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ELIZABETHAE II REGINAE

A.D. 1990

No. 70 of 1990

An Act to amend the Electricity Trust of South Australia Act, 1946.

[Assented to 20 December 1990]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Electricity Trust of South Australia Act Amendment Act, 1990*.

(2) The *Electricity Trust of South Australia Act, 1946*, is referred to in this Act as “the principal Act”.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Substitution of s. 18

3. Section 18 of the principal Act is repealed and the following section is substituted:

Additional benefits on retirement, etc.

18. On termination of the employment of an employee of the Trust, the Trust may provide benefits to, or in relation to, the former employee in addition to any benefits provided under Part IVB.

Insertion of Part IVB

4. The following Part is inserted after Part IVA of the principal Act:

PART IVB

SUPERANNUATION

DIVISION I—PRELIMINARY

Interpretation

43f. In this Part, unless the contrary intention appears—

“the Board” means the Electricity Trust of South Australia Superannuation Board:

“contributor” means a person who has made contributions pursuant to the Scheme or a previous scheme or arrangement for the provision of super-

annuation benefits for employees of the Trust and includes an employee or former employee of the Trust who has ceased making contributions unless his or her rights in relation to superannuation have been exhausted and no derivative rights exist in relation to that person:

“the Fund” means the Electricity Trust of South Australia Superannuation Fund established by this Part:

“the Rules” means rules prepared by the Trust and approved by the Treasurer that regulate membership of the Scheme, provide for contributions and benefits under the Scheme and provide for other matters relating to the establishment and operation of the Scheme:

“the Scheme” means the scheme of superannuation established by this Part and the Rules.

DIVISION II—THE BOARD

The Board

43g. (1) The Electricity Trust of South Australia Superannuation Board is established.

(2) The Board is a body corporate.

(3) The Board has full juristic capacity to exercise any powers that are by their nature capable of being exercised by a body corporate.

(4) Where a document appears to bear the common seal of the Board, it will be presumed, in the absence of proof to the contrary, that the document was duly executed by the Board.

Function of the Board

43h. The Board is responsible for all aspects of the administration of this Part and the Rules (including the management and investment of the Fund).

The Board's membership

43i. (1) The Board consists of the following members:

(a) four members elected by the contributors;

(b) one member appointed by the Trust on the nomination of the Treasurer;

and

(c) three other members appointed by the Trust.

(2) The Trust must appoint a member to be the presiding member of the Board.

(3) The Trust may appoint a deputy to a member of the Board and the deputy may, in the absence or during a temporary vacancy in the office of that member, act as a member of the Board.

(4) The appointment of a deputy to a member is subject to the same nomination requirements (if any) as the appointment of the member.

(5) Subject to subsection (6), a member of the Board will be elected or appointed for a term of three years.

(6) A member elected or appointed to fill a casual vacancy will be elected or appointed for the balance of the term of his or her predecessor.

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

- (a) dies;
 - (b) completes a term of office and is not re-elected or reappointed;
 - (c) resigns by written notice to the Trust;
- or
- (d) is removed from office by the Trust on the ground of—
 - (i) mental or physical incapacity to carry out official duties satisfactorily;
 - (ii) neglect of duty;
- or
- (iii) misconduct.

Procedure at meetings of the Board

43j. (1) A meeting will be chaired by the presiding member or, in his or her absence, by a member chosen by those present.

(2) Subject to subsection (3), the Board may act notwithstanding vacancies in its membership.

(3) Five members constitute a quorum for a meeting of the Board.

(4) Each member present at a meeting of the Board is entitled to one vote on a matter arising for determination at the meeting and the person presiding has, in the event of an equality of votes, a second or casting vote.

(5) Subject to this Act, the Board may determine its own procedures.

(6) The Board must keep minutes of its proceedings.

Trust to provide staff, etc., for Board

43k. (1) The Trust must provide the Board with the staff and facilities necessary to enable the Board to carry out its functions.

DIVISION III—THE ELECTRICITY TRUST OF SOUTH AUSTRALIA SUPERANNUATION SCHEME

Establishment of Scheme

43l. (1) The Trust must establish a superannuation scheme for the benefit of its employees to be known as the *Electricity Trust of South Australia Superannuation Scheme*.

(2) The Trust must make rules that provide for membership of the Scheme, contributions and benefits and other matters relating to the establishment and operation of the Scheme.

(3) The Rules—

(a) must conform to the provisions of this Part;

(b) cannot come into force until they have been approved by the Treasurer;

and

(c) may be varied or replaced by the Trust with the approval of the Treasurer.

(4) The Trust can only replace the Rules on the recommendation of the Board and can only vary the Rules on the recommendation of the Board or in order to bring them into conformity with the Superannuation Act, 1988.

(5) Section 10 (3) and (4) of the *Subordinate Legislation Act, 1978*, does not apply to rules made under this section.

DIVISION IV—PAYMENT OF CONTRIBUTIONS AND BENEFITS

Payment of contributions

43m. Contributions payable pursuant to the Rules must be paid to the Treasurer.

Payment of benefits

43n. (1) Any payment to be made under the Rules to, or in relation to, a contributor must be made out of the Consolidated Account (which is appropriated to the necessary extent).

(2) The prescribed proportion of a payment referred to in subsection (1) will be charged against the contributor's account and the remainder of the payment (if any) will be charged against the Trust.

(3) Where the contributor's account is exhausted, the amount that would otherwise be charged against it under subsection (2) will be charged against the Trust.

(4) The Treasurer may reimburse the Consolidated Account—

(a) by charging the relevant division of the Fund with the amount that is, in pursuance of this section, to be charged against a contributor's account;

and

(b) by charging the Trust with the amount that is, in pursuance of this section, to be charged against the Trust.

(5) The amount that can be charged against the Fund under subsection (4) (a) is limited to the amount standing to the credit of the contributor's account.

(6) In this section—

“the prescribed proportion” in relation to a payment means the whole, or such proportion, of that payment as is prescribed by the Rules or by regulation to be charged against a contributor's account.

DIVISION V—THE FUND

The Fund

43o. (1) The Electricity Trust of South Australia Superannuation Fund is established.

(2) The assets of the Fund belong (both at law and in equity) to the Crown.

(3) The Fund is subject to the management and control of the Board.

(4) The Treasurer must pay into the Fund from the Consolidated Account (which is appropriated to the necessary extent) periodic contributions reflecting the contributions paid to the Treasurer by contributors with respect to the relevant period.

(5) All interest and accretions arising from investment of the Fund must be paid into the Fund.

(6) The Fund will be treated as made up of three major divisions in respect of the following categories of contributors:

(a) contributors to The Electricity Trust of South Australia Retiring Gratuities for Wages Employees Scheme (1962) (excluding those contributors who fall within the category referred to in paragraph (c));

(b) contributors to The Electricity Trust of South Australia Superannuation Fund pursuant to the *ETSA Superannuation Scheme Regulations, 1975* (excluding those contributors who fall within the category referred to in paragraph (c));

(c) contributors—

- (i) whose contributions commenced on or after 1 July, 1986, but before 20 July, 1987, and who within three months of the commencement of this Part elect to contribute to that division of the Scheme established for contributors who become members of the Scheme after the commencement of this Part;
- (ii) whose contributions commenced on or after 20 July, 1987, whether before or after the commencement of this Part.

(7) Each division of the Fund will be proportioned to—

- (a) the aggregate balance, as at a date determined by the Board, of contribution accounts maintained in the names of contributors comprising the category relevant to that division of the Fund;
- (b) the amount (if any) as at the date referred to in paragraph (a), that represents income of the Fund referable to contributors comprising the category relevant to that division of the Fund that is not reflected in contribution accounts;
- (c) the amount (if any) as at the date referred to in paragraph (a), that is referable to contributions of contributors comprising the category relevant to that division of the Fund whose contribution accounts have been closed;
- (d) subsequent contributions and payments referable to contributors comprising the category relevant to that division of the Fund;

and

- (e) subsequent income of the Fund attributable to investment of that division of the Fund.

(8) The following amounts will be paid from the Fund:

- (a) administrative costs and other expenses related to the management and investment of the Fund;
- (b) the prescribed percentage of the other costs of administering the Scheme;
- (c) any reimbursement of the Consolidated Account that the Treasurer charges against the Fund in pursuance of this Part.

(9) The Board must determine the value of each division of the Fund as at the end of each financial year.

Investment of the Fund

43p. (1) Subject to this section, the Fund will be invested in a manner determined by the Board.

(2) The Board may enter into transactions affecting the Fund—

- (a) for the purpose of investment;

or

- (b) for purposes incidental, ancillary or otherwise related to investment.

(3) Unless the Treasurer specifically authorizes the investment, the Fund may not be invested—

- (a) in property outside Australia;

or

- (b) in real property outside the State.

(4) A certificate signed by the Treasurer certifying—

(a) that a particular transaction is of a kind authorized by subsection (2);

or

(b) that a particular transaction has been specifically authorized by the Treasurer under subsection (3),

will be accepted in any legal proceedings as conclusive evidence of the matter so certified.

(5) The Board cannot, without the approval of the Treasurer, demand repayment of money that is invested on deposit with the Trust at the commencement of this Part.

Accounts and audit

43q. (1) The Board must keep proper accounts of receipts and payments in relation to the Fund and must, in respect of each financial year, prepare financial statements in relation to the Fund in a form approved by the Treasurer.

(2) The accounts and financial statements must distinguish between the divisions of the Fund and the investments in which money from each of those divisions has been invested.

(3) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Fund and the financial statements.

DIVISION VI—CONTRIBUTORS' ACCOUNTS

Contributors' accounts

43r. (1) The Board must maintain accounts in the names of all contributors.

(2) A contributor's account must be debited with any payment that is, in pursuance of this Part or the Rules, to be charged against that account.

(3) At the end of each financial year each contributor's account that has a credit balance will be increased to reflect a rate of return determined by the Board in relation to the contribution accounts in the relevant division of the Fund for the relevant financial year.

(4) In determining a rate of return for the purposes of subsection (3), the Board should have regard to—

(a) the net rate of return achieved by investment of the relevant division of the Fund over the financial year;

and

(b) the desirability of reducing undue fluctuations in the rate of return on contributors' accounts.

(5) Where, in pursuance of subsection (4) (b), the Board determines a rate of return that is at variance with the net rate of return achieved by investment of the relevant division of the Fund, the Board must include its reasons for the determination in its report for the relevant financial year.

(6) Where it is necessary to determine the balance of a contributor's account at some time other than the end of a financial year, the balance will be extrapolated by applying a percentage rate of return on accounts in the relevant division of the Fund estimated by the Board.

(7) The Board must, within six months after the end of each financial year, provide each contributor with a written statement of the amount standing to the credit of the contributor's account at the end of the financial year and the amount by which the balance of the account has been increased pursuant to subsection (3) in respect of that financial year.

DIVISION VII—REPORTS

Reports

43s. (1) The Board must, on or before 31 October in each year, submit a report to the Treasurer on the operation of this Part and the Rules and on the management and investment of the Fund during the financial year ending on 30 June in that year.

(2) The report under subsection (1) must include—

(a) the audited accounts of the Fund for the relevant financial year;

and

(b) a copy of the valuation of the Fund made as at the end of the relevant financial year.

(3) An actuary appointed by the Trust must, in relation to the triennium ending on 30 June, 1993, and thereafter in relation to each succeeding triennium, report to the Trust and the Treasurer on—

(a) the cost of the Scheme to the Trust at the time of making the report and the cost of the Scheme to the Trust during the foreseeable future;

and

(b) the ability of the Fund to meet its current and future liabilities,

(and the report must be submitted to the Trust and the Treasurer within 12 months after the end of the relevant triennium).

(4) The Trust must, whenever necessary, appoint an actuary for the purposes of subsection (3).

(5) The Treasurer must, within six sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

(6) In this section—

“actuary” means a Fellow or Accredited Member of the Institute of Actuaries of Australia.

Insertion of schedule

5. The following schedule is inserted after section 44 of the principal Act:

SCHEDULE

Transitional Provisions

1. The assets and liabilities of The Electricity Trust of South Australia Retiring Gratuities for Wages Employees Scheme (1962) and of The Electricity Trust of South Australia Superannuation Fund continued by the *Electricity*

Trust of South Australia Superannuation Scheme Regulations, 1975 are transferred to the Electricity Trust of South Australia Superannuation Fund constituted under Part IVB.

2. (1) The rights of contributors pursuant to a previous scheme or arrangement for the provision of superannuation benefits for employees of the Trust to which the contributor has made contributions cease upon the commencement of this Act.

(2) The amount of the opening balance of a contributor's contribution account will be determined by the Rules.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor