

NORTHERN TERRITORY OF AUSTRALIA

SUPERANNUATION LEGISLATION AMENDMENT ACT 2010

Act No. 42 of 2010

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 42 of 2010

An Act to amend legislation relating to superannuation

[Assented to 13 December 2010]
[Second reading 20 October 2010]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Superannuation Legislation Amendment Act 2010*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Superannuation Act

Division 1 Preliminary matters

3 Act amended

This Part amends the *Superannuation Act*.

Division 2 NTGDI Scheme

4 Section 45E amended

Section 45E(1), definitions *entry date*, *medical condition*, *reduced benefit classification* and *reduced benefit classification adjustment factor*

omit

5 Section 45H amended

- (1) Section 45H(1), Note, after "*Note*"

insert

for section 45H(1)

- (2) Section 45H(3)

omit, insert

- (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.

6 Part 4, Division 3 repealed

Part 4, Division 3

repeal

7 Section 45N amended

- (1) Section 45N(1), formula

omit, insert

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

- (2) Section 45N(1), definition B

omit

benefit; and

insert

benefit.

(3) Section 45N(1), definition S

omit

salary; and

insert

salary.

(4) Section 45N(1), definition Y

omit

subsection (2); and

insert

subsection (2).

(5) Section 45N(1), definition P

omit

member, 1; and

insert

member, 1.

(6) Section 45N(1), definition A

omit

8 Part 6 inserted

After section 51

insert

**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 3 NTGPAS Scheme

9 Section 3 amended

- (1) Section 3(1), definition **eligible employee**, after paragraph (b)
- insert*
- (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

- (2) Section 3(1), definitions *eligible employee*, paragraphs (a) and (d)(i) and *permanent employee*, paragraph (a)(i) and (a), at the end

insert

or

10 Section 37 amended

After section 37(5)

insert

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

11 Section 50A amended

- (1) Section 50A, heading

omit, insert

50A Commissioner may charge fees

- (2) After section 50A(3)

insert

- (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.

Division 4 Superannuation Trustee Board

12 Section 3 amended

- (1) Section 3(1), definition *Investment Board*

omit

- (2) Section 3(1)

insert (in alphabetical order)

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

(3) Section 3(1), definition **Board**

omit

Investment

insert

Trustee

13 Section 6 amended

(1) Section 6(1)(a) and (3)

omit

Investment

insert

Trustee

(2) Section 6(1)(a), at the end

insert

and

(3) After section 6(1)(b)

insert

(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

14 Section 7 amended

Section 7(1)

omit, insert

(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*.

15 Section 11 replaced

Section 11

repeal, insert

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.

16 Section 12 amended

- (1) Section 12, heading

omit

Investment

insert

Trustee

- (2) Section 12(1), (2), (3) and (4)

omit

Investment

insert

Trustee

- (3) Section 12(1)(a)

omit, insert

(a) to hold the Fund as trustee for the members; and

- (4) After section 12(1)(b)

insert

(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

17 Section 24 amended

Section 24

omit

this Act.

insert

this or any other Act.

18 Section 38 amended

- (1) Section 38(1) and (2)

omit

Investment

insert

Trustee

(2) After section 38(1)

insert

(1A) The Fund vests in the Trustee Board.

19 Part 6, Division 2 inserted

After section 52

insert

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.

20 Act further amended

Schedule 1 has effect.

Part 3 Amendment of Legislative Assembly Members' Superannuation Fund Act

21 Act amended

This Part amends the *Legislative Assembly Members' Superannuation Fund Act*.

22 Section 3 amended

- (1) Section 3

omit

Act, unless the contrary intention appears

insert

Act

-
- (2) Section 3, definitions *Trust* and *Trustee*

omit

- (3) Section 3

insert (in alphabetical order)

Scheme means the superannuation scheme established by this Act.

Trustee Board means the Superannuation Trustee Board established by section 11 of the *Superannuation Act*.

23 Section 4 amended

- (1) Section 4(2)(d) and (3)

omit

Trust

insert

Trustee Board

- (2) section 4(2)(a) and (b), at the end

insert

and

- (3) Section 4(6)

omit, insert

- (6) The Fund vests in the Trustee Board.

24 Part II, Division 2 replaced

Part II, Division 2

repeal, insert

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 Board.

25 Section 26 replaced

Section 26

repeal, insert

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).

26 Part VI inserted

After section 29

insert

**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.

27 Act further amended

Schedule 2 has effect.

**Part 4 Amendment of Northern Territory Government
and Public Authorities' Superannuation
Scheme Rules**

28 Rules amended

This Part amends the *Northern Territory Government and Public Authorities' Superannuation Scheme Rules*.

29 Rule 1 amended

- (1) Rule 1

omit

Rules, unless the contrary intention appears

insert

Rules

- (2) Rule 1

insert (in alphabetical order)

NTSSS instrument means the instrument establishing the Northern Territory Supplementary Superannuation Scheme, as in force from time to time.

- (3) Rule 1, definitions ***approved annuity*** and ***benefit salary***, paragraph (a)

omit

; and

insert

; or

-
- (4) Rule 1, definitions *approved period of leave without pay*, paragraphs (a), (b) and (c) and *contribution salary*, paragraph (a), at the end
- insert*
- or
- (5) Rule 1, definition *contribution salary*, paragraph (b)(ii)
- omit*
- ; and
- insert*
- ; or
- (6) Rule 1, definition *former member*, paragraph (b)
- omit, insert*
- (b) a transferee as defined in rule 13C(1).
- (7) Rule 1, definition *prospective membership*, paragraphs (a) and (b), at the end
- insert*
- or
- (8) Rule 1, definition *prospective membership*, paragraph (c)
- omit*
- ; and
- insert*
- ; or
- (9) Rule 1, definition *retrenchment*, paragraph (a), at the end
- insert*
- or

30 Rule 6A inserted

After rule 6

insert

6A Benefit at preservation age

- (1) A member who has attained the preservation age may, in an approved form, elect to take a benefit under this rule.
- (2) If a member who is an eligible employee under the NTSSS makes an election under clause 6(4) of the NTSSS instrument to take a benefit under that clause, the election also takes effect as an election under subrule (1).
- (3) A member who makes an election under subrule (1) must receive a benefit comprising:
 - (a) a refund of the amount credited to his or her accumulation account, if any; and
 - (b) the accrued employer component;less the amount of the balance of the member's surcharge debt account, if any.
- (4) A member ceases to be an eligible employee when the member makes an election under subrule (1).
- (5) In this rule:

preservation age, see regulation 6.01(2) of the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

Note for rule 6A

The administration of the NTGPAS Scheme is subject to the inter-governmental agreement mentioned in section 3A of the Act. As a result, payment of a benefit under this rule is subject to the cashing restrictions mentioned in Schedule 1, Part 1, item 110 of the Superannuation Industry (Supervision) Regulations 1994 (Cth).

31 Rule 13C replaced

Rule 13C

repeal, insert

13C Payments from NTSSS or NTPSBS

- (1) This rule applies if an amount is paid into the Fund for a person (the ***transferee***):
 - (a) under clause 6(3) or (4) of the NTSSS instrument; or

- (b) under a provision of the NTPSBS trust deed that allows for a benefit payable under that trust deed to be paid to the Fund.
- (2) If the transferee does not have an accumulation account, the Commissioner must establish and maintain an accumulation account for the transferee.
- (3) The Commissioner must credit the amount paid into the Fund to the transferee's accumulation account.
- (4) In this rule:

NTPSBS trust deed means the trust deed dated 15 June 1984 establishing the Northern Territory Police Supplementary Benefit Fund, as amended from time to time.

Note for rule 13C

*When a transfer is made as described in rule 13C(1) the transferee becomes a former member (see rule 1, definition **former member**).*

32 Rules further amended

Schedule 3 has effect.

Schedule 1 Superannuation Act further amended

section 20

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
Part 2, Division 3, heading	Investment	Trustee
section 20(2)(a) and (b), at the end		or
section 39(1), (2) and (2)(b)(ii)	Investment <i>(all references)</i>	Trustee
section 39(2)(a)(i), (ii) and (iii) and (b)(i) and (ia), at the end		and
sections 40, 41(1), 42(1) and (3) and 43(1)(a), (2) and (3)	Investment <i>(all references)</i>	Trustee
section 45B	, unless the contrary intention appears	
sections 45C(4)(a) and 45D(2)(a), at the end		and
section 45X(3) and (5)	Investment	Trustee
section 48, heading	Board	Review Board

Schedule 2 Legislative Assembly Members' Superannuation Fund Act further amended

section 27

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
section 3A(1)	established by this Act	
sections 4A(1) and 4B(1), (3) and (6)	Trustees	Trustee Board
section 4B(5)	Trustees'	Trustee Board's
sections 4C(1), (2), (2)(a) and (3) and 4D(1) and (4)	Trustees <i>(all references)</i>	Trustee Board
section 4D(5)	section, <i>approved</i>	section: <i>approved</i>
	Trustees	Trustee Board
sections 4E and 4F(1) and (2)	Trustees	Trustee Board
section 4F(1)(a), at the end		and
sections 5, 6 and 7(1)	Trust	Trustee Board
section 7(1)	of its financial transactions	for the Fund
section 7(2)	of the Trust	
section 8(2), (3) and (4)	Trust	Trustee Board
section 16(1A)	Trustees allow Trustees,	Trustee Board allows Trustee Board,
section 16(2)(a), at the end		or
section 16(2)(b)	; and	; or

section 17	Trust	Trustee Board
section 18	Part, unless the contrary intention appears	Part
section 18, definition <i>spouse</i> , paragraphs (b) and (d)	Trustee	Trustee Board
section 18, definition <i>spouse</i> , paragraphs (a) and (b), at the end		or
section 18, definition <i>spouse</i> , paragraph (e), at the end		and
section 19(1)	equal to A + B, where:	equal to: A + B where:
section 19(1), definition A	salary; and	salary.
section 22(1) and (3)	Trust <i>(all references)</i>	Trustee Board
section 22(2) and (3)	Trustees	Trustee Board
section 24(4)	Trustees think	Trustee Board thinks
section 24(6)	Trustees <i>(all references)</i> their they think	Trustee Board its it thinks
section 24(7)	Trustees <i>(all references)</i>	Trustee Board
section 24(8)	Trustees, in their Trustees, is	Trustee Board, in its Trustee Board, is
section 25(1)	Trust	Trustee Board
section 25(2)(b)	x D,	x D

section 25(2), definition R	commuted;	commuted.
section 25(2), definition P	entitlement;	entitlement.
section 25(2), definition Y, paragraph (i)	and	or
section 25(2), definition Y, paragraph (ii)	and 65; and	and 65.
section 25A(1)	Trustees	Trustee Board
section 25A(2)(b)	x D,	x D
section 25A(2), definition R	commuted;	commuted.
section 25A(2), definition S	entitlement;	entitlement.
section 25A(2), definition D	death; and	death.
section 25A(2), definition Y, paragraph (i)	and	or
section 25A(4)	Trustees formula) , where:	Trustee Board formula:) where:
section 25B	Part, unless the contrary intention appears	Part
section 25C(4)	Trustees	Trustee Board
section 25C(4)(a), at the end		and
section 25D(2)	for the purposes of the Trust by the Trustees	by the Trustee Board

section 28, heading	Trustees	Trustee Board
section 28	The Trustees Trustees undertake	The Trustee Board Trustee Board undertakes

Schedule 3 Northern Territory Government and Public Authorities' Superannuation Scheme Rules further amended

section 32

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
rules 3(7)(a) and (b), 9(1)(a) and (4)(a), 10(1)(a) and (3)(a) and 15(2)(a), at the end		and
rule 17(5), definition BP	received;	received.
rule 17(5), definition AR	received; and	received.
