

WESTERN AUSTRALIA

**GOVERNMENT EMPLOYEES
SUPERANNUATION LEGISLATION
AMENDMENT ACT 1995**

No. 62 of 1995

AN ACT to amend the *Government Employees Superannuation Act 1987* and the *Superannuation and Family Benefits Act 1938*.

[Assented to 9 January 1996.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Government Employees Superannuation Legislation Amendment Act 1995*.

Commencement

2. This Act comes into operation on the day on which it receives the Royal Assent.

Principal Act

3. In section 4 the *Government Employees Superannuation Act 1987** is referred to as the principal Act.

[* *Reprinted as at 15 November 1991.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 90 and Acts Nos. 53 of 1993 and 32, 35 and 36 of 1994.]

Schedule 4 amended

4. (1) Schedule 4 to the principal Act is amended in clause 1, in the definition of "election to transfer", by deleting "or 7A" and substituting the following —

" , 7A or 7B " .

(2) Schedule 4 to the principal Act is amended by inserting after clause 7A the following clause —

" **Certain contributors or subscribers about to be retrenched may transfer to scheme**

7B. (1) In this clause —

"employee" has the same meaning as it has in the S and FB Act;

"retrench" has the meaning given by subclauses (2) and (3);

“S and FB scheme member” means a person who is —

- (a) an S and FB contributor who is contributing under the S and FB Act for units of pension;
- (b) a subscriber or contributor to the Provident Account; or
- (c) an S and FB contributor who has made an election under section 60AA (1) of the S and FB Act and has not become eligible for a pension under that Act.

(2) Unless subclause (3) provides otherwise, a person is retrenched for the purposes of this clause if the person ceases to be an employee —

- (a) in circumstances in which the person —
 - (i) becomes eligible to receive a payment under regulations made in accordance with section 94 of the *Public Sector Management Act 1994*; or
 - (ii) would have become eligible as mentioned in subparagraph (i) if the person's service as an employee had all been service in the Public Sector as a result of which the regulations referred to in subparagraph (i) applied;
- (b) on the expiry of the term of, or other termination of, the person's contract of employment; or
- (c) in any other circumstances that the Treasurer approves under this paragraph.

(3) A person is not retrenched for the purposes of this clause when —

- (a) the person retires or is retired from employment on the grounds of ill health, whether under section 39 of the *Public Sector Management Act 1994* or otherwise;
- (b) the person's employment is terminated because of misconduct or substandard or unsatisfactory performance; or
- (c) the person is dismissed under Division 3 of Part 5 of the *Public Sector Management Act 1994* or, if the person is not subject to that Division, is otherwise dismissed on disciplinary grounds.

(4) An S and FB scheme member who is to be or has been retrenched with effect on or after 12 June 1995 may, in the manner and on the terms provided for by this clause, elect to transfer from the S and FB scheme and become a member of the contributory scheme under this Act.

(5) This clause does not permit a person to remain a member of the contributory scheme after the person ceases to be eligible for membership of the scheme.

(6) An election to transfer under this clause —

- (a) must be signed by the person electing;
- (b) must be lodged with the Board before the retrenchment has effect or within such further time as the Treasurer may allow; and
- (c) when so lodged is irrevocable, notwithstanding section 51.

(7) An election lodged in accordance with this clause is deemed to have been lodged immediately before the retrenchment has effect.

(8) The benefit provided by clause 13 for a person who becomes a member of the contributory scheme because of an election under this clause is as provided for in clause 13 (4) even though the membership period under this Act is less than 24 months.

(9) The average contribution rate of a person electing under this clause is to be taken to be 5% if no contributions have been paid or are payable under this Act by the person.

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Superannuation and Family Benefits Act 1938 amended

5. After section 66 of the *Superannuation and Family Benefits Act 1938** the following section is inserted —

“

Preserved pensions for retrenched persons

66A. (1) In this section —

“**retrenched person**” means a person who ceases to be an employee in circumstances such that the person is retrenched within the meaning given to that term in clause 7B of Schedule 4 to the *Government Employees Superannuation Act 1987*, and includes a person to whom this section applies because of subsection (7).

(2) If a retrenched person —

- (a) has not received any payment under section 66 of this Act; and
- (b) has not made an election under clause 7B of Schedule 4 to the *Government Employees Superannuation Act 1987*,

the person may, by notice in writing in a form approved by the Board, request particulars of the preserved pension that the person may become entitled to under this section.

(3) When a person makes a request under subsection (2), the Treasurer, on the advice of an actuary, is to determine —

- (a) the method of calculating the amount of the preserved pension;
- (b) the circumstances in which, and time when, the preserved pension would be payable on the ground of invalidity or physical or mental incapacity to work, and the method of calculating the preserved pension in those circumstances; and
- (c) the circumstances in which, and time when, benefits would be payable to a widow, widower, child, or personal representative as a result of the death of the person entitled to the preserved pension, and the methods of calculating those benefits.

(4) The retrenched person is to be notified of the Treasurer's determination and if, within such time as the Treasurer allows, the person agrees in writing to accept the preserved pension, the person becomes entitled to the preserved pension.

(5) If a person becomes entitled to a preserved pension the person ceases to have any entitlement under section 66, and cannot make an election under clause 7B of Schedule 4 to the *Government Employees Superannuation Act 1987*.

- (6) The preserved pension is not payable until —
- (a) the person attains the age of 55 years; and
 - (b) if, when attained that age, the person is an employee as defined in section 3 of the *Government Employees Superannuation Act 1987*, the person ceases to be an employee as so defined,

except if it is payable in circumstances referred to in subsection (3) (b), in which case it is payable when specified in the Treasurer's determination.

(7) This section also applies to a person who, on or after 12 June 1995 but before the commencement of the *Government Employees Superannuation Legislation Amendment Act 1995*, ceased to be an employee in circumstances such that the person would have been retrenched within the meaning given to that term in clause 7B of Schedule 4 to the *Government Employees Superannuation Act 1987* if that clause had then been in operation.

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[* *Reprinted as at 9 August 1989.*

For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, pp 208-9 and Acts Nos. 63 of 1994 and 14 of 1995.]
