



SUPERANNUATION (MISCELLANEOUS) AMENDMENT ACT 1998

No. 24 of 1998

SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of s. 4—Interpretation
4. Amendment of s. 8—The Board's membership
5. Amendment of s. 9—Procedures at meetings of the Board
6. Amendment of s. 17—The Fund
7. Amendment of s. 20A—Contributors' Accounts
8. Amendment of s. 20B—Payment of benefits
9. Amendment of s. 23—Contribution rates
10. Amendment of s. 28—Resignation and preservation of benefits
11. Amendment of s. 29—Retrenchment
12. Amendment of s. 31—Termination of employment on invalidity
13. Amendment of s. 32—Death of contributor
14. Amendment of s. 32A—PSESS benefit
15. Amendment of s. 34—Retirement
16. Amendment of s. 37—Invalidity
17. Amendment of s. 38—Death of contributor
18. Amendment of s. 39—Resignation and preservation of benefits
19. Amendment of s. 44—Review of the Board's decisions
20. Amendment of s. 45—Effect of workers compensation, etc., on pensions
21. Insertion of s. 47A and s. 47B
 - 47A. Subsequent roll over of benefits to another fund or scheme
 - 47B. Roll over of benefits from another fund or scheme
22. Amendment of s. 55—Confidentiality
23. Substitution of s. 56
 56. Resolution of doubts and difficulties
24. Amendment of Schedule 1—Transitional Provisions
 18. Repeal of contribution rate
 19. Operation of Sections 28(1f) and 39(1db)
 20. Election on retrenchment under section 29



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ELIZABETHAE II REGINAE

A.D. 1998

No. 24 of 1998

An Act to amend the Superannuation Act 1988.

[Assented to 2 April 1998]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Superannuation (Miscellaneous) Amendment Act 1998*.
- (2) The *Superannuation Act 1988* is referred to in this Act as "the principal Act".

Commencement

2. (1) Subject to subsection (2), this Act will come into operation on a day to be fixed by proclamation.
- (2) Section 18(*h*) will be taken to have come into operation on 1 July 1994.

Amendment of s. 4—Interpretation

3. Section 4 of the principal Act is amended—

- (a) by striking out the definition of "**contribution month**" from subsection (1) and substituting the following definition:

"**contribution month**"—see subsection (2a);;

- (b) by striking out the definition of "**month**" from subsection (1) and substituting the following definition:

"**month**" means a period starting at the beginning of any day of one of the 12 named months and ending—

- (a) immediately before the beginning of the corresponding day of the next named month; or
- (b) if there is no such corresponding day, at the end of the next named month;;

- (c) by inserting the following definition after the definition of "the Scheme" in subsection (1):

"special deposit account" means a special deposit account established under section 8 of the *Public Finance and Audit Act 1987*;

- (d) by inserting the following subsection after subsection (2):

(2a) The number of contribution months in a contribution period is calculated by multiplying the number of days in the period by 0.032854.

Amendment of s. 8—The Board's membership

4. Section 8 of the principal Act is amended by striking out "of three years" from subsection (4) and substituting "not exceeding three years".

Amendment of s. 9—Procedures at meetings of the Board

5. Section 9 of the principal Act is amended by inserting the following subsection after subsection (4):

(4a) A conference by telephone or other electronic means between members of the Board will, for the purposes of this section, be taken to be a meeting of the Board at which the participating members are present if—

- (a) notice of the conference is given to all members in the manner determined by the Board for that purpose; and
- (b) each participating member is capable of communicating with every other participating member during the conference.

Amendment of s. 17—The Fund

6. Section 17 of the principal Act is amended by inserting in paragraph (c) of subsection (7) "or a special deposit account" after "the Consolidated Account".

Amendment of s. 20A—Contributors' Accounts

7. Section 20A of the principal Act is amended by striking out subsection (6) and substituting the following subsections:

(6) Where it is necessary to determine the balance of a contributor's account and the Board has not yet determined a rate of return in relation to the relevant financial year, the balance will be determined by applying a percentage rate of return on accounts estimated by the Board.

(6a) A balance determined under subsection (6) will not be adjusted when a rate of return is subsequently determined under subsection (3).

Amendment of s. 20B—Payment of benefits

8. Section 20B of the principal Act is amended—

- (a) by inserting in subsection (1) "or out of a special deposit account established by the Treasurer for the purpose" after "(which is appropriated to the necessary extent)";
- (b) by inserting in subsection (2) "or special deposit account" after "the Consolidated Account".

Amendment of s. 23—Contribution rates

9. Section 23 of the principal Act is amended—

- (a) by striking out "1.5%" from paragraph (a) of subsection (2);
- (b) by inserting the following subparagraph after subparagraph (iv) of paragraph (b) of subsection (4):
 - (v) if the reason for the reduction in hours of work is an illness or injury suffered by the contributor, an election under subparagraph (iv) may, with the Board's approval, operate during subsequent years despite paragraph (a).;
- (c) by striking out from subparagraph (i) of paragraph (b) of subsection (6) "the Minister" and substituting "the Board";
- (d) by striking out subsection (7) and substituting the following subsection:

(7) An old scheme contributor will cease to contribute if—

- (a) before termination of the contributor's employment the following conditions are satisfied:
 - (i) in the case of a person who was accepted as a contributor under the repealed Act—the contributor is of or above the age of retirement and has—
 - (A) an aggregate of 360 contribution points; or
 - (B) an aggregate number of contribution points equal to the number of months between the date on which he or she became a contributor and the date on which he or she reached the age of retirement,whichever is the greater number;
 - (ii) in the case of a person who was accepted as a contributor before the commencement of the repealed Act—the contributor is of or above the age of retirement and has an aggregate of 360 contribution points; or
- (b) on retirement he or she would be entitled to the maximum pension prescribed by section 34(5).

Amendment of s. 28—Resignation and preservation of benefits

10. Section 28 of the principal Act is amended—

- (a) by striking out paragraphs (a) and (b) of subsection (1c) and substituting the following paragraphs:
 - (a) the contributor may at any time require the Board to make the payment to some other superannuation fund or scheme approved by the Board;

- (b) the contributor may at any time after reaching the age of retirement require the Board to make the payment and, if no such requirement has been made on or before the date on which the contributor reaches 65 years of age, the Board will make the payment;
- (c) if the contributor has reached the age of 55 years and is not employed by an employer within the meaning of the Commonwealth Act, the contributor may require the Board to make the payment to the contributor;
- (d) if the contributor has become incapacitated and satisfies the Board that his or her incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent, the Board will make the payment to the contributor;
- (e) if the contributor dies, the payment will be made to the spouse of the deceased contributor or, if he or she left no surviving spouse, to the contributor's estate,

(and a payment under any of the above paragraphs excludes further rights so that a claim cannot be subsequently made under some other paragraph).;

(b) by striking out subsection (1f) and substituting the following subsection:

(1f) The rate of interest will be determined by the Board in respect of each financial year in accordance with section 20A.;

(c) by striking out paragraph (b) of subsection (2) and substituting the following paragraph:

(b) if the contributor has become incapacitated and satisfies the Board that his or her incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent, the Board will make the payment to the contributor;;

(d) by striking out "(except invalidity, retrenchment or death)" from subsection (7) and substituting "except invalidity (in circumstances entitling the contributor to benefits under this Act), retrenchment or death".

Amendment of s. 29—Retrenchment

11. Section 29 of the principal Act is amended—

(a) by striking out "Where a contributor's employment" from subsection (1) and substituting "Where the employment of a contributor who has not reached the age of 55 years";

(b) by inserting the following subsections after subsection (1):

(1a) A contributor who fails to inform the Board in writing of his or her election under subsection (1) within three months after retrenchment will be taken to have elected to preserve his or her superannuation benefits.

(1b) If the Board is of the opinion that the limitation period referred to in subsection (1a) would unfairly prejudice a contributor, the Board may extend the period as it applies to the contributor.

Amendment of s. 31—Termination of employment on invalidity

12. Section 31 of the principal Act is amended by striking out "actual or attributed salary" from paragraph (a) of subsection (2b) and substituting "adjusted salary".

Amendment of s. 32—Death of contributor

13. Section 32 of the principal Act is amended by striking out from subparagraph (B) of subparagraph (i) of paragraph (a) of subsection (3a) "actual or attributed salary" and substituting "adjusted salary".

Amendment of s. 32A—PSESS benefit

14. Section 32A of the principal Act is amended by striking out paragraphs (a) and (b) of subsection (2) and substituting the following paragraphs:

- (a) be paid to or in relation to the contributor at the time at which, and in the circumstances under which, payment of benefits would be made to or in relation to the contributor if he or she had preserved his or her accrued superannuation benefits; or
- (b) be carried over to some other superannuation fund or scheme approved by the Board.

Amendment of s. 34—Retirement

15. Section 34 of the principal Act is amended by striking out "(except invalidity, retrenchment or death)" from paragraph (a) of subsection (6) and substituting "except invalidity (in circumstances entitling the contributor to benefits under this Act), retrenchment or death".

Amendment of s. 37—Invalidity

16. Section 37 of the principal Act is amended by striking out "actual or attributed salary" from paragraph (a) of subsection (3a) and substituting "adjusted salary".

Amendment of s. 38—Death of contributor

17. Section 38 of the principal Act is amended by striking out from subparagraph (ii) of paragraph (a) of subsection (6) "actual or attributed salary" and substituting "adjusted salary".

Amendment of s. 39—Resignation and preservation of benefits

18. Section 39 of the principal Act is amended—

- (a) by inserting the following paragraph before paragraph (a) of subsection (1c) and redesignating paragraph (a) and the other paragraphs of that subsection as (b), (c), (d) and (e) respectively:
 - (a) the contributor may at any time require the Board to make the payment to some other superannuation fund or scheme approved by the Board;;
- (b) by striking out paragraph (c) of subsection (1c) (redesignated as paragraph (d) by paragraph (a) of this section) and substituting the following paragraph:
 - (d) if the contributor has become incapacitated and satisfies the Board that his or her incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent, the Board will make the payment to the contributor;;

(c) by striking out subsection (1db) and substituting the following subsection:

(1db) The rate of interest will be determined by the Board in respect of each financial year in accordance with section 20A.;

(d) by striking out subsection (1e);

(e) by striking out paragraph (b) of subsection (2) and substituting the following paragraph:

(b) if the contributor has become incapacitated and satisfies the Board that his or her incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent, the Board will make the payment to the contributor;;

(f) by striking out paragraph (b) of subsection (5) and substituting the following paragraph:

(b) if the contributor has become incapacitated and satisfies the Board that his or her incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent, the Board will pay an invalid pension to the contributor;;

(g) by striking out "became totally and permanently incapacitated for work" from paragraph (d) of subsection (6) and substituting "satisfied the Board of the matters referred to in subsection (5)(b)";

(h) by inserting the following subsections after subsection (10):

(10a) For the purposes of this section, a contributor will be taken to resign if the contributor's employment terminates or is terminated for any reason except invalidity (in circumstances entitling the contributor to benefits under this Act), retrenchment or death.

(10b) A contributor who is taken by clause 7(6)(a) of Schedule 2 of the *State Bank (Corporatisation) Act 1994* to have resigned from his or her employment and to have elected to preserve his or her accrued benefits under this section will, for the purposes of the application of subsection (5), be taken to have resigned after a contribution period of 120 months or more.

Amendment of s. 44—Review of the Board's decisions

19. Section 44 of the principal Act is amended by striking out "the Supreme Court" from subsection (1) and substituting "the District Court".

Amendment of s. 45—Effect of workers compensation, etc., on pensions

20. Section 45 of the principal Act is amended—

(a) by inserting the following subsection after subsection (1):

(1a) Other income referred to in subsection (1) will be taken to include—

(a) the monetary value of income that is in a non-monetary form; and

(b) income of a kind referred to in subsection (1)(b)(i) or (ii) that is lawfully paid to some other person.;

(b) by inserting the following word and paragraph after paragraph (b) of subsection (2);

and

(ba) the contributor would not have reached the age of retirement if he or she were still alive;.

Insertion of s. 47A and s. 47B

21. The following sections are inserted after section 47 of the principal Act:

Subsequent roll over of benefits to another fund or scheme

47A. A contributor who is entitled to benefits in the form of a lump sum that is preserved under this Act may, at any time before reaching the age of 55 years, require the Board to pay those benefits to some other superannuation fund or scheme approved by the Board.

Roll over of benefits from another fund or scheme

47B. The Board may, on such terms and conditions as it thinks fit, accept the payment of benefits on behalf of a contributor from another superannuation fund or scheme.

Amendment of s. 55—Confidentiality

22. Section 55 of the principal Act is amended by inserting the following paragraph and word before paragraph (a) of subsection (1) and redesignating paragraph (a) and the other paragraphs of that subsection as (b), (c), (d) and (e) respectively:

(a) as required by or under any Act of the State or the Commonwealth; or.

Substitution of s. 56

23. Section 56 of the principal Act is repealed and the following section is substituted:

Resolution of doubts and difficulties

56. If, in the opinion of the Board, any doubt or difficulty arises in the application of this Act to particular circumstances, the Board may give such directions as are reasonably necessary to resolve the doubt or difficulty and this Act will apply subject to a direction given by the Board under this section.

Amendment of Schedule 1—Transitional Provisions

24. Schedule 1 of the principal Act is amended—

(a) by striking out subclause (4) of clause 2;

(b) by inserting the following clauses after clause 17:

Repeal of contribution rate

18. (1) A contributor who was contributing at the rate of 1.5% at the commencement of the *Superannuation (Miscellaneous) Amendment Act 1998* is entitled to continue contributing at that rate until 1 July 1998.

(2) A contributor referred to in subclause (1) who fails to elect some other rate of contribution under section 23 in respect of the 1998/1999 financial year will be taken to have elected to cease contributing in respect of that year.

Operation of Sections 28(1f) and 39(1db)

19. Sections 28(1f) and 39(1db) substituted by the *Superannuation (Miscellaneous) Amendment Act 1998* operate in relation to the 1997/1998 and subsequent financial years and the provisions they replace operate in relation to the 1996/1997 and previous financial years.

Election on retrenchment under section 29

20. A new scheme contributor who—

- (a) was retrenched one year or less before the commencement of the *Superannuation (Miscellaneous) Amendment Act 1998*; and
- (b) had not reached the age of 55 years at that time; and
- (c) had not made an election under section 29(1) at that time,

is entitled to make the election within three months after the commencement of that Act.

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

E. J. NEAL Governor