

LEGISLATIVE ASSEMBLY MEMBERS PENSIONS ACT.

Act No. 32, 1946.

George VI. An Act to provide for the establishment of a provident fund for members of the Legislative Assembly; to confer on certain persons who have ceased to be members of the Legislative Assembly and on certain other persons rights to receive payments by way of pension; and for purposes connected therewith. [Assented to, 1st May, 1946.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**Short title
and
commencement.**

1. (1) This Act may be cited as the "Legislative Assembly Members Pensions Act, 1946."

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

**Interpre-
tation.**

2. In this Act, unless the context otherwise requires—

"Member" means member of the Legislative Assembly.

"Prescribed" means prescribed by this Act, or by regulations made thereunder.

"Salary" means—

(a) in the case of a Minister of the Crown, being a member of the Executive Council, the salary payable in pursuance of section four of the Parliamentary Allowances and Salaries Act, 1938; and

(b)

(b) in the case of the Speaker of the Legislative Assembly and the Chairman of Committees of the Legislative Assembly the salary payable in pursuance of section five of the Parliamentary Allowances and Salaries Act, 1938; and

(c) in the case of any other member of the Legislative Assembly, the allowance payable in pursuance of section twenty-eight of the Constitution Act, 1902, as amended by subsequent Acts.

“The fund” means the Legislative Assembly Members Provident Fund established under this Act.

“Trustees” means the trustees of the fund appointed under this Act.

3. (1) There shall be a “Legislative Assembly Members Provident Fund” into which shall be paid all moneys payable to the fund under this Act, and all income of the fund from whatever source arising.

(2) Interest derived from the investment of the fund shall form part thereof.

(3) The income of the fund shall not be subject to taxation under any Act of this State.

(4) In addition to the moneys payable out of the fund under this Act all costs of management of the fund shall be a charge against and shall be paid out of the fund.

4. The fund shall as far as practicable be invested—

Investment
of fund.

- (a) in securities of the Government of the Commonwealth;
- (b) in loans to the councils of shires or municipalities, or the Municipal Council of Sydney;
- (c) upon mortgage of land in the State of an estate in fee-simple or on mortgage of leasehold interests in such land; or
- (d) in any other manner for the time being allowed by Act of Parliament or by the rules of court for the investment of trust funds.

No. 32, 1946. **5.** Moneys which are at credit of the fund and are held uninvested may be lodged either at call or on fixed deposit, or partly at call and partly on fixed deposit with the Colonial Treasurer or with any bank, and whilst in such bank shall be held to be moneys of the Crown.

Cheques. **6.** Cheques drawn on any account in any bank shall be signed as prescribed by the regulations.

Audit. **7.** The accounts relating to the fund shall be audited by the Auditor-General.

Power to borrow. **8.** The trustees may borrow for and the Colonial Treasurer may lend to the fund moneys not exceeding two-thirds of the amount, and on the security, of moneys of the fund invested in Commonwealth Government securities.

Contributions. **9.** Upon each payment of the salary of a member of the Legislative Assembly made to him after the commencement of this Act there shall be deducted from the amount payable to him a sum calculated at the rate of seventy-eight pounds per annum and all sums so deducted shall be paid into the fund.

Trustees. **10.** (1) There shall be trustees of the fund who, subject to the provisions of this section, shall be appointed and may be removed by order of the Legislative Assembly.

(2) The said trustees shall be not more than seven in number, of whom one, being the Under Secretary of the Treasury, shall be custodian trustee of the fund and the remainder shall be managing trustees.

For the purposes of the exercise and discharge of the powers, authorities, duties, functions and obligations conferred and imposed upon him by this Act, the Under Secretary of the Treasury is hereby declared to be a corporation sole under the name of "The Under Secretary of the Treasury."

The said corporation sole shall have perpetual succession and an official seal and may in the corporate name sue and be sued and shall be capable of purchasing, holding, granting, demising, disposing of and alienating real and personal property and of doing and suffering all such other acts and things as a body corporate may by law do and suffer.

Where

Where any property real or personal or the interest therein or charge thereon is vested in or is acquired by the said corporation sole, the same shall unless otherwise disposed of by the said corporation sole pass to and devolve on and vest in its successors.

The seal of the corporation sole shall not be affixed to any instrument or writing except in the presence of the Under Secretary of the Treasury who shall attest by his signature the fact and date of the seal being so affixed.

The appointment of the Under Secretary of the Treasury and his official seal shall be judicially noticed.

(3) No person shall be appointed to be a managing trustee unless he is a member of the Legislative Assembly, and, on ceasing to be a member of the Legislative Assembly, a managing trustee shall vacate his office.

(4) The managing trustees may act by a majority of those present at any meeting of the managing trustees at which a quorum is present.

(5) The procedure of the managing trustees shall, subject to the provisions of this Act and the regulations, be such as the trustees may determine, and the quorum for any meeting of the managing trustees shall be three.

(6) A direction of the managing trustees shall continue in force until revoked by a subsequent direction of the managing trustees, notwithstanding any changes in the persons who are managing trustees and notwithstanding that, by reason of a dissolution of Parliament or for any other reason, there are for a time no managing trustees.

11. (1) All sums payable to or out of the income or capital of the fund shall be paid to or by the custodian trustee, and the assets of the fund shall be vested in him as if he were sole trustee. Functions of custodian trustee and managing trustees.

(2) The management of the fund and the exercise of any power or discretion exercisable in relation thereto shall be vested in the managing trustees.

(3) As between the custodian trustee and the managing trustees the custodian trustee shall have the custody of all securities and documents of title relating to

No. 32, 1946. to the property of the fund but the managing trustees shall have free access thereto and be entitled to take copies thereof or extracts therefrom.

(4) The custodian trustee shall concur in and perform all acts necessary to enable the trustees to exercise their powers of management or any other power or discretion vested in them, unless the matter in which he is requested to concur is a breach of trust or involves a personal liability upon him in respect of calls or otherwise, but unless he so concurs the custodian trustee shall not be liable for any act or default on the part of the managing trustees or any of them.

(5) The custodian trustee, if he acts in good faith, shall not be liable for accepting as correct and acting upon the faith of any statement of the managing trustees as to any matter of fact, nor for acting upon any legal advice obtained by the managing trustees independently of the custodian trustee, nor for acting in accordance with any directions given to him in writing and purporting to be signed by or on behalf of the managing trustees.

Pensions.

12. (1) (a) Subject to this Act every person who after the commencement of this Act ceases to be a member of the Legislative Assembly, and who has served as a member of the Legislative Assembly for an aggregate period of fifteen years or more shall be entitled to be paid out of the fund, a pension at the rate of six pounds per week.

The service referred to in this subsection shall include service before the commencement of this Act as well as service after such commencement.

(b) Subject to this Act, every person who after the commencement of this Act ceases to be a member of the Legislative Assembly and who has been a member of the Legislative Assembly in any three Parliaments but does not possess the qualification specified in paragraph (a) of this subsection shall be entitled to be paid out of the fund a pension at the rate of five pounds per week.

The three Parliaments referred to in this paragraph may include any Parliament or Parliaments held before the commencement of this Act as well as the current Parliament, and any future Parliament or Parliaments.

A person shall be deemed to have been a member of the Legislative Assembly in a Parliament if he has been a member of the Legislative Assembly during any portion of the term of that Parliament.

(2) (a) Where at any time before the dissolution of a Parliament or its expiration by effluxion of time, a person ceases to be a member of the Legislative Assembly otherwise than by death, and, at a by-election held to fill the vacancy so occasioned, he does not become a candidate for election, he shall not be entitled to receive any pension under paragraph (b) of subsection one of this section unless the managing trustees or a majority of them in their absolute discretion, upon application made for the purpose, are satisfied that there were good and sufficient reasons for his failure to become a candidate at such by-election.

(b) Where a person—

- (i) resigns his seat in the Legislative Assembly;
- (ii) notifies the Speaker in the instrument of resignation addressed to the Speaker that his resignation is for the purpose of enabling him to seek election for the Parliament of the Commonwealth at an election which is to be held within three months after the date of such resignation; and
- (iii) becomes a candidate for election for the Parliament of the Commonwealth at the election referred to in the last preceding sub-paragraph; and
- (iv) is elected at such election

and such person would have been entitled if paragraph (a) of this subsection had not been enacted, and he had not been elected to the Parliament of the Commonwealth, to receive a pension under this section upon so resigning his seat in the Legislative Assembly, he shall on and from the date upon which he ceases to be a member of the Parliament of the Commonwealth, but subject to the provisions of this section, be entitled to receive such pension.

(c) Where a person ceases to be a member of the Legislative Assembly by reason of the dissolution of Parliament or its expiry by effluxion of time and does not

No. 32, 1946. not become a candidate for election at the general election next ensuing on such dissolution or expiry he shall not be entitled to receive any pension under paragraph (b) of subsection one of this section unless the managing trustees or a majority of them in their absolute discretion, upon application made for the purpose, are satisfied that there were good and sufficient reasons for his failure to become a candidate at such general election.

(3) Upon the death of a male member of the Legislative Assembly who has served as such during the period or in the Parliaments respectively specified in paragraph (a) and paragraph (b) of subsection one of this section, there shall be paid out of the fund to his widow a pension at the rate of three pounds per week, which pension shall subject to this section be payable to her until her death.

(4) Upon the death of a male person who is in receipt of a pension under subsection one of this section there shall be paid out of the fund to his widow a pension at the rate of three pounds per week, which pension shall, subject to this section, be payable to her until her death:

Provided that where a male person who is in receipt of a pension under subsection one of this section marries whilst he is in receipt of that pension his widow shall not be entitled to a pension under this subsection.

(5) Upon the marriage of a widow who is in receipt of a pension under this section, her right to such pension shall cease and determine.

(6) If a person who is in receipt of a pension under any of the provisions of this section accepts an office of profit under the Crown, or becomes a member of the Parliament of the Commonwealth or of any State (including this State) the right of that person to receive such pension shall, whilst that person holds such office of profit or continues to be such member, be suspended.

Refunds of contributions.

13. (1) Where a person ceases to be a member of the Legislative Assembly otherwise than by his death, and he is not entitled to receive a pension under section twelve of this Act, there shall be paid to him out of the fund a refund of all contributions paid by him to the fund, without interest and if that person, being a male, dies

dies before such refund is paid to him, the refund shall No. 32, 1946. be paid to his widow.

(2) Where a male member of the Legislative Assembly dies, and his widow is not entitled to a pension under section twelve of this Act, there shall be paid to the widow out of the fund a refund of all contributions paid by such member to the fund, without interest.

14. In the case of a person who has ceased to be a member and has received a refund or refunds of his contributions to the fund, and has again become a member, the following provisions shall apply:—

- (a) He shall not be entitled to receive any pension to which he might otherwise have been entitled under section twelve of this Act, unless he has repaid to the fund within the prescribed time the full amount of such refund or refunds without interest.
- (b) In the event of his death whilst still a member his widow shall not be entitled to receive any pension to which she would otherwise have been entitled under section twelve of this Act unless the amount referred to in paragraph (a) of this section has within the prescribed time been repaid to the fund.

15. (1) There shall be established within the fund a Accounts. sectional account for each Parliament.

The sectional account for a Parliament shall show—

- (a) the names of members of the Legislative Assembly who ceased to be members during the currency of that Parliament, and of those who, having ceased to be members at the close of that Parliament, were not re-elected as members at the general election next ensuing;
- (b) the particulars set out in subsections two and three of this section and such other matters as may be prescribed.

(2) Each sectional account shall be credited with—

- (a) the amounts contributed under this Act by members whose names are shown in the account, and which have not been credited to the sectional account of a previous Parliament; (b)

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- (b) amounts repaid in accordance with section fourteen of this Act;
- (c) amounts transferred from the sectional account for another Parliament in accordance with subsection four of this section;
- (d) amounts paid into the fund by the Colonial Treasurer in accordance with subsection five of this section;
- (e) such proportion of the interest derived from the investment of the fund and of any other income of the fund as the Colonial Treasurer shall determine.

(3) A sectional account shall be debited with—

- (a) amounts paid in accordance with this Act to members whose names are shown in the account, and to widows of such members;
- (b) such proportion of the cost of management of the fund as the Colonial Treasurer shall determine.

(4) After all claims for payments chargeable to a sectional account have been met the whole of the credit balance in that account shall be transferred to such other sectional account or sectional accounts as the Colonial Treasurer may determine.

(5) The amount of the debit balance of a sectional account at the thirtieth day of June in each year as certified by the Auditor-General shall be paid by the Colonial Treasurer into the fund out of moneys provided by Parliament.

Assignment
of Pensions.

16. Pensions under this Act shall not be in any way assigned or charged or passed by operation of law.

Regula-
tions.

17. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying this Act into effect.

(2) All regulations made under this Act shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations;
- and (c)

(c) be laid before both Houses of Parliament within **No. 32, 1946.**
fourteen sitting days after the publication
thereof if Parliament is in session, and if not,
then within fourteen sitting days after the com-
mencement of the next session.

If either House of Parliament passes a resolution of
which notice has been given at any time within fifteen
sitting days after such regulations have been laid before
such House disallowing any regulation or part thereof,
such regulation or part shall thereupon cease to have
effect.
