

Version No. 070
State Superannuation Act 1988
No. 50 of 1988

Version incorporating amendments as at 10 September 2009

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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is to—

- (a) provide improved benefits under the State Superannuation Fund; and
- (b) introduce a new scheme for new officers; and
- (c) repeal the **Superannuation Act 1958**.

2 Commencement

- (1) Section 93(3) is deemed to have come into operation on 1 July 1987.
- (2) Section 93(4) is deemed to have come into operation on 27 November 1987.
- (3) Part 1 and Division 2 of Part 6 and section 91 are deemed to have come into operation on 1 January 1988.
- (4) The remaining provisions of this Act come into operation on a day or days to be proclaimed.

3 Definitions

(1) In this Act—

S. 3(1) def. of *actuary* substituted by No. 4/1996 s. 106(1)(a).

actuary means a fellow or accredited member of the Institute of Actuaries of Australia approved by the Minister;

S. 3(1) def. of *Board* substituted by No. 120/1994 s. 56(1), repealed by No. 8/1999 s. 51(1)(a), new def. of *Board* inserted by 94/2005 s. 36(1)(a).

Board means the Emergency Services Superannuation Board established under section 5 of the **Emergency Services Superannuation Act 1986**;

S. 3(1) def. of *child* amended by No. 27/2001 s. 5(Sch. 3 item 5.1(b)).

child in relation to an officer or pensioner means a child of himself or herself or of his or her partner other than any child born more than 10 months after his or her death who is—

- (a) under 18 years of age; or
- (b) between the age of 18 and 25 years and in the opinion of the Board is a full-time student;

S. 3(1) def. of *complying superannuation fund* inserted by No. 4/1996 s. 106(1)(b).

complying superannuation fund means a superannuation entity or a superannuation fund within the meaning of section 10 of the Commonwealth Superannuation Industry (Supervision) Act 1993 which is a complying superannuation fund or a complying approved deposit fund within the meaning of Part IX of the Commonwealth Income Tax Assessment Act 1936;

contract officer means—

- (a) an executive within the meaning of section 4(1) of the **Public Administration Act 2004** employed under a contract of employment under that Act, other than an exempt officer; or
- (aa) any person who—
 - (i) is declared or deemed to be a person to whom subsection (2)(c) applies; or
 - (ii) is a member of a class of persons declared or deemed to be persons to whom subsection (2)(c) applies—
by the Minister by instrument in writing; or
- (b) any person who—
 - (i) is declared or deemed to be a contract officer; or
 - (ii) is a member of a class of persons declared or deemed to be contract officers—
by the Minister by instrument in writing for the purposes of this Act;

S. 3(1) def. of *contract officer* inserted by No. 87/1992 s. 15(1)(a), substituted by No. 110/1993 s. 70(1)(a), amended by Nos 46/1998 s. 7(Sch. 1), 84/1998 s. 45(1), 108/2004 s. 117(1) (Sch. 3 item 189.1).

contributor means an officer who will be, is, or has been, eligible to contribute to the State Superannuation Fund;

S. 3(1) def. of *contributor* amended by No. 94/2005 s. 36(1)(b).

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S. 3(1) def. of *dependant* inserted by No. 120/1994 s. 53(1)(a), amended by No. 27/2001 s. 5(Sch. 3 item 5.1(c)).

dependant, in relation to a deceased person, means—

- (a) his or her partner; or
- (b) a child of the person; or
- (c) any other person who in the opinion of the Board was at the date of the death of the person wholly or partially dependent on the person or who at that date had a legal right to look to him or her for financial support;

S. 3(1) def. of *disability* amended by Nos 49/1992 s. 3(a), 110/1993 s. 70(1)(b), 23/1994 s. 118(Sch. 1 item 54.1(a)), substituted by No. 120/1994 s. 54.

disability, in relation to a member, means the permanent inability of the member before the age of 60 years due to a continuing or recurring injury, disease or infirmity—

- (a) to perform his or her duties; and
- (b) to perform any other duties for which he or she is suited by education, training or experience or for which he or she would be suited as a result of retraining—

as determined by the Board on the basis of reports provided by at least 2 registered medical practitioners appointed by the Board;

S. 3(1) def. of *domestic partner* inserted by No. 27/2001 s. 5(Sch. 3 item 5.1(a)), substituted by No. 12/2008 s. 73(1)(Sch. 1 item 58.1).

domestic partner of a person means—

- (a) a person who is, or was at the time of the person's death, in a registered relationship with the person; or
- (b) a person to whom the person is not married but with whom, in the opinion of the Board, the person is, or was at the time of the person's death, living as a couple on a genuine domestic basis (irrespective of gender);

eligible contribution means the Government co-contribution payable under the Superannuation (Government Co-contributions for Low Income Earners) Act 2003 of the Commonwealth that the Commissioner of Taxation determines under that Act is to be paid to the Fund or to the person;

S. 3(1) def. of *eligible contribution* inserted by No. 78/2004 s. 14.

eligible member means a contributor who is a person in respect of whom a Government co-contribution is payable in accordance with section 6 of the Superannuation (Government Co-contributions for Low Income Earners) Act 2003 of the Commonwealth;

S. 3(1) def. of *eligible member* inserted by No. 78/2004 s. 14.

eligible member account means the account established under section 60A;

S. 3(1) def. of *eligible member account* inserted by No. 78/2004 s. 14.

eligible salary sacrifice contributor means an officer in respect of whom a declaration is in force under section 3A;

S. 3(1) def. of *eligible salary sacrifice contributor* inserted by No. 40/2004 s. 29.

employing authority means any person, authority or body who or which is the employer of an officer;

S. 3(1) def. of *exempt officer* inserted by No. 87/1992 s. 15(1)(b), substituted by No. 110/1993 s. 70(1)(c), amended by Nos 46/1998 s. 7(Sch. 1), 108/2004 s. 117(1) (Sch. 3 item 189.2).

exempt officer means—

- (a) an executive within the meaning of section 4(1) of the **Public Administration Act 2004** employed under a contract of employment under the Act during any period that a certificate in writing issued under section 7(5) of the **Superannuation (Public Sector) Act 1992** by the employing authority to the Board is in force; or
- (b) a contract officer whose employing authority advises the Board in writing that the contract of employment under which the contract officer is employed provides that the contract officer is an exempt officer for the purposes of this Act;

expense allowance means an allowance payable periodically which—

- (a) is designated as an expense allowance or an expense of office allowance; or
- (b) is in fact an allowance which is granted to an officer in respect of expenses which are normally and properly incurred by the officer in carrying out the duties of his or her office;

S. 3(1) def. of *final average salary* inserted by No. 110/1993 s. 70(1)(d).

final average salary means—

- (a) in relation to an officer with less than 2 years of recognised service, an amount calculated in accordance with the formula—

$$\frac{A}{B} \times \frac{365}{1}$$

where—

"A" is the aggregate salary paid to the officer in respect of the officer's period of recognised service;

"B" is the total number of days in that period;

- (b) in relation to an officer with 2 years or more of recognised service, an amount equal to one-half of the officer's aggregate salary for the period of recognised service of 2 years ending on the officer's last day of service—

and if the period of recognised service includes a period of leave without pay, there is deemed to have been payable to that officer during that period of leave without pay, salary at the rate payable to the officer immediately before the period of leave, or such higher salary as has been approved by the Board for the purposes of this section, but in no case shall the amount in relation to a person who was an officer on 1 January 1994 be less than the officer's salary on that date;

Fund means the Scheme established under section 15 of the **Emergency Services Superannuation Act 1986**;

S. 3(1) def. of *Fund* amended by No. 81/1988 s. 25(a), substituted by No. 94/2005 s. 36(1)(c).

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S. 3(1) def. of *Government Actuary* repealed by No. 4/1996 s. 106(1)(c).

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S. 3(1) def. of
ill health
inserted by
No. 102/1995
s. 22,
amended by
No. 4/1996
s. 106(2).

ill health means a continuous or recurring impairment of the health of a member which is due to a physical or mental incapacity, bodily injury, illness or disease, which in the opinion of the Board—

- (a) is not a disability; and
- (b) is likely to be adversely affected if the member remains in his or her employment or returns to employment with an employing authority; and
- (c) does not preclude the member from seeking alternative employment; and
- (d) has not been incurred or inflicted for the purpose of obtaining a benefit;

S. 3(1) def. of
*minimum age
for retirement*
amended by
No. 82/1996
s. 58(2).

minimum age for retirement means—

- (a) the age of 55 years; or
- (b) if an entitlement to an accrued benefit at an earlier age than 55 years is prescribed for a prescribed class of members, that earlier age;

S. 3(1) def. of
*new scheme
member*
amended by
Nos 81/1988
s. 25(b),
49/1992
s. 3(b),
110/1993
s. 82(2),
94/2005
s. 36(1)(d).

new scheme member means—

- (a) an officer who was not a contributor or a person entitled to a pension on the ground of disability under the **Superannuation Act 1958** or this Act on 30 June 1988; and
- (b) a person who becomes an officer after 30 June 1988, on and from the date on which that person becomes an officer; and

-
- (ba) a person who makes an election under any Act to transfer to the State Superannuation Fund, on and from the date on which that election takes effect; and
- (c) an officer who makes an election under section 61 or 61B, on and from the date on which that election takes effect—
- but does not include—
- (d) a revised scheme member who after 30 June 1988 ceases to be a contributor for less than 30 days and again becomes an officer; and
- (e) a person—
- (i) who was a contributor before 1 July 1988; and
 - (ii) to whom section 30(2)(b) of **The Constitution Act Amendment Act 1958** applies;

* * * * *

S. 3(1) def. of occupational superannuation standards inserted by No. 49/1992 s. 3(c), repealed by No. 4/1996 s. 106(1)(c).

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S. 3(1) def. of *officer* amended by Nos 49/1992 s. 3(d), 87/1992 s. 15(1)(c), 18/1993 s. 34, 120/1994 s. 65(a), 50/1997 ss 12, 18(4), 46/1998 s. 7(Sch. 1), 12/1999 s. 4(Sch. 2 item 13.1), 108/2004 s. 117(1) (Sch. 3 item 189.3), 20/2005 s. 52(4), 24/2006 s. 6.1.2(Sch. 7 item 38.1 (a)–(c)).

officer (subject to subsection (4)) means a person other than an exempt officer or a person who is employed on a casual basis who is—

- (a) employed—
 - (i) under Part 3 of the **Public Administration Act 2004**; or
 - (ii) under the **Education and Training Reform Act 2006** as—
 - (A) a member of the permanent staff of the teaching service; or
 - (B) a temporary teacher; or
 - (C) a temporary professional appointee; or
 - (D) a temporary assistant professional appointee; or
 - (E) a temporary special developmental school teacher; or
 - (iii) under the **Education and Training Reform Act 2006**—
 - (A) by the Secretary or a school council; or
 - (B) as a rural school aide; or
 - (C) as a teacher aide; or
 - (iv) under Part 3 of the **Parliamentary Administration Act 2005**; and
- (b) on the staff of a post secondary education institution within the meaning of the **Education and Training Reform Act 2006** or a technical and further education institution within the meaning of that

Act whom the Secretary to the Department of Treasury and Finance certifies in writing to the Board to be in his or her opinion a person the greater part of whose salary is met from the Consolidated Fund; and

- (c) a person or a member of a class of persons—
- (i) holding any office under the Crown; or
 - (ii) holding any office as a member or in the service or employment of any body created by or under any Act; or
 - (iii) holding any office as a member or in the service or employment of any other body that the Minister by instrument declares to be a body to which this subparagraph applies—

to which person or class of persons the Minister by instrument declares that this Act applies; and

- (d) holding any office—
- (i) under the Crown; or
 - (ii) as a member or in the service or employment of any body created by or under any Act—

who was before his or her appointment to that office an officer for the purposes of this Act and who is by or under any Act or law deemed to continue to be an officer within the meaning of this Act while holding that office; and

- (e) an officer within the meaning of the **Superannuation Act 1958** on 30 June 1988 and continues to be employed by the same or another employing authority; and
- (f) referred to in paragraph (a), (b), (c), (d) or (e) and has resigned or been given leave of absence without pay to act as a full-time officer of a trade union which is approved by the Minister; and
- (g) a person referred to in a preceding paragraph who as a result of a change of employment becomes a person referred to in—
 - (i) any other paragraph of this definition; or
 - (ii) any paragraph of the definition of *employee* in section 2(1) of the **State Employees Retirement Benefits Act 1979**; or
 - (iii) any paragraph of the definition of *employee* in section 3(1) of the **Transport Superannuation Act 1988**.

S. 3(1) def. of *original scheme member* amended by No. 94/2005 s. 36(1)(e).

original scheme member means an officer contributing to the State Superannuation Fund as at 30 June 1988 who was not a revised scheme member;

S. 3(1) def. of *partner* inserted by No. 27/2001 s. 5(Sch. 3 item 5.1(a)).

partner of a person means—

- (a) in relation to a person who became entitled to benefits under this Act before the commencement of section 5 of the **Statute Law Amendment (Relationships) Act 2001**—

- (i) the person's husband, wife, widower or widow; or
 - (ii) a person of the opposite sex who, though not married to the person, in the opinion of the Board lives with the person, or lived with the person at the date of the person's death, on a bona fide domestic basis as the person's husband or wife;
- (b) in any other case—the person's spouse or domestic partner;

* * * * *

S. 3(1) def. of *Period of absence* repealed by No. 81/1988 s. 25(c).

prescribed means prescribed by the regulations;

recognised service, in relation to an officer, means the total period (calculated in years, months and days) during which the officer contributed (or in the case of a new scheme member, was entitled to contribute) to the State Superannuation Fund and the Fund and includes—

S. 3(1) def. of *recognised service* amended by Nos 81/1988 s. 25(d), 49/1992 s. 3(e)(f), 110/1993 s. 70(1)(e), 94/2005 s. 36(1)(f).

- (a) the additional period of service (if any) which the officer is taken as having by virtue of the operation of, or is by any Act deemed to have for the purpose of section 13D(3), 13DA(3), 13DB(1), 13DB(1A) or 67(1A) of the **Superannuation Act 1958** and in respect of which the officer has made contributions or other payments to the Fund; and

(b) any additional period of service (if any) determined by the Board in accordance with the regulations—

but does not include any period after he or she attains the age of 65 years unless the Treasurer otherwise specifies in writing in respect of a specified officer or, except where express provision to the contrary is made in this Act, any period of leave of absence unless contributions have been paid in respect of that period of leave of absence under section 49(1)(c);

S. 3(1) def. of *registered medical practitioner* inserted by No. 23/1994 s. 118(Sch. 1 item 54.1(b)), amended by No. 97/2005 s. 182(Sch. 4 item 48).

registered medical practitioner means a medical practitioner registered under the **Health Professions Registration Act 2005**;

S. 3(1) def. of *resignation* substituted by No. 82/1996 s. 58(1).

resignation means the termination of service (however expressed) other than by reason of death, disability or retrenchment of a member before he or she has attained the minimum age for retirement;

S. 3(1) def. of *retrenchment* amended by No. 72/1990 s. 3(a)(b), substituted by No. 87/1992 s. 15(1)(d).

retrenchment means the termination of the employment or service of an officer who has not attained the minimum age for retirement and in respect of whom the employing authority certifies in writing to the Board that the officer has been retrenched for the purposes of this Act;

S. 3(1) def. of *revised scheme member* amended by No. 81/1988 s. 25(e).

revised scheme member means an officer who was a revised scheme contributor within the meaning of section 3(1A) of the **Superannuation Act 1958**;

revised scheme member's pension means, on the death or disability of a revised scheme member before retirement, the pension which would have become payable to the deceased or disabled revised scheme member at the retirement age of 60 if his or her final average salary at the time of death or disability had been his or her final average salary at age 60 and counting the recognised service which would have been completed by that age;

S. 3(1) def. of *revised scheme member's pension* amended by No. 110/1993 ss 70(1)(f), 71(2).

RSA means a retirement savings account within the meaning of the Commonwealth Retirement Savings Accounts Act 1997;

S. 3(1) def. of *RSA* inserted by No. 40/2004 s. 28(1).

salary means the annual rate, computed as determined by the Board on the basis of a year consisting of 313 working days and 52 Sundays, of pecuniary emoluments payable periodically and regularly to an officer for the performance of the duties of his or her grade of employment as an officer, and includes—

S. 3(1) def. of *salary* amended by Nos 81/1988 s. 25(f)(i)(ii), 49/1992 s. 3(g)-(i), 37/2007 s. 26.

- (a) the annual rate of allowances payable instead of free quarters, and, when free quarters are provided, the annual rate of allowance that would have been payable had free quarters not been provided; and
- (b) the annual rate of remuneration or pecuniary emolument payable for the regular performance of duties on Sundays, subject to deduction of the value of any leave of absence granted in respect thereof, where the annual value of that remuneration and of that

deduction can be computed in advance;
and

* * * * *

- (d) unless an officer otherwise elects in writing, the annual rate of any higher duties allowance payable to an officer for at least 12 months and includes any increase in the rate during a period of at least 12 months where a higher duties allowance has been paid continuously in respect of different positions held by that officer; and
- (e) any additional amount prescribed for officers who perform rostered or shift work; and
- (f) the annual rate of any other remuneration or pecuniary emolument payable periodically and approved by the Board—

but does not include a recreation leave allowance or an expense allowance or payment for overtime, or for travelling allowances or for incidental expenses or payments of a temporary character;

S. 3(1) def. of *secondment* amended by Nos 49/1992 s. 3(j), 70/2003 s. 18.

secondment, in relation to an officer, means leave without pay to engage in paid employment with the consent of his or her employer during the period of that leave and in respect of which contributions payable under section 90A are only met by or on behalf of the current employer during that period;

S. 3(1) def. of *specified standards* inserted by No. 4/1996 s. 106(1)(d).

specified standards means standards specified under section 92A;

spouse of a person means a person to whom the person is, or was at the time of the person's death, married;

S. 3(1) def. of *spouse* substituted by Nos 120/1994 s. 53(1)(b), 27/2001 s. 5(Sch. 3 item 5.1(d)).

State Superannuation Fund means the Superannuation Fund established under the **Superannuation Act 1925** and continued under this Act as the State Superannuation Fund and as in existence immediately before the commencement of the **Superannuation Legislation (Governance Reform) Act 2005**;

S. 3(1) def. of *State Superannuation Fund* inserted by No. 94/2005 s. 36(1)(g).

Superannuation Act 1958 means the **Superannuation Act 1958** as in force immediately before the commencement of section 93(1);

superannuation system has the same meaning as it has in regulation 5.01(1) of the Superannuation Industry (Supervision) Regulations 1994 of the Commonwealth;

S. 3(1) def. of *superannuation system* inserted by No. 37/2007 s. 27.

surchargeable contributions means the surchargeable contributions of an officer for a particular financial year worked out in accordance with section 8 of the Commonwealth Superannuation Contributions Tax (Assessment and Collection) Act 1997 and any regulations made under that section that apply in respect of that particular financial year;

S. 3(1) def. of *surchargeable contributions* inserted by No. 29/2000 s. 14.

surcharge debt account means, in relation to a person who is or has been an officer, the surcharge debt account kept for that person (while he or she was an officer) under section 71C;

S. 3(1) def. of *surcharge debt account* inserted by No. 29/2000 s. 14.

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S. 3(1) def. of *surcharge deduction amount* inserted by No. 29/2000 s. 14.

surcharge deduction amount means, in relation to a person—

- (a) who is or has been an officer; and
- (b) to or in respect of whom benefits become payable under this Act—

the surcharge deduction amount that is specified in a determination made by the Board under section 71C in relation to the person;

S. 3(1A) inserted by No. 70/2003 s. 19.

- (1A) For the purpose of the definition of *dependant* in section 3(1), a person was partially dependent on a deceased person if the person benefited from a financial contribution which was not trivial in nature and was to some extent necessary to sustain the basics of life.

S. 3(2) amended by No. 87/1992 s. 15(2)(b).

- (2) For the purposes of the definition of *salary* in subsection (1)—

S. 3(2)(a) amended by No. 87/1992 s. 15(2)(a).

- (a) if an officer's salary is reduced then, unless the officer agrees in writing that the reduced salary applies, salary means the greater of—
 - (i) the salary of the officer immediately before the reduction; or
 - (ii) the actual salary; or
- (b) in the case of an officer referred to in paragraph (f) of the definition of *officer*, salary means the last salary of the officer immediately prior to becoming a full-time officer of the trade union adjusted in accordance with changes in the rate of salary for the last substantive classification of the officer or any higher salary as is paid to the officer by the trade union and approved by the Board; or

-
- (c) in the case of a person referred to in paragraph (a) or (aa) of the definition of *contract officer*, salary means the salary for superannuation purposes in accordance with section 12 of the **Superannuation (Public Sector) Act 1992** and notified in writing by the employing authority to the Board; or
- (d) subject to paragraph (e), in the case of a person referred to in paragraph (b) of the definition of *contract officer*, salary means the salary for superannuation purposes specified from time to time in that person's contract of employment and notified in writing by the employing authority to the Board; or
- (e) if a person to whom paragraph (d) applies is a member of the Principal Class within the meaning of Part 2.4 of the **Education and Training Reform Act 2006**, or a member of the Executive Class within the meaning of that Part and immediately before becoming a member of the Executive Class was a member of the Principal Class, the salary specified for the purpose of paragraph (d) must not exceed—
- (i) in the case of a person who was a member of the new scheme on 31 January 1995, a maximum of 90.9 per cent of the person's remuneration package; or
- (ii) in any other case, a maximum of 82.3 per cent of the person's remuneration package.
- S. 3(2)(c) inserted by No. 87/1992 s. 15(2)(b), amended by Nos 58/1994 s. 6(a), 84/1998 s. 45(2).
- S. 3(2)(d) inserted by No. 58/1994 s. 6(b), amended by No. 120/1994 s. 55(1)(2).
- S. 3(2)(e) inserted by No. 120/1994 s. 55(2), amended by No. 24/2006 s. 6.1.2(Sch. 7 item 38.2), substituted by No. 70/2008 s. 42.

State Superannuation Act 1988
No. 50 of 1988
Part 1—Preliminary

s. 3

S. 3(3)
amended by
Nos 100/1995
s. 32(Sch. 2
item 9),
46/1998
s. 7(Sch. 1).

- (3) The Minister may, by an instrument of delegation under the hand of the Minister, delegate to the Secretary to the Department of Treasury and Finance any power or duty of the Minister under paragraph (c) of the definition of *officer* in subsection (1).
- (4) Until 1 July 1988 *officer* in Division 2 of Part 6 has the same meaning as it has in section 3 of the **Superannuation Act 1958**.
- (5) A reference in this Act to a Commonwealth Act is a reference to that Act as amended and in force for the time being or as re-enacted and as subsequently amended and in force for the time being.

S. 3(6)
inserted by
No. 110/1993
s. 70(2).

- (6) Despite the amendment of the definition of *revised scheme member's pension* by section 70(1)(f) of the **Public Sector Superannuation (Administration) Act 1993** no pension calculated according to that definition as amended shall be less than the pension that would have been payable had the revised scheme member retired due to disability or died (as the case may be) immediately before that section came into operation.

S. 3(7)
inserted by
No. 8/1999
s. 51(2),
repealed by
No. 94/2005
s. 36(2).

* * * * *

S. 3(8)
inserted by
No. 27/2001
s. 5(Sch. 3
item 5.2),
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 58.2).

- (8) For the purposes of the definition of *domestic partner* in subsection (1)—
- (a) *registered relationship* has the same meaning as in the **Relationships Act 2008**; and

- (b) in determining whether persons who are not or were not in a registered relationship are or were domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

3A Declaration of eligible salary sacrifice contributors

S. 3A
inserted by
No. 40/2004
s. 30.

The Minister may by notice published in the Government Gazette declare—

- (a) an officer who is—
- (i) an original scheme member; or
 - (ii) a revised scheme member; or
 - (iii) a new scheme member; or
 - (iv) a member of the State Superannuation Fund as a result of a transfer to the Fund under section 94—

S. 3A(a)(iv)
amended by
No. 94/2005
s. 37.

to be an eligible salary sacrifice contributor from the date specified in the notice; or

- (b) a class of officers who are—
- (i) original scheme members; or
 - (ii) revised scheme members; or
 - (iii) new scheme members; or
 - (iv) members of the State Superannuation Fund as a result of a transfer to the State Superannuation Fund under section 94—

S. 3A(b)(iv)
amended by
No. 94/2005
s. 37.

to be eligible salary sacrifice contributors from the date specified in the notice.

4 Application of Act

S. 4(1)
amended by
Nos 4/1996
s. 107(1),
8/1999
s. 51(1)(b),
43/2008
s. 21(1).

- (1) Subject to subsection (1A), this Act does not apply to an officer while he or she is a member of a prescribed superannuation scheme.

S. 4(1A)
inserted by
No. 4/1996
s. 107(2),
repealed by
No. 8/1999
s. 51(1)(c),
new s. 4(1A)
inserted by
No. 43/2008
s. 21(2).

- (1A) Subsection (1) does not apply if the officer is a member of the ESSPLAN Scheme in accordance with section 21B(1)(c) of the **Emergency Services Superannuation Act 1986**.
- (2) If any person has been appointed prior to the commencement of the **Superannuation (Amendment) Act 1968** for a term of years to any of the offices mentioned in Part II of the Second Schedule of the **Superannuation Act 1958**—
- (a) for the purposes of this Act, he or she is so long as he or she continues to be employed in the office (whether during or after the expiration of the term for which he or she was appointed) an officer within the meaning of this Act; and
- (b) the cessation of that employment (otherwise than by retrenchment, dismissal or resignation) is to be taken to be retirement within the meaning of this Act.
- (3) Any person who is an officer for the purposes of this Act by the operation of paragraph (d) in the definition of *officer* in section 3(1) or who would at any time have been an officer for the purposes of this Act or any corresponding previous enactment if the definition of *officer* at that time

had included a provision corresponding to that paragraph is for the purposes of this Act and of any corresponding previous enactment to be taken to have been during the period that he or she holds or held that office, whether before or after the commencement of the **Superannuation Act 1965**, an officer within the meaning of this Act.

- (4) A person (other than a person referred to in subsection (5)) who, immediately before 1 July 1988—
- (a) is a contributor within the meaning of the **Superannuation Act 1958**; and
 - (b) is liable to contribute under section 11 of that Act; and
 - (c) since 1 July 1975 has not contributed under section 11 of that Act or received a disability pension under that Act—
- is to be treated for the purposes of this Act as a new scheme member and is not entitled to receive any benefits under the **Superannuation Act 1958** in respect of any period for which that person has been liable to contribute under section 11 of that Act but has not so contributed.
- (5) Despite subsection (4), a person referred to in that subsection is to be treated as a revised scheme member if he or she—
- (a) within 6 months before 1 July 1988 becomes a contributor within the meaning of the **Superannuation Act 1958**; and
 - (b) has by 31 December 1988 commenced to contribute under section 28.

State Superannuation Act 1988
No. 50 of 1988
Part 1—Preliminary

s. 4

S. 4(6)
inserted by
No. 81/1988
s. 26.

(6) If a person becomes a new scheme member as a result of an election under section 75 of the **State Employees Retirement Benefits Act 1979** the Board must grant to that member an additional accrued retirement benefit equal to—

S. 4(6)(a)
amended by
No. 110/1993
s. 71(1).

(a) 15 per cent of final average salary for each year of service recognised by the State Employees Retirement Benefits Board in which no contributions were made; and

S. 4(6)(b)
amended by
No. 110/1993
s. 71(1).

(b) 20 per cent of final average salary for each year of service recognised by the State Employees Retirement Benefits Board in which contributions were made on or after the commencement of section 26 of the **Superannuation Acts (Amendment) Act 1988**; and

S. 4(6)(c)
amended by
No. 110/1993
s. 71(1).

(c) 21 per cent of final average salary for each year of service recognised by the State Employees Retirement Benefits Board in which contributions were made before the commencement of section 26 of the **Superannuation Acts (Amendment) Act 1988**.

S. 4(7)
inserted by
No. 110/1993
s. 72.

(7) A person cannot become an officer or become a member of the revised scheme or the new scheme on or after the commencement of section 72 of the **Public Sector Superannuation (Administration) Act 1993** except by transferring from the revised scheme to the new scheme under section 61B.

State Superannuation Act 1988
No. 50 of 1988

s. 5

* * * * *

**Pt 2 (Heading
and ss 5–15)
amended by
Nos 81/1988
s. 27(a)–(c),
72/1990 s. 4,
49/1992
ss 4–8,
120/1994
s. 56(2)(3),
4/1996
s. 108(1),
46/1998
s. 7(Sch. 1),
84/1998 s. 46,
repealed by
No. 8/1999
s. 51(1)(c).**

s. 16A

Pt 3 (Heading)
amended by
No. 94/2005
s. 38(1).

PART 3—THE NON-CONTRIBUTORY SCHEMES ACCOUNT

S. 16
amended by
Nos 81/1988
s. 27(d),
49/1992 s. 9,
54/1993
s. 11(1),
82/1996
s. 59(1),
repealed by
No. 94/2005
s. 38(2).

* * * * *

S. 16AA
inserted by
No. 4/1996
s. 109,
repealed by
No. 94/2005
s. 38(2).

* * * * *

S. 16A
inserted by
No. 54/1993
s. 10.

16A Non-contributory schemes account

- (1) The Board must keep an account in the Fund called the non-contributory schemes account.
- (2) There shall be credited to the account in respect of each scheme member such amounts in respect of such periods commencing on or after 1 July 1992 as the Board, on the advice of an actuary and with the approval of the Minister, determines from time to time, having regard to the Commonwealth Act.
- (3) In addition to the amounts paid under subsection (2), there shall be credited to the account in respect of a scheme member such amounts as the Board from time to time determines, on the advice of an actuary and with the approval of the Minister, having regard to interest earned on investment of the Fund, after deduction of income tax (if any) and costs and expenses incurred by the Board in keeping the account.

State Superannuation Act 1988
No. 50 of 1988
Part 3—The Non-contributory Schemes Account

s. 16A

* * * * *

S. 16A(4)(5)
repealed by
No. 82/1996
s. 59(2).

(5A) If a pension or benefit is not payable to or in respect of a person under the relevant Act, the amount in the account is to be paid to the person or to his or her dependant or legal personal representative as the Board determines.

S. 16A(5A)
inserted by
No. 110/1993
s. 73.

* * * * *

S. 16A(5B)
inserted by
No. 110/1993
s. 73,
repealed by
No. 120/1994
s. 53(2).

(6) In this section—

account means the non-contributory schemes account referred to in subsection (1);

Commonwealth Act means the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth;

relevant Act means **Attorney-General and Solicitor-General Act 1972, Constitution Act 1975, County Court Act 1958, Director of Public Prosecutions Act 1982, Magistrates' Court Act 1989 and Supreme Court Act 1986;**

S. 16A(6)
def. of
relevant Act
amended by
No. 70/2003
s. 20(1).

scheme member means a person who has not resigned or retired but who, on resignation or retirement, will be entitled to a pension under a relevant Act.

(7) Part 7A does not apply in respect of the account.

S. 16A(7)
inserted by
No. 70/2003
s. 20(2).

State Superannuation Act 1988
 No. 50 of 1988
 Part 3—The Non-contributory Schemes Account

s. 17

S. 17 repealed by No. 94/2005 s. 38(2).	*	*	*	*	*
Ss 18, 19 repealed by No. 120/1994 s. 56(3).	*	*	*	*	*
Ss 20–22 repealed by No. 31/1994 s. 4(Sch. 2 item 84).	*	*	*	*	*
S. 23 amended by Nos 82/1996 s. 60, 46/1998 s. 7(Sch. 1), repealed by No. 94/2005 s. 38(2).	*	*	*	*	*
Pt 3A (Heading and ss 23A–23G) inserted by No. 95/2000 s. 3, repealed by No. 94/2005 s. 39.	*	*	*	*	*

PART 4—PART-TIME OFFICERS

24 Definitions applying to this Part only

(1) In this Part—

comparable full-time officer in relation to a part-time officer means an officer who is employed in a similar office to the part-time office on a full-time basis, whether or not there is such an officer;

full-time officer means an officer who is employed on a full-time basis throughout the year;

part-time officer means an officer who is employed at any time on a basis which requires him or her to render part-time service;

pro rata in relation to a part-time officer means—

$\frac{A}{B}$

where—

A is the total service in years and completed months of the part-time officer;

B is the total service in years and completed months that the part-time officer would have rendered if he or she had been a full-time officer throughout his or her service as a part-time officer;

total service—

(a) in relation to a revised scheme member, means the total in years and completed months of his or her continuous recognised service, whether as a full-

S. 24(1) def. of
total service
amended by
Nos 81/1988
s. 27(e),
120/1994 s. 58.

time or part-time officer, or 30 years,
whichever is the lesser; or

- (b) in relation to a new scheme member,
the total in years and completed months
of his or her continuous recognised
service whether as a full-time or part-
time officer—

and where that total is relevant to the
calculation of benefits on death or retirement
on grounds of disability includes prospective
service.

- (2) The Board may recognise as a part-time officer an
officer who is employed on an intermittent basis if
it is satisfied that the total service required of that
officer can be calculated annually in advance.
- (3) If a full-time officer is employed on a part-time
basis due to ill-health, the Board may recognise all
or part of that part-time service as full-time
employment.

25 Service and prospective service of a part-time officer

- (1) The service of a part-time officer is to be the
proportion that his or her actual part-time service
bears to the service that a comparable full-time
officer would have been required to render.
- (2) The prospective service of a part-time officer at
any time is to be calculated on the proportion that
his or her average service over the preceding
3 years or his or her period of membership of the
State Superannuation Fund and the Fund
(whichever is the lesser) bears to the service
which would have been required of a comparable
full-time officer over the same period.

S. 25(2)
amended by
No. 94/2005
s. 40.

26 Act applies subject to principles and rules for part-time officers

- (1) This Act applies to a part-time officer (other than an officer employed on that basis who has been recalled to service under section 76) subject to and in accordance with the principles and subject to the rules and modifications provided in this section.
- (2) If—
 - (a) the service of a part-time officer follows continuously upon his or her service as a full-time officer; or
 - (b) the service of a full-time officer follows continuously upon his or her service as a part-time officer—his or her period of service as a full-time officer is to be added to his or her period of service as a part-time officer.
- (3) The contributions to be paid by a part-time officer are that proportion of the contributions that would be payable by a comparable full-time officer which the service of the part-time officer at the time the contributions fall due bears to the service of a comparable full-time officer.
- (4) Where a contributor has been a full-time officer and a part-time officer his or her benefits on retirement or death are to be calculated pro rata to the benefits payable to a comparable full-time officer.

PART 5—ORIGINAL SCHEME MEMBERS

27 Original scheme members

S. 27
amended by
No. 70/2003
s. 21 (LA
s. 39B(1)).

(1) Despite the repeal of the **Superannuation Act 1958**, an officer who is an original scheme member is entitled to contribute for units of pension and has the same benefits and rights under that Act as if that Act had not been repealed.

S. 27(2)
inserted by
No. 70/2003
s. 21.

(2) Notwithstanding anything to the contrary in the **Superannuation Act 1958**, the payment of any benefit under that Act is subject to any relevant specified standards made under section 92A.

S. 27(3)
inserted by
No. 40/2004
s. 31.

(3) An eligible salary sacrifice contributor may by notice in writing to the employing authority elect to make his or her member contributions by way of salary sacrifice at the rate calculated to the nearest highest 0.1% in accordance with the following formula—

$$\frac{M}{1 - R}$$

where—

"M" is the applicable member contribution rate in accordance with the **Superannuation Act 1958** without salary sacrifice;

"R" is the tax rate for the financial year on taxable contributions to the Fund under the Commonwealth Income Tax Assessment Act 1936.

- (4) An election under subsection (3)—
- (a) can only be made if there is in force an agreement between the employing authority and the member under which the employing authority can make the member contributions required by the **Superannuation Act 1958** by way of salary sacrifice;
 - (b) is subject to the terms and conditions specified in the agreement referred to in paragraph (a);
 - (c) can only be made in respect of the whole of the member contributions;
 - (d) can not be made in respect of any contributions made by a member in addition to the member contributions required under the **Superannuation Act 1958**.

S. 27(4)
inserted by
No. 40/2004
s. 31.

- (5) Member contributions made in accordance with the rate determined under subsection (3) are for the purposes of the **Superannuation Act 1958** (other than the provisions relating to surchargeable contributions) to be taken to be—

S. 27(5)
inserted by
No. 40/2004
s. 31.

- (a) the member contributions required to be paid under the **Superannuation Act 1958**; and
- (b) the member contributions that would have been payable if an election had not been made under subsection (3).

Note

The effect of paragraph (b) is that, for the purpose of calculating benefit entitlements, the member contributions are taken to be the member contributions that would have been payable if no election had been made.

Note to
s. 27(5)(b)
inserted by
No. 37/2007
s. 28.

- (6) An election under subsection (3) does not affect the amount that would otherwise constitute the salary of the original scheme member for the purposes of the **Superannuation Act 1958**.

S. 27(6)
inserted by
No. 40/2004
s. 31.

S. 27A
inserted by
No. 70/2003
s. 22.

27A Application of Family Law provisions to pensioners

- (1) The **Superannuation Act 1958** as in force immediately before its repeal continues to apply in respect of a person who became entitled to receive a pension under that Act subject to this section.
- (2) For the purposes of this section—
 - (a) the provisions of Part 7A, with such modifications as are necessary to make those provisions consistent with the **Superannuation Act 1958** as in force immediately before its repeal, are deemed to form part of the **Superannuation Act 1958**; and
 - (b) the **Superannuation Act 1958** as in force immediately before its repeal is to be read and construed subject to—
 - (i) the provisions referred to in paragraph (a); and
 - (ii) any relevant specified standards made under section 92A(1)(ca) or 92A(1)(cb).

PART 6—REVISED SCHEME MEMBERS

Division 1—Contributions

28 Contribution rates

- (1) A revised scheme member must make contributions to the Fund determined in accordance with the following Table:

S. 28(1)
substituted by
No. 40/2004
s. 32.

TABLE OF CONTRIBUTIONS

<i>Age last birthday</i>	<i>Contributions as a percentage of salary</i>
15 years to 29 years	8.0%
30 years to 39 years	8.5%
40 years to 49 years	9.0%
50 years or older	9.5%

- (1A) An eligible salary sacrifice contributor may by notice in writing to the employing authority elect to make his or her member contributions by way of salary sacrifice at the rate calculated to the nearest highest 0.1% in accordance with the following formula—

S. 28(1A)
inserted by
No. 40/2004
s. 32.

$$\frac{M}{1 - R}$$

where—

"M" is the applicable member contribution rate in accordance with subsection (1) without salary sacrifice;

"R" is the tax rate for the financial year on taxable contributions to the Fund under the Commonwealth Income Tax Assessment Act 1936.

S. 28(1B)
inserted by
No. 40/2004
s. 32.

- (1B) An election under subsection (1A)—
- (a) can only be made if there is in force an agreement between the employing authority and the member under which the employing authority can make the member contributions required by this Act by way of salary sacrifice;
 - (b) is subject to the terms and conditions specified in the agreement referred to in paragraph (a);
 - (c) can only be made in respect of the whole of the member contributions;
 - (d) can not be made in respect of any contributions made by a member in addition to the member contributions required under subsection (1).

S. 28(1C)
inserted by
No. 40/2004
s. 32.

- (1C) Member contributions made in accordance with the rate determined under subsection (1A) are for the purposes of this Act (other than sections 71C to 71E) to be taken to be—
- (a) the member contributions required to be paid under this Act; and
 - (b) the member contributions that would have been payable if an election had not been made under subsection (1A).

Note to
s. 28(1C)(b)
inserted by
No. 37/2007
s. 29.

Note

The effect of paragraph (b) is that, for the purpose of calculating benefit entitlements, the member contributions are taken to be the member contributions that would have been payable if no election had been made.

S. 28(1D)
inserted by
No. 40/2004
s. 32.

- (1D) An election under subsection (1A) does not affect the amount that would otherwise constitute the salary of the revised scheme member for the purposes of this Act.

(2) If a revised scheme member or a person to whom section 61(1) applies was entitled to contribute for optional units under the **Superannuation Act 1958** he or she may—

S. 28(2)
amended by
No. 72/1990
s. 7(2).

(a) continue to pay or, with the approval of the Board after considering medical evidence, at any time elect to pay additional contributions fixed by the Board on the advice of an actuary appointed by the Board at regular periods; or

(b) within 1 month of retirement due to age elect to contribute an amount considered appropriate by the Board—

to entitle him or her to an additional pension equal to the pension that he or she would have been entitled if he or she had contributed for all his or her optional units.

(2A) Subsection (2) applies to any revised scheme member entitled to contribute for optional units under the **Superannuation Act 1958** who elected to transfer to the Transport Superannuation Fund under section 4 of the **Transport Superannuation Act 1988**.

S. 28(2A)
inserted by
No. 49/1992
s. 10(1).

(3) If a revised scheme member was not contributing for all of his or her optional units as at 1 February 1975 or was holding fully paid up units under the **Superannuation Act 1958** the Board may determine that his or her contributions to the Fund are to be based on a reduced amount of salary.

S. 28(3)
amended by
No. 81/1988
s. 27(f).

(4) If the Board recognises any service or further service for a revised scheme member after 30 June 1988, the Board may on the advice of an actuary appointed by the Board fix an additional contribution to be made by the revised scheme member.

s. 29

- (5) If a revised scheme member attains the age of 65 years no further contributions are to be made.

* * * * *

S. 28(6)
inserted by
No. 49/1992
s. 10(2),
repealed by
No. 4/1996
s. 108(2).

29 Adjustment of contribution rates

- (1) If the contribution that a revised scheme member is liable to contribute is increased because of—
- (a) an increase in his or her salary; or
 - (b) having a birthday which places him or her in the next age range in the Table in section 28—

the contribution is to be adjusted as at the day in each calendar year fixed by the Board for the adjustment of contributions next following the date upon which he or she becomes so liable and the Board may fix one or more days in each calendar year.

- (2) The contribution as adjusted is payable as from and inclusive of the pay day on or next following the day being 2 months after the day fixed under subsection (1).

* * * * *

S. 30
amended by
No. 110/1993
s. 74,
repealed by
No. 64/1995
s. 38(1).

Division 2—Benefits

31 Pension on retirement through age or disability

- (1) A revised scheme member is entitled to a pension on retirement on or after attaining the minimum age for retirement.
- (2) Subject to this Act upon the retirement of a revised scheme member on the ground of disability he or she is entitled to a pension.
- (3) A revised scheme member who became a contributor before 15 December 1970 is entitled to not less than the benefits and rights that he or she would have been entitled to under the **Superannuation Act 1958**.

32 Minimum amount of pension

Except where this Act requires a pension to be actuarially determined the minimum amount of pension payable to any revised scheme member or to the partner of a revised scheme member or pensioner is \$130 per annum.

S. 32
amended by
No. 27/2001
s. 5(Sch. 3
item 5.3).

33 Amount of pension on retirement through age

- (1) In this section—

N represents the amount of the pension that would have been payable to the officer if the officer had continued to serve as an officer until attaining the age of 60 years and had then retired and as if his or her final average salary at retirement had been his or her final average salary at age 60 and counting the recognised service which would have been completed by that age;

YA represents the period of recognised service of the officer before attaining the age of 60 years or 42 years whichever is the lesser;

S. 33(1)
amended by
Nos 81/1988
s. 28(a),
110/1993
s. 71(2).

YP represents the period of recognised service which the officer would have had if the officer had continued to serve as an officer until attaining the age of 60 years and had then retired or 42 years whichever is the lesser;

C60 represents the lump sum factor at age 60 as specified in Schedule 1;

CR represents the lump sum factor specified in Schedule 1 with respect to the age in completed years and months at which the officer retires.

S. 33(2)
amended by
No. 110/1993
s. 71(1).

(2) A revised scheme member who retires at the age of 60 years and has completed recognised service of not less than 30 years is entitled to a pension equal to two-thirds of his or her final average salary.

S. 33(3)
amended by
No. 110/1993
s. 71(1).

(3) A revised scheme member who retires after the age of 60 years and has completed recognised service of not less than 30 years is entitled to a pension equal to two-thirds of his or her final average salary multiplied by—

$$\frac{C60}{CR}$$

(4) A revised scheme member who retires at or after the age of 60 years and has completed recognised service of less than 30 years is entitled to a pension calculated under subsection (2) or (3) reduced in the proportion that his or her recognised service bears to 30 years.

- (5) A revised scheme member who retires on or after the minimum age for retirement but before attaining the age of 60 years is entitled to a pension equal to—

$$N \times \frac{YA}{YP} \times \frac{C60}{CR}.$$

- (6) Despite subsection (1), until 30 June 1988, C60 and CR are to be determined from Schedule 6 of the **Superannuation Act 1958**.

34 Pension entitlement on retirement through disability

- (1) If a revised scheme member contributing for full benefits retires on the ground of disability which is not due to his or her own fault, he or she is entitled to the revised scheme member's pension.
- (2) If a revised scheme member contributing for full benefits retires on the ground of disability which is due to his or her own fault, he or she is entitled to a pension calculated as if he or she is a service benefits contributor.
- (3) A pension under subsection (1) or (2) is to be paid from a date not later than the date of retirement of the revised scheme member as the Board determines.
- (4) Despite subsection (3), if a revised scheme member—
- (a) has retired on the ground of disability; and
 - (b) was absent from duty by reason of that disability before the date of his or her retirement; and
 - (c) has exhausted his or her entitlement to paid leave before the date of his or her retirement—

S. 34(4)(c)
amended by
No. 81/1988
s. 28(b).

he or she may make an election under subsection (5) at his or her date of retirement.

S. 34(5)(a)
amended by
No. 110/1993
s. 71(2).

(5) The revised scheme member may elect to receive a pension—

(a) calculated from the date on which he or she ceased to be entitled to paid leave at the rate applicable to his or her final average salary at that date; or

S. 34(5)(b)
amended by
No. 110/1993
s. 71(2).

(b) at the rate applicable to the final average salary at the date of his or her retirement.

S. 34(6)
amended by
No. 4/1996
s. 110(1).

(6) If a revised scheme member elects to receive a pension in accordance with subsection (5)(a), he or she is entitled to a refund of any contributions made after the date on which his or her entitlement to paid leave ceased and interest at the rate which is the prescribed rate under section 46(1).

(7) Even though a revised scheme member may have been incapable of forming, or unwilling to form, an intention to retire, he or she is to be taken to have retired on the ground of disability for the purpose of this section if—

(a) the Board has determined under section 83 that he or she is unable by reason of disability to perform his or her duties; and

(b) within 6 months of the determination he or she is dismissed from his or her employment as an officer or that employment is otherwise terminated and no reason other than disability is given for the dismissal or termination.

35 Retirement or death after return from leave of absence

- (1) This section applies to a revised scheme member who—
- (a) returns to duty after being on leave of absence without pay; and
 - (b) retires on the ground of disability or dies within the period—
 - (i) of 3 years of his or her return; or
 - (ii) of time after his or her return which is equal to the period of time for which he or she was absent—whichever is the lesser.
- (2) Unless subsection (4) applies, if the revised scheme member made or was taken to have made an election under section 49(1)(a) the benefits payable are those appropriate to service benefits.
- (3) Unless subsection (4) applies, if the revised scheme member made an election under section 49(1)(b) the benefits payable in respect of any increase in salary immediately on resuming duty are those appropriate to service benefits.
- (4) Subsections (2) and (3) do not apply if the revised scheme member has made an election under section 49(1)(c) or has in respect of his or her return to duty undergone a medical examination in accordance with section 62 and has been classified as a contributor for limited or full benefits.

s. 36

S. 36
(Heading)
inserted by
No. 27/2001
s. 5(Sch. 3
item 5.4).

S. 36(1)(a)
amended by
No. 27/2001
s. 5(Sch. 3
item 5.5).

S. 36(1)(b)
amended by
No. 120/1994
s. 59(1).

S. 36(2)
amended by
No. 27/2001
s. 5(Sch. 3
item 5.5).

S. 36(2)(a)
repealed by
No. 110/1993
s. 75(1).

S. 36(2)(b)
amended by
Nos 120/1994
s. 57(a),
27/2001
s. 5(Sch. 3
item 5.5).

36 Pension to partner or children on death of revised scheme member

- (1) On the death of a revised scheme member before retirement there is to be paid—
 - (a) unless subsection (2) applies, to the partner during his or her life sixty-six and two-thirds per cent of the revised scheme member's pension; and
 - (b) to each child of the deceased revised scheme member a pension at the rate applicable under subsection (3) or the rate of \$312 per annum, whichever is the greater.
- (2) A partner is not entitled to receive—

* * * * *

 - (b) at any one time more than 1 pension as the partner of a deceased officer but is entitled to receive whichever of those pensions is the greater.
- (3) The pension payable to a child of a revised scheme member under subsection (1) is—
 - (a) if there are not more than 2 eligible children, an amount equal to eleven and one-ninth per cent of the revised scheme member's pension; or

-
- (b) if there are 3 or more eligible children, an amount equal to thirty-three and one-third per cent of the revised scheme member's pension divided by the number of eligible children for the time being.
- (4) If a revised scheme member had attained the age of 65 years and dies before retirement leaving a partner, the pension of the partner is to be determined under section 37 as if the revised scheme member had retired immediately before his or her death. **S. 36(4) amended by No. 27/2001 s. 5(Sch. 3 item 5.5).**
- (5) In addition to any other pension payable under this section, if on the death of a revised scheme member before retirement— **S. 36(5) amended by No. 27/2001 s. 5(Sch. 3 item 5.5).**
- (a) the Board is satisfied that the revised scheme member was during any continuous period of absence from duty immediately preceding his or her death incapable of performing his or her duties on the ground of disability not due to his or her own fault; and
- (b) the revised scheme contributor is survived by a partner— **S. 36(5)(b) amended by No. 27/2001 s. 5(Sch. 3 item 5.5).**
- the Board may authorise payment to the partner of a sum not exceeding the amount of pension which would have been payable to the revised scheme member if during the period of absence he or she had been in receipt of a pension under section 34.
- (6) Contributions are not required to be made to the Fund for the period in respect of which an amount is calculated under subsection (5).

s. 37

37 Pension to partner or children on death of revised scheme member who is a pensioner

S. 37
(Heading)
inserted by
No. 27/2001
s. 5(Sch. 3
item 5.6).

S. 37(1)
amended by
No. 49/1992
s. 11.

(1) On the death of a former revised scheme member who is a pensioner there is to be paid—

S. 37(1)(a)
amended by
No. 27/2001
s. 5(Sch. 3
item 5.7).

(a) unless subsection (2) applies, to the partner during his or her life a pension—

(i) equal to sixty-six and two-thirds per cent of the pension payable to the deceased at the time of his or her death;
or

S. 37(1)(a)(ii)
amended by
No. 44/1989
s. 41(Sch. 2
item 40.1).

(ii) in the case of a deceased officer who has under section 39(5) converted part of his or her fortnightly pension entitlement to an equivalent entitlement by way of a lump sum payment or of a deceased officer in the railway service or a deceased person employed at the date of his or her death in the Public Transport Corporation whose pension entitlement has been reduced under section 51 of the **Superannuation Act 1975**, equal to sixty-six and two-thirds per cent of the pension that would have been payable to the deceased at the time of his or her death if he or she had not so converted part of his or her pension or if his or her pension entitlement had not been so reduced; or

(iii) at the rate of \$130 per annum—

whichever is the greater; and

(b) to each child of the deceased pensioner a pension at the rate applicable under section 36(3) (adjusted in accordance with section 91 up to the date of death of the pensioner) or the rate of \$312 per annum, whichever is the greater.

S. 37(1)(b) amended by Nos 120/1994 s. 59(2), 82/1996 s. 61.

(2) A partner is not entitled to receive—

S. 37(2) amended by No. 27/2001 s. 5(Sch. 3 item 5.7).

* * * * *

S. 37(2)(a) repealed by No. 110/1993 s. 75(2).

(b) at any one time more than 1 pension as the partner of a deceased pensioner but is entitled to receive whichever of those pensions is the greater.

S. 37(2)(b) amended by Nos 120/1994 s. 57(b), 27/2001 s. 5(Sch. 3 item 5.7).

(2A) Despite anything to the contrary in this Part, only one pension is payable in the case of the death of a deceased member or pensioner to a partner and if after the Board has made reasonable enquiries more than one person should appear to the Board to qualify for that pension then—

S. 37(2A) inserted by No. 120/1994 s. 59(3), amended by No. 27/2001 s. 5(Sch. 3 item 5.7).

(a) if the member or pensioner has by request in writing to the Board directed that the pension be paid wholly to one of the persons qualified to receive it or that each is to be paid part, the Board must give effect to the expressed intentions;

(b) if paragraph (a) does not apply, the Board must in its absolute discretion determine which of the persons who qualifies is to receive the pension or apportion it between them as the Board considers appropriate.

State Superannuation Act 1988
No. 50 of 1988
Part 6—Revised Scheme Members

s. 37

S. 37(3)
amended by
No. 110/1993
s. 75(3),
substituted by
No. 120/1994
s. 59(4),
amended by
No. 27/2001
s. 5(Sch. 3
item 5.7).

(3) If a person becomes the partner of a pensioner after the pensioner's retirement, a pension is not payable to the partner on the death of the pensioner unless—

S. 37(3)(a)
amended by
No. 27/2001
s. 5(Sch. 3
item 5.7).

(a) at the time that the person became the pensioner's partner, the pensioner was receiving a pension under section 34 or 63 and had not attained the age of 60 years; or

S. 37(3)(b)
amended by
No. 27/2001
s. 5(Sch. 3
item 5.7).

(b) the person became the pensioner's partner at least 2 years before the pensioner's death.

S. 37(4)
amended by
Nos 120/1994
s. 59(5),
27/2001
s. 5(Sch. 3
item 5.7).

(4) If a partner—

(a) is entitled to a pension by virtue of subsection (3)(b); and

(b) was more than 5 years younger than the pensioner—

the pension payable to the partner is to be reduced to the pension that in the opinion of an actuary appointed by the Board is the actuarial equivalent at the date the person became the pensioner's partner of the pension that would have been payable if the partner was 5 years younger than the pensioner.

S. 37(5)
amended by
No. 110/1993
s. 75(4),
substituted by
No. 27/2001
s. 5(Sch. 3
item 5.8).

(5) A partner of a pensioner who became the pensioner's partner after the pensioner's retirement is not entitled to receive at the same time a pension as a surviving partner and as a former contributor but is entitled to whichever of those pensions is the greater.

38 Re-instatement of pension cancelled on the ground of re-marriage

- (1) This section applies to a person who—
 - (a) received a pension under section 36 or 37 as the partner of a deceased revised scheme member or pensioner; and
 - (b) as a result of re-marriage, had their entitlement to that pension cancelled.
- (2) A person to whom this section applies may apply in writing to the Board to receive a pension under section 36 or 37.
- (3) The Board must grant an application made under subsection (2) if the Board is satisfied that—
 - (a) the applicant is a person to whom this section applies; and
 - (b) the applicant would be entitled to a pension under section 36 or 37 as the partner of a deceased revised scheme member or pensioner but for the re-marriage.
- (4) If the Board grants an application made under subsection (2), the person is entitled to be paid a pension in accordance with section 36 or 37 as from the date on which the application was made.

S. 38 amended by Nos 81/1988 s. 28(c), 19/1989 s. 16(Sch. items 50.1–50.6), 49/1992 s. 12(a)–(e), repealed by No. 120/1994 s. 57(c), new s. 38 inserted by No. 38/2009 s. 28.

39 Pensioner may elect to convert whole of or part of pension entitlement to a lump sum payment entitlement

- (1) A pensioner under the **Superannuation Act 1958** who has not converted any part of his or her pension to a lump sum or who is receiving a pension under section 33 or whose pension has been reduced under section 67 and who has not made an election under subsection (3), may within the period of 3 months immediately prior to attaining the age of 65 years elect in writing to convert the whole of or not more than 50 per cent

S. 39(1) amended by Nos 81/1988 s. 28(d), 95/2000 s. 6(1), 27/2001 s. 5(Sch. 3 item 5.9).

of the pensioner's fortnightly pension entitlement and the fortnightly pension entitlement of his or her partner following his or her death to an equivalent entitlement by way of a lump sum payment as determined in accordance with Schedule 1.

S. 39(2)
amended by
No. 27/2001
s. 5(Sch. 3
item 5.9).

- (2) If a pensioner makes an election under subsection (1), he or she is entitled to the lump sum payment when he or she attains the age of 65 years and his or her pension and the pension of his or her partner are reduced by the amount of the pension entitlement converted to a lump sum on the day on which he or she becomes entitled to the lump sum payment.

S. 39(3)
amended by
Nos 81/1988
s. 28(e),
49/1992 s. 13,
120/1994
s. 57(d)(i),
95/2000
s. 6(1)(2),
27/2001
s. 5(Sch. 3
item 5.9),
73/2001
s. 5(1)(a).

- (3) A revised scheme member or pensioner who is or will be entitled to a pension under section 33, or a person who is or will be entitled to an age retirement pension under the **Superannuation Act 1958** may within the period commencing 3 months prior to his or her retirement and ending 3 months after his or her retirement (or any later date fixed by the Board) elect in writing to convert the whole of or not more than 50 per cent of the pensioner's fortnightly pension entitlement and the fortnightly pension entitlement of his or her partner following his or her death to an equivalent entitlement by way of lump sum payment as determined in accordance with Schedule 1.

S. 39(4)
amended by
Nos 49/1992
s. 13, 120/1994
s. 57(d)(ii),
27/2001
s. 5(Sch. 3
item 5.9),
73/2001
s. 5(1)(b).

- (4) If a person makes an election under subsection (3), he or she is entitled to the lump sum payment on retirement or on the day on which he or she makes the election (whichever is the later) and his or her pension and the pension of his or her partner are reduced by the amount of the pension entitlement converted to a lump sum on the day on which he or she becomes entitled to the lump sum payment.

- (5) A person making an election under subsection (1) or (3) may request that no proportion of the fortnightly pension entitlement of his or her partner following his or her death is to be converted into a lump sum payment.

S. 39(5)
amended by
Nos 49/1992
s. 13, 120/1994
s. 57(d)(ii),
27/2001
s. 5(Sch. 3
item 5.9).

- (6) If subsection (5) applies, Schedule 1 has effect as if each lump sum factor specified in column 2 of Schedule 1 was reduced by \$2.00.

- (7) This section does not enable a revised scheme member or pensioner who after he or she has attained the minimum age for retirement has received a pension under section 34 or 63 to elect to convert any of his or her fortnightly pension entitlement under section 33 to a lump sum entitlement unless that member or pensioner has resumed duty and was on duty during the whole of the period of 12 months immediately prior to his or her retirement on account of age.

- (8) A person is not entitled to make more than 1 election under this section unless the Board otherwise determines.

S. 39(8)
amended by
No. 81/1988
s. 28(f).

40 Partner of a pensioner aged 60 years or over entitled to convert part of pension to a lump sum

S. 40
(Heading)
inserted by
No. 27/2001
s. 5(Sch. 3
item 5.10).

- (1) A person who is aged 60 years or over and is entitled to a pension as the partner of a revised scheme member or former revised scheme member, or is entitled to a pension under the **Superannuation Act 1958** as a result of the death of a contributor or pensioner within the meaning of that Act (other than as a child of the contributor or pensioner) may—

S. 40(1)
amended by
Nos 120/1994
s. 57(e)(i),
95/2000
s. 6(3),
27/2001
s. 5(Sch. 3
item 5.11),
73/2001
s. 5(2)(a).

- (a) within 12 months of attaining the age of 60 years; or

State Superannuation Act 1988
No. 50 of 1988
Part 6—Revised Scheme Members

s. 40

S. 40(1)(b)
amended by
Nos 120/1994
s. 57(e)(ii),
27/2001
s. 5(Sch. 3
item 5.11),
substituted by
No. 73/2001
s. 5(2)(b).

(b) within the period of 12 months immediately after the death of the member, former member, contributor or pensioner—

S. 40(1)(c)
repealed by
No. 120/1994
s. 57(e)(iii).

* * * * *

elect in writing to convert the whole of or part of his or her fortnightly pension entitlement to a lump sum payment as determined by the Board.

S. 40(2)
substituted by
No. 95/2000
s. 6(4).

- (2) A person must elect under subsection (1) to convert to an equivalent lump sum payment an amount—
- (a) equal to the whole; or
 - (b) not greater than 50 per cent—
- of his or her fortnightly pension entitlement.
- (3) A person who makes an election under subsection (1) is entitled to the lump sum payment on the day on which the election is made.
- (4) The person's pension is to be reduced by the amount of the pension entitlement converted to a lump sum on the day on which the person becomes entitled to the lump sum payment.

41 Partner of deceased revised scheme member under age 60 may convert whole of pension to a lump sum

S. 41
(Heading)
inserted by
No. 27/2001
s. 5(Sch. 3
item 5.12).

(1) A person—

S. 41(1)
amended by
No. 120/1994
s. 57(f)(ii).

(a) entitled to a pension as the partner of a revised scheme member or former revised scheme member, or entitled to a pension under the **Superannuation Act 1958** as a result of the death of a contributor or pensioner within the meaning of that Act (other than as a child of the contributor or pensioner); and

S. 41(1)(a)
amended by
Nos 120/1994
s. 57(f)(i),
27/2001
s. 5(Sch. 3
item 5.13),
73/2001
s. 5(3)(a).

(b) who is under the age of 60 years at the date of death of the member, former member, contributor or pensioner—

S. 41(1)(b)
amended by
No. 73/2001
s. 5(3)(b).

may within the period of 12 months immediately after the death elect in writing to convert his or her fortnightly pension entitlement to a lump sum payment equal to the annual pension entitlement of that person immediately prior to his or her election multiplied by 7.

(2) A person who makes an election under subsection (1) is entitled to the lump sum payment on the day on which the election is made and the person's pension ceases to be payable on that day.

* * * * *

S. 42
repealed by
No. 120/1994
s. 57(g).

s. 43

S. 43
amended by
Nos 120/1994
s. 57(h)(i)(ii),
4/1996
s. 110(1).

43 Payment on death of revised scheme member before retirement

S. 43(1)
amended by
Nos 27/2001
s. 5(Sch. 3
item 5.13),
94/2005 s. 41.

(1) If on the death of a revised scheme member a pension is not payable to a partner under section 36 or 37 there is to be paid to his or her personal representative the actual amount contributed by him or her to the State Superannuation Fund and the Fund and interest at the rate which is the prescribed rate under section 46(1) less the amount certified by an actuary appointed by the Board as being necessary to pay any pension payable to his or her children.

S. 43(2)
amended by
No. 120/1994
s. 57(i).

(2) This section does not apply if a pension was payable under section 36 or 37 and has been wholly converted into a lump sum.

44 Retrenchment of revised scheme member

(1) A revised scheme member who is retrenched is entitled—

(a) to a lump sum payment of an amount equal to—

$$N \times \frac{YA}{YP} \times C \times C60; \text{ or}$$

(b) to elect either to take a lump sum payment under paragraph (a) or a deferred pension equal to—

$$N \times \frac{YA}{YP} \times C$$

where N, YA, YP and C60 have the same meanings as in section 33(1) and C has the same meaning as in section 46(2).

- (2) If an election is not made under subsection (1)(b) the Board must determine the benefits to which the revised scheme member is entitled.
- (3) If a revised scheme member who has been retrenched re-enters the service—
- (a) his or her entitlement to a deferred pension under subsection (1)(b) is not affected; and
 - (b) he or she must contribute under Part 7 and is not entitled to claim any further benefit in respect of his or her previous service.

S. 44(3)(a)
amended by
No. 81/1988
s. 28(g).

45 Rights of statutory officer

If a revised scheme member—

- (a) has not attained the minimum age for retirement; and
- (b) has been or is appointed for a term of years to a statutory office; and
- (c) is not re-appointed to that office; and
- (d) ceases to be an officer—

he or she is entitled to the same benefits as he or she would be entitled under section 44(1).

46 Rights on resignation

- (1) Subject to subsection (4), if a revised scheme member resigns, he or she may elect within 1 month of his or her resignation to receive either—
- (a) a cash benefit equal to the amount of the contributions paid by him or her and interest at the prescribed rate and a deferred pension calculated in accordance with the formula:

$$N \times \frac{(YA - X)}{YP} \times C \times \frac{5}{7}; \text{ or}$$

State Superannuation Act 1988
No. 50 of 1988
Part 6—Revised Scheme Members

s. 46

S. 46(1)(b)
amended by
No. 81/1988
s. 28(h).

- (b) a cash benefit equal to the amount of the contributions due and paid by him or her during the last X years and interest at the prescribed rate and a deferred pension calculated in accordance with the formula:

$$N \times \frac{(YA - X)}{YP} \times C .$$

- (2) For the purposes of subsection (1) N, YA and YP have the same meanings as in section 33(1) and C means the contribution factor in accordance with the following Table with values for intermediate ages being calculated to the lower 0.01:

TABLE

<i>Age</i>	<i>Factor</i>
50	1.00
45	.90
40	.80
35	.70
30 or less	.60

X means the lesser of—

- (a) the excess (if any) of 50 years over the age of the officer in years and completed months; and
(b) 5 years.

S. 46(2A)
inserted by
No. 81/1988
s. 28(i).

- (2A) For the purposes of subsections (1) and (2) ***recognised service*** included in "YA" and "YP" includes unpaid parental leave up to 12 months for each confinement if the revised scheme member has returned for at least 12 months of paid employment after the period of unpaid parental leave and any period of unpaid leave during which contributions have been paid under section 49.

(3) If a revised scheme member elects to receive a lesser cash benefit the Board on the advice of an actuary appointed by the Board must grant an additional amount of deferred pension.

S. 46(3)
amended by
No. 81/1988
s. 28(j).

(4) Subsection (1) does not apply in respect of any person who—

(a) has received a pension following retirement on the ground of disability; and

(b) subsequently re-enters or is re-employed in the service—

unless that person continues to make contributions for a period of not less than 12 months.

(5) If a revised scheme member does not make an election under subsection (1), the Board must determine the benefits to which the revised scheme member is entitled.

(6) Despite subsection (1), if a revised scheme member is entitled to a deferred pension equal to less than 1 per cent of salary, he or she may elect to receive an equivalent cash benefit.

47 Provisions applying to deferred pensions

(1) If a revised scheme member was not contributing for all of his or her optional units under the **Superannuation Act 1958** the Board must make an appropriate adjustment in calculating the deferred pension under section 44, 45, 46 or 61.

S. 47(1)
amended by
No. 72/1990
s. 5(1).

(2) If a person who is entitled to a deferred pension is not a pensioner but is unable to work because of a disability this Act applies with such adaptations as are necessary in all respects as if he or she was a contributor who had become unable to perform his or her duties because of disability but—

State Superannuation Act 1988
No. 50 of 1988
Part 6—Revised Scheme Members

s. 47

- (a) section 34(1) applies as if any reference to "revised scheme member's pension" was a reference to "pension which he or she had elected to receive on attaining the age of 60 years"; and
- (b) any pension under this subsection may cease to be payable during any period the Board thinks fit.

S. 47(3)
amended by
Nos 49/1992
s. 14(a),
27/2001
s. 5(Sch. 3
item 5.13).

- (3) On the death of a person who is entitled to a deferred pension and is not a pensioner, he or she is deemed to have been a revised scheme member at the date of his or her death and this Act applies accordingly but the pension to which his or her partner is entitled is to be two-thirds of the pension which the deceased would have received on attaining the age of 60 years.

S. 47(4)
repealed by
No. 72/1990
s. 5(2).

* * * * *

S. 47(5)
amended by
Nos 49/1992
s. 14(b),
82/1996
s. 62(a)(b),
27/2001
s. 5(Sch. 3
item 5.13).

- (5) If a person who is entitled to a deferred pension has a partner after becoming so entitled, a pension is not payable upon his or her death to his or her partner or in respect of any children of that partner and that person, born after becoming his or her partner.

S. 47(6)
amended by
No. 72/1990
s. 5(3).

- (6) Subject to subsection (6A), section 39 applies to a person entitled to a deferred pension as if he or she was a revised scheme member entitled to a pension under section 33 at the time the deferred pension became payable.

S. 47(6A)
inserted by
No. 72/1990
s. 5(4).

- (6A) Section 39 applies to a person who becomes entitled to a deferred benefit under section 46(1)(a) on or after 1 April 1991 as if—

- (a) he or she was a revised scheme member entitled to a pension under section 33 at the time the deferred pension became payable; and
 - (b) the Board had determined under section 39(8) that 2 elections could be made; and
 - (c) the cash benefit paid under section 46(1)(a) is the lump sum equivalent to 20 per cent of the deferred pension.
- (7) The deferred pension is payable upon the revised scheme member attaining the age of 60 years.
- (8) A revised scheme member may elect to receive a deferred pension at any time after attaining the minimum age for retirement.
- (9) If a revised scheme member makes an election under subsection (8) the deferred pension must be multiplied by—

$$\frac{C60}{CR}$$

where C60 and CR have the same meanings as in section 33(1).

- (10) A revised scheme member who is entitled to a deferred pension under section 44(1)(b), 44(2), 45, 46(1)(a) or 46(1)(b) may elect in writing to the Board to—
- (a) convert the entitlement to a lump sum; and
 - (b) have the lump sum rolled over or transferred within the superannuation system as nominated by the revised scheme member.

S. 47(10) inserted by No. 110/1993 s. 76, repealed by No. 82/1996 s. 67, new s. 47(10) inserted by No. 95/2000 s. 6(5).

S. 47(10)(b) substituted by Nos 40/2004 s. 28(2), 37/2007 s. 30(1).

s. 48

S. 47(10A)
inserted by
No. 73/2001
s. 5(4).

(10A) A person who is entitled to a deferred pension or a deferred benefit under the **Superannuation Act 1958** may elect in writing to the Board to—

- (a) convert the entitlement to a present lump sum; and
- (b) have the lump sum rolled over or transferred within the superannuation system as nominated by the person.

S. 47(10A)(b)
substituted by
Nos 40/2004
s. 28(3),
37/2007
s. 30(2).

S. 47(11)
inserted by
No. 110/1993
s. 76,
repealed by
No. 82/1996
s. 67, new
s. 47(11)
inserted by
No. 95/2000
s. 6(5),
amended by
No. 73/2001
s. 5(5).

(11) The method of calculating the conversion under subsection (10) or (10A) is to be determined by the Minister on the advice of an actuary appointed by the Board.

48 Payments to children

S. 48(1)
amended by
Nos 81/1988
s. 28(k),
120/1994
s. 57(j),
27/2001
s. 5(Sch. 3
item 5.13).

- (1) If a benefit is not payable to a partner of a revised scheme member the pension for each child of the revised scheme member is to be at the rate applicable under subsection (2) or at the rate of \$624 per annum whichever is the greater.
- (2) The pension payable to each child of a revised scheme member is—
 - (a) if there is 1 eligible child, an amount equal to 45 per cent of the revised scheme member's pension; or
 - (b) if there are 2 eligible children, an amount equal to 40 per cent of the revised scheme member's pension; or

- (c) if there are 3 or more eligible children, an amount equal to the revised scheme member's pension divided by the number of eligible children in respect of whom the pension is for the time being payable.
- (3) This section does not apply if a pension was payable under section 36 or 37 and has been wholly converted into a lump sum.

S. 48(3)
amended by
No. 120/1994
s. 57(k).

49 Election in respect of leave of absence without pay

- (1) A revised scheme member who is on leave of absence without pay (except leave on the grounds of ill health) for at least 4 weeks may in respect of the period of the leave elect—

S. 49(1)
amended by
Nos 4/1996
s. 111(1)(a),
37/2007 s. 31.

- (a) to pay no contributions; or
- (b) to pay contributions at half the rate of the contributions which would be payable by the revised scheme member if he or she had not taken leave and had continued to work at the salary payable to him or her on the date on which the leave commences or at such other rate as is first determined by an actuary after the commencement of section 111(1) of the **Superannuation Acts (Amendment) Act 1996** and thereafter during an actuarial investigation under section 23 and which is specified in the actuary's report and after the commencement of the **Superannuation Legislation (Governance Reform) Act 2005**, during an actuarial investigation under section 19 of the **Emergency Services Superannuation Act 1986** and which is specified in the actuary's report; or

S. 49(1)(b)
amended by
Nos 4/1996
s. 111(1)(b),
94/2005
s. 42(1).

State Superannuation Act 1988
No. 50 of 1988
Part 6—Revised Scheme Members

s. 49

S. 49(1)(c)
amended by
No. 49/1992
s. 15(1).

(c) to pay contributions at 4 times the rate of contributions which would be payable by him or her if he or she had not taken the leave and had continued to work at the salary which would have been payable to him or her during the period of the leave.

(2) The election is of no effect unless—

(a) it is made in writing; and

(b) it is made not later than 1 month from the date on which the leave commences; and

(c) if subsection (3) applies, it is accompanied by a sum equivalent to the total of all contributions payable throughout the period of the leave in accordance with the election.

S. 49(2)(c)
amended by
Nos 81/1988
s. 28(1),
49/1992
s. 15(2),
4/1996
s. 111(2)(a).

* * * * *

S. 49(2)(d)
inserted by
No. 49/1992
s. 15(2),
repealed by
No. 4/1996
s. 111(2)(b).

(3) The Board may, on the application of that person permit the contributions payable in accordance with the election to be paid by him or her during his or her absence in smaller sums and at periods as the Board determines.

(4) The election takes effect on the date on which the leave commences.

(5) A revised scheme member who is absent on leave without pay, otherwise than on the grounds of ill-health, and who does not before the expiration of 1 month from the date on which the leave commences make an election is for the purposes of this Act to be regarded as having made an election under subsection (1)(a).

(6) If a person who makes or is to be regarded as having made an election under subsection (1)(a)—

(a) retires on grounds of disability; or

(b) dies—

more than 1 month after the leave commences but before the end of the leave, benefits are payable under this Act to the person who would but for the taking of the leave have been entitled to benefits on the death or retirement of the revised scheme member and the benefits are calculated as though the revised scheme member had voluntarily resigned from his or her office on the date of his or her death or retirement.

(7) If a revised scheme member makes an election under subsection (1)(b), he or she must until he or she returns to duty have the same entitlements to benefits under this Act as he or she would have had if he or she had paid contributions at the rate which would have been payable by him or her if he or she had not taken the leave and had continued to work at the salary payable to him or her on the date on which the leave commences.

(8) If a revised scheme member makes an election under subsection (1) and becomes entitled to a benefit which is directly related to the amount of contributions he or she has made to the State Superannuation Fund and the Fund, any contributions paid by him or her in consequence of an election under paragraph (b) or (c) of subsection (1) are to be disregarded in determining the amount of that benefit, but, subject to subsection (9), in the case of an election under paragraph (c) of subsection (1) six-sevenths of the contributions so paid are payable to him or her as an additional benefit with interest at the rate which is the prescribed rate under section 46(1).

S. 49(8)
amended by
Nos 81/1988
s. 28(m),
4/1996
s. 110(1),
94/2005
s. 42(2).

State Superannuation Act 1988
No. 50 of 1988
Part 6—Revised Scheme Members

s. 49

S. 49(9)
amended by
Nos 81/1988
s. 28(m),
4/1996
s. 110(1).

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- (9) If a revised scheme member who has made an election under paragraph (b) or (c) of subsection (1)—
- (a) returns to duty upon the expiration of the period for which the leave was granted; and
 - (b) makes contributions in accordance with this Act for a period of not less than 12 months—
- the whole of the amount of the contributions paid by the revised scheme member in consequence of the election are payable to the revised scheme member as an additional benefit with interest at the rate which is the prescribed rate under section 46(1).
-

PART 7—NEW SCHEME MEMBERS

Division 1—Contributions

50 Contribution rates

- (1) Except as provided in subsections (2) and (3), a new scheme member must make contributions to the Fund at a rate specified in the following Table at the election of the new scheme member:

S. 50(1)
amended by
No. 110/1993
s. 77(1).

TABLE OF CONTRIBUTIONS

Contribution as a percentage of salary

Nil
3.0%
5.0%
7.0%

- (2) A new scheme member can only elect to contribute at a rate equal to 7 per cent of his or her salary if—

* * * * *

S. 50(2)(a)
repealed by
No. 110/1993
s. 77(2).

- (b) he or she is a member of a prescribed class of new scheme members; or

- (c) contributing at that rate will not make him or her eligible to an accrued retirement benefit greater than that for which he or she would be eligible by contributing at the rate of 5 per cent of his or her salary for the whole of his or her period of—

S. 50(2)(c)
amended by
No. 81/1988
s. 29.

- (i) recognised service; and

S. 50(2)(c)(i)
inserted by
No. 81/1988
s. 29.

State Superannuation Act 1988
No. 50 of 1988
Part 7—New Scheme Members

s. 50

S. 50(2)(c)(ii)
inserted by
No. 81/1988
s. 29,
amended by
No. 94/2005
s. 43.

(ii) service as an officer prior to 1 July 1988 during which no contributions were made to the State Superannuation Fund; and

S. 50(2)(c)(iii)
inserted by
No. 81/1988
s. 29.

(iii) earlier continuous service approved by the Board in respect of which no deferred benefit can become payable under another statutory superannuation scheme.

S. 50(2A)
inserted by
No. 110/1993
s. 77(3).

(2A) A new scheme member contributing at a rate equal to 7 per cent of his or her salary under subsection (2) as in force before the commencement of section 77 of the **Public Sector Superannuation (Administration) Act 1993** who does not meet the requirements of that subsection as in force after that commencement is to be deemed to have elected to contribute at a rate of 5 per cent of his or her salary with effect from the last pay day in February 1994.

S. 50(3)
substituted by
No. 110/1993
s. 77(4).

(3) A new scheme member contributing at a rate equal to 8 per cent of his or her salary under this section as in force before the commencement of section 77 of the **Public Sector Superannuation (Administration) Act 1993** is to be deemed to have elected to contribute at a rate of 7 per cent of his or her salary with effect from the last pay day in February 1994.

(4) For the purposes of subsections (2) and (3), *recognised service* includes unpaid parental leave up to 12 months for each confinement if the new scheme member has returned for at least 12 months of paid employment after the period of unpaid parental leave.

- (4A) An eligible salary sacrifice contributor may by notice in writing to the employing authority elect to make his or her member contributions by way of salary sacrifice at the rate calculated to the nearest highest 0.1% in accordance with the following formula—

S. 50(4A)
inserted by
No. 40/2004
s. 33.

$$\frac{M}{1 - R}$$

where—

"M" is the elected member contribution rate in accordance with subsection (1) without salary sacrifice;

"R" is the tax rate for the financial year on taxable contributions to the Fund under the Commonwealth Income Tax Assessment Act 1936.

- (4B) An election under subsection (4A)—
- (a) can only be made if there is in force an agreement between the employing authority and the member under which the employing authority can make the member contributions required by this Act by way of salary sacrifice;
 - (b) is subject to the terms and conditions specified in the agreement referred to in paragraph (a);
 - (c) can only be made in respect of the whole of the member contributions;
 - (d) can not be made in respect of any contributions made by a member in addition to the elected member contributions under subsection (1).

S. 50(4B)
inserted by
No. 40/2004
s. 33.

s. 50

S. 50(4C)
inserted by
No. 40/2004
s. 33.

(4C) Member contributions made in accordance with the rate determined under subsection (4A) are for the purposes of this Act (other than sections 71C to 71E) to be taken to be—

- (a) the member contributions elected to be paid under this Act; and
- (b) the member contributions that would have been payable if an election had not been made under subsection (4A).

**Note to
s. 50(4C)(b)**
inserted by
No. 37/2007
s. 32.

Note

The effect of paragraph (b) is that, for the purpose of calculating benefit entitlements, the member contributions are taken to be the member contributions that would have been payable if no election had been made.

S. 50(4D)
inserted by
No. 40/2004
s. 33.

(4D) An election under subsection (4A) does not affect the amount that would otherwise constitute the salary of the new scheme member for the purposes of this Act.

- (5) A new scheme member may elect to change his or her rate of contribution on the day or days in any calendar year fixed by the Board as the day or days on which new scheme members or a class of new scheme members of which he or she is a member may elect to change their rate of contributions.
- (6) The changed contribution is payable as from and inclusive of the pay day on or next following the day being 2 months after the day fixed under subsection (5).
- (7) An election continues in force until another election is made in accordance with this section.
- (8) Until a new scheme member makes an election he or she is to be treated as having elected not to contribute.

- (9) If a new scheme member becomes entitled to the maximum accrued retirement benefit or attains the age of 65 years no further contributions are to be made.

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S. 50(10) inserted by No. 49/1992 s. 16, repealed by No. 4/1996 s. 108(2).

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S. 51 repealed by No. 64/1995 s. 38(2).

Division 2—Benefits

52 Benefit on retirement of new scheme member

- (1) A new scheme member is entitled to a lump sum equal to his or her accrued retirement benefit on retirement on or after the minimum age for retirement.
- (2) The accrued retirement benefit of a new scheme member is the sum of—

(a) 10 per cent of the final average salary of the new scheme member for each year of recognised service in which he or she has not contributed to the State Superannuation Fund and the Fund; and

S. 52(2)(a) amended by Nos 110/1993 s. 71(1), 94/2005 s. 44.

(b) 16 per cent of the final average salary of the new scheme member for each year of recognised service in which he or she contributed 3 per cent of salary to the State Superannuation Fund and the Fund; and

S. 52(2)(b) amended by Nos 110/1993 s. 71(1), 94/2005 s. 44.

State Superannuation Act 1988
No. 50 of 1988
Part 7—New Scheme Members

s. 52

- S. 52(2)(c)
amended by
Nos 110/1993
s. 71(1),
94/2005 s. 44.
- (c) 20 per cent of the final average salary of the new scheme member for each year of recognised service in which he or she contributed 5 per cent of salary to the State Superannuation Fund and the Fund; and
- S. 52(2)(d)
amended by
Nos 110/1993
s. 71(1),
94/2005 s. 44.
- (d) except as provided for in paragraph (e), 24 per cent of the final average salary of the new scheme member for each year of recognised service in which he or she contributed 7 per cent of salary to the State Superannuation Fund and the Fund; and
- S. 52(2)(e)
amended by
Nos 110/1993
s. 71(1),
94/2005 s. 44.
- (e) 28 per cent of the final average salary of the new scheme member for each year of recognised service in which he or she was a prescribed fire-fighter and contributed 7 per cent of salary to the State Superannuation Fund and the Fund; and
- S. 52(2)(f)
amended by
Nos 20/1989
s. 43(3),
110/1993
s. 71(1),
94/2005 s. 44.
- (f) 32 per cent of the final average salary of the new scheme member for each year of recognised service in which he or she was a prescribed fire-fighter and contributed 8 per cent of salary to the State Superannuation Fund and the Fund; and
- S. 52(2)(g)
inserted by
No. 20/1989
s. 43(3),
amended by
No. 110/1993
s. 71(1).
- (g) 15 per cent of the final average salary of the new scheme member who elected to transfer under section 43 of the **State Casual Employees Superannuation Act 1989** for each year of his or her contributory service under that Act.
- S. 52(2A)
inserted by
No. 110/1993
s. 82(3),
substituted by
No. 58/1994
s. 7.
- (2A) In the case of a revised scheme member who elects to transfer to the new scheme under section 61B, his or her accrued retirement benefit for the total period of membership as a revised scheme member and as a new scheme member is the sum of—

-
- (a) the transfer multiple of final average salary calculated in accordance with section 61D; and
- (b) the accrued retirement benefit calculated in accordance with subsection (2).
- (2B) For the purpose only of subsection (2A)(b), recognised service is recognised service for the period after the date of transfer to the new scheme. **S. 52(2B) inserted by No. 58/1994 s. 7.**
- (2C) In the case of a member of the Melbourne Water Corporation Employees' Superannuation Fund who is transferred to the new scheme, his or her accrued retirement benefit for the total period of membership as a member of that Fund and as a new member is the sum of— **S. 52(2C) inserted by No. 64/1995 s. 39.**
- (a) the accrued retirement benefit (however designated) to the date of transfer calculated in accordance with section 95; and
- (b) the accrued retirement benefit calculated in accordance with subsection (2).
- (3) The accrued retirement benefit of a new scheme member must not exceed a maximum of 8.4 times the final average salary of the new scheme member. **S. 52(3) amended by No. 110/1993 s. 71(1).**
- (4) If a payment or transfer to a non-member spouse is made for the purposes of Part VIIIB of the Commonwealth Family Law Act 1975 whether under Part 7A or otherwise, the maximum accrued retirement benefit of the member spouse must be adjusted by the Board in accordance with a methodology approved by the Minister, on the advice of an actuary appointed by the Board. **S. 52(4) inserted by No. 70/2003 s. 23.**
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53 Benefit on death of new scheme member before retirement

S. 53(1)
amended by
No. 81/1988
s. 30(a),
repealed by
No. 120/1994
s. 57(l).

* * * * *

S. 53(2)
amended by
No. 27/2001
s. 5(Sch. 3
item 5.13).

(2) A new scheme member may register the names of persons which he or she considers to be his or her dependants (other than a partner or child) with the Board for the purposes of this section.

S. 53(3)
amended by
Nos 110/1993
s. 71(2),
120/1994
ss 60(1), 65(b).

(3) On the death of a new scheme member (other than a prescribed fire-fighter) who has not attained the age of 60 years before retirement the Board must apportion between those of his or her dependants that the Board considers appropriate a lump sum equal to the accrued retirement benefit which would have been payable if the new scheme member had retired at 60 years of age and was contributing at 3 per cent of final average salary from the date of death until the date of retirement as if his or her final average salary at death had been his or her final average salary at the date of retirement.

S. 53(4)
amended by
No. 110/1993
ss 71(2),
78(1)(a)(b),
substituted by
No. 120/1994
s. 60(2).

(4) Subject to section 52(3), on the death of a prescribed fire-fighter who has not attained the age of 55 years before retirement, the Board must apportion between those of his or her dependants that the Board considers appropriate a lump sum equal to his or her accrued retirement benefit calculated as the total of the sums under section 52(2) and an amount calculated at the rate of 24 per cent of final average salary of the prescribed fire-fighter for each year from the date of death until the age of 55 years as if his or her final average salary at death had been his or her final average salary at the age of 55 years.

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- (4A) On the death of a prescribed fire-fighter who has attained the age of 55 years before retirement, the Board must apportion between those of his or her dependants that the Board considers appropriate a lump sum equal to his or her accrued retirement benefit.
- (4B) A benefit calculated under subsection (4) and (4A) must not be less than the benefit that would have been payable if the prescribed fire-fighter had died on 31 December 1993 under this section as in force at that date.
- (5) On the death of a new scheme member (other than a prescribed fire-fighter) who has attained the age of 60 years before retirement the Board must apportion between those of his or her dependants that the Board considers appropriate a lump sum equal to his or her accrued retirement benefit.
- (5A) If subsection (3), (4), (4A) or (5) applies and there are any dependants, the Board may in its discretion pay the whole or part of the benefit to the personal representative of the new scheme member.
- (6) On the death of a new scheme member before retirement the Board must pay to each child of the partner or the deceased new scheme member—
- (a) for each eligible child not exceeding 4, a pension equal to 5 per cent of the new scheme member's final average salary; or
- (b) if there are more than 4 eligible children, for each eligible child an equal share of 20 per cent of the new scheme member's final average salary.

S. 53(4A)
inserted by
No. 110/1993
s. 78(2),
substituted by
No. 120/1994
s. 60(2).

S. 53(4B)
inserted by
No. 120/1994
s. 60(2).

S. 53(5)
amended by
No. 120/1994
s. 60(1).

S. 53(5A)
inserted by
No. 37/2007
s. 33(1).

S. 53(6)
amended by
Nos 81/1988
s. 30(b),
27/2001
s. 5(Sch. 3
item 5.13).

S. 53(6)(a)
amended by
No. 110/1993
s. 71(1).

S. 53(6)(b)
amended by
No. 110/1993
s. 71(1).

S. 53(7)
amended by
Nos 4/1996
s. 110(2),
94/2005 s. 45.

- (7) If on the death of a new scheme member before retirement there are no dependants, the Board must pay to his or her personal representative the actual amount contributed by him or her to the State Superannuation Fund and the Fund and interest at the rate which is the prescribed rate under section 58(1).
- (8) The Board may assume that there are no dependants for the purposes of subsection (7) if—
- (a) no dependants have been registered under subsection (2); and
 - (b) the Board has not received any claims by dependants within 12 months of the death of the new scheme member.

S. 53(9)
inserted by
No. 37/2007
s. 33(2).

- (9) For the purposes of this section, *personal representative* has the same meaning as it has in section 5(1) of the **Administration and Probate Act 1958**.

54 Benefit on retirement through disability

S. 54(1)
amended by
No. 110/1993
ss 71(3),
78(3)(a).

- (1) Subject to subsection (1A), if a new scheme member retires on the ground of disability before he or she attains 60 years of age he or she is entitled to a pension for life at the rate of one-twelfth of the accrued retirement benefit which would have been payable if the new scheme member had retired at 60 years of age and was contributing from the date of retirement until the date on which he or she would attain 60 years of age at the higher of—
- (a) 5 per cent of salary; or
 - (b) the highest rate at which the new scheme member has contributed for more than half of the 3 years immediately preceding retirement;

* * * * *

S. 54(1)(c)
repealed by
No. 110/1993
s. 78(3)(b).

as if his or her final average salary at the date of retirement had been his or her final average salary at the date on which he or she would attain 60 years of age.

- (1A) In the case of a prescribed fire-fighter, for the purposes of this section, the contribution rate is to be the highest rate at which the prescribed firefighter would then have been entitled to contribute and subsection (1) applies as if for "60" there were substituted "55".

S. 54(1A)
inserted by
No. 110/1993
s. 78(4).

- (1B) Despite subsection (1A), no benefit calculated under this section shall be less than the benefit that would have been payable had the new scheme member retired due to disability before he or she attained 60 years of age immediately before section 78(4) of the **Public Sector Superannuation (Administration) Act 1993** came into operation.

S. 54(1B)
inserted by
No. 110/1993
s. 78(4),
amended by
No. 120/1994
s. 61.

- (2) If a new scheme member continues to receive a pension under subsection (1) until he or she attains 65 years of age, he or she may elect to receive a lump sum equal to his or her accrued retirement benefit calculated at the date of retirement instead of continuing to receive a pension under subsection (1).

S. 54(2)
amended by
No. 81/1988
s. 30(c).

- (3) Despite subsections (1) and (2), the Board may at its discretion determine that instead of the pension at the rate under subsection (1) the new scheme member is to receive—

- (a) a lump sum equal to a part or all of the accrued retirement benefit; and

S. 54(3)(a)
amended by
No. 49/1992
s. 17(1).

s. 56

(b) a pension at the rate of one-twelfth of the balance of the accrued retirement benefit—
in the proportions determined by the Board.

S. 54(3A)
inserted by
No. 49/1992
s. 17(2).

(3A) If the new scheme member receives a lump sum equal to all of the accrued retirement benefit, the new scheme member ceases to have any entitlement to a pension.

S. 54(4)
amended by
No. 81/1988
s. 30(d).

(4) If the new scheme member dies before attaining the age of 65 years the Board must pay to the dependants or other persons that it determines a lump sum equal to—

$$D \frac{(312 - X)}{312}$$

where—

D means the accrued retirement benefit that would have been payable if he or she had died on the date of retirement increased in the proportion that the pension payable under this section was increased under section 91 between the date of retirement and the date of death;

X means the number of instalments of pension already paid.

S. 55
repealed by
No. 120/1994
s. 62(1).

* * * * *

56 Benefit on retirement due to ill-health

If the Board considers that a new scheme member has retired on the ground of ill-health not constituting disablement, the new scheme member is entitled to a lump sum equal to the accrued retirement benefit at the time of his or her retirement.

57 Benefit on retrenchment

- (1) A new scheme member who is retrenched is entitled to a lump sum equal to the accrued retirement benefit at the time of his or her retrenchment.
- (2) If a new scheme member—
- (a) has not attained the minimum age for retirement; and
 - (b) has been or is appointed for a term of years to a statutory office; and
 - (c) is not re-appointed to that office; and
 - (d) ceases to be an officer—
- he or she is entitled to the same benefits as he or she would be entitled under subsection (1).

S. 57
amended by
No. 81/1988
s. 30(e)(i).

S. 57(2)
inserted by
No. 81/1988
s. 30(e)(ii).

58 Benefit on resignation

- (1) If a new scheme member resigns he or she is entitled to—
- (a) a cash benefit equal to the amount of the contributions paid by him or her and interest at the prescribed rate; and
 - (b) a deferred benefit calculated in accordance with the formula—

$$(A - B) \times \frac{(S - X)}{S}$$

where—

A means the accrued retirement benefit at the time of his or her resignation expressed as a multiple of final average salary;

B means the cash benefit under paragraph (a) expressed as a multiple of final average salary;

S. 58(1)
amended by
No. 110/1993
s. 71(1).

S. 58(1)(b)
amended by
Nos 72/1990
s. 6(b),
110/1993
s. 79(2).

S means years of recognised service (including as a revised scheme member) and includes up to 12 months unpaid parental leave for each confinement if the new scheme member has returned for at least 12 months of paid employment after the period of unpaid parental leave;

X has the same meaning as in section 46;

S. 58(1)(c)
inserted by
No. 72/1990
s. 6(a),
repealed by
No. 110/1993
s. 79(2).

* * * * *

S. 58(2)
amended by
No. 110/1993
s. 71(1).

(2) Despite subsection (1), a new scheme member who is entitled to a deferred benefit of less than 10 per cent of final average salary may elect to receive an equivalent cash benefit.

S. 58(2A)
inserted by
No. 110/1993
s. 79(3).

(2A) If a new scheme member who has been a revised scheme member resigns, section 61(2A) applies to his or her deferred pension under the revised scheme.

S. 58(3)
inserted by
No. 81/1988
s. 30(f).

(3) A deferred benefit is payable at the earlier of—
(a) a request of the former new scheme member at or after the minimum age for retirement;
or
(b) the disability of the former new scheme member; or

S. 58(3)(c)
amended by
No. 110/1993
s. 78(5).

(c) the death of the former new scheme member in which case the deferred benefit is payable in accordance with section 53; or
(d) the attainment of the former new scheme member of the age of 65 years.

-
- (4) A new scheme member who is entitled under subsection (1) to a deferred benefit on resignation may elect in writing to the Board to—
- (a) convert the entitlement to a present lump sum; and
- (b) have the lump sum rolled over or transferred within the superannuation system as nominated by the new scheme member.
- (5) The method of calculating the conversion under subsection (4) is to be determined by the Minister on the advice of an actuary appointed by the Board.
- S. 58(4) inserted by No. 110/1993 s. 78(6), repealed by No. 82/1996 s. 67, new s. 58(4) inserted by No. 95/2000 s. 6(6).
- S. 58(4)(b) substituted by Nos 40/2004 s. 28(4), 37/2007 s. 34.
- S. 58(5) inserted by No. 110/1993 s. 78(6), repealed by No. 82/1996 s. 67, new s. 58(5) inserted by No. 95/2000 s. 6(6).

59 Intermittent service

- (1) If a new scheme member takes a period of unpaid leave of absence of 4 weeks or more he or she may elect to make contributions in respect of that leave at a rate of 1.5 per cent (or such other percentage as is first determined by an actuary after the commencement of section 112(1) of the **Superannuation Acts (Amendment) Act 1996** and thereafter during an actuarial investigation under section 23 and which is specified in the actuary's report and after the commencement of the **Superannuation Legislation (Governance Reform) Act 2005**, during an actuarial investigation under section 19 of the **Emergency Services Superannuation Act 1986** and which is specified in the actuary's report) of salary
- S. 59(1) substituted by No. 81/1988 s. 30(g)(i), amended by Nos 4/1996 s. 112(1), 94/2005 s. 46(1), 37/2007 s. 35.

State Superannuation Act 1988
No. 50 of 1988
Part 7—New Scheme Members

s. 59

immediately before the commencement of the leave for the period of the leave.

S. 59(1A)
inserted by
No. 81/1988
s. 30(g)(i).

(1A) The election is of no effect unless—

- (a) it is made in writing; and
- (b) it is made not later than 1 month from the date on which the leave commences; and
- (c) unless subsection (1B) applies, it is accompanied by a sum equivalent to the total of all contributions payable throughout the period of the leave in accordance with the election.

S. 59(1A)(c)
amended by
Nos 49/1992
s. 18, 4/1996
s. 112(2)(a).

S. 59(1A)(d)
inserted by
No. 49/1992
s. 18,
repealed by
No. 4/1996
s. 112(2)(b).

* * * * *

S. 59(1B)
inserted by
No. 81/1988
s. 30(g)(i).

(1B) The Board may, on the application of that person permit the contributions payable in accordance with the election to be paid by him or her during his or her absence in smaller sums and at periods as the Board determines.

S. 59(1C)
inserted by
No. 81/1988
s. 30(g)(i).

(1C) The election takes effect on the date on which the leave commences.

S. 59(1D)
inserted by
No. 81/1988
s. 30(g)(i).

(1D) A new scheme member who is absent on leave without pay, otherwise than on the grounds of ill-health, and who does not before the expiration of 1 month from the date on which the leave commences make an election is for the purposes of this Act to be regarded as having made an election not to make any contributions.

-
- (2) If a contribution is made under subsection (1)—
- (a) the period of unpaid leave is to be treated as service for the purposes of section 58(1); and
 - (b) the new scheme member is entitled to death and disability benefits in the event of death or disability before his or her return from leave as if he or she had returned from leave on the day that the death or disability occurs.
- (3) A contribution is not required if the period of unpaid leave is not more than 4 weeks.
- (4) If a contribution is not made only the service before and the service after the period of unpaid leave is to be counted in relation to any benefit entitlement upon return from leave.
- (5) If a new scheme member resigns and subsequently resumes service and contributes to the State Superannuation Fund and the Fund for 3 years his or her previous accrued retirement benefit less the multiple of final average salary paid as a cash resignation benefit is to be included in his or her subsequent benefit entitlement.
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S. 59(3)
amended by
No. 81/1988
s. 30(g)(ii).

S. 59(5)
amended by
Nos 110/1993
s. 71(1),
94/2005
s. 46(2).

Pt 7A
(Heading and
ss 59AA–
59AG)
inserted by
No. 70/2003
s. 24.

PART 7A—FAMILY LAW PROVISIONS

S. 59AA
inserted by
No. 70/2003
s. 24.

59AA Definitions

(1) In this Part—

approved deposit fund has the meaning given by section 10(1) of the Commonwealth Superannuation Industry (Supervision) Act 1993;

eligible rollover fund means a fund within the meaning of section 242 of the Commonwealth Superannuation Industry (Supervision) Act 1993;

eligible superannuation plan means—

- (a) a regulated superannuation fund; or
- (b) an approved deposit fund; or
- (c) an exempt public sector superannuation scheme; or
- (d) an RSA;

exempt public sector superannuation scheme means a public sector superannuation scheme within the meaning of section 10(1) of the Commonwealth Superannuation Industry (Supervision) Act 1993;

flag lifting agreement has the meaning given by section 90MN of the Commonwealth Family Law Act 1975;

flagging order means an order mentioned in section 90MU(1) of the Commonwealth Family Law Act 1975;

interest has the meaning given by section 90MD of the Commonwealth Family Law Act 1975;

member spouse, in relation to a superannuation interest, means the spouse who has the superannuation interest;

non-member spouse, in relation to a superannuation interest, means the spouse who is not the member spouse in relation to that interest;

payment flag has the meaning given by section 90MD of the Commonwealth Family Law Act 1975;

regulated superannuation fund means a superannuation fund which complies with section 19 of the Commonwealth Superannuation Industry (Supervision) Act 1993;

relevant condition of release means, a condition of release mentioned in item 101, 102, 103 or 106 of Schedule 1 to the Commonwealth Superannuation Industry (Supervision) Regulations 1994;

reversionary interest has the meaning given by section 90MF of the Commonwealth Family Law Act 1975;

* * * * *

S. 59AA(1)
def. of
RSA
repealed by
No. 40/2004
s. 28(5).

specified period means the period which is specified to be the specified period in the specified standards;

s. 59AA

splitting order means an order mentioned in section 90MT of the Commonwealth Family Law Act 1975;

S. 59AA(1)
def. of
spouse
inserted by
No. 38/2009
s. 29(a).

spouse has the meaning given by section 90MD of the Commonwealth Family Law Act 1975;

S. 59AA(1)
def. of
*super-
annuation
agreement*
amended by
No. 38/2009
s. 29(b).

superannuation agreement has the meaning given by section 90MD of the Commonwealth Family Law Act 1975;

superannuation fund has the same meaning as in the Commonwealth Superannuation Industry (Supervision) Act 1993;

superannuation interest means an interest that a person has as a member of an eligible superannuation plan, but does not include a reversionary interest;

unsplittable interest has the meaning given by section 90MD of the Commonwealth Family Law Act 1975;

value at a particular time of the non-member spouse's entitlement in respect of the superannuation interest means the value as determined in accordance with regulation 14G(8) of the Commonwealth Family Law (Superannuation) Regulations 2001;

value of the member spouse's interest in the Fund means the value as determined in accordance with Part 5 of the Commonwealth Family Law (Superannuation) Regulations 2001.

- (2) A reference to the transfer of an amount is to be construed as including a reference to the rollover of an amount.

59AB Accrued benefit multiple

For the purpose of regulation 65 of the Commonwealth Family Law (Superannuation) Regulations 2001, the Board on the advice of an actuary appointed by the Board may from time to time determine the accrued benefit multiple.

S. 59AB
inserted by
No. 70/2003
s. 24.

59AC Obligation on Board

S. 59AC
inserted by
No. 70/2003
s. 24.

- (1) Subject to subsections (5) and (6), the Board must comply with this section if—

- (a) a superannuation agreement which provides for a payment split; or
- (b) a flag lifting agreement which provides for a payment split; or
- (c) a splitting order—

is served on the Board under Part VIII B or VIII AB of the Commonwealth Family Law Act 1975.

- (2) This section also applies to—

- (a) a superannuation agreement which provides for a payment split; or
- (b) a flag lifting agreement which provides for a payment split; or
- (c) a splitting order—

which was served on the Board under Part VIII B of the Commonwealth Family Law Act 1975 before the commencement of section 24 of the **Superannuation Acts (Family Law) Act 2003** if the non-member spouse's entitlements in respect

S. 59AC(1)
amended by
No. 38/2009
s. 30(1).

of the superannuation interest have not been satisfied as at that commencement.

S. 59AC(2A)
inserted by
No. 38/2009
s. 30(2).

(2A) This section also applies to—

- (a) a superannuation agreement which provides for a payment split; or
- (b) a flag lifting agreement which provides for a payment split; or
- (c) a splitting order—

which was served on the Board under Part VIIIAB of the Commonwealth Family Law Act 1975 before the commencement of section 30 of the **Superannuation Legislation Amendment Act 2009** if the non-member spouse's entitlements in respect of the superannuation interest have not been satisfied as at that commencement.

- (3) If the non-member spouse has not satisfied a relevant condition of release and the member spouse is not receiving a pension under this Act, the Board must if the value of the non-member spouse's entitlement in respect of the superannuation interest at the particular time does not exceed the value of the member spouse's interest in the Fund—
 - (a) transfer a lump sum amount equal to the value of the non-member spouse's entitlement in respect of the superannuation interest at the time of the payment to an eligible superannuation plan nominated in writing by the non-member spouse within the specified period; or
 - (b) if the non-member spouse fails to nominate in writing an eligible superannuation plan within the specified period, transfer a lump sum amount equal to the value of the non-member spouse's entitlement in respect of the superannuation interest at the time of the

payment to an eligible rollover fund selected by the Board.

- (4) If the non-member spouse has satisfied a relevant condition of release or the member spouse is receiving a pension under this Act, the Board must if the value of the non-member spouse's entitlement in respect of the superannuation interest at the particular time does not exceed the value of the member spouse's interest in the Fund—
- (a) if so requested in writing by the non-member spouse within the specified period, pay the non-member spouse a lump sum amount equal to the value of the non-member spouse's entitlement in respect of the superannuation interest at the time of the payment; or
 - (b) if so requested in writing by the non-member spouse within the specified period, transfer a lump sum amount equal to the value of the non-member spouse's entitlement in respect of the superannuation interest at the time of the payment to an eligible superannuation plan nominated in writing by the non-member spouse; or
 - (c) if no request is received from the non-member spouse within the specified period, transfer a lump sum amount equal to the value of the non-member spouse's entitlement in respect of the superannuation interest at the time of the payment to an eligible rollover fund selected by the Board.
- (5) Subsections (3) and (4) do not apply if—
- (a) the member spouse's superannuation interest is an unsplittable interest; or

s. 59AD

- (b) a payment flag is operating in respect of the member spouse's superannuation interest; or
 - (c) the non-member spouse has served a waiver notice on the Board under section 90MZA of the Commonwealth Family Law Act 1975 in respect of the member spouse's superannuation interest; or
 - (d) the member spouse's superannuation interest is a payment that is not a splittable payment under Part 2 of the Commonwealth Family Law (Superannuation) Regulations 2001.
- (6) If the member spouse's superannuation interest is a pension under this Act due to a disability which is a splittable payment, the Board may determine that subsections (3) and (4) do not apply.
- (7) If the non-member spouse serves a waiver notice on the Board under section 90MZA of the Commonwealth Family Law Act 1975 in respect of the member spouse's superannuation interest, the Board may make a payment to the non-member spouse not exceeding the value at a particular time of the non-member spouse's entitlement in respect of the superannuation interest less any payments previously made by the Board to the non-member spouse in accordance with this section.

S. 59AD
inserted by
No. 70/2003
s. 24.

59AD Reduction of benefit or accrued benefit entitlement

Despite anything to the contrary in this Act, if under section 59AC an amount is paid by the Board to a non-member spouse or transferred by the Board on behalf of a non-member spouse, the benefit or accrued benefit entitlement of a member spouse must be reduced by the Board in accordance with a methodology approved by the Minister, on the advice of an actuary appointed by the Board.

59AE Board may provide additional information

On the application of an eligible person within the meaning of section 90MZB(8) of the Commonwealth Family Law Act 1975, the Board may provide information additional to the information required to be provided under section 90MZB of that Act if the Board considers that the additional information is necessary to understand the Fund or the member spouse's benefit entitlements.

S. 59AE
inserted by
No. 70/2003
s. 24.

59AF Commutation rights not affected

The entitlement of a person to convert or commute a benefit or pension under this Act is not affected by the making of a payment or transfer under this Part.

S. 59AF
inserted by
No. 70/2003
s. 24.

59AG Charging of fees

- (1) The Board may charge reasonable fees in respect of—
- (a) a payment split;
 - (b) a payment flag;
 - (c) flag lifting under a flag lifting agreement that does not provide for a payment split;
 - (d) an order under section 90MM of the Commonwealth Family Law Act 1975 terminating the operation of a payment flag;
 - (e) an application under section 90MZB of the Commonwealth Family Law Act 1975 for information about a superannuation interest;
 - (f) any other thing done by the Board in relation to a superannuation interest covered by a superannuation agreement, flag lifting agreement or splitting order;
 - (g) the provision of information under section 59AE.

S. 59AG
inserted by
No. 70/2003
s. 24.

- (2) Fees charged under subsection (1) must not exceed the maximum levels of fees fixed by the Minister for the purposes of this section by notice published in the Government Gazette.
 - (3) If the Board charges a fee under subsection (1), the fee is payable—
 - (a) unless paragraph (b) applies, in the case of subsection (1)(a), (1)(b), (1)(c), (1)(d) or (1)(f), by the member spouse and the non-member spouse in equal parts; or
 - (b) if the fee is in respect of a payment split under which the non-member spouse is entitled to be paid the whole of the amount of each splittable payment that becomes payable, by the non-member spouse; or
 - (c) in the case of subsection (1)(e) or (1)(g), by the person who made the application.
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PART 8—GENERAL PROVISIONS

59A Payment of benefits subject to specified standards

S. 59A
inserted by
No. 13/1999
s. 12.

Notwithstanding anything to the contrary in this Act, the payment of any benefit under this Act is subject to any relevant specified standards.

60 Payment of contributions

- (1) The contributions of an officer are (except as otherwise provided in this Act) payable on and from the first pay day after the commencement of his or her employment as an officer or where he or she is appointed as or becomes an officer on a pay day, on and from that pay day.
- (2) The contributions of contributors are to—
 - (a) be deducted from their salaries at each payment of salaries; and
 - (b) be paid to the Board, without deduction for postage, forwarding or exchange.
- (3) Contributions of contributors who are on the staff of any technical school are to be deducted and paid as prescribed.
- (4) If a contributor is on leave of absence through illness, either without pay or at less than full pay, the Board may, upon his or her application, permit the contributions falling due during his or her absence to be paid by him or her in smaller sums, and at periods, as the Board approves.
- (5) Any amounts other than contributions payable to the Board by a contributor are to—
 - (a) be deducted from his or her salary at each payment of salary; and
 - (b) be paid to the Board, without deduction for postage, forwarding or exchange.

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- (6) A contributor who is on leave of absence, with or without pay (other than a contributor to whom subsection (4) applies) who fails to pay his or her contributions on the due date is not if any contribution remains outstanding for a period of more than 3 months, entitled to any benefit under this or any other Act until—
- (a) his or her contributions are fully paid; or
 - (b) he or she resumes duty.
- (7) If, on the date on which the **Superannuation (Amendment) Act 1984** came into operation, a contributor was on leave of absence without pay (except leave on the grounds of ill-health) and the Board permitted him or her to pay all his or her contributions due but unpaid at that date in respect of the leave up to that date in smaller sums and at periods as the Board determined, section 49 applies to the contributor in respect of leave of absence without pay after that date as if he or she had commenced the leave on that date (or where he or she has before that date paid contributions in respect of the leave up to a later date, as if he or she had commenced the leave on that later date).

S. 60A
inserted by
No. 78/2004
s. 15.

60A Eligible member account

- (1) The Board must establish and maintain a separate eligible member account for each contributor who is an eligible member.
- (2) The Board must credit to a contributor's eligible member account—
 - (a) eligible contributions received on behalf of, or from, the contributor; and
 - (b) interest on the amount in the account at the rate determined by the Board.

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- (3) The Board must debit to a contributor's eligible member account—
- (a) any reasonable costs incurred in maintaining the account as determined by the Board; and
 - (b) any taxes payable in respect of the account; and
 - (c) any refund of overpaid or ineligible contributions required to be made to the Commissioner of Taxation under the Superannuation (Government Co-contributions for Low Income Earners) Act 2003 of the Commonwealth.
- (4) The Board may for the purposes of subsection (2)(b) determine that it is appropriate in the circumstances to apply a negative interest rate.
- (5) If benefits become payable under this Act to or in respect of a person who has been a contributor, the Board must ensure that the person receives an additional benefit equal to the net balance of the contributor's eligible member account as at the date of the payment of the benefits.
- (6) The net balance of the contributor's eligible member account as at the date of the payment of the benefits must be paid—
- (a) as a lump sum; and
 - (b) in accordance with the specified standards.
- (6A) A contributor may elect in writing to roll over, transfer or allot the net balance of the contributor's eligible member account within the superannuation system.

S. 60A(6A)
inserted by
No. 38/2009
s. 31.

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- (7) Eligible contributions—
- (a) do not constitute member contributions which are required to be paid under this Act;
 - (b) do not create a corresponding liability requiring the employing authority to make contributions to the Fund;
 - (c) must not be taken into account in the calculation of any benefits under this Act other than this section.
- (8) A benefit paid in accordance with this section—
- (a) does not affect the payment of any other benefits under this Act; and
 - (b) must not be taken into account in determining any minimum or maximum benefit entitlement under this Act.

61 Transfer from revised scheme to new scheme

- (1) A revised scheme member may during the period commencing on 1 July 1988 and ending on the prescribed date elect to transfer from the revised scheme into the new scheme.
- (2) A revised scheme member who elects to transfer under subsection (1) is entitled up to the date of transfer to a deferred pension payable in accordance with sections 46 and 47 and calculated in accordance with the following formula—

$$N \times \frac{YA}{YP} \times C \times F$$

where—

N, YA and YP have the same meanings as in section 33(1);

C means the contribution factor in accordance with section 46;

S. 61(2)
amended by
No. 81/1988
s. 31(1).

F means—

- (a) for a prescribed fire-fighter, a factor in accordance with the following Table:

<i>Age last birthday before transfer</i>	<i>Factor</i>
45 or less	1.05
46	1.04
47	1.03
48	1.02
49	1.01
50 or over	1.00

; or

- (b) for any other revised scheme member, a factor of 1.00.

- (2A) If a person who is entitled to a deferred pension under subsection (2) resigns he or she may elect to receive—

S. 61(2A)
inserted by
No. 72/1990
s. 7(1),
substituted by
No. 110/1993
s. 79(1).

- (a) a cash benefit equal to a refund of the contributions paid by him or her during the period he or she was a revised scheme member and interest at the rate which is the prescribed rate under section 46(1); and
- (b) a deferred pension reduced in accordance with the following formula—

S. 61(2A)(a)
amended by
No. 4/1996
s. 110(3).

$$DF \times \left[\frac{5}{7} \times \frac{(S - X)}{S} \right]$$

where—

DF means the deferred pension calculated under subsection (2);

S, X have the same meanings as in section 58.

State Superannuation Act 1988
No. 50 of 1988
Part 8—General Provisions

s. 61

S. 61(2B)
inserted by
No. 110/1993
s. 79(1).

(2B) Section 47 applies to a deferred pension under subsection (2) or a reduced deferred pension under subsection (2A) as if the reference to deferred pensions in that section included a reference to a deferred pension under subsection (2) or a reduced deferred pension under subsection (2A).

S. 61(3)
inserted by
No. 81/1988
s. 31(2).

(3) If a prescribed fire-fighter makes an election under subsection (1) he or she may further elect not later than 31 December 1989 to have his or her deferred pension calculated as at 1 January 1988 and to be treated as having become a new scheme member on 1 January 1988 if he or she pays any arrears of contributions based on his or her salary as at 1 May 1988 at the time of the further election.

S. 61(4)
inserted by
No. 81/1988
s. 31(2).

(4) For the purposes of determining the maximum benefit under section 52(3)—

- (a) the amount of any deferred pension under subsection (2) is to be taken into account; and
- (b) the deferred pension must be notionally converted into a lump sum as determined in accordance with Schedule 1.

S. 61(5)
inserted by
No. 49/1992
s. 19,
substituted by
No. 110/1993
s. 80.

(5) A revised scheme member who elects whether before or after the commencement of section 19 of the **Superannuation (Occupational Superannuation Standards) Act 1992** to transfer to the Transport Superannuation Fund under section 4 of the **Transport Superannuation Act 1988** is entitled—

- (a) to a deferred pension up to the date of transfer calculated in accordance with subsection (2); or

-
- (b) if he or she subsequently resigns, to elect to receive a cash benefit and reduced deferred benefit calculated in accordance with subsection (2A).
- (6) A deferred pension under subsection (5)(a) or a reduced deferred pension under subsection (5)(b) is payable at the earlier of—
- (a) a request of the former revised scheme member at or after the minimum age for retirement; or
 - (b) the disability of the revised scheme member; or
 - (c) the death of the revised scheme member, to his or her partner, child or personal representative as the Board determines; or
 - (d) the attainment of the former revised scheme member of the age of 65 years.
- (7) Subsection (8) applies to a person who—
- (a) is entitled to a deferred pension under section 61(2) or a reduced deferred pension under section 61(2A) and is not eligible to make contributions under section 50; or
 - (b) is entitled to a deferred pension under section 61(5) or a reduced deferred pension under section 61(5)(b) and is not eligible to make contributions under section 28 of the **Transport Superannuation Act 1988**.
- S. 61(6)**
inserted by
No. 49/1992
s. 19,
substituted by
No. 110/1993
s. 80.
- S. 61(6)(c)**
amended by
Nos 120/1994
s. 57(m),
27/2001
s. 5(Sch. 3
item 5.13).
- S. 61(7)**
inserted by
No. 49/1992
s. 19,
substituted by
No. 110/1993
s. 80,
repealed by
No. 82/1996
s. 67, new
s. 61(7)
inserted by
No. 95/2000
s. 6(7).

State Superannuation Act 1988
No. 50 of 1988
Part 8—General Provisions

s. 61

S. 61(8)
inserted by
No. 110/1993
s. 80,
repealed by
No. 82/1996
s. 67, new
s. 61(8)
inserted by
No. 95/2000
s. 6(7).

(8) A former revised scheme member referred to in subsection (7) may elect in writing to the Board to—

(a) convert the entitlement to a lump sum; and

S. 61(8)(b)
substituted by
Nos 40/2004
s. 28(6),
37/2007 s. 36.

(b) have the lump sum rolled over or transferred within the superannuation system as nominated by the former revised scheme member.

S. 61(8A)
inserted by
No. 95/2000
s. 6(7).

(8A) The method of calculating the conversion under subsection (8) is to be determined by the Minister on the advice of an actuary appointed by the Board.

S. 61(9)
inserted by
No. 110/1993
s. 80.

(9) A revised scheme member who elects whether before or after the commencement of section 19 of the **Superannuation (Occupational Superannuation Standards) Act 1992** to transfer under this section into the new scheme and is subsequently retrenched is entitled to receive a benefit calculated and payable under section 44 as if he or she had been retrenched on the date of transfer.

S. 61(10)
inserted by
No. 110/1993
s. 80.

(10) A revised scheme member who elects whether before or after the commencement of section 19 of the **Superannuation (Occupational Superannuation Standards) Act 1992** to transfer to the Transport Superannuation Fund under section 4 of the **Transport Superannuation Act 1988** and is subsequently retrenched is entitled to receive a benefit calculated and payable under section 44 as if he or she has been retrenched on the date of transfer.

61A Exempt officers

S. 61A
inserted by
No. 87/1992
s. 16.

- (1) A revised scheme member who becomes an exempt officer is entitled up to the date of becoming an exempt officer to a deferred pension calculated in accordance with the formula—

S. 61A(1)
amended by
No. 110/1993
s. 81(1).

$$N \times \frac{YA}{YP} \times C \times F$$

where—

N, YA and YP have the same meanings as in section 33(1);

C means the contribution factor in accordance with section 46;

F has the same meaning as in section 61(2).

- (2) A new scheme member who becomes an exempt officer is entitled up to the date of becoming an exempt officer to a deferred lump sum equal to his or her accrued retirement benefit.

- (3) A pension or benefit under this section—

(a) must be indexed in accordance with section 91; and

(b) is payable to the member or any dependant or legal personal representative as determined by the Board in accordance with the specified standards.

S. 61A(3)(b)
substituted by
No. 110/1993
s. 81(2),
amended by
No. 4/1996
s. 108(3).

State Superannuation Act 1988
No. 50 of 1988
Part 8—General Provisions

s. 61A

S. 61A(4)
inserted by
No. 110/1993
s. 81(3),
repealed by
No. 120/1994
s. 57(n), new
s. 61A(4)
inserted by
No. 95/2000
s. 6(8).

(4) A revised scheme member who is entitled to a deferred pension under subsection (1) may elect in writing to the Board to—

(a) convert the entitlement to a lump sum; and

S. 61A(4)(b)
substituted by
Nos 40/2004
s. 28(7),
37/2007
s. 37(1).

(b) have the lump sum rolled over or transferred within the superannuation system as nominated by the revised scheme member.

S. 61A(5)
inserted by
No. 95/2000
s. 6(8).

(5) A new scheme member who is entitled to a deferred benefit under subsection (2) may elect in writing to the Board to—

(a) convert the entitlement to a present lump sum; and

S. 61A(5)(b)
substituted by
Nos 40/2004
s. 28(8),
37/2007
s. 37(2).

(b) have the lump sum rolled over or transferred within the superannuation system as nominated by the new scheme member.

S. 61A(6)
inserted by
No. 95/2000
s. 6(8).

(6) The method of calculating the conversion under subsection (4) or (5) is to be determined by the Minister on the advice of an actuary appointed by the Board.

Ss 61B, 61C
inserted by
No. 110/1993
s. 82(1),
repealed by
No. 40/2004
s. 34.

* * * * *

61D Entitlements of section 61B transferee

- (1) A revised scheme member who elects to transfer to the new scheme under section 61B is entitled to have his or her entitlement to a benefit from the revised scheme up to the date of transfer converted into a lump sum benefit entitlement from the new scheme equal to a transfer multiple of final average salary calculated in accordance with the formula—

$$TM = \frac{YA}{YP} \times BM \times D$$

where—

"TM" means the transfer multiple of final average salary for the purposes of section 52(2A);

"YA" is the revised scheme member's period of recognised service in completed years and fraction thereof up to and including the date of transfer or 42 years whichever is the lesser;

"YP" is the period of recognised service in completed years and fraction thereof which the officer would have if the officer had continued to serve as an officer until attaining the age of 60 years and had then retired or 42 years whichever is the lesser;

"BM" is—

- (a) the product of YP multiplied by 0.28;
or
- (b) 8.4—

whichever is the lesser;

S. 61D
inserted by
No. 110/1993
s. 82(1).

S. 61D(1)
def. of
"YA"
amended by
No. 58/1994
s. 8(a).

"D" is the factor relating to the revised scheme member's age (rounded down to the next lowest 6 months) at 1 January 1994 in accordance with the following table:

TABLE

Age	Factor
less than or equal to 40 years	0.80
40 years 6 months	0.81
41 years	0.82
41 years 6 months	0.83
42 years	0.84
42 years 6 months	0.85
43 years	0.84
43 years 6 months	0.83
44 years	0.82
44 years 6 months	0.81
45 years or greater	0.80

- (2) A revised scheme member to whom subsection (1) applies ceases to have any other entitlement to a benefit from the revised scheme.
- (3) Despite subsection (1), the Board on the advice of an actuary may reduce the value of "TM" in respect of a member if—
- (a) the member was not contributing for all of his or her optional units under the **Superannuation Act 1958**; or
 - (b) the Board recognises any service or further service for the member in respect of the period before the date of transfer but which is not taken into account under paragraph (a).

S. 61D(3)(b)
amended by
No. 58/1994
s. 8(b).

S. 62
substituted by
No. 81/1988
s. 32(a).

62 Classification of revised scheme members

A revised scheme member is to be classified or re-classified by the Board in accordance with the **Superannuation Act 1958** having regard to the medical and other evidence available to the Board.

63 Benefits payable to revised scheme member classified as limited or service

S. 63
substituted by
No. 81/1988
s. 32(b).

If a revised scheme member who has been classified as a limited contributor or a service benefits contributor dies or becomes disabled, the benefits which are payable to him or her are—

- (a) to bear the same relationship to the benefits payable to a full benefits contributor as is provided in the **Superannuation Act 1958**; or
- (b) to be any greater benefits than under paragraph (a) which may be prescribed.

64 Classification of new scheme members

S. 64
amended by
No. 81/1988
s. 32(c)(d),
substituted by
No. 49/1992
s. 20.

- (1) If the Board after consideration of any personal statement of medical history and any medical report or other medical evidence as it considers relevant is of the opinion that there is a real risk that a new scheme member will not by reason of or connected with any physical or mental condition continue to be an employee until he or she attains the age of 60 years, the Board may issue a benefits classification certificate specifying that condition.
- (2) Until a new scheme member has provided the Board with a personal statement of medical history or any medical report or received any medical evidence as it considers relevant and the member has been classified by the Board, he or she must be treated as having been issued with a benefits classification certificate specifying any relevant condition.

- (3) The Board may after consideration of any personal statement of medical history and any medical report or other medical evidence as it considers relevant, vary or revoke a benefits classification certificate under subsection (1) or (2).

S. 65
amended by
No. 49/1992
s. 21(a)-(c).

65 Benefits payable to new scheme member issued with a medical classification certificate

If a new scheme member in respect of whom there is in force a benefits classification certificate dies or becomes disabled and the Board is of the opinion that the death or disability was caused or substantially contributed to by a condition specified in the benefits classification certificate, the benefit payable instead of the benefit under section 53(3), 54, 55 or 56 (as the case may be) is—

- (a) in the event of death—
- (i) the accrued retirement benefit at the date of death; and
 - (ii) if the new scheme member has completed more than 4 years of recognised service one-sixteenth of the balance of the lump sum benefit which would have been payable if no benefits classification certificate was in force for each year of recognised service in excess of 4 years—

but not exceeding the benefit which would have been payable if no benefits classification certificate was in force at the date of death; and

(b) in the event of disability, a pension for life at the rate of one-twelfth of—

(i) the accrued retirement benefit at the date of disability; and

(ii) one-twentieth of the balance of the lump sum benefit which would have been payable if no benefits classification certificate was in force for each year of recognised service—

but not exceeding the pension which would have been payable if no benefits classification certificate was in force at the date of disability.

66 Officers on secondment or leave of absence

A contributor who is on secondment or is on leave of absence on the grounds of ill-health without pay must pay his or her contributions during or in respect of the period of leave as for a period of service without reduction for the period of the leave.

S. 66
amended by
Nos 4/1996
s. 112(3),
37/2007 s. 38.

67 If pensioner re-employed by Crown, pension may be reduced

(1) In this section—

current equivalent of the salary on retirement in relation to a pensioner means the salary that the Board from time to time determines as being equivalent at any relevant time to the salary that was payable to the pensioner immediately prior to his or her retirement having regard to general increases in salary that have occurred since the retirement of the pensioner;

s. 67

S. 67(1) def. of *employed in the service of the Crown* amended by Nos 49/1992 s. 22(a)(b), 120/1994 s. 65(a), 46/1998 s. 7(Sch. 1), 108/2004 s. 117(1) (Sch. 3 item 189.4), 24/2006 s. 6.1.2(Sch. 7 item 38.3).

employed in the service of the Crown in relation to a pensioner means a person employed—

- (a) by the Crown whether employed under the **Public Administration Act 2004**, the **Education and Training Reform Act 2006** or otherwise; or
- (b) by any body created by or under any Act; or
- (c) by any other body that the Governor in Council, on the recommendation of the Minister, by Order published in the Government Gazette, declares to be a body to which this paragraph applies—

whether permanent, temporary, casual, full-time, part-time or other type of employment.

S. 67(2) amended by Nos 81/1988 s. 33(a), 4/1996 s. 113(1)(a)(b).

(2) Despite any other provision of this Act the pension payable to any pensioner who continues to be an officer and who is employed in the service of the Crown is to be reduced by the amount by which the remuneration he or she or any other person, a corporation or a trust receives from his or her employment in the service of the Crown together with the pension payable to the pensioner under this Act (other than a disability pension) exceeds the current equivalent of his or her salary on retirement.

(3) This section does not apply to the payment of a pension to a pensioner—

S. 67(3)(a) amended by Nos 81/1988 s. 33(b), 120/1994 s. 57(o).

- (a) who is in receipt of a pension under section 36 or 37; or

- (b) who being a pensioner became employed in the service of the Crown prior to the commencement of section 6 of the **Superannuation (Amendment) Act 1969**.

67A Entitlement to pension

S. 67A
inserted by
No. 4/1996
s. 114.

- (1) The entitlement of a former officer to receive a pension under this Act ceases if any part of any entitlement under this Act or membership of the State Superannuation Fund and the Fund is recognised as entitlement towards any benefit in a complying superannuation fund and there is a transfer of assets from the Fund to that complying superannuation fund in accordance with subsection (2), on the day determined by the Board.
- (2) The Board must on the recommendation of an actuary transfer from the Fund to the relevant complying superannuation fund an amount certified by the actuary to be equivalent to the former officer's entitlement under this Act.
- (3) The Board is released from any liability to make any further payments to, or in respect of, any entitlement of the former officer or of any of his or her dependants.
- (4) The entitlement of a former officer to receive a pension under this Act does not cease if the entitlement under this Act or membership of the State Superannuation Fund and the Fund is not recognised as entitlement towards any benefit in a complying superannuation fund.

S. 67A(1)
amended by
No. 94/2005
s. 47(1).

S. 67A(4)
amended by
No. 94/2005
s. 47(2).

s. 67B

S. 67B
inserted by
No. 84/1998
s. 47.

67B Commutation of pension not exceeding declared rate

- (1) This section applies to a person who is entitled to a pension administered by the Board under this Act at a rate per year which does not exceed the declared rate.
- (2) Notwithstanding anything to the contrary in this Act, the Board may at its discretion determine that instead of a pension the person may elect to receive a lump sum payment as determined by the Board on the advice of an actuary.
- (3) If a person elects to accept a lump sum payment under subsection (2), the Board is released from any liability to make any further payments to, or in respect of, any entitlements of that person or any of his or her dependants in relation to that pension entitlement and this Act ceases to apply to that person in respect of that pension entitlement.
- (4) In this section, *declared rate* means—
 - (a) \$520 per year; or
 - (b) such higher rate per year as may be declared from time to time by the Minister by Order published in the Government Gazette.

S. 68
amended by
No. 81/1988
s. 33(c),
repealed by
No. 64/1989
s. 36(4)(a),
new s. 68
inserted by
No. 110/1993
s. 83.

68 Pension entitlements—Masters of the Supreme Court

- (1) In this section—

Master means a Master of the Supreme Court of Victoria;

pension entitlements means the entitlement of a Master or his or her partner and children to a pension.

S. 68(1) def. of
pension entitlements
amended by
No. 27/2001
s. 5(Sch. 3
item 5.13).

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- (2) A Master who was an officer within the meaning of this Act on 31 December 1990 ceased to be such an officer on 1 January 1991.
 - (3) The pension entitlements of a Master who was a contributor on 31 December 1990 are to be determined exclusively in accordance with section 104A of the **Supreme Court Act 1986**.
 - (4) A pension which first became payable to or in respect of a Master before 1 January 1991 continues to be payable in accordance with this Act.
 - (5) The Minister must offset the total of amounts paid to the Masters in satisfaction of their entitlement under this Act before the commencement of section 104A of the **Supreme Court Act 1986** against amounts determined under section 30 as being payable from the Consolidated Fund into the Fund.
 - (6) The Board is released from any liability to make any payment to, or in respect of, a Master who ceases to be an officer by virtue of this section.
 - (7) This section does not affect the application of section 16A.

69 Members of approved superannuation schemes

- (1) In this section *scheme of superannuation* means a scheme for the administration of any assets with the object of providing superannuation payments, annuities, pensions, allowances, lump sum payments or other benefits for employees or former employees or for the partners, children, dependants or legal personal representatives of employees or former employees.

S. 69(1)
amended by
No. 27/2001
s. 5(Sch. 3
item 5.14).

State Superannuation Act 1988
No. 50 of 1988
Part 8—General Provisions

s. 69

S. 69(2)
amended by
No. 46/1998
s. 7(Sch. 1).

(2) The Governor in Council, on the recommendation of the Minister, may by Order published in the Government Gazette declare a scheme of superannuation to be an approved superannuation scheme for the purposes of this section.

S. 69(3)
amended by
No. 81/1988
s. 33(d).

(3) Despite anything to the contrary in this Act an officer who becomes eligible to be a member of an approved superannuation scheme may within 3 months or any longer period approved by the Board of becoming eligible elect to cease to contribute in accordance with this Act.

S. 69(4)
amended by
Nos 81/1988
s. 33(e),
49/1992
s. 23(a),
substituted by
No. 110/1993
s. 84(1).

(4) A contributor who ceases to be a contributor under subsection (3) is entitled to a deferred retirement benefit—

- (a) in the case of a revised scheme member, in accordance with the formula in section 61(2); and
- (b) in the case of a new scheme member, equal to the accrued retirement benefit.

S. 69(4A)
inserted by
No. 95/2000
s. 6(9).

(4A) A contributor who is entitled to a deferred retirement benefit under subsection (4) may elect in writing to the Board to—

- (a) convert the entitlement to a present lump sum; and

S. 69(4A)(b)
substituted by
Nos 40/2004
s. 28(9),
37/2007 s. 39.

- (b) have the lump sum rolled over or transferred within the superannuation system as nominated by the contributor.

S. 69(4B)
inserted by
No. 95/2000
s. 6(9).

(4B) The method of calculating the conversion under subsection (4) is to be determined by the Minister on the advice of an actuary appointed by the Board.

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- (5) If a person who is entitled to a deferred benefit under subsection (4) resigns, he or she may elect to receive instead of that deferred benefit—
- (a) a cash benefit equal to a refund of contributions and interest at the prescribed rate; and
- (b) a deferred retirement benefit reduced by such amount as is determined by the Minister on the advice of an actuary.
- (6) The aggregate benefits of a contributor must not exceed 8.4 times the final average salary of the contributor.
- (6A) For the purposes of subsection (6), if a payment or transfer to a non-member spouse is made for the purposes of Part VIIIB of the Commonwealth Family Law Act 1975 whether under Part 7A or otherwise, the aggregate benefits of the member spouse must be adjusted by the Board in accordance with a methodology approved by the Minister, on the advice of an actuary appointed by the Board.
- (7) The Governor in Council may by Order in Council published in the Government Gazette revoke a declaration made under subsection (2).
- (8) The revocation does not affect the entitlement under this section of a person who has elected to cease to contribute under subsection (3).
- 69A Exemption from membership**
- (1) The Minister may by instrument in writing declare that an officer or a class of officers specified in the instrument is or are eligible to elect to be exempted from continuing to be a member of the revised scheme or the new scheme.
- S. 69(5) inserted by No. 72/1990 s. 8, amended by No. 110/1993 s. 84(2).
- S. 69(5)(b) amended by No. 46/1998 s. 7(Sch. 1).
- S. 69(6) inserted by No. 49/1992 s. 23(b), amended by No. 110/1993 s. 71(1).
- S. 69(6A) inserted by No. 70/2003 s. 25.
- S. 69(7) inserted by No. 110/1993 s. 84(3).
- S. 69(8) inserted by No. 110/1993 s. 84(3).
- S. 69A inserted by No. 110/1993 s. 85.

s. 69B

- (2) A person who is an officer or a member of a class of officers specified under subsection (1) may elect in writing to the Board to be exempted from continuing to be a member of the revised scheme or the new scheme from a date specified in the election.
- (3) As from the date of the election the former officer is deemed to be an exempt officer and is entitled to a benefit calculated and payable in accordance with section 61A as if the officer were an exempt officer.

S. 69B
inserted by
No. 110/1993
s. 85.

69B Designated employees

S. 69B(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (1) If an officer's employment is terminated under section 33 of the **Public Sector Management and Employment Act 1998**, the officer is entitled to a benefit calculated in accordance with—
 - (a) section 61A(1) if the officer is a revised scheme member; or
 - (b) section 61A(2) if the officer is a new scheme member.
- (2) The benefit is payable in accordance with section 61A(3) unless the officer makes an election under subsection (3).

S. 69B(3)(a)
amended by
No. 4/1996
s. 110(4).

- (3) The officer may elect to receive—
 - (a) a cash benefit equal to a refund of the contributions paid by him or her during the period he or she was a revised scheme member or a new scheme member (whichever is his or her current membership) and interest at the rate which is the prescribed rate under section 46(1) or 58(1) as appropriate; and

- (b) a deferred retirement benefit reduced by such amount as is determined by the Minister on the advice of an actuary.
- (4) A deferred retirement benefit under subsection (3)(b) is payable in accordance with section 61A(3), 61A(4) or 61A(5).
- (5) If an officer making an election under subsection (3) is a new scheme member who had transferred from the revised scheme under section 61(1), the officer is deemed to have resigned for the purposes of section 61(2A).

S. 69B(4)
amended by
No. 95/2000
s. 6(10).

70 Provision where contributor who resigns is appointed to a public body

- (1) In this section *public body* means—
- (a) the governing body of any authority constituted under any Act of a State, the Commonwealth or a Territory; or
- (b) any office prescribed as a public body for the purposes of this section.
- (2) If a contributor resigns and is subsequently employed by a public body he or she may instead of receiving a cash benefit and a deferred pension elect within 1 month of resigning or a longer period approved by the Board to authorise the Board to make arrangements for specified contributions to the Fund to be deducted from his or her salary for the duration of his or her employment with the public body.
- (3) With the consent of the Minister, the Board may make the arrangement and agree as to—
- (a) the amount of the pension entitlement and other benefits of that pension; and
- (b) the conditions under which pensions and benefits will be payable; and

S. 70(3)
amended by
No. 46/1998
s. 7(Sch. 1).

s. 71

S. 70(3)(c)
amended by
No. 12/1999
s. 4(Sch. 2
item 13.2).

(c) the amount to be paid by the Minister from the Consolidated Fund into the Fund in respect of the pensions and benefits.

S. 71
amended by
Nos 49/1992
s. 24, 54/1993
s. 11(2)(3),
110/1993
s. 71(1),
4/1996
ss 108(4)(5),
110(5),
70/2003 s. 26,
substituted by
No. 40/2004
s. 35.

71 Minimum benefit

S. 71(1)
amended by
No. 94/2005
s. 48(1).

(1) Subject to this section, if after all benefits payable under this Act in respect of a contributor or former contributor have been paid, the total amount of the benefits paid is less than the sum of the amount contributed by the contributor or former contributor to the State Superannuation Fund and the Fund and interest as appropriate on the amount contributed at the rate which is the prescribed rate under section 46(1) or 58(1) up to the date that the contributor or former contributor first became entitled to a benefit under this Act other than a temporary pension under section 83A, there is to be paid out of the Fund to the contributor or former contributor an amount determined by the Board in accordance with the formula—

$$A = MCI - BP$$

where—

"A" means the amount to be paid;

"MCI" means the sum of the amount contributed by the contributor or former contributor to the State Superannuation Fund and the Fund and interest as appropriate on the amount contributed at the rate which is the prescribed rate under section 46(1) or 58(1) up to the date that the contributor or former contributor first became entitled to a benefit under this Act other than a temporary pension under section 83A;

"BP" means the total amount of all the benefits paid under this Act in respect of the contributor or former contributor.

- (2) Subject to this section, if the total amount of all the benefits paid or payable under this Act in respect of a contributor or former contributor is less than the sum of the superannuation guarantee amount and the amount contributed by the contributor or former contributor to the State Superannuation Fund and the Fund and interest as appropriate on the amount contributed at the rate which is the prescribed rate under section 46(1) or 58(1) up to the date that the contributor or former contributor first became entitled to a benefit under this Act other than a temporary pension under section 83A, there is to be paid out of the Fund to the contributor or former contributor an amount determined by the Board in accordance with the formula—

S. 71(2)
amended by
No. 94/2005
s. 48(2).

$$P = A + I$$

where—

"P" means the amount to be paid;

"I" means interest as appropriate on "A" at the rate which is the prescribed rate under section 46(1) or 58(1) from the date "A" is

calculated until the date that "A" is paid out of the Fund—

and where "A" is an amount determined by the Board in accordance with the formula—

$SGC + MCI - B$

where—

"SGC" means the superannuation guarantee amount;

"MCI" has the same meaning as in subsection (1);

"B" means the total amount of all the benefits paid or payable in respect of the contributor or former contributor.

- (3) Unless subsection (4), (5) or (6) applies, for the purposes of this section, the total amount of all the benefits paid or payable in respect of a contributor or former contributor is to be determined by the Board as at the date on which the contributor or former contributor first became entitled to a benefit under this Act, other than a temporary pension under section 83A, irrespective of when the benefit is payable.
- (4) If a contributor or former contributor becomes entitled to another benefit under this Act other than a temporary pension under section 83A after having returned to work following a period as a pensioner under this Act, the total amount of all the benefits paid or payable in respect of the contributor or former contributor is to be determined by the Board as at the date on which the contributor or former contributor first became entitled to that other benefit under this Act.
- (5) If a contributor or former contributor who had elected to receive all or a part of his or her entitlements under this Act as a deferred benefit—
 - (a) dies before the deferred benefit becomes payable; and

(b) does not leave a partner entitled to a pension under this Act or dependants or other persons entitled to a benefit under this Act—

the Board must pay out of the Fund to the legal personal representative of the contributor or former contributor an amount equal to the superannuation guarantee amount determined by the Board.

- (6) If a contributor or former contributor who had elected to receive a pension under this Act other than a pension under section 83A dies without leaving any dependants, the Board must pay out of the Fund to the legal personal representative of the contributor or former contributor an amount calculated in accordance with subsection (1) determined by the Board as at the date of death.
- (7) If the amount of the benefit paid or payable under this Act consists of, or includes, a pension or deferred benefit, the amount of the benefit paid or payable under this Act for the purposes of this section is to be determined by the Board in accordance with a method determined by an actuary appointed by the Board.
- (8) The Board may determine that an amount determined as payable under this section is to be applied to increase a pension payable to or in respect of a contributor or former contributor in a manner determined by the Board after obtaining the advice of an actuary appointed by the Board.
- (9) Any part of the superannuation guarantee amount which is required to be preserved in accordance with the specified standards must be preserved.

- (10) For the purposes of this section, if a payment or transfer to a non-member spouse is made for the purposes of Part VIII B of the Commonwealth Family Law Act 1975 whether under Part 7A or otherwise, the minimum benefit of the member spouse must be adjusted by the Board in accordance with a methodology approved by the Minister, on the advice of an actuary appointed by the Board.
- (11) In this section, *superannuation guarantee amount* means the amount determined by the Board after obtaining the advice of an actuary appointed by the Board to be the minimum amount necessary in respect of a contributor or former contributor to avoid a superannuation guarantee shortfall within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth.
- (12) The amount determined by the Board for the purpose of subsection (11) is to be determined as if no election had been made under section 27(3), 28(1A) or 50(4A).

S. 71A
inserted by
No. 49/1992
s. 25,
repealed by
No. 4/1996
s. 108(5),
new s. 71A
inserted by
No. 82/1996
s. 63.

71A Early release of benefits

- (1) The Board may approve the early release of part or all of the vested benefit of a member or former member in accordance with the specified standards.
- (2) The Board must determine—
- (a) the amount of the benefit to be released; and
 - (b) the method of payment of that amount; and
 - (c) the reduction to be made to the vested benefit—

in accordance with the specified standards.

71B Taxation on benefits

(1) In this section—

S. 71B
inserted by
No. 110/1993
s. 86.

actuary means a person who is—

- (a) a fellow or an accredited member of the Institute of Actuaries of Australia; and
- (b) approved by the Minister; and
- (c) appointed by the Board as the actuary for the purpose of this section;

affected member means in relation to a benefit reduction under subsection (2) or (3) a person who is a member of the Fund immediately before the date from which that reduction commences to apply;

after-tax benefit means the amount of benefit after allowing for income tax calculated at the rates and in the manner as at the date of commencement of section 86 of the **Public Sector Superannuation (Administration) Act 1993** applicable to a person aged 55 years or more;

detriment means receiving a lesser amount of after-tax benefit than would have been received if the benefit—

- (a) had not been reduced in accordance with subsections (2) and (3); and
- (b) had been an untaxed benefit;

post-June 1983 component has the same meaning as in section 27A of the tax law;

S. 71B(1)
def. of
*post-June
1983
component*
amended by
No. 120/1994
s. 65(c).

rebtable 27H amount has the same meaning as in section 159SJ of the tax law;

tax law means the Commonwealth Income Tax Assessment Act 1936;

taxed element has the same meaning as in section 27A of the tax law;

taxed in respect of a benefit means a benefit in relation to which there is a taxed element or a rebtable 27H amount as the case may be;

untaxed in respect of a benefit means a benefit in relation to which there is no taxed element or rebtable 27H amount as the case may be.

- (2) If before the commencement of section 86 of the **Public Sector Superannuation (Administration) Act 1993** the Board determined that any part of the post-June 1983 component of a benefit paid or payable to a member of the Fund was to be classified for the purposes of the tax law as taxed, then the benefits accruing in respect of members of the Fund in relation to the period after 1 July 1993 (and any relevant maximum benefit) must be reduced on the basis determined by an actuary and approved by the Minister.
- (3) If at any time after the commencement of section 86 of the **Public Sector Superannuation (Administration) Act 1993** the Board determines that any part of the post-June 1983 component of a benefit paid or payable to a member of the Fund is to be classified for the purposes of the tax law as taxed, then the benefits (including any relevant maximum benefit) must be reduced on the basis determined by an actuary and approved by the Minister.

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- (4) In addition to any other form of determination by the Board, the Board shall be deemed to have made a determination under subsection (2) or (3) if it fails to issue a relevant notice to a benefit recipient under the tax law classifying all of the post-June 1983 component of a benefit payable to a member of the Fund as untaxed.
 - (5) In determining the basis of the reduction required under subsection (2) or (3), the actuary must aim to ensure as far as practicable that—
 - (a) the cost of the Fund to employers participating in the Fund is not greater than what would have been the employer cost if the income of the Fund was from 1 July 1988 not subject to tax; and
 - (b) no unreasonable detriment is caused to an affected member of the Fund.
 - (6) If, having received an application from an affected member in accordance with subsection (7), the Board is satisfied that a reduction in benefits has resulted in an unreasonable detriment to the member in respect of a benefit which has become payable to the member, the Board may take such steps, including without limitation increasing the benefit, as the Board considers necessary to avoid or compensate for that detriment.
 - (7) An affected member may within 3 months of a benefit becoming payable from the Fund (or any longer period approved by the Board if the Board considers that there are special circumstances) apply to the Board for a review of the amount of the benefit.
 - (8) The application must be in a form and contain and be accompanied by information prescribed by the Board.
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s. 71C

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- (9) The Board must not consider an application for review under this subsection on any ground other than unreasonable detriment.
- (10) In determining whether an unreasonable detriment exists and the extent of that detriment—
- (a) the Board must act on the advice of the actuary, given either generally or in any specific case; and
 - (b) the actuary must have regard to the following factors—
 - (i) the receipt by a member of a post-June 1983 component of the benefit classified for the purposes of the tax law as a taxed element rather than as an untaxed element; and
 - (ii) the rates of tax and the basis for its assessment under the tax law as at the date of commencement of this Act in respect of a benefit that becomes payable to a person aged 55 years or more; and
 - (iii) any other matters the actuary considers relevant.

S. 71C
inserted by
No. 29/2000
s. 15.

71C Surcharge debt account

- (1) The Board must establish and maintain a separate surcharge debt account for each officer.
- (2) The Board must debit to an officer's surcharge debt account—
 - (a) any superannuation contributions tax paid or payable by the Board on contributions in respect of the officer as a result of the operation of the Commonwealth Superannuation Contributions Tax (Assessment and Collection) Act 1997 to

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- discharge the liability imposed under that Act; and
- (b) if the member's surcharge debt account is in debit at the end of a financial year, interest on the amount by which the account is in debit, calculated at the same rate as the rate determined under section 16 of the Commonwealth Superannuation Contributions Tax (Assessment and Collection) Act 1997; and
 - (c) any debit adjustment to the amount debited under paragraph (a).
- (3) The Board must credit to an officer's surcharge debt account—
- (a) any pre-payment by the officer to the Board in respect of any payment made or to be made by the Board to discharge or partially discharge the liability imposed under the Commonwealth Superannuation Contributions Tax (Assessment and Collection) Act 1997; and
 - (b) any credit adjustment to the amount debited under subsection (2)(a); and
 - (c) any surcharge deduction amount under subsection (4); and
 - (d) an amount to achieve a nil balance after all the debits under subsection (2) and all the credits under paragraphs (a) to (c) have been made.
- (4) If—
- (a) the Board discharges the liability imposed under the Commonwealth Superannuation Contributions Tax (Assessment and Collection) Act 1997 under section 7 of that Act; and
-

- (b) benefits become payable to or in respect of a person who has been an officer; and
- (c) the person's surcharge debt account is in debit when those benefits become so payable—

then, despite anything in any Act or in any trust instrument, contract or other document, the Board may reduce those benefits by an amount determined in writing that, in the Board's opinion on the advice of an actuary, would be fair and reasonable having regard to the matters specified in subsection (5).

- (5) In making the determination, the Board must have regard to the following—
 - (a) the amount by which the person's surcharge debt account is in debit when those benefits become payable;
 - (b) the value of the employer-financed component of those benefits;
 - (c) the value of the benefits that, for the purpose of working out (under the Commonwealth Superannuation Contributions Tax (Assessment and Collection) Act 1997) the surchargeable contributions reported for the person, were assumed to be likely to be payable to the person on his or her ceasing to be an officer;
 - (d) whether the person has or had qualified for his or her maximum benefit entitlement under this Act;
 - (e) any other matter that the Board considers relevant.

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- (6) The amount determined under subsection (4) by the Board must not be more than 15 per cent of the employer-financed component of that part of the benefits payable to the person that accrued after 20 August 1996.
 - (7) For the purposes of subsection (4), if the benefit is in the form of a pension entitlement, the deduction is to be made by the Board commuting the person's pension entitlement to the extent determined by an actuary appointed by the Board to be necessary to meet the amount determined under subsection (4).
 - (8) The exercise of the power of commutation under subsection (7) does not affect the exercise of any other commutation rights under this Act.

71D Recovery of surcharge where person entitled to deferred benefit

S. 71D
inserted by
No. 29/2000
s. 15.

- (1) This section applies if—
 - (a) a person becomes entitled to a deferred benefit under this Act; and
 - (b) any superannuation contributions tax is paid by the Board on contributions in respect of the person, made when the person was an officer, as a result of the operation of the Commonwealth Superannuation Contributions Tax (Assessment and Collection) Act 1997 to discharge the liability imposed under that Act; and
 - (c) the notice of surcharge assessment is issued after the person ceased to be an officer.
- (2) The Board must reduce the person's deferred benefit to the extent determined by an actuary appointed by the Board to be necessary to recover the amount referred to in subsection (1).

- (3) The Board must advise the person in writing as to the actuary's determination.
- (4) The exercise of the power under subsection (2) does not affect the exercise of any other commutation rights under this Act.

S. 71E
inserted by
No. 29/2000
s. 15.

71E Commutation of pension to meet surcharge liability

- (1) The power of commutation under this section applies if—
 - (a) a person is receiving a pension under this Act; and
 - (b) the person receives a notice of surcharge assessment on contributions made in respect of the person when he or she was an officer from the Australian Taxation Office for which he or she is personally liable; and
 - (c) the person makes an election in accordance with subsection (2).
- (2) The election must—
 - (a) be made within the period of 3 months after the day on which the assessment is made; and
 - (b) be made in a manner approved by the Board; and
 - (c) authorise the Board to pay on the person's behalf the amount of the surcharge assessment directly to the Australian Taxation Office.
- (3) The Board must commute the person's pension to the extent determined by an actuary appointed by the Board to be necessary to pay the amount of the surcharge assessment.
- (4) The Board must advise the person in writing as to the actuary's determination.

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- (5) The exercise of the power of commutation under this section does not affect the exercise of any other commutation rights under this Act.

72 Provisions relating to children's pensions

- (1) A child is only entitled to a pension if at the date of the death of the revised scheme member, new scheme member or pensioner the child was wholly or partly dependent on him or her or had a legal right to look to him or her for financial support.
- (2) If pensions are payable in respect of a child as a child of more than one revised scheme member or new scheme member only the pension which is the greater is payable in respect of that child.
- (3) Despite anything to the contrary in this Act, any money payable out of the Fund in respect of a child may at the discretion of the Board be paid to a person directed by the Board on behalf and for the benefit of the child or expended by the Board for the benefit of the child.

S. 72(1)
amended by
No. 49/1992
s. 26.

73 Pensions payable for life except in case of children

- (1) Except where otherwise provided in this Act, a pension is payable during the life of the person entitled to it.
- (2) A pension in respect of a child is payable until the end of the fortnightly pay period in which—
- (a) he or she attains the age of 18 years; or
 - (b) in the case of a student, he or she attains the age of 25 years or the Board ceases to be satisfied that he or she is a full-time student;
or
 - (c) he or she dies—
- whichever is the earlier.

- (3) The Board may require any evidence it thinks fit in order to decide whether or not a child is a full-time student.

74 Pensions payable fortnightly

- (1) A pension payable to—
- (a) a student child may be paid quarterly in arrears; and
 - (b) any other person, is payable in fortnightly instalments.
- (2) The amount of an instalment of a pension covering a period of a fortnight is to be determined by dividing the annual pension by 26.

75 Disability pensioner to be taken to be on leave

Subject to this Act, the following provisions apply to pensioners—

- (a) any pensioner receiving a pension under section 34 or 54 is for the purposes of this Act to be treated as being on leave of absence without pay and is not required to contribute in respect of the period of that leave; and
- (b) despite paragraph (a), his or her office or position is to be held to be vacant and may be filled by the appointment of some other person; and
- (c) if a person who has retired on a pension under section 34 or 54 again becomes an officer, the period during which he or she was retired, is not for the purposes of this Act to be treated as a break in the continuity of his or her service as an officer; and

S. 75
amended by
No. 120/1994
s. 62(2).

S. 75(a)
amended by
No. 120/1994
s. 62(3)(a).

S. 75(c)
amended by
Nos 81/1988
s. 33(f)(g),
120/1994
s. 62(3)(a).

- (d) the pensioner must submit himself or herself for medical examination as and when required by the Board; and
- (e) if the pensioner does not comply with paragraph (d) the pension ceases to be payable so long as he or she continues in default; and
- (f) if the pensioner continues in default for a period of 12 months the Board must cancel the pension and this Act (other than section 71) ceases to apply in respect of that pensioner.

76 Liability to be recalled to service

- (1) Nothing in any Act regulating or restricting the appointment of a person to an office by an employing authority applies to appointments made by an employing authority under this section.
- (2) If in the opinion of the Board the health of a pensioner to whom a pension under section 34, 54 or 83A is being paid would enable him or her to perform duties for which the pensioner is suited by education, training or experience and the Board so informs an employing authority, the employing authority must ensure that the pensioner is offered employment—
 - (a) with tenure comparable with the tenure of the position held by the pensioner prior to the disability; and
 - (b) having duties for which the pensioner is suited by education, training or experience or would be suited as a result of retraining.

S. 76(2)
amended by
Nos 81/1988
s. 33(h)(i)(ii),
120/1994
s. 62(3)(b),
40/2004 s. 36.

S. 76(2)(a)
inserted by
No. 40/2004
s. 36.

S. 76(2)(b)
inserted by
No. 40/2004
s. 36.

State Superannuation Act 1988
No. 50 of 1988
Part 8—General Provisions

s. 76

S. 76(3)
amended by
No. 4/1996
s. 113(2).

(3) If employment is offered to a pensioner at a salary that is less than the salary (excluding the remuneration referred to in paragraph (b) of the definition of *salary* in section 3) then appropriate to the grade in which he or she was employed at the time of his or her retirement because the pensioner is unable to perform the previous duties due to ill health, the Board may agree to pay to him or her fortnightly out of the Fund an amount equal to the difference between the salary offered and the salary then appropriate to the grade in which he or she was employed at the time of his or her retirement while he or she remains an officer.

(4) An amount paid by the Board under subsection (3)—

(a) is not a pension and the person receiving it is not a pensioner; and

(b) is salary for the purposes of this Act and may be adjusted by the Board to allow for changes in the salary paid to the person.

S. 76(4)(b)
amended by
No. 81/1988
s. 33(i).

(5) If a pensioner is offered employment which the employing authority certifies to the Board is employment that the pensioner is suited by education, training or experience or would be suited as a result of retraining and the salary offered and any benefit under subsection (3) is not less than the salary (excluding the remuneration referred to in paragraph (b) of the definition of *salary* in section 3) then appropriate to the grade in which he or she was employed at the time of his or her retirement, the Board must if—

S. 76(5)
amended by
No. 102/1995
s. 23(1)(a)(b).

(a) he or she accepts the employment; or

(b) being under the minimum age for retirement, he or she refuses to accept the employment—

cancel the pension.

(6) Despite anything to the contrary in this section, the Board may offer any pensioner receiving a pension under section 34 a lump sum equal to 5 times the annual rate of his or her pension instead of that pension.

(7) If the pensioner accepts the offer under subsection (6), he or she ceases to be a pensioner and the Board is released from any liability to make any further payments to, or in respect of, any entitlement of the pensioner or of any of his or her dependants.

S. 76(7)
substituted by
No. 102/1995
s. 23(2).

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S. 76(8)
amended by
No. 81/1988
s. 33(j),
repealed by
No. 102/1995
s. 23(3).

77 Review of pension under section 34, 54 or 83A

(1) The Board may at any time review the question of whether a pensioner who is in receipt of a pension under section 34, 54 or 83A is gainfully employed and after the review it may—

S. 77(1)
amended by
No. 120/1994
s. 62(3)(b).

(a) continue the existing pension; or

(b) increase the pension up to the pensioner's maximum pension entitlement; or

(c) reduce the pension; or

(d) suspend the pension; or

S. 77(1)(d)
amended by
No. 102/1995
s. 24(a).

State Superannuation Act 1988
No. 50 of 1988
Part 8—General Provisions

s. 77

S. 77(1)(e)
inserted by
No. 102/1995
s. 24(a).

(e) cancel the pension.

- (2) For the purposes of this section a person is to be taken as gainfully employed if the person or another person, a corporation or a trust is receiving remuneration that is derived wholly or partly from labour provided by the person whether under a contract of service or otherwise.
- (3) A determination to reduce benefits or to suspend a pension does not take effect for a period of 3 months from the date of the determination.
- (4) During the period of 3 months a pensioner in respect of whom a determination has been made may appeal to the Board against that determination.
- (5) The Board after consideration of the appeal must confirm or cancel the determination previously made.
- (6) If the Board confirms the determination on appeal the reduction of pension or the suspension or cancellation of pension will apply 3 months after the original determination was made or on the pension pay day following the determination of the appeal whichever is the later.
- (7) The Board may at any time require a pensioner who is in receipt of a pension under section 34, 54 or 83A to provide to the Board within 45 days any returns and information which the Board may require for the purposes of this section.
- (8) If the pensioner fails or refuses to do so the Board may suspend or cancel the pension and, where the Board cancels the pension, this Act (other than section 71) ceases to apply in respect of that pensioner.

S. 77(6)
amended by
No. 102/1995
s. 24(b).

S. 77(7)
amended by
No. 120/1994
s. 62(3)(b).

77A Disability pensioner retiring due to ill health

S. 77A
inserted by
No. 102/1995
s. 25.

- (1) If the Board has made a determination (whether before, on or after the commencement of section 25 of the **Superannuation Acts (Miscellaneous Amendments) Act 1995**) that a person in receipt of a pension under section 34 or 54 who has not attained the minimum age for retirement is again able to perform his or her duties or any other duties for which the disability pensioner is suited by education, training or experience or for which the disability pensioner would be suited as a result of retraining, the former disability pensioner may within the prescribed period apply to the Board to retire on the grounds of ill health and receive a payment under this section.
- (2) If the Board determines that the application should be granted, the Board must pay the former disability pensioner—
 - (a) in the case of a pension under section 34, a lump sum benefit calculated under section 44(1)(a); or
 - (b) in the case of a pension under section 54, a benefit calculated under section 56—as if it were payable as at the date that the disability benefit was first granted and indexed in accordance with section 91 from the date that the disability benefit was first granted until the date of the determination as if it were a pension first payable on the date that the disability benefit was first granted.
- (3) If the former disability pensioner accepts a payment under subsection (2), the Board is released from any liability to make any further payments to, or in respect of, any entitlements of the former disability pensioner or any of his or her

dependants and this Act ceases to apply to the former disability pensioner.

- (4) In this section, *prescribed period* means—
- (a) in the case of a determination specified in subsection (1) made before the commencement of section 25 of the **State Superannuation (Miscellaneous Amendments) Act 1995**, the period specified in paragraph (c) or the period of 90 days after that commencement, whichever is later;
 - (b) in the case of a determination specified in subsection (1) made on or after the commencement of section 25 of the **State Superannuation (Miscellaneous Amendments) Act 1995**, if the former disability pensioner does not apply for a review of the determination, the period of 90 days after the determination;
 - (c) in the case of a determination specified in subsection (1) made before, on or after the commencement of section 25 of the **State Superannuation (Miscellaneous Amendments) Act 1995**, if the former disability pensioner has applied or does apply for a review of the determination, the period of 30 days after—
 - (i) the Board confirms the determination on review; or
 - (ii) in the case of an application to the Victorian Civil and Administrative Tribunal, the Tribunal affirms the determination on review.

S. 77A(4)(c)(ii)
substituted by
No. 52/1998
s. 311(Sch. 1
item 84.1).

77B Re-instatement of certain disability pensioners

S. 77B
inserted by
No. 95/2000
s. 7.

- (1) This section applies if the Board is satisfied that the application of a former disability pensioner to retire on the grounds of ill health and receive a payment under section 77A was materially influenced by an offer, or the prospect of an offer, of employment by the Department of Education, Employment and Training under the New Start Program or any other program which the Board determines to be similar to the New Start Program.
- (2) An application for re-instatement under this section must be made—
 - (a) within the period of 6 months after the commencement of section 7 of the **Superannuation Acts (Beneficiary Choice) Act 2000**; or
 - (b) within such further period of time as the Board may determine.
- (3) If this section applies, subject to subsection (4), the Board must re-instate the former disability pensioner as an officer entitled to a disability pension with the same rights and entitlements that he or she would have had if he or she had not retired on the grounds of ill health and sections 75, 76 and 77 apply accordingly.
- (4) It is a condition of any re-instatement under this section that the former disability pensioner must immediately repay to the Board an amount determined by the Board on the advice of an actuary appointed by the Board.

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- (5) The advice of the actuary should take into account—
- (a) the amount received under section 77A(2);
 - (b) interest at the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983** on the amount received under section 77A(2);
 - (c) any amount received in the course of gainful employment within the meaning of section 77(2) during the relevant period;
 - (d) an amount determined by the Board on the advice of the actuary to be equal to the present value of the disability pension that the former disability pensioner would have received during the relevant period had he or she remained a disability pensioner;
 - (e) any other amount which the Board determines to be relevant.
- (6) In subsection (5), *relevant period* means the period beginning on the date of retirement under section 77A and ending on the proposed date of re-instatement.
- (7) For the purposes of subsection (4)—
- (a) the Board may require the former disability pensioner to provide to the Board within 45 days any returns and information which the Board specifies; and
 - (b) the determination of the Board has effect as at the date of re-instatement.
- (8) If in the opinion of the Board the former disability pensioner is willing but financially unable to immediately repay the amount determined by the Board under subsection (4), the Board may re-instate the former disability pensioner if he or she enters an agreement with the Board to accept a

reduction in his or her pension entitlement of an amount and for a period as is determined by the Board so as to recover the amount determined under subsection (4) and interest on that amount at the rate for the time being fixed by the Board based on the Treasury bond rate (within the meaning of section 16 of the Commonwealth Superannuation Contributions Tax (Assessment and Collection) Act 1997) for that period.

- (9) An agreement under subsection (8) must contain a condition that if the person or a dependent, spouse or other beneficiary of that person becomes entitled to a pension or benefit under this Act and any amount is still owing under the agreement, the pension or benefit is to be reduced by that amount.
- (10) The Board may deduct from any money payable out of the Fund to any person referred to in subsection (9) in respect of any pension or benefit under this Act any money owing under an agreement under this section.

78 Desertion by pensioner of partner or child

S. 78
(Heading)
inserted by
No. 27/2001
s. 5(Sch. 3
item 5.15).

(1) If—

S. 78(1)
amended by
Nos 57/1989
s. 3(Sch.
item 186),
27/2001
s. 5(Sch. 3
item 5.16).

- (a) a pensioner has unlawfully deserted his or her partner or left his or her partner without means of support; or

S. 78(1)(a)
amended by
No. 27/2001
s. 5(Sch. 3
item 5.16).

s. 80

S. 78(1)(b)
amended by
No. 27/2001
s. 5(Sch. 3
item 5.16).

- (b) a pensioner's partner is dead or divorced and the pensioner has deserted any of his or her children who are dependent on him or her—

Part II of the **Maintenance Act 1965** extends and applies so as to enable the Magistrates' Court on complaint to order the payment, during the period it thinks desirable of so much of his or her pension as the Magistrates' Court thinks fit for the benefit of his or her partner or his or her children or of his or her partner and children.

- (2) The Board must comply with the order and during the period for which the order operates, pay to the pensioner the balance (if any) of his or her pension.

S. 79
repealed by
No. 110/1993
s. 87.

* * * * *

S. 80
substituted by
No. 81/1988
s. 33(k),
amended by
No. 110/1993
s. 88(c).

80 Payment of benefits if person is incapable

If a person who would ordinarily be entitled to receive benefits is—

S. 80(a)
amended by
No. 110/1993
s. 88(a).

- (a) a person who is in the opinion of the Board incapable of managing his or her affairs or of unsound mind; or

S. 80(b)
amended by
Nos 110/1993
s. 88(b),
43/1998
s. 42(5).

- (b) a patient within the meaning of the **Mental Health Act 1986**; or

(c) a represented person under the
**Guardianship and Administration Act
1986—**

S. 80(c)
amended by
No. 52/1998
s. 311(Sch. 1
item 84.2).

the Board may cause his or her benefits or any part of the benefits to be paid to his or her guardian or administrator, or, if there is no guardian or administrator, to a person nominated by the Board for the benefit of that person and his or her dependants or any of them until he or she ceases to be incapable or of unsound mind, a patient or a represented person.

81 Power to recover

The Board may recover contributions or any other amount payable to the Board under this Act, including where there is paid from the Fund to any person an amount, the whole or part of which the person is not entitled to receive under this Act, the amount to which the person is not entitled, as a civil debt due to the Board in any court of competent jurisdiction.

S. 81
amended by
Nos 81/1988
s. 33(l),
49/1992
s. 27(a)–(c),
repealed by
No. 102/1995
s. 26,
new s. 81
inserted by
No. 40/2004
s. 37.

82 Contributors transferring from recognised superannuation schemes

- (1) In this section *recognised superannuation scheme* means a fund approved by the Minister by instrument for the purposes of this section.
- (2) If within the period of 6 months immediately before becoming an officer a person was a contributor to a recognised superannuation scheme, the Board may permit him or her to contribute to the Fund without medical examination at a rate and on the terms determined by the Board.

S. 82(1)
amended by
No. 46/1998
s. 7(Sch. 1).

State Superannuation Act 1988
No. 50 of 1988
Part 8—General Provisions

s. 82

S. 82(4)
amended by
No. 110/1993
s. 89.

- (3) If an officer referred to in subsection (2) was contributing to a recognised superannuation scheme under provisions for less than full benefits, the Board must not permit him or her to contribute to the Fund for full benefits unless the officer is classified by the Board as a contributor for full benefits.
- (4) If the officer is not so classified by the Board and the Board permits the officer to contribute to the Fund under subsection (2), the Board may issue a benefit classification certificate.
- (5) If at any time the Board is satisfied that an officer referred to in subsection (2) has the right to retain a pension entitlement in the fund to which he or she formerly contributed, it may vary the rate at which and the terms under which it permitted the officer to contribute to the Fund but so that his or her entitlement to pension from both funds, if he or she were to exercise his or her right to retain a pension entitlement in the former fund, would not be less in total than the pension entitlement provided by the rate originally agreed to between the Board and the officer.
- (6) If the Board has received a transfer of money or other assets from a recognised superannuation scheme the Board must determine the additional benefits for the officers for whom the transfer has been made having regard to the amount of money or assets transferred, the periods of membership and the contributions (if any) of the officers under that recognised superannuation scheme and any benefits paid to the officers from that recognised superannuation scheme.

S. 82(6)
substituted by
No. 81/1988
s. 33(m).

83 Question as to disability determined by Board on medical officer's report

(1) If any question arises as to—

- (a) whether a contributor is suffering disability;
and
- (b) whether the disability is due to his or her
fault—

the question is to be determined by the Board (whether before or after the retirement of the contributor on the ground of disability) after considering, among other things, reports from at least 2 registered medical practitioners appointed by the Board as medical officers for the purposes of this Act.

(2) After the Board receives the reports from the medical officers and has made a determination on the question which is adverse to the contributor, the contributor has the right to require the Board to review its determination and obtain a further report from—

- (a) a registered medical practitioner mutually agreed upon by the contributor and the Board; or
- (b) if the contributor and the Board do not agree, a registered medical practitioner appointed by the Minister.

S. 83(1)
substituted by
No. 49/1992
s. 28,
amended by
Nos 23/1994
s. 118(Sch. 1
item 54.2),
120/1994
s. 62(4)(a).

S. 83(2)
substituted by
No. 49/1992
s. 28.

S. 83(2)(a)
amended by
No. 23/1994
s. 118(Sch. 1
item 54.2).

S. 83(2)(b)
amended by
Nos 23/1994
s. 118(Sch. 1
item 54.2),
46/1998
s. 7(Sch. 1).

* * * * *

S. 83(3)–(5)
repealed by
No. 120/1994
s. 62(4)(b).

s. 83A

S. 83(6)(7)
repealed by
No. 64/1989
s. 36(4)(b).

S. 83A
inserted by
No. 120/1994
s. 63.

* * * * *

83A Temporary pensions

- (1) If the Board determines that a contributor who has applied to retire on the grounds of disability may substantially recover from a recurring injury or illness, the Board may determine that he or she be given the pension to which he or she would have been entitled had he or she retired on the ground of disability for a limited period only of up to 2 years.
- (2) The Board may determine that any pension payable under this section is to be conditional upon the contributor undertaking an approved course of training or education or participating in any rehabilitation program at the expense of the Board.
- (3) If a person has been granted a pension under this section, he or she may not retire on the grounds of that disability but in all other respects this Act as it relates to disability pensioners applies.
- (4) The eligibility of the pensioner must be reviewed at intervals not exceeding 6 months as determined by the Board.
- (5) If the pensioner does not comply with this section, the pension ceases to be payable as long as he or she continues in default.
- (6) If the pensioner continues in default for a period of 12 months, the Board must cancel the pension.

84 Request for review of classification

- (1) If a contributor is dissatisfied with the determination of the Board as to his or her classification, the contributor may on payment to the Board of the prescribed fee require the Board to refer the question of his or her classification to a review panel.
- (2) A review panel is to consist of a member of the Board appointed by the Board, an actuary and a registered medical practitioner both mutually agreed upon by the contributor and the Board or in default of agreement appointed by the Minister.
- (3) The determination of a review panel as to the classification of a contributor is final and conclusive and is not subject to appeal or review under section 85.
- (4) The review panel must examine the evidence upon which the Board has classified or reclassified the contributor and determine the classification of the contributor where applicable in accordance with the **Superannuation Act 1958**.
- (5) If the determination of the Board is varied by the review panel, the fee paid by the contributor must be refunded to the contributor.
- (6) A person appointed to be a member of a review panel is entitled to the salary, fees or allowances as are fixed by the Governor in Council by Order in Council.

S. 84(2)
amended by
Nos 23/1994
s. 118(Sch. 1
item 54.3),
46/1998
s. 7(Sch. 1).

S. 84(4)
amended by
No. 81/1988
s. 33(n).

85 Settlement of disputes

- (1) Any dispute under this Act must be determined in the first place by the Board.
- (2) A person whose interests are affected by a decision of the Board may apply to the Victorian Civil and Administrative Tribunal for review of the decision.

S. 85(2)
substituted by
No. 52/1998
s. 311(Sch. 1
item 84.3).

s. 86

S. 85(3)
inserted by
No. 52/1998
s. 311(Sch. 1
item 84.3).

- (3) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

86 Board may require information for purposes of administering Act

S. 86(1)(a)
amended by
Nos 46/1998
s. 7(Sch. 1),
84/1998 s. 48.

- (1) The Board may at any time require—
- (a) the Department Head of any Department or any other person or body who or which employs or uses the services of a person who is an officer to furnish any returns and information with respect to any person as the Board may require for the purpose of this Act, including without limiting the generality of the foregoing, particulars of the name, sex, date of birth, date of appointment, date of commencement of duty, rate of salary and changes in the rate of salary, and hours of duty and changes in the hours of duty, and tax file number, of that person; and

S. 86(1)(b)
amended by
No. 23/1994
s. 118(Sch. 1
item 54.4).

- (b) any officer or person entitled or claiming to be entitled to a benefit to furnish any returns and information (including the report of any registered medical practitioner) as the Board may require for the purposes of this Act.

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- (2) Subject to the **Freedom of Information Act 1982**, the Board must not disclose to any person except a court or the person to whom the report relates, information contained in the report of a registered medical practitioner given to the Board under subsection (1)(b).
- (3) Despite any Act or rule of law or practice to the contrary, the Board is not prevented on the ground of medical professional privilege from producing in any legal proceedings any report referred to in subsection (2).
- (4) Any person who, without reasonable excuse, fails neglects or refuses to furnish the information required of him or her under this Act is liable to a penalty of not more than 10 penalty units.

S. 86(2)
amended by
No. 23/1994
s. 118(Sch. 1
item 54.4).

87 Power of Board to reclassify in certain cases

- (1) If the Board is satisfied that—
- (a) an officer or former officer has failed to fully and honestly disclose any information that he or she was requested to give in relation to his or her classification or reclassification or a benefit classification certificate; or
- (b) the officer or former officer has given any incorrect or misleading information in relation to his or her classification or reclassification or a benefit classification certificate—

S. 87(1)
amended by
No. 110/1993
s. 89.

S. 87(1)(a)
amended by
No. 110/1993
s. 89.

S. 87(1)(b)
amended by
No. 110/1993
s. 89.

the Board may reclassify the officer or former officer as it thinks fit or issue a new or revised benefit classification certificate.

- (2) Any reclassification or benefit classification certificate takes effect from the day whether or not an earlier day as is specified by the Board.

S. 87(2)
amended by
No. 110/1993
s. 89.

S. 88
amended by
Nos 81/1988
s. 33(o),
49/1992
s. 29(a)–(c),
substituted by
No. 70/2003
s. 28.

88 Assignment or charging of interest

S. 88(1)
amended by
No. 37/2007
s. 40(1).

- (1) Subject to subsection (2) and subsection (3), an interest of a member or beneficiary in a benefit under this Act—
 - (a) must not be in any way assigned, charged, attached or passed by operation of law to any other person; and
 - (b) is not an asset for the payment of any debt or liability.
- (2) Subsection (1) does not apply to or in respect of any assignment, charge, payment or transfer permitted expressly or by necessary implication by this Act.
- (3) If on the death of a member the Board is satisfied that there is no personal representative, the Board may pay any money payable to the member or to his or her estate to a person the Board considers appropriate in the circumstances.
- (4) For the purposes of subsection (3), *personal representative* has the same meaning as it has in section 5(1) of the **Administration and Probate Act 1958**.

S. 88(3)
inserted by
No. 37/2007
s. 40(2).

S. 88(4)
inserted by
No. 37/2007
s. 40(2).

89 Payment of benefits

Unless otherwise determined by the Board, any pension or benefit under this Act is payable in Australian currency at the office of the Board.

89A Payment of lump sum benefits

If a lump sum benefit (not being a payment under section 77A) to which a person is entitled is not paid within 14 days of the person becoming entitled, the person is entitled to receive interest at the rate prescribed for the purposes of section 46(1)(a) or 58(1)(a) as the case may be from the date of entitlement until the lump sum benefit is paid.

S. 89A
inserted by
No. 102/1995
s. 27.

90 Payments from Consolidated Fund

(1) Any payment or repayment by the Treasurer into the Fund for the purposes of this Act is to be made from the Consolidated Fund which is to the necessary extent appropriated accordingly.

(2) The Treasurer may pay from the Consolidated Fund into the Fund any additional amount or amounts determined by the Minister on the advice of an actuary appointed by the Board in respect of any unfunded liability of the Fund relating to—

S. 90(2)
amended by
No. 44/1989
s. 41(Sch. 2
item 40.2),
substituted by
No. 64/1995
s. 38(3),
amended by
No. 4/1996
s. 115.

(a) an employing authority or class of employing authority under section 90A; or

S. 90(2)(a)
inserted by
No. 4/1996
s. 115.

(b) an employer or class of employer within the meaning of section 25(5) of the **State Employees Retirement Benefits Act 1979**; or

S. 90(2)(b)
inserted by
No. 4/1996
s. 115.

(c) a transport authority or class of transport authority within the meaning of section 27(5) of the **Transport Superannuation Act 1988**.

S. 90(2)(c)
inserted by
No. 4/1996
s. 115.

s. 90A

S. 90(3)
amended by
No. 49/1992
s. 30,
substituted by
No. 64/1995
s. 38(3).

- (3) Any amount or amounts determined under subsection (2) is or are to be paid into the Fund in a manner and a time agreed between the Minister and the Board.

S. 90A
inserted by
No. 64/1995
s. 40.

90A Payments into Fund by employing authority

- (1) In this section, *employing authority* means—
- (a) an employing authority within the meaning of the definition of *employing authority* in section 3(1); and
 - (b) any other person, authority or body declared by the Minister by notice published in the Government Gazette to be an employing authority in respect of an officer, scheme member or pensioner.

S. 90A(1)(b)
amended by
No. 82/1996
s. 64.

- (2) The Minister may by notice published in the Government Gazette declare a class or classes of employing authority.
- (3) Subject to subsection (5), the Board may determine the contributions to be paid into the Fund by an employing authority or a class of employing authority.

S. 90A(3A)
inserted by
No. 84/1998
s. 49(1).

- (3A) Subsection (3) does not apply in respect of—
- (a) a revised scheme member who has ceased making contributions because of section 28(5); or
 - (b) a new scheme member who has ceased making contributions because of section 50(9).

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- (4) Contributions under subsection (3) may be calculated—
- (a) as a percentage or percentages of salary; or
 - (b) as a multiple or multiples of an employee's contribution; or
 - (c) as a proportion or proportions of the benefit payable; or
 - (d) as a fixed amount; or
 - (e) by any combination of the methods specified in paragraphs (a), (b), (c) and (d).
- (5) A determination of the Board under this section has no effect unless the determination has been approved by the Minister.
- (6) A determination—
- (a) takes effect on the expiry of 4 months after notice of the determination is given by the Board to the employing authority or class of employing authority; and
 - (b) continues in force for such period as is specified in the determination.
- (7) An employing authority must pay its contributions on such dates as are determined by the Board in respect of that employing authority or the class of employing authority of which the employing authority is a member.
- (8) If an employing authority does not within 14 days after an amount has become payable pay the whole of that amount to the Board, the employing authority must pay interest at the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983** on the amount remaining unpaid from the date on which it became payable until the date on which it is paid to the Board.

S. 90A(6)
substituted by
No. 84/1998
s. 49(2).

91 Indexation of pensions

S. 91(1)
amended by
No. 49/1992
s. 31(a)(b),
substituted by
Nos 110/1993
s. 90(1),
120/1994
s. 64.

(1) In this section—

consumer price index means the all groups consumer price index number for all Capital Cities published by the Commonwealth Statistician in respect of the June quarter and the December quarter for each year;

prescribed half year means the half year ended 30 June 1987 or any subsequent half year ending on 31 December or 30 June in which the consumer price index is higher than the previous highest consumer price index in or since the half year ended 30 June 1987;

prescribed percentage in relation to a prescribed half year after 30 June 1987 means the percentage calculated to two decimal places in accordance with the formula—

$$\frac{A - B}{B} \times \frac{100}{1}$$

where A is the consumer price index number for the prescribed half year and B is the consumer price index number for the preceding prescribed half year.

S. 91(2)
amended by
No. 49/1992
s. 31(c),
substituted by
Nos 110/1993
s. 90(1),
120/1994 s. 64.

(2) A pension under this Act must—

- (a) if it is then payable, be increased on the payment of the first instalment of pension in the month of December or June by an amount equal to one-sixth of the prescribed percentage (if any) for the preceding half year of the pension for every whole month or part of a month during the preceding half year in respect of which a pension has been payable; or
- (b) if for any reason it is not then payable, be notionally so increased as if then payable.

- (2A) A reference in subsection (2) to a *pension* includes a reference to—
- (a) any deferred pension under sections 44, 45, 46 and 61; and
 - (b) any deferred benefit under section 58.
- (3) If a pensioner becomes liable to have the amount of any pension, allowance, subsidy, concession or other benefit payable to the pensioner under the Social Security Act 1947 of the Commonwealth or the Veterans' Entitlements Act 1986 of the Commonwealth reduced by reason of an increase in the amount of the pensioner's fortnightly pension entitlement under this Act the Board may, on the application in writing of the pensioner at any time within the period commencing 3 months before the date on which the reduction is due to take effect and ending 3 months after the date on which the reduction took effect, convert the amount of the increase in the pensioner's fortnightly pension entitlement to an equivalent entitlement by way of a lump sum payment as determined by an actuary appointed by the Board.
- (4) If an application by a pensioner under subsection (3) is approved by the Board, the pensioner is entitled to the lump sum payment on the day on which the reduction in the amount of the Commonwealth pension or other benefit is due to take effect or on the day on which the approval is given (whichever is the later) and the pensioner's pension is to be reduced by the amount of the pension entitlement converted to a lump sum on the day on which the pensioner becomes entitled to the lump sum payment.
- (5) An approval under this section operates to convert the proportion of the fortnightly pension entitlement of the pensioner's partner following the pensioner's death that is identical to the

S. 91(2A)
inserted by
No. 81/1988
s. 33(p).

S. 91(5)
amended by
No. 27/2001
s. 5(Sch. 3
item 5.16).

proportion of the pensioner's fortnightly pension entitlement that is converted.

92 Regulations

- (1) The Governor in Council may, after consideration of a report from the Board, make regulations not inconsistent with this Act prescribing all matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular where under this Act an officer may make any election or choice, and the time within which it may be made is not stated in the Act—prescribing the time within which it must be made and the conditions upon which it may be made.

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S. 92(1A)
inserted by
No. 49/1992
s. 32,
repealed by
No. 4/1996
s. 108(5).

- (2) The regulations—
- (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstance; and
 - (c) may impose penalties not exceeding five penalty units for a contravention of or an offence under the regulations; and
 - (d) may apply, adopt or incorporate (with or without modification)—
 - (i) the provisions of any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person or body whether as formulated, issued, prescribed or published at the time the

regulations are made, or at any time before then; or

- (ii) the provisions of any Act of the Commonwealth or of another State or of a Territory or any matter contained in an Index published by the Commonwealth or of another State or of a Territory or any matter contained in an Index published by the Commonwealth Statistician or the provisions of any subordinate instrument under any of those Acts, whether wholly or partially or as amended by the regulations or as in force or published at a particular time or from time to time; and
 - (e) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by the Board; and
 - (f) may confer powers or impose duties in connection with the regulations on the Board.
- (3) Regulations made under this Act may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 6(2) of the **Subordinate Legislation Act 1962**.
- (4) Disallowance of a regulation under subsection (3) is deemed to be disallowance by Parliament for the purposes of the **Subordinate Legislation Act 1962**.

92A Specified standards

S. 92A
inserted by
No. 4/1996
s. 116.

(1) The Governor in Council may by Order in Council—

S. 92A(1)(a)
amended by
No. 70/2003
s. 29(1).

- (a) specify standards and conditions for the preservation of specified employer and member contributions and benefits; and
- (b) specify the method, manner and form in which preserved contributions may be paid as a benefit; and

S. 92A(1)(c)
amended by
No. 82/1996
s. 65.

- (c) specify maximum fees and charges which the Board may impose on specified types of benefits; and

S. 92A(1)(ca)
inserted by
No. 70/2003
s. 29(2).

- (ca) specify processes and requirements in respect of the administration and operation of Part 7A; and

S. 92A(1)(cb)
inserted by
No. 70/2003
s. 29(2).

- (cb) specify the benefits and entitlements of non-members spouses under Part 7A; and

S. 92A(1)(d)
inserted by
No. 82/1996
s. 65.

- (d) specify the circumstances (other than death, disability or ill health) in which an application for an early release of benefits may be made; and

S. 92A(1)(e)
inserted by
No. 82/1996
s. 65.

- (e) specify the benefits in respect of which an application for an early release may be made; and

S. 92A(1)(f)
inserted by
No. 82/1996
s. 65.

- (f) specify the method, manner and form in which benefits which are the subject of an application for an early release may be paid.

- (2) An Order in Council made under this section—
- (a) must be published in the Government Gazette;
 - (b) takes effect on and from the date on which it is published or any later date of commencement as may be specified in the Order in Council;
 - (c) may apply, adopt or incorporate (with or without modification) the provisions of any document, code, standard, rule, specification or method whether as formulated, issued, prescribed or published at the time the Order in Council is made.
- (3) Any Order in Council made before the enactment of the **Superannuation Acts (Family Law) Act 2003** has force and effect as if it had been made under this section as amended by section 29(1) of that Act.

S. 92A(3)
inserted by
No. 70/2003
s. 29(3).

93 Savings

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S. 93(1)–(3)
repealed by
No. 120/1994
s. 65(d).

S. 93(4)
amended by
No. 81/1988
s. 33(q),
repealed by
No. 120/1994
s. 65(d).

- (5) On the commencement of section 91—
- (a) the **Pensions Supplementation Act 1966** ceases to apply in respect of any pension payable under this Act and that Act is to be construed as if all the provisions relating to pensions under the **Superannuation Act 1958** were omitted; and

- (b) pensions payable from both the Superannuation Fund and the Pensions Supplementation Fund will continue to be payable in accordance with sections 73 and 74.
- (6) Despite the repeal of the **Superannuation (Amendment) Act 1975** a revised scheme member entitled to a reduction in fortnightly contributions under that Act is entitled to have—
- (a) his or her contributions under section 28(1) of this Act reduced by an amount calculated under section 2(2)(a)(ii) of that Act; and
- (b) any unapplied excess of contributions refunded to him or her by the Board not later than the last payday in 1989.
- (7) Unless the context otherwise requires, any reference to the **Superannuation Act 1958** in any Act, regulation, subordinate instrument or other document is to be construed as a reference to the **State Superannuation Act 1988**.

94 Transfer of members of MWCESF

- (1) On the commencement of section 41 of the **Superannuation Acts (General Amendment) Act 1995**, a person who is a member of the Melbourne Water Corporation Employees' Superannuation Fund to whom section 42(2) of the **Metropolitan Bridges Highways and Foreshores Act 1974** or section 47(1), 48(1), 49(1) or 51(1) of the **Town and Country Planning (Transfer of Functions) Act 1985** applies is transferred to the Fund.

S. 94
inserted by
No. 64/1995
s. 41.

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- (1A) Despite the transfer of a member under this section to the Fund—
- (a) the member is entitled to receive the same benefits that he or she would have been entitled to receive had he or she not been so transferred; and
 - (b) the member is entitled to have his or her rights and obligations determined in accordance with the provisions of the governing instrument of the Melbourne Water Corporation Employees' Superannuation Fund as in force immediately before the transfer.
- (1B) For the purposes of subsection (1A) the Board has in respect of a member the duties and powers conferred on the trustees of the Melbourne Water Corporation Employees Superannuation Fund by or under the provisions of the governing instrument of the Melbourne Water Corporation Employees' Superannuation Fund as in force immediately before the transfer.
- (1C) Without derogating from subsections (1A) and (1B), sections 71A, 83 and 85 apply to and in respect of a transferred member.
- (1D) Subsection (1A) is subject to—
- (a) any relevant specified standards; and
 - (b) any provisions of a relevant Commonwealth or Victorian law relating to anti-discrimination.
- (1E) Without derogating from subsections (1A) and (1B), a transferred member who is entitled to a deferred benefit under section 94 or 95 may elect in writing to the Board to—

S. 94(1C)
inserted by
No. 4/1996
s. 117,
amended by
No. 13/1999
s. 13(1).

S. 94(1D)
inserted by
No. 13/1999
s. 13(2).

S. 94(1E)
inserted by
No. 95/2000
s. 6(11).

State Superannuation Act 1988
No. 50 of 1988
Part 8—General Provisions

s. 94

S. 94(1E)(b)
substituted by
Nos 40/2004
s. 28(10),
37/2007
s. 41(1).

- (a) convert the entitlement to a present lump sum; and
- (b) have the lump sum rolled over or transferred within the superannuation system as nominated by the member.

S. 94(1F)
inserted by
No. 95/2000
s. 6(11).

- (1F) The method of calculating the conversion under subsection (1E) is to be determined by the Minister on the advice of an actuary appointed by the Board.

S. 94(1G)
inserted by
No. 70/2003
s. 30.

- (1G) Subsection (1A) is subject to the provisions of Part 7A.

S. 94(1H)
inserted by
No. 70/2003
s. 30.

- (1H) For the purposes of subsection (1G), the provisions of Part 7A with such modifications as are necessary to make those provisions consistent with the governing instrument of the Melbourne Water Corporation Employees' Superannuation Fund are deemed to form part of the governing instrument of the Melbourne Water Corporation Employees' Superannuation Fund.
- (2) With the approval of the Minister, the trustees of the Melbourne Water Corporation Employees' Superannuation Fund must enter into an agreement with the Board which specifies—
 - (a) the liability of the Melbourne Water Corporation Employees' Superannuation Fund up to the date of transfer in respect of the entitlements of transferred members as determined by an actuary appointed by the trustees of the Melbourne Water Corporation Employees' Superannuation Fund; and

- (b) the value of assets of the Melbourne Water Corporation Employees' Superannuation Fund equal to the liability of the Melbourne Water Corporation Employees' Superannuation Fund under paragraph (a) that are to be transferred to the Fund; and
- (c) the terms and conditions which apply to the transfer of these assets to the Fund.
- (3) For the purposes of subsection (2), the liability in respect of each transferred member is to be treated as being in the same proportion as total net assets of the Melbourne Water Corporation Employees' Superannuation Fund are to the total liabilities of the Melbourne Water Corporation Employees' Superannuation Fund.
- (4) If agreement cannot be reached within 3 months of the commencement of section 41 of the **Superannuation Acts (General Amendment) Act 1995**, the Minister may determine the matters specified in subsection (2) or which are in dispute and the trustees of the Melbourne Water Corporation Employees' Superannuation Fund and the Board are deemed by virtue of this subsection to have entered into an agreement containing the matters determined by the Minister.
- (5) No stamp duty or other tax is payable under any Act in respect of anything done under this section.
- (6) An eligible salary sacrifice contributor may by notice in writing to the employing authority elect to make his or her member contributions by way of salary sacrifice at the rate calculated to the nearest highest 0.1% in accordance with the following formula—

S. 94(6)
inserted by
No. 40/2004
s. 38.

$$\frac{M}{1 - R}$$

where—

"M" is the applicable member contribution rate in accordance with the provisions of the governing instrument of the Melbourne Water Corporation Employees' Superannuation Fund without salary sacrifice;

"R" is the tax rate for the financial year on taxable contributions to the Melbourne Water Corporation Employees' Superannuation Fund under the Commonwealth Income Tax Assessment Act 1936.

(7) An election under subsection (6)—

- (a) can only be made if there is in force an agreement between the employing authority and the member under which the employing authority can make the member contributions required by the provisions of the governing instrument of the Melbourne Water Corporation Employees' Superannuation Fund by way of salary sacrifice;
- (b) is subject to the terms and conditions specified in the agreement referred to in paragraph (a);
- (c) can only be made in respect of the whole of the member contributions;
- (d) can not be made in respect of any contributions made by a member in addition to the applicable member contributions under the provisions of the governing instrument of the Melbourne Water Corporation Employees' Superannuation Fund.

S. 94(7)
inserted by
No. 40/2004
s. 38.

- (8) Member contributions made in accordance with the rate determined under subsection (6) are for the purposes of the provisions of the governing instrument of the Melbourne Water Corporation Employees' Superannuation Fund (other than the provisions relating to surchargeable contributions) to be taken to be—
- (a) the applicable member contributions to be paid under the provisions of the governing instrument of the Melbourne Water Corporation Employees' Superannuation Fund; and
 - (b) the member contributions that would have been payable if an election had not been made under subsection (6).

S. 94(8)
inserted by
No. 40/2004
s. 38.

Note

The effect of paragraph (b) is that, for the purpose of calculating benefit entitlements, the member contributions are taken to be the member contributions that would have been payable if no election had been made.

Note to
s. 94(8)(b)
inserted by
No. 37/2007
s. 41(2).

- (9) An election under subsection (6) does not affect the amount that would otherwise constitute the salary of the member for the purposes of the provisions of the governing instrument of the Melbourne Water Corporation Employees' Superannuation Fund.
- (10) The minimum benefit required to be paid to ensure compliance with the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth is to be determined as if no election had been made under subsection (6).

S. 94(9)
inserted by
No. 40/2004
s. 38.

S. 94(10)
inserted by
No. 40/2004
s. 38.

s. 95

95 Provision relating to change of employment

S. 95
inserted by
No. 64/1995
s. 41.

S. 95(1)
amended by
No. 102/1995
s. 28.

- (1) If a person to whom section 94 applies ceases to be an employee of their current employing authority so as to become an employee of another employing authority and that employee is not an officer referred to in paragraph (a) of the definition of *officer* in section 3(1), the person becomes from the date of commencement of employment with the other employing authority a member of the new scheme with a resignation benefit and an accrued retirement benefit and an accrued retirement benefit entitlement calculated in accordance with subsection (2).
- (2) The resignation benefit and accrued retirement benefit entitlement to the date of becoming a member of the new scheme under this section are to be calculated in accordance with the provisions of the governing instrument of the Melbourne Water Corporation Employees' Superannuation Fund and certified by an actuary appointed by the Board after having been translated into the corresponding benefit entitlements under this Act.
- (3) From the date of becoming a member of the new scheme under this section a person is entitled to receive benefits as a member of the new scheme.

96 Provisions relating to certain water authorities

S. 96
inserted by
No. 4/1996
s. 118.

- (1) In this section—
transfer date means 17 June 1996 or such earlier date as is specified in the agreement;
water authority means—
 - (a) the Melbourne Water Corporation;
 - (b) City West Water Ltd;

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- (c) South East Water Ltd;
- (d) Yarra Valley Water Ltd.
- (2) On the transfer date an employee of a water authority who immediately before the transfer date is a member of the Fund is transferred to the Water Industry Superannuation Fund.
- (3) Despite the transfer of a member under this section to the Water Industry Superannuation Fund—
- (a) the member is entitled to receive the same benefits that he or she would have been entitled to receive had he or she not been so transferred; and
- (b) the member is entitled to have his or her rights and obligations determined in accordance with this Act (other than sections 83 and 85) as in force immediately before that transfer.
- (4) For the purposes of subsection (3) the trustees of the Water Industry Superannuation Fund have in respect of a member the duties and powers conferred on the Board by or under this Act (other than sections 83 and 85) as in force immediately before the transfer.
- (4A) Subsection (3) is subject to the provisions of Part 7A.
- (4B) For the purposes of subsection (4A), the provisions of Part 7A with such modifications as are necessary to make those provisions consistent with the governing instrument of the Water Industry Superannuation Fund are deemed to form part of the governing instrument of the Water Industry Superannuation Fund.

S. 96(4A)
inserted by
No. 70/2003
s. 31.

S. 96(4B)
inserted by
No. 70/2003
s. 31.

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- (5) With the approval of the Minister, the Board must enter into an agreement with the trustees of the Water Industry Superannuation Fund which specifies—
- (a) the liability of the Fund up to the date of transfer in respect of the entitlements of transferred members as determined by an actuary appointed by the Board; and
 - (b) the value of assets of the Fund equal to the liability of the Fund under paragraph (a) that are to be transferred to the Water Industry Superannuation Fund; and
 - (c) the terms and conditions which apply to the transfer of these assets to the Water Industry Superannuation Fund.
- (6) If agreement cannot be reached before 1 June 1996, the Minister may determine the matters specified in subsection (5) or which are in dispute and the Board and the trustees of the Water Industry Superannuation Fund are deemed by virtue of this subsection to have entered into an agreement containing the matters determined by the Minister.
- (7) The Board must transfer the assets specified in the agreement to the Water Industry Superannuation Fund.
- (8) As soon as the assets specified in the agreement have been transferred the assets form part of the Water Industry Superannuation Fund.
- (9) The Board is released from any liability in respect of the entitlements of transferred members as soon as the assets specified in the agreement have been transferred.

97 Provision relating to change of employment

- (1) If a person to whom section 96 applies ceases to be an employee of a water authority so as to become an employee of another water authority, the person becomes from the date of commencement of employment with the other water authority a member of the Water Industry Superannuation Fund with a resignation benefit and an accrued retirement benefit entitlement calculated in accordance with subsection (2).
- (2) The resignation benefit and accrued retirement benefit entitlement to the date of becoming a member of the Water Industry Superannuation Fund under this section are to be calculated in accordance with this Act and certified by an actuary appointed by the trustees of the Water Industry Superannuation Fund after having been translated into the corresponding benefit entitlements under the governing instrument of the Water Industry Superannuation Fund.
- (3) From the date of becoming a member of the Water Industry Superannuation Fund under this section a person is entitled to receive benefits as a member of the Water Industry Superannuation Fund.

S. 97
inserted by
No. 4/1996
s. 118.

98 Provisions relating to transfer of assets and liabilities

No stamp duty or other tax is payable under any Act in respect of anything done under section 96.

99 Transfer of members under section 4(1BA) of ESSA

- (1) This section applies to an officer who elects to transfer to the new scheme under section 4(1BA) of the **Emergency Services Superannuation Act 1986**.

S. 98
inserted by
No. 4/1996
s. 118.

S. 99
inserted by
No. 82/1996
s. 66.

- (2) Upon electing to transfer to the new scheme the officer becomes a member of the new scheme with a resignation benefit and an accrued retirement benefit calculated in accordance with Part 3 of the **Emergency Services Superannuation Act 1986** and, if not adjusted in accordance with section 25A of that Act, adjusted in accordance with section 71B of this Act and certified by an actuary appointed by the Emergency Services Superannuation Board.
- (3) From the date of becoming a member of the new scheme the officer is entitled to receive benefits as a member of the new scheme.

S. 99(4)–(8)
repealed by
No. 94/2005
s. 49.

* * * * *

S. 100
inserted by
No. 50/1997
s. 9.

100 Transfer of assets in respect of PMA SF

- (1) In this section and section 101—
transfer date means 27 June 1997 or such earlier date as is specified in the agreement;
transferred beneficiary means a beneficiary in the Port of Melbourne Authority Superannuation Fund who first became entitled to a pension on or before the transfer date or who becomes entitled after the transfer date due to the death of the first beneficiary after the transfer date.
- (2) On the transfer date, a transferred beneficiary is transferred to the Fund.
- (3) With the approval of the Minister, Port of Melbourne Authority Superannuation Scheme Pty Ltd must enter into an agreement with the Board which specifies—

-
- (a) the liability of the Port of Melbourne Authority Superannuation Fund up to the transfer date in respect of the entitlements of transferred beneficiaries as determined by an actuary appointed by Port of Melbourne Authority Superannuation Scheme Pty Ltd; and
 - (b) the value of assets of the Port of Melbourne Authority Superannuation Fund equal to the liability of the Port of Melbourne Authority Superannuation Fund under paragraph (a) that are to be transferred to the Fund; and
 - (c) the terms and conditions which apply to the transfer of these assets to the Fund.
- (4) If agreement cannot be reached before 16 June 1997, the Minister may determine the matters specified in subsection (3) or which are in dispute and Port of Melbourne Authority Superannuation Scheme Pty Ltd and the Board are deemed by virtue of this subsection to have entered into an agreement containing the matters determined by the Minister.
- (5) Port of Melbourne Authority Superannuation Scheme Pty Ltd must transfer the assets specified in the agreement to the Fund.
- (6) As soon as the assets specified in the agreement have been transferred, the assets form part of the Fund.
- (7) No stamp duty or other tax is chargeable under any Act in respect of anything done under this section.
- (8) Port of Melbourne Authority Superannuation Scheme Pty Ltd is released from any liability in respect of the entitlements of transferred beneficiaries as soon as the assets specified in the agreement have been transferred.
-

s. 101

101 Provisions relating to transferred beneficiaries

S. 101
inserted by
No. 50/1997
s. 9.

- (1) Despite the transfer of a beneficiary under section 100 to the Fund—
- (a) the transferred beneficiary is entitled to receive the same benefits that he or she would have been entitled to receive had he or she not been so transferred; and
 - (b) the transferred beneficiary is entitled to have his or her rights and obligations determined in accordance with the provisions of the governing instrument of the Port of Melbourne Authority Superannuation Fund as in force immediately before the transfer date.

S. 101(1A)
inserted by
No. 13/1999
s. 14(1).

- (1A) Subsection (1) is subject to—
- (a) any relevant specified standards; and
 - (b) any provisions of a relevant Commonwealth or Victorian law relating to anti-discrimination.

S. 101(1B)
inserted by
No. 70/2003
s. 32.

- (1B) Subsection (1) is subject to the provisions of Part 7A.

S. 101(1C)
inserted by
No. 70/2003
s. 32.

- (1C) For the purposes of subsection (1B), the provisions of Part 7A with such modifications as are necessary to make those provisions consistent with the governing instrument of the Port of Melbourne Authority Superannuation Fund are deemed to form part of the governing instrument of the Port of Melbourne Authority Superannuation Fund.
- (2) For the purposes of subsection (1), the Board has in respect of the transferred beneficiary the duties and powers conferred on Port of Melbourne Authority Superannuation Scheme Pty Ltd by or under the provisions of the governing instrument

of the Port of Melbourne Authority
Superannuation Fund as in force immediately
before the transfer date.

- (3) For the purposes of subsection (1), the powers of the Board are not limited by regulations 7E and 9(2) of the Port of Melbourne Authority (Superannuation) Regulations 1989.
- (4) Without derogating from subsections (1) and (2), sections 71A, 84 and 85 apply to and in respect of a transferred beneficiary. **S. 101(4) amended by No. 13/1999 s. 14(2).**
- (5) Without derogating from subsections (1) and (2), a transferred beneficiary who is entitled to a deferred benefit under this section may elect in writing to the Board to—
- (a) convert the entitlement to a present lump sum; and
- (b) have the lump sum rolled over or transferred within the superannuation system as nominated by the beneficiary. **S. 101(5)(b) substituted by Nos 40/2004 s. 28(11), 37/2007 s. 42.**
- (6) The method of calculating the conversion under subsection (5) is to be determined by the Minister on the advice of an actuary appointed by the Board. **S. 101(6) inserted by No. 95/2000 s. 6(12).**

* * * * *

**Pt 9
(Heading and
ss 102–106)
inserted by
No. 95/2000
s. 4,
amended by
No. 73/2001
s. 6,
repealed by
No. 94/2005
s. 39.**

State Superannuation Act 1988
No. 50 of 1988

Sch. 1

SCHEDULES

SCHEDULE 1

**LUMP SUM PAYMENT FOR EACH \$1.00 OF ANNUAL
PENSION**

<i>Column 1</i> <i>Age</i>	<i>Column 2</i> <i>Lump sum factor</i> <i>\$ cts</i>	<i>Column 3</i> <i>Lump sum factor to be subtracted</i> <i>from factor in Column 2 for each</i> <i>completed month of age</i> <i>\$ cts</i>
50	15.20	0.0333
51	14.80	0.0250
52	14.50	0.0250
53	14.20	0.0250
54	13.90	0.0250
55	13.60	0.0167
56	13.40	0.0167
57	13.20	0.0167
58	13.00	0.0167
59	12.80	0.0167
60	12.60	0.0167
61	12.40	0.0083
62	12.30	0.0083
63	12.20	0.0083
64	12.10	0.0083
65	12.00	

Note: The lump sum for any age over 65 years is to be determined by an actuary appointed by the Board.

SCHEDULE 2

Australian Catholic University Limited
Deakin University
La Trobe University
Monash University
Royal Melbourne Institute of Technology
Swinburne University of Technology
The University of Melbourne
University of Ballarat
Victoria University

Sch. 2
amended by
No. 81/1988
s. 34(a)-(i),
repealed by
No. 120/1994
s. 65(d),
new Sch. 2
inserted by
No. 95/2000
s. 5,
substituted by
No. 73/2001
s. 7,
amended by
No. 40/2005
s. 129(2).

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 14 April 1988

Legislative Council: 5 May 1988

The long title for the Bill for this Act was "A Bill to provide improved benefits under the State Superannuation Fund, to introduce a new scheme for new officers, to repeal the **Superannuation Act 1958** and certain other Acts, to make consequential amendments to certain other Acts and for other purposes."

The **State Superannuation Act 1988** was assented to on 24 May 1988 and came into operation as follows:

Section 93(3) on 1 July 1987: section 2(1); section 93(4) on 27 November 1987: section 2(2); Part 1, Division 2 of Part 6, section 91 on 1 January 1988: section 2(3); rest of Act on 1 July 1988: Government Gazette 1 June 1988 page 1487.

2. Table of Amendments

This Version incorporates amendments made to the **State Superannuation Act 1988** by Acts and subordinate instruments.

Superannuation Acts (Amendment) Act 1988, No. 81/1988

Assent Date: 20.12.88
Commencement Date: Ss 21, 22, 25 on 1.1.88: s. 2(1); Ss 5, 10, 29, 31 on 1.7.88: s. 2(2); rest of Act on 20.12.88: s. 2(3)
Current State: All of Act in operation

County Court (Amendment) Act 1989, No. 19/1989

Assent Date: 16.5.89
Commencement Date: 1.8.89: Government Gazette 26.7.89 p. 1858
Current State: All of Act in operation

State Casual Employees Superannuation Act 1989, No. 20/1989

Assent Date: 16.5.89
Commencement Date: 1.7.89: Government Gazette 7.6.89 p. 1358
Current State: All of Act in operation

Transport (Amendment) Act 1989, No. 44/1989

Assent Date: 6.6.89
Commencement Date: S. 41(Sch. 2 item 40) on 1.7.89: s. 2(1)
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.89: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Accident Compensation (General Amendment) Act 1989, No. 64/1989

Assent Date: 29.9.89
Commencement Date: S. 36 on 1.7.90: Government Gazette 21.2.90 p. 518
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Superannuation Acts (Miscellaneous Amendments) Act 1990, No. 72/1990

Assent Date: 4.12.90
Commencement Date: Ss 6, 7(1)(2) on 1.7.88: s. 2(2); s. 7(3) on 4.12.90: s. 2(4); ss 3–5, 8 on 19.12.90: Government Gazette 19.12.90 p. 3751
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

State Superannuation Act 1988
No. 50 of 1988

Endnotes

Superannuation (Occupational Superannuation Standards) Act 1992, No. 49/1992

Assent Date: 30.6.92
Commencement Date: 30.6.92: Special Gazette (No. 31) 30.6.92 p. 2
Current State: All of Act in operation

Superannuation (Public Sector) Act 1992, No. 87/1992

Assent Date: 26.11.92
Commencement Date: Pt 1 (ss 1, 2) on 26.11.92; rest of Act on 27.11.92: Special Gazette (No. 63) 27.11.92 p. 1
Current State: All of Act in operation

Tertiary Education Act 1993, No. 18/1993

Assent Date: 18.5.93
Commencement Date: S. 34 on 1.7.93: Government Gazette 3.6.93 p. 1414
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Superannuation (Compliance) Act 1993, No. 54/1993

Assent Date: 8.6.93
Commencement Date: S. 11 on 1.7.92: s. 2(2); s. 10 on 8.6.93: s. 2(1)
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Public Sector Superannuation (Administration) Act 1993, No. 110/1993

Assent Date: 30.11.93
Commencement Date: S. 79 on 1.7.88: s. 2(2); ss 80, 84(1)(2), 89 on 30.6.92: s. 2(3); ss 70(1)(a)–(c)(e), 73–76, 81, 83, 84(3), 85–88 on 30.11.93: s. 2(1); ss 70(1)(d)(f)(2), 71, 72, 77, 78, 82, 90 on 1.1.94: s. 2(6)
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Medical Practice Act 1994, No. 23/1994

Assent Date: 17.5.94
Commencement Date: Ss 1, 2 on 17.5.94: s. 2(1); rest of Act on 1.7.94: Government Gazette 23.6.94 p. 1672
Current State: All of Act in operation

Financial Management (Consequential Amendments) Act 1994, No. 31/1994

Assent Date: 31.5.94
Commencement Date: S. 4(Sch. 2 item 84) on 1.1.95: Government Gazette 28.7.94 p. 2055
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Superannuation Acts (Amendment) Act 1994, No. 58/1994

Assent Date: 15.6.94
Commencement Date: S. 4 on 30.11.93: s. 2(2); ss 7, 8, 10 on 1.1.94: s. 2(3); rest of Act on 15.6.94: s. 2(1)
Current State: All of Act in operation

State Superannuation Act 1988
No. 50 of 1988

Endnotes

Superannuation Acts (Further Amendment) Act 1994, No. 120/1994

Assent Date: 20.12.94
Commencement Date: Ss 60, 61, 64 on 1.1.94: s. 2(6); ss 53, 57, 59 on 1.7.94:
s. 2(7A); ss 54, 56, 58, 62, 63, 65 on 20.12.94: s. 2(1);
s. 55 on 1.2.95: s. 2(9)
Current State: This information relates only to the provision/s
amending the **State Superannuation Act 1988**

Equal Opportunity Act 1995, No. 42/1995

Assent Date: 14.6.95
Commencement Date: S. 224 on 5.10.95: Government Gazette 28.9.95
p. 2731; Sch. 2 item 38 on 1.1.96: Government
Gazette 21.12.95 p. 3571
Current State: This information relates only to the provision/s
amending the **State Superannuation Act 1988**

Superannuation Acts (General Amendment) Act 1995, No. 64/1995

Assent Date: 27.6.95
Commencement Date: Ss 39, 41 on 1.7.95: s. 2(2); ss 38, 40 on 1.11.95:
s. 2(4)
Current State: This information relates only to the provision/s
amending the **State Superannuation Act 1988**

Miscellaneous Acts (Omnibus Amendments) Act 1995, No. 100/1995

Assent Date: 5.12.95
Commencement Date: S. 32(Sch. 2 item 9) on 5.12.95: s. 2(1)
Current State: This information relates only to the provision/s
amending the **State Superannuation Act 1988**

Superannuation Acts (Miscellaneous Amendments) Act 1995, No. 102/1995

Assent Date: 5.12.95
Commencement Date: S. 28 on 1.7.95: s. 2(2); ss 22–25 on 5.12.95: s. 2(1);
ss 26, 27 on 12.2.96: s. 2(4)
Current State: This information relates only to the provision/s
amending the **State Superannuation Act 1988**

Superannuation Acts (Amendment) Act 1996, No. 4/1996

Assent Date: 18.6.96
Commencement Date: S. 110(3) on 1.7.88: s. 2(2); s. 110(4) on 30.11.93:
s. 2(3); s. 106(2) on 5.12.95: s. 2(6); s. 107 on
19.12.95: s. 2(7); s. 118 on 1.5.96: s. 2(10); ss 109,
110(1)(2)(5), 111–113 on 31.5.96: s. 2(11); ss 114,
116 on 18.6.96: s. 2(1); ss 106(1), 108, 115, 117 on
30.6.96: s. 2(12)
Current State: This information relates only to the provision/s
amending the **State Superannuation Act 1988**

Superannuation Acts (Further Amendment) Act 1996, No. 82/1996

Assent Date: 23.12.96
Commencement Date: Ss 58–67 on 1.1.97: s. 2(4)
Current State: This information relates only to the provision/s
amended the **State Superannuation Act 1988**

State Superannuation Act 1988
No. 50 of 1988

Endnotes

Superannuation Acts (Miscellaneous Amendment) Act 1997, No. 50/1997

Assent Date: 11.6.97
Commencement Date: S. 9 on 1.6.97: s. 2(2); ss 12, 18(4) on 11.6.97: s. 2(1)
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Miscellaneous Acts (Omnibus No. 1) Act 1998, No. 43/1998

Assent Date: 26.5.98
Commencement Date: S. 42(5) on 18.4.98: s. 2(3)
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 84) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Superannuation Acts (Amendment) Act 1998, No. 84/1998

Assent Date: 17.11.98
Commencement Date: Ss 45–49 on 17.11.98: s. 2(1)
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Government Superannuation Act 1999, No. 8/1999

Assent Date: 11.5.99
Commencement Date: S. 51 on 1.7.99: s. 2(1)
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Public Sector Reform (Further Amendments) Act 1999, No. 12/1999

Assent Date: 11.5.99
Commencement Date: S. 4(Sch. 2 item 13) on 11.5.99: s. 2(1)
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Superannuation Acts (Further Amendment) Act 1999, No. 13/1999

Assent Date: 11.5.99
Commencement Date: Ss 12–14 on 11.5.99: s. 2(1)
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

State Superannuation Act 1988
No. 50 of 1988

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Superannuation Acts (Amendment) Act 2000, No. 29/2000

Assent Date: 30.5.00
Commencement Date: Ss 14, 15 on 31.5.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Superannuation Acts (Beneficiary Choice) Act 2000, No. 95/2000

Assent Date: 5.12.00
Commencement Date: Ss 4, 5, 7 on 6.12.00: s. 2(1); ss 3, 6 on 1.7.01: s. 2(6)
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Statute Law Amendment (Relationships) Act 2001, No. 27/2001

Assent Date: 12.6.01
Commencement Date: S. 5(Sch. 3 item 5) on 23.8.01: Government Gazette 23.8.01 p. 1927
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Unclaimed Moneys and Superannuation Legislation (Amendment) Act 2001, No. 73/2001

Assent Date: 7.11.01
Commencement Date: Ss 6, 7 on 6.12.00: s. 2(2); s. 5 on 1.7.01: s. 2(3)
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Superannuation Acts (Family Law) Act 2003, No. 70/2003

Assent Date: 14.10.03
Commencement Date: S. 21 on 16.6.96: s. 2(4); s. 29(1) on 30.6.96: s. 2(2); s. 27 on 6.12.00: s. 2(5); ss 18–20, 22–26, 28, 29(2)(3), 30–32 on 15.10.03: s. 2(1)
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Treasury and Finance Legislation (Amendment) Act 2004, No. 40/2004

Assent Date: 8.6.04
Commencement Date: Ss 28–38 on 9.6.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Parliamentary Superannuation Legislation (Reform) Act 2004, No. 78/2004

Assent Date: 9.11.04
Commencement Date: Ss 14, 15 on 10.11.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 189) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

State Superannuation Act 1988
No. 50 of 1988

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Parliamentary Administration Act 2005, No. 20/2005

Assent Date: 24.5.05
Commencement Date: S. 52(4) on 1.7.05: s. 2(4)
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Higher Education Acts (Amendment) Act 2005, No. 40/2005

Assent Date: 27.7.05
Commencement Date: S. 129(2) on 9.8.05: Special Gazette (No. 148) 9.8.05 p. 1
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Superannuation Legislation (Governance Reform) Act 2005, No. 94/2005

Assent Date: 29.11.05
Commencement Date: Ss 36–49 on 1.12.05: s. 2
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Health Professions Registration Act 2005, No. 97/2005

Assent Date: 7.12.05
Commencement Date: S. 182(Sch. 4 item 48) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Education and Training Reform Act 2006, No. 24/2006

Assent Date: 16.5.06
Commencement Date: S. 6.1.2(Sch. 7 item 38) on 1.7.07: Government Gazette 28.6.07 p. 1304
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Superannuation Legislation Amendment (Contribution Splitting and Other Matters) Act 2007, No. 37/2007

Assent Date: 14.8.07
Commencement Date: Ss 26–42 on 15.8.07: s. 2
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Relationships Act 2008, No. 12/2008

Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 58) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Superannuation Legislation Amendment Act 2008, No. 43/2008

Assent Date: 26.8.08
Commencement Date: S. 21 on 27.8.08: s. 2
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

State Superannuation Act 1988
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Education and Training Reform Further Amendment Act 2008, No. 70/2008

Assent Date: 25.11.08
Commencement Date: S. 42 on 29.1.09: Special Gazette (No. 16) 29.1.09 p. 1
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

Superannuation Legislation Amendment Act 2009, No. 38/2009

Assent Date: 30.6.09
Commencement Date: Ss 28–31 on 1.7.09: s. 2(1)
Current State: This information relates only to the provision/s amending the **State Superannuation Act 1988**

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3. Explanatory Details

No entries at date of publication.

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