



Western Australia

# **Fire and Emergency Services Superannuation Act 1985**

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# Fire and Emergency Services Superannuation Act 1985

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**Defined terms**



Western Australia

## **Fire and Emergency Services Superannuation Act 1985**

**An Act to provide superannuation and other benefits for certain persons employed for the purposes of the *Fire and Emergency Services Act 1998*, for certain former employees of the Fire and Emergency Services Authority of Western Australia and the Western Australian Fire Brigades Board, for the employees, and certain former employees, of other bodies, and for certain other persons, to establish a board and fund for the purpose of providing those benefits, and for incidental and other purposes.**

*[Long title inserted: No. 26 of 1994 s. 4; amended: No. 42 of 1998 s. 38; No. 38 of 2002 s. 64; No. 22 of 2012 s. 96.]*

## **Part I — Preliminary**

### **1. Short title**

This Act may be cited as the *Fire and Emergency Services Superannuation Act 1985* <sup>1</sup>.

*[Section 1 amended: No. 38 of 2002 s. 65.]*

### **2. Commencement**

This Act shall come into operation on such day as is fixed by proclamation <sup>1</sup>.

### **3. Terms used in this Act**

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

***associated employee*** means a person in the employment of an associated employer;

***associated employer*** means a body mentioned in Schedule 1 that is an associated employer under the regulations;

***Authority*** means the Fire and Emergency Services Authority of Western Australia established by section 4 of the *Fire and Emergency Services Act 1998*, as in force immediately before the coming into operation of the *Fire and Emergency Services Legislation Amendment Act 2012* section 7;

***Commissioner*** has the same meaning as in the Commonwealth Act;

***Commonwealth Act*** means —

- (a) the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth; or
- (b) if another Act of the Commonwealth is prescribed for the purposes of this definition, that prescribed Act;

***Commonwealth standards*** means any standards prescribed by or under the Commonwealth Act;

***eligible FES employee*** means a firefighter, or a person holding a prescribed office or of a prescribed class employed in the



department principally assisting in the administration of the *Fire and Emergency Services Act 1998*;

**FES Commissioner** has the same meaning as in the *Fire and Emergency Services Act 1998* section 3;

**Fire Brigades Board** means the Western Australian Fire Brigades Board constituted under the *Fire Brigades Act 1942*, as in force immediately before the coming into operation of the *Fire and Emergency Services Act 1998*;

**firefighter** means an officer or member of a permanent fire brigade under the *Fire Brigades Act 1942* and includes such an officer or member seconded for the time being to another employer;

**former Authority employee** means a person to whom section 5(4)(a) applied immediately before the coming into operation of the *Fire and Emergency Services Legislation Amendment Act 2012* section 99(2);

**former Fire Brigades Board employee** means a person formerly in the employment of the Fire Brigades Board;

**property** means real and personal property of any nature and includes —

- (a) any estate share or interest in any property;
- (b) any thing or chose in action; and
- (c) money and money's worth;

**Superannuation Board** means the Fire and Emergency Services Superannuation Board established under section 4;

**Superannuation Fund** means the Fire and Emergency Services Superannuation Fund established under section 5;

**the actuary** means the actuary appointed under section 16.

- (2) The Governor may amend Schedule 1 by order published in the *Gazette*.

[Section 3 amended: No. 19 of 1992 s. 4; No. 26 of 1994 s. 5; No. 42 of 1998 s. 38; No. 38 of 2002 s. 66; No. 22 of 2012 s. 97.]

**Part II — The Fire and Emergency Services  
Superannuation Board and Fund**

*[Heading inserted: No. 38 of 2002 s. 67.]*

**4.            Establishment and constitution of Superannuation Board**

- (1) For the purposes of this Act there shall be a board to be known as the Fire and Emergency Services Superannuation Board.
- (1a) The Fire and Emergency Services Superannuation Board is a continuation of, and the same legal entity as, the Western Australian Fire Brigades Superannuation Board established by this section as in force before the commencement of Part 5 of the *Fire and Emergency Services Legislation Amendment Act 2002*<sup>1</sup>.
- (2) The Superannuation Board —
  - (a) is a body corporate;
  - (b) shall have an official seal; and
  - (c) may sue and be sued in its corporate name.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Superannuation Board affixed to a document and shall presume that it was duly affixed.
- (4) Subject to this Act the Superannuation Board shall consist of 6 persons of whom —
  - (a) 3 shall be appointed by the FES Commissioner; and
  - (b) 3, of whom not less than 2 are members of the Superannuation Fund, shall be elected by the members of the Superannuation Fund.
- (5) The FES Commissioner may appoint not more than 3 persons to be alternate members of the Superannuation Board.
- (6) The members of the Superannuation Fund may elect not more than 3 persons to be alternate members of the Superannuation Board.

- (7) Schedule 2 shall have effect in relation to the Superannuation Board.

*[Section 4 amended: No. 26 of 1994 s. 6; No. 42 of 1998 s. 38; No. 38 of 2002 s. 68; No. 22 of 2012 s. 98.]*

**5. The Superannuation Fund**

- (1) For the purpose of providing superannuation and other benefits in accordance with this Act there shall be a fund called the Fire and Emergency Services Superannuation Fund.
- (1a) The Fire and Emergency Services Superannuation Fund is a continuation of, and the same fund as, the Western Australian Fire Brigades Superannuation Fund established by this section as in force before the commencement of Part 5 of the *Fire and Emergency Services Legislation Amendment Act 2002*<sup>1</sup>.
- (2) The Superannuation Fund shall consist of —
- (a) contributions paid by members of the Superannuation Fund and by the FES Commissioner and associated employers in respect of such members;
  - (b) all other property received by the Superannuation Board for or in connection with the Superannuation Fund;
  - (c) property (including policies of insurance and assurance) in which the Superannuation Fund is invested;
  - (d) income derived from the investment of the Superannuation Fund; and
  - (e) accretions to, and profits arising from the realization of, property in which the Superannuation Fund is invested.
- (3) The Superannuation Fund shall be available for the payment of —
- (a) benefits to or in respect of members of the Superannuation Fund in accordance with this Act;
  - (b) the costs and expenses of conducting elections in respect of the Superannuation Board under clause 2 of Schedule 2;

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- (c) allowances to members of the Superannuation Board under clause 13 of Schedule 2; and
  - (d) the costs and expenses of administering the Superannuation Fund and the provisions of this Act relating to the Superannuation Fund.
- (4) Regulations under section 32 may provide for all or any of the following people to be members of the Superannuation Fund —
- (a) current and former eligible FES employees; and
  - (b) current and former associated employees; and
  - (c) former Fire Brigades Board employees; and
  - (da) former Authority employees; and
  - (d) current and former spouses or de facto partners of the persons referred to in paragraphs (a), (b), (c) and (da).

*[Section 5 amended: No. 26 of 1994 s. 7; No. 42 of 1998 s. 38; No. 38 of 2002 s. 69; No. 22 of 2012 s. 99.]*

**6. Function and general powers of Superannuation Board**

- (1) The function of the Superannuation Board is to administer, invest and manage the Superannuation Fund.
- (2) Subject to this Act the Superannuation Board may do all acts and things that are necessary or convenient to be done to enable it to perform its functions.
- (3) Without limiting the generality of subsection (2) the Superannuation Board may, subject to this Act —
  - (a) enter into and execute all deeds, contracts and documents that it may think expedient for the purpose of securing the benefits to be provided from the Superannuation Fund;
  - (b) appropriate any part of the Superannuation Fund (including the proceeds arising from any insurance or assurance policies) in full or part satisfaction of any duties or taxes;

- (c) acquire or dispose of any property on such terms of payment as it thinks fit;
- (d) grant or take options or other pre-emptive rights for the sale, purchase or leasing of any property;
- (e) insure or re-insure any risks, contingencies or liabilities of the Superannuation Fund, the Superannuation Board, members of the Superannuation Board, or persons provided by the FES Commissioner under section 31 to assist the Superannuation Board, with or through such persons and on such terms and conditions as the Superannuation Board thinks fit;
- (f) subject to subsection (4), raise or borrow money at such rates of interest and on such terms and conditions as it thinks fit and either by way of fixed loan for a period of time or by way of bank overdraft on a fluctuating basis;
- (g) subject to subsection (4), incur liabilities of such amounts and on such terms and conditions as it thinks fit and provide and set aside out of the Superannuation Fund sufficient money for or towards the discharge or reduction of any encumbrance, debt or other liability affecting any part of the Superannuation Fund;
- (h) secure, guarantee, indemnify or support the performance of any obligation undertaken by it by securities of any nature over the whole or any part of the Superannuation Fund;
- (i) open and operate on accounts with bankers or other financial institutions and sign, draw, discount, accept and endorse cheques, bills and other negotiable instruments in such manner as it determines;
- (j) lease, let out or hire for such periods and at such rentals as it thinks fit any property forming part of the Superannuation Fund;
- (k) postpone the realization of any property forming part of the Superannuation Fund for so long as the

**s. 6A**

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Superannuation Board thinks fit even though the property may be of a speculative or wasting nature;

- (1) expend such amounts in the development and improvement of any property forming part of the Superannuation Fund as the Superannuation Board thinks fit.
- (4) The Superannuation Board may raise or borrow money under subsection (1) for the purpose of overcoming any cash flow problem in the payment of benefits under this Act, but for no other purpose.

*[Section 6 amended: No. 19 of 1992 s. 5; No. 38 of 2002 s. 70; No. 22 of 2012 s. 100.]*

**6A. Compliance with Commonwealth standards**

- (1) The Superannuation Board —
  - (a) shall ensure that the Superannuation Fund complies with the Commonwealth standards so far as they apply to that Fund;
  - (b) shall comply with any requirement made in relation to the Superannuation Fund by the Commissioner under the Commonwealth Act;
  - (c) shall not, in relation to the administration, management or investment of the Superannuation Fund, do anything that is contrary to, or inconsistent with, the Commonwealth standards so far as they apply to the Superannuation Fund.
- (2) This section has effect notwithstanding any other provision of this Act.

*[Section 6A inserted: No. 19 of 1992 s. 6.]*

**7. Power of investment**

- (1) The Superannuation Board may invest the assets of the Superannuation Fund in any form of investment that it considers suitable.

- (2) The Superannuation Board may at any time and in its absolute discretion vary or transpose any investments or other applications of the Superannuation Fund for or into others authorised by this Act.
- (3) The Superannuation Board may underwrite or sub-underwrite any of the investments authorised by this Act.
- (4) Notwithstanding anything in this section, the Superannuation Board shall not lend any money from the Superannuation Fund to a member of that Fund, either directly or by means of an arrangement for lending money to a member of that Fund in the exercise of a power of investment under this section.

*[Section 7 amended: No. 19 of 1992 s. 7; No. 1 of 1997 s. 18; No. 38 of 2002 s. 71.]*

**8. Investment policy**

The Superannuation Board and every delegate of the Superannuation Board who at any time undertakes the investment of all or part of the Superannuation Fund shall have regard only to the best interests of the Superannuation Fund and its members in relation to the making of every such investment.

**9. Power to insure**

- (1) The Superannuation Board may —
  - (a) subject to the regulations, effect and maintain policies of all types of insurance or assurance to provide for any benefit or part of a benefit that may become payable from the Superannuation Fund; and
  - (b) pay out of the Superannuation Fund all premiums under or in respect of policies referred to in paragraph (a).
- (2) The powers conferred under this section are in addition to and extension of the powers conferred by sections 6 and 7.
- (3) In this section *effect* includes acquire or take by assignment.

*[Section 9 amended: No. 26 of 1994 s. 8.]*

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**10. Superannuation Board to have powers of a trustee**

Without limiting the generality of section 6 or 7 the Superannuation Board shall have the powers conferred by law on a trustee.

**11. Discretionary exercise of powers**

Subject to section 8 the powers conferred on the Superannuation Board under this Act or by any other law —

- (a) may be exercised by the Superannuation Board in such circumstances, in such manner and on such terms and conditions as the Superannuation Board thinks fit;
- (b) may be exercised by the Superannuation Board jointly with any other person and notwithstanding that by doing so the Superannuation Board may lose sole control of any of the investments or other applications of the Superannuation Fund or cause any part of the property of the Superannuation Fund to be intermingled with any other property; and
- (c) shall so far as they relate to the investment or other applications of the Superannuation Fund be exercisable by the Superannuation Board as if it were the absolute beneficial owner of the Superannuation Fund.

**12. Power to make determinations**

The Superannuation Board shall determine all questions or issues of doubt or difficulty in relation to —

- (a) the interpretation of any of the provisions of this Act relating to the Superannuation Fund;
- (b) the rights of the members of the Superannuation Fund under this Act; or
- (c) the management and administration of the Superannuation Fund or the performance of the functions conferred on the Superannuation Board.



**13. Delegation**

- (1) The Superannuation Board may, by instrument in writing delegate to any person any power or duty conferred or imposed on the Superannuation Board under this Act or any other Act.
- (2) A power or duty delegated under subsection (1) shall, when exercised or performed by the delegate in accordance with the instrument of delegation, be deemed, for the purposes of this Act, to have been exercised or performed by the Superannuation Board.

**14. Appointment of investment managers**

- (1) The Superannuation Board may appoint a person as an investment manager of the Superannuation Fund and, without limiting the generality of section 13, may delegate to an investment manager so appointed any of its powers and duties under this Act or any other Act as to the investment of the Superannuation Fund.
- (2) An investment manager may be appointed on such terms and at such remuneration as the Superannuation Board thinks fit.
- (3) The Superannuation Board may cause or permit the title to any property forming part of the Superannuation Fund to be registered in the name of an investment manager in trust.

**15. Appointment of secretary**

- (1) The Superannuation Board shall appoint a secretary of the Superannuation Board.
- (2) The secretary shall be appointed on such terms and at such remuneration as the Superannuation Board thinks fit.
- (3) The secretary shall perform such duties and have such powers as the Superannuation Board may from time to time determine.

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**16.      Appointment of actuary**

- (1) The Superannuation Board shall appoint as the actuary to the Superannuation Fund any person who is, or any firm a member of which is, a Fellow of the Institute of Actuaries of Australia or any body formed in reconstruction of or in succession to that Institute.
- (2) The actuary shall be appointed on such terms and at such remuneration as the Superannuation Board thinks fit.

**17.      Actuarial review**

- (1) On or before the day 3 years after the commencement of this Act and thereafter at intervals of not more than 3 years the Superannuation Board shall call on the actuary to conduct an actuarial review of the Superannuation Fund.
- (2) The Superannuation Board shall provide the actuary with such information as he may require to conduct an actuarial review under subsection (1), and shall do so in time to enable the actuary to comply with subsection (3a).
- (3) The actuary shall report to the Superannuation Board in writing the result of an actuarial review conducted under subsection (1).
- (3a) The report shall be made within the period of 12 months after the date as at which the review was made or within such other period as is prescribed.
- (4) The Superannuation Board shall provide the FES Commissioner and each associated employer (if any) with a copy of each report received by the Superannuation Board under subsection (3).

*[Section 17 amended: No. 19 of 1992 s. 8; No. 42 of 1998 s. 38; No. 22 of 2012 s. 101.]*

**18.      Advice to Superannuation Board**

The Superannuation Board may obtain the advice or opinion of any accountant, actuary, banker, legal practitioner, medical practitioner, stockbroker or other professional person and may

act on the advice or opinion of such a person irrespective of whether or not the advice or opinion has been sought by the Superannuation Board.

**19. Records**

The Superannuation Board shall ensure that a complete record is kept of —

- (a) all the members of the Superannuation Fund and all other persons becoming entitled to a benefit from the Superannuation Fund;
- (b) the deaths of members of the Superannuation Fund; and
- (c) all other things necessary for the proper administration of the Superannuation Fund.

**19A. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of the statutory authorities apply to and in respect of the of the Superannuation Board and its operations.

*[Section 19A inserted: No. 4 of 1986 s. 4; amended: No. 77 of 2006 s. 17.]*

**20. Accounts**

- (1) In this section **liabilities** does not include liabilities for the payment of benefits under the Superannuation Fund.
- [(2) deleted]*
- (3) If the receipt or expenditure of money is delegated by the Superannuation Board under section 13 or 14, the Superannuation Board shall procure from the delegate, as soon as practicable after the end of each financial year, a full and true statement of account of all the moneys received and expended by the delegate on behalf of the Superannuation Board during

**s. 21**

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that year and a statement of the assets and liabilities held or incurred by the delegate on behalf of the Superannuation Board as at the end of that year.

*[Section 20 amended: No. 4 of 1986 s. 4.]*

**21. Minister to have access to information**

- (1) For parliamentary purposes or for the proper conduct of the Minister's public business, the Minister is entitled —
  - (a) to have information in the possession of the Superannuation Board; and
  - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
  - (a) request the Superannuation Board to furnish information to the Minister;
  - (b) request the Superannuation Board to give the Minister access to information;
  - (c) for the purposes of paragraph (b) make use of the staff of the Superannuation Board to obtain the information and furnish it to the Minister.

- (3) The Superannuation Board shall comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

- (4) In this section —

**document** includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

**information** means information specified, or of a description specified, by the Minister that relates to the functions or powers of the Board;

**parliamentary purposes** means the purpose of —

- (a) answering a question asked in a House of Parliament; or

- (b) complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament.

*[Section 21 inserted: No. 26 of 1994 s. 9.]*

**21A. Confidential information**

- (1) Nothing in this Act entitles the Minister to have information in the possession of the Superannuation Board in a form that —
  - (a) discloses information about a member or a beneficiary; or
  - (b) might enable information about a member or a beneficiary to be ascertained.
- (2) Subsection (1) does not apply where disclosure of the information —
  - (a) is authorised or required by some other written law; or
  - (b) is authorised by the member or beneficiary.

- (3) In this section —

***beneficiary*** means a person to whom a benefit is payable or has been paid under this Act;

***member*** means a person who is or has been a member of the Superannuation Fund.

*[Section 21A inserted: No. 26 of 1994 s. 9.]*

*[Part III (s. 22-26) deleted: No. 26 of 1994 s. 10.]*

**Part IV — Miscellaneous**

**27. Employers' powers and liabilities in respect of termination not affected**

- (1) Nothing in this Act shall affect the rights of the FES Commissioner or an associated employer in relation to the termination of employment of a member of the Superannuation Fund and the fact of being a member of that fund shall not be taken in any respect as implying a guarantee of continued employment by the FES Commissioner or an associated employer.
- (2) Nothing in this Act and no right or expectation with respect to the accrual in the future of a benefit under this Act shall affect the quantum of damages in any action brought by a member of the Superannuation Fund against the FES Commissioner or an associated employer on account of the termination of his employment.

*[Section 27 amended: No. 26 of 1994 s. 11; No. 42 of 1998 s. 38; No. 22 of 2012 s. 102.]*

**28. Members' rights to compensation not affected**

- (1) Nothing in this Act shall affect the rights of a member of the Superannuation Fund in relation to any claim for damages or compensation that he may have arising out of or with respect to his employment by the FES Commissioner or an associated employer.
- (2) A benefit to which a member of the Superannuation Fund or any other person is entitled under this Act shall not be affected by any damages or compensation payable to or in respect of the member.

*[Section 28 amended: No. 26 of 1994 s. 12; No. 42 of 1998 s. 38; No. 22 of 2012 s. 103.]*

**29. General meetings of members of Superannuation Fund**

- (1) The Superannuation Board shall call an annual general meeting of the members of the Superannuation Fund.
- (2) The Superannuation Board may call a special general meeting of the members of the Superannuation Fund whenever it thinks fit and shall call such a meeting at the request, in writing, of not less than 5% of those members.
- (3) Subject to regulations the day on which, and time and place at which, a general meeting is held under this section shall be determined by the Superannuation Board.
- (4) A general meeting held under this section may make recommendations to the Superannuation Board on the business considered by the general meeting.
- (5) A general meeting held under this section shall be conducted in accordance with the prescribed procedures.

*[30. Deleted: No. 26 of 1994 s. 13.]*

**31. Assistance from FES Commissioner**

The FES Commissioner may provide the Superannuation Board with such assistance with respect to staff, facilities and services as the FES Commissioner thinks fit.

*[Section 31 amended: No. 26 of 1994 s. 14; No. 42 of 1998 s. 38; No. 22 of 2012 s. 104.]*

**32. Power to make regulations**

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act, and in particular may make regulations —

- (a) providing for all or any of the people referred to in section 5(4) to be members of the Superannuation Fund, and for continuity and cessation of membership;

- (b) as to contributions to the Superannuation Fund by members and by the FES Commissioner and associated employers;
- (c) as to the superannuation and other benefits to be paid from the Superannuation Fund and the protection, adjustment, reduction, forfeiture and application of such benefits;
- (ca) specifying what, if any, pension benefits may be paid from the Fund, the conditions under which a pension benefit may be paid from the Fund, and to whom a pension benefit may be paid;
- (d) as to the manner in which a body specified in Schedule 1 may become and cease to be an associated employer for the purposes of the Superannuation Fund and providing for the case of the winding up, dissolution, amalgamation or transfer of the engagements of an associated employer;
- (e) providing for the transfer of persons to or from other superannuation or like funds or schemes;
- [(f)-(h) deleted]*
- (i) requiring members of the Superannuation Fund to undergo medical examinations;
- (j) preventing the Superannuation Board from effecting or maintaining a policy of insurance under section 9 if that policy does not comply with prescribed requirements;
- (k) as to general meetings under section 29;
- (l) requiring the Superannuation Board to furnish reports to the members of the Superannuation Fund and prescribing the matters to be dealt with in such reports;
- (m) prescribing the manner in which notices may be served under this Act;
- (n) prescribing or providing for the approval of forms for the purposes of this Act;



- (o) prescribing requirements as to information to be given in or in connection with applications, returns, claims, elections, and other documents delivered or made for the purposes of this Act, and the evidence to be supplied in support;
- (p) imposing conditions or restrictions on the making of amendments to the regulations.

*[Section 32 amended: No. 26 of 1994 s. 15; No. 42 of 1998 s. 38; No. 38 of 2002 s. 72; No. 22 of 2012 s. 105.]*

*[33. Deleted: No. 26 of 1994 s. 16.]*

**Part V — Amendment, repeal and transitional**

*[34, 35. Deleted: No. 26 of 1994 s. 16.]*

**36. Transitional**

Schedule 3 shall have effect.

**Schedule 1 — Bodies that may be associated employers**

[s. 3]

*[Heading inserted: No. 38 of 2002 s. 73.]*

United Fire Fighters Union of Western Australia

Western Australian Volunteer Fire and Rescue Services Association (Inc.)

Fire and Emergency Services Superannuation Board

*[Schedule 1 inserted: No. 38 of 2002 s. 73.]*

## Schedule 2 — Provisions as to Superannuation Board

[s. 4]

*[Heading amended: No. 26 of 1994 s. 18; No. 19 of 2010 s. 4.]*

### 1. Terms used in this Schedule

In this Schedule, unless the contrary intention appears —

**appointed member** means a member of the Superannuation Board appointed by the FES Commissioner and includes an alternate member so appointed;

**elected member** means a member of the Superannuation Board elected by the members of the Superannuation Fund and includes an alternate member so elected.

*[Clause 1 amended: No. 26 of 1994 s. 18; No. 42 of 1998 s. 38; No. 22 of 2012 s. 106(1).]*

### 2. Elections

*[(1) deleted]*

- (2) Whenever the office of an elected member is vacant or is due to become vacant an election shall be conducted in the prescribed manner amongst the members of the Superannuation Fund to elect a person to fill the vacancy.

*[Clause 2 amended: No. 26 of 1994 s. 18.]*

### 3. Terms of office

- (1) Subject to this Schedule —

- (a) an appointed member shall hold office for such period not exceeding 3 years as is specified in the instrument of his appointment and is eligible for reappointment;
- (b) an elected member other than an alternate member shall hold office —
- (i) where he is elected to fill a vacancy occurring by effluxion of time — for a period ending 3 years after the occurrence of that vacancy;

- (ii) where he is elected to fill a vacancy occurring otherwise than by effluxion of time — for the remainder of the period for which his predecessor in office was elected,  
and is eligible for re-election;
  - (c) an elected member who is an alternate member shall hold office —
    - (i) where he is elected to fill a vacancy occurring by effluxion of time — for a period ending 1 year after the occurrence of that vacancy;
    - (ii) where he is elected to fill a vacancy occurring otherwise than by effluxion of time — for the remainder of the period for which his predecessor in office was elected,  
and is eligible for re-election.
- (2) A member elected to fill an office as an alternate member on the coming into operation of the *Fire Brigades Superannuation Amendment Act 1994* shall, subject to the other provisions of this Schedule, hold office for a period ending one year after the election.  
*[Clause 3 amended: No. 26 of 1994 s. 18.]*

**4. Chairman**

The Superannuation Board may appoint one of its members to be chairman of the Superannuation Board and determine the period for which that member shall hold that office.

*[Clause 4 amended: No. 26 of 1994 s. 18.]*

**5. Publication**

The Superannuation Board shall cause notice of —

- (a) the appointment of appointed members to the Superannuation Board;
- (b) the election of elected members to the Superannuation Board;

**cl. 6**

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(c) the appointment of a chairman of the Superannuation Board, to be published for information in the *Gazette*.

*[Clause 5 amended: No. 26 of 1994 s. 18.]*

**6. How vacancies occur**

- (1) The office of a member of the Superannuation Board becomes vacant if —
- (a) he becomes permanently incapable of performing his duties as a member;
  - (b) he resigns his office by notice in writing delivered to the Superannuation Board;
  - (c) he is removed from office under subclause (2) or (3);
  - (d) he becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth;
  - (e) for more than 2 months he is absent without leave of the Superannuation Board from meetings of the Superannuation Board that he is entitled to attend;
  - (f) he fails to make a disclosure as required by clause 11;
  - (g) being an elected member of the Superannuation Board who is a member of the Superannuation Fund, he ceases to be a member of that fund.
- (2) The FES Commissioner may remove an appointed member from office for inability, inefficiency or misbehaviour.
- (3) An elected member of the Superannuation Board may be removed from office in accordance with the regulations.

*[Clause 6 amended: No. 26 of 1994 s. 18; No. 42 of 1998 s. 38; No. 10 of 2001 s. 221; No. 22 of 2012 s. 106(2).]*

**7. Alternate members**

- (1) An appointed member of the Superannuation Board who proposes to be absent from a meeting of the Superannuation Board may, in writing, nominate an appointed alternate member of the Superannuation Board to attend that meeting in his place and the alternate member so nominated is entitled to attend that meeting.

- (2) If an appointed member of the Superannuation Board is absent from a meeting of the Superannuation Board and does not make a nomination under subclause (1) the FES Commissioner may nominate an appointed alternate member of the Superannuation Board to attend that meeting and the alternate member so nominated is entitled to attend that meeting.
- (3) If for any reason an appointed member of the Superannuation Board vacates his office before the expiry of the period for which he was appointed, the FES Commissioner may nominate an appointed alternate member of the Superannuation Board to attend meetings of the Superannuation Board and the alternate member so nominated is, until the vacancy is filled, entitled to receive notice of and attend every meeting of the Superannuation Board.
- (4) An elected member who proposes to be absent from a meeting of the Superannuation Board may, in writing, nominate an elected alternate member to attend that meeting in his or her place and the alternate member so nominated is entitled to attend that meeting.
- (5) If an elected member is absent from a meeting of the Superannuation Board and does not make a nomination under subclause (4) the other elected members of the Superannuation Board may nominate an elected alternate member to attend that meeting and the alternate member so nominated is entitled to attend that meeting.
- (5a) If for any reason an elected member vacates office before the expiry of the period for which the member was appointed, the other elected members may nominate an elected alternate member to attend meetings of the Board and the alternate member so nominated is, until the vacancy is filled, entitled to receive notice of and attend every meeting of the Superannuation Board.
- (6) An alternate member attending a meeting of the Superannuation Board in accordance with this clause has all the powers and duties of a member of the Superannuation Board.

*[Clause 7 amended: No. 26 of 1994 s. 18; No. 42 of 1998 s. 38; No. 22 of 2012 s. 106(3).]*

**cl. 8**

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**8. Meetings of a Board**

- (1) The chairman of the Superannuation Board shall preside at all meetings of the Superannuation Board at which he is present but, if a chairman is not elected or the chairman is not present at a meeting, the members of the Superannuation Board present may elect one of their number to preside.
- (2) The Superannuation Board shall hold such meetings as are necessary for the performance of its functions.
- (3) The secretary of the Superannuation Board may convene a meeting of the Superannuation Board at any time and shall on request in writing by a member of the Superannuation Board convene such a meeting before the expiration of 30 days after the receipt of the request.
- (4) The secretary of the Superannuation Board shall notify each member of the Superannuation Board of the time, date, and place of every meeting and adjourned meeting of the Superannuation Board.
- (5) Questions arising at a meeting of the Superannuation Board shall be determined by a majority of the votes of the members of the Superannuation Board.
- (6) In the case of an equality of votes on a question the person presiding at the meeting shall not have a second or casting vote and the question shall be deemed to have been resolved in the negative.
- (7) The Superannuation Board shall cause to be kept a record of the proceedings of its meetings.
- (8) Subject to this Act, the Superannuation Board may regulate its own procedure.

*[Clause 8 amended: No. 26 of 1994 s. 18.]*

**9. Quorum**

- (1) Subject to subclauses (2) and (3) the quorum for a meeting of the Superannuation Board shall be not less than 4 members of whom not less than 2 shall be appointed members and not less than 2 shall be elected members.
- (2) If a quorum is not present at a meeting of the Superannuation Board, the meeting shall be adjourned for 1 week and if a quorum is not then present, the meeting shall be further adjourned for 1 week and, if a



quorum is not then present, the members who are present shall, notwithstanding subclause (1), constitute a quorum for the purposes of the meeting.

- (3) If as a result of vacancies in the offices of members of the Superannuation Board it is not possible to obtain a quorum for a meeting of the Superannuation Board, the remaining members or member may act for the purpose of —
- (a) paying benefits from the Superannuation Fund;
  - (b) calling a meeting of members of the Superannuation Fund; or
  - (c) conducting an election of one, or more than one, elected member of the Superannuation Board,

but for no other purpose.

*[Clause 9 amended: No. 26 of 1994 s. 18.]*

**10. Performance of functions by resolution**

- (1) A resolution in writing, signed by all members of the Superannuation Board for the time being entitled to receive notice of a meeting of the Superannuation Board, shall be as valid and effectual as if it had been passed at the meeting of the Superannuation Board duly convened and held.
- (2) A resolution under subclause (1) may consist of several documents in like form, each signed by one or more members of the Superannuation Board.

*[Clause 10 amended: No. 26 of 1994 s. 18.]*

**11. Disclosure of interest**

- (1) A member of the Superannuation Board who has a direct or indirect pecuniary interest in a matter that is being or is about to be considered by the Superannuation Board, otherwise than as a member of and in common with other members of the Superannuation Fund —
- (a) 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 Superannuation Board;
  - (b) shall not take part in any deliberation or decision of the Superannuation Board with respect to that matter.

**cl. 12**

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Penalty: \$500.

- (2) A disclosure made under subclause (1)(a) at a meeting of the Superannuation Board shall be recorded in the record of proceedings of the Superannuation Board.
- (3) For the purposes of clauses 7(1) and (4) and 9, a member who is precluded under subclause (1)(b) from taking part in any deliberation or decision of the Superannuation Board with respect to a matter shall be deemed to be absent from the meeting while that matter is being deliberated or decided upon.

*[Clause 11 amended: No. 26 of 1994 s. 18.]*

**12. Common seal**

- (1) The form of the common seal of the Superannuation Board shall be determined by the Superannuation Board.
- (2) The common seal of the Superannuation Board shall not be used except upon the resolution of the Superannuation Board.
- (3) The common seal of the Superannuation Board shall only be affixed to an instrument in the presence of 2 members and the instrument shall be signed by those 2 members.

*[Clause 12 amended: No. 26 of 1994 s. 18.]*

**13. Allowances**

There shall be paid to the members of the Superannuation Board such allowances as the Minister may, on the recommendation of the Superannuation Board approve.

*[Clause 13 amended: No. 26 of 1994 s. 18.]*

**14. Indemnity**

No liability shall attach to the Superannuation Board or to a member of the Superannuation Board for any act or omission that occurred in good faith and in the exercise or purported exercise of their or his powers or in the discharge or purported discharge of their or his duties under this Act.

*[Clause 14 amended: No. 26 of 1994 s. 18.]*

## **Schedule 3 — Transitional provisions**

[s. 36]

[*Heading amended: No. 19 of 2010 s. 4.*]

### **Part I — Superannuation Fund**

#### **1. Terms used in this Part**

In this Part —

*former regulations* means the regulations mentioned in section 35(a);

*previous superannuation fund* means the Western Australian Fire Brigades Board Superannuation Fund continued by the former regulations.

#### **2. Transfer of assets and liabilities**

All moneys standing to the credit of, and all investments forming part of, the previous superannuation fund immediately before the commencement of this Act shall, on and after that commencement, stand to the credit of, or form part of the Superannuation Fund for the purposes of this Act, and all liabilities of the previous Superannuation fund immediately before that commencement, including contingent liabilities, shall on and after that commencement, be liabilities of the Superannuation Fund.

#### **3. Transfer of operations**

- (1) Any policy of insurance, agreement or instrument subsisting immediately before the commencement of this Act to which the Fire Brigades Board is a party and which relates to the administration of the former regulations shall, subject to this Act, subsist and enure for the purposes of the administration of the Superannuation Fund as if —
  - (a) the Superannuation Board were substituted for the Fire Brigades Board as a party to the policy, instrument or agreement; and
  - (b) any reference in the policy, agreement or instrument to the Fire Brigades Board were (unless the context otherwise requires) a reference to the Superannuation Board.

- (2) Any proceedings pending immediately before the commencement of this Act which the Fire Brigades Board is a party and which relates to the former regulations may be continued after that commencement as if the Superannuation Board were a party thereto in lieu of the Fire Brigades Board.
- (3) Any question arising as to whether or not a provision of this clause applies to any particular policy, agreement, instrument or proceedings shall be determined by the Minister and the decision of the Minister is final.

**4. Claims preserved**

Any claim for benefits under the former regulations that has not been finally dealt with immediately before the commencement of this Act may be proceeded with and dealt with after that commencement as if it were a claim for benefits from the Superannuation Fund under this Act.

**5. Interim Board members**

The Minister shall appoint person to act as members of the Superannuation Board under section 4(4)(b) until members of the Superannuation Board are elected under clause 2(1) of Schedule 2.

**Part II — Disablement Benefits Fund**

**6. Terms used in this Part**

In this Part —

*former regulations* means the regulations mentioned in section 35(b);

*previous disablement benefits fund* means the Western Australian Fire Brigades Disablement Benefits Fund established by the former regulations.

**7. Transfer of assets and liabilities**

All moneys standing to the credit of, and all investments forming part of, the previous disablement benefits fund immediately before the commencement of this Act shall, on and after that commencement, stand to the credit of, or form part of the Disablement Benefits Fund for the purposes of this Act, and all liabilities of the previous

disablement benefits fund immediately before that commencement, including contingent liabilities, shall on and after that commencement, be liabilities of the Disablement Benefits Fund.

**8. Transfer of operations**

- (1) Any policy of insurance, agreement or instrument subsisting immediately before the commencement of this Act to which the Fire Brigades Board is a party and which relates to the administration of the former regulations shall, subject to this Act, subsist and enure for the purposes of the administration of the Disablement Benefits Funds as if —
  - (a) the Disablement Benefits Board were substituted for the Fire Brigades Board as a party to the policy, instrument or agreement; and
  - (b) any reference in the policy, agreement or instrument to the Fire Brigades Board were (unless the context otherwise requires) a reference to the Disablement Benefits Board.
- (2) Any proceedings pending immediately before the commencement of this Act to which the Fire Brigades Board is a party and which relates to the former regulations may be continued after that commencement as if the Disablement Benefits Board were a party thereto in lieu of the Fire Brigades Board.
- (3) Any question arising as to whether or not a provision of this clause applies to any particular policy, agreement, instrument or proceedings shall be determined by the Minister and the decision of the Minister is final.

**9. Claims preserved**

Any claim for benefits under the former regulations that has not been finally dealt with immediately before the commencement of this Act may be proceeded with and dealt with after commencement as if it were a claim for benefits from the Disablement Benefits Fund under this Act.

**10. Interim Board members**

The Minister shall appoint persons to act as members of the Disablement Benefits Board under section 22(4)(b) until members of

***Fire and Emergency Services Superannuation Act 1985***

**Schedule 3** Transitional provisions

**Part II** Disablement Benefits Fund

**cl. 10**

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the Disablement Benefits Board are elected under clause 2(1) of Schedule 2.

### Notes

- <sup>1</sup> This is a compilation of the *Fire and Emergency Services Superannuation Act 1985* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Fire Brigades Superannuation Act 1985</i> <sup>2</sup>	87 of 1985	4 Dec 1985	3 Nov 1986 (see s. 2 and <i>Gazette</i> 24 Oct 1986 p. 3938)
<i>Acts Amendment (Financial Administration and Audit) Act 1986</i> s. 4	4 of 1986	27 Jun 1986	1 Jul 1986 (see s. 2)
<i>Fire Brigades Superannuation Order 1987</i> published in <i>Gazette</i> 14 Aug 1987 p. 3163			14 Aug 1987
<i>Fire Brigades Superannuation (Associated Employer) Order 1988</i> published in <i>Gazette</i> 18 Nov 1988 p. 4532			4 Nov 1988 (see cl. 2)
<i>Fire Brigades Superannuation Amendment Act 1992</i>	19 of 1992	16 Jun 1992	16 Jun 1992 (see s. 2)
<i>Fire Brigades Superannuation Amendment Act 1994</i> <sup>3</sup>	26 of 1994	23 Jun 1994	Act other than s. 5, 10-14, 15(d)-(g) and 16-25: 29 Jun 1994 (see s. 2 and <i>Gazette</i> 29 Jun 1994 p. 3201); s. 5, 10-14, 15(d)-(g), and 16-25: 1 Jul 1994 (see s. 2)
<i>Trustees Amendment Act 1997</i> s. 18	1 of 1997	6 May 1997	16 Jun 1997 (see s. 2 and <i>Gazette</i> 10 Jun 1997 p. 2661)
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 61	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Fire and Emergency Services Authority of Western Australia (Consequential Provisions) Act 1998</i> s. 38 <sup>4</sup>	42 of 1998	4 Nov 1998	1 Jan 1999 (see s. 2 and <i>Gazette</i> 22 Dec 1998 p. 6833)
<i>Corporations (Consequential Amendments) Act 2001</i> s. 221	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)

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Short title	Number and year	Assent	Commencement
<b>Reprint of the <i>Fire Brigades Superannuation Act 1985</i> as at 15 Feb 2002</b> (includes amendments listed above)			
<i>Fire and Emergency Services Legislation Amendment Act 2002</i> Pt. 5	38 of 2002	20 Nov 2002	30 Nov 2002 (see s. 2 and <i>Gazette</i> 29 Nov 2002 p. 5651-2)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<b>Reprint 2: The <i>Fire and Emergency Services Superannuation Act 1985</i> as at 16 Feb 2007</b> (includes amendments listed above)			
<i>Standardisation of Formatting Act 2010</i> s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Fire and Emergency Services Legislation Amendment Act 2012</i> Pt. 5	22 of 2012	29 Aug 2012	1 Nov 2012 (see s. 2(b) and <i>Gazette</i> 31 Oct 2012 p. 5255)

<sup>2</sup> Now known as the *Fire and Emergency Services Superannuation Act 1985*; short title changed (see note under s. 1).

<sup>3</sup> The *Fire Brigades Superannuation Amendment Act 1994* Pt. 3 reads as follows:

“

### **Part 3 — Transitional and consequential provisions**

#### **19. Interpretation**

- (1) In this Part, unless the contrary intention appears —
- commencement day** means the day on which this Act comes into operation;
  - former Board** means the Western Australian Fire Brigades Disablement Benefits Board established under the repealed Part;
  - former Fund** means the Western Australian Fire Brigades Disablement Benefits Fund established under the repealed Part;
  - repealed Part** means the Part repealed by section 10;
  - Superannuation Board** means the Western Australian Fire Brigades Superannuation Board established under section 4 of the principal Act;
  - Superannuation Fund** means the Western Australian Fire Brigades Superannuation Fund established under section 5 of the principal Act.



**20. Transfer of assets and liabilities**

On the commencement day, by virtue of this section —

- (a) all assets standing to the credit of or forming part of the former Fund stand to the credit of or form part of the Superannuation Fund without the need for any conveyance, transfer, assignment or assurance;
- (b) all rights and liabilities of the former Board, including contingent liabilities, become rights and liabilities of the Superannuation Board;
- (c) a claim for any benefits from the former Fund that had not been finally dealt with immediately before the commencement day may be dealt with as if it were a claim for benefits from the Superannuation Fund under the principal Act;
- (d) the rights, obligations and entitlements of persons who were members of the former Fund are taken to be rights, obligations and entitlements of those persons as members of the Superannuation Fund;
- (e) any policy of insurance, agreement or instrument to which the former Board is a party and which relates to the administration of the former Fund has effect, by force of this section, as if the Superannuation Board were substituted for the former Board as a party to the policy, instrument or agreement;
- (f) all proceedings commenced before the commencement day by or against the former Board and pending immediately before the commencement day are to be taken to be proceedings pending by or against the Superannuation Board; and
- (g) anything done or omitted to be done in relation to the assets, rights and liabilities referred to in paragraphs (a), (b), (c) and (d) before the commencement day by, to or in respect of the former Board (to the extent that that thing has any force or effect) is to be taken to have been done or omitted by, to or in respect of the Superannuation Board.

**21. Records**

The Superannuation Board becomes, on the commencement day, the owner of all registers, documents, books and other records (however compiled, recorded or stored) relating to the former Fund, and of any tape, disc or other device or medium relating to such records.

**22. Exemption from *Stamp Act 1921***

Notwithstanding anything in the *Stamp Act 1921*, no duty is payable under that Act in respect of the passing of any assets under this Part.

**23. Registration of documents**

- (1) The Registrar of Titles, the Registrar of Deeds, the Minister administering the *Land Act 1933*, and any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or other property, are to take notice of the provisions of this Part and are empowered to record and register in the appropriate manner such of those documents as are necessary to give effect to this Part.
- (2) Without limiting subsection (1) a statement in an instrument executed by the Superannuation Board that any estate or interest in land or other property stands to the credit of or is part of the Superannuation Fund under section 20 is evidence of that fact.

**24. Report**

- (1) Notwithstanding section 10, the former Board is to report in respect of the former Fund under section 66 of the *Financial Administration and Audit Act 1985* in respect of the period between 1 July 1993 and the commencement day as soon as practicable after the commencement day, and the former Board is continued in existence for that purpose.
- (2) A report prepared under subsection (1) is deemed to be an annual report for the purposes of section 69 of the *Financial Administration and Audit Act 1985*.

”.

<sup>4</sup> The *Fire and Emergency Services Authority of Western Australia (Consequential Provisions) Act 1998* s. 38, which gives effect to Sch. 1 reads as follows:

“

**Part 4 — Miscellaneous amendments**

**38. Miscellaneous amendments**

The Acts mentioned in Schedule 1 are amended as set out in that Schedule.

”.

Schedule 1 cl. 13 reads as follows:

“

- (13) Despite the amendments made to section 4 of the *Fire Brigades Superannuation Act 1985* by subclause (12), a person appointed and holding office under that section immediately before the commencement of this clause as a member or alternate member of the Western Australian Fire Brigades Superannuation Board continues, subject to that Act, to hold that office on and after that commencement for the remainder of the period for which the person was appointed.

”

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
appointed member.....	Sch. 2 cl. 1
associated employee.....	3(1)
associated employer.....	3(1)
Authority.....	3(1)
beneficiary.....	21A(3)
Commissioner.....	3(1)
Commonwealth Act.....	3(1)
Commonwealth standards.....	3(1)
document.....	21(4)
effect.....	9(3)
elected member.....	Sch. 2 cl. 1
eligible FES employee.....	3(1)
FES Commissioner.....	3(1)
Fire Brigades Board.....	3(1)
firefighter.....	3(1)
former Authority employee.....	3(1)
former Fire Brigades Board employee.....	3(1)
former regulations.....	Sch. 3 cl. 1, Sch. 3 cl. 6
information.....	21(4)
liabilities.....	20(1)
member.....	21A(3)
parliamentary purposes.....	21(4)
previous disablement benefits fund.....	Sch. 3 cl. 6
previous superannuation fund.....	Sch. 3 cl. 1
property.....	3(1)
Superannuation Board.....	3(1)
Superannuation Fund.....	3(1)
the actuary.....	3(1)