

No. 6 of 2007.

Superannuation (General Provisions) Act 2007.

Certify on: 18.06.07



No. of 2007.

Superannuation (General Provisions) (Amendment) Act 2007.

ARRANGEMENT OF SECTIONS.

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6. New Section 19A.
7. Licensed Trustee to Lodge Annual Returns (Amendment of Section 53).
8. Disclosure of Information to Members (Amendment of Section 56).
9. Administration and Accounting Standards of Licence Holders (Amendment of Section 58).
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13. Repeal and Replacement of Section 80.
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No. of 2007

AN ACT

entitled

Superannuation (General Provisions) (Amendment) Act 2007,

Being an Act to amend the *Superannuation (General Provisions) Act 2000*.

MADE by the National Parliament to come into operation on 1 May 2007.

1. INTERPRETATION (AMENDMENT OF SECTION 3).

Section 3 of the Principal Act is amended in the definition of "financial accommodation" by repealing Paragraph (g).

2. APPLICATION OF THIS ACT (AMENDMENT OF SECTION 4).

Section 4 of the Principal Act is amended in Subsection (2) by repealing the word "NFP" and replacing it with the following –
"NPF"

3. AUTHORIZED SUPERANNUATION FUND (AMENDMENT OF SECTION 8)

Section 8 of the Principal Act is amended in Subsection (2) by repealing the word "authorized" and replacing it with the following –
"authorize"

4. APPLICATION FOR LICENCE (AMENDMENT OF SECTION 11).

Section 11(4) of the Principal Act is amended in Paragraph (c) by repealing the words "by reference to the cost of supervising and regulating the superannuation industry, or on some other basis as prescribed".

5. MINIMUM REQUIREMENTS (AMENDMENT OF SECTION 12).

Section 12(d) of the Principal Act is amended in Subparagraph (i) and (ii) by repealing the words and figure "Schedule 3" where occurring and replacing it with the following –

"the Regulations"

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6. NEW SECTION 19A.

The Principal Act is amended by inserting after Section 19 the following new section.: -

“19A LICENCE FEE.

(1) A licence fee referred to in Section 19 shall be fixed by the Central Bank with a view to having its costs in supervising and regulating the superannuation industry recovered either in part or in full but no more.

(2) Before fixing the licence fee, the Central Bank shall disclose such information as is necessary to show clearly its costs in carrying out the functions required by this Act”.

7. LICENSED TRUSTEE TO LODGE ANNUAL RETURNS (AMENDMENT OF SECTION 53).

Section 53 of the Principal Act is amended in Subsection (2)(b) by repealing Subparagraph (iii) and replacing it with the following –

“(iii) certifying compliance or non-compliance as the case may be, by the ASF, the licensed trustee, the licensed investment manager and licensed fund administrator, with this Act and the licensed trustee’s investment strategy.”

8. DISCLOSURE OF INFORMATION TO MEMBERS (AMENDMENT OF SECTION 56).

Section 56 of the Principal Act is amended by repealing Subsections (1) and (2) and replacing them with the following –

“(1) Each licensed trustee shall, within five months of the end of the accounting period –

- (a) provide each member with a written summary of the financial and management performance of the ASF for which they are the trustee in respect of the relevant year of income, together with the end-of-year balance of the member’s account; and
- (b) cause to be published a written statement of the financial and management performance of the ASF in respect of the relevant year of income.

- (2) A written summary and written statement issued under Subsection (1) shall –
 - (a) contain the management expense ratio of the ASF; and
 - (b) be in such form and contain such other information as may be prescribed by regulation, prudential standard or guidelines issued by the Central Bank.”

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9. ADMINISTRATION AND ACCOUNTING STANDARDS OF LICENCE HOLDERS (AMENDMENT OF SECTION 58).

Section 58 of the Principal Act is amended by –

- (a) repealing Subsection (1) and replacing it with the following –
 - “(1) Financial statements of a licence holder shall be –
 - (a) prepared by the licence holder in accordance with the *Companies Act 1997* or in accordance with such higher standards as the Central Bank may require; and
 - (b) audited by an approved auditor.”; and
- (b) adding after Subsection (1) the following new subsection –
 - “(1A) The licence holder shall, within three months of the end of the year of income, provide the Central Bank with a copy of the financial statements, an auditor’s report thereon and a copy of any other comments made to the licence holder by the approved auditor.”

10. PROHIBITED PROVISIONS (AMENDMENT OF SECTION 72).

Section 72 of the Principal Act is amended in Subsection (1) by repealing Paragraph (c) and replacing it with the following –

- “(c) it purports to allow the licensed trustee to lend to the members, officers of its licensees, or any other person prohibited by the Central Bank, moneys or property from the ASF, or to permit such loans in existence at commencement of this Act to continue, unless otherwise permitted by this Act;”

11. PROHIBITED ACTIVITIES OF AN ASF (AMENDMENT OF SECTION 75).

Section 75 of the Principal Act is amended by adding after Subsection (2) the following new subsection –

- “(2A) A trustee may give a charge over assets so as to facilitate a risk mitigation arrangement which is in accordance with a prudential standard.”

12. REPEAL AND REPLACEMENT OF SECTION 79.

Section 79 of the Principal Act is repealed and replaced with the following –

“79. POWER TO RECOVER INTEREST ON DEFAULT.

Where an employer defaults in making any contributions required under this Part, the licensed trustee of the relevant ASF may –

- (a) by written notice, require the employer to make payment of the outstanding contributions together with penal interest at the prescribed rate from the date on which payment was due until the date of actual payment; and
- (b) commence proceedings in its own name against the employer for recovery of the outstanding contributions, interest and costs.”

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13. REPEAL AND REPLACEMENT OF SECTION 80.

Section 80 of the Principal Act is repealed and replaced with the following –

“80. CALCULATION OF CONTRIBUTIONS.

(1) Each contribution payable under this Part shall be calculated to the nearest toea, a half toea or more being counted at the next highest toea.

(2) At the time of remitting any payments under this Part the employer shall furnish to the ASF a statement, in such form as it may determine or as may be prescribed, setting out –

- (a) the name and identification details of each employee in respect of whom a payment is made; and
- (b) the amounts of employer and employee contributions being paid in respect of each identified employee.”

14. NEW SECTION 81A.

The Principal Act is amended by adding after Section 81 the following new section –

“81A. INVESTIGATION OF EMPLOYERS.

(1) Where it appears desirable to do so in the interests of members or potential members of an ASF, the Central Bank –

- (a) may, by instrument in writing appoint one or more competent persons to investigate and report to the Central Bank for the purposes of this Act on –
 - (i) the number of employees of an employer’s business or any aspect of the employer’s business relevant to the applicability of this Act to the employer; and
 - (ii) the ownership or control of the employer; and
 - (iii) whether or not the employer or any person or entity associated with the employer has committed an offence under the Act; and
- (b) shall give written notice of any such appointment to the employer concerned.

(2) The Central Bank may appoint under Subsection (1) an officer of the ASF to which the investigation relates.

(3) Where a person appointed under Subsections (1) or (2) thinks it necessary for the purposes of his investigation, he may also investigate –

- (a) the business of any body corporate which is or has at any relevant time been –
 - (i) a holding company, subsidiary or related corporation of the employer; or
 - (ii) a subsidiary or a related corporation of a holding company of the employer; or

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- (iii) a holding company of a subsidiary of the employer; or
- (iv) a body corporate which is a shareholder controller or indirect controller of the employer, either alone or with any associates, being entitled to exercise or control the exercise of more than 15% of the voting power at a general meeting, or
- (b) any other business including a partnership or joint venture in which that employer is or has been at any relevant time a participant.

(4) Any person who is an officer, agent, banker, auditor or lawyer of an entity which is under investigation pursuant to this section, or who is a shareholder controller or indirect controller in relation to the entity –

- (a) shall produce to the person appointed to conduct the investigation within such time and at such place as he may require, all documents which the person appointed believes relate to the matters under investigation which are in its custody or power; and
- (b) shall attend before the person so appointed, to answer questions in relation to the entity, at such time and place as he may require; and
- (c) shall otherwise give the person so appointed all assistance in connection with the investigation which it is reasonably able to give; and
- (d) shall provide copies of, or extracts from, any documents produced by him under this subsection if requested to do so by the person or persons appointed under Subsections (1) or (2).

(5) The provisions of this section apply equally to a former employer as they apply to a current employer.

(6) For the purpose of exercising his powers under this section, a person appointed to conduct an investigation under this section may enter any premises occupied by an entity which is being investigated by him, but he shall not do so without giving prior notice in writing to that entity unless he has reasonable cause to believe that where such a notice were given, any documents whose production could be required under this section would be removed, tampered with or destroyed.

(7) A person exercising powers by virtue of an appointment under this section shall, where so required, produce a copy of the instrument of his appointment as evidence of his authority.

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- (8) An entity who –
- (a) without reasonable excuse, fails to produce any documents which it is his duty to produce under this section; or
 - (b) without reasonable excuse, fails to attend before the person appointed to conduct the investigation when required to do so; or
 - (c) without reasonable excuse, fails to answer any question which is put to him by a person so appointed with respect to an employer which is under investigation or a body which is being investigated by virtue of this section; or
 - (d) intentionally obstructs a person in the exercise of the powers conferred by Subsection (6), is guilty of an offence.

(9) Nothing in this section shall compel the production of a document which is subject to legal professional privilege.”

15. TRANSFER OF ENTITLEMENTS (AMENDMENT OF SECTION 85).

Section 85 of the Principal Act is amended –

- (a) by repealing Subsection 2 and replacing it with the following –

“(2) Upon giving notice under Subsection (1) the employer shall –

- (a) inform the employees of the transfer and provide details of the new ASF to the employees; and
- (b) request the Electoral Commission to conduct a ballot for the purposes of Subsection (8) and thereafter give such assistance as the Electoral Commission may require to conduct the ballot.”; and

- (b) in Subsections (7) and (8) by repealing –

- (i) the percentages “90%” occurring therein and replacing them with “75%”; and
- (ii) the words “election” occurring therein and replacing them with the word “ballot”.

16. PAYMENT OF ENTITLEMENTS (AMENDMENT OF SECTION 90).

Section 90 of the Principal Act is amended –

- (a) in Subsection (4) –

- (i) in Paragraph (b) by repealing the words and figures “60% of the amount standing to the credit of the member’s account at the time” and replacing them with the following –

“the accumulated amount at the time of the member’s own contributions”; and

- (ii) in Paragraph (ba) by inserting after the word “member” the following words –

“as may be prescribed”; and

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- (b) in Subsection (5)(b) by adding at the end of Subparagraph (ii) the following figures and letter –
“or 90(5)(a)”.

17. DEFINITIONS (AMENDMENT OF SECTION 92).

Section 92 of the Principal Act is amended by –

- (a) repealing the definitions of “dependent family” and “dependent parents” and replacing them with the following –
“dependent” in relation to a member means a spouse, child or relative who is substantially dependent on and maintained by the member in such circumstances that, in the opinion of the Trustee, he should be regarded as being dependent on the member; and
- (b) repealing the definition of “custom” and replacing it with the following –
“custom” in relation to a member means the custom of the community to which the person belongs whether by birth or choice; and
- (c) repealing the definition of “family” and replacing it with the following –
“family” in relation to a member means the spouse, children, dependent parents or other dependent relatives of the member; and
- (d) inserting after the definition of “family” the following new definition –
“parents” in relation to a member means the legal or customary parents of the member.

18. PROCEDURE WHERE NO NOMINEE (AMENDMENT OF SECTION 95).

Section 95 of the Principal Act is repealed and replaced with the following –

“95. PROCEDURE ON DEATH WITHOUT NOMINEE.

Where, at the time of the death of the member, no valid nomination has been made or no nominee is still alive, the amount standing to the credit of the member in the fund shall be paid in accordance with –

- (a) a process of mediation or allocation conducted by the ASF trustee as prescribed by the Regulations; or
- (b) a decision by a court of competent jurisdiction in Papua New Guinea.

19. AMENDMENTS TO AND REPEALS OF EXISTING ACTS (AMENDMENT OF SECTION 119).

Section 119 of the Principal Act is amended –

- (a) in Subsection (1) by repealing Paragraph (b); and
- (b) by adding after Subsection (2) the following new subsection –
“(3) On and from the commencement of this Act,
(a) the *Public Officers Superannuation Fund Act 1990* is hereby repealed; and

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- (b) any benefits payable to a member accruing under the repealed *Public Officers Superannuation Fund Act 1990* shall be determined in accordance with the rules set out in Schedule 6.

20. REPEAL AND REPLACEMENT OF SCHEDULE 6.

The Principal Act is amended by repealing Schedule 6 and replacing it with the following:-

SCHEDULE 6.

1. INTERPRETATION.

In this Schedule, unless the contrary intention appears –

- “commencement date” means 1 January 1991;
- “contributor” means a person liable to contribute to the Fund under Section 4 of this Schedule;
- “contributory service” means the period from the date on which a person became a contributor until the date on which he ceases to be a contributor, less any period not counted as contributory service under Section 5 of this Schedule;
- “the former Act” means the repealed *Public Officers Superannuation Fund Act* (Chapter 66);
- “the former Fund” means the Fund established under Section 13(1) of the repealed *Public Officers Superannuation Fund Act* (Chapter 66) and the Fund established under Section 13(1) of the repealed *Retirement Benefits Fund Act* (Chapter 70);
- “the Fund” means the State Services and Statutory Authorities Superannuation Fund established by Section 15 of the repealed *Public Officers Superannuation Fund Act 1990* and after the coming into operation of Section 16 of the repealed *State Services and Statutory Authorities Superannuation Fund (Amendment) Act 1993* means the Public Officers Superannuation Fund;
- “pensioner” means a person in receipt of pension under this Schedule;
- “Retirement Benefits Fund” means the Retirement Benefits Fund established under the repealed *Retirement Benefits Act* (Chapter 70).

2. AUDIT.

To the extent that the Fund was a public body for the purposes of the *Audit Act 1989*, the Fund ceased so to be on the date that the Fund became an Authorised Superannuation Fund for the purposes of this Act.

3. REPORTS AND FINANCIAL STATEMENTS

(1) To the extent that the Fund was a public body for the purposes of the *Public Finances (Management) Act 1996*, the Fund ceased so to be on the date that the Fund became an Authorised Superannuation Fund for the purposes of this Act

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(2) To the extent that the Fund was or may have been declared to be a public body for the purposes of the ***Salaries and Conditions Monitoring Committee Act 1988***, the Fund ceased so to be on the date that the Fund became an Authorised Superannuation Fund for the purposes of this Act.

4. CONTRIBUTORS.

(1) Subject to Subsection (2), the following persons shall contribute to the Fund –

- (a) all citizen officers and employees of –
 - (i) the National Public Service; and
 - (ii) the Parliamentary Service; and
 - (iii) the National Judicial Staff Service; and
 - (iv) approved authorities; and
- (b) all citizen members and employees of –
 - (i) the Teaching Service; and
 - (ii) the Police Force; and
 - (iii) the Corrective Institutions Service, in accordance with this Schedule.

(2) This Schedule shall not apply to contributors to –

- (a) the Parliamentary Members' Retirement Benefits Fund; or
- (b) the Judges Pensions.

5. CONTRIBUTORY SERVICE.

(1) In determining the period of a contributor's contributory service the following periods shall not be counted as contributory service –

- (a) a period during which a contributor does not receive pay, where such period is in excess of one pay period; and
- (b) subject to Subsection (2), a period during which a contributor is on secondment, other than in a State Service position; and
- (c) a period during which a contributor is on leave without pay.

(2) A member on secondment under Subsection (1)(b) may have the option of continuing his contributions if the employer to whom he is seconded agrees to meet the contributions which would otherwise be payable by the State.

(3) An arrangement under Subsection (2) shall be as approved by the Trustee.

6. PAYMENT OF STATE'S CONTRIBUTIONS.

The State shall pay to the Fund the component of any benefit under Section 8 and 9 of this Schedule that is in excess of the aggregate of –

- (a) contributors contributions; and
- (b) the contributor's lump sum benefit as determined under Section 7 of this Schedule; and
- (c) upfront state contribution made under Section 78 of this Act and interest credits thereon.

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7. DETERMINATION IN RESPECT OF NET ASSETS OF FORMER FUND AND STATE LIABILITY IN RESPECT OF FORMER FUND, ETC.

(1) On the date of transfer of the former Fund under Section 16 of the repealed *Public Officers Superannuation Fund Act 1990*, the actuary shall determine from the net assets of the former Fund, the amount of –

- (a) contributor lump sum benefits, being contributions made by contributors to the former Fund, together with interest thereon from the date of commencement of payments by the contributor to the former Fund, at a rate approved by the Trustee on the advice of the actuary, which shall not exceed the average rate of interest declared by the former Fund for the years 1988-1990 inclusive; and
- (b) liabilities for pension payments under the former Fund which shall be adjusted to allow for increases in accordance with the Consumer Price Index since 1975, but not so as to be increased by more than 250%; and
- (c) any surplus after the determination of the amounts under Paragraphs (a) and (b).

(2) On the transfer of the former Fund under Section 16 of the repealed *Public Officers Superannuation Fund Act 1990* –

- (a) the contributor lump sum benefits under Subsection (1)(a) shall be held in the Fund for payment in accordance with this Act and this Schedule; and
- (b) an amount equal to the liabilities determined under Subsection (1)(b) shall be paid by the State into the Fund; and
- (c) any surplus under Subsection (1)(c) shall be held in a reserve account.

(3) Subject to Subsection (4), the actuary shall determine the State's liability to each contributor who contributed to the former Fund and who retires after achieving retirement qualifications under this Schedule based upon the following formula –

$$L = \left[\frac{(10.5 \times S \times N)}{70} \times \frac{(45 + Z)}{100} \right] - C$$

where L = the State liability

S = the average of last three years salary

N = the number of completed years as a contributor

C = the lump sum benefit calculated in Subsection 1(a)

Z = the contributor's age last birthday on 1 January 1991 provided that Z shall not exceed 55.

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(4) In the case of a contributor under Section 4(1)(b)(ii) or 4(1)(b)(iii) of this Schedule, the State liability shall be –

$$L = \left[\frac{(10.5 \times S \times N)}{70} \times \frac{(50 + Z)}{100} \right] - C$$

Where L, C, S, N and Z have the same meaning as in Subsection (3) except that Z shall not exceed 50.

(5) Where, by virtue of the provisions of the repealed ***Public Officers Superannuation Fund Act 1990*** a person became a contributor under that Act, and that person immediately before becoming a contributor under that Act, was a contributor to or a member of any other State superannuation or retirement benefit scheme, the actuary shall determine the State liability under that other scheme, whether contributory or non contributory, in order to determine the benefit which would have applied, at the commencement of that Act, had the beneficiary continued to be employed by the State until he had reached the retirement qualification, and the benefit so determined shall be the benefit payable to the contributor.

(6) The State liability defined in Subsection (5) shall be payable into the Fund.

8. BENEFIT ON RETIREMENT OR DEATH OF A CONTRIBUTOR.

(1) The benefit payable to a contributor upon retirement shall be determined from the equivalent of a lump sum equal to the greater of –

(a) $(A + C) + \frac{(A + C) \times 7}{5} + T$; or

(b) $A + C + \frac{(A \times 7)}{5} + L + T$

Where –

A = the aggregate of the contributor's contributions made from the commencement date plus interest accrued at the Fund earnings rate; and

C = the contributor's lump sum benefit (if any) as determined under Section 7 of this Schedule plus interest accrued at the Fund earning rate; and

L = the State liability (if any) under Section 7 of this Schedule plus interest accrued at the Fund earning rate; and

T = any transfers under Section 31 of the repealed ***Public Officers Superannuation Fund Act 1990*** plus interest accrued at the Fund earning rate,

(2) Where a contributor dies prior to normal retirement age his benefits shall be determined as if he had retired on the date of his death.

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9. BENEFITS UPON RESIGNATION.

The benefit payable to a contributor upon resignation shall be a lump sum equal to the total of –

- (a) the aggregate of the contributor's contributions made from commencement date plus interest accrued at the Fund earning rate; plus the contributor's lump sum benefit (if any) as determined under Section 7 of this Schedule plus interest accrued at the Fund earning rate; plus
- (b) an employer benefit equal to $\frac{7 \times B}{5}$

where B is the lump sum calculated under Paragraph (a).

10. PAYMENT OF PENSIONS.

(1) The Trustee shall determine the frequency of pension payments to a pensioner and may determine either fortnightly or monthly payments or, where in the reasonable opinion of the Trustee the amounts are small or the pensioner resides at a remote location the Trustee may, either –

- (a) commute the pension; or
- (b) pay it at periods in excess of one month.

(2) The Trustee may, from time to time, review the amount of each pension payable in accordance with –

- (a) this Schedule or the repealed *Public Officers Superannuation Fund Act 1990*; and
- (b) the former Act; and
- (c) the repealed *Retirement Benefits Act* (Chapter 70).

11. INVALIDITY PENSIONS.

(1) Where, in the opinion of the Trustee, having regard to professional advice, a contributor is unable to perform his or her duties due to invalidity or physical or mental incapacity not due to the contributor's wilful action, the contributor shall be entitled to a pension based on the benefit under Section 8 of this Schedule

(2) The pension rate shall be determined by the Trustee on the advice of the actuary.

(3) Where a pensioner under Subsection (1) dies, a payment shall be made in accordance with Division 2 of Part XVI of the Act of an amount equal to the difference between the amount of pension actually paid and the aggregate of insured benefits plus retirement benefit under Section 8 of this Schedule.

(4) The payment in Subsection (3) shall be made by the State.

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12. SUBSEQUENT EMPLOYMENT OF A PENSIONER.

Where a person in receipt of pension under Section 11 of this Schedule is subsequently gainfully employed, that person in receipt of pension may opt to contribute to the Fund and there shall be no reduction in that pension while he is a contributor under this section.

13. VESTED BENEFITS IN RESPECT OF NON-CONTRIBUTORY PENSIONS PAYABLE BY THE STATE IN CERTAIN PUBLIC AUTHORITIES.

(1) A contributor who, immediately prior to becoming a contributor –
(a) was an officer or employee of a public authority; and
(b) by virtue of an Act or of an industrial agreement in force at that time was entitled to a non-contributory pension on retirement, shall be entitled to a retirement pension in respect of that non-contributory service to be calculated in accordance with and subject to the conditions under this section.

(2) Upon –
(a) retiring on attaining the age of 50 years; or
(b) being retired early due to incapacity; or
(c) attaining 20 years or more total service, the retirement pension shall be actuarially determined by the Trustee on the basis of the contributor's prior non-contributory service and 25% of the contributor's final salary at retirement.

(3) The retirement pension so calculated shall be treated in every respect as pension earned under Section 8 of this Schedule and shall be added to pension earned under Section 8 of this Schedule.

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(4) The State shall pay to the Fund an actuarially calculated lump sum in respect of any pension payable under this section.

I hereby certify that the above is fair print of the *Superannuation (General Provisions) Act 2007* which was made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Superannuation (General Provisions) Act 2007* was made by the National Parliament on 19 April 2007.

Speaker of the National Parliament.