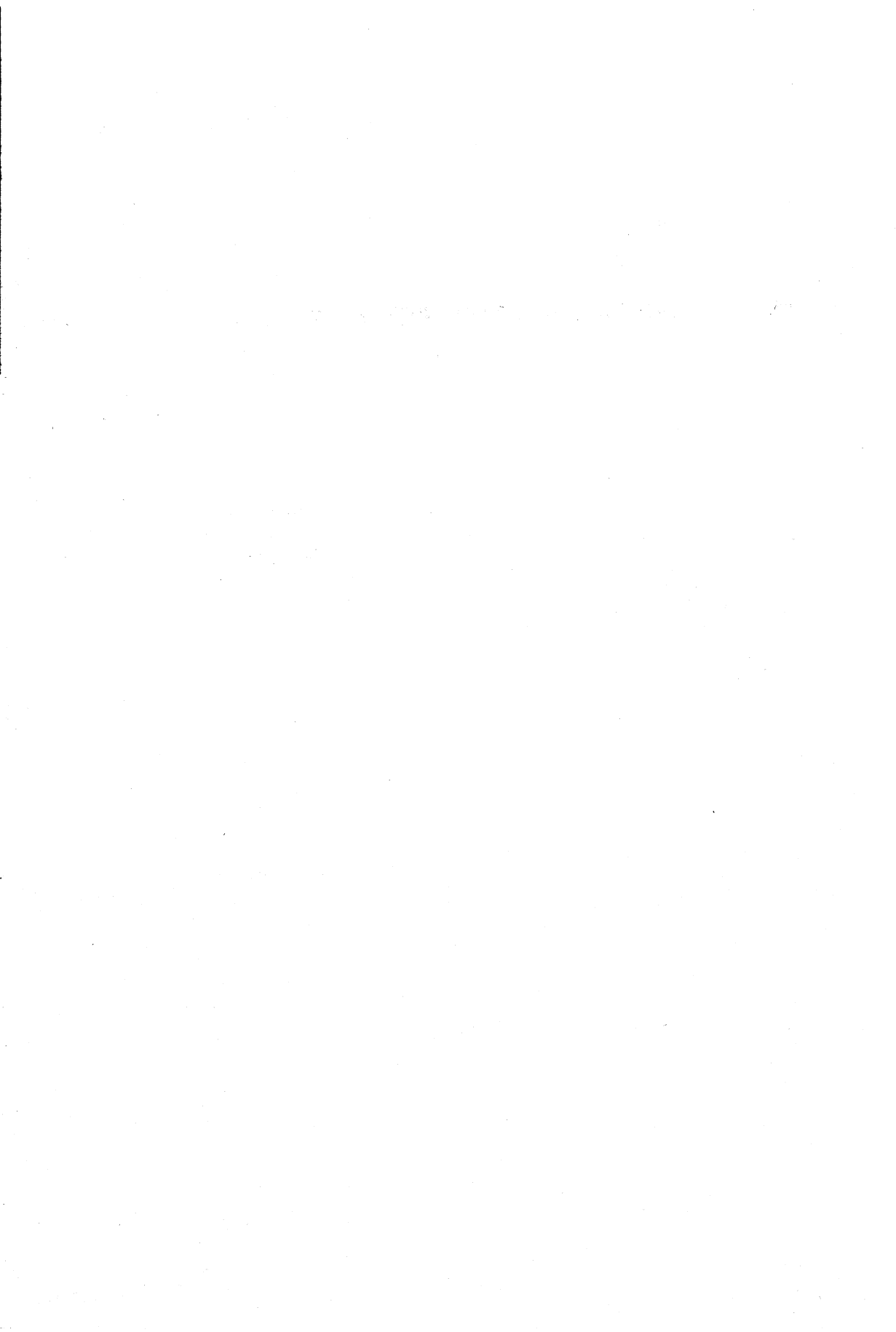

SUPERANNUATION ACT 1974

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SUPERANNUATION

No. 112 of 1974

AN ACT to amend the Superannuation Act 1938 and the Superannuation Act (No. 2) 1968.

[24 January 1975]

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—(1) This Act may be cited as the *Superannuation Act 1974*. Short title and citation.

(2) The *Superannuation Act 1938*, as subsequently amended, is in this Act referred to as the Principal Act.

Widows' and
widowers'
pensions.

2 The heading to Division II of Part V of the Principal Act is amended by inserting, after the word "*Widows*", the words "*and widowers*".

Widows'
pensions.

3 Section 33 of the Principal Act is amended—

(a) by omitting from subsection (1) the words "except where she is the widow of a pensioner who marries after his final retirement from the service"; and

(b) by omitting subsection (4) and substituting therefor the following subsections:—

"(4) A pension is payable under this section to the widow of a pensioner notwithstanding that she married that pensioner after his retirement.

"(4A) Where a widow of a pensioner or contributor subsequently remarries the pension to which she is otherwise entitled under this section as the widow of that contributor or pensioner is not payable during the subsistence of that subsequent marriage."

4 After section 33 of the Principal Act the following sections are inserted in Division II of Part V thereof:—

Widowers'
pensions.

"33A Section 33 applies in respect of a female contributor or a female pensioner in like manner as it applies in respect of a male contributor or a male pensioner as if—

(a) references therein to the widow of a contributor or pensioner included references to the widower of a female contributor or pensioner;

(b) references therein to a husband included references to a wife; and

(c) references therein to a widow's pension included references to a widower's pension.

Recognition of
de facto
relationships.

"33B—(1) Where continuously during the 12 months immediately preceding the death of a contributor or pensioner he or she and some other person of the opposite sex have been living together as man and wife that other person has, subject to this section, the like rights under this Division as if she or he had been married to that contributor or pensioner at the time of that death.

“(2) Where a pensioner or contributor dies leaving a surviving spouse no pension is payable under this section if a pension is payable to that spouse under any of the foregoing provisions of this Division; and, in a case to which subsection (5) of section 33 applies, the Board is not required to make any payment of pension under this section until the time for the making of a complaint under subsection (6) of that section has expired or, if such a complaint is made, until the proceedings thereon have terminated.

“(3) Any person who is aggrieved by a refusal of the Board to make any payment of pension under this section consequent upon the death of a contributor or pensioner may take proceedings against the Board by complaint under the *Justices Act* 1959, and on the hearing of the complaint a magistrate, on being satisfied that the complainant is entitled to a pension under this section and that no other person is entitled to or in receipt of a pension under this Division consequent upon that death, may make an order directing the pension to be paid to the complainant, and the Board shall comply with the order accordingly.”.

5 Section 34 of the Principal Act is repealed and the following section is substituted therefor:—

“34—(1) References in this Act to a child, when used in relation to any person, shall be construed as including references to an adopted child of that person, but not as including a child of that person who has been adopted by another person. Meaning of “child”.

“(2) For the purposes of this Act, ‘child’ means a child of the contributor or pensioner in relation to whom the term is used or of the spouse of that contributor, not being a child born or adopted after the death of the contributor or pensioner who is not a child of the contributor or pensioner.”.

6 Section 35 of the Principal Act is amended—

(a) by omitting paragraph (a) and substituting therefor the following paragraph:—

“(a) consequent upon the death of a contributor or a person to whom a pension was payable under Division I of this Part;”; and

(b) by omitting all the words following the words “ every child ” and substituting therefor the words “ of the contributor or pensioner who is wholly or partly dependent on the contributor or pensioner or would have been so dependent if the contributor or pensioner had continued to live.”.

Entitlement to child's pension.

Amount of
child's pension.

7 Section 37 of the Principal Act is amended—

- (a) by omitting from subsection (1) (a) the word “ wife ” and substituting therefor the word “ spouse ”;
- (b) by omitting paragraph (b) of subsection (1) and substituting therefor the following paragraph:—
 - “(b) in a case where a pension is not payable under Division II of this Part to the surviving parent of the child;”;
- (c) by omitting paragraph (c) of subsection (1);
- (d) by omitting from subsection (1) the words “ five hundred and twenty dollars ” and substituting therefor “ \$600 ”;
- (e) by omitting subsection (2) and substituting therefor the following subsections:—

“(2) Where a child's pension is payable as provided by subsection (1) and a pension is or would, but for the operation of Division IV of this Part, be payable to a parent of the child under Division I of this Part, the child's pension is payable out of, and shall be deducted from, the pension that is, or would be, so payable to that parent.

“(2A) Where a child's pension is payable as provided by subsection (1) and a pension is or would, but for the operation of Division IV of this Part, be payable to a parent of the child under Division II of this Part, one half of the child's pension is payable out of, and shall be deducted from, the pension that is, or would be, so payable to that parent.”; and

- (f) by omitting from subsection (3) the words “ sixty-five dollars ” and substituting therefor “ \$200 ”.

Persons to
whom a
child's pension
is payable.

8 Section 38 of the Principal Act is amended by omitting subsection (1) and substituting therefor the following subsection:—

“(1) A child's pension shall be paid to a parent or guardian of the child, unless the Board, in any case, otherwise determines.”.

9 Section 38A of the Principal Act is amended by inserting after subsection (1) the following subsection:—

Right of male pensioner to convert part of pension entitlement to a lump sum payment.

“(1A) In its application to a police officer subsection (1) has effect as if the reference therein to the age of 65 years were a reference to the age of 60 years.”.

10 Section 38C of the Principal Act is amended—

Conversion of part of widow's or widower's pension entitlement to a lump sum.

(a) by omitting subsection (1) and substituting therefor the following subsections:—

“(1) A person who is or will be entitled to a pension under Division II of this Part may elect to convert part of his or her fortnightly pension entitlement to an equivalent entitlement by way of a lump sum payment calculated in accordance with the conversion rate determined by the Actuary for the purposes of this section.

“(1A) References in this section to ‘ the deceased ’ shall be construed as references to the contributor or pensioner as a consequence of whose death the pension became or becomes payable under Division II of this Part, and references therein to ‘ the pensioner ’ shall be construed as references to the person entitled to that pension.

“(1B) An election under this section shall be made by notice in writing to the Board within—

(a) the period of 6 months following the death of the deceased; or

(b) the period of 3 months immediately preceding the day on which the pensioner will attain the age of 60 years,

whichever period is last to expire;

(b) by omitting from subsection (2) the word “ her ” (wherever occurring) and substituting therefor, in each case, the words “ his or her ”; and

(c) by omitting subsection (3) and substituting therefor the following subsection:—

“(3) An election under this section applies only in relation to such part of the entitlement of the pensioner as would be payable after the day on which the pensioner attains the age of 60 years or the day on which the election is made, whichever is the later.”.

11 Section 38D of the Principal Act is repealed and the following section is substituted therefor:—

Rate of widow's or widower's pension unaffected by conversion made by spouse.

“ 38D Where a contributor or pensioner makes an election under section 38A or section 38B, any pension payable on the death of that contributor or pensioner under Division II of this Part is payable at the same rate that would have been applicable if that election had not been made; but this section does not preclude a person who is or may become entitled to that pension from exercising in relation thereto the rights conferred by section 38C.”

Interpretation of Division IIIB of Part V.

12 Section 38G of the Principal Act is amended—

(a) by inserting, after the definition of “ basic rate ”, the following definition:—

“ ‘ half-year ’ means a period of 6 months commencing on 1st July or 1st January;” ; and

(b) by adding at the end thereof the following definition:—

“ ‘ quarter ’ means a period of 3 months commencing on 1st July, 1st October, 1st January, or 1st April.”

13 Section 38H of the Principal Act is repealed and the following section is substituted therefor:—

Annual adjustment of pensions.

“ 38H—(1) Subject to this section, a pension under this Act shall be adjusted by the Board in each half-year in accordance with this section.

“(2) The Government Statistician shall, as soon as practicable after the end of the first quarter in each half-year, give to the Treasurer a notice specifying the percentage by which the Index for that quarter is greater or less than the Index for the first quarter of the last preceding half-year.

“(3) On receipt of a notice under subsection (2) the Treasurer shall, by order—

(a) declare the percentage by which pensions shall be adjusted (whether by way of increase or decrease) in respect of the half-year following the half-year first-mentioned in that subsection; or

(b) if, by reason of the operation of subsection (9), no adjustment is to be made in respect of that half-year, declare that pensions under this Act shall not be adjusted in respect of that half-year.

“(4) A percentage declared under subsection (3) (a) in respect of any half-year shall be the same as the percentage specified in the notice given to the Treasurer under subsection (2).

“(5) An adjustment of a pension in respect of any half-year made under this section shall be made—

(a) by increasing, or as the case may require, by decreasing, the rate at which, immediately before the making of the adjustment, the pension was payable by the percentage declared in respect of that half-year under subsection (3); and

(b) so as to operate from and including the first pay-day in that half-year.

“(6) The following provisions apply to and in relation to the first adjustment of a pension pursuant to this section that first becomes payable after the commencement of the *Superannuation Act 1974*, namely:—

(a) In the case of a pension that comes into force during the second quarter of any half-year the first adjustment to that pension shall be made so as to operate from the first pay-day after the end of the half-year next following that half-year;

(b) In the case of a pension that comes into force during the first quarter of any half-year the first adjustment to that pension shall be made so as to operate from the first pay-day after the end of that half-year; and

(c) The annual amount by which such a pension is to be increased or decreased shall be calculated in accordance with the prescribed formula.

“(7) For the purposes of subsection (6) (c), the prescribed formula is the formula—

$$P = A \times \frac{B}{6},$$

where—

P represents the annual amount referred to in that paragraph;

A represents the amount by which, but for the operation of that subsection, the pension would have been increased or decreased; and

B represents the number of whole months falling within the period beginning with the day on which the pension came into force and ending—

(a) if that day falls within the second quarter of any half-year, at the end of the first quarter of the half-year next following; or

(b) if that day falls within the first quarter of any half-year, at the end of that quarter.

“(8) In their application to a pension payable under Division II or Division III of this Part that becomes payable on the death of a pensioner, subsections (6) and (7) have effect as if that pension came into force when the pension payable to that pensioner came into force.

“(9) Except as provided in subsection (10) where the percentage specified in a notice under subsection (2) in respect of any half-year is less than one per cent no adjustment of pensions shall be made in respect of that half-year.

“(10) Where each of the percentages specified in a notice under subsection (2) in respect of any two or more successive half-years is less than one per cent but those percentages are, in the aggregate, equal to, or greater than one per cent (whether by way of increase or decrease), pensions shall be adjusted in respect of the latest of those half-years as if the percentage declared in respect of that half-year were a percentage equal to that aggregate.

“(11) Nothing in this section requires the rate of a pension to be decreased below the basic rate and if, by reason of the making of an adjustment under this section, the rate of a pension would be so decreased, that pension shall, until it is next increased to a rate exceeding the basic rate by reason of the making of such an adjustment, be deemed to be payable at the basic rate.

“(12) Where—

(a) by reason solely of the operation of subsection (11), a pension is being paid at the basic rate; and

(b) an adjustment, by way of increase, is required to be made to the rate of that pension in respect of any half-year,

that adjustment shall be made as if, immediately before the making of the adjustment, the pension were payable at the rate at which, but for the operation of that subsection, it would have been payable.”.

14 Section 42 of the Principal Act is repealed and the following subsection is substituted therefor:—

“ 42—(1) For the purposes of this section, ‘ pensioner ’ means a person to whom a pension is payable under Division I or Division II of this Part, and, in relation to such a pensioner, ‘ pensionable dependant ’ means—

- (a) if the pensioner is entitled to a pension under Division I of this Part the spouse of that pensioner, or any child who would be entitled to a pension under Division III of this Part if the pensioner died; or
- (b) if the pensioner is entitled to a pension under Division II of this Part, any child who would be entitled to a pension under Division III of this Part at an increased rate if the pensioner died.

“(2) Where a pensioner deserts a pensionable dependant a magistrate may, on an application made by, or on behalf of, that pensionable dependant, make an order directing the Board to pay pension to that pensionable dependant as provided in this section.

“(3) An order made under this section in respect of a pensioner may be varied or revoked by a magistrate on the application of the pensioner or a pensionable dependant.

“(4) Where a complaint or an application may be made under this section by a child that complaint or application may be made by any person on behalf of the child whether or not he has been duly authorized in that behalf.

“(5) The amount of a pension that may be ordered to be paid to a pensionable dependant under this section shall not exceed—

- (a) in the case of a pensionable dependant referred to in subsection (1) (a), the amount of the pension that would, if the pensioner had died, be payable under Division II or Division III of this Part to that dependant; and
- (b) in the case of a pensionable dependant referred to in subsection (1) (b), the amount by which the pension already payable to that dependant under Division III of this Part would be increased if the pensioner died,

and the total amounts of the pensions that may be ordered to be paid under this section to the pensionable dependants of a pensioner shall not exceed the amount of the pension otherwise payable to that pensioner.

“(6) The Board shall give effect to an order made under this section, and shall deduct the moneys paid thereunder from the pension payable to the pensioner during the period specified in the order.”.

Contributions
by transferred
officers.

15 Section 61A of the Principal Act is amended by omitting paragraph (f) of subsection (4) and substituting therefor the following paragraph:—

“(f) Such other superannuation fund or scheme (if any) established under a law other than a law of this State as the Governor, on the recommendation of the Board, may, by order, declare to be a prescribed superannuation fund for the purposes of this Act.”.

Retrospective
adjustment of
widows'
and children's
pensions.

16 In their application to a pension that became payable under Division II or Division III of Part V of the Principal Act on the death of a pensioner before the commencement of this Act subsections (6) and (7) of section 38H of the Principal Act (as it had effect before being amended by this Act) have effect, and shall be deemed always to have had effect as if that pension came into force when the pension payable to that pensioner came into force.

Amendment of
*Superannuation
Act (No. 2)*
1968.

17 Section 5 of the *Superannuation Act (No. 2)* 1968 is amended by omitting subsection (7).

Transitional
provisions.

18—(1) Where by virtue of any provision of this Act a person becomes, on the commencement of this Act, entitled to any pension to which he would not have been entitled if this Act had not been enacted or to a pension at a different rate from that to which he would otherwise have been entitled that pension shall be deemed to become payable, or payable at that different rate, from the commencement of this Act.

(2) An order made under section 38H (3) of the Principal Act, as that Act had effect before the commencement of this Act, in respect of the year commencing on 1st January 1975, has effect as an order made under section 38H (3) of the Principal Act, as amended by this Act, in respect of the half-year commencing on that day.