

NORTHERN TERRITORY OF AUSTRALIA

SUPERANNUATION ACT

As in force at 30 October 2002

Table of provisions

Part I	Preliminary	
1	Short title	1
2	Commencement	1
3	Interpretation	1
3A	Scheme to comply with superannuation surcharge laws and agreements with Commonwealth	5
Part II	Administration	
Division 1	Commissioner of Superannuation	
4	Commissioner.....	5
5	Acting appointment.....	5
6	Functions and powers of Commissioner.....	6
7	Delegation	6
8	Secrecy.....	6
Division 2	Superannuation Review Board	
9	Superannuation Review Board	7
10	Functions and powers of Review Board	8
Division 3	Superannuation Investment Board	
11	Superannuation Investment Board	8
12	Functions and powers of Investment Board.....	8
Division 4	General	
13	Definition.....	9
14	Nomination and appointment of members	9
15	Alternate members	10
16	Chairman and acting Chairman	10
17	Period of appointment	11
18	Leave of absence	11
19	Resignation of members.....	11
20	Dismissal	11
21	Disclosure of interest	12
22	Meetings of Board	12
23	Validity of acts or decisions of Board.....	13

24	Protection of members	13
25	Boards not subject to direction of Ministers	13

Part III Northern Territory Government and Public Authorities' Superannuation Scheme

Division 1 The Scheme

26	Membership.....	14
27	Information.....	14
28	Records of accumulation accounts.....	14
28A	Surcharge debt accounts.....	15
28B	Advance payments to reduce superannuation contributions surcharge.....	15
29	Payment of benefits.....	15
30	Commissioner may recover employer-financed benefits on behalf of Territory	16
31	Discretionary benefits	16
32	Assignment, &c., of benefit.....	17
33	Payment without grant of probate, &c.....	17
34	Payment where beneficiary incapable	18
35	Unclaimed benefits	18
36	Portability of benefits	18
37	Rules	19

Division 2 Northern Territory Government and Public Authorities Employees' Superannuation Fund

38	Establishment of Fund.....	20
39	Fund accounts	20
40	Proper accounts to be kept.....	21
41	Fixing of interest rates	21
42	Recovery of money owing to Fund or Territory.....	22
43	Annual reports and audit	23
44	Rule against perpetuities not to apply.....	23
45	Actuarial review	23

Part IV Claims for benefits and review of decisions

46	Claim for benefit under Scheme	24
47	Application for review	24
48	Procedure and decision of Board	25
49	Appeal on point of law	25

Part V Miscellaneous

50	Approval for retirement for invalidity	26
51	Regulations.....	26
52	Transitional.....	26

53	Further transitional provision on extension of Scheme to Police Force.....	27
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Schedule

ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

As in force at 30 October 2002

SUPERANNUATION ACT

An Act to provide superannuation benefits for persons employed by the Territory and by certain public authorities, to make provision for certain dependants of those persons, and for related purposes

Part I Preliminary

1 Short title

This Act may be cited as the *Superannuation Act*.

2 Commencement

- (1) Sections 1 and 2 shall come into operation on the day on which the Administrator's assent to this Act is declared.
- (2) The remaining provisions of this Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Interpretation

- (1) In this Act, unless the contrary intention appears:

accumulation account means an account kept under section 28 in the name of an eligible employee or former eligible employee.

Acting Chairperson, in relation to a Board, means the person appointed under section 16(5) to act as the relevant Chairperson.

approved means approved by the Commissioner.

approved deposit means all or part of an amount received by or on behalf of an eligible employee from another approved superannuation scheme or source for payment into the Fund and credited to the eligible employee's accumulation account.

Board means the Review Board or the Investment Board.

Chairperson, in relation to a Board, means the relevant Chairperson appointed under section 16, and includes the Acting Chairperson while he or she is so acting.

Commissioner means the Commissioner of Superannuation appointed under section 4, and includes a person appointed under section 5 to act as the Commissioner while he or she is so acting.

Commonwealth Act means the *Superannuation Act 1976* of the Commonwealth.

dependant, in relation to an eligible employee or former eligible employee, means a spouse, widow, widower, child, adopted child or ex-nuptial child of an eligible employee or former eligible employee or a person who, in the opinion of the Commissioner, is at the relevant date (or in the case of a deceased person was at his or her death) wholly or partially dependent on the eligible employee or former eligible employee or who has or had at the relevant date a legal right to look to the eligible employee or former eligible employee for support.

eligible employee means a permanent employee employed in a full time or part time capacity, other than:

- (a) an employee, or a member of a prescribed class of employees, declared in writing for the purposes of this paragraph by the Commissioner;
- (b) a subscriber to or a member of a superannuation scheme, not being:
 - (i) the Scheme established by this Act;
 - (ii) a superannuation scheme, or one of a class of superannuation schemes, declared in writing for the purposes of this subparagraph by the Commissioner; or
 - (iii) a superannuation scheme where no benefits are directly or indirectly provided or contributed to by any employer; or
- (d) a person employed in or appointed to an office established by name by an Act (unless the office is declared in writing by the Commissioner not to be an office for the purposes of this paragraph), who is not:
 - (i) a Chief Executive Officer or employee, as defined in the *Public Sector Employment and Management Act*;
 - (ii) an officer or employee of the Northern Territory Teaching Service; or
 - (iii) a member of the Police Force.

employer-financed benefit does not include an approved deposit paid into the Fund.

Fund means the Northern Territory Government and Public Authorities Employees' Superannuation Fund established under section 38.

Investment Board means the Superannuation Investment Board established under section 11.

permanent employee means:

- (a) a person who is employed, whether or not on probation, as:
 - (i) a Chief Executive Officer or employee, as defined in the *Public Sector Employment and Management Act*;
 - (ii) an officer or employee of the Northern Territory Teaching Service; or
 - (iii) a member of the Police Force,otherwise than on a tenure expressed to be for a period of less than 6 months;
- (b) a person (other than a person described in paragraph (a) of this definition) who is employed on a contract of service by the Territory or by a public authority, not being a contract of service that is expressed to be for a term of less than 6 months, whether the terms and conditions of his or her employment are set out in the contract or fixed by or under an Act; or
- (c) in relation to so much of the period of his or her employment as is continuous employment by the Territory or a public authority after the expiration of the period of 6 months of such continuous employment, a person:
 - (i) described in paragraph (a) of this definition; or
 - (ii) employed on a contract of service by the Territory or by a public authority,

whose tenure is expressed to be for a period of less than 6 months but who is employed for a continuous period of not less than 6 months by the Territory or a public authority.

Police Associations means the Northern Territory Police Association and the Northern Territory Police Commissioned Officers Association.

public authority means an authority or body prescribed in the Regulations.

Public Service means the Public Sector as defined in the *Public Sector Employment and Management Act*.

Review Board means the Superannuation Review Board established under section 9.

Rules means the Rules set out in the Schedule, as they are amended from time to time.

Scheme means the Northern Territory Government and Public Authorities' Superannuation Scheme, being the scheme of contributions and benefits payable under this Act and the Rules.

spouse, in relation to an eligible employee or former eligible employee, includes:

- (a) a person who is accepted by the Commissioner as having, immediately before the relevant date (or, in the case of a deceased employee, immediately before the employee's death) been living with the employee as husband or wife on a bona fide domestic basis; and
- (b) where the employee is an aboriginal native of Australia, a person referred to in paragraph (a) or a person who is, according to the customs of the group or tribe of aboriginal natives of Australia to which either belongs, married to the employee,

and **widow** and **widower** shall be construed accordingly.

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.

Trades and Labor Council means the body known as the Northern Territory Trades and Labor Council as constituted from time to time and recognized by the Australian Council of Trade Unions as the official Northern Territory Branch of the Australian Council of Trade Unions.

- (2) Where in the definition of **eligible employee** in subsection (1) reference is made to an employee or class of employees, a superannuation scheme or an office declared in writing by the Commissioner, that employee or class of employees, scheme or office may be so declared by the Commissioner:
 - (a) in the case of the declaration of an employee – by notice in writing to the employee; and
 - (b) in any other case – by notice in the *Gazette*.
- (3) A declaration under subsection (2) takes effect or shall be deemed to have taken effect, as the case may be, on and from the date specified in the relevant notice.

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.

Part II Administration

Division 1 Commissioner of Superannuation

4 Commissioner

There shall be a Commissioner of Superannuation who shall be appointed by the Administrator.

5 Acting appointment

The Minister may appoint a person to act from time to time as the Commissioner during the absence from duty or from the Territory of the Commissioner or a vacancy in the office of Commissioner.

6 Functions and powers of Commissioner

- (1) The functions of the Commissioner are:
 - (a) as directed by the Investment Board, to undertake and manage the investments of the Fund;
 - (b) subject to paragraph (a), to administer the Scheme; and
 - (c) such other functions as are imposed on him or her by or under this or any other Act.
- (2) The Commissioner has such powers as are necessary to enable him or her to perform his or her functions or exercise his or her powers or as are conferred on him or her by or under this or any other Act.
- (3) Without limiting the generality of subsection (2), but subject to this Act, the Commissioner has power to borrow money for the Fund, or obtain overdraft accommodation, not exceeding \$1,000,000 or 10% of the value of the Fund, whichever is the greater, as directed by the Investment Board, to meet liabilities of the Fund.

7 Delegation

- (1) The Commissioner may, by instrument in writing, delegate to a person any of his or her powers and functions under this Act, other than this power of delegation.
- (2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act and the Rules, be deemed to have been exercised or performed by the Commissioner.
- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Commissioner.

8 Secrecy

- (1) Subject to this Act and the Rules, the Commissioner or a person who is, or has at any time been, employed by the Territory shall not, either directly or indirectly, except for the purposes of this Act or the Rules:
 - (a) make a record of, or communicate to a person, information concerning the affairs of another person acquired by him or her under this Act or the Rules by reason of his or her office or that employment; or

- (b) produce to a person, or permit a person to have access to, a document furnished to him or her for the purposes of this Act or the Rules.

Penalty: \$1,000.

- (2) Subsection (1) does not apply to the communication of information or the production of a document by the Commissioner, or by a person authorized by him or her, to a person performing, in pursuance of employment by the Territory, a function under this Act for the purpose of enabling that person to carry out that function.

Division 2 Superannuation Review Board

9 Superannuation Review Board

- (1) There shall be a Board by the name of the Superannuation Review Board.
- (2) The Review Board shall consist of:
 - (a) the Chairperson; and
 - (b) 3 other residents of the Territory appointed by the Minister, of whom:
 - (i) one, who shall be a member of an industrial union having a significant membership among eligible employees, shall be appointed on the nomination of the Trades and Labor Council; and
 - (ii) one shall be appointed on the nomination of the Police Associations jointly.
- (3) The member of the Review Board appointed on the nomination of the Police Associations shall act as such only where the Board is:
 - (a) reviewing as mentioned in section 10(1)(a) a matter concerning a member of the Police Force; or
 - (b) considering under section 37(3) proposed amendments to the Rules which, in the opinion of the Chairperson, are of particular significance to members of the Police Force,

and, in the circumstances mentioned in paragraph (a), shall so act to the exclusion of the member appointed on the nomination of the Trades and Labor Council.

10 Functions and powers of Review Board

- (1) The functions of the Review Board are:
 - (a) to review, in accordance with Part IV, any decision or action of the Commissioner under the Rules or the Commissioner's failure to make a decision or to act;
 - (b) to advise the Minister on the amending of the Rules; and
 - (c) such other functions as are imposed on it by or under this or any other Act.
- (2) The Review Board has such powers as are necessary to enable it to perform its functions or exercise its powers or as are conferred on it by or under this or any other Act.

Division 3 Superannuation Investment Board

11 Superannuation Investment Board

- (1) There shall be a board by the name of the Superannuation Investment Board.
- (2) The Investment Board shall consist of:
 - (a) the Chairperson; and
 - (b) 2 other residents of the Territory appointed by the Minister of whom one shall be a member of an industrial union having a significant membership among eligible employees appointed on the nomination of the Trades and Labour Council.

12 Functions and powers of Investment Board

- (1) The functions of the Investment Board are:
 - (a) to act as trustees of the Fund;
 - (b) to direct the Commissioner in managing the Fund on its behalf and the investments of the Fund; and
 - (c) such other functions as are imposed on it by or under this or any other Act.
- (2) The Investment Board has such powers as are necessary to enable it to perform its functions or exercise its powers or as are conferred on it by or under this or any other Act.

- (3) Without limiting the generality of subsection (2), the Investment Board may direct the Commissioner:
- (a) to engage such managers, financial and legal advisers, actuaries and other experts in and in relation to the Commissioner's management of the investments of the Fund; and
 - (b) to invest the moneys of the Fund in such investments or types of investments within or outside the Territory as are prescribed or, in the absence of such prescription,
- as it thinks fit.
- (4) In directing the Commissioner in pursuance of this section, the Investment Board shall have regard to the need:
- (a) to make provisions for payments under the Scheme out of the Fund;
 - (b) for equity among eligible employees;
 - (c) to ensure that the moneys standing to the credit of the Fund are invested so as to achieve maximum returns consistent with sound management of the assets of the Fund;
 - (d) to exercise reasonable care and prudence in order to maintain the integrity of the Fund;
 - (e) to establish policies for the investment of moneys standing to the credit of the Fund and the strategies that are to be adopted to achieve those policies;
 - (f) to determine, authorize or approve programmes for the investment of moneys standing to the credit of the Fund; and
 - (g) to ensure an adequate spread of investments of the Fund.

Division 4 General

13 Definition

In this Division *member* means a member of a Board and includes an alternate member appointed under section 15.

14 Nomination and appointment of members

- (1) If the Trades and Labor Council fails to make a nomination for the purposes of section 9(2)(b)(i) or 11(2)(b) within 28 days after being requested in writing by the Minister to do so or nominates a person

who is a member of an industrial union which, in the opinion of the Minister, does not have a significant membership among eligible employees, the Minister may appoint any resident of the Territory considered by him or her to be qualified for nomination by the Council and suitable to be appointed, and the person so appointed shall be deemed to have been appointed on the nomination of the Council.

- (1A) If the Police Associations fail to make a nomination for the purposes of section 9(2)(b)(ii) within 28 days after being requested in writing by the Minister to do so, the Minister may appoint any resident of the Territory whom he or she considers suitable to be appointed, and the person so appointed shall be deemed to have been appointed on the nomination of the Associations.
- (2) A member appointed under section 9(2)(b) or 11(2)(b) may be appointed by reference to an office specified in the instrument of appointment and where an appointment is so made the holder of that office from time to time shall be that member.

15 Alternate members

- (1) At the same time as he or she appoints a member under section 9(2)(b) or 11(2)(b), and from time to time as the occasion requires, the Minister shall appoint another resident of the Territory, to be an alternate member for that member.
- (2) The Minister shall not appoint a person to be an alternate member for the member appointed on the nomination of the Trades and Labor Council or the Police Associations unless that person has been nominated as an alternate member by that Council or, as the case may be, those Associations.
- (3) An alternate member appointed under subsection (1) shall perform the functions and may exercise the powers of the member for whom he or she is appointed an alternate member during the absence from the Territory or from duty of the member or the member's inability (because of his or her disclosure of an interest in accordance with section 21, or otherwise) to act as a member.

16 Chairman and acting Chairman

- (1) Subject to this section, the Minister shall, by notice in the *Gazette*, appoint a resident of the Territory to be the Chairperson of a Board.
- (2) The Minister shall, whenever the occasion for the appointment of the Chairperson arises, by notice in writing to the Secretary of the Trades and Labor Council, indicate the names of 3 residents of the Territory as candidates for appointment as the Chairperson.

- (3) If within 28 days after receiving the notice under subsection (2) the Trades and Labor Council, in writing, indicates to the Minister that a particular person named in the notice under that subsection should be appointed as the Chairperson, the Minister shall appoint that person accordingly.
- (4) If within 28 days after receiving the notice under subsection (2) the Trades and Labor Council has not indicated to the Minister that a particular person named in the notice should be appointed as the Chairperson or the Trades and Labor Council indicates that another person, or one of a number of persons, nominated by it should be appointed as the Chairperson, the Minister may appoint any person named in the notice under that subsection, or nominated by the Trades and Labor Council, to be the Chairperson.
- (5) The Minister shall, in the same manner and subject to the same conditions as apply under this section to the appointment of the Chairperson, appoint a resident of the Territory to act from time to time as the Chairperson during the absence from duty or from the Territory of the Chairperson or a vacancy in the office of Chairperson.

17 Period of appointment

- (1) The Chairperson and Acting Chairperson, and a member appointed under section 9(2)(b) or 11(2)(b), hold office, subject to this Part and the Regulations, for 5 years from the date of their respective appointments but are eligible for re-appointment.
- (2) Subsection (1) does not apply to a member appointed under section 9(2)(b) or 11(2)(b) who is a member by virtue of being the holder for the time being of an office, position or designation.

18 Leave of absence

The Minister may grant leave of absence to a member on such terms and conditions as the Minister thinks fit.

19 Resignation of members

A member may resign his or her office by notice in writing signed by him or her and delivered to the Minister.

20 Dismissal

- (1) The Minister may terminate the appointment of a member for inability, inefficiency, misbehaviour or physical or mental incapacity.

- (2) The Minister shall terminate the appointment of a member if the member:
- (a) has been convicted and is under sentence of imprisonment for a period of not less than 3 months for an offence against a law of the Territory, the Commonwealth or a State of the Commonwealth or another Territory;
 - (b) ceases to be a resident of the Territory;
 - (c) is absent, except on leave granted by the Minister or the Board, from 3 consecutive meetings of the Board; or
 - (d) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.

21 Disclosure of interest

- (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board otherwise than:
- (a) by virtue of his or her being an eligible employee; or
 - (b) as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 persons and of which he or she is not a director,
- shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his or her interest at a meeting of the Board.
- (2) A disclosure under subsection (1) shall be recorded in the minutes of the Board and the member:
- (a) shall not, while he or she has that interest, take part after the disclosure in any deliberation or decision of the Board in relation to that matter; and
 - (b) shall be disregarded for the purpose of constituting the Board in relation to that matter.

22 Meetings of Board

- (1) The Chairperson may at any time, and shall if so requested by a member, convene a meeting of the Board.

- (2) A meeting requested by a member to be convened shall be held on such date, being not less than 7 days after the request, as the member specifies in his or her request, or as soon as practicable thereafter.
- (3) The Chairperson shall preside at all meetings of the Board at which he or she is present.
- (4) In the absence of the Chairperson from a meeting of the Board the Acting Chairperson shall preside at the meeting.
- (5) Subject to Part IV, at a meeting of the Board:
 - (a) 3 members constitute a quorum;
 - (b) questions arising shall be determined by a majority of the votes of the members; and
 - (c) the Board shall determine the procedure to be followed at or in connection with the meeting.
- (6) The Board shall keep records of its meetings.

23 Validity of acts or decisions of Board

An act or decision of the Board shall not be invalid by reason only of:

- (a) a defect or irregularity in or in connection with the appointment of a member; or
- (b) a vacancy in the membership of the Board, including a vacancy arising because of the failure to appoint a member.

24 Protection of members

No action or proceeding, civil or criminal, shall be commenced or lie against a member for or in respect of an act or thing done or omitted to be done in good faith by him or her in his or her capacity as a member or the performance or purported performance of a function, or in the exercise or purported exercise of a power, under this Act.

25 Boards not subject to direction of Ministers

In the performance of its functions and the exercise of its powers, a Board is not subject to the directions of any minister.

Part III Northern Territory Government and Public Authorities' Superannuation Scheme

Division 1 The Scheme

26 Membership

- (1) All eligible employees are members of the Scheme.
- (2) An eligible employee shall pay to the Commissioner the contributions he or she is required by the Rules to pay.
- (3) An eligible employee, former eligible employee or a dependant of an eligible employee or former eligible employee shall be entitled to receive benefits under the Scheme in accordance with this Part and the Rules.

27 Information

- (1) An eligible employee or former eligible employee may request the Commissioner to provide him or her with information about the state of:
 - (a) his or her accumulation account in the Fund;
 - (b) his or her surcharge debt account; or
 - (c) the number of annual benefit points to which he or she is entitled under the Scheme.
- (1A) The Commissioner must, as soon as practicable after receiving a request under subsection (1), supply the information requested.
- (2) The Commissioner may, at any time, require an eligible employee or the employer of an eligible employee to provide to the Commissioner such information relating to the remuneration of the employee, or such other information relevant to the administration of the Scheme, as the Commissioner requires, and the eligible employee or the employer, as the case may be, shall provide the information accordingly.

28 Records of accumulation accounts

The Commissioner shall keep as a separate account in the accounts of the Fund records of all contributions and approved deposits of an eligible employee and, where necessary, a former eligible employee and the interest accumulated on those contributions and approved deposits, in accordance with the Scheme.

28A 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 within the accounts of the Fund for each eligible employee or former eligible employee in relation to whom superannuation contributions surcharge is paid or payable by the Commissioner.
- (2) The Commissioner must debit to the surcharge debt account of an eligible employee or former eligible employee:
 - (a) superannuation contributions surcharge paid or payable by the Commissioner in respect of the employee; and
 - (b) interest paid or 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 an eligible employee or former eligible employee an amount paid under section 28B by the employee.

28B Advance payments to reduce superannuation contributions surcharge

- (1) An eligible employee or former eligible employee may, on lodging an approved election form with the Commissioner, pay an amount to the Fund for the purpose of reducing the amount by which his or her surcharge debt account is in debit.
- (2) A payment under this section may be made on a periodic or single payment basis.
- (3) An election form lodged under subsection (2) is to specify the amount to be paid and the manner of payment.
- (4) An eligible employee or former eligible employee may, on lodging an approved election form with the Commissioner:
 - (a) vary in accordance with the form the amount or manner of payment of periodic payments; or
 - (b) revoke an election under this section.

29 Payment of benefits

- (1) All benefits payable under the Scheme shall be paid from the Fund.

- (2) In the case of a benefit which includes a component financed by an employer, an amount equal to that of the component shall be paid to the Fund, immediately before the benefit is paid or as soon as practicable (and in any event within 14 days) thereafter, out of:
- (a) moneys set aside for the purpose of paying the employer-financed component of such benefits; or
 - (b) to the extent that those moneys are inadequate, the public moneys of the Territory and the Allocation for that purpose is hereby established or increased to the extent necessary.

30 Commissioner may recover employer-financed benefits on behalf of Territory

- (1) Where, in pursuance of section 29(2), an amount is paid to the Fund in respect of a person who is or has been an eligible employee, being an eligible employee who is or was employed by a public authority, the authority shall, subject to subsection (3), pay to the Territory an amount equal to that amount less, where an amount has been paid or is payable out of the Fund to the Territory in respect of the person, such amount as the Minister determines, and the public authority may apply for that purpose any moneys under its control.
- (2) The Minister may require a public authority to enter into an arrangement with the Territory for the making of payments to the Territory by the public authority in lieu of payments that, but for the arrangement, the public authority would be required to make under subsection (1), being an arrangement which the Minister is satisfied will provide a fair basis of payment to the Territory in respect of amounts paid, payable or likely to become payable to the Fund under section 29(2) in respect of eligible employees who are or have been employed by the public authority, and the public authority shall enter into such an arrangement, and the arrangement may be enforced by the Territory, accordingly.
- (3) The Minister may, by notice in writing to the authority, exempt a public authority from its obligation to make a payment under subsection (1) and the authority, accordingly, shall not be required to make that payment.

31 Discretionary benefits

Notwithstanding anything in this or any other Act, the Commissioner may, with the approval in writing of the Minister and the Review Board, approve the payment to any person of a benefit not expressly provided for, or in addition to that provided for, under the Scheme, and that benefit shall be paid accordingly.

32 Assignment, &c., of benefit

- (1) A purported assignment of, or purported charge over, a benefit payable under the Scheme is void.
- (2) Where, but for this subsection, a benefit would pass by operation of law to a person other than a person to whom the benefit is payable under the Scheme, the benefit does not so pass.

33 Payment without grant of probate, &c.

- (1) Where an eligible employee or former eligible employee dies and:
 - (a) a benefit not exceeding \$15,000 (or, where some other amount is prescribed for the purposes of this paragraph, that other amount) is thereby payable under the Scheme;
 - (b) production to the Commissioner of probate of the will, or letters of administration of the estate, has not been arranged; and
 - (c) the Commissioner has not, within 3 months after the death of the eligible employee or former eligible employee, received notice of intention to apply for a grant of probate of the will, or letters of administration of the estate, of the deceased,

the Commissioner may, if he or she so decides, apply the amount of the benefit in accordance with subsection (2).

- (2) Where the Commissioner makes a decision under subsection (1), he or she shall either:
 - (a) pay the amount of the benefit to a dependant or dependants of the deceased;
 - (b) after paying the funeral expenses of the deceased or reimbursing a person who has paid those expenses, pay the balance to a dependant or dependants of the deceased; or
 - (c) where, at the time of the death of the eligible employee or former eligible employee, there was no person dependent on him or her, pay the amount of the benefit, or the balance referred to in paragraph (b), to some other person.
- (2A) Where an eligible employee or former eligible employee dies, and a benefit of any amount is thereby payable under the Scheme, the Commissioner may if the Commissioner considers it appropriate to do so for the purpose of alleviating financial hardship pay a part of the benefit to a dependant of the deceased:

- (a) at any time before the production to the Commissioner of probate of the will or letters of administration of the estate; and
 - (b) notwithstanding that the Commissioner has received notice of intention to apply for a grant of probate or letters of administration.
- (2B) The receipt in writing of a person in respect of a payment made to him or her under subsection (2) or (2A) is, to the extent of the payment, a good discharge of the obligation under this Act of the Commissioner and the Investment Board.
- (3) Notwithstanding anything in this Act or the Rules, the Commissioner may pay to the Public Trustee (whether or not the Public Trustee is the personal representative of the deceased) or to the personal representative a benefit payable on the death of a deceased eligible employee or former eligible employee (other than a benefit which has not been claimed) for which benefit the receipt of the Public Trustee or that personal representative is a good discharge of the obligation under this Act of the Commissioner and the Investment Board.

34 Payment where beneficiary incapable

- (1) Where an eligible employee or former eligible employee to whom a benefit under this Act is payable is, in the opinion of the Commissioner, incapable of administering the member's own affairs by reason of illness, imprisonment or any other cause, the Commissioner may pay the benefit to the Public Trustee for which benefit the receipt of the Public Trustee is a good discharge of the obligation under the Act of the Commissioner and the Investment Board.
- (2) A payment made under subsection (1) shall be deemed to have been made to the person entitled to the benefit.

35 Unclaimed benefits

The Commissioner may pay to the Consolidated Revenue Account the amount of a benefit payable under the Scheme which benefit has not been claimed within 6 years after it first became payable.

36 Portability of benefits

- (1) This section and the Rules are subject to an agreement or arrangement entered into under subsection (4).

- (2) On entering the Scheme an eligible employee may elect to pay into the Fund, to the credit of his or her accumulation account, an approved deposit.
- (3) Where an approved deposit is paid into the Fund, the Commissioner may place conditions on the withdrawal or transfer of any part of that approved deposit from the eligible employee's or former eligible employee's accumulation account
- (4) The Commissioner may, with the approval of the Minister, enter into an agreement or arrangement with the administrators, trustees or controlling body of another superannuation scheme or fund for the preservation of benefits and entitlements between the Scheme and that other scheme or fund and for the payment of money into or from the Scheme (including the Fund), and for related purposes.
- (5) The Commissioner may, with the approval in writing of the Minister, on such conditions as the Commissioner thinks fit, recognize for the purposes of the Scheme a period of membership, and accrued benefits and entitlements, of a person as a member of an approved previous superannuation scheme and, accordingly, shall adjust the benefits payable to that person as an eligible employee in the Scheme on his or her exiting from the Scheme.

37 Rules

- (1) The Rules set out in the Schedule are, until amended in accordance with this section, the Scheme Rules.
- (2) The Minister may, by notice in the *Gazette*, make rules not inconsistent with this Act, the Regulations or an agreement, approved by the Minister, with the administrators, trustees or controlling body of another superannuation scheme, amending the Rules.
- (3) Before making rules under subsection (2), the Minister shall:
 - (a) notify the Review Board in writing of the amendments to the Rules that he or she proposes to make, and give the Board not less than 21 days to consider them; and
 - (b) consider any advice with respect to the proposed amendments given to him or her either by the Review Board or by individual members of the Review Board.
- (4) Section 63 of the *Interpretation Act* applies to and in relation to rules made under subsection (2) as if they were rules forwarded to the Minister, on the date on which they were made, by some other person with a power under this Act to make them.

- (5) Where rules made by the Minister under subsection (2) do not accord with advice in writing given to him or her under subsection (3) by the Review Board or any individual member of the Review Board, the Minister shall lay a copy of that advice before the Legislative Assembly at the same time as he or she lays the rules before it under section 63(3)(c) of the *Interpretation Act*.

Division 2 Northern Territory Government and Public Authorities Employees' Superannuation Fund

38 Establishment of Fund

- (1) The Commissioner, on behalf of the Investment Board, shall establish a fund to be known as the Northern Territory Government and Public Authorities Employees' Superannuation Fund.
- (2) The Commissioner, on behalf of the Investment Board, shall maintain and manage the Fund in accordance with this Act and the Rules.

39 Fund accounts

- (1) Subject to this Part and the approval of the Treasurer, the Commissioner, on behalf of the Investment Board, shall open and maintain such account or accounts with such ADI or ADIs or the Territory Insurance Office as the Investment Board determines.
- (2) The Investment Board shall cause to be paid:
- (a) to the credit of the account or accounts referred to in subsection (1):
- (i) payments or contributions received under this Act by the Commissioner from eligible employees;
 - (ii) income derived from investments of the Fund;
 - (iii) profits made from realization of investments of the Fund;
 - (iv) money payable to the Fund under section 29(2) or, except for contributions, under the Scheme; and
 - (v) money borrowed for the purposes of the Fund; and
- (b) from the account or accounts referred to in subsection (1):
- (i) the benefits payable under the Scheme in accordance with this Act and the Rules;

- (ia) amounts of superannuation contributions surcharge that are payable in relation to each eligible employee or former eligible employee;
- (ii) the costs incurred by or on behalf of the Investment Board in the management of the Fund, including reasonable brokerage fees, costs of investment advice and other expenses relating to the functions of the Investment Board in the investment of the Fund, and the cost of borrowing for the purposes of the Fund by the Commissioner, but not including the day to day management costs incurred by the Commissioner; and
- (iii) unclaimed benefits payable under the Scheme into the Consolidated Revenue Fund.

40 Proper accounts to be kept

The Investment Board shall cause the Commissioner to keep proper accounts and records of transactions for the purposes of this Act and the Rules and shall do all things necessary to ensure that all payments out of the moneys of the Fund are correctly made and properly authorized and that adequate control is maintained over the property of the Fund or in the custody of the Investment Board and over the incurring of liabilities by or on behalf of the Investment Board.

41 Fixing of interest rates

- (1) Subject to subsection (3), the Investment Board shall, as soon as practicable after the end of each financial year, by notice in the *Gazette*, declare a rate as the rate at which interest will accrue on eligible employees' and former eligible employees' accumulation accounts in the Fund during that financial year and, subject to subsection (2), interest for that period at that rate shall be credited to those accounts in the Fund accordingly.
- (2) The Investment Board shall, from time to time, declare an interim interest rate in respect of a period where an interest rate under subsection (1) has not been declared and that interim interest rate shall be the rate applied in respect of the entitlement of a person where, during that period, he or she ceases to be an eligible employee and in respect of the entitlement of a former eligible employee who has preserved a benefit in the Scheme and who elects to withdraw or have the benefit transferred in that period, but for no other purpose.

- (3) The Investment Board shall not declare a rate under subsection (1) or (2) which does not, in its opinion, approximate the net earning rate of the Fund for the period in relation to which it is declared adjusted, as the Board thinks fit, to reduce fluctuations.

42 Recovery of money owing to Fund or Territory

- (1) The Commissioner, on behalf of the Investment Board, may recover money owing to the Fund by an eligible employee or other person, together with interest thereon as provided by subsection (3):
- (a) except in the case of unpaid contributions – as a debt due and payable to the Fund; or
 - (b) in the case of an eligible employee – by deduction from his or her salary in accordance with subsection (2) by such instalments, and at such times, as the Commissioner determines as if the money owing to the Fund were Territory money within the meaning of the *Financial Management Act* and the directions under section 38 of that Act by the Treasurer and in force from time to time applied to and in relation to it.
- (2) An employer shall, at the request in writing of the Commissioner, make deductions from an eligible employee's salary as referred to in subsection (1)(b) and pay the amount of the deductions into the Fund, and an amount so deducted and paid shall be deemed to have been paid to the Fund by the eligible employee from whose salary the deduction was made.
- (3) Interest at a rate from time to time determined by the Investment Board is payable on any amount owing to the Fund calculated from the date on which the amount became due and payable until the date on which the amount is recovered under subsection (1) or is otherwise paid.
- (4) Where the Territory makes a payment to a person in excess of the amount that under the Scheme it is required to make, it may recover that amount of overpayment as a debt due and payable by the person to the Territory.

43 Annual reports and audit

- (1) Within the period of 6 months immediately following the end of the financial year or such other period as the Treasurer determines:
 - (a) the Investment Board shall prepare and submit to the Minister:
 - (i) a report on its operations during the year; and
 - (ii) a financial statement in respect of the Fund prepared on commercial accounting principles or on such other basis as the Treasurer directs; and
 - (b) the Commissioner shall prepare for submission to the Minister a report on the operation and management of the Scheme during the financial year.
- (2) The Investment Board shall, within 3 months immediately following the end of the financial year to which the statement relates, forward the financial statement referred to in subsection (1)(a)(i) to the Auditor-General who shall audit it and, within the period of 3 months after receiving it or such other period as the Administrator allows, report on the statement to the Minister and forward a copy of the report to the Investment Board.
- (3) The Minister shall table the reports under subsection (1), together with the financial statement and the report of the Auditor-General on the financial statement, in the Legislative Assembly within 6 sitting days of the Assembly after the delivery of the later of those reports to the Minister.

44 Rule against perpetuities not to apply

The rule of law known as the rule against perpetuities does not apply to or in relation to the Fund or an investment of the Fund.

45 Actuarial review

- (1) The Commissioner shall cause an actuarial review of the operations of the Scheme to be made as at the 30 June of any of the first 3 years after the commencement of this Part and every 3 years after that first review, or earlier if so directed by the Minister, and may engage an actuary for that purpose.
- (2) The Commissioner shall forward to the Minister a copy of the report by the actuary within 20 days after receiving it from him or her, together with any comments which the Commissioner wishes to make on the report.

- (3) The Minister shall, within 3 sitting days of the Legislative Assembly, after a report referred to in subsection (2) is received by him or her, table it in the Legislative Assembly.
- (4) The cost of engaging an actuary for the purposes of this section and the costs of the review shall be met by the Territory.

Part IV Claims for benefits and review of decisions

46 Claim for benefit under Scheme

- (1) An eligible employee or other person entitled or claiming to be entitled to a benefit under the Scheme may apply to the Commissioner, in the approved form and manner, for the payment of that benefit to him or her.
- (2) Where under the Rules the Commissioner is required to or may make a decision or take an action in relation to or affecting an eligible employee or other person, the eligible employee or person may apply to the Commissioner, in the approved form and manner, for the Commissioner to make that decision or take that action.
- (3) The Commissioner shall, as soon as practicable after receiving an application under subsection (1) or (2), make a decision on the application and by notice in writing advise the applicant of that decision and of the applicant's rights under subsections (4) and (5).
- (4) An applicant may, in writing, require the Commissioner to give his or her reasons in writing for his or her decision on the application and the Commissioner shall give his or her reasons accordingly.
- (5) An applicant who is aggrieved by a decision of the Commissioner under subsection (3) may, at any time, request the Commissioner to reconsider his or her decision and the Commissioner shall, as soon as practicable after receiving the request, reconsider the decision.

47 Application for review

- (1) Subject to subsection (3), a person who is aggrieved by a decision of the Commissioner under section 46(3) or (5), the failure of the Commissioner to make a decision on an application or his or her failure to take the action to which the application relates may apply to the Review Board for a review of the decision of the Commissioner.

- (2) An application under subsection (1) shall be made within the prescribed time and in the prescribed form and manner or, where there is no time, form or manner prescribed, at any time in a form and manner approved by the Review Board.
- (3) A person shall not make an application under subsection (1) in respect of a decision of the Commissioner under section 46(3) unless he or she has first requested the Commissioner to reconsider the decision under section 46(5) and the Commissioner has reconsidered the decision or failed to reconsider the decision within a reasonable time.

48 Procedure and decision of Board

- (1) In determining an application under section 47(1), the Review Board may inform itself of any matter in such manner as it thinks fit.
- (2) An applicant or the Commissioner may appear before the Review Board in person or, with the leave of the Board, may be represented by any person.
- (3) The Review Board may determine an application under section 47(1), not inconsistent with the Rules, as it considers proper in the circumstances and its decision is binding on the Commissioner.
- (4) The Review Board may award to an applicant or the Commissioner such reasonable costs in relation to an application under section 47(1) as it thinks fit and the amount of the costs so awarded shall be a debt due and payable by the person against whom they are awarded to the person in whose favour they are awarded.
- (5) The Review Board shall give its reasons in writing for its decision on an application under section 47(1).
- (6) Subject to section 49, a decision of the Review Board on an application under section 47(1) is final and shall not be capable of being reviewed in a court of law by prerogative writ or otherwise.

49 Appeal on point of law

- (1) The Commissioner or an applicant may, within 6 months after a decision of the Review Board on an application under section 47(1) and in the manner prescribed by the Rules of the Supreme Court, appeal to the Supreme Court on a question of law against that decision.
- (2) The Supreme Court shall decide the matter of an appeal under subsection (1) and may either dismiss the appeal or reverse or vary the decision appealed against and, subject to subsection (3), make

such orders as to the costs of the appeal or the proceedings before the Review Board, or both, as it thinks fit.

- (3) Where the Commissioner appeals under subsection (1), the reasonable costs of both parties to the appeal shall be met by the Commissioner.

Part V Miscellaneous

50 Approval for retirement for invalidity

Notwithstanding any other law in force in the Territory or the terms or conditions of any contract, an eligible employee shall not be retired from his or her employment on the grounds of invalidity unless his or her employer has first obtained from the Commissioner the Commissioner's approval in writing to the retirement.

51 Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act or the Rules to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act or the Rules.

52 Transitional

- (1) A person who was, immediately before the commencement of Part III, an eligible employee within the meaning of the Commonwealth Act and who, but for that status, would be an eligible employee as defined in section 3 may, within 12 months after that commencement, by an approved notice in writing to the Commissioner, apply to become an eligible employee for the purposes of this Act.
- (2) The Commissioner may, before or after the expiration of the 12 months period referred to in subsection (1), in his or her absolute discretion, by notice in writing to the applicant, accept or reject an application under that subsection with effect on and from a date specified in the notice.
- (3) Where the Commissioner accepts an application under subsection (1), the applicant becomes an eligible employee for the purposes of this Act on the date specified in the notice under subsection (2) and this Act and the Rules apply accordingly.

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- (4) In accepting an application under subsection (1) the Commissioner shall, subject to subsection (5), accept the medical status then applying to the eligible employee under the Commonwealth Act and where the eligible employee had been issued with a Benefit Classification Certificate under that Act, the Commissioner shall accept that classification as though it were a reduced benefit classification certificate issued under the Rules and the date of effect of the reduced benefit classification shall be deemed to be the date of the eligible employee last becoming an eligible employee under the Commonwealth Act.
 - (5) Where an eligible employee has been accepted under subsection (2) and he or she has a Benefit Classification Certificate under the Commonwealth Act which at the date of his or her acceptance had not been in force for a period of 10 years, he or she may apply to the Commissioner to have a medical condition applying to the classification to which that certificate relates reviewed and in his or her review the Commissioner shall assess only the medical condition giving rise to the Benefit Classification Certificate and either issue a reduced benefit classification certificate or give the eligible employee notice in writing that no reduced benefit classification applies.
 - (6) In this section ***reduced benefit classification*** has the same meaning as it has in the Rules.

53 Further transitional provision on extension of Scheme to Police Force

- (1) A member of the Police Force who:
 - (a) was immediately before the commencement of the *Superannuation Amendment Act 1987* an eligible employee within the meaning of the Commonwealth Act; and
 - (b) as from that commencement, would but for that status be an eligible employee as defined in section 3,may, at any time within 6 months after that commencement, apply to the Commissioner by an approved notice in writing to become an eligible employee for the purposes of this Act.
- (2) The Commissioner may, before or after the expiry of the 6 months period referred to in subsection (1), in his or her absolute discretion, by notice in writing to the applicant, accept or reject an application under subsection (1) with effect on and from a date specified in the notice.

- (3) Where the Commissioner accepts an application under subsection (1), the applicant becomes an eligible employee for the purposes of this Act on the date specified in the notice under subsection (2) and this Act and the Rules apply accordingly.
- (4) Section 52(4), (5) and (6) apply for the purposes of this section as they apply for the purposes of section 52.

Schedule

Note: The Rules set out in the Schedule to Act No. 38 of 1986 have been amended. In accordance with section 37(1) of the *Superannuation Act 1986*, the Rules as amended are contained in a consolidated document entitled "*Northern Territory Government and Public Authorities' Superannuation Scheme Rules 1986*".

ENDNOTES
1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION***Superannuation Act 1986 (Act No. 38, 1986)***

Assent date 19 September 1986
 Commenced 1 October 1986 (*Gaz S70*, 1 October 1986, p 1)

Superannuation Amendment Act 1987 (Act No. 56, 1987)

Assent date 4 December 1987
 Commenced s 14: 1 October 1986; rem: 1 January 1988 (*Gaz S80*, 17 December 1987)

Statute Law Revision Act 1991 (Act No. 31, 1991)

Assent date 25 June 1991
 Commenced 25 June 1991

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

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

Superannuation Amendment Act 1992 (Act No. 26, 1992)

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

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 1995* (Act No. 4, 1995) and *Gaz S13*, 31 March 1995)

Statute Law Revision Act 1995 (Act No. 14, 1995)

Assent date 23 June 1995
Commenced 23 June 1995

Trustee (Consequential Amendments) Act 1996 (Act No. 8, 1996)

Assent date 20 March 1996
Commenced 20 March 1996 (s 2, s 2 *Trustee Amendment Act (No. 2) 1995* (Act No. 60, 1995) and *Gaz G7*, 14 February 1996, p 2)

Financial Institutions (Miscellaneous Amendments) Act 1997 (Act No. 23, 1997)

Assent date 2 June 1997
Commenced 2 June 1997

Territory Insurance Office (Miscellaneous Amendments) Act 1998 (Act No. 37, 1998)

Assent date 27 May 1998
Commenced 27 May 1998

Superannuation Amendment Act 1998 (Act No. 69, 1998)

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

Statute Law Revision (Financial Provisions) Act 2002 (Act No. 38, 2002)

Assent date 13 September 2002
Commenced 30 October 2002 (*Gaz G43*, 30 October 2002, p 3)

3 LIST OF AMENDMENTS

- s 3 amd No. 56, 1987, s 4; No. 31, 1991, s 14; No. 82, 1991, s 11; No. 28, 1993, s 3; No. 69, 1998, s 4
- s 3A ins No. 26, 1992, s 3
sub No. 69, 1998, s 5
- ss 6 – 7 amd No. 69, 1998, s 10
- s 8 amd No. 56, 1987, s 5; No. 69, 1998, s 10
- s 9 amd No. 56, 1987, s 6; No. 69, 1998, s 10
- s 11 amd No. 69, 1998, s 10
- s 12 amd No. 8, 1996, s 3; No. 69, 1998, s 10
- s 14 amd No. 56, 1987, s 7; No. 69, 1998, s 10
- s 15 amd No. 56, 1987, s 80; No. 69, 1998, s 10
- ss 16 – 17 amd No. 69, 1998, s 10
- ss 19 – 22 amd No. 69, 1998, s 10
- s 24 amd No. 69, 1998, s 10
- s 26 amd No. 69, 1998, s 10
- s 27 amd No. 69, 1998, s 6
- ss 28A – 28B ins No. 69, 1998, s 7
- s 29 sub No. 56, 1987, s 9
amd No. 5, 1995, s 12
- s 30 amd No. 56, 1987, s 10
- s 33 amd No. 56, 1987, s 11; No. 69, 1998, s 10
- s 34 amd No. 69, 1998, s 10
- s 35 amd No. 5, 1995, s 13
- s 36 amd No. 69, 1998, s 10
- s 37 amd No. 56, 1987, s 12; No. 69, 1998, s 10
- s 39 amd No. 56, 1987, s 13; No. 14, 1995, s 12; No. 23, 1997, s 6; No. 37, 1998, s 4; No. 69, 1998, s 8; No. 38, 2002, 6
- s 41 amd No. 69, 1998, s 10
- s 42 amd No. 5, 1995, s 14; No. 69, 1998, s 10

ENDNOTES

s 43	amd No. 56, 1987, s 14 sub No. 5, 1995, s 15
ss 45 – 47	amd No. 69, 1998, s 10
s 50	amd No. 69, 1998, s 10
s 52	amd No. 69, 1998, s 10
s 53	ins No. 56, 1987, s 15 amd No. 69, 1998, s 10