

SUPERANNUATION (AMEND-
MENT) ACT.

Act No. 26, 1935.

George V.
No. 26, 1935.

An Act to amend the law in regard to the addition of persons and corporations to Schedule III to the Superannuation Act, 1916-1930; to deal with the addition of the Commissioner for Main Roads to such Schedule; to amend the Superannuation Act, 1916-1930, and certain other Acts; and for purposes connected therewith. [Assented to, 8th April, 1935.]

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BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Superannuation (Amendment) Act, 1935." Short title.

(2) The Superannuation Act, 1916, as amended by subsequent Acts is in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the Superannuation Act, 1916-1935.

2. The Principal Act is hereby amended as follows:—

(a) (i) by inserting in subsection one of section eleven after the words "the said date" the words "or (in the case of an employee whose employer is added to Schedule III to this Act under section ninety-two) from such date as the Governor may notify in the Gazette after such addition or from the date of the commencement of his employment where such employment commences after that date";

(ii) by inserting in the same subsection after the words "commencement of the said Act" the words "or made within three months after the date of the addition of her employer to Schedule III to this Act under section ninety-two or from the date of the commencement of her employment or from the date of her marriage where such employment commences or such marriage takes place after the date of such addition";

(iii) by inserting in the same subsection after the words "employer as an employee" first occurring the words "or becomes a contributor by reason of the addition of his employer to Schedule III to this Act under section ninety-two or after such addition enters the service of such employer as an employee";

(iv)

Amendment of Superannuation Act, 1916-1930, s. 11 (1).
Amendments in respect of adding name of an employer to Schedule III to Act.

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(iv) by inserting in the same subsection after the words " as the case may be " the following new paragraph:—

" In the case of a person who becomes a contributor by reason of the addition of his employer to Schedule III to this Act under section ninety-two or after such addition enters the service of such employer as an employee the application shall be made within three months after the date upon which he so becomes a contributor or enters such service, as the case may be."

Amendment
of Super-
annuation
Act, 1916-
1930, s. 12
(a).

(b) by inserting in paragraph (a) of the proviso in section twelve after the words " the age of forty years " the words " or if the employee is of or over the age of forty years at the date his employer is added to Schedule III to this Act under section ninety-two ";

Sec. 12 (e).

(c) by inserting in paragraph (e) of the proviso in section twelve after the word " hereof " the words " or to whom such proviso does not apply ";

Sec. 12 (g).

(d) by inserting in paragraph (g) of the proviso in section twelve after the word " death " secondly occurring the words " Where such widow is an employee at the date her employer is added to Schedule III to this Act under section ninety-two she shall so elect within three months after such addition ";

Amendment
of Super-
annuation
Act, 1916-
1930, s. 16
(3).

(e) by inserting in subsection three of section sixteen after the words " this Act " first occurring the words " or of an employee over fifty-nine years of age at the date his employer is added to Schedule III to this Act under section ninety-two ";

Sec. 16 (4).

(f) by inserting in subsection four of section sixteen after the words " this Act " the words " or at the date her employer is added to Schedule III to this Act under section ninety-two ";

Sec. 60.

(g) by inserting in section sixty at the end thereof the words " or at the date his employer is added to Schedule III to this Act under section ninety-two ";

(h)

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(h) by inserting in section sixty-one after the words "the commencement of this Act" the words "or (if his employer is added to Schedule III to this Act under section ninety-two) at the date of such addition";

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Sec. 61.

(i) by omitting all words in section ninety-two after the words "this Act" secondly occurring and inserting in lieu thereof the words "and on the date of the gazettal of such notification the provisions of this Act other than paragraph (c) of the proviso in section twelve and sections thirty-four, 34A, thirty-five, and Division 4 of Part IV shall (so far as applicable) apply to such council, person, corporation or board and its or his employees:

Addition of name of employer to Schedule III.
Amendment of Superannuation Act, 1916-1935, s. 92.

Provided that an employee who is immediately prior to the date of the gazettal of such notification subject to this Act (including section fifty-five, fifty-eight or fifty-nine), shall not be affected by such notification.

The Governor shall amend Schedule III to this Act by inserting therein the name of any council, person, corporation or board to which or to whom the provisions of this Act have been extended in pursuance of this section."

3. Section two of this Act shall be deemed to have commenced on the nineteenth day of October, one thousand nine hundred and thirty-four, and subject to section four of this Act the provisions of the Principal Act as amended by this Act shall on and after such day apply with respect to the addition of The Commissioner for Main Roads to Schedule III to the Principal Act under section ninety-two by notification by the Governor published in the Gazette of the nineteenth day of October, one thousand nine hundred and thirty-four.

Time of commencement of s. 2.

4. (1) Any person who was at the date of the addition of The Commissioner for Main Roads to Schedule III to the Principal Act under section ninety-two thereof an employee of such Commissioner within the meaning of such Act and was not at such date contributing to the fund and who was or is entitled or required to make any election or application or give any notice under the Principal Act as amended by this Act within a period computed

Extension of time for election, etc., by employees of Commissioner for Main Roads.

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computed from the date of such addition may make such election or application or give such notice within a similar period computed from the date of commencement of this Act.

Employee of
Commissioner for
Main Roads
to be
credited
with certain
service.

(2) Any person who was at the date of the addition of The Commissioner for Main Roads to Schedule III to the Principal Act under section ninety-two thereof an employee of such Commissioner within the meaning of such Act and before such date had continuously served as an employee at monthly or annual rates of pay with such Commissioner and with The Transport Commissioners of New South Wales, The State Transport (Co-ordination) Board and The Main Roads Board of New South Wales or some of them shall be entitled to have such service counted as service for the purposes of subsections one and (1B) and two of section twenty-one, subsection one of section twenty-two, section twenty-three and subsection one of section twenty-nine of the Principal Act.

(3) (a) Any person who was at the date of the addition of The Commissioner for Main Roads to Schedule III to the Principal Act under section ninety-two thereof an employee of such Commissioner within the meaning of such Act and before such date had continuously served with such Commissioner and with The Transport Commissioners of New South Wales, The State Transport (Co-ordination) Board and The Main Roads Board of New South Wales or some of them under an employment the terms of which required him to give his whole time to the duties of his employment and for which he was paid at an hourly, daily, weekly or fortnightly rate or by piece-work shall be entitled to have such service counted as service for the purposes of section twenty-one of the Principal Act.

(b) Service of such person within the meaning of subsection two of this section may be included as service for the purposes of this subsection.

Validation
of certain
contribu-
tions.

(4) Every person who, immediately prior to the addition of The Commissioner for Main Roads to Schedule III to the Principal Act under section ninety-two thereof, was in the service of such Commissioner and was contributing to the fund shall be deemed to have been and to be entitled to contribute thereto notwithstanding that The Main Roads Board of New South
Wales,

Wales, The State Transport (Co-ordination) Board, The Transport Commissioners of New South Wales and The Commissioner for Main Roads were not employers within the meaning of the Principal Act.

(5) The Commissioner for Main Roads shall on and after the date of the commencement of the Transport (Division of Functions) Act, 1932, be the employer for the purposes of the Principal Act as amended by this Act of the persons to whom subsection four of this section applies and of the officers of the Public Service to whom sub-paragraph (ii) of paragraph (b) of subsection two of section seven of the Main Roads Act, 1924, as amended by subsequent Acts has applied or applies, and in addition such Commissioner shall at the request of the State Superannuation Board pay to the fund the contributions in respect of the said persons and officers of the Public Service that would have been payable by The Main Roads Board of New South Wales, The State Transport (Co-ordination) Board and The Transport Commissioners of New South Wales had such bodies been employers within the meaning of the Principal Act.

Liability of Commissioner for Main Roads to pay certain contributions.

5. The Principal Act is further amended as follows:—

(a) by omitting section thirteen and by inserting the following new section thirteen in lieu:—

13. (1) Where the salary of a contributor is reduced the number of units for which he is compelled to contribute shall be reduced accordingly, and any contributions in respect of units in excess of such reduced number previously paid by such contributor shall be refunded to him.

Employee reduced in salary. Amendment of Superannuation Act, 1916-1930, s. 13.

(2) This section applies to every reduction in the salary of a contributor made before the commencement of the Superannuation (Amendment) Act, 1935, unless a pension has been paid before, or is being paid at, such commencement under section thirteen as originally enacted.

(3) Nothing in this section shall affect the provisions of section five of the Public Service Salaries Act, 1931-1934.

(b)

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Sec. 22 (1).
Qualifica-
tion for
breakdown
pension.

(b) (i) by omitting from subsection one of section twenty-two the words "for at least ten years" and by inserting in lieu thereof the words "as an employee for at least five years";

Sec. 29 (1).

(ii) by omitting from subsection one of section twenty-nine the words "for at least ten years" and by inserting in lieu the words "as an employee for at least five years";

(c) by inserting in Part III after section twenty the following new section 20A:—

Sec. 20A.
Contributor
transferred
to Common-
wealth Pub-
lic Service.

20A. In the case of a contributor to whom the last paragraph of section 84 of the Commonwealth Constitution applies, the Board shall on his transfer to the Public Service of the Commonwealth pay to the Colonial Treasurer (who may pay the same to the Commonwealth) the amount of the contributions made to the Fund by such contributor. This section shall be deemed to have commenced on the first day of July, one thousand nine hundred and nineteen.

(d) by inserting therein after section thirty-two the following new section 32A and short heading:—

Other death benefits.

Unmarried
male contri-
butor's
death
benefits.

32A (1) On the death before his retirement of a male contributor who is unmarried or whose wife is dead or divorced there shall be paid to his personal representatives, or, failing them, to such persons as the Board may determine, a sum equal to the total of the contributions paid by him to the Fund subject to a deduction therefrom of such sum as the Board shall determine as the value as at the date of his death of all pensions payable under this Act to children of himself or of his wife on his death.

(2) This section shall be deemed to have commenced on the first day of July, one thousand nine hundred and twenty-nine.

(e)

- (e) by inserting in section thirty-four after subsection (1A) the following new subsection (1B):—

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(1B) The provisions of subsection (1A) of this section conferring benefits on the widow and children of an employee of the Sydney Harbour Trust Commissioners shall extend to the widow and children of a person employed by such Commissioners at the commencement of the Superannuation (Amendment) Act, 1928, and who at the commencement of the said Act had attained the age of sixty years and who had served for at least ten years before such commencement and who has died or dies after such commencement while in the service of such employer as if such person had been retired on a pension under this section on account of his age on the day immediately preceding the day of his death:

Pension to widows and children of certain employees of Sydney Harbour Trust Commissioners. Superannuation Act, 1916-1930, s. 34.

Provided that each such person was of a class similar to that which the Commissioners certified or certify under the provisions of the said Act as being paid in the Public Service by salary fixed at an annual rate.

A pension or benefit under this subsection shall be paid out of the funds of the employer but no pension or benefit shall be payable in respect of any period prior to the first day of November, one thousand nine hundred and twenty-nine.

- (f) by inserting therein after section 35A the following new section:—

35B. Any officer of the Sydney Harbour Trust Commissioners to whom regulations made by the Commissioners under section eighty of the Sydney Harbour Trust Act, 1900, with the approval of the Governor applied, who after the twenty-eighth day of May, one thousand nine hundred and twenty-seven, and before the

Pensions to certain Sydney Harbour Trust employees without contribution.

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the twenty-first day of November, one thousand nine hundred and thirty, has been retired or permitted by his employer to retire, and who, at the time of such retirement—

(a) was of or over the age of sixty-five years; and

(b) had served for at least fifteen years,

shall, subject to this section, be deemed to have been and shall be entitled to a pension under this Act in accordance with salary as set out in section twelve of this Act, but not exceeding four units, without paying any contribution to the Fund.

Any such pension shall carry widows' and children's benefits as elsewhere in this Act provided.

Any pension or benefit under this section shall be paid out of the funds of the employer, but notwithstanding anything hereinbefore contained no pension or benefit to or in respect of any such officer or any other person shall be payable in respect of any period prior to the commencement of the Superannuation (Amendment) Act, 1928.

Machinery amendment for convenience of reprinting.

(g) by inserting after section ninety-three as section ninety-four of the Principal Act, a new section to consist of section three of the Superannuation (Amendment) Act, 1918, as amended by the Superannuation (Amendment) Act, 1919, and the heading thereto.

Breakdown pension to employee of Crown.

6. The Superannuation (Amendment) Act, 1930, is hereby amended by inserting in section two after subsection two the following new subsection:—

Superannuation (Amendment) Act, 1930, s. 2.

(2A) In the application of subsection one of section twenty-nine of the Principal Act to an employee of the Government of New South Wales or the Sydney Harbour Trust Commissioners or the Water Conservation and Irrigation Commission, the said

said subsection shall be read as if paragraph (b) were omitted and the following paragraph inserted in lieu thereof:—

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- (b) if such invalidity or incapacity is due to his own fault he shall be entitled to a pension which shall be the actuarial equivalent of the contributions made by him up to the time of his retirement and the contributions which up to that time would have been made in respect of him if the Superannuation (Amendment) Act, 1930, had not been enacted.

7. The Principal Act is further amended by inserting in section 84A the following new paragraph:—

When a gratuity is granted under any of the said Acts, namely, the Civil Service Act, 1884, and the Public Service Acts to any person and any of his service in respect of which such gratuity is granted has been taken as temporary service, if such person considers that any of that temporary service should have been taken as permanent service for the purposes of the gratuity, he may appeal to the Minister administering such Act, who may thereupon refer that matter for opinion to a judge of the Supreme Court, and if so referred such Minister shall decide the point in accordance with such opinion. Such decision shall be final and conclusive and not subject to appeal.

Appeal to Minister where gratuity under Civil Service Act and Public Service Acts granted on service as temporary. Superannuation Act, 1916-1930, s. 84A.

8. The provisions of section seven of this Act shall apply with respect to any person who retired after the eighteenth day of March, one thousand nine hundred and twenty-seven.

Time of application for sec. 7.