

No. 7 of 2004.

Superannuation (General Provisions)(Amendment) Act 2004.

Certified on: 07 JUL 2004



INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 2004.

Superannuation (General Provisions)(Amendment) Act 2004.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

AN ACT

entitled

Superannuation (General Provisions)(Amendment) Act 2004,

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

MADE by the National Parliament –

- (a) in respect of Section 3, to be deemed to have come into operation on 1 November 2002; and
- (b) in respect of Sections 13 and 14, to be deemed to have come into operation on the coming into operation of the *Superannuation (General Provisions) Act 2000*; and
- (c) in respect of the remainder, to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with the advice of the Minister.

1. **INTERPRETATION (AMENDMENT OF SECTION 3).**

Section 3 of the Principal Act is amended in Subsection (1) –

- (a) in the definition of "accumulated fund", by repealing the symbols and words "accumulated fund" and replacing them with the following:-

"accumulation fund"; and

- (b) in the definition of "employee" –
 - (i) in Paragraph (c), by repealing at the end of the paragraph the word "and" ; and
 - (ii) by repealing Paragraph (d).

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2. **NEW SECTION 3A.**

The Principal Act is amended by inserting after Section 3 the following new section :-

"3A. EXEMPTIONS FOR CERTAIN WORKERS IN PRIMARY INDUSTRIES.

(1) The Minister may, on the written application of an employer or an association of employers whose business is substantially in a primary industry, by notice in the National Gazette, declare a prescribed class of workers who are employed by the employer or group of employers not to be employees for the purposes of this Act.

"(2) In considering an application under Subsection (1), the Minister may consult the Rural Industries Council and any other body he thinks fit in relation to the application.

"(3) A declaration under Subsection (1) does not affect –
(a) an obligation of an employer otherwise than under this Act to make superannuation contributions in respect of its employees; and
(b) the right of an employer to make voluntary superannuation contributions in respect of its employees."

3. **APPLICATIONS FOR LICENCE (AMENDMENT OF SECTION 11).**

Section 11 of the Principal Act is amended in Subsection (4) by repealing Paragraph (c) and replacing it with the following :-

"(c) be accompanied by an application fee as prescribed by reference to the cost of supervising and regulating the superannuation industry, or on some other basis as prescribed."

4. **NEW SECTION 26A.**

Part IV of the Principal Act is amended by inserting after Section 26 the following new section :-

"26A. POWER TO GIVE DIRECTIONS TO NON-LICENSED SUPERANNUATION FUNDS.

Sections 24, 25 and 26 also apply in respect of a superannuation fund that is not an ASF, modified as follows:-

- (a) a reference in those sections to an ASF is a reference to the superannuation fund;
- (b) a reference in those sections to an ASF is a reference to the trustee of the superannuation fund or a person exercising control of a similar kind in relation to the superannuation fund;

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- (c) the purposes for which a notice or direction may be issued include—
 - (i) the purposes of ensuring the prudent management of the superannuation fund; and
 - (ii) the purposes of ensuring that the interests of members of the superannuation fund are properly protected; and
 - (iii) related purposes."

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

Section 56 of the Principal Act is amended by repealing Subsection (2) and replacing it with the following:-

- "(2) A member's statements issued under Subsection (1) shall be in the prescribed form and shall contain –
- (a) information concerning the expenses of operating the fund and the management expense ratio for the fund, each consistent with guidelines issued by the Central Bank; and
 - (b) any other information as prescribed."

6. THE COVENANTS (AMENDMENT OF SECTION 71).

Section 71(2) of the Principal Act is amended –

- (a) in Paragraph (f) by repealing Subparagraph (iv) and replacing it with the following: -

"(iv) the ability of the trustee to discharge the ASF's existing and prospective liabilities; and"; and

- (b) by repealing Paragraph (g) and replacing it with the following:-

- "(g) to maintain an account for each member –
- (i) to which the contributions (including voluntary contributions) paid in respect of the member are to be credited; and
 - (ii) to which at least once each year the amount that the trustee determines is the member's proportion of the increase or decrease in the value of the assets of the ASF is to be credited or debited, as the case may be; and
 - (iii) from which the amount that the trustee determines is the member's proportion of expenses of operating the ASF, and of the fees payable to the trustee in respect of the ASF, are to be debited at least once each year; and
 - (iv) from which periodic withdrawals under Section 90(2A) are to be deducted as they are made; and

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(v) from which any amount the licensed trustee is required to deduct, withhold or pay as income tax or salary or wages tax are to be deducted; and;" and

(c) by inserting after Paragraph (g) the following new paragraph:-

"(ga) if the ASF maintains reserves, to formulate and to give effect to a strategy for their prudential management, consistent with the ASF's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due; and".

7. NEW SECTION 71A.

The Principal Act is amended by inserting after Section 71 the following new section :-

"71A. RESERVING.

"(1) The trustee of an ASF may maintain reserves of the ASF unless the governing rules of the ASF prohibit it.

"(2) On and from the Change Date as defined in Part XVIII in respect of the ASF, the amount standing to the credit of the reserve at any time shall not be more than 2% of the total value of the assets of the ASF at that time.

"(3) The Central Bank may, by written notice to the licensed trustee of an ASF, fix a higher percentage for the purposes of Subsection (2) for the ASF.

"(4) The licensed trustee of an ASF shall ensure that if the amount standing to the credit of the reserve of the ASF at any time is more than 2% of the total value of the assets of the ASF at that time, the strategy for the purposes of the covenant in Section 71(2)(ga) has been approved in writing by the Central Bank.

"(5) The Central Bank may not give approval under Subsection (4) unless it is satisfied that the ASF's strategy for the purposes of the covenant in Section 71(2)(ga) takes proper account of the higher percentage, and makes provision satisfactory to the Central Bank for reducing the percentage of reserves to 2%."

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8. MINIMUM CONTRIBUTIONS BY EMPLOYER (AMENDMENT OF SECTION 76).

Section 76 of the Principal Act is amended by repealing Subsection (1) and replacing it with the following:-

"(1) An employer referred to in Section 4(1)(a) shall, in respect of each of its employees continuously employed for three months or more, make a contribution to an ASF of an amount equal to the percentage of the employee's pay computed from the prescribed date."

9. CONTRIBUTIONS BY EMPLOYEE (AMENDMENT OF SECTION 77).

Section 77 of the Principal Act is amended by repealing Subsection (1) and replacing it with the following:-

"(1) Every employee referred to in Section 4(1)(b) continuously employed for three months or more shall make a contribution to an ASF of an amount equal to the percentage of the employee's pay as prescribed computed from the date as prescribed."

10. REPEAL AND REPLACEMENT OF SECTION 88.

Section 88 of the Principal Act is repealed and is replaced with the following:-

"88. PROHIBITED TRANSFERS BY EMPLOYEES.

Subject to Section 89A and to Section 90(1)(g) and (h), no employee shall have the right to elect to transfer his entitlements between ASF's."

11. NEW SECTION 89A.

Part XV of the Principal Act is amended by inserting after Section 89 the following new section:-

"89A. TRANSFER OF ENTITLEMENTS BY MEMBERS.

(1) Where an amount is or is about to become payable from an ASF ('the first ASF') in respect of a member under Section 90(1), the member or, if the member has died, the member's nominee, may direct the licensed trustee of the ASF to transfer some or all of the amount to another ASF ('the second ASF').

(2) The trustee of the first ASF shall not transfer an amount under Subsection (1) unless the trustee of the second ASF has agreed in writing to the transfer."

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

Section 90 of the Principal Act is amended –

(a) in Subsection (1)–

- (i) by repealing the words " A member or, in the case of a deceased member, his nominee, may withdraw the full amount standing to his credit in an ASF (or such other amount as is prescribed)" and replacing them with the following:-

"Subject to this Act, a member, or in the case of a deceased member, his nominee, may withdraw the full amount standing to his credit in the ASF (or such other amount as is prescribed) only in the following cases:-"; and

- (ii) by repealing Paragraph(c) and replacing it with the following:-

"(c) on the member's death; and"; and

(b) by inserting after Subsection (2) the following new subsections:-

"(2A) A member's entitlements are payable, at the election of the member or of the nominee applying for payment –

- (a) as a single amount equal to the full amount standing to the credit of the member's account in the ASF; or
(b) by periodic withdrawals; or
(c) as a single amount and by periodic withdrawals.

"(2B) A member shall give at least six months notice of any variation or revocation of an election under Subsection (2A)."; and

(c) in Subsection (4) –

- (i) by repealing Paragraph (a); and
(ii) in Paragraph (4)(b) by repealing the words "the member's entitlements" and replacing them with the following:-

"the amount standing to the credit of the member's account in the ASF at the time; and"; and

(iii) by inserting after Paragraph (b) the following new paragraph :-

"(ba) the amount withdrawn is to be used for the purchase or construction of the principal place of residence for the member; and" and

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(d) by inserting after Subsection (4) the following new subsection:-

"(4A) The reference in Subsection (4) to one or more ASF's includes, in respect of the period before the commencement of this Act, a reference to any superannuation fund."; and

(e) in Subsection (6) by repealing the words "An ASF may withdraw" and replacing them with the following:-

"The trustee of an ASF may apply from a member's account in the ASF".

13. EXEMPTION FOR EXISTING FUNDS (AMENDMENT OF SECTION 126).

Section 126 of the Principal Act is amended by repealing Subsection (2) and replacing it with the following:-

"(2) An Existing Fund or Existing Trustee does not contravene this Act by paying benefits or entitlements if the regulations permit the payment of the benefits or entitlements."

14. EXISTING SMALL SUPERANNUATION FUNDS (AMENDMENT OF SECTION 126A).

Section 126A of the Principal Act is amended -

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

"(2) An Existing Small Superannuation Fund may not accept any new members after the commencement of this Act."; and

(b) by inserting after Subsection (2) the following new subsections:-

"(3) For a period of five years from the commencement of this Act, this Act does not prevent an Existing Small Superannuation Fund from accepting contributions in respect of persons who were members of the Fund on the commencement of this Act.

"(4) For a period of five years from the commencement of this Act, this Act does not prevent an Existing Small Superannuation Fund from paying benefits or entitlements in respect of members that are otherwise properly payable."

15. REPEAL OF SCHEDULE 3.

Schedule 3 of the Principal Act is repealed.

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I hereby certify that the above is a fair print of the *Superannuation (General Provisions)(Amendment) Act 2004* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Superannuation (General Provisions)(Amendment) Act 2004* was made by the National Parliament on 13 May 2004.

Acting Speaker of the National Parliament.