



*Tonga*

**NATIONAL RETIREMENT BENEFITS  
SCHEME (AMENDMENT) ACT 2014**

**Act 25 of 2014**





## NATIONAL RETIREMENT BENEFITS SCHEME (AMENDMENT) ACT 2014

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# **NATIONAL RETIREMENT BENEFITS SCHEME (AMENDMENT) ACT 2014**

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## **AN ACT TO AMEND THE NATIONAL RETIREMENT BENEFITS SCHEME ACT 2010**

I assent,  
TUPOU VI,  
3<sup>rd</sup> December 2014.

**BE IT ENACTED** by the King and Legislative Assembly of Tonga in the  
Legislature of the Kingdom as follows-

### **1 Short Title**

- (1) This Act may be cited as the National Retirement Benefits Scheme (Amendment) Act 2014.
- (2) The National Retirement Benefits Scheme Act 2010, as amended, is referred to in this Act as the Principal Act.

### **2 Long title amended**

In the English version only, the long title of the Principal Act is amended by deleting the word “SCHEME” and replacing it with the word “FUND”.

### **3 Section 2 amended**

Section 2 of the Principal Act is amended as follows —

- (a) by deleting the definition of “**active member**” and replacing it with “means a member in respect of whom a contribution in respect of employment is payable under the Act”;
- (b) by deleting the definition of “**date of entry**” and replacing it with “means in respect to any member of the Fund the date in which the first contribution is payable to the Fund on his behalf”;
- (c) in the definition of “**employee**” by deleting the word and number “age 65” and replacing them with the words “the retirement age”;
- (d) by deleting the definition of “**inactive member**” and replacing it with “means a member who ceases employment and advised by the employer”;
- (e) the words “**Medical Board**” and its definition are deleted;
- (f) the word “**Organisation**” and its definition are deleted;
- (g) the words “**pension age**” and definition are deleted;
- (h) the word “**pensioner**” and its definition are deleted;
- (i) the word “**Scheme**” and its definition are deleted; and
- (j) by inserting the following words and definition in the appropriate places —
  - ““**casual worker**” means an employee who has no on-going expectation of permanent employment, and who —
    - (a) has no fixed hours of work;
    - (b) has an irregular pattern of working days; and
    - (c) is paid at the end of each work period;”
  - ““**retirement age**” means 60 years or any older age up to 70 years which an employer notifies the Fund to be the retirement age for any of its employees;”
  - ““**transfer contribution**” means any amount of money transferred to the Fund from another retirement scheme to the credit of a member;”
  - ““**undischarged bankrupt**” includes a person adjudged by a Court to owe any amount of money, which remains outstanding.”.

#### 4 Sections 3, 4 and 5 replaced

Sections 3, 4 and 5 of the Principal Act are deleted and replaced with the following -

##### “3 National Retirement Benefits Fund

- (1) There shall be a National Retirement Benefits Fund operating in accordance with this Act.
- (2) The Fund shall be an autonomous body with the responsibility of implementing this Act.

- (3) The Fund shall be a body corporate with perpetual succession and a common seal and shall have all the rights and duties of a body corporate.
- (4) The Fund may sue and be sued in its corporate name and may enter into contract and may acquire, purchase or lease property, and may convey, assign, transfer, mortgage or otherwise dispose of any real or personal property or any interest vested in the Fund upon such terms as the Board determines to be appropriate in the circumstances of each transaction.

#### **4 Supervision of the Fund**

- (1) The general direction and supervision of the Fund shall vest in the Board of Directors.
- (2) The Directors shall act in good faith, in the best interest of the Fund and in accordance with this Act.

#### **5 Board of Directors**

- (1) The Board of Directors shall consist of 7 members appointed by the Minister in accordance with regulations made under this Act.
- (2) The Minister shall appoint one of the Directors to be Chairman of the Board, and another to be Deputy Chairman.
- (3) A director shall hold office for a term of 3 years, and may be reappointed after the expiry of his term of office.
- (4) No person may be appointed as a Director if he is over the age of 70 years.

Provided that a Director who attains the age of 70 years during his term of office shall continue to be a Director until the expiry of that term of office.

- (5) Directors shall be paid such remuneration, travelling and subsistence allowances as the Board may determine in consultation with the Remuneration Authority.
- (6) The Chief Executive Officer shall perform the function of secretary of the Board.
- (7) Upon cessation of office of a Director, other than an expiry of his full term of office, the Minister shall appoint a replacement Director, in accordance with the regulations, for the remaining part of the term of the former Director.”

#### **5 Section 6 amended**

Section 6 of the Principal Act is amended by —

- (a) deleting paragraph (c) of subsection (1) and replacing it with the following —

- “(c) on which he is disqualified under subsection (2);”;
- (b) deleting paragraph (b) of subsection (2) and replacing it with the following —
  - “(b) who has been disabled under clause 23 of the Constitution;”;
- (c) by inserting the following as paragraph (e) of subsection (2) —
  - “(e) who is a member or representative of a complying scheme.”.

## 6 Section 7 amended

Section 7(1) of the Principal Act is amended —

- (a) in paragraph (b) by inserting the words “finances of the” immediately before the word “Fund” (first appearing);
- (b) in paragraph (d) —
  - (i) in the English version only, by deleting the word “organisation” and replacing it with “Fund”; and
  - (ii) by deleting the first proviso; and
- (c) in paragraph (l) by deleting the word “less” and replacing it with the word “more”.

## 7 Section 8 amended

Section 8 of the Principal Act is amended —

- (a) by deleting subsection (2) and replacing it with the following —
  - “(2) Board meetings shall be convened at least once every two months to consider the Fund’s performance and other matters within the responsibility of the Board.”;
- (b) by deleting subsection (6) and replacing it with the following —
  - “(6) At the absence of the Chairman at a meeting of the Board, the Deputy Chairman shall be Acting Chairman for that meeting, but if the Chairman and Deputy Chairman are both absent the Directors present shall appoint an Acting Chairman for that meeting.”; and
- (c) by inserting the following as subsection (9) —
  - “(9) Notwithstanding any other provision of this Act, a Director may undertake any professional work for the Fund and receive remuneration there from.”.

## 8 Section 9 amended

Section 9 of the Principal Act is amended —

- (a) by deleting the heading and replacing it with the words “Fund’s Monies”;
- (b) in subsection (1) by deleting the words “there shall be established the National Retirement Benefits Fund, into which shall be paid” and replacing them with the words “the Fund’s monies shall consists of”;
- (c) in subsection (2) by deleting the word “Fund” and replacing it with the words “Fund’s monies”.

**9 Sections 10(4), 10(5), 11(1), 30(1) and 30(3) amended**

Sections 10(4), 10(5), 11(1), 30(1) and 30(3) of the Principal Act are amended by deleting the words “general revenue” wherever they appear and replacing them with the words “operating account”.

**10 Section 14 amended**

Section 14 of the Principal Act is amended —

- (a) in subsection (1) by deleting the word “Fund” and replacing it with the words “Fund’s monies”;
- (b) by deleting subsection (2) and replacing it with the following –  
“(2) The cost incurred in implementing the Act and administering the Fund shall be deducted from the income of investments or as prescribed by Regulations.”; and
- (c) by repealing subsection (3).

**11 Section 15 amended**

Section 15(1) of the Principal Act is amended by deleting —

- (a) the words “with the approval of the Minister,”; and
- (b) the proviso.

**12 Section 23 amended**

Section 23 of the Principal Act is amended by deleting the words “form the month” and replacing them with “from the date”.

**13 Section 29 amended**

Section 29 of the Principal Act is amended by deleting “15 days” and replacing it with “28 days”.

**14 Section 30 repealed**

Section 30 of the Principal Act is hereby repealed.

**15 Section 35 amended**

Section 35 of the Principal Act is amended —

- (a) in subsection (1) by deleting —
  - (i) the words “pension benefit” and replacing them with the words “retirement benefit”;
  - (ii) in the English version only, the words “since the date of coming into force of this Act”; and
  - (iii) the proviso; and
- (b) by repealing subsection (2).

**16 Section 40 replaced**

Section 40 of the Principal Act is deleted and replaced by the following-

**“40 Benefit entitlement**

- (1) Subject to this Act, the Fund shall provide the Leaving Service Benefits to a member in the following events —
  - (a) attainment of retirement age;
  - (b) permanent and total disablement before retirement age;
  - (c) death before retirement age; or
  - (d) early release of benefits.
- (2) The Leaving Service Benefit is an amount payable to a member (or his beneficiary) on the occurrence of any of the events specified in subsection (1), which is equal to the sum of —
  - (a) employer’s contribution;
  - (b) employee’s contribution;
  - (c) voluntary contribution;
  - (d) transfer contributions;
  - (e) interests on investments; and
  - (f) insurance.”.

**17 Section 42 replaced**

Section 42 of the Principal Act is deleted and replace by the following —

**“42 Life insurance entitlement**

- (1) If a member dies before retirement age, his Leaving Service Benefits shall also include the amount of life insurance benefits declared by the Board and in force at the date of death.
- (2) A person who is only a voluntary contributor shall not be entitled to the life insurance benefit.”.

## **18 Section 43, 44 and 45 replaced**

Section 43, 44 and 45 of Principal Act is deleted and replaced with the following —

### **“43 Nominated beneficiary**

- (1) Any member of the Fund may nominate one or more beneficiary to receive the Leaving Service Benefits.
- (2) The Court upon application would appoint a person to be the trustee of a beneficiary if he is under 21 years of age.

### **44 Permanent and total disablement**

Subject to this Act, the Leaving Service Benefits shall be payable to a member who is under the retirement age if he is certified by the Chief Executive Officer for Health as suffering from permanent and total disablement for the type of employment he has undertaken.

### **45 Death benefit**

- (1) The prescribed beneficiary shall be entitled to the Leaving Service Benefits on the death of a member.
- (2) When there are two or more children eligible as beneficiaries, they shall be paid in equal portions.”.

## **19 Section 56 repealed**

Section 56 of the Principal Act is hereby repealed.

## **20 Section 59 amended**

Section 59(1) of the Principal Act is amended by deleting the words “under this Scheme” and replacing them with the words “by the Fund”.

## **21 Section 61 amended**

Section 61(d) of the Principal Act is amended by deleting the words “pension or”.

## **22 Section 64 replaced**

Section 64 of the Principal Act is deleted and replaced with the following —

### **“64 Confirmation of entitlement**

The Fund shall contact every member at least once every year to confirm continued eligibility to receive retirement benefits.”.

## **23 First Schedule amended**

The First Schedule of the Principal Act is amended by —

- (a) deleting paragraph 2 and replacing it with the following —  
“2 Any casual worker.”; and
- (b) repealing paragraph 6(b).

## **24 Second Schedule amended**

The Second Schedule of the Principal Act is amended by deleting the words “shall be” and replacing them with the words “shall not be less than”.

## **25 Part II and IV heading amended**

The headings of Part II and Part IV of the Principal Act are amended by deleting the word “SCHEME” and replacing it with the word “FUND”.

## **26 Part VI heading amended**

The heading of PART VI of the Principal Act is amended by deleting the word “BENEFITS” and replacing it with the words “LEAVING SERVICE BENEFITS”.

## **27 Reference to Scheme replaced**

Except for the title of Part V, the Principal Act is amended by deleting the word “Scheme” wherever it appears and replacing it with the word “Fund”.

## **28 Reference to Organisation replaced**

The Principal Act is amended by deleting the word “Organisation” wherever it appears and replacing it with the word “Fund”.

Passed by the Legislative Assembly this 28<sup>th</sup> day of August 2014.