



TASMANIA

**PARLIAMENTARY SUPERANNUATION
(MISCELLANEOUS AMENDMENTS) ACT
1996**

No. 15 of 1996

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**PARLIAMENTARY SUPERANNUATION
(MISCELLANEOUS AMENDMENTS) ACT
1996**

No. 15 of 1996

An Act to amend the *Parliamentary Retiring Benefits Act 1985* and the *Parliamentary Superannuation Act 1973*

[Royal Assent 10 July 1996]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the *Parliamentary Superannuation (Miscellaneous Amendments) Act 1996*.

Commencement

2. This Act commences on the day after the day on which it receives the Royal Assent.

**PART 2 – AMENDMENTS TO PARLIAMENTARY
RETIRING BENEFITS ACT 1985**

Section 4 amended (Parliamentary Retiring Benefits Fund)

3. Section 4(5) of the *Parliamentary Retiring Benefits Act 1985** is amended by omitting "exempt from" and substituting "liable to".

Section 6 amended (Actuarial investigations of Fund)

4. Section 6(1) of the *Parliamentary Retiring Benefits Act 1985* is amended by omitting "1988" and substituting "1995".

Section 8 amended (Audit)

5. Section 8 of the *Parliamentary Retiring Benefits Act 1985* is amended by omitting "the *Audit Act 1918*" and substituting "Part 3 of the *Financial Management and Audit Act 1990*".

* No. 106 of 1985. Amended by No. 33 of 1990, No. 48 of 1991, No. 68 of 1994 and No. 5 of 1995.

Section 10 amended (Deductions of contributions from salaries of members)

6. Section 10 of the *Parliamentary Retiring Benefits Act 1985* is amended by inserting after subsection (1) the following subsections:

(1A) A member who was aged 60 years or over on 1 July 1990 may elect, by notice in writing given to the Trust, that he or she will make contributions in respect of his or her service after the age of 65 years.

(1B) An election under subsection (1A) must be made within such period as the Trust may allow.

(1C) The contributions in respect of a member who has made an election under subsection (1A) cease to be payable –

- (a) when the member attains the age of 70 years; or
- (b) when he or she ceases to be a member; or
- (c) on 30 June 2 000 –

whichever first occurs.

(1D) A member who has ceased to make contributions as mentioned in subsection (1) and has elected under subsection (1A) to make contributions, must recommence paying contributions from a date fixed by the Trust, unless he or she has attained the age of 70 years.

(1E) A member who on being re-elected as a member when over the age of 65 years, did not make contributions as mentioned in subsection (1) and who makes an election under subsection (1A) must

recommence paying contributions from a date fixed by the Trust, unless he or she has attained the age of 70 years.

(1F) A member who has made an election under subsection (1A) must pay contributions in respect of his or her service for which no contributions have been made within such period as the Trust may allow together with interest at such rate as the Trust may determine.

Section 14 amended (Payment of retiring benefit)

7. (1) Section 14 of the *Parliamentary Retiring Benefits Act 1985* is amended as follows:

- (a) by omitting from subsection (1) "under the age of 65 years and who" and substituting "who –

- (a) is under the age of 65 years; or
- (b) has attained the age of 65 years but not the age of 70 years and has made an election under section 10(1A) –

and who in either case";

- (b) by omitting from subsection (3) "who has attained the age of 65 years" and substituting "who –

- (a) has attained the age of 65 years; and
- (b) has not made contributions in respect of his or her service as a member after that age –";

- (c) by omitting "service" from the definition of "K" in subsection (3) and substituting "service, not exceeding 20,";
- (d) by omitting "service" from the definition of "L" in subsection (3) and substituting "service, not exceeding 20,".

(2) Section 14 of the *Parliamentary Retiring Benefits Act 1985* is further amended by inserting after subsection (3) the following subsections:

(4) The Trust must, out of the Fund, pay to a person who –

- (a) has attained the age of 70 years; and
- (b) has made an election under section 10(1A); and
- (c) is entitled to a retiring benefit –

a lump sum payment calculated in accordance with subsection (1) less an amount calculated in accordance with the following formula:

$$D = \left(\frac{K-L}{4} \right) \times FS \times \frac{2}{7}$$

where –

"D" is the amount to be deducted; and

"K" is the total years of service, not exceeding 20, of that person as a member; and

"L" is that person's years of service, not exceeding 20, at the age of 70 years; and

"FS" is the final salary of that person determined in accordance with section 12.

(5) The Trust must, out of the Fund, pay to a person who is entitled to a retiring benefit under this section and who has had 20 or more years of service as a member such further amount as it may determine on the advice of the Actuary having regard to –

- (a) the benefit which may be attributed to any portion of the service of the member in excess of 20 years; and
- (b) the minimum benefits prescribed under the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth.

Section 15 substituted

8. Section 15 of the *Parliamentary Retiring Benefits Act 1985* is repealed and the following section is substituted:

Eligibility for death or invalidity benefit

15. (1) A member is entitled to be paid an invalidity benefit if –

- (a) the Trust is satisfied, on the report of a duly qualified medical practitioner appointed by the Trust, that the member has been rendered totally and permanently incapable of performing the duties of a member, by reason of

ill-health or physical incapacity or mental incapacity; and

- (b) the member ceases to be a member.

(2) On the death of a member, a death benefit is payable, subject to subsection (3), to the spouse of the member or to his or her personal representatives, as the Trust may determine.

(3) A death benefit is not payable to a spouse if, at the time of the member's death –

- (a) the spouse was living apart from the member; and
- (b) the Trust is satisfied, after making due enquiry, that the spouse was not receiving any significant financial support from the member.

Section 16 amended (Payment of death or invalidity benefit)

9. Section 16 of the *Parliamentary Retiring Benefits Act 1985* is amended by inserting after subsection (3) the following subsection:

(4) The Trust must, out of the Fund, pay to a person who is entitled to a death or invalidity benefit under subsection (1) in respect of a member who served 20 or more years as a member such further amount as it may determine on the advice of the Actuary having regard to –

- (a) the benefit which may be attributed to any portion of the service of the member in excess of 20 years; and

- (b) the minimum benefits prescribed under the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth.

Section 18 substituted

10. Section 18 of the *Parliamentary Retiring Benefits Act 1985* is repealed and the following section is substituted:

Payment of termination benefit

18. (1) Subject to subsection (2), the Trust must pay out of the Fund to a person who is eligible for a termination payment a lump sum payment to be calculated in accordance with whichever of the following formulae provides the greater benefit:

$$(a) \quad P = \left(\frac{n}{5} + 1 \right) \times C$$

where –

"P" is the amount to be paid; and

"n" is the number of years service of the member (not exceeding 10); and

"C" is the total of the member's contributions made during the member's period of service;

$$(b) \quad P = E + \left[\frac{r}{9} \times (E - D) \right]$$

where –

"P" is the amount to be paid; and

"E" is the total contributions and accrued interest as at the date when the member's service is terminated; and

"D" is the total contributions and accrued interest as at 1 July 1992 together with interest on that amount as provided in section 10A to the date when the member's service is terminated; and

"r" is whichever of the following numbers is applicable at the date when the person ceases to be a member:

6 – until 30 June 1998

7 – during the period 1 July 1998 to 30 June 2000

8 – during the period 1 July 2000 to 30 June 2002

9 – after 1 July 2002.

(2) If the person eligible for a termination payment has first or again become a member after the age of 65 years, the lump sum is to be calculated in accordance with the formula in subsection (1)(b) as if that person had paid contributions for the whole of the period of his or her service.

(3) Where a termination benefit is payable to a person who has not paid contributions in respect of a period of service after the age of 65 years, that benefit is to be reduced by an amount representing –

- (a) the sum of the contributions taken to have been paid under subsection (2); and
- (b) the interest that would have been payable on those contributions.

Section 19A amended (Application of Commonwealth superannuation standards)

11. Section 19A of the *Parliamentary Retiring Benefits Act 1985* is amended by omitting "requirements of the standards prescribed for the purposes of the *Occupational Superannuation Standards Act 1987* of the Commonwealth and" and substituting "principles of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth or any other law of the Commonwealth relating to the regulation of superannuation schemes that are".

Section 25 amended (Regulations)

12. (1) Section 25 of the *Parliamentary Retiring Benefits* 1985 is amended by omitting "The" and substituting "(1) The".

(2) Section 25 of the *Parliamentary Retiring Benefits Act 1985* is further amended by adding at the end the following subsection:

(2) Without limiting subsection (1) or section 22, the regulations may –

- (a) provide for the procedure to be followed in determining a dispute under this Act; and
- (b) provide that a person aggrieved by a decision of the Trust may, on payment of a prescribed fee, require it to apply to the Supreme Court for a declaration as to the validity of its decision; and
- (c) provide for the powers of the Supreme Court on any such application; and

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- (d) provide for the costs of the proceedings
in the Supreme Court.

**PART 3 – AMENDMENTS TO PARLIAMENTARY
SUPERANNUATION ACT 1973****Section 3 amended (Interpretation)**

13. Section 3(1) of the *Parliamentary Superannuation Act 1973** is amended as follows:

- (a) by omitting "sixteen" from paragraph (a) of the definition of "child" and substituting "18";
- (b) by omitting "twenty-one" from paragraph (d) of the definition of "child" and substituting "25".

Section 4 amended (The Fund)

14. Section 4(5) of the *Parliamentary Superannuation Act 1973* is amended by omitting "exempt from" and substituting "liable to".

Section 8 amended (Payments by Treasurer into the Fund)

15. Section 8(1) of the *Parliamentary Superannuation Act 1973* is amended as follows:

- (a) by omitting from paragraph (d) "person." and substituting "person; and";
- (b) by inserting after paragraph (d) the following paragraph:

* No. 28 of 1973. Amended by No. 70 of 1973, No. 67 of 1974, No. 41 of 1976, No. 88 of 1979, Nos. 15, 92 and 99 of 1982, No. 29 of 1984, No. 105 of 1985, No. 1 of 1986, No. 57 of 1988, No. 42 of 1989, Nos. 5 and 33 of 1990, No. 48 of 1991, No. 68 of 1994 and No. 5 of 1995.

- (e) in respect of a benefit paid under section 16(3B) or 18A, the whole of the benefit.

Section 11B inserted

16. After section 11A of the *Parliamentary Superannuation Act 1973*, the following section is inserted:

Powers and functions of Trust

11B. (1) The functions of the Trust are to –

- (a) manage the Fund so as to maximise the return earned from the Fund, having regard to the need to –
 - (i) provide for payments out of the Fund; and
 - (ii) exercise reasonable care and prudence so as to maintain the integrity of the Fund; and
- (b) administer the receipt of contributions and the payment of benefits having due regard to the need for equity among members and beneficiaries; and
- (c) collect contributions and pay benefits; and
- (d) establish policies in respect of the administration of this Act and the investment of money standing to the credit of the Fund and adopt strategies designed to achieve those policies; and

- (e) determine, authorise and approve programs for the administration of this Act and the investment of money standing to the credit of the Fund; and
- (f) conduct its operations in an efficient, effective and economic manner; and
- (g) take, purchase, lease, hold, sell, exchange and dispose of real investment property for the purposes of this Act; and
- (h) inform members about the management of the Fund including making available to contributors, at least once a year, a summary of information relating to their entitlements.

(2) In performing its functions, the Trust must have regard to the need to protect information the disclosure of which could adversely affect members or the financial position or the commercial or other operations of the Trust.

(3) In performing their functions, the members of the Trust must –

- (a) act honestly in all matters concerning the Fund; and
- (b) exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another person for whom that person felt morally bound to provide; and
- (c) ensure that the Trust's functions and powers are performed and exercised in

the best interests of the beneficiaries;
and

- (d) keep the money and other assets of the Trust separate from any money and assets –
 - (i) that are held by the member personally; or
 - (ii) that are money or assets of the State or an Agency, within the meaning of the *Tasmanian State Service Act 1984*; and
- (e) subject to this Act, not enter into any contract or do any other thing that would prevent the Trust from, or hinder the Trust in, properly performing or exercising its functions and powers; and
- (f) formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including –
 - (i) the risk involved in making, holding and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements; and
 - (ii) the composition of the Fund's investments as a whole, including the extent to which the investments are diverse or involve the Fund in being exposed to risks arising from inadequate diversification; and

- (iii) the liquidity of the Fund's investments, having regard to its expected cash flow requirements; and
- (iv) the ability of the Fund to discharge its existing and prospective liabilities; and
- (g) if there are any reserves of the Fund, formulate and give effect to a strategy for the prudent management of those reserves; and
- (h) allow a beneficiary to have access to any information or any documents prescribed under an Act of the Commonwealth or of Tasmania.

(4) The Trust may do anything necessary or convenient to perform its functions.

Section 12 substituted

17. Section 12 of the *Parliamentary Superannuation Act 1973* is repealed and the following section is substituted:

Secretary and other officers

12. (1) The Trust may, with the approval of a Head of an Agency within the meaning of the *Tasmanian State Service Act 1984*, appoint a person employed in that Agency to be Secretary of the Trust and that person may hold that office in conjunction with any other position.

(2) The Trust may make arrangements with a Head of Agency for such employees within the

Agency in which the Secretary of the Trust is employed as may be considered necessary to be made available to the Trust to enable it to perform its functions and those employees may serve the Trust in any capacity.

(3) The Trust must reimburse the Agency for the services of the person appointed as Secretary under subsection (1) and of the employees made available under subsection (2).

Section 14 amended (Deduction of contributions from salaries of members)

18. Section 14 of the *Parliamentary Superannuation Act 1973* is amended as follows:

- (a) by inserting after "and" in subsection (1) ", subject to subsection (1A),";
- (b) by inserting after subsection (1) the following subsections:

(1A) A member who was aged 60 years or over on 1 July 1990 may elect, by notice in writing given to the Trust, that he or she will make contributions in respect of his or her service after the age of 65 years.

(1B) An election under subsection (1A) must be made within such period as the Trust may allow.

(1C) The contributions in respect of a member who has made an election under subsection (1A) cease to be payable –

- (a) when the member attains the age of 70 years; or

- (b) when he or she ceases to be a member; or
- (c) on 30 June 2 000 –

whichever first occurs.

(1D) A member who has ceased to make contributions as mentioned in subsection (1) and has elected under subsection (1A) to make contributions must recommence paying contributions from a date fixed by the Trust.

(1E) A member who has recommenced paying contributions under subsection (1D) must make the contributions in respect of his or her service for which no contributions have been made within such period as the Trust may allow together with interest at such rate as the Trust may determine.

Section 14C inserted

19. After section 14B of the *Parliamentary Superannuation Act 1973*, the following section is inserted in Part III:

Further contributions by former members

14C. (1) A person who –

- (a) was a member on 30 June 1990 but is no longer a member; and
- (b) ceased to make contributions as mentioned in section 14(1) –

may elect, by notice in writing given to the Trust, to make contributions to the Fund as provided by section 13(2) in respect of his or her service after attaining the age of 65 years and before attaining the age of 70 years.

(2) An election under subsection (1) must be made within such period as the Trust may allow.

(3) A person who makes an election under this section must pay the contributions within such period as the Trust may allow together with interest at such rate as the Trust may determine.

Section 16 amended (Members' superannuation pensions)

20. (1) Section 16 of the *Parliamentary Superannuation Act 1973* is amended by omitting from subsection (3) "who at the date of retirement is aged 65 years or less" and substituting "who –

- (a) at the date of retirement is aged 65 years or less; or
- (b) having attained the age of 65 years has continued to make contributions to the Fund and has not attained the age of 70 years –";

(2) Section 16 of the *Parliamentary Superannuation Act 1973* is further amended by inserting after subsection (3) the following subsection:

(3AA) Where a person who at the date of retirement has attained the age of 70 years and elected on attaining the age of 65 years to continue making contributions to the Fund after the age of 65 years, that person is entitled to a pension under this

section payable at a rate determined in accordance with the following formula:

$$P = E - \left[(E - F) \times \frac{2}{7} \right]$$

where –

"P" represents the pension payable under this subsection; and

"E" represents a pension calculated using the formula in subsection (3); and

"F" represents a pension calculated using the formula in subsection (3) as if the person had retired on attaining the age of 70 years.

(3) Section 16 of the *Parliamentary Superannuation Act 1973* is further amended by omitting from subsection (3A) "person has at the age of retirement attained the age of 65 years" and substituting "person –

- (a) has at the date of retirement attained the age of 65 years; and
- (b) has not made contributions in respect of service after that age –".

(4) Section 16 of the *Parliamentary Superannuation Act 1973* is further amended by inserting after subsection (3A) the following subsection:

(3B) Where –

- (a) a person is entitled to a pension under this section; and
- (b) his or her relevant periods of service as a member are 20 years or more –

that person is entitled to be paid a further benefit by way of a lump sum payment as the Trust may determine on the advice of the Actuary having regard to –

- (c) the pension attributable to any portion of his or her service in excess of 20 years; and
- (d) the minimum benefits prescribed under the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth.

Section 18 amended (Refunds of contributions)

21. Section 18 of the *Parliamentary Superannuation Act 1973* is amended as follows:

- (a) by omitting subsections (2) to (5), both inclusive;
- (b) by omitting "14A." from subsection (6)(b) and substituting "14A; and";
- (c) by inserting after paragraph (b) of subsection (6) the following paragraph:
 - (c) a termination benefit in accordance with section 18A.

Sections 18A and 18B inserted

22. After section 18 of the *Parliamentary Superannuation Act 1973*, the following sections are inserted in Division I of Part IV:

Termination benefit payable

18A. (1) A person who is entitled under section 18 to a refund of contributions is also entitled to payment of a termination benefit as provided in this section.

(2) A termination benefit under subsection (1) is to be calculated in accordance with the following formula:

$$T = \frac{r}{12} \times (B - A)$$

where –

"T" is the termination benefit payable under this section; and

"B" is the total contributions and accrued interest as at the date when the member's service is terminated; and

"A" is the total contributions and accrued interest as at 1 July 1992 together with interest on that amount calculated in accordance with section 14A to the date when the member's service is terminated; and

"r" is whichever of the following numbers is applicable at the date when the person ceases to be a member:

6 – until 30 June 1998

7 – during the period 1 July 1998 to 30 June 2000

8 – during the period 1 July 2000 to 30 June 2002

9 – after 1 July 2002.

(3) Where a person to whom section 24(3) applies has again become, or again becomes, a member, the person is entitled to a benefit calculated in accordance with subsection (2) as if he or she had made contributions from the date of re-election as a member.

Entitlements of personal representatives on death of member

18B. (1) Where a person ceases to be a member by reason of his or her death and no pension is payable under section 19, the personal representatives of that person are entitled to have paid to them an amount representing a lump sum calculated in accordance with section 22B as if 100% of the appropriate pension calculated in accordance with section 19 were commuted.

(2) In the application of section 22B for the purposes of this section –

- (a) the election required under section 22B(1) is taken to have had effect on the death of the deceased member; and
- (b) a conversion factor is to be applied for determining the lump sum; and
- (c) the conversion factor is to be as specified in the fourth Schedule by reference to the appropriate age; and
- (d) the appropriate age is taken to be the age of the deceased member at the date of his or her death.

***Division IIIB - Benefits payable to certain
former members***

Benefits payable to certain former members

22D. (1) Subject to subsection (2), the Trust must, out of the Fund, pay to a person who has made an election under section 14C(1) and paid the required amount under section 14C(3) an additional amount in accordance with subsection (3).

(2) The Trust must, out of the Fund, pay to a person who –

- (a) attained the age of 65 years before 1 July 1990; and
- (b) is entitled to a pension under section 16(3A); and
- (c) having been entitled to make an election under section 14C(1), has failed to do so within the period allowed by the Trust –

an additional amount in accordance with subsection (3) as if he or she attained the age of 65 years on 1 July 1990.

(3) The additional amount is payable by way of pension, lump sum equivalent or partly one and partly the other and is to include any arrears of pension together with interest, as the Trust may determine having regard to the matters specified in section 16.

(2) Section 31 of the *Parliamentary Superannuation Act 1973* is further amended by adding at the end the following subsection:

(2) Without limiting subsection (1) or section 28, the regulations may –

- (a) provide for the procedure to be followed in determining a dispute under this Act; and
- (b) provide that a person aggrieved by a decision of the Trust may, on payment of a prescribed fee, require it to apply to the Supreme Court for a declaration as to the validity of its decision; and
- (c) provide for the powers of the Supreme Court on any such application; and
- (d) provide for the costs of the proceedings in the Supreme Court.

*[Second reading presentation speech made in:–
House of Assembly on 19 June 1996
Legislative Council on 20 June 1996]*

