

Superannuation Acts (Miscellaneous Amendments) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 25 October 1995

(Brought in by Mr Stockdale and Mr Gude)

A BILL

to amend the **Emergency Services Superannuation Act 1986**, the **Hospitals Superannuation Act 1988**, the **Local Authorities Superannuation Act 1988**, the **Public Sector Superannuation (Administration) Act 1993**, the **State Employees Retirement Benefits Act 1979**, the **State Superannuation Act 1988**, the **Superannuation Acts (Further Amendment) Act 1994**, the **Superannuation Acts (General Amendment) Act 1995**, the **Superannuation (Public Sector) Act 1992** and the **Transport Superannuation Act 1988** and for other purposes.

Superannuation Acts (Miscellaneous Amendments) Act 1995

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose*

The purpose of this Act is to make miscellaneous amendments to certain specified Superannuation Acts

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Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)

Superannuation Acts (Miscellaneous Amendments)

to further improve the administration of public sector superannuation schemes.

2. Commencement

- (1) Subject to sub-sections (2), (3) and (4), this Act comes into operation on the day on which this Act receives the Royal Assent. 5
- (2) Section 28 is deemed to have come into operation on 1 July 1995.
- (3) Sections 30 (1), 30 (2), 30 (3) and 30 (4) are deemed to have come into operation on 1 November 1995. 10
- (4) Sections 14, 15, 26 and 27 come into operation on 12 February 1996.

**PART 2—AMENDMENT OF EMERGENCY SERVICES
SUPERANNUATION ACT 1986**

3. Payment of contribution by employers 15

After section 4 of the **Emergency Services Superannuation Act 1986** insert—

‘4A. Payment of contributions by employers

- (1) For the purposes of the provisions of this Act or of the regulations under this Act relating to contributions by employers, “**employer**” means— 20
- (a) an employer within the meaning of the definition of “**employer**” in section 3; and 25
- (b) any other person, authority or body declared by the Minister by notice published in the Government Gazette to be an employer in respect of an employee or a pensioner. 30

- (2) The Minister may by notice published in the Government Gazette declare a class or classes of employers.’.

4. Membership of Board

- (1) Sections 7 (2) and 7 (3) of the **Emergency Services Superannuation Act 1986** are repealed.
- (2) After section 7 (10) of the **Emergency Services Superannuation Act 1986** insert—

“(11) The Board is deemed to be the same body on and after as before the commencement of section 4 of the **Superannuation Acts (Miscellaneous Amendments) Act 1995**.”.

5. Delegation

For section 14 of the **Emergency Services Superannuation Act 1986** substitute—

“14. Delegation

The Board may, by an instrument of delegation under its common seal, delegate to the President, a member of the Board or a member of the staff of the Board or to any other person or corporation—

(a) any function, power or duty of the Board under this Act or any other Act or under a governing instrument, other than this power of delegation; or

(b) any power or duty of the Board under the **Borrowing and Investment Powers Act 1987**.”.

6. *Repeal of spent provision*

Section 16 of the **Emergency Services Superannuation Act 1986** is repealed.

PART 3—AMENDMENT OF HOSPITALS SUPERANNUATION ACT 1988

7. *Delegation*

For section 15 of the **Hospitals Superannuation Act 1988** substitute—

“15. *Delegation*

The Board may, by an instrument of delegation under its common seal, delegate to the President, a member of the Board or a member of the staff of the Board or to any other person or corporation— 10

(a) any function, power or duty of the Board under this Act or any other Act or under a governing instrument, other than this power of delegation; or 15

(b) any power or duty of the Board under the **Borrowing and Investment Powers Act 1987**.”. 20

8. *New sections inserted*

After section 40H of the **Hospitals Superannuation Act 1988** insert— 25

‘40HA. *Beneficiary must make election*

(1) In this section—

“**beneficiary**” means a person who is entitled under this Act to a lump sum payment (other than a deferred 30

benefit until it becomes payable in accordance with this Act or a death benefit);

5 “**beneficiary account holder**” means a beneficiary who is the holder of a beneficiary account under section 51.

(2) A person who—

10 (a) is at the commencement of section 8 of the **Superannuation Acts (Miscellaneous Amendments) Act 1995** a beneficiary account holder, must within 3 months of that commencement; or

15 (b) after that commencement becomes a beneficiary, must within 14 days of becoming entitled to a lump sum payment—

20 elect in writing to the Board in accordance with sub-section (3).

(3) An election may provide—

25 (a) in the case of a person referred to in sub-section (2) (a)—

 (i) for all or part of the balance of his or her beneficiary account to be credited to an account established under section 40HB; or

30 (ii) for all of the balance of his or her beneficiary account to be paid to a complying superannuation scheme or arrangement; or

35 (iii) for the balance of his or her beneficiary account after deduction of any income tax payable on the benefit to be paid to that person or to his or

her legal personal
representative;

(b) in the case of a person referred to in
sub-section (2) (b)—

(i) for all or part of the lump sum
payment to be credited to an
account established under
section 40HB; or

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(ii) for the lump sum payment to
be paid to a complying
superannuation scheme or
arrangement; or

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(iii) for the lump sum payment
after deduction of any income
tax payable on the lump sum
to be paid to that person or to
his or her legal personal
representative.

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(4) If a beneficiary fails to make an election
under sub-section (2), he or she is
deemed to have made an election under
sub-section (3) (a) (i) or (3) (b) (i) as the
case may be.

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40HB. *Separate accounts*

(1) The Board must establish and maintain
within the Fund as part of HOSFUND a
separate account for each beneficiary
who makes in election under section
40HA (3) (a) (i) or 40HBA (3) (b) (i).

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(2) The Board must credit to the separate
account—

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(a) in the case of an election under
section 40HA (3) (a) (i), the amount
referred to in that section after
deduction of any income tax
payable on the benefit; and

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(b) in the case of an election under section 40HA (3) (b) (i), the amount referred to in that section after deduction of any income tax payable on the benefit; and

(c) any net earnings calculated on the basis of the net earning rate of the Fund or an investment fund.

(3) The Board must debit to the separate account—

(a) an amount determined by the Board in respect of management and administration costs incurred by the Board in the administration of the Fund; and

(b) any net loss calculated on the basis of the net earning rate of the Fund or an investment fund; and

(c) any amounts transferred to another complying superannuation scheme or arrangement; and

(d) any other amount payable by the member.’.

9. Amendment of section 40K

After section 40K (3) of the **Hospitals Superannuation Act 1988** insert—

“(4) The whole of the balance of a beneficiary’s account must be withdrawn as a single amount by the beneficiary or his or her legal personal representative by application to the Board in a form approved by the Board upon the death of the beneficiary.

(5) Subject to sub-section (4), a beneficiary may subject to such terms and conditions as are determined by the Board withdraw part or the whole of the balance of a beneficiary’s

account by application to the Board in a form approved by the Board.”.

10. Section 51 repealed

Section 51 of the **Hospitals Superannuation Act 1988** is repealed.

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11. New section 57A inserted

After section 57 of the **Hospitals Superannuation Act 1988** insert—

“57A. Payment of lump sum benefits

If a lump sum benefit to which a person is entitled is not paid within 14 days of the person becoming entitled, the person is entitled to receive interest at the rate prescribed for the purposes of section 33 (1) (b) from the date of entitlement until the lump sum benefit is paid.”.

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PART 4—AMENDMENT OF LOCAL AUTHORITIES SUPERANNUATION ACT 1988

12. Delegation

For section 15 of the **Local Authorities Superannuation Act 1988** substitute—

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“15. Delegation

The Board may, by an instrument of delegation under its common seal, delegate to the President, a member of the Board or a person employed by the Board or to any other person or corporation—

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(a) any function, power or duty of the Board under this Act or any other

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Act or under a governing instrument, other than this power of delegation; or

5 (b) any power or duty of the Board under the **Borrowing and Investment Powers Act 1987**.”.

13. Amendment of section 45

For section 45 (1) of the **Local Authorities Superannuation Act 1988** substitute—

10 “(1) If a lump sum benefit to which a person is entitled is not paid within 14 days of the person becoming entitled, the person is entitled to receive interest at the rate calculated from time to time by the Board as being the earning rate of the Fund from the date of entitlement until the lump sum benefit is paid.”.

PART 5—AMENDMENT OF PUBLIC SECTOR SUPERANNUATION (ADMINISTRATION) ACT 1993

14. Amendment of section 3

20 In section 3 (1) of the **Public Sector Superannuation (Administration) Act 1993**—

(a) in the definition of “beneficiary” after “**1988**” insert “or the **State Superannuation Act 1988**”;

25 (b) in the definition of “existing beneficiary” after “**1995**” insert “or under the **State Superannuation Act 1988** immediately before the commencement of section 26 of the **Superannuation Acts (Miscellaneous Amendments) Act 1995**”.

15. Amendment of section 37A

In section 37A (1) of the **Public Sector Superannuation (Administration) Act 1993** after “1995” insert “or of section 26 of the **Superannuation Acts (Miscellaneous Amendments) Act 1995**, as the case may be,”.

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16. Amendment of section 43

(1) In section 43 (1) of the **Public Sector Superannuation (Administration) Act 1993**—

(a) after “to be preserved” insert “and a participating employer has certified in writing to the Board in accordance with section 31 (4)”;

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(b) after “preserved benefits” insert “and may apply to the Board to make the transfer”;

(c) for “may apply to the Board” substitute “is entitled”.

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(2) In section 43 (2) of the **Public Sector Superannuation (Administration) Act 1993** for “this Act” substitute “section 50”.

17. New section 44A inserted

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After section 44 of the **Public Sector Superannuation (Administration) Act 1993** insert—

“44A. Transfer of benefits to other scheme

(1) If a member of the Fund or beneficiary—

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(a) is entitled to a benefit or part of a benefit under this Part which is not required by a relevant Commonwealth superannuation law to be preserved; and

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(b) is a member, or has applied to become a member, of another complying superannuation scheme or superannuation arrangement

approved by or under a relevant
Commonwealth superannuation
law—

5 the member or beneficiary is entitled to
have the amount of that benefit or that
part of that benefit transferred to that
complying superannuation scheme or
approved superannuation arrangement
10 and may apply to the Board to make the
transfer.

(2) Subject to section 50, the Board must
transfer that amount to that other
complying superannuation scheme or
approved superannuation arrangement.”.

15 **PART 6—AMENDMENT OF STATE EMPLOYEES
RETIREMENT BENEFITS ACT 1979**

18. Definition of “ill health”

20 In section 2 (1) of the **State Employees Retirement
Benefits Act 1979** after the definition of
“Government Actuary” insert—

25 “ill health” means a continuous or recurring
impairment of the health of a member which is
due to a physical or mental incapacity, bodily
injury, illness or disease, which in the opinion of
the Board—

- 30 (a) is not a disability; and
(b) is likely to be adversely affected if the
member remains in his or her employment;
and
(c) does not preclude the member from
seeking alternative employment; and
(d) has not been incurred or inflicted for the
purpose of obtaining a benefit.’.

19. Amendment of section 60

Section 60 (c) of the **State Employees Retirement Benefits Act 1979** is repealed.

20. New section 60A inserted

After section 60 of the **State Employees Retirement Benefits Act 1979** insert—

'60A. Disability pensioner retiring due to ill health

- (1) If the Board has made a determination that a disability pensioner who has not attained the age of 60 years is again able to perform his or her duties or any other duties for which the disability pensioner is suited by education, training or experience or for which the disability pensioner would be suited as a result of retraining, the former disability pensioner may within the prescribed period apply to the Board to retire on the grounds of ill health and receive a payment under this section.
- (2) If the Board determines that the application should be granted, the Board must pay the former disability pensioner a lump sum benefit—
- (a) calculated under section 34A (a) on the total amount of contributions up to the date that the disability benefit was first granted; and
- (b) increased by the interest rate determined by the Board under section 37 (1) (a) for each year or part of a year between that date and the date of the determination.
- (3) If the former disability pensioner accepts a payment under sub-section (2), the Board is released from any liability to

5 make any further payments to, or in respect of, any entitlement of the former disability pensioner or of any of his or her dependants and this Act ceases to apply to the former disability pensioner.

5 (4) In this section, “**prescribed period**” means—

10 (a) if the former disability pensioner does not apply for a review of the determination specified in sub-section (1), the period of 90 days after the determination; and

15 (b) if the former disability pensioner does apply for a review of the determination specified in sub-section (1), the period of 30 days after—

20 (i) the Board confirms the determination on review; or

20 (ii) in the case of an application to the Administrative Appeals Tribunal, the Administrative Appeals Tribunal confirms the determination on review.’.

25 **21. New section 74D inserted**

 After section 74C of the **State Employees Retirement Benefits Act 1979** insert—

“74D. Payment of lump sum benefits

30 If a lump sum benefit (not being a payment under section 60A) to which a person is entitled is not paid within 14 days of the person becoming entitled, the person is entitled to receive interest at the interest rate determined by the Board under section 37 (1) (a) from the date of entitlement until the lump sum benefit is paid.”.

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**PART 7—AMENDMENT OF STATE SUPERANNUATION
ACT 1988**

22. Definition of “ill health”

In section 3 (1) of the **State Superannuation Act 1988** after the definition of “**Government Actuary**” insert—

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“**ill health**” means a continuous or recurring impairment of the health of a member which is due to a physical or mental incapacity, bodily injury, illness or disease, which in the opinion of the Board—

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(a) is not a disability; and

(b) is likely to be adversely affected if the member remains in his or her employment; and

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(c) does not preclude the member from seeking alternative employment; and

(d) has not been incurred or inflicted for the purpose of obtaining a benefit;’.

23. Amendment of section 76

20

(1) In section 76 (5) of the **State Superannuation Act 1988** substitute—

(a) after “offered employment” insert “which the employing authority certifies to the Board is employment that the pensioner is suited by education, training or experience or would be suited as a result of retraining”;

25

(b) for “may if” substitute “must if”.

(2) For section 76 (7) of the **State Superannuation Act 1988** substitute—

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“(7) If the pensioner accepts the offer under sub-section (6), he or she ceases to be a pensioner and the Board is released from any liability to make any further payments to, or in

respect of, any entitlement of the pensioner or of any of his or her dependants.”.

(3) Section 76 (8) of the **State Superannuation Act 1988** is repealed.

5 **24. Amendment of section 77**

In section 77 of the **State Superannuation Act 1988**—

(a) after sub-section (1) (d) **insert**—

“; or

(e) cancel the pension.”.

(b) in sub-section (6) after “suspension” **insert** “or cancellation”.

15 **25. New section 77A inserted**

After section 77 of the **State Superannuation Act 1988** **insert**—

‘77A. Disability pensioner retiring due to ill health

(1) If the Board has made a determination (whether before, on or after the commencement of section 25 of the **Superannuation Acts (Miscellaneous Amendments) Act 1995**) that a person in receipt of a pension under section 34 or 54 who has not attained the minimum age for retirement is again able to perform his or her duties or any other duties for which the disability pensioner is suited by education, training or experience or for which the disability pensioner would be suited as a result of retraining, the former disability pensioner may within the prescribed period apply to the Board to retire on the grounds of ill health and receive a payment under this section.

- (2) If the Board determines that the application should be granted, the Board must pay the former disability pensioner—
- (a) in the case of a pension under section 34, a lump sum benefit calculated under section 44 (1) (a); or 5
- (b) in the case of a pension under section 54, a benefit calculated under section 56— 10
- as if it were payable as at the date that the disability benefit was first granted and indexed in accordance with section 91 from the date that the disability benefit was first granted until the date of the determination as if it were a pension first payable on the date that the disability benefit was first granted. 15
- (3) If the former disability pensioner accepts a payment under sub-section (2), the Board is released from any liability to make any further payments to, or in respect of, any entitlements of the former disability pensioner or any of his or her dependants and this Act ceases to apply to the former disability pensioner. 20 25
- (4) In this section, “**prescribed period**” means—
- (a) in the case of a determination specified in sub-section (1) made before the commencement of section 25 of the **State Superannuation (Miscellaneous Amendments) Act 1995**, the period specified in paragraph (c) or the period of 90 days after that commencement, whichever is later; 30 35

5 (b) in the case of a determination specified in sub-section (1) made on or after the commencement of section 25 of the **State Superannuation (Miscellaneous Amendments) Act 1995**, if the former disability pensioner does not apply for a review of the determination, the period of 90 days after the determination;

10 (c) in the case of a determination specified in sub-section (1) made before, on or after the commencement of section 25 of the **State Superannuation (Miscellaneous Amendments) Act 1995**, if the former disability pensioner has applied or does apply for a review of the determination, the period of 30 days after—

15 (i) the Board confirms the determination on review; or

20 (ii) in the case of an application to the Administrative Appeals Tribunal, the Administrative Appeals Tribunal confirms the determination on review.’.

25 **26. Repeal of section 81**

30 Section 81 of the **State Superannuation Act 1988** is repealed.

27. New section 89A inserted

After section 89 of the **State Superannuation Act 1988** insert—

“89A. Payment of lump sum benefits

If a lump sum benefit (not being a payment under section 77A) to which a person is entitled is not paid within 14 days of the person becoming entitled, the person is entitled to receive interest at the rate prescribed for the purposes of section 46 (1) (a) or 58 (1) (a) as the case may be from the date of entitlement until the lump sum benefit is paid.”

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28. Amendment of section 95

In section 95 (1) of the **State Superannuation Act 1988** after “another employing authority” insert “and that employee is not an officer referred to in paragraph (a) of the definition of “**officer**” in section 3 (1)”.

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PART 8—AMENDMENT OF SUPERANNUATION ACTS (FURTHER AMENDMENT) ACT 1994

29. Change of commencement

(1) After section 2 (7) of the **Superannuation Acts (Further Amendment) Act 1994** insert—

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“(7A) Sections 7 (3), 8, 15, 39, 45 to 50, 53, 57, 59, 67 and 70 are deemed to have come into operation on 1 July 1994.”.

(2) The **Superannuation Acts (Further Amendment) Act 1994** is deemed to have been enacted as amended by sub-section (1).

25

PART 9—AMENDMENT OF SUPERANNUATION ACTS (GENERAL AMENDMENT) ACT 1995

30. Amendment of section 33

(1) In section 33 (1) of the **Superannuation Acts (General Amendment) Act 1995** insert the following definition—

30

“**complying superannuation scheme or arrangement**” has the same meaning as in the **Public Sector Superannuation (Administration) Act 1993**;

5 (2) In section 33 (3) of the **Superannuation Acts (General Amendment) Act 1995** omit “sector”.

(3) After section 33 (4) of the **Superannuation Acts (General Amendment) Act 1995** insert—

10 “(4A) If a member to whom sub-section (3) applies does not nominate a complying superannuation scheme or arrangement or an eligible rollover fund by whichever is the earlier of 90 days after the date of the written request by the Victorian Superannuation Board or 28 February 1996, the Victorian Superannuation Board must pay the balance of the member’s account to the Registrar of Unclaimed Moneys.”.

15 (4) In section 33 (5) of the **Superannuation Acts (General Amendment) Act 1995**, after “person or” insert “or an eligible rollover fund”.

20 (5) In section 33 (6) of the **Superannuation Acts (General Amendment) Act 1995** after “that person” insert “or must pay that balance to the Registrar of Unclaimed Moneys”.

25 (6) After section 33 (7) of the **Superannuation Acts (General Amendment) Act 1995** insert—

30 “(8) If the Victorian Superannuation Board pays the balance of a person’s account to the Registrar of Unclaimed Moneys under sub-section (4A) or (6), the Victorian Superannuation Board—

(a) is deemed to have complied with the requirements of the **Unclaimed Moneys Act 1962**; and

35 (b) must provide to the Registrar of Unclaimed Moneys any information that the Registrar of Unclaimed Moneys requires for the

purposes of the **Unclaimed Moneys Act 1962.**”.

PART 10—AMENDMENT OF SUPERANNUATION (PUBLIC SECTOR) ACT 1992

31. *Amendment of section 12*

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For section 12 (2) of the **Superannuation (Public Sector) Act 1992** substitute—

“(2) Subject to sub-section (3), the amount specified in the contract must be equal to 70 percent of the officer’s remuneration package.”.

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PART 11—AMENDMENT OF TRANSPORT SUPERANNUATION ACT 1988

32. *New section 50A inserted*

After section 50 of the **Transport Superannuation Act 1988** insert—

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“50A. *Payment of lump sum benefits*

If a lump sum benefit to which a person is entitled is not paid within 14 days of the person becoming entitled, the person is entitled to receive interest at the rate prescribed for the purposes of section 35 (1) (a) from the date of entitlement until the lump sum benefit is paid.”.

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