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# ELIZABETHAE II REGINAE

A.D. 1990

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No. 78 of 1990

**An Act to amend the Superannuation Act, 1988.**

[Assented to 20 December 1990]

The Parliament of South Australia enacts as follows:

## Short title

1. (1) This Act may be cited as the *Superannuation Act Amendment Act, 1990*.
- (2) The *Superannuation Act, 1988*, is referred to in this Act as “the principal Act”.

## Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

## Accounts and audit

3. Section 20 of the principal Act is amended—
  - (a) by inserting after “the Fund” in subsection (1) “and must, in respect of each financial year, prepare financial statements in relation to the Fund in a form approved by the Treasurer”;
  - (b) by inserting after “The accounts” in subsection (2) “and financial statements”;
  - and
  - (c) by inserting after “the Fund” in subsection (3) “and the financial statements”.

## Reports

4. Section 21 of the principal Act is amended by striking out paragraphs (a) and (b) of subsection (4) and the word “and” between those paragraphs and substituting the following paragraphs:

- (a) the cost of the Scheme to the Government at the time of making the report and in the foreseeable future;
- and
- (b) the ability of the Fund to meet its current and future liabilities;

## Entry of contributors to the scheme

5. Section 22 of the principal Act is amended by striking out from paragraph (a) of subsection (6) “is a member of” and substituting “is a contributor to”.

**Contribution rates**

6. Section 23 of the principal Act is amended by inserting after “the commencement of the financial year” in paragraph (a) of subsection (4) “or, if the contributor’s hours of employment have increased or decreased between that date and the commencement of the financial year, on the basis of the contributor’s salary following the last such increase or decrease in the hours of employment;”.

**Contribution points**

7. Section 24 of the principal Act is amended—

(a) by inserting after “and the age of retirement” in subparagraph (i) of paragraph (b) of subsection (4) “(an incomplete month being counted as a whole month)”;

and

(b) by inserting after “and the age of retirement” in subparagraph (ii) of paragraph (b) of subsection (4) “(an incomplete month being counted as a whole month)”.

**Attribution of additional contribution points and contribution months**

8. Section 25 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) The Minister must provide the Board with details of the attribution of contribution points or months under subsection (1) and the Board must include those details in its report to the Minister under Division IV of Part II.

**Resignation and preservation**

9. Section 28 of the principal Act is amended by inserting after subsection (1) the following subsections:

(1a) A contributor who fails to inform the Board in writing of his or her election under subsection (1) within three months after resignation will be taken to have elected to preserve his or her accrued superannuation benefits.

(1b) If the Board is of the opinion that the limitation period referred to in subsection (1a) would unfairly prejudice a contributor, the Board may extend the period as it applies to the contributor.

**Insertion of s. 30a**

10. The following section is inserted after section 30 of the principal Act:

**Rehabilitation etc., of disability pensioner**

30a. (1) Where, in the opinion of the Board, an attempt should be made to rehabilitate a disability pensioner or to find alternative employment for such a pensioner, the Board may serve notice on the pensioner’s employer requiring the employer to do one or both of the following—

(a) take measures specified in the notice to rehabilitate the pensioner;

(b) take measures specified in the notice to find alternative employment for the pensioner.

(2) A notice under subsection (1) may require the employer to periodically report in writing to the Board on the progress it is making in complying with the requirements of the notice.

(3) If an employer does not comply with a notice under subsection (1) to the satisfaction of the Board, the Board may, by further notice served on the employer, require the employer to reimburse the Treasurer for the amount of the disability pension paid to the pensioner from the date of service of that notice until the Board informs

the employer in writing that it is satisfied with the employer's compliance with the original notice.

(4) The amount of the pension referred to in subsection (3) is a debt due by the employer to the Treasurer.

### **Termination of employment on invalidity**

#### **11. Section 31 of the principal Act is amended—**

(a) by striking out from paragraph (b) of the definition of "A" in subsection (2) "420" wherever occurring and substituting, in each case, "360";

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

(2a) When determining the number of a contributor's extrapolated superannuation points for the purposes of calculating the employer component under subsection (2), the number of months' difference between the contributor's age as at the entitlement day and the age of 55 years will be used (and for that purpose an incomplete month will be counted as a whole month);

and

(c) by striking out subsections (3) and (4) and substituting the following subsections:

(3) A contributor's employment will be taken to have terminated on account of invalidity if and only if—

(a) the employer (acting with the written approval of the Board) terminates the employment on the ground of the contributor's invalidity;

(b) —

(i) the employer or the contributor satisfies the Board (before termination of employment) that the contributor is incapacitated for work in the contributor's present position and that there is no other position, carrying a salary of at least 80 per cent of the salary applicable to the contributor's present position, which the contributor could reasonably be expected to take, available to the contributor;

(ii) the contributor has been on sick leave, weekly payments of workers compensation, or disability pension for at least 12 months or periods aggregating at least 12 months on account of the invalidity;

and

(iii) after notice has been given to the Board as required by the regulations, the employer terminates the employment or the contributor resigns from employment.

(4) Notwithstanding any other Act or law to the contrary an employer cannot terminate the employment of a contributor on the ground of invalidity unless the requirements of subsection (3) (a) or (b) have been satisfied.

### **Insertion of s. 36a**

12. The following section is inserted after section 36 of the principal Act:

**Rehabilitation etc., of disability pensioner**

36a. (1) Where, in the opinion of the Board, an attempt should be made to rehabilitate a disability pensioner or to find alternative employment for such a pensioner, the Board may serve notice on the pensioner's employer requiring the employer to do one or both of the following—

- (a) take measures specified in the notice to rehabilitate the pensioner;
- (b) take measures specified in the notice to find alternative employment for the pensioner.

(2) A notice under subsection (1) may require the employer to periodically report in writing to the Board on the progress it is making in complying with the requirements of the notice.

(3) If an employer does not comply with a notice under subsection (1) to the satisfaction of the Board, the Board may, by further notice served on the employer, require the employer to reimburse the Treasurer for the amount of the disability pension paid to the pensioner from the date of service of that notice until the Board informs the employer in writing that it is satisfied with the employer's compliance with the original notice.

(4) The amount of the pension referred to in subsection (3) is a debt due by the employer to the Treasurer and the prescribed proportion of that amount must not be charged against the contributor's contribution account under section 43a.

**Invalidity pension**

13. Section 37 of the principal Act is amended by striking out subsections (4) and (5) and substituting the following subsections:

(4) A contributor's employment will be taken to have terminated on account of invalidity if and only if—

- (a) the employer (acting with the written approval of the Board) terminates the employment on the ground of the contributor's invalidity;

or

- (b) —

- (i) the employer or the contributor satisfies the Board (before termination of employment) that the contributor is incapacitated for work in the contributor's present position and that there is no other position, carrying a salary of at least 80 per cent of the salary applicable to the contributor's present position, which the contributor could reasonably be expected to take, available to the contributor;

- (ii) the contributor has been on sick leave, weekly payments of workers compensation, or disability pension for at least 12 months or periods aggregating at least 12 months on account of the invalidity;

and

- (iii) after notice has been given to the Board as required by the regulations, the employer terminates the employment or the contributor resigns from employment.

(5) Notwithstanding any other Act or law to the contrary an employer cannot terminate the employment of a contributor on the ground of invalidity unless the requirements of subsection (4) (a) or (b) have been satisfied.

**Resignation and preservation of benefits****14. Section 39 of the principal Act is amended—**

(a) by striking out from paragraph (b) of subsection (1) “in the Fund”;

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

(1a) A contributor who fails to inform the Board in writing of his or her election under subsection (1) within three months after resignation will be taken to have elected to preserve his or her accrued superannuation benefits.

(1b) If the Board is of the opinion that the limitation period referred to in subsection (1a) would unfairly prejudice a contributor, the Board may extend the period as it applies to the contributor.;

and

(c) by striking out from subsection (2) “in the Fund”.

**Date from which pension payments commence****15. Section 43 of the principal Act is amended—**

(a) by inserting “(and cannot be commuted)” after “the pension will not commence”;

and

(b) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsection:

(2) A contributor referred to in subsection (1) will be taken to have continued in employment during the period of recreation leave referred to in that subsection and the contributor must make a contribution to the Scheme in respect of that period equivalent to the aggregate of the amounts that he or she would have contributed if he or she had remained in employment.

**Adjustment of pensions**

**16. Section 47 of the principal Act is amended by inserting after “the percentage variation”, in subsection (1) “(rounded to two decimal places)”.**

**Regulations**

**17. Section 59 of the principal Act is amended by inserting after subsection (1) the following subsection:**

(1a) In particular a regulation may—

(a) prescribe the salary, or an amount to be taken to be the salary, of a contributor for the purpose of determining contributions or benefits in relation to the contributor notwithstanding any provision to the contrary in this Act.

**Amendment of schedule 1**

**18. Schedule 1 to the principal Act is amended by inserting after clause 3 the following clause:**

**Starting balance for certain new scheme contributors**

3a (1) The contribution account of a new scheme contributor who was accepted as a contributor before the commencement of this Act will be credited with the following amounts:

(a) the aggregate amount of contributions made by the contributor before the commencement of this Act;

(b) an amount determined by the Board to be the return attributable to the investment of those contributions before the commencement of this Act;

and

(c) where the amount referred to in paragraph (b) was not credited to the contributor's contribution account on 1 July, 1988, an amount determined by the Board to be the return that would have been attributable to the investment of that amount if it had been credited to the account on 1 July, 1988.

(2) The amount to be credited to a contribution account under subclause (1) (b) and (c) must be debited against the unallocated portion of the old scheme division of the Fund.

### Insertion of schedule 1a

19. The following schedule is inserted after schedule 1 of the principal Act:

#### SCHEDULE 1a

##### *Provisions relating to other Public Sector Superannuation Schemes*

1. (1) Subject to subclause (2), the Governor may make regulations—

- (a) transferring all the assets and liabilities of a fund established for the purposes of a public sector superannuation scheme to the South Australian Superannuation Fund or transferring part of those assets and liabilities to that Fund and the remainder to an account to be kept at the Treasury pursuant to an arrangement under section 5;
- (b) modifying the provisions of this Act in their application to a group of employees who were members of a public sector superannuation scheme immediately before being accepted as contributors to the Scheme established by this Act (the State Scheme);
- (c) providing for transitional matters upon the acceptance of a group of employees referred to in paragraph (b) as contributors to the State Scheme.

(2) The Governor must not make a regulation under subclause (1) unless—

- (a) the majority of the group of employees affected by the regulation and their employer have given their consent to the proposed regulation;

and

- (b) the employer and the Board have entered into an arrangement under section 5.

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, the Governor may, at the request of the trustees of the fund or the employer in relation to whom the scheme was established, make regulations reducing the benefits payable to, or in relation to, members of the scheme to offset the amount of the tax payable and making consequential alterations to any trust deed or other document establishing the scheme.

3. In this schedule—

“public sector superannuation scheme” means a superannuation scheme established for the benefit of employees of an instrumentality or agency of the Crown.

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

D. B. DUNSTAN, Governor