



SUPERANNUATION (MISCELLANEOUS) AMENDMENT ACT 1994

No. 37 of 1994

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ELIZABETHAE II REGINAE

A.D. 1994

No. 37 of 1994

An Act to amend the Superannuation Act 1988 and to make a related amendment to the Superannuation (Benefit Scheme) Act 1992.

[Assented to 2 June 1994]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Superannuation (Miscellaneous) Amendment Act 1994*.
- (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 14(i) will be taken to have come into operation on 5 June 1992.

Amendment of s. 4—Interpretation

3. Section 4 of the principal Act is amended—

- (a) by inserting after paragraph (b) of subsection (6) the following paragraph:
 - (c) a person whose employment is terminated on the ground of incompetence will be taken to have retired or resigned from employment depending on whether he or she has then reached the age of 55 years;;
- (b) by inserting after subsection (7) the following subsections:
 - (8) For the purposes of this Act a contributor who is on leave without pay is not an active contributor if a contribution payable by the contributor has remained unpaid for 14 days or more.
 - (9) Subsection (8) does not apply if the contributor did not know, and could not reasonably have been expected to know, that the contribution had remained unpaid for 14 days.

(10) For the purposes of subsections (8) and (9), contributions become payable at the times at which salary would have been payable to the contributor if he or she had not been on leave without pay.

Amendment of s. 8—The Board's membership

4. Section 8 of the principal Act is amended by inserting after subsection (6) the following subsection:

(7) If the office of a member elected by the contributors becomes vacant and the balance of the term of the office is 12 months or less, the Governor may appoint to the vacant office a person nominated by the Public Service Association of South Australia Incorporated and the South Australian Institute of Teachers.

Amendment of s. 13—The Trust's membership

5. Section 13 of the principal Act is amended by inserting after subsection (6) the following subsection:

(7) If the office of the member elected by the contributors becomes vacant and the balance of the term of the office is 12 months or less, the Governor may appoint to the vacant office a person nominated by the Public Service Association of South Australia Incorporated and the South Australian Institute of Teachers.

Amendment of s. 19—Investment of the Fund

6. Section 19 of the principal Act is amended—

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

(3) The Fund may not be invested—

(a) in property outside Australia;

or

(b) in real property outside the State,

unless the Minister has authorised the investment specifically or by reference to the class of investment to which it belongs.

(3a) The Minister may vary or revoke an authorisation under subsection (3).;

(b) by striking out "specifically" from paragraph (b) of subsection (4).

Amendment of s. 23—Contribution rates

7. Section 23 of the principal Act is amended—

(a) by striking out from subsection (6)(b) "can only be made in circumstances in which the approval is authorized by the regulations" and substituting "can only be made—

- (i) if the Minister is satisfied with arrangements that have been made for reimbursement of the cost of benefits attributable to that period;

and

- (ii) in circumstances in which the approval is authorised by the regulations);

- (b) by inserting after subsection (6) the following subsection:

(6a) Where a contributor has been, or will be, on leave for more than 12 months and the period of leave is, or will be, made up of two or more components of leave without pay connected by one or more components of paid leave, an election under subsection (6)(b) in relation to a component of that period that will extend it beyond 12 months or that commences after the first 12 months of the period has passed must comply with the requirements of that subsection even though the component itself is less than 12 months in duration.

Amendment of s. 28—Resignation and preservation of benefits

8. Section 28 of the principal Act is amended—

- (a) by striking out from subsection (1d) "adjusted to reflect changes in the Consumer Price Index since the date of resignation" and substituting "together with interest from the date of resignation";
- (b) by inserting after subsection (1d) the following subsections:

(1e) The amount of interest will be calculated and credited to the contributor at the end of each financial year and will be calculated on the amount referred to in subsection (1d) at the end of the first financial year and on the aggregate of that amount and the interest previously credited at the end of each subsequent financial year.

(1f) The rate of interest will be determined in respect of each financial year and—

- (a) in respect of a completed financial year, will be determined by taking the average of the 10 year bond rates declared by the South Australian Government Financing Authority in respect of investments made on the first day of each calendar month of that year;

and

- (b) in respect of the financial year in which the superannuation payment is made, will be determined in accordance with paragraph (a) on the basis of the 10 year bond rates declared on the first days of the calendar months of the financial year being days occurring before the superannuation payment is made and, if the payment is made on the first day of a month, including that day.

Amendment of s. 31—Termination of employment on invalidity**9. Section 31 of the principal Act is amended—**

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

(1) If—

(a) a contributor's employment terminates on account of invalidity before the contributor reaches the age of 55 years;

and

(b) the Board is satisfied that the contributor's incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent,

the contributor is entitled to a superannuation payment made up of two components—

(c) an employee component (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of the contributor's contribution account;

and

(d) an employer component calculated in accordance with subsection (2).;

(b) by inserting after subsection (2a) the following subsections:

(2b) If the Board is not satisfied as to one or both of the matters referred to in subsection (1)(b) the contributor is entitled to a superannuation payment that is the greater of the following:

(a) twice the contributor's actual or attributed salary immediately before termination of employment (expressed as an annual amount);

or

(b) an amount made up of two components—

(i) an employee component (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of the contributor's contribution account;

and

(ii) an employer component calculated as follows:

$$EC = (A \times 3.86 \times FS) + Pn \left[\frac{FS \times 0.85 \times M}{300} \right]$$

Where—

EC is the employer component

A is the lesser of the following:

(a) unity;

(b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by 360

FS is the contributor's actual or attributed salary immediately before termination of employment (expressed as an annual amount)

Pn is—

(a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 30 June 1992—1;

(b) in any other case—the numerical value arrived at by expressing the contributor's employment while an active contributor during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

M is the number of months of the contributor's contribution period occurring after 30 June 1992.

(2c) A superannuation payment under subsection (2b)(a) will be made up of two components—

(a) an employee component (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of the contributor's contribution account;

and

(b) an employer component being the difference between the employee component and twice the contributor's actual or attributed salary

immediately before termination of employment (expressed as an annual amount).

Amendment of s. 34—Retirement

10. Section 34 of the principal Act is amended—

(a) by inserting after "he or she retired" in the definition of "B" in subsection (2) "reduced by the number of months (if any) in that period during which the contributor was not an active contributor";

(b) by inserting after subsection (4) the following subsections:

(5) The amount of a retirement pension will be the amount calculated under this section or 75 per cent of the contributor's actual or attributed salary immediately before retirement (expressed as an amount per fortnight), whichever is the lesser.

(6) For the purposes of this section, a contributor retires from employment if—

(a) the contributor has attained the age of 55 years and the contributor's employment terminates or is terminated before the contributor reaches the age of retirement for any reason (except invalidity, retrenchment or death);

or

(b) the contributor's employment terminates or is terminated on or after the contributor reaches the age of retirement for any reason (except the contributor's death).

Amendment of s. 35—Retrenchment

11. Section 35 of the principal Act is amended—

(a) by inserting after paragraph (b) of subsection (4) the following word and paragraph:

and

(c) the contributor has not made an election under subsection (6),;

(b) by inserting after subsection (5) the following subsection:

(6) If a contributor whose employment is terminated by retrenchment but who is not entitled to a pension and a lump sum under subsection (1) makes an election under this subsection by written notice to the Board within three months after termination of the employment, the contributor will be taken—

(a) if the contributor had not reached the age of 55 years at the termination of his or her employment—to have resigned and elected to preserve his or her accrued superannuation benefits;

or

- (b) if the contributor had reached that age at the termination of his or her employment—to have retired.

Amendment of s. 37—Invalidity

12. Section 37 of the principal Act is amended—

- (a) by striking out subsection (1) and substituting the following subsection:

(1) If a contributor's employment terminates on account of invalidity and the Board is satisfied that the contributor's incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent, the contributor is entitled to a pension under this section.;

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

(3a) If the Board is not satisfied as to one or both of the matters referred to in subsection (1) the contributor is entitled to a superannuation payment that is the greater of the following:

- (a) twice the contributor's actual or attributed salary immediately before termination of employment (expressed as an annual amount);

or

- (b) an amount made up of two components—

- (i) an employee component (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of the contributor's contribution account;

and

- (ii) an employer component calculated as follows:

$$EC = (A \times 5.83 \times FS) + Pn \left[\frac{FS \times 0.85 \times M}{450} \right]$$

Where—

EC is the employer component

A is the lesser of the following:

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by—

(i) in the case of a contributor who was accepted under the repealed Act before reaching the age of 30 years—the number of months between the age of acceptance and the age of 55 years;

(ii) in any other case—300

FS is the contributor's actual or attributed salary immediately before termination of employment (expressed as an annual amount)

Pn is—

(a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;

(b) in any other case—the numerical value arrived at by expressing the contributor's employment while an active contributor during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

M is the number of months of the contributor's contribution period occurring after 31 December 1987.

(3b) A superannuation payment under subsection (3a)(a) will be made up of two components—

(a) an employee component (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of the contributor's contribution account;

and

(b) an employer component being the difference between the employee component and twice the contributor's actual or attributed salary immediately before termination of employment (expressed as an annual amount).

(3c) If—

(a) a contributor's employment terminates on account of invalidity;

(b) the Board is not satisfied as to one or both of the matters referred to in subsection (1);

and

- (c) the contributor makes an election under this subsection by written notice to the Board within three months after receiving written notice from the Board of its decision under paragraph (b),

the contributor will be taken—

- (d) if the contributor had not reached the age of 55 years at the termination of his or her employment—to have resigned and elected to preserve his or her accrued superannuation benefits;

or

- (e) if the contributor had reached that age at the termination of his or her employment—to have retired.

Amendment of s. 38—Death of contributor

13. Section 38 of the principal Act is amended by striking out subparagraph (ii) of subsection (4)(c) and substituting the following subparagraph:

- (ii) had been credited with a number of contribution points in respect of the period from the date of death to the age of retirement equivalent to—
- (A) in the case of a contributor who had been in full-time employment throughout the contribution period—the number of months between the end of the last complete month of the contribution period and the age of retirement (an incomplete month being counted as a whole month);
- (B) in the case of a contributor who had not been in full-time employment throughout the contribution period—the number that bears the same proportion to the number of months referred to in subparagraph (A) as the contributor's employment while an active contributor bears to full-time employment.

Amendment of s. 39—Resignation and preservation of benefits

14. Section 39 of the principal Act is amended—

- (a) by striking out from subsection (1) "60 years" and substituting "55 years";
- (b) by inserting after "31 December 1987" in the definition of "M" in subsection (1d)(a) "and before 1 July 1992";

(c) by striking out from subsection (1d)(b) "adjusted to reflect changes in the Consumer Price Index since the date of resignation" and substituting "together with interest from the date of resignation";

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

(1da) The amount of interest will be calculated and credited to the contributor at the end of each financial year and will be calculated on the amount referred to in subsection (1d) at the end of the first financial year and on the aggregate of that amount and the interest previously credited at the end of each subsequent financial year.

(1db) The rate of interest will be determined in respect of each financial year and—

(a) in respect of a completed financial year, will be determined by taking the average of the 10 year bond rates declared by the South Australian Government Financing Authority in respect of investments made on the first day of each calendar month of that year;

and

(b) in respect of the financial year in which the superannuation payment is made, will be determined in accordance with paragraph (a) on the basis of the 10 year bond rates declared on the first days of the calendar months of the financial year being days occurring before the superannuation payment is made and, if the payment is made on the first day of a month, including that day.;

(e) by striking out from subsection (4) "The employer component" and substituting "The amount referred to in subsection (3)(b)(i)";

(f) by striking out subsection (7) and substituting the following subsection:

(7) When calculating a pension under subsection (6) in respect of a contributor who was accepted as a contributor before the age of 30 years and before the commencement of the repealed Act, a factor in the relevant formula designated "A" will be replaced by a factor calculated as follows:

$$A_1 = A \times \frac{M}{NM} \times \frac{CP}{S}$$

Where—

A_1 is the substituted factor

A is the factor designated "A" in the relevant formula

M is—

- (a) in the case of a contributor whose age at the date on which the pension first became payable is 55 years or more but less than 60 years— $300+n$;
- (b) in all other cases—360

NM is the number of months between the contributor's age as at the date of acceptance as a contributor and the age of retirement

CP is the number of months in the contribution period to the date of resignation

S is the number of months in the contribution period after the date on which the contributor reached 30 years of age

n is the number of months between the day on which the contributor reached the age of 55 years and the day on which the pension first became payable;

(g) by striking out from subsection (8) "under subsection (7)" and substituting "in accordance with subsection (7)";

(h) by striking out "Benefits" from subsection (8c) and substituting "Subject to this Act, benefits";

(i) by inserting after subsection (9) the following subsection:

(10) Subsection (9)(a) does not apply to former employees of the Australian National Railways Commission who resigned to take up employment with the National Rail Corporation.

Amendment of s. 39a—Resignation or retirement pursuant to a voluntary separation package

15. Section 39a of the principal Act is amended—

(a) by inserting after "who resigns" in subsection (1) "or retires";

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

(2) Section 34 or 39 does not apply to a contributor to whom this section applies.;

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

(4) A contributor to whom this section applies who retires on or after reaching the age of 55 years is entitled to a lump sum that is equivalent to the amount that the contributor would have received if section 34 had applied to the contributor and he or she—

- (a) had been entitled to commute the whole of his or her retirement pension;
- and
- (b) had commuted the whole of the pension pursuant to the regulations.;
- (d) by inserting after "resigns" in subsection (5) "or retires".

Amendment of s. 43a—Percentage of pension, etc., to be charged against contribution account

16. Section 43a of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

- (2) For the purposes of subsection (1) a regulation may—
 - (a) prescribe different proportions of a pension in respect of different periods during which the pension is payable;
 - (b) prescribe a proportion or proportions of a pension in respect of part only of the period during which the pension is payable.

Amendment of s. 43b—Exclusion of benefits under awards, etc.

17. Section 43b of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) An award cannot be made or varied under the *Industrial Relations Act (S.A.) 1972* on or after 1 July 1992 under which a person who employs, or has employed, a contributor is required to make a payment or payments in respect of a period of employment to which this Act applies occurring before that date—

- (a) in the nature of superannuation;
- or
- (b) to a superannuation fund,

for the benefit of the contributor or for the benefit of some other person in respect of the contributor.

Amendment of s. 44—Review of the Board's decision -

18. Section 44 of the principal Act is amended—

- (a) by inserting after "Supreme Court" in subsection (1) "or to the Board";
- (b) by inserting after "On a review" in subsection (2) "by the Court,";
- (c) by inserting after subsection (3) the following subsection:

(4) On a review by the Board, the Board may substitute another decision for its original decision or confirm its original decision.

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

19. Section 45 of the principal Act is amended by inserting after subsection (5) the following subsection:

(6) Where part of a retrenchment pension has been commuted—

(a) the amount of the pension for the purposes of subsection (1)(d) will be the amount of the pension that the contributor would have been receiving if part of it had not been commuted;

and

(b) the amount (if any) by which the pension is to be reduced under subsection (1)(d) must be deducted from the part of the pension that has not been commuted.

Amendment of schedule 1—Transitional provisions

20. Schedule 1 of the principal Act is amended—

(a) by striking out the formula from subclause (1) of clause 6 and substituting the following formula:

$$LS = A \times \frac{2}{3} \times FS \times Z + P_n \left[FS \times \frac{0.85}{450} \times M \right];$$

(b) by striking out the definition of "FS" from subclause (1) of clause 6 and substituting the following definition:

FS is the contributor's actual or attributed salary immediately before termination of employment (expressed as an annual amount);

(c) by inserting after the definition of "Z" in subclause (1) of clause 6 the following definitions:

P_n is—

(a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;

(b) in any other case—the numerical value arrived at by expressing the contributor's employment while an active contributor during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

M is the number of months of the contributor's contribution period occurring

after 31 December 1987.;

(d) by striking out from subclause (1) of clause 15 "Parts IV and V" and substituting "Subject to clause 15a, Parts IV and V";

(e) by inserting after subclause (2) of clause 15 the following subclause:

(3) Where benefits under the Public Sector Employees Superannuation Scheme have been credited to an account maintained by the Board in the name of a contributor under section 28 of the *Superannuation (Benefit Scheme) Act 1992*, the contributor will be taken, for the purposes of subclause (1)(b), to have received those benefits.;

(f) by inserting after clause 15 the following clause:

Early retirement benefit for certain contributors

15a. (1) A contributor—

(a) who resigned from employment before 1 July 1992 after a contribution period of 120 months or more and preserved his or her accrued superannuation benefits under section 39;

and

(b) who, on or before reaching the age of retirement, requires the Board to commence paying a retirement pension,

is entitled to the following benefits:

(c) if the contributor was accepted as a contributor before the age of 30 years and before commencement of the repealed Act, the contributor is entitled to a pension in accordance with section 39(7) and (8) as in force immediately before the *Superannuation (Miscellaneous) Amendment Act 1994* came into operation;

(d) in any other case the contributor is entitled to a pension calculated as follows:

$$P = AFS \times A \times \left[\frac{45.5}{100} + \frac{21.1 \times n_2}{100 \times 60} \right]$$

Where—

P is the amount of the pension (expressed as an amount per fortnight)

AFS is the contributor's actual or attributed salary (expressed as an amount per fortnight) immediately before resignation adjusted to reflect changes in the Consumer Price Index between the date of resignation and the date on which the pension first became payable

A is the lesser of the following:

(a) unity;

(b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by—

(i) in the case of a contributor who was accepted as a contributor under the repealed Act before reaching the age of 30 years—the number of months between the date of acceptance and the date on which the pension first became payable;

(ii) in any other case— $300 + n_2$

n_2 is the number of months between the day on which the contributor reached the age of 55 years and the day on which the pension first became payable.

(2) For the purpose of applying section 39(7) as required by subclause (1)(c), the factor "NP" in the formula in section 39(7) is the amount of pension that would have been payable to the contributor if it were calculated under subclause (1)(d).

(3) A contributor referred to in clause 15(1) who is an old scheme contributor and who retires on or after reaching the age of 55 years but before the age of retirement is entitled to a pension calculated as follows:

$$P = FS \times A \times \left[\frac{45.5}{100} + \frac{21.1 \times n_2}{100 \times 60} \right]$$

Where—

P is the amount of the pension (expressed as an amount per fortnight)

FS is the contributor's actual or attributed salary (expressed as an amount per fortnight) immediately

before retirement

A is the lesser of the following:

(a) unity;

(b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by—

(i) in the case of a contributor who was accepted as a contributor under the repealed Act before reaching the age of 30 years—the number of months between the date of acceptance and the date on which the pension first became payable;

(ii) in any other case— $300 + n_2$

n_2 is the number of months between the day on which the contributor reached the age of 55 years and the day on which the pension first became payable.;

(g) by inserting the following clause after clause 16:

Payment of contributions while on leave without pay

17. Section 4(8) does not apply to a contributor who is on leave without pay when the *Superannuation (Miscellaneous) Amendment Act 1994* comes into operation in respect of that period of leave.

Amendment of schedule 1a—Provisions relating to other Public Sector Superannuation Schemes

21. Schedule 1a of the principal Act is amended—

(a) by inserting before paragraph (a) of clause 1(1) the following paragraph:

(aaa) declaring a group of employees who are members of a public sector superannuation scheme to be contributors for the purposes of this Act;;

(b) by striking out paragraphs (b) and (c) of clause 1(1) and substituting the following paragraphs:

(b) modifying the provisions of this Act in their application to the group of employees referred to in paragraph (aaa);

(c) providing for transitional matters upon the making of a declaration under paragraph (aaa).

Amendment of Superannuation (Benefit Scheme) Act 1992

22. The *Superannuation (Benefit Scheme) Act 1992* is amended by inserting after the present contents of section 19 (now to be designated as subsection (1)) the following subsections:

(2) An award cannot be made or varied under the *Industrial Relations Act (S.A.) 1972* on or after 1 July 1992 under which an employer is required to make a payment or payments in respect of a period of PSESS Scheme employment occurring before that date—

(a) in the nature of superannuation;

or

(b) to a superannuation fund,

for the benefit of a PSESS Scheme employee or for the benefit of some other person in respect of that employee.

(3) In subsection (2)—

“PSESS Scheme employee” means a person to whom benefits have been credited under the PSESS Scheme;

“PSESS Scheme employment”, in relation to an employee, means employment by virtue of which the employee is credited with benefits under the PSESS Scheme.

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

ROMA MITCHELL Governor