



**POLICE SUPERANNUATION (MISCELLANEOUS) AMENDMENT ACT
1998**

No. 16 of 1998

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ELIZABETHAE II REGINAE

A.D. 1998

No. 16 of 1998

An Act to amend the Police Superannuation Act 1990.

[Assented to 2 April 1998]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Police Superannuation (Miscellaneous) Amendment Act 1998*.

(2) The *Police Superannuation Act 1990* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 4—Interpretation

3. Section 4 of the principal Act is amended—

(a) by inserting the following subsection after subsection (3):

(3a) In subsection (3)—

"**permanent position in the police force**" includes a position to which the contributor is appointed pursuant to a contract for a fixed term that is specified in the contract as being of one year or more.;

(b) by inserting the following subsection after subsection (6a):

(6b) The following provisions apply to the application of subsection (3) in relation to a contributor who has been seconded to another police force or police forces in Australia or in any other country:

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- (a) if the contract under which the contributor is serving in the other police force is for a period of five years or more, the seconded position will be taken to be a permanent position in the South Australian police force for the purpose of calculating contributions;
- (b) if the contributor has served under two or more contracts in the same or in two or more interstate or overseas police forces and the aggregate of the periods of those contracts is five years or more, the seconded positions will be taken to be permanent positions in the South Australian police force for the purpose of calculating contributions (but contributions will only be calculated on that basis from the commencement of the contract that results in an aggregate period of five years or more);
- (c) if the contract under which the contributor served in the other police force was for a period of five years or more or if the contributor served under two or more contracts in the same or in two or more interstate or overseas police forces and the aggregate of the periods of those contracts was five years or more, the seconded position or positions will be taken to be a permanent position or positions in the South Australian police force for the purpose of calculating benefits;
- (d) if paragraph (c) applies the following provisions apply to and in relation to the calculation of benefits under subsection (3):
 - (i) separate salaries will be determined under subsection (3) in respect of the contributor's period of employment in the South Australian police force and his or her period of employment in the other police force or police forces;
 - (ii) the salary for the purpose of calculating benefits will be the average of those salaries determined in accordance with the following formula:

$$A = \frac{(X \times P_1) + (Y \times P_2)}{T}$$

Where

A is the average salary

X is the salary determined under subsection (3) in respect of the contributor's period of employment in the South Australian police force

P₁ is the period of the contributor's employment in the South Australian police force

- Y** is the salary determined under subsection (3) in respect of the contributor's period of employment in the other police force or police forces
- P₂** is the period of the contributor's employment in the other police force or police forces
- T** is the aggregate of the periods of the contributor's employment in the South Australian police force and the other police force or forces;
- (e) if paragraphs (a) and (c) or (b) and (c) are not applicable because the period or periods of secondment are less than five years, the contributor will be taken, for the purpose of calculating contributions and benefits, to be employed during the period of secondment in the position in which he or she was employed in the South Australian police force immediately before the commencement of the relevant period of secondment;
- (f) a reference in this subsection to another police force in Australia or in any other country includes—
- (i) all law enforcement agencies; and
 - (ii) a body established by the Australian Police Ministers Council; and
 - (iii) a body established by the Council of Police Commissioners of Australia; and
 - (iv) a body prescribed for the purposes of this paragraph by regulation.;
- (c) by striking out from subsection (7) "is terminated by retrenchment or on the ground of invalidity" and substituting "terminates or is terminated for any reason except the contributor's death";
- (d) by inserting after "new scheme contributor" in subsection (8) "who has not reached the age of 55 years";
- (e) by striking out paragraph (a) of subsection (8) and substituting the following paragraph:
- (a) the contributor will be taken to have retired if he or she had reached the age of 50 years but not the age of 55 years and was entitled to retire under section 21(2) and (3);;
- (f) by inserting after "old scheme contributor" in subsection (8a) "who has not reached the age of 55 years";
- (g) by striking out paragraph (a) of subsection (8a) and substituting the following paragraph:
- (a) the contributor will be taken to have retired if he or she—
 - (i) had reached the age of 50 years but not the age of 55 years; and
 - (ii) was entitled to retire under section 28(3) and (4); and

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- (iii) had, within three months after termination of the employment, informed the Board in writing that he or she had retired from employment;.

Amendment of s. 13—Contributors accounts

4. Section 13 of the principal Act is amended—

- (a) by striking out subsection (6) and substituting the following subsections:

(6) Where it is necessary to determine the balance of a contributor's account and the Board has not yet determined a rate of return in relation to the relevant financial year, the balance will be determined by applying a percentage rate of return on accounts estimated by the Board.

(6a) A balance determined under subsection (6) will not be adjusted when a rate of return is subsequently determined under subsection (3).;

- (b) by inserting the following subsection after subsection (7):

(8) A reference in this section to "rate of return" is a reference to a positive or a negative rate of return.

Amendment of s. 17—Contribution rates

5. Section 17 of the principal Act is amended—

- (a) by striking out paragraph (a) of subsection (2) and substituting the following paragraph:

(a) on the basis of the contributor's actual or attributed salary as at 31 March last preceding the commencement of the financial year or, if the contributor's hours of employment have increased or decreased between that date and the commencement of the financial year, on the basis of the contributor's salary following the last such increase or decrease in the hours of employment;;

- (b) by inserting the following subparagraphs after subparagraph (ii) of paragraph (b) of subsection (2):

(iii) if after the date on which contributions for a particular financial year are fixed there is a reduction in the contributor's salary resulting from a reduction in hours of work (other than a temporary reduction of less than two weeks' duration), there will be a proportionate reduction in the contributor's contributions (but such a contributor may, with the Board's approval, elect to contribute as if there had been no reduction in salary and in that event benefits payable under this Act will be calculated as if there had been no reduction of salary);

(iv) if the reason for the reduction in hours of work is an illness or injury suffered by the contributor, an election under subparagraph (iii) may, with the Board's approval, operate during subsequent years despite paragraph (a).

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Amendment of s. 22—Resignation and preservation

6. Section 22 of the principal Act is amended—

(a) by striking out from paragraph (c) of subsection (1) "in accordance with criteria prescribed by the regulations for the purposes of this paragraph";

(b) by inserting the following subsections after subsection (1):

(1aa) A contributor who fails to inform the Board in writing of his or her election under subsection (1) within three months after resignation will be taken to have elected to preserve his or her accrued superannuation benefits.

(1ab) If the Board is of the opinion that the limitation period referred to in subsection (1aa) would unfairly prejudice a contributor, the Board may extend the period as it applies to the contributor.;

(c) by striking out paragraphs (a) and (b) of subsection (1a) and substituting the following paragraphs:

(a) if the amount of the superannuation payment is less than \$200, the contributor is entitled to the payment on resignation;

(b) if the amount of the payment is \$200 or more the contributor may elect to preserve the payment or to carry it over to some other superannuation fund or scheme approved by the Board;

(c) if the contributor elects to preserve the payment—

(i) the contributor may at any time after reaching 60 years of age require the Board to make the payment and, if no such requirement has been made on or before the date on which the contributor reaches 65 years of age, the Board will make the payment;

(ii) if the contributor has reached the age of 55 years and is not employed by an employer within the meaning of the Commonwealth Act, the contributor may require the Board to make the payment to the contributor;

(iii) if the contributor has become incapacitated and satisfies the Board that his or her incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent, the Board will make the payment to the contributor;

(iv) if the contributor dies, the payment will be made to the spouse of the deceased contributor or, if he or she left no surviving spouse, to the contributor's estate,

(and a payment under any of the above subparagraphs excludes further rights so that a claim cannot be subsequently made under some other subparagraph).;

(d) by striking out subsection (1b) and substituting the following subsections:

(1b) The amount of the superannuation payment referred to in subsection (1a) is the amount of the minimum contribution required to avoid payment of the superannuation guarantee charge in respect of the contributor under the Commonwealth Act together with interest from the date of resignation.

(1c) The amount of interest will be calculated and credited to the contributor at the end of each financial year and will be calculated on the amount referred to in subsection (1b) at the end of the first financial year and on the aggregate of that amount and the interest previously credited at the end of each subsequent financial year.

(1d) The rate of interest will be determined by the Board in respect of each financial year in accordance with section 13.;

(e) by striking out paragraph (b) of subsection (2) and substituting the following paragraph:

(b) if the contributor has become incapacitated and satisfies the Board that his or her incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent, the Board must make a superannuation payment to the contributor;;

(f) by striking out subsection (8) and substituting the following subsection:

(8) For the purposes of this section, a contributor who has not reached the age of 55 years will be taken to resign if the contributor is not to be taken to have retired from employment pursuant to section 4(8) and the contributor's employment terminates or is terminated for any reason except invalidity (in circumstances entitling the contributor to benefits under this Act), retrenchment or death.

Amendment of s. 32—Pensions payable on contributor's death

7. Section 32 of the principal Act is amended—

(a) by striking out from paragraph (a) of subsection (1) "a surviving spouse (not being a person who became the contributor's spouse after termination of the contributor's employment and less than five years before the date of the contributor's death)" and substituting "a person referred to in subsection (1aa)";

(b) by inserting the following subsection after subsection (1):

(1aa) The following persons are entitled to a benefit under subsection (1)(a):

(a) the deceased contributor's lawful spouse if—

(i) he or she became the contributor's lawful spouse before termination of the contributor's employment; or

(ii) he or she was the contributor's lawful spouse for a period of five years immediately preceding the contributor's death; or

(iii) he or she is entitled to a benefit under paragraph (b);

(b) a person who was cohabiting with the contributor at the time of his or her death as the lawful spouse or the husband or wife *de facto* of the contributor—

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- (i) if he or she had cohabited with the contributor either as the lawful spouse or the husband or wife *de facto* of the contributor (or in both of those capacities at different times)—
 - (A) continuously for the period of five years immediately preceding the contributor's death; or
 - (B) during the period of six years immediately preceding the contributor's death for periods aggregating not less than five years; or
 - (ii) if he or she is the natural parent of a child of whom the contributor was the other natural parent.;
- (c) by striking out subparagraph (ii) of paragraph (c) of subsection (4) and substituting the following subparagraphs:
- (ii) had been credited with a number of contribution points in respect of the period from the date of death to the age of 60 years equivalent to—
 - (A) in the case of a contributor who had been in full-time employment throughout the contribution period—the number of months between the end of the last complete month of the contribution period and the age of 60 years (an incomplete month being counted as a whole month);
 - (B) in the case of a contributor who had not been in full-time employment throughout the contribution period—the number that bears the same proportion to the number of months referred to in subparagraph (A) as the contributor's employment bears to full-time employment; and
 - (iii) had retired on reaching the age of 60 years.;

Amendment of s. 34—Resignation and preservation of benefits

8. Section 34 of the principal Act is amended—

(a) by inserting the following subsections after subsection (1):

(1aa) A contributor who fails to inform the Board in writing of his or her election under subsection (1) within three months after resignation will be taken to have elected to preserve his or her accrued superannuation benefits.

(1ab) If the Board is of the opinion that the limitation period referred to in subsection (1aa) would unfairly prejudice a contributor, the Board may extend the period as it applies to the contributor.;

(b) by striking out paragraphs (a) and (b) of subsection (1a) and substituting the following paragraphs:

(a) if the amount of the superannuation payment is less than \$200, the contributor is entitled to the payment on resignation;

- (b) if the amount of the payment is \$200 or more the contributor may elect to preserve the payment or to carry it over to some other superannuation fund or scheme approved by the Board;
- (c) if the contributor elects to preserve the payment—
 - (i) the contributor may at any time after reaching 60 years of age require the Board to make the payment and, if no such requirement has been made on or before the date on which the contributor reaches 65 years of age, the Board will make the payment;
 - (ii) if the contributor has reached the age of 55 years and is not employed by an employer within the meaning of the Commonwealth Act, the contributor may require the Board to make the payment to the contributor;
 - (iii) if the contributor has become incapacitated and satisfies the Board that his or her incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent, the Board will make the payment to the contributor;
 - (iv) if the contributor dies, the payment will be made to the spouse of the deceased contributor or, if he or she left no surviving spouse, to the contributor's estate,

(and a payment under any of the above subparagraphs excludes further rights so that a claim cannot be subsequently made under some other subparagraph).;

- (c) by striking out subsection (1b) and substituting the following subsections:

(1b) The amount of the superannuation payment referred to in subsection (1a) is the amount of the minimum contribution required to avoid payment of the superannuation guarantee charge in respect of the contributor under the Commonwealth Act together with interest from the date of resignation.

(1c) The amount of interest will be calculated and credited to the contributor at the end of each financial year and will be calculated on the amount referred to in subsection (1b) at the end of the first financial year and on the aggregate of that amount and the interest previously credited at the end of each subsequent financial year.

(1d) The rate of interest will be determined by the Board in respect of each financial year in accordance with section 13.;

- (d) by striking out paragraph (b) of subsection (2) and substituting the following paragraph:

(b) if the contributor has become incapacitated and satisfies the Board that his or her incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent, the Board must make a superannuation payment to the contributor;;

- (e) by striking out paragraph (b) of subsection (4) and substituting the following paragraph:

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(b) if the contributor has become incapacitated and satisfies the Board that his or her incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent, the Board must pay an invalid pension to the contributor;;

(f) by striking out subsection (11) and substituting the following subsection:

(11) For the purposes of this section, a contributor who has not reached the age of 55 years will be taken to resign if the contributor is not to be taken to have retired from employment pursuant to section 4(8a) and the contributor's employment terminates or is terminated for any reason except invalidity (in circumstances entitling the contributor to benefits under this Act), retrenchment or death.

Amendment of s. 39—Review of the Board's decisions

9. Section 39 of the principal Act is amended—

(a) by striking out "the Supreme Court" from subsection (1) and substituting "the District Court or to the Board";

(b) by striking out "On a review the Court may" from subsection (2) and substituting "On a review by the Court, the Court may";

(c) by inserting the following subsection after subsection (3):

(4) On a review by the Board, the Board may substitute another decision for its original decision or confirm its original decision.

Amendment of s. 40—Effect of workers compensation, etc., on pensions

10. Section 40 of the principal Act is amended by striking out subsection (4) and substituting the following subsection:

(4) Where a right to weekly workers compensation payments has been surrendered in whole or in part by commutation or by agreement, the person who would have been entitled to those payments if the right to them had not been surrendered will be taken, for the purposes of this section, to be receiving them.

Amendment of s. 49—Confidentiality

11. Section 49 of the principal Act is amended by inserting the following word and paragraph after paragraph (d) of subsection (1):

or

(e) as may be required or authorised by another State Act or an Act of the Commonwealth.

Amendment of Schedule 1

12. Schedule 1 of the principal Act is amended by inserting the following clause after clause 9:

Operation of sections 22(1b), (1c) and (1d) and 34 (1b), (1c) and (1d)

10. (1) Sections 22(1b), (1c) and (1d) and 34(1b), (1c) and (1d) inserted by the *Police Superannuation (Miscellaneous) Amendment Act 1998* operate in relation to the 1997/1998 and subsequent financial years.

(2) Where section 22(1b) or 34(1b) repealed by the *Police Superannuation (Miscellaneous) Amendment Act 1998* applied in relation to a contributor who resigned before 1 July 1997, the amount of the superannuation payment adjusted to reflect changes in the Consumer Price Index will be determined under the appropriate subsection up to 1 July 1997 and section 22(1c) and (1d) or section 34(1c) and (1d) inserted by that Act will be applied in relation to that amount in respect of the 1997/1998 and subsequent financial years.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor