



SUPERANNUATION (MISCELLANEOUS) AMENDMENT ACT 1991

No. 67 of 1991

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ANNO QUADRAGESIMO

ELIZABETHAE II REGINAE

A.D. 1991

No. 67 of 1991

An Act to amend the Superannuation Act 1988.

[Assented to 5 December 1991]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Superannuation (Miscellaneous) Amendment Act 1991*.
- (2) The *Superannuation Act 1988* is referred to in this Act as “the principal Act”.

Commencement

2. (1) Section 15 will be taken to have come into operation on 17 January 1991.
- (2) The other provisions of this Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 28—Resignation and preservation

3. Section 28 of the principal Act is amended by striking out subsection (4) and substituting the following subsection:

(4) The employer component will be calculated as follows:

(a) where the payment is to the contributor—

$$EC = A \times 4.5 \times AFS;$$

(b) where the contributor dies and the payment is to the contributor's spouse or estate the lesser of the following:

(i) $EC = A \times 4.5 \times AFS;$

(ii) $EC = \left[1 - \frac{X}{420} \right] \times 4.5 \times AFS$

Where (in both paragraphs (a) and (b))—

- 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 420
- AFS is the contributor's actual or attributed salary as at the date of resignation (expressed as an annual amount) adjusted to reflect changes in the Consumer Price Index since the date of resignation
- X is—
- (a) in relation to a contributor who has died at or above the age of 55 years but under the age of 60 years—the number of months by which the contributor's age fell short of 60 years;
 - (b) in any other case—zero.

Amendment of s. 31—Termination of employment on invalidity

4. Section 31 of the principal Act is amended by striking out paragraph (b) of the definition of "A" in subsection (2) and substituting the following paragraph:

(b) whichever of the following is applicable in the circumstances of the case:

- (i) if the contributor is not receiving, and is not entitled to receive, weekly workers compensation payments in relation to the invalidity and was an active contributor immediately before termination of the employment—the numerical value obtained by dividing the number of the contributor's extrapolated contribution points by 360;
- (ii) if the contributor is receiving, or is entitled to receive, weekly workers compensation payments in relation to the invalidity based on partial incapacity for work and was an active contributor immediately before termination of employment, the numerical value obtained from the following formula:

$$n = \frac{acp + (1 - x)(ecp - acp)}{360}$$

Where—

- n is the numerical value
- acp is the number of the contributor's accrued contribution points
- ecp is the number of the contributor's extrapolated contribution points
- x is the extent of the contributor's incapacity for work expressed as a proportion of total incapacity.;

- (iii) in any other case—the numerical value obtained by dividing the number of the contributor's accrued contribution points by 360.

Amendment of s. 32—Death of contributor**5. Section 32 of the principal Act is amended—**

(a) by striking out paragraph (b) of subsection (1) and substituting the following paragraphs:

(b) if the contributor is survived by a spouse and an eligible child or eligible children—a pension will be paid to each eligible child throughout any period of dependency;

(ba) if the contributor is not survived by a spouse but is survived by an eligible child or eligible children—a lump sum will be paid to the contributor's estate and a pension will be paid to each eligible child throughout any period of dependency;;

(b) by striking out paragraph (b) of the definition of "A" in subsection (2) (b) (ii) and substituting the following paragraph:

(b) whichever of the following is applicable in the circumstances of the case:

(i) if the spouse is not receiving, and is not entitled to receive, weekly workers compensation payments in relation to the contributor's death and the contributor was an active contributor immediately before the contributor's death—the numerical value obtained by dividing the number of the contributor's extrapolated contribution points by 420;

(ii) if the spouse is receiving, or is entitled to receive, weekly workers compensation payments in relation to the contributor's death based on partial dependency and the contributor was an active contributor immediately before his or her death—the numerical value obtained from the following formula:

$$n = \frac{acp + (1 - x)(ecp - acp)}{420}$$

Where—

n is the numerical value

acp is the number of the contributor's accrued contribution points

ecp is the number of the contributor's extrapolated contribution points

x is the extent of the spouse's dependency expressed as a proportion of full dependency.;

(iii) in any other case—the numerical value obtained by dividing the number of the contributor's accrued contribution points by 420.

(c) by striking out paragraph (b) of the definition of "A" in subsection (3) (b) and substituting the following paragraph:

(b) (i) where the contributor was an active contributor immediately before the contributor's death—the numerical value obtained by dividing the number of the contributor's extrapolated contribution points by 420;

(ii) where the contributor was not an active contributor immediately before the contributor's death—the numerical value obtained by dividing the number of the contributor's accrued contribution points by 420;

(d) by inserting after subsection (3) of the following subsection:

(3a) The lump sum to be paid to the estate of a contributor who is not survived by a spouse but is survived by an eligible child or eligible children will be charged against the contributor's contribution account to the extent of the amount standing to the credit of the account and will be—

(a) where the contributor was an active contributor immediately before his or her death—the greater of the following amounts:

(i) an amount equivalent to the amount standing to the credit of the contributor's contribution account;

(ii) an amount equivalent to twice the amount of the contributor's actual or attributed salary immediately before the contributor's death (expressed as an annual amount);

(b) where the contributor was not an active contributor immediately before his or her death—an amount equivalent to the amount standing to the credit of the contributor's contribution account.

and

(e) by striking out paragraph (b) from subsection (5) and substituting the following paragraph:

(b) an employer component that is the lesser of the following:

(i) $EC = A \times 4.5 \times FS$

(ii) $EC = \left[1 - \frac{X}{420} \right] \times 4.5 \times FS$

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 420

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

X is—

(a) in relation to a contributor who was at death of or above the age of 55 years but under the age of 60 years—the number of months by which the contributor's age fell short of 60 years;

(b) in any other case—zero.

Amendment of s. 35—Retrenchment

6. Section 35 of the principal Act is amended—

(a) by striking out from paragraph (b) of the definition of "A" in subsection (2) "extrapolated superannuation points" and substituting "contribution points";

and

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

(2a) In subsection (2)—

“contribution points” means—

- (a) in the case of a contributor who was an active contributor immediately before retrenchment—extrapolated contribution points;
- (b) in the case of a contributor who was not an active contributor immediately before retrenchment—accrued contribution points.

Amendment of s. 37—Invalidity pension

7. Section 37 of the principal Act is amended—

(a) by striking out from paragraph (b) of the definition of “A” in subsection (2) “extrapolated superannuation points” and substituting “contribution points”;

and

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

(2a) In subsection (2)—

“contribution points” means—

- (a) in the case of a contributor who was an active contributor immediately before termination of employment—extrapolated contribution points;
- (b) in the case of a contributor who was not an active contributor immediately before termination of employment—accrued contribution points.

Amendment of s. 38—Death of contributor

8. Section 38 of the principal Act is amended—

(a) by striking out paragraph (b) from subsection (1) and the word “and” immediately before that paragraph and substituting the following paragraphs:

(b) if the contributor is survived by a spouse and an eligible child or eligible children—each eligible child is entitled to a pension in accordance with subsection (2);

(c) if the contributor is not survived by a spouse but is survived by an eligible child or eligible children—the contributor’s estate is entitled to a lump sum in accordance with subsection (6) and each eligible child is entitled to a pension in accordance with subsection (2);

and

(d) if the contributor is not survived by a spouse or an eligible child—the contributor’s estate is entitled to a lump sum in accordance with subsection (7).;

(b) by striking out from paragraph (c) of subsection (4) “where the contributor’s employment terminated on his or her death and the contributor had not reached the age of retirement on the date of death” and substituting “where the contributor’s employment terminated on his or her death, the contributor had not reached the age of retirement on the date of death and the contributor was an active contributor immediately before the date of death”;

(c) by inserting after paragraph (c) of subsection (4) the following paragraph:

- (d) where the contributor's employment terminated on his or her death, the contributor had not reached the age of retirement on the date of death and the contributor was not an active contributor immediately before the date of death—a reference to the amount of the retirement pension to which the contributor would have been entitled if he or she had reached the age of retirement on the date of death and had retired on that date.;

and

- (d) by inserting the following subsections after subsection (5):

(6) The lump sum to be paid to the estate of a contributor who is not survived by a spouse but is survived by an eligible child or eligible children will be charged against the contributor's contribution account to the extent of the amount standing to the credit of the account and will be—

- (a) where the contributor's employment was terminated by the contributor's death and the contributor was an active contributor immediately before his or her death—the greater of the following amounts:

- (i) an amount equivalent to the amount standing to the credit of the contributor's contribution account;
- (ii) an amount equivalent to twice the amount of the contributor's actual or attributed salary immediately before the contributor's death (expressed as an annual amount).;

- (b) in any other case—an amount equivalent to the amount standing to the credit of the contributor's contribution account.

(7) Where a contributor dies and is not survived by a spouse or an eligible child a lump sum will be paid to the estate of the contributor 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 that is the lesser of the following:

$$(i) EC = A \times 4.5 \times FS$$

$$(ii) EC = \left[1 - \frac{X}{360} \right] 4.5 \times FS$$

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 the contributor's death (expressed as an annual amount)

X is—

(a) in relation to a contributor who was at death of or above the age of 55 years but under the age of retirement—the number of months by which the contributor's age fell short of the age of retirement;

(b) in any other case—zero.

Amendment of s. 39—Resignation and preservation of benefits

9. Section 39 of the principal Act is amended—

(a) by striking out paragraph (d) of subsection (5) and substituting the following paragraphs:

(d) if the contributor dies and is survived by a spouse and an eligible child or eligible children, a pension will be paid to each eligible child;

(e) if the contributor dies and is not survived by a spouse but is survived by an eligible child or eligible children, a lump sum will be paid to the contributor's estate and a pension will be paid to each eligible child;

(f) if the contributor dies and is not survived by a spouse or an eligible child a lump sum will be paid to the contributor's estate.;

and

(b) by inserting after subsection (8) the following subsections:

(8a) The lump sum to be paid to the estate of a contributor who is not survived by a spouse but is survived by an eligible child or eligible children will be the amount standing to the credit of the contributor's contribution account and will be charged against that account.

(8b) The lump sum to be paid to the estate of a contributor who is not survived by a spouse or an eligible child 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 that is the lesser of the following:

$$(i) EC = A \times 4.5 \times AFS$$

$$(ii) EC = \left[1 - \frac{X}{360} \right] 4.5 \times AFS$$

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

AFS is the contributor's actual or attributed salary as at the date of resignation (expressed as an annual amount) adjusted to reflect changes in the Consumer Price Index from the date of resignation until the contributor's death

X is—

(a) in relation to a contributor who was at death of or above the age of 55 years but under the age of retirement—the number of months by which the contributor's age fell short of the age of retirement;

(b) in any other case—zero.

Amendment of s. 40—Commutation of pension

10. Section 40 of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) The amount of a commutation factor fixed under subsection (3) may reflect the loss of the benefit provided by section 38 (4) (a) or section 47 (3) as a result of the commutation of the pension or a proportion of the pension.

Substitution of s. 43

11. Section 43 of the principal Act is repealed and the following section is substituted:

Notional extension of period of employment

43. Where—

(a) a contributor becomes entitled, on termination of his or her employment, to a pension;

and

(b) the contributor was, immediately before termination of employment, entitled to a period of recreation leave and is paid, or entitled to, a lump sum in lieu of that leave,

the contributor's employment will be taken to have been extended for a period equivalent to the period of recreation leave and the contributor is liable for contributions in respect of that period and is entitled to benefits at the end of that period as though he or she had remained in employment and had received the lump sum as salary during that period.

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

12. Section 45 of the principal Act is amended by striking out subsection (4) and substituting the following subsection:

(4) Where a right to weekly workers compensation payments has been surrendered in whole or in part by commutation or by agreement, the person who would have been entitled to those payments if the right to them had not been surrendered will be taken, for the purposes of this section, to be receiving them.

Regulations

13. Section 59 of the principal Act is amended by inserting after paragraph (a) of subsection (1a) the following paragraph:

- (b) where a contributor was previously a contributor to another superannuation scheme and money is paid in respect of the contributor from that other scheme to the scheme established by this Act—modify the provisions of this Act in their application to the contributor in order to comply with conditions under which the payment is made.

Amendment of schedule 1

14. Schedule 1 of the principal Act is amended by striking out from subclause (4) of clause 2 “or neglected unit maintenance payments” and substituting “, neglected unit maintenance payments or payments for the purchase of contribution months”.

Amendment of schedule 1a

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

- (a) by striking out paragraph (b) of clause 1 (2) and substituting the following paragraph:

(b) the employer is the State Transport Authority, the Commissioner of Highways or the South Australian Health Commission or the employer and the Board have entered into an arrangement under section 5.

- (b) by striking out from clause 2 “Where tax is payable on the income of a fund established for the purposes of a public sector superannuation scheme pursuant to a law of the Commonwealth” and substituting “Where, pursuant to a law of the Commonwealth, tax is payable on the income of a fund established for the purposes of a public sector superannuation scheme”;

and

- (c) by inserting after the present contents of clause 2 as amended by this section (now to be designated as subclause (1)) the following subclause:

(2) A regulation whenever made under subclause (1) will, unless otherwise provided in the regulation, have effect from the time at which the tax referred to in subclause (1) first became payable.

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

ROMA MITCHELL Governor