

TASMANIA

**PUBLIC SECTOR SUPERANNUATION
(MISCELLANEOUS AMENDMENTS) BILL
(No. 2) 2004**

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**PUBLIC SECTOR SUPERANNUATION
(MISCELLANEOUS AMENDMENTS) BILL
(No. 2) 2004**

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

A BILL FOR

**An Act to make miscellaneous amendments to the
law relating to superannuation in the public sector**

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 *Public Sector Superannuation (Miscellaneous Amendments) Act (No. 2) 2004*.

Commencement

2. (1) Subject to this section, this Act commences on the day on which this Act receives the Royal Assent.

(2) Parts 2 and 3 are taken to have commenced on 15 May 1999.

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(3) Parts 6 and 8 commence on a day to be proclaimed.

**PART 2 – INDUSTRIAL RELATIONS ACT 1984
AMENDED**

Principal Act

3. In this Part, the *Industrial Relations Act 1984** is referred to as the Principal Act.

Section 3 amended (Interpretation)

4. Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition before the definition of “adult”:

“accumulation scheme” means the accumulation scheme as defined in the *Public Sector Superannuation Reform Act 1999*;

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

“complying superannuation scheme” means a complying superannuation scheme as defined in the *Public Sector Superannuation Reform Act 1999*;

Section 6 amended (Provisions relating to appointment of Commissioners)

5. Section 6(5) of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

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- (a) the *Retirement Benefits Act 1993* or, if appointed on or after 15 May 1999, the *Public Sector Superannuation Reform Act 1999*; and

Section 6A inserted

6. After section 6 of the Principal Act, the following section is inserted in Division 1:

Superannuation entitlements of Commissioner appointed on or after 15 May 1999

6A. (1) This section applies in respect of a person appointed as a Commissioner on or after 15 May 1999 who was not, immediately before his or her appointment, a contributor to the contributory scheme provided by the *Retirement Benefits Regulations 1994*.

(2) Where a person was appointed as a Commissioner on or after 15 May 1999 and before 25 April 2000 –

- (a) he or she is not eligible to become a member of the contributory scheme provided by the *Retirement Benefits Regulations 1994*; and
- (b) references to an employee in the *Public Sector Superannuation Reform Act 1999* are to be read as including references to a Commissioner; and
- (c) the rate of contributions to be made in respect of the Commissioner is the relevant rate specified in regulation 46 of the *Retirement Benefits Regulations 1994* or section 6(7) of the *Public Sector*

Superannuation Reform Act 1999, as may be appropriate; and

- (d) on and after 25 April 2000, all such contributions are to be paid into a complying superannuation scheme nominated by the Commissioner in accordance with subsection (4) or, if no such nomination is made, into the accumulation scheme.

(3) Where a person is appointed as a Commissioner on or after 25 April 2000 –

- (a) he or she is not eligible to become a member of the contributory scheme provided by the *Retirement Benefits Regulations 1994*; and
- (b) subject to subsection (4), he or she is to be a member of the accumulation scheme; and
- (c) references to an employee in the *Public Sector Superannuation Reform Act 1999* are to be read as including references to a Commissioner; and
- (d) the rate of contributions to be made in respect of the Commissioner is the relevant rate specified in section 6(7) of the *Public Sector Superannuation Reform Act 1999*.

(4) A Commissioner may elect, either before or after commencing the duties of that office, to become a member of a complying superannuation scheme that is not the accumulation scheme.

(5) If a Commissioner has become a member of a complying superannuation scheme that is not the accumulation scheme, he or she may at any time elect to become a member of the accumulation scheme.

(6) Where a Commissioner elects to become a member of a complying superannuation scheme that is not the accumulation scheme, the Secretary must, on being satisfied after making reasonable inquiries that the nominated scheme is a complying superannuation scheme, make contributions –

- (a) at the relevant rate specified in section 6(7) of the *Public Sector Superannuation Reform Act 1999*; and
- (b) in the manner required by the rules of that scheme.

(7) An election under this section is to be made in writing to the Secretary.

(8) Where an election is made under subsection (4), the Secretary is not required to pay superannuation contributions into a complying superannuation scheme if that scheme does not accept payment by electronic funds transfer.

**PART 3 – PARLIAMENTARY PRIVILEGE ACT 1898
AMENDED**

Principal Act

7. In this Part, the *Parliamentary Privilege Act 1898** is referred to as the Principal Act.

Section 2 amended (Interpretation)

8. Section 2 of the Principal Act is amended as follows:

- (a) by inserting the following definitions before the definition of “the President”:

“accumulation scheme” means the accumulation scheme as defined in the *Public Sector Superannuation Reform Act 1999*;

“complying superannuation scheme” means a complying superannuation scheme as defined in the *Public Sector Superannuation Reform Act 1999*;

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

“Secretary” means the Secretary of the Department;

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Section 3A amended (Supplementary provisions relating to officers)

9. Section 3A(3) of the Principal Act is amended by inserting “or, if appointed on or after 15 May 1999, the *Public Sector Superannuation Reform Act 1999*” after “*Retirement Benefits Act 1993*”.

Section 4A inserted

10. After section 4 of the Principal Act, the following section is inserted:

Superannuation entitlements of officers and employees appointed on or after 15 May 1999

4A. (1) This section applies in respect of a person appointed as an officer under section 3 or as a sessional or temporary employee under section 4 if in either case he or she was appointed on or after 15 May 1999 and was not, immediately before his or her appointment, a contributor to the contributory scheme provided by the *Retirement Benefits Regulations 1994*.

(2) Where a person is appointed as an officer or as a sessional or temporary employee on or after 15 May 1999 and before 25 April 2000 –

- (a) he or she is not eligible to become a member of the contributory scheme provided by the *Retirement Benefits Regulations 1994*; and
- (b) references to an employee in the *Public Sector Superannuation Reform Act 1999* are to be read as including references to an officer or a sessional or temporary employee; and

- (c) the rate of contributions to be made in respect of the officer or sessional or temporary employee is the relevant rate specified in regulation 46 of the *Retirement Benefits Regulations 1994* or section 6(7) of the *Public Sector Superannuation Reform Act 1999*, as may be appropriate; and
- (d) on and after 25 April 2000, all such contributions are to be paid into a complying superannuation scheme nominated by the officer or sessional or temporary employee in accordance with subsection (4) or, if no such nomination is made, into the accumulation scheme.

(3) Where a person is appointed as an officer or sessional or temporary employee on or after 25 April 2000 –

- (a) he or she is not eligible to become a member of the contributory scheme provided by the *Retirement Benefits Regulations 1994*; and
- (b) subject to subsection (4), he or she is to be a member of the accumulation scheme; and
- (c) references to an employee in the *Public Sector Superannuation Reform Act 1999* are to be read as including references to an officer or sessional or temporary employee; and
- (d) the rate of contributions to be made in respect of the officer or sessional or temporary employee is the relevant rate

specified in section 6(7) of the *Public Sector Superannuation Reform Act 1999*.

(4) An officer or sessional or temporary employee may elect, either before or after commencing the duties of his or her office as such, to become a member of a complying superannuation scheme that is not the accumulation scheme.

(5) If an officer or sessional or temporary employee has become a member of a complying superannuation scheme that is not the accumulation scheme, he or she may at any time elect to become a member of the accumulation scheme.

(6) Where an officer or sessional or temporary employee elects to become a member of a complying superannuation scheme that is not the accumulation scheme, the Secretary must, on being satisfied after making reasonable inquiries that the nominated scheme is a complying superannuation scheme, make contributions –

- (a) at the relevant rate specified in section 6(7) of the *Public Sector Superannuation Reform Act 1999*; and
- (b) in the manner required by the rules of that scheme.

(7) An election under this section is to be made in writing to the Secretary.

(8) Where an election is made under subsection (4), the Secretary is not required to pay superannuation contributions into a complying superannuation scheme if that scheme does not accept payment by electronic funds transfer.

**PART 4 – PUBLIC SECTOR SUPERANNUATION
REFORM ACT 1999 AMENDED**

Principal Act

11. In this Part, the *Public Sector Superannuation Reform Act 1999** is referred to as the Principal Act.

Section 9 amended (Contents of Trust Deed)

12. Section 9(1)(h) of the Principal Act is amended by inserting “, market linked income streams” after “pensions”.

Section 15A inserted

13. After section 15 of the Principal Act, the following section is inserted in Part 4:

Validation of notice

15A. The notice by the Treasurer published in the *Gazette* on 22 September 1999 declaring that this Act applies to the authorities specified in the notice is taken to have applied, with effect from 15 May 1999, to each of the joint authorities, State-owned companies, Agencies or parts of Agencies specified in that notice and to have had effect as if –

- (a) the reference to the Royal Tasmanian Botanical Gardens were a reference to the board of trustees under the *Botanical Gardens Act 1950* or the Botanical Gardens Board under the

*No. 19 of 1999

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*Royal Tasmanian Botanical Gardens Act
2002, as may be appropriate; and*

- (b) the reference to Marine and Safety Tasmania were a reference to the Marine and Safety Authority; and
- (c) the reference to the Port Arthur Historical Site Management Authority were a reference to the Port Arthur Historic Site Management Authority.

**PART 5 – RETIREMENT BENEFITS ACT 1993
AMENDED**

Principal Act

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

Section 3 amended (Interpretation)

15. Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “Actuary”:

“Agency” means –

- (a) a Government department or a statutory authority or other organisation specified in column 1 of Schedule 1 to the *State Service Act 2000*; or
- (b) a prescribed authority that is not such an organisation; or
- (c) the controlling authority of any industry or undertaking carried on by or on behalf of the State; or
- (d) where the services of a prescribed authority are

*No. 103 of 1993

transferred to another person or organisation or another prescribed authority, the person, organisation or authority responsible for payment of contributions to the Fund in respect of –

- (i) contributors; or
 - (ii) other persons who were eligible employees within the meaning of the regulations as in force before the commencement of Part 5 of the *Public Sector Superannuation (Miscellaneous Amendments) Act (No. 2) 2004*;
- (b) by inserting the following definition after the definition of “non-contributory scheme”:

“prescribed authority” means an authority, State-owned company, Agency or part of an Agency to which the regulations apply;

Section 5 amended (Objects of Act)

16. Section 5(1)(e) of the Principal Act is amended by omitting “State authorities” and substituting “statutory authorities”.

Sections 29H and 29J inserted

17. After section 29G of the Principal Act, the following sections are inserted in Part 4:

Validation of certain decisions and payments relating to invalidity

29H. (1) Where, before the commencement of this section –

- (a) a question had arisen under the *Retirement Benefits Regulations 1994* as to whether –
 - (i) a person was suffering from such bodily infirmity, physical incapacity or mental incapacity as to be retired on the grounds of invalidity; or
 - (ii) a person, who immediately before 1 July 1994 was a contributor under the repealed Act, was not suffering from bodily infirmity, physical incapacity or mental incapacity as to be retired on the grounds of invalidity but was suffering from incapacity or infirmity as to be retired on the grounds of partial and permanent incapacity or infirmity; and
- (b) the Board decided that it was unable to determine the question on the ground that the person to whom the question related was no longer a contributor or eligible employee –

that decision of the Board is taken to have been validly made.

(2) Where the Board has, after 25 May 2004 and before 19 October 2004, made a determination in respect of a question referred to in subsection (1)(a) relating to any person who, at the time of the determination, was not in the employment of an Agency –

- (a) that determination is taken to have been validly made; and
- (b) any benefit paid as a consequence of that determination is taken to have been validly paid.

Validation of notice

29J. (1) The notice by the Treasurer published in the *Gazette* on 22 September 1999 declaring that the *Retirement Benefits Regulations 1994* apply to the authorities specified in the notice is taken to have applied as provided by those regulations, and with effect from 15 May 1999, to –

- (a) each of the joint authorities, State-owned companies, Agencies or parts of Agencies specified in that notice; and
- (b) their employees and former employees –

and in so applying to have effect as if –

- (c) the reference to the Royal Tasmanian Botanical Gardens were a reference to the board of trustees under the *Botanical Gardens Act 1950* or the Botanical Gardens Board under the *Royal Tasmanian Botanical Gardens Act 2002*, as may be appropriate; and

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- (d) the reference to the Regional Water Authority were a reference to the Hobart Regional Water Authority; and
- (e) the reference to Marine and Safety Tasmania were a reference to the Marine and Safety Authority; and
- (f) the reference to the Port Arthur Historical Site Management Authority were a reference to the Port Arthur Historic Site Management Authority.

(2) This section expires on a date to be fixed by the Minister by notice published in the *Gazette*.

**PART 6 – RETIREMENT BENEFITS ACT 1993
FURTHER AMENDED**

Principal Act

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

Section 5 amended (Objects of Act)

19. Section 5 of the Principal Act is amended as follows:

(a) by inserting the following paragraph after paragraph (e) in subsection (1):

(ea) persons employed by a joint authority, State-owned company, Agency or part of an Agency as provided by a notice published by the Minister under subsection (1A); and

(b) by omitting from subsection (1)(f) “paragraph (a), (b), (c), (d) or (e)” and substituting “paragraph (a), (b), (c), (d), (e) or (ea)”;

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

(1A) The Minister may, by notice published in the *Gazette*, declare that this Act applies to –

*No. 103 of 1993

- (a) a joint authority under section 30 of the *Local Government Act 1993*; or
- (b) a State-owned company; or
- (c) a specified Agency or part of an Agency which maintains its own superannuation provisions for all or any of its employees; or
- (d) the employees or former employees of any such authority, company, Agency or part of an Agency or a class of any such employees or any such former employees; or
- (e) any other specified body or organisation.

(1B) A notice under subsection (1A) may amend or revoke a notice made under regulation 3(5) of the *Retirement Benefits Regulations 1994* before the commencement of Part 6 of the *Public Sector Superannuation (Miscellaneous Amendments) Act (No. 2) 2004*.

**PART 7 – RETIREMENT BENEFITS REGULATIONS
1994 AMENDED**

Principal Regulations

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

Regulation 96 amended (Power of Board to determine invalidity)

21. Regulation 96 of the Principal Regulations is amended by inserting after subregulation (6) the following subregulation:

(7) Subject to regulation 102, the Board may make a determination under this regulation in respect of a question arising under subregulation (1)(a) or (b) only where the employee to whom the question relates is at the time of the determination in the employment of an Agency.

*S.R. 1994, No. 83

**PART 8 – RETIREMENT BENEFITS REGULATIONS
1994 FURTHER AMENDED****Principal Regulations**

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

Regulation 3 amended (Interpretation)

23. Regulation 3 of the Principal Regulations is amended as follows:

- (a) by omitting “subregulation (5)” from the definition of “prescribed authority” in subregulation (1) and substituting “section 5(1A) or 29J of the Act”;
- (b) by omitting subregulation (5).

*S.R. 1994, No. 83