



STATUTES AMENDMENT (COMMUTATION FOR SUPERANNUATION SURCHARGE) ACT 1999

No. 23 of 1999

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A.D. 1999

No. 23 of 1999

An Act to amend the Judges' Pensions Act 1971, the Parliamentary Superannuation Act 1974, the Police Superannuation Act 1990 and the Superannuation Act 1988.

[Assented to 1 April 1999]

The Parliament of South Australia enacts as follows:

PART 1 PRELIMINARY

Short title

1. This Act may be cited as the *Statutes Amendment (Commutation for Superannuation Surcharge) Act 1999*.

Interpretation

2. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

PART 2 AMENDMENT OF JUDGES' PENSIONS ACT 1971,

Insertion of s. 17A

3. The following section is inserted in Part 2 after section 17 of the principal Act:

Commutation of pension to pay deferred superannuation contributions surcharge

17A. (1) The Treasurer will, on the application of a former Judge who is entitled to a pension and who is liable for a deferred superannuation contributions surcharge, commute so much of the pension as is required to provide a lump sum equivalent to the amount of the surcharge.

(2) An application under subsection (1) must be made in writing to the Treasurer before the expiration of the period of three months immediately following the date on which the notice given to the former Judge by the Commissioner of Taxation under section 15(7) of the *Commonwealth Act* was issued.

(3) Where—

(a) —

- (i) a Judge, or former Judge, who is liable for a deferred superannuation contributions surcharge dies before notice by the Commissioner of Taxation under section 15(7) of the *Commonwealth Act* is issued; or
- (ii) a former Judge who is liable for a deferred superannuation contributions surcharge dies within three months after the issue of such a notice without having commuted his or her pension under subsection (1); and

(b) the Judge is survived by a spouse who is entitled to a pension as the Judge's spouse under this Act,

the Treasurer will, subject to subsection (5) on the application of the spouse, commute so much of the spouse's pension as is required to provide a lump sum equivalent to the amount of the surcharge.

(4) An application under subsection (3) must be made in writing to the Treasurer before the expiration of the period of six months immediately following the Judge's death or the issue of the notice under section 15(7) of the *Commonwealth Act*, whichever is the later.

(5) The Treasurer must not commute a pension under subsection (3) unless he or she is satisfied that the resulting lump sum will be applied in payment of the surcharge or be used to reimburse the deceased Judge's estate or the spouse or other person who has paid the surcharge on behalf of the estate.

(6) The commutation factors to be applied in the commutation of a pension under this section will be determined by the Treasurer on the recommendation of an actuary.

(7) In this section—

"actuary" means a Fellow or Accredited Member of the Institute of Actuaries of Australia;

"the *Commonwealth Act*" means the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*;

"deferred superannuation contributions surcharge" in relation to a former Judge means the amount that the former Judge is liable to pay to the Commissioner under section 15(6) of the *Commonwealth Act*.

PART 3

AMENDMENT OF THE PARLIAMENTARY SUPERANNUATION ACT 1974

Insertion of s. 21AA

4. The following section is inserted in Part 4 Division 2 after section 21A of the principal Act:

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Commutation to pay deferred superannuation contributions surcharge

21AA. (1) The Board will, on the application of a former old scheme or new scheme member who is entitled to a pension and who is liable for a deferred superannuation contributions surcharge, commute so much of the pension as is required to provide a lump sum equivalent to the amount of the surcharge.

(2) An application under subsection (1) must be made in writing to the Board before the expiration of the period of three months immediately following the date on which the notice given to the former member by the Commissioner of Taxation under section 15(7) of the *Commonwealth Act* was issued.

(3) Where—

(a) —

- (i) an old scheme or new scheme member, or a former old scheme or new scheme member, who is liable for a deferred superannuation contributions surcharge dies before notice by the Commissioner of Taxation under section 15(7) of the *Commonwealth Act* is issued; or
- (ii) a former old scheme or new scheme member who is liable for a deferred superannuation contributions surcharge dies within three months after the issue of such a notice without having commuted his or her pension under subsection (1); and

(b) the former member is survived by a spouse who is entitled to a pension as the former member's spouse under this Act,

the Board will, subject to subsection (5) on the application of the spouse, commute so much of the spouse's pension as is required to provide a lump sum equivalent to the amount of the surcharge.

(4) An application under subsection (3) must be made in writing to the Board before the expiration of the period of six months immediately following the former member's death or the issue of the notice under section 15(7) of the *Commonwealth Act*, whichever is the later.

(5) The Board must not commute a pension under subsection (3) unless it is satisfied that the resulting lump sum will be applied in payment of the surcharge or be used to reimburse the deceased former member's estate or the spouse or other person who has paid the surcharge on behalf of the estate.

(6) The commutation factors to be applied in the commutation of a pension under this section will be determined by the Treasurer on the recommendation of an actuary.

(7) If the Board is satisfied that—

- (a) a former member, or the spouse of a member or former member, is entitled to commute the whole of his or her pension under section 21 or 26AA and has done so except for a part that the former member or spouse wishes to retain for the purpose of commutation under this section in order to pay the former member's deferred superannuation contributions surcharge; and

- (b) after commutation under this section for that purpose there will still be a part of the pension remaining uncommuted; and
- (c) the part of the pension originally retained for commutation under this section was a reasonable estimate of the amount of the pension that would be required for that purpose.

the Board will, on the application of the former member or spouse made at the same time as his or her application under subsection (1) or (3), commute the remaining uncommuted part of the pension using the factors applicable under section 21 or 26AA.

(8) In this section—

"actuary" means a Fellow or Accredited Member of the Institute of Actuaries of Australia;

"the Commonwealth Act" means the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*;

"deferred superannuation contributions surcharge" in relation to a member means the amount that the member is liable to pay to the Commissioner under section 15(6) of the *Commonwealth Act*.

PART 4 AMENDMENT OF POLICE SUPERANNUATION ACT 1990

Insertion of s. 35A

5. The following section is inserted after section 35 of the principal Act:

Commutation to pay deferred superannuation contributions surcharge

35A. (1) The Board will, on the application of a contributor who is entitled to a pension (other than a temporary disability pension) and who is liable for a deferred superannuation contributions surcharge, commute so much of the pension as is required to provide a lump sum equivalent to the amount of the surcharge.

(2) An application under subsection (1) must be made in writing to the Board before the expiration of the period of three months immediately following the date on which the notice given to the contributor by the Commissioner of Taxation under section 15(7) of the *Commonwealth Act* was issued.

(3) Where—

(a) —

- (i) a contributor who is liable for a deferred superannuation contributions surcharge dies before notice by the Commissioner of Taxation under section 15(7) of the *Commonwealth Act* is issued; or
- (ii) a contributor who is liable for a deferred superannuation contributions surcharge dies within three months after the issue of such a notice without having commuted his or her pension under subsection (1); and

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- (b) the contributor is survived by a spouse who is entitled to a pension as the contributor's spouse under this Act,

the Board will, subject to subsection (5) on the application of the spouse, commute so much of the spouse's pension as is required to provide a lump sum equivalent to the amount of the surcharge.

(4) An application under subsection (3) must be made in writing to the Board before the expiration of the period of six months immediately following the contributor's death or the issue of the notice under section 15(7) of the *Commonwealth Act*, whichever is the later.

(5) The Board must not commute a pension under subsection (3) unless it is satisfied that the resulting lump sum will be applied in payment of the surcharge or be used to reimburse the deceased contributor's estate or the spouse or other person who has paid the surcharge on behalf of the estate.

(6) The commutation factors to be applied in the commutation of a pension under this section will be determined by the Treasurer on the recommendation of an actuary.

(7) If the Board is satisfied that—

- (a) a contributor, or the spouse of a contributor, is entitled to commute the whole of his or her pension under section 35 and has done so except for a part that the contributor or spouse wishes to retain for the purpose of commutation under this section in order to pay the contributor's deferred superannuation contributions surcharge; and
- (b) after commutation under this section for that purpose there will still be a part of the pension remaining uncommuted; and
- (c) the part of the pension originally retained for commutation under this section was a reasonable estimate of the amount of the pension that would be required for that purpose,

the Board will, on the application of the contributor or spouse made at the same time as his or her application under subsection (1) or (3), commute the remaining uncommuted part of the pension using the factors applicable under section 35.

(8) In this section—

"the **Commonwealth Act**" means the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*;

"**deferred superannuation contributions surcharge**" in relation to a contributor means the amount that the member is liable to pay to the Commissioner under section 15(6) of the *Commonwealth Act*.

PART 5
AMENDMENT OF SUPERANNUATION ACT 1988

Insertion of s. 40A

6. The following section is inserted after section 40 of the principal Act:

Commutation to pay deferred superannuation contributions surcharge

40A. (1) The Board will, on the application of a contributor who is entitled to a pension (other than a temporary disability pension) and who is liable for a deferred superannuation contributions surcharge, commute so much of the pension as is required to provide a lump sum equivalent to the amount of the surcharge.

(2) An application under subsection (1) must be made in writing to the Board before the expiration of the period of three months immediately following the date on which the notice given to the contributor by the Commissioner of Taxation under section 15(7) of the *Commonwealth Act* was issued.

(3) Where—

(a) —

(i) a contributor who is liable for a deferred superannuation contributions surcharge dies before notice by the Commissioner of Taxation under section 15(7) of the *Commonwealth Act* is issued; or

(ii) a contributor who is liable for a deferred superannuation contributions surcharge dies within three months after the issue of such a notice without having commuted his or her pension under subsection (1); and

(b) the contributor is survived by a spouse who is entitled to a pension as the contributor's spouse under this Act,

the Board will, subject to subsection (5) on the application of the spouse, commute so much of the spouse's pension as is required to provide a lump sum equivalent to the amount of the surcharge.

(4) An application under subsection (3) must be made in writing to the Board before the expiration of the period of six months immediately following the contributor's death or the issue of the notice under section 15(7) of the *Commonwealth Act*, whichever is the later.

(5) The Board must not commute a pension under subsection (3) unless it is satisfied that the resulting lump sum will be applied in payment of the surcharge or be used to reimburse the deceased contributor's estate, or the spouse or other person who has paid the surcharge on behalf of the estate.

(6) The commutation factors to be applied in the commutation of a pension under this section will be determined by the Treasurer on the recommendation of an actuary.

(7) If the Board is satisfied that—

- (a) a contributor, or the spouse of contributor, is entitled to commute the whole of his or her pension under section 40 and has done so except for a part that the contributor or spouse wishes to retain for the purpose of commutation under this section in order to pay the contributor's deferred superannuation contributions surcharge; and
- (b) after commutation under this section for that purpose there will still be a part of the pension remaining uncommuted; and
- (c) the part of the pension originally retained for commutation under this section was a reasonable estimate of the amount of the pension that would be required for that purpose,

the Board will, on the application of the contributor or spouse made at the same time as his or her application under subsection (1) or (3), commute the remaining uncommuted part of the pension using the factors applicable under section 40.

(8) In this section—

"the Commonwealth Act" means the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*;

"deferred superannuation contributions surcharge" in relation to a contributor means the amount that the member is liable to pay to the Commissioner under section 15(6) of the *Commonwealth Act*.

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

E. J. NEAL Governor