



New South Wales

Parliamentary Contributory Superannuation Amendment Act 1999 No 89

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Parliamentary Contributory Superannuation Amendment Act 1999 No 89

Act No 89, 1999

An Act to amend the *Parliamentary Contributory Superannuation Act 1971* with respect to the payment and commutation of pensions under the scheme established by that Act, actuarial investigations of the Parliamentary Contributory Superannuation Fund and the preservation of lump sum benefits; and for other purposes. [Assented to 6 December 1999]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Parliamentary Contributory Superannuation Amendment Act 1999*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Parliamentary Contributory Superannuation Act 1971 No 53

The *Parliamentary Contributory Superannuation Act 1971* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 6 Payments into and out of Fund

Insert “interest payable on preserved benefits,” after “sums,” in section 6 (2).

[2] Section 10 Actuarial investigation

Omit “12” from section 10 (2A). Insert instead “6”.

[3] Section 10 (2C)

Insert after section 10 (2B):

(2C) The trustees must, not later than 1 month after receiving a report under this section, forward the report to the Minister with such comments as the trustees think fit.

[4] Section 15 Functions of trustees

Insert “have regard to” before “the future” in section 15 (5) (c).

[5] Sections 19B–19F

Insert after section 19A:

19B Deferral of certain pensions

- (1) Despite any other provision of this Act, a pension, or part of a pension, payable under section 19 to a former member is payable by the trustees to the former member only if:
 - (a) the former member has attained the age of 55 years, or
 - (b) a pension is payable under section 19D or 19E.
- (2) A former member may make an election under section 20 in respect of an amount of pension that is not payable because of this section as if the former member were entitled to a pension under this Part.

- (3) In this section, and sections 19C–19F, a pension, or part of a pension, that is not payable because of this section is a *deferred pension*.
- (4) This section applies to a former member who first becomes a member after the date of assent to the *Parliamentary Contributory Superannuation Amendment Act 1999*.

19C Calculation of deferred pension

- (1) The value of a deferred pension when it first becomes payable is to be calculated in accordance with section 19 as at the date the former member ceased to be a member, except that the current basic salary for the purpose of that section is to be calculated as at the date the deferred pension becomes payable under section 19B.
- (2) If a former member in respect of whom a pension has been deferred under section 19B dies:
 - (a) section 23 (2) applies in respect of the spouse of the former member in the same way as it applies in respect of the spouse of a member who has been entitled to salary for an aggregate period of 7 years or more, and
 - (b) section 23B applies in respect of a dependent child of the former member in the same way as it applies in respect of a dependent child of a deceased member or former member.

19D Payment of deferred pension in cases of hardship

- (1) The trustees may, on the written application of a former member, pay the former member the former member's deferred pension on the ground of the former member's financial hardship.
- (2) In determining whether a pension is payable to a former member under this section, the trustees must have regard to the following matters:
 - (a) the financial circumstances of the former member and his or her capacity to meet reasonable and immediate financial commitments,
 - (b) any other matters the trustees think relevant and appropriate.

19E Payment on grounds of ill-health or incapacity

- (1) The trustees may, on the written application of a former member, pay the former member the former member's deferred pension on the ground of the former member's ill-health or physical or mental incapacity.
- (2) The trustees must not determine that a pension is payable under this section unless the trustees are satisfied that the former member would, if still a member, be incapable of performing the duties of a member because of ill-health or physical or mental incapacity.
- (3) For the purposes of satisfying the trustees that a pension is payable under this section, the former member must provide such medical and other evidence or information as the trustees require.
- (4) In particular, the medical evidence must include a certificate or certificates acceptable to the trustees, signed by 2 medical practitioners, certifying that the former member would, if still a member, be incapable of performing the duties of a member due to ill-health or physical or mental incapacity.

19F Applications for payment of deferred pensions

- (1) A former member may, at any time, lodge with the trustees an application to vary or revoke an application under section 19D or 19E.
- (2) An application under section 19D or 19E is to be in a form approved by the trustees for the purposes of this section.

[6] Section 20 Right to convert pension to lump sum entitlement

Omit the definition of *the prescribed part of his or her pension entitlement* from section 20 (1).

[7] Section 20 (2)

Omit section 20 (2). Insert instead:

- (2) Despite anything in this Act, except subsection (2A), the following former members may elect, by notice in writing served on the trustees, to convert the whole or part of the

former members' pension entitlements to lump sum entitlements determined in accordance with subsection (3):

- (a) a former member who is entitled to a pension under this Part but who is not a former member referred to in paragraph (b) or (c),
- (b) a former member who becomes, on ceasing to be a person whose right to a pension is suspended under section 25 (2), entitled to a pension under this Part,
- (c) a former member who is entitled to a pension as a result of a direction given by the trustees under section 26 (2).

[8] Section 20 (2A)

Omit "is not entitled to make an election under subsection (2) (b) or (c)".
Insert instead "referred to in subsection (2) (b) or (c) is not entitled to make an election under subsection (2)".

[9] Section 20 (2B)

Omit "subsection (2)" where secondly occurring.
Insert instead "subsection (11)".

[10] Section 20 (2B) (a)

Omit "subsection (2) of section 25 or subsection (1) of section 26".
Insert instead "section 25 (2) or section 26 (1)".

[11] Section 20 (3A)

Insert after section 20 (3):

- (3A) For the purposes of subsection (2), the maximum amount of pension entitlement that may be the subject of an election under that subsection by a former member referred to in subsection (2) (c), is the lesser of the following amounts:
- (a) the pension entitlement of the former member, if the entitlement had not been suspended under section 26 (1),
 - (b) the annual pension entitlement directed to be paid to the former member under section 26 (2) as at the date from

which a pension is first payable to the former member under section 26 (2),

- (c) the annual pension entitlement of the former member as at the date immediately before the election under this section is received by the trustees.

[12] Section 20 (4)

Omit “subsection (2) of section 26”. Insert instead “section 26 (2)”.

[13] Section 20 (11)

Insert after section 20 (10):

- (11) An election under subsection (2) must be made:
 - (a) in the case of a former member referred to in subsection (2) (a)—not later than 3 months after the former member ceases to be a member,
 - (b) in the case of a former member referred to in subsection (2) (b)—not later than 3 months after the former member ceases to be a person whose right to a pension is suspended under section 25 (2),
 - (c) in the case of a former member referred to in subsection (2) (c)—not later than 3 months after the giving of the direction under section 26 (2) that resulted in the former member first becoming entitled to a pension under section 26 (2) and that was given after the former member’s pension was last suspended under section 26 (1).

[14] Sections 22B and 22BA

Omit section 22B. Insert instead:

22B Compulsory preservation of benefits

- (1) The trustees must, when a lump sum becomes payable under this Act, preserve all or so much of the lump sum as is required to be preserved so as to be consistent with a relevant Commonwealth superannuation standard.

- (2) The amount of the lump sum that must be preserved under this section in respect of a former member is the amount determined by the trustees, after obtaining actuarial advice.
- (3) The amount of a benefit that must be preserved under this section is to be preserved in the Fund together with interest from the member's exit date to the date of payment at a rate determined by the trustees.
- (4) The trustees may establish and maintain within the Fund such accounts and reserves as, in the opinion of the trustees, are necessary or convenient for the administration of this section.
- (5) The trustees may, from time to time, adjust any account or reserve established under this section by:
 - (a) deducting amounts for the trustees' administration costs in respect of the preserved benefit, and
 - (b) adjusting it for interest at a rate determined by the trustees, having regard to the income of the Fund and such other matters as the trustees consider relevant.

22BA Payment of compulsorily preserved benefit

- (1) The whole or part of a benefit preserved under section 22B is payable by the trustees in the circumstances in which the whole or part of a benefit may be paid under a relevant Commonwealth superannuation standard.
- (2) The whole or part of a benefit preserved under section 22B must be paid by the trustees, if it is required to be paid under a relevant Commonwealth superannuation standard.
- (3) The benefit is payable:
 - (a) unless the former member has died—to the former member, or
 - (b) if the former member has died and is survived by a spouse—to the surviving spouse, or
 - (c) if the former member has died and is not survived by a spouse—to the personal representatives of the former member or such other persons as the trustees direct.
- (4) Nothing in this section affects payment of a benefit under section 28A or 28B.

- (5) Without limiting subsection (1) or (2), the whole or part of a benefit preserved under section 22B may, at any time, on the election of the former member in respect of whom it is preserved, be paid in one or more of the following ways:
- (a) to a regulated superannuation fund,
 - (b) to an approved deposit fund,
 - (c) to an RSA,
 - (d) to a life insurance company or a registered organisation, for the purchase of a deferred annuity, if the conditions set out in subsection (6) are satisfied.
- (6) A deferred annuity may be purchased if it is issued by a life insurance company or a registered organisation for the benefit of the person or for the benefit of the dependants of the person in the event of the death of the person and:
- (a) the annuity cannot be surrendered or assigned before the person is aged 55 years, and
 - (b) the annuity does not provide for the payment of amounts except in the following circumstances:
 - (i) the person retires from the workforce after reaching 55 years,
 - (ii) the person retires from the workforce before reaching 55 years on the ground of permanent incapacity or invalidity,
 - (iii) the person dies,
 - (iv) in such other circumstances as are approved by the trustees.
- (7) In this section:

approved deposit fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

dependant has the same meaning as in the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

life insurance company has the same meaning as in the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

registered organisation has the same meaning as in the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

regulated superannuation fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

RSA has the same meaning as in the *Retirement Savings Accounts Act 1997* of the Commonwealth.

[15] Section 23A Right of certain spouses to convert part of pension entitlement to lump sum entitlement

Insert “19C (2) (a) or” before “23 (2)” in section 23A (1).

[16] Section 25 Termination or suspension of pension if recipient becomes a member of Parliament

Insert “, or in respect of whom payment of a pension has been deferred under this Part,” after “member” where firstly occurring in section 25 (1).

[17] Section 25 (2)

Insert “, or in respect of whom payment of a pension has been deferred under this Part” after “Part” where firstly occurring.

[18] Section 26 Suspension of pension where another parliamentary pension received

Insert “, or in respect of whom payment of a pension has been deferred under this Part,” after “section” in section 26 (1).

[19] Section 28B Payment or release of benefit on compassionate grounds

Omit “Insurance and Superannuation Commissioner appointed under the *Insurance and Superannuation Commissioner Act 1987* of the Commonwealth” from section 28B (2).

Insert instead “Australian Prudential Regulation Authority”.

[20] Section 29 Continuation of former Act in certain circumstances

Omit “in subsection (2)” from section 29 (3).

Insert instead “by subsections (2) and (6)”.

[21] Section 29 (3)

Omit “section 4 had not been enacted” from section 29 (3).
Insert instead “the former Act had not been repealed”.

[22] Section 29 (6)

Insert after section 29 (5):

- (6) Schedule 2 applies in respect of a pension or allowance referred to in subsection (3) but does not apply in respect of a pension or allowance referred to in subsection (2).

[23] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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[24] Schedule 1, clauses 2 and 3

Insert after clause 1:

2 Lump sum benefits

Section 20, as amended by the *Parliamentary Contributory Superannuation Amendment Act 1999*, applies:

- (a) to and in respect of any entitlement to commute a pension under this Act that emerges after the commencement of this clause, and
- (b) to and in respect of any entitlement to commute a pension (including a pension suspended under section 25 or paid under section 23 or 26) under this Act that existed immediately before the commencement of this clause and that had not been exercised before that commencement.

3 Payment of previously preserved benefits

- (1) A benefit preserved under section 22B, as in force immediately before its repeal by the *Parliamentary Contributory Superannuation Amendment Act 1999*, is payable as if section 22B had not been repealed.

- (2) The circumstances in which a benefit may be paid under a relevant Commonwealth superannuation standard, as referred to in section 22B as so in force, are taken to include, and to have always included, the payment of a benefit to an eligible rollover fund in accordance with the facility provided under Part 24 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth and other relevant Commonwealth superannuation standards.

[25] Schedule 2

Insert after Schedule 1:

Schedule 2 Provisions relating to pensions and allowances under former Act

(Section 29 (6))

1 Application of Schedule

This Schedule applies in respect of:

- (a) a pension payable to a person under the former Act, as continued by section 29 (3), immediately before 1 July 1994, and
- (b) a pension payable, because of section 29, to the spouse of any such person on or after 1 July 1994.

2 Definitions

- (1) In this Schedule:

adjustment date for a year means 1 October in that year.

adjustment percentage for a year means (subject to clause 3 (2)) the percentage for that year, calculated in accordance with clause 3.

amending Act means the *Parliamentary Contributory Superannuation Amendment Act 1999*.

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 Australian Statistician under the *Census and Statistics Act 1905* of the Commonwealth.

June quarter of a year means the period commencing on and including 1 April in that year and ending on and including 30 June in that year.

year means:

- (a) the period of a year commencing on and including 1 July 1994, or
 - (b) a subsequent period commencing on and including 1 July and ending on and including the next following 30 June.
- (2) If a pension is to be adjusted under this Schedule by reference to the adjustment percentage for a year, a reference (however expressed) in this Schedule to adjusting the pension is a reference to:
- (a) if the adjustment percentage is calculated in accordance with the formula set out in clause 3 (1) (a)—increasing the pension, or
 - (b) if the adjustment percentage is calculated in accordance with the formula set out in clause 3 (1) (b)—reducing the pension.

3 Calculation of adjustment percentage

- (1) For the purposes of the definition of **adjustment percentage** in clause 2 (1), the percentage for a year is to 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:

where:

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

P is the percentage to be obtained, and

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) If:

(a) the percentage calculated for a year in accordance with this clause is less than 1 per cent, or

(b) the Index number for the June quarter in that year is the same as the Index number for the immediately preceding June quarter,

there is taken to be no adjustment percentage for that year.

(3) If there is taken 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 is taken not to have been published, and

(b) the Index number for that quarter is taken 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 Schedule, the Australian Statistician has published in respect of a particular June quarter an Index number in substitution for an Index number previously published by the Australian Statistician in respect of that quarter:

(a) except as provided by paragraph (b), the publication of the later number is to be disregarded, or

- (b) if the Minister so directs, regard is to be had, after the direction is given, to the later and not the earlier number,

for the purposes of this Schedule.

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

4 Adjustment of pensions

If there is an adjustment percentage for a year, the pension payable on the adjustment date for that year to a person is adjusted, on and from that adjustment date, by that percentage.

5 Minimum amount to which pensions may be reduced

Despite anything in this Schedule, a pension must not be reduced below the amount that would have been payable if this Schedule had not been enacted.

6 Calculation of percentages

If a percentage that is to be calculated under this Schedule is or includes a fraction of one-tenth of 1 per cent:

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

7 Adjustments before commencement of Schedule

- (1) Adjustments to pensions paid to any person in respect of the period commencing 1 July 1994 and ending on the commencement of this Schedule are taken to have been made in accordance with this Schedule.

Schedule 1 Amendments

- (2) No further amount is payable, and no recovery of amounts paid may be required, in respect of any amount paid in respect of the adjustment of a pension for the period referred to in subclause (1).
- (3) The payment of any amount, by or on behalf of the trustees with the approval of the Minister, in respect of pension payable during that period that is additional to the pension otherwise payable under section 29 is validated.

[Minister's second reading speech made in—
Legislative Assembly on 24 November 1999 pm
Legislative Council on 30 November 1999]

BY AUTHORITY