

TASMANIA

**RETIREMENT BENEFITS AMENDMENT
(EARLY RELEASE OF BENEFITS) BILL 2004**

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RETIREMENT BENEFITS AMENDMENT (EARLY RELEASE OF BENEFITS) BILL 2004

*(Brought in by the Minister for Finance, the Honourable
James Glennister Cox)*

A BILL FOR

**An Act to amend the *Retirement Benefits Act 1993*,
the *Retirement Benefits Regulations 1994* and the
*Retirement Benefits (Parliamentary
Superannuation) Regulations 2002* to provide for
the early release of benefits**

Be it enacted by His Excellency the Governor of Tasmania,
by and with the advice and consent of the Legislative
Council and House of Assembly, in Parliament assembled,
as follows:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the *Retirement Benefits
Amendment (Early Release of Benefits) Act 2004*.

Commencement

2. This Act commences on the day on which this Act
receives the Royal Assent.

**PART 2 – RETIREMENT BENEFITS ACT 1993
AMENDED**

Principal Act

3. In this Part, the *Retirement Benefits Act 1993** is referred to as the Principal Act.

Section 29G inserted

4. After section 29F of the Principal Act, the following section is inserted in Part 4:

Validation of certain payments by Board

29G. Where –

- (a) the Board has made a payment of a benefit to, or on behalf of, a person on or after 1 July 1994 and before the commencement of the *Retirement Benefits Amendment (Early Release of Benefits) Act 2004*; and
- (b) a regulated superannuation fund, within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth, would have been permitted to make such a payment under that Act –

that payment by the Board is taken to have been validly made.

*No. 103 of 1993

**PART 3 – RETIREMENT BENEFITS
(PARLIAMENTARY SUPERANNUATION)
REGULATIONS 2002 AMENDED**

Principal Regulations

5. In this Part, the *Retirement Benefits (Parliamentary Superannuation) Regulations 2002** are referred to as the Principal Regulations.

Regulation 3 amended (Interpretation)

6. Regulation 3 of the Principal Regulations is amended by inserting after the definition of “PSRB Trust” the following definition:

“**regulated superannuation fund**” means a regulated superannuation fund within the meaning of the SIS Act;

Regulation 24 amended (Preservation of benefits)

7. Regulation 24 of the Principal Regulations is amended by omitting subregulation (3) and substituting the following subregulation:

(3) Notwithstanding subregulation (1), a member who is under the preservation age is entitled to be paid by the Board the whole or a part of his or her benefit if a regulated superannuation fund would be permitted under the SIS Act to make such a payment in similar circumstances.

*S.R. 2002, No. 176

**PART 4 – RETIREMENT BENEFITS REGULATIONS
1994 AMENDED**

Principal Regulations

9. In this Part, the *Retirement Benefits Regulations 1994** are referred to as the Principal Regulations.

Regulation 3 amended (Interpretation)

10. Regulation 3(1) of the Principal Regulations is amended as follows:

- (a) by omitting the definition of “regulated superannuation fund” and substituting the following definition:

“regulated superannuation fund”
means a regulated superannuation fund within the meaning of the SIS Act;

- (b) by inserting the following definition after the definition of “service”:

“SIS Act” means the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

Regulation 26 amended (Obligation of certain employees to contribute)

11. Regulation 26 of the Principal Regulations is amended as follows:

*S.R. 1994, No. 83

s. 12

No. *Retirement Benefits Amendment (Early Release of Benefits)* 2004

- (a) by omitting paragraph (b) from subregulation (11) and substituting the following paragraph:
 - (b) refund to him or her the total of all excess contributions paid above that rate after 30 June 1999 together with accrued interest, but only if a regulated superannuation fund would be permitted under the SIS Act to make such a payment in similar circumstances.
- (b) by inserting the following subregulation after subregulation (11):

(12) On payment of a refund of additional contributions under subregulation (11), the contributor is taken to have contributed at the basic contribution rate during the period of service to which the refund of those additional contributions relates.

Regulation 43 amended (Preservation of contributions)

12. Regulation 43(8) of the Principal Regulations is amended by omitting paragraph (c) and substituting the following paragraph:

- (c) if the benefit is calculated under regulation 41, the amount of the employee component calculated as at 30 June 1999.

Regulation 60 amended (Establishment of investment account for contributors, eligible employees and their spouses)

13. Regulation 60 of the Principal Regulations is amended as follows:

- (a) by omitting from subregulation (4) “, unless prohibited from doing so by the law of the Commonwealth,”;
- (b) by inserting the following subregulation after subregulation (4):

(4A) On receipt of an election under subregulation (4), the Board must, subject to subregulation (5A), give effect to that election and reduce the balance of the person’s investment account accordingly.

- (c) by inserting the following subregulation after subregulation (5):

(5A) Any amount standing to the credit of an investment account may be paid by the Board only if a regulated superannuation fund would be permitted under the SIS Act to make such a payment in similar circumstances.

Regulation 63 amended (Establishment of compulsory preservation account)

14. Regulation 63(5) of the Principal Regulations is amended by omitting “A benefit” and substituting “Except as provided by regulation 69A, a benefit”.

s. 15

No. *Retirement Benefits Amendment (Early Release of Benefits)* 2004

Regulation 69 amended (Release of preserved benefits)

15. Regulation 69 of the Principal Regulations is amended by omitting subregulation (2) and substituting the following subregulation:

(2) Where the Board is required to preserve a lump sum benefit entitlement under Part 4 or 5, that benefit entitlement may be paid by the Board only if a regulated superannuation fund would be permitted under the SIS Act to make such a payment in similar circumstances.

Regulation 69A inserted

16. After regulation 69 of the Principal Regulations, the following regulation is inserted in Part 6:

Early release of benefits

69A. (1) In this regulation –

“**child**”, in respect of a person, includes a step-child of the person;

“**dependant**”, in respect of a person, includes –

- (a) the spouse of the person; and
- (b) a child of the person; and
- (c) any other person with whom the first-mentioned person has an interdependency relationship within the meaning of section 10A of the SIS Act;

“medical transport” means transport by land, water or air for the purposes of medical attention.

(2) This regulation applies only to a person who holds an account under regulation 60 or 63.

(3) A person to whom this regulation applies may apply to the Board in a form approved by the Board for a determination in accordance with this regulation for the early release of the whole or a part of an amount standing to the credit of his or her account under regulation 60 or 63.

(4) Subject to Part 7A but notwithstanding any other provision of these regulations, the Board may make a determination for the early release of the whole or a part of a person’s benefit as mentioned in subregulation (3) if the Board is satisfied that –

- (a) the amount to be released is required –
 - (i) to pay for medical treatment or medical transport for the person or a dependant; or
 - (ii) to enable the person to make a payment on a loan, to prevent –
 - (A) foreclosure of a mortgage on the person’s principal place of residence; or
 - (B) exercise by the mortgagee of an express or statutory power of sale over the person’s principal place of residence; or

- (iii) to modify the person's principal place of residence, or vehicle, to accommodate the special needs of the person, or a dependant, arising from severe disability; or
 - (iv) to pay for expenses associated with the person's palliative care, in the case of impending death; or
 - (v) to pay for expenses associated with a dependant's death, funeral, burial or, in the case of impending death, palliative care; or
 - (vi) to meet expenses for any other purpose which the Board determines to be consistent with a ground mentioned in the preceding subparagraphs of this paragraph; or
- (b) the person to whom this regulation applies is in severe financial hardship as mentioned in subregulation (9)(a); or
 - (c) the person to whom this regulation applies is in severe financial hardship as mentioned in subregulation (9)(b).

(5) The Board must not make a determination under this regulation that money is required for medical treatment unless 2 legally qualified medical practitioners (at least one of whom must be a specialist) certify that –

- (a) the medical treatment is necessary to –
 - (i) treat a life-threatening illness or injury; or

- (ii) alleviate acute or chronic pain; or
 - (iii) alleviate an acute or chronic mental disturbance; and
- (b) the treatment is not readily available to the person, or the dependant, through the public health system.

(6) The Board must not make a determination under this regulation that money is required for medical transport unless the medical treatment for which the medical transport is required has been certified, under subregulation (5), as necessary for a reason mentioned in subregulation (5)(a).

(7) The Board must not make a determination under this regulation that money is required on the ground mentioned in subregulation (4)(a)(ii) unless the person provides the Board with a written statement from the mortgagee that –

- (a) payment of an amount is overdue; and
- (b) if the person fails to pay the amount, the mortgagee will –
 - (i) foreclose the mortgage on the person's principal place of residence; or
 - (ii) exercise its express or statutory power of sale over the person's principal place of residence.

(8) A statement under subregulation (7) must specify –

- (a) an amount that is equal to 3 months' repayments under the mortgage; and

- (b) an amount that is equal to 12 months' interest on the outstanding balance of the loan at the time the statement is made.

(9) For the purposes of subregulation (4), a person is taken to be in severe financial hardship if –

- (a) the Board is satisfied that –

- (i) based on written evidence provided by at least one department or agency of the Commonwealth responsible for administering a class of Commonwealth income support payments –

- (A) the person has received Commonwealth income support payments for a continuous period of 26 weeks; and

- (B) the person was in receipt of payments of that kind on the date of the written evidence; and

- (ii) the person is unable to meet reasonable and immediate family living expenses; or

- (b) the person has reached the age that is the person's preservation age plus 39 weeks and the Board is satisfied that –

- (i) based on written evidence provided by at least one department or agency of the

Commonwealth responsible for administering a class of Commonwealth income support payments, the person received Commonwealth income support payments for a cumulative period of 39 weeks after the person reached his or her preservation age; and

- (ii) the person was not gainfully employed on a full-time or part-time basis on the date of his or her application under this regulation.

(10) The written evidence referred to in subregulation (9)(a) is of no effect if it is dated more than 21 days before the date of the relevant application to the Board.

(11) In each 12-month period, beginning on the date of the first payment, the Board may, under this regulation, pay by way of early release of a person's benefit a single lump sum payment that is to be –

- (a) in respect of an amount released under subregulation (4)(a)(ii), not more than the total of the amounts referred to in subregulation (8); or
- (b) in respect of a person who is in severe financial hardship as mentioned in subregulation (9)(a), an amount not less than \$1 000 and not more than \$10 000 or, if the amount of the person's benefit is less than \$1 000, the amount of that benefit; or

- (c) in respect of a person who is in severe financial hardship as mentioned in subregulation (9)(b), an amount not more than the amount of the person's benefit; or
- (d) in respect of any other amount released under subregulation (4), such amount as the Board considers appropriate after consideration of the relevant application and accompanying evidence.

(12) An amount released under this regulation may be paid to any person that the Board determines.

(13) Where the Board has paid an amount by way of early release under this regulation, the Board must reduce the balance of the relevant person's account or accounts under regulation 60 or 63 accordingly.

(14) If the Board is not satisfied that an applicant has established grounds for the early release of the whole or a part of his or her benefit, the Board may decline to proceed with consideration of the application until the applicant has produced such relevant information as the Board may require.

Regulation 88D rescinded

17. Regulation 88D of the Principal Regulations is rescinded.