

SUPERANNUATION (AMENDMENT) ACT.

New South Wales



ANNO VICESIMO

ELIZABETHÆ II REGINÆ

Act No. 7, 1971.

An Act to increase the amount payable by way of pensions under the Superannuation Act, 1916; to reduce to three years the intervals at which an investigation of the state and sufficiency of the Fund under that Act is to be made; for these and other purposes to amend that Act; and for purposes connected therewith. [Assented to, 13th May, 1971.]

BE

Superannuation (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by No. 7, 1971
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 :—

1. (1) This Act may be cited as the "Superannuation Short title
and con-
struction.
(Amendment) Act, 1971".

(2) This Act shall be read and construed with the
Superannuation Act, 1916, which is in this Act referred to as
the Principal Act.

2. (1) Where any pension payable under the Principal Increase in
pensions.
Act, other than a pension in respect of a widow or children,
was at the first day of January, one thousand nine hundred
and seventy-one, payable to or after that date and before the
commencement of this Act became payable to or after such
commencement becomes payable to any person, such pension
shall as from the first day of January, one thousand nine
hundred and seventy-one, or as from any subsequent date
upon which such person so became or becomes entitled to
such pension, as the case may be, be increased either by
two-ninths, or by fifty cents per unit in respect of every unit
for which contributions were paid and in respect of which
pension was or is payable, whichever is the less.

Where part of a pension has been commuted under the
Principal Act the increases provided by this section shall apply
to the pension which would be payable but for such
commutation.

(2) (a) A pension which was payable to a widow
on the first day of January, one thousand nine hundred and
seventy-one, or became payable to a widow after that date
and before the commencement of this Act, not being a
pension paid or payable to her in respect of children, shall as
from that date or from the date on which it became so
payable,

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No. 7, 1971 payable, as the case may be, be at the rate of two-thirds of the amount which would have been payable to her husband had he been in receipt of a pension at the relevant date calculated without allowing for commutation of any part thereof :

Provided that the application of this subsection shall not operate to reduce the amount of pension being paid to any widow prior to the date of commencement of this Act.

(b) Where in pursuance of section thirty or thirty-one of the Principal Act a pension is restored to a widow who remarried before the commencement of this Act, the pension shall be at the rate at which pension would have been payable to her had she not remarried.

(3) Where a person died on or after the first day of January, one thousand nine hundred and seventy-one, and before the commencement of this Act, leaving no spouse or child surviving the pension payable in respect of that person shall be calculated at the rate which would have been applicable had this section not been enacted.

(4) In this subsection "pension" means a pension to which section two of the Superannuation (Amendment) Act, 1970, applies.

If—

(a) the amount of pension which would but for section two of the Superannuation (Amendment) Act, 1970, be payable were increased by this section and the amount as so increased, exceeds

(b) the amount of that pension payable under the said section two,

the amount of that pension shall, notwithstanding subsection one or two of this section, be the amount of that pension payable before the first day of January, one thousand nine

hundred

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hundred and seventy-one, together with a sum equivalent to that by which the increased amount referred to in paragraph (a) above exceeds the amount referred to in paragraph (b) above. No. 7, 1971

(5) Where the operation of the provisions of this section would increase the pension payable to a person and that person would in the opinion of the Board thereby be prejudicially affected in respect of any benefits otherwise receivable by that person the amount of the increase shall be such lesser amount than that referred to in subsection one or two of this section as the Board determines and the amount of the increase so determined shall be payable in respect of such periods or at such times by way of lump sum or otherwise as the Board determines.

3. (1) The Principal Act is amended—

Amendment
of Act No.
28, 1916.

(a) by omitting from subparagraph (iic) of paragraph (b) of the proviso to subsection one of section twelve the words “the employee shall not be entitled to a pension” and by inserting in lieu thereof the words “no pension shall be payable”;

Sec. 12.
(Scale of
units of
pension.)

(b) by inserting next after section 21A the following new section :—

New sec.
21B.

21B. (1) Any person in receipt of pension at the commencement of the Superannuation (Amendment) Act, 1971, who has attained the age of sixty years may, whether or not he has commuted part of his pension pursuant to section 21A of this Act, commute the whole or part of the increase to which he is entitled under section two of the Superannuation (Amendment) Act, 1971.

Commuta-
tion of
increases
in pension
by Super-
annuation
(Amend-
ment) Act,
1971.

(2)

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(2) Where a person has before the commencement of the Superannuation (Amendment) Act, 1971, made an election to commute his pension pursuant to section 21A of this Act and such election has not taken effect—

- (a) that election shall have effect as if section two of the Superannuation (Amendment) Act, 1971, had not been enacted, and
- (b) that person may make a further election to commute the whole or part of the increase to which he is entitled under the said section two.

(3) The provisions of subsection two of section 21A of this Act shall apply, mutatis mutandis, to and in respect of an election under this section.

(4) Upon an election under this section taking effect there shall be paid to the person making such election or his personal representatives, as the case may require, a lump sum calculated by the application, mutatis mutandis, of the provisions of subsection three of section 21A of this Act, subject to the multiplying factor of two hundred and fifty dollars being reduced to such lesser amount as the Board may determine in the case of a pensioner aged sixty-five years or more at the first day of January, one thousand nine hundred and seventy-one.

(5) Where a married male person has commuted the whole or part of the increase in his pension pursuant to this section his widow shall upon his death be entitled to a pension in accordance with the provisions of this Act subject to the amount thereof being determined in accordance with the amount of pension which would have been payable to him at the time of his death had he not made any commutation of any part thereof.

(6)

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(6) The provisions of subsection four of No. 7, 1971 section 21A of this Act apply to and in respect of any amounts of pension commuted under this section :

Provided that a reference in that subsection to subsection three of that section shall be read and construed as a reference to subsection four of this section.

(c) by inserting next after section 23B the following New secs.
23BA, 23BB. new sections :—

23BA. (1) Notwithstanding subsection two of section 23B of this Act, where a contributor retires or dies or where a pensioner dies and an amount in respect of an increase in his salary that took effect from a day earlier than the day of his retirement or death and payable up to the day of his retirement or death has been paid to him, or is payable to his estate, he, or in the case of his death, his widow may make an election to take up any or all of the additional units to which such increase would have entitled him had he continued to be a contributor. Retrospective salary increases.

(2) For the purposes of determining the contributions payable consequent upon an election under this section the increase in salary shall be deemed to have been actually paid on the date on which such increase took effect.

Pension in respect of the additional units in respect of which an election is made under this section shall be payable from the day following the date of retirement or death of the contributor or pensioner, as the case may be.

(3)

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(3) An election under this section shall—

- (a) in the case of a person who retired or died before the commencement of the Superannuation (Amendment) Act, 1971, be made within three months after such commencement;
- (b) in the case of a person who retires after such commencement be made by him within three months after the increase is actually paid to him and in the event of his death before the expiration of the said three months and his not having made such election be made by his widow within three months after his death;
- (c) in the case of a person who retires after such commencement and dies before the increase is paid be made by his widow within three months after the increase is paid;
- (d) in the case of a contributor who dies before the increase is paid be made by his widow within three months after the increase is paid :

Provided that the Board may in special circumstances allow an election to be made under this section after the expiration of the periods above prescribed.

Payments in respect of additional contributions.

23BB. Nothing in section 23B or 23BA shall require payment of additional contributions in respect of units for which total contributions have been paid under subsection three or four of section sixteen of this Act.

Sec. 30.
(Pensions to widow and orphans on death of contributor.)

- (d) (i) by omitting from paragraph (a) of subsection one of section thirty the word "five-eighths" and by inserting in lieu thereof the word "two-thirds";

(ii)

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- (ii) by omitting from paragraph (a) of subsection No. 7, 1971 two of the same section the word "five-eighths" and by inserting in lieu thereof the word "two-thirds";
- (e) (i) by omitting from paragraph (a) of subsection one of section thirty-one the word "five-eighths" wherever occurring and by inserting in lieu thereof the word "two-thirds";
- (ii) by omitting from subparagraph (ii) of the same paragraph the words "where the pensioner became entitled to a pension before that commencement, or becomes so entitled after that commencement,";
- (iii) by inserting at the end of the same subsection the following new paragraph :—
- Where under subsection five of section two of the Superannuation (Amendment) Act, 1971, a lesser amount of pension than that which but for that subsection would be applicable is paid to a person the pension payable to a widow shall be calculated by reference to that pension which but for that subsection would have been payable to her husband at the time of his death.
- (f) by inserting next after section thirty-three the following new section :—

33A. Where the operation of the provisions of the Superannuation (Amendment) Act, 1971, would increase the pension payable to a widow and that widow would in the opinion of the Board thereby be prejudicially affected in respect of any benefits otherwise receivable by her the amount of the increase shall be such lesser amount that the Board determines and the amount of the increase so determined shall be payable in respect of such periods or at such times by way of lump sum or otherwise as the Board determines.

(2)

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No. 7, 1971 (2) (a) The amendment made by paragraph (a) of subsection one of this section shall be deemed to have commenced on the twentieth day of March, one thousand nine hundred and seventy.

(b) The amendment made by paragraph (c) of subsection one of this section shall be deemed to have commenced on the first day of January, one thousand nine hundred and seventy-one.

Further amendment of Act No. 28, 1916.

4. (1) The Principal Act is further amended—

Sec. 9A.
(Guaranteed minimum interest yield.)

- (a) (i) by inserting at the end of the definition of "I" in paragraph (a) of subsection three of section 9A the words "and the cost of management as referred to in section eighty-three of this Act";
- (ii) by inserting in paragraph (b) of the same subsection after the words "not received" the words "and costs of management accrued and not paid";

New sec 9c.

(b) by inserting next after section 9B the following new section :—

Fund and employers' contribution to increases in pension since 1.1.71.

9c. (1) In this section—

"secondary increase" means the increase referred to in paragraph (b) of subsection two of this section.

(2) The cost of the increase in pensions attributable to the provisions of the Superannuation (Amendment) Act, 1971, shall—

- (a) in respect of the first half of the increase, be paid as to sixty per centum thereof out of the Fund and as to forty per centum thereof by the employers on the requisition of the Board;

(b)

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(b) subject as hereinafter provided, in respect ^{No. 7, 1971} of the other half of the increase, be paid as to sixty per centum thereof out of the Fund and as to forty per centum thereof by the employers on the requisition of the Board.

(3) (a) The Board shall, in relation to the financial year commencing on the first day of July, one thousand nine hundred and seventy-one, and in each succeeding financial year, determine the amount ascertained in accordance with the formula—

$$1.0275 I$$

(hereinafter referred to as formula X) and the amount ascertained in accordance with the formula—

$$.0275 (A + B)$$

(hereinafter referred to as formula Y).

(b) If in the financial year commencing on the first day of July, one thousand nine hundred and seventy-one, the amount by which formula X exceeds formula Y is insufficient to pay sixty per centum of the secondary increase, the employers shall on the requisition of the Board pay the deficiency in addition to the amount required to be paid by them under paragraph (b) of subsection two of this section.

(c) Where in any financial year succeeding that referred to in paragraph (b) of this subsection the prescribed amount is insufficient to pay sixty per centum of the secondary increase in that succeeding financial year the employers shall on the requisition of the Board pay the deficiency in addition to the amount required to be paid by them under paragraph (b) of subsection two of this section.

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In this subsection "prescribed amount" means so much of the amount by which formula X exceeds formula Y in a financial year, together with the amounts by which formula X exceeded formula Y in preceding financial years and together with any payments by employers under this subsection in respect of preceding financial years, as is in excess of sixty per centum of the secondary increases in preceding financial years.

For the purposes of this subsection any financial year preceding the first day of July, one thousand nine hundred and seventy-one, shall not be taken into account.

(4) Of such deficiency (if any) payable pursuant to subsection three of this section each employer shall pay to the Fund on the requisition of the Board the sum which bears to such deficiency the same proportion as the total amount of the increase in pensions paid or payable by reason of the enactment of the Superannuation (Amendment) Act, 1971, during the financial year in question to pensioners or to the widows of deceased pensioners or contributors who were employed in the service of such employer at the date of their retirement, retrenchment or death, as the case may be, bears to the aggregate amount of the increase in pensions so paid or payable during that year.

(5) Any amount payable by an employer under this section shall be in addition to any amount payable by him under section 9A or 9B of this Act and any other contribution or payment otherwise payable by him to the Fund.

(6) The provisions of subsection three of section 9A of this Act shall apply, mutatis mutandis, to this section.

(7)

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(7) This section shall not apply in respect of any pension which is wholly payable out of the Consolidated Revenue Fund or the funds of the employer nor in respect of any pension wholly payable out of the Fund and in respect of which the Fund is wholly repaid or wholly recouped by the Consolidated Revenue Fund or the employer. No. 7, 1971

- (c) (i) by omitting subsection one of section ten and the heading to that section and by inserting in lieu thereof the following subsection :—

(1) An investigation as to the state and sufficiency of the fund shall be made as at the thirtieth day of June, one thousand nine hundred and seventy-two, and as at the expiration of each period of three years thereafter.

Sec. 10.
(Triennial investigation by two or more actuaries.)

- (ii) by inserting at the end of the same section the following new subsection :—

(4) The Board shall, not later than two months after it receives a report under subsection three of this section, forward the report to the Minister with such comments thereon as it thinks fit.

- (d) by inserting at the end of section 17B the following new subsection :—

(8) The liability of employers to make payments to the fund pursuant to this section shall be calculated as if the Superannuation (Amendment) Act, 1971, had not been enacted.

Sec. 17B.
(Additional payment by employers in respect of increase in pension unit value.)

This subsection shall be deemed to have commenced upon the first day of January, one thousand nine hundred and seventy-one.

(e)

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- No. 7, 1971
- Sec. 17c.
(Additional payment by employers in respect of persons becoming contributors after 1.7.63.)
- (e) by inserting at the end of section 17c the following new subsection :—
- (5) The liability of employers to make payments to the fund pursuant to this section shall be calculated as if the Superannuation (Amendment) Act, 1971, had not been enacted.
- This subsection shall be deemed to have commenced upon the first day of January, one thousand nine hundred and seventy-one.
- Sec. 21A.
(Commuting of certain units.)
- (f) by omitting from subsection two of section 21A the words “a pensioner” and by inserting in lieu thereof the words “an employee or a pensioner”;
- Sec. 63.
(Moneys part of Fund.)
- (g) by inserting at the end of section sixty-three the following new subsections :—
- (2) The Board shall determine what part of the investments of the Board represents the investment of moneys paid to the Fund under section sixty-two of this Act.
- (3) Investments to which a determination under subsection two of this section relates, together with moneys paid to the Fund under this Part, may be invested separately from the other moneys in the Fund. The provisions of sections five, 5A and 5B of this Act shall apply, mutatis mutandis, to and in respect of investment of moneys paid to the Fund under this Part.
- New sec. 69.
Joint accounts.
- (h) by inserting next after section sixty-eight the following new section :—
69. Moneys paid to the Fund by an employee or a person in receipt of a pension may in addition to any other provision of this Part be credited to an
- account

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account in the name of the employee or person in receipt of a pension and any other person nominated by him. Any such joint account shall be operated upon in such manner as the Board may from time to time determine. No. 7, 1971

(i) (i) by inserting in paragraph (c) of section ninety-one after the words "section 21A" the words "or section 21B"; Sec. 91.
(Time for making elections, applications, etc.)

(ii) by inserting next after the same paragraph the following new paragraph :—

(d) may with the approval of the Board be amended or revoked.

(j) by inserting in subsection one of section ninety-four after the word "person" the words "who has not attained the age of sixty-five years and". Sec. 94.
(Person entitled to pension subsequently employed.)

(2) (a) Paragraph (g) of subsection one of this section shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(b) Paragraph (h) of subsection one of this section shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.