

Queensland



ANNO TRICESIMO QUARTO

ELIZABETHAE SECUNDAE REGINAE



No. 98 of 1985

An Act to provide for superannuation benefits for permanent employees of Local Authorities and for related purposes

[ASSENTED TO 13TH DECEMBER, 1985]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short title. This Act may be cited as the *Local Government Superannuation Act 1985*.

2. Commencement. (1) Section 1 and this section shall commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), the provisions of this Act shall commence on a date to be appointed by Proclamation.

The date so appointed is in this Act referred to as the date of commencement of this Act.

3. Arrangement. This Act is arranged in Parts as follows:—

PART I—PRELIMINARY (ss. 1-7);

PART II—SUPERANNUATION SCHEMES NOT REGULATED BY ACT (ss. 8-13);

PART III—SUPERANNUATION SCHEME REGULATED BY ACT (ss. 14-60);

Division 1—The Board

Division 2—Board's Financial Affairs

Division 3—Contributions to the Scheme

Division 4—Provisions and Benefits of the Scheme

Division 5—Costs and Expenses of Administration

Division 6—Specific Powers and Duties of Board

PART IV—GENERAL PROVISIONS (ss. 61-68).

4. Repeal. (1) The Acts specified in the Schedule are repealed.

(2) The *Local Government Superannuation Act 1964-1978* is in this Act referred to as the repealed Act.

5. Meaning of terms. In this Act, except where a contrary intention appears:—

“Actuary” means a Fellow or Associate of the Institute of Actuaries (London) or of the Faculty of Actuaries (Edinburgh) or any other person approved by the Governor in Council to act as an Actuary for the purposes of this Act by reason

of his possessing sufficient actuarial knowledge and experience;

“Articles” means the Articles of the Local Government Superannuation Scheme established and maintained under this Act;

“Board” means The Local Government Superannuation Board preserved, continued in existence and constituted under this Act;

“existing superannuation scheme” means any superannuation scheme or any provident or benefit fund that was established by a Local Authority for the benefit of its employees before the commencement of *The Local Government Superannuation Act of 1964* and that has not been taken over by the Board and absorbed in the scheme established and maintained under that Act prior to the date of commencement of this Act;

“Fund” means moneys standing to the credit of the Local Government Employees’ Superannuation Fund from which benefits provided for by the Scheme shall be paid;

“Local Authority” means a Local Authority or Joint Local Authority constituted under the *Local Government Act 1936-1985* and a person or body of persons declared under this Act to be a Local Authority for the purposes of this Act;

“Minister” means the Minister for Local Government, Main Roads and Racing or other Minister of the Crown for the time being charged with the administration of this Act and includes any Minister of the Crown for the time being discharging the duties of the Minister;

“permanent employee” means a member of any of the following classes of employees of a Local Authority:—

- (a) employees who have been in the continuous employment of a Local Authority or Local Authorities for not less than 12 months;
- (b) employees declared in writing by a Local Authority and notified to the Board to be permanent employees for the purposes of this Act.

The term does not include any employee engaged on constructional work whose duration of employment by a Local Authority is or is likely to be dependent on the duration of that work;

“salary” means the payment made by a Local Authority to a permanent employee by way of fixed remuneration for his work or services during the whole of a year and includes wages but does not include sums paid by way of fees,

allowances, overtime, bonus, loading of any description or special grant;

“Scheme” means the Local Government Superannuation Scheme established and maintained under this Act;

“transfer funds” means the sum arising from the negotiation of any transfer value or transfer values;

“transfer value” means the value negotiated by the Board pursuant to this Act or the Articles in respect of any policy of insurance or assurance or in respect of any asset held for the use of any existing superannuation scheme;

“year” means the period commencing on 1 July in one calendar year and terminating on 30 June in the next following calendar year.

6. Declaration as Local Authority. (1) The Governor in Council may, on the recommendation of the Board, from time to time, by notification published in the Gazette, declare any person or body of persons empowered by or under any Act to discharge a function that in the Board’s opinion is similar to any function that a Local Authority within the meaning of the *Local Government Act 1936-1985* is empowered to discharge or is related directly to the administration of Local Government to be a Local Authority for the purposes of this Act.

(2) A person or body duly declared under subsection (1)—

(a) shall be deemed to have always been before the declaration a Local Authority for the purposes of this Act;

and

(b) shall be deemed to be after the declaration, for as long as the declaration continues in force, a Local Authority for the purposes of this Act.

(3) A declaration under subsection (1) may be revoked at any time by the Governor in Council on the recommendation of the Board by notification published in the Gazette.

7. Administration of Act. This Act shall be administered by the Minister and subject to him by the Board.

PART II—SUPERANNUATION SCHEMES NOT REGULATED BY ACT

8. Continuation of existing superannuation schemes. Subject to this Part, every existing superannuation scheme may continue to be maintained and may from time to time be varied unless it is wound up pursuant to an application made under section 12 and in accordance with this Part.

9. Contributors to existing superannuation schemes. The provisions of this Act, other than of this Part, do not apply in relation to any permanent employee for as long as he is a contributor to or is covered by an existing superannuation scheme.

10. Existing superannuation schemes closed. No permanent employee shall be admitted as a contributor to an existing superannuation scheme or to cover provided by an existing superannuation scheme on or after the date of commencement of this Act.

11. Participation in schemes other than statutory scheme prohibited. On and from the date of commencement of this Act a Local Authority—

(a) shall not establish or be party to the establishment of a superannuation scheme or of a provident or benefit fund for the benefit of its permanent employees other than the Scheme;

and

(b) shall not contribute to a superannuation scheme or a provident or benefit fund for the benefit of its permanent employees other than the Scheme or an existing superannuation scheme.

12. Winding-up of existing superannuation schemes. (1) The trustees of an existing superannuation scheme may make application to the Board, within one month after the date of commencement of this Act, for—

(a) the winding up of that scheme;

(b) the incorporation of all the assets of that scheme into the Fund;

and

(c) the acceptance of employees by whom or on whose behalf contributions have been made to that scheme as permanent employees for the purposes of this Act.

(2) Subject to the Board's being satisfied as to—

(a) the adequacy of the transfer values relevant to the existing superannuation scheme to which an application made under subsection (1) relates;

(b) the terms of payment of the transfer funds by the trustees of the existing superannuation scheme to the Board;

and

(c) the terms of any agreement between the trustees of the existing superannuation scheme and the Board that is necessary to give effect to the application made under subsection (1) in relation to that scheme,

the Board may approve the application.

(3) Upon performance of any agreement such as is referred to in paragraph (c) of subsection (2) the existing superannuation scheme to which the application approved by the Board relates shall be deemed to be wound up, notwithstanding any provisions of the scheme.

13. Consequences of Board's approval of s. 12 application. (1) Upon approval by the Board of an application under section 12—

- (a) the employees by or on whose behalf contributions have been paid under the existing superannuation scheme to which the application relates shall be deemed to be permanent employees for the purposes of this Act on and from the date of commencement of this Act;
- (b) the Board shall make all necessary adjustments in respect of the contributions made by or on behalf of those employees to that existing superannuation scheme so that those contributions conform with the requirements of the Articles in relation to contributions by or on behalf of permanent employees to the Scheme and where, as a result of the adjustments, further contribution or payment is required to be made by any of those employees or a Local Authority to satisfy the requirements aforesaid of the Articles such further contribution or payment shall be made, by the person to whom the Board directs a notice specifying the amount owing to the Scheme by or on behalf of that employee, within 30 days from the receipt by that employee or Local Authority of the notice and in accordance with the terms of the notice.

(2) Where a further contribution or payment that is required by paragraph (b) of subsection (1) to be made is not made as prescribed by that paragraph the amount thereof may be recovered by the Board from the person required by that paragraph to make the contribution or payment by action for a debt due and owing by that person to the Board in any court of competent jurisdiction.

PART III—SUPERANNUATION SCHEME REGULATED BY ACT

Division 1—The Board

14. Continuation of Board. The Board constituted under the repealed Act is preserved, continued in existence and constituted under this Act by the name and style “The Local Government Superannuation Board”.

15. Board to be body corporate. (1) The Board is a body corporate under the name and style prescribed by section 14 and by that name has perpetual succession and an official seal and, subject to this Act, is capable in law in its corporate name—

of suing and being sued;

of acquiring, holding, leasing and disposing of property, real and personal, movable and immovable;

and

of doing and suffering all such other such acts, matters and things as bodies corporate may in law do and suffer.

(2) All courts and persons acting judicially shall take judicial notice of—

the appointment of the chairman and every other member of the Board and of a deputy for any of them;

the appointment of the secretary of the Board;

the signature of any member of the Board, a deputy for any member of the Board and the secretary of the Board;

the official seal of the Board affixed to any document or writing whatever,

and until the contrary is proved shall presume that every such signature or the official seal was duly affixed to any document or writing on which it appears.

16. Membership of Board. (1) The Board shall consist of three members of whom one shall be appointed by the Governor in Council, by notification published in the Gazette, to be the chairman of the Board.

(2) Each member of the Board shall be appointed by the Governor in Council, upon the nomination of the Minister, by notification published in the Gazette, for such period as is specified in the notification and shall be eligible for re-appointment.

(3) A person who was appointed under the repealed Act as a member of the Board shall continue as a member of the Board, and in the case of the member so appointed who is chairman of the Board shall continue as chairman, until the office to which he was so appointed becomes vacant in accordance with this Act.

17. Commencement and termination of appointment to Board. (1) The appointment of a member of the Board—

(a) shall commence upon the publication of notification of his appointment in the Gazette or upon such later date as is specified in the notification;

and

(b) shall terminate upon the expiration of the period for which he was appointed unless his office as a member sooner becomes vacant as prescribed.

(2) The office of a member of the Board becomes vacant if—

(a) he dies or is suffering or appears to be suffering from mental illness;

(b) he is declared bankrupt or otherwise takes advantage of the law relating to bankruptcy;

(c) he is absent, without leave granted by the Board, from three consecutive ordinary meetings of the Board of which due notice has been given to him;

(d) he is convicted in Queensland of an indictable offence or is convicted elsewhere in respect of an act or omission,

which if it occurred in Queensland would constitute an indictable offence;

(e) he resigns his office by writing under his hand addressed to and given to the Minister;

or

(f) he is removed from office by the Governor in Council as prescribed by section 20.

(3) Non-attendance of a member of the Board at the time and place appointed for a meeting of the Board shall not constitute absence from the meeting unless a meeting of the Board at which a quorum is present is actually held on the same day.

Attendance of a member of the Board at the time and place appointed for an ordinary meeting of the Board shall be deemed to constitute presence at an ordinary meeting of the Board notwithstanding that, by reason that a quorum is not present, a meeting of the Board is not actually held then and there, and the secretary of the Board shall enter in the minute book the names of all members who so attend.

18. Deputy for a member. (1) If at any time it appears likely that a member of the Board will be prevented by absence, illness or otherwise from discharging the duties of his office, the Minister may appoint a deputy to act for the member during such time as he is so prevented and every deputy, while so acting, shall have and may exercise all the powers and authorities and shall discharge all the functions and duties of the member in whose place he acts:

Provided that a deputy who is acting in place of the chairman shall not preside at any meeting of the Board.

(2) No person shall be concerned to enquire whether an occasion has arisen requiring or authorizing a person to act in the place of a member of the Board or as to the necessity for or propriety of an appointment of a deputy, and all acts and things done or omitted by a person when acting in place of a member of the Board shall be as valid and effectual and shall have the same consequences as if they had been done or omitted by the member in whose place the person was acting.

19. Casual vacancies. When the office of a member of the Board becomes vacant otherwise than by effluxion of time, the Governor in Council may, upon the nomination of the Minister, by notification published in the Gazette, appoint for such period as is specified in the notification another person to be a member of the Board.

20. Removal of members. The Governor in Council may by notice under the hand of the Minister addressed to and given to the member in question, remove from office any member of the Board for any cause that appears to the Governor in Council to be sufficient.

21. Entitlements in relation to Board membership. (1) The holder of an office who, pursuant to any Act—

(a) is required to devote the whole of his time to the duties of the office;

or

(b) is prohibited from engaging in employment other than in discharging the duties of the office,

shall not be disqualified from or be thereby hindered in—

(c) holding that office and also the office of a member of the Board or an appointment as deputy for a member of the Board;

and

(d) accepting and retaining any payment authorized by subsection (2) to be received by him as a member of the Board or as a deputy for a member of the Board.

(2) Every member of the Board and a deputy for any member of the Board shall be entitled to receive such amounts as may be approved from time to time by the Governor in Council, whether by way of remuneration, fees for attendance at meetings of the Board or allowances for expenses reasonably incurred in connexion with discharging the duties of a member or a deputy for a member.

22. Secretary. (1) The Board shall from time to time appoint a secretary of the Board.

(2) The secretary—

(a) shall be the executive officer of the Board and shall be entitled to receive, subject to any applicable industrial award or agreement, such remuneration as the Board may from time to time determine;

(b) shall have and discharge and may exercise such functions, duties, powers and authorities as are prescribed or, in so far as they are not prescribed, as the Board directs or authorizes;

and

(c) shall have custody of the Board's official seal, with power, subject to direction by the Board, to execute documents and writings on behalf of the Board and to affix the Board's official seal.

(3) The person appointed pursuant to the repealed Act as secretary of the Board shall continue to be secretary of the Board until his position becomes vacant or another appointment of secretary is made.

23. Meetings of Board. (1) The Board shall meet at such times and places and conduct its business in such manner as is prescribed or, in so far as those matters are not prescribed, as it may from time to time determine.

(2) A quorum at any meeting of the Board shall consist of two at least of whom one at least shall be a member of the Board and the other may be a deputy for a member of the Board.

A duly convened meeting of the Board at which a quorum is present shall be competent to transact the business of the Board and may discharge and exercise all the functions, duties, powers and authorities of the Board.

(3) The chairman shall preside at all meetings of the Board at which he is present and if he is absent from any duly convened meeting the persons present shall elect one of their number, other than a deputy for any member of the Board, to preside at the meeting.

The person who presides at any meeting of the Board shall be entitled to a vote and, where there is an equality of votes upon any matter, shall be entitled to a second or casting vote.

24. Validity of Board's proceedings. No act or proceeding of the Board shall be invalidated or prejudiced by reason only that, at the time the act was authorized or done or the proceeding occurred—

- (a) a vacancy existed in the Board's membership;
or
- (b) the appointment of any member of the Board or of a deputy for a member of the Board was defective or any member of the Board or deputy for a member of the Board was disqualified from participating in relation to the act or proceeding.

or by reason only of both those matters.

25. Appointment of advisers and officers. (1) The Board may from time to time—

- (a) appoint any person or persons to advise it on such matters within the scope of its functions as it thinks fit;
and
 - (b) appoint such number of persons, on either a full-time or part-time basis, as it deems expedient, to perform clerical work for the Board in its administration of this Act and of the Scheme.
- (2) The Board may—
- (a) pay to every person appointed under paragraph (a) of subsection (1) such sum by way of remuneration as it determines;
and
 - (b) subject to any applicable industrial award or agreement,
 - (i) pay to every person appointed under paragraph (b) of subsection (1) such sum by way of remuneration as it determines;
and
 - (ii) terminate the appointment of any person appointed under paragraph (b) of subsection (1).

(3) While employed by the Board persons appointed under paragraph (b) of subsection (1) shall be under the control and direction of the secretary of the Board.

26. Delegation. (1) The Board may, by its resolution, delegate to the secretary of the Board, any officer of the Board or the person with whom the Board has entered into management arrangements pursuant to this Act all or any of its functions, duties and powers other than

 this power of delegation;

 and

 the power to obtain temporary financial accommodation,

and may by its resolution revoke a delegation, wholly or in part, or vary the terms of a delegation.

(2) A delegation may be made subject to such conditions or such limitations as to the discharge or exercise of any function, duty or power delegated or as to time, place or circumstance as may be specified in the Board's resolution.

(3) A function, duty or power delegated by the Board may be discharged or exercised in accordance with the terms of the delegation (or those terms as subsequently varied) by the delegate to whom the delegation is given, while the delegation remains unrevoked.

(4) Any act or thing done or suffered by a delegate while acting in the discharge or exercise of a function, duty or power delegated by the Board has the same force and effect as if it were done or suffered by the Board.

Division 2—Board's Financial Affairs

27. Local Government employees' superannuation fund. (1) Upon the date of commencement of this Act or as soon thereafter as is practicable the Board shall establish and thereafter maintain a fund to be called the "Local Government Employees' Superannuation Fund".

(2) There shall be paid into the Fund—

- (a) all moneys standing to the credit of the Local Government (Employees) Insurance Fund established and kept by the Board pursuant to the repealed Act;
- (b) all moneys standing to the credit of the Local Government (Employees) Provident Fund established and kept by the Board pursuant to the repealed Act;
- (c) all moneys standing to the credit of the Contingent Account established by the Board under the authority of the repealed Act;
- (d) all moneys arising from investment (including investment by way of life assurance) of moneys from a fund referred to in paragraph (a) or (b) or from the account referred to

in paragraph (c), whether those moneys arise by way of earnings on or maturity or liquidation of an investment;

- (e) all contributions or payments paid to the Board pursuant to this Act or the Articles;
- (f) all moneys arising by way of earnings on investment of the Fund;
and
- (g) all moneys allocated to the Fund from time to time by the Board from the Local Government Superannuation (Management) Fund established and kept by the Board pursuant to the repealed Act.

(3) The Fund shall be taken to comprise all investments of moneys from a fund referred to in paragraph (a) or (b) or from the account referred to in paragraph (c) of subsection (2).

(4) The Board is authorized to make the allocations referred to in paragraph (g) of subsection (2) in such amounts and at such times as the Board thinks fit.

28. Payment of benefits. All benefits of the Scheme payable pursuant to the Articles shall be paid from the Fund.

29. Accounts and financial statements. (1) The Board—

- (a) shall cause to be kept such accounts as will properly record the financial transactions of the Board;
and
- (b) shall arrange for the preparation and presentation of suitable financial statements.

Financial statements prepared for the Board shall be certified on its behalf by the chairman and the secretary of the Board.

(2) The Board shall observe and give effect to any direction that it receives in writing from the Minister in respect of the keeping of accounts or the preparation of financial statements.

Before he issues a direction such as is referred to in this subsection the Minister shall consult with and have due regard to any recommendations of the Treasurer.

(3) Until the financial statements prepared for the Board pursuant to subsection (1) have been audited and presented to the Minister no copy thereof shall be sold or otherwise made available to any person other than—

- (a) the Minister or the Auditor-General or a person authorized by either of them;
or
- (b) a member or the secretary of the Board or an officer of the Board authorized by the secretary.

(4) The Board may by its resolution adopt as its annual accounting period such period of 12 months as it thinks fit and may by its resolution vary the period adopted by it.

The Board shall notify the Auditor-General and each Local Authority of the annual accounting period adopted by it from time to time.

The first annual accounting period of the Board shall be the period commencing on the commencement of this Act and terminating on the last day of the annual accounting period adopted by the Board first occurring after the commencement of this Act notwithstanding that the period may be less than 12 months.

30. Financial accommodation. (1) The Board is authorized to obtain temporary financial accommodation—

by means of an overdraft or other short term arrangement with any bank;

by means of a bill of exchange drawn or accepted by the Board; or

with the approval of the Governor in Council first had and obtained, by any other means.

(2) The Governor in Council may give his general and continuing approval of a particular means or class of means of obtaining temporary financial accommodation or may give his approval of a particular borrowing by the Board.

(3) For the purpose of obtaining temporary financial accommodation the Board is authorized to create a charge over all or any of the assets of the Scheme.

31. Investment power. (1) The Board may invest the Fund or other moneys vested in it—

(a) in any manner in which a trustee is authorized by any Act to invest trust funds in his hands;

or

(b) with the approval of the Governor in Council first had and obtained, in any other manner.

(2) The Governor in Council may give his general and continuing approval of a particular manner or class of manner in which moneys of the Board may be invested or may give his approval to a particular investment by the Board.

32. Transfer values and transfer funds. (1) Upon the date of commencement of this Act or as soon thereafter as is practicable the Board shall arrange with the insurance company with whom insurances under Part IV of the repealed Act are effected for the fixing of transfer values in respect of all policies of assurance issued by the company for the purposes of the repealed Act and for the terms, times and manner of payment to the Board of transfer funds payable to the Board consequent upon the fixing of those transfer values.

(2) In the event of a dispute arising between the Board and the insurance company referred to in subsection (1) the matters in dispute shall be submitted to the Minister for determination and the Minister's decision thereon shall be final and binding.

33. Management of Scheme and Fund. With the approval of the Governor in Council first had and obtained, the Board may arrange with any body or bodies corporate—

to manage the Scheme on behalf of the Board;

or

to invest, as agent of the Board, moneys forming part of the Fund.

Division 3—Contributions to the Scheme

34. Contributors to Scheme. Unless he has been exempted under section 35 from the application of this Division, every permanent employee, other than one who is a contributor to an existing superannuation scheme or the superannuation scheme established under the repealed Act, shall, within the prescribed time and in the prescribed manner, apply to the Board to become a contributor to the Scheme.

35. Exemption. Upon application made to it as prescribed by any permanent employee the Board may exempt the employee from the application of this Division either indefinitely or for such period as it thinks fit, if the Board is of the opinion that it is for the employee's benefit that he should be so exempt.

For as long as the exemption remains in force the permanent employee in question shall not be required to be a contributor to the Scheme or to contribute to the Fund.

36. Local Authorities to make payments to Board. (1) Every Local Authority that employs a permanent employee to whom the provisions of this Division apply shall pay to the Board in respect of that employee such annual contributions as are prescribed within such time or times as are prescribed.

(2) If a Local Authority has made a payment to the Board in respect of a permanent employee in respect of a whole year and the employee ceases to be employed by the Local Authority at any time in that year the Board shall refund to the Local Authority an amount that bears to the whole payment made the proportion that the portion of the year for which the employee is not employed by the Local Authority bears to the whole of the year.

37. Consequences of late payment or no payment. (1) Interest at a rate prescribed and calculated on a daily basis shall be paid by a Local Authority on any amount required by section 36 (1) to be paid by that Local Authority to the Board and not paid by it within the time prescribed:

Provided that the Board may remit payment of interest in a particular case for any reason that in its opinion is sufficient.

(2) Interest payable by a Local Authority under subsection (1) shall not be charged by the Local Authority against any other person.

(3) The Board may recover from a Local Authority by action in a court of competent jurisdiction as for a debt due and owing—

- (a) the amount of any contribution that the Local Authority is required by section 36 (1) to pay and has not paid within the time prescribed;
- and
- (b) the amount of interest that the Local Authority is required by subsection (1) to pay and has not paid.

(4) Pending recovery from a Local Authority of any amount recoverable pursuant to subsection (3) the Board may, without prejudice to its right of recovery, pay to the Fund the amount due and owing by the Local Authority out of other moneys of the Board or borrowed by the Board for the purpose.

38. Employee liable for half Local Authority's payment to Board.

(1) Subject to this Act, every permanent employee in respect of whom a Local Authority is required by section 36 (1) to pay an annual contribution to the Board is liable to the Local Authority for one-half of the amount that the Local Authority is so required to pay in respect of him.

(2) Notwithstanding the provisions of any other Act, a Local Authority to which a permanent employee is liable under subsection (1) may deduct the amount of the liability or any part thereof from any sum that may be or become due by it to the permanent employee by way of salary or otherwise, by such instalments as are prescribed.

(3) A Local Authority may recover from a permanent employee by action in a court of competent jurisdiction as for a debt due and owing any amount for which the employee is liable to the Local Authority under subsection (1), which has not been otherwise recovered by the Local Authority.

39. Amount of contribution to Fund. (1) Subject to this Act, the amount of annual contribution to the Fund in respect of a permanent employee payable by a Local Authority under section 36 (1) is 12 per centum of the salary payable to the employee at the date when the contribution in respect of him is first payable after the commencement of this Act.

(2) A person who was a permanent employee at the commencement of this Act may, by notice given to the Local Authority in the form prescribed and within the time prescribed, elect that the amount of annual contribution to the Fund in respect of him payable by the Local Authority under section 36 (1) shall be 10 per centum of the salary payable to him at the date when the contribution in respect of him is first payable after the commencement of this Act, whereupon the amount of the contribution shall be as so elected in lieu of as prescribed by subsection (1).

(3) A Local Authority shall, within 30 days after it receives a notice of election referred to in subsection (2), give a copy of the notice to the Board.

40. Variation of amount of contribution to Fund. (1) When as at 1 January or 1 July in any year the salary of a permanent employee in respect of whom an annual contribution is payable to the Fund exceeds by at least \$100 per annum his salary as at—

the date of the last adjustment of contribution to the Fund in respect of him;

or, if there is no such date,

the date when contribution to the Fund in respect of him was first payable,

the annual contribution to the Fund in respect of him shall be increased by an amount equal to—

(a) 10 per centum of the excess, where he has duly elected under section 39 (2);

or

(b) 12 per centum of the excess, where he has not duly elected under section 39 (2).

(2) Whenever the salary of a permanent employee in respect of whom an annual contribution is payable to the Fund is decreased by at least \$100 per annum and the employee or the Local Authority by which the contribution is payable so requests of the Board, the amount of the annual contribution to the Fund payable in respect of him shall, subject to subsection (3), be reduced by an amount equal to—

(a) 10 per centum of the decrease in salary, where he has duly elected under section 39 (2);

or

(b) 12 per centum of the decrease, where he has not duly elected under section 39 (2).

(3) The reduction prescribed by subsection (2) shall not be made where the permanent employee concerned notifies the Board within the time prescribed that he is willing and able to pay to the Fund the whole of the difference between the amount of contribution to the Fund that would be payable in respect of him had he not suffered the decrease in his salary and the amount of contribution to the Fund that would be payable in respect of him pursuant to subsection (2) had he not notified the Board under this subsection, while he makes payment to the Fund accordingly.

41. Apportionment of contribution on transfer. (1) Where a permanent employee in respect of whom an annual contribution is payable to the Fund leaves the service of one Local Authority and, without receiving benefit from the Fund by reason of his so leaving, enters the service of another Local Authority, the Board shall certify to the Local Authorities concerned the proportions of the contribution for which each of the

Local Authorities shall be liable in respect of that employee for the year in which the change in service occurs and each Local Authority concerned shall be liable to pay to the Board the proportion so certified and the provisions of section 37 apply in respect thereof as if the liability arose under section 36 (1).

(2) Where, in a case to which subsection (1) applies, a Local Authority has paid contribution to the Board in respect of an employee who has left its service in an amount that exceeds the proportion for which the Local Authority is liable for the year in which the change in service occurs that Local Authority is entitled to recover (if necessary, by action in a court of competent jurisdiction as for a debt due and owing) from the Local Authority whose service the employee has entered the amount of the excess.

42. Where employee is in service of several Local Authorities. (1) Where any permanent employee is employed by more than one Local Authority the Board may decide—

- (a) what shall be the amount of contribution to the Fund in respect of him;
 - (b) the principle or basis on which the amount of contribution to the Fund payable by each of the Local Authorities in respect of him shall be determined;
- and
- (c) the principle or basis on which the amount to be deducted by each of the Local Authorities from his salary on account of payments made to the Board in respect of him shall be determined.

(2) The Board's decision under subsection (1) is final and binding on every Local Authority and permanent employee affected by it.

43. Date from which contributions payable. The Board may by its resolution fix, generally or in a particular case, the date of commencement of the period for payment of contributions under this Act.

Division 4—Provisions and Benefits of the Scheme

44. The Articles. (1) The conditions and rules of the Scheme, the provisions regulating administration of the Scheme and the benefits to be derived from the Scheme are those provided for in a document called "The Articles of the Local Government Employees' Superannuation Scheme".

(2) Upon approval thereof by Order in Council the Articles shall be in force and shall take effect according to their tenor and shall be binding on the Board, each Local Authority that is liable to pay an annual contribution to the Board and each permanent employee in respect of whom an annual contribution to the Fund is payable.

(3) The Articles, as approved by Order in Council, shall be published in the Gazette as part of the Order in Council by which they are approved.

45. Amendment of Articles. (1) The Articles may be amended from time to time by the Board but no amendment shall be of force and effect until it is approved by Order in Council.

(2) Every amendment of the Articles, as approved by Order in Council, shall be published in the Gazette as part of the Order in Council by which it is approved.

46. Protection of benefits. An entitlement to a benefit under the Articles shall not be in any way assigned, charged, attached, taken in execution or passed by operation of law or otherwise to any person other than the person who by reason of his being a permanent employee is entitled thereto, his legal personal representative or his nominated beneficiary and any such entitlement payable on the death of a permanent employee shall not be assets for the payment of his debts or liabilities.

47. Payment of benefit when employee deceased. (1) Where a permanent employee entitled to a benefit from the Scheme has died the benefit shall be paid by the Board to the person or persons appearing to the Board to be legally entitled thereto and, where there are more than one such person, in the proportions in which those persons appear to the Board to be entitled thereto.

(2) A payment made under subsection (1) shall be a good defence to any demand made against the Board by any other person as next of kin, legatee, nominated beneficiary or legal personal representative of the deceased permanent employee.

(3) Neither any action of the Board under subsection (1) nor subsection (2) shall be taken to bar the claim of a next of kin, legatee, nominated beneficiary or legal personal representative of the deceased permanent employee to recover by action in a court of competent jurisdiction the amount of benefit paid by the Board under subsection (1) from the person or persons to whom the benefit was paid.

(4) An acknowledgment of payment of a benefit under subsection (1) signed by the person or persons receiving the benefit from the Board shall release the Board from any obligation to pay further moneys by way of benefit from the Scheme to which the deceased permanent employee was entitled.

48. Provisions concerning payment under s. 47. (1) The Board may in a particular case, before making payment of a benefit under section 47 (1), require production of probate of the will or letters of administration of the estate of the deceased permanent employee in question or, where the Public Trustee is administering that estate, his authority to administer, or may dispense with the production thereof:

Provided that, in the case of an intestacy, where the deceased permanent employee left infant children surviving him, the Board shall not dispense with the production of letters of administration or of the authority to administer unless, having regard to the circumstances of the case, the Board considers that the expense of complying with a

requirement for such production would be unduly detrimental to the interests of the beneficiaries of the deceased permanent employee or any of the beneficiaries.

(2) Where the Board proposes to make payment of a benefit under section 47 (1) without production of probate, letters of administration or, as the case may be, authority to administer, it shall not make final settlement therein until it has received—

- (a) satisfactory proof of death of the deceased;
- (b) a release and indemnity to its satisfaction from the person or persons to whom payment is to be made;
- and
- (c) if the deceased left a will, the original will for perusal and a certified copy thereof.

(3) Before making payment of benefit under section 47 (1) the Board may make advance payments from any amount payable in respect of the deceased permanent employee in question to any person or persons appearing to the Board to be legally entitled thereto for all or any of the following purposes:—

- (a) the maintenance of the lawful widow or children (or both) of the deceased;
- (b) any other purpose that the Board considers reasonable in the circumstances.

Division 5—Costs and Expenses of Administration

49. Management Fund. (1) The Board shall continue to maintain the Local Government Superannuation (Management) Fund established and kept by the Board pursuant to the repealed Act.

(2) Moneys arising from the investment of moneys from the Local Government Superannuation (Management) Fund, whether those moneys arise by way of earnings or on maturity or liquidation of an investment, shall be paid into and form part of that fund.

(3) If the Board has earnings or moneys that are not required by this Act to be otherwise disposed of, those earnings and moneys shall be paid into and form part of the Local Government Superannuation (Management) Fund.

50. Costs of administration. Except where it is otherwise expressly provided by this Act, the costs and expenses of or in connexion with the administration of this Act and the Scheme shall be defrayed from the Local Government Superannuation (Management) Fund.

Where moneys standing to the credit of that fund are insufficient to defray those costs and expenses, the Board may make a per capita levy on Local Authorities and their permanent employees as provided for by section 51 to defray the balance of those costs and expenses.

51. Levy to defray costs of administration. (1) A per capita levy referred to in section 50—

- (a) may be made in respect of all permanent employees in respect of whom an annual contribution is payable to the Fund or, if the Board considers the circumstances so warrant, in respect of a particular group of such permanent employees; and
- (b) shall not exceed, in respect of any permanent employee, the amount of \$1.00 or such other amount as the Governor in Council from time to time approves.

(2) Each Local Authority whose permanent employees have been levied shall pay to the Board, on or before a date notified to it by the Board, the whole of the amount of the levy made in respect of its permanent employees.

52. Consequences of late payment or no payment. (1) Interest at a rate prescribed and calculated on a daily basis shall be paid by a Local Authority on any amount required by section 51 (2) to be paid by that Local Authority to the Board and not paid by it within the time prescribed:

Provided that the Board may remit payment of interest in a particular case for any reason that in its opinion is sufficient.

(2) Interest payable by a Local Authority under subsection (1) shall not be charged by the Local Authority against any other person.

(3) The Board may recover from a Local Authority by action in a court of competent jurisdiction as for a debt due and owing—

- (a) the amount of any contribution that the Local Authority is required by section 51 (2) to pay and has not paid within the time prescribed;
and
- (b) the amount of interest that the Local Authority is required by subsection (1) to pay and has not paid.

53. Employee liable for half Local Authority's payment to Fund. (1) Subject to this Act, every permanent employee in respect of whom a Local Authority is required by section 51 (2) to pay an amount of levy to the Board is liable to the Local Authority for one-half of the amount that the Local Authority is so required to pay in respect of him.

(2) Notwithstanding the provisions of any other Act, a Local Authority to which a permanent employee is liable under subsection (1) may deduct the amount of the liability or any part thereof from any sum that may be or become due by it to the permanent employee by way of salary or otherwise, by such instalments as are prescribed.

(3) A Local Authority may recover from a permanent employee by action in a court of competent jurisdiction as for a debt due and

owing any amount for which the employee is liable to the Local Authority under subsection (1), which has not been otherwise recovered by the Local Authority.

Division 6—Specific Powers and Duties of Board

54. Employer to act as Board's agent. (1) The Board may enter into an arrangement or may require any Local Authority to perform, with respect to the Local Authority's employees—

- (a) any function of the Board directly related to the acceptance of new contributors to the Scheme;
 - (b) the collection and recording of the payment of contributions to the Fund of the Local Authority and its employees;
 - (c) the payment and recording of the payment of benefits from the Scheme;
- and
- (d) such other acts and things as are prescribed.

(2) A requisition directed to a Local Authority by the Board under subsection (1) shall be complied with in all respects by the Local Authority and all persons who act on its behalf.

55. Determination of permanency of employment. (1) The Board is authorized to decide for the purposes of this Act any question that arises as to whether any employee of a Local Authority is a permanent employee.

(2) The decision of the Board on such a question shall be final and conclusive and binding upon all persons concerned.

56. Determination of incapacity. If a question arises—

- (a) as to the illness or incapacity of a permanent employee in respect of whom contribution is paid to the Fund;
- or
- (b) as to whether any illness or incapacity of a permanent employee is due to wilful action on the part of the employee for the purpose of obtaining a benefit from the Scheme,

the Board is authorized to determine that question for the purposes of this Act after consideration of a report or reports from a medical practitioner or medical practitioners appointed by the Board.

(2) The determination of the Board shall be final and conclusive and binding upon all persons concerned.

57. Settlement of disputes. (1) A dispute arising under this Act other than one relating to a matter referred to in sections 55 and 56 shall be determined in the first place by the Board.

(2) An appeal against the Board's determination of a dispute to which subsection (1) applies shall lie to the Supreme Court constituted by a single judge of that court, if it is instituted by a person aggrieved

by the determination within 30 days from the date on which a notice of the determination is given to the person aggrieved or to his agent (and no later) by filing in the registry of the Supreme Court a notice of appeal.

(3) A notice of the Board's determination may be given personally or by post.

(4) The power to make Rules of the Supreme Court includes power to make rules providing for and regulating practice and procedure of appeals under subsection (2).

Until such rules are made or in so far as they do not sufficiently provide a judge of the Supreme Court may, in a particular case, give directions as to the conduct of an appeal, which directions shall be complied with.

(5) An appeal under subsection (2) shall be by way of rehearing and the court may, by its order made therein—

confirm the Board's determination;

or

allow the appeal and make such orders therein as it considers necessary or expedient to adequately dispose of the matter in dispute,

and may make such order as to costs as it thinks just.

The court's decision shall be final and conclusive.

58. Payment of benefit during long service leave. (1) Where a permanent employee who is entitled to be paid a benefit from the Scheme upon his ceasing to be employed by a Local Authority has been granted by the Local Authority long service leave that will terminate coincidentally with his ceasing to be so employed the Board may—

if the permanent employee requests it;

if the Board, having regard to the purposes of this Act, deems it expedient;

and

subject to such conditions as the Board determines,

pay to him the benefit at anytime during the continuance of the long service leave.

(2) Except as is provided by subsection (1)—

(a) the entitlement of any permanent employee to long service leave shall not be prejudiced or affected by this Act;

and

(b) the entitlement of any permanent employee to a benefit from the Scheme shall not be prejudiced or affected by any entitlement of the employee to long service leave.

59. Board's right of set-off. If any moneys are due and owing under this Act to the Board by a permanent employee the Board may recoup

itself for those moneys from moneys due and owing under this Act by the Board to or in respect of that employee.

60. Annual report. (1) As soon as is practicable after 30 June in each year the Board shall furnish to the Minister a report on its administration of this Act.

(2) When and so often as the Minister requires, the Board shall furnish to the Minister a report on such matters concerning its administration of this Act as he requires.

PART IV—GENERAL PROVISIONS

61. Actuarial investigation of Fund. (1) An investigation as to the state and sufficiency of the Fund shall be made before the expiration of three years from the date of commencement of this Act and thereafter such an investigation shall be made periodically so that there shall not be a period longer than—

five years;

or

such shorter period as is from time to time determined by the Board,

between successive investigations.

(2) Each investigation shall be made by an Actuary appointed by the Board for the purpose who shall report to the Board on the findings of his investigation and shall include therein comments with respect to—

(a) the sufficiency of transfers to and actuarial soundness of the Fund either generally or in respect of any particular benefit;

(b) if a surplus exists in the Fund, the manner in which the surplus should be dealt with;

and

(c) any other actuarial matter affecting the Fund or the Scheme on which the Board requires his comment,

and shall therein make such recommendations as he considers necessary or desirable having regard to the purpose of the investigation and his findings therein.

(3) The Board may act as it considers prudent in respect of any recommendation made by an Actuary in his report to the Board.

62. Application of Act to Board's employees. The provisions of this Act apply and extend, with and subject to all necessary adaptations, to the Board and to all persons employed by the Board on a permanent, full-time basis as if the Board were a Local Authority and those employees were permanent employees.

63. Privilege of communications. All communications between the Board and any Local Authority in relation to a permanent employee shall be absolutely privileged.

64. Extinction of claim to benefit. (1) If a claim to a benefit from the Scheme is not established to the Board's satisfaction within six years from the date on which the benefit becomes payable to or in respect of a permanent employee, the employee and all other persons concerned shall cease to have any entitlement to the benefit:

Provided that in any case where the Board is satisfied that special reason exists for allowing a claim made or established after such period of six years the Board may allow the claim and pay the benefit notwithstanding the passage of that period.

(2) If after a benefit is paid to any person or persons pursuant to the authority conferred by subsection (1) a claim by any other person to the benefit is made the Board shall not be liable in respect of that claim but the claimant may, if he can establish his claim, recover, by action as for a debt due and owing to him, in a court of competent jurisdiction the amount of the benefit from the person or persons to whom the Board has paid the benefit.

65. First charge on benefits to recoup defalcations. If the employment with a Local Authority of a permanent employee in respect of whom contribution to the Fund is payable ceases by reason of his dismissal for misappropriation of moneys or other property of the Local Authority, the amount of the moneys or the value of the property misappropriated or, where part restitution thereof has been made, the outstanding balance of the moneys or the difference between the value of the property misappropriated and the sum paid as restitution shall be a first charge on any benefit payable from the Scheme to or in respect of the employee by reason of his ceasing to be so employed, and may be deducted therefrom by the Board.

(2) Any sum deducted by the Board under subsection (1) shall be paid to the Local Authority whose moneys or other property has been misappropriated.

(3) A certificate signed by the chairman of a Local Authority and sealed with the common seal of the Local Authority stating—

- (a) that a person named therein was a permanent employee of the Local Authority in respect of whom contribution to the Fund was payable;
 - (b) that the employment of that person with the Local Authority has ceased by reason of his dismissal for misappropriation of moneys or other property of the Local Authority;
- and
- (c) that an amount specified therein is due to the Local Authority by way of restitution of the moneys or other property misappropriated,

shall be evidence of the matters contained therein and sufficient authority for the Board's deducting moneys from any benefit from the Scheme payable to or in respect of the person named in the certificate.

66. Offences against Act. (1) A person who—

- (a) makes to the Board or any other person in relation to any matter connected with the administration or execution of this Act a statement (oral or written) that is false or misleading in a material particular, whether by reason of any matter contained therein or any matter omitted therefrom;
- or
- (b) contravenes or fails to comply in all respects with any provision of this Act or with any direction duly given under this Act,

commits an offence against this Act.

(2) A person guilty of an offence against this Act in respect of which no other penalty is prescribed is liable to a penalty not exceeding \$500.

67. Recovery of penalties. (1) A prosecution in respect of an offence against this Act shall be taken by way of summary proceedings under the *Justices Act 1886-1985* upon complaint made within one year from the time when the matter of complaint arose or within six months after the offence comes to the knowledge of the complainant, whichever period is later to expire.

(2) Unless it is otherwise expressly prescribed, all penalties and other moneys recovered in respect of offences against this Act shall be paid to the Local Government Superannuation (Management) Fund maintained by the Board.

(3) The institution of proceedings for a penalty or the conviction of a person in respect of an offence against this Act shall not affect any remedy that any person may have by way of civil action.

68. Regulations. The Governor in Council may, from time to time, make regulations, not inconsistent with this Act, with respect to—

- (a) the manner in which, the time within which and, where appropriate, the forms by which anything required or authorized by this Act to be done, shall or may be done;
- (b) the accounts to be kept by the Board, the manner of keeping those accounts and the manner in which the Board's financial statements shall be presented;
- (c) the power of persons under full age to execute and do or suffer documents, acts and things for the purposes of this Act as if they had attained full age;
- (d) penalties for breaches of regulations not exceeding in any case \$100;
- (e) the proceedings of the Board;
- (f) all matters and things that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for achieving the objects and purposes of

this Act and in respect of which no other means of prescription are provided for.

SCHEDULE

[s. 4]

The Local Government Superannuation Act of 1964

The Local Government Superannuation Act Amendment Act of 1967

Local Government Superannuation Act Amendment Act 1974

Local Government Superannuation Act Amendment Act 1976

Local Government Superannuation Act Amendment Act 1978