



ANNO VICESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1976

No. 22 of 1976

An Act to amend the Superannuation Act, 1974.

[Assented to 4th March, 1976]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Superannuation Act Amendment Act, 1976". Short titles.

(2) The Superannuation Act, 1974, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Superannuation Act, 1974-1976".

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

3. Section 5 of the principal Act is amended—

(a) by striking out from paragraph (b) of the definition of "contribution months" the passage "during or";

(b) by striking out from paragraph (c) of the definition of "contribution months" the passage "during or";

(c) by inserting in paragraph (a) of the definition of "contribution salary" after the passage "to that contributor" the passage "(with no regard being paid in that determination to any retrospective variations of the actual salary of that contributor)";

(d) by inserting in paragraph (c) of the definition of "contribution salary" after the passage "of that contributor" the passage "(with no regard being paid to any retrospective variations of that salary)";

(e) by striking out paragraph (d) from the definition of "employee" and inserting in lieu thereof the following paragraph:—

(d) any such person who is a contributor to a declared scheme;;

Amendment of principal Act, s. 5—
Interpretation.

(f) by inserting in the definition of “full unit entitlement” after the passage “appropriate to the salary” the passage “(ignoring any retrospective increases in salary)”;

(g) by inserting in paragraph (c) of the definition of “prescribed deduction” after the word “any” the word “lump”;

and

(h) by inserting immediately after the definition of “superannuation fortnight” the following definition:—

“supplementation amount” in relation to a pension payable to—

(a) a contributor pensioner, means an amount determined by the Public Actuary as being the amount, if any, by which that pension has been increased by the operation of section 98 of this Act;

(b) the spouse of a deceased contributor or deceased contributor pensioner, means an amount determined by the Public Actuary as being—

(i) the amount, if any, by which that pension has been increased by the operation, from time to time, of any provision of Part VI of the repealed Act, or any corresponding previous enactment or by the operation of section 98 of this Act;

and

(ii) in the case of a spouse—

(A) whose pension was first payable before the commencement of this Act, sixty-five per centum of the amount, if any, by which the pension of the deceased contributor pensioner was increased by the operation, from time to time, of any provision of Part VI of the repealed Act, or any corresponding previous enactment;

and

(B) whose pension was first payable, on or after the commencement of this Act, two-thirds of the amount, if any, by which the pension of the deceased contributor pensioner was increased by the operation, from time to time, of any provision of Part VI of the repealed Act, or any corresponding previous enactment or section 98 of this Act:.

4. The following section is enacted and inserted in the principal Act immediately after section 6 thereof:—

Enactment of
s. 6a of
principal Act—

6a. (1) For the purposes of this Act, on and from the commencement of the Superannuation Act Amendment Act, 1976, no person shall be deemed to be, by the terms of his employment, required to give his whole time to the duties of his employment unless—

“Whole time”
employees.

(a) he normally is engaged in that employment for not less than the prescribed number of hours per week;

or

(b) in the case of prescribed employment or employment of a prescribed class, he normally is engaged in that employment for not less than the number of hours per week prescribed in relation to that employment.

(2) Where before the commencement of the Superannuation Act Amendment Act, 1976, a prescribed person—

(a) was a contributor;

or

(b) was by virtue of an Act deemed to be an employee within the meaning and for the purposes of this Act,

then that person may, subject to this Act—

(c) continue to be a contributor;

or

(d) become a contributor,

as the case may be.

(3) Notwithstanding anything in this Act contained, in the application of this Act to or in relation to a prescribed person who, pursuant to subsection (2) of this section, continues to be or becomes a contributor, a reference in this Act to the salary of that person shall, unless in any particular case the Board otherwise directs, be read as a reference to—

(a) an amount determined from time to time by the Public Actuary as being equivalent of the salary payable to that person in respect of the number of hours per week normally worked by that person on the commencement of the Superannuation Act Amendment Act, 1976;

or

(b) an amount equal to the actual salary from time to time of that person,

whichever amount is the lesser.

(4) In this section—

“prescribed person” means a person who, immediately before the commencement of this Act—

(a) was a contributor;

or

(b) was by virtue of an Act, deemed to be an employee within the meaning and for the purposes of this Act, and who, had subsection (1) of this section and any regulation made thereunder been in operation immediately before he became a contributor or was so deemed, as the case may be, would not have been regarded as being by the terms of his employment required to give his whole time to the duties of his employment.

Amendment of principal Act, s. 13—
Investment of Fund.

5. Section 13 of the principal Act is amended by striking out paragraph (f) from subsection (1) and inserting in lieu thereof the following paragraphs:—

- (f) in the holding, development or maintenance of real property in the State, and in dealing in such real property whether by way of purchase, sale, mortgage, lease or otherwise;
- (fa) in the purchase or sale of plant, equipment or furnishings in connection with investments of the Fund and the maintenance thereof;

Amendment of principal Act, s. 43—
Acceptance of employees as contributors.

6. Section 43 of the principal Act is amended—

- (a) by striking out from subsection (1) the word “section” and inserting in lieu thereof the word “Act”;
- (b) by inserting in subsection (1) after the word “employee”, first occurring, the passage “, who has not attained the age of retirement or who is not a pensioner”;

and

(c) by inserting after subsection (2) the following subsections:—

(3) Where the Board is satisfied that an employee whose application has been accepted under subsection (1) of this section at the time that he applied to the Board failed to reveal to the Board a material matter within his knowledge relating to his state of health and that had the Board known of that matter the Board would not have been satisfied as to the soundness of his health the Board may by notice published in the *Gazette* declare that that employee shall be deemed never to have been a contributor and upon publication of that notice this Act shall apply and have effect accordingly.

(4) An employee who is the subject of a notice under subsection (3) of this section shall be paid by the Board the monetary equivalent of the contributions paid by him to the Fund in consequence of the acceptance by the Board of his application referred to in subsection (3) of this section less the monetary equivalent of any pension or benefit paid to him under this Act.

Amendment of principal Act, s. 45—
Purchase of contribution months.

7. Section 45 of the principal Act is amended—

- (a) by striking out from subsection (1) the passage “Subject to this section and section 46 of this Act a new contributor who, at the time of becoming such a new contributor is of or over the age of thirty years, may” and inserting in lieu thereof the passage

“Subject to this Act, a new contributor may before the first contribution adjustment day of that contributor or within the period of three months next preceding his retirement having attained the age of retirement”;

and

(b) by inserting after subsection (3) the following subsections:—

(4) Where the salary of the contributor referred to in subsection (3) of this section is subsequently increased retrospectively with effect from the day on which his election is to take effect the Public Actuary may adjust his determination referred to in that subsection so as to increase the amount so determined by the amount, if any, that in his opinion is appropriate as a consequence of that increase and the amount as so increased shall be deemed to be the amount so determined pursuant to that subsection.

(5) A new contributor is not required to make any further contributions to the Fund provided for by this section after the expiration of the superannuation fortnight next preceding the day on which he attains the age of retirement.

8. Section 46 of the principal Act is amended by striking out from subsection (1) the passage “after the first contribution adjustment day of that contributor”.

Amendment of principal Act, s. 46—
Acceptance of election under s. 45 of this Act.

9. Section 54 of the principal Act is amended—

(a) by striking out from subsection (1) the word “This” and inserting in lieu thereof the passage “Subject to subsection (4) of this section, this”;

Amendment of principal Act, s. 54—
Special provision for certain contributors.

and

(b) by inserting after subsection (3) the following subsection:—

(4) The Minister may, on the recommendation of the Public Actuary, direct that—

(a) this section shall no longer apply to a person specified in the direction;

and

(b) this Act shall with such modifications as are specified in the direction apply to and in relation to that person,

and this Act shall apply and have effect accordingly.

10. Section 59 of the principal Act is amended by inserting after subsection (5) the following subsection:—

Amendment of principal Act, s. 59—
Mode of payment.

(6) Notwithstanding anything in subsection (5) of this section the Board may, where contributions due to the Fund together with interest chargeable thereon by the Board under this Act or under the repealed Act are due and payable by a person, without any authority other than this subsection apply from any amount standing to the credit of that person in the Retirement Benefit Account an amount, in full or in part satisfaction of the liability of that person, not greater than the amount so due and payable.

Amendment of
principal Act,
s. 62—
Determination
of contributor's
salary in
certain cases.

11. Section 62 of the principal Act is amended—

(a) by inserting in subsection (1) after the passage “declared amount exceeds his fortnightly salary” the passage “or one-half of his fortnightly salary whichever is the greater amount”;

and

(b) by inserting in subsection (2) after the passage “applies to a contributor” the passage “who has attained the age of nineteen years on the relevant salary determination day and”.

Enactment of
s. 65a of
principal Act.

12. The following section is enacted and inserted in the principal Act immediately after section 65 thereof:—

Contributors
ceasing to be
employees.

65a. (1) Except as expressly provided under this Act or any other Act—

(a) an employee who ceases to be an employee shall upon that cessation cease to be a contributor;

and

(b) no contributor shall cease to be a contributor otherwise than by ceasing to be an employee.

(2) Where a person ceases to be an employee and, within a period of one month of that cessation, again becomes an employee that person shall for the purposes of this Act be deemed—

(a) not to have so ceased to be an employee;

and

(b) in respect of that period to have remained an employee in the employment in which he was so engaged immediately before that cessation.

Amendment of
principal Act,
s. 67—
Entitlement
to pension.

13. Section 67 of the principal Act is amended—

(a) by inserting in paragraph (c) of subsection (1) after the word “he”, firstly occurring, the passage “, not having attained the age of retirement,”;

(b) by inserting in paragraph (c) of subsection (1) after the passage “by his employing authority” the passage “and the Board is satisfied that the retirement is”;

(c) by inserting in paragraph (d) of subsection (1) after the passage “by his employing authority” the passage “with the consent of the Minister”;

(d) by inserting in subparagraph (i) of paragraph (d) of subsection (1) after the passage “forty-five years” the passage “and has not attained the age of retirement”;

(e) by striking out subparagraph (ii) of paragraph (d) of subsection (1) and inserting in lieu thereof the following paragraph:—

(ii) that contributor has been a contributor to the Fund for not less than five consecutive years, whether under this Act, or under the repealed Act or partly under this Act and partly under that Act;

and

(f) by inserting after subsection (1) the following subsections:—

(1a) Subject to this section a pension to which a contributor is entitled pursuant to subsection (1) of this section shall be payable on and from the day next succeeding the day on which he retires, is retired or his services are compulsorily terminated.

(1b) Where the Board is satisfied that on the retirement or compulsory termination of the service of an employee that employee has been paid a lump sum in lieu of recreation leave, the Board may suspend payment of any pension otherwise payable for a period not exceeding the period of leave of that employee in respect of which that payment was made but for the purposes of this Act other than this section that employee shall during that period of suspension be deemed to be in receipt of that pension.

14. Section 71 of the principal Act is amended by inserting after the passage “and including the day” in the description of the symbol “B” the passage “immediately preceding the day”.

Amendment of principal Act, s. 71—
Early retirement.

15. Section 75 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “the third month”, first occurring, and inserting in lieu thereof the passage “the period of three months”;

and

(b) by inserting in subsection (1) after the passage “thirty per centum” the passage “of an amount derived by deducting the supplementation amount from the amount”

Amendment of principal Act, s. 75—
Commutation of pension of contributor pensioner.

16. Section 76 of the principal Act is amended—

(a) by inserting immediately after subsection (2) the following subsection:—

(2a) Where the Board is satisfied that it is in the interest of the health of a pensioner so to do, it may direct that pensioner to undergo or submit himself to such treatment or to avail himself of such assistance as is specified in the direction.;

(b) by inserting in subsection (3) after the passage “subsection (2)” the passage “or subsection (2a)”;

and

(c) by inserting in subsection (3) after the passage “at a time and place specified by the Board” the passage “or, as the case requires, satisfies the Board that he is complying with a direction under subsection (2a) of this section”.

Amendment of principal Act, s. 76—
Recall of invalid pensioner.

17. Section 78 of the principal Act is amended by striking out from subsection (1) the passage “other than as an employee” and inserting in lieu thereof the passage “otherwise than as a consequence of an offer of employment under section 76 or section 77 of this Act”.

Amendment of principal Act, s. 78—
Remunerative activity by invalid pensioners or retrenchment pensioners.

Amendment of principal Act, s. 81—
Provision where contributions exceed benefits.

18. Section 81 of the principal Act is amended—

(a) by inserting in subsection (2) after the passage “exceed the total benefits paid” the passage “to or”;

and

(b) by striking out from subsection (2) the passage “the legal personal representative of that deceased contributor or pensioner” and inserting in lieu thereof the passage “such person or persons and in such proportions as the Board considers appropriate”.

Amendment of principal Act, s. 84—
Commutation by spouse of pensioner.

19. Section 84 of the principal Act is amended—

(a) by striking out from paragraph (a) of subsection (1) the passage “the sixth month” and inserting in lieu thereof the passage “the period of six months”;

(b) by striking out from subsection (1) the passage “that pension” last occurring and inserting in lieu thereof the passage “an amount derived by deducting the supplementation amount from the amount of that pension”;

and

(c) by striking out from subsection (4) the passage “the sixth month” and inserting in lieu thereof the passage “the period of six months”.

Amendment of principal Act, s. 93—
Contributors whose pensions emerged after 1/1/73

20. Section 93 of the principal Act is amended by inserting immediately after subsection (4) the following subsection:—

(5) Where in relation to a pension payable immediately before the commencement of the Superannuation Act Amendment Act, 1976, that was adjusted pursuant to this section, the application of the amendments effected to this Act by that Act has effect so as to reduce the amount of that pension so payable that reduction shall be ignored and that pension shall continue to be payable in the amount at which it was so payable immediately before that commencement.

Amendment of principal Act, s. 98—
Adjustment of pension.

21. Section 98 of the principal Act is amended by striking out from the definition of “the Index” in subsection (1) the passage “and includes” and inserting in lieu thereof the word “or”.

Amendment of principal Act, s. 102—
Acceptance as a contributor.

22. Section 102 of the principal Act is amended—

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

(1a) Where an employee referred to in section 100 of this Act attains the age of retirement, that employee shall, on the day he so attains that age, be deemed to have been accepted by the Board as a contributor to the Fund.;

(b) by inserting in subsection (2) after the passage “being accepted” the passage “or being deemed to have been accepted”;

(c) by inserting in subsection (2) after the passage “this Act shall” the passage “, subject to subsection (3) of this section,”;

and

(d) by inserting immediately after subsection (2) the following subsection:—

(3) In the application of section 45 of this Act to an employee referred to in subsection (2) of this section a reference in subsection (1) of that section to “the first contribution adjustment day” shall be read as a reference to “the expiration of the period of three months next following the day on which the employee was accepted or deemed to have been accepted as a contributor”.

23. Section 121 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of
s. 121 of
principal Act
and enactment
of section
in its place—
Putative
spouses.

121. (1) Where an application is made, within three months of the death of a contributor or contributor pensioner, under the Family Relationships Act, 1975, by a person and that person is declared under that Act to have been the putative spouse—

(a) of the deceased contributor on the day on which the contributor died;

or

(b) of the deceased contributor pensioner on the day on which the contributor pensioner became a pensioner and on the day on which the contributor pensioner died,

the provisions of this Act shall, subject to subsection (2) of this section, apply and have effect as if that person were the spouse of the deceased contributor or deceased contributor pensioner and the lawful spouse, if any, of the deceased contributor or deceased contributor pensioner were not the spouse of the deceased contributor or deceased contributor pensioner.

(2) Notwithstanding the provisions of subsection (1) of this section, a declaration made under that subsection shall not affect any fortnightly payments of the spouse's pension made to the lawful spouse, if any, of the deceased contributor or deceased contributor pensioner in respect of the period occurring before the day on which the declaration is made and the spouse's pension shall not be payable to the putative spouse of the deceased contributor or deceased contributor pensioner in respect of that period.

24. Section 129 of the principal Act is amended—

Amendment of
principal Act,
s. 129—
Returns.

(a) by inserting in subsection (1) after the passage “require an” the passage “employing authority, person,”;

(b) by inserting in subsection (1) after the passage “such information” the passage “in such manner or form and within such time”;

(c) by inserting in subsection (2) after the word “An” the passage “employing authority, person”;

and

(d) by inserting in subsection (2) after the passage “required of” the passage “it or”.

Enactment of
s. 129a of
principal Act—

25. The following section is enacted and inserted in the principal Act immediately after section 129 thereof:—

No assignment
of pension.

129a. (1) Pensions or other benefits payable pursuant to this Act shall, except as provided for in this Act, not be assigned, charged or passed by operation of law to any person other than the person to whom pursuant to this Act they are payable and any moneys payable out of the Fund on the death of an employee, pensioner or beneficiary shall not be assets, for the payment of his debts or liabilities, within the meaning of any Act.

(2) Nothing in subsection (1) of this section shall prevent the making of an order in the nature of a garnishee order against any instalment of a pension payable pursuant to this Act to a contributor pensioner.

Amendment of
principal Act,
s. 139—
Regulations.

26. Section 139 of the principal Act is amended by inserting immediately after paragraph (d) the following paragraphs:—

(da) prescribing or providing for any matter or thing in relation to contributions or benefits payable by or to or in relation to employees who, not being employees referred to in paragraph (d) of this section, were, immediately prior to becoming such employees, employed by the Commonwealth or another State or a Territory of the Commonwealth or a prescribed organization;

(db) prescribing or providing for any matter or thing in relation to contributions or benefits payable by or to or in relation to employees who were immediately prior to becoming such employees contributors to a declared scheme;

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

M. L. OLIPHANT, Governor