RESOLUTION 14 OF 1995

GOVERNMENT EMPLOYEES PENSION BILL AND RULES

The parties to the Education Labour Relations Council note the following submission by SADTU:

SADTU’s POSITION ON THE GOVERNMENT EMPLOYEES PENSION FUND

SADTU signs this agreement with the understanding that this is seen as the first step towards rationalisation of the Government Employees Pension Fund. SADTU places on record its concerns around the following:

- Mechanism of decision making through majority vote
- Determination of a quorum
- The absence of dispute settlement mechanism
- Resignation benefit is poor
- Death-in-service and disability benefits for members with less than 10 years service are inadequate
- Different benefits for members with less than 10 years service are discriminatory
- Gratuity only 25% of total retirement package as compared to one third in the private sector
Member communication is poor

The union therefore serves notice in terms of section 28 of the Government Employees Pension Fund Bill that the above items will be tabled for negotiation in the PSCBC at the earliest opportunity.

2. The parties therefore agree to the contents of the draft Government Employees Pension Bill and Rules as set out at Annexures A and B respectively, subject to the following amendments:

DRAFT BILL

1.1 Clause 2 (xxv) (p 6)

Replace "or in terms of agreed informal" with "and in accordance with".

1.2 Clause 15 [3] (p 19)

Interpolate "or any subsequent labour legislation promulgated" after "1993" in order to make provision for possible changes.

1.3 Clause 26 (1) (p 26)

Interpolate "or subsequent labour legislation promulgated" after "1993".
DRAFT RULES

1.4 Rule 1.5 (p 1)

Interpolate the words "as defined in the Educators' Employment Act" between "persons" at the end of line one and "performing" at the beginning of line two.

1.5 Rule 3 (p 5)

Interpolate the "or such address as the Board of Trustees may determine from time to time" after "Pretoria".

1.6 Rule 8.3 (p 21)

As a significant co-provision exists at 10.1, a cross-reference to 10.1 should be made.

1.7 Rule 18.1 (p 59)

Interpolate the following between "may" and "be paid" in line 2 - "with regard being had to the testamentary dispositions of a deceased member and in consultation with the Master of the Supreme Court,"

3. This agreement shall be subject to the provisions of any applicable Act of Parliament or secondary legislation promulgated in terms thereof.

4. The representation of all relevant parties undertake to take all reasonable steps necessary to ensure the implementation of this agreement.

5. No amendment to this agreement shall be in force or effect unless reduced to writing and signed by all parties.
6. Council notes that one of the first tasks of the Board of Trustees will be to provide for general financial administration measures.

Signed on this 23rd day of November, 1995

at Pretoria.

On behalf of the employer parties:

Signature

[Signature]

On behalf of the employer parties:

Signature

[Signature]
ANNEXURE A
To provide for pension and other related benefits for persons in the employ of the Government and certain other bodies and institutions and for such benefits for their dependants or nominees; to repeal certain pension laws; and to provide for incidental matters.

Definitions

1. In this Act, unless the context otherwise indicates -

(ii) "annuity" means an amount which is payable each year; ( )

(iii) "approved retirement fund", a fund other than a related fund, which is registered as a pension fund organisation under the Pension Funds Act, 1956 (Act No 24 of 1956) and also approved as a pension fund, retirement umnity fund, or provident fund in terms of the Income Tax Act, 1962 (Act No. 58 of 1962); ( )

(iii) "Authorities' Service Pension Fund" means the fund established by section 2(1) of the Black Authorities' Service Pensions Act, 1971 (Act No. 6 of 1971); ( )
(iv) "Authorities' Service Superannuation Fund" means the fund established by section 2(2) of the Black Authorities' Service Pensions Act, 1971;

(v) "beneficiary" means a member or pensioner's dependant or nominee, as the case may be;

(vi) "benefit" means an annuity and or a gratuity as the case may be;

(vii) "Board of Trustees" means the Board of Trustees referred to in section 5;

(viii) "Ciskeian Civil Servants Pension Fund" means the fund referred to in the Government Service Pension Act, 1989 (Act No. 4 of 1989), of the erstwhile Ciskei as amended by the Government Service Pensions Amendment Decree, 1993 (Decree No. 9 of 1993), of the erstwhile Ciskei;

(ix) "commencement date" means the date of commencement of this Act;

(x) "dependant", in relation to a member or a pensioner -

(a) any person in respect of whom the member or pensioner is legally liable for maintenance;

(b) any person in respect of whom the member or pensioner is not legally liable for maintenance, if such a person -

(i) was, in the opinion of the Board of Trustees, upon the death of the member or pensioner in fact dependant upon such member or pensioner for maintenance;
(ii) is the spouse of the member or pensioner, including a party to a customary union according to indigenous law and custom or to a union recognised as a marriage under the tenets of any Asiatic religion; or

(c) a posthumous child; and

(d) a person in respect of whom the member would have been legally liable for maintenance had that person been a minor;

(xi) "dormant member" means a member declared as such in terms of section 24 of this Act or section 15 of the General Pensions Act, 1979 (Act No. 29 of 1979), or a member of a previous fund declared as such by or under the law governing such fund;

(xii) "employer", except where the context in which the word is used clearly indicates a different meaning, means -

(a) for purposes of the collection and payment to the Fund of contributions and monies owing by members to the Fund, the collection of the contributions referred to in section 15(1) and (2) of the Act, the administration of membership matters and the payment of benefits to members and their beneficiaries:

(i) a department or administration referred to in Schedule 1 of the Public Service Act, 1994 or an organisational component referred to in Schedule 2 of the Public Service Act, 1994 or any other body or institution which employs the persons contemplated in section 8 of the Public Service Act, 1994:
(ii) the Public Service Commission contemplated in section 209 of the Constitution of the Republic of South Africa, 1993;

(iii) a Provincial Service Commission contemplated in section 213 of the Constitution of the Republic of South Africa, 1993, except where legislation establishing such a provincial service commission for a province specifically excludes its members from being members of the Fund;

(iv) the Auditor-General contemplated in section 191 of the Constitution of the Republic of South Africa, 1993;

(v) the Office of the Auditor-General as provided for in terms of the Audit Arrangements Act, 1992 (Act No. 122 of 1992):

(b) for all other purposes of the Act in regard to members employed by the departments, administrations, organisational components, bodies and institutions referred to in (i) to (v), the Government; and

(c) for all purposes of the Act, any institution or body, other than those referred to in (a), approved by the Board of Trustees:

as the case may be; ( )

(xiii) "Government" means the Government of the Republic of South Africa and also the State; ( )

(xiv) "Government Employees Pension Fund of Transkei" means the fund
established under the Government Employees Pensions Act, 1978 (Act No. 15 of 1978), of the erstwhile Transkei; ( )

(xv) "Government Pension Fund of Bophuthatswana" means the fund established by section 2(1) of the Bophuthatswana Government Service Pensions Act, 1977 (Act No. 14 of 1977), of the erstwhile Bophuthatswana; ( )

(xvi) "Government Pension Fund of Venda" means the fund established by section 2(1) of the Venda Government Service Pensions Act, 1979 (Act No. 4 of 1979), of the erstwhile Venda; ( )

(xvii) "Government Service Pension Fund" means the fund established by section 3 of the Government Service Pension Act, 1973 (Act No. 57 of 1973); ( )

(xviii) "Government Superannuation Fund of Venda" means the fund established by section 2(1) of the Venda Government Service Pensions Act, 1979 (Act No. 4 of 1979) of the erstwhile Venda;

(xix) "gratuity" means a single amount benefit payable in terms of the Rules; ( )

(xx) "matters of mutual interest": 'matters of mutual interest' as defined in the Public Service Labour Relations Act, 1994 and in the Education Labour Relations Act, 1993 and all matters covered in the Act and Rules; ( )

(xxi) "member", in relation to the Fund, means a person referred to in section 13 or 14 and includes such a person who is absent with or without leave or has been suspended from duty and who immediately prior to such absence or suspension was contributing to the Fund, as
well as a person who was a dormant member of the Government Service Pension Fund, the Temporary Employees Pension Fund or a previous fund or a person who is otherwise eligible for deferred benefits payable from the Government Service Pension Fund, the Temporary Employees Pension Fund or a previous fund from some future date; ( )

(xxii) "Minister" means the Minister of Finance; ( )

(xxiii) "National Defence Force" the Permanent Force referred to in the Defence Act, 1957 (Act No 44 of 1957); ( )

(xxiv) "National Intelligence Agency" means the Agency established by Section 3 of the Intelligence Services Act, 1994 (Act No 38 of 1994); ( )

(xxv) "negotiations", negotiations between the employer and the employee organisations in terms of legislation or in terms of agreed informal processes regarding matters of mutual interest for the purpose of reaching binding agreements; ( )

(xxvi) "pensionable service", in relation to a member, means any period of pensionable service as defined in the Rules; ( )

(xxvii) "pensioner" means a person who is in receipt of an annuity under this Act; ( )

(xxviii) "prescribed" means prescribed by the Rules; ( )

(xxix) "previous funds" means the Government Employees Pension Fund of Transkei, the Transkeian Government Service Pension Fund, the Ciskeian Civil Servants Pension Fund, the Government Pension Fund
of Bophuthatswana, the Government Pension Fund of Venda, the
Government Superannuation Fund of Venda, the Authorities' Service
Pension Fund and the Authorities' Service Superannuation Fund;

(XXX)

"related fund" a fund instituted by law, to which the Government
contributes financially and which essentially provides for retirement
benefits; ( )

(XXXI)

"Rules" means the rules made under section 26; ( )

(XXXII)

"South African Police Service" means the Service as contemplated in
the South African Police Service Rationalisation Proclamation No R.6
of 1995; ( )

(XXXIII)

"South African Secret Service" means the Service established by
section 3 of the Intelligence Services Act, 1994 (Act No. 38 of 1994);
( )

(XXXIV)

"spouse" means a person who can provide proof to the satisfaction
of the Board of Trustees that he or she was the lawful husband or
wife of a member or pensioner at the time of that member's or
pensioner's death, or, if he or she was not the lawful husband or wife
of that member or pensioner, that he or she was the spouse of that
member or pensioner according to indigenous law or custom or the
tenets of any Asiatic religion;

(XXXV)

"Temporary Employees Pension Fund" means the fund established by
section 3 of the Temporary Employees Pension Fund Act, 1979 (Act
No. 75 of 1979); ( )
(xxxvi) Transkeian Government Service Pension Fund means the fund established under the Transkei Government Service Pension Fund Act, 1970 (Act No. 4 of 1970)

(xxxvii) "the Commission" means the Public Service Commission established in terms of section 209 of the Constitution of the Republic of South Africa, 1993;

(xxxviii) "the Fund" means the Government Employees Pension Fund as contemplated in section 3;

(xxxix) "this Act" or "the Act" includes the Rules;

(XXXX) "transfer date" means a date determined by the Minister.

Rationalisation of previous funds

2. (1) (a) Every previous fund shall cease to exist with effect from the transfer date and all the assets and liabilities of any such fund immediately prior to that date, shall vest in the Fund with effect from the transfer date.

(b) Different transfer dates may be determined by the Minister in respect of the different previous funds.

(2) Any amount which immediately prior to the transfer date was due to a previous fund or accrued to such a fund shall with effect from the transfer date be deemed to be an amount which is due to the Fund or has accrued to the Fund, as the case may be.

(3) Any amount which immediately prior to the transfer date was due to any person from a previous fund in terms of a provision of any law and which was not paid from such fund, shall be paid from the Fund.
(4) If any person, institution or body holds any assets on behalf of a previous fund or has on behalf of a previous fund invested any such assets in deposits, stock, debentures, securities, equities, insurance policies, other financial instruments, or any other property, whether corporeal or incorporeal, such person, institution or body shall, with effect from the transfer date -

(a) transfer those assets into the name of the Fund or into the name of any nominee of the Fund properly authorised and instructed by the Board of Trustees;

(b) take such steps as may be necessary to ensure that on such deposits, stock, debentures, securities, equities, insurance policies, other financial instruments or any other property, whether corporeal or incorporeal, issued or registered in the name of or otherwise belonging to that person, institution or body and in any relevant register or other record, such endorsements are made as may be necessary to show that the ownership therein vests in the Fund or any nominee contemplated in paragraph (a).

(5) On or as soon as possible after the transfer date the Minister shall cause such steps to be taken as may be necessary to ensure that all assets contemplated in subsection (4) are transferred or endorsed into the name of the Fund or any nominee contemplated in the said subsection.

(6) No stamp, transfer or other duty shall be payable in respect of any transfer or endorsement effected in terms of subsection (4) or (5).

Continuation of Government Service Pension Fund

3. (1) As from the commencement date the Government Service Pension Fund shall, notwithstanding the repeal of the Government Service Pension Act, 1973 (Act No. 57 of 1973), by this Act, and subject to the provisions of this Act, continue to exist under the name Government Employees Pension Fund
and shall, in addition to the amounts and assets contemplated in section 2, consist of:

(a) the amounts and assets vested in or due to the Government Service Pension Fund immediately prior to the commencement date;
(b) the amounts paid to the Fund in terms of section 14(2);
(c) the amounts paid to the Fund by members in terms of the Rules;
(d) the amounts paid to the Fund by the employer in terms of this Act, any other law or any agreement;
(e) any other amounts which are to be credited to the Fund from time to time.

(2) The Fund shall be a juristic person as from the commencement date.

(3) The provisions of section 2(2), (3), (4), (5) and (6) shall apply mutatis mutandis in respect of the Government Service Pension Fund continuing as the Government Employees Pension Fund, and in any such application references in the said subsections to the transfer date shall be construed as references to the commencement date.

Object of the Fund

4. The object of the Fund shall be to provide the pensions and other related benefits defined in the Rules to its members and pensioners and their beneficiaries.

Management of the Fund

5. (1) There shall be a Board of Trustees which shall be
constituted as prescribed and which shall manage the Fund.

(2) Members and pensioners of the Fund shall be entitled to representation on the Board of Trustees, which representation shall collectively be equal in number to the representation by the employer as prescribed.

(3) The first meeting of the Board of Trustees shall be held at the time and place determined by the Minister and all subsequent meetings shall be held at the times and places determined in the manner as prescribed.

(4) The procedure to be followed at meetings, the quorum for a meeting, and the majority required for a decision of the Board of Trustees, shall be as prescribed.

(5) The Board of Trustees shall, subject to the provisions of this Act, perform the functions as prescribed.

(6) The Board of Trustees shall be entitled to delegate any of the performances of its powers to a committee, management committee, persons responsible for the administration of the Fund or any other person or body, subject to such conditions as the Board may determine.

(7) The investment policy of the Fund shall be determined by the Board of Trustees in consultation with the Minister.

Administration of the Fund

6. (1) The Board of Trustees shall make suitable arrangements for the effective and efficient administration of the Fund and the effective and efficient management of the assets of the Fund.

(2) Notwithstanding subsection (1) the Minister may at the request of the Board of Trustees provide personnel and facilities for the administration of the Fund and the management of the assets of the Fund.

(3) The Board may, for the effective and efficient administration of the Fund, prescribe the manner and form of any action to be
performed by an employer in terms of this Act, and direct an employer to perform such action accordingly.

Accounting and related records

7. The Board of Trustees shall cause such accounting and related records, in the prescribed form, to be kept as are necessary to represent fairly the state of affairs and business of the Fund and to explain its transactions and financial position.

Annual financial statements

8. (1) The Board of Trustees shall in respect of every financial year of the Fund cause to be made out annual financial statements and shall submit copies of such statements, after such statements have been audited in terms of section 12, to the Minister.

(2) The annual financial statements mentioned in subsection (1) shall consist of-

(a) a statement of funds and net assets;
(b) a revenue account;
(c) a cash flow statement;
(d) notes to the financial statements;
(e) a Board of Trustees' report contemplated in section 9; and
(f) such other statements as may be prescribed.

(3) The annual financial statements mentioned in subsection (1) shall be accompanied by a report of the auditors as contemplated in section 12.

(4) The annual financial statements mentioned in subsection (1) shall, in conformity with generally accepted accounting practice, fairly present the state of affairs of the Fund and its business and its financial
position at the end of the financial year concerned.

(5) The annual financial statements of the Fund shall by means of figures and a descriptive report explain any other matters and information material to the affairs of the Fund.

(6) The Minister shall, within 30 days after receipt, submit the annual financial statements of the Fund, prepared in the prescribed form, to Parliament.

Report by Board of Trustees

9. (1) The Board of Trustees shall, as part of its annual financial statements, submit to the Minister a report regarding the state of affairs, the business and the financial position of the Fund and the degree in which its objectives have been attained.

(2) The report contemplated in subsection (1) shall also:

(a) set out the functions and objectives of the Fund as determined by law or otherwise;

(b) state the extent to which the Fund has achieved its set objectives for the financial year concerned;

(c) contain relevant performance information regarding the economical, efficient and effective application of resources; and

(d) indicate the amount of money received from the Government and any other commitment furnished by the Government.

Appointment and discharge of auditors

10. (1) The Board of Trustees shall appoint the auditors of the Fund annually.
(2) Auditors appointed in terms of subsection (1) of this section shall be persons registered in terms of section 15 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), as accountants and auditors, and engaged in public practice as such.

(3) An auditor appointed in terms of subsection (1) shall not be discharged before the expiry of his or her term of appointment except by the Board of Trustees.

(4) The Board of Trustees shall inform an auditor appointed in terms of subsection (1) in writing that the Board intends to discharge him or her in accordance with subsection (3) before the expiry of his or her term of appointment, and such auditor may make written representations to the Board of Trustees in connection with the intended discharge within 20 days of receipt of the notice and shall inform the Minister in writing if in the opinion of the auditor any matter should in the public interest be brought to the attention of the Minister.

Duties and powers of auditors

11. (1) An auditor appointed in terms of section 10 shall perform his or her duties in terms of the provisions of section 20 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991).

(2) In exercising his or her powers and performing his or her duties an auditor shall have-

(a) the right of access at all reasonable times to the accounting records and all books, vouchers, documents and other property of the Fund, and may require from the Board of Trustees such information and explanations as he or she thinks necessary for the performance of his or her said duties;

(b) the right to investigate whether there are adequate measures and procedures for the proper application of sound economical, efficient and effective management of the Fund and for the utilisation of all the
resources under the control of the Board of Trustees;

c) the right to investigate any matter, including the efficiency and
effectiveness of the internal control of the Fund, relating to
expenditure by and the revenue of the Fund.

(3) Subsection (2)(b) shall not be construed as entitling the
auditor of the Fund to question the merits of the policy objectives of the Fund.

Reports of auditors

12. (1) An auditor's report on the annual financial statements
shall be prepared in respect of the Fund by the auditors appointed in terms of
section 10(1) within six months after the end of the financial year concerned.

(2) (a) A report in terms of subsection (1) shall, not later
than six months after the end of the financial year concerned, be addressed to the
Board of Trustees and shall state separately in respect of each of the following
matters whether in the auditor's opinion -

(i) the annual financial statements fairly present the financial position
and the results obtained by the Fund in accordance with generally
accepted accounting practice applied on a basis consistent with that
of the preceding year;

(ii) the information furnished in terms of sections 8 and 9 is fair in all
material respects and, if applicable, on a basis consistent with that of
the preceding year;

(iii) the transactions of the Fund that had come to the auditor's notice in
the course of his or her examination were made in accordance with
the applicable laws and instructions; and

(iv) the transactions that had come to his or her attention during auditing
were in all material respects in accordance with the mandatory
functions of the Fund determined by law or otherwise.

(b) The Board of Trustees shall submit such report
together with its comments thereon to the Minister within 30 days of receipt thereof.

(3) The auditor shall report to the Board of Trustees and the Minister the results of any audit carried out under section 11(2)(b) or (c).

(4) The auditor shall draw attention to any other matter falling within the scope of the auditor's examination which, in his or her opinion, should in the public interest be brought to the notice of Parliament.

Membership of the Fund

13. (1) A person who was a member or a pensioner of a previous fund immediately prior to the transfer date, shall:

(a) cease to be a member or a pensioner, as the case may be, of such fund with effect from the transfer date;

(b) except in respect of any amount which was due by him or her to such fund immediately prior to the transfer date and subject to the provisions of this Act, be released from all obligations towards, and shall relinquish all rights and privileges in respect of such fund;

(c) subject to the provisions of the Rules, become a member or pensioner of the Fund with effect from the transfer date; and

(d) in the case of a member, with effect from the transfer date contribute to the Fund as prescribed.

(2) A person who was a member or a pensioner of the Government Service Pension Fund immediately prior to the commencement date shall, subject to the provisions of the Rules, remain a member or pensioner of the Fund as from the commencement date.

(3) Subject to any provisions to the contrary contained in any other law and subject to the provisions of subsection (5) and the Rules, every person who on or after the commencement date is appointed in the service of the employer shall become a member of the Fund and contribute thereto as prescribed.
(4) Notwithstanding anything to the contrary in any law contained but subject to subsection (5) as well as subject to section 15(4) and the provisions of the Rules, a person who on the commencement date -
(a) is employed in the service of the employer;
(b) is not a member of the Government Service Pension Fund or a previous fund; and
(c) is entitled to become a member of the Fund in terms of the law governing his or her employment;
may, subject to the prescribed conditions and in the prescribed manner, become a member of the Fund.

(5) A person -
(a) who is remunerated solely by fees or allowances;
(b) who is employed for a short and predetermined period of service;
(c) who is employed under a contract explicitly providing for the payment of a benefit from a source outside the Fund in lieu of a benefit as defined in this Act; or
(d) under a contract precluding membership of the Fund,
shall not be eligible for membership of the Fund.

Transfer of certain members of the Temporary Employees Pension Fund to the Fund

14. (1) A person who was a member of the Temporary Employees Pension Fund immediately prior to the transfer date and who is on the transfer date employed in the service of the employer or a pensioner that was in the service of the employer prior to his or her retirement or the surviving spouse shall -
(a) cease to be a member or a pensioner, as the case may be, of the Temporary Employees Pension Fund with effect from the transfer date;
(b) except in respect of any amount which was due by him or her to the
Temporary Employees Pension Fund immediately prior to the transfer date and subject to the provisions of this Act, be released from all obligations towards, and shall relinquish all rights and privileges in respect of, the Temporary Employees Pension Fund;

(c) subject to the provisions of the Rules, become a member or pensioner of the Fund with effect from the transfer date; and

(d) in the case of a member, with effect from the transfer date contribute to the Fund as provided by the Rules.

(2) Notwithstanding anything to the contrary in any law contained, the Temporary Employees Pension Fund shall in respect of a person referred to in subsection (1) pay to the Fund an amount, whether in cash or in specie, equal to the funding percentage of the Temporary Employees Pension Fund multiplied by the actuarial obligation of the Temporary Employees Pension Fund in respect of that person on the date contemplated in subsection (1), plus interest thereon calculated at the bank rate from the said date until the date on which the said amount is paid.

(3) For purposes of this section -

(a) "actuarial obligation" means the actuarial obligation of the Temporary Employees Pension Fund with regard to the member concerned on the date contemplated in subsection (1), as calculated by an actuary;

(b) "funding percentage" means the market value of the net assets of the Temporary Employees Pension Fund on the date contemplated in subsection (1), expressed as a percentage of the calculated aggregate actuarial obligation of the Temporary Employees Pension Fund on such date, as determined by an actuary; and

(c) "bank rate" means the rate determined from time to time in terms of section 10(2) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989).
Funding of the Fund

15. (1) In addition to the contributions of the members the employer shall contribute to the Fund the amounts determined in accordance with the provisions of subsection (2).

(2) The employer’s contribution rate to the Fund shall be as prescribed and shall be based on a valuation of the Fund, performed at intervals not exceeding three years, by an actuary appointed by the Board of Trustees.

(3) Should an actuarial valuation of the Fund, as contemplated in subsection (2), reveal that the Fund is financially not in a sound position, the Board of Trustees shall, after consideration of any proposals made by the actuary in his or her actuarial report, construct and implement a scheme of arrangements aimed at ensuring financial soundness of the Fund: Provided that no aspect of any such scheme which affects the benefits of members or pensioners of the Fund or the contributions to the Fund shall be implemented unless it has been agreed to after negotiations in terms of the Public Service Labour Relations Act, 1994 and the Education Labour Relations Act, 1993 and negotiations in accordance with any labour relations arrangements applicable to the South African Police Service, the National Defence Force, the National Intelligence Agency and the South African Secret Service as regards negotiations concerning their terms and conditions of employment.

(4) If any action taken by the employer or in terms of legislation places an additional financial obligation on the Fund, the Government or the employer or the Government and the employer shall pay to the Fund such further amounts as are necessary to meet the additional financial obligation.

Age of retirement

16. Subject to the provisions of this Act, a member shall have the right to retire on pension and shall be so retired on reaching the age determined by
the law governing his or her employment: Provided that where such law governing his or her employment does not provide for such a retirement age, a member -

(a) who was a member on the commencement date shall have the right to retire and shall be so retired on reaching the retirement age provided for in any other law that was applicable to him or her and which existed on the day prior to the commencement date of this Act; or

(b) who joined the Fund subsequent to the commencement date shall have the right to retire and shall be so retired on reaching his or her pension retirement date as prescribed.

Benefits may not be granted or varied except in accordance with an Act of Parliament.

17. (1) Save as is otherwise provided in this Act, no award of a benefit or any increase thereof and no alteration of any condition or condonation of a breach of any condition upon which such benefit is by law earned or to be earned in respect of a pensioner of the Fund, the Temporary Employees Pension Fund or a previous fund, shall be lawful unless the award, increase, alteration or condonation is specially authorized by an Act of Parliament.

(2) If an award contemplated in subsection (1) is granted, the employer shall immediately compensate the Fund in full for the actuarial liability incurred by the Fund.

Prohibition on cession and attachment of benefits

18. (1) No benefit or right in respect of a benefit payable under this Act shall be capable of being assigned or transferred or otherwise ceded or of
being pledged or hypothecated or, save as is provided in section 11(2) of the Maintenance Act, 1963 (Act No. 23 of 1963), and section 7(8) of the Divorce Act, 1979 (Act No. 70 of 1979), be liable to be attached or subjected to any form of execution under a judgement or order of a court of law.

(2) If any member, pensioner or beneficiary attempts to assign or transfer or otherwise cede or to pledge or hypothecate any benefit to which he or she is entitled under this Act or any right in respect of such benefit, payment of such benefit may be withheld, suspended or discontinued if the Board of Trustees so directs: Provided that the Board of Trustees may direct that such benefit or part thereof be paid to one or more of the dependants of such member or pensioner or to a trustee for such member or pensioner or his or her dependants during such period as the Board of Trustees may determine.

(3) Notwithstanding the provisions of subsection (1) or of any other law -

(a) any amount which is payable to the employer or the Fund by any member in the employ of such employer on the date of his or her retirement or discharge, or which the employer is liable to pay in respect of such member;

(b) any amount which has been paid to any member, pensioner or beneficiary in accordance with the provisions of this Act and to which such member, pensioner or beneficiary was not entitled;

(c) the amount of any loss to have been sustained by the employer through theft, fraud, negligence or any misconduct on the part of any member, pensioner or beneficiary if it is admitted in writing or if it has been proven in court,

may be deducted from the benefit payable to such member, pensioner or beneficiary under this Act in a lump sum or in such instalments as the Board of Trustees may determine.

(4) Where a member dies before the last day of a period in respect of which any salary or allowance was paid to him or her prior to his or her death, a pro rata part of the amount so paid may be recovered in respect of the unexpired portion of that period by deducting it in a lump sum, or in such
instalments as the Board of Trustees may determine, from the benefit payable to the estate or to a beneficiary of the deceased under this Act.

Payment of gratuity to beneficiaries designated by member of the Fund

19. (1) If a gratuity is payable on the death of any member to the dependants of such a member or to his or her estate, that member may, on the prescribed form and subject to the prescribed conditions, notify the Board of Trustees of his or her wish that the said gratuity be paid on his or her death to the beneficiaries mentioned in that form and be divided among such beneficiaries in the proportion mentioned in that form.

(2) Notwithstanding anything to the contrary in any law contained, the Board of Trustees may on the death of a member who so notified the Board of Trustees pay at its discretion the gratuity concerned in accordance with the member’s wish.

Benefit not asset in insolvent estate

20. Any benefit received under this Act by any member, pensioner or beneficiary whose estate is sequestrated shall not form part of the assets in his or her insolvent estate.

Application of benefits for payment of certain debts

21. (1) If the Board of Trustees is satisfied that any judgement or order for the payment of money given or made by a court of law against a pensioner in any judicial proceedings for the dissolution of the marriage between such pensioner and his or her spouse, has not been satisfied in full, the Board of
Trustees may, notwithstanding anything to the contrary in any law contained, at its discretion direct that so much of any benefit payable to such pensioner under this Act as does not exceed the amount of the contributions or moneys which have not been paid or the amount of the judgement or order which has not been satisfied, be paid to such spouse, in such instalments or otherwise and at such times, in such circumstances and on such conditions as the Board of Trustees, may from time to time determine.

(2) The payment of any benefit or any part thereof in terms of a direction under subsection (1), shall be a complete discharge of any liability to pay such benefit or part to the pensioner concerned.

(3) For the purposes of this section "pensioner" means any person to whom any benefit is payable, but does not include a person to whom any benefit is payable as the widow, widower or dependent of any person.

Increase of certain annuities and payment of allowances and bonuses

22. (1) Notwithstanding anything to the contrary in any law contained but subject to the provisions of this section, the Board of Trustees shall within the financial constraints of the Fund regularly and acting on the advice of the actuary -

(a) authorize the increase of any annuity payable under this Act in order to ensure that the value of annuities are maintained by means of fair adjustments; and

(b) authorize the payment of any allowance or bonus to any person who is in receipt of an annuity referred to in paragraph (a), in accordance with such rates or scales and in such circumstances and on such conditions and with effect from such date, which may be a date in the past, as the Board of Trustees may determine.

(2) Different rates, scales, circumstances and conditions may be determined in terms of subsection (1) in respect of different classes or
categories of persons.

(3) Any increase of any annuity and any allowance or bonus payable under subsection (1) shall be funded by the Fund.

(4) (a) Notwithstanding the provisions of subsections (1), (2) and (3), the Minister may supplement any benefit payable to a member or pensioner, or grant increases, additional to such increases contemplated in subsection (1)(a) in order to protect them from the effects of inflation: Provided that such supplements or increases shall only be effected after consultation with the Board of Trustees.

(b) If an annuity is supplemented or an increase in annuity is granted as contemplated in paragraph (a), the employer shall immediately compensate the Fund in full for the actuarial liability incurred by the Fund as a result of the granting of such supplement or increase. Such actuarial liability shall be calculated by the actuary referred to in section 15(2).

Period regarding payment of benefits

23. (1) Notwithstanding anything to the contrary in any law contained, a benefit payable in terms of this Act shall be paid to the member, pensioner or beneficiary entitled to such benefit within a period of 60 days after the date on which the Board of Trustees receives a duly completed statement in the prescribed form or, if the Board of Trustees receives such statement before the date on which a benefit is payable to the member or pensioner concerned in terms of this Act, within a period of 60 days after the date on which such benefit is so payable.

(2) If a benefit is not paid within the period prescribed in subsection (1), interest shall be paid by the Fund to the member, pensioner or beneficiary on the amount not paid over at the rate as prescribed for the period after expiry of the period of 60 days referred to in subsection (1).

(3) For the purpose of section 12(1) of the Prescription
Act, 1969 (Act No. 68 of 1969), a benefit payable to a member, pensioner or beneficiary in terms of this Act shall be deemed to be due on the date following the date on which a member's benefit becomes payable in terms of subsection (1) for the period after expiry of 60 days.

Dormant membership

24. If the membership of a member is for any reason terminated before he or she attains the age at which he or she would have had the right to retire on pension, the Board of Trustees may, with the concurrence of such member, declare him or her a dormant member of the Fund with effect from the date on which his or her membership was so terminated if the Board of Trustees deems it expedient that his or her accrued pension interest in the Fund be retained for him or her.

Benefits not property for estate duty purposes

25. Notwithstanding anything to the contrary in any law contained, any benefit or any right to a benefit due and payable on or as a result of or after the death of a member to the beneficiary of such member, in terms of this Act, shall for the purposes of the Estate Duty Act, 1955 (Act No. 45 of 1955), be deemed not to be property as defined in section 3(2) of that Act.
26. (1)  (a) Subject to the provisions relating to negotiations regarding the terms and conditions of employment contained in the Public Service Labour Relations Act, 1994, and the Education Labour Relations Act, 1993 (Act No. 146 of 1993), and subject to negotiations in accordance with any labour relations legislation or arrangements applicable to the South African Police Service, the National Defence Force, the National Intelligence Agency and the South African Secret Service regarding negotiations concerning their terms and conditions of employment, the Board of Trustees shall make Rules -

(i) regarding the constitution of the Board of Trustees and the management and administration of the Fund;

(ii) regarding the payment of contributions to the Fund and the payment of benefits from the Fund to or in respect of members on their retirement, discharge, resignation or death;

(iii) regarding any matter in respect of dormant members of the Fund;

(iv) regarding any matter required or permitted to be prescribed under this Act,

and generally for the better achievement of the objects and purposes of this Act.

(b) Notwithstanding the provisions of paragraph (a), the first Rules shall be made by the Minister without the concurrence of the Board of Trustees after agreement on the first Rules has been reached following negotiations in terms of the labour relations legislation referred to in (1)(a) and negotiations in accordance with any labour relations legislation or arrangements applicable to the South African Police Service, the National Defence Force, the National Intelligence Agency and the South African Secret Service.

(2) Without prejudice to the generality of the provisions of subsection (1), such Rules may -

(a) prescribe the classes or categories of persons who shall become members of the Fund and shall contribute to the Fund;

(b) from time to time prescribe the conditions subject to which and the
rate at which members shall contribute to the Fund, and the times at which and the manner in which such contributions or any amounts which are payable to the Fund in terms of this Act, shall be deducted from the pensionable emoluments of members and paid to the Fund; from time to time prescribe the circumstances in which and the basis and conditions subject to which any period which is not a period of pensionable service as defined in the Rules, may be recognised as pensionable service and the amount, including interest, which shall be paid to the Fund in respect of such period by the member concerned or any other person or the employer or any other employer, and the times at which and the manner in which such amount shall be so paid;

(d) prescribe the circumstances in which and the basis and conditions on which the accrued benefits of:

(i) a member of the Fund may be transferred to another approved retirement fund; or

(ii) a member of an approved retirement fund may be transferred to the Fund and the amount, including interest, which shall be paid to the Fund by the member concerned, the approved retirement fund, or the present or previous employer of the member in respect of such transfer, and the manner in which such amounts shall be calculated and paid;

(e) from time to time prescribe the contributions, interest or other amounts which shall or may from time to time be paid to the Fund by the employer or any other employer and the circumstances in which and the basis and conditions on which and the manner in which the said contributions, interest or other amounts shall be calculated and shall or may be paid to the Fund;

(f) from time to time prescribe the benefits payable to a member whose service is terminated as a result of injury or ill-health, not occasioned by his own fault, arising out of and in the course of his employment;
from time to time prescribe the benefits payable from the Fund to members or their beneficiaries prescribed by the Rules, in respect of the pensionable service of members in cases or classes or categories of cases specified by the Rules, and the manner in which such benefits shall be calculated and the times at which and the manner in which such benefits shall be paid;

(h) provide for the investment of amounts standing to the credit of the Fund and for the periodic valuation of the assets and liabilities of the Fund by an actuary;

(i) provide for the conditions on which a member who is seconded to employment in respect of which he or she is not liable to contribute to the Fund, may continue to contribute to the Fund and receive benefits from the Fund;

(j) from time to time prescribe formulae for the calculation of benefits payable from the Fund;

(k) provide that any change to the rules must satisfy the condition that the real value of the accrued benefits of every member of the Fund, as represented by the Fund’s actuarial liability towards the member and his or her beneficiaries, is maintained in such change, and provide for the manner in which such value is to be determined.

(3) Different rules may be made under this section in respect of members who belong to different classes or categories.

(4) Any rule except a rule which increases the rate at which members shall contribute to the Fund or reduces the amount of the benefit payable from the Fund, may be made with retrospective effect.

(5) The Rules shall be binding on the Government, the Fund, its members and pensioners and their beneficiaries or any other person who has a claim against the Fund.

Protection of rights of members

27. (1) In the case of a member of a previous fund who becomes a
member of the Fund on the transfer date, the member's benefits in the Fund immediately after the transfer date shall satisfy the condition that the real value of the accrued benefits of such member immediately after the transfer date as represented by the Fund's actuarial liability towards the member and his or her beneficiaries, shall not be less than the real value of the accrued benefits of such member in the relevant previous fund immediately before the transfer date, as represented by the actuarial liability of such previous fund towards the member and his or her beneficiaries, in accordance with a certificate from an actuary appointed by the Board of Trustees. Consistent actuarial bases shall be applied in the calculation of the actuarial liability values referred to above.

(2) The provisions of subsection (1) shall apply mutatis mutandis to a member of the Temporary Employees Pension Fund who becomes a member of the Fund in terms of section 14, and in any such application references in the said subsection to previous fund and transfer date shall be construed as references to the Temporary Employees Pension Fund and the date contemplated in section 14(1) respectively.

Binding of the State

28. This Act shall bind the State and the Government shall be responsible for meeting the obligations of the Fund, whether properly funded or not, in favour of its members, pensioners and beneficiaries: Provided that any change in the investment policy as contemplated in section 5(7) and the benefit structure of the Fund, as prescribed, that may have an effect on the Government's financial obligation towards the Fund shall be subject to the approval of the Minister: Provided further that the Minister's approval shall not be required in the event of changes to the benefit structures brought about by agreements reached in the bargaining structures for the Public Service.
Withdrawal from the Fund

29. (1) The provisions of this Act shall not preclude the establishment by an Act of Parliament of a separate fund for a sector or part of a sector of the Public Service as contemplated in section 8(1)(a) of the Public Service Act, 1994.

(2) Subject to the Constitution, the creation of such a separate fund shall be subject to agreement between the employer and the employee organisations representing such a sector or part of a sector of the Public Service after negotiations in accordance with the labour relations laws or other arrangements applicable to such a sector.

(3) Appropriate financial arrangements regarding the transfer of liabilities and assets from the Fund to such a separate fund must be approved by the Minister in concurrence with the Board of Trustees, provided that such arrangements shall not have a detrimental effect on the financial position of the Fund.


Dissolution of the Fund

30. (1) The Fund may be dissolved -

(a) by the Board of Trustees in concurrence with the Minister: Provided that the dissolution of the Fund has been agreed to after negotiations have taken place as contemplated in section 15(3); or

(b) if the Fund is dissolved in terms of subsection (1), the
Board of Trustees shall appoint a liquidator.

(3) The provisions of sections 28 or 29, as the case may be, of the Pension Funds Act, 1956 (Act No. 24 of 1956) shall apply to the dissolution of the Fund and the appointment of the liquidator in terms of subsection (2) shall be subject to the approval of the Registrar of Pension Funds.

Repeal and amendment of laws

31. (1) (a) The laws specified in Schedule 1 to this Act are hereby repealed to the extent indicated in the third column of that Schedule.

(b) This section shall, in respect of each previous fund, come into operation on the transfer date related to the previous fund concerned.

(2) The laws specified in Schedule 2 to this Act are hereby amended to the extent indicated in the third column of that Schedule.

Short title and commencement

32. (1) This Act shall be called the Government Employees Pension Act, 1995, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.
### SCHEDULE 1

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"**Definitions**

1. In this Act, unless the context otherwise indicates:
   - 'annuity' means an amount which is payable each year and includes a pension or an allowance;
   - 'benefit' means an amount of money;
   - 'Director-General' means the Director-General: Finance;
   - 'Minister' means the Minister of Finance;
   - 'pension fund' means a pension or provident fund;"
or scheme established by or under any pension law: 'pension law' means any law, including this Act, relating to a pension fund administered by or under the control of the Minister, and includes any regulation made under any such law, but excluding the Government Employees Pension Act, 19...

2. The amendment of section 11 -
   (a) by the substitution for paragraph (a) of subsection 1 of the following paragraph:

   "(a)(i) for the payment of compensation to or in respect of, or to a dependant of, an employee who dies or is retired or discharged as a result of injury or ill-health, not occasioned by his own fault, arising out of and in the course of his employment; and

   (ii) for the rendering of medical treatment (including
(b) for the payment of annuities or benefits to or in respect of, any employee referred to in paragraph (a)(ii) of paragraph 1 of the following paragraph:

(b) by the substitution for paragraph (b) of sub-
paragraph 1 of section 1 of the
Government or by any pro-
vincial administration.
the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);"

(c) by deleting paragraph (b) of subsection (3);

(d) by the substitution for subsection (4) of the following subsection:

"(4)(a) For the purposes of section 1(a)(i) -
"employee" means any member of the Reserve Police Force established under section 34(2) of the Police Act, 1958 (Act No. 7 of 1958), or any member of the Police Reserve established under section 34(2) of the Police Act, 1958.

(b) For the purposes of section 1(a)(ii) -
"officer or employee" means any member of the Reserve Police Force established under section 34(2) of the Police Act."
1958 (Act No. 7 of 1958), or any member of the Police Reserve established under section 34(2) of the Police Act, 1958, and also any member of the Government Employees Pension Fund in the employ of the Government or any provincial administration;"

3. The repeal of section 12.

4. The repeal of section 19.
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RULES

1. DEFINITIONS

In the Rules words that are defined in the Act, but not defined in this rule, shall have the meaning assigned to them by the Act, and, unless the context otherwise indicates, words indicating the singular include the plural and conversely and also, unless the context otherwise indicates, the words hereunder shall have the following meaning:

1.1 "Act", the Government Employees Pension Act, 19... (Act No ... of 19...);

1.2 "actuary", any Fellow of an institute, faculty, society or chapter of actuaries approved by the Minister, appointed as the actuary of the Fund in terms of rule 4.8;

1.3 "agreement", an appropriate written agreement concluded in negotiations between the employer and employee organisations;

1.4 "Correctional Services", the Department of Correctional Services established in terms of section 2 of the Correctional Services Act, 1959 (Act No 8 of 1959);

1.5 "education service", the teachers or other persons performing education functions at a state educational institution, which is an institution (including an office controlling such institution), other than a university or technikon, that is wholly or partially funded by the State.
regard to which the remuneration and service conditions of such teachers or other persons performing education functions are determined by or in terms of a law;

1.6 "employee organisation"

1.6.1 an admitted employee organisation referred to in section 1 of the Public Service Labour Relations Act, 1994;

1.6.2 an admitted employee organisation referred to in section 1 of the Education Labour Relations Act, 1993;

1.6.3 an employee organisation or other employee structure formed by personnel appointed in terms of the Intelligence Services Act, 1994 (Act 38 of 1994) the Defence Act, 1957 (Act No 44 of 1957) and the South African Police Service Rationalisation Proclamation No R.5 of 1995, and which has, for negotiation purposes, been accepted by the employer;

1.7 "final salary", a member's pensionable emoluments on the day preceding the date with effect from which his or her service terminates;

1.8 "fund year", the first day of April of a year up to the last day of March of the ensuing year;

1.9 "interest", compounded interest at a rate as determined from time to time by the Board after consultation with the Actuary; provided that different rates may be determined in respect of different rules;
1.10 "pensionable emoluments", the basic annual salary of a member and any other emoluments to be recognised as pensionable emoluments, after an agreement has been reached between the employer and employee organisations taking into account the actuary’s report on the financial implications regarding the inclusion thereof as pensionable emoluments;

1.11 "pension-retirement date" the date on which a member is entitled to retire in terms of section 16 of the Act: Provided that in any case where section 16(b) of the Act and rule 14.1.1(h) is applicable it shall be the date when such member attains the age of 65 years: Provided, further, that the pension-retirement date of a member who holds office as contemplated in rule 14.2.3(b)(BB) shall for the purposes of this definition be the date with effect from which he or she would have had the right to retire in terms of section 16 of the Act had he or she not hold the said office;

1.12 "pensionable service", subject to the provisions of rules 9 to 12 -

1.12.1 in respect of a member who was a member of the Government Service Pension Fund or the Temporary Employees Pension Fund immediately prior to the commencement date, the period of time which was recognised as pensionable service of the member under the Government Service Pension Act or the Temporary Employees Pension Act in respect of which no benefit was paid out of the Fund:
1.12.2 continuous service of a member on or after the commencement date in respect of which such a member contributes or contributed to the Fund or was liable to contribute to the Fund, and in respect of which no benefit has been paid out of the Fund under the Rules; and

1.12.3 any other period which is recognised or allowed in terms of the Rules as pensionable service of a member;

Provided that a period of pensionable service shall be calculated by the year and any portion of a year shall be determined according to the proportion which the number of days in that portion of a year bears to 365 days;

1.13 "principal", the Minister or the relevant employee organisations, as the case may be, who designate the trustees;

1.14 "Public Service Act", the Public Service Act, 1994;

1.15 "responsible Minister", the Minister; Provided that for the purpose of rule 4.1.2(a), it shall mean the Minister in consultation with the Ministers responsible for Administration, State Expenditure, Education, the National Defence Force, the South African Police Service, the National Intelligence Agency and the South African Secret Service;

1.16 "Services", the Services intended in section 1(xxxii), (xxxiv), (xxxii) and (xxxiii) of the Act;
"the Board, the Board of Trustees;"

"trustee", a person designated in terms of rule 4.1.2 and 4.1.4;

"unexpired period of service", the period between the date on which a member ceases or would cease to be a member of the Fund and his or her pension-retirement date; provided that in the case of a member referred to in section 16(a) of the Act the pension-retirement date shall for this purposes be regarded as the date when he or she attains the age of sixty years.

2. NATURE OF THE FUND

With effect from the commencement date the Fund is entitled to sue and be sued as a juristic person, to acquire, possess and alienate movable and immovable property and to acquire rights and incur liabilities and to function separately from its members, pensioners and beneficiaries.

3. REGISTERED OFFICE

The registered office of the Fund is situated at 34 Hamilton Street, Pretoria.

4. MANAGEMENT OF THE FUND

4.1 BOARD OF TRUSTEES

4.1.1 The Board is responsible for the proper and efficient management of the Fund. The Board shall comply with all the obligations imposed upon it by the Rules and do everything necessary to ensure the proper functioning of the Fund.

[Signatures]
4.1.2 Subject to the provisions of rule 4.1.9, the term of office of a trustee shall be four years and the Board shall consist of:

(a) six persons, referred to in the Rules as "the employer nominees", designated by the responsible Minister, at least one of whom must have proven expertise in the following:

(i) financial management and investments; and/or

(ii) the management and organisation of pension funds in general;

(b) six persons, referred to in the Rules as "the employer nominees", in terms of rules 4.1.3, 4.1.4 and 4.1.5.

4.1.3 The employee nominees shall be calculated as follows:

(a) The education service.

\[ A \times 6 = N \]

(b) The services excluding Correctional Services.

\[ B \times 6 = N \]
(c) Employers not mentioned in (b) or (c).

\[ C \times \frac{6}{D} = N \]

where -

\[ A \] = the number of education service members as determined by the Public Service Commission after consultation with the Department of Finance and based on the information available to the Public Service Commission.

\[ B \] = the number of services members excluding members of Correctional Services as determined by the Public Service Commission after consultation with the Department of Finance and based on the information available to the Public Service Commission.

\[ C \] = the number of members other than members included in A and B as determined by the Public Service Commission after consultation with the Department of Finance and based on the information available to the Public Service Commission.

\[ D \] = the sum of A, B and C.

\[ N \] = the number of the relevant employee nominees on the Board, and in calculating N a fraction shall be
rounded off to the nearest whole number provided that if the sum of the three numbers represented by N in respect of (a), (b) and (c) above do not add up to 6 an additional member shall be added to the variable N in which the largest fraction not rounded off to a whole number occurred.

4.1.4 The employee nominees referred to in 4.1.3 shall be designated by the employee organisations as follows:

(a) As regards 4.1.3(a) above by the employee organisations contemplated in rule 1.6.2.

(b) As regards 4.1.3(b) above by the employee organisation or structure contemplated in rule 1.6.3.

(c) As regards 4.1.3(c) above by the employee organisations contemplated in rule 1.6.1.

4.1.5 The calculation of A, B and C in the formulae contained in rule 4.1.3 shall be done by the Public Service Commission after consultation with the Department of Finance to come into operation on the commencement date and the results of such calculations shall be valid and remain in force for a period of four years from such date. Thereafter the calculations as referred to above shall be done anew every four years.

4.1.6 The chairperson of the Board is elected by the Board, from its own ranks at the first
meeting of such Board by voting in terms of rule 4.1.14: Provided that in the event of an equality of votes, a new round of voting will take place and if such new round of voting also results in an equality of votes the name of each candidate shall in the presence of the meeting be written on a piece of paper and such papers shall be placed in a suitable container and one of these papers shall be drawn from the container. The candidate whose name is so drawn shall be deemed to have been duly elected.

4.1.7 The trustees will be compensated for their services and expenses on the basis determined by the Board.

4.1.8 A substitute is designated for each trustee by the persons, organisations or structures referred to in rules 4.1.2(a) and 4.1.4. A substitute acts in the place of the trustee on behalf of whom he or she was designated as substitute in such a trustee's absence, and he or she then has all the competencies and obligations of a trustee.

4.1.9 A trustee or his or her substitute ceases to be a trustee or a substitute, as the case may be, when -

(a) his or her term of office expires;

(b) he or she dies;

(c) due to any recalculation in terms of rule 4.1.3, the number of representatives allocated to one of the sectors referred to in the said rule is reduced, and, as a result thereof, the designation of a
trustee or a substitute is terminated by his or her principal;

(d) he or she resigns from his or her office as trustee or substitute by way of a notice in writing addressed to the chairperson of the Board;

(e) he or she becomes physically or mentally unfit and, due to such unfitness, he or she is not, in the opinion of the Board in consultation with his or her principal, capable of properly performing his or her duties as trustee or substitute;

(f) his or her estate is sequestrated or renounced on behalf of his or her creditors;

(g) he or she is convicted in the Republic or elsewhere of theft, fraud, forgery or the uttering of a forged document, or perjury, or he or she is sentenced to imprisonment without the option of a fine;

(h) he or she is discharged by a court of law from any position of trust on account of misconduct;

(i) he or she becomes incompetent to be a director of a company in terms of the Companies Act, 1973 (Act No 61 of 1973);

(j) he or she contravenes rule 4.1.20 or neglects to conform thereto, should the Board in consultation with his or her principal so decide; and

(k) he or she is replaced by another person
by his or her principal, which replacement must be conveyed in writing to the chairperson of the Board.

If another person is appointed in the place of a trustee or substitute who ceases to be a trustee or substitute in terms of this rule, such other person, subject to rule 4.1.8, acts in the place of such trustee or substitute for the duration of the term of office of the person in whose place he or she was appointed.

4.1.10 The Board elects a vice-chairperson from its ranks and in this regard the provisions contained in rule 4.1.6 shall apply mutatis mutandis. In the absence of the chairperson as well as the vice-chairperson at any meeting of the Board, the trustees present at such a meeting, elect a chairperson from their ranks in which case the arrangement set out in rule 4.1.6 mutatis mutandis applies.

4.1.11 Two-thirds of the trustees is a quorum. If a quorum is not present the chairperson postpones the meeting for seven days and informs the trustees of such meeting and trustees present at that meeting then form a quorum.

4.1.12 The Board shall meet regularly to attend to the affairs of the Fund. The chairperson or if he or she is not available the vice-chairperson may, when he or she deems it necessary, convene a meeting of the Board to discuss matters concerning the Fund.

4.1.13 Any trustee may with the written support of
two other trustees request the chairperson, or if he or she is not available the vice-chairperson, in writing, to convene a meeting of the Board to deal with the business set out in such a request. The chairperson, or if he or she is not available the vice-chairperson, convenes such a meeting of the Board within 21 days of receiving the request.

4.1.14 Every trustee including the chairperson, has one vote at all meetings of the Board and subject to rule 4.1.11, the decision of the majority of trustees present at a meeting shall constitute a decision of the Board.

4.1.15 During a meeting of the Board votes are cast by the raising of hands unless the majority of trustees present at the meeting request that voting takes place by way of secret ballot.

4.1.16 The Board may adopt any arrangement in its discretion to regulate its proceedings or to delegate the performance of any of its duties to a sub-committee of the Board, subject thereto that such an arrangement must not be inconsistent with any provision contained in the Act.

4.1.17 Minutes are kept of every meeting of the Board. During each meeting of the Board the minutes of the previous meeting are signed by the chairperson of that meeting after approval thereof by the meeting.

4.1.18 A trustee who, directly or indirectly, has a pecuniary interest in any investment or contemplated investment of the Fund, or an in-
interest in any other matter before the Board, shall disclose such interest and may not be present at that meeting when the particular matter is discussed and decided upon.

4.1.19 Notwithstanding any provision to the contrary contained in the Rules, a minor or person who is legally incapable cannot be appointed as a trustee.

4.1.20 The Board may determine requirements in connection with the attendance of its meetings by trustees and substitutes, and remove from office any trustee or substitute who does not comply therewith in consultation with his or her principal.

4.1.21 Each trustee or a substitute referred to in rule 4.1.8 shall, notwithstanding the duties as may be determined by the Board -

(a) take all reasonable steps to ensure that the interests of members in terms of the Rules of the Fund and the provisions of the Act are protected at all times, especially in the event of an amalgamation or splitting of the Fund, termination or reduction of contributions by the employer, increase of contributions by members and withdrawal of an employer;

(b) act at all times with due care and diligence and in good faith;

(c) avoid conflicts of interest;

(d) act with impartiality in respect of all members and beneficiaries;
(e) ensure that proper registers, books and records are kept, inclusive of proper minutes of all resolutions passed by the Board;

(f) ensure that proper control systems are employed by or on behalf of the Board;

(g) take all reasonable steps to ensure that the Rules of the Fund comply with the Act, and all other applicable laws;

(h) ensure that adequate and appropriate information is communicated to the members informing them of their rights, benefits and duties in terms of the Rules of the Fund;

(i) take all reasonable steps to ensure that contributions are paid timeously to the Fund in accordance with the provisions of the Act;

(j) obtain expert advice on matters where Board members may lack expertise;

(k) ensure that the operation and administration of the Fund comply with the Act, and all other applicable laws; and

(l) adhere to the principles of privileged information and confidentiality.

4.2 POWERS OF THE BOARD

Save for the appropriate provisions of the Act, the Board shall in the exercise of its powers and duties be entitled to -
4.2.1 raise money for the purposes of the Fund or borrow money as bridging facilities for a temporary cash deficit or to complete an investment, or to loan money;

4.2.2 invest, loan, advance on interest and place on deposit moneys not needed immediately for the current expenditure of the Fund or to deal therewith in any other way against such securities and in such a way as the Board may determine and to convert into money, adjust such securities, re-invest the proceeds thereof or to deal therewith in any other way as determined by the Board;

4.2.3 purchase, erect, sell, let or alienate movable or immovable property for purposes of the Fund;

4.2.4 prescribe in which way claims must be lodged against and handled by the Fund;

4.2.5 appoint any person, committee or body to perform such investigation, research or any other duty as instructed by the Board, subject to such conditions as the Board may determine and pay such person, committee or body from the Fund;

4.2.6 employ personnel or make any other suitable arrangements to administer the Fund and to manage the investments of the Fund;

4.2.7 determine the remuneration and other conditions of service of the personnel referred to in rules 4.2.5 and 4.2.6 and make such rules as in its discretion are necessary to regulate personnel matters;
4.2.8 pay from the Fund the expenditure connected with the management of the Fund’s business; and

4.2.9 in general take any steps necessary or perform any actions which are advantageous for the achievement of the Fund’s objectives.

4.3 SIGNING AUTHORITY

The Board may authorise persons from time to time to sign any contract or other document which binds the Fund or any other document which authorises any action on behalf of the Fund or any cheque or letter on such conditions as it may deem fit.

4.4 BANK ACCOUNT

The Board shall open an account or accounts in the name of the Fund at any registered bank or the South African Reserve Bank. All monies received by or on behalf of the Fund, shall be paid into such account or accounts.

4.5 PERSONAL LIABILITY

A trustee and any person or body to whom powers have been delegated by the Board is not personally liable for any costs or loss originating from his or her conduct, except in the case of negligence, dishonesty or fraud.

4.6 FIDELITY INSURANCE

The Board may take out insurance for such an amount as is considered sufficient from time to time to provide for losses as a result of negligence, fraud or dishonesty on the part of persons receiving or
handling money or assets of the Fund.

4.7 REGISTRATION AND SAFE KEEPING OF SECURITIES

All title deeds and securities of the Fund are registered in the name of the Fund or in the name of a nominee company or institution approved by the Board and no security is transferred, amended, ceded, or otherwise alienated. All mortgage bonds, title deeds and other securities that belong to the Fund or are held by the Fund, are kept in safe custody in a vault or strongroom at the registered office of the Fund or at any registered financial institution approved by the Board for this purpose, unless they are temporarily held in another place with the approval of the Board.

4.8 ACTUARY

The Board appoints an actuary who is the valuator of the Fund. Such appointment remains valid until it is terminated by the Board.

4.9 ACTUARIAL VALUATIONS

4.9.1 The Fund is valued at least every three years by the actuary and the actuary reports thereon to the Board.

4.9.2 A copy of the actuary's report, which contains recommendations in respect of any surplus or deficit existing in the Fund on the valuation date, must be submitted to the Board within such period as prescribed by the Board. The actuary's report must comply with the provisions of section 16 of the Pension Funds Act, 1956 (Act 24 of 1956).

4.9.3 The Board submits a copy of the actuary's
report referred to in rule 4.9.2 to the Minister within 27 days of the receipt of such report.

4.10 REPORT TO OR BY THE BOARD

4.10.1 Within eight months after the end of each fund year, subject to section 9 of the Act, the Board shall cause to be published in the Government Gazette a report on the activities of the Fund, which includes the annual financial statements of the Fund.

4.10.2 Remuneration paid to trustees, during a particular period under review, must be reflected in the financial statements.

4.10.3 On request of a member or any other person who has an interest in the Fund, a copy of the report of the Board is furnished on payment of such fee as determined by the Board provided that such fee shall relate to the cost of producing the report.

5. MEMBERSHIP

5.1 A person becomes a member of the Fund in terms of section 13 or 14 of the Act.

5.2 Subject to the provisions of section 13 and 14 of the Act and the Rules, a member ceases to be a member of the Fund if -

5.2.1 he or she is retired or discharged in terms of an act which determines his or her conditions of service;

5.2.2 he or she resigns from his or her employer's
service;

5.2.3 he or she dies;

5.2.4 he or she is obliged to join an approved retirement fund or a related fund as a result of a change in his or her conditions of service, whether in terms of legislation or for another reason; or

5.2.5 his or her employment circumstances change to the effect envisaged in section 13(5) of the Act unless his or her and the employers’ contributions in terms of rule 7 are continued to be paid to the Fund, whichever occurs first.

6. FURNISHING OF PROOF BY MEMBER, PENSIONER OR BENEFICIARY

The Board is entitled to require satisfactory proof of the right of any member, pensioner or his or her beneficiaries to any benefit and the Fund is not obliged to pay benefits to a member, pensioner or their beneficiaries until such proof has been submitted to the Board.

7. CONTRIBUTIONS

7.1 Every member contributes to the Fund at a rate of 7.5% of his or her pensionable emoluments.

7.2 The employer contributes to the Fund at the rate of 18% of the member’s pensionable emoluments.

7.3 The employer, in respect of each member to whom a service bonus of 93% of his or her full basic monthly pensionable salary (excluding any allowances irrespective of whether it is pensionable or not) is payable, pays to the Fund -
7.3.1 7% of such full basic monthly pensionable salary for the month in which his or her service bonus pay date falls; and

7.3.2 three times the contribution in terms of rule 7.3.1.

8. COLLECTION OF CONTRIBUTIONS

8.1 Subject to the provisions of the Act -

8.1.1 the amount which a member contributes to the Fund in terms of rule 7.1 shall be deducted from his or her pensionable emoluments monthly and from his or her annual service bonus when it is paid to the member as the case may be, or at such times as the Board may, from time to time, determine;

8.1.2 any amount which the employer contributes to the Fund in terms of rule 7.2 shall be determined simultaneously with the contributions of the members in the employer’s service; and

8.1.3 any amount which a member or an employer is obliged to pay to the Fund in terms of rules 7.1 or 7.2 shall be recovered from the member’s pensionable emoluments or from the employer as the case may be, monthly or in such manner and at such times and in such instalments as the Board may determine;

and immediately paid to the Fund. Provided that if any employer does not pay the contributions to the Fund within seven days after it becomes due, interest
shall be paid by the employer to the Fund at the rate prescribed as from such due dates.

8.2 A member shall continue to contribute to the Fund -

5.2.1 while he or she is absent on sick or other leave with full or less than full pay calculated on his or her full pensionable emoluments; or

8.2.2 while he or she is absent on leave without pay for a continuous period of 120 days or less calculated on his or her full pensionable emoluments on the day immediately prior to the day on which such leave of absence commenced;

8.3 If a member is absent on leave without pay for a continuous period of more than 120 days, he or she remains a member of the Fund after the expiry of the first 120 days of such period, and no contributions are payable to the Fund by or in respect of the member after expiry of the period of 120 days.

9. NON-RECOGNITION OF PREVIOUS AND OTHER PERIODS OF SERVICES AS PENSIONABLE SERVICE

9.1 Notwithstanding provisions to the contrary in the Rules, any period which -

9.1.1 in terms of section 9(1) of the Pension Laws Amendment Act, 1957 (Act No 62 of 1957); or

9.1.2 in terms of rule 10.2.4;

was recognised as pensionable service of a member, shall be excluded when calculating a benefit which
shall be paid in terms of the Rules to a member on his or her resignation, dismissal or discharge in terms of rule 4.3.1 or on his or her death without dependants.

9.2 No period during which a member is

9.2.1 absent on leave without pay;

9.2.2 suspended from his or her employer's duty;
or

9.2.3 seconded to the service of any other Government or to a board, institution or body established by or under any act or to any other body or person;

shall be taken into account in the calculation of a benefit which is payable to him or her in terms of the Rules, unless his or her and the employers' contributions in terms of rule 7 are paid to the Fund for the said period or such period is recognised or allowed as pensionable service of such a member in terms of rule 10.

10. RECOGNITION OF PREVIOUS AND OTHER PERIODS OF SERVICE AS PENSIONABLE SERVICE

Subject to the provisions of the Rules any part or the whole of any of the undermentioned periods may at the written request of a member and with the approval of the Board be recognised as pensionable service -

10.1 a period during which a member was

(a) absent on leave without pay for a period in excess of 120 days;
(b) suspended from his or her employer's duty; or

(c) seconded to the service of any other Government or to a board, institution, establishment or body established by or under an act or to any other body or person approved by the Board,

and in respect of which he or she did not contribute to the Fund;

10.2 in the case of a member who was re-admitted to the Fund, and who at an earlier stage received a benefit (excluding a benefit payable for a reason referred to in rule 14.1.1) from the Fund, the Temporary Employees Pension Fund or a previous fund, such earlier period of pensionable service in respect of which a benefit as aforesaid was paid to him or her:

Provided that

(a) the recognition of such earlier period of pensionable service shall be subject to the provisions of rule 17, mutatis mutandis;

(b) if such a person was a member of the Government Service Pension Fund immediately prior to the commencement date, his or her written request was received by the Fund within the twelve month period immediately following the commencement date;

(c) if such a person was a member of the Temporary Employees Pension Fund or a previous fund, as the case may be, immediately prior to the transfer date, his or her written request was received by the Fund within the twelve month period immediately following the transfer date; Provided that the regulations pertaining to the Temporary Employees Pension
Fund or the previous fund provided for the recognition of such period of service as pensionable service;

(d) if such a member was so re-admitted to the Fund after the commencement date or the transfer date, as the case may be, the re-admittance took place within a period of thirty-six months after the member had terminated his or her membership of the Fund, the Temporary Employees Pension Fund or a previous fund: Provided, further, that such written request by the member was received by the Fund within the twelve month period immediately following his or her re-admittance to the Fund;

(e) the member referred to in (b), (c) or (d) above submits proof to the satisfaction of the Board of such previous pensionable service and offers payment of the amount of such benefit to the Board;

10.3 a period intended in rule 10.2 during which the member was a member of the Associated Institutions Pension Fund, established under section 2 of the Associated Institutions Pension Fund Act, 1963 (Act No. 41 of 1963), in which case the provisions of rule 10.2 will mutatis mutandis apply; or

10.4 a period which is not pensionable service and which follows on the date on which a member attained the age of eighteen years, as well as a period of previous pensionable service to be recognised in respect of a member in terms of rule 10.2, other than a member referred to in rule 10.2(b), (c) or (d).
11. PAYMENTS IN RESPECT OF PENSIONABLE SERVICE

11.1 In respect of service recognised as pensionable service in terms of rule 10.1 the following amounts shall be paid to the Fund -

11.1.1 by the member concerned, an amount calculated as:

\[ R \times N \times S \times D, \]

where:

\( R \) is the rate of seven and a half percent;

\( N \) is the period of service recognised as pensionable;

\( S \) is the member’s pensionable emoluments, on the day on which he or she became a member of the Fund or the date on which the period of his or her leave or suspension expires, or on the day on which he or she resumes duty after a period of secondment, whichever is applicable; and

\( D \) has the same meaning as in rule 14.3.1; and

11.1.2 by the Government or the employer or the Government and the employer, an amount equal to the residue (if any) of the costs incidental to the recognition of such service as pensionable service, as determined by the Board after consultation with the actuary, in excess of the amount calculated in terms of rule 11.1.1.
11.2 In respect of previous service recognised as pensionable service in terms of rule 10.2, the member shall pay back to the Fund the benefit previously paid to him or her in terms of the said rule, with interest from the date on which the benefit was paid to him or her up to the date on which it is repaid to the Fund.

11.3 In respect of previous service recognised as pensionable service in terms of rule 10.3, the provisions of rule 11.2 shall apply mutatis mutandis.

11.4 In respect of service recognised as pensionable service in terms of rule 10.4, the member shall pay an amount calculated in accordance with the following formula:

\[ N \times S \times F(X), \]

where:

\( N \) is the period of service recognised as pensionable service;

\( S \) is the member's pensionable emoluments on the date on which he or she applies for the recognition of such service as pensionable service; and

\( F(X) \) is a factor determined by the Board after consultation with the actuary.

11.5 The following further provisions apply with regard to payment in respect of the recognition of pensionable service in terms of rules 11.1 to 11.4:

11.5.1 The member may, with the approval of the Board, redeem the amount that he or she must pay in respect of such a service recog-
nition, in instalments as determined by the Board in which case interest shall be added to the outstanding amount of debt.

11.5.2 Notwithstanding any provision to the contrary in the Rules -

(a) any amount still owing by a member in respect of additional pensionable service that has been recognised as pensionable service in terms of rule 10, shall, unless other arrangements are made with the Board, on the termination of his or her membership be deducted from any benefit payable to him or her, except a benefit payable to a member whose membership is terminated for a reason contemplated in rule 14.3 or 14.4.2 and whose additional pensionable service is recognised in terms of rule 10.4; and

(b) if a member referred to in sub-paragraph (a), redeem the costs of such additional pensionable service in instalments such pensionable service vests at any time only to the degree to which the costs thereof were redeemed on the date of termination of such member’s service: Provided further that such pensionable service is vested in full if arrangements were made by the member to the satisfaction of the Board for the settlement of the outstanding amount of debt.
11.6 If additional pensionable service was recognised in respect of a member before the commencement date or the transfer date, as the case may be, in terms of similar provisions as contained in rule 10, and the member has not redeemed the full costs thereof on the commencement date or transfer date, as the case may be, the terms on which such an outstanding amount of debt would have been redeemed, are, notwithstanding the provisions of rule 11.5, taken over by the Board, without change except if such terms are changed with the consent of such member.

12. TRANSFERS BETWEEN FUNDS

12.1 The following provisions are applicable upon the transfer of members of the Fund to a related fund, or conversely:

12.1.1 If a person who was a member of a related fund, excluding a fund referred to in rule 12.1.2, becomes a member of the Fund immediately after the termination of his or her membership of the related fund, or after such an interruption in his or her service as the Board in its discretion may condone, the following provisions are applicable:

(a) The period of pensionable service of such a person in the related fund, is recognised to be pensionable service for the purposes of the Fund: Provided that if the pensionable emoluments of such person on admission to the Fund are higher than his or her pensionable emoluments on his or her termination of membership of the related fund, except if his or her employer requests otherwise, the period of pensionable service in the
related fund of such a person is reduced in proportion to his or her pensionable emoluments at his or her termination of membership of the related fund to his or her pensionable emoluments on his or her admission to the Fund. Provided further that no such a proportional reduction shall take place if such a person’s employer or such a person pays to the Fund the additional costs for the Fund as determined by the Board, resulting from the non-application of the reduction referred to in the proviso above.

(b) The related fund shall pay, subject to the provisions of subparagraph c., to the Fund the amount that the related fund had at its disposal in respect of the person at his or her withdrawal from the related fund together with interest as from the date on which the person ceased to be a member of the related fund up to and including the date on which the said amount is paid.

(c) If a member referred to in this rule 12.1.1 owes an amount to the related fund, the amount is deducted by the related fund from the amount referred to in subparagraph (b); and all rights of the related fund in respect of the amount owing pass on to the Fund and the member in question shall pay the amount due to the Fund in such a manner as determined by the Board and in such
a case, the provisions of rule 11.5 shall apply mutatis mutandis.

12.1.2 If a person who was a member of the Associated Institutions Provident Fund, established under section 3 of the Associated Institutions Provident Fund Act, 1971 (Act No. 11 of 1971), or a related fund of which the benefits are determined on a similar basis as that in respect of the aforesaid fund, becomes a member of the Fund immediately after the termination of his or her membership of the funds referred to above, or after such an interruption in his or her service as the Board in its discretion may condone, the following provisions apply:

(a) The Associated Institutions Provident Fund or related fund concerned pays to the Fund the amount standing to the credit of the member in such a fund.

(b) If the amount referred to in subparagraph (a) is less than the amount required by the Fund as determined by the Board in consultation with the actuary for the full recognition of his or her period of pensionable service in the Associated Institutions Provident Fund or related fund as pensionable service in the Fund, the member’s pensionable service is reduced in the ratio which the amount referred to in subparagraph (a) bears to the amount that the Fund requires for the full recognition of such period as pensionable service.
The member may request in writing that his or her period of pensionable service in the Associated Institutions Provident Fund or related fund be recognised as pensionable service in the Fund on condition that the difference between the amount mentioned in subparagraph (a) and the amount required for the full recognition of his or her pensionable service period in the Associated Institutions Provident Fund or related fund as pensionable service in the Fund, be paid by him or her to the Fund in which case the provisions of rule 11.5 shall apply mutatis mutandis.

12.1.3 If a member of the Fund becomes a member of a related fund within six months of him or her terminating his or her membership of the Fund, the following provisions apply:

(a) No benefit is paid to the member on his or her termination of membership of the Fund.

(b) The Fund pays, subject to the provisions of subparagraph (c), to the related fund the amount that the Fund had at its disposal in respect of the member upon his or her termination of membership of the Fund, as determined by the Board after consultation with the actuary together with interest as from the date on which the person ceased to be a member of the Fund and to and including the date on which the