

STATE PUBLIC SERVICE SUPERANNUATION BILL, 1985

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:—

- Superannuation (Amendment) Bill, 1985;
- Superannuation (Scheme Closure) Amendment Bill, 1985;
- Public Finance and Audit (State Public Service Superannuation Board) Amendment Bill, 1985;
- Statutory and Other Offices Remuneration (State Public Service Superannuation Board) Amendment Bill, 1985.

The objects of this Bill are—

- (a) to constitute the State Public Service Superannuation Board (the “Board”);
- (b) to establish and provide for the investment and administration of the State Public Service Superannuation Fund (the “Fund”); and
- (c) to provide a superannuation scheme for certain employees of the Government and of certain other employers.

The Bill contains the following provisions:—

PART I.—PRELIMINARY.

- Clause 1. Short title.
- Clause 2. Commencement.
- Clause 3. Persons not subject to Act.
- Clause 4. Transitional provisions.
- Clause 5. Interpretation.

Clause 6 sets out the amounts, allowances, etc., included in “salary” for the purposes of the proposed Act.

PART II.—THE STATE PUBLIC SERVICE SUPERANNUATION FUND.

Clause 7 establishes the Fund.

Clause 8 provides for investment of the Fund and exempts the Board from liability to pay stamp duty.

Clause 9 provides that the Board shall establish and maintain certain accounts within the Fund.

Clause 10 provides for the crediting of interest to contributors' accounts and employers' accounts established within the Fund.

Clause 11 provides for periodic actuarial investigation of the Fund.

PART III.—CONTRIBUTIONS BY EMPLOYEES.

Clause 12 provides for an election by an employee to join the Fund.

Clause 13 provides for applications to be made to the Board by an employee or a contributor to be covered for the supplementary benefit, and for the approval or refusal of such applications.

Clause 14 establishes a person's liability to contribute to the Fund in respect of each superannuation period occurring while the person is a contributor to the Fund.

Clause 15 enables the Board to declare specified dates as the review date and the adjustment date for the purpose of adjusting contribution rates.

Clause 16 sets out the amount of the contribution payable by a contributor in respect of a superannuation period.

Clause 17 provides for the payment of contributions to the Fund by a contributor during a period of leave without pay.

Clause 18 deems a contributor, who has resumed employment within a certain period after ceasing to be an employee without providing for a preserved benefit, to have so provided, on the contributor refunding any benefit paid and paying interest.

Clause 19 provides that the preserved benefit provisions cease to apply to a contributor who has provided for a preserved benefit which has not been paid and who later becomes an employee and elects to rejoin the scheme.

Clause 20 provides for deduction of contributions from a contributor's salary.

Clause 21 enables the Board to make arrangements or take action in respect of arrears of a contributor's contributions to the Fund.

PART IV.—CONTRIBUTIONS BY EMPLOYERS.

Clause 22 sets out the rates and times for contributions by employers.

Clause 23 provides for certain payment by employers of a share of the costs of management of the Fund.

Clause 24 enables the Governor to make certain orders with respect to a contributor on secondment but not to an employer.

PART V.—BENEFITS.

Clause 25. Interpretation.

Clause 26 provides for the calculation of the adjusted length of a contributor's membership period in the scheme.

Clause 27 provides for the calculation of a contributor's final salary.

Clause 28 specifies the benefit payable on retirement or death of a contributor at or after attaining the age of 55 years.

Clause 29 specifies the benefit payable on the death of a contributor during employment before attaining the age of 55 years.

Clause 30 specifies the benefit payable to a contributor who retires as a result of total and permanent invalidity before attaining the age of 55 years.

Clause 31 specifies the benefit payable to a contributor who retires as a result of partial and permanent invalidity before attaining the age of 55 years.

Clause 32 specifies the benefit payable to a contributor on resignation, dismissal or discharge before attaining the age of 55 years.

Clause 33 specifies the benefit payable to a contributor who is retrenched before attaining the age of 55 years.

Clause 34 provides for a contributor, who has been a contributor for not less than 3 years, to elect to preserve a benefit to which the contributor is otherwise entitled.

Clause 35 provides for applications for preservation of a benefit or payment of a benefit.

PART VI.—THE STATE PUBLIC SERVICE SUPERANNUATION BOARD.

Clause 36 constitutes the Board.

Clause 37 provides for the employment of staff by the Board.

Clause 38 provides for the employment of staff to manage and maintain real property in which the Board has an interest.

Clause 39 enables the Board to employ agents.

Clause 40 enables the delegation of functions by the Board.

Clause 41 provides for the relationship between the powers of the Board and the powers of a trustee in relation to the Fund.

Clause 42 provides that a member of the Board or a member of the staff of the Board may hold office, with the approval of the Board, as a director of a company.

Clause 43 makes provision with respect to acts and proceedings of the Board.

Clause 44 requires members of the Board to disclose pecuniary interests in certain matters.

Clause 45 specifies the financial year of the Board.

Clause 46 provides for the management costs incurred in investing the Fund and managing investments to be paid to the Management Account from the income from those investments.

Clause 47 sets out the borrowing powers of the Board.

Clause 48 provides for service of documents on the Board.

Clause 49 provides for authentication of documents by the Board.

Clause 50 provides that proof of certain matters relating to the Board is not required in any legal proceedings.

PART VII.—MISCELLANEOUS.

Clause 51 enables the Governor by order published in the Gazette to amend Schedule 3 which specifies the employers for the purposes of the proposed Act and Schedule 4 which excludes certain persons as employees.

Clause 52 requires employers to submit information about contributions to the Board.

Clause 53 enables the Board to require employees or claimants to provide specified information or evidence.

Clause 54 provides for the method of making an election or application under the proposed Act.

Clause 55 renders void any purported assignment of, or charge over, a benefit payable under the proposed Act.

Clause 56 provides that the Board may keep its accounts and records in any suitable manner.

Clause 57 specifies the circumstances in which the Board may pay up to \$50,000 of the amount of a benefit to an eligible person within the meaning of the Family Provision Act, 1982, or certain other persons where probate, etc., has not been sighted by or notified to the Board.

Clause 58 enables the Board to recover any money owing to the Fund with interest.

Clause 59 provides for appeals from a decision of the Board in determining a dispute under the proposed Act.

Clause 60 enables regulations to be made with respect to foreign contributors.

Clause 61 enables the Governor to make regulations in aid of the proposed Act.

Schedule 1 contains provisions relating to elections and elected members of the Board.

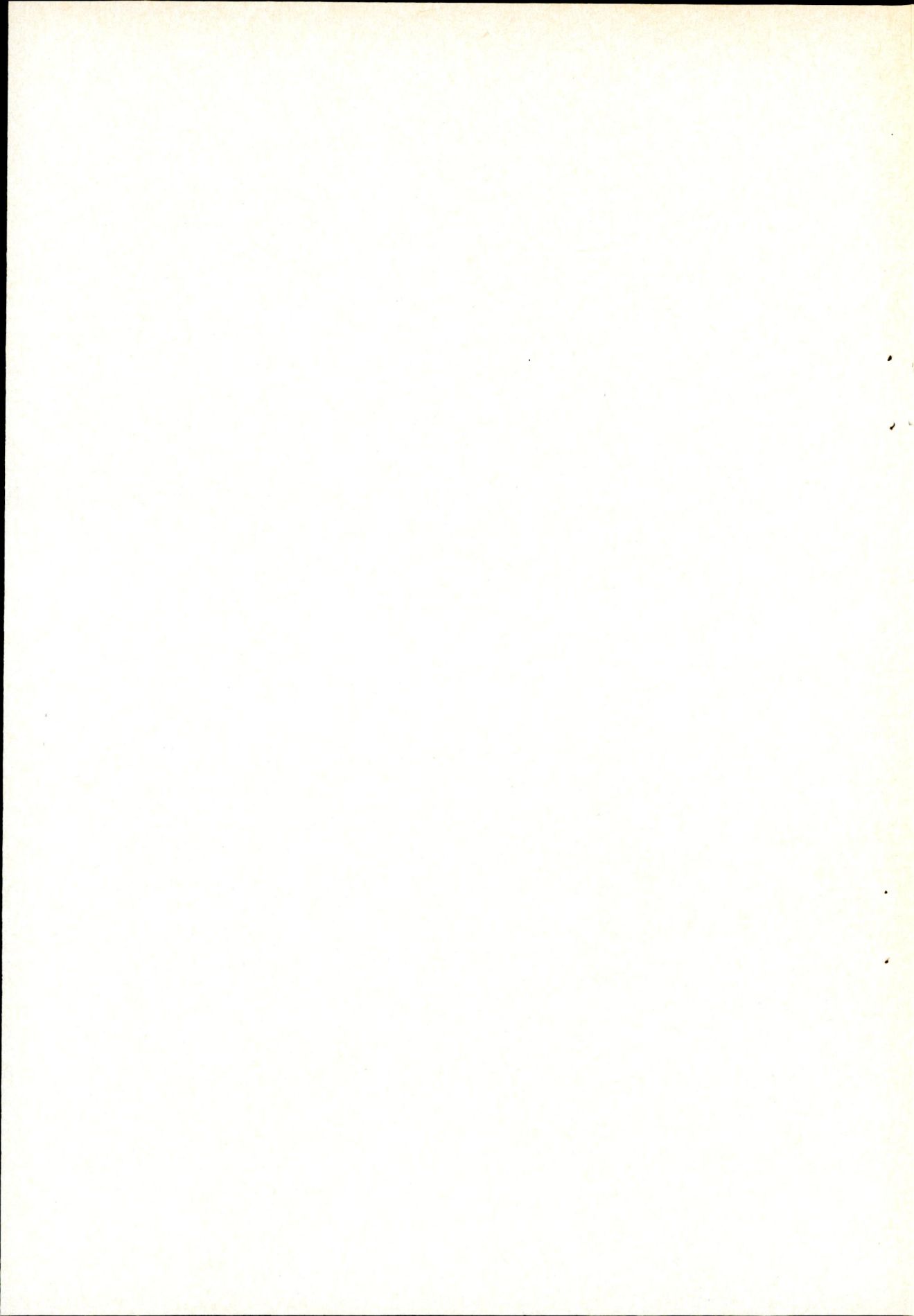
Schedule 2 contains provisions relating to the procedure of the Board.

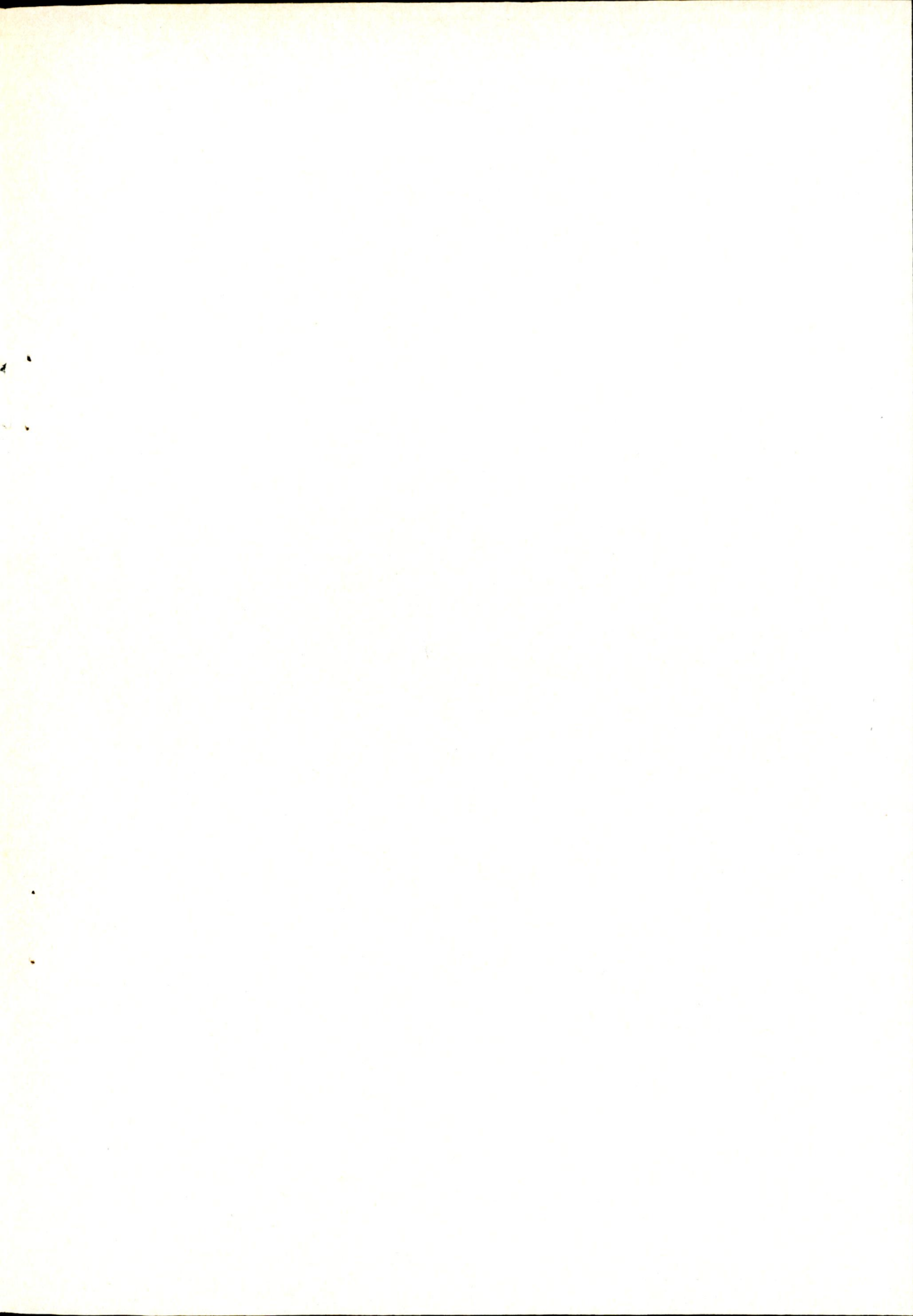
Schedule 3 specifies authorities and corporations, etc., that are employers under the proposed Act.

Schedule 4 specifies persons who are excluded persons under the Act.

Schedule 5 specifies superannuation periods.

Schedule 6 contains transitional provisions.





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NEW SOUTH WALES.

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SCHEDULE 1.—PROVISIONS RELATING TO ELECTIONS AND ELECTED MEMBERS.

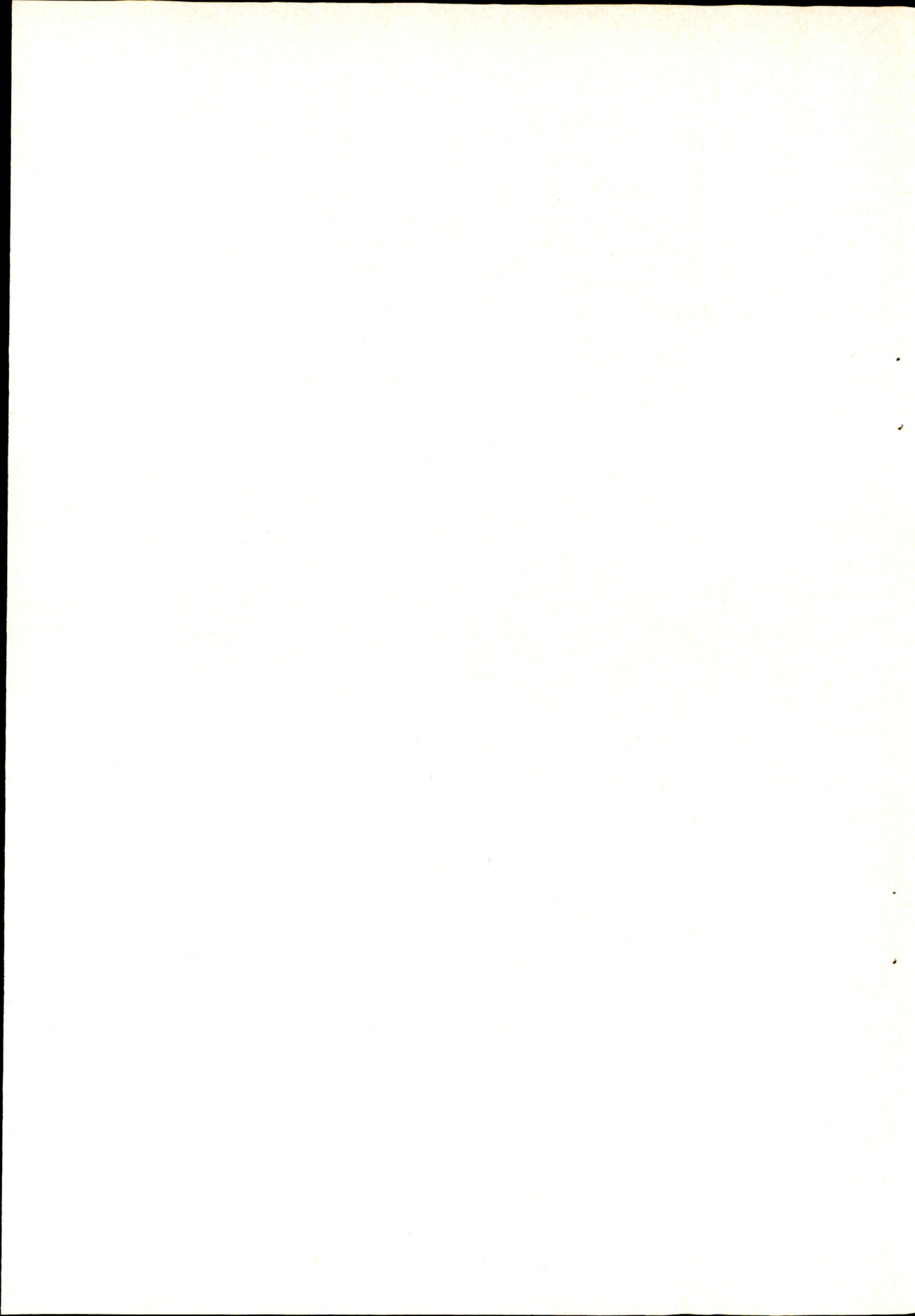
SCHEDULE 2.—PROVISIONS RELATING TO THE PROCEDURE OF THE BOARD.

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STATE PUBLIC SERVICE SUPERANNUATION BILL, 1985

No. , 1985.

A BILL FOR

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

See also Superannuation (Amendment) Bill, 1985; Superannuation (Scheme Closure) Amendment Bill, 1985; Public Finance and Audit (State Public Service Superannuation Board) Amendment Bill, 1985; Statutory and Other Offices Remuneration (State Public Service Superannuation Board) Amendment Bill, 1985.

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

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PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "State Public Service Superannuation Act, 1985".

10 **Commencement.**

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

15 (2) Section 36 (4) and Schedule 1 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) Except as provided by subsections (1) and (2), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Persons not subject to Act.

20 3. Schedule 4 has effect.

Transitional provisions.

4. Schedule 6 has effect.

Interpretation.

25 5. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

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

30 "administration levy" means the amount of a contributor's share of management costs referred to in section 46 (2);

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“applicable superannuation period” has the meaning ascribed thereto in section 25;

“appointed day” means the day appointed and notified under section 2 (3);

5 “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,

10

as certified by the contributor’s employer;

“benefit” means benefit payable under this Act;

“Board” means the State Public Service Superannuation Board constituted by this Act;

15

“contributor” means an employee whose election to contribute to the Fund has taken effect;

“contributor’s account” means the account established and maintained under section 9 (2) in respect of the contributor;

20

“contributor’s component” has the meaning ascribed thereto in section 25;

“elected member” means the full-time elected member or the part-time elected member;

25

“employee” means a person (other than an excluded person referred to in Schedule 4) who is employed by an employer and is the subject of a certificate by the employer to the effect that, for the time being, the person—

(a) is employed by the employer under a contract of employment;

30

(b) is so employed otherwise than on a casual or temporary basis;

(c) if the regulations prescribe a class of persons as not being employees—is not within that class (specifying the class); and

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(d) if the regulations prescribe any requirement with which a person must comply in order to be an employee—complies with the requirement (specifying the requirement);

“employer” means—

5 (a) the Government of New South Wales; or

(b) an authority specified in Schedule 3,

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

10 “employer’s account” means the account established and maintained under section 9 (4) in respect of the employer;

“employer’s component” has the meaning ascribed thereto in section 25;

15 “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,

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

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

(a) the only such cessation of employment of the contributor; or

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

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

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- “final contribution date”, in relation to a contributor, means the last day of the superannuation period that ends on, or last precedes, the contributor’s exit date in respect of which the contributor is liable to contribute to the Fund;
- 5 “financial year” means the financial year of the Board specified in section 45;
- “first contribution date”, in relation to a contributor, means the first day of the superannuation period referred to in section 14 (a);
- 10 “full-time elected member” means the person who for the time being holds office as the full-time elected member of the Board;
- “full-time employee” means an employee who is not a part-time employee;
- 15 “Fund” means the State Public Service Superannuation Fund established, maintained and managed by the Board in accordance with this Act;
- “Management Account” means the account established and maintained by the Board under section 9 (1);
- “maximum benefit points” has the meaning ascribed thereto in section 25;
- 20 “part-time elected member” means the person who for the time being holds office as the part-time elected member of the Board;
- “part-time employee” means an employee certified under section 12 (2) to be a part-time employee;
- 25 “preserved benefit”, in relation to a contributor, means a benefit for which the contributor has made provision under section 34;
- “prospective benefit points” has the meaning ascribed thereto in section 25;
- “regulations” means regulations made under, or for the purposes of, this Act;
- 30 “retire” includes cease (otherwise than by reason of death) in any manner to be employed by an employer;
- “retrench”, in relation to a contributor, means compulsorily terminate the employment of the contributor with an employer where the termination is expressed to be on the ground that—

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- (a) the employment of the contributor is not necessary and his or her position is not to be filled;
- (b) the work for which the contributor was engaged is finished; or
- 5 (c) the quantity of work has diminished and has rendered necessary a reduction in the number of employees;

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

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

15 “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;

“State Superannuation Board” means the State Superannuation Board constituted under the Superannuation Act, 1916;

20 “superannuation period” means a period commencing on and including a date specified in Column 2 of Schedule 5 and ending on and including the date specified opposite thereto in Column 3 of that Schedule;

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

30 “supplementary benefit” has the meaning ascribed thereto in section 25;

“supplementary levy” means the levy that, in order to attract the supplementary benefit, is paid by transfer from a contributor’s account under section 13 (7) (b);

“this Act” includes regulations;

35 “union” means an industrial union registered as such under the Industrial Arbitration Act, 1940, or an association of employees

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registered as an organization under the Conciliation and Arbitration Act 1904 of the Commonwealth as subsequently amended.

(2) Where a contributor is in part-time employment with more than one employer at the same time, this Act applies to the contributor separately in relation to each employment as if, in relation to each employment, the contributor were a different person, except that the maximum benefit points for the contributor when taken into account in relation to all employments of the contributor shall not exceed in number the number that would have been the 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.

Salary.

6. (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 that is payable in money to the contributor in the contributor's capacity as an employee and is certified by the contributor's employer or by a person duly authorised to do so on behalf of the employer to be so payable, and to be likely to continue to be so payable, while the employee continues to occupy the position he or she occupies at the time of the certification, not being—

- (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.

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(2) Notwithstanding subsection (1), the regulations may declare any remuneration or benefit (whether or not of a kind referred to in subsection (1) (a)–(f)) to be, either generally or in relation to a specified employee or class of employees, salary for the purposes of this Act but, where such a
5 declaration is made, it applies to remuneration or a benefit payable or afforded to a contributor only if—

- (a) it is payable in money to the contributor in the contributor's capacity as an employee; or
- 10 (b) the contributor's employer, or a person duly authorised to do so on behalf of the employer, certifies in writing to the Board that it should be treated as remuneration or a benefit payable in money to the contributor in his capacity as an employee and also certifies the annual rate of the remuneration or benefit.

(3) Where remuneration or a benefit is the subject of a certificate referred
15 to in subsection (2) (b) it shall, for the purposes of this Act, be deemed to be remuneration or a benefit payable in money to the contributor to whom the certificate relates and to be so payable in the contributor's capacity as an employee.

(4) A regulation made for the purposes of subsection (2) may be made
20 to operate on and from the appointed day or any later day, whether or not the day from which it is made to operate is earlier than the day of its publication and, where it is made to operate from such an earlier day, the contributor's salary shall be deemed to have included the declared remuneration or benefit if payment has been made to the Board, within a
25 period approved by the Board, of any contributions to the Fund that would have been payable had the remuneration or benefit been salary before the declaration was made.

(5) 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
30 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 or such continuous period that, in the opinion of the Board, is not materially less than 12 months and would be 12 months but for a customary practice in the field in which the contributor is employed (whether or not
35 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,

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

(6) Where—

5 (a) a relieving allowance has, for a continuous period of 12 months, been paid to a contributor in the contributor's capacity as an employee; and

(b) the allowance is not salary in accordance with subsection (2), the allowance is, from the expiration of that period of 12 months, salary for the purposes of this Act.

10 (7) Where the 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.

(8) The Governor may, by order in writing, declare unconditionally, or subject to conditions, that subsection (9) applies—

15 (a) to a contributor specified in the order who is on secondment but not to another employer; and

(b) generally during the period of that secondment, or during such period as is specified in the order, being, in either case, a period commencing before, on or after the date of the order.

20 (9) During the period in which this subsection is declared pursuant to subsection (8) to apply to a contributor on secondment, the contributor's salary shall, for the purposes of this Act, be that paid or payable in respect of the employment to which he or she is seconded.

PART II.

THE STATE PUBLIC SERVICE SUPERANNUATION FUND.

25 **Establishment of the Fund.**

7. (1) The Board shall establish, and shall maintain and manage, the State Public Service Superannuation Fund.

(2) The Board shall—

30 (a) cause to be paid to the Fund—

(i) contributions made by employers and employees;

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- (ii) income derived from investment of the Fund, and any profit made from realisation of any investment of the Fund;
 - (iii) money borrowed for the purposes of the Fund; and
 - 5 (iv) any other amounts payable to the Fund; and
 - (b) cause to be paid from the Fund—
 - (i) by transfer from the Fund to the Management Account—management costs relating to investment of the Fund as referred to in section 46 (1);
 - 10 (ii) the benefits payable under this Act; and
 - (iii) any other amounts payable from the Fund.

Investment of the Fund.

8. (1) For the purposes of this section—

“public securities” means—

- 15 (a) bonds, debentures, stock or other securities issued by—
 - (i) the Commonwealth, this or any other State or a Territory of the Commonwealth; or
 - 20 (ii) a municipal corporation, other local governing body or public authority constituted by or under an Act or by or under a law of the Commonwealth or of another State or of a Territory of the Commonwealth; or
- (b) prescribed securities or other instruments.

25 (2) Subject to this section, the Board may, in such manner as it thinks fit, apply the Fund for the purpose of producing income and for related purposes including entering into such arrangements, and undertaking such obligations, as the Board thinks fit.

30 (3) Money in the Fund may, pending investment, be lodged at call, or partly at call and partly on fixed deposit, with the Treasurer or with any bank and shall, while so lodged with a bank, be deemed to be money of the Crown.

(4) The Board shall, so far as is practicable, ensure that at all times the

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assets of the Fund shall include public securities the cost of which, averaged over the period of 3 months that commences on the appointed day and over each succeeding period of 3 months, is not less than 30 per cent (or, if some other proportion is prescribed for the purposes of this subsection, that other
5 proportion) of the cost of all the assets of the Fund.

(5) The Board shall, so far as is practicable, ensure that at no time do the assets of the Fund include any one asset (other than public securities) the cost of which was more than 5 per cent (or, if some other proportion is prescribed for the purposes of this subsection, that other proportion) of the
10 cost of all the assets of the Fund.

(6) For the purposes of subsection (5) but without limiting its generality, all the assets acquired under subsection (2) that comprise—

(a) securities within the meaning of the Securities Industry (New South Wales) Code and other instruments, being securities or
15 instruments allotted or issued by any one corporation, or by related corporations within the meaning of the Companies (New South Wales) Code; or

(b) an interest as beneficiary under any one trust,
shall be deemed to be one asset of the Fund.

(7) Where, in respect of an instrument relating to a transaction, the Board, or a broker, dealer or other person acting on behalf of the Board in respect of the transaction, would, but for this subsection, be liable to pay stamp duty under the Stamp Duties Act, 1920, in respect of the instrument, the Board, broker, dealer or other person is not so liable.
20

(8) A transaction entered into by the Board is not invalidated by reason only that it is not authorised by, or may result in a contravention of, the provisions of this section.
25

(9) Annual reviews of the Board's broad investment policy and the management of its investments shall be conducted as prescribed.

30 **Certain accounts to be kept.**

9. (1) The Board shall establish and maintain within the Fund a Management Account—

(a) to which shall be credited—

(i) the amounts transferred in accordance with section 7 (2)
35 (b) (i); and

(ii) the management costs paid by employers and contributors as provided by section 46 (2); and

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(b) to which shall be debited the costs of administering this Act.

(2) The Board shall establish and maintain within the Fund a separate account for each contributor—

(a) to which shall be credited—

- 5 (i) the contributions made by the contributor to the Fund;
- (ii) the contributor's component of a refund of benefit made by a contributor pursuant to section 18 (resumption of contributions after break in employment); and
- (iii) interest as provided by section 10; and

10 (b) to which shall be debited—

- (i) where the contributor is covered for the supplementary benefit—the amount of the supplementary levy;
- (ii) the amount of the contributor's component of any benefit paid to, or in relation to, the contributor; and
- 15 (iii) the administration levy.

(3) The Board shall establish and maintain within the Fund a Supplementary Levy Account—

(a) to which shall be credited the amounts debited pursuant to subsection (2) (b) (i); and

20 (b) to which shall be debited 25 per cent of any supplementary benefit paid to, or in relation to, a contributor.

(4) The Board shall establish and maintain within the Fund a separate account for each employer—

(a) to which shall be credited—

- 25 (i) the contributions made by the employer to the Fund;
- (ii) so much of a benefit paid to a contributor as was paid by the employer and refunded by the contributor pursuant to section 18 (resumption of contributions after break in employment); and
- 30 (iii) interest as provided by section 10; and

(b) to which shall be debited the amount of the employer's liabilities under Part IV.

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(5) The Board shall establish and maintain within the Fund such other accounts as, in the opinion of the Board, are necessary or convenient for the management of the Fund and the administration of this Act.

Interest.

5 **10. (1)** The Board shall from time to time credit each contributor's account, and each employer's account, with interest at a rate fixed by the Board.

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

 (3) The Board shall, in its annual report, specify the effective rate at which interest was credited under subsection (1) during the last preceding financial year.

Actuarial investigation of the Fund.

15 **11. (1)** An investigation as to the state and sufficiency of the Fund shall, as at 30th June, 1988, and at the expiration of each succeeding period of 3 years, be made by not less than 2 actuaries appointed by the Board.

 (2) Actuaries appointed under subsection (1) shall complete their investigation, and shall report the result to the Board, not later than 13
20 months after the date as at which the investigation is made.

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

 (4) The Minister may, in relation to a particular investigation, extend or
25 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 III.

CONTRIBUTIONS BY EMPLOYEES.

Election to contribute to the Fund.

5 **12. (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 the prescribed form;

10 (b) specify the rate at which the employee desires, subject to this Act, to contribute to the Fund, being the rate of 2, 3, 4, 5, 6, 7, 8 or 9 per cent of the employee's salary;

(c) be accompanied by the certificate by the employee's employer referred to in the definition of "employee" in section 5 (1); and

(d) be accompanied by a certificate by the employee's employer that is in the prescribed form and specifies—

15 (i) the date of birth of the employee;

 (ii) whether the employee is a part-time employee;

 (iii) the salary, and the attributed salary, of the employee; and

 (iv) such other matters as the Board considers to be necessary or convenient for the purposes of this section.

20 **(3)** A failure to comply with subsection (2) (b) does not invalidate an election and, in the event of such a failure, the form of election shall be deemed to specify a rate of 2 per cent.

(4) Subject to this Act, an election under subsection (2) takes effect—

25 (a) in the case of an election by a person who was an employee at the commencement of this Act and whose election is received in the office of the Board not later than 2 months after that commencement—as at that commencement;

30 (b) in the case of an election by a person who becomes an employee after that commencement and whose election is received in the office of the Board not later than 2 months after the person becomes an employee—as at the date on which the person became an employee; or

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(c) in any other case—as at the date on which the election is received in the office of the Board.

(5) An election by an employee under this section takes effect only if, at the time for its taking effect, the employee has not attained the age of 55 years.

(6) The Board is entitled to act on information provided under subsection (2).

Supplementary benefit.

10 13. (1) Application to be covered for the supplementary benefit may be made to the Board—

(a) by an employee who has not attained the age of 53 years and is not a contributor—at the time the employee makes an election under section 12 (election to contribute to the Fund); or

15 (b) except to the extent that subsection (8) or (12) otherwise provides—at any time by a contributor who has not attained the age of 53 years.

(2) An application under subsection (1) shall—

(a) be in a form approved by the Board for the purposes of this section; and

20 (b) be accompanied by such documents and evidence as are prescribed for the purposes of this section.

(3) The Board may require an applicant under subsection (1)—

(a) to undergo such a medical examination as may be prescribed; and

(b) to provide such medical reports as are specified by the Board.

25 (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

30 (b) fails to comply with a requirement under subsection (3),

the Board shall refuse the application.

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(5) The Board—

(a) shall, before forming the opinion referred to in subsection (4) (a), obtain such evaluations of a medical examination, and medical reports, referred to in subsection (3) as it thinks fit; and

5 (b) shall, in forming that opinion, have regard to those evaluations and the documents and evidence referred to in subsection (2).

(6) Where the Board approves an application under subsection (1)—

(a) the Board shall appoint the day on and from which the applicant's cover for the supplementary benefit is to commence; and

10 (b) subject to subsection (7), the applicant becomes, and remains, liable for payment of the supplementary levy.

(7) Subject to subsection (12), payment by a contributor of the supplementary levy—

15 (a) shall commence on a date appointed by the Board and shall be made at the prescribed rate and at the prescribed times;

(b) shall be effected by transfer from the contributor's account; and

(c) shall cease when the contributor no longer has available to be taken into account any prospective benefit points.

20 (8) Where an application under subsection (1) is refused, the applicant may not again make such an application before the expiration of—

(a) the period of 3 years that next succeeds the refusal; or

(b) in a particular case—such shorter period as the Board may decide.

25 (9) Where, after approving an application under subsection (1), the Board forms the opinion that, in relation to the application, or to a medical examination of the applicant, an untrue statement within the meaning of section 53 was made and that its approval would not have been given had the untrue statement not been made, the Board shall, subject to subsection (10), revoke the approval.

30 (10) For the purpose of deciding whether or not, in relation to an application or a medical examination of an applicant, it is of the opinion referred to in subsection (9), the Board may, if it thinks fit, require that applicant within a time specified by the Board or within such further time as the Board may allow, to provide information, or to undergo a medical examination, or to provide medical reports, as specified by the Board.

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(11) Upon the expiration of the time, or further time, referred to in subsection (10), 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 (9).

5 (12) Where, pursuant to subsection (9), the Board revokes its approval of an application—

- (a) the applicant ceases to be covered for the supplementary benefit and ceases to be liable to pay the supplementary levy;
- 10 (b) the applicant is disqualified for 3 years from again applying to be covered for the supplementary benefit; and
- (c) the amount of any supplementary levy paid by the applicant prior to revocation of the approval is not recoverable.

Liability to contribute following election by employee.

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

- 20 (a) the superannuation period prescribed by the regulations as the superannuation period in respect of which contributions by that person are to commence;
- (b) the superannuation period that ends on, or last precedes, the contributor's exit date; and
- (c) each intervening superannuation period,

not in any case being—

- 25 (d) a superannuation period in respect of which the contributor is not, by reason of section 17 (3) liable or entitled to make a contribution; or
- 30 (e) a superannuation period in respect of which the contributor is not, by reason of a cessation of employment as referred to in sections 18 (resumption of contributions after break in employment) and 19 (resumption of contributions after preservation of benefit), liable or entitled to make a contribution to the Fund.

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Review dates and adjustment dates.

15. The Board shall, by order specified in the Gazette, declare—

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

Amount of contributions.

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

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

where—

- 15 C represents the amount to be ascertained;
 - R represents the rate per cent of salary at which the contributor elected under section 12 to contribute to the Fund;
 - 20 E represents the contributor's attributed salary specified in the certificate given under section 12 (2) (d) in relation to the contributor; and
 - S represents the contributor's salary ratio as at the contributor's entry date calculated on the basis of the information in the certificate provided under section 12 (2) (d) in relation to the contributor.
- 25 (2) A contributor may, within the prescribed time after a review date (other than a review date that occurs less than 3 months after the contributor's first contribution date), lodge with the Board an election to vary the rate per cent of the contributor's salary to be paid to the Fund.
- (3) An election under subsection (2)—
- 30 (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
 - 35 (c) takes effect on the adjustment date that next succeeds that review date.

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(4) The contribution payable to the Fund by a contributor on and from each adjustment date commencing with the adjustment date that next succeeds the first review date that is not less than 3 months later than the contributor's first contribution date is the amount calculated in accordance with the formula—

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

where—

- 10 C represents the amount to be ascertained;
 R represents the rate per cent of salary at which the contributor has for the time being elected to contribute to the Fund;
 A represents the contributor's attributed salary as at the review date that last preceded the adjustment date in relation to which the calculation is made; and
 15 S represents the contributor's salary ratio as at that review date.

(5) Where the nature of the employment of a contributor changes from full-time to part-time or from part-time to full-time, or the amount of time worked part-time by a contributor changes, the amount of the contributor's contribution to the Fund in respect of the first complete superannuation period during which the change operates, and each succeeding superannuation period until varied in accordance with this Act, is the amount calculated by multiplying by the contributor's salary ratio at the commencement of the superannuation period the amount of the contribution that would be payable on the basis of the contributor's attributed salary last applicable for the purpose of calculating contributions to the Fund.

(6) Except as provided by subsection (5) or to the extent that the Board upon the application of a contributor otherwise directs, a reduction in the salary of the contributor below that upon which his or her contributions are based does not, until the adjustment date next after the review date that next succeeds the reduction, affect the amount of the contribution that the contributor is required to pay to the Fund.

(7) Except in the case of a contributor who applies for a direction of the Board under subsection (6), where a contributor's attributed salary is reduced as a consequence of the contributor's ill-health or in circumstances that are considered by the contributor to justify the application of this subsection and are approved by the Board, the contributor may apply to the Board in a form that—

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

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

5 (8) Where the Board approves an application by a contributor under subsection (7), the attributed salary of the contributor shall, for the purposes of this Act and notwithstanding any intervening review date, be deemed to be the same as the contributor's attributed salary immediately before the reduction until—

- 10 (a) the contributor's attributed salary is equal to or greater than his or her attributed salary immediately before the reduction; or
- (b) the Board's approval is revoked on the application of the contributor,

whichever first occurs.

15 (9) The result of a calculation of the amount of a contribution to be made under this section shall, where a number of cents included in the result is not an even number of whole cents, be rounded to the nearest higher number that is an even whole number of cents.

Contributions during leave without pay.

20 17. (1) In this section—

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

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

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

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

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-
- (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;
 - 5 (d) pursuant to an agreement with the employer for the secondment of the contributor to employment that is not employment with an employer;
 - 10 (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;
 - 15 (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—

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

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

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

*State Public Service Superannuation 1985***Resumption of contributions after break in employment.**

18. (1) This section applies to a contributor where—

- 5 (a) the employment of the contributor with an employer ceases in circumstances entitling the contributor to be paid a benefit under section 32 (benefit on resignation, dismissal or discharge before age 55) but the contributor does not provide for a preserved benefit;
- 10 (b) not later than the expiration of the period of 3 months that next succeeds that cessation of employment, the contributor again commences employment as an employee;
- (c) the contributor makes an election under section 12 that takes effect as provided by section 12 (4) (b); and
- 15 (d) if the contributor has been paid a benefit as a consequence of the cessation of employment—the amount of the benefit has been repaid to the Fund with interest as provided by subsection (2).

(2) Interest referred to in subsection (1) (d) is payable at a rate specified by the Board on so much of the benefit so referred to as was not represented by the contributor's component and is so payable from the time of the payment of the benefit to the contributor to the time of its repayment to
20 the Fund.

(3) A contributor to whom this section applies shall be deemed, on the cessation of employment referred to in subsection (1), to have provided under section 34 for a preserved benefit.

Resumption of contributions after preservation of benefit.

25 19. Where—

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

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

Deduction of contributions from salary.

20. (1) From each payment of a contributor's salary an employer shall deduct an amount sufficient to pay the contributions that the contributor is liable to make to the Fund and shall, within the prescribed time, pay the
5 amount deducted to the Board.

(2) An amount deducted and paid to the Board under subsection (1) (whether or not it is so paid within the prescribed time) shall be deemed to have been paid to the Fund by the contributor from whose salary the deduction was made.

10 (3) An employer shall, if the Board so directs in a particular case, pay interest in accordance with section 58 on any amount required to be deducted by the employer under subsection (1) that is not paid to the Board within the prescribed time, and the amount of any interest paid by an employer in relation to a contributor is not chargeable by the employer
15 against the contributor.

(4) Where a change occurs in the amount deducted from a contributor's salary in respect of a superannuation period, the contributor's employer shall, within the prescribed time, provide the Board in writing with the prescribed information relating to the change.

20 (5) The amount of any overpayment of contributions to the Fund by a contributor shall—

(a) if it exceeds the prescribed amount—be refunded by the Board to the contributor; or

25 (b) if it does not exceed the prescribed amount—be credited by the Board to the contributor's account.

(6) Where contributions are paid to the Fund at a rate in excess of the rate at which the contributor has for the time being elected to contribute to the Fund, the excess shall be disregarded for the purpose of calculating the contributor's contributed points figure under Part V.

30 Arrears of contributions.

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

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(2) Where a contributor—

- (a) fails to comply with a requirement under subsection (1) to enter into an arrangement referred to in that subsection; or
- (b) having entered into such an arrangement, fails to comply with its terms,

the Board may direct that any superannuation period in respect of which any such arrears are outstanding is not an applicable superannuation period for the contributor.

PART IV.

CONTRIBUTIONS BY EMPLOYERS.

Contribution rates and times.

22. (1) An employer shall pay to the Fund in accordance with subsection (2) an amount equal to one-half of the amount of the contributions paid to the Fund by contributors employed by the employer.

(2) The times at which contributions under subsection (1) are payable, and the basis on which the amount of each contribution is to be calculated, shall be as decided by the Board.

(3) Where a benefit becomes payable to, or in relation to, a contributor, the employer or employers, as the case may be, who employed the contributor between entry date and exit date shall pay to the Board within a time notified by the Board so much of the employer-financed benefit payable as, in the opinion of the Board, is not provided for by way of contributions under subsection (1), the amount payable by each employer where there was more than one employer being calculated as prescribed.

(4) A reference in subsection (3) to the employer-financed benefit in relation to a contributor is a reference to—

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

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

*State Public Service Superannuation 1985***Costs of administration.**

23. An employer shall, at times notified by the Board, pay to the Fund such amounts referred to in section 9 (1) (a) (ii) as are decided by the Board.

Secondment of employee otherwise than to employer.

5 24. (1) The Governor may, by order in writing made under section 6 (8) or by a different order, declare unconditionally or subject to conditions that subsection (2) applies—

- (a) to a contributor specified in the order who is on secondment but not to another employer; and
- 10 (b) generally during the period of that secondment, or during such period as is specified in the order being, in either case, a period commencing before, on or after the date of the order.

(2) During the period in which this subsection is declared pursuant to subsection (1) to apply to a contributor, the employer specified in the
15 declaration shall be deemed to be the employer from whose employment the contributor is seconded.

PART V.**BENEFITS.****Interpretation.**

20 25. (1) For the purposes of this Act—

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

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

“adjusted length”, in relation to a contributor’s membership period, means the adjusted length of the membership period ascertained
30 as provided by section 26;

“applicable superannuation period”, in relation to a contributor, means a superannuation period that occurs during the period that commences on the contributor’s first contribution date and ends on the contributor’s final contribution date, except where—

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(a) a direction by the Board under section 21 (arrears of contributions) is in force in relation to the superannuation period; or

5 (b) the contributor was not liable to contribute to the Fund in respect of the superannuation period by reason that it occurred during leave without pay or between a cessation and resumption of employment with an employer;

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

10 (a) 6 per cent; and

(b) the rate per cent calculated in accordance with the formula—

15
$$R = \frac{G}{N}$$

where—

R represents the rate per cent to be ascertained;

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

N represents the number of those applicable superannuation periods;

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

30
$$F = \frac{K \times R}{26}$$

where—

F represents the figure to be ascertained;

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

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

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“contributor’s component”, in relation to a benefit payable to, or in relation to, a contributor, means the amount certified by the Board as the balance at credit in the contributor’s account at the time the benefit is paid;

5 “employer’s component”, in relation to a benefit payable to, or in relation to, a contributor, means the amount calculated in accordance with the formula—

$$E = S \times A \times 0.03$$

where—

10 E represents the amount to be ascertained;
S represents the final salary of the contributor; and
A represents the accrued benefit points for the contributor at the contributor’s exit date;

15 “final salary”, in relation to a contributor, means the amount calculated as provided by section 27;

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

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

35 “membership period”, in relation to a contributor, means the period that commenced on the contributor’s entry date and ended on the

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contributor's exit date, any period during which the contributor provided for preservation of a benefit being disregarded;

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

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

$$P = \frac{C \times R \times H}{26}$$

where—

- 10 P represents the number to be ascertained;
- C represents the contributor's average contribution rate per cent;
- R represents the salary ratio applicable to the contributor at the contributor's exit date; and
- 15 H represents the number of complete superannuation periods that would occur during the period that commences immediately after the contributor's final contribution date and ends immediately before the 55th anniversary of the contributor's
- 20 birth; or
- (b) if it is a lesser number than that calculated under paragraph (a)—the number that, when added to the number of the contributor's accrued benefit points at the exit date, would produce a number equal to the maximum benefit points that would have been attributable to the contributor if contributions had continued at the contributor's average contribution rate per cent, the salary ratio had remained constant until the exit date and the exit date had immediately preceded the 55th anniversary of the
- 25 contributor's birth;
- 30

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

$$L = S \times P \times 0.04$$

where—

- 35 L represents the amount to be ascertained;
- S represents the final salary for the contributor; and

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

(2) For the purposes of the definition of "maximum benefit points" in subsection (1), the number prescribed by this subsection in relation to a contributor is—

- (a) where the contributor has not attained the age of 55 years—the number ascertained by multiplying by 6 the adjusted length of the contributor's membership period;
- (b) where the contributor has attained the age of 55 years but has not attained the age of 60 years—the sum of—
 - (i) the maximum benefit points ascertained in relation to the contributor as if the contributor's exit date had immediately preceded the contributor's attainment of the age of 55 years; and
 - (ii) the number ascertained by multiplying by 0.5 the number of completed months that have elapsed since the contributor attained the age of 55 years; or
- (c) where the contributor is of or over the age of 60 years—the sum of—
 - (i) the maximum benefit points ascertained in relation to the contributor as if the contributor's exit date had immediately preceded the contributor's attainment of the age of 55 years; and
 - (ii) 30.

(3) For the purposes of this Part, the length of a period shall be expressed—

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

Adjustment of length of membership period.

26. (1) In this section—

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“distinct period”, in relation to a contributor’s membership period, means a part of the membership period during which the contributor’s salary ratio remained constant;

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

(2) For the purposes of this Act, the adjusted length of a contributor’s membership period is—

10 (a) where the contributor’s salary ratio remained constant throughout the contributor’s membership period—the length of the contributor’s membership period multiplied by that salary ratio; or

15 (b) where the contributor’s salary ratio did not remain constant throughout the contributor’s membership period—the length of the period ascertained by adding together the notional lengths of the distinct periods that made up the membership period.

Final salary.

27. (1) In this section—

“base date”, in relation to a contributor, means—

20 (a) where, during the period of 3 years that last preceded the contributor’s exit date, the contributor was continuously a contributor in the employment of an employer—the date that preceded the exit date by 3 years;

25 (b) where, during the period of 3 years that last preceded the contributor’s exit date, the contributor ceased to be a contributor, and subsequently again became a contributor—the date of the last or only resumption as a contributor; or

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

30 “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 Commonwealth Statistician under the Census and Statistics Act 1905 of the Parliament of the Commonwealth;

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

5 “quarter” means a period of 3 months commencing on 1st January, 1st April, 1st July or 1st October;

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

10
$$Q = \frac{M}{3}$$

where—

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

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

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

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

25 (b) the amount calculated in accordance with the formula—

$$N = B \times \frac{C}{D}$$

where—

N represents the amount to be ascertained;

30 B represents the amount of the attributed salary of the contributor applicable as at the contributor’s base date;

C represents the index number for the last quarter for the contributor; and

D represents the relevant index number for the contributor.

Benefit on retirement or death at or after age 55.

35 28. (1) The benefit provided by this section is payable by the Board where, immediately before, or on or at any time after, attaining the age of

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55 years, a contributor retires from, or dies during, employment with an employer and is so payable—

(a) where the benefit becomes payable on retirement of the contributor—to the contributor; or

5 (b) where the benefit becomes payable on the death of the contributor—to the personal representatives of the contributor or, if appropriate, in accordance with section 57 (payment without grant of probate, etc.).

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

(a) the amount of the contributor's component; and

(b) the amount of the employer's component.

Benefit on death before age 55.

15 29. (1) The benefit provided by this section is payable by the Board where a contributor dies before attaining the age of 55 years during employment with an employer and is so payable to the personal representative of the contributor or, if appropriate, in accordance with section 57 (payment without grant of probate, etc.).

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

(a) the amount of the contributor's component;

(b) the amount of the employer's component; and

(c) where the contributor was, at the date of death, covered for the supplementary benefit—the amount of the supplementary benefit.

25 Benefit on total and permanent invalidity before age 55.

30 30. (1) The benefit provided by this section is payable by the Board to a contributor who is covered for the supplementary benefit where—

(a) before attaining the age of 55 years, the contributor is retired from employment with an employer;

30 (b) the employer certifies to the Board that the contributor was retired on the ground of physical or mental incapacity to perform his or her duties; and

(c) the Board is satisfied, after taking into account any medical opinion that it considers to be relevant, that the contributor is,

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and until attaining the age of 55 years will continue to be, physically or mentally incapable of performing the duties of any employment with an employer that, in the opinion of the Board, it would be reasonable for the contributor to undertake.

- 5 (2) The benefit provided by this section is an amount equal to the sum of—
- (a) the amount of the contributor's component;
 - (b) the amount of the employer's component; and
 - (c) the amount of the supplementary benefit.

- 10 (3) Where the Board is not satisfied as referred to in subsection (1) (c), the contributor is entitled to the benefit provided by section 31.

(4) A contributor entitled to payment of a benefit under this section is not entitled to payment of any other benefit under this Act.

Benefit on partial and permanent invalidity before age 55.

- 15 31. (1) The benefit provided by this section is payable by the Board to a contributor where—
- (a) before attaining the age of 55 years, the contributor is retired from employment with an employer; and
 - 20 (b) the employer certifies to the Board that the contributor was retired on the ground of physical or mental incapacity to perform his or her duties.

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

- (a) the amount of the contributor's component; and
- 25 (b) the amount of the employer's component.

Benefit on resignation, dismissal or discharge before age 55.

- 30 32. (1) The benefit provided by this section is payable by the Board to a contributor where, before attaining the age of 55 years, the contributor resigns, or is dismissed or discharged, from employment with an employer and no other benefit is payable under this Act.

(2) The benefit provided by this section for a contributor with a membership period of 10 years or more is the sum of—

- (a) the amount of the contributor's component; and

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

$$W = V \times T \times \frac{A}{Y} \times 0.025$$

5 where—

W represents the amount to be ascertained;

V represents the length of the contributor's membership period;

T represents the amount of the contributor's component;

10 A represents the contributor's accrued benefit points at the contributor's exit date; and

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

(3) The benefit provided by this section for a contributor with a membership period of less than 10 years is the amount of the contributor's component.

Benefit on retrenchment before age 55.

20 33. (1) The benefit provided by this section is payable by the Board to a contributor where, before attaining the age of 55 years, the contributor is retrenched by his or her employer and no other benefit is payable under this Act.

(2) The benefit provided by this section for a contributor with a 25 membership period of 10 years or more is an amount equal to the sum of—

(a) the contributor's component; and

(b) the employer's component.

30 (3) The benefit provided by this section for a contributor with a membership period of less than 10 years is the benefit payable under section 32 (3).

Preserved benefit.

35 34. (1) A contributor who became entitled not less than 3 years after his or her entry date to be paid a benefit under section 32 (benefit on resignation, dismissal or discharge before age 55) may elect to make provision instead for a benefit provided by this section.

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(2) Where an election made by a contributor under subsection (1) takes effect, a benefit is not payable to, or in relation to, the contributor under any provision of this Act other than this section.

(3) The benefit provided by subsection (5) is payable by the Board upon the contributor attaining the age of 55 years or earlier suffering death or, in the case of a contributor covered for the supplementary benefit, upon the Board being satisfied as referred to in section 30 (1) (c) and is so payable—

- (a) except in the case of the death of the contributor—to the contributor; or
- (b) in the case of the death of the contributor—to the personal representatives of the contributor or, if appropriate, in accordance with section 57 (payment without grant of probate, etc.).

(4) The benefit provided by subsection (6) is payable by the Board to the contributor upon the contributor electing to take that benefit and the election taking effect—

- (a) after the election made under subsection (1) takes effect; and
- (b) before the benefit provided by subsection (5) becomes payable to, or in relation to, the contributor.

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

- (a) the amount of the contributor's component at exit date; and
- (b) the amount calculated in accordance with the formula—

$$E = S \times A \times 0.03 \times Z$$

where—

- E represents the amount to be ascertained;
- S represents the final salary of the contributor;
- A represents the contributor's accrued benefit points at exit date; and
- Z represents the figure calculated by raising 0.98 to a power the magnitude of which is the number obtained by deducting from 55 the contributor's age at exit date expressed in years, any fractional part of a year being calculated on a daily basis,

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

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

- 5 (a) the amount of the benefit under section 32 (benefit on resignation, dismissal or discharge before age 55) that would have been payable to the contributor at the contributor's exit date if the contributor had not made the election under subsection (1); and
- 10 (b) interest as provided by section 10 from the contributor's exit date to the date of payment.

Application for payment or preservation of benefit.

35. (1) An application for payment of a benefit to or in relation to, a contributor or for preservation of a benefit under section 34 shall be made in writing in a form approved by the Board for the purpose, shall be signed 15 by the applicant and shall be accompanied by—

- 20 (a) except in the case of a benefit payable under section 34—a certificate by the contributor's employer at the contributor's exit date, specifying the exit date and the manner of cessation of the contributor's employment and such other particulars as may be prescribed; and
- (b) such other documents as may be prescribed.

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

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

PART VI.

THE STATE PUBLIC SERVICE SUPPERANNUATION BOARD.

The Board.

36. (1) There is hereby constituted a corporation with the corporate name 30 "State Public Service Superannuation Board".

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(2) The Board shall consist of—

- (a) the President of the Board, who shall be the person for the time being holding or acting in the office of President of the State Superannuation Board;
- 5 (b) the Vice-President of the Board, who shall be the person for the time being holding or acting in the office of Vice-President of the State Superannuation Board;
- (c) the actuary member of the Board, who shall be the person for the time being holding or acting in the office of actuary member of
10 the State Superannuation Board; and
- (d) 2 elected members, being a full-time elected member and a part-time elected member, each of whom is elected, and assumes office, in accordance with this Act.

(3) The President is the chief executive officer of the Board.

15 (4) Schedule 1 has effect with respect to elections and the elected members.

(5) Schedule 2 has effect with respect to the procedure of the Board.

Public Service staff.

20 37. (1) Such staff as may be necessary to enable the Board to exercise its functions shall be employed under the Public Service Act, 1979.

(2) The functions for the exercise of which staff may be employed pursuant to section 82 of the Superannuation Act, 1916, may include the functions of the Board constituted by this Act.

25 (3) A member of the staff of the State Superannuation Board is, while exercising a function for the purposes of this Act, a member of the staff of the Board constituted by this Act.

Property management staff.

38. (1) The Board may appoint and employ persons for the purpose of managing or maintaining real property in which the Board has an interest.

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(2) A person employed under this section shall, subject to the terms of his or her appointment, continue in the service of the Board at the will of the Board only.

(3) A person employed under this section shall be subject to the sole control and governance of the Board which may fix wages and conditions of employment where they are not otherwise fixed in accordance with law.

(4) The Public Service Act, 1979, does not apply to or in respect of the appointment and employment of a person under this section, and such a person is not subject to the provisions of that Act while so employed.

10 (5) The purpose for which persons may be employed under section 82A of the Superannuation Act, 1916, may include the purpose referred to in subsection (1) and such a person shall, while employed in managing or maintaining real property as so referred to, be deemed to be employed under this section by the Board.

15 Employment of agents.

39. 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.

Delegation.

20 40. (1) The Board may, by instrument in writing, delegate to—

- (a) a member of the Board;
- (b) the person for the time being holding or acting in a specified office that is the office of a member of the Board; or
- (c) a member of the staff of the Board or of the State Superannuation Board,

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such of the functions of the Board (other than this power of delegation) as are specified in the instrument.

(2) A function the exercise of which has been delegated under this section may, while the delegation remains unrevoked, be exercised from time to time by the delegate in accordance with the terms of the delegation.

30

(3) A delegation under this section may be made subject to such conditions or limitations as to the exercise of any function the subject thereof, or as to time or circumstance, as may be specified in the instrument of delegation.

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(4) Notwithstanding any delegation under this section, the Board may continue to exercise any function delegated.

(5) Any act or thing done or suffered by a delegate acting in the exercise of a delegation under this section has the same force and effect as it would
5 have if it had been done or suffered by the Board and shall be deemed to have been done or suffered by the Board.

(6) The Board may, by instrument in writing, revoke wholly or in part any delegation under this section.

(7) An instrument purporting to have been signed by a person in the
10 capacity of a delegate of the Board shall, in all courts and before all persons acting judicially, be received in evidence as if it were an instrument duly executed by the Board and shall, unless the contrary is proved, be deemed to be an instrument signed by a delegate of the Board.

Relationship between powers of the Board and powers of trustees.

15 41. (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,
20 1925, or any other law relating to trusts or trustees, those powers are not so restricted.

(3) Nothing in this section—

(a) constitutes the Board a trustee of the Fund; or

(b) implies that the Board is a trustee of the Fund.

25 Member of Board or its staff may be director of company.

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

(2) Where property is vested in the Board and a company has been
30 formed to manage the property (whether with or without other property) the Board may take such action as may be necessary to qualify it to nominate a person for appointment as a director of the company.

Acts and proceedings of the Board.

43. (1) In this section, “prescribed person” means—

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- (a) a person who is, or acts as, a member of the Board and the State Superannuation Board;
- (b) a person who is, or acts as, a member of the staff of the Board and of the State Superannuation Board;
- 5 (c) a person who is, or acts as, a member of the property management staff of the Board and of the State Superannuation Board; or
- (d) a person who is an agent of the Board and of the State Superannuation Board.
- (2) A decision made, or any act or thing done or suffered, by the Board or a prescribed person in the exercise of a function conferred on the Board or the prescribed person by this Act shall not be called in question on the ground of an alleged conflict of interest by reason that a prescribed person is, or acts as, a member of both the Board and the State Superannuation Board or is, or acts as, a member of the staff or an agent, of both the Board and the State Superannuation Board or on the ground that knowledge gained by such a person in one of those capacities is, or may be, relevant to the exercise of a function in the other of those capacities.

(3) A decision made, or any act or thing done or suffered, by the Board in the exercise of a function conferred on it by this Act is not invalidated or prejudiced by reason that, at the time the decision was made or the act done or commenced, there was a vacancy in the office of a member of the Board.

(4) No decision made, or act done, by the Board, a member of the Board or a person acting under the direction of the Board, bona fide for the purposes of this Act subjects a member, or a person so acting, to any action, liability, claim or demand.

Disclosure of pecuniary interests.

44. (1) A member of the Board who has a direct or indirect pecuniary interest—
- 30 (a) in a matter that is being considered, or is about to be considered, at a meeting of the Board; or
- (b) in a thing being done or about to be done by the Board,
- shall, 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.

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(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;
- 5 (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 a specified person,

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

(3) The Board shall cause particulars of any disclosure made under subsection (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Board from time to
15 time.

(4) After a member of the Board has, or is deemed to have, disclosed the nature of an interest in any matter or thing pursuant to subsection (1) or (2), the member shall not, unless the Minister otherwise determines—

- 20 (a) be present during any deliberation of the Board, or take part in any decision of the Board, with respect to that matter; or
 - (b) exercise any functions under this Act with respect to that thing,
- as the case may require.

(5) Notwithstanding that a member of the Board contravenes the provisions of this section, that contravention does not invalidate any
25 decision of the Board or the exercise of any function under this Act.

(6) Nothing in this section applies to or in respect of an interest of a member of the Board in a matter or thing which arises by reason only that the member is a contributor to a superannuation scheme administered or managed by the Board.

30 (7) A reference in this section to a meeting of the Board includes a reference to a meeting of a committee of the Board.

Financial year.

45. The financial year of the Board shall be—

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- (a) where no period is prescribed as referred to in paragraph (b)—the year commencing on 1st July; or
- (b) the period prescribed for the purposes of this section.

Management costs.

5 **46. (1)** There shall be transferred to the Management Account established under section 9 from the income from investment of the Fund the management costs incurred in investing the Fund and managing the investments.

10 **(2)** Management costs relating to the administration of this Act (other than costs referred to in subsection (1)) shall be paid to the Management Account by employers and contributors and shall be so paid that—

- (a) an employer pays the prescribed multiple of the amount paid by contributors employed by the employer; and
- 15 (b) each employer pays a proportion of those costs according to the number of contributors employed by the employer.

Borrowing powers of the Board.

47. (1) The Treasurer may, on the application of the Board and on such terms and conditions as the Treasurer thinks fit, lend money to the Board.

20 **(2)** The Board may, for the purpose of obtaining financial accommodation, borrow by way of overdraft from any bank, but the total amount owing at any time on money so borrowed shall not exceed \$6,000,000.

Service of documents.

25 **48. (1)** A document may be served on the Board by leaving it at, or by sending it by post to, the office of the Board.

(2) Subsection (1) does not affect the operation of any law or rule of court that authorises service of a document on the Board in a manner not provided by subsection (1).

Authentication of documents.

30 **49.** Any summons, process, demand, order, notice, statement, direction or document requiring authentication by the Board may be sufficiently authenticated without the seal of the Board if signed by a member of the Board or a member of the staff of the Board authorised to do so by the Board.

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Proof of certain matters not required.

50. In any legal proceedings, unless evidence to the contrary is given, proof is not required of—

- (a) the constitution of the Board;
 - 5 (b) a resolution, decision or determination of the Board;
 - (c) the appointment of, or the holding of office by, a member; or
 - (d) the presence, or the nature of, a quorum at a meeting of the Board.
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PART VII.

10

MISCELLANEOUS.

Employers and employees.

51. (1) The Governor may, by order published in the Gazette—
- (a) amend Schedule 3 by inserting therein the name of an organisation or corporation;
 - 15 (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;
 - 20 (d) amend Schedule 3 by omitting therefrom the name of an employer that has ceased to exist but is not an employer referred to in paragraph (c); or
 - 25 (e) amend Schedule 4.
- (2) An order under subsection (1), and any order revoking or varying such an order, may be made—
- (a) to take effect on and from a day specified in the order, whether or not the day specified is earlier than the day of publication of the order; and
 - 30

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- (b) to effect the amendment to which it relates with such limitations as are specified in the amendment, being limitations that do not operate to the prejudice of any existing contributor or any person having rights under this Act.

5 Employer to provide information.

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

- 10 (2) Where an employer fails to comply with subsection (1) in relation to an employee or contributor, the Board may—

(a) refuse an application by an employee to be covered for the supplementary benefit if the information sought is relevant to such an application; or

- 15 (b) defer payment of a benefit to, or in relation to, a contributor where the information sought is relevant to the right to receive the benefit or to the amount of the benefit.

Employee or contributor to provide information.

- 20 53. (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

- 25 (b) misleading by reason of the omission from the statement of matter that is material and of which the person making the statement has, or at any time had, knowledge.

(2) The Board may require an employee or a claimant for payment of a benefit under this Act—

(a) to provide the Board with specified information or evidence referred to in subsection (3);

- 30 (b) to provide the Board with an authority to obtain from a third person any such information or evidence; or

(c) in the case of a claimant for payment of a benefit under section 30—to undergo a medical examination.

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(3) A requirement under subsection (2) may be made only in relation to a medical examination or—

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

10 (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
- 15 (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,

20 the Board may—

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

30 **Making of elections and applications.**

54. (1) An election or application under this Act—

- (a) shall be in writing signed by the person entitled to make the election or application;
- 35 (b) subject to subsection (2), is not validly made unless it is received in the office of the Board—

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- (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
- 5 (ii) in any other case—not later than the expiration of the period of 2 months that next succeeds the time at which the right to make the election or application arises;
- (c) takes effect—
- 10 (i) where, by or under this Act (subparagraph (ii) excepted), a day is specifically prescribed for the taking effect of an election of the same class—on that day; or
- (ii) in any other case—on a day determined by the Board, being a day that is not earlier than the day of receipt of the election or application in the office of the Board; and
- 15 (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
- 20 (ii) in the case of revocation of an election—a condition as to the day on which the revocation takes effect.

(2) Where an election or application is not received in the office of the Board within the time prescribed by subsection (1) (b) for the election or
25 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.

30 Assignment, etc., of benefit.

55. (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
35 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.

*State Public Service Superannuation 1985***Accounts and records.**

56. The Board may maintain its accounts and other records in or upon any medium, or combination of mediums, capable of having information recorded therein or thereon and may, from time to time, vary the manner or form in which the accounts or other records are maintained.

Payment without grant of probate, etc.

57. (1) Where a contributor dies and—

- (a) a benefit thereby becomes payable from the Fund;
- 10 (b) production to the Board of probate of the will, or letters of administration of the estate, has not been arranged; and
- (c) the Board has not, within the period of 3 months that next succeeds the death of the contributor, received notice of intention to apply for a grant of probate of the will, or letters of administration of the estate, of the deceased,

15 the Board may, if it so decides, make a payment of the whole or a 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.

20 (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 the Family Provision Act, 1982;
- 25 (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 a 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.

30 Recovery of money owing to Fund.

58. (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 (2)—

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- (a) except in the case of unpaid contributions—as a debt in a court of competent jurisdiction;
- 5 (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.

10 (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.

15 (3) Unless, in special circumstances and in a particular case, payment thereof is waived by the Board, interest at a rate from time to time determined by the Minister on the recommendation of the Board is payable on any amount owing to the Fund calculated from the date on which the amount became due for payment until the date on which the amount is recovered under subsection (1) or is otherwise paid.

20 Appeals.

59. (1) Subject to this section, a dispute under this Act shall be determined by the Board.

25 (2) A person aggrieved by a decision of the Board under subsection (1) may, within a period of 6 months from the date of the decision, appeal to the Minister, who shall thereupon refer the matter for opinion to a Judge of the Supreme Court, and shall decide the matter in accordance with that opinion.

30 (3) The Board or a Judge of the Supreme Court may, in determining a dispute, or forming an opinion, as referred to in subsections (1) and (2), inform itself, himself or herself of any matter in such manner as the Board or Judge thinks fit and, in so doing, is not bound to observe rules of law relating to evidence.

(4) A decision of the Minister under subsection (2) is final and conclusive and not subject to appeal.

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Foreign contributors.

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

5 Regulations.

61. (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.

10 (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

15 (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.

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SCHEDULE 1.

(Sec. 36.)

PROVISIONS RELATING TO ELECTIONS AND ELECTED MEMBERS.

Elections.

- 5 1. (1) The Superannuation (Board Elections) Regulation, 1984, made under the Superannuation Act, 1916, applies, with such modifications as are prescribed, to and in respect of the election of the elected members.
- (2) The Regulation referred to in subclause (1), modified as so referred to, is a regulation made for the purposes of this Act.

10 **Time for holding elections.**

2. (1) The elections for the 2 elected members shall be held concurrently within the period of 6 months that last precedes expiration of the term of office of the persons for the time being holding office as elected members or, if both offices become vacant before the elections are held, as soon as practicable after the offices become vacant.
- 15 (2) For the purposes of subclause (1), an office shall be deemed to be vacant notwithstanding an appointment to fill a casual vacancy in the office.

Nominations.

3. A nomination of a person for election as an elected member is invalid if—
- 20 (a) it is not made jointly by at least 30 contributors other than the nominee;
- (b) the nominee is not, at the time of nomination, both a contributor and a member of a union;
- (c) the nominee does not consent in writing to the nomination;
- (d) the nominee does not, in the prescribed form and manner—
- 25 (i) where the nominee is not a member of more than one union—specify that union for the purposes of the election; or
- (ii) where the nominee is a member of more than one union—specify one of those unions as the preferred union for the purposes of the election; or
- 30 (e) the nominee has consented, or consents, to nomination for election as the other elected member.

Result of elections.

4. (1) Where, at concurrent elections, each position of elected member would, but for this subclause, be filled by a candidate who, in accordance with the regulations, nominated the same union as the other candidate—
- 35 (a) only the candidate nominated for election as full-time member shall be declared elected; and
- (b) the candidate for the position of part-time elected member who has the next highest number of votes (as determined in accordance with the regulations) shall be declared elected as the part-time elected member.
- 40 (2) At concurrent elections, the persons elected shall be declared elected on the same day.

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SCHEDULE 1—*continued.*

PROVISIONS RELATING TO ELECTIONS AND ELECTED MEMBERS—*continued.*

5 (3) The returning officer for an election may require a candidate at the election to make a statutory declaration in relation to any prescribed matters relating to the election or its conduct before the returning officer declares the result of the election, and the returning officer is entitled to rely on the information in the statutory declaration.

(4) If a candidate—

(a) fails, within the prescribed period, to make a statutory declaration when required pursuant to subclause (3) so to do; and

10 (b) would, but for this subclause, be entitled to be declared elected,

the candidate shall be deemed to have been ineligible for election.

(5) Where a candidate is, pursuant to subclause (4), deemed to have been ineligible for election, the candidate who has the next highest number of votes (as determined in accordance with the regulations) shall, unless ineligible for election, be declared to be
15 elected.

Saving of election.

5. (1) Nothing in this Act—

(a) invalidates an election that, because no candidate was nominated, was not held concurrently with another election; or

20 (b) prevents the assumption of office by only one elected member.

(2) Where only one elected member assumes office, there shall be deemed to be a casual vacancy in the office of the other elected member.

Assumption of office.

25 6. (1) At concurrent elections, a person declared elected shall assume office on the same day as the other person declared elected, that day being determined as provided by subclause (2).

(2) The day on which a person declared elected assumes office is—

(a) except as provided by paragraph (b)—the day that is one month after—

30 (i) the expiration of the term of office of the persons elected at the last preceding election; or

(ii) if both offices are vacant on the day on which the declaration is made—the day of the declaration; or

35 (b) if the Minister so directs—on a day specified by the Minister, being a day that is not earlier than the day of the declaration but is earlier than the day prescribed by paragraph (a).

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SCHEDULE 1—*continued.*

PROVISIONS RELATING TO ELECTIONS AND ELECTED MEMBERS—*continued.*

Age of elected member.

7. A person who is of or above the age of 60 years is not eligible for election as an
5 elected member or to act in the office of elected member.

Term of office.

8. (1) An elected member holds office for a term of 3 years and, if otherwise qualified,
is eligible for re-election.

(2) The full-time elected member shall devote the whole of his or her time to the duties
10 of that office.

(3) Where, by or under any other Act, provision is made requiring a person who is
the holder of an office specified therein to devote the whole of his or her time to the
duties of that office, or prohibiting the person from engaging in employment outside the
duties of that office, the provision does not operate to disqualify the person from holding
15 that office and also the office of part-time elected member or from accepting and retaining
any remuneration payable to the person under this Act as the part-time elected member.

Employment of full-time elected member.

9. (1) The full-time elected member shall, upon assuming office, be deemed to be an
employee within the meaning of this Act and shall cease to be an employee in any other
20 capacity.

(2) Notwithstanding the provisions of any other Act, where the full-time elected
member ceases to hold the office by reason of—

- (a) the expiration of his or her term of office; or
- (b) his or her resignation from office,

25 he or she is, if under the age of 60 years, entitled to be appointed, as from the time of
ceasing to hold the office, to some position in the service of the employer by whom the
member was employed immediately before assumption of the office, being a position not
lower in classification and salary than that held immediately before assumption of the
office.

30 Remuneration.

10. (1) The full-time elected member is entitled to be paid—

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration
Act, 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to
35 time determine in respect of the member.

(2) The part-time elected member 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.

*State Public Service Superannuation 1985*SCHEDULE 1—*continued.*PROVISIONS RELATING TO ELECTIONS AND ELECTED MEMBERS—*continued.***Deputy elected members.**

5 11. (1) The Minister may appoint a deputy to act in the place of an elected member during any illness, suspension or absence of the member and a deputy so appointed has, while acting for an elected member, the functions of the member.

(2) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a deputy to act in the place of a member, or as to the necessity or propriety of any appointment of a deputy.

10 (3) An act, matter or thing done or omitted to be done by a deputy when acting in the place of a member is as valid and effectual, and has the same consequences, as if the act, matter or thing has been done or omitted to be done by the member in whose place the deputy is acting.

Casual vacancies.

15 12. (1) An elected member shall be deemed to have vacated the office of elected member if the member—

- (a) dies;
- (b) is the full-time elected member and is absent from duty for a period of 15 consecutive days except on leave granted by the Minister;
- 20 (c) is the part-time elected member and, except on leave granted by the Minister, is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to him personally or by post;
- (d) 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;
- 25 (e) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- 30 (f) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards, or is convicted in New South Wales or elsewhere of an offence which, if committed in New South Wales, would be an offence so punishable;
- (g) resigns the office by instrument in writing addressed to the Minister;
- (h) attains the age of 60 years;
- 35 (i) being the part-time elected member, ceases to be a contributor; or
- (j) is convicted of an offence of making a false statement in a statutory declaration referred to in clause 4 (3).

State Public Service Superannuation 1985

SCHEDULE 1—*continued.*

PROVISIONS RELATING TO ELECTIONS AND ELECTED MEMBERS—*continued.*

5 (2) Where, from any cause, a casual vacancy occurs in the office of an elected member, the Minister may appoint a contributor who has not attained the age of 60 years to fill the vacancy until—

- (a) the appointee's successor is elected and assumes office; or
- (b) the expiration of the term of office of the appointee's predecessor,

whichever first occurs.

10 (3) The Minister shall, before making an appointment under subclause (2), consult such persons, authorities, organisations and associations as the Minister thinks fit.

(4) A person appointed under subclause (2)—

(a) to fill a vacancy in the office of full-time elected member—shall hold office as, and shall be deemed to be, the full-time elected member; or

15 (b) to fill a vacancy in the office of part-time elected member—shall hold office as, and shall be deemed to be, the part-time elected member,

elected at the last preceding election for that office.

(5) Notwithstanding that a vacancy in office is filled in accordance with this clause, clauses 1 and 2 have effect as if the vacancy had not been filled.

Removal from office.

20 13. Section 74 of the Superannuation Act, 1916, applies to and in respect of the suspension and removal of an elected member from office in the same way as it applies to and in respect of the suspension and removal of a member of the State Superannuation Board.

SCHEDULE 2.

(Sec. 36 (5).)

PROVISIONS RELATING TO THE PROCEDURE OF THE BOARD.

General procedure.

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

30 **Quorum.**

2. At a meeting of the Board, 3 members (of whom one is the President or the Vice-President) constitute a quorum and any business transacted at a meeting at which a quorum is present is valid.

Equal voting.

35 3. The member presiding at a meeting of the Board has a deliberative vote and, where voting at a meeting of the Board is equal has, in addition, a casting vote.

*State Public Service Superannuation 1985*SCHEDULE 2—*continued.*PROVISIONS RELATING TO THE PROCEDURE OF THE BOARD—*continued.***Presiding member.**

- 5 4. The President or, in the absence of the President, the Vice-President, shall **preside** at a meeting of the Board.

Voting.

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

Minutes.

- 10 6. The Board shall cause full and accurate minutes to be kept at each meeting of the Board.

SCHEDULE 3.

(Sec. 5 (1).)

EMPLOYERS.

- 15 State Bank of New South Wales.
The Maritime Services Board of New South Wales.
The Water Resources Commission.
The Metropolitan Water Sewerage and Drainage Board.
The Hunter District Water Board.
- 20 The Board of Fire Commissioners of New South Wales.
Western Lands Commissioner.
The University of Sydney.
The Trustees of the Sydney Grammar School.
Australian Museum Trust.
- 25 The Commissioner for Main Roads.
The Electricity Commission of New South Wales.
The University of New England.
The University of New South Wales.
Grain Handling Authority of New South Wales.
- 30 The New South Wales Teachers' Federation.
Public Service Association of New South Wales.
The Macquarie University.
The University of Newcastle.
Mitchell College of Advanced Education.
- 35 New South Wales Institute of Technology.
Northern Rivers College of Advanced Education.

*State Public Service Superannuation 1985*SCHEDULE 3—*continued.*EMPLOYERS—*continued.*

- Newcastle College of Advanced Education.
 Cumberland College of Health Sciences.
- 5 Kuring-gai College of Advanced Education.
 The University of Wollongong.
 Nepean College of Advanced Education.
 Riverina College of Advanced Education.
 Joint Coal Board.
- 10 Hawkesbury Agricultural College.
 Macarthur Institute of Higher Education.
 Sydney College of the Arts.
 Armidale College of Advanced Education.
 Sydney College of Advanced Education.
- 15 Orange Agricultural College.

SCHEDULE 4.

(Sec. 3.)

EXCLUDED PERSONS.

General exclusions.

- 20 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;
- 25 (b) received a benefit under, or is in receipt of periodic payments under, such a superannuation scheme as a consequence of ill-health, not being a benefit or payments based on an elapsed period of membership;
- (c) is a person who was a contributor and received a benefit under this Act where prospective benefit points were a factor in the calculation of the amount of the benefit; or
- 30 (d) is a Judge within the meaning of the Judges' Pensions Act, 1953, or a master within the meaning of the Supreme Court Act, 1970, or is Solicitor General.

Disqualification of contributor.

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

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SCHEDULE 4—*continued.*

EXCLUDED PERSONS—*continued.*

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

SCHEDULE 5.

(Sec. 5 (1).)

SUPERANNUATION PERIODS.

Column 1.	Column 2.	Column 3.
Period No.	Commencing Date.	Terminating Date.
10	1st July	14th July
	2	28th July
	3	11th August
	4	25th August
15	5	8th September
	6	22nd September
	7	6th October
	8	20th October
	9	3rd November
20	10	17th November
	11	1st December
	12	15th December
	13	29th December
	14	12th January
25	15	26th January
	16	9th February
	17	23rd February
	18	9th March
	19	23rd March
30	20	6th April
	21	20th April
	22	4th May
	23	18th May
	24	1st June
35	25	15th June
	26	30th June

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SCHEDULE 6.

(Sec. 4.)

TRANSITIONAL PROVISIONS.

Board may exercise functions in anticipation.

- 5 1. The Board may, if it considers it to be necessary or convenient to do so for the purpose of preparing for the coming into operation of an uncommenced provision of this Act, exercise a function conferred on it by this Act that, but this clause, it could not exercise until after the commencement of the provision.

Elected members.

- 10 2. (1) Until members of the Board elected as provided by Schedule 1 assume office—
- (a) the person for the time being holding or acting in the office of full-time elected member of the State Superannuation Board shall hold or, as the case may be, act in, the office of full-time elected member of the State Public Service Superannuation Board;
- 15 (b) the person for the time being holding or acting in the office of part-time elected member of the State Superannuation Board shall hold or, as the case may be, act in, the office of part-time elected member of the State Public Service Superannuation Board;
- 20 (c) where the operation of a provision of Schedule 1 is conditional upon the time at which the last preceding elections referred to in that Schedule were held, the elections under the Superannuation Act, 1916, at which were elected the persons who, pursuant to this clause, were holding office, or acting, as members of the State Public Service Superannuation Board immediately before the commencement of the provision shall be deemed, for the purposes of the provision, to have been elections referred to in that Schedule;
- 25 (d) the reference in section 75 (1) (b) of the Superannuation Act, 1916, to "duty" includes a reference to duty under this Act that, by the operation of this Schedule, is imposed on the person referred to in paragraph (a); and
- 30 (e) the reference in section 75 (1) (b) of the Superannuation Act, 1916, to "four consecutive meetings" includes a reference to 4 consecutive meetings of the State Public Service Superannuation Board.

- (2) Schedule 1 does not apply to or in respect of persons referred to in subclause (1) (a) and (b).

Regulations.

- 35 3. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequential upon the enactment of this Act and the Superannuation (Scheme Closure) Amendment Act, 1985.

- (2) Without prejudice to the generality of subclause (1), regulations may be made for or with respect to the making and effect of an election to become a contributor under this Act by a person referred to in section 1A (2) (a) of the Superannuation Act, 1916, who, pursuant to regulations made under section 86 (1A) of the latter Act, also makes an election to become a contributor under the latter Act.
- 40

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SCHEDULE 6—*continued.*

TRANSITIONAL PROVISIONS—*continued.*

(3) A provision made under subclause (1) may be made to take effect on and from the date of assent to this Act or on and from a later date.

5 (4) To the extent to which a provision made under subclause (1) takes effect on and from a date that is later than the date of its publication in the Gazette, the provision does not operate—

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

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1985

**STATE PUBLIC SERVICE SUPERANNUATION ACT, 1985,
No. 45**

NEW SOUTH WALES.



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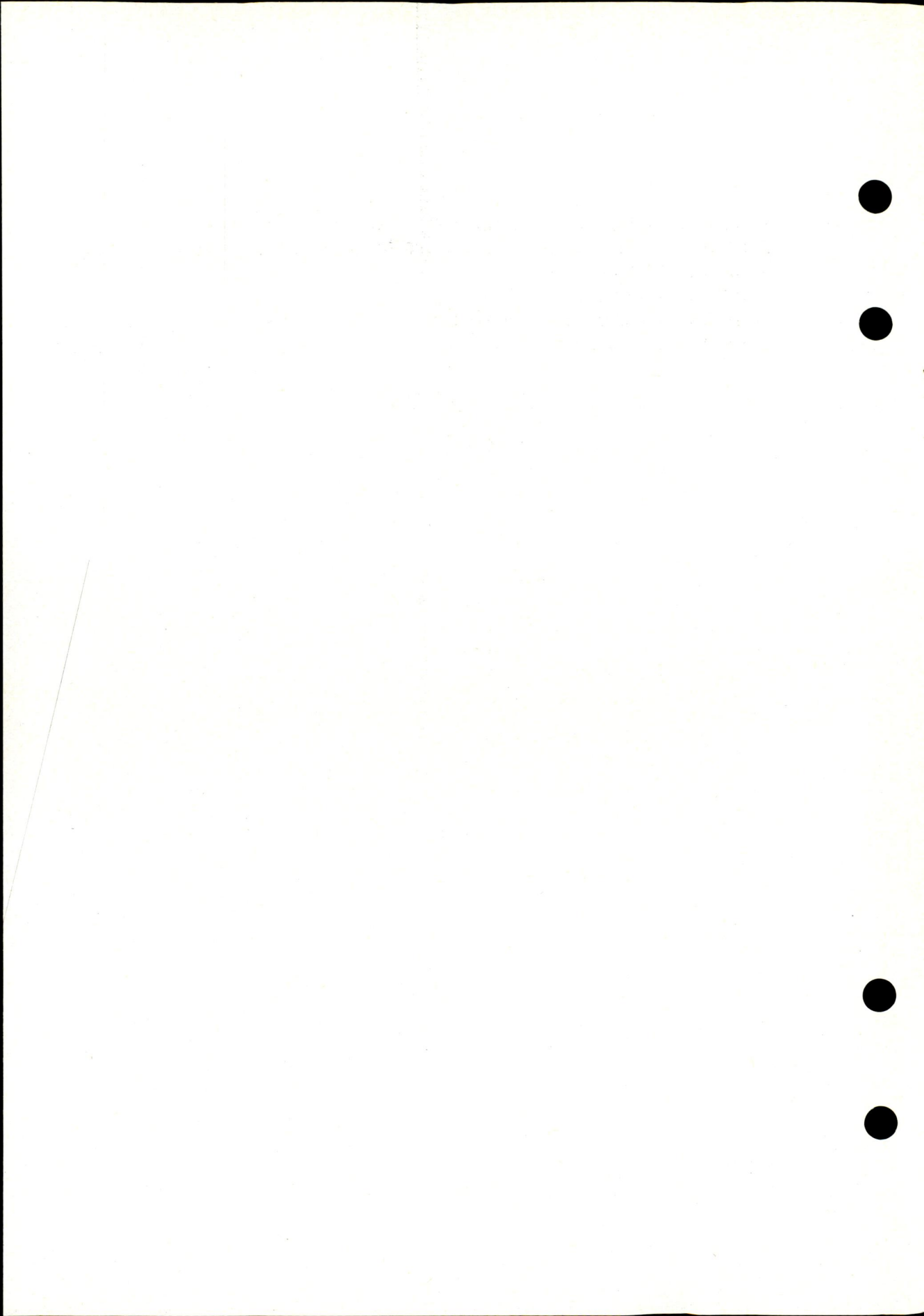
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**STATE PUBLIC SERVICE SUPERANNUATION ACT, 1985,
No. 45**

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* * * * *

Act No. 45, 1985.

An Act to constitute the State Public Service Superannuation Board and to establish and provide for the investment and administration of the State Public Service Superannuation Fund; to provide a superannuation scheme for certain employees of the Government and of certain other employees; and for other purposes. [Assented to, 30th April, 1985.]

See also Superannuation (Amendment) Act, 1985; Superannuation (Scheme Closure) Amendment Act, 1985; Public Finance and Audit (State Public Service Superannuation Board) Amendment Act, 1985; Statutory and Other Offices Remuneration (State Public Service Superannuation Board) Amendment Act, 1985.

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "State Public Service Superannuation Act, 1985".

Commencement.

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

(2) Section 36 (4) and Schedule 1 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) Except as provided by subsections (1) and (2), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Persons not subject to Act.

3. Schedule 4 has effect.

Transitional provisions.

4. Schedule 6 has effect.

Interpretation.

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

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

"administration levy" means the amount of a contributor's share of management costs referred to in section 46 (2);

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- “applicable superannuation period” has the meaning ascribed thereto in section 25;
- “appointed day” means the day appointed and notified under section 2 (3);
- “attributed salary”, in relation to a contributor at any time, means—
- (a) where the contributor is a full-time employee at that time—the salary of the contributor at that time; or
 - (b) where the contributor is a part-time employee at that time—the salary that would be payable to the contributor at that time if employed as a full-time employee,
- as certified by the contributor’s employer;
- “benefit” means benefit payable under this Act;
- “Board” means the State Public Service Superannuation Board constituted by this Act;
- “contributor” means an employee whose election to contribute to the Fund has taken effect;
- “contributor’s account” means the account established and maintained under section 9 (2) in respect of the contributor;
- “contributor’s component” has the meaning ascribed thereto in section 25;
- “elected member” means the full-time elected member or the part-time elected member;
- “employee” means a person (other than an excluded person referred to in Schedule 4) who is employed by an employer and is the subject of a certificate by the employer to the effect that, for the time being, the person—
- (a) is employed by the employer under a contract of employment;
 - (b) is so employed otherwise than on a casual or temporary basis;
 - (c) if the regulations prescribe a class of persons as not being employees—is not within that class (specifying the class); and

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- (d) if the regulations prescribe any requirement with which a person must comply in order to be an employee—complies with the requirement (specifying the requirement);

“employer” means—

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

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

“employer’s account” means the account established and maintained under section 9 (4) in respect of the employer;

“employer’s component” has the meaning ascribed thereto in section 25;

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

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

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

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

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

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

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- “final contribution date”, in relation to a contributor, means the last day of the superannuation period that ends on, or last precedes, the contributor’s exit date in respect of which the contributor is liable to contribute to the Fund;
- “financial year” means the financial year of the Board specified in section 45;
- “first contribution date”, in relation to a contributor, means the first day of the superannuation period referred to in section 14 (a);
- “full-time elected member” means the person who for the time being holds office as the full-time elected member of the Board;
- “full-time employee” means an employee who is not a part-time employee;
- “Fund” means the State Public Service Superannuation Fund established, maintained and managed by the Board in accordance with this Act;
- “Management Account” means the account established and maintained by the Board under section 9 (1);
- “maximum benefit points” has the meaning ascribed thereto in section 25;
- “part-time elected member” means the person who for the time being holds office as the part-time elected member of the Board;
- “part-time employee” means an employee certified under section 12 (2) to be a part-time employee;
- “preserved benefit”, in relation to a contributor, means a benefit for which the contributor has made provision under section 34;
- “prospective benefit points” has the meaning ascribed thereto in section 25;
- “regulations” means regulations made under, or for the purposes of, this Act;
- “retire” includes cease (otherwise than by reason of death) in any manner to be employed by an employer;
- “retrench”, in relation to a contributor, means compulsorily terminate the employment of the contributor with an employer where the termination is expressed to be on the ground that—

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- (a) the employment of the contributor is not necessary and his or her position is not to be filled;
- (b) the work for which the contributor was engaged is finished; or
- (c) the quantity of work has diminished and has rendered necessary a reduction in the number of employees;

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

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

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

“State Superannuation Board” means the State Superannuation Board constituted under the Superannuation Act, 1916;

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

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

“supplementary benefit” has the meaning ascribed thereto in section 25;

“supplementary levy” means the levy that, in order to attract the supplementary benefit, is paid by transfer from a contributor’s account under section 13 (7) (b);

“this Act” includes regulations;

“union” means an industrial union registered as such under the Industrial Arbitration Act, 1940, or an association of employees

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registered as an organization under the Conciliation and Arbitration Act 1904 of the Commonwealth as subsequently amended.

(2) Where a contributor is in part-time employment with more than one employer at the same time, this Act applies to the contributor separately in relation to each employment as if, in relation to each employment, the contributor were a different person, except that the maximum benefit points for the contributor when taken into account in relation to all employments of the contributor shall not exceed in number the number that would have been the 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.

Salary.

6. (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 that is payable in money to the contributor in the contributor's capacity as an employee and is certified by the contributor's employer or by a person duly authorised to do so on behalf of the employer to be so payable, and to be likely to continue to be so payable, while the employee continues to occupy the position he or she occupies at the time of the certification, not being—

- (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.

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(2) Notwithstanding subsection (1), the regulations may declare any remuneration or benefit (whether or not of a kind referred to in subsection (1) (a)–(f)) to be, either generally or in relation to a specified employee or class of employees, salary for the purposes of this Act but, where such a declaration is made, it applies to remuneration or a benefit payable or afforded to a contributor only if—

- (a) it is payable in money to the contributor in the contributor's capacity as an employee; or
- (b) the contributor's employer, or a person duly authorised to do so on behalf of the employer, certifies in writing to the Board that it should be treated as remuneration or a benefit payable in money to the contributor in his capacity as an employee and also certifies the annual rate of the remuneration or benefit.

(3) Where remuneration or a benefit is the subject of a certificate referred to in subsection (2) (b) it shall, for the purposes of this Act, be deemed to be remuneration or a benefit payable in money to the contributor to whom the certificate relates and to be so payable in the contributor's capacity as an employee.

(4) A regulation made for the purposes of subsection (2) may be made to operate on and from the appointed day or any later day, whether or not the day from which it is made to operate is earlier than the day of its publication and, where it is made to operate from such an earlier day, the contributor's salary shall be deemed to have included the declared remuneration or benefit if payment has been made to the Board, within a period approved by the Board, of any contributions to the Fund that would have been payable had the remuneration or benefit been salary before the declaration was made.

(5) 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 or such continuous period that, in the opinion of the Board, is not materially less than 12 months and would be 12 months but for a customary practice in the field in which the contributor is employed (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,

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

(6) Where—

(a) a relieving allowance has, for a continuous period of 12 months, been paid to a contributor in the contributor's capacity as an employee; and

(b) the allowance is not salary in accordance with subsection (2),

the allowance is, from the expiration of that period of 12 months, salary for the purposes of this Act.

(7) Where the 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.

(8) The Governor may, by order in writing, declare unconditionally, or subject to conditions, that subsection (9) applies—

(a) to a contributor specified in the order who is on secondment but not to another employer; and

(b) generally during the period of that secondment, or during such period as is specified in the order, being, in either case, a period commencing before, on or after the date of the order.

(9) During the period in which this subsection is declared pursuant to subsection (8) to apply to a contributor on secondment, the contributor's salary shall, for the purposes of this Act, be that paid or payable in respect of the employment to which he or she is seconded.

PART II.

THE STATE PUBLIC SERVICE SUPERANNUATION FUND.

Establishment of the Fund.

7. (1) The Board shall establish, and shall maintain and manage, the State Public Service Superannuation Fund.

(2) The Board shall—

(a) cause to be paid to the Fund—

(i) contributions made by employers and employees;

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- (ii) income derived from investment of the Fund, and any profit made from realisation of any investment of the Fund;
 - (iii) money borrowed for the purposes of the Fund; and
 - (iv) any other amounts payable to the Fund; and
- (b) cause to be paid from the Fund—
- (i) by transfer from the Fund to the Management Account—management costs relating to investment of the Fund as referred to in section 46 (1);
 - (ii) the benefits payable under this Act; and
 - (iii) any other amounts payable from the Fund.

Investment of the Fund.

8. (1) For the purposes of this section—

“public securities” means—

- (a) bonds, debentures, stock or other securities issued by—
 - (i) the Commonwealth, this or any other State or a Territory of the Commonwealth; or
 - (ii) a municipal corporation, other local governing body or public authority constituted by or under an Act or by or under a law of the Commonwealth or of another State or of a Territory of the Commonwealth; or
- (b) prescribed securities or other instruments.

(2) Subject to this section, the Board may, in such manner as it thinks fit, apply the Fund for the purpose of producing income and for related purposes including entering into such arrangements, and undertaking such obligations, as the Board thinks fit.

(3) Money in the Fund may, pending investment, be lodged at call, or partly at call and partly on fixed deposit, with the Treasurer or with any bank and shall, while so lodged with a bank, be deemed to be money of the Crown.

(4) The Board shall, so far as is practicable, ensure that at all times the

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assets of the Fund shall include public securities the cost of which, averaged over the period of 3 months that commences on the appointed day and over each succeeding period of 3 months, is not less than 30 per cent (or, if some other proportion is prescribed for the purposes of this subsection, that other proportion) of the cost of all the assets of the Fund.

(5) The Board shall, so far as is practicable, ensure that at no time do the assets of the Fund include any one asset (other than public securities) the cost of which was more than 5 per cent (or, if some other proportion is prescribed for the purposes of this subsection, that other proportion) of the cost of all the assets of the Fund.

(6) For the purposes of subsection (5) but without limiting its generality, all the assets acquired under subsection (2) that comprise—

(a) securities within the meaning of the Securities Industry (New South Wales) Code and other instruments, being securities or instruments allotted or issued by any one corporation, or by related corporations within the meaning of the Companies (New South Wales) Code; or

(b) an interest as beneficiary under any one trust,
shall be deemed to be one asset of the Fund.

(7) Where, in respect of an instrument relating to a transaction, the Board, or a broker, dealer or other person acting on behalf of the Board in respect of the transaction, would, but for this subsection, be liable to pay stamp duty under the Stamp Duties Act, 1920, in respect of the instrument, the Board, broker, dealer or other person is not so liable.

(8) A transaction entered into by the Board is not invalidated by reason only that it is not authorised by, or may result in a contravention of, the provisions of this section.

(9) Annual reviews of the Board's broad investment policy and the management of its investments shall be conducted as prescribed.

Certain accounts to be kept.

9. (1) The Board shall establish and maintain within the Fund a Management Account—

(a) to which shall be credited—

(i) the amounts transferred in accordance with section 7 (2)
(b) (i); and

(ii) the management costs paid by employers and contributors as provided by section 46 (2); and

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(b) to which shall be debited the costs of administering this Act.

(2) The Board shall establish and maintain within the Fund a separate account for each contributor—

(a) to which shall be credited—

- (i) the contributions made by the contributor to the Fund;
- (ii) the contributor's component of a refund of benefit made by a contributor pursuant to section 18 (resumption of contributions after break in employment); and
- (iii) interest as provided by section 10; and

(b) to which shall be debited—

- (i) where the contributor is covered for the supplementary benefit—the amount of the supplementary levy;
- (ii) the amount of the contributor's component of any benefit paid to, or in relation to, the contributor; and
- (iii) the administration levy.

(3) The Board shall establish and maintain within the Fund a Supplementary Levy Account—

(a) to which shall be credited the amounts debited pursuant to subsection (2) (b) (i); and

(b) to which shall be debited 25 per cent of any supplementary benefit paid to, or in relation to, a contributor.

(4) The Board shall establish and maintain within the Fund a separate account for each employer—

(a) to which shall be credited—

- (i) the contributions made by the employer to the Fund;
- (ii) so much of a benefit paid to a contributor as was paid by the employer and refunded by the contributor pursuant to section 18 (resumption of contributions after break in employment); and

(iii) interest as provided by section 10; and

(b) to which shall be debited the amount of the employer's liabilities under Part IV.

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(5) The Board shall establish and maintain within the Fund such other accounts as, in the opinion of the Board, are necessary or convenient for the management of the Fund and the administration of this Act.

Interest.

10. (1) The Board shall from time to time credit each contributor's account, and each employer's account, with interest at a rate fixed by the Board.

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

(3) The Board shall, in its annual report, specify the effective rate at which interest was credited under subsection (1) during the last preceding financial year.

Actuarial investigation of the Fund.

11. (1) An investigation as to the state and sufficiency of the Fund shall, as at 30th June, 1988, and at the expiration of each succeeding period of 3 years, be made by not less than 2 actuaries appointed by the Board.

(2) Actuaries appointed under subsection (1) shall complete their investigation, and shall report the result to the Board, not later than 13 months after the date as at which the investigation is made.

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

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

PART III.

CONTRIBUTIONS BY EMPLOYEES.

Election to contribute to the Fund.

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

(3) A failure to comply with subsection (2) (b) does not invalidate an election and, in the event of such a failure, the form of election shall be deemed to specify a rate of 2 per cent.

(4) Subject to this Act, an election under subsection (2) takes effect—

- (a) in the case of an election by a person who was an employee at the commencement of this Act and whose election is received in the office of the Board not later than 2 months after that commencement—as at that commencement;
- (b) in the case of an election by a person who becomes an employee after that commencement and whose election is received in the office of the Board not later than 2 months after the person becomes an employee—as at the date on which the person became an employee; or

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(c) in any other case—as at the date on which the election is received in the office of the Board.

(5) An election by an employee under this section takes effect only if, at the time for its taking effect, the employee has not attained the age of 55 years.

(6) The Board is entitled to act on information provided under subsection (2).

Supplementary benefit.

13. (1) Application to be covered for the supplementary benefit may be made to the Board—

(a) by an employee who has not attained the age of 53 years and is not a contributor—at the time the employee makes an election under section 12 (election to contribute to the Fund); or

(b) except to the extent that subsection (8) or (12) otherwise provides—at any time by a contributor who has not attained the age of 53 years.

(2) An application under subsection (1) shall—

(a) be in a form approved by the Board for the purposes of this section; and

(b) be accompanied by such documents and evidence as are prescribed for the purposes of this section.

(3) The Board may require an applicant under subsection (1)—

(a) to undergo such a medical examination as may be prescribed; 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.

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- (5) The Board—
- (a) shall, before forming the opinion referred to in subsection (4) (a), obtain such evaluations of a medical examination, and medical reports, referred to in subsection (3) as it thinks fit; and
 - (b) shall, in forming that opinion, have regard to those evaluations and the documents and evidence referred to in subsection (2).
- (6) Where the Board approves an application under subsection (1)—
- (a) the Board shall appoint the day on and from which the applicant's cover for the supplementary benefit is to commence; and
 - (b) subject to subsection (7), the applicant becomes, and remains, liable for payment of the supplementary levy.
- (7) Subject to subsection (12), payment by a contributor of the supplementary levy—
- (a) shall commence on a date appointed by the Board and shall be made at the prescribed rate and at the prescribed times;
 - (b) shall be effected by transfer from the contributor's account; and
 - (c) shall cease when the contributor no longer has available to be taken into account any prospective benefit points.
- (8) Where an application under subsection (1) is refused, the applicant may not again make such an application before the expiration of—
- (a) the period of 3 years that next succeeds the refusal; or
 - (b) in a particular case—such shorter period as the Board may decide.
- (9) Where, after approving an application under subsection (1), the Board forms the opinion that, in relation to the application, or to a medical examination of the applicant, an untrue statement within the meaning of section 53 was made and that its approval would not have been given had the untrue statement not been made, the Board shall, subject to subsection (10), revoke the approval.
- (10) For the purpose of deciding whether or not, in relation to an application or a medical examination of an applicant, it is of the opinion referred to in subsection (9), the Board may, if it thinks fit, require that applicant within a time specified by the Board or within such further time as the Board may allow, to provide information, or to undergo a medical examination, or to provide medical reports, as specified by the Board.

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(11) Upon the expiration of the time, or further time, referred to in subsection (10), 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 (9).

(12) Where, pursuant to subsection (9), the Board revokes its approval of an application—

- (a) the applicant ceases to be covered for the supplementary benefit and ceases to be liable to pay the supplementary levy;
- (b) the applicant is disqualified for 3 years from again applying to be covered for the supplementary benefit; and
- (c) the amount of any supplementary levy paid by the applicant prior to revocation of the approval is not recoverable.

Liability to contribute following election by employee.

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

- (a) the superannuation period prescribed by the regulations as the superannuation period in respect of which contributions by that person are to commence;
- (b) the superannuation period that ends on, or last precedes, the contributor's exit date; and
- (c) each intervening superannuation period,

not in any case being—

- (d) a superannuation period in respect of which the contributor is not, by reason of section 17 (3) liable or entitled to make a contribution; or
- (e) a superannuation period in respect of which the contributor is not, by reason of a cessation of employment as referred to in sections 18 (resumption of contributions after break in employment) and 19 (resumption of contributions after preservation of benefit), liable or entitled to make a contribution to the Fund.

*State Public Service Superannuation 1985***Review dates and adjustment dates.**

15. The Board shall, by order specified in the Gazette, declare—
- (a) that a specified date in each year is the review date for the purposes of this Act; and
 - (b) that a specified later date in each year is the adjustment date for the purposes of this Act.

Amount of contributions.

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

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

where—

- C represents the amount to be ascertained;
 - R represents the rate per cent of salary at which the contributor elected under section 12 to contribute to the Fund;
 - E represents the contributor's attributed salary specified in the certificate given under section 12 (2) (d) in relation to the contributor; and
 - S represents the contributor's salary ratio as at the contributor's entry date calculated on the basis of the information in the certificate provided under section 12 (2) (d) in relation to the contributor.
- (2) A contributor may, within the prescribed time after a review date (other than a review date that occurs less than 3 months after the contributor's first contribution date), lodge with the Board an election to vary the rate per cent of the contributor's salary to be paid to the Fund.
- (3) An election under subsection (2)—
- (a) shall be in a form approved by the Board for the purposes of this section;
 - (b) shall specify the varied rate per cent (being 2, 3, 4, 5, 6, 7, 8 or 9 per cent) of the contributor's salary to be paid to the Fund; and
 - (c) takes effect on the adjustment date that next succeeds that review date.

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(4) The contribution payable to the Fund by a contributor on and from each adjustment date commencing with the adjustment date that next succeeds the first review date that is not less than 3 months later than the contributor's first contribution date is the amount calculated in accordance with the formula—

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

where—

- C represents the amount to be ascertained;
- R represents the rate per cent of salary at which the contributor has for the time being elected to contribute to the Fund;
- A represents the contributor's attributed salary as at the review date that last preceded the adjustment date in relation to which the calculation is made; and
- S represents the contributor's salary ratio as at that review date.

(5) Where the nature of the employment of a contributor changes from full-time to part-time or from part-time to full-time, or the amount of time worked part-time by a contributor changes, the amount of the contributor's contribution to the Fund in respect of the first complete superannuation period during which the change operates, and each succeeding superannuation period until varied in accordance with this Act, is the amount calculated by multiplying by the contributor's salary ratio at the commencement of the superannuation period the amount of the contribution that would be payable on the basis of the contributor's attributed salary last applicable for the purpose of calculating contributions to the Fund.

(6) Except as provided by subsection (5) or to the extent that the Board upon the application of a contributor otherwise directs, a reduction in the salary of the contributor below that upon which his or her contributions are based does not, until the adjustment date next after the review date that next succeeds the reduction, affect the amount of the contribution that the contributor is required to pay to the Fund.

(7) Except in the case of a contributor who applies for a direction of the Board under subsection (6), where a contributor's attributed salary is reduced as a consequence of the contributor's ill-health or in circumstances that are considered by the contributor to justify the application of this subsection and are approved by the Board, the contributor may apply to the Board in a form that—

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

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

(8) Where the Board approves an application by a contributor under subsection (7), the attributed salary of the contributor shall, for the purposes of this Act and notwithstanding any intervening review date, be deemed to be the same as the contributor's attributed salary immediately before the reduction until—

- (a) the contributor's attributed salary is equal to or greater than his or her attributed salary immediately before the reduction; or
- (b) the Board's approval is revoked on the application of the contributor,

whichever first occurs.

(9) The result of a calculation of the amount of a contribution to be made under this section shall, where a number of cents included in the result is not an even number of whole cents, be rounded to the nearest higher number that is an even whole number of cents.

Contributions during leave without pay.

17. (1) In this section—

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

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

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

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

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

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

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

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

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

Resumption of contributions after break in employment.

18. (1) This section applies to a contributor where—

- (a) the employment of the contributor with an employer ceases in circumstances entitling the contributor to be paid a benefit under section 32 (benefit on resignation, dismissal or discharge before age 55) but the contributor does not provide for a preserved benefit;
- (b) not later than the expiration of the period of 3 months that next succeeds that cessation of employment, the contributor again commences employment as an employee;
- (c) the contributor makes an election under section 12 that takes effect as provided by section 12 (4) (b); and
- (d) if the contributor has been paid a benefit as a consequence of the cessation of employment—the amount of the benefit has been repaid to the Fund with interest as provided by subsection (2).

(2) Interest referred to in subsection (1) (d) is payable at a rate specified by the Board on so much of the benefit so referred to as was not represented by the contributor's component and is so payable from the time of the payment of the benefit to the contributor to the time of its repayment to the Fund.

(3) A contributor to whom this section applies shall be deemed, on the cessation of employment referred to in subsection (1), to have provided under section 34 for a preserved benefit.

Resumption of contributions after preservation of benefit.

19. Where—

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

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

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Deduction of contributions from salary.

20. (1) From each payment of a contributor's salary an employer shall deduct an amount sufficient to pay the contributions that the contributor is liable to make to the Fund and shall, within the prescribed time, pay the amount deducted to the Board.

(2) An amount deducted and paid to the Board under subsection (1) (whether or not it is so paid within the prescribed time) shall be deemed to have been paid to the Fund by the contributor from whose salary the deduction was made.

(3) An employer shall, if the Board so directs in a particular case, pay interest in accordance with section 58 on any amount required to be deducted by the employer under subsection (1) that is not paid to the Board within the prescribed time, and the amount of any interest paid by an employer in relation to a contributor is not chargeable by the employer against the contributor.

(4) Where a change occurs in the amount deducted from a contributor's salary in respect of a superannuation period, the contributor's employer shall, within the prescribed time, provide the Board in writing with the prescribed information relating to the change.

(5) The amount of any overpayment of contributions to the Fund by a contributor shall—

- (a) if it exceeds the prescribed amount—be refunded by the Board to the contributor; or
- (b) if it does not exceed the prescribed amount—be credited by the Board to the contributor's account.

(6) Where contributions are paid to the Fund at a rate in excess of the rate at which the contributor has for the time being elected to contribute to the Fund, the excess shall be disregarded for the purpose of calculating the contributor's contributed points figure under Part V.

Arrears of contributions.

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

*State Public Service Superannuation 1985***(2) Where a contributor—**

- (a) fails to comply with a requirement under subsection (1) to enter into an arrangement referred to in that subsection; or
- (b) having entered into such an arrangement, fails to comply with its terms,

the Board may direct that any superannuation period in respect of which any such arrears are outstanding is not an applicable superannuation period for the contributor.

PART IV.**CONTRIBUTIONS BY EMPLOYERS.****Contribution rates and times.**

22. (1) An employer shall pay to the Fund in accordance with subsection (2) an amount equal to one-half of the amount of the contributions paid to the Fund by contributors employed by the employer.

(2) The times at which contributions under subsection (1) are payable, and the basis on which the amount of each contribution is to be calculated, shall be as decided by the Board.

(3) Where a benefit becomes payable to, or in relation to, a contributor, the employer or employers, as the case may be, who employed the contributor between entry date and exit date shall pay to the Board within a time notified by the Board so much of the employer-financed benefit payable as, in the opinion of the Board, is not provided for by way of contributions under subsection (1), the amount payable by each employer where there was more than one employer being calculated as prescribed.

(4) A reference in subsection (3) to the employer-financed benefit in relation to a contributor is a reference to—

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

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

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Costs of administration.

23. An employer shall, at times notified by the Board, pay to the Fund such amounts referred to in section 9 (1) (a) (ii) as are decided by the Board.

Secondment of employee otherwise than to employer.

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

- (a) to a contributor specified in the order who is on secondment but not to another employer; and
- (b) generally during the period of that secondment, or during such period as is specified in the order being, in either case, a period commencing before, on or after the date of the order.

(2) During the period in which this subsection is declared pursuant to subsection (1) to apply to a contributor, the employer specified in the declaration shall be deemed to be the employer from whose employment the contributor is seconded.

PART V.

BENEFITS.

Interpretation.

25. (1) For the purposes of this Act—

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

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

“adjusted length”, in relation to a contributor’s membership period, means the adjusted length of the membership period ascertained as provided by section 26;

“applicable superannuation period”, in relation to a contributor, means a superannuation period that occurs during the period that commences on the contributor’s first contribution date and ends on the contributor’s final contribution date, except where—

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

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

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

$$R = \frac{G}{N}$$

where—

R represents the rate per cent to be ascertained;

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

N represents the number of those applicable superannuation periods;

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

$$F = \frac{K \times R}{26}$$

where—

F represents the figure to be ascertained;

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

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

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“contributor’s component”, in relation to a benefit payable to, or in relation to, a contributor, means the amount certified by the Board as the balance at credit in the contributor’s account at the time the benefit is paid;

“employer’s component”, in relation to a benefit payable to, or in relation to, a contributor, means the amount calculated in accordance with the formula—

$$E = S \times A \times 0.03$$

where—

E represents the amount to be ascertained;

S represents the final salary of the contributor; and

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

“final salary”, in relation to a contributor, means the amount calculated as provided by section 27;

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

(a) where the contributor has not attained the age of 55 years at the exit date—

(i) 150; or

(ii) if the number prescribed by subsection (2) (a) for the contributor is less than 150—the number so prescribed;

(b) where, at the exit date, the contributor has attained the age of 55 years but has not attained the age of 60 years—the number prescribed by subsection (2) (b) for the contributor; or

(c) where the contributor is of or over the age of 60 years at the exit date—

(i) 180; or

(ii) if the number prescribed by subsection (2) (c) for the contributor is less than 180—the number so prescribed;

“membership period”, in relation to a contributor, means the period that commenced on the contributor’s entry date and ended on the

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contributor's exit date, any period during which the contributor provided for preservation of a benefit being disregarded;

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

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

$$P = \frac{C \times R \times H}{26}$$

where—

P represents the number to be ascertained;

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

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

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

(b) if it is a lesser number than that calculated under paragraph (a)—the number that, when added to the number of the contributor's accrued benefit points at the exit date, would produce a number equal to the maximum benefit points that would have been attributable to the contributor if contributions had continued at the contributor's average contribution rate per cent, the salary ratio had remained constant until the exit date and the exit date had immediately preceded the 55th anniversary of the contributor's birth;

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

$$L = S \times P \times 0.04$$

where—

L represents the amount to be ascertained;

S represents the final salary for the contributor; and

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

(2) For the purposes of the definition of "maximum benefit points" in subsection (1), the number prescribed by this subsection in relation to a contributor is—

- (a) where the contributor has not attained the age of 55 years—the number ascertained by multiplying by 6 the adjusted length of the contributor's membership period;
- (b) where the contributor has attained the age of 55 years but has not attained the age of 60 years—the sum of—
 - (i) the maximum benefit points ascertained in relation to the contributor as if the contributor's exit date had immediately preceded the contributor's attainment of the age of 55 years; and
 - (ii) the number ascertained by multiplying by 0.5 the number of completed months that have elapsed since the contributor attained the age of 55 years; or
- (c) where the contributor is of or over the age of 60 years—the sum of—
 - (i) the maximum benefit points ascertained in relation to the contributor as if the contributor's exit date had immediately preceded the contributor's attainment of the age of 55 years; and
 - (ii) 30.

(3) For the purposes of this Part, the length of a period shall be expressed—

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

Adjustment of length of membership period.

26. (1) In this section—

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“distinct period”, in relation to a contributor’s membership period, means a part of the membership period during which the contributor’s salary ratio remained constant;

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

(2) For the purposes of this Act, the adjusted length of a contributor’s membership period is—

- (a) where the contributor’s salary ratio remained constant throughout the contributor’s membership period—the length of the contributor’s membership period multiplied by that salary ratio; or
- (b) where the contributor’s salary ratio did not remain constant throughout the contributor’s membership period—the length of the period ascertained by adding together the notional lengths of the distinct periods that made up the membership period.

Final salary.

27. (1) In this section—

“base date”, in relation to a contributor, means—

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

“index number”, in relation to a quarter, means the number for that quarter appearing in the Consumer Price Index (All Groups Index) for Sydney published by the Commonwealth Statistician under the Census and Statistics Act 1905 of the Parliament of the Commonwealth;

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

“quarter” means a period of 3 months commencing on 1st January, 1st April, 1st July or 1st October;

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

$$Q = \frac{M}{3}$$

where—

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

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

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

- (a) the amount of the attributed salary of the contributor applicable as at the contributor’s exit date; and
- (b) the amount calculated in accordance with the formula—

$$N = B \times \frac{C}{D}$$

where—

N represents the amount to be ascertained;

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

C represents the index number for the last quarter for the contributor; and

D represents the relevant index number for the contributor.

Benefit on retirement or death at or after age 55.

28. (1) The benefit provided by this section is payable by the Board where, immediately before, or on or at any time after, attaining the age of

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55 years, a contributor retires from, or dies during, employment with an employer and is so payable—

- (a) where the benefit becomes payable on retirement of the contributor—to the contributor; or
- (b) where the benefit becomes payable on the death of the contributor—to the personal representatives of the contributor or, if appropriate, in accordance with section 57 (payment without grant of probate, etc.).

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

- (a) the amount of the contributor's component; and
- (b) the amount of the employer's component.

Benefit on death before age 55.

29. (1) The benefit provided by this section is payable by the Board where a contributor dies before attaining the age of 55 years during employment with an employer and is so payable to the personal representative of the contributor or, if appropriate, in accordance with section 57 (payment without grant of probate, etc.).

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

- (a) the amount of the contributor's component;
- (b) the amount of the employer's component; and
- (c) where the contributor was, at the date of death, covered for the supplementary benefit—the amount of the supplementary benefit.

Benefit on total and permanent invalidity before age 55.

30. (1) The benefit provided by this section is payable by the Board to a contributor who is covered for the supplementary benefit where—

- (a) before attaining the age of 55 years, the contributor is retired from employment with an employer;
- (b) the employer certifies to the Board that the contributor was retired on the ground of physical or mental incapacity to perform his or her duties; and
- (c) the Board is satisfied, after taking into account any medical opinion that it considers to be relevant, that the contributor is,

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and until attaining the age of 55 years will continue to be, physically or mentally incapable of performing the duties of any employment with an employer that, in the opinion of the Board, it would be reasonable for the contributor to undertake.

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

- (a) the amount of the contributor's component;
- (b) the amount of the employer's component; and
- (c) the amount of the supplementary benefit.

(3) Where the Board is not satisfied as referred to in subsection (1) (c), the contributor is entitled to the benefit provided by section 31.

(4) A contributor entitled to payment of a benefit under this section is not entitled to payment of any other benefit under this Act.

Benefit on partial and permanent invalidity before age 55.

31. (1) The benefit provided by this section is payable by the Board to a contributor where—

- (a) before attaining the age of 55 years, the contributor is retired from employment with an employer; and
- (b) the employer certifies to the Board that the contributor was retired on the ground of physical or mental incapacity to perform his or her duties.

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

- (a) the amount of the contributor's component; and
- (b) the amount of the employer's component.

Benefit on resignation, dismissal or discharge before age 55.

32. (1) The benefit provided by this section is payable by the Board to a contributor where, before attaining the age of 55 years, the contributor resigns, or is dismissed or discharged, from employment with an employer and no other benefit is payable under this Act.

(2) The benefit provided by this section for a contributor with a membership period of 10 years or more is the sum of—

- (a) the amount of the contributor's component; and

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

$$W = V \times T \times \frac{A}{Y} \times 0.025$$

where—

- W represents the amount to be ascertained;
- V represents the length of the contributor's membership period;
- T represents the amount of the contributor's component;
- A represents the contributor's accrued benefit points at the contributor's exit date; and
- Y represents the number ascertained by adding together all the contributor's contributed points figures calculated in relation to the contributor for the applicable superannuation periods for the contributor.

(3) The benefit provided by this section for a contributor with a membership period of less than 10 years is the amount of the contributor's component.

Benefit on retrenchment before age 55.

33. (1) The benefit provided by this section is payable by the Board to a contributor where, before attaining the age of 55 years, the contributor is retrenched by his or her employer and no other benefit is payable under this Act.

(2) The benefit provided by this section for a contributor with a membership period of 10 years or more is an amount equal to the sum of—

- (a) the contributor's component; and
- (b) the employer's component.

(3) The benefit provided by this section for a contributor with a membership period of less than 10 years is the benefit payable under section 32 (3).

Preserved benefit.

34. (1) A contributor who became entitled not less than 3 years after his or her entry date to be paid a benefit under section 32 (benefit on resignation, dismissal or discharge before age 55) may elect to make provision instead for a benefit provided by this section.

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(2) Where an election made by a contributor under subsection (1) takes effect, a benefit is not payable to, or in relation to, the contributor under any provision of this Act other than this section.

(3) The benefit provided by subsection (5) is payable by the Board upon the contributor attaining the age of 55 years or earlier suffering death or, in the case of a contributor covered for the supplementary benefit, upon the Board being satisfied as referred to in section 30 (1) (c) and is so payable—

- (a) except in the case of the death of the contributor—to the contributor; or
- (b) in the case of the death of the contributor—to the personal representatives of the contributor or, if appropriate, in accordance with section 57 (payment without grant of probate, etc.).

(4) The benefit provided by subsection (6) is payable by the Board to the contributor upon the contributor electing to take that benefit and the election taking effect—

- (a) after the election made under subsection (1) takes effect; and
- (b) before the benefit provided by subsection (5) becomes payable to, or in relation to, the contributor.

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

- (a) the amount of the contributor's component at exit date; and
- (b) the amount calculated in accordance with the formula—

$$E = S \times A \times 0.03 \times Z$$

where—

E represents the amount to be ascertained;

S represents the final salary of the contributor;

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

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

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

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

- (a) the amount of the benefit under section 32 (benefit on resignation, dismissal or discharge before age 55) that would have been payable to the contributor at the contributor's exit date if the contributor had not made the election under subsection (1); and
- (b) interest as provided by section 10 from the contributor's exit date to the date of payment.

Application for payment or preservation of benefit.

35. (1) An application for payment of a benefit to or in relation to, a contributor or for preservation of a benefit under section 34 shall be made in writing in a form approved by the Board for the purpose, shall be signed by the applicant and shall be accompanied by—

- (a) except in the case of a benefit payable under section 34—a certificate by the contributor's employer at the contributor's exit date, specifying the exit date and the manner of cessation of the contributor's employment and such other particulars as may be prescribed; and
- (b) such other documents as may be prescribed.

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

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

PART VI.**THE STATE PUBLIC SERVICE SUPERANNUATION BOARD.****The Board.**

36. (1) There is hereby constituted a corporation with the corporate name "State Public Service Superannuation Board".

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- (2) The Board shall consist of—
- (a) the President of the Board, who shall be the person for the time being holding or acting in the office of President of the State Superannuation Board;
 - (b) the Vice-President of the Board, who shall be the person for the time being holding or acting in the office of Vice-President of the State Superannuation Board;
 - (c) the actuary member of the Board, who shall be the person for the time being holding or acting in the office of actuary member of the State Superannuation Board; and
 - (d) 2 elected members, being a full-time elected member and a part-time elected member, each of whom is elected, and assumes office, in accordance with this Act.
- (3) The President is the chief executive officer of the Board.
- (4) Schedule 1 has effect with respect to elections and the elected members.
- (5) Schedule 2 has effect with respect to the procedure of the Board.

Public Service staff.

37. (1) Such staff as may be necessary to enable the Board to exercise its functions shall be employed under the Public Service Act, 1979.

(2) The functions for the exercise of which staff may be employed pursuant to section 82 of the Superannuation Act, 1916, may include the functions of the Board constituted by this Act.

(3) A member of the staff of the State Superannuation Board is, while exercising a function for the purposes of this Act, a member of the staff of the Board constituted by this Act.

Property management staff.

38. (1) The Board may appoint and employ persons for the purpose of managing or maintaining real property in which the Board has an interest.

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(2) A person employed under this section shall, subject to the terms of his or her appointment, continue in the service of the Board at the will of the Board only.

(3) A person employed under this section shall be subject to the sole control and governance of the Board which may fix wages and conditions of employment where they are not otherwise fixed in accordance with law.

(4) The Public Service Act, 1979, does not apply to or in respect of the appointment and employment of a person under this section, and such a person is not subject to the provisions of that Act while so employed.

(5) The purpose for which persons may be employed under section 82A of the Superannuation Act, 1916, may include the purpose referred to in subsection (1) and such a person shall, while employed in managing or maintaining real property as so referred to, be deemed to be employed under this section by the Board.

Employment of agents.

39. 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.

Delegation.

40. (1) The Board may, by instrument in writing, delegate to—

- (a) a member of the Board;
- (b) the person for the time being holding or acting in a specified office that is the office of a member of the Board; or
- (c) a member of the staff of the Board or of the State Superannuation Board,

such of the functions of the Board (other than this power of delegation) as are specified in the instrument.

(2) A function the exercise of which has been delegated under this section may, while the delegation remains unrevoked, be exercised from time to time by the delegate in accordance with the terms of the delegation.

(3) A delegation under this section may be made subject to such conditions or limitations as to the exercise of any function the subject thereof, or as to time or circumstance, as may be specified in the instrument of delegation.

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(4) Notwithstanding any delegation under this section, the Board may continue to exercise any function delegated.

(5) Any act or thing done or suffered by a delegate acting in the exercise of a delegation under this section has the same force and effect as it would have if it had been done or suffered by the Board and shall be deemed to have been done or suffered by the Board.

(6) The Board may, by instrument in writing, revoke wholly or in part any delegation under this section.

(7) An instrument purporting to have been signed by a person in the capacity of a delegate of the Board shall, in all courts and before all persons acting judicially, be received in evidence as if it were an instrument duly executed by the Board and shall, unless the contrary is proved, be deemed to be an instrument signed by a delegate of the Board.

Relationship between powers of the Board and powers of trustees.

41. (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.

(3) Nothing in this section—

- (a) constitutes the Board a trustee of the Fund; or
- (b) implies that the Board is a trustee of the Fund.

Member of Board or its staff may be director of company.

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

(2) Where 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 as may be necessary to qualify it to nominate a person for appointment as a director of the company.

Acts and proceedings of the Board.

43. (1) In this section, “prescribed person” means—

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- (a) a person who is, or acts as, a member of the Board and the State Superannuation Board;
 - (b) a person who is, or acts as, a member of the staff of the Board and of the State Superannuation Board;
 - (c) a person who is, or acts as, a member of the property management staff of the Board and of the State Superannuation Board; or
 - (d) a person who is an agent of the Board and of the State Superannuation Board.

(2) A decision made, or any act or thing done or suffered, by the Board or a prescribed person in the exercise of a function conferred on the Board or the prescribed person by this Act shall not be called in question on the ground of an alleged conflict of interest by reason that a prescribed person is, or acts as, a member of both the Board and the State Superannuation Board or is, or acts as, a member of the staff or an agent, of both the Board and the State Superannuation Board or on the ground that knowledge gained by such a person in one of those capacities is, or may be, relevant to the exercise of a function in the other of those capacities.

(3) A decision made, or any act or thing done or suffered, by the Board in the exercise of a function conferred on it by this Act is not invalidated or prejudiced by reason that, at the time the decision was made or the act done or commenced, there was a vacancy in the office of a member of the Board.

(4) No decision made, or act done, by the Board, a member of the Board or a person acting under the direction of the Board, bona fide for the purposes of this Act subjects a member, or a person so acting, to any action, liability, claim or demand.

Disclosure of pecuniary interests.

44. (1) A member of the Board who has a direct or indirect pecuniary interest—

- (a) in a matter that is being considered, or is about to be considered, at a meeting of the Board; or
- (b) in a thing being done or about to be done by the Board,

shall, 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.

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(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;
- (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 a specified person,

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

(3) The Board shall cause particulars of any disclosure made under subsection (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Board from time to time.

(4) After a member of the Board has, or is deemed to have, disclosed the nature of an interest in any matter or thing pursuant to subsection (1) or (2), the member shall not, unless the Minister otherwise determines—

- (a) be present during any deliberation of the Board, or take part in any decision of the Board, with respect to that matter; or
- (b) exercise any functions under this Act with respect to that thing,

as the case may require.

(5) Notwithstanding that a member of the Board contravenes the provisions of this section, that contravention does not invalidate any decision of the Board or the exercise of any function under this Act.

(6) Nothing in this section applies to or in respect of an interest of a member of the Board in a matter or thing which arises by reason only that the member is a contributor to a superannuation scheme administered or managed by the Board.

(7) A reference in this section to a meeting of the Board includes a reference to a meeting of a committee of the Board.

Financial year.

45. The financial year of the Board shall be—

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- (a) where no period is prescribed as referred to in paragraph (b)—the year commencing on 1st July; or
- (b) the period prescribed for the purposes of this section.

Management costs.

46. (1) There shall be transferred to the Management Account established under section 9 from the income from investment of the Fund the management costs incurred in investing the Fund and managing the investments.

(2) Management costs relating to the administration of this Act (other than costs referred to in subsection (1)) shall be paid to the Management Account by employers and contributors and shall be so paid that—

- (a) an employer pays the prescribed multiple of the amount paid by contributors employed by the employer; and
- (b) each employer pays a proportion of those costs according to the number of contributors employed by the employer.

Borrowing powers of the Board.

47. (1) The Treasurer may, on the application of the Board and on such terms and conditions as the Treasurer thinks fit, lend money to the Board.

(2) The Board may, for the purpose of obtaining financial accommodation, borrow by way of overdraft from any bank, but the total amount owing at any time on money so borrowed shall not exceed \$6,000,000.

Service of documents.

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

(2) Subsection (1) does not affect the operation of any law or rule of court that authorises service of a document on the Board in a manner not provided by subsection (1).

Authentication of documents.

49. Any summons, process, demand, order, notice, statement, direction or document requiring authentication by the Board may be sufficiently authenticated without the seal of the Board if signed by a member of the Board or a member of the staff of the Board authorised to do so by the Board.

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Proof of certain matters not required.

50. In any legal proceedings, unless evidence to the contrary is given, proof is not required of—

- (a) the constitution of the Board;
- (b) a resolution, decision or determination of the Board;
- (c) the appointment of, or the holding of office by, a member; or
- (d) the presence, or the nature of, a quorum at a meeting of the Board.

PART VII.

MISCELLANEOUS.

Employers and employees.

51. (1) The Governor may, by order published in the Gazette—

- (a) amend Schedule 3 by inserting therein the name of an organisation or corporation;
- (b) amend Schedule 3 by omitting therefrom the name of an employer that has changed its name and by inserting instead the new name of the employer;
- (c) amend Schedule 3 by omitting therefrom the name of an employer that has ceased to exist but has been replaced as an employer by another organisation or corporation and by inserting instead the name of that other organisation or corporation;
- (d) amend Schedule 3 by omitting therefrom the name of an employer that has ceased to exist but is not an employer referred to in paragraph (c); or
- (e) amend Schedule 4.

(2) An order under subsection (1), and any order revoking or varying such an order, may be made—

- (a) to take effect on and from a day specified in the order, whether or not the day specified is earlier than the day of publication of the order; and

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- (b) to effect the amendment to which it relates with such limitations as are specified in the amendment, being limitations that do not operate to the prejudice of any existing contributor or any person having rights under this Act.

Employer to provide information.

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

(2) Where an employer fails to comply with subsection (1) in relation to an employee or contributor, the Board may—

- (a) refuse an application by an employee to be covered for the supplementary benefit if the information sought is relevant to such an application; or
- (b) defer payment of a benefit to, or in relation to, a contributor where the information sought is relevant to the right to receive the benefit or to the amount of the benefit.

Employee or contributor to provide information.

53. (1) For the purposes of this section, “untrue”, in relation to a statement, includes—

- (a) misleading in the form and context in which the statement appears; and
- (b) misleading by reason of the omission from the statement of matter that is material and of which the person making the statement has, or at any time had, knowledge.

(2) The Board may require an employee or a claimant for payment of a benefit under this Act—

- (a) to provide the Board with specified information or evidence referred to in subsection (3);
- (b) to provide the Board with an authority to obtain from a third person any such information or evidence; or
- (c) in the case of a claimant for payment of a benefit under section 30—to undergo a medical examination.

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(3) A requirement under subsection (2) may be made only in relation to a medical examination or—

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

(4) Where—

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

the Board may—

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

Making of elections and applications.

54. (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—

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

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

Assignment, etc., of benefit.

55. (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.

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Accounts and records.

56. The Board may maintain its accounts and other records in or upon any medium, or combination of mediums, capable of having information recorded therein or thereon and may, from time to time, vary the manner or form in which the accounts or other records are maintained.

Payment without grant of probate, etc.

57. (1) Where a contributor dies and—

- (a) a benefit thereby becomes payable from the Fund;
- (b) production to the Board of probate of the will, or letters of administration of the estate, has not been arranged; and
- (c) the Board has not, within the period of 3 months that next succeeds the death of the contributor, received 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 a 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 the Family Provision Act, 1982;
- (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 a 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.

Recovery of money owing to Fund.

58. (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 (2)—

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

(2) An employer shall, at the written request of the Board, make deductions from a contributor's salary as referred to in subsection (1) (c) and pay the amount thereof to the Board, and an amount so deducted and paid shall be deemed to have been paid to the Fund by the contributor from whose salary the deduction was made.

(3) Unless, in special circumstances and in a particular case, payment thereof is waived by the Board, interest at a rate from time to time determined by the Minister on the recommendation of the Board is payable on any amount owing to the Fund calculated from the date on which the amount became due for payment until the date on which the amount is recovered under subsection (1) or is otherwise paid.

Appeals.

59. (1) Subject to this section, a dispute under this Act shall be determined by the Board.

(2) A person aggrieved by a decision of the Board under subsection (1) may, within a period of 6 months from the date of the decision, appeal to the Minister, who shall thereupon refer the matter for opinion to a Judge of the Supreme Court, and shall decide the matter in accordance with that opinion.

(3) The Board or a Judge of the Supreme Court may, in determining a dispute, or forming an opinion, as referred to in subsections (1) and (2), inform itself, himself or herself of any matter in such manner as the Board or Judge thinks fit and, in so doing, is not bound to observe rules of law relating to evidence.

(4) A decision of the Minister under subsection (2) is final and conclusive and not subject to appeal.

Foreign contributors.

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

Regulations.

61. (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.

State Public Service Superannuation 1985

SCHEDULE 1.

(Sec. 36.)

PROVISIONS RELATING TO ELECTIONS AND ELECTED MEMBERS.

Elections.

1. (1) The Superannuation (Board Elections) Regulation, 1984, made under the Superannuation Act, 1916, applies, with such modifications as are prescribed, to and in respect of the election of the elected members.

(2) The Regulation referred to in subclause (1), modified as so referred to, is a regulation made for the purposes of this Act.

Time for holding elections.

2. (1) The elections for the 2 elected members shall be held concurrently within the period of 6 months that last precedes expiration of the term of office of the persons for the time being holding office as elected members or, if both offices become vacant before the elections are held, as soon as practicable after the offices become vacant.

(2) For the purposes of subclause (1), an office shall be deemed to be vacant notwithstanding an appointment to fill a casual vacancy in the office.

Nominations.

3. A nomination of a person for election as an elected member is invalid if—
- (a) it is not made jointly by at least 30 contributors other than the nominee;
 - (b) the nominee is not, at the time of nomination, both a contributor and a member of a union;
 - (c) the nominee does not consent in writing to the nomination;
 - (d) the nominee does not, in the prescribed form and manner—
 - (i) where the nominee is not a member of more than one union—specify that union for the purposes of the election; or
 - (ii) where the nominee is a member of more than one union—specify one of those unions as the preferred union for the purposes of the election; or
 - (e) the nominee has consented, or consents, to nomination for election as the other elected member.

Result of elections.

4. (1) Where, at concurrent elections, each position of elected member would, but for this subclause, be filled by a candidate who, in accordance with the regulations, nominated the same union as the other candidate—

- (a) only the candidate nominated for election as full-time member shall be declared elected; and
- (b) the candidate for the position of part-time elected member who has the next highest number of votes (as determined in accordance with the regulations) shall be declared elected as the part-time elected member.

(2) At concurrent elections, the persons elected shall be declared elected on the same day.

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SCHEDULE 1—*continued.*

PROVISIONS RELATING TO ELECTIONS AND ELECTED MEMBERS—*continued.*

(3) The returning officer for an election may require a candidate at the election to make a statutory declaration in relation to any prescribed matters relating to the election or its conduct before the returning officer declares the result of the election, and the returning officer is entitled to rely on the information in the statutory declaration.

(4) If a candidate—

(a) fails, within the prescribed period, to make a statutory declaration when required pursuant to subclause (3) so to do; and

(b) would, but for this subclause, be entitled to be declared elected,

the candidate shall be deemed to have been ineligible for election.

(5) Where a candidate is, pursuant to subclause (4), deemed to have been ineligible for election, the candidate who has the next highest number of votes (as determined in accordance with the regulations) shall, unless ineligible for election, be declared to be elected.

Saving of election.

5. (1) Nothing in this Act—

(a) invalidates an election that, because no candidate was nominated, was not held concurrently with another election; or

(b) prevents the assumption of office by only one elected member.

(2) Where only one elected member assumes office, there shall be deemed to be a casual vacancy in the office of the other elected member.

Assumption of office.

6. (1) At concurrent elections, a person declared elected shall assume office on the same day as the other person declared elected, that day being determined as provided by subclause (2).

(2) The day on which a person declared elected assumes office is—

(a) except as provided by paragraph (b)—the day that is one month after—

(i) the expiration of the term of office of the persons elected at the last preceding election; or

(ii) if both offices are vacant on the day on which the declaration is made—the day of the declaration; or

(b) if the Minister so directs—on a day specified by the Minister, being a day that is not earlier than the day of the declaration but is earlier than the day prescribed by paragraph (a).

*State Public Service Superannuation 1985*SCHEDULE 1—*continued.*PROVISIONS RELATING TO ELECTIONS AND ELECTED MEMBERS—*continued.***Age of elected member.**

7. A person who is of or above the age of 60 years is not eligible for election as an elected member or to act in the office of elected member.

Term of office.

8. (1) An elected member holds office for a term of 3 years and, if otherwise qualified, is eligible for re-election.

(2) The full-time elected member shall devote the whole of his or her time to the duties of that office.

(3) Where, by or under any other Act, provision is made requiring a person who is the holder of an office specified therein to devote the whole of his or her time to the duties of that office, or 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 part-time elected member or from accepting and retaining any remuneration payable to the person under this Act as the part-time elected member.

Employment of full-time elected member.

9. (1) The full-time elected member shall, upon assuming office, be deemed to be an employee within the meaning of this Act and shall cease to be an employee in any other capacity.

(2) Notwithstanding the provisions of any other Act, where the full-time elected member ceases to hold the office by reason of—

- (a) the expiration of his or her term of office; or
- (b) his or her resignation from office,

he or she is, if under the age of 60 years, entitled to be appointed, as from the time of ceasing to hold the office, to some position in the service of the employer by whom the member was employed immediately before assumption of the office, being a position not lower in classification and salary than that held immediately before assumption of the office.

Remuneration.

10. (1) The full-time elected member is entitled to be paid—

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.

(2) The part-time elected member 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.

*State Public Service Superannuation 1985*SCHEDULE 1—*continued.*PROVISIONS RELATING TO ELECTIONS AND ELECTED MEMBERS—*continued.***Deputy elected members.**

11. (1) The Minister may appoint a deputy to act in the place of an elected member during any illness, suspension or absence of the member and a deputy so appointed has, while acting for an elected member, the functions of the member.

(2) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a deputy to act in the place of a member, or as to the necessity or propriety of any appointment of a deputy.

(3) An act, matter or thing done or omitted to be done by a deputy when acting in the place of a member is as valid and effectual, and has the same consequences, as if the act, matter or thing has been done or omitted to be done by the member in whose place the deputy is acting.

Casual vacancies.

12. (1) An elected member shall be deemed to have vacated the office of elected member if the member—

- (a) dies;
- (b) is the full-time elected member and is absent from duty for a period of 15 consecutive days except on leave granted by the Minister;
- (c) is the part-time elected member and, except on leave granted by the Minister, is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to him personally or by post;
- (d) 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;
- (e) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (f) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards, or is convicted in New South Wales or elsewhere of an offence which, if committed in New South Wales, would be an offence so punishable;
- (g) resigns the office by instrument in writing addressed to the Minister;
- (h) attains the age of 60 years;
- (i) being the part-time elected member, ceases to be a contributor; or
- (j) is convicted of an offence of making a false statement in a statutory declaration referred to in clause 4 (3).

State Public Service Superannuation 1985

SCHEDULE 1—*continued.*

PROVISIONS RELATING TO ELECTIONS AND ELECTED MEMBERS—*continued.*

(2) Where, from any cause, a casual vacancy occurs in the office of an elected member, the Minister may appoint a contributor who has not attained the age of 60 years to fill the vacancy until—

- (a) the appointee's successor is elected and assumes office; or
- (b) the expiration of the term of office of the appointee's predecessor,

whichever first occurs.

(3) The Minister shall, before making an appointment under subclause (2), consult such persons, authorities, organisations and associations as the Minister thinks fit.

(4) A person appointed under subclause (2)—

- (a) to fill a vacancy in the office of full-time elected member—shall hold office as, and shall be deemed to be, the full-time elected member; or
- (b) to fill a vacancy in the office of part-time elected member—shall hold office as, and shall be deemed to be, the part-time elected member,

elected at the last preceding election for that office.

(5) Notwithstanding that a vacancy in office is filled in accordance with this clause, clauses 1 and 2 have effect as if the vacancy had not been filled.

Removal from office.

13. Section 74 of the Superannuation Act, 1916, applies to and in respect of the suspension and removal of an elected member from office in the same way as it applies to and in respect of the suspension and removal of a member of the State Superannuation Board.

SCHEDULE 2.

(Sec. 36 (5).)

PROVISIONS RELATING TO THE PROCEDURE OF THE BOARD.

General procedure.

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

Quorum.

2. At a meeting of the Board, 3 members (of whom one is the President or the Vice-President) constitute a quorum and any business transacted at a meeting at which a quorum is present is valid.

Equal voting.

3. The member presiding at a meeting of the Board has a deliberative vote and, where voting at a meeting of the Board is equal has, in addition, a casting vote.

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SCHEDULE 2—*continued.*

PROVISIONS RELATING TO THE PROCEDURE OF THE BOARD—*continued.*

Presiding member.

4. The President or, in the absence of the President, the Vice-President, shall preside at a meeting of the Board.

Voting.

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

Minutes.

6. The Board shall cause full and accurate minutes to be kept at each meeting of the Board.

SCHEDULE 3.

(Sec. 5 (1).)

EMPLOYERS.

State Bank of New South Wales.
 The Maritime Services Board of New South Wales.
 The Water Resources Commission.
 The Metropolitan Water Sewerage and Drainage Board.
 The Hunter District Water Board.
 The Board of Fire Commissioners of New South Wales.
 Western Lands Commissioner.
 The University of Sydney.
 The Trustees of the Sydney Grammar School.
 Australian Museum Trust.
 The Commissioner for Main Roads.
 The Electricity Commission of New South Wales.
 The University of New England.
 The University of New South Wales.
 Grain Handling Authority of New South Wales.
 The New South Wales Teachers' Federation.
 Public Service Association of New South Wales.
 The Macquarie University.
 The University of Newcastle.
 Mitchell College of Advanced Education.
 New South Wales Institute of Technology.
 Northern Rivers College of Advanced Education.

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SCHEDULE 3—*continued.*

EMPLOYERS—*continued.*

Newcastle College of Advanced Education.
 Cumberland College of Health Sciences.
 Kuring-gai College of Advanced Education.
 The University of Wollongong.
 Nepean College of Advanced Education.
 Riverina College of Advanced Education.
 Joint Coal Board.
 Hawkesbury Agricultural College.
 Macarthur Institute of Higher Education.
 Sydney College of the Arts.
 Armidale College of Advanced Education.
 Sydney College of Advanced Education.
 Orange Agricultural College.

SCHEDULE 4.

(Sec. 3.)

EXCLUDED PERSONS.

General exclusions.

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

Disqualification of contributor.

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

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SCHEDULE 4—*continued.*

EXCLUDED PERSONS—*continued.*

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

SCHEDULE 5.

(Sec. 5 (1).)

SUPERANNUATION PERIODS.

Column 1.	Column 2.	Column 3.
Period No.	Commencing Date.	Terminating Date.
1	1st July	14th July
2	15th July	28th July
3	29th July	11th August
4	12th August	25th August
5	26th August	8th September
6	9th September	22nd September
7	23rd September	6th October
8	7th October	20th October
9	21st October	3rd November
10	4th November	17th November
11	18th November	1st December
12	2nd December	15th December
13	16th December	29th December
14	30th December	12th January
15	13th January	26th January
16	27th January	9th February
17	10th February	23rd February
18	24th February	9th March
19	10th March	23rd March
20	24th March	6th April
21	7th April	20th April
22	21st April	4th May
23	5th May	18th May
24	19th May	1st June
25	2nd June	15th June
26	16th June	30th June

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SCHEDULE 6.

(Sec. 4.)

TRANSITIONAL PROVISIONS.

Board may exercise functions in anticipation.

1. The Board may, if it considers it to be necessary or convenient to do so for the purpose of preparing for the coming into operation of an uncommenced provision of this Act, exercise a function conferred on it by this Act that, but this clause, it could not exercise until after the commencement of the provision.

Elected members.

2. (1) Until members of the Board elected as provided by Schedule 1 assume office—
- (a) the person for the time being holding or acting in the office of full-time elected member of the State Superannuation Board shall hold or, as the case may be, act in, the office of full-time elected member of the State Public Service Superannuation Board;
 - (b) the person for the time being holding or acting in the office of part-time elected member of the State Superannuation Board shall hold or, as the case may be, act in, the office of part-time elected member of the State Public Service Superannuation Board;
 - (c) where the operation of a provision of Schedule 1 is conditional upon the time at which the last preceding elections referred to in that Schedule were held, the elections under the Superannuation Act, 1916, at which were elected the persons who, pursuant to this clause, were holding office, or acting, as members of the State Public Service Superannuation Board immediately before the commencement of the provision shall be deemed, for the purposes of the provision, to have been elections referred to in that Schedule;
 - (d) the reference in section 75 (1) (b) of the Superannuation Act, 1916, to "duty" includes a reference to duty under this Act that, by the operation of this Schedule, is imposed on the person referred to in paragraph (a); and
 - (e) the reference in section 75 (1) (b) of the Superannuation Act, 1916, to "four consecutive meetings" includes a reference to 4 consecutive meetings of the State Public Service Superannuation Board.
- (2) Schedule 1 does not apply to or in respect of persons referred to in subclause (1) (a) and (b).

Regulations.

3. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequential upon the enactment of this Act and the Superannuation (Scheme Closure) Amendment Act, 1985.

(2) Without prejudice to the generality of subclause (1), regulations may be made for or with respect to the making and effect of an election to become a contributor under this Act by a person referred to in section 1A (2) (a) of the Superannuation Act, 1916, who, pursuant to regulations made under section 86 (1A) of the latter Act, also makes an election to become a contributor under the latter Act.

State Public Service Superannuation 1985

SCHEDULE 6—*continued.*TRANSITIONAL PROVISIONS—*continued.*

(3) A provision made under subclause (1) may be made to take effect on and from the date of assent to this Act or on and from a later date.

(4) To the extent to which a provision made under subclause (1) takes effect on and from a date that is later than the date of its publication in the Gazette, the provision does not operate—

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

In the name and on behalf of Her Majesty I assent to this Act.

J. A. ROWLAND,
Governor.

Government House,
Sydney, 30th April, 1985.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1985

