

RETIREMENT BENEFITS AMENDMENT ACT (No. 2) 1981

No. 72 of 1981

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RETIREMENT BENEFITS AMENDMENT ACT (No. 2) 1981

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AN ACT to amend the Retirement Benefits Act 1970 to make further provision for the payment of expenses incurred for actuarial services carried out for the purposes of the administration of that Act, to extend the powers of investment of the Retirement Benefits Fund Investment Trust, to provide for the protection of members of the Trust and the Retirement Benefits Fund Board, and to remove doubts which have arisen concerning the jurisdiction of the Board with respect to the payment of pensions and other benefits on the ground of invalidity, and for other purposes. [Royal Assent 9 December 1981]

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:—

1—This Act may be cited as the Retirement Benefits Amendment Act (No. 2) 1981. Short title.

2—This Act shall commence on the twenty-eighth day after the date on which it receives the Royal Assent. Commencement.

Principal Act.

3—In this Act, the *Retirement Benefits Act 1970** is referred to as the Principal Act.

Amendment of section 2 of Principal Act (Interpretation).

4—Section 2 (1) of the Principal Act is amended by inserting the following definition after the definition of “employee”:

“functions” includes duties;

Amendment of section 4 of Principal Act (Establishment of the Fund).

5—(1) Section 4 (4) of the Principal Act is amended by omitting the passage beginning with “and all pensions” and ending with “by the Board”.

(2) Section 4 of the Principal Act is further amended by inserting the following subsection after subsection (4):—

(4A) The Board shall pay out of the Fund—

(a) all pensions and other benefits, and all refunds of contributions or other sums, payable under this Act; and

(b) the expenses incurred for services that are carried out by the Actuary on or after 1st July 1981 for the purposes of the administration of this Act.

Amendment of section 5 of Principal Act (Investment of the Fund).

6—(1) Section 5 (3) of the Principal Act is amended as follows:—

(a) by omitting “and re-invested”;

(b) by inserting the following paragraph after paragraph (d):—

(da) in shares of a company incorporated within the Commonwealth and having a paid-up capital of not less than \$1 000 000;

(c) by omitting paragraph (f) and substituting the following paragraph:—

(f) in securities where the principal and interest are for the time being guaranteed—

(i) by the Parliament of the Commonwealth or the Parliament of this or another State; or

(ii) by a Minister of the Commonwealth or a Minister of this or another State;

* No. 76 of 1970. Subsequently amended by No. 101 of 1971, No. 33 of 1972, Nos. 32 and 113 of 1974, No. 93 of 1976, No. 106 of 1977, No. 58 of 1978, No. 72 of 1979, No. 14 of 1980, and No. 24 of 1981.

- (d) by omitting from paragraph (b) “ State; or ” and substituting “ State;”;
- (e) by inserting the following paragraphs after paragraph (b):—
 - (i) by lending money on the security of, or by purchasing, a bill of exchange which is drawn and endorsed, or accepted, by a bank and which, if purchased for value, confers on the holder a right of recourse against a bank which carries on business in this State as the acceptor of the bill for an amount equal to the face value of the bill;
 - (ia) by lending money on the security of, or by purchasing, a promissory note or any other commercial instrument which confers on the holder a right of recourse against the Government of the Commonwealth or of this or another State for the repayment of the loan and the payment of interest on it;
 - (ib) by lending money on the security of, or by purchasing, a letter of credit which confers on the holder a right of recourse against a bank which carries on business in this State for the repayment of the loan and the payment of interest on it;
- (f) by omitting from paragraph (j) “ market,” and substituting “ market; or ”;
- (g) by inserting the following paragraph after paragraph (j):—
 - (k) in a leveraged lease transaction, being a transaction in which—
 - (i) the Trust, whether alone or in the company of others, lends money to a lessor on a non-recourse basis to enable the lessor to purchase property for leasing purposes; and
 - (ii) the security for the loan is a charge or other security over the lessor’s rights under the lease, whether with or without any other security,

(2) Section 5 of the Principal Act is further amended by inserting the following subsections after subsection (4):—

(4A) The Trust shall be deemed to invest in shares to which paragraph (*da*) of subsection (3) applies, in debentures to which paragraph (*e*) of that subsection applies, or in securities to which paragraph (*f*) of that subsection applies if the Trust underwrites, co-underwrites, or sub-underwrites those shares, debentures, or securities.

(4B) For the purposes of subsection (3) (*k*) (*i*), “non-recourse basis”, in relation to the lending of money under a leveraged lease transaction, means a basis on which—

- (a) the lender is entitled to look only to the security provided under that transaction for the payment of the principal, interest, or any other money due under the transaction; and
- (b) there is no legal recourse against the lessor for payment of that principal, interest, or other money in the event of a failure to pay it when due under that transaction.

(3) Section 5 of the Principal Act is further amended by omitting subsection (5), and substituting the following subsection:—

(5) The Trust shall ensure that, of the total sum of the investments made by it pursuant to this section—

- (a) not more than 50 per cent of that sum is, at any one time, invested in the manner permitted by paragraphs (*c*), (*da*), and (*e*) of subsection (3);
- (b) not more than 20 per cent of that sum is, at any one time, invested in the manner permitted by paragraph (*da*) of that subsection; and
- (c) not more than 20 per cent of that sum is, at any one time, invested in the manner permitted by paragraph (*e*) of that subsection.

(4) Section 5 of the Principal Act is further amended by omitting subsection (9) and substituting the following subsection:—

(9) In this section—

“debenture”, in relation to a company, includes debenture stock, bonds, notes, and any other securities of the company, whether or not those securities constitute a charge on the assets of the company;

“share”, in relation to a company, includes stock, ordinary share, preference share, bonus share, right to subscribe for a share, option to subscribe for a share, and any other right or option to acquire a share in the share capital of the company.

7—After section 18 of the Principal Act, the following section is inserted:—

Insertion in Principal Act of new section 18A.

18A—(1) Subject to subsection (2), any matter or thing done by a member of the Board or the Trust in good faith for the purpose or purported purpose of the performance by him of his duties as a member of the Board or the Trust shall not subject him personally to any action, liability, claim, or demand.

Protection for members of the Board and the Trust.

(2) Subsection (1) does not preclude the Board or the Trust from being subject to any action, liability, claim, or demand to which the Board or the Trust would, but for that subsection, have been subject.

8—Section 19 of the Principal Act is repealed and the following section is substituted:—

Substitution of section 19 of Principal Act.

19—(1) The Board may, by instrument in writing, delegate to a member of the Board or to an officer appointed under section 17 the performance or exercise of such of the Board's functions and powers (other than this power of delegation) as are specified in the instrument, and may, by a similar instrument, revoke wholly or in part any such delegation.

Power of delegation of Board and Trust.

(2) A function or power, the performance or exercise of which has been delegated under this section, may, while the delegation remains unrevoked, be performed or exercised from time to time in accordance with the terms of the delegation.

(3) A delegation under this section may be made subject to such conditions or limitations as to the performance or exercise of any of the functions or powers delegated, or as to time or circumstance, as are specified in the instrument.

(4) Notwithstanding any delegation under this section, the Board may continue to perform or exercise all or any of the functions or powers delegated.

(5) Any act or thing done by or to a delegate while acting in the exercise of a delegation under this section shall have the same force and effect as if the act or thing had been done by or to the Board and shall be deemed to have been done by or to the Board.

(6) An instrument purporting to be signed by a delegate of the Board in his capacity as such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Board under seal and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate of the Board under this section.

(7) Subsections (1) to (6) apply to the Trust in the same way as they apply to the Board and, for the purpose of that application, a reference in those subsections to the Board shall be read as a reference to the Trust.

Amendment of section 26 of Principal Act (Rights of contributors for full benefits).

9—(1) Section 26 (1) of the Principal Act is amended by omitting “Where” and substituting “Subject to subsection (1A), where”.

(2) Section 26 of the Principal Act is further amended by inserting the following subsection after subsection (1):—

(1A) A contributor for full benefits to whom subsection (1) (c) relates is not entitled to a pension under this section unless the Board, before the retirement of the contributor on the ground of invalidity not due to his own fault, has, in determining—

(a) the question referred to in paragraph (a) of section 68 (2), found that the contributor is suffering from such bodily infirmity or physical incapacity or mental incapacity as is referred to in that paragraph; and

(b) the question referred to in paragraph (b) of section 68 (2), found that any such infirmity or incapacity is not due to the fault of the contributor.

10—(1) Section 27 (2) of the Principal Act is amended by omitting “Where” and substituting “Subject to subsection (6A), where”.

Amendment of section 27 of Principal Act (Rights of contributors for limited benefits).

(2) Section 27 (6) of the Principal Act is amended by omitting “subsection (7) of this section” and substituting “subsections (6A) and (7)”.

(3) Section 27 of the Principal Act is further amended by inserting the following subsection after subsection (6):—

(6A) A contributor for limited benefits—

(a) to whom paragraph (a) (i) of subsection (2) relates is not entitled to the payment of a sum under that subsection; or

(b) who is a transferred contributor to whom paragraph (a) of subsection (6) relates is not entitled to the payment of an allowance under that subsection,

unless the Board, before the retirement of the contributor on the ground of invalidity not due to his own fault, has, in determining—

(c) the question referred to in paragraph (a) of section 68 (2), found that the contributor is suffering from such bodily infirmity or physical incapacity or mental incapacity as is referred to in that paragraph; and

(d) the question referred to in paragraph (b) of section 68 (2), found that any such infirmity or incapacity is not due to the fault of the contributor.

11—(1) Section 29 (1) of the Principal Act is amended by omitting “Where” and substituting “Subject to subsection (1A), where”.

Amendment of section 29 of Principal Act (Refund of contributions).

(2) Section 29 of the Principal Act is further amended by inserting the following subsection after subsection (1):—

(1A) A contributor to whom paragraph (c) of subsection (1) relates is not entitled to be paid a sum of money under that subsection unless the Board, before the retirement of the contributor on the ground of invalidity due to his own fault, has, in determining—

- (a) the question referred to in paragraph (a) of section 68 (2), found that the contributor is suffering from such bodily infirmity or physical incapacity or mental incapacity as is referred to in that paragraph; and
- (b) the question referred to in paragraph (b) of section 68 (2), found that any such infirmity or incapacity is due to the fault of the contributor.

Amendment of
section 53 of
Principal Act
(Cost of
administration).

12—Section 53 of the Principal Act is amended—

- (a) by inserting “(1)” before “The expenses”; and
- (b) by adding the following subsection as subsection (2) of that section:—
 - (2) In subsection (1), “expenses” does not include expenses for services referred to in section 4 (4A) (b) that are carried out on or after 1st July 1981.

Saving.

13—Any delegation in force under section 19 of the Principal Act, as in force immediately before the commencement of section 8 of this Act, shall be deemed to be a delegation under section 19 of the Principal Act as in force on and after that commencement.