

NORTHERN TERRITORY OF AUSTRALIA

SUPERANNUATION ACT 1986

No. 38 of 1986

TABLE OF PROVISIONS

Section

PART I - PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART II - ADMINISTRATION

*Division 1 - Commissioner of Superannuation*

4. Commissioner
5. Acting appointment
6. Functions and powers of Commissioner
7. Delegation
8. Secrecy

*Division 2 - Superannuation Review Board*

9. Superannuation Review Board
10. Functions and powers of Review Board

*Division 3 - Superannuation Investment Board*

11. Superannuation Investment Board
12. Functions and powers of Investment Board

*Division 4 - General*

13. Definition
14. Nomination and appointment of members
15. Alternate members
16. Chairman and acting Chairman
17. Period of appointment
18. Leave of absence
19. Resignation of members
20. Dismissal

21. Disclosure of interest
22. Meetings of Board
23. Validity of acts or decisions of Board
24. Protection of members
25. Boards not subject to direction of ministers

PART III - NORTHERN TERRITORY GOVERNMENT AND PUBLIC  
AUTHORITIES' SUPERANNUATION SCHEME

*Division 1 - The Scheme*

26. Membership
27. Information
28. Records of accumulation accounts
29. Payment of benefits
30. Commissioner may recover employer-financed  
benefits on behalf of Territory
31. Discretionary benefits
32. Assignment, &c., of benefit
33. Payment without grant of probate, &c.
34. Payment where beneficiary incapable
35. Unclaimed benefits
36. Portability of benefits
37. Rules

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

38. Establishment of Fund
39. Fund accounts
40. Proper accounts to be kept
41. Fixing of interest rates
42. Recovery of money owing to Fund or Territory
43. Audit and annual report
44. Rule against perpetuities not to apply
45. Actuarial review

PART IV - CLAIMS FOR BENEFITS AND REVIEW  
OF DECISIONS

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

PART V - MISCELLANEOUS

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

SCHEDULE

Northern Territory Government and Public Authorities'  
Superannuation Scheme Rules

PART I - PRELIMINARY

1. Definitions

PART II - CLASSIFICATION AND CONTRIBUTIONS

2. Medical classification on entry
3. Reduced benefit classification
4. Salary for superannuation purposes
5. Contributions

PART III - BENEFITS

6. Age retirement benefit
7. Resignation benefit
8. Retrenchment benefit
9. Death benefit
10. Invalidity retirement benefit
11. Temporary invalidity income benefit
12. Continuing invalidity income benefit
13. Preservation of benefits



## NORTHERN TERRITORY OF AUSTRALIA

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No. 38 of 1986

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### AN ACT

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

[Assented to 19 September 1986]

**B**E it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

#### PART I - PRELIMINARY

##### 1. SHORT TITLE

This Act may be cited as the *Superannuation Act 1986*.

##### 2. COMMENCEMENT

(1) Sections 1 and 2 shall come into operation on the day on which the Administrator's assent to this Act is declared.

(2) The remaining provisions of this Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

##### 3. INTERPRETATION

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

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

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

"approved" means approved by the Commissioner;

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## *Superannuation*

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

"Board" means the Review Board or the Investment Board;

"Chairman", in relation to a Board, means the relevant Chairman appointed under section 16, and includes the Acting Chairman while he is so acting;

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

"Commonwealth Act" means the *Superannuation Act 1976* of the Commonwealth;

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

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

- (a) an employee, or a member of a prescribed class of employees, declared in writing for the purposes of this paragraph by the Commissioner;
- (b) a subscriber to or a member of a superannuation scheme, not being -
  - (i) the Scheme established by this Act;
  - (ii) a superannuation scheme, or one of a class of superannuation schemes, declared in writing for the purposes of this subparagraph by the Commissioner; or
  - (iii) a superannuation scheme where no benefits are directly or indirectly provided or contributed to by his employer;

### Superannuation

- (c) a member of the Police Force; 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) an employee in the Public Service; or
  - (ii) an officer or employee of the Northern Territory Teaching Service;

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

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

"Investment Board" means the Superannuation Investment Board established under section 11;

"permanent employee" means -

- (a) a person who is employed, whether or not on probation, as -
  - (i) an employee in the Public Service; or
  - (ii) an officer or employee of the Northern Territory Teaching Service;

otherwise than on a tenure expressed to be for a period of less than 6 months;

- (b) a person (other than a person described in paragraph (a) of this definition) who is employed on a contract of service by the Territory or by a public authority, not being a contract of service that is expressed to be for a term of less than 6 months, whether the terms and conditions of his 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 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,

## *Superannuation*

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;

"public authority" means an authority or body prescribed in the Regulations;

"Public Service" means the Public Service of the Northern Territory established by the *Public Service Act*;

"Review Board" means the Superannuation Review Board established under section 9;

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

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

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

(2) Where in the definition of "eligible employee" in subsection (1) reference is made to an employee or class of employees, a superannuation scheme or an office declared in writing by the Commissioner, that employee or class of employees, scheme or office may be so declared by the Commissioner -

(a) in the case of the declaration of an employee - by notice in writing to the employee; and

(b) in any other case - by notice in the *Gazette*.

(3) A declaration under subsection (2) takes effect on and from the date specified in the relevant notice.

## PART II - ADMINISTRATION

### *Division 1 - Commissioner of Superannuation*

#### 4. COMMISSIONER

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

## *Superannuation*

### 5. ACTING APPOINTMENT

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

### 6. FUNCTIONS AND POWERS OF COMMISSIONER

(1) The functions of the Commissioner are -

- (a) as directed by the Investment Board, to undertake and manage the investments of the Fund;
- (b) subject to paragraph (a), to administer the Scheme; and
- (c) such other functions as are imposed on him by or under this or any other Act.

(2) The Commissioner has such powers as are necessary to enable him to perform his functions or exercise his powers or as are conferred on him by or under this or any other Act.

(3) Without limiting the generality of subsection (2), but subject to this Act, the Commissioner has power to borrow money for the Fund, or obtain overdraft accommodation, not exceeding \$1,000,000 or 10% of the value of the Fund, whichever is the greater, as directed by the Investment Board, to meet liabilities of the Fund.

### 7. DELEGATION

(1) The Commissioner may, by instrument in writing, delegate to a person any of his powers and functions under this Act, other than this power of delegation.

(2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act and the Rules, be deemed to have been exercised or performed by the Commissioner.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Commissioner.

### 8. SECRECY

(1) Subject to this Act and the Rules, the Commissioner or a person who is employed by the Territory shall not, either directly or indirectly, except for the purposes of this Act or the Rules -



### *Superannuation*

- (a) make a record of, or communicate to a person, information concerning the affairs of another person acquired by him under this Act or the Rules by reason of his office or that employment; or
- (b) produce to a person, or permit a person to have access to, a document furnished to him for the purposes of this Act or the Rules.

Penalty: \$1,000.

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

#### *Division 2 - Superannuation Review Board*

#### 9. SUPERANNUATION REVIEW BOARD

(1) There shall be a Board by the name of the Superannuation Review Board.

- (2) The Review Board shall consist of -
  - (a) the Chairman; and
  - (b) 2 other residents of the Territory appointed by the Minister of whom one shall be a member of an industrial union having a significant membership among eligible employees appointed on the nomination of the Trades and Labor Council.

#### 10. FUNCTIONS AND POWERS OF REVIEW BOARD

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

## *Superannuation*

### *Division 3 - Superannuation Investment Board*

#### 11. SUPERANNUATION INVESTMENT BOARD

(1) There shall be a board by the name of the Superannuation Investment Board.

(2) The Investment Board shall consist of -

(a) the Chairman; and

(b) 2 other residents of the Territory appointed by the Minister of whom one shall be a member of an industrial union having a significant membership among eligible employees appointed on the nomination of the Trades and Labour Council.

#### 12. FUNCTIONS AND POWERS OF INVESTMENT BOARD

(1) The functions of the Investment Board are -

(a) to act as trustees of the Fund;

(b) to direct the Commissioner in managing the Fund on its behalf and the investments of the Fund; and

(c) such other functions as are imposed on it by or under this or any other Act.

(2) The Investment Board has such powers as are necessary to enable it to perform its functions or exercise its powers or as are conferred on it by or under this or any other Act.

(3) Without limiting the generality of subsection (2), the Investment Board may direct the Commissioner -

(a) to engage such managers, financial and legal advisers, actuaries and other experts in and in relation to his 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, whether or not they are authorized trustee investments, as are prescribed or, in the absence of such prescription,

as it thinks fit.

(4) In directing the Commissioner in pursuance of this section, the Investment Board shall have regard to the need -

(a) to make provisions for payments under the Scheme out of the Fund;

(b) for equity among eligible employees;

### *Superannuation*

- (c) to ensure that the moneys standing to the credit of the Fund are invested so as to achieve maximum returns consistent with sound management of the assets of the Fund;
- (d) to exercise reasonable care and prudence in order to maintain the integrity of the Fund;
- (e) to establish policies for the investment of moneys standing to the credit of the Fund and the strategies that are to be adopted to achieve those policies;
- (f) to determine, authorize or approve programmes for the investment of moneys standing to the credit of the Fund; and
- (g) to ensure an adequate spread of investments of the Fund.

### *Division 4 - General*

#### 13. DEFINITION

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

#### 14. NOMINATION AND APPOINTMENT OF MEMBERS

(1) If the Trades and Labor Council fails to make a nomination for the purposes of section 9(2)(b) or 11(2)(b) within 28 days after being requested in writing by the Minister to do so or nominates a person who is a member of an industrial union which, in the opinion of the Minister, does not have a significant membership among eligible employees, the Minister may appoint any resident of the Territory considered by him to be qualified and suitable to be appointed, and a person so appointed shall be deemed to have been nominated pursuant to that section.

(2) A member appointed under section 9(2)(b) or 11(2)(b) may be appointed by reference to an office specified in the instrument of appointment and where an appointment is so made the holder of that office from time to time shall be that member.

#### 15. ALTERNATE MEMBERS

(1) At the same time as he appoints a member under section 9(2)(b) or 11(2)(b), and from time to time as the occasion requires, the Minister shall appoint another resident of the Territory, to be an alternate member for that member.

(2) The Minister shall not appoint a person to be an alternate member for the member appointed on the nomination of the Trades and Labour Council unless that person has been nominated as an alternate member by that Council.

## *Superannuation*

(3) An alternate member appointed under subsection (1) shall perform the functions and may exercise the powers of the member for whom he is appointed an alternate member during the absence from the Territory or from duty of the member or the member's inability (because of his disclosure of an interest in accordance with section 21, or otherwise) to act as a member.

### 16. CHAIRMAN AND ACTING CHAIRMAN

(1) Subject to this section, the Minister shall, by notice in the *Gazette*, appoint a resident of the Territory to be the Chairman of a Board.

(2) The Minister shall, whenever the occasion for the appointment of the Chairman arises, by notice in writing to the Secretary of the Trades and Labor Council, indicate the names of 3 residents of the Territory as candidates for appointment as the Chairman.

(3) If within 28 days after receiving the notice under subsection (2) the Trades and Labor Council, in writing, indicates to the Minister that a particular person named in the notice under that subsection should be appointed as the Chairman, the Minister shall appoint that person accordingly.

(4) If within 28 days after receiving the notice under subsection (2) the Trades and Labor Council has not indicated to the Minister that a particular person named in the notice should be appointed as the Chairman or the Trades and Labor Council indicates that another person, or one of a number of persons, nominated by it should be appointed as the Chairman, the Minister may appoint any person named in the notice under that subsection, or nominated by the Trades and Labor Council, to be the Chairman.

(5) The Minister shall, in the same manner and subject to the same conditions as apply under this section to the appointment of the Chairman, appoint a resident of the Territory to act from time to time as the Chairman during the absence from duty or from the Territory of the Chairman or a vacancy in the office of Chairman.

### 17. PERIOD OF APPOINTMENT

(1) The Chairman and Acting Chairman, and a member appointed under section 9(2)(b) or 11(2)(b), hold office, subject to this Part and the Regulations, for 5 years from the date of their respective appointments but are eligible for re-appointment.

(2) Subsection (1) does not apply to a member appointed under section 9(2)(b) or 11(2)(b) who is a member by virtue of being the holder for the time being of an office, position or designation.

## *Superannuation*

### 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 office by notice in writing signed by him and delivered to the Minister.

### 20. DISMISSAL

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

(2) The Minister shall terminate the appointment of a member if the member -

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

### 21. DISCLOSURE OF INTEREST

(1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board otherwise than -

- (a) by virtue of his being an eligible employee; or
- (b) as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 persons and of which he is not a director,

shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

### *Superannuation*

- (2) A disclosure under subsection (1) shall be recorded in the minutes of the Board and the member -
  - (a) shall not, while he 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 Chairman may at any time, and shall if so requested by a member, convene a meeting of the Board.

(2) A meeting requested by a member to be convened shall be held on such date, being not less than 7 days after the request, as the member specifies in his request, or as soon as practicable thereafter.

(3) The Chairman shall preside at all meetings of the Board at which he is present.

(4) In the absence of the Chairman from a meeting of the Board the Acting Chairman shall preside at the meeting.

(5) Subject to Part IV, at a meeting of the Board -

- (a) 3 members constitute a quorum;
- (b) questions arising shall be determined by a majority of the votes of the members; and
- (c) the Board shall determine the procedure to be followed at or in connection with the meeting.

(6) The Board shall keep records of its meetings.

#### 23. VALIDITY OF ACTS OR DECISIONS OF BOARD

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

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

## *Superannuation*

### 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 in his capacity as a member or the performance or purported performance of a function, or in the exercise or purported exercise of a power, under this Act.

### 25. BOARDS NOT SUBJECT TO DIRECTION OF MINISTERS

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

## PART III - NORTHERN TERRITORY GOVERNMENT AND PUBLIC AUTHORITIES' SUPERANNUATION SCHEME

### *Division 1 - The Scheme*

### 26. MEMBERSHIP

(1) All eligible employees are members of the Scheme.

(2) An eligible employee shall pay to the Commissioner the contributions he is required by the Rules to pay.

(3) An eligible employee, former eligible employee or a dependant of an eligible employee or former eligible employee shall be entitled to receive benefits under the Scheme in accordance with this Part and the Rules.

### 27. INFORMATION

(1) An eligible employee or former eligible employee may, at any time, request the Commissioner to provide him with information about the state of his accumulation account in the Fund or the number of annual benefit points to which he is entitled under the Scheme, and the Commissioner shall, as soon as practicable, supply the information requested.

(2) The Commissioner may, at any time, require an eligible employee or the employer of an eligible employee to provide to the Commissioner such information relating to the remuneration of the employee, or such other information relevant to the administration of the Scheme, as the Commissioner requires, and the eligible employee or the employer, as the case may be, shall provide the information accordingly.

## *Superannuation*

### 28. RECORDS OF ACCUMULATION ACCOUNTS

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

### 29. PAYMENT OF BENEFITS

(1) Employer-financed benefits payable under the Scheme shall be paid from moneys set aside for the purpose and to the extent that those moneys are inadequate those benefits shall be paid from the Consolidated Fund, which is hereby appropriated accordingly.

(2) Subject to subsection (1), all benefits payable under the Scheme shall be paid from the Fund.

### 30. COMMISSIONER MAY RECOVER EMPLOYER-FINANCED BENEFITS ON BEHALF OF TERRITORY

(1) Where, in pursuance of section 29(1), an amount is paid out of moneys set aside for the purpose of paying that amount or the Consolidated Fund to or 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 out of moneys set aside as referred to in section 29(1) or the Consolidated Fund 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.



## *Superannuation*

### 31. DISCRETIONARY BENEFITS

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

### 32. ASSIGNMENT, &c., OF BENEFIT

(1) A purported assignment of, or purported charge over, a benefit payable under the Scheme is void.

(2) Where, but for this subsection, a benefit would pass by operation of law to a person other than a person to whom the benefit is payable under the Scheme, the benefit does not so pass.

### 33. PAYMENT WITHOUT GRANT OF PROBATE, &c.

(1) Where an eligible employee or former eligible employee dies and -

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

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

(2) Where the Commissioner makes a decision under subsection (1), he shall either -

- (a) pay the amount of the benefit to a dependant or dependants of the deceased;
- (b) after paying the funeral expenses of the deceased or reimbursing a person who has paid those expenses, pay the balance to a dependant or dependants of the deceased; or
- (c) where, at the time of the death of the eligible employee or former eligible employee, there was no person dependent on him, pay the amount of the benefit, or the balance referred to in paragraph (b), to some other person.

## *Superannuation*

(3) Notwithstanding anything in this Act or the Rules, the Commissioner may pay to the Public Trustee (whether or not the Public Trustee is the personal representative of the deceased) or to the personal representative a benefit payable on the death of a deceased eligible employee or former eligible employee (other than a benefit which has not been claimed) for which benefit the receipt of the Public Trustee or that personal representative is a good discharge of the obligation under this Act of the Commissioner and the Investment Board.

### 34. PAYMENT WHERE BENEFICIARY INCAPABLE

(1) Where an eligible employee or former eligible employee to whom a benefit under this Act is payable is, in the opinion of the Commissioner, incapable of administering his own affairs by reason of illness, imprisonment or any other cause, the Commissioner may pay the benefit to the Public Trustee for which benefit the receipt of the Public Trustee is a good discharge of the obligation under the Act of the Commissioner and the Investment Board.

(2) A payment made under subsection (1) shall be deemed to have been made to the person entitled to the benefit.

### 35. UNCLAIMED BENEFITS

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

### 36. PORTABILITY OF BENEFITS

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

(2) On entering the Scheme an eligible employee may elect to pay into the Fund, to the credit of his 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.

## *Superannuation*

(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 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, in writing, advise the Review Board of the amendments to the Rules he proposes to make and shall consider the advice, if any, of the Review Board after giving it not less than 21 days to consider the proposed amendments.

(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 the Review Board gives to the Minister its advice in writing on rules proposed by the Minister to be made and the rules made by the Minister do not accord with the advice so given, the Minister shall lay before the Legislative Assembly, at the same time as under section 63(3)(c) of the *Interpretation Act* he lays the rules before it, a copy of that advice.

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

### 38. ESTABLISHMENT OF FUND

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

(2) The Commissioner, on behalf of the Investment Board, shall maintain and manage the Fund in accordance with this Act and the Rules.

## *Superannuation*

### 39. FUND ACCOUNTS

(1) Subject to this Part and the approval of the Treasurer, the Commissioner, on behalf of the Investment Board, shall open and maintain such account or accounts with such bank or banks as the Investment Board determines.

- (2) The Investment Board shall cause to be paid -
- (a) to the credit of the account or accounts referred to in subsection (1) -
    - (i) contributions received under this Act by the Commissioner from eligible employees;
    - (ii) income derived from investments of the Fund;
    - (iii) profits made from realization of investments of the Fund;
    - (iv) money, other than contributions, payable to the Fund 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 (other than employer-financed benefits) payable under the Scheme in accordance with this Act and the Rules;
    - (ii) the costs incurred by or on behalf of the Investment Board in the management of the Fund, including reasonable brokerage fees, costs of investment advice and other expenses relating to the functions of the Investment Board in the investment of the Fund, and the cost of borrowing for the purposes of the Fund by the Commissioner, but not including the day to day management costs incurred by the Commissioner; and
    - (iii) unclaimed benefits payable under the Scheme into the Consolidated Fund.

### 40. PROPER ACCOUNTS TO BE KEPT

The Investment Board shall cause the Commissioner to keep proper accounts and records of transactions for the purposes of this Act and the Rules and shall do all things necessary to ensure that all payments out of the moneys of the Fund are correctly made and properly authorized and

## *Superannuation*

that adequate control is maintained over the property of the Fund or in the custody of the Investment Board and over the incurring of liabilities by or on behalf of the Investment Board.

### 41. FIXING OF INTEREST RATES

(1) Subject to subsection (3), the Investment Board shall, as soon as practicable after the end of each financial year, by notice in the *Gazette*, declare a rate as the rate at which interest will accrue on eligible employees' and former eligible employees' accumulation accounts in the Fund during that financial year and, subject to subsection (2), interest for that period at that rate shall be credited to those accounts in the Fund accordingly.

(2) The Investment Board shall, from time to time, declare an interim interest rate in respect of a period where an interest rate under subsection (1) has not been declared and that interim interest rate shall be the rate applied in respect of the entitlement of a person where, during that period, he ceases to be an eligible employee and in respect of the entitlement of a former eligible employee who has preserved a benefit in the Scheme and who elects to withdraw or have the benefit transferred in that period, but for no other purpose.

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

### 42. RECOVERY OF MONEY OWING TO FUND OR TERRITORY

(1) The Commissioner, on behalf of the Investment Board, may recover money owing to the Fund by an eligible employee or other person, together with interest thereon as provided by subsection (3) -

- (a) except in the case of unpaid contributions - as a debt due and payable to the Fund; or
- (b) in the case of an eligible employee - by deduction from his 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 Administration and Audit Act* and the directions issued under section 35 of that Act by the Treasurer and in force from time to time applied to and in relation to it.

### Superannuation

(2) An employer shall, at the request in writing of the Commissioner, make deductions from an eligible employee's salary as referred to in subsection (1)(b) and pay the amount of the deductions into the Fund, and an amount so deducted and paid shall be deemed to have been paid to the Fund by the eligible employee from whose salary the deduction was made.

(3) Interest at a rate from time to time determined by the Investment Board is payable on any amount owing to the Fund calculated from the date on which the amount became due and payable until the date on which the amount is recovered under subsection (1) or is otherwise paid.

(4) Where the Territory makes a payment to a person in excess of the amount that under the Scheme it is required to make, it may recover that amount of overpayment as a debt due and payable by the person to the Territory.

#### 43. AUDIT AND ANNUAL REPORT

(1) Subject to subsection (2), sections 67 and 68 of the *Financial Administration and Audit Act* apply to and in relation to the Investment Board and the Fund as if the Investment Board were a prescribed statutory corporation within the meaning and for the purposes of those sections.

(2) The Commissioner shall, as soon as practicable after the end of each financial year, prepare for submission to the Minister a report on the operation and management of the Scheme during that financial year and that report shall form part of, and be dealt with in the same manner as, the report required under subsection (1) to be prepared.

#### 44. RULE AGAINST PERPETUITIES NOT TO APPLY

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

#### 45. ACTUARIAL REVIEW

(1) The Commissioner shall cause an actuarial review of the operations of the Scheme to be made as at the 30 June of any of the first 3 years after the commencement of this Part and every 3 years after that first review, or earlier if so directed by the Minister, and may engage an actuary for that purpose.

(2) The Commissioner shall forward to the Minister a copy of the report by the actuary within 20 days after receiving it from him, together with any comments which the Commissioner wishes to make on the report.

## *Superannuation*

(3) The Minister shall, within 3 sitting days of the Legislative Assembly, after a report referred to in subsection (2) is received by him, table it in the Legislative Assembly.

(4) The cost of engaging an actuary for the purposes of this section and the costs of the review shall be met by the Territory.

### PART IV - CLAIMS FOR BENEFITS AND REVIEW OF DECISIONS

#### 46. CLAIM FOR BENEFIT UNDER SCHEME

(1) An eligible employee or other person entitled or claiming to be entitled to a benefit under the Scheme may apply to the Commissioner, in the approved form and manner, for the payment of that benefit to him.

(2) Where under the Rules the Commissioner is required to or may make a decision or take an action in relation to or affecting an eligible employee or other person, the eligible employee or person may apply to the Commissioner, in the approved form and manner, for the Commissioner to make that decision or take that action.

(3) The Commissioner shall, as soon as practicable after receiving an application under subsection (1) or (2), make a decision on the application and by notice in writing advise the applicant of that decision and of the applicant's rights under subsections (4) and (5).

(4) An applicant may, in writing, require the Commissioner to give his reasons in writing for his decision on the application and the Commissioner shall give his 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 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 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.

## *Superannuation*

(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 has first requested the Commissioner to reconsider the decision under section 46(5) and the Commissioner has reconsidered the decision or failed to reconsider the decision within a reasonable time.

### 48. PROCEDURE AND DECISION OF BOARD

(1) In determining an application under section 47(1), the Review Board may inform itself of any matter in such manner as it thinks fit.

(2) An applicant or the Commissioner may appear before the Review Board in person or, with the leave of the Board, may be represented by any person.

(3) The Review Board may determine an application under section 47(1), not inconsistent with the Rules, as it considers proper in the circumstances and its decision is binding on the Commissioner.

(4) The Review Board may award to an applicant or the Commissioner such reasonable costs in relation to an application under section 47(1) as it thinks fit and the amount of the costs so awarded shall be a debt due and payable by the person against whom they are awarded to the person in whose favour they are awarded.

(5) The Review Board shall give its reasons in writing for its decision on an application under section 47(1).

(6) Subject to section 49, a decision of the Review Board on an application under section 47(1) is final and shall not be capable of being reviewed in a court of law by prerogative writ or otherwise.

### 49. APPEAL ON POINT OF LAW

(1) The Commissioner or an applicant may, within 6 months after a decision of the Review Board on an application under section 47(1) and in the manner prescribed by the Rules of the Supreme Court, appeal to the Supreme Court on a question of law against that decision.

(2) The Supreme Court shall decide the matter of an appeal under subsection (1) and may either dismiss the appeal or reverse or vary the decision appealed against and, subject to subsection (3), make such orders as to the costs of the appeal or the proceedings before the Review Board, or both, as it thinks fit.

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



## *Superannuation*

### PART V - MISCELLANEOUS

#### 50. APPROVAL FOR RETIREMENT FOR INVALIDITY

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

#### 51. REGULATIONS

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

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

#### 52. TRANSITIONAL

(1) A person who was, immediately before the commencement of Part III, an eligible employee within the meaning of the Commonwealth Act and who, but for that status, would be an eligible employee as defined in section 3 may, within 12 months after that commencement, by an approved notice in writing to the Commissioner, apply to become an eligible employee for the purposes of this Act.

(2) The Commissioner may, before or after the expiration of the 12 months period referred to in subsection (1), in his absolute discretion, by notice in writing to the applicant, accept or reject an application under that subsection with effect on and from a date specified in the notice.

(3) Where the Commissioner accepts an application under subsection (1), the applicant becomes an eligible employee for the purposes of this Act on the date specified in the notice under subsection (2) and this Act and the Rules apply accordingly.

(4) In accepting an application under subsection (1) the Commissioner shall, subject to subsection (5), accept the medical status then applying to the eligible employee under the Commonwealth Act and where the eligible employee had been issued with a Benefit Classification Certificate under that Act, the Commissioner shall accept that classification as though it were a reduced benefit classification certificate issued under the Rules and the date of effect of the reduced benefit classification shall be deemed to be the date of the eligible employee last becoming an eligible employee under the Commonwealth Act.

*Superannuation*

(5) Where an eligible employee has been accepted under subsection (2) and he has a Benefit Classification Certificate under the Commonwealth Act which at the date of his acceptance had not been in force for a period of 10 years, he may apply to the Commissioner to have a medical condition applying to the classification to which that certificate relates reviewed and in his review the Commissioner shall assess only the medical condition giving rise to the Benefit Classification Certificate and either issue a reduced benefit classification certificate or give the eligible employee notice in writing that no reduced benefit classification applies.

(6) In this section "reduced benefit classification" has the same meaning as it has in the Rules.

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SCHEDULE

Section 3

NORTHERN TERRITORY GOVERNMENT AND PUBLIC  
AUTHORITIES' SUPERANNUATION SCHEME RULES

PART I - PRELIMINARY

1. DEFINITIONS

In these Rules, unless the contrary intention appears -

"accrued employer component" means an amount payable on a member's exit date from the Scheme as calculated by the formula -

$$\text{accrued employer component} = \frac{\text{total number of annual benefit points}}{100} \times \frac{\text{benefit salary}}{\text{salary}} \times 2.5;$$

"annual benefit points" means the number of benefit points allocated a member each year as calculated by the formula -

$$\text{elected contribution rate} \times \text{part-time ratio} \times \frac{\text{number of salary periods in the year for which contributions made}}{\text{Number of salary periods in the year}};$$

"annual review date" means the date specified by the Commissioner for each member as the date each year on which the member's contribution salary, base salary and part-time ratio will be determined by the member's employer;

## *Superannuation*

"approved allowance" means so much of an allowance, or the value of an allowance, specified in the Regulations or these Rules to be regarded as part of a member's contribution salary as the Commissioner is satisfied has been or is likely to be received by the member in regular payments over a period of not less than 12 months;

"approved annuity" means -

- (a) in relation to a benefit under rule 6(1) or an invalidity retirement benefit - an annuity purchased by a former member for his life or for a minimum of 10 years; and
- (b) in relation to a death benefit - an annuity purchased by a dependant of a deceased member out of moneys referred to in rule 9(4) for the life of the dependant or for a minimum of 10 years;

"approved period of leave without pay" means -

- (a) sick leave without pay;
- (b) maternity leave without pay;
- (c) a period of leave without pay during which the member receives periodic payments under an Act relating to workers' compensation;
- (d) with the approval of the Commissioner, a period of leave without pay during which the member is seconded to an employer not covered by the Scheme; or
- (e) any other period of leave without pay approved by the Commissioner;

"average weekly earnings" means the Average Weekly Earnings for Full Time Adult Persons, Weekly Ordinary Time Earnings for the Northern Territory as published quarterly in Catalogue Number 6302.0 by the Australian Statistician;

"base salary", subject to the Regulations, means the full time equivalent annual salary, excluding all allowances, payable to a member in his capacity as an employee as certified by an employer and accepted by the Commissioner;

"benefit" means a benefit payable under the Scheme;

### *Superannuation*

"benefit salary", in relation to a member, means -

- (a) where 3 or more contribution salaries have been determined for him after having been adjusted to full time equivalent values and indexed by average weekly earnings to current values at the exit date - the average of the last 3 contribution salaries before his exit date so determined for him; and
- (b) where he has had less than 3 contribution salaries so determined - the average of the applicable lesser number of contribution salaries after those salaries have been so adjusted;

"continuing invalidity income benefit" means a benefit payable under rule 12 to a member;

"contribution salary" means the actual annual rate of salary and approved allowances certified by an employer and accepted by the Commissioner as payable at the member's entry date or annual review date;

"death benefit" means the benefit payable under rule 9 on the death of a member;

"declared interest rate" means the interest rate declared under section 41 of the Act, and includes an interim rate fixed by the Investment Board for the purpose of crediting interest to a member's accumulation account before paying out the balance of that account;

"elected contribution rate" means the rate of 2, 3, 4, 5 or 6% of contribution salary elected by a member as the rate of payment of his contributions;

"entry date" means the date on which a person became a member;

"exit date" means the date on which a person ceased to be a member;

"invalidity", in relation to a member, means an assessment by the Commissioner, after considering medical and other relevant evidence, that the member has become incapacitated to such an extent as to be rendered unable to perform any available work for which he is reasonably qualified by education, training or experience with any employer covered by the Scheme;

"invalidity retirement benefit" means the benefit payable under rule 10 to a member;

## *Superannuation*

"member" means an eligible employee;

"part-time ratio" means the ratio obtained by dividing a member's actual hours of work by the relevant number of equivalent full-time hours of work as at the member's entry date and annual review dates or, where in the opinion of the Commissioner this method or date cannot or should not be used, by any other method or at any other date determined by the Commissioner;

"prospective benefit points" means the number of prospective benefit points allocated a member who becomes entitled to a death or invalidity retirement benefit calculated by the formula -

$$\text{prospective membership} \times \frac{\text{standard contribution rate}}{\text{part-time ratio applicable at the member's exit date}};$$

"prospective employer component" means an amount calculated by the formula -

$$\frac{\text{prospective benefit points}}{100} \times \text{benefit salary} \times 3.5 ;$$

"prospective membership" means -

- (a) in relation to a member who on his exit date has not attained the age of 60 years - subject to paragraphs (b) and (c), the number of years (with a part year being expressed as a fraction of a whole year) between his exit date and his sixty fifth birthday;
- (b) in relation to a member referred to in paragraph (a) who on his exit date has attained the age of 50 years but has not attained the age of 55 years - the number of years calculated in accordance with that paragraph reduced by the number of years (with a part year being expressed as a fraction of a whole year) between his exit date and his fiftieth birthday;
- (c) in relation to a member who on his exit date has attained the age of 55 years - the number of years (with a part year being expressed as a fraction of a whole year) between his exit date and his sixtieth birthday; and
- (d) in relation to a member who on his exit date has attained the age of 60 years - nil;

## *Superannuation*

"reduced benefit classification" means a classification applied to a member where he has been assessed by the Commissioner (after the Commissioner receiving medical advice) as having a significant risk of death or invalidity retirement in the first 10 years of membership because of a physical or mental condition existing on his entry date;

"resign", in relation to a member, means -

- (a) the voluntary cessation of his employment; or
- (b) the cessation of that employment where he is engaged on a contract of service for a fixed term or terms and the contract is completed or is otherwise lawfully brought to an end;

"retrenchment", in relation to a member, means the involuntary termination of his employment as an eligible employee where the termination is expressed to be on the ground that -

- (a) his employment is not necessary and his position is not to be filled;
- (b) the work for which he was engaged is finished; or
- (c) the quantity of work has diminished and rendered necessary a reduction in the number of employees,

but does not include the termination of his employment in a circumstance referred to in paragraph (b) of the definition of "resign";

"standard contribution rate" means a contribution rate of 5%.

### PART II - CLASSIFICATION AND CONTRIBUTIONS

#### 2. MEDICAL CLASSIFICATION ON ENTRY

(1) Subject to subrule (3), a member shall, on or as soon as practicable after his entry date, complete and submit to the Commissioner a medical declaration in the approved form.

(2) A member need not complete and submit a medical declaration under subrule (1) where the Commissioner accepts a medical classification or status applying to the member under an approved previous superannuation scheme of which he was a member.

## *Superannuation*

(3) As soon as practicable after he receives the completed form referred to in subrule (1), the Commissioner may require the member to provide further medical information or to undergo a medical examination or examinations by an approved medical practitioner.

(4) Subject to subrule (2), a member who refuses to complete a medical declaration, provide additional medical information or undergo a medical examination required under subrule (3) shall be entitled to a benefit under the Scheme as provided in rule 3(5) as if a reduced benefit classification certificate had been issued for the condition or circumstance giving rise to the claim for benefits.

### 3. REDUCED BENEFIT CLASSIFICATION

(1) The Commissioner may, after receiving medical advice, issue a reduced benefit classification certificate in respect of a member if he is of the opinion that the member has a significant risk of death or invalidity retirement in the first 10 years of Scheme membership by reason of a physical or mental condition (or combination of conditions) existing on his entry date.

(2) Where the Commissioner has accepted a medical classification or status under an approved previous superannuation scheme, he shall, unless the accepted medical classification or status indicates no significant risk of invalidity or other significant health risk, issue a reduced benefit classification certificate which conforms to that medical classification or status.

(3) A reduced benefit classification certificate issued under subrule (1) or (2) shall specify the conditions to which the reduced benefit classification relates.

(4) Where the Commissioner issues a reduced benefit classification certificate to a member, he shall provide to the member his reasons for issuing it.

(5) Subject to subrule (6), where a reduced benefit classification certificate has been issued in respect of a member and entitlement to a death or invalidity retirement benefit occurs during the first 10 years after the entry date of the member (or lesser period approved by the Commissioner in the case of a person whose medical classification or status in an approved previous superannuation scheme has been accepted by the Commissioner) and entitlement to the benefit is directly attributable to the condition specified in the reduced benefit classification certificate, the prospective employer component of the benefit is payable in the proportion determined by the formula -

complete months of membership between entry date  
and exit date

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## *Superannuation*

(6) Subject to the Regulations, the Commissioner may, in his discretion, adjust the formula under clause (5) where the reduced benefit classification certificate has been issued on the basis of a medical classification or status under an approved previous superannuation scheme.

(7) Where the prospective employer component of an invalidity retirement benefit becomes payable to a member and -

- (a) less than 10 years membership since his entry date has elapsed;
- (b) a reduced benefit classification is not in force in respect of him;
- (c) the cause of his invalidity is directly attributable to a medical condition the Commissioner has reasonable grounds for believing existed at the entry date and the Commissioner has reasonable grounds for believing that the condition was known to the member at the entry date but was not disclosed by the member; and
- (d) had the condition been disclosed it would have been likely to result in the issue of a reduced benefit classification certificate,

the Commissioner may, after receiving medical advice, determine the proportion of the prospective employer component of the benefit payable to the member as though a reduced benefit classification certificate had been issued on entry.

#### 4. SALARY FOR SUPERANNUATION PURPOSES

(1) A member's contribution salary, base salary and part-time ratio at his entry date and each annual revenue date shall be certified by his employer and approved by the Commissioner.

(2) A member's salary for benefit purposes is his benefit salary immediately before his exit date.

(3) Where a member's exit date occurs during or immediately after a period of leave without pay during which he was not eligible to make contributions, his benefit salary will be calculated on contribution salaries determined before the leave, adjusted to full time equivalent values and indexed to his exit date.

(4) Where a member is on an approved period of leave without pay, the Commissioner may, subject to such conditions as he thinks fit, determine the member's contribution salary during that approved period of leave.



## *Superannuation*

(5) Where a member's contribution salary at an annual review date is determined to be less than his contribution salary immediately before that annual review date and the reason for the reduction in contribution salary is not due to his undertaking part time work, the Commissioner may, on application in writing from the member, accept the next previous higher contribution salary as the contribution salary for that annual review date.

### 5. CONTRIBUTIONS

(1) On or within an approved period after his entry date a member shall, in an approved form, elect 2, 3, 4, 5 or 6% as the percentage of his contribution salary to be credited to his accumulation account and, subject to this rule, on payment of his salary for each pay period while he remains a member and is eligible to make contributions, that amount shall be deducted from his salary and credited accordingly.

(2) A member who fails to make an election under clause (1) within the approved period shall be deemed to have elected 5% as the percentage of his contribution salary to be deducted from his salary and credited to his accumulation account.

(3) A member may, at an approved annual review date, by an election in an approved form forwarded to the Commissioner by an approved date, vary his election under subrule (1) or as deemed under subrule (2) and, subject to this rule, on payment of his salary for each pay period while he remains a member and is eligible to make contributions, contributions of the rate so varied shall be deducted from his salary and credited accordingly.

(4) A member shall, subject to this rule, make contributions to his accumulation account notwithstanding that -

- (a) he is receiving part salary only; or
- (b) he is on leave without pay not exceeding 3 months.

(5) A member is not eligible to contribute to his accumulation account -

- (a) while on leave without pay exceeding 3 months where that leave is not an approved period of leave without pay; or
- (b) while receiving a benefit under rule 11.

(6) A member is not required, but is eligible on application in writing to the Commissioner, to make contributions to his accumulation account while he is on an approved period of leave without pay exceeding 3 months.

## *Superannuation*

(7) Where a member is required or is eligible to make contributions to his accumulation account but is receiving no salary or less than his normal salary, the Commissioner may, on application in writing by the member, permit the member to reduce his elected contribution rate or to make payment of the contributions falling due in such instalments and at such times as the Commissioner approves and the Commissioner shall make such adjustments as he thinks fit to the annual benefit points of the member as fairly reflect the approved arrangements.

(8) Where an eligible employee voluntarily terminates his employment in order to become a candidate for election as a member of the Legislative Assembly, a House of Parliament of the Commonwealth or a State not earlier than one month before the date on which nominations for the election closed, he shall, on application in writing to the Commissioner, be deemed for the purposes of the Scheme to be an eligible employee on an approved period of leave without pay for the period between the date of his terminating his employment and the date 2 months after the date of the declaration of the result of the election, unless in the meantime he has resumed employment as an eligible employee or has elected to cease to be a member.

### PART III - BENEFITS

#### 6. AGE RETIREMENT BENEFIT

(1) A member who retires after attaining the age of 55 years shall receive a benefit comprising -

- (a) a refund of the amount credited to his accumulation account; and
- (b) the accrued employer component.

(2) A member who resigns after attaining the age of 55 years shall, for the purposes of this rule, be deemed to have retired.

(3) Where a former member has received benefit under subrule (1) and within 90 days after receiving the benefit purchases an approved annuity, he shall be entitled to an annuity bonus equal to 5% of so much of the purchase price of the approved annuity as is attributable solely to the contributions made and the benefits received under the Scheme.

#### 7. RESIGNATION BENEFIT

(1) A member who resigns, or who ceases to be an eligible employee and is not entitled to any other benefit under the Scheme, shall receive a benefit comprising -

- (a) a refund of the amount credited to his accumulation account; and

## *Superannuation*

- (b) where his exit date occurs after the first 5 years of his membership (excluding periods where he was not eligible to contribute) - the accrued employer component multiplied by  $\frac{X}{60}$ , where X equals the number of complete months of his membership during which he was eligible to contribute after that first 5 years of his membership but in any case is not greater than 60.

(2) In calculating a period of membership for the purposes of subrule (1), any prior period of membership during which the member was eligible to contribute may be taken into account.

### 8. RETRENCHMENT BENEFIT

A member who is retrenched shall receive a benefit comprising -

- (a) a refund of the amount credited to his accumulation account; and
- (b) the accrued employer component.

### 9. DEATH BENEFIT

(1) Subject to the Act, where a member dies leaving a dependant or dependants, there is payable to his estate a benefit comprising -

- (a) a refund of the amount credited to his accumulation account;
- (b) the accrued employer component; and
- (c) subject to subrule (2), the prospective employer component subject to a reduced benefit classification if applicable.

(2) Any amount payable under subrule (1)(c) shall be reduced by the amount of any lump sum benefit payable under worker's compensation legislation to a dependant of the deceased member in respect of his death.

(3) Where a member dies leaving no dependant or dependants there is payable to his estate -

- (a) the amount credited to his accumulation account; and
- (b) the accrued employer component.

## Superannuation

(4) Where a benefit under subrule (1) is paid and within 90 days, or such longer period as is approved, after the benefit is paid a dependant of the deceased member participating in the distribution of the estate of the deceased member purchases an approved annuity, that dependant is entitled to an annuity bonus equal to 5% of so much of the amount of the purchase price of the approved annuity which, in the opinion of the Commissioner, is proportionate to the share of that dependant in that part of the net estate and which can also fairly be attributable solely to the contributions made under the Scheme by the deceased member and to the benefits received under the Scheme by the estate.

### 10. INVALIDITY RETIREMENT BENEFIT

(1) A member who is retired from employment on the grounds of invalidity in accordance with section 51 of the Act or who is assessed by the Commissioner as being subject to invalidity shall receive a benefit comprising -

- (a) a refund of the amount credited to his accumulation account;
- (b) the accrued employer component;
- (c) subject to subrule (2), the prospective employer component subject to a reduced benefit classification if applicable.

(2) Where a member on invalidity retirement is also entitled to periodic payments for loss of earning capacity under workers' compensation legislation, the prospective employer component of the benefit under subrule (1) is payable only to the extent to which its value exceeds the actual or notional redemption value of the workers' compensation periodic payments as determined by an approved actuary.

(3) Where a benefit under subrule (1) is paid and within 90 days after it is paid the former member to whom it is paid purchases an approved annuity, he is entitled to an annuity bonus equal to 5% of so much of the purchase price of the approved annuity as is attributable solely to the contributions made and the benefits received under that Scheme.

### 11. TEMPORARY INVALIDITY INCOME BENEFIT

(1) Where a member is unable to resume employment because of physical or mental incapacity and, in the opinion of the Commissioner, a further period is needed for assessment or rehabilitation before a decision can be made on the member's retirement on the grounds of invalidity, the Commissioner may determine that a benefit is payable to the member, in accordance with this rule, to alleviate financial hardship and a benefit so determined shall be paid accordingly.

## Superannuation

(2) In determining whether a benefit is payable under subrule (1), the Commissioner must be satisfied that financial hardship exists and shall consider the member's entitlement to paid sick leave, periodic payments under workers' compensation legislation, periodic payments from disability insurance arrangements and other direct or indirect sources of income support.

(3) The maximum rate of payment for a benefit under subrule (1) is an amount sufficient to raise the member's current income as an eligible employee (including paid sick leave, periodic payments under worker's compensation legislation, periodic payments from disability insurance arranged by the member or similar payments) to 80% of the member's contribution salary determined at the last annual review date prior to the incapacity but may be such lesser percentage as the Commissioner determines having regard to subrule (2).

(4) Payment of a benefit under subrule (1) shall be reviewed regularly by the Commissioner and be paid for a maximum period of 12 months or periods aggregating 12 months.

### 12. CONTINUING INVALIDITY INCOME BENEFIT

(1) A member who experiences a reduction in salary on the grounds of physical or mental incapacity may apply to the Commissioner for payment of a continuing invalidity income benefit.

(2) Where the Commissioner is satisfied, after considering relevant medical, employment or other evidence, that the reduction in salary referred to in subrule (1) is due to physical or mental incapacity, he may approve payment of a continuing invalidity income benefit and the benefit shall be paid accordingly.

(3) A continuing invalidity income benefit is not affected by any reduced benefit classification which may be in force in respect of the member.

(4) The rate of payment of a benefit under subrule (2) is 80% of the difference between the reduced salary and the salary received prior to incapacity.

(5) Salaries referred to in subrules (4) and (6) are base salaries but include any periodic payments received by the member under workers' compensation legislation.

(6) The rate of payment of a benefit under subrule (2) remains constant (it is not indexed) but may be reviewed where the Commissioner determines that a change is warranted after considering any change in the salary currently being received by the member after a benefit has been paid under that subrule.

(7) Payment of a benefit under subrule (2) to a member ceases on his ceasing to be a member.

## *Superannuation*

(8) A benefit under subrule (2) shall be regarded as an approved allowance for the purpose of determining contribution salary at an annual review date.

### 13. PRESERVATION OF BENEFITS

(1) A member, on ceasing to be an eligible employee, may, in an approved form, elect to preserve a benefit in the Scheme.

(2) If an election referred to in subrule (1) is made, any employer-financed benefits due at the member's exit date shall be calculated and transferred to the Fund to be credited to the member's accumulation account. Benefits may be preserved until the former member's sixty fifth birthday but may be withdrawn earlier, unless in the meantime the former member has again become an eligible employee.

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