

NORTHERN TERRITORY OF AUSTRALIA

LEGISLATIVE ASSEMBLY MEMBERS' PENSIONS ACT 1979

As in force at 12 April 2019

Table of provisions

Part I	Preliminary	
1	Short title	1
2	Commencement	1
3	Definitions	1
3A	Scheme to comply with superannuation surcharge laws and agreements with Commonwealth	3
3B	Application of Criminal Code	3
Part II	Administration	
Division 1	Discontinuance of Legislative Assembly Members' Superannuation Fund	
4	Transfer of Fund assets and liabilities	3
4A	Transfer of functions	4
5	Record of accounts	4
6	Return on accumulation accounts	5
7	Surcharge debt accounts	5
8	Advance payments to reduce superannuation contributions surcharge	5
9	Repayment of superannuation contribution surcharge	6
9A	Commutation to pay deferred superannuation contributions surcharge	6
10	Actuarial review	7
11	Payments and appropriation	7
Division 2	Commissioner	
12	Delegation	7
Part III	Contributions	
15A	Application	7
16	Contributions by members	7
17	Election by Ministers, &c.	8
17A	Certain members not entitled to contribute	8
Part IV	Pensions and benefits	
18	Definitions	9

19	Pensions.....	9
20	Additional salary	10
21	Benefits to certain former members and to estate where no dependants.....	11
22	Retirement through ill health.....	11
24	Spouses' and dependent children's benefit	12
25	Commutation of pension – former member	14
25A	Commutation of pension – spouse	15
25AB	Commutation to pay tax debts.....	16

Part IVA Requirements of Family Law Act

25B	Definitions.....	17
25C	Act to be administered so as to comply with Family Law Act provisions in relation to superannuation	17
25D	Commutation of non-member spouse pension payable in accordance with Family Law Act	18

Part V Miscellaneous

26	Service before commencement of Act.....	19
27	Election or re-election of person entitled to pension	19
27A	Re-election of person entitled to payment under section 21	19
27B	Claims for benefits.....	20
28	Fees for additional services.....	20
28A	Offence to disclose confidential information	20
29	Regulations.....	21

Part VI Transitional matters for Superannuation Legislation Amendment Act 2010

30	Object of this Part.....	21
31	Definitions.....	22
32	Transfer of Fund and liabilities etc.....	22
33	Effect on rights and remedies	23
34	Completion of change of trusteeship	23
35	Exemption from taxes and charges	23
36	Continuation of ongoing matters.....	24

Part VII Transitional matters for Superannuation Legislation Amendment and Repeal Act 2014

37	Time limit for claiming retirement through ill health benefit.....	24
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**Part VIII Transitional matters for Superannuation
Legislation Amendment Act 2019**

38	Exemption from taxes and charges	25
39	Continuation of ongoing matters.....	25
40	Acquisition on just terms.....	26

ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

As in force at 12 April 2019

LEGISLATIVE ASSEMBLY MEMBERS' PENSIONS ACT 1979

An Act establish a Contributory Superannuation Scheme for certain Members of the Legislative Assembly elected before the scheme closure date, and for related purposes

Part I Preliminary

1 Short title

This Act may be cited as the *Legislative Assembly Members' Pensions Act 1979*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Definitions

In this Act:

accumulation account means the account of a member or former member recorded in the accounts of the Scheme.

additional salary means that part of a members salary or allowance paid to a member, in addition to his or her basic salary as a member, in respect of service in the Assembly as the Speaker, a Minister or Leader of the Opposition, or other service in a particular office or in performance of a particular function in respect of which remuneration or an allowance is payable under the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006*.

Assembly means the Legislative Assembly.

asset means property of any kind, whether tangible or intangible, real or personal, including any right, interest or claim of any kind, whether liquidated or unliquidated, actual, contingent or prospective.

basic salary has the same meaning as in the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006*.

Commissioner, see section 3(1) of the *Superannuation Act 1986*.

full term of the Assembly, in relation to a member elected at a by-election, includes the period between his or her election as a member (whenever occurring) and the date of the next succeeding general election of members of the Assembly.

Fund means the Legislative Assembly Members' Superannuation Fund established on 23 September 1979 under this Act.

liability means any liability, duty or obligation, whether liquidated or unliquidated, actual, contingent or prospective.

member means a member of the Assembly who:

- (a) was elected before the scheme closure date; and
- (b) has been a member of the Assembly continuously since that date.

right means any right, power, privilege or immunity, whether actual, contingent or prospective.

Scheme means the superannuation scheme established by this Act.

scheme closure date means the date on which the *Legislative Assembly Members' Superannuation Amendment (Scheme Closure) Act 2004* commences.

superannuation contributions surcharge means the superannuation contributions surcharge imposed under the Surcharge Act.

Surcharge Act means the *Superannuation Contributions Tax Imposition Act 1997* of the Commonwealth and includes regulations under that Act.

Surcharge Collection Act means the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth and includes regulations under that Act.

transfer date means the commencement of section 7 of the *Superannuation Legislation Amendment Act 2019*.

Trustee Board means the Superannuation Trustee Board as constituted on the transfer date under section 8A of the *Superannuation Act 1986*.

Note for section 3

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

3A Scheme to comply with superannuation surcharge laws and agreements with Commonwealth

- (1) The Scheme is to be administered in accordance with:
 - (a) the Surcharge Act and the Surcharge Collection Act; and
 - (b) a written agreement entered into by the Territory and the Commonwealth relating to exempt public sector superannuation schemes within the meaning of section 10 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.
- (2) If a provision of this Act or the Regulations is inconsistent with a provision of the Surcharge Act or the Surcharge Collection Act, the provision of this Act or the Regulations is to be taken to have been complied with if the provision of the Surcharge Act or the Surcharge Collection Act, as the case may be, has been complied with.

3B Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 3B

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part II Administration

Division 1 Discontinuance of Legislative Assembly Members' Superannuation Fund

4 Transfer of Fund assets and liabilities

- (1) The assets and liabilities of the Fund are transferred to the Central Holding Authority on the transfer date.

- (2) The assets and liabilities of the Fund must be recorded in the accounts of the Central Holding Authority.
- (3) The Fund is discontinued when all its assets and liabilities are transferred under subsection (1).

4A Transfer of functions

- (1) On the transfer date, the Trustee Board and Commissioner must:
 - (a) take all practicable steps to transfer the Trustee Board's functions and the records and administration of the Scheme to the Commissioner; and
 - (b) give to each registrar all documents and information necessary to record and register the transfers mentioned in paragraph (a).
- (2) On the transfer date:
 - (a) the Commissioner is substituted for the Trustee Board in any proceedings relating to the Fund to which the Trustee Board is a party; and
 - (b) the Commissioner is substituted for the Trustee Board in any agreement or document relating to the Fund; and
 - (c) any proceedings relating to the Fund that could have been commenced by or against the Trustee Board may only be commenced by or against the Commissioner; and
 - (d) any remedy that would have been available to or against the Trustee Board relating to the Fund is available only to or against the Commissioner.
- (3) In this section:

registrar means a person authorised or required by a law of any jurisdiction to record or register documents relating to transactions affecting a transferred asset or liability.

5 Record of accounts

The Commissioner must record the following in relation to each member and each former member who retains an interest in the Scheme:

- (a) all contributions made under Part III;

- (b) the return on the accumulation account as at the end of the financial year before the assets of the Fund are transferred to the Central Holding Authority;
- (c) the rate of return on the accumulation account determined under section 6(1);
- (d) all benefits and other amounts paid from the accumulation account;
- (e) any other amounts debited or credited to the accumulation account.

6 Return on accumulation accounts

- (1) The Commissioner must, on the transfer date, determine the rate of return (which may be positive, neutral or negative) on accumulation accounts.
- (2) The return is to be credited or debited to accumulation accounts as at the transfer date.

7 Surcharge debt accounts

- (1) The Commissioner must establish and maintain for the purposes of section 16 of the Surcharge Collection Act a surcharge debt account for each member in relation to whom a superannuation contributions surcharge is paid or payable by the Commissioner.
- (2) The Commissioner must debit to the surcharge debt account of a member:
 - (a) any superannuation contributions surcharge paid or payable by the Commissioner in respect of the member; and
 - (b) any interest payable under the Surcharge Collection Act on the amount by which the account is in debit.
- (3) The Commissioner must credit to the surcharge debt account of a member any amount paid under section 8 by the member.

8 Advance payments to reduce superannuation contributions surcharge

- (1) A member may, by lodging with the Commissioner an election form, do any of the following:
 - (a) pay an amount to the credit of the Central Holding Authority to reduce the amount by which the member's surcharge debt account is in debit;

- (b) pay the amount by a single payment or by periodic payments;
 - (c) vary, in accordance with the form, the amount or manner of payment;
 - (d) revoke a previous election under this section.
- (2) The election form must:
- (a) be in a form approved by the Commissioner; and
 - (b) specify the amount to be paid and the manner of payment.

9 Repayment of superannuation contribution surcharge

Despite any other provision of this Act, the Commissioner may:

- (a) commute part of a member's pension under this Act to a lump sum in order to pay the balance of the member's surcharge debt account; or
- (b) deduct an amount equal to the balance of a member's surcharge debt account from any payment to be made under this Act in relation to the member.

9A Commutation to pay deferred superannuation contributions surcharge

- (1) A former member or other person may request commutation, under subsection (2), of a pension or allowance if:
- (a) the pension or allowance is payable under this Act to the former member or person; and
 - (b) the former member or other person has received, from the Commissioner of Taxation, a notice under section 15 of the Surcharge Collection Act and is liable to pay a superannuation contributions surcharge in an amount specified in the notice; and
 - (c) the superannuation contributions surcharge relates to surchargeable contributions, within the meaning of the Surcharge Collection Act, in relation to the former member, a deceased member or a deceased former member.
- (2) The former member or other person may, in writing, request the Commissioner to commute as much of the pension or allowance payable to the former member or other person as is necessary to provide a lump sum equivalent to the amount of the superannuation contributions surcharge.

- (3) The Commissioner must comply with the request if satisfied that the commuted amount will be used to pay the superannuation contributions surcharge.

10 Actuarial review

- (1) The Commissioner must have an actuarial review of the Scheme carried out as at 30 June 2019 and 3 year intervals after that date, or at other dates as directed by the Minister.
- (2) The Commissioner may engage an actuary to carry out an actuarial review.
- (3) The cost of engaging an actuary and the costs of an actuarial review are to be paid by the Territory.

11 Payments and appropriation

- (1) The benefits payable under this Act must be paid from the Central Holding Authority.
- (2) The appropriation of public moneys for the purpose of paying benefits under this Act is established or increased to the extent necessary.

Division 2 Commissioner

12 Delegation

The Commissioner may delegate any of the Commissioner's powers and functions under this Act to a person.

Part III Contributions

15A Application

This Part applies to a member who was elected before the scheme closure date and is a member on that date.

16 Contributions by members

- (1) Subject to subsection (1A), every member must contribute to the Central Holding Authority.
- (1A) A member is not required to contribute to the Central Holding Authority in respect of any basic salary received by the member after the completion of 20 years service as a member but may, within 14 days (or such longer period as the Commissioner allows) after the completion of that 20 years service, by notice in writing to

the Minister and the Commissioner, elect to pay contributions or to continue to pay contributions in respect of the member's additional salary earned after the completion of that 20 years service and must contribute to the Central Holding Authority accordingly.

- (2) Subject to section 17, the rate of contribution of a member to the Central Holding Authority is:
 - (a) in the case of a member who is not in receipt of additional salary – 11.5% of the member's basic salary; or
 - (b) in the case of a member who is in receipt of additional salary – 11.5% of the aggregate of the member's basic salary and additional salary; or
 - (c) in the case of a member who is in receipt of additional salary in respect of which the member has made an election under subsection (1A) – 11.5% of that additional salary.
- (3) The contributions payable under this section must be deducted from every amount of basic salary and additional salary payable to the member, and the amount so deducted must be paid to the Central Holding Authority.

17 Election by Ministers, &c.

A member who is receiving additional salary may, by notice in writing to the Minister and the Commissioner, elect to pay contributions on the member's basic salary only and, while that election remains in force, only those contributions are to be deducted from the member's salary and paid to the Central Holding Authority.

17A Certain members not entitled to contribute

A member for whom the Territory must make a contribution under the *Legislative Assembly Members' Superannuation Contributions Act 2004* is not entitled to contribute to the Central Holding Authority.

Part IV Pensions and benefits

18 Definitions

In this Part:

dependent child, in relation to a member or former member, means a child, adopted child, foster child or stepchild of that member or former member who is unmarried and:

- (a) has not attained the age of 16 years; or
- (b) has attained the age of 16 years but has not attained the age of 25 years, is receiving full-time education at a school, college or university and is primarily dependent on the member or former member for financial support.

spouse, of a member or former member, means:

- (a) a spouse of the member or former member who, at the relevant time, was living with the member or former member on a bona fide domestic basis; or
- (b) a spouse of the member or former member who, at the relevant time, was not living with the member or former member on a bona fide domestic basis but, in the opinion of the Commissioner, was wholly or substantially dependent upon the member or former member at that time; or
- (c) a de facto partner of the member or former member; or
- (d) a former de facto partner of the member or former member who, in the opinion of the Commissioner, was wholly or substantially dependent upon the member or former member at the relevant time,

but does not include a person who married, or entered a de facto relationship with, a former member:

- (e) after the former member's retirement; and
- (f) after the former member attained the age of 60 years; and
- (g) less than 5 years before the former member's death.

19 Pensions

- (1) Subject to this Act, where a member who has been elected on not less than 3 occasions and has served as a member for an

aggregate period of not less than 8 years ceases to be a member, the member is entitled to be paid out of the Central Holding Authority an annual pension at a rate equal to:

A + B

where:

- A is an amount equal to 6.25% of final basic salary for each of the first 8 years of service plus 3% of final basic salary for each year of service in excess of 8 years (with a part year being taken into account as a fraction of a whole year calculated on the basis of days), subject to a maximum of 80% of final basic salary.
- B is the amount obtained by aggregating, for each office or function for which additional salary was payable to the member, an amount equal to 6.25% of the final additional salary payable in respect of the office or function for each year the member held the office or performed the function (with a part year being taken into account as a fraction of a whole year calculated on the basis of days), subject to a maximum of 80% of the final additional salary payable for the office or function attracting the highest additional salary held or performed by the member.
- (2) The annual rate of pension payable under subsection (1) shall be increased in proportion to increases in the basic salary payable to members from time to time.
- (3) In this section:

final additional salary, in respect of an office or function attracting additional salary, means the additional salary payable at the time a person ceases to be a member or, where an office or function has ceased to exist, an amount of additional salary determined by the Speaker after considering actuarial advice.

final basic salary means the basic salary payable at the time a person ceases to be a member.

service includes a period of service recognised under section 26 or 27.

20 Additional salary

In calculating the amount payable to a person under section 19(1), additional salary shall not be taken into account where that person has, in respect of that additional salary, made an election under section 17 and contributions otherwise payable have been reduced

as a consequence of that election.

21 Benefits to certain former members and to estate where no dependants

- (1) A person who ceases to be a member otherwise than by reason of his or her death and who is not entitled to a pension under this Act shall be entitled to a lump sum payment equal to 2.5 times the amount standing to the credit of his or her accumulation account at the time the lump sum is paid.
- (2) Where a member dies leaving no spouse or dependent child surviving him or her, there is payable to his or her estate a lump sum amount equal to 2.5 times the amount standing to the credit of his or her accumulation account at the time the lump sum is paid.

22 Retirement through ill health

- (1) A person who becomes a member after the commencement of this Act may furnish to the Commissioner a certificate of a registered medical practitioner, who has been approved by the Commissioner, certifying that the member is not likely by reason of ill health to be rendered incapable, before the expiration of a period of 8 years from the date of the certificate, of performing the duties of a member.
- (2) Where a member who has furnished a certificate pursuant to subsection (1), or a person who was a member at the commencement of this Act, satisfies the Commissioner that the member or person has ceased to be a member because the member or person has been rendered incapable of being a member by reason of ill health, the member or person is, subject to subsection (3), entitled to a pension calculated under section 19 before the expiration of a period of 8 years and before having been elected on 3 occasions.
- (2A) Where a member has served less than 8 years and subsection (2) applies, the member's pension calculated under section 19(1) shall be multiplied by 8 and divided by the member's period of service in years (with a part year being taken into account as a fraction of a whole year calculated on the basis of days).
- (3) A person who applies to the Commissioner under this section must provide the Commissioner with such medical reports and other evidence as the Commissioner may require.

24 Spouses' and dependent children's benefit

- (1) On the death of a former member who was receiving a pension under this Part, the spouse of that former member shall be entitled to an annual pension at the rate of:
- (a) in the case where the former member had not converted any part of his or her pension entitlement to a lump sum payment:
 - (i) five-sixths of the pension that would have been payable, from time to time, to the former member but for his or her death; or
 - (ii) 40% per annum of the basic salary from time to time, whichever is the greater amount; and
 - (b) in the case where the former member had converted part of his or her pension entitlement to a lump sum payment – five-sixths of the pension that would have been payable, from time to time, to the former member but for his or her death,
- but the spouse shall be entitled to no pension if the former member had converted his or her entire pension entitlement to a lump sum payment.
- (2) On the death of a member who has been elected on 3 occasions and has served for an aggregate period of 8 years, the spouse of that member shall, be entitled to an annual pension at the rate of:
- (a) five-sixths of the pension that would have been payable, from time to time, to the member but for his or her death if he or she had ceased to be a member on the date of his or her death and was entitled to a pension under section 19; or
 - (b) 40 per cent per annum of the basic salary from time to time, whichever is the greater amount.
- (3) On the death of a member before he or she has been elected on 3 occasions and has served for an aggregate period of 8 years, a pension shall be paid to his or her spouse, at the same rate as that applying under subsection (2) and, for that purpose, the member's pension calculated under section 19(1) shall be multiplied by 8 and divided by the member's period of service in years (with a part year being taken into account as a fraction of a whole year calculated on the basis of days).
- (4) Subject to subsection (5), where a member dies leaving a dependent child but no spouse, or where a former member who

was receiving a pension under this Act dies leaving a dependent child but no spouse, or where the spouse of a deceased person who was before the person's death receiving a pension under this Act dies leaving a dependent child, there is payable to such person or persons as the Commissioner thinks fit, an allowance in respect of such child or children of an amount equal to the following percentage of the pension that was payable to the deceased spouse of the deceased member or former member, or that would have been payable had the person survived the deceased member or former member:

one child	–	45%
2 children	–	80%
3 children	–	90%
4 or more children	–	100%

- (5) An amount otherwise payable under subsection (4) in respect of a dependent child shall, where the child is a dependent child of a former member or the spouse of a deceased member who has converted a part of his or her or her pension entitlement to a lump sum payment, be reduced by the same proportion as the proportion of the pension entitlement that was converted to a lump sum payment bears to the whole amount of the original pension entitlement of the former member or spouse, as the case may be and, if the whole of the pension entitlement has been converted into a lump sum payment, there should be no entitlement to an allowance under subsection (4).
- (6) A dependent child of a member who died in office without leaving a surviving spouse, or a person acting on behalf of such a child, may, within 6 months after the date of death of the member, apply to the Commissioner to have a lump sum equal to 2.5 times the amount of the deceased member's accumulation account distributed for the dependent child's benefit as a lump sum payment in lieu of an allowance under subsection (4) and the Commissioner may, in the Commissioner's absolute discretion, after receiving and considering such actuarial advice, if any, as the Commissioner thinks fit and taking into account whether the payment of an allowance rather than the lump sum benefit would be to the advantage of that or any other dependent child, distribute the lump sum benefit amongst the deceased member's dependent and non-dependent children in such proportion as, in the opinion of the Commissioner, is equitable in the circumstances.
- (7) Where an amount in respect of an infant or other person under a legal disability is paid under this section by the Commissioner to a

person having the care or control of the infant or other person or the infant's or other person's property, the Commissioner is not bound to see to the application of that amount.

- (8) Where at the time of death, a member or former member had more than one spouse, the aggregate amount payable under this section must not exceed the amount that would have been payable if at the time of death there was had only one spouse, and the Commissioner, in the Commissioner's absolute discretion, may apportion any such amount between the spouses as, in the opinion of the Commissioner, is equitable in the circumstances.

25 Commutation of pension – former member

- (1) A former member who is entitled to a pension under section 19 or 22 may, within the period of 6 months after ceasing to be a member, by notice in writing to the Commissioner, elect to convert all or part of the former member's pension entitlement to a lump sum payment determined in accordance with subsection (2).

- (2) A lump sum payment under subsection (1) shall be equal to the higher amount resulting from the application of the following 2 formulas:

(a) $R \times P \times (10 - \frac{y}{2})$

(b) $R \times 2.5 \times D$

where:

R is the proportion of pension to be commuted.

P is the annual amount of pension entitlement.

Y is:

- (i) where the person has not attained the age of 66 years – 0; or
- (ii) in any other case – the number of completed years between the age of the person at the time of electing for commutation and 65.

D is the value of the person's accumulation account at the time of his or her ceasing to be a member.

- (3) A former member who makes an election under subsection (1) shall be entitled to receive a lump sum payment calculated under subsection (2) and from the date of payment of that lump sum the

annual pension payable to that former member shall be reduced by the amount of annual pension in respect of which the election was made.

25A Commutation of pension – spouse

- (1) The spouse of a member, who is entitled to a pension under section 24(2) or (3), may, within 6 months after first becoming entitled to that pension, by notice in writing to the Commissioner, elect to convert all or part of the pension entitlement to a lump sum payment determined in accordance with subsection (2).
- (2) A lump sum payment under subsection (1) shall be equal to the higher amount resulting from the application of the following 2 formulas:

(a) $R \times S \times (10 - \frac{Y}{2})$

(b) $R \times 2.5 \times D$

where:

R is the proportion of pension to be commuted.

S is the annual amount of spouse's pension entitlement.

D is the value of the member's accumulation account at the time of his or her death.

Y is:

(i) where the spouse has not attained the age of 66 years – 0; or

(ii) in any other case – the number of completed years between the age of the spouse at the time of electing for commutation and 65.

- (3) Nothing in this section shall be construed as depriving a spouse referred to in subsection (1) of the right to receive pension payments in respect of the period between first becoming entitled to a pension and the date of payment of the lump sum arising from the commutation elected for under that subsection.
- (4) The spouse of a former member, who is entitled to a pension under section 24(1), may, within 6 months after first becoming entitled to that pension, by notice in writing to the Commissioner, elect to convert all or part of the pension entitlement to a lump sum payment equal to the amount resulting from the application of the

formula:

$$R \times S \left(10 - \frac{y}{2}\right)$$

where:

R, S, and Y have the same meaning as in subsection (2).

25AB Commutation to pay tax debts

- (1) This section applies if:
 - (a) a former member or other person (a **taxpayer**) becomes entitled to a pension or allowance under this Act; and
 - (b) the Commonwealth Commissioner of Taxation (the **ATO**) issues a release authority (as defined in section 45DA of the *Superannuation Act 1986*) for the taxpayer; and
 - (c) the release authority is given to the Commissioner:
 - (i) before payment of the taxpayer's pension or allowance commences; and
 - (ii) in accordance with the relevant Commonwealth Act.
- (2) On receipt of the request, the Commissioner may:
 - (a) commute so much of the pension or allowance as is necessary to provide a lump sum equal to the release amount determined under subsection (3); and
 - (b) pay the lump sum:
 - (i) to the ATO; or
 - (ii) if the relevant Commonwealth Act permits and the taxpayer so requests – to the taxpayer.
- (3) The **release amount** is whichever of the following is the least:
 - (a) the amount authorised by the release authority to be paid;
 - (b) the amount the taxpayer or the ATO requests to be paid;
 - (c) the amount of the lump sum that would be achieved if the whole of the taxpayer's pension or allowance were commuted.

- (4) If the Commissioner commutes all or part of a taxpayer's pension or allowance:
 - (a) the amount of the pension or allowance to which the taxpayer is entitled is reduced accordingly; and
 - (b) if the taxpayer is a former member – the balance of the former member's accumulation account at the time he or she ceased to be a member is taken to have been reduced by the amount of the commuted lump sum.

Part IVA Requirements of Family Law Act

25B Definitions

In this Part:

Family Law Act means the *Family Law Act 1975* of the Commonwealth and includes regulations made under that Act.

member spouse, in relation to a superannuation interest, means the person who is the member spouse in relation to that interest under Part VIII B of the Family Law Act.

non-member spouse, in relation to a superannuation interest, means the person who is the non-member spouse in relation to that interest under Part VIII B of the Family Law Act.

splitting instrument means a superannuation agreement, a flag lifting agreement that provides for a payment split, or a splitting order, each within the meaning of Part VIII B of the Family Law Act.

superannuation interest means an interest that a person has under this Act.

25C Act to be administered so as to comply with Family Law Act provisions in relation to superannuation

- (1) This section applies despite any other provision of this Act.
- (2) This Act is to be administered in accordance with the provisions of the Family Law Act relating to superannuation.
- (3) Subject to the provisions of the Family Law Act relating to superannuation, this Act is to be administered in relation to a person in accordance with the provisions of a splitting instrument, if any, that applies in relation to the person.

- (4) The Commissioner may prepare written administrative instructions that are necessary or convenient to give effect to:
 - (a) the provisions of the Family Law Act relating to superannuation; and
 - (b) splitting instruments; and
 - (c) Acts of the Commonwealth relating to superannuation and regulations under those Acts.
- (5) Without limiting the generality of subsection (4), administrative instructions for the purposes of that subsection may include, but are not limited to, the following:
 - (a) the methods of calculating and paying a superannuation interest to member spouses and non-member spouses, including calculations that may reduce the superannuation interest of a member spouse;
 - (b) the establishing of interests and accounts, including accounts under the *Superannuation Act 1986*, for non-member spouses.
- (6) An administrative instruction prepared under subsection (4) takes effect on the date specified in the instruction.
- (7) If a provision of this Act or the administrative instructions made under this section is inconsistent with:
 - (a) a provision of the Family Law Act relating to superannuation; or
 - (b) a splitting instrument,

the provision of this Act or the administrative instructions is taken to have been complied with if the provision of the Family Law Act or a splitting instrument, as the case may be, has been complied with.

25D Commutation of non-member spouse pension payable in accordance with Family Law Act

- (1) If a non-member spouse is entitled to an amount under this Act in accordance with the Family Law Act and the amount is to be paid as a pension, he or she may within 6 months after first becoming entitled to that pension, by notice in writing to the Treasurer, choose to convert all or part of the pension entitlement to a lump sum payment.

- (2) Subject to the provisions of the Family Law Act relating to superannuation, the amount of a lump sum payment under subsection (1) is to be determined in accordance with a method and formula determined by the actuary appointed by the Commissioner.

Part V Miscellaneous

26 Service before commencement of Act

- (1) This section applies if a person:
- (a) was a member of the Assembly at any time between 19 October 1974 and 23 September 1979; and
 - (b) made an election under this section as in force before the commencement of Part 3 of the *Superannuation Legislation Amendment Act 2010*; and
 - (c) paid the additional contributions required under this section as then in force.
- (2) If this section applies:
- (a) the person's period of service as a member during the period from 19 October 1974 and 23 September 1979 is to be treated as membership for this Act; and
 - (b) for sections 17 and 19, that period is taken to be a period during which that member was entitled to additional salary or a salary (as the case requires).

27 Election or re-election of person entitled to pension

If a person who is receiving, or is entitled to receive, a pension under this Act is elected or re-elected as a member after the scheme closure date, payment of the pension is suspended until the person ceases to be a member.

27A Re-election of person entitled to payment under section 21

If a person who has received, or is entitled to receive, a payment under section 21 is re-elected as a member after the scheme closure date, the person is not entitled:

- (a) to contribute to the Scheme after the re-election; or
- (b) to receive a pension or other payment under this Act in respect of his or her service as a member consequent on the re-election.

27B Claims for benefits

- (1) A person entitled, or claiming to be entitled, to a benefit under this Act may apply to the Commissioner, in the form approved by the Commissioner, for payment of that benefit.
- (2) If the application relates to a benefit under section 22, it must be made within 2 years after the person ceased to be a member.
- (3) The Commissioner must make a decision on the application as soon as practicable after receiving it.
- (4) On making a decision, the Commissioner must give the applicant a written notice setting out:
 - (a) the Commissioner's decision; and
 - (b) either:
 - (i) the Commissioner's reasons for the decision; or
 - (ii) that the applicant has a right to request written reasons under subsection (5); and
 - (c) that the applicant has a right under Part 5A of the *Superannuation Act 1986* to have the decision reviewed.
- (5) An applicant may, in writing, require the Commissioner to give reasons for the Commissioner's decision and the Commissioner must give the applicant those reasons in writing.

28 Fees for additional services

The Commissioner may charge a person who requests a service in relation to this Act the reasonable cost of performing the service.

28A Offence to disclose confidential information

- (1) A person commits an offence if:
 - (a) the person obtains information in the course of performing a function connected with the administration of this Act or exercising a power under this Act; and
 - (b) the information is confidential and the person is reckless in relation to that circumstance; and
 - (c) the person intentionally engages in conduct; and

- (d) the conduct results in the disclosure of the information and the disclosure is not:
 - (i) for a purpose connected with the administration of this Act, including a legal proceeding arising out of the operation of this Act; or
 - (ii) to a person who is otherwise entitled to the information; and
- (e) the person is reckless in relation to the result and circumstance mentioned in paragraph (d).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Strict liability applies to subsection (1)(a).
- (3) If the information mentioned in subsection (1) relates to a person, it is a defence to a prosecution for an offence against that subsection if the person has consented to the disclosure of the information.

Note for section 28A

In addition to the circumstances mentioned in this section, a person who discloses information mentioned in this section will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

29 Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Part VI Transitional matters for Superannuation Legislation Amendment Act 2010

30 Object of this Part

The object of this Part is to give effect to the change in the trusteeship of the Fund from the old Trust to the Trustee Board effected by the amendments to the Act made by Part 3 of the *Superannuation Legislation Amendment Act 2010*.

31 Definitions

In this Part:

asset means property of any kind, whether tangible or intangible, real or personal, including any right, interest or claim of any kind, whether liquidated or unliquidated, actual, contingent or prospective.

liability means any liability, duty or obligation, whether liquidated or unliquidated, actual, contingent or prospective, and whether owed alone or jointly with another person or jointly and severally with another person.

old Trust means the Legislative Assembly Members' Superannuation Trust under section 11 as in force before the restructure time.

old trustee means a person who was a member of the old Trust.

restructure time means the commencement of Part 3 of the *Superannuation Legislation Amendment Act 2010*.

right means any right, power, privilege or immunity, whether actual, contingent or prospective.

transferred asset or liability means an asset transferred by operation of section 32(a) or liability transferred by operation of section 32(b).

32 Transfer of Fund and liabilities etc.

At the restructure time:

- (a) the Fund vests in the Trustee Board; and
- (b) each liability of the old Trust becomes a liability of the Trustee Board; and
- (c) in any proceedings to which the old Trust is party, the Trustee Board is substituted for the old Trust as a party to the proceedings; and
- (d) any agreement or document relating to a transferred asset or liability is taken to be amended so that any reference in it to the old Trust includes, if the context permits, a reference to the Trustee Board.

33 Effect on rights and remedies

- (1) After the restructure time, any proceedings that could have been commenced by or against the old Trust in relation to a transferred asset or liability:
 - (a) may be commenced by or against the Trustee Board; and
 - (b) cannot be commenced by or against the old Trust.
- (2) After the restructure time, any remedy that would have been available to or against the old Trust in relation to a transferred asset or liability:
 - (a) is available to or against the Trustee Board; and
 - (b) is not available to or against the old Trust.

34 Completion of change of trusteeship

- (1) The old trustees, Trustee Board and Commissioner must take all practicable steps to:
 - (a) ensure that the effect sought to be achieved by sections 32 and 33 is achieved; and
 - (b) otherwise give effect to the object of this Part.
- (2) Without limiting subsection (1):
 - (a) the Commissioner must give to each registrar all the information the registrar needs in order to record and register the documents necessary to show the effect of section 32; and
 - (b) the old trustees, Trustee Board and Commissioner must make arrangements for the delivery to the Trustee Board of all the old Trust's documents and other records relating to the Fund or Scheme.
- (3) In this section:

registrar means a person authorised or required by a law of any jurisdiction to record and give effect to the registration of documents relating to transactions affecting a transferred asset or liability.

35 Exemption from taxes and charges

- (1) No tax or charge is chargeable in relation to any thing (a **relevant act**):
 - (a) that occurs by operation of this Part; or

- (b) done:
 - (i) under this Part; or
 - (ii) to give effect to this Part; or
 - (iii) for a purpose connected with, or arising out of, giving effect to the object of this Part.
- (2) Subsection (1) applies in relation to a foreign tax or charge so far as the legislative power of the Legislative Assembly permits.
- (3) Any foreign tax or charge payable in relation to a relevant act is to be paid from the Central Holding Authority, which is appropriated accordingly.
- (4) In this section:

foreign tax or charge means a tax or charge under a law of a jurisdiction other than the Territory.

tax or charge means a tax, duty, levy, fee or charge of any kind, including a fee or charge for a service.

36 Continuation of ongoing matters

- (1) Anything done or omitted to be done by, to, or in relation to, the old Trust before the restructure time that is of ongoing effect is to be taken, after the restructure time, to have been done or omitted to be done by, to, or in relation to, the Trustee Board.
- (2) Without limiting subsection (1), any direction given by the old Trust to the Commissioner and in force immediately before the restructure time continues in force as a direction given by the Trustee Board.

Part VII Transitional matters for Superannuation Legislation Amendment and Repeal Act 2014

37 Time limit for claiming retirement through ill health benefit

- (1) For a person who ceased to be a member before the commencement, the reference in section 27B(2) to 2 years after the person ceased to be a member is taken to be a reference to 2 years after the commencement.

(2) In this section:

commencement means the commencement of section 72 of the *Superannuation Legislation Amendment and Repeal Act 2014*.

Part VIII Transitional matters for Superannuation Legislation Amendment Act 2019

38 Exemption from taxes and charges

(1) No tax or charge is chargeable in relation to any act or thing that:

- (a) occurs by operation of Part 3 of the *Superannuation Legislation Amendment Act 2019*; or
- (b) is done under or to give effect to that Part; or
- (c) is done for a purpose connected with, or arising out of, giving effect to that Part.

(2) Subsection (1) applies in relation to a foreign tax or charge so far as the legislative power of the Legislative Assembly permits.

(3) Any foreign tax or charge payable in relation to an act or thing mentioned in subsection (1) is to be paid from the Central Holding Authority, which is appropriated accordingly.

(4) In this section:

foreign tax or charge means a tax or charge under a law of a jurisdiction other than the Territory.

tax or charge means a tax, duty, levy, fee or charge of any kind, including a fee or charge for a service.

39 Continuation of ongoing matters

Anything done or omitted to be done by, to or in relation to the Trustee Board before the transfer date that has effect after that date is taken to have been done or omitted to be done by, to or in relation to the Commissioner.

40 Acquisition on just terms

If the operation of Part 3 of the *Superannuation Legislation Amendment Act 2019* would result in an acquisition of property from a person otherwise than on just terms:

- (a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

ENDNOTES
1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = Gazette	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION***Legislative Assembly Members' Superannuation Act 1979 (Act No. 83, 1979)***

Assent date	13 July 1979
Commenced	23 September 1979 (Gaz G37, 14 September 1979, p 12)

Statute Law Revision Act 1980 (Act No. 6, 1981)

Assent date	9 January 1981
Commenced	9 January 1981

Statute Law Revision Act 1983 (Act No. 58, 1983)

Assent date	28 November 1983
Commenced	28 November 1983

Legislative Assembly Members' Superannuation Amendment Act 1989 (Act No. 34, 1989)

Assent date	28 August 1989
Commenced	1 July 1989 (s 2)

De Facto Relationships (Miscellaneous Amendments) Act 1991 (Act No. 82, 1991)

Assent date	24 December 1991
Commenced	1 January 1992 (s 2)

Legislative Assembly Members' Superannuation Amendment Act 1992 (Act No. 5, 1992)

Assent date	8 April 1992
Commenced	8 April 1992

Legislative Assembly Members' Superannuation Amendment Act (No. 2) 1992 (Act No. 34, 1992)

Assent date	25 June 1992
Commenced	30 June 1992 (s 2)

Statute Law Revision Act 1992 (Act No. 46, 1992)

Assent date	7 September 1992
Commenced	7 September 1992

Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)

Assent date 30 June 1993
 Commenced 1 July 1993 (s 2, s 2 *Public Sector Employment and Management Act 1993* (Act No. 11, 1993) and *Gaz S53*, 29 June 1993)

Financial Management (Consequential Amendments) Act 1995 (Act No. 5, 1995)

Assent date 21 March 1995
 Commenced 1 April 1995 (s 2, s 2 *Financial Management Act 1992* (Act No. 4, 1995) and *Gaz S13*, 31 March 1995)

Legislative Assembly Members' Superannuation Amendment Act 1996 (Act No. 44, 1996)

Assent date 4 October 1996
 Commenced 22 August 1996 (s 2)

Legislative Assembly Members' Superannuation Amendment Act 1998 (Act No. 67, 1998)

Assent date 23 September 1998
 Commenced 20 October 1998 (*Gaz S41*, 20 October 1998)

Legislative Assembly Members' Superannuation Amendment Act 1999 (Act No. 5, 1999)

Assent date 26 February 1999
 Commenced 26 February 1999

Legislative Assembly Members' Superannuation Amendment Act (No. 2) 1999 (Act No. 61, 1999)

Assent date 14 December 1999
 Commenced 14 December 1999

Legislative Assembly Members' Superannuation Amendment Act 2003 (Act No. 10, 2003)

Assent date 18 March 2003
 Commenced 28 May 2003 (*Gaz G21*, 28 May 2003, p 3)

Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)

Assent date 7 January 2004
 Commenced 17 March 2004 (*Gaz G11*, 17 March 2004, p 8)

Legislative Assembly Members' Superannuation Amendment (Scheme Closure) Act 2004 (Act No. 68, 2004)

Assent date 21 December 2004
 Commenced 9 May 2005 (s 2, s 2 *Legislative Assembly Members' Superannuation Contributions Act 2004* (Act No. 69, 2004) and *Gaz S15*, 9 May 2005)

Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006 (Act No. 7, 2006)

Assent date 26 April 2006
 Commenced 26 April 2006

Superannuation Law Reform Act 2007 (Act No. 36, 2007)

Assent date 12 December 2007
 Commenced 23 January 2008 (*Gaz G3*, 23 January 2008, p 3)

Statute Law Revision Act 2008 (Act No. 6, 2008)

Assent date 11 March 2008
Commenced 11 March 2008

Financial Management Amendment Act 2009 (Act No. 15, 2009)

Assent date 18 June 2009
Commenced 18 June 2009

Superannuation Legislation Amendment Act 2010 (Act No. 42, 2010)

Assent date 13 December 2010
Commenced pt 1, pt 2, divs 1 to 3 and pt 4: 1 January 2011 (*Gaz S72*, 23 December 2010); rem: 15 March 2011 (*Gaz S13*, 14 March 2011)

Superannuation Amendment Act 2012 (Act No. 15, 2012)

Assent date 27 April 2012
Commenced 27 April 2012

Superannuation Legislation Amendment and Repeal Act 2014 (Act No. 39, 2014)

Assent date 13 November 2014
Commenced pts 1 and 2: 13 November 2014 (s 2); pts 3 and 5: 1 July 2015 (*Gaz G21*, 27 May 2015, p 2); pt 4: nc

Interpretation Legislation Amendment Act 2018 (Act No. 22, 2018)

Assent date 8 November 2018
Commenced pt 2 and ss 19, 20 and 25 to 27: 11 February 2019 (*Gaz S11*, 18 February 2019); rem: 11 December 2018 (*Gaz S101*, 11 December 2018)

Superannuation Legislation Amendment Act 2019 (Act No. 3, 2019)

Assent date 27 February 2019
Commenced pts 1 and 2: 2019 (s 2); pt 3: 12 April 2019 (*Gaz S20*, 10 April 2019); rem: nc

3 SAVINGS AND TRANSITIONAL PROVISIONS

- ss 5(2), 11(2) and 13(2) *Legislative Assembly Members' Superannuation Amendment Act 1989* (Act No. 34, 1989)
- s 11(2) *De Facto Relationships (Miscellaneous Amendments) Act 1991* (Act No. 82, 1991)
- s 13 *Legislative Assembly Members' Superannuation Amendment Act 1996* (Act No. 44, 1996)
- s 4 *Legislative Assembly Members' Superannuation Amendment Act 1999* (Act No. 5, 1999)
- s 75 *Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003* (Act No. 1, 2004)

4 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22 of 2018) to: ss 1, 3, 4, 5, 7, 12, 17A, 25AB, 25C and 27B.

5 LIST OF AMENDMENTS

lt	amd No. 68, 2004, s 4
s 1	amd No. 68, 2004, s 5; No. 3, 2019, s 8
s 3	amd No. 34, 1989, s 4; No. 5, 1992, s 2; No. 44, 1996, s 4; No. 67, 1998, s 4; No. 68, 2004, s 6; No. 7, 2006, s 30; No. 36, 2007, s 37; No. 42, 2010, s 22; No. 15, 2012, s 10; No. 22, 2018, s 37; No. 3, 2019, s 9
s 3A	ins No. 34, 1992, s 3 sub No. 44, 1996, s 5; No. 67, 1998, s 5 amd No. 42, 2010, s 27
s 3B	ins No. 39, 2014, s 28
pt II hdg	sub No. 3, 2019, s 10
pt II	
div 1 hdg	sub No. 3, 2019, s 10
s 4	amd No. 5, 1995, s 19; No. 67, 1998, s 6; No. 15, 2009, s 16; No. 42, 2010, s 23; No. 39, 2014, s 29 sub No. 3, 2019, s 10
s 4A	ins No. 34, 1989, s 5 amd No. 67, 1998, s 9 sub No. 36, 2007, s 38 amd No. 42, 2010, s 27; No. 39, 2014, s 30 sub No. 3, 2019, s 10
s 4B	ins No. 34, 1989, s 5 amd No. 67, 1998, s 9 sub No. 36, 2007, s 38 amd No. 42, 2010, s 27 rep No. 3, 2019, s 10
ss 4C – 4E	ins No. 67, 1998, s 7 amd No. 42, 2010, s 27 rep No. 3, 2019, s 10
s 4F	ins No. 61, 1999, s 2 amd No. 42, 2010, s 27 rep No. 3, 2019, s 10
s 5	amd No. 28, 1993, s 3; No. 42, 2010, s 27 sub No. 3, 2019, s 10
s 6	amd No. 6, 1981, s 4; No. 58, 1983, s 3; No. 42, 2010, s 27 sub No. 3, 2019, s 10
s 7	amd No. 58, 1983, s 3; No. 5, 1995, s 19; No. 67, 1998, s 9; No. 6, 2008, s 3; No. 42, 2010, s 27 sub No. 3, 2019, s 10
s 8	amd No. 67, 1998, s 9; No. 42, 2010, s 27 sub No. 3, 2019, s 10
s 9	amd No. 6, 2008, s 3 sub No. 3, 2019, s 10
s 9A	ins No. 3, 2019, s 10 sub No. 3, 2019, s 10
s 10	amd No. 5, 1995, s 19; No. 15, 2009, s 16 sub No. 3, 2019, s 10
pt II	
div 2 hdg	sub No. 42, 2010, s 24 sub No. 3, 2019, s 10
s 11	sub No. 42, 2010, s 24 sub No. 3, 2019, s 10
s 12	amd No. 44, 1996, s 6; No. 67, 1998, s 9 sub No. 42, 2010, s 24 amd No. 39, 2014, s 31 sub No. 3, 2019, s 10
s 13	rep No. 42, 2010, s 24

ENDNOTES

s 14	amd No. 67, 1998, s 9 rep No. 42, 2010, s 24
s 15	rep No. 42, 2010, s 24
s 15A	ins No. 68, 2004, s 7
s 16	amd No. 34, 1989, s 6; No. 67, 1998, s 9; No. 42, 2010, s 27; No. 3, 2019, s 13
s 17	amd No. 67, 1998, s 9; No. 42, 2010, s 27; No. 3, 2019, s 13
s 17A	ins No. 68, 2004, s 8 amd No. 3, 2019, s 13
s 18	amd No. 34, 1989, s 7; No. 82, 1991, s 11; No. 67, 1998, s 9; No. 1, 2004, s 62; No. 42, 2010, s 27; No. 3, 2019, s 13
s 19	amd No. 34, 1989, s 8 sub No. 44, 1996, s 7 amd No. 67, 1998, s 9; No. 5, 1999, s 2; No. 42, 2010, s 27; No. 3, 2019, s 13
s 21	amd No. 34, 1989, s 9; No. 44, 1996, s 8; No. 67, 1998, s 9
s 22	amd No. 34, 1989, s 10; No. 44, 1996, s 9; No. 67, 1998, s 9; No. 42, 2010, s 27; No. 3, 2019, s 13
s 23	amd No. 67, 1998, s 9 rep No. 5, 1999, s 3
s 24	amd No. 34, 1989, s 11; No. 44, 1996, s 10; No. 67, 1998, s 9; No. 42, 2010, s 27; No. 3, 2019, s 13
s 25	amd No. 34, 1989, s 12; No. 44, 1996, s 11; No. 67, 1998, s 9; No. 42, 2010, s 27; No. 3, 2019, s 13
s 25A	ins No. 34, 1989, s 13 amd No. 44, 1996, s 12; No. 67, 1998, s 9; No. 42, 2010, s 27; No. 3, 2019, s 13
s 25AB	ins No. 39, 2014, s 32
pt IVA hdg	ins No. 10, 2003, s 3
s 25B	ins No. 10, 2003, s 3 amd No. 42, 2010, s 27
ss 25C – 25D	ins No. 10, 2003, s 3 amd No. 42, 2010, s 27; No. 3, 2019, s 13
s 26	amd No. 6, 1981, s 4; No. 67, 1998, s 9 sub No. 42, 2010, s 25
s 27	amd No. 67, 1998, s 9 sub No. 68, 2004, s 9
s 27A	ins No. 68, 2004, s 9 amd No. 3, 2019, s 13
s 27B	ins No. 39, 2014, s 72 amd No. 3, 2019, s 13
s 28	amd No. 58, 1983, s 3; No. 5, 1992, s 3; No. 46, 1992, s 13 rep No. 67, 1998, s 8 ins No. 10, 2003, s 4 amd No. 42, 2010, s 27 sub No. 3, 2019, s 11
s 28A	ins No. 39, 2014, s 33 sub No. 3, 2019, s 11
pt VI hdg	ins No. 42, 2010, s 26
ss 30 – 36	ins No. 42, 2010, s 26
pt VII hdg	ins No. 39, 2014, s 73
s 37	ins No. 39, 2014, s 73
pt VIII hdg	ins No. 3, 2019, s 12
ss 38 – 40	ins No. 3, 2019, s 12