

**PUBLIC SECTOR EXECUTIVES SUPERANNUATION ACT 1989**  
**No. 106**

NEW SOUTH WALES



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**PUBLIC SECTOR EXECUTIVES SUPERANNUATION ACT**  
**1989 No. 106**

NEW SOUTH WALES



**Act No. 106, 1989**

An Act to establish a superannuation scheme for public sector chief executive officers and senior executive officers and other persons employed in senior positions in the public sector; and for other purposes. [Assented to 15 August 1989]

**The Legislature of New South Wales enacts:**

**PART 1 - PRELIMINARY**

**Short title**

1. This Act may be cited as the Public Sector Executives Superannuation Act 1989.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Definitions**

3. (1) In this Act:

"**additional benefit**" means an amount equal to the difference between the total amount of benefit approved in relation to a member under section 38 (as varied by any subsequent election that is in force) and the balance at credit in the member's account at the time the additional benefit is payable to the member;

"**Additional Benefit Management Fund**" means the Additional Benefit Management Fund established under this Act;

"**additional benefit premium**" means the premium that, in order to attract the additional benefit for a member, is paid by transfer from the member's account;

"**approved deposit fund**" has the same meaning as in section 3 of the Occupational Superannuation Standards Act 1987 of the Commonwealth;

"**benefit**" means a benefit payable under this Act;

"**Board**" means the Public Sector Executives Superannuation Board constituted by this Act;

"**chief executive officer**" has the same meaning as in the Public Sector Management Act 1988;

"**Commonwealth occupational superannuation standard**" means a standard prescribed in respect of occupational superannuation schemes by a law of the Commonwealth;

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

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

**"early retirement age"** means the age of 55 years;

**"employee"** means:

- (a) a chief executive officer; or
- (b) a senior executive officer; or
- (c) an office holder nominated for the purposes of section 11A of the Statutory and Other Offices Remuneration Act 1975 in respect of whom an election is in force under that section; or
- (d) a person who is specified as an employee in Schedule 1;

**"employer"** means:

- (a) except as provided by paragraph (b) - subject to section 5, the employee's employer; or
- (b) in relation to an employee specified in Schedule 1 - the person or body specified in that Schedule as the employee's employer;

**"exit date"**, in relation to a member, means the date on which the member ceases to be an employee, being:

- (a) the only such cessation of employment as an employee; or
- (b) where there has been more than one such cessation of employment as an employee - the later or latest of those cessations of employment;

**"Fund"** means the Public Sector Executives Superannuation Fund established under this Act;

**"Management Account"** means the Public Sector Executives Superannuation Management Account established under this Act;

**"member"** means an employee who has made an election to become a member of the Fund which has taken effect and which has not ceased to have effect;

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**"member's account"** means the account established and maintained under section 23 in respect of a member;

**"preserved benefit"**, in relation to a member, means a benefit for which the member has made provision under section 51 or which a member elects to have dealt with under that section;

**"retire"**, in relation to a member, means cease (otherwise than because of death) in any manner to be employed as an employee within the meaning of this Act on or after reaching the early retirement age;

**"salary"**, in relation to an employee or a member, means:

(a) in the case of a chief executive officer or senior executive officer:

- (i) the monetary remuneration payable to the officer in accordance with a contract of employment under the Public Sector Management Act 1988 or, if there is no such contract, the monetary remuneration payable in accordance with section 42L (8) of that Act; and
- (ii) the cost of employment benefits provided under any such contract, being employment benefits prescribed as salary for the purposes of this definition,

expressed as an annual rate, but does not include any performance-related incentive payments made to the officer; and

(b) in the case of an office holder nominated for the purposes of section 11A of the Statutory and Other Offices Remuneration Act 1975:

- (i) the remuneration payable to the office holder as reduced (under that section) by the cost of employment benefits provided to the office holder; and
- (ii) the cost of employment benefits provided under that section, being employment benefits prescribed as salary for the purposes of this definition,

expressed as an annual rate; and

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(c) in the case of any other employee or member - the amount determined in accordance with the regulations;  
"senior executive officer" has the same meaning as in the Public Sector Management Act 1988;

"spouse", in relation to a deceased member, means:

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

"this Act" includes the regulations.

(2) In this Act:

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

(3) A reference in this Act to an employee's employment with an employer includes a reference to employment as an employee within the meaning of this Act with successive employers.

#### **Secondment of employees**

4. (1) If a member is on secondment to another employer, the salary of the member for the purposes of this Act is the salary that is or is to be provided to the member by the other employer.



(2) The Governor may, by order in writing, declare unconditionally, or subject to conditions, that any one or more of subsections (3), (4) and (5) apply:

- (a) to a member specified in the order who is on secondment:
  - (i) but not to another employer; or
  - (ii) otherwise than in a capacity that would qualify the member as an employee within the meaning of this Act, or both; and
- (b) generally during the period of that secondment, or during such period as is specified in the order being, in either case, a period commencing before, on or after the date of the order.

(3) During the period in which this subsection is declared to apply to a member on secondment, the member's salary is, for the purposes of this Act, the salary that is or is to be provided in respect of the employment to which he or she is seconded.

(4) During the period for which this subsection is declared to apply to a member, the employer specified in the declaration is to be taken to be the employer from whose employment the member is seconded.

(5) During the period in which this subsection is declared to apply to a member, the member is, for the purposes of this Act, to be taken to be employed in a capacity that would qualify the member as an employee within the meaning of this Act.

#### **Employees of Crown etc.**

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

## **PART 2 - THE PUBLIC SECTOR EXECUTIVES SUPERANNUATION BOARD**

### **The Board**

6. (1) There is constituted by this Act a corporation with the corporate name of the Public Sector Executives Superannuation Board.

(2) The Board is, for the purposes of any Act, a statutory body representing the Crown.

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(3) The Board is to consist of 4 part-time members appointed by the Governor on the nomination of the Minister.

(4) Of the members of the Board:

- (a) 2 are to be appointed to represent employers; and
- (b) 2 are to be appointed to represent employees.

(5) One of the members appointed under subsection (4) (a) is, in and by the instrument by which the member is appointed, to be appointed as Chairperson of the Board.

(6) Schedule 2 has effect with respect to the members of the Board.

(7) Schedule 3 has effect with respect to the procedure of the Board.

**Functions of Chairperson**

7. The Chairperson of the Board:

- (a) is responsible, as the chief executive officer of the Board, for the management of the affairs of the Board subject to and in accordance with any directions of the Board; and
- (b) has such other functions as are conferred or imposed on the Chairperson by or under this or any other Act.

**Functions of the Board**

8. The Board:

- (a) is to administer and manage the superannuation scheme established by this Act; and
- (b) has such other functions as are conferred or imposed on it by or under this or any other Act.

**Appointment of managers to administer the superannuation scheme etc.**

9. (1) The Board may make and enter into contracts or arrangements:

- (a) with any person for the person to carry out any one or more of the Board's functions with respect to the administration and management of the superannuation scheme established by this Act or any other functions of the Board under this or any other Act; and

- (b) with any person for the performance of services.
- (2) Without limiting subsection (1), a contract or arrangement made or entered into under this section may provide for:
  - (a) the management of the Fund, the Management Account or any other fund, account or reserve that may be established under this Act; and
  - (b) the payment from the income from investment of the Fund of any commission or other fees or amounts payable under any such contract or arrangement; and
  - (c) the payment to or from the Fund, the Management Account or any other fund, account or reserve established under this Act of any amounts payable under this Act or any such contract or arrangement to the Board, a member of the Board or a member (including management costs incurred by the Board in the administration or execution of this Act).
- (3) The Board may not make or enter into a contract or arrangement with a person for that person to carry out the Board's functions under section 33 (Actuarial investigation).
- (4) The Board may not make or enter into a contract or arrangement under this section unless the terms and conditions of the contract or arrangement have been approved by the Governor.
- (5) A person who makes or enters into a contract or arrangement with the Board under this section has, while acting in accordance with that contract or arrangement, the functions of the Board conferred or imposed on the person by the contract or arrangement.

**Provision of additional benefits**

10. (1) Without limiting any functions it may exercise under section 9, the Board may make and enter into a contract or arrangement with any person for:
- (a) the insurance by that person, or the arranging of insurance by that person (on an individual or a group basis), of members for the purpose of the payment to them of additional benefits; or
  - (b) the management of a scheme, carried out by or on behalf of that person, for the purpose of the payment to members of additional benefits,

and for any matters ancillary to or connected with the provision of any such insurance or scheme, including the carrying out of any of the

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Board's functions under this Act with respect to the Additional Benefit Management Fund and (except as provided by subsection (2)) its other functions relating to additional benefits.

(2) The Board may not make or enter into a contract or arrangement with any person for that person to carry out the Board's functions under section 49 (1) (relating to determining an entitlement to benefit).

(3) The Board may not make or enter into a contract or arrangement under this section unless the terms and conditions of the contract or arrangement have been approved by the Governor.

(4) A contract or arrangement made or entered into under this section may be made or entered into as part of a contract or arrangement made or entered into under section 9.

(5) A person who makes or enters into a contract or arrangement with the Board under this section has, while acting in accordance with that contract or arrangement, the functions of the Board conferred or imposed on the person by the contract or arrangement.

**Staff of Board**

11. (1) The Board may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department, an administrative office or a public or local authority.

(2) For the purposes of this Act, a person whose services are made use of under this section is an officer of the Board.

**Agents**

12. (1) The Board may employ and pay an agent to transact any business or do any act (including receiving or paying money) that the Board is authorised or required to transact or do in the exercise of its functions.

(2) An agent may be employed by the Board to receive or pay money even though the agent, or any subagent employed by the agent, is not a bank.

**Consultants**

13. The Board may engage persons having suitable qualifications and experience as consultants to the Board.

**Committees**

14. (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that any or all of the members of a committee are not members of the Board.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings may be determined by the Board or (subject to any determination of the Board) by the committee.

**Financial year**

15. (1) The financial year of the Board is the year ending on 31 March.

(2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

**Financial accommodation and investment**

16. Without limiting the operation of the Public Authorities (Financial Arrangements) Act 1987, the Board may obtain financial accommodation, effect financial adjustments and make investments under and subject to that Act.

**Delegation by Board and Chairperson**

17. (1) The Board may delegate to a person any of its functions, other than this power of delegation.

(2) The Chairperson of the Board may delegate to a person any of the functions delegated to the Chairperson by the Board, subject to any conditions to which the delegation to the Chairperson is subject.

**Relationship between powers of Board and powers of trustee**

18. (1) To the extent (if any) to which, but for this subsection, the Board would not have in relation to the Fund the powers that it would have if it were a trustee of the Fund, it has those powers.

(2) To the extent (if any) to which, but for this subsection, the powers conferred on the Board by this Act would be restricted by the Trustee Act 1925 or any other law relating to trusts or trustees, those powers are not so restricted.

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(3) Nothing in this section constitutes the Board a trustee of any fund, account or reserve established under this Act or implies that the Board is a trustee of any such fund, account or reserve.

**Power to compromise claims**

19. (1) Without limiting any of its powers otherwise conferred, the Board may compromise or otherwise settle any claim made against it.

(2) If the Board compromises or otherwise settles a claim in relation to a benefit, the compromise or settlement discharges the Board's obligations as regards the benefit, and the amount payable is to be regarded as a benefit.

(3) To the extent that an amount payable by the Board following a compromise or settlement is not a benefit or exceeds the amount credited to a member's account, the amount is payable from the Management Account and is a management cost.

(4) The Board may make such inquiries and investigations with respect to a claim made against it as it thinks fit.

(5) The Board may request a person who has made a claim against it to provide the Board with an authority to obtain from a third person any information or evidence that is relevant to the subject-matter of the claim.

**Accounts and records**

20. The Board may maintain its accounts and other records in such manner or form as it may from time to time determine.

**Member, staff etc. may be director etc. of company**

21. (1) If the Board so approves, a person who holds office as a member of the Board, or as an officer of the Board, may also hold office as a director or other officer of a company.

(2) If the Board so approves, a consultant to the Board may hold office as a director or other officer of a company.

(3) If property is vested in the Board and a company has been formed to manage the property (whether with or without other property), the Board may take such action (for example, as regards shareholding) as may be necessary to qualify it to nominate a person for appointment as a director or other officer of the company.

(4) An officer of a company includes any person concerned in the management of the company.

**PART 3 - THE PUBLIC SECTOR EXECUTIVES  
SUPERANNUATION FUND**

**Establishment of the Fund**

22. (1) The Board is required to establish, and maintain and manage, the Public Sector Executives Superannuation Fund.

(2) The Board is required to cause to be paid to the Fund:

- (a) contributions made by employers and employees; and
- (b) income derived from investment of the Fund, and any profit made from realisation of any investment of the Fund; and
- (c) money borrowed for the purposes of the Fund; and
- (d) any other amounts payable to the Fund.

(3) The Board is required to cause to be paid from the Fund:

- (a) by transfer from the Fund to the Management Account (subject to the terms and conditions of any contract or arrangement made or entered into under section 9) - management costs incurred by the Board in the administration or execution of this Act; and
- (b) such amounts as are necessary to satisfy any liability of the Fund with respect to tax payable under Commonwealth taxation law; and
- (c) benefits payable under this Act; and
- (d) premiums payable for additional benefit cover under this Act; and
- (e) any other amounts payable from the Fund.

(4) If a loss is incurred in realising any investment forming part of the assets of the Fund, the Fund is accordingly reduced by the amount of that loss.

**Members' accounts**

23. (1) The Board is required to establish and maintain within the Fund a separate account for each member.

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- (2) There is required to be credited to a member's account:
  - (a) any contributions made by the member to the Fund; and
  - (b) any contributions made by the member's employer to the Fund in respect of the member; and
  - (c) any other amounts payable to the account.
- (3) There is required to be debited to a member's account:
  - (a) where the member is covered for the additional benefit - the amount of any additional benefit premium payable by or in respect of the member; and
  - (b) benefits payable to the member; and
  - (c) any other amounts payable under this Act by the member or from the member's account.

**Additional Benefit Management Fund**

24. (1) The Board is required to establish and maintain an Additional Benefit Management Fund.

(2) There is required to be credited to the Additional Benefit Management Fund (subject to the terms and conditions of any contract or arrangement made or entered into under section 9 or 10 relating to the provision of additional benefits):

- (a) the amounts of additional benefit premiums debited to members' accounts under this Act; and
- (b) additional benefits payable by a person with whom the Board has made or entered into a contract or arrangement under section 9 or 10.

(3) There is required to be debited to the Additional Benefit Management Fund (subject to the terms and conditions of any contract or arrangement made or entered into under section 9 or 10 relating to the provision of additional benefits):

- (a) the amounts of any additional benefit premiums payable to or by a person with whom the Board has made or entered into a contract or arrangement under section 9 or 10; and
- (b) any payment of additional benefits.

**Other accounts and reserves and investment funds**

25. (1) The Board may establish and maintain within the Fund such other accounts and reserves as, in the opinion of the Board, are



necessary or convenient for the management of the Fund and the administration of this Act.

(2) Without limiting subsection (1), the Board may, for the purposes of the investment of the Fund and with the consent of a member, treat the member's account as belonging to a particular investment fund and may invest the amount of the Fund attributable to the accounts comprising a particular investment fund differently from any other part of the Fund.

**Adjustment of accounts and reserves for interest etc.**

26. (1) The Board may, from time to time, adjust each of the accounts and reserves established under this Part at a rate fixed by the Board, having regard to the income of the Fund and such other matters as the Board considers relevant.

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

(3) In adjusting members' accounts under this section, the Board may fix different rates for accounts that are treated as belonging to different investment funds.

**Funds, accounts and reserves generally**

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

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

**Deposit funds**

28. (1) The Board may, subject to and in accordance with the regulations, take such steps as are appropriate to establish one or more funds into which may be paid, at the request of the person entitled to it, the whole or part of any benefit.

(2) The regulations may provide that any such fund is to be administered in accordance with rules determined by the Board.

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(3) Any rules made by the Board must comply with any applicable Commonwealth occupational superannuation standard.

**Management Account and costs**

29. (1) The Board is required to establish and maintain a Public Sector Executives Superannuation Management Account.

(2) Management costs incurred by the Board in the administration or execution of this Act, including the remuneration or allowances of the members of the Board, are to be charged against the Management Account.

(3) Management costs incurred in investing the Fund and managing any such investment are (subject to the terms and conditions of any contract or arrangement made or entered into under section 9) to be paid from the income from investment of the Fund.

(4) Management costs incurred by the Board other than those incurred in investing the Fund and managing any such investment are (subject to the terms and conditions of any contract or arrangement made or entered into under section 9) to be paid from the members' accounts, at such times and in such amounts or at such a rate as may be determined by the Board.

(5) Without limiting the generality of section 9, a contract or arrangement made or entered into under that section may provide for:

- (a) the payment of the income of the investment of the Fund:
  - (i) to the Management Account to meet costs referred to in subsection (3); and
  - (ii) to any person with whom any such contract or arrangement has been made for commission or other fees or amounts payable by the Board to the person; and
- (b) the calculation and collection of amounts payable in respect of management costs other than those incurred in investing the Fund; and
- (c) the payment of any such amounts to the Management Account or otherwise in accordance with the contract or arrangement.

**Management costs arising from preserved benefits**

30. (1) The Board may from time to time levy administrative charges (of such amount as it thinks fit) in relation to a preserved benefit.

(2) An administrative charge is required to be debited to the relevant member's account or to the amount that is the subject of the preserved benefit.

(3) An amount so debited is required to be paid to the Management Account or otherwise in accordance with any relevant contract or arrangement made or entered into under section 9.

**Board must deduct tax liabilities from members' accounts**

31. Whenever the Board has paid (or is liable to pay) an amount of income tax under a Commonwealth taxation law in respect of an employer's contributions to a member's account in the Fund, the Board is required to debit to the account the amount of any such income tax.

**What information must be disclosed to members?**

32. (1) The Board must give to each person who becomes a member of the Fund, as soon as practicable after the person becomes a member, a written statement containing prescribed particulars relating to the benefits provided to members, the conditions relating to those benefits and the method of determining entitlements of members.

(2) The Board must give to each member of the Fund as soon as practicable after 1 July in each year, or on the request of a member (but not more than once in each year), a written statement containing prescribed particulars relating to the Fund, any contributions by or in respect of the member to the Fund and the member's entitlements from the Fund.

(3) The Board must give to a person who ceases to be a member of the Fund, or the personal representative of the person, on the person ceasing to be a member (or as soon as practicable after the person ceases to be a member), a written statement containing prescribed particulars relating to the Fund, the contributions by or in respect of the person to the Fund and the person's entitlements from the Fund.

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**Actuarial investigation**

**33. (1)** An investigation as to the state and sufficiency of any or all of the funds established under this Act may, to the extent specified by the Minister and as at a day appointed by the Minister for the purposes of this section, be made by an actuary or actuaries appointed by the Board.

**(2)** Actuaries appointed under this section must complete their investigation, and report the result to the Board, not later than 13 months after the date as at which the investigation is made.

**(3)** The Board must, not later than 2 months after it receives a report under this section, forward the report to the Minister with such comments as it thinks fit.

**(4)** The Minister may, in relation to a particular investigation, extend or further extend a period referred to in subsection (2) or (3) if the Minister considers that special circumstances exist to justify such an extension or further extension.

**PART 4 - CONTRIBUTIONS****How does an employee become a member of the Fund?**

**34. (1)** An employee may at any time lodge with the Board an election to become a member of the Fund.

**(2)** An election must:

- (a) be in a form approved by the Board; and
- (b) specify the amount of any contributions to be paid by the employee and the employee's employer; and
- (c) specify the salary of the employee; and
- (d) be supported by a certificate by the employee's employer that is in a form approved by the Board.

**(3)** The certificate must state:

- (a) the date of birth of the employee; and
- (b) the salary of the employee; and
- (c) that the employer consents to the election to pay any contributions to be paid by the employer; and
- (d) such other matters as the Board considers necessary or convenient for the purposes of this section.

(4) An election made by an employee 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 takes effect not later than on the first day of the second contribution period after receipt by the Board of the election, but, when an employee makes a subsequent election under section 35 or 36, ceases to be in force (to the extent to which it specifies the amount of any contributions) immediately before the subsequent election takes effect.

(6) If the Board approves, an employee may, before an election made under this section takes effect, amend the election:

- (a) to vary the amount of any contributions to be paid by the employee or the employee's employer; or
- (b) to specify that contributions are to be paid by the employee or the employer,

or both.

(7) An employee is eligible to make an election to become a member of the Fund even though the employee is a member of another superannuation scheme.

#### **Contributions may be varied annually**

35. (1) A member must, on or before 1 September in each year, lodge with the Board an election specifying the amount of any contributions to be paid to the Fund by the member and the member's employer in the next succeeding year.

(2) An election must:

- (a) be in a form approved by the Board; and
- (b) specify the amount of any contributions to be paid by the member and the member's employer; and
- (c) specify the salary of the member; and
- (d) be supported by a certificate by the member's employer that is in a form approved by the Board.

(3) The certificate must state:

- (a) the salary of the member; and
- (b) that the employer consents to the election to pay any contributions to be paid by the employer; and

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- (c) such other matters as the Board considers necessary or convenient for the purposes of this section.
- (4) An election:
  - (a) takes effect on receipt by the Board of the election or on 1 October in the year in which the election is made, whichever is the later; and
  - (b) remains in force until a further election made under this section or section 36 takes effect.

**Contributions may be varied in special circumstances**

**36.** (1) If a member's salary changes, the member may lodge with the Board an election to vary or cease to pay any contributions payable to the Fund by the member or the member's employer, or both.

(2) The Board may, if it is satisfied that a continuation of the amount of contributions by or in respect of a member to the Fund would result in financial hardship for the member, accept at any time an election under this section to reduce or cease to pay, as from a date determined by the Board having regard to the circumstances of the member, the amount of contributions payable to the Fund by the member or the member's employer.

- (3) An election under subsection (1) or (2) must:
  - (a) be in a form approved by the Board; and
  - (b) specify the amount of any contributions to be paid by the member and the member's employer; and
  - (c) specify the salary of the member; and
  - (d) be supported by a certificate by the member's employer that is in a form approved by the Board.
- (4) The certificate must state:
  - (a) the salary of the member; and
  - (b) that the employer consents to the election to pay any contributions to be paid by the employer; and
  - (c) such other matters as the Board considers necessary or convenient for the purposes of this section.
- (5) An election:
  - (a) takes effect on acceptance by the Board or on any earlier or later date determined by the Board; and

- (b) remains in force until a further election made under this section or section 35 takes effect.

(6) After an election is accepted by the Board, the Board must refund any resulting excess of contributions made to the Fund by the member or the member's employer after the election took effect.

**Who may apply to be covered for an additional benefit?**

37. (1) An employee under the early retirement age may lodge with the Board an application to be covered for an additional benefit.

(2) An application may be made:

- (a) by an employee who is not a member - at the time the employee makes an election to become a member of the Fund; or
- (b) by an employee who is a member - at any time, except to the extent that section 42 provides.

(3) A member under the early retirement age may, when lodging an annual election as to contributions, also lodge with the Board an application to vary the total amount of benefit approved for the person under section 38.

(4) An application must:

- (a) be in a form approved by the Board; and
- (b) specify the total amount of benefit that the additional benefit cover is intended to secure in the event of an additional benefit being payable; and
- (c) be accompanied by such documents, evidence and information as the Board may require.

**Effect of approval of application for additional benefit cover or variation of cover**

38. (1) If the Board approves an application to be covered for an additional benefit it must:

- (a) appoint the day on and from which the cover for the additional benefit is to commence; and
- (b) approve the total amount of benefit that the additional benefit cover is intended to secure for the member concerned,

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and must notify the applicant accordingly.

(2) On approval of an application to be covered for an additional benefit, the applicant becomes, and remains, liable for payment of the additional benefit premium (in accordance with subsection (4)).

(3) If the Board approves an application to vary the total amount of benefit that the additional benefit is intended to secure, it must:

- (a) appoint the day on and from which the variation is to commence; and
- (b) approve the total amount of benefit that the additional benefit cover is intended to secure for the member concerned,

and must notify the applicant accordingly.

(4) Payment by or in respect of a member of an additional benefit premium:

- (a) is to be made at such time or times as is determined by the Board; and
- (b) is to be of such an amount or amounts or at such a rate as is determined from time to time by the Board; and
- (c) is to be effected by transfer from the member's account.

(5) No additional benefit premium is payable by or in respect of a member if the balance at credit in the member's account is equal to or exceeds the total amount of benefit approved in relation to the member under this section.

**Medical examinations etc. may be required of applicant for additional benefit cover or variation of cover**

39. (1) The Board may require a person who applies to be covered for an additional benefit or to vary the total amount of benefit approved for the person under section 38 to comply with any requirement of a person who is providing or arranging additional benefit cover, including:

- (a) submitting to such a medical examination or medical examinations as may be required by the person; and
- (b) the provision of such medical reports, evidence and information as are specified by the person.

(2) For the purpose of deciding whether or not to approve the application, the Board:



- (a) may require the applicant to submit to further medical examinations or provide further medical reports or evidence or information as may be required by the Board or any person who is providing or arranging additional benefit cover; and
- (b) may obtain such evaluations of medical examinations or medical reports as it thinks fit.

**When may an application relating to additional benefit cover be refused?**

- 40. (1) If**
- (a) a person who applies to be covered for an additional benefit or to vary the total amount of benefit approved for the person under section 38 fails, in the opinion of the Board or any person who is providing or arranging additional benefit cover, to pass a medical examination to which the applicant has submitted in accordance with a requirement under section 39; or
  - (b) the applicant fails to comply with a requirement under section 39; or
  - (c) a person who is providing or arranging additional benefit cover advises the Board that the applicant will not be covered for an additional benefit or any varied amount of benefit,

the Board may refuse the application and may, in the case of a person who has applied to vary a benefit, revoke its approval for the person to be covered for an additional benefit.

(2) Nothing in this section prevents the Board or a person who is providing or arranging additional benefit cover from refusing an application where the Board or person thinks fit.

**When may an approval relating to additional benefit cover be revoked?**

**41. (1) If, after approving an application to be covered for an additional benefit or to vary the total amount of benefit approved for a person under section 38:**

- (a) the Board forms the opinion that, in relation to the application, a medical examination of the applicant or any medical report, evidence or other information supplied in respect of the application:

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- (i) an untrue statement was made; and
  - (ii) its approval would not have been given had the untrue statement not been made; or
- (b) the Board is notified by a person who is providing or arranging additional benefit cover that a requirement for coverage of the applicant for an additional benefit has not been or is not being complied with or that an applicant will not be covered for an additional benefit or any additional amount of benefit,
- the Board may revoke the approval, and may, in the case of an approval to vary a benefit, revoke its approval for the person to be covered for an additional benefit.

(2) For the purpose of determining whether it is of the opinion referred to in subsection (1) (a), 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 evidence or medical reports or to undergo a medical examination or examinations, as specified by the Board.

(3) On the expiration of that time, or further time, the Board may, whether or not the requirement so referred to is complied with, proceed to decide whether or not it is of the opinion referred to in subsection (1) (a).

(4) If the applicant fails to comply with a requirement under subsection (2), the Board may revoke the approval and may, in the case of an approval to vary a benefit, revoke its approval for the person to be covered for an additional benefit.

(5) 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 because of the omission from the statement of matter that is material.

**Effect of, and limits on, revocation of approval**

42. (1) If the Board revokes an approval for a person to be covered for an additional benefit or to vary the total amount of benefit approved for a person under section 38:

- (a) the person (if a member) ceases to be covered for the additional benefit or any varied amount of benefit, as the case

may be, and, in the case of revocation of approval to be covered for an additional benefit, ceases to be liable to pay the additional benefit premium; and

- (b) the person (if a member) is disqualified for 3 years from again applying to be covered for the additional benefit or to vary the total amount of benefit approved for the person, as the case may be; and
- (c) the amount of any additional benefit premium paid by the person (whether a member or a former member) before revocation of the approval is not recoverable.

(2) If the payment of an additional benefit to a member is secured by way of insurance provided by a person other than the Board, an approval for an additional benefit or to vary the total amount of benefit approved for a person under section 38 may not be revoked under this Act unless the relevant contract of insurance may (either wholly or to the extent to which it applies to that member) be lawfully avoided under the Insurance Contracts Act 1984 of the Commonwealth.

#### **Liability of employee to contribute**

43. (1) If an election by an employee specifying an amount of contributions to be paid by the employee takes effect, the employee becomes, and remains, liable to pay to the Fund the contributions specified in the election and to pay those contributions in respect of successive contribution periods:

- (a) commencing with the contribution period in which the election takes effect; and
- (b) ending with the last complete contribution period ending on or before the election ceases to have effect or on or before the employee's exit date, whichever is the earlier.

(2) A member's contributions to the Fund are to be calculated on the basis of the contribution periods applicable to the member and a contribution payable in respect of a contribution period must be paid to the Board within 7 days after the last day of that period.

(3) A member's contributions to the Fund are payable to the Board by the member's employer and the employer is entitled to deduct those contributions from any amount or amounts that may become payable by the employer to the member, whether as salary or otherwise.

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**Liability of employer to contribute**

44. (1) If an election by an employee specifying an amount of contributions to be paid by the employee's employer takes effect, the employer must pay to the Fund an amount equal to the contributions specified in the election and must pay that amount at such times as may be agreed between the employer and the Board.

(2) Any such agreement must provide that the amounts are to be paid within the year in which the liability arises.

**Interest on unpaid contributions**

45. The Board may, in a particular case, charge interest calculated on a daily basis at a rate determined by the Board on contributions to the Fund for any period during which the contributions remain unpaid after the time allowed for payment under this Part and any such interest:

- (a) must be paid to the Board by the employer in default; and
- (b) is not chargeable against any employee.

**Liability for contributions during leave without pay**

46. (1) In this section:

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

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

- (a) pursuant to a grant of sick leave; or
- (b) for a period during which the member receives periodic payments under an Act relating to workers' compensation; or
- (c) pursuant to a grant of maternity leave; or
- (d) pursuant to an agreement with the employer for the secondment of the member to employment that is not employment with an employer; or
- (e) to enable the member to perform duties that the employer certifies to be in the interests of the employer or the State; or

- (f) on service with the naval, military or air forces of the Commonwealth; or
- (g) in circumstances approved by the Board for the purposes of this section.

(2) A member who takes leave without pay that is prescribed leave is liable to make any contributions to the Fund in respect of the contribution periods occurring wholly or partly while on prescribed leave that the member would be liable to make if not on leave.

(3) A member who takes leave without pay that is not prescribed leave:

- (a) is liable to make any contributions to the Fund in respect of the contribution period in which the leave that is not prescribed leave commences that the member would be liable to make if not on leave; and
- (b) is liable to make any such contributions to the Fund in respect of the contribution period in which the leave that is not prescribed leave ceases (as determined by the Board); and
- (c) is not liable to make contributions to the Fund in respect of any contribution periods between those mentioned in paragraphs (a) and (b).

(4) A member liable to make contributions under this section is required to pay to the Fund in accordance with directions given by the Board such contributions as would have been deducted from the member's salary if the member had continued to be paid salary by the employer during the contribution period or periods concerned.

#### **PART 5 - BENEFITS**

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

47. (1) The benefit provided by this section is payable by the Board when a member retires from employment with an employer on or after reaching the early retirement age or dies during employment as an employee within the meaning of this Act on or after reaching that age and is so payable:

- (a) except where the member has died - to the member; or
- (b) if the member has died and is survived by a spouse - to the member's spouse; or

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- (c) if the member has died and is not survived by a spouse - to the personal representatives of the member or, if appropriate, in accordance with section 64 (Payment without grant of probate etc.).

(2) The benefit provided by this section is an amount equal to the balance at credit in the member's account at the time the benefit is paid.

(3) If the Board makes a determination under section 55 in relation to a benefit to be provided by this section, the amount of that benefit is reduced by the amount specified in the Board's determination.

**Benefit on death before early retirement age**

48. (1) The benefit provided by this section is payable by the Board where a member dies before attaining the early retirement age during employment as an employee within the meaning of this Act and is so payable:

- (a) if the member is survived by a spouse - to the member's spouse; or
- (b) if the member is not survived by a spouse - to the personal representatives of the member or, if appropriate, in accordance with section 64 (Payment without grant of probate etc.).

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

- (a) the balance at credit in the member's account at the time the benefit is paid; and
- (b) where an approval under section 38 is in force - the additional benefit.

(3) If the Board makes a determination under section 55 in relation to a benefit to be provided by this section, the amount of that benefit is reduced by the amount specified in the Board's determination.

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

49. (1) The benefit provided by this section is payable by the Board to a member where, before attaining the early retirement age, the member ceases to be employed as an employee within the meaning of this Act and the Board is satisfied:

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

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

- (a) the balance at credit in the member's account at the time the benefit is paid; and
- (b) where an approval under section 38 is in force - the additional benefit.

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

(4) If the Board makes a determination under section 55 in relation to a benefit to be provided by this section, the amount of that benefit is reduced by the amount specified in the Board's determination.

**Benefit on termination of employment before early retirement age**

50. (1) The benefit provided by this section is payable by the Board to a member where, before attaining the early retirement age, the member resigns, or is dismissed or discharged or otherwise ceases in any manner to be employed as an employee within the meaning of this Act and no other benefit is payable under this Act.

(2) The benefit provided by this section is an amount equal to the balance at credit in the member's account at the time the benefit is paid.

(3) If the Board makes a determination under section 55 in relation to a benefit to be provided by this section, the amount of that benefit is reduced by the amount specified in the Board's determination.

(4) The whole or any part of a benefit under this section that is not less than such amount as may be prescribed by the regulations and that consists of contributions paid by the member's employer or that arises indirectly from any such contributions is not payable except:

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- (a) in accordance with section 51; or
- (b) in any other prescribed circumstances.

(5) The whole or any part of a benefit that is not less than the amount prescribed under subsection (4) and that consists of contributions paid by the member or that arises indirectly from any such contributions is not payable except in accordance with section 52.

(6) A benefit under this section that is less than the amount prescribed under subsection (4) is payable by the Board to the member on the member becoming eligible for the benefit.

**Preserved benefit - employer-financed contributions**

51. (1) If:

- (a) a member becomes entitled to be paid a benefit under section 50; and
- (b) the whole or part of the balance at credit in the member's account consists of contributions paid by the member's employer or arises indirectly from any such contributions,

the member is required, in relation to that part of the benefit referred to in paragraph (b), to make an election under this section.

(2) The member must elect:

- (a) to make provision for a benefit provided by subsection (3); or
- (b) to request the Board to transfer the benefit to the credit of the member in another superannuation scheme.

(3) The benefit provided by this subsection is an amount equal to the balance at credit in the member's account at the member's exit date that consists of contributions paid by the member's employer or arises indirectly from any such contributions together with interest thereon, from the exit date to the date of payment, at a rate determined by the Board.

(4) The benefit provided by subsection (3) is payable by the Board:

- (a) when the member attains the early retirement age; or
- (b) if, before attaining that age, the member dies; or
- (c) on the Board's being satisfied as provided by section 49; or
- (d) in other prescribed circumstances,



and is so payable in accordance with subsection (5).

(5) A benefit is payable:

- (a) except where the member has died - to the member; or
- (b) if the member has died and is survived by a spouse - to the member's spouse; or
- (c) if the member has died and is not survived by a spouse - to the personal representatives of the member or, if appropriate, in accordance with section 64 (Payment without grant of probate etc.).

(6) If the Board makes a determination under section 55 in relation to a benefit to be provided by this section, the amount of that benefit is reduced by the amount specified in the Board's determination.

(7) If an election made under this section by a member takes effect, a benefit or part of a benefit to which the election applies is not payable to, or in relation to, the member under any other provision of this Act.

**Preserved benefit - member-financed contributions**

52. (1) If:

- (a) a member becomes entitled to be paid a benefit under section 50; and
- (b) the whole or part of the balance at credit in the member's account consists of contributions paid by the member or arises indirectly from any such contributions,

the member is required to elect to have that part of the benefit referred to in paragraph (b) dealt with under section 51 or to take the benefit provided by subsection (4).

(2) A member may elect to have a benefit dealt with under section 51 even though no part of the benefit payable to the member consists of contributions paid by the member's employer or arises indirectly from any such contributions.

(3) A member who elects to have a benefit dealt with under section 51 may at any time after that election takes effect and before the benefit becomes payable to, or in relation to, the member elect to take the benefit provided by subsection (4).

(4) The benefit provided by this subsection is an amount equal to the balance at credit in the member's account at the member's exit date

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that consists of contributions paid by the member or arises indirectly from any such contributions, together with interest thereon, from the exit date to the date of payment, at a rate determined by the Board.

(5) The benefit provided by subsection (4) is payable by the Board to the member on the member electing to take that benefit and the election taking effect.

**How does a member or other person apply for payment or preservation of a benefit?**

53. (1) An application for payment of a benefit to, or in relation to, a member, or for preservation of a benefit under section 51 or 52, must be made in writing in a form approved by the Board for the purpose, be signed by the applicant and be accompanied by:

- (a) except in the case of an application for payment of a benefit preserved under section 51 or 52 - a certificate by the person who is the member's employer at the member's exit date, specifying the exit date and the manner of cessation of the member's employment and such other particulars as may be prescribed; and
- (b) such other documents as the Board may require.

(2) A benefit may 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 under subsection (1).

**Interest**

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

**Power of the Board to reduce benefits to comply with certain Commonwealth standards relating to occupational superannuation**

55. (1) If:

- (a) the payment of a benefit to or in respect of a member would cause the Board or the Fund to be in breach of a prescribed Commonwealth occupational superannuation standard because:

- (i) the amount of the benefit; or
- (ii) the amount of the benefit, together with the amounts of any other benefits that have already been paid, or that are or may become payable, to or in respect of the member from the Fund or under one or more other superannuation schemes,

would, if paid, exceed the relevant level specified in that standard; and

- (b) such a breach would cause the Board or the Fund to be liable to a penalty under a Commonwealth taxation law,

the Board may make a determination reducing the amount of the benefit by such amount (but no more) as will ensure that neither the Board nor the Fund is in breach of that standard.

(2) In this section, a reference to a penalty under a Commonwealth taxation law includes a reference to (but is not limited to):

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

#### **Transfer of benefit from other schemes to Fund**

56. (1) An employee may:

- (a) at the time of making an election to become a member; or
- (b) at any time after such an election takes effect,

elect to pay a benefit received, or any amount held to the credit of the employee, under another superannuation scheme into the employee's account, or the account to be established for the employee in the Fund.

(2) An election must:

- (a) be in a form approved by the Board; and
- (b) specify the amount to be paid by the employee into the Fund.

(3) An election takes effect on acceptance by the Board.

(4) On payment of an amount into the Fund under this section, the amount paid is, for the purposes of this Act, to be treated as if it were contributed under this Act by the member or the member's employer, as the case requires.

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**Transferred members**

57. Schedule 4 has effect with respect to members who are transferred as a result of a Government initiative or who, while remaining with their existing employer, are required to become contributors to another scheme and to cease to be members of the scheme established by this Act.

**PART 6 - MISCELLANEOUS**

**Additional employers and employees**

58. (1) The Governor may, by order published in the Gazette:

- (a) amend Schedule 1 by inserting, omitting or substituting the name of a person who or body that is an employer and the name of the position of an employee; or
- (b) amend Schedule 1 by omitting the name of an employer that has changed its name and by inserting instead the new name of the employer; or
- (c) amend Schedule 1 by omitting the name of an employer that has ceased to exist but has been replaced as an employer by another organisation or corporation and by inserting instead the name of that other organisation or corporation; or
- (d) amend Schedule 1 by omitting the name of the position of an employee and by inserting instead the new name of the position.

(2) Such an order, and any other order revoking or varying such an order, may be made:

- (a) to take effect on and from a day specified in the order, whether or not the day specified is earlier than the day of publication of the order; and
- (b) to effect the amendment to which it relates with such limitations as are specified in the amendment, being limitations that do not operate to the prejudice of an existing member.

**Limits on liability of Board and associated persons**

59. (1) A decision made, or any act or thing done or omitted to be done, by a person associated with the Board in the exercise of any function conferred or imposed on the person by this Act or in the

exercise of a function directly or indirectly connected with the official duties of the person may not be called in question:

- (a) on the ground of an alleged conflict of interest because the person is involved in administering superannuation schemes other than the scheme established by this Act; or
- (b) on the ground that knowledge gained by the person for the purpose of such a scheme is or may be relevant to the exercise of a function under this Act or that scheme.

(2) No decision made, or act done or omitted to be done, by:

- (a) the Board, a person associated with the Board, or any other person acting under the direction of the Board, in good faith for the purpose of executing this or any other Act; or
- (b) a person associated with the Board, or any other person acting under the direction of the Board, in good faith in the exercise of any function directly or indirectly connected with the official duties of the person,

subjects the Board or a person associated with the Board to any action, liability, claim or demand.

(3) A decision made, or any act or thing done or omitted to be done, by the Board in the exercise of a function conferred on it by this Act is not invalidated or prejudiced because of a vacancy in the office of a member of the Board.

(4) The protection afforded by this section in relation to a decision made, or any act or thing done or omitted, while a person is a person associated with the Board continues in relation to the person even though the person ceases to be a person associated with the Board.

(5) In this section, "person associated with the Board" means:

- (a) a person who is or acts as a member of the Board; or
- (b) a person who is or acts as an officer of the Board; or
- (c) a person who is an agent of or consultant to the Board and who is for the time being nominated by the Board as being within this section; or
- (d) a person who is acting in accordance with a contract or arrangement made or entered into under section 9 or 10.

(6) The Board may make or revoke the nomination for the purposes of this section of a person who is an agent of or consultant to the Board.

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**Employer to provide information**

60. (1) An employer must submit to the Board such information or evidence relating to employees of the employer as the Board requires.

(2) If an employer fails to comply with subsection (1) in relation to an employee or member, the Board may:

- (a) refuse an application by an employee to be covered for or to vary 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 member where the information sought is relevant to the right to receive the benefit.

**Employee or claimant to provide information**

61. (1) 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 (2); or
- (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 49 - to undergo a medical examination or examinations.

(2) A requirement under subsection (1) may be made only:

- (a) in the case of an employee - in relation to information or evidence that is relevant to the assessment of an application by the employee to be covered for the additional benefit or a varied amount of additional benefit; or
- (b) in the case of a claimant for payment of a benefit - in relation to information, evidence or a medical examination or examinations that is or are relevant to the assessment of an application made by the claimant for payment of the benefit.

(3) If:

- (a) the employee or claimant to whom a requirement under subsection (1) relates fails to comply with the requirement or, in purported compliance with the requirement, makes or provides an untrue statement; or
- (b) a person referred to in subsection (1) (b) fails to provide information or evidence that the Board has been authorised to

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

the Board may:

- (c) where the information or evidence is required in relation to an application to be covered for the additional benefit or to vary the additional benefit - refuse the application, and in the case of an application to vary a benefit, revoke its approval for the person to be covered for an additional benefit; or
- (d) where the information is required in relation to a claim for a benefit - take such action in relation to the benefit as, in the opinion of 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 or examinations made or if the statement had not been untrue.

(4) For the purposes of this section, "untrue", in relation to a statement, includes:

- (a) misleading in the form and context in which the statement appears; and
- (b) misleading because of the omission from the statement of matter that is material.

#### **How is an election or application to be made?**

62. (1) An election or application under this Act must be in writing signed by the person entitled to make the election or application.

(2) An election or application under this Act is not, subject to this section, validly made unless it is received in the office of the Board:

- (a) where, by or under this Act (paragraph (b) 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 on that day; or
- (b) in any other case - not later than at the expiration of the period of 2 months that next succeeds the vesting of the right to make the election or application.

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(3) An election or application under this Act takes effect:

- (a) where, by or under this Act (paragraph (b) excepted), a day is specifically prescribed for the taking effect of an election of the same class - on that day; or
- (b) in any other case - on a day determined by the Board, being, except as provided by subsection (6), a day that is not earlier than the date of receipt of the election or application in the office of the Board.

(4) An election or application under this Act may, with the approval of the Board, be amended or revoked subject to such conditions as the Board may impose, which may include conditions as to:

- (a) in the case of an amendment of an election - the day or days on which, or the manner in which, the election is to take effect; and
- (b) in the case of revocation of an election - the day on which the revocation takes effect.

(5) If:

- (a) an election or application is not received in the office of the Board within the time prescribed by subsection (2) for the receipt of the election or application; and
- (b) 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.

(6) If the Board is satisfied that, in all the circumstances of the case, it is desirable that an election or application should take effect on a day that is earlier than the date of receipt of the election or application in the office of the Board:

- (a) the Board may, subject to such terms and conditions as it may impose, determine that the election or application is to be treated as having taken effect on such an earlier day determined by the Board; and



- (b) the election or application takes effect accordingly.

**Assignment etc. of benefit**

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

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

(3) A benefit payable on the death of a member is not an asset in the member'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) is to be taken to have been made to the person entitled to the benefit.

**Payment without grant of probate etc.**

**64.** (1) If a person dies and:

- (a) a benefit is, or becomes payable, from the Fund in relation to the deceased; and
- (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) If 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 the Family Provision Act 1982; or

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- (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) If a member or former member dies and the Board is of the opinion that proceedings might be instituted under the Family Provision Act 1982 in relation to the estate, or notional estate, of the deceased, 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.

**Recovery of money owing to Fund**

65. (1) The Board may recover any money owing to the Fund by a member, employer or other person, together with interest on that money as provided by subsection (3):

- (a) except in the case of unpaid contributions - as a debt in a court of competent jurisdiction; or
- (b) where any amount is, or becomes, payable from the Fund to the member, employer or other person - by deduction from that amount; or
- (c) in the case of a member who is an employee - by deduction from the member's salary in accordance with subsection (2) by such instalments and at such times as the Board determines.

(2) An employer is required, at the written request of the Board, to make deductions from a member's salary as referred to in subsection (1) (c) and pay the amount deducted to the Board, and an amount so deducted and paid is to be taken to have been paid to the Fund by the member 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.

**Restoration of lost right etc. under Act**

66. (1) If a person is entitled to exercise a right or enjoy a privilege or benefit under this Act and, without having exercised the right or enjoyed the privilege or benefit, the person ceases to be entitled to do so, the person may exercise the right or enjoy the privilege or benefit if:

- (a) 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 privilege or benefit; and
- (b) the person fulfils any conditions imposed, and complies with any requirements made, by the Board in giving its consent.

(2) If under this section 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.

**Disputes**

67. (1) A dispute under this Act is to be determined by the Board.

(2) The Board may, in determining such a dispute, inform itself on any matter in such manner as it thinks fit and, in so doing, is not bound to observe rules of law relating to evidence.

(3) The Board may request a person who has a dispute with the Board to provide the Board with an authority to obtain from a third person any information or evidence that is relevant to the subject-matter of the dispute.

**Appeals against Board's determinations in disputes**

68. (1) A person aggrieved by a determination of the Board under section 67 may appeal against the determination to the Industrial Commission.

(2) The appeal must be made within 6 months after the date of the determination or within such further period as the Industrial Commission may allow.

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**Payment where beneficiary incapable**

69. (1) If a person to whom a benefit under this Act is payable is, in the opinion of the Board, incapable of administering his or her own affairs because 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 this section, the benefit would be payable, or of any person dependent on him or her.

(2) Any payment made under this section is to be taken to have been made to the person entitled to the benefit.

**Service of documents**

70. (1) A document may be served on the Board by leaving it at, or by sending it by post to:

- (a) the office of the Board; or
- (b) if it has more than one office - any one of its offices.

(2) A notice or other document required to be served on a person under this Act may be served by sending it by post to the last known place of residence or business of the person.

(3) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Board in any other manner.

**Recovery of charges etc. by Board**

71. (1) Any charge, fee or money due to the Board may be recovered by the Board as a debt in a court of competent jurisdiction.

(2) Without limiting subsection (1), the Board may recover any money owing to it under this or any other Act, together with interest thereon as provided by subsection (3), as a debt in a court of competent jurisdiction.

(3) Interest at a rate from time to time determined by the Board is payable on any amount referred to in subsection (2) calculated from the date on which the amount became due for payment until the date on which the amount is recovered under that subsection or is otherwise paid.

**Regulations**

72. 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.

**Review of operation of Act etc.**

73. (1) The Minister must, on or after the first anniversary of the commencement of this section, review the operation of this Act, including the operation and activities of the Board and any contract or arrangement made or entered into by the Board under section 9 or 10.

(2) The review may be carried out by such person or persons as may be appointed by the Minister, in accordance with such directions and within such time, as may be specified by the Minister.

**Savings and transitional provisions**

74. Schedule 5 has effect.

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**SCHEDULE 1 - ADDITIONAL EMPLOYEES AND EMPLOYERS**  
(Sec. 3 (1))

**Employee                      Employer**

**SCHEDULE 2 - PROVISIONS RELATING TO  
MEMBERS OF BOARD**  
(Sec. 6 (6))

**Acting members and acting Chairperson**

1. (1) The Minister may, from time to time, appoint a person to act in the office of a member of the Board during the illness or absence of the member, and the person, while so acting, has all the functions of the member and is to be taken to be a member.

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SCHEDULE 2 - PROVISIONS RELATING TO MEMBERS  
OF BOARD - *continued*

(2) The Minister may, from time to time, appoint a member of the Board to act in the office of Chairperson of the Board during the illness or absence of the Chairperson, and the member, while so acting, has all the functions of the Chairperson and is to be taken to be the Chairperson.

(3) The Minister may, at any time, remove a person from any office to which the person was appointed under this clause.

(4) A person while acting in the office of a member of the Board is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) For the purposes of this clause:

- (a) a vacancy in the office of a member or the Chairperson of the Board is to be taken to be an absence from office of the member or Chairperson; and
- (b) a member of the Board is to be taken to be absent from office as a member during any period when the member acts in the office of the Chairperson pursuant to an appointment under subclause (2).

**Terms of office**

2. (1) Subject to this Schedule, the original members appointed to the Board on or before the commencement of this clause hold office for such period (not exceeding 12 months) as is specified in each member's instrument of appointment, but are eligible (if otherwise qualified) for re-appointment.

(2) Subject to this Schedule, a member holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

**Remuneration**

3. A member of the Board is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

SCHEDULE 2 - PROVISIONS RELATING TO MEMBERS  
OF BOARD - *continued*

**Vacancy in office of member**

4. (1) The office of a member of the Board becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed or retired from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988; or
- (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings; or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Governor may remove a member of the Board from office at any time.

(3) Without affecting the generality of subclause (2), the Governor may remove from office a member of the Board who contravenes clause 6.

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SCHEDULE 2 - PROVISIONS RELATING TO MEMBERS  
OF BOARD - *continued*

**Filling of vacancy in office of member**

5. If the office of any member of the Board becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

**Disclosure of pecuniary interests**

6. (1) If

- (a) a member of the Board has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board; and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a member of the Board at a meeting of the Board that the member:

- (a) is a member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) Particulars of any disclosure made under this clause are to be recorded by the Board in a book kept for the purpose and that book is to be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.

(4) After a member of the Board has disclosed the nature of an interest in any matter, the member may not, unless the Minister or the Board otherwise determines:

- (a) be present during any deliberation of the Board with respect to the matter; or



SCHEDULE 2 - PROVISIONS RELATING TO MEMBERS  
OF BOARD - *continued*

(b) take part in any decision of the Board with respect to the matter.

(5) For the purposes of the making of a determination by the Board under subclause (4), a member of the Board who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of the Board for the purpose of making the determination; or

(b) take part in the making by the Board of the determination.

(6) A contravention of this clause does not invalidate any decision of the Board or the exercise of any function under this Act.

(7) This clause does not apply to or in respect of an interest of a member of the Board in a matter which arises merely because the member is a contributor to the superannuation scheme established by this Act or another superannuation scheme.

(8) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.

**Effect of certain other Acts**

7. (1) The Public Sector Management Act 1988 does not apply to the appointment of a member of the Board and a member is not, as a member, subject to that Act (except Part 8).

(2) If by or under any other Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office;  
or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member of the Board or from accepting and retaining any remuneration payable to the person under this Act as a member.

(3) The office of a member of the Board is not, for the purposes of any Act, an office or place of profit under the Crown.

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**SCHEDULE 3 - PROVISIONS RELATING TO  
BOARD PROCEDURE**

(Sec. 6 (7))

**General procedure**

1. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Board.

**Quorum**

2. The quorum for a meeting of the Board is 3 members, of whom one must be the Chairperson.

**Voting**

3. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

**Minutes**

4. The Board must cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

**SCHEDULE 4 - SPECIAL PROVISIONS FOR PRESERVING  
THE BENEFITS OF CERTAIN MEMBERS**

(Sec. 57)

**Application of Schedule**

1. (1) This Schedule applies:

(a) to members:

- (i) who are employed in an area of an employer's activities that is, or is to be, transferred to another employer who is not, in respect of the member, an employer under this Act; and
- (ii) who have elected or are required to transfer to the employment of that other employer; and

**SCHEDULE 4 - SPECIAL PROVISIONS FOR PRESERVING  
THE BENEFITS OF CERTAIN MEMBERS - *continued***

- (iii) whose transfer of employment is declared by the regulations to be a transfer of employment to which this Schedule applies; and
- (b) to members:
  - (i) who, while remaining with the same employer, are required to become contributors to another superannuation scheme and to cease to contribute to the scheme established by this Act; and
  - (ii) whose transfer to that scheme is declared by the regulations to be a transfer of superannuation coverage to which this Schedule applies.
- (2) The regulations may:
  - (a) for the purposes of subclause (1) (a) (iii), declare that the transfer of employment of any specified members or former members is a transfer of employment to which this Schedule applies; or
  - (b) for the purposes of subclause (1) (b) (ii), declare that the transfer of any specified members or former members to another superannuation scheme is a transfer of superannuation coverage to which this Schedule applies,

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

**Member entitled to preserved benefit despite having contributed less than the prescribed amount**

2. A member to whom this Schedule applies is entitled to make provision for a preserved benefit even though the member is not entitled to a benefit of or exceeding the amount prescribed for the purposes of section 50 (4).

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

3. (1) A member to whom this Schedule applies and who elects to make provision for a preserved benefit is entitled to be paid the

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**SCHEDULE 4 - SPECIAL PROVISIONS FOR PRESERVING  
THE BENEFITS OF CERTAIN MEMBERS - *continued***

benefits provided by sections 51 and 52 on ceasing to be a member, despite anything to the contrary in those sections.

- (2) A preserved benefit is payable under this clause if, and only if:
- (a) the Board is satisfied that that part of the benefit that consists of contributions paid by the member's employer or arises indirectly from any such contributions will be applied to the credit of the member in another superannuation scheme; and
  - (b) any requirements made by the regulations with respect to the payment of the benefit (whether or not consisting of or arising from contributions paid by an employer) are complied with.

**Regulations**

4. 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 member under any superannuation scheme to which any such preserved benefit is credited.

**SCHEDULE 5 - SAVINGS AND TRANSITIONAL PROVISIONS**  
(Sec. 74)

**Regulations**

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

This Act  
Miscellaneous Acts (Public Sector Executives Superannuation)  
Amendment Act 1989

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

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

SCHEDULE 5 - SAVINGS AND TRANSITIONAL PROVISIONS  
*- continued*

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

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[*Minister's second reading speech made in -  
Legislative Assembly on 27 July 1989  
Legislative Council on 8 August 1989*]