

Public Authorities Superannuation Act 1985 No 41

[1985-41]



New South Wales

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Public Authorities Superannuation Act 1985 No 41



New South Wales

An Act to continue the Public Authorities Superannuation Board and to establish and provide for the investment and administration of the Public Authorities Superannuation Fund; to provide a superannuation scheme for employees of certain public authorities and to provide for the transfer to that scheme of contributors under certain other superannuation schemes; to repeal the *Public Authorities Superannuation Board Act 1983*; and for other purposes.

Part 1 Preliminary

1 Name of Act

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

2 Commencement

- (1) Parts 1, 6 and 7, and Schedules 1–5, shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.
- (3) Subsection (1) does not apply to section 4 in its application to Schedules 6–8.

3 Persons not subject to Act

Schedule 4 has effect.

3A Closure of scheme

- (1) Notwithstanding any other provision of this Act—
 - (a) a person is not entitled to elect on or after 1 April 1988 to become a contributor,
 - (b) a person is not entitled to become a contributor pursuant to an election that was made before, but did not take effect before, 1 April 1988,
 - (c) a person who, immediately before 1 April 1988, was contributing to the Public Authorities Superannuation Fund ceases on and from that day to be entitled or

liable to contribute to that Fund, and

- (d) a benefit under this Act is not payable on or after 1 April 1988 to, or in relation to, a contributor unless the benefit was so payable before that day.
- (2) A benefit under this Act that had become payable before 1 April 1988 but had not been paid, or had not commenced to be paid, before that date shall be paid from the State Authorities Superannuation Fund.
- (3) Any pension under this Act of which payment had commenced before 1 April 1988 shall, on and after that date, be paid from the State Authorities Superannuation Fund.
- (4) Any amount that, before 1 April 1988, a person was liable to pay, but had not paid, to the Public Authorities Superannuation Fund is payable to the State Authorities Superannuation Fund.

4 Repeal, savings and transitional provisions

Schedules 5-8 have effect.

5 Definitions

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

additional benefit has the meaning ascribed thereto in section 24.

applicable month has the meaning ascribed thereto in section 24.

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

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

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

benefit means benefit payable under this Act.

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

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

contributor-financed benefit, in relation to a benefit payable to, or in relation to, a

contributor, means the balance at credit in the contributor's account at the time the benefit is paid.

contributor's account means the account established and maintained under section 9 (1) in respect of the contributor.

death and disability levy means the levy that, in order to attract the additional benefit for a contributor, is paid to the Fund by transfer from the contributor's account under section 12 (6) (b).

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

employee means a person who is employed by an employer and who is not an excluded person as provided by Schedule 4.

employer means an authority specified in Schedule 3 and a reference to employment with an employer includes a reference to employment with successive employers.

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

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

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

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

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

or, if the contributor attains the age of 65 years before any such cessation of employment, the day on which the contributor attains that age.

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

financial year means the financial year of the Board specified in section 46.

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

Fund means the State Authorities Superannuation Fund established under the [State Authorities Superannuation Act 1987](#).

maximum benefit points has the meaning ascribed thereto in section 24.

member means a member (including a part-time member) of the Board.

month means January, February, March, April, May, June, July, August, September, October, November or December.

part-time employee means an employee whose employer notifies the Board that the employee is a part-time employee.

part-time member means a member referred to in section 35 (2) (c), (d) or (e).

preserved benefit, in relation to a contributor, means a benefit for which the contributor has made provision under section 32.

President means President of the Board.

prospective benefit points has the meaning ascribed thereto in section 24.

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

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

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

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

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

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

spouse, in relation to a deceased contributor, means—

- (a) if the deceased contributor was survived by a widow or widower—the widow or widower, as the case may be, of the contributor, or
- (b) if the deceased contributor was not survived by a widow or widower—
 - (i) where the contributor was a man and, at the time of his death, he was living with a woman as his wife on a bona fide domestic basis—the woman with whom he was so living, or
 - (ii) where the contributor was a woman and, at the time of her death, she was living with a man as her husband on a bona fide domestic basis—the man with whom she was so living.

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

superannuation year means—

- (a) the period that commences on 1 July 1985 and ends on 31 March 1986,
- (b) the year that commences on 1 April 1986, and
- (c) each year that commences on 1 April and succeeds the year referred to in paragraph (b).

this Act includes regulations.

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

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

6 Salary

- (1) For the purposes of this Act but subject to this section, **salary**, in relation to a contributor, includes any remuneration or benefit by way of salary, wages or allowance payable in money to the contributor in the contributor's capacity as an employee, other than—
- (a) an amount paid for overtime or as a bonus, or as an allowance instead of overtime,
 - (b) except to the extent that this section otherwise provides—a relieving allowance,
 - (c) an expense allowance or an allowance for travelling, subsistence or other expenses,
 - (d) an amount paid for rent or as a residence, housing or quarters allowance,
 - (e) a climatic allowance or an allowance for equipment, or
 - (f) an allowance prescribed for the purposes of this paragraph.
- (2) Where a contributor's employer, or a person authorised to do so on behalf of the employer, certifies in writing to the Board that a relieving allowance to be, or being, paid to the contributor in the contributor's capacity as an employee is likely to be paid for a continuous period of 12 months (whether or not that period is partly before the date of the certificate) the allowance is, as from—
- (a) the date on which the certificate is lodged with the Board, or
 - (b) the date from which the allowance becomes payable,
- whichever is the later, salary for the purposes of this Act.
- (3) Where a relieving allowance has been paid to a contributor in the contributor's capacity as an employee for a continuous period of 12 months that ends after the appointed day and, during that period, the allowance has not been treated as part of the contributor's salary in accordance with subsection (1), the allowance shall, as from the expiration of that period of 12 months, be treated as part of the contributor's salary while its payment to the contributor continues.
- (4) Where a contributor is on secondment to another employer, the salary of the contributor for the purposes of this Act is the salary paid or payable to the contributor by that other employer.

Part 2

7-10 (Repealed)

Part 3 Contributions by employees

11 Election to contribute to the Fund

- (1) An employee may lodge with the Board an election to contribute to the Fund.
- (2) An election under subsection (1) shall—
 - (a) be in a form approved by the Board for the purposes of this section,
 - (b) specify the rate at which the employee desires, subject to this Act, to contribute to the Fund, being the rate of 2, 3, 4, 5, 6, 7, 8, or 9 per cent of the employee's salary, and
 - (c) be accompanied by a certificate by the employee's employer that is in a form approved by the Board and specifies—
 - (i) the date of birth of the employee,
 - (ii) the salary (and, in the case of a part-time employee, the attributed salary) of the employee, and
 - (iii) such other matters as the Board considers to be necessary or convenient for the purposes of this section.
- (3) A failure to comply with subsection (2) (b) does not invalidate an election and, in the event of such a failure, the form of election shall be deemed to specify a rate of 2 per cent.
- (4) An election made by an employee under subsection (1) is ineffective if, at the time the election would take effect, the employee would be of or above the age of 65 years.
- (5) An election made by an employee under subsection (1) (other than an election referred to in subsection (4)) takes effect not later than the first day of the second month after that in which the election is received in the office of the Board but, where the employee makes a subsequent election under section 15 (variations of contribution rate) ceases to be in force immediately before the subsequent election takes effect.
- (6) If the Board approves, an employee may, before an election made under this section takes effect, vary the election.
- (7) Where a contributor to another superannuation scheme becomes (but for being such a contributor) entitled to elect to contribute to the Fund by reason of a change of work

category or for any other reason—

- (a) that contributor shall be deemed not to be a contributor to that other superannuation scheme for the purposes of making that election,
- (b) that contributor may make that election on condition that the Board approves an application made by the person under section 12 to be covered for the additional benefit, and
- (c) that election takes effect as at a date determined by the Board.

12 Additional benefit

- (1) Application to be covered for the additional benefit may be made to the Board—
 - (a) by an employee who is not a contributor—at the time the employee makes an election under section 11 (election to contribute to the Fund), or
 - (b) except to the extent that subsection (7) or (11) otherwise provides—at any time by a contributor.
- (2) An application under subsection (1) shall—
 - (a) be in a form approved by the Board for the purposes of this section, and
 - (b) be accompanied by such documents and evidence as the Board may require for the purposes of this section.
- (3) The Board may require an applicant under subsection (1)—
 - (a) to submit to such a medical examination as may be required by the Board, and
 - (b) to provide such medical reports as are specified by the Board.
- (4) Where an application is made under subsection (1) and the applicant—
 - (a) fails, in the opinion of the Board, to pass a medical examination to which the applicant has submitted in accordance with a requirement under subsection (3), or
 - (b) fails to comply with a requirement under subsection (3),the Board shall refuse the application.
- (4A) For the purpose of deciding whether or not to approve an application under subsection (1), the Board—
 - (a) may, under subsection (3), require the applicant to submit to further medical examinations or provide further medical reports, and
 - (b) may obtain such evaluations of medical examinations or medical reports as it thinks fit.

- (5) Where the Board approves an application under subsection (1)—
 - (a) the Board shall appoint the day on and from which the applicant's cover for the additional benefit is to commence and shall notify the applicant accordingly, and
 - (b) subject to subsection (6), the applicant becomes, and remains, liable for payment of the death and disability levy in accordance with subsection (6).
- (6) Subject to subsection (11), payment by a contributor of the death and disability levy—
 - (a) shall commence on a date appointed by the Board and shall be made at a rate determined by the Board and at times so determined,
 - (b) shall be effected by transfer from the contributor's account, and
 - (c) shall cease when the contributor no longer has available to be taken into account any prospective benefit points.
- (7) Where an application under subsection (1) is refused, the applicant may not again make such an application before the expiration of—
 - (a) the period of 3 years that next succeeds the refusal, or
 - (b) in a particular case—such shorter period as the Board may decide.
- (8) Where, after approving an application under subsection (1), the Board forms the opinion that, in relation to the application, or to a medical examination of the applicant, an untrue statement within the meaning of section 54 (1) was made and that its approval would not have been given had the untrue statement not been made, the Board shall, subject to subsection (9), revoke the approval.
- (9) For the purpose of deciding whether or not, in relation to an application or a medical examination of an applicant, it is of the opinion referred to in subsection (8), the Board may, if it thinks fit, require the applicant, within a time specified by the Board or within such further time as the Board may allow, to provide information, or to undergo a medical examination, or to provide medical reports, as specified by the Board.
- (10) Upon the expiration of the time, or further time, referred to in subsection (9), the Board shall, whether or not the requirement so referred to is complied with, proceed to decide whether or not it is of the opinion referred to in subsection (8).
- (11) Where, pursuant to subsection (8), the Board revokes its approval of an application—
 - (a) the applicant ceases to be covered for the additional benefit and ceases to be liable to pay the death or disability levy,
 - (b) the applicant is disqualified for 3 years from again applying to be covered for the additional benefit, and

- (c) the amount of any death and disability levy paid by the applicant prior to revocation of the approval is not recoverable.

13 Liability to contribute following election by employee

- (1) Where an election under section 11 takes effect, the person who made the election becomes, and remains, liable to pay to the Fund the contributions prescribed by this Part and, except as provided by section 16 (3), to pay those contributions in respect of the period that commences on the contributor's entry date and ends on the contributor's exit date.
- (2) A contributor's contributions to the Fund shall be calculated on a monthly basis and a contribution payable in respect of a month shall be paid to the Board within 7 days after the last day of that month.
- (3) A contributor's contributions to the Fund are payable to the Board by the employer by which the contributor is employed and the employer is entitled to deduct those contributions from any amount or amounts that may become payable by the employer to the contributor, whether as salary or otherwise.
- (4) The Board may, in a particular case, charge interest calculated on a daily basis at a rate determined by the Board on a contribution to the Fund for any period during which the contribution remains unpaid after the time allowed for payment under subsection (2) and any such interest—
 - (a) shall be paid to the Board by the employer in default, and
 - (b) is not chargeable against any employee.

14 Salary basis for contributions

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

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

15 Variations of contribution rate

- (1) A contributor may, during the period that commences at the beginning of a superannuation year and ends on the next succeeding 31 December or such later date as the Board may approve, lodge with the Board an election to vary the rate per cent of the contributor's salary to be paid to the Fund.
- (2) An election under subsection (1)—

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

whichever first occurs.

- (7) Notwithstanding subsection (1), the Board may, if it is satisfied that a continuation of a contributor's rate of contribution to the Fund would result in financial hardship for the contributor, accept at any time an election under that subsection to reduce, as from a date determined by the Board having regard to the circumstances of the contributor, the rate per cent of the contributor's salary to be paid to the Fund.
- (8) After an election referred to in subsection (7) is accepted by the Board, the Board shall refund to the contributor any resulting excess of contributions to the Fund made on or after the date from which the contributor's rate of contribution is reduced until the date determined by the Board for commencement of the reduced contributions.
- (9) An election that takes effect under this section remains in force until a further election made under this section takes effect.

16 Contributions during leave without pay

- (1) In this section—

initial period, in relation to leave without pay that is not prescribed leave, means any period prescribed for the purposes of this section as the initial period.

leave without pay means a period of leave from employment with an employer (otherwise than on secondment as referred to in section 6 (4)) during which the contributor is not entitled to receive payment of salary from the employer.

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

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

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

- (a) where the leave without pay is not prescribed leave—during any initial period of the leave, or
- (b) except to the extent (if any) that the contributor otherwise elects in writing where the leave without pay is prescribed leave—during the whole of the period of the leave,

pay to the Fund in accordance with directions given by the Board such contributions as would have been deducted from the salary of the contributor in accordance with section 13 if the contributor had continued to be paid salary by the employer during the initial period or period of prescribed leave, as the case may be, at the rate at which the contributor would have been paid but for being on leave without pay.

(3) Except as provided by subsection (2) (a), a contributor is not liable or entitled to make a contribution to the Fund in respect of a month that is included in a period of leave without pay that is not prescribed leave.

17 Resumption of contributions after break in employment

(1) This section applies to a contributor where—

(a) the employment of the contributor with an employer—

- (i) ceases in circumstances entitling the contributor to be paid a benefit under section 29 (benefit on partial and permanent disablement before early retirement age), or
- (ii) ceases in circumstances entitling the contributor to be paid a benefit under section 30 (benefit on resignation, dismissal or discharge before early retirement age) or section 31 (benefit on retrenchment before early retirement age) but the contributor does not elect to make provision for a preserved benefit,

(b) not later than the expiration of the period of 3 months that next succeeds cessation of the employment, the contributor resumes employment as an employee,

(c) the contributor makes an election under section 11 that takes effect as provided by that section, and

(d) if the contributor has been paid a benefit as a consequence of the cessation of employment—the amount of the benefit has been repaid to the Fund with interest as provided by subsection (2).

(2) Interest referred to in subsection (1) (d) is payable at a rate determined by the Board on so much of the benefit so referred to as was not represented by the contributor-

financed benefit and is so payable from the time of the payment of the benefit to the contributor to the time of its repayment to the Fund.

- (3) A contributor to whom this section applies shall be deemed, on the resumption of employment referred to in subsection (1), to have been on leave without pay.

18 Overpayments and arrears

- (1) The amount of any overpayment of contributions to the Fund by a contributor shall—
- (a) if it exceeds the prescribed amount—be refunded by the Board to the contributor with interest at a rate determined by the Board, or
 - (b) if it does not exceed the prescribed amount—be credited by the Board to the contributor's account.
- (2) Where contributions are paid to the Fund at a rate in excess of the rate at which the contributor has for the time being elected to contribute to the Fund, the excess shall be disregarded when calculating the contributor's contributed points figure under Part 5.
- (3) The Board may enter into an arrangement with a contributor, or may require a contributor to enter into an arrangement with the Board, for the payment of arrears of contributions to the Fund that have been incurred, or are expected to be incurred, by the contributor.
- (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,
- the Board may direct that any month in respect of which any such arrears are outstanding is not an applicable month for the contributor.

Part 4 Contributions by employers

18A Definitions

- (1) In this Part—

notional preserved benefit, in relation to a transferred contributor, means the benefit that would have been payable if the transferred contributor, on becoming employed by the new employer, had elected to make provision for a preserved benefit under section 32 (1) and the benefit provided by section 32 (5) had thereupon become payable.

transferred contributor means a contributor who—

- (a) ceases to be employed by an employer and becomes employed by another employer, and
 - (b) does not apply for payment of a benefit under this Act in respect of that former employment.
- (2) For the purpose of the making of contributions by employers under this Part, a preserved benefit (including a notional preserved benefit) provided by section 32 (5) shall be deemed to become payable on the date the contributor elects, or is deemed to have elected, to make provision for the benefit under section 32 (1).

19 Contribution by employer under Part 1 of Schedule 3

- (1) Where a benefit becomes payable from the Fund to, or in relation to, a contributor who, immediately before the benefit became payable, was employed by an employer specified in Part 1 of Schedule 3, the employer shall pay to the Fund within a time determined by the Board such of the amount of the benefit as comprises the employer-financed benefit.
- (2) An employer specified in Part 1 of Schedule 3 shall pay to the Fund such amounts referred to in section 9 (3) (c) and (d) as are from time to time determined by the Board.

20 Contribution by employer under Part 2 of Schedule 3

- (1) An employer specified in Part 2 of Schedule 3 shall pay to the Fund an amount equal to one-half of the amount of contributions payable to the Fund by contributors employed by the employer.
- (2) Contributions under subsection (1) shall be calculated on a monthly basis and the contributions payable in respect of a month shall be paid to the Board within 7 days after the last day of the month to which they relate.
- (3) Where a benefit becomes payable from the Fund to, or in relation to, a contributor who, immediately before the benefit became payable, was employed by an employer specified in Part 2 of Schedule 3, the employer shall pay to the Fund, within a time determined by the Board, so much of the employer-financed benefit applicable as, in the opinion of the Board, was not provided for by way of contributions under subsection (1).
- (4) An employer specified in Part 2 of Schedule 3 shall pay to the Fund such amounts referred to in section 9 (3) (c) and (d) as are from time to time determined by the Board.

21 Contribution by employer under Part 3 of Schedule 3

- (1) Where a contributor is employed by an employer specified in Part 3 of Schedule 3, the

employer shall pay to the Fund an amount equal to the sum of—

- (a) 1.7 times the contributions payable to the Fund by the contributor while employed by the employer, and
 - (b) 1 per cent of the salary of the contributor on which those contributions are based.
- (2) Contributions under subsection (1) shall be calculated on a monthly basis and the contributions payable in respect of a month shall be paid to the Board within 7 days after the last day of the month to which they relate.

22 Contribution by employer under Part 4 of Schedule 3

- (1) Where a contributor is employed by an employer specified in Part 4 of Schedule 3, the employer shall pay to the Fund an amount equal to 5.25 per cent of the salary on which the contributions payable to the Fund by the contributor are based.
- (2) Contributions under subsection (1) shall be calculated on a monthly basis and the contributions payable in respect of a month shall be paid to the Board within 7 days after the last day of the month to which they relate.

23 Regulations—contributions by certain employers

Where Schedule 3 is amended by adding an employer, or a class of employers, the regulations may make provision for and with respect to contributions to the Fund by the employer or class of employers.

23A Transfers of credits between employers in respect of transferred contributors

Where a transferred contributor—

- (a) transfers to the employment of an employer specified in Part 1 or 2 of Schedule 3 from the employment of any other employer,
- (b) transfers to the employment of an employer specified in Part 3 of Schedule 3 from the employment of an employer not specified in that Part, or
- (c) transfers to the employment of an employer specified in Part 4 of Schedule 3 from the employment of an employer not specified in that Part,

the Board shall—

- (d) debit the appropriate reserve established under section 9 (3) or (6) in respect of the former employer with such of the amount of the notional preserved benefit of the transferred contributor as comprises the employer-financed benefit, and
- (e) credit the appropriate reserve established under section 9 (3) or (6) in respect of the new employer with the amount so debited in respect of the former employer.

Part 5 Benefits

24 Definitions

For the purposes of this Act—

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

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

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

$$L = S \times P \times 0.01$$

where—

L represents the amount to be ascertained,

S represents the final salary for the contributor, and

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

applicable month, in relation to a contributor, means a month that occurs during the period that commences on the contributor's entry date and ends on the contributor's final contribution date, except where—

- (a) a direction by the Board under section 18 (4) is in force in relation to that month, or
- (b) the contributor was not liable to contribute to the Fund in respect of that month by reason that it occurred during leave without pay or between a cessation and resumption of employment with an employer.

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

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

$$L = S \times P \times 0.01$$

where—

R represents the rate per cent to be ascertained,

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

N represents the number of those applicable months.

contributed points figure, in relation to a contributor, means the figure that, in relation to each applicable month for the contributor that occurs before the contributor attains the age of 65 years, is calculated to 2 decimal places in accordance with the formula—

$$L = S \times P \times 0.01$$

where—

F represents the figure to be ascertained,

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

R represents the salary ratio applicable to the contributor on the first day of that month.

early retirement age means the age of 60 years or, if some other age (being not less than 55 years) is prescribed, that other age.

final average salary, in relation to a contributor, means the average of the attributed salaries paid to the contributor at the rates applicable—

(a) on 31 December last preceding the contributor's exit date, and

(b) on 31 December last preceding 31 December referred to in paragraph (a).

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

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

(a) 240, or

(b) if the number ascertained by multiplying by 0.5 the sum of the salary ratios for the contributor on the first day of each applicable month for the contributor is less than 240—the number so ascertained.

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

means—

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

$$L = S \times P \times 0.01$$

where—

P represents the number to be ascertained,

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

R represents the salary ratio for the contributor at the contributor's exit date, and

S represents the number of applicable months for the contributor that would occur during the period that commences immediately after the contributor's final contribution date and ends immediately before the 60th anniversary of the contributor's birth, or

(b) if it is a lesser number than that calculated under paragraph (a)—the number of benefit points that, when added to the number of the contributor's accrued benefit points at the exit date, would produce a number equal to the maximum benefit points that would have been attributable to the contributor if contributions had continued at the average contribution rate per cent, the salary ratio had remained constant until the exit date and the exit date had immediately preceded the 60th anniversary of the contributor's birth.

25 Change in early retirement age

Regulations may be made for and with respect to the application of the provisions of this Act, with prescribed modifications, where an employee retires from employment with an employer on attaining any prescribed early retirement age that is lower than 60 years.

26 Benefit at age 65 or on early retirement or on death at or after age 60

(1) The benefit provided by this section is payable by the Board on a contributor attaining the age of 65 years or where, on or after attaining the early retirement age and before attaining the age of 65 years, a contributor retires from employment with an employer or, on or after attaining the age of 60 years and before attaining the age of 65 years, a contributor dies during employment with an employer and is so payable—

(a) where the benefit becomes payable on the contributor attaining the age of 65 years or earlier retiring—to the contributor,

(b) where the benefit becomes payable on the death of the contributor and the contributor is survived by a spouse—to the contributor's spouse, or

(c) where the benefit becomes payable on the death of the contributor and the contributor is not survived by a spouse—to the personal representatives of the contributor or, if appropriate, in accordance with section 58 (payment without grant of probate, etc).

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

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

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

$$L = S \times P \times 0.01$$

where—

E represents the amount to be ascertained,

F represents the contributor's final average salary, and

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

27 Benefit on death before age 60

(1) The benefit provided by this section is payable by the Board where a contributor dies before attaining the age of 60 years during employment with an employer and is so payable—

(a) where the contributor is survived by a spouse—to the contributor's spouse, or

(b) where the contributor is not survived by a spouse—to the personal representatives of the contributor or, if appropriate, in accordance with section 58 (payment without grant of probate etc).

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

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

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

$$L = S \times P \times 0.01$$

where—

E represents the amount to be ascertained,

S represents the contributor's final salary,

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

P represents—

(i) where an approval under section 12 (additional benefit) is in force in relation to the contributor—the prospective benefit points for the contributor at the contributor's exit date, or

(ii) where no such approval is in force—nil, and

(c) where an approval under section 12 (additional benefit) is in force—the amount of the additional benefit.

28 Benefit on total and permanent disablement before age 60

(1) The benefit provided by this section is payable by the Board to a contributor where, before attaining the age of 60 years, the contributor retires from employment with an employer and the Board is satisfied—

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

(b) that the contributor is permanently unable, by reason of that incapacity, to engage, or be employed, in any remunerative occupation in which, in the opinion of the Board, it would otherwise be reasonable to expect the contributor to engage.

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

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

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

$$L = S \times P \times 0.01$$

where—

E represents the amount to be ascertained,

S represents—

(i) where the contributor has not attained the age of 58 years—the contributor's final salary,

(ii) where the contributor has attained the age of 58 years but has not attained the age of 59 years—the average of the contributor's final salary and salary at the last preceding 31 December, or

(iii) where the contributor has attained the age of 59 years—the contributor’s final average salary,

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

P represents—

(i) where an approval under section 12 (additional benefit) is in force in relation to the contributor—the prospective benefit points for the contributor at the contributor’s exit date, or

(ii) where no such approval is in force—nil, and

(c) where an approval under section 12 (additional benefit) is in force—the amount of the additional benefit.

29 Benefit on partial and permanent disablement before early retirement age

(1) The benefit provided by this section is payable by the Board to a contributor where, before attaining the early retirement age, the contributor retires from employment with an employer and the Board is satisfied—

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

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

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

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

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

$$L = S \times P \times 0.01$$

where—

E represents the amount to be ascertained,

S represents—

(i) where the contributor’s exit date is 2 or more years before the contributor would attain the early retirement age—the contributor’s final salary,

- (ii) where the contributor's exit date is less than 2 years, but not less than 1 year, before the contributor would attain the early retirement age—the average of the contributor's final salary and salary at the last preceding 31 December, or
- (iii) where the contributor's exit date is less than one year before the contributor would attain the early retirement age—the contributor's final average salary, and

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

30 Benefit on resignation, dismissal or discharge before early retirement age

- (1) The benefit provided by this section is payable by the Board to a contributor where, before attaining the early retirement age, the contributor resigns, or is dismissed or discharged, from employment with an employer and no other benefit is payable under this Act.
- (2) The benefit provided by this section for a contributor for whom the period commencing on entry date and ending on exit date is 10 years or more is an amount equal to the sum of—
 - (a) the amount of the contributor-financed benefit, and
 - (b) an amount of employer-financed benefit calculated in accordance with the formula—

$$L = S \times P \times 0.01$$

where—

W represents the amount to be ascertained,

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

R represents the amount of the contributor-financed benefit,

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

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

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

31 Benefit on retrenchment before early retirement age

(1) The benefit provided by this section is payable by the Board to a contributor where, before attaining the early retirement age, the contributor is retrenched, no other benefit is payable under this Act and the Board is provided with a statutory declaration by a person, duly authorised for the purpose by the employer, confirming that the contributor has been retrenched and specifying the ground upon which the retrenchment was justified.

(2) If—

(a) a contributor's exit date was before 13 February 1987 and the period commencing on the contributor's entry date and ending on that exit date was 10 years or more, or

(b) a contributor's exit date was on or after 13 February 1987 and the period commencing on the contributor's entry date and ending on that exit date was 3 years or more,

the benefit provided by this section is an amount equal to the sum of—

(c) the contributor-financed benefit, and

(d) an amount of employer-financed benefit calculated in accordance with the formula—

$$L = S \times P \times 0.01$$

where—

E represents the amount to be ascertained,

S represents—

(i) where the contributor's exit date is 2 or more years before the contributor would attain the early retirement age—the contributor's final salary,

(ii) where the contributor's exit date is less than 2 years, but not less than 1 year, before the contributor would attain the early retirement age—the average of the contributor's final salary and salary at the last preceding 31 December, or

(iii) where the contributor's exit date is less than 1 year before the contributor would attain the early retirement age—the contributor's final average salary, and

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

(3) If—

- (a) a contributor's exit date was before 13 February 1987 and the period commencing on the contributor's entry date and ending on that exit date was less than 10 years, or
- (b) a contributor's exit date was on or after 13 February 1987 and the period commencing on the contributor's entry date and ending on that exit date was less than 3 years,

the benefit provided by this section is the amount of the contributor-financed benefit.

32 Preserved benefit

- (1) A contributor who becomes entitled not less than 3 years after his or her entry date to be paid a benefit under section 30 or 31 (3) may elect to make provision for a benefit provided by this section.
- (2) Where an election made by a contributor under subsection (1) takes effect, a benefit is not payable to, or in relation to, the contributor under any provision of this Act other than this section.
- (3) Subject to subsection (3A), the benefit provided by subsection (5) is payable by the Board—
 - (a) when the contributor attains the early retirement age,
 - (b) if, before attaining that age—
 - (i) the contributor dies, or
 - (ii) having become a contributor to the State Public Service Superannuation Fund, the contributor is retrenched while contributing to that Fund, or
 - (c) on the Board's being satisfied as provided by section 28 (1) (benefit on total and permanent disablement before age 60).
- (3A) Subsection (3) does not apply to a contributor referred to in paragraph (b) (ii) of that subsection unless the periods during which the contributor contributed to the Fund and to the State Public Service Superannuation Fund were continuous.
- (3B) Subject to subsection (3), the benefit provided by subsection (5) is payable—
 - (a) except where the contributor has died, to the contributor, or
 - (b) if the contributor has died and is survived by a spouse, to the spouse, or
 - (c) if the contributor has died but is not survived by a spouse—
 - (i) to the contributor's legal personal representatives, or
 - (ii) where section 58 applies (payment without grant of probate etc) and the

Board has made a decision under subsection (1) of that section, in accordance with subsection (2) of that section.

- (4) The benefit provided by subsection (6) is payable by the Board to the contributor upon the contributor electing to take that benefit and the election taking effect—
- (a) after the election made under subsection (1) takes effect, and
 - (b) before the benefit provided by subsection (5) becomes payable to, or in relation to, the contributor.

- (5) The benefit provided by this subsection is an amount equal to the sum of—

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

$$L = S \times P \times 0.01$$

where—

E represents the amount to be ascertained,

S represents—

- (i) where the contributor's exit date is 2 or more years before the contributor would attain the early retirement age—the contributor's final salary,
- (ii) where the contributor's exit date is less than 2 years, but not less than 1 year, before the contributor would attain the early retirement age—the average of the contributor's final salary and salary at the last preceding 31 December, or
- (iii) where the contributor's exit date is less than one year before the contributor would attain the early retirement age—the contributor's final average salary,

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

D represents the figure calculated by raising 0.995 to the power the magnitude of which is the number obtained by deducting from 60 the contributor's age at exit date expressed in years and, calculated on a monthly basis, any fractional part of a year.

together with interest thereon, from the exit date to the date of payment, at a rate determined by the Board.

- (6) The benefit provided by this subsection is an amount equal to the sum of—
- (a) the amount of the benefit under section 30 or 31 (3) that would have been

payable to the contributor at the contributor's exit date if the contributor had not made the election under subsection (1), and

(b) interest on the amount referred to in paragraph (a), from the contributor's exit date to the date of payment, at a rate determined by the Board.

(7) A contributor who becomes a contributor to another superannuation scheme while employed by the same employer—

(a) is required to make provision for a benefit provided by this section notwithstanding anything to the contrary in subsection (1),

(b) shall be deemed to have elected under subsection (1) to make provision for that benefit on becoming a contributor to that other superannuation scheme, and

(c) is not entitled to elect to take the benefit provided by subsection (6) while employed by that same employer.

(8) Schedule 9 has effect with respect to contributors transferred as a result of Government initiatives.

33 Application for payment or preservation of benefit

(1) An application for payment of a benefit to, or in relation to, a contributor or for preservation of a benefit under section 32 shall be made in writing in a form approved by the Board for the purpose, shall be signed by the applicant and shall be accompanied by—

(a) except in the case of a benefit payable under section 32—a certificate by the contributor's employer at the contributor's exit date, specifying the exit date and the manner of cessation of the contributor's employment and such other particulars as may be prescribed, and

(b) such other documents as may be prescribed.

(2) A benefit shall not be paid or preserved by the Board before subsection (1) has been complied with.

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

34 Payments from Contingent Account

(1) Subject to subsection (2) and such conditions as the Board may impose, the Board may, in its absolute discretion, from time to time pay from the Contingent Account such amounts as the Board thinks fit—

(a) as sickness benefits to contributors,

(b) as grants towards funeral expenses incurred in relation to deceased contributors,

or

(c) in payment of contributions to the Fund in the case of contributors who, in the opinion of the Board, are unable through sickness or other sufficient cause to pay the contributions.

(2) A payment under subsection (1)—

(a) shall not exceed any prescribed maximum, and

(b) is made subject to any prescribed conditions.

Part 6

35-51 (Repealed)

Part 7 Miscellaneous

52 Employers and employees

(1) The Governor may, by order published on the NSW legislation website—

(a) amend Schedule 3 by inserting therein the name of an organisation or corporation or a description of a class of organisations or corporations, or by transferring such a name or description from one Part of the Schedule to another Part,

(b) amend Schedule 3 by omitting therefrom the name of an employer that has changed its name and by inserting instead the new name of the employer,

(c) amend Schedule 3 by omitting therefrom the name of an employer that has ceased to exist but has been replaced as an employer by another organisation or corporation and by inserting instead the name of that other organisation or corporation,

(d) amend Schedule 3 by omitting therefrom the name of an employer that has ceased to exist and is not referred to in paragraph (c),

(e) amend Schedule 3 by adding a Part for the purposes of paragraph (a), or

(f) amend Schedule 4.

(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 any existing contributor.

53 Employer to provide information

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

54 Employee or claimant to provide information

- (1) For the purposes of this section, *untrue*, in relation to a statement, includes—
 - (a) misleading in the form and context in which the statement appears, and
 - (b) misleading by reason of the omission from the statement of matter that is material.
- (2) The Board may require an employee or a claimant for payment of a benefit under this Act—
 - (a) to provide the Board with specified information or evidence referred to in subsection (3),
 - (b) to provide the Board with an authority to obtain from a third person any such information or evidence, or
 - (c) in the case of a claimant for a benefit under section 28 or 29—to undergo a medical examination.
- (3) A requirement under subsection (2) may be made only—
 - (a) in the case of an employee—in relation to information or evidence that is relevant to the assessment of an application by the employee to be covered for the additional benefit, or
 - (b) in the case of a claimant for payment of a benefit—in relation to information, evidence or a medical examination that is relevant to the assessment of an application made by the claimant for payment of the benefit.
- (4) Where—
 - (a) the employee or claimant to whom a requirement under subsection (2) (a) or (2) (c) relates fails to comply with the requirement or, in purported compliance with

the requirement, makes or provides an untrue statement, or

- (b) a person referred to in subsection (2) (b) fails to provide information or evidence that the Board has been authorised to obtain from the person or, in purported compliance with the request by the Board for the information or evidence, makes or provides an untrue statement,

the Board may—

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

55 Making of elections and applications

(1) An election or application under this Act—

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

on which, or the manner in which, the election is to take effect, and

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

(2) Where an election or application is not received in the office of the Board within the time prescribed by subsection (1) (b) for the election or application and the Board is satisfied that, in all the circumstances of the case, it is desirable that the election or application should be accepted, the Board may, subject to such terms and conditions as it may impose, accept the election or application and deal with it as if it had been received within the time so prescribed.

56 Assignment etc of benefit

(1) A purported assignment of, or purported charge over, a benefit is void.

(2) Where, but for this subsection, a benefit would pass by operation of law to a person other than a person to whom the benefit is payable under this Act, the benefit does not so pass.

(3) A benefit payable upon the death of a contributor is not an asset in the contributor's estate that is applicable in payment of the debts and liabilities of the deceased.

(4) Nothing in this section prevents the Board from making, at the request of a person to whom an amount by way of a benefit is payable, a payment of the whole or a part of the amount on behalf of the person.

(5) Any payment made under subsection (4) shall be deemed to have been made to the person entitled to the benefit.

57 (Repealed)

58 Payment without grant of probate etc

(1) Where a person dies and—

(a) a benefit is or becomes payable from the Fund in relation to the deceased,

(b) production to the Board of probate of the will, or letters of administration of the estate, of the deceased has not been arranged, and

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

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

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

59 Recovery of money owing to Fund

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

60 (Repealed)

61 Restoration of lost right etc under Act

- (1) Where a person is entitled to exercise a right or enjoy a privilege or benefit under this

Act and, without having exercised the right or enjoyed the privilege or benefit, the person ceases to be entitled so to do, the person may exercise the right or enjoy the privilege or benefit if—

- (a) the Board, being satisfied that it is just and equitable that it should do so, gives its consent to the exercise by the person of the right or the enjoyment by the person of the benefit or privilege, and
- (b) the person fulfils any conditions imposed, and complies with any requirements made, by the Board in giving its consent.

- (2) Where pursuant to subsection (1) the Board consents to an election, or an application to the Board, being made after the time before which, but for that consent, it should have been made, the Board may, if it thinks fit, deal with the election or application as if it had been made before that time.

62 Payment where beneficiary incapable

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

62A Payment where beneficiary is missing

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

63 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A provision of a regulation may—
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors,

- (b) apply differently according to different factors of a specified kind, or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
- or may do any combination of those things.

Schedules 1, 2 (Repealed)

Schedule 3 Employers

(Section 5 (1))

Part 1

The Bathurst Orange Development Corporation.
The Board of Fire Commissioners of New South Wales.
Clann Limited.
The Crown or a Minister of the Crown.
The Hawkesbury Agricultural College.
The Homebush Abattoir Corporation.
The Hunter Valley Conservation Trust.
The New South Wales Film Corporation.
The New South Wales Meat Industry Authority.
The Orange Agricultural College.
The Riverina College of Advanced Education.
Roads and Maritime Services.
The State Transit Authority of New South Wales.
The Trustees of the Anzac Memorial Building.
The Wentworth Park Trust.
Water Administration Ministerial Corporation.

Part 2

Pacific Power (with respect to all its employees).
The Australian Federated Union of Locomotive Enginemen.
The Australian Railways Union.
The Australian Tramway and Motor Omnibus Employees' Association.
The Australian Transport Officers Federation (New South Wales Division).
The Fish Marketing Authority.
The Government Insurance Office of New South Wales.
The Justice and Police Museum Limited.
The Metropolitan Waste Disposal Authority (with respect to all its employees).
The Public Authorities Superannuation Board (with respect to all its employees).
The Water and Sewerage Employees Union (Salaried Division and Wages Division).

Part 3

A body corporate constituted under the [Local Government Act 1919](#) as a council or a county council.
A committee constituted under the [Local Government Act 1919](#) as an urban committee or a joint

committee of 2 or more councils.

A pastures protection board constituted under the *Pastures Protection Act 1934*.

The employer of a servant, or class of servants, specified in a proclamation published under section 2 (4) of the *Local Government and Other Authorities (Superannuation) Act 1927*.

A body or association of persons specified in a proclamation published under section 2 (5) of the *Local Government and Other Authorities (Superannuation) Act 1927*.

Children's Medical Research Foundation (Note—limited to particular employees as specified in the order inserting the name of the employer).

Garvan Institute of Medical Research.

St. Luke's Hospital Limited (Note—limited to particular employees as specified in the order inserting the name of the employer).

The Operative Plasterers and Plaster Workers' Federation of Australia (Note—limited to a particular employee as specified in the order inserting the name of the employer).

Part 4

The Health Administration Corporation.

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

Part 5

Armidale College of Advanced Education.

Cumberland College of Health Sciences.

Kuring-gai College of Advanced Education.

Macarthur Institute of Higher Education.

Mitchell College of Advanced Education.

Nepean College of Advanced Education.

Newcastle College of Advanced Education.

New South Wales Institute of Technology.

Northern Rivers College of Advanced Education.

Sydney College of Advanced Education.

Sydney College of the Arts.

Schedule 4 Excluded persons

(Sections 3, 5 (1))

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

- (a) is a full-time employee and is a contributor to a superannuation scheme other than the superannuation scheme established by this Act,
- (b) has received a benefit under, or is in receipt of periodic payments under, such a superannuation

scheme as a consequence of ill-health, not being a benefit or payment based on an elapsed period,

- (c) is a person who was a contributor and received a benefit under this Act where prospective benefit points were a factor in the calculation of the amount of the benefit, or
- (d) is a Judge within the meaning of the *Judges' Pensions Act 1953*, a master within the meaning of the *Supreme Court Act 1970* or the Solicitor General.

Schedule 5 Repeal, savings and transitional provisions

(Section 4)

1 Definitions

In this Schedule—

corporation means the corporation constituted under section 5 of the repealed Act as the Public Authorities Superannuation Board.

repealed Act means the *Public Authorities Superannuation Board Act 1983* repealed by clause 2.

2 Repeal of Act No 103, 1983

The *Public Authorities Superannuation Board Act 1983* is repealed.

3 Continuity of corporation

The repeal of the repealed Act does not affect the perpetual succession of the corporation and the corporation continues as the same legal entity under and in accordance with this Act.

4 Continuity of membership

- (1) A person who, immediately before the appointed day, held office as a member of the corporation—
 - (a) shall be deemed to have been appointed under this Act as a member of the Board for the residue of the term of office for which the member was appointed under the repealed Act as a member of the corporation, and
 - (b) while a member of the Board pursuant to paragraph (a) holds, subject to this Act, the office of President, Vice-President or part-time member to which the member was appointed under the repealed Act.
- (2) A person who, immediately before the appointed day, held office as an acting member of the corporation shall be deemed to have been appointed under and subject to this Act as an acting member of the Board.

5 Property of corporation

The repeal of the repealed Act does not affect the property of the corporation.

6 Delegations

A delegation effected by the corporation and in force immediately before the appointed day shall be deemed to have been effected under this Act.

7 Legal proceedings etc

Except to the extent that an inconsistency with this Act would arise—

- (a) the repeal of the repealed Act does not prejudice or affect any right, privilege or legal proceeding that, immediately before the appointed day, could have been enforced, enjoyed, instituted or continued, and
- (b) any such right, privilege or legal proceeding may be enforced, enjoyed, instituted or continued as if it had been conferred by, or arisen under, this Act.

8 Exercise of function

Where, before the appointed day, the corporation, or a member or delegate of the corporation, exercised a function under or in relation to the repealed Act, the function shall, except to the extent that an inconsistency with this Act would arise, be deemed to have been exercised under or in relation to this Act.

9 Continuation of certain provisions

Notwithstanding the repeal of the repealed Act, so much of Schedule 3 to that Act as was in force immediately before the appointed day continues in force on and after that day as if it had been enacted in this Act.

10 Union representation

- (1) This clause applies to the trade and industrial unions registered under section 6 of the *Trade Union Act 1881* and section 8 of the *Industrial Arbitration Act 1940* as—
 - (a) The Federated Municipal and Shire Council Employees' Union of Australia, New South Wales Division, and
 - (b) The Public Service Association of New South Wales.
- (2) Each union to which this clause applies—
 - (a) may have, and shall be deemed always to have been authorised to have, employees of the Board as members, and
 - (b) may represent, and shall be deemed always to have been authorised to represent, the interests of employees of the Board in industrial matters under the *Industrial*

Arbitration Act 1940,

whether or not any such power or authority is, or at any time was, conferred by the rules of the union or any Act or law.

11 Regulations

- (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequential upon the enactment of this Act and the following Acts—

Public Authorities Superannuation (Amendment) Act 1985

Superannuation Legislation Amendment (Family Law) Act 2003 (but only to the extent that it amends this Act)

- (2) A provision made under subclause (1) may be made to take effect on and from the date of assent to the Act concerned or on and from a later date.
- (3) To the extent to which a provision made under subclause (1) takes effect on and from a date that is earlier than the date of its publication in the Gazette, the provision does not operate—
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the date of publication, or
- (b) to impose a liability on any person (other than the State or an authority of the State) in respect of anything done or omitted before the date of publication.

Schedule 6 Transitional provisions—Local Government Pension Fund

(Section 4)

Part 1 General

1 Definitions

- (1) In this Schedule—

earlier Act means the *Local Government and Other Authorities (Superannuation) Act 1927*.

pensioner means a person in receipt of a pension pursuant to this Schedule.

Pension Fund means the Local Government Pension Fund established under the earlier Act.

transferred contributor means an employee who, pursuant to this Schedule, becomes a contributor under this Act.

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

2 Elections and applications under earlier Act

- (1) Where an employee who made an election under section 15AN of the earlier Act before the appointed day had not, before that day, become a contributor to the Pension Fund, that section continues to apply to, and in relation to, the employee as if—
- (a) a reference in that section to becoming a contributor to the Pension Fund were a reference to becoming a contributor under this Act, and
 - (b) a reference in that section to a determination by the Board that an applicant is qualified for full, or partial, additional benefits were a reference to an approval under section 12 of an application by the employee to be covered for the additional benefit.
- (2) Where an application under section 15AT of the earlier Act made before the appointed day had not been dealt with by the Board before that day, that section continues to apply to, and in relation to, the application and, where the Board determines under that section that the applicant is qualified for full, or partial, additional benefits, the Board's determination shall be deemed to be an approval under section 12 for the applicant to be covered for the additional benefit.
- (3) For the purposes of section 12 (7), a refusal of an application under section 15AT of the earlier Act (whether or not it is an application to which subclause (2) applies) shall be deemed to have been a refusal of an application under section 12 (1).
- (4) An election referred to in this clause pursuant to which a person becomes a contributor under this Act shall be deemed to have been an election under section 11 (election to contribute to the Fund).

3 Transferred contributors

- (1) An employee who, immediately before the appointed day, was a contributor under Part 3D of the earlier Act shall be deemed to have made an election under section 11 (election to contribute to the Fund)—
- (a) that took effect on the appointed day, and
 - (b) that specified, as the rate at which the employee desired to contribute to the Fund, the rate per cent of salary at which the employee was, immediately before the appointed day, contributing to the Pension Fund.
- (2) Where, immediately before the appointed day, an employee was, under the earlier Act, qualified for full, or partial, additional benefits, the employee shall, on and from the appointed day—

- (a) pay the death and disability levy in accordance with section 12 (6), and
 - (b) be deemed to do so pursuant to an approved application under section 12.
- (3) Where, pursuant to this clause, an employee becomes a contributor—
- (a) the employee ceases to be a contributor to the Pension Fund, and
 - (b) a benefit under the earlier Act is not payable to, or in relation to, the employee.

3A Transferred contributors with 30 years' service entitled to death and disability cover

- (1) This clause applies to a transferred contributor referred to in clause 3 whose entry date was at least 30 years before the appointed day.
- (2) If a transferred contributor to whom this clause applies makes an application under section 12 before 31 March 1986, the Board shall approve the application without the necessity for the contributor to submit to, or pass, a medical examination.

4 Transferred accounts and reserves

- (1) The contributor's account that is established under section 9 (1) in relation to a transferred contributor shall be so established with a credit balance equal to the balance at credit immediately before the appointed day in the account that had been established under section 15BB of the earlier Act in respect of the transferred contributor.
- (2) The general reserve, and the special reserve, established under Part 3D of the earlier Act shall be transferred to reserves established under section 9.

5 Application of certain definitions to transferred contributor

In relation to a transferred contributor referred to in clause 3—

- (a) the definition of **accrued benefit points** in section 24 shall be construed as if the reference therein to contributed points figures included a reference to the number of pension points that the transferred contributor had accrued under section 15BE of the earlier Act immediately before the appointed day,
- (b) the contributor's entry date shall be deemed to be the date on which the transferred contributor last became subject to the provisions of the earlier Act, and
- (c) the contributor's average contribution rate per cent referred to in the definition of **prospective benefit points** in section 24 shall, if there is any applicable month for the contributor occurring before the contributor last became a contributor under Part 3D of the earlier Act, be determined as prescribed by the regulations or, if no regulations have been made, be determined by the Board.

6 Benefit to be adjusted in certain circumstances

Where a gratuity is payable under section 97 of the *Local Government Act 1919* to a transferred contributor who, under a provision of this Act other than this Schedule, has become entitled to payment of a benefit that includes an employer-financed benefit, the total of the amount of the gratuity and of the amount of that employer-financed benefit shall not exceed the amount of the employer-financed benefit that would have been payable to the contributor if it had been based on the maximum benefit points for the contributor.

7 Minimum benefit

- (1) Notwithstanding any other provision of this Act, where a benefit under this Act becomes payable to, or in relation to, a transferred contributor and the Board is satisfied that, but for the enactment of this Act, a greater benefit would have been payable under the earlier Act, the Board shall, instead of paying the benefit that became payable under the other provisions of this Act, pay the same benefit as that which would have been payable under the earlier Act.
- (2) Where the Board pays a benefit pursuant to subclause (1), the Board shall debit to the appropriate reserve established in the Fund under section 9 the difference between the amount of the benefit so paid and the amount that, but for subclause (1), would have been paid under this Act.

8 Choice of benefit—transferred contributor

- (1) A transferred contributor who retires and thereby becomes entitled to be paid the benefit provided by section 26 (benefit at age 65 or on early retirement or on death at or after age 60) or 28 (benefit on total and permanent disablement before age 60) may elect, as prescribed, to take, instead of the whole or a specified part of that benefit, the benefit provided by subclauses (2) and (3).
- (2) The employer-financed benefit provided by this subclause shall be based on the number of benefit points to which the election relates and is—
 - (a) a pension for the transferred contributor for life determined as prescribed, and
 - (b) upon the death of the pensioner leaving a spouse—a pension for the spouse for life at an annual rate equal to 62.5 per cent of the annual rate of pension payable to the deceased immediately before his or her death.
- (3) The contributor-financed benefit provided by this subclause is—
 - (a) a pension for the transferred contributor for life determined as prescribed, and
 - (b) upon the death of the pensioner leaving a spouse—a pension for the spouse for life at an annual rate equal to 62.5 per cent of the annual rate of pension payable to the deceased immediately before his or her death.

- (4) If a pensioner elected to take the benefit provided by subclauses (2) and (3), the benefit is taken to extend to the de facto partner of a deceased pensioner who dies on or after the commencement of this subclause.

Note—

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

9 Choice of benefit—spouse of deceased transferred contributor

- (1) Where the spouse of a deceased transferred contributor becomes entitled to be paid the benefit provided by section 27 (benefit on death before age 60) the spouse may elect, in a form approved by the Board for the purposes of this clause, to take, instead of the whole or a part of the employer-financed part of that benefit, the benefit provided by subclause (2).
- (2) The benefit provided by this subclause shall be based on the number of benefit points to which the election relates and is a pension for life determined as prescribed.

10 Limitation on spouse’s pensions

- (1) In this clause, **spouse’s pension** means a pension payable under clause 8 (2) (b) or 9 (2).
- (2) Notwithstanding clause 8 (2) (b) or 9 (2), where, but for this subclause, a person would be entitled to more than one spouse’s pension, the person is entitled to one only of those pensions being, where the pensions are not equal, the greater or greatest of them.

11 Pensions in respect of children and orphans

- (1) In this clause—

dependent child, in relation to a deceased contributor, means—

- (a) a child of the contributor, who has not attained the age of 16 years, or
- (b) a child of the contributor, who has attained the age of 16 years but not the age of 25 years and who is, in the opinion of the Board, receiving full-time education at a school, college or university and not ordinarily employed or engaged in working for a salary,

and who was, in the opinion of the Board, wholly or substantially dependent on the contributor immediately before the contributor’s death.

notional pension, in relation to the spouse or de facto partner of a deceased contributor or pensioner, means—

- (a) where the spouse or de facto partner receives the pension provided by clause 8 (2) (b)—the pension that would have been payable to the deceased if he or she

had elected to take the pension provided by clause 8 (2) and lived, or

- (b) where the spouse receives the pension provided by clause 9 (2)—the pension that would have been payable to the deceased if he or she had suffered total and permanent disablement instead of death and had elected to take the pension provided by clause 8 (2).

spouse applies in relation to a deceased pensioner in the same way as it applies in relation to a deceased contributor.

- (2) Where a transferred contributor, or a pensioner, dies leaving dependent children, the Board shall—
 - (a) pay a pension in respect of each such child to the spouse of the deceased or the guardian of the child, or
 - (b) expend the pension for the benefit of the child in such manner as is determined by the Board.
- (3) A pensioner in relation to whom there is a notional pension is entitled to so much only of pensions under subclause (2) as will, when added to the pensioner's actual pension, not exceed that notional pension.
- (4) A pension payable under subclause (2) ceases to be payable in respect of a child when the child ceases to be a dependent child.
- (5) Subject to any periodical adjustment as provided by Part 2, the rate of pension payable under subclause (2) in respect of a child is—
 - (a) where a parent of the child is living—\$20.60 per week, or
 - (b) in any other case—\$48.93 per week.

Part 2 Periodic adjustment of pensions

12 Definitions

In this Part, 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 for a year, in relation to a pension, means, subject to clause 14, the percentage for that year in relation to that pension calculated in accordance with that clause.

December quarter in relation to a year, means the period commencing on 1st October in that year and ending on 31st December in that year.

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

June quarter, in relation to a year, means the period commencing on 1st April in that year and ending on 30th June in that year.

pension means pension payable under this Schedule.

year means—

- (a) the period commencing on and including 1 July 1989 and ending on and including 30 June 1990, or
- (b) a subsequent period commencing on and including 1 July and ending on and including the next following 30 June.

13 Restriction on automatic adjustment of pension

- (1) This Part does not operate to reduce a pension to a rate lower than the rate at which it would have been payable if this Part had not been enacted.
- (2) Where the Board is of the opinion that an increase pursuant to this Part in the pension payable to a person would prejudicially affect that person in respect of some advantageous situation in which, but for being so affected, the person would be placed, the Board may determine—
 - (a) not to pay the amount of the increase,
 - (b) to pay a specified increase of a lesser amount, or
 - (c) to decrease the pension to a specified amount.
- (3) A determination made under subclause (2) has effect according to its tenor but that subclause does not authorise variation of a determination that has the effect of increasing a pension to an amount greater than it would have been if no determination in relation to the pension had been made under that subclause.
- (4) A determination made under subclause (2) shall be disregarded in calculating a pension payable to the spouse or de facto partner of a deceased pensioner to whom the determination relates but such a determination may be made in relation to the pension so calculated.

14 Calculation of adjustment percentage

- (1) In this clause—

relevant day, in relation to a pension, means—

- (a) where the pension is payable under clause 8 (2) (b) as a consequence of the

death of a pensioner—the day on which the deceased pensioner last became a pensioner, or

(b) except as provided by paragraph (a)—the day on and from which entitlement to the pension arose.

(2) For the purposes of the definition of **adjustment percentage** in clause 12 (1), the percentage for a year in relation to—

(a) a pension referred to in clause 8 (2) or 9—shall be calculated as provided by subclauses (3) and (4),

(b) a pension referred to in clause 8 (3)—shall be calculated as provided by subclause (5), or

(c) a pension referred to in clause 11 (5)—shall be calculated as provided by subclause (3).

(3) The calculation for the purposes of subclause (2) (a) and (c) in relation to a year is, where the relevant day for the pension is earlier than 1 July in that year, to be made—

(a) where the Index number for the June quarter in that year is greater than the Index number for the last preceding June quarter—in accordance with the formula—

$$L = S \times P \times 0.01$$

(b) where the Index number for the June quarter in that year is less than the Index number for the last preceding June quarter—in accordance with the formula—

$$L = S \times P \times 0.01$$

where—

P represents the percentage to be ascertained,

J represents the Index number for the June quarter in that year, and

L represents the Index number for the last preceding June quarter.

(4) The calculation for the purposes of subclause (2) (a) in relation to a year is, where the relevant day for the pension is not earlier than 1 July in that year or later than 30 June in that year, to be made—

(a) where the Index number for the June quarter in that year is greater than the Index number for the December quarter in that year—in accordance with the formula—

$$L = S \times P \times 0.01$$

- (b) where the Index number for the June quarter in that year is less than the Index number for the December quarter in that year—in accordance with the formula—

$$L = S \times P \times 0.01$$

where—

P represents the percentage to be ascertained,

J represents the Index number for the June quarter in that year, and

D represents the Index number for the December quarter in that year.

- (4A) There is taken to be no adjustment percentage for a year if—

- (a) the percentage calculated for the year in accordance with subclause (3)(b) or (4)(b) is less than 1.1% or any other percentage prescribed by the regulations, or
- (b) the Index number for the June quarter in that year is the same as the Index number for the immediately preceding June quarter.

- (4B) If there is taken to be no adjustment percentage for a year (the **first year**), then, for the purposes of calculating the percentage for the next year—

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

- (5) The calculation for the purposes of subclause (2) (b) in relation to a superannuation year shall be made—

- (a) where the average rate of interest credited by the Board during the year under section 10 (interest on accounts and reserves) is greater than 4.25 per cent—in accordance with the formula—

$$L = S \times P \times 0.01$$

- (b) where the average rate of interest credited by the Board under section 10 (interest on accounts and reserves) is less than 4.25 per cent—in accordance with the formula—

$$L = S \times P \times 0.01$$

where—

P represents the percentage to be ascertained,

R represents the average rate of interest referred to in paragraphs (a) and (b),

I represents 4.25 per cent, and

N represents the number of whole quarters for which the pension was paid in that year.

- (6) If at any time (whether before, on or after the appointed day) the Australian Statistician published, or publishes, in respect of a particular quarter an Index number in substitution for an Index number previously published in respect of that quarter—
- (a) except as provided by paragraph (b)—the publication of the later Index number shall be disregarded, or
 - (b) if the Minister so directs—regard shall be had to the later, and not to the earlier, Index number,
- for the purposes of this Part.
- (7) Notwithstanding subclause (6), if at any time on or after the appointed day the Australian Statistician changes the reference base for the Consumer Price Index (All Groups Index) for Sydney, regard shall, for the purposes of this Part, be had only to Index numbers published in terms of the new reference base.

15 Adjustment of pensions

- (1) Subject to this Part, where there is an adjustment percentage for a year in relation to a pension, the amount of the pension payable on the adjustment date is hereby adjusted, on and from that adjustment date, by that percentage.
- (2) A reference in subclause (1) to the amount of a pension payable to a person includes a reference to the pension that would have been payable to that person had clause 13 (2) not been enacted.

Part 3 Regulations

16 Transitional regulations may be made

- (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequential upon the enactment of this Schedule.
- (2) A provision made under subclause (1) may be made to take effect on and from the date of assent to this Act or on and from a later date.
- (3) To the extent to which a provision made under subclause (1) takes effect on and from a date that is earlier than the date of its publication in the Gazette, the provision does not operate—
 - (a) to affect, in a manner prejudicial to any person (other than the State or an

authority of the State) the rights of that person existing before the date of publication, or

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

Schedule 7 Transitional provisions—New South Wales Retirement Fund

(Section 4)

1 Definitions

- (1) In this Schedule—

earlier Act means the *New South Wales Retirement Benefits Act 1972*.

pensioner means a person in receipt of a pension pursuant to this Schedule.

Retirement Fund means the New South Wales Retirement Fund established under the earlier Act.

transferred contributor means—

- (a) an employee who—

- (i) but for the enactment of the *New South Wales Retirement Benefits (Fund Closure) Amendment Act 1985*, would have been entitled, before the expiration of a period that commences before, and ends after, the appointed day, to elect to contribute to the Retirement Fund, and
- (ii) makes an effective election under section 11 (election to contribute to the Fund) before the expiration of that period,

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

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

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

2 Elections under earlier Act

- (1) Where an employee who, before the appointed day, made an election under the earlier Act to contribute to the Retirement Fund had not, before that day, become a contributor to the Retirement Fund, the election shall be deemed to have been an election under section 11 (election to contribute to the Fund) that—

- (a) specifies under section 11 (2) (b) a rate per cent of salary determined by the

Board having regard to the level of contribution to the Retirement Fund selected by the employee, and

(b) takes effect on a date determined by the Board.

- (2) An employee referred to in subclause (1) may, before becoming a contributor, make an application under section 12 (additional benefit) but, subject to that section, this subclause does not operate to prevent an employee so referred to from making such an application after becoming a contributor.
- (3) An election referred to in subclause (1) is ineffective for the purposes of the earlier Act.

3 Transfer of contributors under earlier Act

- (1) An employee who, immediately before the appointed day, was a contributor to the Retirement Fund shall be deemed to have made an election under section 11 (election to contribute to the Fund) which took effect on the appointed day and to which section 11 (2) did not apply.
- (2) Where, pursuant to subclause (1), an employee becomes a contributor—
 - (a) the employee ceases to be a contributor to the Retirement Fund, and
 - (b) a benefit under the earlier Act is not payable to, or in relation to, the employee.
- (3) An application under section 12 (additional benefit) may, subject to that section, be made at any time by an employee who, pursuant to this clause, becomes a contributor.

3A (Repealed)

3B Transferred contributors with 30 years' service entitled to death and disability cover

- (1) This clause applies to a transferred contributor referred to in clause 3 in respect of whom the number of years of service that would have been taken into account in calculating a benefit payable to the contributor under the earlier Act if the benefit had become payable immediately before the appointed day is, in total, at least 30 years.
- (2) If a transferred contributor to whom this clause applies makes an application under section 12 before 31 March 1986, the Board shall approve the application without the necessity for the contributor to submit to, or pass, a medical examination.

4 Contribution rates

- (1) A contributor referred to in clause 3 shall, subject to this clause, contribute to the Fund at the rate at which he or she would, but for clause 3 (2) (a), have continued to contribute to the Retirement Fund and shall so contribute to the Fund notwithstanding that the rate of contribution is not 2, 3, 4, 5, 6, 7, 8 or 9 per cent of the contributor's

salary.

- (2) A contributor referred to in subclause (1) who does not, before 31 December 1985 or before 31 December in any subsequent year, make an election under section 15 (variations of contribution rate) shall be deemed to have made such an election specifying, pursuant to section 15 (2) (b), a rate sufficient to increase by 2 the accrued benefit points for a superannuation year.
- (2A) A contributor referred to in subclause (1) who wishes to make an election under section 15 may make that election by specifying the number of benefit points to be accrued for a superannuation year and, if the election is made in that manner, the election shall be deemed to specify a rate per cent of the contributor's salary sufficient to increase by that number the accrued benefit points for that superannuation year.
- (3) Section 15 of the earlier Act shall be deemed not to have applied in relation to any contributions or benefits that, but for clause 3, would have been payable on or after the appointed day.

5 Contributor's account for transferred contributor

- (1) The contributor's account that is established under section 9 (1) in relation to a transferred contributor shall be so established with a credit balance of the sum of—
- (a) an amount calculated for the contributor in accordance with section 26 (1) (b) of the earlier Act as if the period referred to in section 26 (1) (b) (iii) of that Act ended immediately before the appointed day, and
 - (b) any amount held in the Retirement Fund in relation to the contributor for the purposes of section 24 of the earlier Act.
- (2) Section 24 of the earlier Act ceases to apply to, or in relation to, a contributor referred to in subclause (1).

5A Application of certain definitions to transferred contributor

In relation to a transferred contributor referred to in clause 3—

- (a) the definition of **accrued benefit points** in section 24 shall be construed as if a reference therein to contributed points figures included a reference to the number of transferred benefit points for the contributor, and
- (b) the definition of **average contribution rate per cent** in section 24 shall be construed as if a reference therein to the sum of the rates per cent of salary in relation to a contributor were a reference to the sum of benefit points accrued by the contributor.

6 Benefit points to be credited to transferred contributor

- (1) For the purposes of this clause, the number of transferred benefit points for a transferred contributor referred to in clause 3 is the number calculated in accordance with the formula—

$$L = S \times P \times 0.01$$

where—

P represents the number of points to be ascertained,

R represents the figure by which the annual wages of the contributor were to be multiplied for the purpose of ascertaining the level of benefit for which the contributor was contributing under the earlier Act,

S represents the number of months of service that would have been taken into account in calculating a benefit payable to the contributor under the earlier Act if the benefit had become payable immediately before the appointed day,

B represents the amount of any balance standing to the credit of the contributor under section 24 of the earlier Act immediately before the appointed day, and

W represents the number of dollars comprising the contributor's annual wages within the meaning of the earlier Act immediately before the appointed day.

- (2) For the purposes of this clause, for each applicable month in the superannuation year that commences on 1st July 1985, the number of benefit points accrued by a transferred contributor referred to in clause 3 is the number calculated in accordance with the formula—

$$L = S \times P \times 0.01$$

where—

P represents the number of points to be ascertained, and

R has the value referred to in subclause (1).

- (3) For the purposes of this clause, the number of transferred benefit points for a transferred contributor other than a transferred contributor referred to in clause 3 is such number as is determined by the Board for the contributor.

- (4) (Repealed)

6A Calculation of “prospective benefit points” for transferred contributor

In relation to a transferred contributor referred to in clause 3, the contributor's average contribution rate per cent referred to in the definition of **prospective benefit points** in

section 24 shall be determined by including any applicable month occurring before the contributor's entry date, being a month of service which would have been taken into account in calculating a benefit payable to the contributor under the earlier Act if the benefit had become payable immediately before the appointed day.

7 Adjustment of points accrual

(1) In this clause—

points limit, in relation to a transferred contributor, means the maximum number of benefit points for which the contributor may contribute in any superannuation year.

transfer points, in relation to a transferred contributor, means transferred benefit points for the contributor calculated in accordance with clause 6.

(2) Without prejudice to the operation of clause 6, for the purpose of assessing the accrued benefit points for a transferred contributor referred to in clause 3, the points limit for the contributor is—

(a) in the case of a contributor who before 1 April 1986 attains the age of 59 years and 11 months—9, or

(b) in the case of a contributor who does not attain the age of 59 years and 11 months before 1 April 1986—the number calculated in accordance with the formula—

$$L = S \times P \times 0.01$$

where—

P represents the number of points to be ascertained,

M represents the number of months in the period that commences on 1 April 1986, and ends immediately before the 60th anniversary of the contributor's birth,

R represents the maximum multiplication factor that could be applied to the contributor's annual wages at age 60 in order to determine the level of benefit for which contributions were being made, assuming that the contributor had continued to contribute to the Retirement Fund and had increased the multiple at each review date within the meaning of section 15 of the earlier Act,

S represents the number of months of service that would have been applicable in calculating the benefit that would have been payable from the Retirement Fund if the contributor had continued to contribute to the Retirement Fund and retired at age 60, and

T represents 240 or, if it is a lesser number, the number calculated in accordance with the formula—

$$L = S \times P \times 0.01$$

where—

T represents the number to be ascertained,

P represents the number of transfer points for the contributor, and

R represents the multiplication factor referred to in clause 6 (1).

- (3) For the purposes of this clause but subject to subclauses (4) and (5), for each one per cent of salary contributed to the Fund by a contributor for the superannuation year that commences on 1 April 1986 and each succeeding superannuation year, the number of benefit points accrued is the greater of—
- (a) the number of points specified in the Table to this Schedule, and
 - (b) the number of points that is equal to one-ninth of the points limit for the contributor for that year.
- (4) The maximum number of benefit points that may be accrued in any superannuation year by the application of subclause (3) (a) is 9.
- (5) The Board may determine a greater number of benefit points accrued by a contributor for the superannuation year that commences on 1 April 1986, and each succeeding superannuation year, than the number of benefit points that would otherwise have accrued under subclause (3) for each one per cent of salary, or part thereof, contributed to the Fund.
- (6) The Board may make a determination under subclause (5) in respect of a contributor only if—
- (a) the contributor has attained the age of 59 years and 11 months before 1 April 1986, and
 - (b) the Board is of the opinion that the contributor would, as a result of the operation of subclause (3) (b), otherwise be required to maintain contributions or increase contributions to the Fund in excess of the rate of contributions which would have been required to have been made to the Retirement Fund to accrue the benefit for which the contributor was contributing immediately before the appointed day.

8 Choice of benefit—transferred contributor

- (1) A transferred contributor who retires and thereby becomes entitled to be paid the benefit provided by section 26 (benefit at age 65 or on early retirement or on death at or after age 60) or 28 (benefit on total and permanent disablement before age 60) may elect, as prescribed, to take, instead of the whole or a specified part of that benefit, the benefit provided by subclause (2) or (3).

- (2) The benefit provided by this subclause is a pension for the transferred contributor for life determined as provided by subclause (4).
- (3) The benefit provided by this subclause is—
 - (a) a pension for the transferred contributor for life determined as provided by subclause (4), and
 - (b) upon the death of the pensioner leaving a spouse—a pension for the spouse for life at an annual rate equal to 62.5 per cent of the annual rate of pension payable to the deceased immediately before his or her death.
- (4) The benefit payable under subclause (2) or (3) shall be the actuarial equivalent, determined by the Board, of the benefit or part of the benefit that would have been payable if an election under subclause (1) had not been made.
- (5) If a pensioner elected to take the benefit provided by subclause (3), the benefit is taken to extend to the de facto partner of a deceased pensioner who dies on or after the commencement of this subclause.

Note—

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

9 Choice of benefit—spouse of deceased transferred contributor

- (1) Where the spouse of a deceased transferred contributor becomes entitled to be paid the benefit provided by section 27 (benefit on death before age 60) the spouse may elect, in a form approved by the Board, to take, instead of the whole or a specified part of that benefit, the benefit provided by subclause (2).
- (2) The benefit provided by this subclause is a pension for life of the actuarial equivalent, determined by the Board, of the benefit or part of the benefit that would have been payable if an election under subclause (1) had not been made.

10 Minimum benefit

- (1) Notwithstanding any other provision of this Act, where a benefit under this Act becomes payable to, or in relation to, a transferred contributor and the Board is satisfied that, but for the enactment of this Act, a greater benefit would have been payable under the earlier Act, the Board shall, instead of paying the benefit that became payable under the other provisions of this Act, pay the same benefit as that which would have been payable under the earlier Act.
- (2) Where the Board pays a benefit pursuant to subclause (1), the Board shall debit to the appropriate reserve established in the Fund under section 9 the difference between the amount of the benefit so paid and the amount that, but for subclause (1), would have been paid under this Act.

11 Periodic adjustment of pensions

The provisions of Part 2 of Schedule 6 apply to, and in relation to, a pension payable pursuant to this Schedule in the same way as they apply to, and in relation to, a pension referred to in clause 14 (2) (a) of that Schedule.

12 Transitional regulations may be made

- (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequential upon the enactment of this Schedule.
- (2) A provision made under subclause (1) may be made to take effect on and from the date of assent to this Act or on and from a later date.
- (3) To the extent to which a provision made under subclause (1) takes effect on and from a date that is earlier than the date of its publication in the Gazette, the provision does not operate—
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the date of publication, or
 - (b) to impose a liability on any person (other than the State or an authority of the State) in respect of anything done or omitted before the date of publication.

Table

(Clause 7)

BENEFIT POINTS

Points per 1 per cent of salary contribution per superannuation year from 1 April

Age	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	20
16	5.21																		
17	4.99	4.99																	
18	4.79	4.79	4.79																
19	4.59	4.59	4.59	4.59															
20	4.40	4.40	4.40	4.40	4.40														
21	4.22	4.22	4.22	4.22	4.22	4.22													
22	4.04	4.04	4.04	4.04	4.04	4.04	4.04												
23	3.87	3.87	3.87	3.87	3.87	3.87	3.87	3.87											
24	3.71	3.71	3.71	3.71	3.71	3.71	3.71	3.71	3.71										
25	3.55	3.55	3.55	3.55	3.55	3.55	3.55	3.55	3.55	3.55									

26	3.40	3.40	3.40	3.40	3.40	3.40	3.40	3.40	3.40	3.40	3.40	3.40	3.40	3.40	3.40	3.40	3.40	3.40	3.40	3.40
27	3.25	3.25	3.25	3.25	3.25	3.25	3.25	3.25	3.25	3.25	3.25	3.25	3.25	3.25	3.25	3.25	3.25	3.25	3.25	3.25
28	3.11	3.11	3.11	3.11	3.11	3.11	3.11	3.11	3.11	3.11	3.11	3.11	3.11	3.11	3.11	3.11	3.11	3.11	3.11	3.11
29	2.97	2.97	2.97	2.97	2.97	2.97	2.97	2.97	2.97	2.97	2.97	2.97	2.97	2.97	2.97	2.97	2.97	2.97	2.97	2.97
30	2.84	2.84	2.84	2.84	2.84	2.84	2.84	2.84	2.84	2.84	2.84	2.84	2.84	2.84	2.84	2.84	2.84	2.84	2.84	2.84
31	2.72	2.56	2.56	2.56	2.56	2.56	2.56	2.56	2.56	2.56	2.56	2.56	2.56	2.56	2.56	2.56	2.56	2.56	2.56	2.56
32	2.60	2.46	2.30	2.30	2.30	2.30	2.30	2.30	2.30	2.30	2.30	2.30	2.30	2.30	2.30	2.30	2.30	2.30	2.30	2.30
33	2.48	2.36	2.23	2.08	2.08	2.08	2.08	2.08	2.08	2.08	2.08	2.08	2.08	2.08	2.08	2.08	2.08	2.08	2.08	2.08
34	2.37	2.26	2.15	2.01	1.87	1.87	1.87	1.87	1.87	1.87	1.87	1.87	1.87	1.87	1.87	1.87	1.87	1.87	1.87	1.87
35	2.26	2.17	2.07	1.95	1.82	1.69	1.69	1.69	1.69	1.69	1.69	1.69	1.69	1.69	1.69	1.69	1.69	1.69	1.69	1.69
36	2.16	2.08	1.99	1.89	1.77	1.65	1.52	1.52	1.52	1.52	1.52	1.52	1.52	1.52	1.52	1.52	1.52	1.52	1.52	1.52
37	2.06	2.00	1.92	1.83	1.72	1.61	1.49	1.37	1.37	1.37	1.37	1.37	1.37	1.37	1.37	1.37	1.37	1.37	1.37	1.37
38	1.96	1.92	1.85	1.77	1.68	1.57	1.47	1.35	1.23	1.23	1.23	1.23	1.23	1.23	1.23	1.23	1.23	1.23	1.23	1.23
39	1.87	1.83	1.78	1.71	1.63	1.54	1.44	1.33	1.22	1.11	1.11	1.11	1.11	1.11	1.11	1.11	1.11	1.11	1.11	1.11
40	1.78	1.76	1.71	1.66	1.59	1.50	1.41	1.31	1.21	1.10	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
41	1.69	1.68	1.65	1.60	1.54	1.47	1.39	1.30	1.20	1.10	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
42	1.58	1.59	1.59	1.55	1.50	1.44	1.36	1.28	1.19	1.10	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
43	1.45	1.45	1.50	1.50	1.46	1.40	1.34	1.26	1.18	1.09	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
44	1.38	1.38	1.38	1.42	1.41	1.37	1.31	1.24	1.17	1.08	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
45	1.31	1.31	1.30	1.30	1.34	1.33	1.28	1.22	1.16	1.08	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
46	1.24	1.24	1.24	1.24	1.24	1.26	1.26	1.21	1.14	1.07	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
47	1.17	1.18	1.18	1.17	1.17	1.17	1.19	1.19	1.13	1.07	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
48	1.11	1.11	1.11	1.11	1.11	1.11	1.11	1.12	1.12	1.06	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
49	1.05	1.05	1.05	1.06	1.06	1.06	1.05	1.05	1.06	1.06	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
50+	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00

Schedule 8 Transitional provisions for certain other superannuation schemes

(Section 4)

1 Transfers from certain other superannuation schemes

(1) The Governor may make regulations for and with respect to the transfer to the

superannuation scheme constituted by this Act of participants in any superannuation scheme constituted by the *Local Government and Other Authorities (Superannuation) Act 1927* (Part 3D excepted) or the *Transport Employees Retirement Benefits Act 1967*, or the participants in any other superannuation scheme, and the consequential termination of those schemes.

- (2) A regulation made pursuant to subclause (1) has effect notwithstanding any of the provisions of the *Local Government and Other Authorities (Superannuation) Act 1927* or the *Transport Employees Retirement Benefits Act 1967*, or any other Act.

2 Transitional regulations may be made

- (1) The Governor may make regulations containing provisions of a savings or transitional nature consequential upon any regulations made under clause 1.
- (2) A provision of a regulation made under subclause (1) may be made to take effect on and from a date that is earlier than the date of publication of the regulation in the Gazette or from a later date.
- (3) To the extent to which a provision made under subclause (1) takes effect on and from a date that is earlier than the date of its publication in the Gazette, the provision does not operate—
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the date of publication, or
 - (b) to impose a liability on any person (other than the State or an authority of the State) in respect of anything done or omitted before the date of publication.

Schedule 9 Preserved benefit—contributors transferred as a result of government initiatives

(Section 32 (8))

1 Transferred contributors to whom this Schedule applies

- (1) This Schedule applies to a contributor—
 - (a) who is employed in an area of an employer's activities that is, or is to be, transferred to another employer who is not, in respect of the contributor, an employer under this Act,
 - (b) who elected or is required to transfer to the employment of that other employer, and
 - (c) whose transfer of employment is declared by the regulations to be a transfer of employment to which this Schedule applies.

- (2) The regulations may, for the purposes of subclause (1) (c), declare that the transfer of employment of any specified contributors or former contributors is a transfer of employment to which this Schedule applies if the Minister has certified that the transfer is a consequence of a Government initiative.
- (3) A reference in section 32 (8) and this clause to a contributor includes a reference to a participant in a superannuation scheme referred to in clause 1 (1) of Schedule 8.

2 Transferred contributor entitled to preserved benefit notwithstanding having less than 3 years' service

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

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

- (1) A transferred contributor to whom this Schedule applies and who elects to make provision for a preserved benefit is entitled to be paid the benefit provided by section 32 (5) on ceasing to be a contributor notwithstanding anything to the contrary in section 32.
- (2) A preserved benefit is payable under this clause if, and only if—
 - (a) the Board is satisfied that the benefit will be applied to the credit of the transferred contributor in another superannuation scheme, and
 - (b) any requirements made by the regulations with respect to the payment of the benefit are complied with.

4 Regulations

- (1) The Governor may make regulations for the purposes of this Schedule and, in particular, for or with respect to—
 - (a) the application of a preserved benefit payable under clause 3, and
 - (b) the entitlements and obligations of a transferred contributor under any superannuation scheme to which any such preserved benefit is credited.
- (2) Where a transferred contributor to whom this Schedule applies is a participant in a superannuation scheme referred to in clause 1 (1) of Schedule 8 but is not a contributor to the superannuation scheme constituted by this Act, the regulations under this Schedule may make provision for or with respect to the transfer of the participant to the superannuation scheme constituted by this Act and may, for that purpose, apply (with or without modifications) the provisions of or made under Schedule 8.