

NORTHERN TERRITORY OF AUSTRALIA

LEGISLATIVE ASSEMBLY MEMBERS' SUPERANNUATION FUND ACT

As in force at 1 July 2015

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 July 2015

LEGISLATIVE ASSEMBLY MEMBERS' SUPERANNUATION FUND ACT

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

Part I Preliminary

1 Short title

This Act may be cited as the *Legislative Assembly Members' Superannuation Fund Act*.

2 Commencement

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

3 Definitions

In this Act:

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

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

Assembly means the Legislative Assembly.

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

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

Fund means the Legislative Assembly Members' Superannuation Fund established under this Act.

member means a member of the Assembly who:

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

Scheme means the superannuation scheme established by this Act.

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

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

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

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

Trustee Board means the Superannuation Trustee Board continued under section 8A of the *Superannuation Act*.

Under Treasurer means the Chief Executive Officer, within the meaning of the *Public Sector Employment and Management Act*, of the Agency responsible under the Treasurer for the administration of the *Financial Management Act*.

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

- (1) The Scheme is to be administered in accordance with:
 - (a) the Surcharge Act and the Surcharge Collection Act; and

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

3B Application of Criminal Code

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

Note for section 3B

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

Part II Administration

Division 1 The Legislative Assembly Members' Superannuation Fund

4 The Fund

- (1) There shall be established a fund by the name of the Legislative Assembly Members' Superannuation Fund.
- (2) The following are to be credited to the Fund:
- (a) payments and contributions paid by members pursuant to this Act; and
 - (b) moneys paid to the Fund by the Territory; and
 - (c) interest and other income earned by the investment of moneys of the Fund; and
 - (d) moneys borrowed by the Trustee Board in accordance with this Act.
- (2A) The following may be debited to the Fund:
- (a) benefits payable under this Act; and

- (b) costs incurred by the Trustee Board in the administration of the Scheme and management of the Fund; and
 - (c) the portion of the Board's general costs (as defined in section 8TB of the *Superannuation Act*) that are apportioned under that section to the Scheme; and
 - (d) the cost of any borrowing under subsection (3); and
 - (e) any other amounts lawfully payable by the Trustee Board from the Fund.
- (3) For the purposes of the Fund, the Trustee Board may borrow money from the Territory and, with the consent of the Minister, from any person.
- (4) A liability in respect of moneys borrowed with the consent of the Minister in pursuance of subsection (3) is hereby guaranteed by the Territory.
- (5) A liability incurred by the Territory under a guarantee referred to in subsection (4) shall be satisfied out of the public moneys of the Territory and the appropriation for that purpose is hereby established or increased to the extent necessary.
- (6) The Fund vests in the Trustee Board.

4A Members' accumulation accounts

- (1) The Trustee Board must keep a separate account in the accounts of the Fund for each member and each former member who retains an interest in the Fund.
- (2) The account must record the following:
- (a) all contributions made by the member;
 - (b) the return on the account for each financial year;
 - (c) benefits and other amounts paid from the account;
 - (d) any other amounts debited or credited to the account.

4B Return on accumulation accounts

- (1) The Trustee Board must, as soon as practicable after the end of each financial year, determine the rate of return (which may be positive, neutral or negative) on accumulation accounts for the financial year.

- (2) The return is to be credited (or debited) to accumulation accounts as at the end of the financial year.
- (3) If an accumulation account is to be closed during the course of a financial year, the Trustee Board must determine the rate of return (which may be positive, neutral or negative) on the accumulation account for the relevant part of the financial year.
- (4) The return is to be credited (or debited) to the relevant accumulation account as at the date of closure of the account.
- (5) A rate of return determined under this section must approximate, in the Trustee Board's opinion, the net rate of return on the investment of the Fund for the relevant period.
- (6) When a member's accumulation account is credited (or debited) under this section, the Trustee Board must forward to the member a statement showing:
 - (a) the amount standing to the member's credit in the accumulation account; and
 - (b) the amount and rate of the return.

4C Surcharge debt accounts

- (1) The Trustee Board 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 member in relation to whom superannuation contributions surcharge is paid or payable by the Trustee Board.
- (2) The Trustee Board must debit to the surcharge debt account of a member:
 - (a) superannuation contributions surcharge paid or payable by the Trustee Board in respect of the member; and
 - (b) interest payable under the Surcharge Collection Act on the amount by which the account is in debit.
- (3) The Trustee Board must credit to the surcharge debt account of a member an amount paid under section 4D by the member.

4D Advance payments to reduce superannuation contributions surcharge

- (1) A member may, on lodging with the Trustee Board an approved election form, 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 (1) is to specify the amount to be paid and the manner of payment.
- (4) A member may, on lodging an approved election form with the Trustee Board:
 - (a) vary in accordance with the form the amount or manner of payment of periodic payments; or
 - (b) revoke an election under this section.
- (5) In this section:

approved election form means a form approved by the Trustee Board.

4E Repayment to Fund of superannuation contributions surcharge

Notwithstanding any other provision of this Act, the Trustee Board may:

- (a) commute part of a pension payable under this Act in relation to a member to a lump sum for the purposes of paying to the Fund an amount equal to the balance of the member's surcharge debt account; or
- (b) deduct an amount equal to the balance of a member's surcharge debt account from a lump sum payment to be paid under this Act in relation to the member.

4F Commutation to pay deferred superannuation contributions surcharge

- (1) If:
 - (a) a former member, or a person, is paid a pension or allowance under this Act; and

- (b) he or she has received from the Commissioner of Taxation notice under section 15 of the Surcharge Collection Act that he or she is liable to pay an amount of superannuation contributions surcharge specified in the notice; and
- (c) the superannuation contributions surcharge relates to surchargeable contributions, within the meaning of the Surcharge Collection Act, in relation to the former member or to a member, or former member, who has died,

the former member or person may, within a reasonable period after the notice was given, request the Trustee Board in writing to commute as much of the pension or allowance payable to him or her as is necessary to provide a lump sum equivalent to the amount.

- (2) The Trustee Board must, if satisfied that the commuted amount will be used to pay the superannuation contributions surcharge, comply with a request under subsection (1).

5 Provision of staff

The Minister may make available to the Trustee Board the services of an employee, within the meaning of the *Public Sector Employment and Management Act*, for the purpose of assisting it in the exercise of its powers and functions under this Act.

6 Investment of moneys

The Trustee Board may invest the moneys of the Fund in such investments as it thinks fit.

7 Accounts and audit

- (1) The Trustee Board shall keep complete and proper accounts for the Fund.
- (2) In each financial year the accounts shall be audited by the Auditor-General and a copy of the accounts, together with a report of the Auditor-General, shall be forwarded to the Minister who shall, within 6 sitting days after they are received by him or her, cause them to be tabled in the Assembly.
- (3) Part 3 of the *Audit Act* applies to and in relation to an audit conducted under this section.

8 Actuarial investigation

- (1) An investigation as to the state and sufficiency of the Fund shall be made as at 30 June 1980 and as at the expiration of each period of 3 years thereafter.
- (2) The investigations referred to in subsection (1) shall be made by an actuary appointed by the Trustee Board .
- (3) When the actuary has completed an investigation of the Fund under this section he or she shall report to the Trustee Board the result of his or her investigation and shall certify to the Minister the amount that, in addition to any other moneys payable into the Fund (including any interim advances which, before the completion of the investigation, have been paid into the Fund, or which he or she has, under subsection (4), certified should be paid into the Fund) should, in his or her opinion, be paid into the Fund in respect of each financial year during the period of 25 years following the completion of that investigation to enable the Fund to meet its liabilities.
- (4) Where the actuary appointed by the Trustee Board to make an investigation of the Fund is of the opinion that an interim advance to the Fund should be made to enable current liabilities of the Fund to be paid, without realization of investments, before any of the annual amounts certified or to be certified in accordance with subsection (3) are payable, he or she may, at any time before the appointment of an actuary to make the next succeeding investigation of the Fund, certify to the Minister the amounts that, in his or her opinion, should be paid into the Fund by way of interim advances.

9 Payment by Territory

The Territory shall pay into the Fund the annual amounts, from time to time, last certified in accordance with section 8(3) and the interim advances certified in accordance with section 8(4).

10 Source of payment

Payments to be made under this Act by the Territory into the Fund shall be paid from the public moneys of the Territory and the appropriation for that purpose is hereby established or increased to the extent necessary.

Division 2 Trustee Board

11 Functions of Trustee Board

The functions of the Trustee Board are:

- (a) to hold the Fund as trustee for the members; and
- (b) to manage the Fund; and
- (c) to administer the Scheme.

12 Delegation

The Trustee Board may delegate any of its powers and functions under this Act to:

- (a) the Commissioner of Superannuation under the *Superannuation Act*, or
- (b) a member of the Trustee Board; or
- (c) a committee established under section 8TA of the *Superannuation Act*.

Part III Contributions

15A Application

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

16 Contributions by members

- (1) Subject to subsection (1A), every member shall contribute to the Fund.
- (1A) A member is not required to contribute to the Fund in respect of any basic salary received by him or her after the completion of 20 years service as a member but may, within 14 days (or such longer period as the Trustee Board allows) after the completion of that 20 years service, by notice in writing to the Minister and the Trustee Board, elect to pay contributions or to continue to pay contributions in respect of his or her additional salary earned after the completion of that 20 years service and shall contribute to the Fund accordingly.

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

17 Election by Ministers, &c.

A member who is receiving additional salary may, by notice in writing to the Minister and the Trustee Board, elect to pay contributions on his or her basic salary only and, while that election remains in force, only those contributions shall be deducted from his or her salary and paid to the Fund.

17A Certain members not entitled to contribute

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

Part IV Pensions and benefits

18 Definitions

In this Part:

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

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

spouse, of a member or former member, means:

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

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

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

19 Pensions

- (1) Subject to this Act, where a member who has been elected on not less than 3 occasions and has served as a member for an aggregate period of not less than 8 years ceases to be a member, he or she is entitled to be paid out of the Fund an annual pension at a rate equal to:

A + B

where:

A is an amount equal to 6.25% of final basic salary for each of the first 8 years of service plus 3% of final basic salary for each year of service in excess of 8 years (with a part year being taken into account as a fraction of a whole year calculated on the basis of days), subject to a maximum of 80% of final basic salary.

B is the amount obtained by aggregating, for each office or function for which additional salary was payable to the member, an amount equal to 6.25% of the final additional

salary payable in respect of the office or function for each year the member held the office or performed the function (with a part year being taken into account as a fraction of a whole year calculated on the basis of days), subject to a maximum of 80% of the final additional salary payable for the office or function attracting the highest additional salary held or performed by the member.

- (2) The annual rate of pension payable under subsection (1) shall be increased in proportion to increases in the basic salary payable to members from time to time.
- (3) In this section:

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

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

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

20 Additional salary

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

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

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

22 Retirement through ill health

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

24 Spouses' and dependent children's benefit

- (1) On the death of a former member who was receiving a pension under this Part, the spouse of that former member shall be entitled to an annual pension at the rate of:
 - (a) in the case where the former member had not converted any part of his or her pension entitlement to a lump sum payment:
 - (i) five-sixths of the pension that would have been payable, from time to time, to the former member but for his or her death; or
 - (ii) 40% per annum of the basic salary from time to time, whichever is the greater amount; and
 - (b) in the case where the former member had converted part of his or her pension entitlement to a lump sum payment – five-sixths of the pension that would have been payable, from time to time, to the former member but for his or her death,

but the spouse shall be entitled to no pension if the former member had converted his or her entire pension entitlement to a lump sum payment.

- (2) On the death of a member who has been elected on 3 occasions and has served for an aggregate period of 8 years, the spouse of that member shall, be entitled to an annual pension at the rate of:
- (a) five-sixths of the pension that would have been payable, from time to time, to the member but for his or her death if he or she had ceased to be a member on the date of his or her death and was entitled to a pension under section 19; or
 - (b) 40 per cent per annum of the basic salary from time to time, whichever is the greater amount.
- (3) On the death of a member before he or she has been elected on 3 occasions and has served for an aggregate period of 8 years, a pension shall be paid to his or her spouse, at the same rate as that applying under subsection (2) and, for that purpose, the member's pension calculated under section 19(1) shall be multiplied by 8 and divided by the member's period of service in years (with a part year being taken into account as a fraction of a whole year calculated on the basis of days).
- (4) Subject to subsection (5), where a member dies leaving a dependent child but no spouse, or where a former member who was receiving a pension under this Act dies leaving a dependent child but no spouse, or where the spouse of a deceased person who was before his or her death receiving a pension under this Act dies leaving a dependent child, there shall be payable to such person or persons as the Trustee Board thinks fit, an allowance in respect of such child or children of an amount equal to the following percentage of the pension that was payable to the deceased spouse of the deceased member or former member, or that would have been payable to him or her or her had he or she or she, as the case may be, survived the deceased member or former member:
- | | | |
|--------------------|---|------|
| one child | – | 45% |
| 2 children | – | 80% |
| 3 children | – | 90% |
| 4 or more children | – | 100% |
- (5) An amount otherwise payable under subsection (4) in respect of a dependent child shall, where the child is a dependent child of a former member or the spouse of a deceased member who has

converted a part of his or her or her pension entitlement to a lump sum payment, be reduced by the same proportion as the proportion of the pension entitlement that was converted to a lump sum payment bears to the whole amount of the original pension entitlement of the former member or spouse, as the case may be and, if the whole of the pension entitlement has been converted into a lump sum payment, there should be no entitlement to an allowance under subsection (4).

- (6) A dependent child of a member who died in office without leaving a spouse surviving him or her, or a person acting on behalf of such a child, may, within 6 months after the date of death of the member, apply to the Trustee Board to have a lump sum equal to 2.5 times the amount of the deceased member's accumulation account distributed for the dependent child's benefit as a lump sum payment in lieu of an allowance under subsection (4) and the Trustee Board may, in its absolute discretion, after receiving and considering such actuarial advice, if any, as it thinks fit and taking into account whether the payment of an allowance rather than the lump sum benefit would be to the advantage of that or any other dependent child, distribute the lump sum benefit amongst the deceased member's dependent and non-dependent children in such proportion as, in the opinion of the Trustee Board, is equitable in the circumstances.
- (7) Where an amount in respect of an infant or other person under a legal disability is paid under this section by the Trustee Board to a person having the care or control of the infant or other person or the infant's or other person's property, the Trustee Board shall not be bound to see to the application of that amount.
- (8) Where at the time of his or her death a member or former member had more than one spouse, the aggregate amount payable under this section shall not exceed the amount that would have been payable if at that time he or she had only one spouse, and the Trustee Board, in its absolute discretion, may apportion any such amount between the spouses as, in the opinion of the Trustee Board, is equitable in the circumstances.

25 Commutation of pension – former member

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

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

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

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

where:

R is the proportion of pension to be commuted.

P is the annual amount of pension entitlement.

Y is:

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

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

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

- (3) A former member who makes an election under subsection (1) shall be entitled to receive a lump sum payment calculated under subsection (2) and from the date of payment of that lump sum the annual pension payable to that former member shall be reduced by the amount of annual pension in respect of which the election was made.

25A Commutation of pension – spouse

- (1) The spouse of a member, who is entitled to a pension under section 24(2) or (3), may, within 6 months after first becoming entitled to that pension, by notice in writing to the Trustee Board, elect to convert all or part of the pension entitlement to a lump sum payment determined in accordance with subsection (2).

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

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

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

where:

- R is the proportion of pension to be commuted.
- S is the annual amount of spouse's pension entitlement.
- D is the value of the member's accumulation account at the time of his or her death.
- Y is:
- (i) where the spouse has not attained the age of 66 years – 0; or
 - (ii) in any other case – the number of completed years between the age of the spouse at the time of electing for commutation and 65.

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

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

where:

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

25AB Commutation to pay tax debts

- (1) This section applies if:
- (a) a former member or other person (a **taxpayer**) becomes entitled to a pension or allowance under this Act; and
 - (b) the Commonwealth Commissioner of Taxation (the **ATO**) issues a release authority (as defined in section 45DA of the *Superannuation Act*) for the taxpayer; and

- (c) the release authority is given to the Commissioner:
 - (i) before payment of the taxpayer's pension or allowance commences; and
 - (ii) in accordance with the relevant Commonwealth Act.
- (2) On receipt of the request, the Commissioner may:
 - (a) commute so much of the pension or allowance as is necessary to provide a lump sum equal to the release amount determined under subsection (3); and
 - (b) pay the lump sum:
 - (i) to the ATO; or
 - (ii) if the relevant Commonwealth Act permits and the taxpayer so requests – to the taxpayer.
- (3) The **release amount** is whichever of the following is the least:
 - (a) the amount authorised by the release authority to be paid;
 - (b) the amount the taxpayer or the ATO requests to be paid;
 - (c) the amount of the lump sum that would be achieved if the whole of the taxpayer's pension or allowance were commuted.
- (4) If the Commissioner commutes all or part of a taxpayer's pension or allowance:
 - (a) the amount of the pension or allowance to which the taxpayer is entitled is reduced accordingly; and
 - (b) if the taxpayer is a former member – the balance of the former member's accumulation account at the time he or she ceased to be a member is taken to have been reduced by the amount of the commuted lump sum.

Part IVA Requirements of Family Law Act

25B Definitions

In this Part:

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

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

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

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

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

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

- (1) This section applies despite any other provision of this Act.
- (2) This Act is to be administered in accordance with the provisions of the Family Law Act relating to superannuation.
- (3) Subject to the provisions of the Family Law Act relating to superannuation, this Act is to be administered in relation to a person in accordance with the provisions of a splitting instrument, if any, that applies in relation to the person.
- (4) The Trustee Board may prepare written administrative instructions that are necessary or convenient to give effect to:
 - (a) the provisions of the Family Law Act relating to superannuation; and
 - (b) splitting instruments; and
 - (c) Acts of the Commonwealth relating to superannuation and regulations under those Acts.
- (5) Without limiting the generality of subsection (4), administrative instructions for the purposes of that subsection may include, but are not limited to, the following:
 - (a) the methods of calculating and paying a superannuation interest to member spouses and non-member spouses, including calculations that may reduce the superannuation interest of a member spouse;
 - (b) the establishing of interests and accounts, including accounts under the *Superannuation Act*, for non-member spouses.

- (6) An administrative instruction prepared under subsection (4) takes effect on the date specified in the instruction.
- (7) If a provision of this Act or the administrative instructions made under this section is inconsistent with:
 - (a) a provision of the Family Law Act relating to superannuation; or
 - (b) a splitting instrument,the provision of this Act or the administrative instructions is taken to have been complied with if the provision of the Family Law Act or a splitting instrument, as the case may be, has been complied with.

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

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

Part V Miscellaneous

26 Service before commencement of Act

- (1) This section applies if a person:
 - (a) was a member of the Assembly at any time between 19 October 1974 and 23 September 1979; and
 - (b) made an election under this section as in force before the commencement of Part 3 of the *Superannuation Legislation Amendment Act 2010*; and
 - (c) paid the additional contributions required under this section as then in force.

(2) If this section applies:

- (a) the person's period of service as a member during the period from 19 October 1974 and 23 September 1979 is to be treated as membership for this Act; and
- (b) for sections 17 and 19, that period is taken to be a period during which that member was entitled to additional salary or a salary (as the case requires).

27 Election or re-election of person entitled to pension

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

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

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

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

27B Claims for benefits

- (1) A person entitled, or claiming to be entitled, to a benefit under this Act may apply to the Trustee Board, in the form approved by the Board, for payment of that benefit.
- (2) If the application relates to a benefit under section 22, it must be made within 2 years after the person ceased to be a member.
- (3) The Trustee Board must make a decision on the application as soon as practicable after receiving it.
- (4) On making a decision, the Trustee Board must give the applicant a written notice setting out:
 - (a) the Trustee Board's decision; and
 - (b) either:
 - (i) the Trustee Board's reasons for the decision; or

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- (ii) that the applicant has a right to request written reasons under subsection (5); and
 - (c) that the applicant has a right under Part 5A of the *Superannuation Act* to have the decision reviewed.
- (5) An applicant may, in writing, require the Trustee Board to give reasons for the Board's decision and the Board must give the applicant those reasons in writing.

28 Trustee Board may charge fees for additional services

The Trustee Board may charge a person the reasonable cost of performing on behalf of the person a service in relation to this Act that the Trustee Board undertakes at the request of the person.

28A Confidentiality of information

- (1) A person commits an offence if the person:
- (a) obtains information in the course of performing functions connected with the administration of this Act; and
 - (b) engages in conduct that results in the disclosure of the information.

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

- (2) Strict liability applies in relation to subsection (1)(a).
- (3) Subsection (1) does not apply if:
- (a) the person discloses the information:
 - (i) for the administration of this Act or otherwise in relation to the operation or management of the Scheme; or
 - (ii) with the consent of the person to whom the information relates; or
 - (iii) for legal proceedings arising out of the operation of this Act; or
 - (b) the information is otherwise available to the public.

Note for subsection (3)

In addition to the circumstances mentioned in subsection (3), a person who discloses confidential information will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

29 Regulations

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

Part VI Transitional matters for Superannuation Legislation Amendment Act 2010**30 Object of this Part**

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

31 Definitions

In this Part:

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

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

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

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

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

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

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

32 Transfer of Fund and liabilities etc.

At the restructure time:

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

33 Effect on rights and remedies

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

34 Completion of change of trusteeship

- (1) The old trustees, Trustee Board and Commissioner must take all practicable steps to:
 - (a) ensure that the effect sought to be achieved by sections 32 and 33 is achieved; and
 - (b) otherwise give effect to the object of this Part.
- (2) Without limiting subsection (1):
 - (a) the Commissioner must give to each registrar all the information the registrar needs in order to record and register the documents necessary to show the effect of section 32; and

- (b) the old trustees, Trustee Board and Commissioner must make arrangements for the delivery to the Trustee Board of all the old Trust's documents and other records relating to the Fund or Scheme.

- (3) In this section:

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

35 Exemption from taxes and charges

- (1) No tax or charge is chargeable in relation to any thing (a **relevant act**):

- (a) that occurs by operation of this Part; or

- (b) done:

- (i) under this Part; or

- (ii) to give effect to this Part; or

- (iii) for a purpose connected with, or arising out of, giving effect to the object of this Part.

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

- (3) Any foreign tax or charge payable in relation to a relevant act is to be paid from the Central Holding Authority, which is appropriated accordingly.

- (4) In this section:

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

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

36 Continuation of ongoing matters

- (1) Anything done or omitted to be done by, to, or in relation to, the old Trust before the restructure time that is of ongoing effect is to be taken, after the restructure time, to have been done or omitted to be done by, to, or in relation to, the Trustee Board.

- (2) Without limiting subsection (1), any direction given by the old Trust to the Commissioner and in force immediately before the restructure time continues in force as a direction given by the Trustee Board.

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

37 Time limit for claiming retirement through ill health benefit

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

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

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***Legislative Assembly Members' Superannuation Act 1979 (Act No. 83, 1979)***

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

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

Assent date 9 January 1981
 Commenced 9 January 1981

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

Assent date 28 November 1983
 Commenced 28 November 1983

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

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

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

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

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

Assent date 8 April 1992
 Commenced 8 April 1992

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

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

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

Assent date 7 September 1992
 Commenced 7 September 1992

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

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

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

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

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

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

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

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

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

Assent date 26 February 1999
 Commenced 26 February 1999

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

Assent date 14 December 1999
 Commenced 14 December 1999

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

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

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

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

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

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

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

Assent date 26 April 2006
 Commenced 26 April 2006

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

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

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

Assent date 11 March 2008
Commenced 11 March 2008

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

Assent date 18 June 2009
Commenced 18 June 2009

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

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

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

Assent date 27 April 2012
Commenced 27 April 2012

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

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

3 SAVINGS AND TRANSITIONAL PROVISIONS

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

4 LIST OF AMENDMENTS

- It amd No. 68, 2004, s 4
- s 1 amd No. 68, 2004, s 5
- s 3 amd No. 34, 1989, s 4; No. 5, 1992, s 2; No. 44, 1996, s 4; No. 67, 1998, s 4; No. 68, 2004, s 6; No. 7, 2006, s 30; No. 36, 2007, s 37; No. 42, 2010, s 22; No. 15, 2012, s 10
- s 3A ins No. 34, 1992, s 3
sub No. 44, 1996, s 5; No. 67, 1998, s 5
amd No. 42, 2010, s 27
- s 3B ins No. 39, 2014, s 28
- s 4 amd No. 5, 1995, s 19; No. 67, 1998, s 6; No. 15, 2009, s 16; No. 42, 2010, s 23; No. 39, 2014, s 29
- s 4A ins No. 34, 1989, s 5
amd No. 67, 1998, s 9
sub No. 36, 2007, s 38
amd No. 42, 2010, s 27; No. 39, 2014, s 30

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s 4B	ins No. 34, 1989, s 5 amd No. 67, 1998, s 9 sub No. 36, 2007, s 38 amd No. 42, 2010, s 27
ss 4C – 4E	ins No. 67, 1998, s 7 amd No. 42, 2010, s 27
s 4F	ins No. 61, 1999, s 2 amd No. 42, 2010, s 27
s 5	amd No. 28, 1993, s 3; No. 42, 2010, s 27
s 6	amd No. 6, 1981, s 4; No. 58, 1983, s 3; No. 42, 2010, s 27
s 7	amd No. 58, 1983, s 3; No. 5, 1995, s 19; No. 67, 1998, s 9; No. 6, 2008, s 3; No. 42, 2010, s 27
s 8	amd No. 67, 1998, s 9; No. 42, 2010, s 27
s 9	amd No. 6, 2008, s 3
s 10	amd No. 5, 1995, s 19; No. , 2009, s 16
pt II	
div 2 hdg	sub No. 42, 2010, s 24
s 11	sub No. 42, 2010, s 24
s 12	amd No. 44, 1996, s 6; No. 67, 1998, s 9 sub No. 42, 2010, s 24 amd No. 39, 2014, s 31
s 13	rep No. 42, 2010, s 24
s 14	amd No. 67, 1998, s 9 rep No. 42, 2010, s 24
s 15	rep No. 42, 2010, s 24
s 15A	ins No. 68, 2004, s 7
s 16	amd No. 34, 1989, s 6; No. 67, 1998, s 9; No. 42, 2010, s 27
s 17	amd No. 67, 1998, s 9; No. 42, 2010, s 27
s 17A	ins No. 68, 2004, s 8
s 18	amd No. 34, 1989, s 7; No. 82, 1991, s 11; No. 67, 1998, s 9; No. 1, 2004, s 62; No. 42, 2010, s 27
s 19	amd No. 34, 1989, s 8 sub No. 44, 1996, s 7 amd No. 67, 1998, s 9; No. 5, 1999, s 2; No. 42, 2010, s 27
s 21	amd No. 34, 1989, s 9; No. 44, 1996, s 8; No. 67, 1998, s 9
s 22	amd No. 34, 1989, s 10; No. 44, 1996, s 9; No. 67, 1998, s 9; No. 42, 2010, s 27
s 23	amd No. 67, 1998, s 9 rep No. 5, 1999, s 3
s 24	amd No. 34, 1989, s 11; No. 44, 1996, s 10; No. 67, 1998, s 9; No. 42, 2010, s 27
s 25	amd No. 34, 1989, s 12; No. 44, 1996, s 11; No. 67, 1998, s 9; No. 42, 2010, s 27
s 25A	ins No. 34, 1989, s 13 amd No. 44, 1996, s 12; No. 67, 1998, s 9; No. 42, 2010, s 27
s 25AB	ins No. 39, 2014, s 32
pt IVA hdg	ins No. 10, 2003, s 3
ss 25B – 25D	ins No. 10, 2003, s 3 amd No. 42, 2010, s 27
s 26	amd No. 6, 1981, s 4; No. 67, 1998, s 9 sub No. 42, 2010, s 25
s 27	amd No. 67, 1998, s 9 sub No. 68, 2004, s 9
s 27A	ins No. 68, 2004, s 9
s 27B	ins No. 39, 2014, s 72

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s 28	amd No. 58, 1983, s 3; No. 5, 1992, s 3; No. 46, 1992, s 13 rep No. 67, 1998, s 8 ins No. 10, 2003, s 4 amd No. 42, 2010, s 27
s 28A	ins No. 39, 2014, s 33
pt VI hdg	ins No. 42, 2010, s 26
ss 30 – 36	ins No. 42, 2010, s 26
pt VII hdg	ins No. 39, 2014, s 73
s 37	ins No. 39, 2014, s 73