

RETIREMENT BENEFITS AMENDMENT ACT 1985

No. 22 of 1985

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RETIREMENT BENEFITS AMENDMENT ACT 1985

No. 22 of 1985

AN ACT to amend the Retirement Benefits Act 1982.

[Royal Assent 1 May 1985]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Retirement Benefits Amendment Act 1985*. Short title.

2—(1) Except as provided in subsections (2), (3), and (4), this Act shall commence on the day on which it receives the royal assent. Commencement.

(2) Section 6 shall be deemed to have commenced on 1st December 1984.

(3) Where this Act receives the royal assent on a day before the day fixed under section 2 (2) of the *Tasmanian State Service (Miscellaneous Amendments) Act 1984*—

- (a) section 5 (1) shall commence, and section 5 (2) shall be repealed, on the first-mentioned day; and
- (b) section 15 shall commence on the day fixed under section 2 (2) of that Act.

(4) Where this Act receives the royal assent on a day that is the same or a later day than the day fixed under section 2 (2) of the *Tasmanian State Service (Miscellaneous Amendments) Act 1984*, section 5 (2) shall commence, and sections 5 (1) and 15 shall be repealed, on that first-mentioned day.

Principal Act.

3—In this Act, the *Retirement Benefits Act 1982** is referred to as the Principal Act.

Amendment of section 3 of Principal Act (Interpretation).

4—Section 3 (1) of the Principal Act is amended by inserting the following definition after the definition of “Commonwealth Actuary”:

“contributions” means contributions paid or payable under this Act to the Fund;

Amendment of section 4 of Principal Act (Non-application of Act).

5—(1) Section 4 of the Principal Act is amended as follows:—

- (a) by omitting from paragraph (b) “Act; or”;
- (b) by inserting the following paragraph after paragraph (b):—

(ba) a person who, pursuant to clause 8 (4) of Schedule 3 to the *Hobart Regional Water Act 1984*, notifies the Hobart Regional Water Board that he desires that clause 8 (5) of that Schedule should apply to him;

or

(2) Section 4 of the Principal Act is amended as follows:—

- (a) by omitting from paragraph (b) “Act; or”;
- (b) by inserting the following paragraph after paragraph (b):—

* No. 10 of 1982. Subsequently amended by Nos. 12 and 85 of 1983 and No. 29 of 1984.

- (*ba*) a person who, pursuant to clause 12 (4) of Schedule 8 to the *Hobart Regional Water Act* 1984, notifies the Hobart Regional Water Board that he desires that clause 12 (5) of that Schedule should apply to him;
or

6—(1) Section 21 (3) of the Principal Act is amended as follows:—

Amendment of section 21 of Principal Act (Investment of the Fund).

- (*a*) by omitting from paragraph (*m*) (ii) “ security; or ” and substituting “ security;”;

- (*b*) by inserting the following paragraphs after paragraph (*m*):—

(*ma*) in a unit trust;

(*mb*) in a loan guaranteed by a bank carrying on business in Tasmania;

(*mc*) in any arrangement, undertaking, or venture, being an arrangement or undertaking or a venture in which the Trust and any other person or persons make a joint investment and that investment by the Trust is made in a manner in which the Trust is authorized by this subsection to make an investment on its own account;

- (*c*) by omitting from paragraph (*n*) “ subsection,” and substituting “ subsection; or ”;

- (*d*) by inserting the following paragraph after paragraph (*n*):—

(*o*) in such other manner as may be prescribed by the regulations,

(2) Section 21 of the Principal Act is further amended by inserting the following subsection after subsection (3):—

(3A) The Trust may vary an investment made by it under subsection (3).

(3) Section 21 of the Principal Act is further amended by inserting the following subsections after subsection (6):—

(6A) For the purposes of subsection (3) (*ma*), the Trust shall be deemed to invest in a unit trust if it—

- (*a*) invests in units in a unit trust;

- (b) underwrites, co-underwrites, or sub-underwrites the issue of units in a unit trust; or
- (c) makes a loan to the trustee of a unit trust on the security of debentures in the unit trust or on such other security as may be the security for any investment that the Trust is authorized by subsection (3) to make on its own account.

(6B) For the purposes of making a joint investment under subsection (3) (*mc*), the Trust may—

- (a) enter into, form, or promote a partnership, company with a paid-up capital of not less than \$2, unit trust, or other arrangement, undertaking, or venture;
- (b) subscribe for or otherwise acquire, and dispose of, any interest, share, or unit in, or any debt security of, the joint investment;
- (c) create a charge on the assets, whether tangible or not, of the joint investment or any other assets;
- (d) provide any loan, advance, or debt facility to, or participate in a debt arrangement with, the other person or persons participating in the joint investment or some other person or persons, whether that loan or advance or the debt to which that facility relates is secured or not; and
- (e) enter into such arrangements, undertakings, or ventures with such person or persons as are necessary to provide a security for the investment.

(6C) For the purposes of the making by the Trust of a joint investment under subsection (3) (*mc*), any member or officer of the Trust may, notwithstanding anything in this Act or any other Act—

- (a) be a director or other officer of a company;
- (b) exercise all the powers of such an officer; and
- (c) hold shares in a company in trust for the Trust.

(4) Section 21 (7) of the Principal Act is amended as follows:—

- (a) by omitting “ 50 ” from paragraph (a) and substituting “ 65 ”;
- (b) by omitting “ 20 ” from paragraph (b) and substituting “ 30 ”.

(5) Section 21 (11) of the Principal Act is amended as follows:—

- (a) by inserting “ or unit trust ” in the definition of “ debenture ” after “ company ”, wherever occurring;
- (b) by omitting “ company.” from the definition of “ share ” and substituting “ company;”;
- (c) by inserting the following definition after the definition of “ share ”:—

“ unit ”, in relation to a unit trust, includes ordinary unit, preference unit, bonus unit, right to subscribe for a unit, option to subscribe for a unit, and any other right or option to acquire a unit.

7—(1) Section 25 (3) of the Principal Act is amended by omitting “ subsection (4)” and substituting “ subsections (4) and (6)”. Amendment of section 25 of Principal Act (Commencement and cessation of contributions).

(2) Section 25 (4) of the Principal Act is amended by omitting “ If ” and substituting “ Except as provided in subsection (5), if ”.

(3) Section 25 of the Principal Act is further amended by inserting the following subsections after subsection (4):—

(5) An employee who is an amalgamated contributor and who, having attained the age for retirement on or after the day on which the *Retirement Benefits Amendment Act 1985* receives the royal assent, continues to be an employee is not entitled to make an election under subsection (4).

(6) The contributions of an employee who contributes to the Fund on the amalgamation basis cease to be payable—

- (a) with respect to that part of the employee’s contributions applicable to units contributed under the *Superannuation Act 1938*—as if section 18 of that Act was still in force; and
- (b) with respect to that part of the employee’s contributions payable after the first commencement day—on the pay day immediately preceding the day on which he ceases, for any reason, to be an employee or on the day on which he attains the age for retirement, whichever is the earlier.

Amendment of section 26 of Principal Act (Time and manner of paying contributions).

8—(1) Section 26 (3) of the Principal Act is amended as follows:—

(a) by omitting paragraph (a) and substituting the following paragraph:—

(a) is on leave of absence without pay for a period not exceeding 3 years;

(b) by omitting “(not exceeding 2 years)”.

(2) Section 26 of the Principal Act is further amended by inserting the following subsections after subsection (3):—

(3A) Where, during any period that a contributor is absent from his employment without pay and without having had the payment of his contributions deferred under subsection (3), he fails to pay contributions in respect of that period at the times and in the manner prescribed by the regulations, the Board may require the contributor to comply with such conditions as the Board imposes in relation to the payment by him of those contributions (including conditions as to the payment of interest, at such rate as is determined by the Board, on those contributions).

(3B) Where the Board requires a contributor to comply with conditions imposed by it pursuant to subsection (3A), the period during which that contributor was absent from his employment as mentioned in that subsection shall not be counted as part of his service for the purposes of this Act until he complies with those conditions.

Amendment of section 42 of Principal Act (Persons to whom child's pension is payable).

9—Section 42 of the Principal Act is amended by inserting the following subsection after subsection (2):—

(3) Where a child's pension is paid under subsection (1) or a pension or sum of money is paid under subsection (2), the child in respect of whom the pension or sum is paid is beneficially entitled to that pension or sum.

Amendment of section 76 of Principal Act (False declarations, &c.).

10—Section 76 (1) (a) of the Principal Act is amended by omitting “as to his age or the state of his health”.

Insertion in Principal Act of new section 76A.

11—After section 76 of the Principal Act, the following section is inserted:—

76A—(1) Where the Board is satisfied that a person has—

- (a) when required by or under this Act to furnish any information in relation to a medical examination required to be undergone by him under this Act, failed to furnish that information fully; or
- (b) in any information that he has been required to furnish by or under this Act, knowingly made a false or misleading statement,

Powers of Board in respect of persons who fail to furnish information in relation to medical examinations, &c.

the Board may, subject to subsection (2), make an order—

- (c) in the case of a contributor, declaring that—
 - (i) he shall cease to be a contributor and that he shall be ineligible, either permanently or for such time as is specified in the order, to contribute to the Fund;
 - (ii) declaring that, if his contributions have not commenced, he is ineligible to commence to contribute to the Fund, either permanently or for such time as is specified in the order; or
 - (iii) if he is a contributor for full benefits, he shall, either permanently or for such time as is specified in the order, be deemed to be a contributor for limited benefits;
- (d) in the case of a pensioner—
 - (i) cancelling the pension payable to him under this Act and declaring that no refund of his contributions be made to him; or
 - (ii) declaring that the amount of that pension shall be reduced to such amount as is specified in the order, being an amount that, in the opinion of the Board, the circumstances of the case warrant; or
- (e) in the case of a person other than a contributor or pensioner, order that that person be ineligible to commence to contribute to the Fund, either permanently or for such time as the Board determines.

(2) Before making an order under subsection (1) in respect of a person, the Board shall give him an opportunity to be heard, and shall consider any evidence which he may then submit to it.

(3) An order under subsection (1) shall take effect on such day as is specified in the order, being a day not earlier than the day immediately following the end of the period during which the person in respect of whom the order is made may, pursuant to section 77 (4), appeal from the order.

(4) Where, pursuant to subsection (1) (c) (i), the Board makes an order declaring that a contributor shall cease to be a contributor, it shall make to him a refund of his contributions.

Amendment of section 84 of Principal Act (Recovery of overdue payments).

12—Section 84 (2) of the Principal Act is amended as follows:—

- (a) by inserting “ in a court of competent jurisdiction ” after “ recover ”;
- (b) by omitting “ a contributor or pensioner in a court of competent jurisdiction ” and substituting “ any person ”;
- (c) by omitting “ the contributor or pensioner ” and substituting “ that person ”.

Amendment of Schedule 6 to Principal Act (BENEFITS OF AMALGAMATED CONTRIBUTORS).

Benefits payable to employee who retires after attaining the age for retirement.

13—Schedule 6 to the Principal Act is amended by inserting the following clause after clause 4:—

4A—(1) A contributor who, having attained the age for retirement, ceases to pay contributions but continues to be an employee is entitled on his retirement to a pension consisting of the sum of the following amounts:—

- (a) in respect of his service before the first commencement day, the amount of the value of the number of units for which he was contributing on the day on which he attained the age for retirement, together with the actuarial equivalent in pension of the increment accruing in respect of his contributions on and after his reaching that age;
- (b) 40 per cent of the difference between his annual salary immediately before the first commencement day and the average annual salary received by him during the year immediately preceding the date of his retirement.

(2) For the purpose of calculating the amount referred to in paragraph (a) of subclause (1) in relation to a pension to which a contributor to which that subclause applies is entitled, no account shall be taken of the contributions that would be payable by the Treasurer if the contributor had retired on attaining the age for retirement.

14—(1) Where, before the commencement day, the Board has, pursuant to an application under section 26 (3) of the Principal Act made by a contributor, permitted him to defer his contributions to the Fund for a period approved by the Board and the period has not expired immediately before that day, the Board may, on the application of the contributor, and subject to subsection (2), extend that period.

Application
of certain
amendments
made by Act.

(2) A period extended by the Board pursuant to subsection (1) shall not extend a total period of 3 years.

(3) The provisions of subsection (3) of section 42 of the Principal Act, as inserted by section 9 of this Act, apply to a payment under section 42 (1) or (2) of that Act made before the commencement day as if that subsection had been in force when that payment was made.

(4) In this section, “commencement day” means the day on which this Act receives the royal assent.

15—Section 4 (ba) of the Principal Act (as inserted by section 5 (1) of this Act) is amended by omitting “clause 8 (4) of Schedule 3” and “clause 8 (5)” and substituting “clause 12 (4) of Schedule 8” and “clause 12 (5)” respectively.

Amendments
consequential
upon Tas-
manian State
Service Act
1984.

