

**SUPERANNUATION (FURTHER AMENDMENT)
ACT.**

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 104, 1974.

An Act to provide for the automatic adjustment of certain pensions payable under the Superannuation Act, 1916; for these and other purposes to amend that Act; to validate certain matters; and for purposes connected therewith. [Assented to, 13th December, 1974.]

BE

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- (c) by inserting at the end of section 17C the following **No. 104, 1974** subsection :—

(7) The liability of employers to make payments to the fund pursuant to this section shall be calculated as if Division 6 of Part IV had not been enacted.

Sec. 17C.
(Additional payment by employers in respect of persons becoming contributors after 1.7.63.)

- (d) by inserting after section 21A (1A) the following subsection :—

(1B) Notwithstanding anything in subsection (1), this section does not authorise the commutation of the amount of any increase of pension payable under Division 6 of Part IV.

Sec. 21A.
(Commuting of pension.)

- (e) by inserting after section 51 (2) the following subsections :—

(3) Notwithstanding anything in this Act—

- (a) where a person is retired under section 22 within five years of again becoming a contributor following a previous retirement under that section, then, as on and from the date (being not earlier than the commencement of this subsection) on which pension thereafter first becomes payable to him, the rate at which it is payable shall be that at which it would have been payable to him had he continued in his last retirement (disregarding any retirement of that person to which subsection (2) (b) applied)

Sec. 51.
(Employee restored to health may be recalled to service.)

instead

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instead of again becoming a contributor and had the provisions referred to in the definition of "suspended part of a pension" in section 61B (1) not been enacted; and

- (b) where a contributor dies within five years of having again become a contributor following a previous retirement under section 22, then, as on and from the date (being not earlier than the commencement of this subsection) on which pension thereafter first becomes payable to his widow, the rate at which it is payable shall be that at which it would have been payable to her had her late husband—
- (i) where he has been retired under section 22 once only—continued in that retirement instead of his again becoming a contributor; or
 - (ii) where he has been so retired more than once—continued in his last retirement (disregarding any retirement of his to which subsection (2) (b) applied) instead of again becoming a contributor,

and had the provisions referred to in the definition of "suspended part of a pension" in section 61B (1) not been enacted.

(4) Without affecting the operation of subsection (3), Part II of the Superannuation (Amendment) Act, 1974, does not apply to a pension referred to in subsection (3).

(f)

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- (f) by inserting after Division 5 of Part IV the following No. 104, 1974
Division :—

DIVISION 6.—*Automatic adjustment of pensions.*

Part IV,
Div. 6.

61B. (1) In this Division, except in so far as the Interpretation: Div. 6 of Pt. IV. context or subject-matter otherwise indicates or requires—

“adjustment date”, in relation to a year, means the first day of the pension pay period that ends on the first pension pay day in the October that next follows that year;

“adjustment percentage”, in relation to a year, means (subject to section 61C (2)) the percentage for that year, calculated in accordance with section 61C;

“Index number”, in relation to a June quarter, means the number for that June quarter appearing in the Consumer Price Index (All Groups Index) for Sydney published by the Commonwealth Statistician under the Census and Statistics Act 1905–1966 of the Parliament of the Commonwealth or that Act as amended from time to time or any Act of that Parliament passed in substitution therefor;

“June quarter”, in relation to a year, means the period commencing on and including 1st April in that year and ending on and including 30th June in that year;

“pension”—

(a) subject to paragraph (b), means—

(i) pension payable under this Act; and

(ii) pension wholly paid or recouped from the Consolidated Revenue Fund or the funds of an employer; and

(b)

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(b) does not include—

- (i) pension that has been commuted under section 21A or 21B; or
- (ii) pension payable in respect of a child or a student;

“quarter”, in relation to a year, means—

- (a) the period commencing on and including 1st July in that year and ending on and including 30th September in that year;
- (b) the period commencing on and including 1st October in that year and ending on and including 31st December in that year;
- (c) the period commencing on and including 1st January in that year and ending on and including 31st March in that year; or
- (d) the period commencing on and including 1st April in that year and ending on and including 30th June in that year;

“suspended part of a pension”, in relation to an adjustment date, means, where any part of an increase in pension was not payable at that adjustment date by reason only of the operation of section 2 (5) of the Superannuation (Amendment) Act, 1971, section 7 of the Superannuation (Amendment) Act, 1974, or section 61I of this Act, the unpaid part of that increase;

“suspended

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“suspended pension”, in relation to an adjustment No. 104, 1974 date, means—

- (a) a pension that was not payable under section 30 or 31 at that adjustment date by reason only of the marriage of a person; or
- (b) a pension that was not payable at that adjustment date by reason only of the operation of section 94;

“year” means—

- (a) the period commencing on and including 1st July, 1973, and ending on and including 30th June, 1974; or
- (b) a subsequent period commencing on and including 1st July and ending on and including 30th June.

(2) Where a pension is to be adjusted under this Division by reference to the adjustment percentage for a year, a reference (however expressed) in this Division to adjusting the pension is a reference to—

- (a) where the adjustment percentage is calculated in accordance with the formula set out in section 61c (1) (a)—increasing the pension; or
- (b) where the adjustment percentage is calculated in accordance with the formula set out in section 61c (1) (b)—reducing the pension.

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Calculation
of adjust-
ment
percentage.

61c. (1) For the purposes of the definition of "adjustment percentage" in section 61B (1), the percentage for a year shall be calculated—

- (a) if the Index number for the June quarter in that year is greater than the Index number for the immediately preceding June quarter—in accordance with the following formula :—

$$P = \frac{100 (C - L)}{L}$$

- (b) if the Index number for the June quarter in that year is less than the Index number for the immediately preceding June quarter—in accordance with the following formula :—

$$P = \frac{100 (L - C)}{L}$$

where—

P is the percentage to be obtained;

C is the Index number for the June quarter in that year; and

L is the Index number for the immediately preceding June quarter.

(2) Where—

- (a) the percentage calculated for a year in accordance with this section is less than 1.0 per centum; or

(b)

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(b) the Index number for the June quarter in No. 104, 1974 that year is the same as the Index number for the immediately preceding June quarter, there shall be deemed to be no adjustment percentage for that year.

(3) Where there is deemed to be no adjustment percentage for a year, then, for the purposes of calculating the percentage for the next year—

- (a) the Index number for the June quarter in the firstmentioned year shall be deemed not to have been published; and
- (b) the Index number for that quarter shall be deemed to be the same as the Index number for the June quarter in the last year for which there was an adjustment percentage.

(4) If at any time, whether before or after the commencement of this Division, the Commonwealth Statistician has published in respect of a particular June quarter an Index number in substitution for an Index number previously published by him in respect of that quarter—

- (a) except as provided in paragraph (b)—the publication of the later Index number shall be disregarded; or
- (b) if the Minister so directs—regard shall, after the direction is given, be had to the later and not to the earlier Index number,

for the purposes of this Division.

(5)

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(5) Notwithstanding subsection (4), if at any time after the commencement of this Division the Commonwealth Statistician changes the reference base for the Consumer Price Index (All Groups Index) for Sydney, then, for the purposes of the application of this Division after the change takes place, regard shall be had only to Index numbers published in terms of the new reference base.

Adjustment
of pensions:
general
cases.

61D. (1) Subject to this Division, where there is an adjustment percentage for a year (in this section referred to as "the particular year"), the pension payable on the adjustment date for that year to a person to whom this section applies is hereby adjusted, on and from that adjustment date, by that percentage.

(2) This section applies to—

- (a) a person who last became a pensioner before 1st July in the particular year;
- (b) a person who is the widow of a pensioner, where that pensioner last became a pensioner before 1st July in the particular year and died before the adjustment date for that year; and
- (c) a person who is the widow of a contributor, being a contributor who died, on or after 1st July in the particular year but before the adjustment date for that year, within five years of having again become a contributor following a retirement under section 22 before 1st July in that year.

(3)

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(3) A reference in subsection (1) to a pension payable to a person includes a reference to the pension that would have been payable to him had the provisions referred to in the definition of "suspended part of a pension" in section 61B (1) not been enacted.

61E. (1) Subject to this Division, where there is an adjustment percentage for a year (in this section referred to as "the particular year"), the pension payable on the adjustment date for that year to a person to whom this section applies is hereby adjusted, on and from that adjustment date, by the percentage calculated in accordance with the formula set out in subsection (3).

(2) This section applies to—

- (a) a person who last became a pensioner on or after 1st July in the particular year but on or before 31st March in that year, other than a person referred to in paragraph (c);
- (b) a person who is the widow of a pensioner, where that pensioner last became a pensioner on or after 1st July in the particular year but on or before 31st March in that year and died before the adjustment date for that year; and
- (c) a person who is the widow of a contributor, being a contributor who died, on or after 1st July in the particular year but before the adjustment date for that year, within five years of having again become a contributor following a retirement under section 22 on or after 1st July in that year but on or before 31st March in that year,

but does not apply to a person to whom section 61D applies.

(3)

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(3) The formula referred to in subsection (1) is—

$$A = P \times \frac{Q}{4}$$

where—

A is the percentage by which the pension is to be adjusted;

P is the adjustment percentage for the particular year; and

Q is the number of whole quarters of the particular year, being whole quarters after—

(a) in the case of a person referred to in subsection (2) (a)—the person last became a pensioner;

(b) in the case of a person referred to in subsection (2) (b)—her late pensioner husband last became a pensioner; or

(c) in the case of a person referred to in subsection (2) (c)—

(i) where her late husband had been retired under section 22 once only—her late husband was so retired; or

(ii) where her late husband had been so retired more than once—her late husband was last so retired, disregarding any retirement of her late husband to which section 51 (2) (b) applied.

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61F. (1) In determining when a pensioner last became a pensioner for the purposes of section 61D or 61E, regard shall not be had to any retirement to which section 51 (2) (b) applied.

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Application
of secs.
61D and 61E
to break-
down pen-
sions and
suspended
pensions.

(2) Section 61D or 61E, as the case may require, applies to and in respect of a suspended pension in the same way as it applies to and in respect of a pension referred to therein, and so applies as if—

- (a) the marriage by reason of which the pension is a suspended pension had not taken place ;
or
- (b) section 94 had not been enacted,

as the case may require, but nothing in this subsection operates so as to authorise or require the payment at any time of that suspended pension or any part thereof.

61G. (1) Where an increase in pension is payable to a pensioner under the Superannuation (Amendment) Act, 1970, then, as on and from the date (being not earlier than the commencement of this Division) on which the increase is payable, the rate at which it is payable shall be that at which it would be payable to him had he been in receipt of the increase at the commencement of Part II of the Superannuation (Amendment) Act, 1974.

(2)

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(2) Without affecting the operation of subsection (1), Part II of the Superannuation (Amendment) Act, 1974, does not apply to an increase in pension referred to in subsection (1).

Minimum amount to which pensions may be reduced.

61H. Notwithstanding anything in this Division—

- (a) a pension (other than a pension payable to a person by virtue of her being a widow of a pensioner) shall not be reduced below the fortnightly amount that would, if this Division had not been enacted, have been payable; and
- (b) a pension payable to a person by virtue of her being a widow of a pensioner shall not be reduced below the fortnightly amount that would have been payable to her by reference to the pension that would, if this Division had not been enacted, have been payable to her late husband.

Suspension of increase in pension in certain circumstances.

61I. (1) Where the operation of the provisions of this Division would increase the pension payable to a person, or a widow's pension would be increased by reason of the operation of those provisions in relation to her late husband, and that person or widow would, in the opinion of the Board, thereby be prejudicially affected in respect of any benefits otherwise receivable by that person or widow, the amount of the increase shall be such lesser amount than that provided for under this

Division

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Division as the Board from time to time determines, No. 104, 1974
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
from time to time determines.

(2) An increase or part of an increase that
is not paid because of the operation of subsection
(1) shall, in calculating a pension payable under
section 30 or 31, be taken into account as if it had
been payable.

61j. (1) Where, by virtue of there being an Additional
payment by
employers. adjustment percentage for a year, an increased
pension is payable to a pensioner or to the widow
of a deceased pensioner or contributor, the
employer in whose service the pensioner or deceased
pensioner was employed at the date of his retire-
ment or retrenchment, or in whose service the con-
tributor was employed at the date of his death, shall
pay to the Fund at such intervals as may be
determined by the Board and on the requisition of
the Board, an amount equal to the difference
between the amount of the pension payable under
this Division and the amount of pension that would
have been payable had there been no adjustment
percentage for that year.

(2) An amount payable by an employer
under this section is additional to any contribution
or other payment that the employer is required to
make under any other provision of this Act.

61k.

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Calculation
of
percentages.

61K. Where a percentage that is to be calculated under this Division is or includes a fraction of one-tenth of one per centum—

- (a) if that fraction is less than one-half of one-tenth—that fraction shall be disregarded; and
- (b) if that fraction is not less than one-half of one-tenth—that fraction shall be treated as one-tenth.

COMMERCIAL