

Superannuation (Public Sector) Act 1992

No. 87/1992

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Victoria

No. 87 of 1992

Superannuation (Public Sector) Act 1992

[Assented to 26 November 1992]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The purpose of this Act is to make further provision for superannuation in the public sector and for that purpose to amend—

- (a) the **State Superannuation Act 1988**; and
- (b) the **Transport Superannuation Act 1988**; and
- (c) the **State Employees Retirement Benefits Act 1979**.

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2. Commencement

- (1) Part 1 comes into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act come into operation on a day or days to be proclaimed.

**PART 2—EXECUTIVE OFFICERS UNDER
CONTRACT—SUPERANNUATION PROVISIONS**

3. Definitions

- (1) In this Part—

“**administrators**” in relation to a statutory superannuation scheme means the governing body by whatever name called which administers that scheme;

“**contract officer**” means an executive officer whose contract of employment provides that he or she continues to be a member of a statutory superannuation scheme;

“**employer**” means employer within the meaning of section 50 (1) of the **Public Sector Management Act 1992**;

“**occupational superannuation standards**” means the occupational superannuation standards specified or prescribed by or under the Occupational Superannuation Standards Act 1987 of the Commonwealth and as amended and in force from time to time;

“**statutory superannuation scheme**” means—

(a) a superannuation scheme under—

- (i) the **State Superannuation Act 1988**; or
- (ii) the **Transport Superannuation Act 1988**; or
- (iii) the **State Employees Retirement Benefits Act 1979**; or

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- (b) a scheme or fund that is specified in accordance with sub-section (2).
- (2) An Order under section 54 (1) (b) or 89 of the **Public Sector Management Act 1992** that relates to a declared authority may specify—
- (a) a scheme or fund established by or under an Act which provides superannuation benefits to be a statutory superannuation scheme for the purposes of this Part in relation to that declared authority; and
 - (b) the provisions of this Part that apply to that declared authority in relation to that scheme or fund.

4. Relationship of this Part to Public Sector Management

This Part must be read as one with the **Public Sector Management Act 1992** and as if this Act formed part of that Act.

5. Part to prevail over inconsistent laws

If a provision of this Part is inconsistent with a provision of another Act or a provision of an instrument made under another Act or a provision of a statutory superannuation scheme, the provision of this Part prevails but must not be read so as to be inconsistent with the occupational superannuation standards.

6. Executive officers appointed from outside the public sector

- (1) If a person other than a member of staff of the public service enters into a contract of employment as an executive officer, that person is not entitled to become a member of a statutory superannuation scheme.
- (2) Sub-section (1) does not affect any deferred pension or benefit which that person may have under a statutory superannuation scheme which existed before the person enters into that contract.

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7. Exemption from scheme for existing officers

- (1) Subject to section 6, a contract of employment of an executive officer under Part 4 of the **Public Sector Management Act 1992** must provide—
 - (a) that the officer ceases to be a member of a named statutory superannuation scheme; or
 - (b) that the officer continues to be a member of a named statutory superannuation scheme.
- (2) The officer must elect which of these terms must be included in the contract.
- (3) Sub-section (1) (a) does not affect any deferred pension or benefit which a person may have under that statutory superannuation scheme.
- (4) A contract of employment that provides that an executive officer ceases to be a member of a statutory superannuation scheme must also provide for membership of an alternative superannuation scheme which must be a complying fund in accordance with the occupational superannuation standards and to which employer contributions must not be less than the minimum requirement under the Superannuation Guarantee Charge Act 1992 of the Commonwealth.
- (5) The employer of an executive officer whose contract of employment provides that he or she ceases to be a member of a statutory superannuation scheme must certify to the administrator of the scheme that the officer is an exempt officer.
- (6) The employer of an officer in respect of whom a certificate has been issued under sub-section (5) must by notice in writing to the administrator of the scheme, revoke the certificate if —
 - (a) the officer ceases to be an executive officer; or
 - (b) the officer's contract of employment provides that he or she is to be a member of a statutory superannuation scheme.

- (7) A certificate under sub-section (5) or a notice under sub-section (6) is binding on the administrators of a statutory superannuation scheme.

8. Officers with a right of return to public sector

If the contract of employment of an executive officer provides that the officer ceases to be a member of a statutory superannuation scheme and includes a right of return to the public sector and the officer exercises that right of return in accordance with the contract—

- (a) the officer's entitlement to any deferred pension or benefit is not affected; and
- (b) he or she must contribute to an applicable statutory superannuation scheme as if he or she were a new member and is not entitled to claim any further benefit in respect of his or her previous service; and
- (c) for the purpose of joining that statutory superannuation scheme the officer must be taken to have the same medical classification as he or she had immediately before ceasing to be a member of the first-mentioned statutory superannuation scheme.

9. Expiry of contract of employment

- (1) For the purposes only of a statutory superannuation scheme, a contract officer whose contract of employment does not include a right of return to the public sector—
- (a) must be taken to have been retrenched on the expiry of that contract if a new contract of employment has not been offered to the officer or the officer is only offered a new contract of employment with terms and conditions that are less favourable to the officer than those of the expired contract and the officer has not accepted the offer; and

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- (b) must be taken to have resigned on the expiry of that contract if a new contract of employment has been offered to the officer (with terms and conditions that are no less favourable to the officer than those of the expired contract) and the officer has not accepted the offer.
- (2) For the purposes only of a statutory superannuation scheme, a contract officer whose contract of employment includes a right of return to the public sector—
- (a) must be taken to have been retrenched on the expiry of that contract if, before that expiry—
 - (i) a new contract of employment has not been offered to the officer or the officer is only offered a new contract of employment with terms and conditions that are less favourable to the officer than those of the expired contract and the officer has not accepted the offer; and
 - (ii) the officer has not exercised the right of return; and
 - (b) must be taken to have resigned on the expiry of that contract of employment if, before that expiry—
 - (i) a new contract of employment has been offered to the officer (with terms and conditions that are no less favourable to the officer than those of the expired contract) and the officer has not accepted the offer; and
 - (ii) the officer has not exercised the right of return.

10. *Termination of contract during term*

- (1) For the purposes only of a statutory superannuation scheme, a contract officer must be taken to have resigned on the termination by the executive officer of his or her contract of employment during its term if—

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- (a) the contract does not include a right of return to the public sector; and
 - (b) a new contract is not entered into on or before that termination.
- (2) For the purposes only of a statutory superannuation scheme, a contract officer must be taken to have been retrenched on the termination by the executive officer's employer of the officer's contract of employment during its term if—
- (a) the contract does not include a right of return to the public sector; and
 - (b) a new contract is not entered into on or before that termination.
- (3) For the purposes only of a statutory superannuation scheme, if —
- (a) a contract officer's contract of employment includes a right of return to the public sector; and
 - (b) the contract is terminated during its term by the officer ; and
 - (c) a new contract is not entered into on or before that termination; and
 - (d) the right of return is not exercised in accordance with the contract —

the officer must be taken to have resigned on not exercising that right of return.

- (4) For the purposes only of a statutory superannuation scheme, if —
- (a) a contract officer's contract of employment includes a right of return to the public sector; and
 - (b) the contract is terminated during its term by the employer; and
 - (c) a new contract is not entered into on or before that termination; and
 - (d) the right of return is not exercised in accordance with the contract—

the officer must be taken to have been retrenched on not exercising that right of return.

11. *Notice to scheme administrator*

The employer of a contract officer or former contract officer who must be taken by this Part to have resigned or been retrenched must give notice in writing of the resignation or retrenchment to the administrator of the applicable statutory superannuation scheme.

12. *Calculation of contributions and benefits for contract officers*

- (1) For the purpose of calculating contributions and benefits under any statutory superannuation scheme in respect of a contract officer the officer's salary for the purpose of that scheme must be taken to be the amount from time to time specified for that purpose in the contract of employment.
- (2) Subject to sub-section (3), the amount specified in the contract —
 - (a) must not be less than the officer's salary for the purposes of that scheme immediately before entering into that contract; and
 - (b) must not be more than 70 per cent of the officer's remuneration package.
- (3) If the amount of the officer's salary for the purposes of that scheme immediately before entering into the contract was more than the amount equivalent to 70 per cent of the officer's remuneration package under that contract, the officer must elect in writing which of those amounts is to be the officer's salary for the purpose of that scheme under the contract.
- (4) The employer of a contract officer must give notice in writing to the administrator of that scheme of the officer's salary for the purposes of that scheme.

13. *Application to declared authorities*

If under an Order referred to in section 3 (2), section 6 applies to a declared authority, a reference in section 6 to a member of staff of the public service must be taken to

be a reference to a member of staff of the declared authority.

14. *Salary in relation to declared authority*

- (1) In relation to a declared authority to which this section applies, if a contract officer's salary for the purposes of a statutory superannuation scheme specified in relation to that declared authority in an Order referred to in section 3 (2), is reduced then, unless the officer elects in writing that the reduced salary applies for superannuation purposes, the officer's salary for the purposes of that scheme must be taken to mean the greater of —
 - (a) the salary of the officer immediately before the reduction; or
 - (b) the officer's actual salary.
- (2) The officer's employer must give notice in writing to the administrator of the applicable statutory superannuation scheme of that agreement.

PART 3—AMENDMENTS TO SUPERANNUATION ACTS

15. *Definitions*

- (1) In section 3 (1) of the **State Superannuation Act 1988**—
 - (a) after the definition of “**child**” insert—

“**contract officer**” means an executive officer within the meaning of section 4 (1) of the **Public Sector Management Act 1992** employed under a contract of employment under that Act, other than an exempt officer;”;
 - (b) after the definition of “**employing authority**” insert—

“**exempt officer**” means an executive officer within the meaning of section 4 (1) of the **Public Sector Management Act 1992**

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employed under a contract of employment under that Act during any period that a certificate in writing issued under section 7 (5) of the **Superannuation (Public Sector) Act 1992** by the employing authority to the Board is in force;’;

- (c) in the definition of “**officer**” after “ other than” insert “an exempt officer or”;
- (d) for the definition of “**retrenchment**” substitute—

“**retrenchment**” means the termination of the employment or service of an officer who has not attained the minimum age for retirement and in respect of whom the employing authority certifies in writing to the Board that the officer has been retrenched for the purposes of this Act;’.

- (2) In section 3 (2) of the **State Superannuation Act 1988** insert—

- (a) in paragraph (a) for “and the Board agrees that the reduction should not be taken into account” substitute “then, unless the officer agrees in writing that the reduced salary applies,”;

- (b) after paragraph (b) insert—

“; or

- (c) in the case of a contract officer, salary means the salary for superannuation purposes in accordance with section 12 of the **Superannuation (Public Sector) Act 1992** and notified in writing by the employing authority to the Board.”.

16. New section 61A—Exempt officers

After section 61 of the **State Superannuation Act 1988** insert—

“**61A. Exempt officers**

- (1) A revised scheme member who becomes an exempt officer is entitled up

to the date of becoming an exempt officer to a deferred pension calculated in accordance with the formula:

$$N \times \frac{YA}{YP} \times C \times F$$

Where—

N, YA and YP have the same meanings as in section 33 (1);

C means the contribution factor in accordance with section 46;

F has the same meaning as in section 62 (2).

- (2) A new scheme member who becomes an exempt officer is entitled up to the date of becoming an exempt officer to a deferred lump sum equal to his or her accrued retirement benefit.
- (3) A pension or benefit under this section—
 - (a) must be indexed in accordance with section 91; and
 - (b) must be preserved and is payable in accordance with the occupational superannuation standards.”.

17. Definitions

- (1) In section 3 (1) of the **State Employees Retirement Benefits Act 1979**—

- (a) after the definition of “**adjusted final salary**” insert—

- “**contract officer**” means an executive officer within the meaning of section 4 (1) of the **Public Sector Management Act 1992** employed under a contract of employment

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under that Act, other than an exempt officer;’;

- (b) in the definition of “employee” at the end of the definition insert—

“—

but does not include an exempt officer.”;

- (c) after the definition of “employer” insert—

“**“exempt officer”** means an executive officer within the meaning of section 4 (1) of the **Public Sector Management Act 1992** employed under a contract of employment under that Act, during any period that a certificate in writing issued under section 7 (5) of the **Superannuation (Public Sector) Act 1992** by the executive officer’s employer to the Board is in force;’.

- (2) After section 3 (2) of the **State Employees Retirement Benefits Act 1979** insert—

- “(3) For the purposes of the definition of “salary” in sub-section (1), in the case of a contract officer, salary means the salary for superannuation purposes in accordance with section 12 of the **Superannuation (Public Sector) Act 1992** and notified in writing by the employer to the Board.

- (4) For the purposes of the definition of “salary” in sub-section (1), if a member’s salary is reduced then, unless the officer agrees in writing that the reduced salary applies, salary means the greater of—

- (a) the salary of the member immediately before the reduction; or

- (b) the actual salary.”.

18. Retrenchment

For section 34 of the **State Employees Retirement Benefits Act 1979** substitute—

34. Retrenchment

For the purposes of this Act—

“**retrenchment**” means the termination of the service of a member who has not attained the age of 55 years in respect of whom the member’s employer certifies in writing to the Board that the member has been retrenched for the purposes of this Act.’.

19. New section 34AB—Exempt officers

After section 34A of the **State Employees Retirement Benefits Act 1979** insert—

“34AB. Exempt officers

- (1) A contributor who becomes an exempt officer is entitled up to the date of becoming an exempt officer to a deferred retirement benefit payable in accordance with section 38.
- (2) A benefit under this section—
 - (a) must be indexed in accordance with section 43; and
 - (b) must be preserved and is payable in accordance with the occupational superannuation standards.”.

20. Definitions

- (1) In section 3 (1) of the **Transport Superannuation Act 1988**—

(a) after the definition of “**Board**” insert—

“**contract officer**” means an executive officer within the meaning of section 4 (1) of the **Public Sector Management Act 1992** employed under a contract of employment under that Act, other than an exempt officer;’.

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- (b) in the definition of “employee” after “other than” insert “an exempt officer or”;
- (c) after the definition of “employee” insert—

“**exempt officer**” means an executive officer within the meaning of section 4 (1) of the **Public Sector Management Act 1992** employed under a contract of employment under that Act during any period that a certificate in writing issued under section 7 (5) of the **Superannuation (Public Sector) Act 1992** by the executive officer’s employing transport authority to the Board is in force;’;

- (d) for the definition of “retrenchment” substitute—

“**retrenchment**” means the termination of the service of an employee who has not attained the minimum age for retirement in respect of whom a transport authority certifies in writing to the Board that the employee has been retrenched for the purposes of this Act;’.

- (2) After section 3 (2) of the **Transport Superannuation Act 1988** insert—

(3) For the purposes of the definition of “salary” in sub-section (1), in the case of a contract officer, salary means the salary for superannuation purposes in accordance with section 12 of the **Superannuation (Public Sector) Act 1992** and notified in writing by the employer to the Board.’.

21. New section 34A—Exempt officers

After section 34 of the **Transport Superannuation Act 1988** insert—

“34A. Exempt officers

- (1) A member who becomes an exempt officer is entitled up to the date of becoming an

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exempt officer to a deferred lump sum equal to his or her accrued retirement benefit.

- (2) A benefit under this section—
- (a) must be indexed in accordance with section 46; and
 - (b) must be preserved and is payable in accordance with the occupational superannuation standards.”.



NOTES

1. *Minister's second reading speech—*

Legislative Assembly: 10 November 1992

Legislative Council: 17 November 1992

2. The long title for the Bill for this Act was “A Bill to make further provision relating to superannuation in the public sector and for other purposes.”.
3. Section headings appear in bold italics and are not part of the Act. (See **Interpretation of Legislation Act 1984.**)