

Version No. 063
Superannuation (Portability) Act 1989

No. 14 of 1989

Version incorporating amendments as at
31 May 2012

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Version No. 063
Superannuation (Portability) Act 1989
No. 14 of 1989

Version incorporating amendments as at
31 May 2012

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;

child in relation to a deceased member or former member means a child of the person or the person's partner other than any child born more than 10 months after the person's death who is—

S. 3(1) def. of *child* inserted by No. 27/2001 s. 5(Sch. 3 item 6.1(a)).

- (a) under 18 years of age; or
- (b) between the age of 18 and 25 years and in the opinion of the administrators is a full-time student;

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S. 3(1) def. of
complying
super-
annuation
fund
inserted by
No. 4/1996
s. 120.

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
dependant
amended by
No. 27/2001
s. 5(Sch. 3
item 6.1(b)).

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

- (a) the partner 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;

domestic partner of a person means—

- (a) a person who is, or was at the time of the person's death, in a registered domestic relationship with the person; or
- (b) a person to whom the person is not married but with whom, in the opinion of the administrators, the person is, or was at the time of the person's death, living as a couple on a genuine domestic basis (irrespective of gender);

S. 3(1) def. of *domestic partner* inserted by No. 27/2001 s. 5(Sch. 3 item 6.1(a)), substituted by No. 12/2008 s. 73(1)(Sch. 1 item 59.1), amended by No. 4/2009 s. 37(Sch. 1 item 24.1).

* * * * *

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 of *government actuary* repealed by No. 120/1994 s. 66(1)(b).

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

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

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).

partner of a person means the person's spouse or domestic partner;

S. 3(1) def. of *partner* inserted by No. 27/2001 s. 5(Sch. 3 item 6.1(a)), substituted by No. 40/2010 s. 97(1).

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S. 3(1) def. of *public authority* amended by Nos 46/1998 s. 7(Sch. 1), 108/2004 s. 117(1) (Sch. 3 item 192).

public authority means any office, body, authority or Department within the meaning of the **Public Administration Act 2004** declared by Order in Council to be a public authority for the purposes of this Act;

S. 3(1) def. of *retirement benefit* amended by No. 13/1999 s. 15(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 at or after the minimum retirement age under that superannuation scheme;

S. 3(1) def. of *spouse* substituted by Nos 120/1994 s. 67(b), 27/2001 s. 5(Sch. 3 item 6.1(c)), amended by No. 38/2009 s. 35(1).

spouse of a person (except in sections 9AA to 9AD) means a person to whom the person is, or was at the time of the person's death, married;

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

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

S. 3(1) def. of *superannuation system* inserted by No. 37/2007 s. 43.

superannuation system has the same meaning as it has in regulation 5.01(1) of the Superannuation Industry (Supervision) Regulations 1994 of the Commonwealth;

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

(2) In this Act—

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

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

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;

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

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;

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

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) In this Act—

S. 3(4)
inserted by
No. 70/2003
s. 33.

approved deposit fund has the meaning given by
section 10(1) of the Commonwealth
Superannuation Industry (Supervision) Act
1993;

eligible rollover fund means a fund within the
meaning of section 242 of the
Commonwealth Superannuation Industry
(Supervision) Act 1993;

eligible superannuation plan means—

- (a) a regulated superannuation fund; or
- (b) an approved deposit fund; or
- (c) an exempt public sector superannuation
scheme; or
- (d) an RSA;

exempt public sector superannuation scheme

means a public sector superannuation scheme within the meaning of section 10(1) of the Commonwealth Superannuation Industry (Supervision) Act 1993;

flag lifting agreement has the meaning given by section 90MN of the Commonwealth Family Law Act 1975;

flagging order means an order mentioned in section 90MU(1) of the Commonwealth Family Law Act 1975;

interest has the meaning given by section 90MD of the Commonwealth Family Law Act 1975;

member spouse, in relation to a superannuation interest, means the spouse who has the superannuation interest;

non-member spouse, in relation to a superannuation interest, means the spouse who is not the member spouse in relation to that interest;

payment flag has the meaning given by section 90MD of the Commonwealth Family Law Act 1975;

regulated superannuation fund means a superannuation fund which complies with section 19 of the Commonwealth Superannuation Industry (Supervision) Act 1993;

relevant condition of release means, a condition of release mentioned in item 101, 102, 103 or 106 of Schedule 1 to the Commonwealth Superannuation Industry (Supervision) Regulations 1994;

reversionary interest has the meaning given by section 90MF of the Commonwealth Family Law Act 1975;

RSA means a retirement savings account within the meaning of the Commonwealth Retirement Savings Accounts Act 1997;

specified period means the period which is specified to be the specified period in the specified standards;

splitting order means an order mentioned in section 90MT of the Commonwealth Family Law Act 1975;

spouse, in sections 9AA to 9AD, has the meaning given by section 90MD of the Commonwealth Family Law Act 1975;

S. 3(4) def. of *spouse* inserted by No. 38/2009 s. 35(2)(a).

superannuation agreement has the meaning given by section 90MD of the Commonwealth Family Law Act 1975;

S. 3(4) def. of *superannuation agreement* amended by No. 38/2009 s. 35(2)(b).

superannuation fund has the same meaning as in the Commonwealth Superannuation Industry (Supervision) Act 1993;

superannuation interest means an interest that a person has in the statutory superannuation fund, but does not include a reversionary interest;

unsplittable interest has the meaning given by section 90MD of the Commonwealth Family Law Act 1975;

value at a particular time of the non-member spouse's entitlement in respect of the superannuation interest means the value as determined in accordance with regulation 14G(8) of the Commonwealth Family Law (Superannuation) Regulations 2001;

value of the member spouse's interest in the statutory superannuation fund means the value as determined in accordance with Part 5 of the Commonwealth Family Law (Superannuation) Regulations 2001.

(5) A reference to the transfer of an amount is to be construed as including a reference to the rollover of an amount.

S. 3(5)
inserted by
No. 70/2003
s. 33.

(6) For the purposes of the definition of *domestic partner* in subsection (1)—

S. 3(4)
inserted by
No. 27/2001
s. 5(Sch. 3
item 6.2),
substituted as
s. 3(6) by
No. 12/2008
s. 73(1)(Sch. 1
item 59.2).

(a) *registered domestic relationship* has the same meaning as in the **Relationships Act 2008**; and

S. 3(6)(a)
amended by
No. 4/2009
s. 37(Sch. 1
item 24.2(a)).

(b) in determining whether persons who are not or were not in a registered domestic relationship are or were domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

S. 3(6)(b)
amended by
No. 4/2009
s. 37(Sch. 1
item 24.2(b)).

S. 3(7)
inserted by
No. 40/2010
s. 97(2).

- (7) The definition of *partner* as substituted by section 97(1) of the **Superannuation Legislation Amendment Act 2010** applies in respect of the determination by the Board of an entitlement arising under this or any other Superannuation Act within the meaning of section 3(1) of the **Emergency Services Superannuation Act 1986** on or after the commencement of the substituting section.

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
 - (b) with a public authority; or
 - (c) with an employer declared by Order of the Governor in Council to be an approved employer for the purposes of this section—

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

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

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.

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- (2) A deferred retirement benefit under this Act becomes payable at whichever of the following first occurs—
- (a) the member attains the minimum retirement 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 subsection (1);
 - (b) death;
 - (c) termination of employment on account of disability.
- (2A) A member who is entitled to a deferred retirement benefit by the operation of this section may elect in writing to the administrators to—
- (a) convert the entitlement to a present lump sum; and
 - (b) have the lump sum rolled over or transferred within the superannuation system as nominated by the member.
- (2B) The method of calculating the conversion under subsection (2A) is to be determined by the Minister on the advice of an actuary appointed by the administrators.
- (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
- S. 5(2)**
amended by
No. 13/1999
s. 15(2)(a).
- S. 5(2)(a)**
substituted by
No. 82/1996
s. 68,
amended by
No. 13/1999
s. 15(2)(b).
- S. 5(2A)**
inserted by
No. 95/2000
s. 18(1).
- S. 5(2A)(b)**
substituted by
Nos 40/2004
s. 39(1),
37/2007 s. 44.
- S. 5(2B)**
inserted by
No. 95/2000
s. 18(1).

scheme relating to the conversion of pensions to lump sum payments.

S. 5A
inserted by
No. 95/2000
s. 17,
repealed by
No. 94/2005
s. 50.

* * * * *

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 $\frac{A}{B}$.

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- (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 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

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

(ii) a member of the Port of Melbourne
Authority Superannuation Scheme—

the deferred retirement benefit is the amount
calculated under subsection (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
retirement but none of subsections (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.

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- (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 subsection (1), (2), (3) or (4) applies—multiplied by $\frac{A}{B}$; or
 - (b) if the statutory superannuation scheme is one to which subsection (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).

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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—

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

(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)(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.

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- (5) If a person becomes entitled to a deferred retirement pension and the pension under the statutory superannuation scheme carried an entitlement to a partner pension, the entitlement to the deferred retirement pension carries with it an entitlement to a partner pension on the same basis as under the statutory superannuation scheme.
- (6) If a member entitled to a deferred retirement pension reaches the minimum retirement age fixed in the governing instrument of the member's statutory superannuation scheme at any age other than 60 years, the amount of the deferred retirement pension is the amount calculated under section 6 multiplied by $\frac{CC}{CR}$.
- (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 retirement age fixed in the governing instrument of the member's statutory superannuation scheme 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
- (b) a deferred retirement benefit reduced by such amount as is determined by the Minister on the advice of an actuary.
- (7A) A person who is entitled under subsection (7) to a deferred retirement benefit by the operation of section 5 may elect in writing to the administrators to—
- (a) convert the entitlement to a present lump sum; and
- S. 7(5)**
amended by
No. 27/2001
s. 5(Sch. 3
item 6.3).
- S. 7(6)**
amended by
No. 40/2004
s. 40(1).
- S. 7(7)**
inserted by
No. 72/1990
s. 16,
amended by
No. 40/2004
s. 40(2).
- S. 7(7)(b)**
amended by
No. 46/1998
s. 7(Sch. 1).
- S. 7(7A)**
inserted by
No. 95/2000
s. 18(2).

s. 7A

S. 7(7A)(b)
substituted by
Nos 40/2004
s. 39(2),
37/2007 s. 45.

(b) have the lump sum rolled over or transferred within the superannuation system as nominated by the person.

S. 7(7B)
inserted by
No. 95/2000
s. 18(2).

(7B) The method of calculating the conversion under subsection (7A) is to be determined by the Minister on the advice of an actuary appointed by the administrators.

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

(8) Subsection (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.

S. 7A
inserted by
No. 13/1999
s. 16.

7A Payment of benefits subject to specified standards and other provisions

Notwithstanding anything to the contrary in this Act or the governing instrument of the member's statutory superannuation scheme, the payment of any benefit under this Act is subject to—

- (a) any relevant specified standards; and
- (b) any provisions relating to the early release of benefits—

which apply to the member's statutory superannuation scheme.

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 subsection (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 subsection (2)(b), the period of 2 months or any other longer period nominated by the Minister under subsection (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 transfer amount to a complying superannuation fund.

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).

s. 9AA

- (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 subsection (3), the officer is deemed to have elected to transfer the transfer amount to a complying superannuation fund nominated 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 subsection (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),
8/1999 s. 52.

S. 9AA
inserted by
No. 70/2003
s. 34.

S. 9AA(1)
amended by
No. 38/2009
s. 36(1).

9AA Obligation on administrators

- (1) Subject to subsections (5) and (6), the administrators must comply with this section if—
 - (a) a superannuation agreement which provides for a payment split; or

(b) a flag lifting agreement which provides for a payment split; or

(c) a splitting order—

is served on the administrators under Part VIII B or VIII AB of the Commonwealth Family Law Act 1975.

(2) This section also applies to—

(a) a superannuation agreement which provides for a payment split; or

(b) a flag lifting agreement which provides for a payment split; or

(c) a splitting order—

which was served on the administrators under Part VIII B of the Commonwealth Family Law Act 1975 before the commencement of section 34 of the **Superannuation Acts (Family Law) Act 2003** if the non-member spouse's entitlements in respect of the superannuation interest have not been satisfied as at that commencement.

(2A) This section also applies to—

(a) a superannuation agreement which provides for a payment split; or

(b) a flag lifting agreement which provides for a payment split; or

(c) a splitting order—

which was served on the administrators under Part VIII AB of the Commonwealth Family Law Act 1975 before the commencement of section 36 of the **Superannuation Legislation Amendment Act 2009** if the non-member spouse's entitlements in respect of the superannuation interest have not been satisfied as at that commencement.

S. 9AA(2A)
inserted by
No. 38/2009
s. 36(2).

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- (3) If the non-member spouse has not satisfied a relevant condition of release and the member spouse is not receiving a pension under this Act, the administrators must if the value of the non-member spouse's entitlement in respect of the superannuation interest at the particular time does not exceed the value of the member spouse's interest in the statutory superannuation fund—
- (a) transfer a lump sum amount equal to the value of the non-member spouse's entitlement in respect of the superannuation interest at the time of the payment to an eligible superannuation plan nominated in writing by the non-member spouse within the specified period; or
 - (b) if the non-member spouse fails to nominate in writing an eligible superannuation plan within the specified period, transfer a lump sum amount equal to the value of the non-member spouse's entitlement in respect of the superannuation interest at the time of the payment to an eligible rollover fund selected by the administrators.
- (4) If the non-member spouse has satisfied a relevant condition of release or the member spouse is receiving a pension under this Act, the administrators must if the value of the non-member spouse's entitlement in respect of the superannuation interest at the particular time does not exceed the value of the member spouse's interest in the statutory superannuation fund—
- (a) if so requested in writing by the non-member spouse within the specified period, pay the non-member spouse a lump sum amount equal to the value of the non-member spouse's entitlement in respect of the

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- superannuation interest at the time of the payment; or
- (b) if so requested in writing by the non-member spouse within the specified period, transfer a lump sum amount equal to the value of the non-member spouse's entitlement in respect of the superannuation interest at the time of the payment to an eligible superannuation plan nominated in writing by the non-member spouse; or
- (c) if no request is received from the non-member spouse within the specified period, transfer a lump sum amount equal to the value of the non-member spouse's entitlement in respect of the superannuation interest at the time of the payment to an eligible rollover fund selected by the administrators.
- (5) Subsections (3) and (4) do not apply if—
- (a) the member spouse's superannuation interest is an unsplitable interest; or
- (b) a payment flag is operating in respect of the member spouse's superannuation interest; or
- (c) the non-member spouse has served a waiver notice on the administrators under section 90MZA of the Commonwealth Family Law Act 1975 in respect of the member spouse's superannuation interest; or
- (d) the member spouse's superannuation interest is a payment that is not a splittable payment under Part 2 of the Commonwealth Family Law (Superannuation) Regulations 2001.
- (6) If the member spouse's superannuation interest is a pension under this Act due to a disability which is a splittable payment, the administrators may
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s. 9AB

determine that subsections (3) and (4) do not apply.

- (7) If the non-member spouse serves a waiver notice on the administrators under section 90MZA of the Commonwealth Family Law Act 1975 in respect of the member spouse's superannuation interest, the administrators may make a payment to the non-member spouse not exceeding the value at a particular time of the non-member spouse's entitlement in respect of the superannuation interest less any payments previously made by the administrators to the non-member spouse in accordance with this section.

S. 9AB
inserted by
No. 70/2003
s. 34.

9AB Reduction of deferred retirement benefit or transfer amount

Despite anything to the contrary in this Act, if under section 9AA an amount is paid by the administrators to a non-member spouse or transferred by the administrators on behalf of a non-member spouse, the deferred retirement benefit or transfer amount of a member spouse must be reduced by the administrators in accordance with a methodology approved by the Minister, on the advice of an actuary appointed by the administrators.

S. 9AC
inserted by
No. 70/2003
s. 34.

9AC Administrators may provide additional information

On the application of an eligible person within the meaning of section 90MZB(8) of the Commonwealth Family Law Act 1975, the administrators may provide information additional to the information required to be provided under section 90MZB of that Act if the administrators consider that the additional information is necessary to understand the statutory superannuation fund or the member spouse's benefit entitlements.

9AD Charging of fees

**S. 9AD
inserted by
No. 70/2003
s. 34.**

- (1) The administrators may charge reasonable fees in respect of—
- (a) a payment split;
 - (b) a payment flag;
 - (c) flag lifting under a flag lifting agreement that does not provide for a payment split;
 - (d) an order under section 90MM of the Commonwealth Family Law Act 1975 terminating the operation of a payment flag;
 - (e) an application under section 90MZB of the Commonwealth Family Law Act 1975 for information about a superannuation interest;
 - (f) any other thing done by the Board in relation to a superannuation interest covered by a superannuation agreement, flag lifting agreement or splitting order;
 - (g) the provision of information under section 9AC.
- (2) Fees charged under subsection (1) must not exceed the maximum levels of fees fixed by the Minister for the purposes of this section by notice published in the Government Gazette.
- (3) If the administrators charge a fee under subsection (1), the fee is payable—
- (a) unless paragraph (b) applies, in the case of subsection (1)(a), (1)(b), (1)(c), (1)(d) or (1)(f), by the member spouse and the non-member spouse in equal parts; or
 - (b) if the fee is in respect of a payment split under which the non-member spouse is entitled to be paid the whole of the amount of each splittable payment that becomes payable, by the non-member spouse; or

s. 9A

(c) in the case of subsection (1)(e) or (1)(g), by the person who made the application.

S. 9A
inserted by
No. 29/2000
s. 16.

9A Surcharge payments

The administrators of a statutory superannuation scheme must administer any surcharge paid or payable in respect of any benefit under this Act in accordance with the terms of the statutory superannuation scheme.

10 Settlement of disputes

(1) In this section *dispute* means any dispute—

- (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—

S. 10(1)(b)(i)
substituted by
No. 82/1996
s. 70.

- (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

S. 10(1)(b)
(ii)(iii)
repealed by
No. 82/1996
s. 70.

* * * * *

(iv) any other matter.

S. 10(2)
amended by
No. 120/1994
s. 66(2)(3),
substituted by
No. 4/1996
s. 123.

(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(3)
amended by
No. 120/1994
s. 66(2),
substituted by
Nos 4/1996
s. 123, 52/1998
s. 311(Sch. 1
item 87).

(4) An application for review must be made within 28 days after the later of—

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).

(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.

Superannuation (Portability) Act 1989
No. 14 of 1989

s. 12

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- (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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ENDNOTES

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.

Superannuation (Portability) Act 1989
No. 14 of 1989

Endnotes

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. 149 on 30.11.93: s. 2(1); s. 148 on 1.1.94: s. 2(6)
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

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) Act 1989**

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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) Act 1989**

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) Act 1989**

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) Act 1989**

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) Act 1989**

Government Superannuation Act 1999, No. 8/1999

Assent Date: 11.5.99
Commencement Date: S. 52 on 1.7.99: s. 2(1)
Current State: This information relates only to the provision/s amending the **Superannuation (Portability) Act 1989**

Superannuation Acts (Further Amendment) Act 1999, No. 13/1999

Assent Date: 11.5.99
Commencement Date: Ss 15, 16 on 11.5.99: s. 2(1)
Current State: This information relates only to the provision/s amending the **Superannuation (Portability) Act 1989**

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Superannuation Acts (Amendment) Act 2000, No. 29/2000

Assent Date: 30.5.00
Commencement Date: S. 16 on 31.5.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Superannuation (Portability) Act 1989**

Superannuation Acts (Beneficiary Choice) Act 2000, No. 95/2000

Assent Date: 5.12.00
Commencement Date: S. 17 on 6.12.00: s. 2(1); s. 18 on 1.7.01: s. 2(6)
Current State: This information relates only to the provision/s amending the **Superannuation (Portability) Act 1989**

Statute Law Amendment (Relationships) Act 2001, No. 27/2001

Assent Date: 12.6.01
Commencement Date: S. 5(Sch. 3 item 6) on 23.8.01: Government Gazette 23.8.01 p. 1927
Current State: This information relates only to the provision/s amending the **Superannuation (Portability) Act 1989**

Superannuation Acts (Family Law) Act 2003, No. 70/2003

Assent Date: 14.10.03
Commencement Date: Ss 33, 34 on 15.10.03: s. 2(1)
Current State: This information relates only to the provision/s amending the **Superannuation (Portability) Act 1989**

Treasury and Finance Legislation (Amendment) Act 2004, No. 40/2004

Assent Date: 8.6.04
Commencement Date: Ss 39, 40 on 9.6.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **Superannuation (Portability) Act 1989**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 192) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Superannuation (Portability) Act 1989**

Superannuation Legislation (Governance Reform) Act 2005, No. 94/2005

Assent Date: 29.11.05
Commencement Date: S. 50 on 1.12.05: s. 2
Current State: This information relates only to the provision/s amending the **Superannuation (Portability) Act 1989**

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Superannuation Legislation Amendment (Contribution Splitting and Other Matters) Act 2007, No. 37/2007

Assent Date: 14.8.07
Commencement Date: Ss 43–45 on 15.8.07: s. 2
Current State: This information relates only to the provision/s amending the **Superannuation (Portability) Act 1989**

Relationships Act 2008, No. 12/2008

Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 59) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Superannuation (Portability) Act 1989**

Relationships Amendment (Caring Relationships) Act 2009, No. 4/2009

Assent Date: 10.2.09
Commencement Date: S. 37(Sch. 1 item 24) on 1.12.09: s. 2(2)
Current State: This information relates only to the provision/s amending the **Superannuation (Portability) Act 1989**

Superannuation Legislation Amendment Act 2009, No. 38/2009

Assent Date: 30.6.09
Commencement Date: Ss 35, 36 on 1.7.09: s. 2(1)
Current State: This information relates only to the provision/s amending the **Superannuation (Portability) Act 1989**

Superannuation Legislation Amendment Act 2010, No. 40/2010

Assent Date: 30.6.10
Commencement Date: S. 97 on 1.7.10: Government Gazette 1.7.10 p. 1359
Current State: This information relates only to the provision/s amending the **Superannuation (Portability) Act 1989**

3. Explanatory Details

No entries at date of publication.