

NORTHERN TERRITORY OF AUSTRALIA

SUPERANNUATION ACT

As in force at 15 March 2011

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 15 March 2011

SUPERANNUATION ACT

An Act to provide for the administration of the (closed) Northern Territory Government and Public Authorities' Superannuation Scheme and for the establishment and administration of the Northern Territory Government Death and Invalidity Scheme, and for related purposes.

Part 1 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:

accumulation account means an account kept in the name of a member or adherent of the NTGPAS Scheme of the amount in the Fund standing to the credit of the member or adherent.

adherent, of the NTGPAS Scheme, means a person who is not an eligible employee (and hence not a member of that Scheme) but in whose name an accumulation account exists in the Fund.

allocated pension means:

- (a) a pension that complies with the requirements for an allocated pension under relevant Commonwealth laws regulating the payment of superannuation benefits; or

- (b) any other form of periodic payment of superannuation benefits (however described) recognised as permissible under relevant Commonwealth laws regulating the payment of superannuation benefits.

approved means approved by the Commissioner.

approved deposit means an amount accepted by the Commissioner for deposit to the credit of an accumulation account (and may include an amount rolled over from another superannuation fund).

Board means the Review Board or the Trustee Board.

Chair, of a Board, includes an Acting Chair while acting in the place of the Chair.

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.

dependant, of another person, means:

- (a) a spouse, widow, widower or child of the other person; or
- (b) a person who, in the Commissioner's opinion:
- (i) was, at the date of the other person's death, wholly or partially dependent on the other person; or
 - (ii) had, at the date of the other person's death, a legal right to look to the other person for support.

eligible employee means a permanent employee employed in a full time or part time capacity whose last period of continuous employment as a permanent employee commenced before the commencement of the *Superannuation Amendment Act 2004*, 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; or
- (b) a subscriber to or a member of a superannuation scheme, not being:
- (i) the NTGPAS Scheme; or

- (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
- (c) an employee who, under the Rules, ceases to be an eligible employee as a result of electing to take a benefit while still a permanent employee; 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*; or
 - (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.

exempt public sector superannuation scheme, see section 10 of the *Superannuation Industry (Supervision) Act 1993* (Cth).

Fund means the Northern Territory Government and Public Authorities Employees' Superannuation Fund.

NTGDI Scheme means the Northern Territory Government Death and Invalidity Scheme.

NTGPAS Scheme means the Northern Territory Government and Public Authorities' Superannuation Scheme.

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*; or
 - (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; or

(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 Association means The Northern Territory Police Association Incorporated.

public authority means:

(a) an Agency; or

(b) an authority or body classified by the regulations as a public authority.

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

Rules means the *Northern Territory Government and Public Authorities' Superannuation Scheme Rules*.

Scheme means (according to context):

(a) the NTGPAS Scheme; or

(b) the NTGDI Scheme.

spouse includes a de facto partner.

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.

Trustee Board means the Superannuation Trustee Board established by section 11.

Unions NT means the Northern Territory Trades and Labor Council Incorporated trading as Unions NT.

- (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 Schemes to be administered in accordance with agreements with the Commonwealth

The NTGPAS Scheme and the NTGDI Scheme are to be administered in accordance with a written agreement entered into by the Territory and the Commonwealth relating to exempt public sector superannuation schemes.

Part 2 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 Trustee Board, to undertake and manage the investments of the Fund; and
 - (b) subject to paragraph (a), to administer the Scheme; and
 - (ba) with the approval of the Minister:
 - (i) to administer any other superannuation scheme; and
 - (ii) to undertake and manage the investments of the fund for any such scheme on behalf of, and as directed by, its trustees; 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 Trustee Board, to meet liabilities of the Fund.

7 Delegation

- (1) The Commissioner may delegate to a person:
 - (a) any of the Commissioner's powers and functions under this Act; and
 - (b) any power delegated to the Commissioner under section 12(a) of the *Legislative Assembly Members' Superannuation Fund Act*.

- (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.

Maximum penalty: 8 penalty units.

- (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 consists of:
 - (a) the Chair; and
 - (b) 3 other residents of the Territory appointed by the Minister.
- (3) The membership of the Review Board must include:
 - (a) a nominee of Unions NT (the ***Unions NT nominee***), who must be a member of a union drawing its membership wholly or substantially from public employees; and

- (b) a nominee of the Police Association (the ***Police Association nominee***).
- (4) The Police Association nominee alternates as a member of the Review Board with the Union NT nominee as follows:
 - (a) the Police Association nominee sits as a member when the Review Board:
 - (i) is conducting a review under Part 4 concerning a member of the Police Force; or
 - (ii) is considering a proposed amendment to the Rules that has, in the opinion of the Chair, particular significance for members of the Police Force; and
 - (b) on other occasions the Unions NT nominee sits as a member of the Review Board (to the exclusion of the Police Association nominee).

10 Functions and powers of Review Board

- (1) The functions of the Review Board are:
 - (a) to review, in accordance with Part 5, a decision or action of the Commissioner, or the Commissioner's failure to make a decision or to act; and
 - (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 Trustee Board

11 Superannuation Trustee Board

- (1) The Superannuation Trustee Board is established.
- (2) The Trustee Board:
 - (a) is a body corporate; and
 - (b) has a common seal; and

- (c) may acquire, hold and dispose of real and personal property and sue and be sued.
- (3) All courts, judges and persons acting judicially must take judicial notice of the common seal of the Trustee Board affixed to a document and assume it was duly affixed.

11A Membership of Trustee Board

- (1) The Trustee Board consists of:
 - (a) the Chair; and
 - (b) 2 other residents of the Territory appointed by the Minister.
- (2) Subject to section 14, at least one of the members of the Trustee Board must be:
 - (a) a member of a union the membership of which is wholly or substantially public employees; and
 - (b) nominated by Unions NT.

12 Functions and powers of Trustee Board

- (1) The functions of the Trustee Board are:
 - (a) to hold the Fund as trustee for the members; and
 - (b) to direct the Commissioner in managing the Fund on its behalf and the investments of the Fund; and
 - (ba) to exercise powers and perform functions under the *Legislative Assembly Members' Superannuation Fund Act*; and
 - (bb) with the approval of the Minister, to exercise powers and perform functions in relation to any other superannuation fund or scheme; and(c) such other functions as are imposed on it by or under this or any other Act.
- (2) The Trustee 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 Trustee 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 Trustee Board shall have regard to the need:
- (a) to make provisions for payments under the Scheme out of the Fund; and
 - (b) for equity among eligible employees; and
 - (c) to ensure the sound management of the assets of the Fund; and
 - (d) to exercise reasonable care and prudence in order to maintain the integrity of the Fund; and
 - (e) to determine, authorise or approve policies, programs and strategies for the investment of the Fund that are consistent with the need to ensure an adequate spread of investments and provide for investor choice.

Division 4 General

13 Definition

In this Division:

member means a member of a Board and includes:

- (a) the Chair or an Acting Chair; and
- (b) an alternate member.

14 Nomination of members

(1) If:

- (a) the Minister asks Unions NT, in writing, to nominate a suitable person for appointment to a Board; and
- (b) Unions NT fails to nominate a person, qualified for appointment, within 28 days of the date of the request;

the Minister may appoint a resident of the Territory to the Board in place of the nominee.

(2) If:

- (a) the Minister asks the Police Association, in writing, to nominate a suitable person for appointment to a Board; and
- (b) the Police Association fails to nominate a person, qualified for appointment, within 28 days of the date of the request;

the Minister may appoint a resident of the Territory to the Board in place of the nominee.

(3) A person appointed under this section is taken to be a nominee of Unions NT or the Police Association (as the case requires).

15 Alternate members

(1) The Minister may appoint a person as an alternate member for a member of a Board (other than the Chair).

(2) If a member of a Board is unable or unavailable to act, the member's alternate may act in place of that member.

(3) If the Minister proposes to appoint an alternate member for a member nominated by Unions NT or the Police Association, the Minister must follow the procedures applicable to the appointment of the principal member.

(4) When a member of a Board is appointed, an alternate member should (wherever practicable) be appointed at the same time.

16 Chair and Acting Chair

(1) The Minister must consult with Unions NT before appointing a person as the Chair of a Board.

(2) The Minister may, after consultation with Unions NT, appoint a person as the Acting Chair of a Board.

- (3) The Acting Chair of a Board may, when there is a vacancy in the office of the Chair, or the Chair is unable or unavailable to act, act as the Chair of the Board.
- (4) When the Chair of a Board is appointed, an Acting Chair should (wherever practicable) be appointed at the same time.

17 Term of appointment

- (1) The Chair or another member of a Board will be appointed for a term of 5 years.
- (2) The term of appointment for an Acting Chair or an alternate member ends:
 - (a) if the Chair or principal member is re-appointed – when the re-appointment takes effect (unless the Acting Chair or alternate member is also re-appointed for a further term); or
 - (b) if the Chair or principal member ceases to hold office (either prematurely or at the end of a term of appointment) – when the appointment of a successor to the Chair or principal member takes effect (unless the Acting Chair or alternate member is then re-appointed for a further term).

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; or
 - (b) ceases to be a resident of the Territory; or

- (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 monetary interest in a matter before the Board must, as soon as practicable, disclose the interest at a meeting of the Board.

Exception:

Disclosure of the following interests is not required:

- (a) an interest as a member or adherent of the NTGPAS Scheme;
 - (b) an interest as a member of the NTGDI Scheme;
 - (c) an interest shared in common with at least 25 other people.
- (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 Chair of a Board may at any time, and must if requested by a member, convene a meeting of the Board.
- (2) A meeting to be convened at the request of a member must be held on a date requested by the member (which cannot be earlier than 7 days after the date of the request) or as soon as practicable after that date.
- (3) The Chair of a Board, if present at a meeting of the Board, must preside at the meeting.
- (4) In the absence of the Chair, the Acting Chair must preside.

- (5) At a meeting of a Board:
- (a) the Chair or Acting Chair and 2 other members constitute a quorum; and
 - (b) questions arising for decision are to be decided by majority vote; and
 - (c) the Board will determine its own procedure.
- (6) A Board must keep records of its proceedings.

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 or any other 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 3 Northern Territory Government and Public Authorities' Superannuation Scheme

Division 1 The Scheme

25A References to the Scheme

In this Part, references to the **Scheme** are references to the NTGPAS 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.

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.

28 Records of accumulation accounts

The Commissioner must keep records of:

- (a) contributions and approved deposits to each accumulation account in the Fund; and
- (b) the return on the account.

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 those moneys are inadequate – the Territory's public account (which is appropriated to the necessary extent).

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 Allocated pensions

The Commissioner may, at the request of a person in whose name an accumulation account is held in the Fund, pay a benefit to which the person is entitled from the Fund in the form of an allocated pension.

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*.
- (6) For section 57A of the Interpretation Act, the Rules are a statutory instrument under an Act.

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

38 Establishment of fund

- (1) The Commissioner, on behalf of the Trustee Board, shall establish a fund to be known as the Northern Territory Government and Public Authorities Employees' Superannuation Fund.
- (1A) The Fund vests in the Trustee Board.

- (2) The Commissioner, on behalf of the Trustee 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 Trustee Board, shall open and maintain such account or accounts with such ADI or ADIs or the Territory Insurance Office as the Trustee Board determines.

- (2) The Trustee 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; and
- (ii) income derived from investments of the Fund; and
- (iii) profits made from realization of investments of the Fund; and
- (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; and
- (ia) amounts of superannuation contributions surcharge that are payable in relation to each eligible employee or former eligible employee; and
- (ii) the costs incurred by or on behalf of the Trustee Board in the management of the Fund, including reasonable brokerage fees, costs of investment advice and other expenses relating to the functions of the Trustee 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 Territory's public account.

40 Proper accounts to be kept

The Trustee 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 Trustee Board and over the incurring of liabilities by or on behalf of the Trustee Board.

41 Investor choice

- (1) The Commissioner may, with the Trustee Board's approval, offer members and adherents of the Scheme a choice between various investment options approved by the Trustee Board.
- (2) When the Commissioner offers investment options, one of the options is to be designated as the default option.
- (3) A member or adherent of the Scheme may choose a particular investment option, or change from one investment option to another, by giving the Commissioner a notice in the approved form.
- (4) A member or adherent who has not made a choice between investment options is taken to have chosen the default option until a choice to change from that option is made.
- (5) The money standing to the credit of the accumulation account of a member or adherent is to be allocated to investments of a class determined by the Commissioner to be appropriate to the investment option chosen, or taken to have been chosen, by the member or adherent.
- (6) The Commissioner may charge an administration fee fixed by the Commissioner against an accumulation account when the member or adherent changes from one investment option to another.

41A Return on accumulation accounts

- (1) The Commissioner:
 - (a) must, as soon as practicable after the end of each financial year, publish a notice (a ***final investment return notice***) showing the net rate of return (which may be positive, neutral or negative) for the financial year on the investments corresponding to each investment option; and

- (b) may at other times, as the Commissioner considers appropriate, publish a notice (an ***interim investment return notice***) showing the rate of return (which may be positive, neutral or negative) for part of a financial year.
- (2) An investment return notice is to be published as follows:
- (a) a final investment return notice is to be published in the *Gazette* and in any other way the Commissioner considers appropriate;
- (b) an interim investment return notice is to be published in any way the Commissioner considers appropriate.
- (3) On publication of the final investment return notice for a financial year, each accumulation account will be credited (or debited), as at the end of the financial year, with an investment return at the rate appropriate to the investment option chosen, or taken to have been chosen, by the member or adherent in whose name the account is established.
- (4) If the balance standing to the credit of an accumulation account is to be rolled over into another superannuation fund, or paid out for some other reason, during the course of a financial year, the Commissioner will, having regard to any relevant interim investment return notice and other relevant information available to the Commissioner, determine an interim rate of return for the relevant investment option to the date of the rollover or payout, and adjust the final balance of the account accordingly.
- (5) If, after the publication of an interim or final investment return notice under this section, it appears that an error was made in determining the rate of return for one or more investment options, the Commissioner may:
- (a) publish a fresh notice in the *Gazette* correcting the error; and
- (b) make consequential adjustments (if required) increasing or reducing the balances of accumulation accounts.

42 Recovery of money owing to fund

- (1) The Commissioner, on behalf of the Trustee 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 Trustee 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.

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 Trustee 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 Trustee Board must, within 3 months after the end of each financial year, forward the financial statement for the financial year to the Auditor-General.
- (3) The Auditor-General must, within 3 months after receiving the statement, or a longer period allowed by the Administrator, audit the statement and report on the audit to the Trustee Board and the Minister.

- (4) The Minister must table the reports, together with the financial statement and the Auditor-General's report on the audit, in the Legislative Assembly within 6 sitting days after the Minister receives the last of the reports.

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.

Division 3 Spouse accounts

45A Accounts for spouses

- (1) The Commissioner may, at the request of an eligible employee or a former eligible employee, establish and maintain a separate account in the accounts of the Fund for the employee's spouse.
- (2) The Fund may accept for payment into an account established under subsection (1):
- (a) a contribution that is credited to the account; and
 - (b) an approved deposit.
- (3) An account established under subsection (1) is subject to the Rules.
- (6) An amount credited to the account of a person established under subsection (1) is not taken to be an entitlement to an employer-financed benefit for the purposes of Part 3.

Division 4 Splitting of superannuation under Family Law Act

45B Definitions

In this Division:

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 VIIIB of the Family Law Act.

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

45C Scheme 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 for non-member spouses under section 45D.
- (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.
- (8) If a provision of the Rules is inconsistent with a provision of the administrative instructions prepared under this section, the provision of the administrative instructions prevails to the extent of the inconsistency.

45D Superannuation accounts for non-member spouses

- (1) The Commissioner may, for the purposes of the administration of an amount to which a person is entitled as a non-member spouse for the purposes of this Act, another Act of the Territory or an approved scheme, at the request of the person, establish and maintain a separate account in the accounts of the Fund for the person.
- (2) The Fund may accept for payment into an account established under subsection (1):
- (a) an amount to which the person for whom the account is established is entitled under the provisions of the Family Law Act relating to superannuation; and
 - (b) a contribution; and
 - (c) an approved deposit.
- (3) An account established under subsection (1) is subject to the Rules.
- (6) An amount credited to the account of a non-member spouse established under subsection (1) is not taken to be an entitlement to an employer-financed benefit for the purposes of Part 3.

Part 4 Northern Territory Government Death and Invalidation Scheme

Division 1 Preliminary

45E Definitions

(1) In this Part:

approved allowances means allowances or entitlements that are, by determination of the Commissioner under subsection (2), to be taken into account in determining the member's benefit salary.

benefit salary means:

- (a) for a member employed under an Executive Contract of Employment:
- (i) in the case of a member employed on a full-time basis – the member's notional salary (as defined in the contract) as at the member's exit date or such other amount as may be determined by the Commissioner; or
 - (ii) in the case of a member employed on a part-time basis – the full-time equivalent of the member's notional salary (as defined in the contract) as at the member's exit date or such other amount as may be determined by the Commissioner; or
- (b) for a member employed in the Police Force (other than a police auxiliary or a person employed under an Executive Contract of Employment) – an amount calculated as follows:

$$BS = 1.3S + A$$

where:

BS is the amount to be ascertained; and

S is:

- (i) for a member employed on a full-time basis immediately before the member's exit date, the member's salary (exclusive of approved allowances) as at the member's exit date as certified by the member's employer and accepted by the Commissioner; or
- (ii) for a member employed on a part-time basis immediately before the member's exit date – the full-time equivalent of the member's salary (exclusive of

approved allowances) as at the member's exit date as certified by the member's employer and accepted by the Commissioner; and

A is the amount of the member's approved allowances immediately before the member's exit date as certified by the member's employer and accepted by the Commissioner; or

- (c) for any other employee member – the member's actual salary, or in the case of a part-time employee, the full-time equivalent of the member's salary, as at the member's exit date, as certified by the member's employer and accepted by the Commissioner; or
- (d) for a parliamentary member – the member's basic salary as a Member of the Legislative Assembly as at the member's exit date plus any additional salary to which the member was then entitled for a ministerial or parliamentary office as certified by the Clerk of the Legislative Assembly and accepted by the Commissioner.

death benefit, see section 45P.

employee member means a member who is a permanent employee.

employment means:

- (a) service as a permanent employee under a contract of service or in a statutory or other public office; or
- (b) service as a Member of the Legislative Assembly.

exit date means the date on which a person ceases to be a member of the Scheme.

invalidity retirement means retirement on the ground of invalidity (see section 45F).

invalidity retirement benefit, see section 45Q.

member means a member of the Scheme.

nominal retirement age, for a member, means the age of 65 years, or if retirement is compulsory at a younger age, the age at which retirement becomes compulsory.

NTGDIS benefit, see section 45N.

parliamentary member means a member who is a Member of the Legislative Assembly.

part-time member means a member who is, immediately before the member's exit date, in part-time employment.

part-time ratio, for a part-time member, means the quotient obtained:

- (a) by dividing the member's actual hours of work immediately before the member's exit date by the number of hours of work that would constitute full-time employment; or
- (b) on some other basis (which may involve estimation or supposition) the Commissioner considers fair to the member in the circumstances.

salary includes approved allowances.

Scheme means the NTGDI Scheme.

workers' compensation agreement means an agreement under which:

- (a) an amount is payable instead of periodic payments under workers' compensation legislation; and
 - (b) there is no exclusion or limitation of the application of, or the rights or entitlements of a person under, that legislation; and
 - (c) the amount is repayable if those rights or entitlements are pursued.
- (2) The Commissioner may determine, in relation to a particular class of members, that allowances of a particular kind are to be taken into account, in a particular way, for calculating the benefit salary of a member of the relevant class.

Examples

- 1 *The Commissioner might determine that allowances of a particular kind are to be taken into account as if they formed part of the salary of members of a particular class.*
- 2 *The Commissioner might determine for members employed in the Police Force (other than a police auxiliary or person employed under an Executive Contract of Employment) that an allowance of a particular kind is to be taken into account for the purposes of the relevant formula in the definition of **benefit salary**.*

45F Invalidation retirement

- (1) A member of the Scheme retires from employment on the ground of invalidation if, and only if:
 - (a) the member is involuntarily retired from employment with the Commissioner's approval under section 50; or
 - (b) the member resigns or retires from employment (voluntarily or involuntarily) and the Commissioner approves the payment of an invalidation retirement benefit; or
 - (c) the member's employment terminates or is terminated and the Commissioner approves the payment of an invalidation retirement benefit.
- (2) The Commissioner may only give an approval under subsection (1) if the Commissioner makes an assessment, after considering medical and other relevant evidence, that the member has (or had) become, by the date of resignation, retirement or termination of employment, physically or mentally so incapacitated that the member is (or was) unfit for any available employment (on a full-time or part-time basis) for which the member is reasonably qualified by education, training or experience.
- (3) In considering whether suitable employment is available to a member, the Commissioner will have regard only to employment available from employers whose employees are covered by the Scheme.

Division 2 Establishment and membership of the Northern Territory Government Death and Invalidation Scheme

45G Establishment of the Scheme

The Northern Territory Government Death and Invalidation Scheme is established.

45H Membership of Scheme

- (1) A person is a member of the Scheme if both of the following conditions are satisfied:
 - (a) the person:
 - (i) is a permanent employee employed in a full-time or part-time capacity under the *Public Sector Employment and Management Act* or as a member of the Police Force; or

- (ii) is employed in the public sector under an Executive Contract of Employment;
- (b) the person is not an eligible employee (and hence is not a member of the NTGPAS Scheme).

Note for section 45H(1)

This means that a permanent employee's last period of continuous employment must have commenced after 9 August 1999.

- (2) Members of the Legislative Assembly elected for the first time at the general election held on 18 June 2005 or a later general election or by-election are also members of the Scheme.
- (3) A permanent employee who was a member of the NTGPAS Scheme and, under the Rules, ceases to be an eligible employee as a result of electing to take a benefit from that Scheme, becomes a member of the NTGDI Scheme on ceasing to be an eligible employee.

Division 4 Entitlements

45M Entitlement to benefits under the Scheme

A benefit is payable under the Scheme if:

- (a) a member dies leaving a dependant or dependants who survive the member; or
- (b) a member retires from employment on the ground of invalidity.

45N NTGDIS benefit

- (1) The NTGDIS benefit is calculated in accordance with the following formula:

$$B = 17.5\% \times S \times Y \times P$$

where:

B is the amount of the benefit.

S is the member's benefit salary.

Y is a multiplier based on the member's age, as at the member's exit date, in accordance with subsection (2).

P is, for a part-time member, the member's part-time ratio and, for any other member, 1.

- (2) The age-based multiplier is determined as follows:
- (a) if the member is, on the exit date, 60 years of age or above – the multiplier is zero;
 - (b) if the member is, on the exit date, 55 years of age or above but less than 60 years of age – the multiplier is the number of years between the member's age at the exit date and 60 years (expressing a part of a year as a decimal fraction);
 - (c) if the member is, on the exit date, 50 years of age or above but less than 55 years – the multiplier is the number of years between the member's age at the exit date and the member's nominal retirement age less the number of years between the exit date and the date on which the member attained 50 years of age (expressing a part of a year as a decimal fraction);
 - (d) if the member is, on the exit date, less than 50 years of age – the multiplier is the number of years between the member's age on the exit date and the member's nominal retirement age (expressing a part of a year as a decimal fraction).

45P Benefit payable on death

- (1) If a member dies leaving a dependant or dependants, the NTGDIS benefit is payable to the estate of the deceased member.
- (2) However, if a benefit (a ***workers' compensation benefit***) is payable in respect of the member's death to a dependant or dependants of the deceased member under workers' compensation legislation or a workers' compensation agreement, the NTGDIS benefit is to be reduced by the amount of the workers' compensation benefit.
- (3) If a workers' compensation benefit consists of periodic payments, the amount of the benefit is taken to be the notional redemption value (as determined by an approved actuary) of the periodic payments.

45Q Benefit payable on invalidity retirement

- (1) If a member is entitled to a benefit on invalidity retirement, the NTGDIS benefit is payable to the member.
- (2) However, if a benefit (a ***workers' compensation benefit***) is payable to the member under workers' compensation legislation or a workers' compensation agreement, the NTGDIS benefit is to be reduced by the amount of the worker's compensation benefit.

- (3) If a workers' compensation benefit consists of periodic payments, the amount of the benefit is taken to be the notional redemption value (as determined by an approved actuary) of the periodic payments.

45R Anticipatory payments

- (1) If a member's salary is suspended or reduced because of the member's physical or mental incapacity, the Commissioner may, on application in the approved form by the member, authorise a payment or payments to the member to relieve financial hardship.
- (2) The Commissioner is not to authorise a payment to a member under this section unless:
- (a) the member is currently undergoing assessment for invalidity retirement; or
 - (b) the Commissioner has assessed the member as substantially incapacitated for employment.
- (3) The amount paid to a member under this section cannot exceed:
- (a) the amount necessary to make up relevant salary loss; or
 - (b) the amount that would be payable to the member on the assumption that the member's employment had terminated in circumstances entitling the member to an invalidity retirement benefit.
- (4) A payment cannot be made to a member under this section after the member's exit date.
- (5) If a benefit later becomes payable in respect of the member's death or invalidity, the benefit is to be reduced by the amount of any payment or payments made under subsection (1).
- (6) In subsection (3)(a):

relevant salary loss means the amount by which the member's loss of salary resulting from the physical or mental incapacity exceeds 20% of the salary that would have been earned apart from the incapacity.

45S Source of payment

- (1) The benefits payable under the Scheme to, or in relation to, a member or former member are to be paid out of the Territory's public account (which is appropriated to the necessary extent).

- (2) A public authority by which a member was employed for the whole, or any part, of the period of the member's membership of the Scheme is liable to reimburse the Territory for a fair proportion (to be determined by the Minister) of the amount paid from the public account to, or in relation to, the member or former member.
- (3) A public authority must, if the Minister requires:
 - (a) enter into an arrangement with the Territory for contributing, on a basis the Minister considers fair to the Territory, to the cost of paying benefits under the Scheme to, or in relation to, employees or former employees of the public authority; and
 - (b) make payments to the Territory in accordance with the arrangement.
- (4) The Minister may exempt a public authority from a liability under subsection (2).

Part 5 Provisions of general application to both Schemes

Division 1 Information

45T Information to be provided by Commissioner

- (1) A member or former member of either Scheme may ask the Commissioner for information about actual or prospective entitlements under the Scheme and for information relevant to the calculation of those entitlements.

Example

A member of the NTGPAS Scheme might ask for a statement of the balance of the member's accumulation account or the member's surcharge debt account (or both) or for a statement of the number of annual benefit points to which the member is entitled.

- (2) The Commissioner must, as soon as practicable after receiving a request under subsection (1), supply the information requested.

45U Information to be provided by member or employer

- (1) A member of either Scheme must, if the Commissioner requires, provide the Commissioner with specified information relevant to the administration of the Scheme.

Maximum penalty: 20 penalty units

- (2) The employer of a member of either Scheme must, if the Commissioner requires, provide the Commissioner with specified information relevant to the administration of the Scheme.

Maximum penalty: 50 penalty units.

Division 2 Benefits

45V Discretionary benefits

The Commissioner may, with the written approval of the Minister and the Review Board, approve a payment of a benefit for which no provision is made, or in addition to a benefit for which provision is made, in either Scheme.

45W Assignment, etc. of benefit

- (1) A purported assignment of, or purported charge over, a benefit payable under either 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 pass.

45X Payment without grant of probate etc.

- (1) If a benefit is payable under either Scheme on death, and the benefit would, but for this section, be payable to the estate of the deceased, the Commissioner may, without production of probate of the will or letters of administration of the estate of the deceased, pay the benefit for one or more of the following purposes:
- (a) towards the expenses of the deceased's funeral;
 - (b) to a dependant or dependants of the deceased;
 - (c) if the deceased left no dependant, but the Commissioner is satisfied that the deceased intended to benefit some other person – to the other person.
- (2) The amount the Commissioner may pay under subsection (1) is subject to a limit of \$20 000 or, if a higher limit is fixed by regulation, the higher limit.

Exception:

The Commissioner may make a payment in excess of the limit if the payment is made to a dependant who, in the Commissioner's opinion, requires the payment to alleviate financial hardship.

- (3) The receipt in writing of a person to whom a payment is made under subsection (1) discharges the Commissioner (and, if relevant, the Trustee Board) from further liability for the portion of the benefit to which the payment relates.
- (4) If a benefit is payable to the estate of a deceased person, the Commissioner may instead of paying the benefit to the legal personal representative of the deceased, pay the benefit to the Public Trustee.
- (5) The Public Trustee's receipt for the payment discharges the Commissioner (and, if relevant, the Trustee Board) from further liability in respect of the benefit or the portion of the benefit that the payment represents.

45Y Payment where beneficiary incapable

- (1) If a person to whom a benefit under either Scheme is payable is, in the opinion of the Commissioner, incapable of administering the person's own affairs because of illness or imprisonment or for any other reason, the Commissioner may pay the benefit to the Public Trustee.
- (2) A payment made under subsection (1) is taken to have been made to the person entitled to the benefit.

45Z Unclaimed benefits

If a benefit is not claimed within 6 years after it became payable, the Commissioner may pay the benefit to the credit of the Territory's public account.

Division 3 Actuarial review

45ZA Actuarial review

- (1) The Commissioner must have an actuarial review of both Schemes carried out as at 30 June 2010 or an earlier date directed by the Minister.
- (2) A further actuarial review is to be carried out at an interval of 3 years from the previous one or, if the Minister directs an earlier review, as directed by the Minister.
- (3) The Commissioner may engage an actuary to carry out a review.
- (4) The cost of engaging an actuary for the purposes of this section and the costs of the review are to be met by the Territory.

Division 4 Claims for benefits and review of decisions

46 Claim for benefit under Scheme

- (1) A person entitled, or claiming to be entitled, to a benefit under either Scheme may apply to the Commissioner, in the approved manner and form, for the payment of that benefit.
- (2) A person who could be affected by a decision or an action that the Commissioner is authorised or required to make or take under this Act may apply to the Commissioner, in the approved form, for the Commissioner to make the relevant decision or to take the relevant 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 Review 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.

Division 5 Miscellaneous

50 Approval for retirement for invalidity

Notwithstanding any other law in force in the Territory or the terms or conditions of any contract, a member of either Scheme 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.

50A Commissioner may charge fees

- (1) The Commissioner may charge fees for services provided at the request of a person.
- (2) If the person requesting the service has an accumulation account in the Fund, the Commissioner may charge the fee against the accumulation account.

Examples

- 1 The Commissioner might charge a fee for changing the investment of an accumulation account from one investment option to another.*
 - 2 The Commissioner might charge periodic fees against an accumulation account for paying a benefit, in the form of an allocated pension, from the account.*
- (3) The Commissioner may levy a general charge, on a basis the Commissioner considers appropriate, against accumulation accounts for providing incidental services (such as financial advice) for members and adherents of the NTGPAS Scheme.
 - (4) The Commissioner may charge an adherent of the NTGPAS Scheme an account keeping fee, determined on a basis the Commissioner considers appropriate, and may charge the fee against the person's accumulation account.

50B Power to recover money on behalf of the Territory

If the Territory makes a payment to any person under either Scheme to which the person was not entitled, or in excess of the person's entitlement, the Commissioner may, on behalf of the Territory, recover the amount of the payment or the amount of the excess (as the case requires) as a debt.

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.

**Part 6 Transitional matters for Superannuation
Legislation Amendment Act 2010**

Division 1 NTGDI Scheme

**52 Adjustment of NTGDI Scheme benefits for death or retirement
on or after 1 April 2010**

- (1) This section applies if:
 - (a) a benefit under Part 4 was paid to, or in respect of, a member before the commencement of Part 2, Division 2 of the 2010 Act; and
 - (b) the benefit trigger occurred on or after 1 April 2010; and
 - (c) the value for A in the formula in section 45N(1) used to calculate the amount of the benefit was less than 1.
- (2) An additional benefit is payable under the NTGDI Scheme of an amount equal to the difference between:
 - (a) the amount of the benefit paid as mentioned in subsection (1); and
 - (b) the amount of the benefit that would have been payable under Part 4 if Part 2, Division 2 of the 2010 Act had commenced on 1 April 2010.
- (3) A benefit under subsection (2) must be paid:
 - (a) to the member; or
 - (b) if the member has died – to the member's estate.
- (4) To avoid doubt, a benefit paid under Part 4 is not subject to any adjustment as a result of the enactment of Part 2, Division 2 of the 2010 Act if the benefit trigger occurred before 1 April 2010.

(5) In this section:

2010 Act means the *Superannuation Legislation Amendment Act 2010*.

benefit trigger, for a benefit under Part 4, means the death or retirement as mentioned in section 45M for which the benefit is payable.

Division 2 Superannuation Trustee Board

53 Object of this Division

The object of this Division is to give effect to the change in the trusteeship of the Fund from the old board to the Trustee Board effected by the amendments to the Act made by Part 2, Division 4 of the *Superannuation Legislation Amendment Act 2010*.

54 Definitions

In this Division:

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 board means the Superannuation Investment Board under section 11 as in force before the restructure time and includes the persons who were members of that board.

restructure time means the commencement of Part 2, Division 4 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 56(a) or liability transferred by operation of section 56(b).

55 Members of old board to be first members of Trustee Board

- (1) The person who was the Chair of the old board immediately before the restructure time:
 - (a) is the Chair of the Trustee Board; and
 - (b) holds that office for the remainder of the term of the person's appointment to the old board.
- (2) Each other person who was a member of the old board immediately before the restructure time:
 - (a) is a member of the Trustee Board; and
 - (b) holds that office for the remainder of the person's term of appointment to the old board.

56 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 board becomes a liability of the Trustee Board; and
- (c) in any proceedings to which the old board is party, the Trustee Board is substituted for the old board 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 board includes, if the context permits, a reference to the Trustee Board.

57 Effect on rights and remedies

- (1) After the restructure time, any proceedings that could have been commenced by or against the old board 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 board.
- (2) After the restructure time, any remedy that would have been available to or against the old board 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 board.

58 Completion of change of trusteeship

- (1) The old board, Trustee Board and Commissioner must take all practicable steps to:
 - (a) ensure that the effect sought to be achieved by sections 56 and 57 is achieved; and
 - (b) otherwise give effect to the object of this Division.
- (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 56; and
 - (b) the old board, Trustee Board and Commissioner must make arrangements for the delivery to the Trustee Board of all the old board'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.

59 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 Division; or
 - (b) done:
 - (i) under this Division; or
 - (ii) to give effect to this Division; or
 - (iii) for a purpose connected with, or arising out of, giving effect to the object of this Division.
- (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.

60 Continuation of ongoing matters

- (1) Anything done or omitted to be done by, to, or in relation to, the old board 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 board to the Commissioner and in force immediately before the restructure time continues in force as a direction given by the Trustee Board.

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*, the Rules as amended are contained in a consolidated document entitled "*Northern Territory Government and Public Authorities' Superannuation Scheme Rules*".

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)

Superannuation Amendment Act 2003 (Act No. 7, 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)

Superannuation Amendment Act 2004 (Act No. 72, 2004)

Assent date 21 December 2004
Commenced 21 December 2004

Statute Law Revision Act 2007 (Act No. 4, 2007)

Assent date 8 March 2007
Commenced 8 March 2007

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

Assent date 12 December 2007
Commenced 23 January 2008 (*Gaz G3*, 23 January 2008, p 2)

Penalties Amendment (Justice and Treasury Legislation) Act 2010 (Act No. 38, 2010)

Assent date 18 November 2010
Commenced 1 February 2011 (*Gaz S6*, 1 February 2011)

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)

3**SAVINGS AND TRANSITIONAL PROVISIONS**

s 79 Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003
 (Act No. 1, 2004)
ss 3 and 4 Superannuation Amendment Act 2004 (Act No. 72, 2004)

4**LIST OF AMENDMENTS**

lt	sub No. 36, 2007, s 4
pt 1 hdg	amd No. 36, 2007, s 5
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; No. 7, 2003, s 4; No. 1, 2004, s 62; No. 72, 2004, s 2; No. 36, 2007, s 6; No. 42, 2010, ss 9 and 12
s 3A	ins No. 26, 1992, s 3 sub No. 69, 1998, s 5; No. 36, 2007, s 7
pt 2 hdg	amd No. 36, 2007, s 8
s 6	amd No. 69, 1998, s 10; No. 42, 2010, s 13
s 7	amd No. 69, 1998, s 10; No. 42, 2010, s 14
s 8	amd No. 56, 1987, s 5; No. 69, 1998, s 10; No. 38, 2010, s 4
s 9	amd No. 56, 1987, s 6; No. 69, 1998, s 10; No. 36, 2007, s 9
s 10	amd No. 36, 2007, s 10
pt 2	
div 3 hdg	amd No. 42, 2010, s 20
s 11	amd No. 69, 1998, s 10; No. 36, 2007, s 11 sub No. 42, 2010, s 15
s 11A	ins No. 42, 2010, s 15
s 12	amd No. 8, 1996, s 3; No. 69, 1998, s 10; No. 36, 2007, s 12; No. 42, 2010, s 16
s 13	sub No. 36, 2007, s 13
s 14	amd No. 56, 1987, s 7; No. 69, 1998, s 10 sub No. 36, 2007, s 13
s 15	amd No. 56, 1987, s 8; No. 69, 1998, s 10 sub No. 36, 2007, s 13
ss 16 – 17	amd No. 69, 1998, s 10 sub No. 36, 2007, s 13
s 19	amd No. 69, 1998, s 10
s 20	amd No. 69, 1998, s 10; No. 42, 2010, s 20
s 21	amd No. 69, 1998, s 10; No. 36, 2007, s 14
s 22	amd No. 69, 1998, s 10 sub No. 36, 2007, s 15
s 24	amd No. 69, 1998, s 10; No. 42, 2010, s 17
pt 3 hdg	amd No. 36, 2007, s 16
s 25A	ins No. 36, 2007, s 17
s 26	amd No. 69, 1998, s 10
s 27	amd No. 69, 1998, s 6 rep No. 36, 2007, s 18
ss 28A – 28B	ins No. 69, 1998, s 7
s 28	sub No. 36, 2007, s 19
s 29	sub No. 56, 1987, s 9 amd No. 5, 1995, s 12; No. 36, 2007, s 20
s 30	amd No. 56, 1987, s 10
s 31	sub No. 36, 2007, s 31
s 32	rep No. 36, 2007, s 31
s 33	amd No. 56, 1987, s 11; No. 69, 1998, s 10; No. 7, 2003, s 5; No. 4, 2007, s 7 rep No. 36, 2007, s 31
s 34	amd No. 69, 1998, s 10; No. 7, 2003, s 6 rep No. 36, 2007, s 31

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s 35	amd No. 5, 1995, s 13; No. 4, 2007, s 7 rep No. 36, 2007, s 31
s 36	amd No. 69, 1998, s 10
s 37	amd No. 56, 1987, s 12; No. 69, 1998, s 10; No. 42, 2010, s 10
s 38	amd No. 42, 2010, s 18
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, s 6; No. 36, 2007, s 22; No. 42, 2010, s 20
s 40	amd No. 42, 2010, s 20
s 41	amd No. 69, 1998, s 10 sub No. 36, 2007, s 23 amd No. 42, 2010, s 20
s 41A	ins No. 36, 2007, s 23
s 42	amd No. 5, 1995, s 14; No. 69, 1998, s 10; No. 36, 2007, s 24; No. 42, 2010, s 20
s 43	amd No. 56, 1987, s 14 sub No. 5, 1995, s 15 amd No. 36, 2007, s 25; No. 42, 2010, s 20
s 45	amd No. 69, 1998, s 10 rep No. 36, 2007, s 26
pt III	
div 3 hdg	ins No. 7, 2003, s 7
s 45A	ins No. 7, 2003, s 7 amd No. 36, 2007, s 27
pt III	
div 4 hdg	ins No. 7, 2003, s 7
ss 45B – 45C	ins No. 7, 2003, s 7 amd No. 42, 2010, s 20
s 45D	ins No. 7, 2003, s 7 amd No. 36, 2007, s 28; No. 42, 2010, s 20
pt 4 hdg	ins No. 36, 2007, s 29
pt 4	
div 1 hdg	ins No. 36, 2007, s 29
s 45E	ins No. 36, 2007, s 29 amd No. 42, 2010, s 4
s 45F	ins No. 36, 2007, s 29
pt 4	
div 2 hdg	ins No. 36, 2007, s 29
s 45G	ins No. 36, 2007, s 29
s 45H	ins No. 36, 2007, s 29 amd No. 42, 2010, s 5
pt 4	
div 3 hdg	ins No. 36, 2007, s 29 rep No. 42, 2010, s 6
ss 45J – 45L	ins No. 36, 2007, s 29 rep No. 42, 2010, s 6
pt 4	
div 4 hdg	ins No. 36, 2007, s 29
s 45M	ins No. 36, 2007, s 29
s 45N	ins No. 36, 2007, s 29 amd No. 42, 2010, s 7
ss 45P – 45S	ins No. 36, 2007, s 29
pt 5 hdg	ins No. 36, 2007, s 29
pt 5	
div 1 hdg	ins No. 36, 2007, s 29
ss 45T – 45U	ins No. 36, 2007, s 29
pt 5	
div 2 hdg	ins No. 36, 2007, s 29

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ss 45V – 45W	ins No. 36, 2007, s 29
s 45X	ins No. 36, 2007, s 29 amd No. 42, 2010, s 20
ss 45Y – 45Z	ins No. 36, 2007, s 29
pt 5	
div 3 hdg	ins No. 36, 2007, s 29
s 45ZA	ins No. 36, 2007, s 29
pt 4 hdg	sub No. 36, 2007, s 30
s 46	amd No. 69, 1998, s 10; No. 36, 2007, s 31
s 47	amd No. 69, 1998, s 10
s 48	amd No. 42, 2010, s 20
pt 5 hdg	sub No. 36, 2007, s 32
s 50	amd No. 69, 1998, s 10; No. 36, 2007, s 33
s 50A	ins No. 7, 2003, s 8 sub No. 36, 2007, s 34 amd No. 42, 2010, s 11
s 50B	ins No. 36, 2007, s 34
pt 6 hdg	ins No. 42, 2010, s 8
pt 6	
div 1 hdg	ins No. 42, 2010, s 8
s 52	amd No. 69, 1998, s 10 rep No. 36, 2007, s 35 ins No. 42, 2010, s 8
pt 6	
div 2 hdg	ins No. 42, 2010, s 19
s 53	ins No. 56, 1987, s 15 amd No. 69, 1998, s 10 rep No. 36, 2007, s 35 ins No. 42, 2010, s 19
ss 54 – 60	ins No. 42, 2010, s 19