

WESTERN AUSTRALIA

**GOVERNMENT EMPLOYEES
SUPERANNUATION AMENDMENT
ACT 1992**

No. 25 of 1992

AN ACT to amend the *Government Employees Superannuation Act 1987*.

[Assented to 19 June 1992.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Government Employees Superannuation Amendment Act 1992*.

Commencement

2. This Act comes into operation on such day as is fixed by proclamation.

Principal Act

3. In this Act the *Government Employees Superannuation Act 1987** is referred to as the principal Act.

[*Reprinted as at 15 November 1991.]

Section 3 amended

4. (1) Section 3 of the principal Act is amended in subsection (1) —

- (a) in the definition of “contributor” and “contributory membership” by deleting “19” and substituting the following —

“ 17B, 17C ”;

- (b) by deleting the definition of “entry date” and substituting the following definition —

“ “entry date” in relation to —

- (a) a person who is a contributory member, means the date as at which the person’s election to become a contributory member took effect, that election being —

- (i) the only such election made by the member;

or

- (ii) where the member made more than one such

election, the later or latest
of those elections;

and

(b) a person who is a non-contributory member means the date as at which the person commenced to be a non-contributory member that commencement being —

(i) the only such commencement of non-contributory membership;

or

(ii) where there has been more than one such commencement, the later or latest of them; ”;

(c) in the definition of “exit date” by deleting all of the definition from and including “except that” to the end and substituting the following —

“ except that, in relation to —

(aa) a contributor whose contributory membership ceases because he or she becomes ineligible under section 17B or 17C for membership of the scheme; or

(bb) a non-contributor whose non-contributory membership ceases because he or she becomes ineligible under section 17B or by operation of an instrument of

renunciation under section 17D,

“exit date” means the day on which the membership ceases;”;

- (d) by deleting the definition of “final salary” and substituting the following definition —

“ **“final salary”**, in relation to a member, has the meaning given to it by section 4A;”;

- (e) in the definition of “membership period” by inserting at the end after “came into operation” the following —

“ if, in the case of a contributor, he or she is not entitled to contribute to the scheme for that period”;

and

- (f) by deleting the definitions of “non-contributor” and “non-contributory member” and substituting the following definitions —

“ **“non-contributor”** and **“non-contributory member”** mean an employee who is, or is continued as, a non-contributory member of the scheme by operation of section 17A;”.

- (2) Section 3 of the principal Act is amended in subsection (5) by deleting “17 (3)” and substituting the following —

“ 17B ”.

Section 4 amended

5. Section 4 of the principal Act is amended —

- (a) by inserting after the section designation “4.” the subsection designation “(1)”; and
- (b) by inserting after subsection (1) the following subsections —

“ (2) An employer or other person who gives a certificate under subsection (1) may, instead of certifying an amount representing salary or wages and the actual amount for allowances paid to an employee or a particular class of employee, certify a percentage of basic salary or wages that is to be taken to represent allowances payable to that employee or class of employee.

(3) Where a certificate is given in terms of subsection (2) the salary of the employee or class of employee is, unless the employee shows otherwise, the basic salary or wages certified under subsection (1) plus the amount represented by the percentage certified in terms of subsection (2).

”.

Section 4A inserted

6. After section 4 of the principal Act the following section is inserted —

Meaning of “final salary”

“ **4A.** (1) For the purposes of this Act, except Schedule 4, “**final salary**” in relation to a member —

- (a) means the average annual salary deemed to have been paid to the member in respect

of the membership period of 2 years immediately preceding the member's exit date; or

- (b) where the membership period is less than 2 years, means the average annual salary calculated in accordance with the formula —

$$FS = TS \times \frac{26}{NP}$$

where —

FS represents the final salary to be ascertained;

TS represents the salary deemed to have been paid to the member in accordance with subsection (3);

NP represents the number of complete fortnightly pay periods within the member's membership period (or the equivalent number if the member's pay periods are of another duration).

(2) For the purposes of subsection (1) (a) the average annual salary shall be calculated by dividing by 2 the total of the amounts deemed by subsection (3) to have been paid to the member as salary in respect to the last 52 complete fortnightly pay periods preceding the member's exit date (or the equivalent number if the member's pay periods are of another duration).

(3) For the purposes of subsection (2), the member is conclusively deemed to have been paid as salary —

- (a) in respect of the period from his or her exit date to the last salary adjustment day, an amount calculated at the rate at which he or she was paid on the exit date;
- (b) in respect of the period from the last salary adjustment day to the last adjustment day but one, an amount calculated at the rate at which he or she was paid on the last salary adjustment day; and
- (c) in respect of the balance of the 52 complete fortnightly pay periods, an amount calculated at the rate at which he or she was paid on the last salary adjustment day but one.

(4) In subsection (3) “salary adjustment day” means the day that applied to the member by operation of section 22 (5a).”.

Section 13A inserted

7. After section 13 of the principal Act the following section is inserted —

Investment, particular limitations imposed

“ **13A.** (1) Notwithstanding anything in section 13, the Board shall not —

- (a) make a loan out of moneys of the Fund to any member of the scheme; or
- (b) invest moneys of the Fund otherwise than in accordance with the standards for the time being prescribed by regulations made

under the *Occupational Superannuation Standards Act 1987* of the Commonwealth, so far as they apply to the Fund.

(2) The Board shall not make an investment of moneys in the Fund that would result in a breach of subsection (3) and if at any time it appears to the Board that the Fund is invested in breach of that subsection it shall take such steps as are necessary to remedy the breach.

(3) This subsection is breached if the cost of investments of the Fund in debt paper or securities of an employer exceeds 10%, or such other percentage as is prescribed, of the cost of all investments of the Fund.

(4) Debt paper of the Western Australian Treasury Corporation is not to be treated as debt paper of an employer for the purposes of subsection (3).

”.

Section 8A inserted

8. After section 8 of the principal Act the following sections are inserted —

Minister to have access to information

“ 8A. (1) For parliamentary purposes or for the proper conduct of the Minister’s public business, the Minister is entitled —

- (a) to have information in the possession of the Board; and
- (b) where the information is in or on a document, to have, and make and retain copies of, that document.

(2) For the purposes of subsection (1) the Minister may —

- (a) request the Board to furnish information to the Minister;
- (b) request the Board to give the Minister access to information;
- (c) for the purposes of paragraph (b) make use of the staff of the Board to obtain the information and furnish it to the Minister.

(3) The Board shall comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

(4) In this section —

“document” includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

“information” means information specified, or of a description specified, by the Minister that relates to the functions or powers of the Board;

“parliamentary purposes” means the purpose of —

- (a) answering a question asked in a House of Parliament; or
- (b) complying with a written law, or an order or resolution of a House of Parliament, that requires information

to be furnished to a House of Parliament.

Confidential information

8B. (1) Nothing in this Act entitles the Minister to have information in the possession of the Board in a form that—

- (a) discloses information about a member or a beneficiary; or
- (b) might enable information about a member or a beneficiary to be ascertained,

being information that the Board considers to be confidential.

(2) Subsection (1) does not apply where disclosure of the information—

- (a) is authorized or required by some other written law; or
- (b) is authorized by the member or beneficiary.

(3) In subsection (1)—

“**beneficiary**” means a person to whom a benefit is payable or has been paid under this Act or the *Superannuation and Family Benefits Act 1938*;

“**member**” means a person who is or has been—

- (a) a member of the scheme;
- or
- (b) a contributor, qualified contributor or subscriber under the *Superannuation and Family Benefits Act 1938*.

Section 14 amended

9. Section 14 of the principal Act is amended —

- (a) in subsection (1) by deleting “for the purpose of performing its functions and”;
- (b) in subsection (1) (c) by deleting the full stop after “credit” and substituting a comma;
- (c) in subsection (1) by inserting at the end, starting from the left margin of the subsection, the following —

“ for the purpose of overcoming any cash flow problem in the payment of superannuation benefits, and for no other purpose. ”;

and

- (d) in subsection (3), by inserting after “to the Board” the following —

“ for the purpose described in subsection (1), and for no other purpose ”.

Section 17 repealed and sections substituted

10. Section 17 of the principal Act is repealed and the following sections are substituted —

Contributory members

- “ 17. An employee of an employer, including a person who is already a non-contributory member, is eligible to elect to become a contributory member of the scheme unless he or she is excluded from contributory membership of the scheme by section 17B or 17C.

Non-contributory members

17A. (1) A person who becomes an employee of an employer is a non-contributory member of the scheme —

- (a) by virtue of that employment; and
- (b) without the need for any election.

(2) Subsection (1) applies to a person who —

- (a) is an employee of an employer on the commencement of section 10 of the *Government Employees Superannuation Amendment Act 1992*;

but

- (b) is not a non-contributory member of the scheme immediately before that day,

as if he or she became such an employee on that day.

(3) A person who was a non-contributory member immediately before the commencement of the Act referred to in subsection (2) continues to be a non-contributory member after that commencement.

(4) An employee of an employer who has renounced his or her rights under section 17D (3) may, by writing in a form approved by the Board, cancel the renunciation and if he or she does so becomes a non-contributory member by virtue of, and with effect from the date of, that cancellation.

(5) A contributor who terminates his or her membership under section 19A becomes a non-contributory member of the Scheme by virtue of that termination.

(6) Nothing in this section applies to a person who is excluded from non-contributory membership of the scheme by section 17B or 17D.

**Exclusions from membership
in any capacity**

17B. (1) A person cannot become a member as either a contributor or a non-contributor if the person is a person to whom this section applies, and if a person is a member his or her membership ceases upon his or her becoming a person to whom this section applies.

(2) This section applies to a person who —

- (a) is a judge or other person with an entitlement or an expectation of an entitlement to a pension under the *Judges Salaries and Pensions Act 1950*;
- (b) is receiving a pension under the *Superannuation and Family Benefits Act 1938*, other than as a widow or widower of a contributor under that Act;
- (c) is a contributor for units of pension under the *Superannuation and Family Benefits Act 1938*, or a subscriber or contributor to the Provident Account under that Act, or a person who has made an election under section 60AA of that Act;
- (d) is a contributor to a public sector (including local government) superannuation scheme in the State or elsewhere in Australia;
- (e) is a member of a superannuation scheme, in the State or elsewhere in Australia, that

provides for benefits that are funded wholly or partly by his or her employer;

- (f) receives remuneration from the employer that includes a component in substitution for superannuation;
- (g) is already a member of the scheme by virtue of other full-time employment;
- (h) is a casual employee within the meaning in subsection (3);
- (i) is receiving or has received invalid or disability benefits under a public sector (including local government) superannuation scheme in the State or elsewhere in Australia, except that the Board may, where it thinks fit, decide that this paragraph shall not apply to a particular person; or
- (j) is a member of a class of persons prescribed for the purposes of this section.

(3) For the purposes of subsection (2) (h) a person is a casual employee in relation to an employer if the person is engaged by that employer on terms that —

- (a) the employee is not required to work in that employment at some time during 2 successive superannuation fortnights; and
- (b) the employee's remuneration in that employment is expected to be less than \$250, or such other amount as is prescribed, for any period of one month.

**Further exclusion from
contributory membership**

17C. (1) A person cannot become a contributory member if he or she is a person to whom this section applies and if a person is a contributory member his or her contributory membership ceases on his or her becoming a person to whom this section applies.

(2) This section applies to an employee who is employed on a part-time basis —

- (a) if the number of hours worked in each week is less than 10 or such other number as is prescribed;
- (b) if the basis of the part-time work does not conform to any standard that is prescribed by regulations for the purposes of this subsection; or
- (c) if, being a contributory member, he or she becomes excluded from contributory membership by subsection (3).

(3) If an employee is not excluded from contributory membership by operation of subsection (2) (a) or (b) at the time he or she elects to become a contributory member he or she is not so excluded subsequently unless and until the basis of the part-time work falls below any standard that is prescribed by regulations for the purposes of this subsection.

**Further exclusion from
non-contributory membership**

17D. (1) A person cannot become a non-contributory member if he or she is a person to whom this section applies and if a person is a non-

contributory member his or her non-contributory membership ceases on his or her becoming a person to whom this section applies.

(2) This section applies to a person who —

- (a) is a contributory member; or
- (b) has under subsection (3) renounced his or her rights as a non-contributor.

(3) A person may renounce his or her rights as a non-contributor under this Act by lodging with the Board a document of renunciation in a form approved by the Board.

(4) A renunciation under subsection (3) may have retrospective effect from a time specified in the instrument, and if so a person's non-contributory membership ceases from that time. ”.

Section 18 amended

11. Section 18 of the principal Act is amended —

(a) by repealing subsections (1) and (2) and substituting the following subsection —

“ (1) An employee who comes within section 17 may at any time lodge with the Board an election to become a contributor. ”;

(b) in subsection (3), by deleting “In the case of an election to become a contributor, the Board may require the employee” and substituting the following —

“ The Board may require an employee who lodges an election under subsection (1) ”;

and

- (c) by repealing subsection (8).

Section 19 repealed

12. Section 19 of the principal Act is repealed.

Section 19A amended

13. Section 19A of the principal Act is amended by repealing subsection (2).

Section 21 amended

14. Section 21 of the principal Act is amended by repealing subsection (2) and substituting the following subsection —

“ (2) An employee —

- (a) who elects to become a contributor and whose election is accepted by the Board; or
- (b) who becomes a non-contributor,

may cause to be paid into the Fund the amount of a portable benefit that has accrued to the employee, if that benefit exceeds \$500 or such other amount as is prescribed.

”.

Section 21A inserted

15. (1) After section 21 of the principal Act, the following section is inserted —

Information for members

“ 21A. (1) The Board shall as soon as is practicable after a person becomes a contributory or non-contributory member send to the person a written statement describing the kind of benefits provided for by this Act for a contributory or non-contributory member, as the case may be, and the conditions relating to, and the method of determining, those benefits.

(2) The Board shall in respect of each financial year send to each member a written statement setting out the prescribed information about the member's contributions to the Fund and the benefits provided for by this Act as they relate to the member.

(3) A statement under subsection (2) in respect of a financial year shall be sent on, or as soon as is practicable after, the next adjustment day of the member following that financial year.

(4) Where a person ceases to be a member of the scheme, the Board shall as soon as is practicable after the cessation of membership send to the person, or the personal representative (if any) of the person, a written statement setting out the prescribed information about the entitlement under this Act of the member or the member's estate, as the case may be. ”

(2) The requirements of subsections (1) and (4) of section 21A of the principal Act inserted by subsection (1) of this section apply to persons who become, or cease to be, members of the scheme after the commencement of this section; and the requirements of subsection (2) of section 21A apply in respect of the financial year ending on 30 June 1992 and subsequent financial years.

Section 23 amended

16. Section 23 of the principal Act is amended in subsection (3a) by inserting after “no-pay leave” the following —

“ for a period of 3 months or more ”.

Section 23A amended

17. Section 23A of the principal Act is amended by inserting after “no-pay leave” the following —

“ for a period of 3 months or more ”.

Section 25 amended

18. Section 25 of the principal Act is amended by repealing subsection (4) and substituting the following subsection —

“ (4) A contributor who is seconded to other employment may not contribute to a superannuation scheme administered by or for employees of that employment. ”.

Section 31 amended

19. Section 31 (1) of the principal Act is amended in paragraph (d) by inserting after “no-pay leave” the following —

“ for a period of 3 months or more ”.

Section 32 amended

20. Section 32 (1) of the principal Act is amended in paragraph (dd) by inserting after “no-pay leave” the following —

“ for a period of 3 months or more ”.

Section 33 amended

21. Section 33 (1) of the principal Act is amended in paragraph (dd) by inserting after “no-pay leave” the following —

“ for a period of 3 months or more ”.

Section 35 amended

22. Section 35 of the principal Act is amended in subsection (1) —

(a) by deleting “or” after paragraph (a);

(b) by deleting the full stop at the end of paragraph (b) and substituting the following —

“ ; or ”; and

(c) by inserting after paragraph (b) the following paragraph —

“ (c) in the case of a non-contributor, where he or she has under section 17D, following a period of non-contributory membership, ceased to be a non-contributory member by operation of an instrument of renunciation under subsection (3) of that section. ”.

Section 37 amended

23. Section 37 of the principal Act is amended by repealing subsection (2) and substituting the following subsection —

“ (2) The Board shall transfer the amount to which such a request relates if the terms of the other

superannuation scheme are such that the deferred benefit, if transferred, cannot be paid to the member before he or she attains the age of 55 or retires, whichever last occurs, except in the event of —

- (a) the member's earlier death or disability;
- (b) the member's earlier permanent departure from Australia; or
- (c) the occurrence of other prescribed circumstances.

”.

Section 38 amended

24. Section 38 of the principal Act is amended —

(a) in subsection (1) —

- (i) by deleting “or” after paragraph (b);
- (ii) in paragraph (c) by deleting the comma and substituting a semicolon;
- (iii) by inserting after paragraph (c) the following paragraphs —

“ (d) satisfies the Board that he or she has permanently departed from Australia; or

(e) satisfies the Board that prescribed circumstances have occurred,

”;

(b) in subsection (2) by deleting “send a written notice to the person's last known address” and substitute the following —

“ send to the person a written notice ”;

- (c) by inserting after subsection (3) the following subsection —

“ (3a) If —

- (a) a person has an entitlement to a deferred benefit under section 35 (4);
- (b) that entitlement arose from the cessation of the person's non-contributory membership by operation of an instrument of renunciation under section 17D (3); and
- (c) the person —
 - (i) subsequently elects to become a contributor and the election is accepted by the Board; or
 - (ii) cancels the renunciation as mentioned in section 17A (3),

the entitlement to the deferred benefit ceases to exist, but the former membership period shall be taken into account in relation to any further benefit that may become payable to or in respect of that person —

- (aa) where paragraph (c) (i) applies, as a contributory period; or

(bb) where paragraph (c) (ii) applies,
as a membership period. ”;

and

(d) in subsection (4) by deleting “lodges a further election to become, and is again accepted as, a contributory or non-contributory” and substituting the following —

“ subsequently lodges an election to become and is accepted as a contributory member or subsequently becomes a non-contributory ”.

Section 39 amended

25. Section 39 of the principal Act is amended —

(a) in subsection (3) by deleting “contributor” in each place where it appears and substituting the following —

“ member ”;

(b) in subsection (3) by deleting “contributor’s” and substituting the following —

“ member’s ”; and

(c) by inserting after subsection (3) the following subsection —

“ (4) A member who is seconded to other employment may not participate in a benefit from a superannuation scheme administered by or for employees of that employment. ”.

Section 39A inserted

26. After section 39 of the principal Act the following section is inserted —

Salary reduction in case of non-contributor

“ 39A. (1) If the salary of a non-contributory member is reduced and the Board is satisfied that the reduction of salary is not attributable to the misconduct or inefficiency of the member, the Board may assess any benefit provided to or in respect of the member as if his or her salary during any period determined by the Board were —

- (a) the former salary so long as that salary exceeds the actual salary of the member;
- (b) a notional salary representing the salary from time to time attributable to the post occupied by the member immediately before the reduction; or
- (c) some other notional salary that the Board considers appropriate.

(2) This section does not apply to a reduction of salary that arises from a variation of employment —

- (a) from a full-time basis to a part-time basis;
- or
- (b) by which the number of hours worked in part-time employment is decreased. ”.

Section 46 amended

27. Section 46 of the principal Act is amended in subsection (1) (aa) —

- (a) by deleting “the relevant period referred to in section 17 (4) (b)” and substituting the following —

“ a week ”; and

- (b) by deleting “that period” and substituting the following —

“ a week ”.

Section 51 amended

28. Section 51 of the principal Act is amended by inserting after “to become a”, in each place where it appears, the following —

“ contributory ”.

Section 53 amended

29. Section 53 of the principal Act is amended in subsections (1) and (4) (a) by inserting after “to become a” the following —

“ contributory ”.

Section 58 repealed

30. Section 58 of the principal Act is repealed.

Schedule 2 amended

31. Schedule 2 to the principal Act is amended —

- (a) in clause 2 (2) —

(i) by deleting “subject to clause 4,”; and

- (ii) by inserting after “as soon as practicable” the following —

“ , and in any case not later than 60 days, ”;

and

- (b) in clause 4 by repealing subclause (1) and substituting the following —

“ (1) Where from any cause a casual vacancy occurs in the office of an elected member, the Minister may appoint a member of the scheme to fill the vacancy until the appointee’s successor is elected. ”.

Schedule 3 amended

32. Schedule 3 to the principal Act is amended —

- (a) by repealing clause 8 and substituting the following clause —

Quorum

“ 8. A quorum for a meeting of the Board is 5 members. ”;

and

- (b) in clause 9 by repealing subclause (2) and substituting the following subclause —

“ (2) A decision supported by 5 members of the Board is the decision of the Board. ”.

Schedule 4 amended

33. Schedule 4 to the principal Act is amended —

(a) in clause 1 (1) by deleting the definition of “final salary” and substituting the following definition —

“ **“final salary”**, in relation to a transferred contributor, has the meaning given by clause 1A; ”;

and

(b) by inserting after clause 1 the following clause —

Meaning of “final salary”

“ **1A. (1)** For the purposes of this Schedule **“final salary”** in relation to a transferred contributor —

(a) means the average annual salary deemed to have been paid to the member in respect of the period of 2 years immediately preceding the member’s exit date; or

(b) where the employment period is less than 2 years, means the average annual salary calculated in accordance with the formula —

$$FS = TS \times \frac{26}{NP}$$

where —

*Government Employees Superannuation
Amendment Act 1992*

FS represents the final salary to be ascertained;

TS represents the salary deemed to have been paid to the member in accordance with subclause (3);

NP represents the number of complete fortnightly pay periods within the member's employment period (or the equivalent number if the member's pay periods are of another duration).

(2) For the purposes of subclause (1) (a) the average annual salary shall be calculated by dividing by 2 the total of the amounts deemed by subclause (3) to have been paid to the member as salary in respect to the last 52 complete fortnightly pay periods preceding the member's exit date (or the equivalent number if the member's pay periods are of another duration).

(3) For the purposes of subclause (2), the member is conclusively deemed to have been paid as salary —

- (a) in respect of the period from his or her exit date to the last salary adjustment day, an amount calculated at the rate at which he or she was paid on the exit date;
- (b) in respect of the period from the last salary adjustment day to the last salary adjustment day but one, an amount calculated at the rate at which he or she was paid on the last salary adjustment day; and

- (c) in respect of the balance of the 52 complete fortnightly pay periods, an amount calculated at the rate at which he or she was paid on the last salary adjustment day but one.

(4) In subclause (3) "salary adjustment day" means the day that applied to the member by operation of section 22 (5a)."

=====