

- (5) If the amount of the conversion benefit calculated under this section is less than the minimum benefit payable to the contributor, the amount of the conversion benefit is to be the amount of the minimum benefit.
- (6) STC may make a determination under section 61RA only in respect of the amount of the conversion benefit that consists of the amount of the benefit provided under subsection (2).
- (7) If STC has made a determination under section 61RA in relation to a conversion benefit, the amount of the benefit is reduced by the amount specified in the determination.

#### **20L Minimum benefit**

- (1) For the purposes of section 20K, the minimum benefit payable to the contributor is the minimum benefit that would be payable to satisfy the requirements of section 61U, as determined by STC.
- (2) For the purposes of this section, STC may obtain actuarial advice.

#### **20M Payment of conversion benefit**

- (1) If a person makes a conversion election in accordance with this Part, STC must, as soon as practicable after being notified that the election has taken effect, pay the amount of the conversion benefit payable but not paid in respect of the person—
  - (a) if the person's employer is an employer under the *First State Superannuation Act 1992*, to FTC, or
  - (b) if the person's employer is a university, to Unisuper Limited, or
  - (c) in any other case, if the employer consents, to another superannuation scheme that is an accumulation scheme and is a regulated fund under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.
- (2) STC is liable to pay interest, at a rate determined by the Treasurer, on any outstanding amount of a conversion benefit not paid on the conversion date for the contributor concerned.
- (3) STC may meet the requirement to pay an amount under this section by transferring assets equivalent to the value of that amount or by paying part of the amount and transferring assets of the value of the remaining amount payable.
- (4) If the conversion benefit is payable to FTC, FTC must credit the amount of the conversion benefit to an account to be established to the credit of the person in the

First State Superannuation Fund, or to any existing account of the person under that Act.

- (5) If the conversion benefit is payable to Unisuper Limited, Unisuper Limited must credit the amount of the conversion benefit to an account to be established to the credit of the person in the accumulation division of the Superannuation Scheme for Australian Universities, or to any existing account of the person under that Division.
- (6) Duty under the *Duties Act 1997* is not payable in respect of the transfer of any assets by STC to FTC under this section.
- (7) In this section—  
**university** includes the following—
  - (a) University of Wollongong Recreation and Sports Association,
  - (b) Armidale Union-University of New England.

#### **20N Reserves from which conversion benefit to be paid**

- (1) A conversion benefit payable under this Part is to be paid from the reserves of the Fund in accordance with section 33B.
- (2) If there is not a sufficient amount in the appropriate employer reserve of an employer for whom the Crown contributes amounts to the Fund, the amount of the insufficiency is payable from the Crown reserve established in the Fund or assets acquired using funds from the Crown reserve.

#### **20O Information and assistance to be provided by STC**

STC must, at the request of the Treasurer, provide to the Treasurer such information and assistance as the Treasurer requires for the purposes of this Part.

#### **20P Liability for actions taken under Part**

- (1) A matter or thing done or omitted to be done by the Treasurer, or any person acting under the direction of the Treasurer, does not, if the matter or thing was done or omitted to be done in good faith—
  - (a) in connection with obtaining or making a conversion election, or
  - (b) in connection with the provision of information in relation to this Part, or
  - (c) for the purpose of executing this Part,

subject the Treasurer, a person so acting, FTC, STC, the FTC Board, the STC Board, a member of either of those Boards, or any person acting under the direction of FTC, STC or either of those Boards, to any action, liability, claim or demand.



- (2) Without limiting subsection (1), the Treasurer, FTC, STC, the FTC Board, the STC Board, a member of either of those Boards, or any person acting under the direction of the Treasurer, FTC, STC or either of those Boards, is not liable for any action, liability, claim or demand relating to the duties of FTC or STC as a trustee in respect of anything done or omitted to be done by the Treasurer, or any person acting under the direction of the Treasurer, as referred to in that subsection.
- (3) A matter or thing done or omitted to be done by STC, the STC Board, a member of the Board or any person acting under the direction of STC or the Board, does not, if the matter or thing was done or omitted in good faith—
- (a) in connection with obtaining or making a conversion election, or
  - (b) in connection with the provision of information in relation to this Part, or
  - (c) for the purpose of executing this Part,
- subject STC, a member of the Board or a person so acting, to any action, liability, claim or demand.
- (4) A matter or thing done or omitted to be done by FTC, the FTC Board, a member of the Board or any person acting under the direction of FTC or the Board, does not, if the matter or thing was done or omitted in good faith—
- (a) in connection with obtaining or making a conversion election, or
  - (b) in connection with the provision of information in relation to this Part, or
  - (c) for the purpose of executing this Part,
- subject FTC, a member of the Board or a person so acting, to any action, liability, claim or demand.
- (5) This section has effect despite the *Superannuation Administration Act 1996* or any other law.

## **Part 4 Pensions and benefits**

### **Division 1 Retirement on pension**

#### **21 Age of retirement**

- (1) A contributor (being, in the case of a woman, a contributor at the rate prescribed for retirement at age sixty) who has served for at least ten years with any one or more employers shall be entitled to elect to retire on pension from the service of the contributor's employer upon or after reaching the age of sixty years; and every woman contributor at the rate prescribed for retirement at age fifty-five who has so served shall be entitled to so retire upon or after reaching the age of fifty-five years.

(1A) (Repealed)

(1B) A contributor (being, in the case of a woman, a contributor at the rate prescribed for retirement at age sixty) shall be entitled to elect to retire from the service of the contributor's employer on pension on or after reaching the age of fifty-five years if the contributor has continuously been a contributor during the next preceding period of ten years.

(2) (Repealed)

(3) A person who, before becoming a contributor, was—

(a) employed on terms requiring the contributor to give the whole of his or her time to that employment, and

(b) paid at an hourly, daily, weekly or fortnightly rate, or at piecework rates,

is entitled to have that employment treated as service as an employee for the purposes of this section.

(4) Whenever—

(a) a period of employment that a contributor has had with an employing authority, and

(b) a later period of service that the contributor has had as an employee with an employer are continuous,

STC may, if satisfied that, having regard to the nature of the work performed by the contributor during that period of employment, it is proper to do so, treat, for the purposes of this section, that period of employment as a period of service as an employee with that employer.

(5) A reference in subsection (4) to a period of service as an employee with an employer includes a reference to a period treated under subsection (3) or (4) as a period of service as an employee.

#### **21A-21B (Repealed)**

#### **21C Commuting of pension**

(1) A person who is entitled or becomes entitled to a pension under this Act may commute the whole or part of that pension (subject to this section and Part 6 of Schedule 25).

(2) A person may not commute the whole or any part of a pension under subsection (1) before attaining the age of 55 years.

(3) This section does not authorise the commutation of a pension payable in respect of

children.

- (4) Subject to section 21D, any person desiring to commute pension pursuant to this section may elect to do so at any time after attaining the age of 54 years and 6 months.
- (5) An election under this section may be made in respect of 2 different amounts and as from 2 different dates and the election shall have effect as to the different amounts as from the respective dates from which the different amounts are commuted.
- (6) Where—
  - (a) a person making an election under this section in respect of one amount dies before the election takes effect, the election shall be deemed to be revoked, and
  - (b) a person making an election under this section in respect of different amounts as from different dates dies before the commutation as to one or both of those amounts takes effect, the commutation as to that or those amounts, as the case may be, shall not be effective.
- (7) Where an election under this section takes effect and the person who made the election dies before any lump sum payable pursuant to the election has been paid to the person, STC shall pay the lump sum to the person's personal representatives.
- (8) Upon an election under this section taking effect as to an amount of pension, there shall be paid from the Fund to the person who made the election or, as the case may require, to the personal representatives of the person, a lump sum calculated by multiplying the fortnightly amount of pension commuted by the prescribed commutation factor in relation to the person, subject to sections 31A (3) and 32A (3).
- (9) In subsection (8)—

**prescribed commutation factor** means—

- (a) in relation to a person whose election under this section took effect as to an amount of pension before the person attained the age of 60 years, the figure (rounded to 2 decimal places) calculated in accordance with the following formula—

$$F = 285 - (A - 55) \times 7$$

where—

**F** is the prescribed commutation factor,

**A** is the age of the person in years (including any fractional part of a year calculated on a daily basis) on the date the election by the person to commute took effect as to that amount of pension, and

- (b) in relation to a person whose election under this section took effect as to an amount of pension on or after the person attained the age of 60 years—
  - (i) 250, where no prescribed period has elapsed in relation to the person, or
  - (ii) where a prescribed period has elapsed in relation to the person, a figure lower than 250 determined by STC having regard to the length of the prescribed period.

**prescribed period**, in relation to a person whose election under this section took effect as to an amount of pension on or after the person attained the age of 60 years, means—

- (a) in the case of such a person who became entitled to the amount of pension to which the election relates on or before attaining the age of 65 years—the period (if any) between—
  - (i) the attainment by the person of the age of 60 years or the day on which the person became entitled to that amount of pension, whichever was the later, and
  - (ii) the day on which the election took effect as to that amount of pension, or
- (b) in the case of such a person who became entitled to the amount of pension to which the election relates after attaining the age of 65 years—the period (if any) between—
  - (i) the attainment by the person of the age of 65 years, and
  - (ii) the day on which the election took effect as to that amount of pension.

(10) (Repealed)

(11) Subject to section 21D, a person may, with the approval of STC, make more than one election under this section, but only one such election shall take effect.

(12) Where a person makes an election under section 23BA to take up additional units, nothing in subsection (11) applies to an election made under this section in respect only of any of the pension payable in respect of those additional units, but—

- (a) a person may not, without the approval of STC, make more than one such election under this section in respect of that pension, and
- (b) only one such election made by the person under this section in respect of that pension shall take effect.

(13) Subsections (11) and (12) apply to and in respect of an election under this section whether or not the election has been amended or revoked.

- (14) The approval of STC may only be given for the purposes of subsection (11) or (12) in special circumstances.
- (15) An election made under this section by an employee before the day on which the employee attained the age of 55 years shall be deemed to be revoked if the employee has not retired before the expiration of 12 months after attaining that age.
- (16) An election made under this section by an employee on or after the day on which the employee attained the age of 55 years shall be deemed to be revoked if the employee has not retired before the expiration of 12 months after making the election.
- (17) This Act applies to and in respect of a person who is entitled to a pension and who commutes the whole of that pension in accordance with this section in the same way as it applies to and in respect of a pensioner under this Act.
- (18) On the death of a person who has, pursuant to this section, commuted the whole or part of any pension payable to the person, the pension payable to the spouse or de facto partner of the person pursuant to the provisions of this Act shall be determined in accordance with the pension that would have been payable to the person at the time of death had the person not so commuted that pension.
- (19) Nothing in this Act shall be construed as requiring STC to make inquiries as to whether any pension is payable under this Act as a consequence of the death of a person who has commuted the whole of a pension in accordance with this section.

**21D Limitations on elections under section 21C**

- (1) Subject to this section, a person may not make an election under section 21C relating to a pension under this Act after the expiration of 6 months after—
  - (a) the day on which the person attained the age of 55 years, or
  - (b) the day on which the person became entitled to that pension,whichever is the later day.
- (2) Subject to this section, if a person makes an election under section 23BA to take up additional units, the person may not make an election under section 21C in respect only of the pension payable in respect of those additional units after the expiration of 6 months after—
  - (a) the day on which the person attained the age of 55 years, or
  - (b) the day on which the person made the election under section 23BA,whichever is the later day.
- (3) Where—

- (a) an election under section 21C was not made within the time prescribed in respect thereof by the provisions of subsections (1) and (2),
- (b) it is proved to the satisfaction of STC that the election was not made within that time because—
  - (i) the person entitled to make the election did not know of the right to make the election, or
  - (ii) circumstances substantially beyond the control of the person prevented the making of the election, and
- (c) STC is satisfied that, in the circumstances of the case, it is desirable that the election should be accepted,

STC may, subject to such terms and conditions as it may impose, accept the election and deal with it as if that time had been indefinitely extended.

(4) Where—

- (a) a pension became payable to a person before the person attained the age of 60 years,
- (b) the person has attained the age of 59 years and 6 months, and
- (c) the person, although entitled to do so, has not previously made an election under section 21C (being an election which has taken effect) to commute the whole or any part of that pension,

the person may make an election under that section in relation to that pension before the expiration of the period of 6 months after the day on which the person attains or attained the age of 60 years.

### **21E Interest to be paid on commuted amounts**

Whenever a lump sum is payable under section 21C on or after the commencement of Schedule 2 (6) to the *Superannuation (Amendment) Act 1988*, interest at the rate currently fixed under section 86A for the purposes of this section (less any deduction for money due to the Fund) is payable from the Fund in respect of the period beginning with the date on which the lump sum becomes payable and ending with the date when it is authorised to be paid.

### **22 Breakdown retirement**

(1) Any contributor may be retired from the service of the contributor's employer on the ground of invalidity or physical or mental incapacity to perform the contributor's duties.

(1A) (Repealed)

- (2) The question whether the contributor is an invalid, or is physically or mentally incapable of performing his or her duties, shall be determined by STC, having regard to medical advice furnished by one or more persons or bodies nominated, or one or more persons who are members of a class of persons nominated, by STC.

### **23 Retrenchment and discharge**

- (1) For the purposes of this Act, a contributor shall be taken to be retrenched when the contributor's service with an employer is terminated and where the service 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 service, 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 requires to be performed has diminished and, because of 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).
- (2) For the purposes of this Act, a contributor shall be taken to be discharged on 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.

### **23A (Repealed)**

### **23B Date of retirement, contributions payable etc**

- (1) For the purpose of determining the rights of an employee under this Act, the date of the employee's retirement shall be the date on which in the opinion of STC the employee ceases to be employed by his or her employer.
- (2) Except as provided by section 23BA, a person is not entitled to elect to contribute, or required to contribute, in respect of an additional unit or units of pension by reason of a salary increase not actually paid before the date of the person's retirement, determined as provided by subsection (1), or the date of the person's death, whichever first occurs.
- (3) (Repealed)
- (4) Notwithstanding anything contained in this Act, sections 28A and 29 excepted, or any

other Act, pension shall be payable, in the case of the death of an employee from the day following the date of death of the employee, and in the case of the retirement of an employee the date of whose retirement is determined by STC in accordance with this section from the day following such date.

### **23BA Retrospective salary increases**

- (1) Notwithstanding subsection (2) of section 23B, where a contributor retires or dies or where a pensioner dies and an amount in respect of an increase in the contributor's or pensioner's salary that took effect from a day earlier than the day of the contributor's or pensioner's retirement or death and payable up to the day of the contributor's or pensioner's retirement or death has been paid to the contributor or pensioner, or is payable to the contributor's or pensioner's estate, the contributor or pensioner, or in the case of the contributor's or pensioner's death, the contributor's or pensioner's spouse or de facto partner may make an election to take up any or all of the additional units to which such increase would have entitled the contributor or pensioner had the contributor or pensioner continued to be a contributor.
- (2) Pension in respect of the additional units in respect of which an election is made under this section shall be payable from the day following the date of retirement or death of the contributor or pensioner, as the case may be.
- (2A) The contributions payable consequent on an election under this section in respect of a unit of pension shall be the contributions that would have been payable had the unit been a unit in respect of which the contributor was required by section 10R (1) to contribute to the Fund.
- (2B) Nothing in this section authorises a person to elect to take up abandoned units.
- (3) An election under this section shall—
  - (a) in the case of a person who retired or died before the commencement of the *Superannuation (Amendment) Act 1971* be made within three months after such commencement,
  - (b) in the case of a person who retires after such commencement be made by the contributor or pensioner within three months after the increase is actually paid to the contributor or pensioner and in the event of the person's death before the expiration of the said three months and the person's not having made such election be made by the person's spouse or de facto partner within three months after the person's death,
  - (c) in the case of a person who retires after such commencement and dies before the increase is paid be made by the person's spouse or de facto partner within three months after the increase is paid,
  - (d) in the case of a contributor who dies before the increase is paid be made by the



person's spouse or de facto partner within three months after the increase is paid—

Provided that STC may in special circumstances allow an election to be made under this section after the expiration of the periods above prescribed.

### **23BB (Repealed)**

### **24 Dismissal**

For the purposes of this Act, a contributor shall be taken to be dismissed when the employer compulsorily terminates (however expressed) the contributor's service otherwise than—

- (a) by compulsorily retiring the contributor on a pension payable under this Act, or
- (b) by retrenching or discharging the contributor.

### **25 Resignation**

For the purposes of this Act, a contributor shall be taken to have resigned from the service of an employer when the contributor terminates (however expressed) that service without—

- (a) being entitled to retire from that service on a pension payable under this Act, or
- (b) being retrenched.

## **Division 2 Grant of pensions and benefits**

### **26 (Repealed)**

### **26A Benefit payable not to include fraction of a cent**

Where STC is required to pay to a person as a benefit under this Act an amount that includes a fraction of a cent, the fraction shall be ignored and, where the fraction is one-half or more, the amount payable after ignoring the fraction shall be increased by one cent.

### **27 Amount of pension payable on retirement**

- (1) A contributor who retires is entitled to be paid a pension of \$5.50 per fortnight for each unit for which the contributor was contributing at the time of retirement.
- (2) Subsection (1) does not apply to a contributor in respect of whom special provision for the payment of a pension or other retirement benefit is made under another provision of this Act.
- (3) If STC has made a determination under section 61RA in respect of a pension payable under this section, the amount of the pension is reduced by the amount specified in

STC's determination.

**28 Pension of woman retiring before 60**

- (1) On the retirement at or after the age of fifty-five years of a woman who has contributed for a pension payable on reaching the said age, the full pension for which she has so contributed shall be payable.
- (2) (Repealed)

**28A Pension on retirement before reaching 60 years of age**

- (1) This section applies to a contributor who retires in accordance with section 21 (1B) and who is not entitled to a pension under section 28AA.
- (2) A contributor to whom this section applies is entitled on retirement to a pension determined according to the number of units for which the contributor has, at the time of retirement, contributed for not less than 2 years and 6 months.
- (3) Subject to this section, the value of each unit of pension referred to in subsection (2) is as follows—
  - (a) if the age of the contributor at the contributor's last birthday before retirement was 55 years—\$3.27 per fortnight,
  - (b) if the age of the contributor at the contributor's last birthday before retirement was 56 years—\$3.55 per fortnight,
  - (c) if the age of the contributor at the contributor's last birthday before retirement was 57 years—\$3.91 per fortnight,
  - (d) if the age of the contributor at the contributor's last birthday before retirement was 58 years—\$4.35 per fortnight,
  - (e) if the age of the contributor at the contributor's last birthday before retirement was 59 years—\$4.88 per fortnight.
- (4) In addition to the value of a unit of pension specified in subsection (3), a contributor is entitled to receive in respect of the unit an amount per fortnight calculated in accordance with the following formula—

$$\frac{(A - B)}{364} \times C$$

where—

**A** represents the value that the unit would have had if the contributor had in fact retired on the contributor's next birthday after that retirement, and

**B** represents the value of the unit at the contributor's last birthday before retirement,

and

**C** represents the number of days during the period beginning with the day after the contributor's last birthday before retirement and ending with the day before payment of the pension is due to begin.

- (5) If a contributor to whom this section applies has contributed for one or more units of pension for less than 2 years and 6 months, the contributor is entitled to be paid on retirement a lump sum equal to the amount of contributions that the contributor has paid in respect of the unit or units.
- (6) A pension under this section becomes payable on and from the day following the contributor's exit day, except as provided by subsection (7).
- (7) A pension under this section payable to a contributor who is retrenched becomes payable on and from the day after the day on which the contributor actually leaves the service of the contributor's employer, whether at the contributor's exit day any period of untaken leave was due to the contributor or not.
- (8) A contributor whose pension is determined in accordance with this section ceases to be liable to pay contributions to the Fund on the first day of the month or four-weekly period, as the case may be, in which the pension becomes payable in accordance with subsection (6) or (7).
- (9) If STC has made a determination under section 61RA in respect of a pension payable under this section, the amount of the pension is reduced by the amount specified in STC's determination.

**28AA Pension on retirement before age 60—component pension**

- (1) On the retirement of a contributor under section 21 (1B) on or after the commencement of Schedule 2 (6) to the *Superannuation (Amendment) Act 1985*, except as provided by subsection (2), the pension to which the contributor is entitled is a pension under this section.
- (2) A contributor is entitled to the pension under section 28A and not the pension under this section if the sum of—
  - (a) the amount which would be payable to the contributor on the commutation of the whole of the pension payable to the contributor under section 28A, and
  - (b) the amount of any lump sum which would be payable to the contributor under section 28A (5),is greater than the amount which would be payable to the contributor on the commutation of the whole of the pension payable to the contributor under this section.

- (3) The pension to which a contributor is entitled under this section is a pension of an amount per fortnight equivalent to the sum of the employee-contributed pension component, and the employer-financed pension component, in relation to the contributor.
- (4) For the purposes of subsection (3), the employee-contributed pension component, in relation to a contributor, shall be calculated in accordance with the following formula—

$$P1 = 2.20 \times EPU \times (1 - .07 \times TM)$$

where—

**P1** is the employee-contributed pension component.

**EPU** is the sum of the following—

(a)

$$UHn - \frac{Cn}{Rn} \text{ (except where } \frac{Cn}{Rn} \text{ exceeds } UHn)$$

,

(b)

$$\frac{TCB}{RB}$$

,

(c) UC.

**UHn** is the number of units of pension for which contributions were payable by the contributor on the contributor's exit day in accordance with the tables of contributions fixed by or under this Act, but excluding—

- (a) any such units of pension which are excess units of pension referred to in section 10W (1) and in respect of which no person has any rights in the Fund, and
- (b) any such units of pension, being reserve units, for which contributions were being made under section 15A.

**Cn** is the amount of contributions due for the last contribution period for which contributions were payable by the contributor before the contributor's exit day, in respect of that number of units of pension.

**Rn** is the amount which, if the contributor were required under Division 5 of Part 3 to commence to contribute for an additional unit of pension on the contributor's exit day, would be the amount payable in accordance with the tables of contributions fixed under section 10AD for that unit for a contribution period.

**TCB** is the total amount paid in respect of instalments payable by the contributor on or before the contributor's exit day for units of pension for which the contributor

contributed in accordance with Division 6 of Part 3 (but deducting therefrom any part of that amount allocated under this Act to the purchase of fully paid up units).

**RB** is the amount specified in section 10AG (1) as the cost of a unit of pension in relation to the contributor.

**UC** is the number of units (if any) purchased by the contributor and credited to the contributor as fully paid up units under section 20C or otherwise.

**TM** is the number of years, if any, (including any fractional part of a year calculated on a daily basis) by which the day from which the pension under this section commences to be payable precedes the date on which the contributor attains the age of 60 years.

- (5) For the purposes of subsection (3), the employer-financed pension component, in relation to a contributor, shall be calculated in accordance with the following formula—

$$P2 = 3.30 \times UE \times \frac{S}{S + TM} \times (1 - .04 \times TM)$$

where—

**P2** is the employer-financed pension component.

**UE** is the number of units of pension that, pursuant to section 12 (1), is appropriate to the salary payable to the contributor on the contributor's exit day plus, in a case to which section 10W applies, the number of any excess units of pension referred to in section 10W (1) and in respect of which STC considers, in accordance with section 10W (5), that the retention of entitlement to benefits under this Act is warranted.

**S** is the number of years (including any fractional part of a year calculated on a daily basis) of continuous contributory service by the contributor with any one or more employers.

**TM** is the number of years, if any, (including any fractional part of a year calculated on a daily basis) by which the day from which the pension under this section commences to be payable precedes the date on which the contributor attains the age of 60 years.

- (5A) If STC has made a determination under section 61RA in respect of a pension payable under subsection (3), the amount of that pension is reduced by the amount specified in STC's determination.
- (6) For the purposes of subsection (5), the period of continuous contributory service by a person on the person's exit day is the period that commenced when the person last became a contributor and ended on that day (but excluding any part of that period during which the person is treated by section 48 as being on leave of absence without pay).

- (7) Except as provided by subsection (7A), a pension payable under this section shall commence and be payable as from the day following the contributor's exit day.
- (7A) A pension payable under this section to a contributor who is retrenched shall be payable as from and including the day after the date on which the contributor actually leaves the service of the employer, whether or not at the contributor's exit day any period of untaken leave was due to the contributor.
- (8) Contributions payable by and in respect of a contributor whose pension is payable under this section shall cease to be paid—
- (a) where the pension becomes payable before the commencement of Schedule 9 to the *Superannuation (Amendment) Act 1983*—on the first day of the month or four-weekly contribution period, as the case may be, in which the pension commences to be payable in accordance with subsection (7), or
- (b) where the pension becomes payable on or after the commencement of that Schedule—on the first day of the contribution period preceding that in which the pension commences to be payable in accordance with subsection (7) or (7A).
- (9) (Repealed)

**28B Increase of pension in case of certain retirements after reaching 62 years of age**

- (1) For the purposes of this section, the period of contributory service of a contributor upon the contributor's retirement is the next preceding period that commenced—
- (a) when the contributor last became a contributor, or
- (b) (Repealed)
- (c) if, since the contributor last became a contributor, the contributor had been on leave of absence pursuant to section 48—when the contributor was re-employed by an employer after the last such leave of absence,
- and ended upon the contributor's retirement.
- (2) Where a contributor aged sixty-two years or more retired on or after 1 July 1972 and before the commencement of the *Superannuation (Amendment) Act 1972*, or retires at or after that commencement, the pension that, but for this section, would be payable to the contributor shall, if the contributor has completed not less than eleven years of contributory service, be increased by a percentage determined in accordance with subsection (3).
- (3) The percentage referred to in subsection (2) is—
- (a) where the contributor had completed forty years or more of contributory service at the time of the contributor's retirement—

- (i) ten per centum if the contributor retired on or after reaching the age of sixty-two years and before reaching the age of sixty-three years,
  - (ii) twenty per centum if the contributor retired on or after reaching the age of sixty-three years and before reaching the age of sixty-four years, and
  - (iii) thirty per centum if the contributor retired on or after reaching the age of sixty-four years, or
- (b) where the contributor had completed eleven or more, but less than forty, years of contributory service at the time of the contributor's retirement—the percentage that would, if the contributor had completed more than forty years of contributory service, be applicable under paragraph (a), multiplied by the fraction obtained by applying the formula—

$$\frac{n - 10}{30}$$

where *n* represents the number of years of contributory service that the contributor had completed.

- (4) Notwithstanding subsection (2), the pension of a contributor shall not be increased under this section to an amount in excess of the amount of the upper limit of the salary group in which the contributor's salary fell immediately before the contributor's retirement, any salary increase referred to in section 23BA being deemed to have been paid to the contributor immediately before that retirement.
- (5), (6) (Repealed)
- (7) Notwithstanding the foregoing provisions of this section—
- (a) this section does not apply to a contributor who retires on or after 1 July 1979 and who has not attained the age of 62 years before that date, and
  - (b) this section applies to a contributor who retires on or after 1 July 1979 and who has attained the age of 62 years before that date, but so applies subject to subsection (8).
- (8) In the case of a contributor referred to in subsection (7) (b), the percentage by which the contributor's pension is to be increased shall be determined as though the contributor retired on 30 June 1979, but that percentage shall be applied to the whole of the pension that, but for this section, would be payable to the contributor upon the contributor's actual retirement.

## 29 Breakdown pensions

- (1) Except as provided by subsections (2), (2A) and (3), if a contributor is retired on the ground of invalidity or physical or mental incapacity to perform the contributor's

duties, the contributor shall, subject to section 10AA (2), be entitled to the full pension for which the contributor was contributing as at the contributor's exit day.

(2) If a contributor—

(a) being a person who became a contributor on or after 13 January 1978, or

(b) being a person who, immediately before 13 January 1978, was—

(i) a contributor accepted or treated as a contributor for limited benefits under this Act as then in force, or

(ii) a contributor accepted or treated as a contributor in the provisional category under this Act as then in force,

is retired on the ground of invalidity or physical or mental incapacity to perform the contributor's duties and the number of years (disregarding any fraction of a year) comprising the period from the date when the contributor last became a contributor and the contributor's exit day, after having subtracted from that period any period of retirement pursuant to section 22 in respect of which the contributor received a pension under this Act, is less than 10, the contributor shall be entitled to a pension, the amount of which shall be calculated in accordance with the formula—

$$P = \frac{A}{100} \left( 80 + \frac{20B}{C} \right)$$

where, in relation to the contributor—

**P** is the amount of the pension per fortnight,

**A** is the amount of pension per fortnight that would have been payable to the contributor under subsection (1) had the contributor been a person to whom that subsection applies,

**B** is the number of years (disregarding any fraction of a year) comprising the period from the date when the contributor last became a contributor to the contributor's exit day, after having subtracted from that period any period of retirement pursuant to section 22 in respect of which the contributor received a pension under this Act, and

**C** is—

(a) the number of years (disregarding any fraction of a year) comprising the period from the date when the contributor last became a contributor to the last day of the contribution period preceding that in which the contributor would attain the maturity age, or

(b) 10,

whichever is the lesser.



(2AA) If STC has made a determination under section 61RA in respect of a pension payable under subsection (2), the amount of the pension is reduced by the amount specified in STC's determination.

(2A) If—

- (a) a person becomes a contributor within the period of one year ending on and including the last day of the contribution period preceding that in which the person would attain the maturity age,
- (b) the person is retired on the ground of invalidity or physical or mental incapacity to perform the person's duties, and
- (c) the person's exit day precedes the last day of the contribution period referred to in paragraph (a),

then—

- (d) subsection (2) does not apply to that person, and
- (e) the person shall be entitled to a pension equal to 80 per cent of the amount of pension that would have been payable to the contributor under subsection (1) had the person been a person to whom that subsection applies.

(2B) Subsection (2) does not apply to a contributor whose exit day is on or after the last day of the contribution period preceding that in which the contributor attains or would attain the maturity age.

(3) If, in respect of a contributor referred to in subsection (2) (b) (other than a contributor referred to in subsection (2) (b) (ii)), the amount of pension to which the contributor would have been entitled, had this Act not been amended by the *Superannuation (Amendment) Act 1977*, is greater than the amount to which the contributor would otherwise be entitled under subsection (2), the contributor shall, notwithstanding subsection (2), be entitled to a pension of the greater amount.

(4) A contributor to whom this section applies shall be granted payment of pension only for such period at a time as STC determines and a fresh application shall, unless STC from time to time otherwise determines, be necessary before any further payment is made.

(4A) The period determined by STC as referred to in subsection (4) for the payment of pension to a person who—

- (a) has not attained the maturity age—shall be such period (not exceeding 5 years) as STC thinks fit, having regard to the state of health of the person, and
- (b) has attained the maturity age—may be for the remainder of the person's life.

- (5) Despite subsection (4A), STC may determine that the period for payment of a pension to a contributor to whom this section applies or a former contributor who is being paid a pension under this section, and who has attained the age of 55 years, is to be for the remainder of the person's life.
- (5A) STC may not make a determination under subsection (5), except on the election of the contributor or former contributor concerned.
- (6) Contributions payable by or in respect of a contributor to whom this section applies cease to be payable on the first day of the contribution period during which the pension becomes payable.
- (7) Schedule 17 has effect.
- (8) A contributor who is a Magistrate and who ceases to hold office (whether before or after the commencement of this subsection) on the ground of invalidity or physical or mental incapacity to perform the Magistrate's duties is entitled to a pension under this section as if the Magistrate had been retired by the Magistrate's employer on that ground, if STC is satisfied as to the Magistrate's invalidity or incapacity in accordance with section 22 (2).

**29A (Repealed)**

**30 Pensions to spouse or de facto partner on death of contributor**

- (1) On the death of a male contributor, pension is, subject to section 46A, payable to his spouse or de facto partner, at the rate of two-thirds of the pension that would have been payable to the contributor had he, where he was aged not less than 60 years, retired or been retired immediately before his death or, where he died before reaching the age of 60 years, had he been retired immediately before his death.
- (2) On the death of a woman contributor, pension is, subject to section 46A, payable to her spouse or de facto partner, at the rate of two-thirds of the pension that would have been payable to the contributor had she, where she was aged not less than the maturity age, retired or been retired immediately before her death or, where she died before reaching the maturity age, had she been retired immediately before her death.

**30A, 30AA (Repealed)**

**31 Pension to spouse or de facto partner on death of pensioner**

- (1) On the death of a male pensioner, pension is, subject to sections 46A and 47, payable to his spouse or de facto partner, at the rate of two-thirds of the pension payable to the pensioner at the time of his death.
- (2) On the death of a woman pensioner, pension is, subject to sections 46A and 47, payable to her spouse or de facto partner, at the rate of two-thirds of the pension payable to the pensioner at the time of her death.

- (3) (Repealed)
- (4) Notwithstanding the foregoing provisions of this section, but subject to section 47, where a pensioner referred to in subsection (1) or (2) had contributed for not more than 4 units of pension and had received a pension increase in terms of section 2 of the *Superannuation (Amendment) Act 1970*, the pension payable to the pensioner's spouse or de facto partner shall not exceed \$20 per fortnight, but nothing in this subsection affects the operation of Division 6.
- (5) A reference in subsection (1) or (2) to a pensioner does not include a person who is entitled to receive only a pension under this section or section 30.

**31A Minimum benefit payable in respect of pensioner who dies**

- (1) If a pensioner dies without leaving a spouse or de facto partner to whom pension is payable under this Act, nor a child in respect of whom pension is payable under this Act, there is payable to the personal representatives of the pensioner an amount calculated by deducting from the minimum benefit payable in respect of the pensioner the total of all benefits paid to the pensioner under this Act.
- (2) If a pensioner dies leaving a surviving spouse or de facto partner, and the surviving spouse or de facto partner dies, and there is no child of the pensioner or spouse or de facto partner in respect of whom pension is payable under this Act, there is payable to the personal representatives of the pensioner an amount calculated by deducting from the minimum benefit payable in respect of the pensioner the total of—
  - (a) all benefits paid to the pensioner under this Act, and
  - (b) all benefits paid as a consequence of the death of the pensioner to the spouse or de facto partner or any other person under this Act.
- (3) If a pensioner dies leaving a surviving spouse or de facto partner to whom pension is payable under this Act, and no child of the pensioner or spouse or de facto partner in respect of whom pension is payable under this Act, and the surviving spouse or de facto partner elects to commute the whole of that pension under section 21C, there is payable to the spouse or de facto partner, on that election taking effect, whichever is the greater of the following amounts—
  - (a) the amount that would be payable under section 21C (but for this section), or
  - (b) the amount calculated by deducting from the minimum benefit payable in respect of the pensioner the total of—
    - (i) all benefits paid to the pensioner under this Act, and
    - (ii) all benefits paid as a consequence of the death of the pensioner to the spouse or de facto partner or any other person under this Act.

- (4) If subsection (1), (2) or (3) would apply in respect of a pensioner, but for the pensioner leaving a child or children in respect of whom pension is payable under this Act (or would, but for this section, be so payable), STC may, if it considers it to be in the best interests of the child or children, apply this section as if there were no such child or children, in which case pension or pensions are not payable under this Act in respect of the child or children.
- (5) If a pensioner has no personal representatives, an amount payable to the pensioner's personal representatives is to be paid to such person or persons as STC may determine.
- (6) For the purposes of this section, if a pensioner dies and his or her spouse or de facto partner died at the same moment or in circumstances rendering it uncertain which of them survived the other, and the spouse or de facto partner died before a pension became payable to him or her under this Act because of the pensioner's death, the pensioner is taken not to have a surviving spouse or de facto partner.
- (7) For the purposes of this section, the **minimum benefit** payable in respect of a pensioner is the amount to which the pensioner would have been entitled under section 38A if the pensioner had, on the day determined by STC as being the last day on which he or she was an employee, resigned from the service of his or her employer and elected to take the benefit of that section.
- (8) In this section—

**benefits** includes instalments of pension.

**pensioner** means a person to whom a pension is payable under this Act because the person was a former contributor, and includes a person who became entitled to a pension under this Act because the person was a former contributor and who commuted that pension in accordance with this Act.

### **31B, 32 (Repealed)**

### **32A Death of employee before retirement**

- (1) Where an employee dies before retirement without leaving a spouse or de facto partner in respect of whom pension is payable under this Act, the employee shall, unless the employee leaves a child or children in respect of whom pension is payable under this Act or would, but for this section, be so payable, be deemed to have resigned, immediately before dying, from the service of the employee's employer and to have elected under section 38B to take the benefit of section 38A.
- (1A) The amount payable under section 38A by reason of the death of an employee in the circumstances referred to in subsection (1) shall be paid by STC to the employee's personal representatives or, where the employee has no personal representatives, to such persons as STC may determine.

- (2) Where an employee referred to in subsection (1) leaves a child or children in respect of whom pension is payable under this Act or would, but for this section, be so payable, STC may—
- (a) make a payment referred to in subsection (1A) as if the employee had not left such a child or children, in which case a pension or pensions shall not be payable under this Act in respect of the child or children, or
  - (b) pay a pension or pensions in respect of the child or children as if this section had not been enacted and pay to the personal representatives of the employee or, if there are no personal representatives, to such persons as STC may determine, an amount equal to the total of the contributions paid by the employee to the Fund, whichever STC considers to be in the best interests of the child or children.
- (3) If an employee dies before retirement leaving a surviving spouse or de facto partner in respect of whom pension is payable under this Act, and no child in respect of whom pension is payable under this Act, and the surviving spouse or de facto partner elects to commute the whole of that pension under section 21C, there is payable to the spouse or de facto partner, on that election taking effect, whichever is the greater of the following amounts—
- (a) the amount that would be payable under section 21C (but for this section), or
  - (b) the amount that would have been payable if the employee had resigned, immediately before dying, from the service of the employee's employer and elected under section 38B to take the benefit of section 38A, less the total of any benefits paid as a consequence of the death of the employee to the spouse or de facto partner or any other person under this Act (including any instalments of pension).
- (4) If subsection (3) would apply in respect of an employee, but for the employee leaving a child or children in respect of whom pension is payable under this Act (or would, but for this section, be so payable), STC may, if it considers it to be in the best interests of the child or children, apply subsection (3) as if there were no such child or children, in which case pension or pensions are not payable under this Act in respect of the child or children.

**32AA Extension of sec 32A to certain cases where spouses or de facto partners die contemporaneously**

- (1) Where—
- (a) a male employee died before his retirement, whether before, on or after the commencement of this subsection,
  - (b) his spouse or de facto partner died at the same moment or after he died or in

circumstances rendering it uncertain which of them survived the other, and

- (c) his spouse or de facto partner died before a pension became payable to the spouse or de facto partner under this Act consequent on his death,

he shall, for the purposes of section 32A as in force at any time, be deemed not to have had a spouse or de facto partner at the time of his death.

(2) Where—

- (a) a woman employee died before her retirement, on or after the commencement of this subsection,
- (b) her spouse or de facto partner died at the same moment or after she died or in circumstances rendering it uncertain which of them survived the other, and
- (c) her spouse or de facto partner died before a pension became payable to the spouse or de facto partner under this Act consequent on her death,

she shall, for the purposes of section 32A as in force at any time, be deemed not to have had a spouse or de facto partner at the time of her death.

### **32B (Repealed)**

### **32C Refund or minimum benefit in certain cases where spouse or de facto partner dies**

(1) Where—

- (a) an employee dies before retirement leaving a spouse or de facto partner,
- (b) the spouse or de facto partner dies, and
- (c) there are children of the employee or of the spouse or de facto partner in respect of whom pension becomes payable in accordance with section 33,

there shall be paid to the employee's personal representatives or, where the employee has no personal representatives, to such persons as STC may determine a sum equal to the contributions paid by the employee to the Fund less—

- (d) the total amount of pension paid to the spouse or de facto partner under section 30 otherwise than in respect of a child, and
- (e) any lump sum paid to the spouse or de facto partner under section 21C in respect of such a pension.

(2) If an employee dies before retirement leaving a surviving spouse or de facto partner, and the surviving spouse or de facto partner dies, and there is no child of the employee or of the spouse or de facto partner in respect of whom pension is payable under this Act, there is payable to the employee's personal representative or, where

the employee has no personal representatives, to such person as STC may determine, an amount calculated by deducting from the minimum benefit payable in respect of the employee the total of all benefits paid as a consequence of the death of the employee to the spouse or de facto partner or any other person under this Act (including any instalments of pension).

- (3) In a case to which subsection (1) applies, STC may, if it considers it to be in the best interests of the child or children, make a payment in accordance with subsection (2) as if there were no child or children of the deceased, in which case no pension is payable under this Act in respect of the child or children and no amount is payable under subsection (1).
- (4) For the purposes of this section, the minimum benefit payable in respect of an employee is the amount that would have been payable if the employee had resigned, immediately before dying, from the service of the employee's employer and elected under section 38B to take the benefit of section 38A.

### **32D Children's pensions at sec 61M rates**

- (1) A pension of the appropriate amount per fortnight under section 61M is payable on the death of a contributor or pensioner in respect of a child if the conditions set out in subsections (1A) and (1B) are satisfied.
  - (1A) The child must be a child of the contributor or pensioner or a child of a surviving spouse or de facto partner of the contributor or pensioner who is not eligible to receive a pension under section 33.
  - (1B) If the child is not a child of the contributor or pensioner, the child—
    - (a) must have been born or adopted before the death of the contributor or pensioner, and
    - (b) must have been ordinarily part of the contributor's or pensioner's household at the time of the death of the contributor or pensioner.
- (2) A pension under this section ceases to be payable in respect of a child if the surviving parent dies.
- (3) A pension under this section continues to be payable notwithstanding that the surviving parent marries or remarries.
- (4) Nothing in this section affects the operation of section 47.
- (5) In this section—

***pensioner*** means a person who received a pension because the person was a former contributor.

### 33 Children's pensions at sec 61N rates

- (1) A pension of the appropriate amount per fortnight under section 61N is payable on the death of a contributor or pensioner in respect of a child if the conditions set out in subsections (1A)–(1C) are satisfied.
- (1A) The child must be a child of the contributor or pensioner or a child of a spouse or de facto partner of the contributor or pensioner.
- (1B) The other parent of the child or the spouse or de facto partner of the contributor or pensioner who was a parent of the child—
- (a) must have died before the contributor's or pensioner's death, or
  - (b) must have been divorced from the contributor or pensioner, or
  - (c) must have been in a registered relationship or interstate registered relationship, within the meaning of the [Relationships Register Act 2010](#), or a de facto relationship, with the contributor or pensioner that ended before the contributor's or pensioner's death.

**Note—**

"De facto relationship" is defined in section 21C of the [Interpretation Act 1987](#).

- (1C) If the child is not a child of the contributor or pensioner—
- (a) in a case where the spouse or de facto partner who is the parent of the child is divorced from or the former de facto partner of the pensioner or contributor, the child must have been born or adopted before the divorce or end of the relationship, and
  - (b) in any case, the child must have been ordinarily part of the contributor's or pensioner's household at the time of the death of the spouse or de facto partner, divorce or end of the relationship.
- (1D) In this section—
- pensioner** means a person who received a pension because the person was a former contributor.
- spouse or de facto partner** includes a person previously married to the contributor or pensioner or a former de facto partner.
- (2) Where a pension ceases to be payable under section 32D in respect of a child because the surviving parent dies, a pension of the appropriate amount per fortnight under section 61N is payable in respect of the child.
- (3) Nothing in this section affects the operation of section 47.



### **33AA STC may determine to pay children's pensions in other cases**

STC may, if it considers it appropriate, determine that a pension is payable under a provision of this Act to a child even though the child is not eligible under that provision to receive a pension.

### **33A Variation of pension in certain circumstances**

- (1) In this section, a reference to pension under this Act is a reference to pension payable under this Act, including any increase to that pension payable under this or any other Act.
- (2) Where a person entitled to receive a pension under this Act or a child or student in respect of whom such a pension is payable would, in the opinion of STC, thereby be prejudicially affected in respect of any benefits otherwise receivable by that person, or that child or student, the amount of pension payable shall be such lesser amount than that provided for under this or any other Act as STC from time to time determines.
- (3), (4) (Repealed)
- (5) Where STC, under subsection (2), determines an amount of pension under this Act, the amount of the pension as determined by STC shall be payable in respect of such periods or at such times by way of lump sum or otherwise as STC from time to time determines.
- (6) A part of a pension that is not paid because of the operation of subsection (2) shall, in calculating a pension payable under section 30 or 31, be taken into account as if it had been payable.

### **33B STC to apportion benefits and other payments between the contributors' reserve and the appropriate employer reserve**

- (1) Whenever—
  - (a) a benefit under this Act becomes payable to a contributor (other than a benefit under Division 3A of Part 4), or
  - (b) a contributor elects to take the benefit of that Division, or
  - (c) if a contributor has died without having received a benefit under this Act—the benefit becomes payable to another person in consequence of that death,STC must ascertain the portion of the benefit that is payable from the contributors' reserve and the portion that is payable from the appropriate employer reserve.
- (2) For the purposes of subsection (1)—
  - (a) the portion of the benefit payable to or in respect of a contributor from the contributors' reserve is an amount equal to the lesser of the amount calculated

according to subsection (4) and the relevant amount, and

- (b) the portion of the benefit payable to or in respect of the contributor from the appropriate employer reserve is equal to the relevant amount, less the amount ascertained under paragraph (a).

(2A) When an amount under the family law superannuation legislation or Part 4A becomes payable to or in respect of a non-contributor spouse, STC must, in accordance with the regulations, determine the portion of the payment that is payable from the contributors' reserve and the portion that is payable from the appropriate employer reserve.

(3) For the purposes of subsection (2), the relevant amount is—

- (a) if a lump sum benefit (other than a commutation of pension) is to be paid to or in respect of the contributor—the amount of the benefit payable to or in respect of the contributor, or
- (b) if a pension or a commutation of a pension is to be paid to or in respect of the contributor—the amount calculated by STC as the capitalised value of the benefits payable to or in respect of the contributor.

(4) For the purposes of subsection (2), the amount to be calculated is—

- (a) the amount that would have been payable if the contributor had elected to take the benefit of section 38, and
- (b) interest—
  - (i) compounded on 30 June in each year in respect of the period beginning with the day on which the contributor first became liable to make contributions under this Act and ending with the day on which the contributor ceased to be employed by an employer, and
  - (ii) calculated at the prescribed rate on the amount ascertained by applying the formula set out in subsection (5).

(5) For the purposes of subsection (4) (b), the formula is as follows—

$$\frac{A + B}{2}$$

where—

**A** represents the total amount of contributions (excluding contributions refundable under section 15A (6AA) or (6AB)) that the contributor had paid to the Fund from the beginning of the contributor's contributory service to the beginning of the period in respect of which the calculation is to be made, together with interest (if any) at the prescribed rate calculated at 30 June immediately preceding that period.

**B** represents the total amount of those contributions from the beginning of the contributor's contributory service to the end of the period in respect of which the calculation is to be made, together with interest (if any) at the prescribed rate calculated as at 30 June immediately preceding that period.

- (6) For the purposes of this section, **prescribed rate** means—
- (a) in respect of any relevant period ending before 1 July 1972—3.5 per cent per year, and
  - (b) in respect of any relevant period beginning on or after 1 July 1972—the rate as fixed by STC from time to time, having regard to the earnings of the Fund and such other matters as STC considers relevant.

### **34-36 (Repealed)**

### **37 Retrenchment benefits payable to an employee who is retrenched after completing 10 years' service**

(1AA) This section does not apply to an employee who is retrenched before having completed 10 years' service with any one or more employers.

- (1) In the case of the retrenchment of an employee who was a contributor at 30 June 1963, the contributor is, subject to section 38B, entitled to either—
- (a) a lump sum payment equal to three and one-half times the sum of—
    - (i) the contributions that the contributor paid to the Fund (but without interest) before 13 January 1952, and
    - (ii) ten-elevenths of the contributions that the contributor has paid to the Fund (but without interest) on or after 13 January 1952,in determination of all rights given by this Act (subsection (4) excepted), or
  - (b) such pension as is determined by STC to be the equivalent of the contributor's rights in the Fund.
- (2) In the case of the retrenchment of an employee who became or becomes a contributor on or after 1 July 1963, the contributor is, subject to section 38B, entitled to either—
- (a) a lump sum payment equal to two and one-half times the contributions that the contributor has paid to the Fund (but without interest), in determination of all rights given by this Act (subsection (4) excepted), or
  - (b) such pension as is determined by STC to be the equivalent of the contributor's rights in the Fund.

- (3) (Repealed)
- (4) An employee entitled to—
- (a) a lump sum payment under subsection (1) (a) is also entitled to a lump sum payment equal to two and one-half times an amount equal to ten-elevenths of the contributions, or
  - (b) a lump sum payment under subsection (2) (a) is also entitled to a lump sum payment equal to one and one-half times an amount equal to the contributions,
- that would have been payable by the employee under this Act in respect of each of the reduced value units allocated to the employee, had each such reduced value unit been held by the employee as a contributory unit as from the earliest of the times that the employee is deemed by section 47C (6) to have held the reduced value unit.
- (4A) If STC has made a determination under section 61RA in respect of a benefit payable under this section, the amount of the benefit is reduced by the amount specified in STC's determination.
- (5) Where an employee who has been retrenched and is in receipt of a pension thereafter enters the service of an employer—
- (a) the pension shall not cease to be payable,
  - (b) the employee shall contribute as provided in Part 3, and
  - (c) the employee shall not be entitled to count the employee's service prior to retrenchment as service for the purpose of any other pension or benefit under this Act.
- (6) Where an employee who has been retrenched and has received a lump sum under this section thereafter enters the service of an employer, the employee is not entitled to claim any further benefit in respect of the employee's previous service unless the employee complies with section 38C.
- (7)–(10) (Repealed)
- (11) A person who, before becoming a contributor, was—
- (a) employed on terms requiring the contributor to give the whole of his or her time to that employment, and
  - (b) was paid at an hourly, daily, weekly or fortnightly rate, or at piecework rates,
- is entitled to have that employment treated as service as an employee for the purposes of this section.
- (12) Whenever—

- (a) a period of employment that a contributor has had with an employing authority, and
- (b) a later period of service that the contributor has had as an employee with an employer,

are continuous STC may, if satisfied that, having regard to the nature of the work performed by the contributor during that period of employment, it is proper to do so, treat, for the purposes of this section, that period of employment as a period of service as an employee with that employer.

- (13) A reference in subsection (12) to a period of service as an employee with an employer includes a reference to a period treated under subsection (11) or (12) as a period of service as an employee.

**37A Retrenchment benefits payable to contributors having not less than 3 years' contributory service**

- (1) This section applies to a contributor who is retrenched from the service of an employer on or after 13 February 1987 and who, at the time of retrenchment, has completed 3 years' continuous contributory service.

(1A) (Repealed)

- (2) For the purpose of subsection (1), a contributor who is retrenched shall be taken to have completed 3 years' continuous contributory service when—

- (a) the contributor has, for a continuous period of 3 years or more immediately preceding the retrenchment, been employed in the service of an employer or employers, and
- (b) during the continuous period of 3 years immediately preceding the retrenchment, the contributor has been a contributor under this Act or has been a contributor under this Act and a contributor to the Public Authorities Superannuation Fund.

- (3) For the purposes of subsection (1), the period of continuous contributory service by a contributor at the contributor's exit day is—

- (a) subject to paragraph (b)—the period that commenced when the contributor last became a contributor to the Fund and ended on that exit day, or
- (b) if immediately before becoming a contributor to the Fund the contributor was a contributor to the Public Authorities Superannuation Fund—the period that commenced when the contributor last became a contributor to the Public Authorities Superannuation Fund and ended on that exit day,

but excluding in either case any part of that period during which the contributor is treated by section 48 as being on leave of absence without pay.

- (4) A contributor to whom this section applies is, subject to section 38B, entitled to either—
- (a) a lump sum benefit calculated in accordance with the formula set out in subsection (5), or
  - (b) such pension as is determined by STC to be the equivalent of the contributor's rights in the Fund.

(5) The formula referred to in subsection (4) (a) is as follows—

$$B = C + E$$

where—

**B** represents the benefit to be determined,

**C** is equal to—

(a)

$$P_1 \times (0.96^{M-A}) \times F$$

, or

(b) the contributions paid by the contributor,

whichever is the greater, and

**E** is equal to

$$P_2 \times (0.98^{M-A}) \times F$$

(6) For the purposes of subsection (5)—

**A** represents the contributor's age in years and any fractional part of a year (that part to be calculated on a daily basis) on the contributor's exit day,

**F** is equal to—

(a) if "M" is 60 or more—285, and

(b) if "M" is less than 60—

$$320 - (M - 55) \times 7$$

**M** represents the greater of the following—

(a) the contributor's maturity age,

(b) the contributor's age in years and any fractional part of a year (that part to be calculated on a daily basis) at the date on which the contributor last became a

member of the Fund + 10,

**P<sub>1</sub>** is the employee-contributed pension component calculated in accordance with subsection (7) (a), and

**P<sub>2</sub>** is the employer-financed pension component calculated in accordance with subsection (7) (b).

(7) In subsection (6)—

(a)

$$P_1 = 2.20 \times \text{EPU}$$

where EPU is the sum of—

(i)

$$\text{UH}_n - \frac{\text{C}_n}{\text{R}_n} \text{ (except where } \frac{\text{C}_n}{\text{R}_n} \text{ exceeds UH}_n\text{)}$$

,

(ii)

$$\frac{\text{TCB}}{\text{RE}}$$

, and

(iii) UC, and

(b)

$$P_2 = 3.30 \times \text{UE} \times \frac{\text{S}}{\text{S} + \text{T}}$$

where—

**UE** is the number of units of pension that, pursuant to section 12 (1), is appropriate to the salary payable to the contributor on the contributor's exit day plus, in a case to which section 10W applies, the number of any excess units of pension referred to in section 10W (1) and in respect of which STC considers, in accordance with section 10W (5), that the retention of entitlement to benefits under this Act is warranted.

**S** is the number of years (including any fractional part of a year calculated on a daily basis) of continuous contributory service by the contributor with any one or more employers.

**T** is the number of years, if any, (including any fractional part of a year calculated on a daily basis) by which the contributor's exit day precedes—

(a) the date on which the contributor attains the maturity age, or

(b) where any employment which, on the contributor's exit day, the contributor is entitled to count as service for the purposes of section 21 is, in total, for less than a period of 10 years—the expiration of the balance of that period of 10 years,

whichever is the later.

(8) For the purposes of subsection (7) (a)—

**U<sub>HN</sub>** is the number of units of pension for which contributions were payable by the contributor on the contributor's exit day in accordance with the tables of contributions fixed by or under this Act, but excluding—

(a) any such units of pension which are excess units of pension referred to in section 10W (1) and in respect of which no person has any rights in the Fund, and

(b) any such units of pension, being reserve units, for which contributions were being made under section 15A,

**C<sub>n</sub>** is the amount of contributions due for the last contribution period for which contributions were payable by the contributor before the contributor's exit day, in respect of that number of units of pension,

**R<sub>n</sub>** is the relevant amount under subsection (9) in relation to the contributor for an additional unit of pension on the contributor's exit day,

**T<sub>CB</sub>** is the total amount paid in respect of instalments payable by the contributor on or before the contributor's exit day for units of pension for which the contributor contributed in accordance with Division 6 of Part 3 (but deducting from that amount any part allocated under this Act to the purchase of fully paid up units),

**R<sub>B</sub>** is the amount specified in section 10AG (1) as the cost of a unit of pension in relation to the contributor, and

**U<sub>C</sub>** is the number of units (if any) purchased by the contributor and credited to the contributor as fully paid up units under section 20C or otherwise.

(9) For the purposes of subsection (8), the relevant amount in relation to a contributor for an additional unit of pension on the contributor's exit day is—

(a) where the contributor has attained the prescribed age on or before that day, the amount which, if the contributor were required under Division 5 of Part 3 to commence to contribute for an additional unit of pension on that day, would be the amount payable in accordance with the tables of contributions fixed under section 10AD for that unit for a contribution period, or

(b) where the contributor has not attained the prescribed age on or before that day, the amount equal to the sum of—



- (i) the amount payable by the contributor for any additional unit of pension for which the contributor had been required to commence contributing on and from the contributor's last annual adjustment day for a contribution period or, as the case may be, the amount that would have been so payable if the contributor had been so required, and
  - (ii) for each day of the period commencing on the day following that annual adjustment day and ending on the contributor's exit day, the amount equal to 1/364th part of the difference between the amount referred to in subparagraph (i) and the amount that that amount would have been if, on the contributor's last annual review day before the contributor's exit day, the contributor had been 1 year older than the age actually attained.
- (10) For the purposes of subsection (7) (b), the period of continuous contributory service by a contributor on the contributor's exit day is the period that commenced when the contributor last became a contributor and ended on that day, but excluding any part of that period during which the contributor is treated by section 48 as being on leave of absence without pay.
- (10A) If STC has made a determination under section 61RA in respect of a benefit payable under this section, the amount of the benefit is reduced by the amount specified in STC's determination.
- (11) If a former employee who—
- (a) has been retrenched, and
  - (b) has received a retrenchment benefit under this section,
- subsequently enters the service of the same or another employer, the former employee is not entitled to claim any further benefit in respect of previous service with an employer unless the former employee has complied with section 38C.
- (12), (13) (Repealed)

### **37B Deferral of payment of benefits on retrenchment**

- (1) This section applies to a contributor who is retrenched from the service of an employer and who, at the time of retrenchment, is not less than 50 years of age.
- (2) A contributor to whom this section applies is entitled, subject to section 38B and only with the concurrence of his or her employer, to elect to retire on pension at the early retirement date instead of taking any pension, benefit or other amount that would be payable to the contributor under this Part on the retrenchment of the contributor.
- (3) If a contributor makes such an election, the contributor is entitled, on the early retirement date, to a pension under section 28, 28A or 28AA (whichever is applicable),

as if the contributor had continued in the service of the employer and had elected to retire, and retired, on the early retirement date. Section 21C applies accordingly.

- (4) The entitlement under this section arises only if the contributor agrees to pay to the Fund, and does pay to the Fund, within the time required by STC, an amount determined by STC, on the basis of actuarial advice, as the present value of the total of all further amounts that the contributor would have been required to contribute to the Fund had the contributor not been retrenched and had continued in service with the employer until the early retirement date.
- (5) If a contributor elects to take the benefit of this section, Division 7 of Part 3 applies, and continues to apply, in respect of the contributor's employer, as if the contributor were still employed by the employer and had continued in the service of the employer until the early retirement date. Accordingly, the employer must contribute to the Fund as required by those provisions.
- (6) For the purposes of Division 7 of Part 3, the contributions to be made by the employer are to be determined by STC on the basis of the contributions that would have been payable by the contributor had he or she continued in the service of the employer at the same salary and on the same basis as immediately before his or her retrenchment.
- (7) If a contributor who has been retrenched elects to take the benefit of this section and afterwards enters the service of the same or a different employer, the contributor is not entitled to claim any further benefit in respect of the contributor's previous service, except in accordance with section 38C.
- (8) If a contributor who elects to take the benefit of this section—
  - (a) becomes incapacitated before the early retirement date, or
  - (b) dies before the early retirement date,

STC may treat the contributor (whether or not the election has already taken effect) as having elected to take the benefit of Division 3A immediately before he or she became incapacitated or died, and apply those provisions accordingly. If the contributor has paid a lump sum to the Fund in accordance with this section, STC is to refund to the contributor, or the contributor's personal representatives, an amount determined by STC as being the value of excess contributions paid by the contributor (that is, contributions paid in respect of a period commencing after the contributor's incapacity or death).

- (9) In this section—

**early retirement date**, in relation to a contributor to whom this section applies, means the date on which the contributor will reach the age of 55 years.

### 38 Refund of contributions

- (1) If a contributor—
  - (a) is retrenched from the service of an employer, or
  - (b) resigns or is dismissed or discharged from the service of an employer,the contributor is, subject to section 38B, entitled to be paid a lump sum (without interest) equal to the contributions (other than contributions refundable under section 15A (6AB)) paid by the contributor under this Act, irrespective of the cause of the retrenchment, resignation, dismissal or discharge.
- (2) Whenever a lump sum is paid under subsection (1), there shall, subject to subsection (3), be deducted from that sum any amount received by the contributor as a pension before the contributor's retrenchment, resignation, dismissal or discharge.
- (3) A deduction under subsection (2) must not reduce the amount paid to a contributor under this section to an amount below the contributions paid by the contributor since the contributor last received any amount as pension.
- (4) If a former employee who—
  - (a) has been retrenched, dismissed or discharged, or has resigned, and
  - (b) has received a benefit under this section or section 38A,subsequently enters the service of the same or another employer, the former employee is not entitled to claim any further benefit in respect of previous service unless the former employee has complied with section 38C.

### 38A Withdrawal benefit

- (1) In this section—

**contributory service**, in relation to a contributor who is retrenched, resigns or is dismissed or discharged from the service of an employer, is the next preceding period that—

  - (a) began—
    - (i) when the contributor last became a contributor, or
    - (ii) if, since last becoming a contributor, the contributor had been held to be on leave of absence without pay as provided by section 48—when an employer re-employed the contributor after that leave of absence, and
  - (b) ended when the contributor's employment with the employer ceased.

**prescribed rate** means—

- (a) in respect of any relevant period ending before 1 July 1972—3.5 per cent per year, and
  - (b) in respect of any relevant period beginning on or after 1 July 1972—the rate as fixed by STC from time to time, having regard to the earnings of the Fund and such other matters as STC considers relevant.
  - (c) (Repealed)
- (2) If a contributor who has not completed 5 years' contributory service is retrenched, resigns or is dismissed or discharged from the service of an employer, the contributor is, subject to section 38B, entitled to receive from the Fund the amount that would have been payable if the contributor had elected to take the benefit of section 38.
- (3) If a contributor who has completed 5 years' but less than 10 years' contributory service is retrenched, resigns or is dismissed or discharged from the service of an employer, the contributor is, subject to section 38B, entitled to receive from the Fund an amount equal to the sum of—
- (a) the amount that would have been payable if the contributor had elected to take the benefit of section 38, and
  - (b) interest—
    - (i) compounded on 30 June each year in respect of the period beginning with the day on which the contributor first became liable to make contributions under this Act and ending with the day on which the contributor ceased to be employed by that employer, and
    - (ii) calculated at the prescribed rate on the amount ascertained by applying the formula set out in subsection (5).
- (4) If a contributor who has 10 years' contributory service or more is retrenched, resigns or is dismissed or discharged from the service of an employer, the contributor is, subject to section 38B, entitled to receive from the Fund an amount equal to the sum of—
- (a) the amount that would have been payable if the contributor had elected to take the benefit of section 38, and
  - (b) interest—
    - (i) compounded on 30 June each year in respect of the period beginning with the day on which the contributor first became liable to make contributions under this Act and ending with the day on which the contributor ceased to be employed by that employer, and
    - (ii) calculated at the prescribed rate on the amount ascertained by applying the

formula set out in subsection (5), and

(c) a further amount calculated in accordance with the following formula—

$$\frac{T \times P}{40}$$

where—

**T** represents the sum of the amounts referred to in paragraphs (a) and (b), and

**P** represents the period of the contributor's contributory service, expressed in years with any fractional part of a year being calculated on a daily basis.

(5) For the purposes of subsections (3) (b) and (4) (b), the formula is as follows—

$$\frac{A + B}{2}$$

where—

**A** represents the total amount of contributions (excluding contributions refundable under section 15A (6AB)) that the contributor had paid to the Fund from the beginning of the contributor's contributory service to the beginning of the period in respect of which the calculation is to be made, together with interest (if any) at the prescribed rate calculated at 30 June immediately preceding that period, and

**B** represents the total amount of those contributions from the beginning of the contributor's contributory service to the end of the period in respect of which the calculation is to be made, together with interest (if any) at the prescribed rate calculated at 30 June immediately preceding that period.

(5A) Despite subsections (2), (3) and (4), the maximum amount that a contributor is entitled to receive from the Fund under this section is—

(a) in the case of a contributor who has not attained the age of 55 years—the amount calculated by STC as the value of the lump sum that would have been payable to the contributor had he or she retired at 55 years of age and elected under section 21C to commute the whole of the pension to which the person was entitled on retirement at that age, or

(b) in the case of a contributor who has attained the age of 55 years—the amount calculated by STC as the value of the lump sum that would have been payable to the contributor had he or she retired at his or her current age and elected under section 21C to commute the whole of the pension to which the person was entitled on retirement.

(5B) If STC calculates that the maximum amount that a contributor is entitled to receive from the Fund under subsection (5A) is less than the amount the contributor would

have been entitled to receive under this section had the amendments made to this section by the *Superannuation Legislation Amendment Act 1998* not been made, then the contributor is entitled to receive the greater amount (despite those amendments).

- (6) If STC has made a determination under section 61RA in respect of a benefit payable under this section, the amount of the benefit is reduced by the amount specified in STC's determination.

**38B Contributor who is retrenched, resigns or is dismissed or discharged to be entitled to the greatest available benefit**

- (1) A contributor who is retrenched from the service of an employer and who, at the date when the retrenchment takes effect, is not entitled to elect to retire on a pension under section 27, 28, 28A or 28AA may, at any time before the end of 3 months after that date, elect between taking—
- (a) a lump sum benefit payable under a provision of this Part to any such contributor who is retrenched, or
  - (b) if such a provision also confers an entitlement to a pension—a pension, or
  - (c) subject to subsection (7)—the benefit of Division 3A, or
  - (d) if section 37B applies to the contributor—the benefit of that section.
- (2) A contributor who resigns or is dismissed or discharged from the service of an employer may, at any time before the end of 3 months after the date when the resignation, dismissal or discharge takes effect, elect between taking—
- (a) a lump sum benefit payable under a provision of this Part to a contributor who has resigned or is dismissed or discharged, or
  - (b) subject to subsection (7)—the benefit of Division 3A.
- (3) If a contributor is retrenched, resigns or is dismissed or discharged from the service of an employer, the employer must take all practicable steps to obtain from the contributor an election under subsection (1) or (2) and, after obtaining such an election, must forward it immediately to STC.
- (4) If a contributor who is entitled to make an election under subsection (1) or (2) to take a particular kind of benefit does not make such an election before the end of the prescribed period, the contributor shall be taken to have elected to take the kind of benefit that STC decides to be the most appropriate in the circumstances of the case.
- (5) If a contributor elects under this section to take a particular kind of benefit under subsection (1) and would, but for subsection (6), be entitled to a benefit of that kind under 2 or more provisions of this Part, STC must calculate which of the benefits under those provisions would be the greater or greatest.

- (6) A contributor referred to in subsection (5) is entitled to receive only the greater or greatest of the benefits calculated under that subsection.
- (7) A contributor who is retrenched, resigns or is dismissed or discharged from the service of an employer is not entitled to elect under subsection (1) or (2) to take the benefit of Division 3A unless the contributor has completed 3 years' continuous contributory service.
- (8) For the purposes of subsection (7), a contributor to whom that subsection applies shall be taken to have completed 3 years' contributory service when—
- (a) a contributor has, for a continuous period of 3 years or more immediately preceding the retrenchment, been employed in the service of one or more employers, and
  - (b) during the period of 3 years immediately preceding the retrenchment, the contributor has been a contributor under this Act or has been a contributor under this Act and a contributor to the Public Authorities Superannuation Fund.
- (9) For the purposes of subsection (7), the period of continuous contributory service by a contributor at the contributor's exit day is—
- (a) subject to paragraph (b)—the period that commenced when the contributor last became a contributor to the Fund and ended on that exit day, or
  - (b) if immediately before becoming a contributor to the Fund the contributor was a contributor to the Public Authorities Superannuation Fund—the period that commenced when the contributor last became a contributor to the Public Authorities Superannuation Fund and ended on that exit day,
- but excluding in either case any part of that period during which the contributor is treated by section 48 as being on leave of absence without pay.

### **38C Break in service may be cured on certain conditions**

- (1) In this section, a reference to the prescribed rate is a reference to the rate of interest for the time being fixed by STC under section 86A for the purposes of this section.
- (2) Where a person who ceases to be employed by an employer (otherwise than by retirement or retrenchment on pension under this Act) enters the service of the same or a different employer within the next succeeding period of three months and, within that same period of three months, would (but for section 1A) be required to contribute to the Fund, the person may, subject to subsection (8), elect to resume payment of the person's contributions as if the person had not ceased to be employed if the person elects within three months after the person would (but for section 1A) be required to contribute to the Fund to comply, and upon the election taking effect does comply, with this section.

- (3) A person referred to in subsection (2) complies with this section if—
- (a) the person pays to the Fund any lump sum received by the person, or authorises the retention in the Fund of any lump sum payable to the person, under section 37, 37A, 38 or 38A in consequence of the cessation of the person's employment together with, where the person has received any such amount, interest thereon at the prescribed rate from the date the amount was paid to the person to the date of receipt in the office of STC of the amount payable pursuant to this paragraph,
  - (b) the person pays to the Fund the amount referred to in subsection (4), and
  - (c) the person resumes payment to the Fund of the contributions that would, had the person continued in the employment of the person's previous employer, have been payable by the person on and from the beginning of the four-weekly contribution period in which the person ceased to be employed.
- (4) The amount required to be paid under paragraph (b) of subsection (3) by a person who makes an election under this section is an amount equal to the sum of—
- (a) all the contributions that would have been payable—
    - (i) by the person from the day following the day to which the person's contributions were paid before cessation of the person's former employment, and
    - (ii) by the person's employer from the beginning of the four-weekly contribution period in which the person ceased to be employed,had the person continued in the employment of the person's former employer, at the same salary as that which the person was receiving immediately before cessation of the contributions the person was required to make by reason of the person's former employment, until the beginning of the first contribution period in which the person's employment resumes, and
  - (b) interest at the prescribed rate on the amount of each contribution referred to in paragraph (a) from the termination of the four-weekly contribution period in respect of which it is required to be paid to the date of receipt of the contribution in the office of STC.
- (5) STC may, in special circumstances and in a particular case—
- (a) waive payment of interest under this section or any part thereof, or
  - (b) permit payment over an extended period of any amount required to be paid pursuant to paragraph (a) or (b) of subsection (3).
- (6) Where a person who makes an election under this section was, immediately before



cessation of the person's employment, contributing for reserve units of pension under section 15A, the person may, when making an election under this section, make an election under subsection (6) of that section and, where the person so elects under that section, contributions in respect of the reserve units to which the election under that section relates shall not be taken into account when calculating any amount payable by that person under this section.

- (7) Part 3 applies to and in respect of a person who makes an election under this section and does not comply with this section, and so applies as if the person had not made the election.
- (8) Section 10B does not apply to a person who makes an election under this section, unless STC directs that that section shall apply to the person.
- (9) A person who ceases to be an employee and elects under section 38B to take the benefit of Division 3A may not, upon entering the service of an employer within the next succeeding period of 3 months, make an election under this section if, during that period, the person received any benefit under that Division.
- (10) Where a person who is deemed under subsection (11) not to have ceased to be an employee had, upon ceasing to be an employee, elected under section 38B to take the benefit of Division 3A—
  - (a) the person shall be deemed not to have elected to take the benefit of Division 3A, and
  - (b) no person has any rights in the Fund in relation to the employee-contributed pension component, or the employer-financed pension component, calculated in relation to the person.
- (11) A person who makes an election under, and complies with, this section shall, for the purposes of this Act, but subject to subsection (8), be deemed not to have ceased to be an employee or a contributor by reason of the cessation of employment that gave rise to the election.
- (12) If a person who is deemed under subsection (11) not to have ceased to be an employee had, on ceasing to be an employee, elected to take the benefit of section 37B—
  - (a) the person is deemed not to have elected to take the benefit of that section, and
  - (b) any lump sum amount payable by the employee to the Fund under that section ceases to be payable and, if it has already been paid to the Fund, is to be refunded to the employee.

### **39 Desertion of spouse or de facto partner or child**

- (1) Where any pensioner deserts his or her spouse or de facto partner, the spouse or de

facto partner may from time to time apply to any Magistrate, and on proof of such desertion such Magistrate may order the payment during such period as the Magistrate thinks desirable of pension under section 31 as if the said pensioner were dead or of pension of such lesser amount as the Magistrate may determine, subject to the pension so ordered to be paid not exceeding the pension being paid to the pensioner at the time of the order. STC shall comply with any such order which has been served on it or of which written notice has been given to it.

- (2) Where any pensioner deserts any of the pensioner's children who are dependent on the pensioner, the guardian of such children, or STC, may apply to any Magistrate, and on proof of such desertion such Magistrate may order the payment of pension under section 32D or 33 as if the said pensioner were dead subject to the pension so ordered to be paid not exceeding the pension payable to the pensioner at the time of the order. STC shall comply with any such order made on its application or with any such order made on the application of the guardian where the same has been served on it or where written notice thereof has been given to it.
- (3) Where a certificate has been granted under subsection (1) of section 45 of the *Maintenance Act 1964*, the person entitled to receive the money ordered to be paid by the order to which the certificate relates may, in lieu of filing the certificate or causing the same to be filed as provided in subsection (2) of that section, file the same or cause it to be filed with STC.

Where the defendant named in such certificate is a contributor who has resigned or been dismissed or discharged from the service of an employer and who has not been paid the lump sum referred to in subsection (1) of section 38, or payable under section 38A, STC may pay to the person entitled as aforesaid out of such lump sum the amount specified in the certificate or so much as does not exceed such lump sum or the unpaid balance thereof.

- (4)
  - (a) Any payment to a deserted spouse or de facto partner or in respect of children under this section shall take effect from the date that notice of such order or certificate is received by STC.
  - (b) Every payment made by STC pursuant to an order or certificate referred to in subsection (1), (2) or (3) shall be as valid as if made to the pensioner or contributor.

#### **40 Male pensioner sentenced to imprisonment**

- (1) Where any male pensioner is in prison for any period in excess of one month—
  - (a) his spouse or de facto partner may be paid during any such period of imprisonment pension for the spouse or de facto partner and in respect of any children of the pensioner or the spouse or de facto partner that would have been

payable under sections 31 and 32D if the pensioner were dead, or

(b) in any other case, pension may be paid in respect of any children of himself or his spouse or de facto partner in accordance with the provisions of section 33 as if the pensioner were dead.

(2) Any amount payable to a spouse or de facto partner or in respect of children in accordance with paragraphs (a) and (b) of subsection (1) shall be deducted from any pension payable to the pensioner and the balance of such pension shall be paid to him or to such person including his spouse or de facto partner, or a person on behalf of his children, as STC determines.

(3) Any payment made by STC under the authority of this section shall—

(a) be as valid as if made by way of pension to the pensioner, and

(b) not exceed the amount of pension which but for his imprisonment would have been payable to the pensioner.

#### **41 Woman pensioner sentenced to imprisonment**

(1) Where any woman pensioner is in prison for any period in excess of one month STC may suspend payment of pension during such period of imprisonment or may pay the pension or part thereof to such person as STC may determine on the pensioner's behalf and any balance of such pension shall be paid to the pensioner.

(2) Where any female spouse or de facto partner in receipt of a pension under section 30 or 31 is in prison for any period in excess of one month any pension payable to her in respect of children shall be payable in accordance with the provisions of section 33 as if she were dead.

(3) Any pension payable in respect of children under subsection (2) shall be deducted from the pension payable to the female spouse or de facto partner and the pension payable in respect of her children and the balance, if any, of such pension shall be paid to her or to such person as STC may determine on her behalf.

(4) Any payment made by STC under the authority of this section shall—

(a) be as valid as if made by way of pension to the pensioner, and

(b) not exceed the amount of pension which but for her imprisonment would have been payable to the pensioner.

#### **42 Incapacity or absence of pensioner**

(1) Subject to sections 39, 40 and 41 if because of a pensioner's incapacity from any cause or because a pensioner cannot be found STC is of opinion that payment of a pension or other benefit under this Act should be made to a person other than the

pensioner or other beneficiary and is satisfied that such payment will be used for the maintenance, care and support of the pensioner or beneficiary, or a person who is wholly or partly dependent on the pensioner or beneficiary, STC may make payment of the pension or part thereof to such other person during the period of absence or incapacity.

- (2) Any amount payable pursuant to subsection (1) shall be deducted from any pension or benefit payable to the pensioner or beneficiary.
- (3) Any payment made by STC under the authority of this section shall be as valid as if made by way of pension or benefit to the pensioner or beneficiary, as the case may be.

### **43 Payments in respect of children**

- (1) A pension payable under this Act in respect of a child shall be paid to the child's mother, if living, or, if she is not living, to the child's father, if living.
- (2) Notwithstanding anything elsewhere contained in this Act, any money payable out of the Fund under this Act in respect of a child may, at the discretion of STC, be paid to the child's guardian or expended by STC for the benefit of the child.
- (3) Not more than one pension may be paid in respect of the one child during any one period and where, but for this subsection, pensions would be payable, in respect of the child, of the appropriate amount per fortnight under both section 61M and section 61N, the pension payable shall be that of the appropriate amount per fortnight under section 61N.
- (4) (Repealed)

### **43A Pensions in respect of students**

- (1) The provisions of this section shall have effect notwithstanding anything elsewhere in this Act contained.
- (2) In this section **student** means a person who, though having attained the age of eighteen years, is under the age of twenty-five years and is receiving full time education from a school, college or university approved by STC.
- (3) A pension under this section—
  - (a) shall be payable in respect of a student if a pension would be payable in respect of such student were the student under the age of eighteen years, and
  - (b) shall be payable to such persons as STC determines a pension would have been payable were such student under the age of eighteen years or shall be expended by STC towards the support or education of such student.

- (4) The amount of pension payable under this section shall be—
- (a) in the case of a student in respect of whom a pension would be payable under section 33 were the student under the age of eighteen years—the appropriate amount per fortnight under section 61N, or
  - (b) in any other case—the appropriate amount per fortnight under section 61M.
- (5) A pension payable under this section shall be paid until the student attains the age of twenty-five years or ceases to be a student or dies whichever first occurs.
- (6) A pension shall not be paid to any person in respect of a student unless STC is satisfied that such pension is being used for or towards, or such person contributes towards, the support or education of such student.
- (7) For the purposes of this section STC may at any time require evidence of the age of the student, the education being received by the student, or the support or education of the student for or towards which the pension is being used, or being contributed to by any person to whom a pension under this section is payable.

In default of the provision of such evidence or if in the opinion of STC the evidence provided is not satisfactory STC may refuse to pay such pension.

#### **44 Pensions payable for a life**

- (1) Except where otherwise specifically provided, a pension shall be payable during the life of the person entitled thereto.
- (2) Pensions in respect of children shall be payable until they reach the age of eighteen years or die under that age.

#### **45 Pensions payable fortnightly**

Pensions shall be payable by equal fortnightly instalments.

#### **46 Reduction of spouses' or de facto partners' pensions**

Except where otherwise specifically provided, in any case where in this Act provision is made for the pension of any person to be determined by STC, any pension under this Act to the person's spouse or de facto partner in respect of the spouse's or de facto partner's own life shall be two-thirds of the amount so determined, but not less than one unit.

#### **46A Miscellaneous provisions as to spouses' or de facto partners' pensions**

- (1) In this section, ***spouse's or de facto partner's pension*** means a pension under section 30 or 31.
- (2) (Repealed)

- (3) Where, but for this subsection, a person would be entitled to more than one spouse's or de facto partner's pension, the person shall be entitled to only one of those pensions, being (where they are not equal) the greater or greatest of them.
- (4) A reference in—
- (a) section 30 (1) to the pension that would have been payable to a male contributor on his retirement,
  - (b) section 30 (2) to the pension that would have been payable to a woman contributor on her retirement,
  - (c) section 31 (1) to the pension payable to a spouse or de facto partner at the time of the spouse's or de facto partner's death, or
  - (d) section 31 (2) to the pension payable to a spouse or de facto partner at the time of the spouse's or de facto partner's death,
- does not include a reference to a spouse's or de facto partner's pension.

**46B Competing claims for spouses' or de facto partners' pensions**

- (1) This section applies to a pension under this Act which is payable to the spouse or de facto partner of a deceased person.
- (2) Where, but for this subsection, a pension to which this section applies would be payable to more than 1 person (because a deceased person has left more than 1 spouse or de facto partner)—
- (a) the pension is payable in accordance with a determination made by STC, and not otherwise, and
  - (b) the total amount of pension payable to those persons at any time shall not exceed the amount of a single pension.
- (3) For the purpose of subsection (2) (a), STC may determine in relation to a pension to which this section applies—
- (a) that the pension is not payable to such of the persons concerned as it specifies, or
  - (b) that, subject to subsection (2) (b), the amount of the pension shall be apportioned between the persons concerned in such manner as it specifies.
- (4) STC may withhold the payment of 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 any part of the amount commuted—
- (a) until the expiration of the period of 30 days after the death of the person, or

- (b) where application has been made for the pension by more than 1 person, until it is satisfied that only 1 of those persons is entitled to the pension or until a determination is made in relation to the matter by STC under this section.
- (5) Where, 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 the 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) Where, 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 STC to a person purporting to be the spouse or de facto partner of a deceased person shall be deemed to have been paid to such a spouse or de facto partner.
- (8) Where, 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 STC may determine, any pension to which this section applies which is payable to the spouse or de facto partner of the deceased person shall be reduced, in the prescribed manner, by the amount so paid.
- (9) For the purposes of subsection (8), the prescribed manner of reducing a benefit 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 STC determines.

#### **47 Pensions for certain spouses or de facto partners and their children**

- (1) Pension shall not, upon the death of a pensioner, be payable to a person who is the spouse or de facto partner of the deceased or in respect of any children of the spouse or de facto partner who are not children of the pensioner unless—
  - (a) in the case of the spouse or de facto partner of a pensioner receiving a pension under section 29, the person was the pensioner's spouse or de facto partner—

- (i) before becoming entitled to that pension, or
- (ii) before the pensioner attained the maturity age and more than 3 years before the death of the pensioner, or

(b) in any other case, the person was the pensioner's spouse or de facto partner before becoming entitled to a pension under this Act,

and unless the person remained the pensioner's spouse or de facto partner until the date of death.

(2) Despite subsection (1), a pension is payable under section 31, on the death of a pensioner on or after the commencement of this subsection, to the spouse or de facto partner of the deceased pensioner if the spouse or de facto partner—

(a) became such a spouse or de facto partner after the deceased pensioner became entitled to a pension under this Act, and

(b) has or had in his or her marriage or relationship with the deceased pensioner a child, being—

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

(ii) a child of the deceased pensioner who was conceived before and born alive after the death of the pensioner, and

(c) had been married to, or living in the relationship with, the pensioner for 3 years or more immediately before the death of the pensioner.

(3) Despite subsection (1), a pension reduced on a pro rata basis according to the proportion that the period of the marriage or relationship bears to 3 years is payable under section 31, on the death of a pensioner, to the spouse or de facto partner of the deceased pensioner if the spouse or de facto partner—

(a) satisfies the requirements of subsection (2) (a) and (b), and

(b) had been married to, or living in the relationship with, the pensioner for less than 3 years immediately before the death of the pensioner.

**Note—**

Section 31 provides for the rate of pension to be paid to the spouse or de facto partner on the death of a pensioner.

**47A (Repealed)**



#### **47B Employer subsidy not to be of greater benefit if service not continuous**

- (1) In this section *withdrawal benefit* means—
- (a) a benefit payable in accordance with section 38A (3) or (4), or
  - (b) any other benefit payable to or in respect of a person on cessation of the person's employment otherwise than by reason of the person's death, where the benefit is wholly or partly payable pursuant to or from a retirement scheme, fund or arrangement 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 employed by the employer or authority.
- (2) Where a withdrawal benefit is paid, or is or will become payable, to a person and the person subsequently contributes to the Fund without complying with section 38C, any benefit (other than a benefit payable pursuant to section 38 or a benefit referred to in paragraph (a) of subsection (1)) payable in respect of that person shall be reduced in a manner determined by STC having regard to the amount of any withdrawal benefit previously paid to the person.

### **Division 2A Reduced value units**

#### **47C Allocation of reduced value units**

- (1) Where—
- (a) a contributor or a contributor's spouse or de facto partner is entitled to a pension under this Act consequent on the contributor's ceasing to be a contributor, or
  - (b) (Repealed)
  - (c) a contributor elects to take the benefit of section 37,
- and the contributor has a number of abandoned units at the contributor's exit day, STC shall (whether or not the contributor has died) allocate to the contributor one (and one only) reduced value unit in substitution for each of the number of abandoned units that the contributor has at the contributor's exit day.
- (1A) This section does not apply to—
- (a) a person who is entitled to a pension under section 28AA or to a pension under Division 3A, or
  - (b) a person who is retrenched from the service of an employer and who is to receive or is receiving a pension under section 37A.
- (1B) (Repealed)
- (2) The reduced value units allocated to a contributor under this section shall be deemed

to have been held by the contributor at the contributor's exit day.

(3) Where—

- (a) a person referred to in subsection (1) has made an election to take up an abandoned unit under section 10Y or 10Z,
- (b) the unit has not been held as a contributory unit for at least 2 years and 6 months, and
- (c) the contributor's exit day is before the last day of the contribution period preceding that in which the contributor would attain the maturity age,

STC may treat the unit as not having been taken up as a contributory unit, and, if STC does so, the contributions paid to the Fund by the contributor concerned or the contributor's spouse or de facto partner in respect of the unit shall be refunded.

- (4) For the purposes of this section, where an election is made under section 10R to abandon a unit of pension, the unit shall be deemed to be an abandoned unit that the contributor concerned had at the contributor's exit day.
- (5) For the purposes of this section, where an election is made under section 23BA in respect of one or more additional units of pension, the unit or units shall be deemed to have been held by the contributor concerned at the contributor's exit day.
- (6) For the purposes of sections 37 (4) and 47D (3), a contributor to whom reduced value units are allocated under this section shall, as at the contributor's exit day, be deemed to have held at any time one (and one only) reduced value unit for each of the number of abandoned units that the contributor had at that time, but so that—
  - (a) the number of reduced value units that the contributor would, but for this paragraph, be so deemed to have held before that time does not exceed the number that the contributor is so deemed to have held at that time, and
  - (b) the number of reduced value units that the contributor would, but for this paragraph, be so deemed to have held at that time does not exceed the number that the contributor is allocated at the contributor's exit day.
- (7) Where the number of reduced value units to be allocated to a contributor is smaller than the number of abandoned units that the contributor has at the contributor's exit day, STC shall, for the purposes of subsection (6), have regard to such of those abandoned units as the contributor has had the longest.
- (8) This section does not apply to—
  - (a) a person to the extent to which the person or the person's spouse or de facto partner satisfies STC that the allocation of reduced value units would prejudicially affect the person or the person's spouse's or de facto partner's interests, or

(b) a person whose exit day is before 13 January 1977.

**47D Benefits payable in respect of reduced value units**

- (1) Subject to this section, pensions are payable in respect of reduced value units as if they were contributory units.
- (2) Notwithstanding anything in this or any other Act, but subject to this section, the sum of \$3.30 per fortnight shall, in respect of reduced value units, be the unit of pension.
- (3) Where a pension becomes payable under section 28A to a contributor—
  - (a) the fortnightly pension, payable to the contributor in respect of a reduced value unit that is allocated to the contributor and that the contributor is deemed by section 47C (6) to have held for not less than 2 years and 6 months, shall be the amount that bears to \$3.30 the same proportion as the fortnightly pension that would be payable in respect of that unit had it been a contributory unit bears to \$5.50, and
  - (b) pension is not payable to the contributor in respect of a reduced value unit that is allocated to the contributor and that the contributor is deemed by section 47C (6) to have held for less than 2 years and 6 months.
- (4) Where a pension becomes payable under section 29 (2) in respect of contributory units for which a contributor has contributed, the fortnightly pension payable in respect of each of the contributor's reduced value units shall be the amount that bears to \$3.30 the same proportion as the fortnightly pension payable in respect of each of those contributory units bears to \$5.50.
- (5), (6) (Repealed)
- (7) The pension payable in respect of reduced value units is subject to automatic adjustment in accordance with Division 6.
- (8) If STC has made a determination under section 61RA in relation to a pension payable in respect of reduced value units, the amount of the pension is reduced by the amount specified in STC's determination.

**47E No employee contributions payable**

No contributions to the Fund are payable by a contributor in respect of a reduced value unit.

**47F (Repealed)**

## **Division 3 Breakdown pensioners—special provisions re**

### **48 Breakdown pensioner held to be on leave**

Any pensioner who is in receipt of a “breakdown” pension, shall for the purposes of this Act be held to be on leave of absence without pay, but shall not be required to contribute in respect of the period of such leave. Notwithstanding the fact that the pensioner is held to be on leave of absence, the pensioner’s office or position shall be held to be vacant, and may be filled by the appointment thereto of some other person.

### **49 Continuity of service**

The period of such leave without pay in the case of a “breakdown” pensioner shall not count as service; but it shall not, except for the purposes of sections 28AA, 28B, 37A, 38A and 52A, in the event of the pensioner’s re-employment under any employer, be held to constitute a break in the continuity of the pensioner’s service.

### **50 Employee retired through infirmity may be called up for medical examination**

Any such pensioner shall submit himself or herself for medical examination by one or more persons or bodies nominated, or one or more persons who are members of a class of persons nominated, by STC, as and when required by STC, and if the pensioner make default in complying with such requirement, pension shall cease to be payable to the pensioner during such default.

### **51 Employee restored to health may be recalled to service**

- (1) If, in the opinion of STC, the health of any pensioner retired as aforesaid has become so restored as to enable the pensioner to perform duties which, having regard to the duties performed by the pensioner immediately prior to the pensioner’s retirement, are in the opinion of STC suitable to be performed by such pensioner, STC may communicate with the employer from whose service the pensioner was retired, or any other employer under this Act, and, if suitable employment be found for such pensioner, at a salary not less than two-thirds of the salary of a person who is employed in a position which is, in the opinion of STC, a corresponding position to that in which the pensioner was employed immediately before the pensioner’s retirement, or at such salary as may be agreed upon between the pensioner and the pensioner’s employer, may cancel the pension; thereupon the pension shall cease to be payable.
- (2) In the event of the subsequent retirement on grounds of invalidity or physical or mental incapacity to perform the person’s duties or of the death of a person who has been recalled to the service in accordance with subsection (1)—
  - (a) pension shall, where such retirement or death occurred five years or more after the recall of such person, be paid as provided in this Act but such pension shall not be less than the amount of pension at which the person was previously retired,

(b) pension shall not, where such retirement or death occurred less than five years after the recall of such person, be paid in respect of the number of units of pension in excess of the number for which the person was contributing at the time when the person was previously retired but in such case pension shall not be less than the amount of pension at which the person was previously retired and a lump sum, equal to the contribution paid by the person in respect of the number of units of pension in excess of the number in respect of which pension is payable as aforesaid, shall be payable.

(3) Notwithstanding anything in this Act, but except as prescribed—

(a) where a person is retired under section 22 within five years of again becoming a contributor following a previous retirement under that section, then, as on and from the date (being not earlier than the commencement of this subsection) on which pension thereafter first becomes payable to the person, the rate at which it is payable shall be that at which it would have been payable to the person had the person continued in the person's last retirement (disregarding any retirement of that person to which subsection (2) (b) applied) instead of again becoming a contributor and had the provisions referred to in the definition of **suspended part of a pension** in section 61B (1) not been enacted, and

(b) where a contributor dies within five years of having again become a contributor following a previous retirement under section 22, then, as on and from the date (being not earlier than the commencement of this subsection) on which pension thereafter first becomes payable to the contributor's spouse or de facto partner, the rate at which it is payable shall be that at which it would have been payable to the contributor's spouse or de facto partner had the contributor—

(i) where the contributor has been retired under section 22 once only—continued in that retirement instead of the contributor's again becoming a contributor, or

(ii) where the contributor has been so retired more than once—continued in the contributor's last retirement (disregarding any retirement of the contributor's to which subsection (2) (b) applied) instead of again becoming a contributor,

and had the provisions referred to in the definition of **suspended part of a pension** in section 61B (1) not been enacted.

(4) Without affecting the operation of subsection (3), Part 2 of the [Superannuation \(Amendment\) Act 1974](#), does not apply to a pension referred to in subsection (3).

#### **51A Division not applicable to lifetime pensions**

This Division does not apply if STC determines that a "breakdown" pension is to be paid to a person for the remainder of the person's life under section 29 (5) or 52E (4A).

## 52 Governor may prescribe different provisions

The Governor may, on the recommendation of STC at any time, by regulation, prescribe, in respect of contributors suffering from invalidity or physical or mental incapacity to perform their duties any or all of the following—

- (a) Conditions of retirement.
- (b) Pensions or other benefits.
- (c) Provisions for cancellation of pensions or other benefits.
- (d) Conditions of compulsory re-employment.

## Division 3A Voluntarily deferred benefits

### 52A Calculation of preserved pension components

- (1) Where a person who is retrenched or resigns or is dismissed or discharged from the service of an employer elects to take the benefit of this Division, there shall be calculated, as at the person's exit day, the employee-contributed pension component, and the employer-financed pension component, in relation to the person.
- (2) For the purposes of subsection (1), the employee-contributed pension component in relation to a person shall be calculated in accordance with the following formula—

$$P1 = 2.20 \times EPU$$

where—

**P1** is the employee-contributed pension component.

**EPU** is the sum of the following—

(a)

$$UHn - \frac{Cn}{Rn} \text{ (except where } \frac{Cn}{Rn} \text{ exceeds } UHn)$$

,

(b)

$$\frac{TCB}{RB}$$

,

(c) UC.

**UHn** is the number of units of pension for which contributions were payable by the person on the person's exit day in accordance with the tables of contributions fixed by or under this Act, but excluding—

- (a) any such units of pension which are excess units of pension referred to in section

10W (1) and in respect of which no person has any rights in the Fund, and

(b) any such units of pension, being reserve units, for which contributions were being made under section 15A.

**Cn** is the amount of contributions due for the last contribution period for which contributions were payable by the person before the person's exit day, in respect of that number of units of pension.

**Rn** is the relevant amount under subsection (4) in relation to the person for an additional unit of pension on the person's exit day.

**TCB** is the total amount paid in respect of instalments payable by the person on or before the person's exit day for units of pension for which the person contributed in accordance with Division 6 of Part 3 (but deducting therefrom any part of that amount allocated under this Act to the purchase of fully paid up units).

**RB** is the amount specified in section 10AG (1) as the cost of a unit of pension in relation to the person.

**UC** is the number of units (if any) purchased by the person and credited to the person as fully paid up units under section 20C or otherwise.

(3) For the purposes of subsection (1), the employer-financed pension component in relation to a person shall be calculated in accordance with the following formula—

$$P2 = 3.30 \times UE \times \frac{S}{S+T}$$

where—

**P2** is the employer-financed pension component.

**UE** is the number of units of pension that, pursuant to section 12 (1), is appropriate to the salary payable to the person on the person's exit day plus, in a case to which section 10W applies, the number of any excess units of pension referred to in section 10W (1) and in respect of which STC considers, in accordance with section 10W (5), that the retention of entitlement to benefits under this Act is warranted.

**S** is the number of years (including any fractional part of a year calculated on a daily basis) of continuous contributory service by the person with any one or more employers.

**T** is the number of years, if any, (including any fractional part of a year calculated on a daily basis) by which the person's exit day precedes—

(a) the date on which the person attains the maturity age, or

(b) where any employment which, on the person's exit day, the person is entitled to

count as service for the purposes of section 21 is, in total, for less than a period of 10 years—the expiration of the balance of that period of 10 years,

whichever is the later.

- (4) For the purposes of subsection (2), the relevant amount in relation to a person for an additional unit of pension on the person's exit day is—
- (a) where the person has attained the prescribed age on or before that day, the amount which, if the person were required under Division 5 of Part 3 to commence to contribute for an additional unit of pension on that day, would be the amount payable in accordance with the tables of contributions fixed under section 10AD for that unit for a contribution period, or
  - (b) where the person has not attained the prescribed age on or before that day, the amount equal to the sum of—
    - (i) the amount payable by the person for any additional unit of pension for which the person had been required to commence contributing on and from the person's last annual adjustment day for a contribution period or, as the case may be, the amount that would have been so payable if the person had been so required, and
    - (ii) for each day of the period commencing on the day following that annual adjustment day and ending on the person's exit day, the amount equal to 1/364th part of the difference between the amount referred to in subparagraph (i) and the amount which that amount would have been if, on that annual adjustment day, the person had been 1 year older than the age actually attained.
- (5) For the purposes of subsection (3), the period of continuous contributory service by a person on the person's exit day is the period that commenced when the person last became a contributor and ended on that day (but excluding any part of that period during which the person is treated by section 48 as being on leave of absence without pay).
- (6) If STC has made a determination under section 61RA in respect of a pension payable under this Division, the amount of the pension is reduced by the amount specified in STC's determination.

#### **52B Adjustment of pension components**

- (1) Expressions used in this section have the same meanings as they have in Division 6.
- (2) Where—
- (a) the employer-financed pension component in relation to a person is calculated under this Division as at the person's exit day,



(b) pensions are adjusted under Division 6 by a percentage for a year commencing after the exit day, and

(c) no benefit became payable under this Division during that year to, or by virtue of the death of, the person,

the component, as so calculated and as previously adjusted under this section, is, as from the adjustment date for that year, adjusted by that percentage.

(3) Where—

(a) the employer-financed pension component in relation to a person is calculated under this Division as at the person's exit day,

(b) pensions are adjusted under Division 6 by a percentage for a year commencing on or before the exit day and ending after the exit day, and

(c) no benefit became payable under this Division during that year to, or by virtue of the death of, the person,

the component, as so calculated, is, as from the adjustment date for that year, adjusted by the percentage calculated in accordance with the following formula—

$$A = P \times \frac{Q}{4}$$

where—

**A** is the percentage by which the component is to be adjusted.

**P** is the percentage for the year by which pensions are adjusted.

**Q** is the number of whole quarters of the year, being the whole quarters after the exit day.

(4) Where—

(a) a pension under this Division, or a pension that is calculated by reference to a pension that is payable under this Division, has become payable to or in respect of a person referred to in section 52A, and

(b) pensions are adjusted under Division 6 by a percentage for a year beginning before and ending after the date on which that pension became so payable,

the pension, as from the adjustment date for that year, is, in addition to any adjustment of the pension under Division 6, adjusted by the amount calculated in accordance with the following formula—

$$A = C_2 \times P \times \frac{Q}{4}$$

where—

**A** represents the amount of the pension as adjusted.

**C<sub>2</sub>** represents—

- (a) in the case of a pension payable under section 52C or 52E to a person—the amount of the employer-financed pension component calculated in relation to the person and as adjusted by the operation (if any) of this section before the pension became payable, or
- (b) in the case of a pension payable under section 52D to a person—the amount obtained in relation to the person from the calculation, under that section, of the formula
$$P2 (1 - 0.04 \times TM)$$
, or
- (c) in the case of a pension payable under this Division to the spouse or de facto partner of a person referred to in section 52A (1)—an amount equal to two-thirds of the amount of the employer-financed pension component calculated in relation to that person and as adjusted by the operation (if any) of this section before the pension became payable, or
- (d) in the case of a pension of a spouse or de facto partner that is calculated by reference to a pension that was payable to a person under this Division—an amount equal to two-thirds of the amount referred to in paragraph (a) or (b), as the case may be, in relation to that person.

**P** represents the percentage for the year by which pensions are adjusted.

**Q** represents the number derived by adding together the following—

- (a) except when paragraph (b) applies—“1” (representing the quarter of the year during which the pension became payable),
- (b) if the pension became payable on the first day of a quarter, “0”,
- (c) the smaller of—
  - (i) the number of whole quarters in that year that have occurred before the day on which the pension became payable, and
  - (ii) the number of whole quarters that have occurred since the exit day of the person to or in respect of whom the pension is payable and before the day on which the pension became payable.

### **52C Pensions at retiring age**

- (1) A person referred to in section 52A (1) who has not received any other benefit under this Division and who applies to STC to receive a pension under this section is entitled to receive that pension—
  - (a) on the person's attaining the maturity age,
  - (b) where any employment which, on the person's ceasing to be a contributor, the person was entitled to count as service for the purposes of section 21 was, in total, for less than a period of 10 years—on the expiration of such time after the person ceased to be a contributor as is equivalent to the balance of that period, or
  - (c) on receipt by STC of the application,whichever is the latest.
- (1A) The pension provided by this section is not payable under subsection (1) to a person who elected to provide for the benefit under section 20AB unless the requirements of section 20AB (5) (d) are satisfied.
- (2) The pension which a person is entitled to receive under this section is a pension of an amount per fortnight equivalent to the sum of—
  - (a) the employee-contributed pension component calculated in relation to the person, and
  - (b) the employer-financed pension component calculated in relation to the person and as adjusted by the operation (if any) of section 52B.
- (3) This Act applies to and in respect of a person who is entitled to a pension under this section in the same way as it applies to and in respect of a contributor who is entitled to a pension under section 27 and so applies as if the pension payable under this section were a pension payable under that section.

### **52D Pensions at early retirement age**

- (1) A person referred to in section 52A (1) who has not received any other benefit under this Division and who applies to STC to receive a pension under this section is entitled to receive that pension—
  - (a) on the person's attaining the age of 55 years,
  - (b) on the expiration of the period of ten years after the person last became a contributor, or
  - (c) on receipt by STC of the application,whichever is the latest.

(1A) The pension provided by this section is not payable under subsection (1) to a person who elected to provide for the benefit under section 20AB unless the requirements of section 20AB (5) (d) are satisfied.

(2) The pension which a person is entitled to receive under this section is a pension of an amount per fortnight calculated in accordance with the following formula—

$$TP = P1 (1 - .07 \times TM) + P2 (1 - .04 \times TM)$$

where—

**TP** is the amount of the pension.

**P1** is the employee-contributed pension component calculated in relation to the person.

**P2** is the employer-financed pension component calculated in relation to the person and as adjusted by the operation (if any) of section 52B.

**TM** is the number of years, if any, (including any fractional part of a year calculated on a daily basis) by which the day from which the pension commences to be payable precedes the date on which the person attains the age of 60 years.

(3) This Act applies to and in respect of a person who is entitled to a pension under this section in the same way as it applies to and in respect of a contributor who is entitled to a pension under section 28A and so applies as if the pension payable under this section were a pension payable under that section.

### **52E Disability pension**

(1) A person referred to in section 52A (1) who has not received any other benefit under this Division and who applies to STC to receive a pension under this section is entitled to receive that pension—

(a) on receipt by STC of the application, or

(b) on STC's being satisfied, after taking into account any medical opinion that it considers to be relevant, that the person is physically or mentally incapable of performing the duties of any employment that, in the opinion of STC, it would be reasonable for the person to undertake,

whichever is the later.

(1A) (Repealed)

(2) The pension which a person is entitled to receive under this section is a pension of an amount per fortnight equivalent to the sum of—

(a) the employee-contributed pension component calculated in relation to the person,

and

(b) the employer-financed pension component calculated in relation to the person and as adjusted by the operation (if any) of section 52B.

- (3) A person to whom this section applies shall be granted payment of pension only for such period at a time as STC determines and a fresh application shall, unless STC from time to time otherwise determines, be necessary before any further payment is made.
- (4) The period determined by STC as referred to in subsection (3) for the payment of pension to a person—
- (a) if the person has not attained the maturity age, shall be such period (not exceeding 5 years) as STC thinks fit, having regard to the state of health of the person, and
- (b) if the person has attained the maturity age—may be for the remainder of the person's life.
- (4A) Despite subsection (4), STC may determine that the period for payment of a pension to a person to whom this section applies or a person who is being paid a pension under this section, and who has attained the age of 55 years, is to be for the remainder of the person's life.
- (4B) STC may not make a determination under subsection (4A), except at the election of the person concerned.
- (4C) Subsections (5)–(7) do not apply to a person the subject of a determination under subsection (4A).
- (5) A person receiving a pension under this section shall submit to a medical examination as and when required by STC and, if the person defaults in complying with any such requirement, pension shall cease to be payable to the person during the default.
- (6) A pension payable under this section shall cease to be payable to a person on STC's ceasing to be satisfied as referred to in subsection (1) (b) in relation to the person.
- (7) Where a pension under this section ceases to be payable to a person, the person shall, for the purposes of this Division, be deemed not to have received a benefit under this Division.
- (8) Except as provided by this section, this Act applies to and in respect of a person who is entitled to a pension under this section in the same way as it applies to and in respect of a person entitled to a pension under section 29 and so applies as if the pension payable under this section were a pension payable under that section.

### **52EA Interim pension**

- (1) STC may grant an interim pension to a person who has attained the age of 55 years and who, on application, would be entitled to a pension under section 52D, pending the determination of an application under section 52E.
- (2) The pension which STC may grant is a pension equal to the early retirement pension to which the person would be entitled on application under section 52D.
- (3) This Act applies to and in respect of a person granted a pension under this section in the same way as it applies to a person entitled to a pension under section 28A and so applies as if a pension payable under this section were a pension payable under that section.
- (4) If an interim pension is granted, the amount of any pension payable to a person under section 52E is to be reduced by the amount of any interim pension paid.
- (5) Despite section 52E (1), the grant of an interim pension under this section does not make a person ineligible for a pension under section 52E or affect any other right of a person granted a pension under that section.
- (6) However, a person who commutes an interim pension before the determination of an application under section 52E is not entitled to a pension under section 52E.

### **52F Pensions for spouses or de facto partners**

- (1) Where a person referred to in section 52A (1) who has not received a benefit under this Division dies, the spouse or de facto partner of the person is entitled to receive a pension under this section on receipt by STC of an application by the spouse or de facto partner for that pension.
- (2) The pension which a spouse or de facto partner of a person is entitled to receive under this section is a pension at the rate of two-thirds of the pension that would have been payable to the person had the person been entitled to pension under section 52E immediately before dying.
- (3) This Act applies to and in respect of a spouse or de facto partner who is entitled to receive a pension under this section in the same way as it applies to and in respect of a spouse or de facto partner of a contributor, being a spouse or de facto partner to whom pension is payable under this Act, and so applies as if the pension payable under this section were a pension payable under section 30 by virtue of the death of a contributor.

### **52FA Children's pensions at sec 61M rates**

- (1) A pension of the appropriate amount per fortnight under section 61M is payable in respect of a child on the death of a person referred to in section 52A (1) (***the former***

**employee**) who has not received a benefit under this Division if the conditions set out in subsections (2) and (3) are satisfied.

- (2) The child must be a child of the former employee or a child of a surviving spouse or de facto partner of the former employee who is not eligible to receive a pension under section 52G.
- (3) If the child is not a child of the former employee, the child—
  - (a) must have been born or adopted before the death of the former employee, and
  - (b) must have been ordinarily part of the former employee's household at the time of the death of the former employee.
- (4) A pension under this section ceases to be payable in respect of a child if the surviving parent dies, but continues to be payable even though the surviving parent marries or remarries.
- (5) This Act applies to and in respect of a child in respect of whom a pension is payable under this section in the same way as it applies to and in respect of a child in respect of whom a pension is payable under Division 2, and so applies as if the pension payable under this section were a pension payable under Division 2 by virtue of the death of a contributor.

#### **52G Children's pensions**

- (1) A pension of the appropriate amount per fortnight under section 61N is payable in respect of a child on the death of a person referred to in section 52A (1) (**the former employee**) who has not received a benefit under this section if the conditions set out in subsections (2)–(3A) are satisfied.
- (2) The child must be a child of the former employee or a child of a spouse or de facto partner of the former employee.
- (3) The other parent of the child or the spouse or de facto partner of the former employee who was a parent of the child—
  - (a) must have died before the former employee's death, or
  - (b) must have been divorced from the former employee, or
  - (c) must have been in a registered relationship or interstate registered relationship, within the meaning of the [Relationships Register Act 2010](#), or a de facto relationship, with the former employee that ended before the former employee's death.
- (3A) If the child is not a child of the former employee—
  - (a) in a case where the spouse or de facto partner who is the parent of the child is

divorced from or the former de facto partner of the former employee, the child must have been born or adopted before the divorce or end of the relationship, and

(b) in any case, the child must have been ordinarily part of the former employee's household at the time of the death of the spouse or de facto partner, divorce or end of the relationship.

(4) Where a pension ceases to be payable under section 52FA in respect of a child because the surviving parent dies, a pension of the appropriate amount per fortnight under section 61N is payable in respect of the child.

(5) This Act applies to and in respect of a child in respect of whom a pension is payable under this section in the same way as it applies to and in respect of a child in respect of whom a pension is payable under Division 2, and so applies as if the pension payable under this section were a pension payable under Division 2 by virtue of the death of a contributor.

(6) In this section—

**spouse or de facto partner** includes a person previously married to the former employee or a former de facto partner.

#### **52H Students' pensions**

(1) In this section, **student** has the same meaning as it has in section 43A.

(2) Where a person referred to in section 52A (1) who has not received a benefit under this Division dies, a pension under this section—

(a) is payable in respect of a student if a pension would be payable in respect of the student were the person a contributor and the student under the age of 18 years, on receipt by STC of an application for that pension, and

(b) is payable to such persons as STC determines a pension would have been payable were the student under the age of 18 years or shall be expended by STC towards the support or education of the student.

(3) The amount of pension payable under this section shall be—

(a) in the case of a student in respect of whom the pension referred to in subsection (2) (a) is a pension payable under section 33—the appropriate amount per fortnight under section 61N, or

(b) in any other case—the appropriate amount per fortnight under section 61M.

(4) For the purposes of section 43A (1), (5), (6) and (7), a pension payable under this section shall be deemed to be a pension payable under section 43A.

(5) This Act applies to and in respect of a student in respect of whom a pension is payable



under this section in the same way as it applies to and in respect of a student in respect of whom a pension is payable under section 43A, and so applies as if the pension payable under this section were a pension payable under that section by virtue of the death of a contributor.

## **52I Cash termination benefit**

- (1) A person referred to in section 52A (1) who has not received any other benefit under this Division may, at any time, apply to STC for a cash termination benefit under this section.
- (2) On receipt by STC of an application made by a person in accordance with subsection (1), there shall be payable to the person—
  - (a) if the person was retrenched from the service of an employer—the lump sum payment to which the person would have been entitled under section 38B in consequence of the retrenchment if the person had elected under that section to take a lump sum benefit, or
  - (b) if the person resigned or was dismissed or discharged from the service of an employer—the lump sum payment to which the person would have been entitled under section 38A in consequence of the resignation, dismissal or discharge.
- (2A) STC is to adjust the amount of a benefit payable under this section, having regard to any adjustment of a contributor's account under section 8.
- (3) An application made in accordance with subsection (1) shall be deemed to be revoked if the person dies before payment of the cash termination benefit applied for, leaving a spouse or de facto partner to whom, but for the payment of that benefit, a pension would, on application, be payable under this Act.
- (4) Where a person referred to in section 52A (1) dies without having received a benefit under this Division and without leaving a spouse or de facto partner (or leaving a spouse or de facto partner who dies without having received a benefit under this Division), the person shall, unless the person leaves a child or children in respect of whom pension is payable under this Act or would, but for this section, be so payable, if application is made to STC for a benefit under this section, be deemed to have applied for a cash termination benefit under subsection (1) immediately before the death, and the money payable under subsection (2) shall be paid by STC to the person's personal representatives or, where the person has no personal representatives, to such persons as STC may determine.
- (5) Where a person referred to in section 52A (1) dies without having received a benefit under this Division leaving a child or children in respect of whom pension is, on application, payable under this Act or would, but for this section, be so payable, STC may, on receipt by it of an application for a benefit under this section, or section 52FA

or 52G—

- (a) pay the cash termination benefit under this section as if the person had not died leaving the child or children, in which case a pension or pensions shall not be payable under this Act in respect of the child or children, or
- (b) pay a pension or pensions in respect of the child or children as if this section had not been enacted,

whichever STC considers to be in the best interests of the child or children.

**52IA Effect of contributor becoming a contributor to another scheme while employed by the same employer**

- (1) A contributor (other than a contributor who is an executive officer) who becomes a contributor to another superannuation scheme while employed by the same employer—
  - (a) is required to make provision for a benefit provided by this Division (section 52I excepted) despite anything to the contrary in this Division, and
  - (b) shall be regarded as having elected to make provision for that benefit on becoming a contributor to that other superannuation scheme, and
  - (c) is not entitled to elect to take the benefit provided by section 52I while employed by that same employer.
- (2) Subsection (1) does not apply to an employee for whom additional pre-tax employer contributions are made to another superannuation scheme.

**52J, 52K (Repealed)**

**Division 3B Deferral of benefit for contributors aged 55 years and over in certain circumstances**

**52L Eligible contributors**

- (1) This Division applies to a person who is a contributor—
  - (a) who is of or above the age of 55 years, and
  - (b) who, as a result of a single reduction of salary, has undergone a reduction of 20% or more in salary after reaching that age, and
  - (c) whose employer certifies the matters referred to in paragraphs (a) and (b).
- (2) The fact that a person undergoes more than one salary reduction of 20% or more does not mean that the person ceases to be a person to whom this Division applies.

### **52M Exit day**

In this Division, **exit day**, in relation to an employee to whom this Division applies, means the day immediately preceding the day of the reduction in salary in relation to which the employee makes an election under section 52N.

### **52N Election to defer or preserve a benefit**

- (1) A person to whom this Division applies may elect—
  - (a) if the person would have been entitled to be paid a benefit under section 21 (1) or 21 (1B) had he or she ceased employment on his or her exit day—to defer that benefit (in this Division termed **a deferred benefit**) in accordance with this Division, or
  - (b) in any other case—to preserve a benefit provided for by Division 3A which benefit is to be dealt with in accordance with that Division.
- (2) When a person has made a valid election under subsection (1) (b), a benefit is not payable to, or in respect of, that person—
  - (a) under any other provision of this Act, and
  - (b) unless that person has ceased employment or has died.
- (3) An employee may make only one election under this section but the election may relate to any single reduction in salary of 20% or more that occurs after the employee reaches 55 years of age (not just the first reduction that occurs).

### **52O Date of deferral or preservation of benefit**

A benefit referred to in this Division is deferred or preserved from the exit day.

### **52P Calculation of value of deferred benefit**

The initial value of a deferred benefit is to be calculated in accordance with Division 2 as if the person had retired and may be adjusted or reduced in the same way as any other benefit payable to a person on retirement.

### **52Q Election to commute deferred benefit**

- (1) A person who has made a valid election under section 52N (1) (a) may elect to commute the whole or part of his or her pension benefit in accordance with sections 21C and 21D, except that—
  - (a) sections 21C (5) and (6) and 21D (4) do not apply with respect to such an election, and
  - (b) the election must be made by the person within 3 months after his or her exit day.

- (2) A person may not amend or withdraw an election to commute, in whole or in part, a deferred benefit made under this Division.

**52R Adjustment of deferred benefit**

A deferred benefit is to be adjusted—

- (a) as to the pension component of the benefit—in accordance with Division 6, and  
(b) as to the commuted component of the benefit—in accordance with section 8.

**52S When deferred benefit is payable**

A deferred benefit is to be paid on the happening of any of the following—

- (a) the person in respect of whom a benefit is payable applying for payment of the benefit following resignation, retirement or any other cessation of employment,  
(b) the death of the person in respect of whom a benefit is payable.

**52T Payment of deferred benefit**

- (1) A deferred benefit is to be paid in accordance with this section.
- (2) In a case other than death of the person to whom this Division applies, payment is to be made to the person of the deferred pension, if any, and the deferred commuted component, if any, adjusted in accordance with this Division.
- (3) If the person to whom this Division applies dies and is survived by a spouse or de facto partner, payment is to be made to the spouse or de facto partner of—
- (a) a fortnightly pension at the rate of two-thirds of the pension, as adjusted, which would have been payable to the person, on the day immediately preceding the day of the person's death, if no election to commute any part of the person's benefit had been made, and
- (b) where applicable, the deferred commuted component, as adjusted, which would have been payable to the person had the person retired on the day immediately preceding the day of the person's death, and
- (c) amounts in accordance with this Act in respect of any eligible children.
- (4) If the person to whom this Division applies dies and is not survived by a spouse or de facto partner, payment is to be made—
- (a) to the estate of the deceased of—
- (i) where applicable, the deferred commuted amount, as adjusted, or
- (ii) an amount calculated in accordance with section 38A which would have been

payable to the person on the day immediately preceding the day of the person's death,

whichever is the greater, and

(b) of amounts in accordance with this Act in respect of any eligible children.

#### **52U STC to apportion benefit**

When a benefit is deferred in accordance with this Division, section 33B applies.

#### **52V Break in service**

When a benefit is deferred in accordance with this Division, section 38C does not apply.

### **Division 3C Age termination benefits**

#### **52W Benefit on attaining 65 or 70**

- (1) An employee who attains the age of 70 years must be paid any pension to which the employee would be entitled on retirement at that age but—
  - (a) may elect under section 21C to commute to a lump sum all or part of the pension, and
  - (b) if such an election is made, may also elect to preserve the whole of the lump sum in the Fund.
- (2) (Repealed)
- (2A) An employee may elect at any time on or after attaining 65 years and before attaining 70 years to be paid any pension to which the employee is entitled at the time but—
  - (a) may elect under section 21C to commute to a lump sum all or part of the pension, and
  - (b) if such an election is made, may also elect to preserve the whole of the lump sum in the Fund,even though the employee is not retired.
- (3) STC is to adjust the amount of a benefit payable under this section, having regard to any adjustment of a contributor's account under section 8.
- (4) A benefit provided under subsection (1) (b) is to be paid out by STC on application by the person to whom it is payable under subsection (5).
- (5) A benefit under subsection (1) (b) is payable—

- (a) if the former contributor has not died—to the former contributor, or
  - (b) if the former contributor has died and is survived by a spouse or de facto partner—to the former contributor's spouse or de facto partner, or
  - (c) if the former contributor has died and is not survived by a spouse or de facto partner—
    - (i) to the former contributor's personal representatives, or
    - (ii) if section 88A (Payment without grant of probate etc) applies and STC has made a decision under section 88A (1)—in accordance with section 88A (2).
- (6) A person entitled or who has elected to be paid to a benefit under this section is not entitled to any other benefit under this Act.

#### **52X Compulsory payment of preserved or other benefit**

- (1) This section applies to a person who is entitled to, but has not been paid, a benefit under Division 3A, Division 3B or this Division.
- (2) STC is, as soon as practicable, to pay the benefit to which a person to whom this section applies is entitled if—
  - (a) STC is satisfied that the person is at least 65 years of age and is working for less than 10 hours a week, or
  - (b) STC is satisfied that the person has attained the age of 70 years even though the person is working for more than 10, but less than 30, hours a week, or
  - (c) the person is at least 65 years of age and has requested STC to pay the benefit, or
  - (d) STC is satisfied that the person has retired from the work force.

### **Division 3D Compulsory preservation of benefits**

#### **52Y Compulsory preservation of benefits after changeover day**

- (1) STC must, when a pension or lump sum becomes payable under this Act (including a benefit provided under Division 3A or 3B), preserve all or so much of the pension or lump sum as is required to be preserved so as to be consistent with a relevant Commonwealth superannuation standard.
- (2) For the purpose of preserving a benefit under this section, STC must convert to a lump sum so much of a pension as is required to be preserved. The remainder of the pension is to be dealt with as otherwise required or permitted by or under this Act.
- (3) The amount of the benefit to be preserved in respect of a contributor or former contributor for the purpose of this section is as determined by STC, after obtaining

actuarial advice.

- (4) The amount of a benefit that must be preserved for the purposes of subsection (1) is to be preserved in the Fund and is to be adjusted, having regard to any adjustment of the appropriate reserve under section 8 or is to be preserved under section 52AA.

#### **52Z Payment of compulsorily preserved benefit**

- (1) The whole or part of a benefit preserved under section 52Y is payable by STC in the circumstances in which a benefit is payable under a relevant Commonwealth superannuation standard.
- (2) The whole or part of a benefit preserved under section 52Y must be paid by STC, if it is required to be paid under a relevant Commonwealth superannuation standard.
- (3) The benefit is payable—
  - (a) unless the former contributor has died—to the former contributor, or
  - (b) if the former contributor has died and is survived by a spouse or de facto partner—to the surviving spouse or de facto partner, or
  - (c) if the former contributor has died and is not survived by a spouse or de facto partner—to the personal representatives of the former contributor or, if appropriate, in accordance with section 88A (Payment without grant of probate etc).

#### **52AA Preserved benefits**

- (1) Any amounts preserved by STC under section 52Y may be preserved in such funds, accounts or reserves as STC determines, whether established under this Act or the [Superannuation Administration Act 1996](#) or for the purposes of any other superannuation scheme administered by STC.
- (2) Any such preserved amounts payable by STC under section 52Y are to be paid from the appropriate fund, account or reserve referred to in this section.

### **Division 4**

#### **53-59 (Repealed)**

### **Division 5 Existing insurance policies**

#### **60 Insurance policies may be continued or discontinued at option of contributor**

Notwithstanding anything to the contrary in any Act it shall not be necessary for any contributor under this Act to insure the contributor's life, or to continue in force any policy of insurance on the contributor's life already taken out at the commencement of this Act, or at the date the contributor's employer is added to Schedule 3 under section 92.

## **61 Surrender of policies**

- (1) Any employee whose life is insured at the commencement of this Act, or (if the employee's employer is added to Schedule 3 under section 92) at the date of such addition, may surrender the employee's policy of insurance or the employee may transfer such policy (if unencumbered) to STC or to a person approved by STC and request STC to continue the payment of the premiums under the said policy. STC shall thereupon cause such premiums to be duly paid, and on the maturity of the policy shall hand over to the employee or to the employee's personal representatives to be administered as part of the employee's estate any sums received on the policy, less the amount of the premiums, with compound interest thereon at the prescribed rate from the respective dates of payment—

Provided that STC or the person approved by STC pursuant to this section may at any time prior to the maturity of any policy transferred to STC or such person upon repayment of all moneys paid by STC for premiums thereunder with compound interest thereon at the prescribed rate from the respective dates of payment release such policy to the employee.

The provisions of this section shall extend to any employee of the Sydney Harbour Trust Commissioners included in the certificate of the said Commissioners made in pursuance of section 2 of the *Superannuation (Amendment) Act 1928* where the employee's policy of insurance is in force at the commencement of that Act.

- (2) In this section, a reference to the prescribed rate is a reference to the rate of interest for the time being fixed by STC under section 86A for the purposes of this section.
- (3) The right of an employee under subsection (1)—
  - (a) to pay STC the surrender value of an insurance policy, or
  - (b) to transfer an insurance policy to STC,ceases at the commencement of Schedule 10 (7) to the *Superannuation (Amendment) Act 1983*.

### **61A Surrender of policies generally**

- (1) Any employee or pensioner whose life, or the life of whose spouse or de facto partner, is insured under a policy of assurance which has been in force for not less than five years and which is at the time of transfer an endowment policy unencumbered and upon which all premiums due have been paid may request STC to accept a transfer of such policy in accordance with the provisions of this section.
- (2) STC may, in such cases as it deems proper and subject to such conditions as it may determine, accept a transfer of any such policy.
- (3) Upon such acceptance by STC—



- (a) the employee or pensioner or spouse or de facto partner of the employee or pensioner, as the case may be shall assign the benefit of such policy to STC,
  - (b) STC shall cause all premiums under such policy to be duly paid from the Fund.
- (4) Where, before the maturity of any such policy, the person who assigned the policy to STC requests STC in writing in the form prescribed to release the same to the person and pays to STC the amount of the premiums paid by it with compound interest thereon at the prescribed rate from the respective dates of payment, STC shall release such policy to such person.
- (5) On the maturity of such policy (such policy not having been released pursuant to the provisions of subsection (4)) STC shall hand over to the person entitled thereto all moneys received under such policy less the amount of the premiums paid by it with compound interest thereon at the prescribed rate from the respective dates of payment.
- (6) In this section, a reference to the prescribed rate is a reference to the rate of interest for the time being fixed by STC under section 86A for the purposes of this section.
- (7) The right of an employee or pensioner under subsection (1) to request STC to accept a transfer of a policy of assurance ceases at the commencement of Schedule 10 (8) (c) to the [Superannuation \(Amendment\) Act 1983](#).

## Division 6 Automatic adjustment of pensions

### 61B Definitions

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

**adjustment date**, in relation to a year, means the first day of the pension pay period that ends on the first pension pay day in the October that next follows that year.

**adjustment percentage**, in relation to a year, means (subject to section 61C (2)) the percentage for that year, calculated in accordance with section 61C.

**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 1905-1966](#) of the Parliament of the Commonwealth or that Act as amended from time to time or any Act of that Parliament passed in substitution therefor.

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

**pension**—

(a) subject to paragraph (b), means—

(i) pension payable under this Act, and

(ii) pension wholly paid or recouped from the Consolidated Revenue Fund or the funds of an employer, and

(b) does not include—

(i) pension that has been commuted under section 21C, or

(ii) pension payable in respect of a child or a student.

**quarter**, in relation to a year, means—

(a) the period commencing on and including 1 July in that year and ending on and including 30 September in that year,

(b) the period commencing on and including 1 October in that year and ending on and including 31 December in that year,

(c) the period commencing on and including 1 January in that year and ending on and including 31 March in that year, or

(d) the period commencing on and including 1 April in that year and ending on and including 30 June in that year.

**suspended part of a pension**, in relation to an adjustment date, means, where any part of an increase in pension was not payable at that adjustment date by reason only of the operation of section 33A, the unpaid part of that increase or, where any part of a pension was not payable at that adjustment date by reason only of the operation of section 31B (3), the unpaid part of that pension.

**suspended pension**, in relation to an adjustment date, means—

(a) a pension that was not payable under section 30 or 31 at that adjustment date by reason only of the marriage of a person, or

(b) a pension that was not payable at that adjustment date by reason only of the operation of section 50 or 94.

**year** means—

(a) the period commencing on and including 1 July 1973 and ending on and including 30 June 1974, or

(b) a subsequent period commencing on and including 1 July and ending on and including the next following 30 June.

(2) Where a pension is to be adjusted under this Division by reference to the adjustment

percentage for a year, a reference (however expressed) in this Division to adjusting the pension is a reference to—

- (a) where the adjustment percentage is calculated in accordance with the formula set out in section 61C (1) (a)—increasing the pension, or
- (b) where the adjustment percentage is calculated in accordance with the formula set out in section 61C (1) (b)—reducing the pension.

### **61C Calculation of adjustment percentage**

(1) For the purposes of the definition of **adjustment percentage** in section 61B (1), the percentage for a year shall 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,

**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 subsection (1) (b) is less than 1.1% or any other percentage prescribed by the regulations, or
- (b) the Index number for the June quarter for a year is the same as the Index number for the immediately preceding June quarter,

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

(3) Where there is deemed 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 shall be deemed not to have been published, and
  - (b) the Index number for that quarter shall be deemed 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 Division, 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 in paragraph (b)—the publication of the later Index number shall be disregarded, or
  - (b) if the Minister so directs—regard shall, after the direction is given, be had to the latter and not to the earlier Index number,
- for the purposes of this Division.
- (5) Notwithstanding subsection (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 Division after the change takes place, regard shall be had only to Index numbers published in terms of the new reference base.

#### **61D Adjustment of pensions: general cases**

- (1) Subject to this Division, where there is an adjustment percentage for a year (in this section referred to as **the particular year**), the pension payable on the adjustment date for that year to a person to whom this section applies is hereby adjusted, on and from that adjustment date, by that percentage.
- (2) This section applies to—
- (a) a person who last became a pensioner on or before 1 July in the particular year,
  - (b) a person who is the spouse or de facto partner of a pensioner, where that pensioner last became a pensioner on or before 1 July in the particular year and died before the adjustment date for that year, and
  - (c) a person who is the spouse or de facto partner of a contributor, being a contributor who died, on or after 1 July in the particular year but before the adjustment date for that year, within five years of having again become a contributor following a retirement under section 22 on or before 1 July in that year.
- (3) A reference in subsection (1) to a pension payable to a person includes a reference to the pension that would have been payable to the person had the provisions referred to

in the definition of **suspended part of a pension** in section 61B (1) not been enacted.

**61E Adjustment of pensions: partial adjustment**

- (1) Subject to this Division, where there is an adjustment percentage for a year (in this section referred to as **the particular year**), the pension payable on the adjustment date for that year to a person to whom this section applies is hereby adjusted, on and from that adjustment date, by the percentage calculated in accordance with the formula set out in subsection (3).
- (2) This section applies to—
- (a) a person who last became a pensioner after 1 July in the particular year but on or before 1 April in that year, other than a person referred to in paragraph (c),
  - (b) a person who is the spouse or de facto partner of a pensioner, where that pensioner last became a pensioner after 1 July in the particular year but on or before 1 April in that year and died before the adjustment date for that year, and
  - (c) a person who is the spouse or de facto partner of a contributor, being a contributor who died, after 1 July in the particular year but before the adjustment date for that year, within five years of having again become a contributor following a retirement under section 22 after 1 July in that year but on or before 1 April in that year,

but does not apply to a person to whom section 61D applies.

- (3) The formula referred to in subsection (1) is—

$$A = P \times \frac{Q}{4}$$

where—

**A** is the percentage by which the pension is to be adjusted,

**P** is the adjustment percentage for the particular year, and

**Q** is the number of whole quarters of the particular year, being the whole quarters after, and (if applicable) the whole quarter on the first day of which—

- (a) in the case of a person referred to in subsection (2) (a)—the person last became a pensioner,
- (b) in the case of a person referred to in subsection (2) (b)—the person's late pensioner spouse or de facto partner last became a pensioner, or
- (c) in the case of a person referred to in subsection (2) (c)—

- (i) where the person's late spouse or de facto partner had been retired under section 22 once only—the person's late spouse or de facto partner was so retired, or
- (ii) where the person's late spouse or de facto partner had been so retired more than once—the person's late spouse or de facto partner was last so retired, disregarding any retirement of the person's late spouse or de facto partner to which section 51 (2) (b) applied.

**61F Application of secs 61D and 61E to breakdown pensions and suspended pensions**

- (1) In determining when a pensioner last became a pensioner for the purposes of section 61D or 61E, regard shall not be had to any retirement to which section 51 (2) (b) applied.
- (2) Section 61D or 61E, as the case may require, applies to and in respect of a suspended pension in the same way as it applies to and in respect of a pension referred to therein, and so applies as if—
  - (a) the marriage by reason of which the pension is a suspended pension had not taken place,
  - (b) section 50 had not been enacted, or
  - (c) section 94 had not been enacted,as the case may require, but nothing in this subsection operates so as to authorise or require the payment at any time of that suspended pension or any part thereof.

**61G Certain increases under [Superannuation \(Amendment\) Act 1970](#)**

- (1) Where an increase in pension is payable to a pensioner under the [Superannuation \(Amendment\) Act 1970](#), then, as on and from the date (being not earlier than the commencement of this Division) on which the increase is payable, the rate at which it is payable shall be that at which it would be payable to the pensioner had the pensioner been in receipt of the increase at the commencement of Part 2 of the [Superannuation \(Amendment\) Act 1974](#).
- (2) Without affecting the operation of subsection (1), Part 2 of the [Superannuation \(Amendment\) Act 1974](#) does not apply to an increase in pension referred to in subsection (1).

**61H Minimum amount to which pensions may be reduced**

Notwithstanding anything in this Division—

- (a) a pension (other than a pension payable to a person by virtue of the person being a spouse or de facto partner of a pensioner) shall not be reduced below the fortnightly

amount that would, if this Division had not been enacted, have been payable, and

- (b) a pension payable to a person by virtue of the person being a spouse or de facto partner of a pensioner shall not be reduced below the fortnightly amount that would have been payable to the person by reference to the pension that would, if this Division had not been enacted, have been payable to the pensioner.

### **61I, 61J (Repealed)**

### **61K Calculation of percentages**

Where a percentage that is to be calculated under this Division is or includes a fraction of one-tenth of one per centum—

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

## **Division 7 Automatic adjustment of children's pensions**

### **61L Definitions**

In this Division, except in so far as the context or subject-matter otherwise indicates or requires, **adjustment date**, **adjustment percentage** and **year** have the meanings respectively ascribed to those expressions by section 61B (1).

### **61M Children's pensions**

- (1) For the purposes of sections 32D and 43A (4) (b), the appropriate amount of pension in respect of a child or student is, subject to this section, \$4 per week.
- (2) Subject to this Division, the appropriate amount of pension under this section is, as from the commencement of Schedule 8 (2) to the *Superannuation (Amendment) Act 1985*, increased to \$41.20 per fortnight.
- (3) Subject to this Division, where pensions are increased or decreased under Division 6 by a percentage for the year ending on and including 30 June 1985 or for any subsequent year, the appropriate amount of pension, as previously adjusted, under this section is, as from the adjustment date for that year, increased or decreased, as the case may be, by that percentage.
- (4) If STC has made a determination under section 61RA in respect of a pension under this section, the amount of the pension is reduced by the amount specified in STC's determination.

### **61N Orphans' pensions**

- (1) For the purposes of sections 33 and 43A (4) (a), the appropriate amount of pension in respect of a child or student is, subject to this section, \$10 per week.
- (2) Subject to this Division, the appropriate amount of pension under this section is, as from the commencement of Schedule 8 (3) to the *Superannuation (Amendment) Act 1985*, increased to \$97.85 per fortnight.
- (3) Subject to this Division, where pensions are increased or decreased under Division 6 by a percentage for the year ending on and including 30 June 1985 or for any subsequent year, the appropriate amount of pension, as previously adjusted, under this section is, as from the adjustment date for that year, increased or decreased, as the case may be, by that percentage.
- (4) If STC has made a determination under section 61RA in respect of a pension under this section, the amount of the pension is reduced by the amount specified in STC's determination.

### **61O Minimum amounts to which pensions may be reduced**

Notwithstanding anything in this Division, the appropriate amount of pension under—

- (a) section 61M—shall not be reduced below \$4 per week, or
- (b) section 61N—shall not be reduced below \$10 per week.

### **61P, 61Q (Repealed)**

### **61R Operation of Division**

An increase or decrease of the appropriate amount under section 61M or 61N operates in relation to pensions being paid as at the date of the increase or decrease, as well as to pensions that become payable thereafter.

## **Division 7A Circumstances in which benefits may be reduced**

### **61RA Power of STC to reduce pensions and other benefits to offset certain tax liabilities**

- (1) Whenever—
  - (a) a right to a benefit under this Act accrues to or in respect of a contributor or former contributor, and
  - (b) STC has paid or is liable to pay income tax under a Commonwealth taxation law in respect of employers' contributions to the Fund, and
  - (c) a portion of that tax is referable to the employer-financed portion of that benefit,STC must, subject to subsection (2)—



(d) calculate the amount necessary to offset STC's liability to pay tax so far as it is referable to the employer-financed portion of that benefit, and

(e) accordingly make a determination reducing the benefit by the amount so assessed.

(1A) Whenever—

(a) a right to a benefit under this Act accrues to or in respect of a contributor or former contributor, and

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

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

(1B) In determining the surcharge deduction amount in respect of a benefit payable to a contributor or former contributor, STC may have regard to any or all of the following matters—

(a) the amount of superannuation contributions surcharge payable or paid by STC in respect of the contributor or former contributor,

(b) the amount by which the contributor's or former contributor's surcharge debt account is in debit when the benefit emerges or commences to be paid,

(c) the value of the employer-financed portion of the benefit,

(d) the value of the benefits that, for the purpose of working out (under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth) the notional surchargeable contribution factors applicable to the contributor or former contributor, were assumed to be likely to be payable to the person on his or her ceasing to be an employee,

(e) whether the contributor or former contributor has qualified for a benefit that includes an employer-financed component,

(f) the amount of any payments under section 91B,

(g) any other matter STC considers relevant.

(1C) The surcharge deduction amount determined by STC must not exceed—

(a) an amount that is 15% of the employer-financed portion of that part of the benefit payable to the contributor or former contributor that accrued after 20 August

1996, 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 contributor or former contributor accrued.

- (1D) For the purpose of determining the surcharge deduction amount, STC may obtain actuarial advice or advice from any other persons, as STC thinks fit.
- (1E) The balance of any additional amount payable by STC for superannuation contributions surcharge in respect of a contributor or former contributor, after payment of the balance of the relevant surcharge debt account, is to be paid by STC from the Fund under section 4 (4) and debited to the appropriate employer reserve.
- (2) Subsection (1) does not authorise the reduction of a benefit under this Act, unless—
  - (a) the benefit is of a kind to which section 61RD applies, and
  - (b) the method of calculating the reduction is set out in section 61RD, and
  - (c) the reduction is calculated according to that method.
- (3) Subsection (1A) does not authorise the reduction of a benefit as a result of a liability for superannuation contributions surcharge unless the benefit is of a kind to which section 61RD applies.
- (3A) If STC determines a surcharge deduction amount in respect of a contributor or former contributor under this section, STC may, on the application of the contributor or former contributor, apply the benefit that accrues to or in respect of the contributor or former contributor under the [State Authorities Non-contributory Superannuation Act 1987](#) toward payment of the surcharge deduction amount, and make a determination reducing the benefit payable under that Act accordingly. In such a case, STC may make a determination reducing the benefit payable under this Act to the extent necessary (if any) to pay the balance of the surcharge deduction amount.

- (4) In this section—

**surcharge debt account**, in relation to a contributor or former contributor, means the surcharge debt account kept for the contributor or former contributor (while an employee) under section 16 of the [Superannuation Contributions Tax \(Assessment and Collection\) Act 1997](#) of the Commonwealth.

- (5) Despite subsection (1A), the benefit of a former contributor who has commenced to be paid that benefit may be adjusted by STC in accordance with the regulations if the former contributor 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 contributor.

- (6) The regulations may make provision for or with respect to the following—
- (a) the circumstances in which STC may or may not pay superannuation contributions surcharge on behalf of a former contributor,
  - (b) adjusting the amounts of benefits or paying amounts in relation to a surcharge deduction amount or an assessment of superannuation contributions surcharge received by a former contributor before, on or after the commencement of this subsection.
- (7) Without limiting subsection (6), the regulations may make provision for the payment by STC of an amount of additional surcharge payable by a former contributor above the amount determined under subsection (1C).

**61RAA Restoration of death benefit previously reduced to offset contribution tax liabilities**

- (1) STC may, for the purposes of obtaining a deduction from assessable income under section 295-485 of the *Income Tax Assessment Act 1997* of the Commonwealth, increase a lump sum benefit under this Act payable or paid on the death of a contributor or former contributor that has been previously reduced under section 61RA.
- (2) The amount of the increase is to be the amount determined by STC, after obtaining actuarial advice, as the amount of increase required to obtain the deduction referred to in subsection (1).
- (3) (Repealed)

**61RB Power of STC to adjust benefits to comply with certain Commonwealth standards relating to superannuation**

- (1) (Repealed)
- (2) If—
- (a) a contributor or former contributor becomes entitled to receive a pension under this Act, other than a specified invalidity pension, and
  - (b) payment of the pension to the contributor or former contributor would, but for this subsection, not be consistent with relevant Commonwealth superannuation standards,

the contributor or former contributor may elect, before the pension starts to be paid, 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).
- (3) Even after such a pension has started to be paid in a form that is not consistent with relevant Commonwealth superannuation standards, the contributor or former contributor concerned is entitled to make an election or a further election to receive payment of the pension in a form that is consistent with relevant Commonwealth superannuation standards.
- (4) An election made and notified to STC in accordance with this section is sufficient authority for STC to pay a pension in accordance with the election of the contributor or former contributor concerned.
- (5) An election under this section to receive a pension in a form that is consistent with relevant Commonwealth superannuation standards is irrevocable.
- (6) A contributor or former contributor who does not notify STC of the election of the contributor or former contributor under this section before the pension concerned starts to be paid is, subject to subsection (3), to be regarded as having elected to receive payment of that pension in the form provided by this Act (apart from this section).
- (7) If a contributor or former contributor makes an election under this section to receive a pension in a form that is consistent with relevant Commonwealth superannuation standards, STC must ensure that the pension is varied only to the extent necessary to comply with those standards.
- (8) An election under this section to receive a pension in a form that is consistent with relevant Commonwealth superannuation standards is binding not only on the contributor or former contributor who made the election but also on any person claiming a benefit under this Act through that contributor or former contributor.
- (9) If an election is made under this section to receive a pension in a form that is consistent with relevant Commonwealth superannuation standards, the pension is payable in that form despite any other provision of this Act to the contrary.
- (10) In this section—
- (a) a reference to a benefit or pension is a reference to the benefit or pension after reducing it in accordance with section 61RA or 61RC where appropriate, and
  - (b) a reference to a superannuation scheme is a reference to a scheme, fund or arrangement (whether or not established by or under an Act) under or from which any superannuation or retirement benefits are provided, and
  - (c) **specified invalidity pension** means a pension under section 29 other than a

pension in respect of which the period for payment has been determined, in accordance with section 29 (4A) (b) or (5), to be for the remainder of the relevant person's life.

**61RC Power of STC to reduce benefits for no-TFN tax**

- (1) This section applies to a benefit if—
  - (a) a right to the benefit accrues under this Act to or in respect of a contributor or former contributor, and
  - (b) STC has paid or is liable to pay no-TFN tax in respect of employer contributions to the Fund, and
  - (c) a portion of that tax is referable to the employer-financed portion of that benefit, and
  - (d) the benefit is of a kind prescribed by the regulations for the purposes of this section.
- (2) The amount of the benefit is reduced by the amount necessary to offset STC's liability to pay no-TFN tax so far as it is referable to the employer-financed portion of that benefit.
- (3) The amount of the reduced benefit is to be determined by STC after obtaining actuarial advice.
- (4) A contributor or former contributor may elect to have his or her SANCS benefit reduced instead of the benefit to which this section applies if the SANCS benefit is payable to the contributor or former contributor. On an election being made, the SANCS benefit is reduced accordingly and the benefit to which this section applies is reduced only if it is necessary to do so to meet any shortfall in the amount of offset.
- (5) The regulations may provide for the establishment of debt accounts in respect of contributors or former contributors for the purposes of this section.
- (6) In this section—

**employer contribution** includes a salary sacrifice contribution.

**employer-financed portion** of a benefit includes any part of the benefit financed by a salary sacrifice contribution.

**no-TFN tax** means an amount equal to the difference between the amount of—

- (a) income tax payable by STC under the [Income Tax Assessment Act 1997](#) of the Commonwealth on employer contributions to the Fund for a contributor if there is a failure by the contributor to provide information about his or her tax file number to STC, and

- (b) income tax that would be so payable if the information about the tax file number was provided.

**SANCS benefit** means a benefit that accrues to or in respect of a contributor or former contributor who is an employee or former employee under the [State Authorities Non-contributory Superannuation Act 1987](#).

**61RD Reduction of benefit**

- (1) This section applies to the benefits provided under the following provisions—
- (a) section 27 (Amount of pension payable on retirement),
  - (b) section 28A (Pension on retirement before reaching 60 years of age),
  - (c) section 28AA (Pension on retirement before age 60—component pension),
  - (d) section 29 (Breakdown pensions),
  - (e) section 30 (Pensions to spouse or de facto partner on death of contributor),
  - (f) section 37 (Retrenchment benefits payable to an employee who is retrenched after completing 10 years' service),
  - (g) section 37A (Retrenchment benefits payable to contributors having not less than 3 years' contributing service),
  - (h) section 38A (Withdrawal benefit),
  - (i) section 47D (Benefits payable in respect of reduced value units),
  - (j) Division 3A of Part 4 (Preserved benefits),
  - (k) Part 3B (Conversion of existing entitlements).
- (2) For the purposes of section 61RA, the reduction in a benefit to which this section applies (other than a benefit under section 38A or 47D) is the amount calculated in accordance with the following formula—

$$R = M \times \frac{A}{E} \times Q$$

- (3) For the purposes of section 61RA, the reduction in a benefit under section 38A (other than a benefit arising as a result of the death of a person) is the amount calculated in accordance with the following formula—

$$R = A \times Q$$

- (4) For the purposes of section 61RA, the reduction in a benefit under section 47D is the

amount calculated in accordance with the following formula—

$$R = T \times Q$$

(5) In this section—

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

**M** is calculated in accordance with subsection (6) and represents the amount of the pension or lump sum being reduced.

**A** represents the portion of the benefit payable from the appropriate employer's reserve in accordance with section 33B (2) (b).

**B** represents the relevant amount in respect of the benefit determined in accordance with section 33B (3).

**Q** represents the sum of such number of terms as is determined in accordance with the formula prescribed by subsection (7) to reflect the number of times the rate of tax has changed.

**T** represents the total amount of benefit derived under section 47D.

(6) In subsection (5), the symbol "M" represents—

- (a) in the case of a benefit arising under section 27, 28A, 28AA or 29—the benefit that would be payable under that section, but for section 61RA and this section, or
- (b) in the case of a benefit arising under section 30 in respect of a contributor who dies before reaching the age of 60 in the case of a man, or the maturity age in the case of a woman—two-thirds of the pension that, but for section 61RA and this section, would have been payable to the contributor under section 29 if the contributor had been retired immediately before death, or
- (c) in the case of a benefit arising under section 30 in respect of a contributor who dies on or after reaching the age of 60 in the case of a man, or the maturity age in the case of a woman—two-thirds of the pension that, but for section 61RA and this section, would have been payable under section 27 if the contributor had retired, or had been retired, immediately before death, or
- (d) in the case of a benefit arising under Part 3B or section 37 or 37A—the lump sum benefit that would be payable under the provision concerned but for section 61RA and this section, or
- (e) in the case of a benefit arising under Division 3A of Part 4—the total component pension preserved in accordance with section 52A.

(7) For the purposes of the symbol "Q" in subsection (5), the formula prescribed by this

subsection is—

$$\frac{C}{D} \times L$$

where—

**C** represents the number of days of continuous contributory service that the person in respect of whom the pension is payable has had with one or more employers in each period during which the rate of tax payable on employer contributions is L.

**D** represents—

- (a) in the case of benefits arising under section 29 or 30—the number of days of continuous contributory service that the person in respect of whom the pension is payable has had with one or more employers during the period beginning with the date when the person last became a contributor and ending with the later of the exit date and the date on which the person would have been eligible to retire under section 21 (1) if the person's employment had continued to that date, or
- (b) in all other cases—the number of days of continuous contributory service that the person in respect of whom the pension is payable has had with one or more employers during the period beginning with the date on which the person last became a contributor and ending with the person's exit day.

**L** represents the rate of tax payable on employer contributions set out in the relevant Commonwealth taxation law or such lesser rate as may be determined by STC having regard to the most recent actuarial valuation of the scheme.

- (8) For the purposes of the symbols "C" and "D" in subsection (7), the period of a person's continuous contributory service does not include any period during which the person is treated by section 48 (Breakdown pensioner held to be on leave) as being on leave without pay.
- (9) For the purposes of sections 31 and 52F, the benefit that emerges upon the death of the member is not to be reduced as it would already have been reduced in accordance with section 61RA when the member retired or when the benefit was preserved.

#### **61RE Commutation of pensions for adjustment of benefits**

- (1) If a benefit that may be taken in the form of a pension is reduced under section 61RA or 61RC, STC may, at its discretion and with the consent of the contributor or former contributor concerned, commute part of the pension to a lump sum for the purposes of payment to STC 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 contributor or former contributor 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 STC for the purposes of this section.

(3) STC 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.

## **Division 7B Other benefits**

### **61RF Release of benefits on grounds of severe financial hardship**

(1) STC may, on the election of a contributor, or a former contributor who has provided for a benefit under Division 3A, Division 3B or section 37B or had a benefit preserved under this Act, release to the contributor or former contributor a benefit on the ground of the contributor or former contributor's severe financial hardship.

(2) STC may release the benefit only if STC is satisfied that the circumstances are such that a benefit would be payable on the grounds of severe financial hardship if the contributor or former contributor were a member of a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

(3) The amount paid—

(a) is to be the amount payable for the purpose of complying with the requirements of that Act for payment of such a benefit from a regulated superannuation fund, and

(b) is not to exceed the amount of any accrued, deferred or preserved benefit that would be payable to the contributor or former contributor if the contributor or former contributor were eligible to be paid such a benefit.

(4) A contributor or former contributor may, at any time before the release of a benefit under this section, vary or revoke an election under this section.

(5) An amount may not be paid under this section unless any applicable requirements of any regulations made under section 61RH have been complied with.

### **61RG Release of benefit on compassionate grounds**

(1) STC may, on the election of a contributor, or a former contributor who has provided for a benefit under Division 3A, Division 3B or section 37B or had a benefit preserved under this Act, release to the contributor or former contributor a benefit on compassionate grounds.

- (2) STC may release the benefit only if STC is satisfied that the circumstances are such that the Regulator (within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth) would be entitled to determine that the amount could be released on compassionate grounds if the contributor or former contributor were a member or former member of a regulated superannuation fund within the meaning of that Act.
- (3) The amount paid—
  - (a) is to be the amount payable for the purpose of complying with the requirements of that Act for payment of such a benefit from a regulated superannuation fund, and
  - (b) is not to exceed the amount of any accrued, deferred or preserved benefit that would be payable to the contributor or former contributor if the contributor or former contributor were eligible to be paid such a benefit.
- (4) A contributor or former contributor may, at any time before the release of a benefit under this section, vary or revoke an election under this section.
- (5) An amount may not be paid under this section unless any applicable requirements of any regulations made under section 61RH have been complied with.

#### **61RH Effect on other benefits**

- (1) Regulations may be made for or with respect to the payment and calculation of future benefits where a benefit has been released to a person under section 61RF or 61RG.
- (2) Without limiting subsection (1), regulations may be made for or with respect to the following matters—
  - (a) the adjustment by STC of a benefit that is paid to a person to whom an amount has been previously released under section 61RF or 61RG, including interest payable in respect of the amount released,
  - (b) the obtaining of consent to any such adjustment,
  - (c) the obtaining of actuarial advice by STC for the purpose of any such adjustment,
  - (d) enabling the payment to STC of amounts to set-off amounts released under section 61RF or 61RG against benefits that would otherwise accrue,
  - (e) any matter ancillary to or consequential on the matters set out in paragraphs (a)–(d).

## **Division 8 Miscellaneous provisions**

### **61S Increases in certain pensions**

Schedule 18 has effect.

**61T Transitional and other provisions arising from the [Superannuation \(Amendment\) Act 1978](#)**

Schedule 19 has effect.

**61U Compliance with superannuation guarantee legislation**

- (1) **Minimum benefits** STC must, after obtaining actuarial advice, determine what the minimum **employer-financed benefit** would have to be to ensure that there is no **superannuation guarantee shortfall**.
- (2) **Increase in benefits** So much of a pension component of a benefit 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 benefit 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 non-contributory scheme** The amount of any increase in benefit is to be debited by STC from the employer reserve of the employer concerned established under the [State Authorities Non-contributory Superannuation Act 1987](#).
- (4) **Definition** In this section, **employer-financed benefit** means the sum of so much of a pension component of a benefit or lump sum as is employer-financed under this Act, any basic benefit under the [State Authorities Non-contributory Superannuation Act 1987](#) and any employer-financed benefit of a kind provided by the [State Authorities Non-contributory Superannuation Act 1987](#).

**61V Application of section 61U to period from 1.7.1992**

A benefit that is preserved under this Act after 1 July 1992 and before the commencement of the [First State Superannuation Act 1992](#), or that is paid after 1 July 1992 and before that commencement, is to be adjusted by STC in accordance with section 61U.

**61VA 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 STC, 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 STC, and
  - (c) be served on STC 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.

## Part 4A Provisions relating to family law superannuation legislation

### 61W Definitions

In this Part—

**complying superannuation fund** means—

- (a) a regulated superannuation fund under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth, or
- (b) the First State Superannuation Fund.

**contributor spouse**, in relation to a superannuation interest under this Act, means the spouse who has the superannuation interest.

**family law superannuation entitlement** has the same meaning as it has in section 61WB (2) (a).

**family law superannuation legislation** means Part VIIIIB of the *Family Law Act 1975* of the Commonwealth and the *Family Law (Superannuation) Regulations 2001* of the

Commonwealth.

**family law superannuation payment** means an amount payable under this Part to or in respect of a non-contributor spouse.

**flag lifting agreement** has the same meaning as it has in Part VIII B of the *Family Law Act 1975* of the Commonwealth.

**FTC** has the same meaning as it has in the *First State Superannuation Act 1992*.

**non-contributor spouse**, in relation to a superannuation interest under this Act, means the spouse who is not the contributor spouse in relation to that interest.

**payment split** has the same meaning as it has in Part VIII B of the *Family Law Act 1975* of the Commonwealth.

**RSA** means a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997* of the Commonwealth.

**splitting order** has the same meaning as it has in Part VIII B of the *Family Law Act 1975* of the Commonwealth.

**spouse** of a person means a person who is or was married to that person.

**superannuation agreement** has the same meaning as it has in Part VIII B of the *Family Law Act 1975* of the Commonwealth.

**superannuation interest** means an interest that a contributor or former contributor or other person has as a contributor to or beneficiary of the superannuation scheme under this Act.

**61WA Payment of benefits where superannuation interests affected by flagging order or payment split**

Nothing in this Act—

- (a) requires STC to pay a benefit or to make any other payment under this Act, to the extent that any such payment would contravene provisions of the family law superannuation legislation or any order or agreement made under that legislation, or
- (b) prevents STC from paying or reducing a benefit or making any other payment, to the extent that the payment or reduction is required to be made, or results from a requirement, under the family law superannuation legislation or any order or agreement made under that legislation.

**61WB Payment splits**

- (1) The object of this section is to facilitate arrangements for payment splits under the family law superannuation legislation and to provide for family law superannuation

payments to or in respect of non-contributor spouses for the purposes of satisfying the requirements of Division 2.2 of Part 2 of the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.

**Note—**

The effect of satisfying those requirements is that payments to the contributor spouse of a benefit under this Act will no longer be liable to be split for the purposes of the family law superannuation legislation.

- (2) A non-contributor spouse has a family law superannuation entitlement to which this section applies if—
  - (a) the non-contributor spouse has an entitlement, that is operative, to be paid an amount under a superannuation agreement, flag lifting agreement or splitting order in respect of the superannuation interest of a contributor spouse (a **family law superannuation entitlement**), and
  - (b) the family law superannuation entitlement has not been paid to the non-contributor spouse by the contributor spouse, or waived by the non-contributor spouse, in accordance with the family law superannuation legislation.
- (3) On written notice by a contributor spouse or a non-contributor spouse, or by any other person or court, of a family law superannuation entitlement of a non-contributor spouse to which this section applies, STC must take one of the following actions—
  - (a) pay or release to the non-contributor spouse an amount of the value of the family law superannuation entitlement (less any costs chargeable by STC),
  - (b) transfer or rollover to a complying superannuation fund or an RSA nominated by the non-contributor spouse an amount, of the value of the family law superannuation entitlement (less any costs chargeable by STC), to be held for the benefit of the non-contributor spouse.
- (4) STC may take the action set out in subsection (3) (a) only if the contributor spouse is in receipt of a pension under this Act or the non-contributor spouse has satisfied a condition for payment or release of a benefit of a kind that would entitle a contributor to payment of a benefit if the Fund were a complying superannuation fund.
- (5) STC must transfer a family law superannuation payment to FTC for crediting to the First State Superannuation Fund if—
  - (a) the payment is payable under subsection (3) (a) and the non-contributor spouse fails, within the period prescribed by the regulations, to provide details as to the required manner of payment of the family law superannuation payment, or
  - (b) the payment is not payable under subsection (3) (a) and the non-contributor spouse fails, within the period prescribed by the regulations, to make a nomination for the purposes of subsection (3) (b) or a nominated fund or RSA does not accept the nomination.

- (6) For the purposes of this section, the value of a family law superannuation entitlement or family law superannuation payment of a non-contributor spouse is to be determined by STC in accordance with any applicable provisions of the regulations and the family law superannuation legislation.
- (7) STC must not pay a family law superannuation payment to or in respect of a non-contributor spouse under this section if the value of the payment that is or would be payable to or in respect of the non-contributor spouse at that time (taking into account any prior liability to pay a family law superannuation payment) is greater than the value of the contributor spouse's superannuation interest (as calculated in accordance with the regulations) at that time.

#### **61WC Reduction of benefits of contributor spouses**

- (1) STC may reduce the amount of any benefit payable under this Act to or in respect of a contributor spouse (or a spouse or de facto partner of a contributor spouse) if a family law superannuation entitlement is paid or payable to or in respect of the non-contributor spouse under the family law superannuation legislation or this Part or the regulations.
- (2) A preserved or deferred benefit may be reduced under this section.
- (3) A pension may be reduced under this section even though payment of the pension first commenced before the payment of the amount to or in respect of the non-contributor spouse.
- (4) The benefit is to be reduced in accordance with the regulations and any applicable provisions of the family law superannuation legislation.

#### **61WD Regulations**

Regulations may be made for or with respect to the following matters—

- (a) elections by non-contributor spouses for payment of family law superannuation entitlements,
- (b) the persons or bodies to whom a family law superannuation payment may be paid,
- (c) the composition of payments made for the purposes of the family law superannuation legislation or this Part, having regard to the composition of the contributor spouse's superannuation interest under this Act before the payment is paid,
- (d) the payment of fees for or with respect to family law superannuation payments,
- (e) notice of family law superannuation entitlements and payment splits,
- (f) the periods for payment of family law superannuation payments,
- (g) the calculation of payments and entitlements for the purposes of the family law

superannuation legislation or this Part,

- (h) the calculation of the value of superannuation interests of contributor spouses for purposes relating to the family law superannuation legislation or this Part,
- (i) the accrued benefit multiple for contributor spouses, or a class of contributor spouses, for the purposes of the family law superannuation legislation,
- (j) the reduction of benefits (including deferred or preserved benefits) payable to or in respect of contributor spouses, or spouses or de facto partners of contributor spouses, as a consequence of payments under the family law superannuation legislation or this Part,
- (k) without limiting paragraph (j), the commutation of pensions or parts of pensions for the purposes of the reduction of benefits as a consequence of payments under the family law superannuation legislation or this Part.

## **Part 5 Provisions relating to privatisation of employers and other Government initiatives**

### **62 Removal of employers from Act on privatisation**

- (1) The Governor may, by order published on the NSW legislation website, amend Schedule 3 by omitting the name of an employer if the Minister has certified that the removal is a consequence of a Government privatisation initiative affecting the employer.
- (2) An order under this section, and any order revoking or varying such an order, may be made to take effect on and from a day specified in the order, whether or not the day specified is earlier than the day of publication of the order.

### **62A Application of Part**

- (1) This Part applies to a contributor who transfers employment if—
  - (a) the contributor elects or is required to transfer employment otherwise than with an employer under this Act, and
  - (b) the Minister certifies that the transfer of employment is as a consequence of a Government privatisation initiative or other Government initiative.
- (2) This Part applies to a contributor who transfers superannuation coverage if—
  - (a) the contributor, while remaining with his or her existing employer, elects or is required to become a contributor to another superannuation scheme, and
  - (b) the Minister certifies that the transfer of superannuation coverage is as a consequence of a Government privatisation initiative or other Government



initiative.

- (3) This Part applies to a contributor if the employer of the contributor ceases to be an employer under this Act because of an order under this Part.

### **63 Preservation of benefit for contributors**

- (1) Part 1 of Schedule 23 has effect with respect to contributors to whom this Part applies.
- (2) A benefit is not required to be preserved under this section if a benefit is payable under another provision of this Act because the contributor has been retrenched.

### **64 Adjustment of employer liability on Government initiative taking effect**

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

### **65 Employer liabilities after Government initiative takes effect**

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

Crown.

- (3) Any surplus after meeting any liability vested in the Crown by this section is vested in the Crown.

**66-69 (Repealed)**

**Part 6**

**69A-84 (Repealed)**

**Part 7 General provisions**

**84A (Repealed)**

**85 Information that must be disclosed to contributors**

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

**85A Disputes**

- (1) If STC makes a decision under this Act in relation to a contributor or other person, STC must give to the contributor or other person notice in writing of—
  - (a) the decision, and
  - (b) the right to dispute the decision, and
  - (c) the time within which notice of a dispute must be served on STC.
- (2) A contributor or other person who is aggrieved by a decision made by STC has a right to dispute that decision and to have the dispute determined under the *Superannuation Administration Act 1996*.
- (3) Notice of the dispute must be served on STC within 2 years after the aggrieved person is notified in writing of the right to dispute that decision.
- (4) This section applies to a decision made before, on or after the commencement of this section, except a decision in respect of which a dispute has been notified to STC before the commencement of this section.

## **86 Regulations**

- (1) The Governor may, on the recommendation of STC, make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying this Act into effect.
- (1A) (Repealed)
- (2) The regulations may provide a penalty not exceeding 0.5 penalty unit for any breach thereof.
- (3) (Repealed)

## **86A STC empowered to fix interest rates for the purposes of this Act**

- (1) Whenever STC considers it necessary to do so, STC may, by resolution, fix a rate of interest for the purposes of section 15A, 21E, 38C, 61, 61A or 91A.
- (2) A rate fixed under subsection (1) for the purposes of section 38C, 61, 61A or 91A has effect on and from—
  - (a) the date on which the resolution of STC fixing the rate is made, or
  - (b) if a later date is specified in the resolution, that later date.
- (3) A rate fixed under subsection (1) for the purposes of section 15A or 21E has effect on and from—
  - (a) such date as is specified in the resolution of STC fixing the rate (whether that date is before or after the date of the resolution), or
  - (b) if no such date is specified in the resolution, the date on which the resolution is made.
- (4) Subject to this section, STC has power, and shall be regarded as always having had power, when paying a benefit under this Act, to pay interest at such rates, for such periods and in such circumstances as in its absolute discretion it thinks appropriate.
- (5) STC may fix different rates for the provisions mentioned in subsection (1).

## **87 Returns**

STC may at any time require any employer to furnish such returns with respect to the employer's employees as STC may decide, and may at any time require any employee to furnish such information as STC may decide is necessary for the purpose of any investigation in connection with the Fund. If any such employer or employee neglect to furnish such information within a reasonable time, the employer or employee shall be liable to a penalty not exceeding 0.5 penalty unit.

## **88 Assignment etc of benefit**

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

## **88A Payment without grant of probate etc**

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

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

- (2) Where STC makes a decision under subsection (1), STC may—
  - (a) pay the whole or any part of the amount of the benefit to an eligible person within the meaning of 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 STC 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, STC may, despite any other provision of this Act, pay to the personal representatives of the deceased any benefit that, but for this subsection, would have been paid to some other person.

### **89 Restriction on manner of payment of benefit**

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

### **89A Evidence as to age, marriage or death**

For the purposes of this Act STC may require such evidence of the age, marriage, dependency or death of any person, or any other particular in relation to a person, as it deems necessary and in default of the production of such evidence STC may itself obtain such evidence and deduct the expenses incurred in obtaining the same from any moneys payable from the fund to the person from whom such evidence is required.

Where any moneys are not immediately payable from the fund to the person (being a contributor) from whom such evidence is required the contributor's employer shall, on the requisition of STC and with the approval of the Minister, deduct the amount of the expenses so incurred from the contributor's salary and shall forward that amount to STC.

### **90 (Repealed)**

### **91 Time for making elections, applications and choices**

- (1) Notwithstanding anything contained in this Act (subsection (2) excepted), an election, application or choice under this Act or any Act amending this Act—
- (a) shall be in writing,
  - (b) may be made on or before—
    - (i) the last day on which, but for this paragraph, it could be made, or
    - (ii) the expiration of the period of 2 months after the right to make it arises,whichever is the later, but is not validly made unless received in the office of STC on or before the last day on which, pursuant to this paragraph, it may be made,
  - (c) shall in the case of an election under section 21C take effect as from such date, or where such election is in respect of different amounts as from such respective dates, as STC determines and, in the case of any other election, application or choice, take effect and be operative where provision therefor is made by or under this Act as from the date so provided, or where no such provision is made as from the date it is received in the office of STC or such other date as STC may determine,

(d) may, with the approval of STC, be amended or revoked subject to such conditions as STC may impose, including conditions as to the time or times at which, and the manner in which, the election as amended is to take effect, or the time at which the revocation is to take effect.

(1A) The provisions of subsection (1) (c) and (d) do not apply to an election under section 61RB.

(2) Where an election, application or choice is not made or received within the time prescribed in respect thereof by paragraph (b) of subsection (1) and STC is satisfied that in all the circumstances of the case it is desirable, that the election, application or choice should be accepted, STC may, subject to such terms and conditions as it may impose, accept the election, application or choice and deal with it as if it had been made or received within the time so prescribed.

(3) Subsection (2) does not apply to or in respect of an election under section 21C.

(4) The date or dates determined by STC under subsection (1) (c) as the date or dates as from which an election made under section 21C after the commencement of Schedule 6 to the *Superannuation (Amendment) Act 1975* is or are to take effect shall not be later than the expiration of 7 months after the last day on which the election could have been made, but STC may determine a later date or later dates if it is satisfied that such special circumstances exist as warrant the determination thereof.

(5) If an election to commute pension payable under section 28A or 28AA is made under section 21C by a contributor or pensioner who has not attained the age of 55 years, the date or dates determined by STC under subsection (1) (c) as the date or dates from which the election is to take effect must not be earlier than the date on which the contributor or pensioner attains the age of 55 years.

(5A) (Repealed)

(6) Where—

(a) an election to commute pension payable under section 29 is made under section 21C by a pensioner, and

(b) any employment which, on the pensioner's ceasing to be a contributor, the pensioner was entitled to count as service for the purpose of section 21 was, in total, for less than a period of 10 years,

the date or dates determined by STC under subsection (1) (c) as the date or dates as from which the election is to take effect shall not be earlier than—

(c) the expiration of 6 months after the day the election was made, or

(d) the expiration of such time after the pensioner ceased to be a contributor as is

equivalent to the balance of the period referred to in paragraph (b),  
whichever first occurs.

**91A Recovery of money payable to STC**

- (1) If an employee or pensioner, spouse or de facto partner of a deceased employee or pensioner, or an employer or any other person owes money to the Fund, STC may recover that money, together with interest as provided by subsection (2), by deducting it—
  - (a) in the case of money owed by an employee or pensioner—from amounts payable from the Fund—
    - (i) to the employee or pensioner, or
    - (ii) to the spouse or de facto partner of the employee or pensioner, or
    - (iii) to the personal representatives of the employee or pensioner, or
    - (iv) in respect of the children of the employee or pensioner or of the spouse or de facto partner of the employee or pensioner, or
  - (b) in the case of money owed by the spouse or de facto partner of a deceased employee or pensioner—from amounts payable from the Fund—
    - (i) to that spouse or de facto partner, or
    - (ii) to the personal representatives of that spouse or de facto partner, or
    - (iii) in respect of the children of that spouse or de facto partner or the children of the deceased employee or pensioner, or
  - (c) in the case of money owed by an employer—from any amounts in the Fund credited to that employer, or
  - (d) in the case of money owed by any other person—from any amounts payable from the Fund to or in respect of that other person or to the personal representatives of that other person.
- (2) Interest at the rate for the time being fixed by STC under section 86A for the purposes of this section is payable—
  - (a) in respect of any amount that is owed to the Fund—
    - (i) by an employee or pensioner, or
    - (ii) by the spouse or de facto partner of a deceased employee or pensioner, or
  - (b) in respect of any amount owed to the Fund by an employer in respect of a

contributor or former contributor,

calculated from the date on which the amount owing became due for payment to the date on which STC receives the amount.

- (3) STC may, in such special circumstances as it may determine and in a particular case, waive payment of interest or any part of any interest that is payable under subsection (2).
- (4) The reference in subsection (2) (a) to an amount that is owed to the Fund includes a reference to a contribution, whether STC has allowed payment of the contribution to be deferred or not.
- (5) STC may recover in a court of competent jurisdiction as a debt owing to STC any money owing to the Fund, together with any interest that is payable on that money.

#### **91B Payments to cover superannuation contributions surcharge**

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

#### **91C Repayment of excess payments**

STC must refund to a contributor or former contributor any excess amount of payments made under section 91B remaining in the contributor's or former contributor's account after payment of the amount of debt (including accrued interest) owed for superannuation contributions surcharge in respect of the contributor or former contributor, together with interest on the excess amount at a rate determined by STC.

#### **92 Power to amend Schedule 3 (List of employers)**

- (1) The Governor may, by order published on the NSW legislation website—
  - (a) amend Schedule 3 by inserting the name of an organisation or corporation or a



description of a class of organisations or corporations, or by transferring such a name or description from one Part of that Schedule to another Part, or

- (b) amend Schedule 3 by omitting the name of an employer that has changed its name and inserting instead the new name of the employer, or
- (c) amend Schedule 3 by omitting the name of an employer that has ceased to exist but has been replaced as an employer by another organisation or corporation and by inserting instead the name of that other organisation or corporation, or
- (d) amend Schedule 3 by omitting the name of an employer that has ceased to exist and has not been so replaced, or
- (d1) amend Schedule 3 by omitting the name of an employer if the employer no longer employs any employees who are contributors, or
- (e) amend Schedule 3 by adding a Part for the purposes of paragraph (a).

- (1A) The Governor may, by order published on the NSW legislation website, make an order amending Schedule 3 by inserting, in relation to an employer listed in Schedule 3, such limitations as are specified in the amendment.
- (1B) An order under subsection (1A) may not impose limitations that operate to the prejudice of an existing contributor.
- (2) An order under subsection (1), and any other order revoking or varying such an order, may be made—
  - (a) to take effect on and from a day specified in the order, whether or not the day specified is earlier than the day of publication of the order, and
  - (b) to effect the amendment to which it relates with such limitations as are specified in the amendment, being limitations that do not operate to the prejudice of an existing contributor.

**92AA-94 (Repealed)**

**94A Transitional and other provisions arising from the Superannuation (Amendment) Act 1985**

Schedule 20 has effect.

**94B Transitional and other provisions arising from the Superannuation (Amendment) Act 1988**

Schedule 22 has effect.

**94C Savings and transitional**

Schedule 25 has effect.

## **Part 8 Provisions applicable in respect of the period from 13 January 1976 to 12 January 1977**

### **95 Definition**

In this Part, **suspension period** means the period commencing on and including 13 January 1976 and ending on and including 12 January 1977.

### **96 This Part to prevail over other provisions**

This Part has effect notwithstanding any other provisions of this or any other Act.

### **97 Number of units not to be increased**

- (1) The number of units of pension for which a contributor was contributing under this Act immediately before the suspension period shall not be increased during the suspension period, except as provided in this Part.
- (2) A person shall, on becoming a contributor during the suspension period, contribute for the number of units of pension for which the person would have contributed had this Part not been enacted, but thereafter the number of units for which the person was contributing under this Act on the day on which the person so became a contributor shall not be increased during the suspension period, except as provided in this Part.
- (3) Where—
  - (a) a contributor was actually paid a salary increase before the suspension period,
  - (b) the increased salary fell within a salary group higher than the salary group within which it fell immediately before that increase, and
  - (c) the contributor had, before payment of that increase, abandoned a unit, or units, of pension,the contributor may make an election under section 12 (4) to take up that abandoned unit, or any of those abandoned units, during the suspension period, being an election that the contributor could have made in relation to that increase had this Part not been enacted.
- (4) Nothing in this section affects the right to make an election under section 23BA.

### **98 Reserve units**

No election to contribute for reserve units of pension under section 15A (2) may be made during the suspension period.

### **99 Pensions emerging during suspension period**

- (1) Where—

- (a) a former contributor or a contributor's widow becomes entitled to a pension during the suspension period, and
- (b) the salary group within which the contributor's salary fell immediately before the entitlement to the pension arose was higher than the salary group within which it fell—
  - (i) immediately before the commencement of the suspension period, or
  - (ii) on the date on which the contributor became a contributor,whichever is the later,

the former contributor or the widow may, within one month after the entitlement to the pension arose, elect to take up one or more of the additional units of pension (other than abandoned units) for which the contributor would have been required or entitled to contribute had this Part not been enacted.

- (2) Where the former contributor referred to in subsection (1) could have made but did not make the election which the former contributor was entitled to make under subsection (1), and the former contributor dies within one month after the entitlement to the pension arose, the former contributor's widow may, within one month after the date of the former contributor's death, elect to take up one or more of the additional units of pension (other than abandoned units) which could have been the subject of an election under subsection (1).
- (3) Where a former contributor or a contributor's or former contributor's widow makes an election to take up any units under subsection (1) or (2), the contributor shall, for the purposes of this Act, be deemed to have been contributing for those units as from the date as from which the contributor could have contributed for them had this Part not been enacted.
- (4) The amount by which a pension is increased by virtue of subsection (3) is not payable unless, before the expiration of one month, or such further period as STC may in special circumstances allow, after the pension becomes payable—
  - (a) the former contributor or the widow, as the case may require, pays to STC an amount equal to the amount that would have been payable to STC as employee's contributions in respect of the additional units had this Part not been enacted, or
  - (b) arrangements, satisfactory to STC, have been made for the payment to STC of the amount referred to in paragraph (a).
- (5) Where payment is made, or arrangements are made, under subsection (4) in respect of any additional unit, the former employer of a former contributor referred to in subsection (1) shall pay to STC an amount equal to the amount that would have been payable to STC as employer's contributions in respect of the unit had this Part not

been enacted.

- (6) For the purposes of subsection (4) (b), reserve units of pension may be appropriated in respect of any additional units instead of being dealt with in accordance with section 15A (6AB), and section 15A applies to and in respect of the additional units as if this Part had not been enacted.

### **100 Abandoned units**

(1) Where—

- (a) a contributor retires or dies during the suspension period and at the date of retirement or death—
- (i) except in a case to which subparagraph (ii) applies—had attained the age of 59 years, or
  - (ii) in the case of a woman contributor who retires, having contributed under this Act to retire at the age of 55 years—had attained the age of 54 years,
- (b) the contributor had, before the suspension period, abandoned one or more units of pension,
- (c) the salary group within which the contributor's salary fell at the date of retirement or death was higher than the salary group within which it fell—
- (i) immediately before the commencement of the suspension period, or
  - (ii) on the date on which the contributor became a contributor,
- whichever is the later, and
- (d) the contributor would have been entitled to elect to take up the abandoned unit or units after attaining the age of 59 years (or 54 years in a case to which paragraph (a) (ii) applies) had this Part not been enacted,

the former contributor (in the case of the contributor's retirement) or the contributor's widow (in the case of the contributor's death) may, within one month after the date of retirement or death, elect to take up one or more of the number of the abandoned units.

- (2) Where the contributor referred to in subsection (1) retires during the suspension period and could have made but did not make the election which the contributor was entitled to make under subsection (1), and the contributor dies within one month after the date of the contributor's retirement, the contributor's widow may, within one month after the date of the contributor's death, elect to take up one or more of the number of the abandoned units.

(3) Where a former contributor or a contributor's or former contributor's widow makes an

election to take up any abandoned units under subsection (1) or (2), the contributor shall, for the purposes of this Act, be deemed to have been contributing for those units as from the only date, or the later or latest of the dates, as from which the contributor could have contributed for them had this Part not been enacted.

- (4) The amount by which a pension is increased by virtue of subsection (3) is not payable unless, before the expiration of one month, or such further period as STC may in special circumstances allow, after the pension becomes payable—
- (a) the former contributor or the widow, as the case may require, pays to STC an amount equal to the amount that would have been payable to STC as employee's contributions in respect of the units to which the election relates had this Part not been enacted, or
- (b) arrangements, satisfactory to STC, have been made for the payment to STC of the amount referred to in paragraph (a).
- (5) Where payment is made, or arrangements are made, under subsection (4) in respect of any unit, the former employer of a contributor or former contributor referred to in subsection (1) or (2) shall pay to STC an amount equal to the amount that would have been payable to STC as employer's contributions in respect of the unit had this Part not been enacted.

#### **101 Reduction of salary**

Where the salary of a contributor is reduced during the suspension period, sections 13 and 13A shall apply to and in respect of the reduction only if the salary group within which the contributor's salary falls as at the date of the reduction is lower than the salary group within which it fell—

- (a) immediately before the commencement of the suspension period, or
- (b) on the date on which the contributor became a contributor,
- whichever is the later.

#### **102 Elections**

Section 91 (1) (b) (ii) does not apply in relation to an election under this Part.

#### **103 (Repealed)**

### **Part 9 Provisions applicable in respect of foreign contributors**

#### **104 Definitions**

- (1) In this Part—

***conversion ratio***, in relation to a foreign currency, means—

- (a) in the case of sterling—the ratio of 1 pound sterling to 2 Australian dollars, or
- (b) in the case of Japanese currency—the ratio of 400 Japanese yen to 1 Australian dollar.

**foreign contributor** means a contributor who—

- (a) was recruited in a country other than Australia and is employed in such a country, and
- (b) is paid a salary at a rate expressed in a currency other than Australian currency.

**foreign currency** in relation to a foreign contributor means the currency in which the foreign contributor's rate of salary is expressed.

- (2) A reference in this Part—
  - (a) to a foreign contributor shall be construed as including a reference to a former foreign contributor, and
  - (b) to an employer of a foreign contributor shall be construed as including a reference to the person who was the employer of the former foreign contributor.

### **105 Certain calculations to be made by means of a conversion ratio**

Where—

- (a) an amount expressed in a foreign currency is required for the purposes of this Act to be expressed in Australian currency—that amount expressed in Australian currency, or
  - (b) an amount expressed in Australian currency is required for the purposes of this Act to be expressed in a foreign currency—that amount expressed in the foreign currency,
- shall be calculated by means of the conversion ratio in relation to that foreign currency.

### **106 Certain amounts to be expressed in foreign currency**

- (1) This section shall not apply in respect of a foreign contributor unless a conversion ratio applies in relation to the currency of the country in which the foreign contributor is employed.
- (2) For the purpose of determining the number of units of pension that, pursuant to section 12 (1), is appropriate for the salary actually being paid to a foreign contributor, the amount of the salary shall be expressed in Australian currency in accordance with section 105.
- (3) Any amount payable under this Act by or to a foreign contributor shall be expressed in foreign currency in accordance with section 105.

### **107 Employer to pay to or receive from the Fund any difference between actual amount**

**paid under this Part and amount otherwise payable**

(1) Where—

- (a) an amount that, but for section 106 (3), would be payable under this Act by a foreign contributor is greater than the amount that is paid by the foreign contributor, or
- (b) an amount that, but for section 106 (3), would be payable under this Act to a foreign contributor is less than the amount that is paid to the foreign contributor,

the employer of the foreign contributor shall pay to the Fund an amount equal to the difference between the amount that, but for section 106 (3), would be payable and the amount that is paid.

(2) Where—

- (a) an amount that, but for section 106 (3), would be payable under this Act by a foreign contributor is less than the amount that is paid by the foreign contributor, or
- (b) an amount that, but for section 106 (3), would be payable under this Act to a foreign contributor is greater than the amount that is paid to the foreign contributor,

STC shall pay from the Fund to the employer of the foreign contributor an amount equal to the difference between the amount that, but for section 106 (3), would be payable and the amount that is paid.

**108 Payments to be made as if conversion ratio always applied**

Where a conversion ratio applies to the currency of a country in which, immediately before the conversion ratio first applied to that currency, there was employed a foreign contributor to whom section 106 did not apply—

- (a) STC may pay to the foreign contributor such amount or make such allowance in respect of future contributions payable by the contributor,
- (b) the employer shall pay to the Fund such amount, and
- (c) the foreign contributor shall pay to the Fund such amount,

as in the opinion of STC would place the Fund, the foreign contributor and the employer of the foreign contributor in the financial position in which they would have been if the conversion ratio had always applied.

**Schedules 1, 2 (Repealed)**

## Schedule 3 List of employers

(Sections 3, 10AJ, 92)

### Part 1 The Crown and other employers

A Public Service agency within the meaning of the *Government Sector Employment Act 2013*

NSW Police Force

Health Administration Corporation

Water Administration Ministerial Corporation

Sydney Water Corporation

Hunter Water Corporation

Western Lands Commissioner

Australian Museum Trust

Roads and Maritime Services

New South Wales Treasury Corporation

Judicial Commission of New South Wales

Bathurst-Orange Development Corporation

Homebush Abattoir Corporation

Independent Commission Against Corruption

New South Wales Film and Television Office

State Transit Authority of New South Wales

The University of Sydney

The University of New England

University of New England, Armidale Union (limited to persons who were contributors to the Fund immediately before becoming employed by the University of New England, Armidale Union)

The University of New South Wales

The Macquarie University

The University of Newcastle

The University of Wollongong

University of Technology Sydney



Charles Sturt University

Western Sydney University

Southern Cross University

The New South Wales Teachers' Federation

Public Service Association of New South Wales

New South Wales Nurses and Midwives' Association

Trustees of Arakoon State Conservation Area

Trustees of Bent's Basin State Conservation Area

Trustees of Burrendong State Conservation Area

Trustees of Burrinjuck State Conservation Area

Trustees of Copeton State Conservation Area

Trustees of Lake Glenbawn State Conservation Area

Trustees of Grabine State Conservation Area

Trustees of Killalea State Conservation Area

Trustees of Lake Keepit State Conservation Area

Trustees of Wyangala State Conservation Area

The Sydney Opera House Trust

United Dental Hospital

Wentworth Park Trust

Parramatta Park Reserve Trust

Parramatta Stadium Trust

Zoological Parks Board of New South Wales

Ambulance Service of New South Wales

University of Wollongong Recreation and Sports Association

Australian Securities Commission (limited to those persons who—

(a) immediately before 1 January 1991, were employed in the Government Department known as Business and Consumer Affairs, and

(b) immediately before the date of assent to the *Statute Law (Miscellaneous Provisions) Act (No 2) 1991*, were employed in the service of the Commission, and

(c) on being employed in that service, have elected to remain contributors to the Fund)

TAFE Commission

Wild Dog Destruction Board

The Hills Centre Limited (limited to those employees who became employees after 1 July 1997 and before the commencement of the *Superannuation (Local Government and Energy Employers) Order 2002*)

Audit Office

Lord Howe Island Board

New South Wales Casino Control Authority

Australian Industrial Registry (limited to those persons—

(a) who on 3 February 1993 were employed by the Joint Coal Board constituted under the *Coal Industry Act 1946* as officers or employees of the Coal Industry Tribunal also constituted under that Act, and

(b) who, before becoming employed in the Australian Industrial Registry, have not elected to make provision for a preserved benefit as referred to in clause 3 (1) of Schedule 23)

Financial Institutions Commission (limited to the person who was appointed to the office of Chief Executive of the New South Wales Financial Institutions Commission on 1 July 1992)

Public Transport Union NSW Branch (limited to existing employees of the Public Transport Union NSW Branch who were contributors to the Fund as at 1 March 1993, and employees who become employees on or after 1 March 1993 and who are contributors to the Fund immediately before becoming employees)

Government Pricing Tribunal of New South Wales

Financial Institutions Commission (limited to those persons—

(a) who, being contributors, were employed in the Registry of Co-operatives, Department of Local Government and Co-operatives, immediately before the transfer date specified in the order by which their employment was transferred to that Commission in accordance with clause 3 of Schedule 3 to the *Financial Institutions Commission Act 1992*, and

(b) who did not, before that transfer date, exercise their entitlement under this Act to make provision for a preserved benefit provided by Division 3A of Part 4)

Sydney Organising Committee for the Olympic Games

New South Wales Aboriginal Land Council

Hawkesbury-Nepean Catchment Management Trust

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

Hunter Catchment Management Trust

Newcastle Port Corporation

Port Kembla Port Corporation

Sydney Ports Corporation

Maritime Authority of NSW

Port Macquarie Base Hospital (limited to those persons—

(a) who were, immediately before 2 November 1994—

(i) employees of Hastings District Hospital, Port Macquarie, and

(ii) contributors to the State Superannuation Fund, and

(b) who, on that date—

(i) transferred their employment to Port Macquarie Base Hospital, and

(ii) did not cease to be contributors to that Fund)

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

Delta Electricity

Macquarie Generation

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

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

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

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

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

FSS Trustee Corporation

SAS Trustee Corporation

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

1999

Hawkesbury District Health Service Limited (limited to persons—

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

Garvan Institute of Medical Research (limited to those persons—

- (a) who were employees of that Institute immediately before 6 March 1998, and
- (b) who were members of the Fund immediately before that date)

Olympic Roads and Transport Authority

Australian Prudential Regulation Authority (limited to those persons—

- (a) who, being contributors, were employed by the Financial Institutions Commission immediately before they became employees of the Authority under section 32 of the *Financial Sector Reform (New South Wales) Act 1999*, and
- (b) who did not, before becoming employees of the Authority, exercise their entitlement to make provision for a preserved benefit under clause 3 (1) of Schedule 23)

Eraring Energy

Parramatta Rail Link Company Pty Limited

Landcom

Pacific National (NSW) Pty Ltd (limited to those persons who were, immediately before 21 February 2002, employees of the Freight Rail Corporation)

Asciano Services Pty Ltd (limited to those persons who were, immediately before 21 February 2002, employees of the Freight Rail Corporation)

A council within the meaning of the *Local Government Act 1993* (limited to those employees who became employees after 1 July 1997 and before the commencement of the *Superannuation (Local Government and Energy Employers) Order 2002*, not being employees referred to in clause 11 of the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997*)

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

A livestock health and pest authority constituted under the *Rural Lands Protection Act 1998*

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

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

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

Australian Health Management Group Pty Limited (formerly known as Government Employees Health Club, Government Employees Health Fund Limited and Australian Health Management Group Limited) (limited to—

- (a) contributors in respect of any period during which they have been employees of the employer from and including 1 July 1989 (but only if they were employees of the employer on 18 December 1992), and
- (b) other contributors in respect of any period during which they were employees of the employer from and including 1 July 1989 and before 18 December 1992)

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

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

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

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

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

Western Sydney Buses

POWMRI Limited (limited to those employees who were employees of the University of New South Wales immediately before 21 July 2003)

Jenolan Caves Reserve Trust

Rail Corporation New South Wales

Independent Transport Safety and Reliability Regulator

Sydney Ferries

Cancer Institute (NSW)

Natural Resources Commission

New South Wales Institute of Sport

Australian Rail Track Corporation Ltd (limited to those persons who—

- (a) become employees of Australian Rail Track Corporation Ltd on or after 1 June 2004 and not later than 31 December 2008, and
- (b) cease to be employed by Rail Infrastructure Corporation, RailCorp or the State Rail Authority not more than 30 days before being so employed, and
- (c) do not elect to cease to be contributors to the Fund within 30 days of commencing employment with Australian Rail Track Corporation Ltd).

Catholic Health Care Services Limited (limited to those persons who were employees of Mid Western Area Health Service immediately before 1 October 2004 and transferred their employment to Macquarie Care Centre, Bathurst, on that date)

National Office Products Ltd (limited to those persons—

- (a) who were—
  - (i) employed in the Q Stores business unit of the Department of Commerce, and
  - (ii) contributors to the State Superannuation Fund, immediately before 1 February 2005, and
- (b) who, on that date, transferred their employment to National Office Products Ltd and did not cease to be contributors to that Fund)

Toll Pty Limited—limited to those persons who—

- (a) immediately before 1 March 2005, were employed in the State Mail business unit of the Department of Commerce and were contributors to the Fund, and
- (b) on that date, became employees of Toll Pty Limited and did not cease to be contributors to the Fund

Salmat Document Management Solutions Pty Limited—limited to those persons who—

- (a) immediately before 16 April 2005, were employed in the Government Printing Service business unit of the Department of Commerce and were contributors to the Fund, and
- (b) on that date, became employees of Salmat Document Management Solutions Pty Limited and did not cease to be contributors to the Fund

Calvary Retirement Community Cessnock Limited (limited to those persons—

- (a) who were employees of Hunter Area Health Service immediately before 2 April 2003, and
- (b) who, on or after that date, transferred their employment from Hunter Area Health Service to Calvary Retirement Community Cessnock Limited)

Events New South Wales Pty Limited—limited to those persons who—

- (a) were employed in the Major Events Unit of the Department of State and Regional Development immediately before becoming employees of Events New South Wales Pty Limited, and
- (b) became employees of Events New South Wales Pty Limited on or before 10 March 2009

Pacific National (QLD) Pty Ltd (limited to those persons who were, immediately before 21 February 2002, employees of the Freight Rail Corporation)

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

Pacific National (Victoria) Pty Ltd (limited to those persons who were, immediately before 21 February 2002, employees of the Freight Rail Corporation)

Murray-Darling Basin Authority (limited to those persons who were, immediately before 15 December 2008, employees of the Murray-Darling Basin Commission)

Sydney Metro

Tatts Employment Co (NSW) Pty Ltd (limited to persons who, immediately before 31 March 2010, were employees of New South Wales Lotteries Corporation)

National Measurement Institute (limited to those persons who were, immediately before 1 July 2010, employed in the Department of Services, Technology and Administration in a function relating to trade measurement)

SITA (No. 1) Pty Ltd (limited to persons who, immediately before 31 January 2011, were employees of Waste Recycling and Processing Corporation)

National VET Regulator (limited to those persons who, immediately before 1 July 2011, were employed in the Department of Education and Communities in the Quality Assurance Services Directorate)

Harbour City Ferries Pty Ltd (limited to those persons who, immediately before 28 July 2012, were employed on a permanent basis by Sydney Ferries and—

- (a) on that date, transferred their employment to Harbour City Ferries Pty Ltd, or
- (b) were covered by the *Sydney Ferries Salaried and Senior Officers Agreement 2011*, commenced employment with Harbour City Ferries Pty Ltd between 28 July 2012 and 28 October 2012 (inclusive), were not made an offer of employment by Harbour City Ferries Pty Ltd before 28 July 2012 and did not receive a voluntary redundancy payment from Sydney Ferries)

Infrastructure NSW

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

Port Botany Operations Pty Limited (as trustee of the Port Botany Unit Trust), limited to those employees whose employment is transferred from Sydney Ports Corporation to Port Botany Operations Pty Limited (as trustee of the Port Botany Unit Trust) by order under section 16 of the *Ports Assets (Authorised Transactions) Act 2012*

Port Kembla Operations Pty Limited (as trustee of the Port Kembla Unit Trust), limited to those employees whose employment is transferred from Port Kembla Port Corporation to Port Kembla Operations Pty Limited (as trustee of the Port Kembla Unit Trust) by order under section 16 of the *Ports Assets (Authorised Transactions) Act 2012*

NSW Trains

Sydney Trains

Transport Cleaning Services

Eraring Energy Services Pty Limited, limited to those employees whose employment is transferred from Eraring Energy to Eraring Energy Services Pty Limited by order under section 14 of the *Electricity Generator Assets (Authorised Transactions) Act 2012*

Green State Power Pty Ltd

EnergyAustralia NSW Pty Ltd, limited to those employees whose employment is transferred from Delta Electricity to EnergyAustralia NSW Pty Ltd pursuant to offers of employment made under the Sale and Purchase Agreement (Delta Western Assets) dated 25 July 2013 between the Crown in Right of the State of New South Wales, Delta Electricity, EnergyAustralia Pty Ltd and EnergyAustralia NSW Pty Ltd

National Disability Insurance Scheme Launch Transition Agency—limited to those employees who, on or after 4 October 2013, but before 1 July 2019, commenced permanent employment with the National Disability Insurance Scheme Launch Transition Agency immediately following their permanent employment with the Department of Family and Community Services.

Port of Newcastle Operations Pty Limited (as trustee of the Port of Newcastle Unit Trust), limited to those employees whose employment is transferred from Newcastle Port Corporation to Port of Newcastle Operations Pty Limited (as trustee of the Port of Newcastle Unit Trust) by order under section 16 of the *Ports Assets (Authorised Transactions) Act 2012*.

AGL Macquarie Pty Limited, limited to those employees whose employment is transferred from Macquarie Generation to AGL Macquarie Pty Limited pursuant to offers of employment made under the Sale and Purchase Agreement dated 12 February 2014 between Macquarie Generation and AGL Macquarie Pty Limited

Water NSW

Snowy Hydro Limited, limited to those employees whose employment is transferred from Delta Electricity to Snowy Hydro Limited pursuant to offers of employment made under the Sale and



Purchase Agreement (Colongra Assets) dated 29 December 2014 between the Crown in Right of the State of New South Wales, Delta Electricity and Snowy Hydro Limited

Insurance and Care NSW

AGL Energy Limited, limited to those employees who, immediately before commencing employment with AGL Energy Limited, were—

- (a) employees of AGL Macquarie Pty Limited, and
- (b) employees for the purposes of this Act.

Sydney Motorway Corporation Pty Limited and its subsidiaries

Sunset Power International Pty Ltd, limited to those employees whose employment is transferred from Delta Electricity to Sunset Power International Pty Ltd pursuant to offers of employment made under the Sale and Purchase Agreement dated 19 November 2015 between Delta Electricity and Sunset Power International Pty Ltd

Australian Unity Home Care Service Pty Ltd, limited to those persons whose employment was transferred to Australian Unity Home Care Service Pty Ltd in accordance with the Implementation and Sale Agreement (dated 27 August 2015) between the Crown in Right of the State of New South Wales, Australian Unity Home Care Pty Ltd and Australian Unity Limited

Cochrane Dam Pty Ltd (limited to the person whose employment was transferred from Delta Electricity to Cochrane Dam Pty Ltd pursuant to an offer of employment made under the Sale and Purchase Agreement (Brown Mountain Assets) dated 1 July 2016 between the Crown in Right of the State of New South Wales, Delta Electricity, Cochrane Dam Pty Ltd and Hydro Power Pty Limited)

Australian Nursing and Midwifery Federation New South Wales Branch

Office of the National Rail Safety Regulator established under the [Rail Safety National Law \(NSW\)](#) (limited to those persons whose employment was transferred from the Independent Transport Safety Regulator to the Office of the National Rail Safety Regulator pursuant to an offer of employment made under the Transition Agreement of 7 November 2016 between the Office of the National Rail Safety Regulator, the Independent Transport Safety Regulator and Transport for New South Wales)

TJS Services Group Pty Limited (limited to the person whose employment was transferred to TJS Services Group Pty Limited pursuant to an offer of employment made under the agreement between the Department of Finance, Services and Innovation and TJS Services Group Pty Limited dated 1 July 2016 and known as the *Asset Sale Agreement*)

Australian Registry Services Pty Ltd (ACN 617 926 066) as trustee for the Australian Registry Services Trust (limited to those persons who, immediately before 11.59 pm on 30 June 2017, were employees of the Land and Property Information Division, Department of Finance, Services and Innovation and whose employment is transferred pursuant to an order made by the Treasurer under section 21 of the [Land and Property Information NSW \(Authorised Transaction\) Act 2016](#))

Any person in the non-government sector (within the meaning of the [National Disability Insurance Scheme \(NSW Enabling\) Act 2013](#)) to whom the employment of a disability services employee (within the meaning of that Act) is transferred, on or after 1 July 2017 and on or before 30 June 2022, by an

order of the Minister under section 14 of that Act (limited to those employees whose employment is transferred by any such order)

Healthscope Operations Pty Ltd (limited to those employees whose employment was transferred to Healthscope Operations Pty Ltd from 1 July 2018 pursuant to offers of employment made under the Project Deed dated 11 December 2014 between Health Administration Corporation and the Northern Sydney Local Health District (together on behalf of the State) and NBH Operator Co Pty Ltd (in its capacity as trustee of the NBH Operating Trust) and NBH Operator B Pty Ltd)

Clinical Laboratories Pty Ltd (limited to those employees whose employment was transferred to Clinical Laboratories Pty Ltd from 1 July 2018 pursuant to offers of employment made under the Project Deed dated 11 December 2014 between Health Administration Corporation and the Northern Sydney Local Health District (together on behalf of the State) and NBH Operator Co Pty Ltd (in its capacity as trustee of the NBH Operating Trust) and NBH Operator B Pty Ltd)

Epic Pharmacy Services Pty Ltd (limited to those employees whose employment was transferred to Epic Pharmacy Services Pty Ltd from 1 July 2018 pursuant to offers of employment made under the Project Deed dated 11 December 2014 between Health Administration Corporation and the Northern Sydney Local Health District (together on behalf of the State) and NBH Operator Co Pty Ltd (in its capacity as trustee of the NBH Operating Trust) and NBH Operator B Pty Ltd)

HealthCare Imaging Services Pty Limited (limited to those employees whose employment was transferred to HealthCare Imaging Services Pty Limited from 1 July 2018 pursuant to offers of employment made under the Project Deed dated 11 December 2014 between Health Administration Corporation and the Northern Sydney Local Health District (together on behalf of the State) and NBH Operator Co Pty Ltd (in its capacity as trustee of the NBH Operating Trust) and NBH Operator B Pty Ltd)

Ventia NBH Pty Limited (limited to those employees whose employment was transferred to Ventia NBH Pty Limited from 1 July 2018 pursuant to offers of employment made under the Project Deed dated 11 December 2014 between Health Administration Corporation and the Northern Sydney Local Health District (together on behalf of the State) and NBH Operator Co Pty Ltd (in its capacity as trustee of the NBH Operating Trust) and NBH Operator B Pty Ltd)

Transit Systems West Services Pty Ltd (limited to those persons who, immediately before 1 July 2018, were contributors to the Fund and whose employment was transferred to Transit Systems West Services Pty Ltd on that date pursuant to offers of employment made under the Transitional Agreement dated 12 February 2018, between the Secretary of the Department of Transport (on behalf of the State) and Transit Systems West Services Pty Ltd)

Southern Cross Community Housing Limited (limited to those employees whose employment was transferred on 22 October 2018 pursuant to offers of employment made under a transitional agreement dated 31 October 2017 between the Secretary of the Department of Family and Community Services (on behalf of the State) and Southern Cross Community Housing Limited)

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

## **Part 3 Public health organisations**

A public health organisation within the meaning of the [Health Services Act 1997](#)

**Schedules 4-6 (Repealed)****Schedule 7**

(Section 10AD)

**Table A**  
**Men**  
*Employee contributions for four weeks*  
*(Contributors at 30 June 1963)*

<b>Age next birthday</b>	<b>For each additional unit</b>	<b>Age next birthday</b>	<b>For each additional unit</b>
	<b>\$</b>		<b>\$</b>
26	0.54	41	1.26
27	0.58	42	1.34
28	0.60	43	1.46
29	0.64	44	1.56
30	0.68	45	1.68
31	0.70	46	1.84
32	0.74	47	2.00
33	0.78	48	2.20
34	0.84	49	2.44
35	0.88	50	2.72
36	0.92	51	3.06
37	0.98	52	3.48
38	1.04	53	4.04
39	1.10	54	4.76
40	1.18	55	5.80
		56-60	396.90 ÷ <i>n</i>

**Note—**

*n* denotes the number of complete four-weekly contributions payable before attainment of age 60.

**Table B**  
**Women**  
*Employee contributions for four weeks*  
*(Contributors at 30 June 1963)*

Age next birthday	Retirement at age 55. For each unit	Retirement at age 60. For each unit	Age next birthday	Retirement at age 55. For each unit	Retirement at age 60. For each unit
	\$	\$		\$	\$
26	0.72	0.52	41	2.02	1.24
27	0.76	0.54	42	2.22	1.34
28	0.80	0.58	43	2.44	1.44
29	0.86	0.60	44	2.72	1.56
30	0.92	0.64	45	3.04	1.68
31	0.98	0.68	46	3.42	1.84
32	1.04	0.70	47	3.92	2.00
33	1.12	0.76	48	4.54	2.20
34	1.20	0.80	49	5.38	2.44
35	1.28	0.84	50	6.54	2.72
36	1.38	0.90	51	450.90 ÷ <i>n</i>	3.08
37	1.48	0.96	52	450.90 ÷ <i>n</i>	3.50
38	1.58	1.02	53	450.90 ÷ <i>n</i>	4.06
39	1.72	1.08	54	450.90 ÷ <i>n</i>	4.80
40	1.86	1.16	55	450.90 ÷ <i>n</i>	5.84
			56-60	—	395.54 ÷ <i>n</i>

**Note—**

*n* denotes the number of complete four-weekly contributions payable before attainment of maturity age (55 or 60, as the case may be).

**Schedule 8 (Repealed)**

## Schedule 9

(Section 10AD)

**Table A**  
**Men**  
*Employee contributions for four weeks*  
*(Contributors after 30 June 1963)*

Age next birthday	For first 2 units	For each additional unit	Age next birthday	For first 2 units	For each additional unit
	\$	\$		\$	\$
16	0.86	0.42	36	2.46	1.16
17	0.94	0.44	37	2.62	1.24
18	0.98	0.46	38	2.74	1.30
19	1.04	0.48	39	2.92	1.40
20	1.10	0.52	40	3.12	1.50
21	1.16	0.54	41	3.32	1.60
22	1.22	0.56	42	3.54	1.70
23	1.28	0.60	43	3.80	1.84
24	1.32	0.62	44	4.08	1.98
25	1.40	0.66	45	4.38	2.12
26	1.44	0.68	46	4.76	2.32
27	1.54	0.72	47	5.18	2.52
28	1.62	0.76	48	5.68	2.76
29	1.70	0.80	49	6.28	3.06
30	1.80	0.86	50	6.96	3.40
31	1.90	0.90	51	7.84	3.84
32	2.02	0.94	52	8.94	4.38
33	2.12	1.00	53	10.32	5.06
34	2.24	1.06	54	12.16	5.98
35	2.34	1.10	55	14.74	7.26
			56-60	999.36 ÷n	493.28 ÷n

**Note—**

*n* denotes the number of complete four-weekly contributions payable before attainment of age 60.

**Table B**  
**Women**  
*Employee contributions for four weeks*  
*(Contributors after 30 June 1963)*

Age next birthday	Retirement at age 55. For each unit	Retirement at age 60. For each unit	Age next birthday	Retirement at age 55. For each unit	Retirement at age 60. For each unit
	\$	\$		\$	\$
16	0.46	0.34	36	1.62	1.06
17	0.48	0.36	37	1.74	1.14
18	0.52	0.38	38	1.88	1.20
19	0.54	0.40	39	2.02	1.28
20	0.58	0.42	40	2.20	1.38
21	0.62	0.46	41	2.40	1.46
22	0.66	0.48	42	2.62	1.58
23	0.70	0.50	43	2.90	1.70
24	0.76	0.54	44	3.22	1.84
25	0.82	0.58	45	3.60	2.00
26	0.86	0.62	46	4.06	2.18
27	0.90	0.64	47	4.64	2.38
28	0.96	0.68	48	5.38	2.62
29	1.02	0.72	49	6.38	2.90
30	1.10	0.76	50	7.76	3.22
31	1.16	0.80	51	534.40 ÷ n	3.64
32	1.24	0.84	52	534.40 ÷ n	4.16
33	1.32	0.90	53	534.40 ÷ n	4.82
34	1.42	0.94	54	534.40 ÷ n	5.70
35	1.50	1.00	55	534.40 ÷ n	6.92
			56-60	—	468.80 ÷ n

**Note—**

*n* denotes the number of complete four-weekly contributions payable before attainment of maturity age (55 or 60, as the case may be).

**Schedules 10-15 (Repealed)**

## Schedule 16 Four-weekly contribution periods

(Section 3 (1))

Column 1 Period No	Column 2 Commencing date	Column 3 Terminating date
1	1 July	28 July
2	29 July	25 August
3	26 August	22 September
4	23 September	20 October
5	21 October	17 November
6	18 November	15 December
7	16 December	12 January
8	13 January	9 February
9	10 February	9 March
10	10 March	6 April
11	7 April	4 May
12	5 May	1 June
13	2 June	30 June

## Schedule 17 Transitional and other provisions arising from the [Superannuation \(Amendment\) Act 1977](#)

(Section 29 (7))

### Part 1 Medical examinations

**1** An employee who, immediately before 13 January 1978—

- (a) was a contributor to whom section 10B as then in force applied, and
- (b) had not complied with that section,

shall, notwithstanding the [Superannuation \(Amendment\) Act 1977](#), comply with that section as if it had continued in force on and after 13 January 1978.

**2** Where—

- (a) a report is made by HealthQuest in respect of—
  - (i) an employee to whom section 10C as in force immediately before 13 January 1978 applied,
  - or

- (ii) an employee to whom clause 1 applies,
- (b) the report indicates that the employee is suffering from any physical or mental defect which is likely to affect the employee's health or longevity or capacity to continue in the employee's employment, and
- (c) STC, in respect of such a report made before 13 January 1978, has not made a decision under section 10C (2) as in force immediately before 13 January 1978,

STC may, for the purposes of section 29, treat the employee as if the employee were a person referred to in section 29 (2) (b).

**3** Where a person—

- (a) who, immediately before 13 January 1978, was—
  - (i) a contributor accepted or treated as a contributor for limited benefits under this Act as then in force, or
  - (ii) a contributor accepted or treated as a contributor in the provisional category under this Act as then in force, and
- (b) whose medical examination under section 10F (1) (a) or (3) as then in force had commenced before the date of assent to the [Superannuation \(Amendment\) Act 1977](#),

produces a report from HealthQuest stating that HealthQuest has caused the person to be medically examined and that the person's health warrants the person's acceptance as a contributor for full benefits within the meaning of this Act as in force immediately before 13 January 1978 STC may, for the purposes of section 29, treat the person as if the person were a person referred to in section 29 (1).

## **Part 2 Election of certain persons to contribute to the Fund**

**4**

- (1) Notwithstanding section 10N, a person who was an employee but not a contributor on 12 January 1977 because STC refused to accept the person as a contributor or postponed the person's acceptance as a contributor, shall not contribute to the Fund.
- (2) An employee referred to in subclause (1) may elect to contribute to the Fund.
- (3) Subclause (1) ceases to apply to an employee who elects to contribute to the Fund.
- (4) An election under subclause (2) is of no effect unless made with the approval of STC given in special circumstances.

**5**

- (1) A person who—
  - (a) would be an employee if the person were not subject to the provisions of the [New South Wales Retirement Benefits Act 1972](#), and



(b) is, in the opinion of STC, subject to those provisions because STC refused to accept the person as a contributor or postponed the person's acceptance as a contributor,

may elect to contribute to the Fund.

- (2) An election under subclause (1) is of no effect unless made with the approval of STC given in special circumstances.
- (3) Nothing in this clause affects the operation of section 92A (as in force before the commencement of Schedule 2 (30) to the *Superannuation (Amendment) Act 1988*) in relation to a person who makes an election under subclause (1).

### Part 3 Pensions

**6** In this Part, **breakdown**, in relation to a person, means the person's retirement on the ground of invalidity or physical or mental incapacity to perform the person's duties.

#### 7

- (1) In this clause, **contributor for limited benefits** means a contributor accepted or treated as a contributor for limited benefits under this Act as in force immediately before 13 January 1978.
- (2) Where, on and from 13 January 1978, pension is payable in respect of the breakdown or death of a contributor for limited benefits, or a former contributor for limited benefits, whose exit day occurred before 13 January 1978, the amount of pension shall be calculated as if section 29 had been in force at his or her exit day but as if section 29 (2) (a) and (b) had not been enacted.

#### 8

- (1) In this clause, **contributor in the provisional category** means a contributor accepted or treated as a contributor in the provisional category under this Act as in force immediately before 13 January 1978.
- (2) Where a lump sum paid to a contributor in the provisional category or the contributor's widow under section 29A as in force immediately before 13 January 1978 is repaid, pension shall, from the date on which the lump sum is repaid, be payable to or in respect of the contributor as if this Act, as amended by the *Superannuation (Amendment) Act 1977*, had been in force at the contributor's exit day but as if section 29 (2) (a) and (b) had not been enacted.

#### 9 (Repealed)

## Schedule 18 Increases in certain pensions

(Section 615)

### 1 Definitions

In this Schedule—

**Column** means a Column of the Table set out in clause 2.

**eligibility date**, means—

- (a) in relation to a person referred to in paragraph (a) of the definition of **eligible pension** in this clause—the date when the person last became a pensioner,
- (b) in relation to a person referred to in paragraph (b) of that definition—the date when the person's late pensioner husband last became a pensioner, or
- (c) in relation to a person referred to in paragraph (c) of that definition—the date when the person's late contributor husband last became a pensioner.

**eligible pension** means—

- (a) the pension payable to a person who last became a pensioner on or before 30 June 1971, other than a person who so became a pensioner pursuant to section 30 or 31,
- (b) the pension payable to a person who is the widow of a person referred to in paragraph (a), or
- (c) the pension payable to a person who is the widow of a contributor, being a contributor who died within 5 years of having again become a contributor following a retirement under section 22 in consequence of which the contributor became a pensioner on or before 30 June 1971.

**pension**—

- (a) subject to paragraph (b), means—
  - (i) pension payable under this Act, and
  - (ii) pension wholly paid or recouped from the Consolidated Revenue Fund or the funds of an employer, and
- (b) does not include—
  - (i) pension that has been commuted under section 21A or 21B (before the repeal of those sections by the *Superannuation Legislation Amendment Act 1998*), or
  - (ii) pension payable in respect of a child or a student.

**relevant period**, in relation to a person, means the period (specified in Column 1) that

includes the person's eligibility date.

**suspended pension** means—

- (a) a pension that is not payable under section 30 or 31 by reason only of the marriage of a person, or
- (b) a pension that is not payable by reason only of the operation of section 50 or 94.

## 2 Table of percentages

For the purposes of this Schedule, the Table is as follows—

### Table

<b>Column 1 Date of emergence of pension</b>	<b>Column 2 Percentage increase payable on 24 March 1978</b>	<b>Column 3 Percentage increase payable on 22 September 1978</b>	<b>Column 4 Percentage increase payable on 29 June 1979</b>	<b>Column 5 Percentage increase payable on 27 June 1980</b>
On or before 30 June 1948	33.6			
1 July 1948, to 30 September 1948	30.5			
1 October 1948, to 31 December 1948	29.0			
1 January 1949, to 31 March 1949	24.9			
1 April 1949, to 30 June 1949	22.2			
1 July 1949, to 30 September 1949	19.9			
1 October 1949, to 31 December 1949	18.4			
1 January 1950, to 31 March 1950	15.9			
1 April 1950, to 30 June 1950	12.4			
1 July 1950, to 30 September 1950	10.4			
1 October 1950, to 31 December 1950	5.5			

1 January 1951, to 31 December 1963	5.1		
1 January 1964, to 31 March 1971	1.7	1.7	1.6
1 April 1971, to 30 June 1971		1.5	1.5

### **3 Increases in pensions**

(1) Where—

- (a) an eligible pension is payable to a person on the date specified in Column 2, 3, 4 or 5, and
- (b) a percentage is specified in that Column opposite the person's relevant period, the pension is hereby increased, on and from that date, by that percentage.

(2) This clause does not apply to an eligible pension to which clause 4 applies.

### **4 Increases in pensions—special cases**

(1) This clause applies to an eligible pension payable to a person in receipt of an increase in pension under section 2 of the *Superannuation (Amendment) Act 1970*, as at 24 March 1978, being a person whose eligibility date is on or before 31 December 1950.

(2) Where an eligible pension to which this clause applies is payable to a person on 24 March 1978, the pension is hereby increased, on and from that date, by—

- (a) 5.1 per cent of the pension, or
- (b) a percentage of the pension that would have been payable had section 2 of the *Superannuation (Amendment) Act 1970* not been enacted, being the percentage equal to that specified in Column 2 opposite the person's relevant period, whichever results in the greater pension.

### **5 Application of clauses 3 and 4 to breakdown pensions and suspended pensions**

(1) In determining when a pensioner last became a pensioner for the purposes of this Schedule, regard shall not be had to any retirement to which section 51 (2) (b) applied.

(2) Clause 3 or 4, as the case may require, applies to and in respect of a suspended pension in the same way as it applies to and in respect of a pension referred to therein, and so applies as if—

- (a) the marriage by reason of which the pension is a suspended pension had not

taken place,

(b) section 50 had not been enacted, or

(c) section 94 had not been enacted,

as the case may require, but nothing in this subclause operates so as to authorise or require the payment at any time of that suspended pension or any part thereof.

(3) A reference in clause 3 or 4 to the pension payable to a person includes a reference to the pension that would have been payable to the person had the provisions referred to in the definition of **suspended part of a pension** in section 61B (1) not been enacted.

## **6, 7 (Repealed)**

## **8 Increases under this Schedule to be cumulative**

Where a pension is to be increased pursuant to this Schedule on a date on which the pension is to be adjusted pursuant to Division 6 of Part 4, the pension to be so increased is the pension as so adjusted.

## **Schedule 19 Transitional and other provisions arising from the Superannuation (Amendment) Act 1978**

(Section 61T)

- 1** This Act, as amended by Schedule 2 to the *Superannuation (Amendment) Act 1978*, applies in relation to women contributors or women pensioners dying before (as well as on or after) 1 January 1979.
- 2** This Act, as amended by Schedule 2 to the *Superannuation (Amendment) Act 1978*, applies in relation to a woman contributor or woman pensioner dying before 1 January 1979, as if that Act, as so amended, had been in force at the time of her death.
- 3** No pension is payable under this Act in respect of any period before 1 January 1979 consequent upon the death of a person referred to in clause 2.
- 4** A pension is not payable to a widower consequent upon the death of a person referred to in clause 2, except on application made in writing to STC.
- 5** Section 32 applies in relation to a woman employee dying before 1 January 1979, as if that section had not been repealed by the *Superannuation (Amendment) Act 1978*.
- 6** This Schedule has effect in relation to a deceased woman employee notwithstanding that a benefit has been paid or is payable in relation to her pursuant to section 32.
- 7** A pension payable under section 30 or 31 as in force immediately before the commencement of this Schedule shall, subject to this Act, continue to be payable after that commencement under the appropriate corresponding provision of this Act, as amended by Schedule 2 to the *Superannuation*

*(Amendment) Act 1978.*

- 8 A provision of a regulation made for the purposes of section 31B (2) may, but need not, have effect in respect of any period before 1 January 1979.

## **Schedule 20 Transitional and other provisions arising from the Superannuation (Amendment) Act 1985 and the Superannuation (Further Amendment) Act 1985**

(Section 94A)

### **1 Certain references to Board's former investment powers**

A reference in any Act or statutory instrument, or in any other instrument, or in any contract or agreement, to section 5, 5A, 5B, 5C, 5D or 6 of this Act shall, on and after the commencement of Schedule 11 to the *Superannuation (Amendment) Act 1985*, be read and construed as a reference to that section, as in force immediately before that commencement.

### **2 Effect of certain elections to commute pension**

Section 91 (5) does not apply to or in respect of an election under section 21C which is made before the expiration of 2 months after the commencement of Schedule 1 (4) to the *Superannuation (Amendment) Act 1985*.

### **3 Repeal of sec 30AA**

The repeal of section 30AA by the *Superannuation (Amendment) Act 1985* does not affect the operation of that section in respect of a woman contributor who died before that repeal.

### **4 Suspension on re-marriage lifted**

- (1) A spouse's or de facto partner's pension (within the meaning of section 46A) which, immediately before the commencement of Schedule 9 (7) to the *Superannuation (Amendment) Act 1985*, was not payable by reason of the operation of section 46A (2), becomes payable on and from that commencement, but any such pension is not payable in respect of any period before that commencement.
- (1A) The widow of a contributor or pensioner, being a widow who remarried before 27 November 1969 and to whom a pension in accordance with section 30 or 31 was not payable on 30 June 1985 because of that remarriage, shall be paid pension in accordance with section 30 or 31, as the case may be, as from 1 July 1985.
- (2) A reference in this Act to a person who becomes entitled to a pension at a particular time does not include a reference to a person to whom a pension becomes payable as referred to in subclause (1) or (1A) at that time.

## **5 Adjustment of unit entitlement to have effect in relation to certain pensions**

- (1) A pension payable under this Act (other than under section 28A) on the commencement of Schedule 10 to the *Superannuation (Amendment) Act 1985*, being a pension which became payable to a contributor who retired or was retrenched, or to the widow or widower of a contributor who died or who retired or was retrenched, after 1 July 1982, shall, on that commencement, be increased to the amount which that pension would have been if—
  - (a) each additional unit of pension that would have been appropriate for the salary of the contributor at any time had that Schedule commenced on 1 July 1982, were an abandoned unit which the contributor had at that time, and
  - (b) a reduced value unit were allocated in respect of each of those abandoned units.
- (2) Nothing in subclause (1) renders the increase in pensions referred to in that subclause payable in respect of any period before the commencement of Schedule 10 to the *Superannuation (Amendment) Act 1985*.

### **5A Date of operation of section 10P (2A) and (3)**

A reference in section 10P (2A) and (3) to an entry review day includes a reference to the entry review day of a contributor occurring before 1 July 1985 if the entry payment day of the contributor occurs after that date.

## **6 Regulations**

- (1) A regulation may be made containing provisions of a savings or transitional nature consequent on the enactment of the *Superannuation (Amendment) Act 1985* or the *Superannuation (Further Amendment) Act 1985*.
- (2) A provision made under subclause (1) may take effect as from the date of assent to the *Superannuation (Amendment) Act 1985* or a later day.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein, 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 therein.
- (4) A provision of a regulation made under subclause (1) shall, if the regulation expressly so provides, have effect notwithstanding any provision of this Schedule other than this

clause.

## **Schedule 21 Provisions relating to the closure of the Scheme**

(Section 1A)

### **1 Existing employees who may elect to contribute to Fund**

- (1) Except as provided by subclause (2), this Schedule applies to a person—
  - (a) who was, immediately before 1 July 1985, an employee but was not contributing to the Fund, and
  - (b) who would, but for section 1A, be required or entitled, subject to the provisions of this Act, to contribute to the Fund.
- (2) This Schedule does not apply to—
  - (a) a person exempted from contributing to the Fund under section 10T,
  - (b) a person who was, under section 10D, treated by STC as if he or she were not an employee,
  - (c) a person to whom clause 4 (1) of Schedule 17 applies, or
  - (d) a person of a class prescribed by the regulations.

### **2 Election to contribute to Fund**

- (1) A person to whom this Schedule applies may elect to contribute to the Fund if—
  - (a) before 1 July 1985, the employer of the person has notified STC that the person is an employee, or
  - (b) on or before 31 December 1985—
    - (i) the employer of the person notifies STC that the person is an employee, or
    - (ii) the person lodges at the office of STC a certificate signed by or on behalf of his or her employer stating that the person is an employee.
- (2) Where, within the period of 28 days after a person to whom this Schedule applies is given notice by STC that the employer of the person has notified STC that the person is an employee, the person does not make an election referred to in subclause (1) or apply to STC to be excluded from the provisions of this Schedule, the person shall be deemed to have directed that the notification given by the employer be regarded as an election referred to in subclause (1).
- (3) Where, immediately before 1 July 1985, a person was an employee but was, under section 10C, being treated by STC as if he or she were not an employee, the person



may elect to contribute to the Fund only if—

- (a) the person has not attained the maturity age before that day or, if the person has attained that age, has not served for at least 10 years with any one or more employers,
  - (b) on or before 30 September 1985 the person lodges a request with his or her employer that arrangements be made for the person to submit himself or herself to a prescribed medical examination (as defined in section 10A), and
  - (c) the person submits himself or herself to the examination arranged pursuant to that request and, in the opinion of STC, passes that examination.
- (4) A person who would, but for section 1A, be required or entitled, subject to the provisions of this Act, to contribute to the Fund and who makes an election in accordance with this Schedule shall, upon the election taking effect, be so required or entitled to contribute to the Fund.
- (5) Subclause (4) ceases to apply in respect of a person to whom this Schedule applies if, pursuant to section 10C, STC treats the person as if the person had not been an employee and subclause (4) shall not thereafter apply in respect of that person.
- (6) Anything done, before the date of assent to the *Superannuation (Further Amendment) Act 1985*, pursuant to clause 21 of the Superannuation Regulations shall be deemed to have been done pursuant to this Schedule.

### **3 Transfer of contributors (formerly medically unfit) from other public superannuation schemes**

- (1) Where a contributor to the State Public Service Superannuation Fund or the Public Authorities Superannuation Fund becomes a contributor to the Fund in accordance with an election made under this Schedule, the contributor shall, for the purposes of the *State Public Service Superannuation Act 1985* or the *Public Authorities Superannuation Act 1985*, as the case requires, be deemed to have resigned from employment with an employer.
- (2) Where a contributor to the Public Authorities Superannuation Fund (being a person entitled to make an election under this Schedule) does not become a contributor to the Fund in accordance with such an election, section 12 (7) of the *State Public Service Superannuation Act 1985* applies to the contributor.

### **4 (Repealed)**

## **Schedule 22 Transitional and other provisions arising from the**

## Superannuation (Amendment) Act 1988

(Section 94B)

### 1 State Superannuation Fund

The State Superannuation Fund established by section 4 (as in force on and after 1 July 1988) is the same fund as that established by that section (as in force immediately before that date).

### 2 Saving for contributor resuming employment after service as a member of Parliament

- (1) Despite the repeal of section 11, a person who resigned from the Public Service in accordance with section 2 of the *Constitution (Public Service) Amendment Act 1916* and became a member of the Legislative Council or the Legislative Assembly before that repeal took effect is entitled to elect to take the benefit of that section as if it had not been repealed.
- (2) Section 11 (as in force on 30 June 1988) applies to a person who makes an election under subclause (1) as if that section had not been repealed by the *Superannuation (Amendment) Act 1988*.

### 3 Pensions on retirement

Sections 26, 27 and 28A (as in force on 30 June 1988) continue to apply to a person who retired in accordance with this Act before that date as if those sections had not been repealed or replaced by the *Superannuation (Amendment) Act 1988*.

### 4 Certain persons to continue to be liable to make payments that were due under this Act before the commencement of the Superannuation (Amendment) Act 1988

If—

- (a) a provision of the *Superannuation (Amendment) Act 1988* repeals or amends a provision of this Act, and
- (b) immediately before the commencement of the repealing or amending provision a person was liable to make a payment under the repealed or amended provision which has not been satisfied,

the liability continues despite the repeal or amendment.

### 5 Equation of payments

Any agreement entered into under section 90 and in force immediately before 1 July 1988 continues in force as if that section had not been repealed by the *Superannuation (Amendment) Act 1988*.

### 6 Savings with respect to entitlements arising under enactments repealed by the

### **Superannuation (Amendment) Act 1988**

Any person who was entitled to receive a pension or other benefit before 1 July 1988 by virtue of, or partly by virtue of, a provision of an Act (including this Act) repealed or amended by the *Superannuation (Amendment) Act 1988* continues to be entitled to receive that pension or benefit as if the lastmentioned Act had not been enacted.

#### **7 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Superannuation (Amendment) Act 1988*.
- (2) Any such provision may, if the regulations so provide, take effect from and including 1 July 1988 or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

#### **8 Terms and conditions relating to participants in other schemes**

If section 92A (as in force immediately before the commencement of Schedule 2 (30) to the *Superannuation (Amendment) Act 1988*) was applicable to a person before that date, that section and any terms and conditions determined under that section with respect to the person continue to apply to the person as if that section had not been repealed by that Act.

### **Schedule 23 Special provisions for deferring benefits of certain contributors**

(Section 63 (1))

#### **Part 1 Contributors affected by Government privatisation initiatives and other Government initiatives**

##### **1 Application of Part**

This Part applies to contributors to whom Part 5 applies and so applies on and from transfer of employment or superannuation coverage, or an employer ceasing to be an employer under this Act, as referred to in section 62A.

## 2 Contributor entitled to defer benefit

- (1) A contributor is taken to have elected to take the benefit of Division 3A of Part 4 on the date that this Part first applies to the contributor, unless the contributor is otherwise entitled to a pension under section 27, 28, 28A or 28AA.
- (2) A contributor who is entitled to a pension under section 27, 28, 28A or 28AA on the date when this Part first applies to the contributor may instead elect to take the benefit of Division 3B of Part 4.
- (3) A contributor is entitled to take the benefit of Division 3A or 3B of Part 4, despite any provision of those Divisions.

## 3 Application of Division 3B of Part 4

- (1) For the purposes of the application of Division 3B of Part 4 to a contributor, the **exit day** for the contributor is the date when this Part first applied to the contributor.
- (2) Sections 52L and 52N (3) do not apply to a contributor to whom this Part applies.

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

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

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

**deferred annuity** means a deferred annuity within the meaning of the

*Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

## **5 Regulations relating to liabilities during transfer period**

- (1) Regulations may be made for or with respect to liability for payment of employer contributions, benefits or other employer liabilities under this Act payable during, or in respect of, any period in which a contributor may elect to transfer employment or superannuation coverage (as referred to in section 62A) and before any such election is made.
- (2) A regulation under this clause has effect despite any other provision of this Act or the regulations.

## **6-9 (Repealed)**

## **Part 2 Special provisions relating to certain employees**

### **10 Employees affected by privatisation of GIO and GrainCorp**

- (1) This Part applies to former employees who are or were employed by New South Wales Grain Corporation Limited or GIO—
  - (a) whose benefits were taken to have been preserved under Division 3A of Part 4 on the day appointed under section 10 of the *NSW Grain Corporation Holdings Limited Act 1992* or on the conversion of GIO into a public company, as applicable, and
  - (b) who had reached the age of 55 years on or before that day or the conversion (the **deferral day**), and
  - (c) who had not had the benefits paid to another superannuation scheme, before the date of assent to the *Superannuation Legislation (Further Amendment) Act 1993*.
- (2) A former employee is entitled to elect to take the benefit of Division 3A or Division 3B of Part 4. Any such election is taken to have had effect on and from the deferral day.
- (3) A former employee is entitled to take the benefit of Division 3A or 3B of Part 4, despite any provision of those Divisions or of the *Government Insurance Office (Privatisation) Act 1991*, the *NSW Grain Corporation Holdings Limited Act 1992* or the *Statute Law (Miscellaneous Provisions) Act (No 2) 1992*.

### **11 Application of Division 3B of Part 4**

- (1) For the purposes of the application of Division 3B of Part 4 to a former employee, the **exit day** for the former employee is the preservation day.
- (2) Sections 52L and 52N (3) do not apply to a former employee to which this Part applies.

## 12 Payment of deferred benefit

A benefit deferred under this Part may only be paid in accordance with Division 3A or Division 3B of Part 4, as applicable.

## Schedule 24 Loading in respect of shift allowance

(Section 3A)

### 1 Definitions

In this Schedule—

**agreement** means an industrial agreement in force under the *Industrial Arbitration Act 1940* as in force immediately before 18 December 1987.

**award** means an award in force under the *Industrial Arbitration Act 1940* as in force immediately before 18 December 1987.

**base salary**, in relation to a contributor, means the remuneration, salary or wages payable to the contributor under an award or agreement after excluding all allowances.

**industrial organisation** means—

- (a) an industrial union of employees registered under the *Industrial Arbitration Act 1940* as in force immediately before 18 December 1987, or
- (b) an organisation of employees registered under the *Conciliation and Arbitration Act 1904* of the Commonwealth as in force immediately before 18 December 1987.

**relevant period**, in relation to a contributor, means the period of 12 months ending on 31 December preceding the date on which the salary of the contributor is to be calculated for the purposes of section 3A.

### 2 Determination of loading

- (1) For the purposes of section 3A (1) (a), the loading (if any) to be treated as part of a contributor's salary is determined by reference to whichever of the provisions of subclause (2), (3) or (4) is applicable to the contributor.
- (2) If—
  - (a) there is in force an agreement between, or a practice accepted by, an industrial organisation and the employer of a contributor which was in force immediately before 18 December 1987, and
  - (b) the effect of the agreement or practice is that an amount in respect of any shift allowance paid to the contributor by the employer for shifts worked by the contributor during a relevant period is to be treated as a loading for superannuation purposes, and

(c) that amount is greater than that which would be determined for that period in respect of the contributor under subclause (3),

then the amount referred to in paragraph (b) is, for the purposes of section 3A (1) (a), the loading for the contributor in respect of that shift allowance.

- (3) Unless subclause (2) or (4) applies, if a contributor is paid a shift allowance for shifts worked by the contributor during a relevant period, the loading for the contributor in respect of that shift allowance is to be determined by reference to the number of shifts the contributor is taken to have worked (as calculated in accordance with subclause (5)) during the relevant period. The loading is—
- (a) nil, if during the relevant period the contributor is taken not to have worked more than 104 shifts, or
  - (b) an amount equal to 10 per cent of the contributor's base salary for the relevant period, if during that period the contributor is taken to have worked more than 104 shifts but not more than 156 shifts, or
  - (c) an amount equal to 15 per cent of the contributor's base salary for the relevant period, if during that period the contributor is taken to have worked more than 156 shifts but not more than 208 shifts, or
  - (d) an amount equal to 20 per cent of the contributor's base salary for the relevant period, if during that period the contributor is taken to have worked more than 208 shifts.
- (4) If the amount actually paid or payable to a contributor as a shift allowance in respect of shifts worked by the contributor during a relevant period is less than the amount of loading for that period determined in respect of the contributor in accordance with subclause (3), the amount so paid is, for the purposes of section 3A (1) (a), the loading for the contributor in respect of that shift allowance.
- (5) For the purposes of subclause (3), the number of shifts a contributor is taken to have worked during a relevant period, being shifts for which a shift allowance is paid, is the number calculated as follows—

$$N = \frac{H}{H_0} \times S$$

where—

**N** is the number of such shifts the contributor is taken to have worked during the relevant period.

**H** is the number of hours per shift regularly required to be worked in such shifts during the relevant period.

**$H_0$**  is the smallest number of hours per shift regularly required to be worked (whether by the contributor or any comparable worker) in such shifts during any calendar year after 1987, including the relevant period.

**$S$**  is the sum of—

- (a) the number of such shifts the contributor actually worked during the relevant period, and
- (b) the number of such shifts the contributor would have actually worked during the relevant period but for the contributor being on leave, being leave for which a shift allowance or an equivalent allowance or loading (including that part of annualised salary that replaces shift allowance in respect of the contributor) is paid.

## **Schedule 25 Savings and transitional provisions**

(Section 94C)

### **Part 1 Regulations**

#### **1 Regulations**

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

*Superannuation Legislation (Amendment) Act 1991*

*Superannuation Legislation (Further Amendment) Act 1993*

*Superannuation Legislation Amendment Act 1996*

*Superannuation Legislation Amendment Act 1997*

*Superannuation Legislation Further Amendment Act 1997*

*Disability Discrimination Legislation Amendment Act 1998*

*Superannuation Legislation Amendment Act 1998*

*Superannuation Legislation Further Amendment Act 1998*

*Superannuation Legislation Amendment Act 1999*

*Superannuation Legislation Further Amendment Act 1999*

*Superannuation Legislation Amendment Act 2000*

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

*Superannuation Legislation Amendment Act 2002*



*Superannuation Legislation Amendment (Family Law) Act 2003* (but only to the extent that it amends this Act)

*Superannuation Legislation Amendment Act 2005*, but only to the extent to which it amends this Act

*Public Sector Employment and Management Amendment (Extended Leave) Act 2005* (but only to the extent that it amends this Act)

*Superannuation Legislation Amendment Act 2006*, but only to the extent to which it amends this Act

*Superannuation Legislation Amendment Act 2007*

*Relationships Register Act 2010*

*Superannuation Legislation Amendment Act 2010*

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

## **Part 1A Effect of repeal of certain Acts**

### **1A 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**

<b>Column 1</b>	<b>Column 2</b>
<i>Superannuation (Amendment) Act 1935</i>	Sections 3 and 4
<i>Superannuation (Amendment) Act 1948</i>	Section 2 (3) and (4)
<i>Superannuation (Amendment) Act 1972</i>	Section 12

(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.

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

### **2 Contributions while on leave without pay or working minimum hours**

Sections 10WB, 12B and 12C, as amended by the *Superannuation Legislation (Further Amendment) Act 1993*, apply to a period of leave without pay or part-time work commenced before 1 January 1994 and not completed immediately before that date.

### **3 Disability pensions**

Sections 52E and 52EA, as amended or inserted by the *Superannuation Legislation (Further Amendment) Act 1993*, apply to applications for pensions under section 52E made after the date of assent to the *Superannuation Legislation (Further Amendment) Act 1993*.

### **4 Children's benefits**

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

### **5 Spouse's benefits**

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

## **Part 3 Superannuation Legislation Amendment Act 1996**

### **6 Closure of Fund**

The repeal of clause 4 of Schedule 21 by the *Superannuation Legislation Amendment Act 1996* does not affect an application made to STC or its predecessors for the exercise of its discretion under that clause, and not determined, before the repeal. STC may continue to deal with any such application as if the clause had not been repealed.

## **Part 4 Superannuation Legislation Further Amendment Act 1997**

### **7 Authorised leave**

A person who commenced a period of authorised leave before the commencement of section 12D (as inserted by the *Superannuation Legislation Further Amendment Act 1997*) is entitled to the benefit of that section if the person was still on leave immediately before the commencement of that section.

## Part 5 Disability Discrimination Legislation Amendment Act 1998

### 8 Definitions

In this Part—

**amending Act** means the *Disability Discrimination Legislation Amendment Act 1998*.

**appointed day** means the day on which Schedule 1.7 to the amending Act commences.

### 9 Amendments to section 21D—no application to persons of or over 60 years of age

The amendments made to section 21D by the amending Act do not apply in respect of any person who attains the age of 60 years on or before the appointed day.

### 10 Amendments to section 21D—application to certain persons between 55 and 60 years of age

(1) This clause applies in respect of a person who—

(a) is entitled to a pension payable under section 29, and

(b) has a maturity age of 55 years, and

(c) on the appointed day, has not attained the age of 60 years but has attained the age of 55 years.

(2) Section 21D, as amended by the amending Act, applies in respect of such a person as if the person had attained the maturity age of 55 years on the appointed day. For example, section 21D (1) (b), as amended by the amending Act, applies so that such a person may make an election under section 21C relating to a pension payable under section 29 at any time within the period of 6 months after the appointed day.

(3) Accordingly, the reference in section 21D (3) to the time prescribed by section 21D (1) and (2) is a reference to the time prescribed by those subsections, as modified by this clause.

## Part 6 Superannuation Legislation Amendment Act 1998

### 11 Definitions

In this Part—

**amending Act** means the *Superannuation Legislation Amendment Act 1998*.

**eligible pensioner** means a person who is in receipt of a pension under this Act and who, on the repeal of section 21A by the amending Act—

(a) has not attained the age of 60 years and 6 months, and

- (b) has not made an election to commute any part of that pension under section 21A or whose election to commute under that section has not taken effect.

**12 Amendments do not confer new commutation rights on persons who are not eligible pensioners**

- (1) Section 21C (1), as substituted by the amending Act, does not apply to or in respect of any pension to which a person became entitled under this Act before 1 July 1985 if the person who is in receipt of that pension is not an eligible pensioner and, accordingly, section 21C does not confer on such a person an entitlement to commute the whole or part of that pension.
- (2) The repeal of section 21A by the amending Act does not affect any election made by a person (not being an eligible pensioner) under section 21A before that repeal, and this Act continues to apply in respect of such an election as if it had not been amended by the amending Act.
- (3) This clause is subject to clause 13.

**13 Commutation of mandatory residual pension under section 21C**

- (1) If a person who became entitled to a pension under this Act before 1 July 1985 elected to commute the whole of his or her pension (other than the mandatory residual pension) in accordance with this Act, before the repeal of section 21A by the amending Act—
  - (a) section 21C, as amended by that Act, extends to that mandatory residual pension, and
  - (b) the person may make one election under section 21C in respect of that mandatory residual pension within the period of 6 months after the commencement of this clause (despite section 21D).
- (2) STC may, subject to such terms and conditions as it may impose, accept an election that is made after that period of 6 months and deal with it as if that time had been indefinitely extended if—
  - (a) it is proved to the satisfaction of STC that an election was not made because—
    - (i) the person entitled to make the election did not know of the person's right to make the election, or
    - (ii) circumstances substantially beyond the person's control prevented the person's making an election, and
  - (b) STC is satisfied that in the circumstances of the case it is desirable that the election should be accepted.
- (3) This clause does not authorise the commutation of a pension payable in respect of

children.

(4) In this clause—

***mandatory residual pension*** means any amount of pension per fortnight that a person was not entitled to commute under section 21A (1), (1A), (1B) or (1C), as in force immediately before the repeal of those provisions by the amending Act.

#### **14 Saving of commutation entitlements of eligible pensioners**

- (1) Section 21C (1), as substituted by the amending Act, applies to or in respect of a pension to which a person became entitled under this Act before 1 July 1985 if the person who is in receipt of that pension is an eligible pensioner.
- (2) Accordingly, an eligible pensioner may commute the whole or part of that pension in accordance with sections 21C and 21D.
- (3) If an eligible pensioner attained the section 21C commutation age before the commencement of this clause—
  - (a) the eligible pensioner is taken, for the purposes of section 21D (1) and (2), to have attained the section 21C commutation age on the commencement of this clause, and
  - (b) the reference in section 21D (3) to the time prescribed is taken to be a reference to the time prescribed by that section as modified by this clause.
- (4) If an eligible pensioner made an election to commute any part of his or her pension under section 21A before the repeal of that section by the amending Act (being an election that has not taken effect)—
  - (a) that election is to be treated as an election under section 21C, and
  - (b) the eligible pensioner may, without the approval of STC being necessary, make a further election under section 21C in accordance with section 21D (as modified by subclause (3), if applicable).
- (5) In this clause, the ***section 21C commutation age*** means—
  - (a) in the case of a person who is in receipt of a pension payable under section 29, the maturity age, or
  - (b) in any other case, 55 years.

#### **15 References to amounts commuted under repealed provisions**

- (1) The reference in section 21C (18) to the spouse of a person who dies, having commuted the whole or part of any pension payable to the person pursuant to section 21C, extends to the spouse of a person who dies on or after the commencement of

this clause, having commuted the whole or any part of any pension payable to the person pursuant to section 21A or 21B (before the repeal of those sections by the amending Act or in accordance with an election referred to in clause 12 (2)).

- (2) A reference in section 32C or 61B to any lump sum paid, or any pension that has been commuted, under section 21C extends to any lump sum paid, or pension that has been commuted, under section 21A or 21B (before the repeal of those sections by the amending Act or in accordance with an election referred to in clause 12 (2)).

## 16 Changes to method of calculation

- (1) The amendment made to section 37A by the amending Act does not apply to the calculation of a benefit payable to a contributor who became entitled to the benefit before the commencement of that amendment. Section 37A, as in force immediately before the commencement of that amendment, continues to apply in respect of such a calculation.
- (2) The amendments made to section 38A by the amending Act do not apply to the calculation of any amount payable to a contributor who became entitled to the amount before the commencement of the amendments. Section 38A, as in force immediately before the commencement of those amendments, continues to apply in respect of such a calculation.

## Part 7 Superannuation Legislation Further Amendment Act 1998

### 17 Definitions

In this Part—

**amending Act** means the *Superannuation Legislation Further Amendment Act 1998*.

**appointed day** means 1 March 1999, the day on which Schedule 2.5 [16] to the amending Act commenced.

### 18 Existing part-time contributors

- (1) Sections 3 (1), 3AA, 10WC, 12B and 12C, as in force immediately before their amendment by the amending Act, and any treatment or practices by STC under those provisions applying at the time to a contributor, continue to apply to a contributor on part-time leave without pay immediately before the commencement of this clause as if those amendments had not been made.
- (2) A contributor referred to in subclause (1) may elect to have sections 3 (1), 3AA, 10WC, 12B and 12C, as amended by the amending Act, apply to the contributor.
- (3) Subclause (1) does not apply to a contributor if—
  - (a) an election by the contributor under subclause (2) takes effect, or

- (b) a period of part-time leave without pay approved in respect of a contributor as at the commencement of this clause ends, whether or not a further period of part-time leave, continuous with the period that ends, is approved.

**19 Amendments to section 21D—no application to persons of or over the age of 60 years.**

The amendments made to section 21D by the amending Act do not apply in respect of any person who is entitled to a pension payable under section 29 and who attains the age of 60 years on or before the appointed day.

**20 Amendments to section 21D—application to certain persons between 55 and 60 years of age**

- (1) This clause applies in respect of a person who has a maturity age of 60 years and who, on the appointed day—
  - (a) is entitled to a pension payable under section 29 of the Act, and
  - (b) has attained the age of 55 years but has not yet attained the age of 60 years.
- (2) Section 21D, as amended by the amending Act, applies in respect of such a person as if the person had attained the age of 55 years on the appointed day. Accordingly—
  - (a) the person may make an election under section 21C, or under section 23BA (if applicable to the person), at any time within the period of 6 months after the appointed day, and
  - (b) the reference in section 21D (3) to the time prescribed by section 21D (1) and (2) is a reference to the time prescribed by those subsections, as modified by this clause.

**21 Application of section 31A and amendments to section 32A**

- (1) Section 31A, as inserted by the amending Act, does not apply to or in respect of a pensioner who died before the commencement of that section.
- (2) Section 32A (3) and (4), as inserted by the amending Act, do not apply to or in respect of an employee who died before the commencement of those subsections.

**22 Application of section 37B**

Section 37B, as inserted by the amending Act, applies only in respect of a contributor referred to in section 37B (1) who is retrenched on or after the commencement of that section.

**23 Payment of previously preserved benefits**

A benefit preserved under section 52Y, as in force immediately before its repeal by the amending Act, is payable as if section 52Y had not been repealed.

## Part 8 Superannuation Legislation Further Amendment Act 1999

### 24 Definition

In this Part—

**amending Act** means the *Superannuation Legislation Further Amendment Act 1999*.

### 25 Existing part-time contributors

- (1) A contributor who, at any time during the period from 1 April 1999 to the date of assent to the amending Act, was a full-time employee on part-time leave without pay may, in respect of any period during which a deduction factor was applied, or applicable, under section 12C because of that leave, apply to STC to have the person's contributions and entitlements in respect of that period adjusted, or treated, as if the person were a part-time employee.
- (2) On an election being made, STC must adjust or treat the contributions and entitlements accordingly and may, for that purpose, make any appropriate arrangements with the contributor.
- (3) If an election is not made under subclause (1), the person's contributions and entitlements in respect of the period concerned are to be adjusted, or treated, as if the person were a full-time employee during that period.
- (4) A person who, immediately before the date of assent to the amending Act, was a full-time employee and who was on part-time leave without pay is entitled to make an election under section 12C, as amended by the amending Act, within 2 months of that date or such later time as STC determines in respect of any part of that period of leave occurring on or after that date.
- (5) Any action, or omission, by STC in respect of the treatment of contributors under section 12C that—
  - (a) occurred on or after 1 April 1999 and before the amendment of section 12C by the amending Act, and
  - (b) would have been validly done or omitted to be done if section 12C, as amended by the amending Act, had been in force,is taken to have been, and always to have been, validly done or omitted.

### 26 Payments of invalidity pensions

- (1) Section 29, as amended by the amending Act, applies to any person entitled to a pension on the date of assent to the amending Act but who was, immediately before that date, not entitled (because of section 29 (5)) to payment of that pension.
- (2) Any payment of an invalidity pension under section 29 that—



- (a) was made on or after 1 July 1999 and before the repeal of section 29 (5) by the amending Act, and
  - (b) would have been validly made if section 29 (5), as in force immediately before its repeal by the amending Act, had been in force,
- is taken to have been, and always to have been, validly made.

## **Part 9 Superannuation Legislation Amendment (Same Sex Partners) Act 2000**

### **27 Definitions**

In this Part—

**amending Act** means the *Superannuation Legislation Amendment (Same Sex Partners) Act 2000*.

**conversion benefit** means the benefit provided under section 20K.

**conversion election** means an election under Part 3B.

**exercise** a function includes perform a duty.

**former contributor** means an employee who has made a conversion election that has taken effect.

**function** includes a power, authority or duty.

**revocation election**—see clause 31 (2).

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

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

### **28 Spouse or de facto partner entitlements**

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

## **29 Arrangements for revocation of conversion elections**

- (1) The Minister may enter into a written arrangement with STC, FTC, a trustee of a superannuation scheme or any other person, for or with respect to the revocation of a conversion election made by a former contributor, or class of former contributors, and the reinstatement of that former contributor, or class of former contributors, as a contributor or contributors under this Act.
- (2) An arrangement may be entered into by the Minister with one or more of the persons referred to in subclause (1).
- (3) For the purposes of this Part, STC, FTC, the trustee of a superannuation scheme or any other person may enter into an arrangement under this Part.
- (4) STC or FTC must, if required by the Minister, enter into an arrangement under this Part.
- (5) The Minister or any person with whom the Minister enters into an arrangement under this Part may not give effect to any such arrangement with respect to a former contributor except with the written consent of the former contributor affected by the arrangement.
- (6) A former contributor who makes a revocation election is taken to have given consent for the purposes of subclause (5).
- (7) An arrangement under this Part may be amended in the manner provided by the arrangement.

## **30 Matters to be covered by arrangement**

An arrangement under this Part may be made for or with respect to the following matters—

- (a) the notice, and information, to be given to a former contributor about the right to make a revocation election and the effect of making such an election,
- (b) the manner in which a revocation election may be made, amended or revoked,
- (c) the period within which a revocation election is required to be made,
- (d) the date on which a revocation election by a former contributor takes effect,
- (e) the reinstatement of a former contributor as a contributor under this Act and as an employee under the *State Authorities Non-contributory Superannuation Act 1987* to the same position that the former contributor would have been in if the conversion election made by the former contributor had not taken effect,
- (f) the rights and obligations of a reinstated contributor under the State Superannuation Scheme and the *State Authorities Non-contributory Superannuation Act 1987*,

- (g) the effect of reinstatement on the contributor's rights or obligations under, benefits under, or membership of, another superannuation scheme,
- (h) the effect of reinstatement on the liability for payment of employer contributions or other amounts to the State Superannuation Scheme or the superannuation scheme established under the *State Authorities Non-contributory Superannuation Act 1987* or any other superannuation scheme,
- (i) the transfer of benefits, or other amounts, (whether or not currently payable) under another superannuation scheme by the trustee of that superannuation scheme to STC for payment in respect of the former contributor to the State Superannuation Scheme or the superannuation scheme established under the *State Authorities Non-contributory Superannuation Act 1987*,
- (j) the adjustment of reserves or funds of superannuation schemes for the purposes of the arrangement, whether the schemes are established by or under this or any other Act or in any other manner,
- (k) the contributions, and other amounts, payable by a former contributor in respect of the period during which a conversion election had effect in respect of the former contributor,
- (l) the adjustment or reduction of benefits payable to contributors under this Act or any other superannuation scheme,
- (m) the payment of interest on outstanding amounts required to be paid under the arrangement,
- (n) the transfer of assets by a trustee of a superannuation scheme to meet a requirement to pay an amount under the arrangement,
- (o) the obtaining of actuarial advice by the Minister or a trustee of a superannuation scheme or other person for the purposes of the arrangement or a related matter,
- (p) the amendment of the arrangement,
- (q) any other matter that is ancillary to, or consequential on, a matter referred to in paragraphs (a)-(p),
- (r) any other matter prescribed by the regulations for the purposes of this clause.

### **31 Right to revoke conversion election**

- (1) A former contributor who is covered by an arrangement under this Part may, in the manner specified by the arrangement, make a revocation election.
- (2) A **revocation election** is an election by a former contributor to give effect to an arrangement under this Part in relation to the former contributor.

- (3) If a former contributor fails to make a revocation election on or before the last date for making an election specified under the arrangement or purports to make an election after that date, the former contributor is taken to have elected not to make a revocation election.
- (4) A revocation election made by a former contributor takes effect on the date specified under the arrangement.
- (5) Despite subclause (3), an arrangement may provide for the acceptance of an election after the last date for making it in specified circumstances.

### **32 Circumstances in which a revocation election may not be made or is revoked**

If a benefit is paid or becomes payable or is deferred or preserved in respect of a former contributor under the *First State Superannuation Act 1992* or another superannuation scheme before the date on which a revocation election made by the former contributor takes effect—

- (a) the former contributor is not eligible to make a revocation election, and
- (b) if the former contributor has made a revocation election, the election has no effect.

### **33 Effect of arrangement**

- (1) An arrangement entered into by the Minister and the trustee of a superannuation scheme for the purposes of this Part has effect according to its tenor.
- (2) Despite subclause (1), any such arrangement does not have effect in respect of a former contributor unless written consent is given as required by clause 29 (5).
- (3) The Minister, STC, FTC, a trustee of a superannuation scheme or any other person has, and may exercise, any function conferred by or under this Part or by or under an arrangement entered into under this Part.
- (4) This Part has effect despite any other provision of this Act or any other Act or regulation or other law or the rules of any superannuation scheme affected by an arrangement.
- (5) For the purposes of section 25 of the *Privacy and Personal Information Protection Act 1998*, STC and FTC are not required to comply with section 9, 10, 14, 17, 18 or 19 of that Act in respect of the provision of information for the purposes of an arrangement, or proposed arrangement, under this Part.
- (6) This Part, and any arrangement entered into under this Part, have effect so far as the legislative power of the Parliament of New South Wales permits.

### **34 Validation**

Any act, matter or thing done or omitted to be done by the Minister, STC, FTC or any

trustee of a superannuation scheme or other person under or for the purposes of an arrangement under this Part before the arrangement takes effect, or takes effect in relation to a former contributor, that could have been done or omitted to be done if the arrangement had effect, or had effect in relation to the former contributor, is, if the arrangement takes effect, or takes effect in relation to the former contributor, validated.

### **35 Liability for actions taken under Part**

- (1) A matter or thing done or omitted to be done by STC, the STC Board, a member of the Board or any person acting under the direction of STC or the Board, does not, if the matter or thing was done or omitted to be done in good faith—
  - (a) in connection with obtaining or making a revocation election, or
  - (b) in connection with an arrangement, or proposed arrangement, under this Part, or
  - (c) in connection with the provision of information in relation to clauses 29–34 or an arrangement, or proposed arrangement, under this Part, or
  - (d) for the purpose of executing clauses 29–34,

subject STC, a member of the Board or a person so acting to any action, liability, claim or demand.

- (2) A matter or thing done or omitted to be done by FTC, the FTC Board, a member of the Board or any person acting under the direction of FTC or the Board, does not, if the matter or thing was done or omitted to be done in good faith—
  - (a) in connection with obtaining or making a revocation election, or
  - (b) in connection with an arrangement, or proposed arrangement, under this Part, or
  - (c) in connection with the provision of information in relation to clauses 29–34 or an arrangement, or proposed arrangement, under this Part, or
  - (d) for the purpose of executing clauses 29–34,

subject FTC, a member of the Board or a person so acting to any action, liability, claim or demand.

## **Part 10 Superannuation Legislation Amendment Act 2000**

### **36 Definition**

In this Part—

**amending Act** means the *Superannuation Legislation Amendment Act 2000*.

### **37 Late conversion elections**

- (1) This clause applies to a conversion election made before the date of assent to the amending Act and after the time required under Part 3B for the making of the conversion election.
- (2) Section 20H, as amended by the amending Act, extends to any such election and STC may deal with the election accordingly.
- (3) Any acceptance by STC, before the commencement of this clause, of a conversion election to which this clause applies is validated.

### **38 Entitlement to withdrawal benefit (section 38A)**

- (1) Section 38A (5B), as inserted by the amending Act, applies in respect of the calculation of a contributor's entitlement under section 38A if the contributor's entitlement to an amount under that section arises on or after the commencement of that subsection.
- (2) However, STC may adjust the entitlements of any contributor or former contributor who became entitled to an amount under section 38A on or after 1 December 1998 but before the commencement section 38A (5B), so as to apply that subsection to the contributor.

### **39 Adjustment of pensions (section 61C)**

The amendment made to section 61C by the amending Act does not affect the calculation of an adjustment percentage for a year if the June quarter in that year ended before the commencement of that amendment.

### **40 Removal of waiting period (section 91)**

- (1) This clause applies in respect of an election to commute a pension under this Act that was made by a person under section 21C within the period of 6 months before the date of assent to the *Superannuation Legislation Amendment Act 2000* (**the commencement date**).
- (2) If, at the commencement date, the person who made the election is entitled to commute the pension under section 21C and the election has not yet taken effect (and has not been revoked), the election is taken to take effect on the commencement date.
- (3) If, at the commencement date, the person who made the election is not entitled to commute the pension under section 21C, because the person has not yet attained the age of 55 years, the election is taken to take effect on the date that the person attains the age of 55 years, unless sooner revoked.
- (4) If the person who made the election died before the commencement date, having

attained the age of 55 years, the election is taken to have taken effect the day before the person died, and section 21C (7) applies accordingly.

- (5) If the person who made the election died before the commencement date, without having attained the age of 55 years, the election is taken to be revoked.
- (6) This clause applies despite any determination made by STC in respect of the election before the commencement date.

## **Part 11 Superannuation Legislation Amendment Act 2005**

### **41 Restoration of death benefit previously reduced**

- (1) Section 61RAA, as inserted by the *Superannuation Legislation Amendment Act 2005*, applies to a lump sum benefit reduced, but not paid, before the commencement of that section.
- (2) Section 61RAA, as inserted by the *Superannuation Legislation Amendment Act 2005*, does not apply to a lump sum benefit paid before the commencement of that section.

### **42 Validation**

Anything done or omitted to be done, on or after 1 March 1999, that would have been validly done or omitted had the amendment made to clause 2 (5) of Schedule 24 by Schedule 6 [18] to the *Superannuation Legislation Amendment Act 2005* been in force at the time that the thing was done or omitted, is validated.

## **Part 12 Relationships Register Act 2010**

### **43 De facto partner entitlements**

- (1) The amendments to section 3 (1) made by the *Relationships Register Act 2010* apply only to or in respect of contributors or former contributors who die on or after the commencement of those amendments.
- (2) The definitions of **de facto partner** and **de facto relationship**, as in force immediately before that commencement, apply to or in respect of contributors or former contributors who die before that commencement.

## **Schedule 26**

(Section 20E)

### **Part 1 Public Authorities**

Department of Aboriginal Affairs  
Ageing and Disability Department  
Department of Agriculture  
Ministry for the Arts  
Attorney General's Department

Department of Rural Fire Service  
Cabinet Office  
Department of Community Services  
Department of Energy  
Department of Fair Trading  
New South Wales Fire Brigades  
Department of Gaming and Racing  
Department of Health  
Heritage Office  
Department of Housing  
Department of Industrial Relations  
Department of Juvenile Justice  
Department of Land and Water Conservation  
Department of Local Government  
Department of Mineral Resources  
Olympic Roads and Transport Authority  
Ministry for Police  
Premier's Department  
Department of Public Works and Services  
Department of Education and Training  
Department of Sport and Recreation  
Department of State and Regional Development  
Department of Transport  
The Treasury  
Ministry of Urban Infrastructure Management  
Valuer-General's Department  
Department for Women  
Audit Office  
Office of the Board of Studies  
Department of Corrective Services  
New South Wales Crime Commission  
New South Wales Dairy Corporation  
Darling Harbour Authority  
Office of the Director of Public Prosecutions  
Environment Protection Authority  
Multicultural NSW  
NSW Fisheries  
Forestry Corporation  
Home Purchase Assistance Authority  
HomeFund Commissioner's Office  
New South Wales Institute of Sport  
Legal Aid Commission  
Office of Marine Administration  
New South Wales Meat Industry Authority  
National Parks and Wildlife Service  
Ombudsman's Office  
Parliamentary Counsel's Office  
Royal Botanic Gardens and Domain Trust



Rural Assistance Authority  
State Electoral Office  
State Emergency Service  
Tourism New South Wales  
Department of Urban Affairs and Planning  
The Legislature  
Ambulance Service of New South Wales  
Australian Museum Trust  
Bathurst-Orange Development Corporation  
Colleambally Irrigation Corporation  
Delta Electricity  
Financial Institutions Commission  
FSS Trustee Corporation  
Greyhound Racing Control Board  
Harness Racing New South Wales  
Hawkesbury-Nepean Catchment Management Trust  
Health Administration Authority  
Home Care Service of New South Wales  
Hunter Catchment Management Trust  
Hunter Water Corporation Limited  
Independent Commission Against Corruption  
Independent Pricing and Regulatory Tribunal of New South Wales  
Independent Audit Bureau of New South Wales  
Judicial Commission of New South Wales  
Lord Howe Island Board  
Macquarie Generation  
Murrumbidgee Irrigation Corporation  
New South Wales Aboriginal Land Council  
New South Wales Casino Control Authority  
New South Wales Dried Fruits Board  
New South Wales Film and Television Office  
New South Wales Lotteries Corporation  
New South Wales Treasury Corporation  
Newcastle Port Corporation  
Parramatta Park Reserve Trust  
Parramatta Stadium Trust  
NSW Police Force  
Port Kembla Port Corporation  
Rail Infrastructure Corporation  
Roads and Maritime Services  
SAS Trustee Corporation  
State Transit Authority of New South Wales  
The Corporation constituted under the [Superannuation Administration Authority Corporatisation Act 1999](#)  
Sydney Cove Redevelopment Authority  
The Sydney Opera House Trust  
Sydney Organising Committee for the Olympic Games  
Sydney Ports Corporation

Sydney Water Corporation Limited  
TAFE Commission  
Trustee of Arakoon State Conservation Area  
Trustee of Bent Basin State Conservation Area  
Trustee of Burrendong State Conservation Area  
Trustee of Burrinjuck State Conservation Area  
Trustee of Copeton State Conservation Area  
Trustee of Grabine State Conservation Area  
Trustee of Killalea State Conservation Area  
Trustee of Lake Glenbawn State Conservation Area  
Trustee of Lake Keepit State Conservation Area  
Trustee of Wyangala State Conservation Area  
United Dental Hospital  
Waste Recycling and Processing Corporation  
Water Administration Ministerial Corporation  
Maritime Authority of NSW  
Wentworth Park Trust  
Western Lands Commissioner  
Wild Dog Destruction Board  
Zoological Parks Board of New South Wales  
Central Coast Waste Planning and Management Board  
Hunter Waste Planning and Management Board  
Illawarra Coast Waste Planning and Management Board  
Inner Sydney Waste Planning and Management Board  
Macarthur Waste Planning and Management Board  
Northern Sydney Waste Planning and Management Board  
Southern Sydney Waste Planning and Management Board  
Western Sydney Waste Planning and Management Board  
A rural lands protection board constituted under the [Rural Lands Protection Act 1989](#)  
Justice Health  
Far West Health Service  
The Gower Wilson Memorial Hospital Lord Howe Island  
Greater Murray Health Service  
Macquarie Health Service  
Mid North Coast Health Service  
Mid Western Health Service  
New England Health Service  
Northern Rivers Health Service  
The Royal Alexandra Hospital for Children  
Southern Health Service  
The Stewart House Preventorium, Curl Curl  
Catholic Health Care Services Ltd, in respect of Bodington, Wentworth Falls  
Benevolent Society of New South Wales, in respect of Scarba Services  
Hope Healthcare Ltd, in respect of Braeside Hospital, Prairiewood  
Buckland Convalescent Hospital Ltd  
Calvary Hospital Kogarah Ltd  
The trustee of the Carrington Centennial Trust  
Dame Eadith Walker Convalescent Hospital for Men

Hope Healthcare Ltd, in respect of Eversleigh Hospital, Petersham  
Hope Healthcare Ltd, in respect of Graythwaite Nursing Home, in respect of Eversleigh Hospital, Petersham  
Hope Healthcare Ltd, in respect of Greenwich Hospital, Greenwich  
Karitane  
Mercy Care Centre Ltd, in respect of Mercy Care Centre, Young  
Hope Healthcare Ltd, in respect of Neringah Hospital, Wahroonga  
The trustee of the Sisters of Mercy, Singleton, in respect of Newcastle Mater Misericordiae Hospital, Waratah  
The trustee of the Daughters of Charity of St Vincent de Paul, in respect of Our Lady of Loreto Nursing Home for the Aged, Strathfield  
Royal Rehabilitation Centre, Sydney  
St Vincent's Hospital Sydney Ltd, in respect of Sacred Heart Hospice  
St Anthony's and St Joseph's Centre of Care Ltd, in respect of St Anthony's Home, Croydon  
The trustee of the Daughters of Charity of St Vincent de Paul, in respect of St Catherine's Villa, Eastwood  
St John of God Health Care System Inc, in respect of St John of God Hospital, Goulburn  
The trustee of the Roman Catholic Church for the diocese of Maitland-Newcastle, in respect of St Joseph's Home, Sandgate  
St Joseph's Hospital Ltd, in respect of St Joseph's Hospital, Auburn  
The trustee of the Roman Catholic Church for the diocese of Bathurst, in respect of St Vincent's Community Hospital, Bathurst  
St Vincent's Hospital Sydney Ltd, in respect of St Vincent's Hospital, Darlinghurst  
St Vincent's Hospital Sydney Ltd, in respect of Babworth House (After Care Unit), Darling Point  
The trustee of the Roman Catholic Church for the diocese of Lismore, in respect of St Vincent's Community Hospital, Lismore, in respect of the day hospital, the rehabilitation unit and the community health facilities  
Royal Society for the Welfare of Mothers and Babies, in respect of Tresillian Family Care Centres at Penrith, Petersham, Willoughby and Wollstonecraft  
The trustee of the Roman Catholic Church for the diocese of Bathurst, in respect of Lourdes House, Dubbo  
Uniting Church in Australia, in respect of Lottie Stewart Hospital  
Uniting Church in Australia, in respect of War Memorial Hospital, Waverley  
Uniting Church in Australia, in respect of Uniting Church Nursing Service, Menindee  
An area health service constituted under the [Health Services Act 1997](#)  
Australian Red Cross Society, in respect of The NSW Blood Transfusion Service

## **Part 2 Other Employers**

University of New England, Armidale Union (limited to persons who were contributors to the Fund immediately before becoming employed by the University of New England, Armidale Union)  
Baulkham Hills Shire Council  
Charles Sturt University  
EnergyAustralia  
Goldenfields Water County Council  
Greater Taree City Council  
NSW Nurses' Association  
Southern Cross University  
The New South Wales Teachers' Federation

The Macquarie University  
The University of New England  
The University of New South Wales  
The University of Newcastle  
The University of Sydney  
The University of Wollongong  
University of Technology Sydney  
Western Sydney University