



ANNO TRICESIMO QUARTO

ELIZABETHAE II REGINAE

A.D. 1985

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No. 105 of 1985

An Act to amend the Parliamentary Superannuation Act, 1974.

[Assented to 7 November 1985]

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

Short title.

1. (1) This Act may be cited as the "Parliamentary Superannuation Act Amendment Act, 1985".

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

Commencement.

2. (1) Subject to subsection (3), this Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act (other than section 10 (c) and (d)) until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

(3) Section 10 (c) and (d) shall be deemed to have come into operation on the first day of July, 1979.

Amendment of s. 11—  
Accounts and audit.

3. Section 11 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) The Auditor-General may at any time, and shall at least once in every year, audit the accounts kept by the Trustees pursuant to subsection (1).

Insertion of new section 11a.

4. The following section is inserted after section 11 of the principal Act:

Report.

11a. (1) The Trustees shall, on or before the 30th day of September in each year, deliver to the Treasurer a report upon the administration of this Act during the period of 12 months that ended on the preceding 30th day of June.

(2) The report must incorporate the audited accounts kept by the Trustees in relation to the relevant period and any comments

made by the Auditor-General in relation to the accounts that the Auditor-General has requested be included in the report.

(3) The Treasurer shall cause a copy of the report to be laid before each House of Parliament.

5. Section 17 of the principal Act is amended by striking out subsections (2a) and (2b) and substituting the following subsection:

Amendment of  
s. 17—  
Amount of  
pension on  
retirement.

(2a) For the purposes of subsection (2)—

(a) if a member did not elect to make contributions to the Fund in respect of the additional salary paid for a period of service in a prescribed office commencing after the commencement of this Act and concluding on or before the commencement of the Parliamentary Superannuation Act Amendment Act (No. 2), 1978, that period of service shall not be regarded as a period of service in a prescribed office;

(b) if a member held a prescribed office during the member's period of service and the prescribed office does not exist on the date of the member's retirement, the rate of additional salary applicable to that office on that date shall be deemed to be a rate of salary determined by the Public Actuary having regard to the rate of additional salary last applicable to that office before the date of retirement of the member and the movements (if any) in salaries and additional salaries up to the date of retirement of the member;

(c) if—

(i) a member held a prescribed office during the member's period of service;

(ii) the additional salary payable in respect of that prescribed office is, in comparison with the additional salaries payable in respect of other prescribed offices, proportionately less on the date of the member's retirement than it was at any time at which the member actually held that office;

(iii) the Trustees are of the opinion that a determination under this paragraph is necessary in order to avoid substantial injustice,

the rate of additional salary applicable to that office on the date of the member's retirement shall be deemed to be the rate of salary determined by the Public Actuary on the assumption that the additional salary in question had not been reduced in comparison to additional salaries payable in respect of other prescribed offices.

6. Section 19 of the principal Act is repealed and the following section is substituted:

Repeal of s. 19  
and substitution  
of new section.

19. (1) Where a member pensioner occupies a prescribed office or position, the pension payable to the member pensioner pursuant

Reduction of  
pension in certain  
circumstances.

to this Act shall be reduced by the amount of the salary, or other remuneration, paid in respect of that office or position.

(2) Where a member pensioner, or the member pensioner's spouse or child or another person, becomes entitled to superannuation or a retirement allowance by virtue of the member pensioner having held or occupied a prescribed office or position, any pension or child benefit payable under this Act to the member pensioner, the member pensioner's spouse or child or that other person shall be reduced by the prescribed amount.

(3) For the purposes of subsection (2), the prescribed amount shall be—

- (a) where the whole of the superannuation or retirement allowance referred to in that subsection is paid to the member pensioner, the member pensioner's spouse or child or another person by way of a pension and no part of it has been paid by way of a lump sum—the pension so paid;
- (b) where, as the result of an election made by the member pensioner, the member pensioner's spouse or child or that other person, the whole or a part of that superannuation or retirement allowance is paid as a lump sum—the amount of the pension that would have been payable in respect of that superannuation or retirement allowance if that election had not been made;
- (c) where, without an election being made, the whole or a part of that superannuation or retirement allowance is paid as a lump sum—the amount determined in accordance with the following formula:

$$PA = P + \frac{LS}{10}$$

where—

PA = the prescribed amount expressed as an annual pension.

P = that part (if any) (expressed as an annual pension) of the superannuation or retirement allowance that is paid as a pension.

LS = the lump sum that was paid in total or partial satisfaction of the entitlement of the member pensioner (or of the member pensioner's spouse or child or another person) to the superannuation or retirement allowance.

(4) Where a pension or child benefit is reduced pursuant to this section, the person entitled (or who would have been entitled but for the reduction) or, where 2 or more persons are so entitled, all of those persons acting together, may by notice in writing to the Trustees require the Trustees to pay to that person, or to those persons, out of the Fund an amount ascertained by reference to the following formula:

$$A = [TC(1 + .03 [N - 1])] - P$$

where—

A = the amount expressed in dollars and cents.

TC = the total contributions expressed in dollars and cents paid to the Fund by the member pensioner under this Act or under the repealed Act other than any such contributions that have been refunded to the member pensioner and have not been repaid.

N = one or the number of whole years of service of the member pensioner whichever is the greater.

P = the total of all pensions and benefits (if any) received by the member pensioner, his spouse or an eligible child in respect of the member pensioner under this Act and under the repealed Act,

and upon payment of that amount no further pension or benefit shall be paid to, or in respect of, the member pensioner.

(5) A notice referred to in subsection (4) may be given on behalf of a child who is under the age of 18 years by the child's parent or guardian.

(6) A payment under subsection (4) shall—

(a) if made to a spouse and a child or children—be divided between them as to three quarters to the spouse and as to one quarter to the child or children;

(b) if made only to children—be divided equally between them.

(7) In this section—

“prescribed office or position” means an office or position established under the law of this State, the Commonwealth, another State of the Commonwealth or a Territory of the Commonwealth which has been declared by regulation to be a prescribed office or position for the purposes of this section.

7. Section 21 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “Subject to section 21a of this Act, a member pensioner may, within three months of becoming entitled to a pension under this Act” and substituting the passage “Subject to this Division, a former member, who is entitled to a pension under this Act, may”;

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

(1a) A member pensioner who is deemed by this Act to have retired involuntarily by virtue of seeking and obtaining election to the Parliament of another State, the Northern Territory or the Commonwealth may not commute a pension under subsection (1) unless, on ceasing to be a member of that Parliament, the member pensioner is not entitled to superannuation or a retirement allowance by virtue of having been a member of that Parliament.

(1b) A member pensioner who—

Amendment of  
s. 21—  
Commutation of  
pension.

(a) is deemed by this Act to have retired involuntarily by virtue of seeking and obtaining election to the Parliament of another State, the Northern Territory or the Commonwealth;

and

(b) has, on ceasing to be a member of that Parliament, become entitled to superannuation or a retirement allowance no part of which is attributable to his or her years of service as a member of the Parliament of this State,

is entitled to payment from the Fund of an amount equal to the amount that the member pensioner would have been entitled to receive by way of commutation if the member pensioner had been entitled to commute a pension under subsection (1a).

(1c) A member pensioner who wishes to commute a percentage of the pension or to apply to the Trustees for a payment from the Fund under subsection (1b) must do so within 3 months after first becoming so entitled.;

(c) by striking out from subsection (2) the passage "subsection (1) of";

and

(d) by striking out subsection (3) and substituting the following subsection:

(3) On payment of an amount pursuant to subsection (1b), any pension payable under this Act to the member pensioner shall be reduced as though the amount paid under subsection (1b) had been made by way of commutation of the pension.

Amendment of  
s. 24—  
Pension for  
spouse of  
deceased  
pensioner.

8. Section 24 of the principal Act is amended—

(a) by inserting after the word "member" wherever it occurs in subsection (3) the word "pensioner";

(b) by inserting before the word "pensioner" wherever it occurs in subsection (3) the word "member";

and

(c) by striking out subsections (4) and (5) and substituting the following subsection:

(4) For the purposes of subsection (3)—

(a) if a member pensioner had not elected to make contributions to the Fund in respect of the additional salary paid for a period of service in a prescribed office commencing after the commencement of this Act and concluding on or before the commencement of the Parliamentary Superannuation Act Amendment Act (No. 2), 1978, that period of service shall not be regarded as a period of service in a prescribed office;

(b) if a member pensioner held a prescribed office during the member pensioner's period of service and the prescribed office did not exist immediately before the member pensioner became a member pensioner, the rate of additional salary applicable to that office immediately before the member pensioner became a member pensioner shall be deemed to be a rate of salary determined by the Public Actuary having regard to the rate of additional salary last applicable to that office before the member pensioner became a member pensioner and the movements (if any) in salaries and additional salaries up to the date on which the member pensioner became a member pensioner;

(c) if—

(i) a member pensioner held a prescribed office during the member pensioner's period of service;

(ii) the additional salary payable in respect of that prescribed office was, in comparison with the additional salaries payable in respect of other prescribed offices, proportionately less, immediately before the member pensioner became a member pensioner, than it was at any time at which the member pensioner actually held that office;

and

(iii) the Trustees are of the opinion that a determination under this paragraph is necessary in order to avoid substantial injustice,

the rate of additional salary applicable to that office immediately before the member pensioner became a member pensioner shall be deemed to be the rate of salary determined by the Public Actuary on the assumption that the additional salary in question had not been reduced in comparison to additional salaries payable in respect of other prescribed offices.

9. Section 30 of the principal Act is repealed and the following section is substituted:

Repeal of s. 30  
and substitution  
of new section.

30. An amount payable under this Act to a person who is, or was, an eligible child may, if that person is under the age of 18 years, be paid—

Payment to or on  
behalf of child.

(a) to that person;

or

(b) to that person's parent or guardian on that person's behalf,

as the Trustees direct.

Amendment of  
s. 36—  
Provisions as to  
previous service.

**10. Section 36 of the principal Act is amended—**

- (a) by striking out from the definition of “prescribed amount” in subsection (4) the passage “subsection (2) of section 21 of this Act” and substituting the passage “Division II of Part IV”;
- (b) by striking out from the definition of “prescribed amount” in subsection (4) the passage “made an election under subsection (1) of section 21 of this Act” and substituting the passage “received an amount pursuant to Division II of Part IV”;
- (c) by inserting after subsection (7) the following subsections:

(7a) Where—

- (a) a member stands for re-election but is not returned as having been re-elected;
- (b) the Court of Disputed Returns subsequently declares the member to have been duly elected at that election or it declares the election void and the member is elected at the subsequent by-election;

and

- (c) the member complies with the requirements of subsection (7b),

the member’s period of service for the purposes of this Act shall include—

- (d) previous service that the member was, at the termination of the member’s immediately preceding period of service, entitled to have counted as service under this Act;

and

- (e) the period during which the member was unable to assume membership of Parliament by reason of not being returned as elected in the first instance.

(7b) The member shall within 3 months—

- (a) after a declaration by the Court of Disputed Returns that the member has been duly elected;

or

- (b) after the member’s re-election following a declaration by the Court that the original election was void,

or after such further period as the Trustees may allow—

- (c) make a contribution to the Fund of an amount equal to 11.5 per cent of the salary that was lost by reason of the fact that the member was not returned as elected in the first instance;

and

(d) repay to the Fund an amount equal to the amount (if any) paid to the member pursuant to this Act (whether by way of a pension or a lump sum, or both, or by way of a payment pursuant to Division III of Part IV) following the return made at the election.;

and

(d) by striking out from subsection (8) the passage "or (6)" and substituting the passage ", (6) or (7b)".

11. The second schedule to the principal Act is amended by striking out the passage "enters upon pension" and substituting the passage "first becomes entitled to elect to commute a percentage of pension". Amendment of second schedule.

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

D. B. DUNSTAN, Governor