

Version No. 022
Superannuation (Portability) Act 1989

Act No. 14/1989

Version incorporating amendments as at 17 November 1998

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Superannuation (Portability) Act 1989
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The Parliament of Victoria enacts as follows:

1. Purpose

The purpose of this Act is to provide a more comprehensive system of portability of superannuation within the public sector.

2. Commencement

This Act comes into operation on the day on which it receives Royal Assent.

3. Definitions

(1) In this Act—

"actuary" means a fellow or accredited member of the Institute of Actuaries of Australia approved by the Minister;

S. 3(1) def. of "actuary" inserted by No. 120/1994 s. 66(1)(a).

"administrators" means the administrators of a statutory superannuation scheme;

"complying superannuation fund" means a superannuation entity or a superannuation fund within the meaning of section 10 of the Commonwealth Superannuation Industry (Supervision) Act 1993 which is a complying superannuation fund or a complying approved deposit fund within the meaning of Part IX of the Commonwealth Income Tax Assessment Act 1936;

S. 3(1) def. of "complying superannuation fund" inserted by No. 4/1996 s. 120.

"dependant" means in relation to a deceased member or former member—

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- (a) the spouse or any child of the member or former member; or
 - (b) any other person who in the opinion of the administrators was at the date of death of the member or former member wholly or partially dependent on the member or former member or who at that date had a legal right to look to the member or former member for financial support;

S. 3(1) def. of "disability" substituted by No. 120/1994 s. 68.

"disability", in relation to a member, means the permanent inability of the member before the age of 60 years due to a continuing or recurring injury, disease or infirmity—

- (a) to perform his or her duties; and
- (b) to perform any other duties for which he or she is suited by education, training or experience or for which he or she would be suited as a result of retraining—

as determined by the Board on the basis of reports provided by at least 2 registered medical practitioners appointed by the Board;

S. 3(1) def. of "government actuary" repealed by No. 120/1994 s. 66(1)(b).

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S. 3(1) def. of "member" amended by No. 120/1994 s. 67(a).

"member" means a member of a statutory superannuation scheme however designated in or for the purposes of the statutory superannuation scheme;

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"Order in Council" means an Order in Council made by the Governor in Council on the recommendation of the Minister and published in the Government Gazette;

S. 3(1) def. of "Order in Council" amended by No. 46/1998 s. 7(Sch. 1).

"public authority" means any office, body, authority or department within the meaning of the **Public Sector Management and Employment Act 1998** declared by Order in Council to be a public authority for the purposes of this Act;

S. 3(1) def. of "public authority" amended by No. 46/1998 s. 7(Sch. 1).

"retirement benefit" means an annual, monthly or other periodical payment, a lump sum payment or any other entitlement to which under the terms of a superannuation scheme a member will become entitled upon retirement at or after the minimum retirement age under that superannuation scheme;

"spouse" means in relation to a person—

- (a) that person's husband, wife, widower or widow; or
- (b) a person of the opposite sex who, though not legally married to the first mentioned person, in the opinion of the administrators lives or lived with the first mentioned person as at the relevant date (being, in the case of a deceased person, the date of death) on a bona fide domestic basis as the husband or wife of the first mentioned person;

S. 3(1) def. of "spouse" substituted by No. 120/1994 s. 67(b).

"statutory superannuation scheme" means a superannuation scheme declared by Order in Council to be a statutory superannuation scheme for the purposes of this Act;

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"superannuation scheme" means a scheme one of the purposes of which is to provide retirement benefits;

"terms", in relation to a statutory superannuation scheme, means the rules and provisions of the statutory superannuation scheme.

(2) In this Act—

S. 3(2) def. of "A" substituted by Nos 110/1993 s. 148(1)(a), 120/1994 s. 69(a).

"A" is the consumer price index number for the quarter prior to the quarter in which the pension or lump sum becomes payable;

"B" is the consumer price index number for the quarter immediately prior to the quarter in which the member resigned;

"C" means the contribution factor in accordance with the following Table with values for intermediate ages being calculated to the lower 0.01:

TABLE

<i>Age</i>	<i>Factor</i>
50	1.00
45	.90
40	.80
35	.70
30 or less	.60

"CC" represents the lump sum factor specified in Schedule 1 of the **State Superannuation Act 1988** with respect to age 60 or the later age in completed years and months at which the person changes employment;

"CR" represents the lump sum factor specified in Schedule 1 of the **State Superannuation Act 1988** with respect to the age in

completed years and months at which the person retires;

"consumer price index number", for a quarter, means the all groups consumer price index number for all Capital Cities published by the Commonwealth Statistician in respect of the relevant quarter;

S. 3(2) def. of "consumer price index number" substituted by Nos 110/1993 s. 148(1)(b), 120/1994 s. 69(b).

$$"K" = \frac{Y - X}{720 - X};$$

"X" is the member's age in whole months on the date on which he or she joined the superannuation scheme;

"Y" is equal to 720 or the member's age in whole months on the date on which he or she resigns whichever is the lesser.

- (3) The value of **"X"** must be adjusted to allow for any prior service recognised by the administrators.

4. Application of Act

Despite anything in the **State Superannuation Act 1988** or any other Act, a statutory superannuation scheme is to be read and construed in accordance with this Act as from the day it becomes a statutory superannuation scheme.

5. Entitlement to deferred retirement benefit

- (1) A member of a statutory superannuation scheme who changes employment in order to accept employment—
- (a) in respect of which he or she will be a member of another statutory superannuation scheme; or

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S. 5(1)(b)
amended by
No. 54/1993
s. 13.

(b) with a public authority; or

S. 5(1)(c)
inserted by
No. 54/1993
s. 13.

(c) with an employer declared by Order of the Governor in Council to be an approved employer for the purposes of this section—

is entitled on application to the administrators to either the benefit provided under the terms of the statutory superannuation scheme of which he or she is a member upon the change of employment or a deferred retirement benefit under this Act.

(2) The deferred retirement benefit becomes payable at whichever of the following first occurs—

S. 5(2)(a)
substituted by
No. 82/1996
s. 68.

(a) retirement at or after the age fixed in the governing instrument of the member's statutory superannuation scheme as in force at the time the member made the election under sub-section (1);

(b) death;

(c) termination of employment on account of disability.

(3) If any pension payable under the terms of a statutory superannuation scheme may be totally or partially converted to a lump sum payment on the election or application of the person to whom it is payable, a person entitled to a pension in accordance with this Act is entitled to elect to receive or to apply for the conversion of the pension or part of the pension to a lump sum payment calculated and payable in accordance with the terms of the statutory superannuation scheme relating to the conversion of pensions to lump sum payments.

6. Amount of deferred retirement benefit

- (1) If a member who is aged 60 years or under has been required to contribute a uniform percentage of his or her salary throughout his or her membership of the statutory superannuation scheme and the benefit or part of the benefit which would have been payable on his or her retirement had he or she not changed employment was a pension based on salary at or prior to his or her retirement, the deferred retirement benefit or part of that benefit is a pension of an amount determined by—
- (a) calculating in accordance with the terms of the statutory superannuation scheme the amount of the pension payable to him or her if he or she had retired on attaining the age of 60 years on the assumptions that he or she would have served until the age of 60 years and that the actual salary payable prior to the date of his or her change of employment was the salary at or prior to attaining the age of 60 years; and
 - (b) multiplying the amount so calculated by K; and
 - (c) multiplying the amount calculated under paragraph (b) by $\frac{A}{B}$.
- (2) If a member who is aged 60 years or under has been required to contribute a uniform percentage of his or her salary throughout his or her membership of the statutory superannuation scheme and the benefit or part of the benefit which would have been payable on his or her retirement had he or she not changed employment was a lump sum based on salary at or prior to his or her retirement, the deferred retirement benefit

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or part of that benefit is a lump sum of an amount determined by—

- (a) calculating in accordance with the terms of the statutory superannuation scheme the amount of the lump sum payable to him or her if he or she had retired on attaining the age of 60 years on the assumptions that he or she would have served until the age of 60 years and that the actual salary payable prior to the date of his or her change of employment was the salary at or prior to attaining the age of 60 years; and
- (b) multiplying the amount so calculated by K; and
- (c) multiplying the amount calculated under paragraph (b) by $\frac{A}{B}$.

(3) If a member—

- (a) changes employment when aged 60 years or under; and
- (b) is—
 - (i) an original scheme member or revised scheme member of the State Superannuation Fund; or
 - (ii) a member of the Port of Melbourne Authority Superannuation Scheme—

the deferred retirement benefit is the amount calculated under sub-section (1) or (2) multiplied by C.

(4) In the case of a statutory superannuation scheme under which the benefit or part of the benefit which would have been payable on retirement of the member had he or she not changed employment was based on salary at or prior to

S. 6(3)(b)(ii)
substituted by
No. 4/1996
s. 121.

retirement but none of sub-sections (1), (2) or (3) applies, the deferred benefit or part of that benefit for a member who changes employment aged 60 years or under is equal to the retirement benefit to which he or she would be entitled under the terms of the statutory superannuation scheme if he or she was to be taken to retire at the age of 60 years on the date of changing employment multiplied

by $\frac{A}{B}$.

- (5) In the case of a statutory superannuation scheme in which the benefit or part of the benefit which would have been payable on retirement of the member had he or she not changed employment was a lump sum not based on his or her salary at or prior to his or her date of retirement, the deferred benefit or part of that benefit for a member who changes employment when aged 60 years or under is equal to a lump sum to which he or she would be entitled under the terms of the statutory superannuation scheme if he or she was to be taken to retire at the age of 60 years on the date of changing employment increased by the addition of interest at rates determined by the administrators.
- (6) In the case of a member who is aged over 60 years at the date of change of employment, the deferred retirement benefit is equal to the pension or lump sum that would have been payable at his or her retirement at the date of change of employment—
- (a) if the statutory superannuation scheme is one to which sub-section (1), (2), (3) or (4) applies—multiplied by $\frac{A}{B}$; or

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- (b) if the statutory superannuation scheme is one to which sub-section (5) applies—increased by the addition of interest at rates determined by the administrators.
- (7) If a person who would be entitled to a deferred retirement benefit by the operation of section 5 resigns from employment as specified in section 5 then for the purpose of calculating resignation benefits—
 - (a) deferred retirement benefits under this Act are to be taken to be the benefits he or she would have received on retirement at the age of 60 years; and
 - (b) the aggregate of service for which benefits or deferred benefits are payable under any statutory superannuation scheme is to be recognized as service.

7. Provisions relating to payment of benefits

- (1) If a person entitled to a deferred retirement benefit dies there is payable to his or her personal representative or dependants the benefits that the administrators determine having regard to—
 - (a) the governing instrument of the member's statutory superannuation scheme as in force at the time the member made the election under section 5(1); and

S. 7(1)(a) substituted by No. 82/1996 s. 69(1).

S. 7(1)(b)(c) repealed by No. 82/1996 s. 69(1).

* * * * *

- (d) any other matter they consider relevant.
- (2) If a person entitled to a deferred retirement benefit ceases to be gainfully employed on account of disability there is payable the benefits that the administrators determine having regard to—

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(a) the governing instrument of the member's statutory superannuation scheme as in force at the time the member made the election under section 5(1); and

S. 7(2)(a)
substituted by
No. 82/1996
s. 69(2).

* * * * *

S. 7(2)(b)(c)
repealed by
No. 82/1996
s. 69(2).

(d) any other matter they consider relevant.

(3) If any person is in receipt of a deferred retirement pension he or she is entitled to receive any increase in the amount of the pension payable under the terms of the statutory superannuation scheme or in accordance with any decision of the administrators on the same basis as other persons receiving pensions under the statutory superannuation scheme.

(4) If the aggregate of—

(a) lump sum benefits payable from statutory superannuation schemes; and

(b) pensions payable for statutory superannuation schemes multiplied by CR—

exceeds 8·4 times the final salary of the member the last deferred retirement benefit granted under this Act must be reduced so that the aggregate does not exceed that multiple of final salary.

(5) If a person becomes entitled to a deferred retirement pension and the pension under the statutory superannuation scheme carried an entitlement to a spouse pension, the entitlement to the deferred retirement pension carries with it an entitlement to a spouse pension on the same basis as under the statutory superannuation scheme.

(6) If a member entitled to a deferred retirement pension retires at any age other than 60 years the

amount of the deferred retirement pension is the amount calculated under section 6 multiplied by $\frac{CC}{CR}$.

S. 7(7)
inserted by
No. 72/1990
s. 16.

(7) If a person who would be entitled to a deferred retirement benefit by the operation of section 5 is subject to the termination of his or her employment prior to attaining the minimum age for retirement on a ground other than disability or death, he or she may elect to receive—

(a) a cash benefit equal to a refund of the contributions paid by him or her and interest at the prescribed rate; and

S. 7(7)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

(b) a deferred retirement benefit reduced by such amount as is determined by the Minister on the advice of an actuary.

S. 7(8)
inserted by
No. 110/1993
s. 149.

(8) Sub-section (7) applies in respect of any deferred retirement benefit to which a person may be entitled as a result of a previous transfer to a different category of membership or scheme in the same Fund or to another Fund established by or under an Act if the deferred retirement benefit and the benefit preserved under this Act relate to a period of continuous employment.

8. Medical classification

A person who elects to take a deferred retirement benefit is entitled to a medical classification under a statutory superannuation scheme of which he or she becomes a member which is no less favourable than the medical classification made under the statutory superannuation scheme from which the deferred retirement benefit was granted.

9. Option relating to certain members

(1) In this section—

"approved employer" means an employer declared under section 5(1)(c) to be an approved employer in respect of the employment of persons who are officers;

"officer" means a member of a statutory superannuation scheme;

"transfer period" means—

- (a) in the case of an officer specified in sub-section (2)(a), the period of 6 months commencing on the date on which the officer became an employee of the approved employer;
- (b) in the case of an officer specified in sub-section (2)(b), the period of 2 months or any other longer period nominated by the Minister under sub-section (4) commencing on the date on which the officer becomes an employee of the approved employer or the public authority.

(2) This section applies to an officer—

- (a) who was an officer or employee of the Public Transport Corporation in the railway workshop at Bendigo on 7 February 1996; or
- (b) who is a member of a class of persons declared to be officers to whom this section applies by the Minister by instrument in writing for the purposes of this section.

(3) An officer who accepts employment with the approved employer or the public authority may elect during the transfer period to transfer the

S. 9 repealed by No. 64/1989 s. 36(5), new s. 9 inserted by No. 4/1996 s. 122.

S. 9(1) def. of "transfer period" amended by Nos 50/1997 s. 13(a), 84/1998 s. 50(1).

S. 9(3) amended by No. 50/1997 s. 13(b).

transfer amount to a complying superannuation fund.

- (4) The transfer amount and the terms and conditions that apply in respect of the transfer are to be determined by the Minister.
- (5) The administrators must pay into the statutory superannuation scheme payments received for superannuation provision in respect of the statutory superannuation scheme from any person liable for the unfunded liability relating to any transfer amount transferred from that statutory superannuation scheme.
- (6) The administrators must pay out of the statutory superannuation scheme the transfer amount, after deducting any tax required to be paid under the Commonwealth Income Tax Assessment Act 1936, to the relevant complying superannuation fund.
- (7) If an officer does not make an election in accordance with sub-section (3), the officer is deemed to have elected to transfer the transfer amount to a beneficiary account established by the administrator of the officer's statutory superannuation scheme.
- (8) No stamp duty or other tax is payable under any Act in respect of anything done under this section.
- (9) The administrators are released from any liability in respect of the entitlements of officers to whom sub-section (6) applies as soon as the transfer amount is paid to the relevant complying superannuation fund.

S. 9(7)
amended by
Nos 50/1997
s. 13(b),
84/1998
s. 50(2).

10. Settlement of disputes

- (1) In this section "**dispute**" means any dispute—
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- (a) as to the amount of any benefit payable in accordance with this Act; or
- (b) arising as a result of the administrators or a person entitled to a benefit in accordance with this Act considering that the benefit paid or payable to that person is inappropriate having regard to—
- (i) the governing instrument of the member's statutory superannuation scheme as in force at the time the member made the election under section 5(1); and
- * * * * *
- (iv) any other matter.
- (2) Any dispute relating to benefit entitlements under this Act must be determined in the first place by the administrators.
- (3) A person whose interests are affected by a decision of the administrators may apply to the Victorian Civil and Administrative Tribunal for review of the decision.
- S. 10(1)(b)(i) substituted by No. 82/1996 s. 70.**
- S. 10(1)(b)(ii)(iii) repealed by No. 82/1996 s. 70.**
- S. 10(2) amended by No. 120/1994 s. 66(2)(3), substituted by No. 4/1996 s. 123.**
- S. 10(3) amended by No. 120/1994 s. 66(2), substituted by Nos 4/1996 s. 123, 52/1998 s. 311(Sch. 1 item 87).**

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S. 10(4)
amended by
No. 120/1994
s. 66(2),
repealed by
No. 4/1996
s. 123, new
s. 10(4)
inserted by
No. 52/1998
s. 311(Sch. 1
item 87).

- (4) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

11. *Regulations*

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
 - (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstances.

12. *Repeal*

- (1) The **Superannuation Benefits Act 1977** is **repealed**.
- (2) Unless the context otherwise requires, any reference to the **Superannuation Benefits Act 1977** in any Act, regulation, subordinate instrument or other document is to be construed as a reference to the **Superannuation (Portability) Act 1989**.

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Notes

NOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 3 November 1988

Legislative Council: 18 April 1989

The long title for the Bill for this Act was "A Bill to re-enact with amendments the law relating to the portability of superannuation within the public sector, to repeal the **Superannuation Benefits Act 1977** and for other purposes."

The **Superannuation (Portability) Act 1989** was assented to on 9 May 1989 and came into operation on 9 May 1989: section 2

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2. Table of Amendments

This Version incorporates amendments made to the **Superannuation (Portability) Act 1989** by Acts and subordinate instruments.

Accident Compensation (General Amendment) Act 1989, No. 64/1989

Assent Date: 29.9.89
Commencement Date: S. 36(5) on 1.7.90: Government Gazette 21.2.90 p. 518
Current State: This information relates only to the provision/s amending the **Superannuation (Portability) Act 1989**

Superannuation Acts (Miscellaneous Amendments) Act 1990, No. 72/1990

Assent Date: 4.12.90
Commencement Date: S. 16 on 19.12.90: Government Gazette 19.12.90 p. 3751
Current State: This information relates only to the provision/s amending the **Superannuation (Portability) Act 1989**

Superannuation (Compliance) Act 1993, No. 54/1993

Assent Date: 8.6.93
Commencement Date: S. 13 on 8.6.93: s. 2(1)
Current State: This information relates only to the provision/s amending the **Superannuation (Portability) Act 1989**

Public Sector Superannuation (Administration) Act 1993, No. 110/1993

Assent Date: 30.11.93
Commencement Date: S. 148 on 1.1.94: s. 2(6); s. 149 on 30.11.93: s. 2(1)
Current State: This information relates only to the provision/s amending the **Superannuation (Portability) Act 1989**

Superannuation Acts (Further Amendment) Act 1994, No. 120/1994 (as amended by No. 102/1995)

Assent Date: 20.12.94
Commencement Date: S. 69 on 1.1.94: s. 2(6); s. 67 on 1.7.94: s. 2(7A); ss 66, 68 on 20.12.94: s. 2(1)
Current State: This information relates only to the provision/s amending the **Superannuation (Portability) Act 1989**

Superannuation Acts (Amendment) Act 1996, No. 4/1996

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Assent Date: 18.6.96
Commencement Date: S. 122 on 7.2.96: s. 2(8); s. 121 on 18.6.96: s. 2(1);
ss 120, 123 on 30.6.96: s. 2(12)
Current State: This information relates only to the provision/s
amending the **Superannuation (Portability)
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Superannuation Acts (Further Amendment) Act 1996, No. 82/1996

Assent Date: 23.12.96
Commencement Date: Ss 68–70 on 23.12.96: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Superannuation (Portability)
Act 1989**

Superannuation Acts (Miscellaneous Amendment) Act 1997, No. 50/1997

Assent Date: 11.6.97
Commencement Date: S. 13 on 11.6.97: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Superannuation (Portability)
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Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7 (Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Superannuation (Portability)
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Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 87) on 1.7.98: Government Gazette
18.6.98 p. 1512
Current State: This information relates only to the provision/s
amending the **Superannuation (Portability)
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Superannuation Acts (Amendment) Act 1998, No. 84/1998

Assent Date: 17.11.98
Commencement Date: S. 50 on 17.11.98: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Superannuation (Portability)
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3. Explanatory Details

No entries at date of publication.