

South Australia



SUPERANNUATION (CONTRACTING OUT) AMENDMENT ACT 1995

No. 97 of 1995

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ELIZABETHAE II REGINAE

A.D. 1995

No. 97 of 1995

An Act to amend the Superannuation Act 1988.

[Assented to 7 December 1995]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Superannuation (Contracting Out) Amendment Act 1995*.
- (2) The *Superannuation Act 1988* is referred to in this Act as "the principal Act".

Commencement

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

Amendment of s. 4—Interpretation

3. Section 4 of the principal Act is amended—

- (a) by inserting after the definition of "the Consumer Price Index" in subsection (1) the following definition:

"contracting out agreement" means an agreement between a Minister or other agent or instrumentality of the Crown and another person or persons—

- (a) under which—
 - (i) a function previously undertaken by the Crown is to be undertaken by the private sector; or
 - (ii) a service previously provided by the Crown to the public, or to a section of the public or to the Crown itself, is to be provided by the private sector; and
- (b) under which persons who had been public sector employees employed in undertaking that function or providing that service are offered employment in the private sector;;

- (b) by inserting after the definition of "old scheme contributor" in subsection (1) the following definition:

"outplaced employee" means a contributor who has retired or resigned from employment to take up employment in the private sector pursuant to an offer of employment in a contracting out agreement;;

- (c) by inserting after the definition of "pension period" in subsection (1) the following definition:

"private sector employer" means the employer with whom an outplaced employee takes up employment upon retiring or resigning from employment in the public sector;.

Amendment of s. 27—Retirement

4. Section 27 of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) This section does not apply to an outplaced employee who had reached the age of 55 years when he or she retired from employment unless he or she has made an election in accordance with section 28B to take the retirement benefit provided by this section.

Amendment of s. 28—Resignation and preservation of benefits

5. Section 28 of the principal Act is amended by inserting after subsection (7) the following subsection:

(8) This section does not apply to, or in relation to, an outplaced employee who resigned from employment before reaching the age of 55 years unless he or she has made an election in accordance with section 28C to preserve his or her accrued superannuation benefits under this section or is taken under section 28C to have made such an election.

Insertion of ss. 28B and 28C

6. The following sections are inserted after section 28A of the principal Act:

Outplaced employees—55 and over

28B. (1) A contributor who had reached the age of 55 years when he or she retired from employment to take up employment in the private sector pursuant to an offer of employment in a contracting out agreement may elect—

- (a) to take the retirement benefit provided by section 27; or
- (b) to preserve his or her accrued superannuation benefits under section 28 as though he or she had resigned from employment before reaching the age of 55 years.

(2) A contributor who fails to inform the Board in writing of his or her election under subsection (1) within one month after retiring will be taken to have made an election under subsection (1)(b).

(3) If the Board is of the opinion that the limitation period referred to in subsection (2) would unfairly prejudice a contributor, the Board may extend the period as it applies to the contributor.

(4) Where a contributor has made, or is taken to have made, an election under subsection (1)(b), section 28 applies to, and in relation to, the contributor except that he or she is not entitled to require the Board to make a superannuation payment under section 28(2)(a), and the Board must not make such a payment under that provision, until the contributor has ceased employment with the private sector employer.

Outplaced employees under 55

28C. (1) A contributor who had not reached the age of 55 years when he or she resigned from employment to take up employment in the private sector pursuant to an offer of employment in a contracting out agreement may elect—

- (a) to preserve his or her accrued superannuation benefits under section 28; or
- (b) to take the benefits provided by section 28A.

(2) A contributor who fails to inform the Board in writing of his or her election under subsection (1) within one month after resigning will be taken to have made an election under subsection (1)(a).

(3) If the Board is of the opinion that the limitation period referred to in subsection (2) would unfairly prejudice a contributor, the Board may extend the period as it applies to the contributor.

(4) Where a contributor has made, or is taken to have made, an election under subsection (1)(a), section 28 applies to, and in relation to, the contributor except that he or she is not entitled to require the Board to make a superannuation payment under section 28(2)(a), and the Board must not make such a payment under that provision, until the contributor has reached the age of 55 years and has ceased employment with the private sector employer.

(5) Where a contributor has made an election under subsection (1)(b), section 28A applies to the contributor as though the requirements of section 28A(1) had been met.

Amendment of s. 34—Retirement

7. Section 34 of the principal Act is amended by inserting after subsection (6) the following subsection:

- (7) This section does not apply to an outplaced employee.

Amendment of s. 39—Resignation and preservation of benefits

8. Section 39 of the principal Act is amended by inserting after subsection (10) the following subsection:

(11) This section does not apply to, or in relation to, an outplaced employee who resigned from employment before reaching the age of 55 years unless he or she has made an election in accordance with section 39C to preserve his or her accrued superannuation benefits under this section or is taken under section 39C to have made such an election.

Insertion of ss. 39B and 39C

9. The following sections are inserted after section 39A of the principal Act:

Outplaced employees—55 and over

39B. (1) A contributor who had reached the age of 55 years when he or she retired from employment to take up employment in the private sector pursuant to an offer of employment in a contracting out agreement may elect—

- (a) to preserve his or her accrued superannuation benefits under section 39 as though he or she had resigned from employment before reaching the age of 55 years; or
- (b) to take the benefit provided by section 39A.

(2) A contributor who fails to inform the Board in writing of his or her election under subsection (1) within one month after retiring will be taken to have made an election under subsection (1)(a).

(3) If the Board is of the opinion that the limitation period referred to in subsection (2) would unfairly prejudice a contributor, the Board may extend the period as it applies to the contributor.

(4) Where a contributor has made, or is taken to have made, an election under subsection (1)(a), section 39 applies to, and in relation to, the contributor except that—

- (a) section 39(5) (instead of section 39(2)) will apply to, and in relation to, a contributor whose contribution period is less than 120 months; and
- (b) the contributor is not entitled to require the Board to commence paying a retirement pension under section 39(5)(a), and the Board must not commence paying such a pension under that provision, until the contributor has ceased employment with the private sector employer.

(5) Where the contributor has made an election under subsection (1)(b), section 39A applies to the contributor as though the requirements of section 39A(1) had been met.

Outplaced employees under 55

39C. (1) A contributor who had not reached the age of 55 years when he or she resigned from employment to take up employment in the private sector pursuant to an offer of employment in a contracting out agreement may elect—

- (a) to preserve his or her accrued superannuation benefits under section 39; or
- (b) to take the benefits provided by section 39A.

(2) A contributor who fails to inform the Board in writing of his or her election under subsection (1) within one month after resigning will be taken to have made an election under subsection (1)(a).

(3) If the Board is of the opinion that the limitation period referred to in subsection (2) would unfairly prejudice a contributor, the Board may extend the period as it applies to the contributor.

(4) Where a contributor has made, or is taken to have made, an election under subsection (1)(a), section 39 applies to, and in relation to, the contributor except that (subject to subsection (5))—

- (a) section 39(5) (instead of section 39(2)) applies to, and in relation to, a contributor whose contribution period is less than 120 months; and
- (b) the contributor is not entitled to require the Board to commence paying a retirement pension under section 39(5)(a), and the Board must not commence paying such a pension under that provision, until the contributor has reached the age of 55 years and has ceased employment with the private sector employer.

(5) A contributor who has made, or is taken to have made, an election under subsection (1)(a) and whose contribution period is less than 120 months may inform the Board in writing within one month after resigning that section 39(2) and not section 39(5) is to apply to, and in relation to, the contributor and in that case—

- (a) section 39(2) applies to, and in relation to, the contributor; but
- (b) the contributor is not entitled to require the Board to make a superannuation payment under section 39(2)(a), and the Board must not make a superannuation payment under that provision until the contributor has reached the age of 55 years and has ceased employment with the private sector employer.

(6) If the Board is of the opinion that the limitation period referred to in subsection (5) would unfairly prejudice a contributor, the Board may extend the period as it applies to the contributor.

(7) Where the contributor has made an election under subsection (1)(b), section 39A applies to the contributor as though the requirements of section 39A(1) had been met.

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

ROMA MITCHELL Governor