

SOUTH AUSTRALIA

PARLIAMENTARY SUPERANNUATION ACT 1974

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 April 1999.

It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since the reprint published on 1 September 1988.

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being

Parliamentary Superannuation Act 1974 No. 15 of 1974
[Assented to 4 April 1974]¹

as amended by

Parliamentary Superannuation Act Amendment Act 1974 No. 79 of 1974 [Assented to 31 October 1974]
Parliamentary Superannuation Act Amendment Act 1978 No. 7 of 1978 [Assented to 9 March 1978]²
Parliamentary Superannuation Act Amendment Act (No. 2) 1978 No. 112 of 1978 [Assented to 7 December 1978]³

Parliamentary Superannuation Act Amendment Act 1981 No. 4 of 1981 [Assented to 26 February 1981]⁴
Parliamentary Superannuation Act Amendment Act 1982 No. 18 of 1982 [Assented to 11 March 1982]⁵
Parliamentary Superannuation Act Amendment Act 1985 No. 105 of 1985 [Assented to 7 November 1985]⁶
Statute Law Revision Act 1986 No. 14 of 1986 [Assented to 20 March 1986]⁷

Parliamentary Superannuation Act Amendment Act 1989 No. 21 of 1989 [Assented to 27 April 1989]⁸
Parliamentary Superannuation (Miscellaneous) Amendment Act 1992 No. 18 of 1992 [Assented to 7 May 1992]

Statutes Amendment (Public Actuary) Act 1992 No. 69 of 1992 [Assented to 19 November 1992]⁹
Parliamentary Superannuation (New Scheme) Amendment Act 1995 No. 59 of 1995 [Assented to 3 August 1995]¹⁰

Statutes Amendment (Superannuation) Act 1997 No. 25 of 1997 [Assented to 10 April 1997]¹¹
Statutes Amendment (Adjustment of Superannuation Pensions) Act 1998 No. 20 of 1998 [Assented to 2 April 1998]¹²

Parliamentary Superannuation (Establishment of Fund) Amendment Act 1999 No. 8 of 1999 [Assented to 18 March 1999]¹³

Statutes Amendment (Commutation for Superannuation Surcharge) Act 1999 No. 23 of 1999 [Assented to 1 April 1999]

¹ Came into operation 4 April 1974: *Gaz.* 4 April 1974, p. 1132.

² Came into operation 1 June 1978: *Gaz.* 1 June 1978, p. 1878.

³ Came into operation 21 December 1978: *Gaz.* 21 December 1978, p. 2307.

⁴ S. 7 came into operation 21 December 1978: s. 2(2); remainder of Act came into operation 21 October 1982: *Gaz.* 21 October 1982, p. 1162.

⁵ Came into operation 21 October 1982: *Gaz.* 21 October 1982, p. 1160.

⁶ S. 10(c) and (d) came into operation 1 July 1979: s. 2(3); remainder of Act came into operation 21 November 1985: *Gaz.* 21 November 1985, p. 1542.

⁷ Came into operation (except Scheds. 3, 4 and 6) 31 July 1986: *Gaz.* 17 July 1986, p. 269; Sched. 6 came into operation 1 September 1986: *Gaz.* 7 August 1986, p. 474; Sched. 3 came into operation 24 July 1989: *Gaz.* 29 June 1989, p. 1756; Sched. 4 came into operation 1 January 1990: *Gaz.* 14 December 1989, p. 1768.

⁸ Came into operation 11 May 1989: *Gaz.* 11 May 1989, p. 1252.

⁹ Came into operation 10 December 1992: *Gaz.* 10 December 1992, p. 1752.

¹⁰ Came into operation 24 August 1995: *Gaz.* 24 August 1995, p. 499.

¹¹ Part 3 (s. 6) came into operation 24 April 1997: *Gaz.* 24 April 1997, p. 1618.

¹² Part 3 (s. 5) came into operation 1 October 1997: s. 2.

¹³ Came into operation 1 July 1998: s. 2.

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

An Act to provide for the payment of superannuation benefits to persons who have served as members of Parliament; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Parliamentary Superannuation Act 1974*.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation.

* * * * *

Interpretation

5. (1) In this Act, unless the contrary intention appears—

"**additional salary**" means the amount by which the salary of a member who holds Ministerial or other Parliamentary office exceeds the basic salary of a member, and includes any remuneration declared by proclamation to be additional salary for the purposes of this Act;

"**basic salary**" of a member means—

- (a) where the member holds no Ministerial or Parliamentary office—the salary to which the member is entitled under the *Remuneration Act 1985*;
- (b) where the member holds a Ministerial or Parliamentary office—the salary to which the member would be entitled under the *Remuneration Act 1985* if the member held no such office;

"**the Board**" means the South Australian Parliamentary Superannuation Board;

"**child benefit**" means child benefit payable pursuant to Division 2 of Part 5;

"**contribution**" means any contribution paid by a member pursuant to the repealed Act or this Act;

"**eligible child**" means the child or adopted child—

- (a) of a deceased member or deceased member pensioner; or
- (b) of the spouse of a deceased member or deceased member pensioner, not being a child—
 - (i) born of a pregnancy that commenced after the death of the member or pensioner; or
 - (ii) adopted after the death of the member or pensioner;

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who—

- (c) has not attained the age of 16 years; or
- (d) having attained that age, has not attained the age of 25 years and is in full time attendance at an educational institution recognised by the Board for the purposes of this Act;

"former new scheme member" means a person who was a new scheme member immediately before ceasing to be a member;

"former old scheme member" means a person who was an old scheme member immediately before ceasing to be a member;

"the Fund" means the Parliamentary Superannuation Fund established by this Act;

"member" means a member of either House of Parliament of the State, and includes a person who, having ceased to be such a member, is still in receipt of salary;

"member pensioner" means a former member who is entitled to a pension under this Act notwithstanding that, at the material time, payment of that pension may be suspended or the pension may be preserved under this Act;

"new scheme member" means a member who first became a member of either House of Parliament of the State on or after the commencement of the *Parliamentary Superannuation (New Scheme) Amendment Act 1995* and includes a person who was an old scheme member who has transferred to the new scheme;

"new scheme member pensioner" means a member pensioner who was a new scheme member immediately before ceasing to be a member;

"notional pension"—

- (a) in relation to a deceased member, means the amount of pension that would have been payable to that deceased member on the day in relation to which the expression is used if—
 - (i) on the day that he died, he had retired in the circumstances referred to in section 18; and
 - (ii) he had been alive and in receipt of a pension on the day in relation to which the expression is used; and
- (b) in relation to a deceased member pensioner, means the amount of pension that would have been payable to that pensioner if he had been alive and in receipt of pension on the day in relation to which the expression is used;

"old scheme member" means a member who first became a member of either House of Parliament of the State before the commencement of the *Parliamentary Superannuation (New Scheme) Amendment Act 1995* but does not include a person who has transferred to the new scheme;

"old scheme member pensioner" means a member pensioner who was an old scheme member immediately before ceasing to be a member;

"**pension day**", in relation to a pension, means the day on which a periodical payment of that pension is usually made;

"**prescribed office**" means an office or position in respect of which additional salary is payable;

"**the repealed Act**" means the *Parliamentary Superannuation Act 1948*;

"**salary**" means basic salary (expressed as an annual salary);

"**service**", in relation to a member, means the member's service as determined by the rules set out in section 7;

"**special deposit account**" means a special deposit account established under section 8 of the *Public Finance and Audit Act 1987*;

"**spouse**" includes a putative spouse;

"**spouse pension**" means—

- (a) a pension payable to the widow or widower of a member or former member under the repealed Act that was so payable immediately before the commencement of this Act; or
- (b) a pension payable to the spouse of a deceased member or deceased member pensioner and first payable on or after the commencement of this Act.

"**State**" includes a Territory of the Commonwealth.

(2) The Governor may, by proclamation, declare any remuneration payable to a member to be additional salary for the purposes of this Act and the Governor may, by proclamation, amend, vary or revoke any such declaration.

Voluntary and involuntary retirement

6. (1) For the purposes of this Act, a former member shall be deemed to have retired involuntarily if his term of office expires or he resigns and a judge is satisfied that, upon so ceasing to be a member—

- (a) he genuinely sought to be elected at an election for the Parliament of this State (whether or not for the same electorate or the same House), another State or the Commonwealth (being an election not later than the next general election for that Parliament occurring after he ceased to be a member) but—
 - (i) having stood as a candidate, was defeated; or
 - (ii) failed to be a candidate due to—
 - (A) his failure to secure the support of a political party from which he reasonably sought support; or
 - (B) his expulsion from a political party; or
 - (C) ill health; or
 - (D) any other good and sufficient reason; or

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- (b) he sought to be and was elected at an election for the Parliament of another State or the Commonwealth (being an election not later than the next general election for that Parliament occurring after he ceased to be a member).

* * * * *

- (3) Where a member ceases to be a member otherwise than—

- (a) by death; or
- (b) by retirement in circumstances specified in section 18; or
- (c) in circumstances referred to in subsection (1),

that member shall, for the purposes of this Act, be deemed to have retired voluntarily.

- (4) In this section—

"judge" means a judge of the Supreme Court nominated by the Governor to deal with matters arising under this section.

Computation of service

7. In computing the length of a member's service the following rules shall be observed:

- (a) if a member is elected to Parliament between the 28th day of February and the 1st day of August in any year, except in the case of such a member elected to fill a casual vacancy, his service shall be reckoned from the 1st day of March of that year; and
- (b) if a member ceases to be a member of Parliament by reason of a dissolution taking place within 2 months before the expiration of the House of Assembly by effluxion of time, his service shall be deemed to continue until the day on which the House of Assembly would have so expired; and
- (c) service whether occurring before or after the commencement of this Act shall be taken into account; and
- (d) where the continuity of a member's service has been broken, the former period of service (and any service by the member in a prescribed office during that former period) shall not be taken into account unless by virtue of section 20 or 36 that former period of service is to be counted as service for the purposes of this Act; and
- (e) subject to this section and section 36, only the actual service of a member shall be regarded as service.

PART 2

THE SOUTH AUSTRALIAN PARLIAMENTARY SUPERANNUATION BOARD

The Board

8. (1) The *South Australian Parliamentary Superannuation Board* is established.

(2) The Board is a body corporate.

(3) The Board has full juristic capacity to exercise any powers that are by their nature capable of being exercised by a body corporate.

(4) Where a document appears to bear the common seal of the Board, it will be presumed, in the absence of proof to the contrary, that the document was duly executed by the Board.

The Board's membership

9. (1) The Board consists of the following members:

(a) the President for the time being of the Legislative Council; and

(b) the Speaker for the time being of the House of Assembly; and

(c) a person appointed by the Governor on the nomination of the Treasurer.

(2) Subject to subsection (3), a person, upon ceasing to hold the office of President of the Legislative Council or Speaker of the House of Assembly, will continue as a member of the Board until his or her successor is appointed to that office.

(3) A member of the Board referred to in subsection (2) may resign from membership of the Board if he or she has ceased to be a member of Parliament.

(4) The office of the member of the Board appointed by the Governor becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Treasurer; or

(d) is removed from office by the Governor on the ground of—

(i) mental or physical incapacity to carry out official duties satisfactorily; or

(ii) neglect of duty; or

(iii) misconduct.

(5) The Governor may appoint a person to fill a casual vacancy in the membership of the Board and a person so appointed will hold office as a member of the Board until the office is filled pursuant to subsection (1).

Procedure at meetings of the Board

10. (1) Subject to subsection (2), the Board may act notwithstanding vacancies in its membership.

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(2) Two members constitute a quorum for a meeting of the Board.

(3) A decision in which a majority of the members of the Board present at a meeting concur is a decision of the Board.

(4) Subject to this Act, the Board may determine its own procedures.

Availability of Public Service employees

11. The Board may, with the approval of a Minister responsible for a particular administrative unit of the Public Service, make use of the staff or facilities of that administrative unit.

Report

12. (1) The Board must, on or before 30 September in each year, submit a report to the Treasurer on the operation of this Act during the financial year ending on 30 June in that year.

(2) The Treasurer must have copies of the report laid before both Houses of Parliament.

PART 2A
THE PARLIAMENTARY SUPERANNUATION FUND

The Fund

- 13.** (1) The Parliamentary Superannuation Fund is established.
- (2) The assets of the Fund belong (both at law and in equity) to the Crown.
- (3) The Fund is subject to the management and control of the Superannuation Funds Management Corporation of South Australia.
- (4) The Treasurer must pay into the Fund from the Consolidated Account (which is appropriated to the necessary extent) or from a special deposit account established by the Treasurer for that purpose—
- (a) periodic contributions reflecting the contributions paid to the Treasurer by members; and
 - (b) periodic contributions to ensure that members' entitlements are fully funded as they accrue.
- (5) The Treasurer must transfer to the Fund the balance of the special deposit account into which members' contributions made before 1 July 1998 and other amounts for the funding of the schemes under this Act have been paid.
- (6) All interest and accretions arising from investment of the Fund must be paid into the Fund.
- (7) The following amounts will be paid from the Fund:
- (a) any reimbursement of the Consolidated Account or a special deposit account that the Treasurer charges against the Fund in pursuance of this Act; and
 - (b) the administrative costs and other expenses related to the management and investment of the Fund; and
 - (c) the other costs of administering this Act.
- (8) The Superannuation Funds Management Corporation of South Australia must determine the value of the Fund as at the end of each financial year.

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**PART 2B
MEMBERS' CONTRIBUTION ACCOUNTS**

Members' contribution accounts

13A. (1) The Board must maintain contribution accounts in the names of all members.

(2) A member's contribution account must be credited with the amount of contributions made by the member and must be debited with any payment that is, in pursuance of this Act, to be charged against the account.

(3) The amount of the opening balance of the contribution account of a person who was a member on 1 July 1998 is the amount that would have been the balance of the member's notional contribution account if that balance had been determined as at 30 June 1998 under section 21B before that section was repealed.

Accretions to members' accounts

13B. (1) At the end of each financial year, each member's contribution account that has a credit balance will be adjusted to reflect a rate of return determined by the Board in relation to members' accounts for the relevant financial year.

(2) In determining a rate of return for the purposes of subsection (1), the Board should have regard to—

- (a) the net rate of return achieved by investment of the Fund over the financial year; and
- (b) the desirability of reducing undue fluctuations in the rate of return on members' accounts.

(3) Where, in pursuance of subsection (2)(b), the Board determines a rate of return that is at variance with the net rate of return achieved by investment of the Fund, the Board must include its reasons for the determination in its report for the relevant financial year.

(4) Where it is necessary to determine the balance of a member's account and the Board has not yet determined a rate of return in relation to the relevant financial year, the balance will be determined by applying a percentage rate of return on accounts estimated by the Board.

(5) A balance determined under subsection (4) will not be adjusted when a rate of return is subsequently determined under subsection (1).

(6) A reference in this section to "rate of return" is a reference to a positive or a negative rate of return.

**PART 3
CONTRIBUTIONS**

Contributions by members

14. (1) Every member is liable to make contributions to the Treasurer in accordance with this Act.

(2) Subject to subsection (3), contributions will be 11.5 per cent of the salary and additional salary (if any) payable to each member and must be deducted by the Treasurer when paying salary to members.

(3) The contribution payable by a member whose period of service is equal to or exceeds 20 years and one month is 5.75 per cent of the member's basic salary and 11.5 per cent of the member's additional salary (if any).

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PART 4
PENSION AND BENEFITS FOR FORMER MEMBERS

DIVISION 1—ENTITLEMENT TO PENSION

Entitlement to a pension on retirement

16. A former member who—

- (a) has retired involuntarily, having had not less than 6 years service; or
- (b) has retired voluntarily—
 - (i) having had not less than 15 years service; or
 - (ii) having been a member of not less than four Parliaments and having had not less than 13 years service; or
- (c) having attained the age of 60 years, has retired voluntarily having had not less than 6 years service,

shall, on and from the day next succeeding the day on which he retired, be entitled to a pension for life in an amount calculated by reference to this Division.

Amount of pension for old scheme member pensioners

17. (1) Subject to this section, the amount of annual pension payable to a former old scheme member referred to in section 16 shall be an amount equal to 41.2 per cent of the salary payable to him immediately before he ceased to be a member plus 0.2 per cent of that salary for each whole month of the member's service after 6 years service but the annual pension shall not, in any case, exceed 75 per cent of that salary.

(2) Where a former old scheme member was in receipt of additional salary at any time during his service, the amount of the annual pension payable to that former member shall be determined by reference to the following formula:

$$P = \frac{(BP - X) HS}{BS} + X$$

where—

- P is the annual pension payable to the former member;
- BP is the annual pension that would, apart from this subsection, be payable to the former member;
- X is an amount arrived at by subtracting from BP the amount of the annual pension that would, apart from this subsection, be payable to the former member if the reference to 6 years service in subsection (1) were a reference to 8 years service;
- HS is the sum of BS and the amount arrived at by calculating the total amount that would have been payable to the former member by way of additional salary—
 - (a) upon the assumption that the rates of additional salary applicable on the date of his retirement had applied during the whole of his period of service; and

- (b) where he held prescribed offices during his period of service for a total period of more than 6 years—by taking into account only periods of his service for which he held prescribed office that equal in aggregate 6 years, those periods that would have been the most remunerative for him in terms of additional salary at the rates referred to in paragraph (a) being first taken into account and (if necessary) those periods that would have been the next most remunerative for him in terms of additional salary at those rates being next taken into account and so on until the periods equal in aggregate 6 years;

BS is an amount equal to 6 times the salary applicable to the member on the date of his retirement.

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Amount of pension for new scheme member pensioners

17A. (1) Subject to this section, the amount of the annual pension payable to a former new scheme member referred to in section 16 is—

- (a) 41.2 per cent of the salary payable to the former member immediately before he or she ceased to be a member plus 0.2 per cent of that salary for each completed month of service in addition to the first six years of service of the former member; and
- (b) where the former member held a prescribed office at any time during his or her service—a percentage, calculated in accordance with the following formula, of the additional salary (expressed as an annual amount) payable in respect of the prescribed office on the date of the former member’s retirement:

$$P = 6.25 \times \frac{M}{12}$$

Where—

P is the percentage of the additional salary

M is the number of complete months during which the former member held the prescribed office.

(2) Where—

- (a) a former new scheme member had been a member of the Parliament of another State or the Commonwealth before becoming a member of the South Australian Parliament; and
- (b) the former member is entitled to a pension in respect of his or her service as a member of that other Parliament,

the former member’s period of service as a member of that other Parliament will be counted as service for the purposes of section 16 and the amount of the annual pension (if any) payable to the former new scheme member under this Act will be—

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- (c) 0.2 per cent of the salary payable to the former member immediately before he or she ceased to be a member for each completed month of the member's service in the South Australian Parliament; and
- (d) where the former member held a prescribed office at any time during his or her service in the South Australian Parliament—a percentage, calculated in accordance with the formula in subsection (1)(b), of the additional salary (expressed as an annual amount) payable in respect of the prescribed office on the date of the former member's retirement.

(3) If the former member held two or more prescribed offices during his or her service, the pension under subsection (1) or (2) will include a percentage of the additional salary payable in respect of each office calculated under subsection (1)(b).

(4) The component of the pension determined under subsection (1)(a) or (2)(c) cannot exceed 75 per cent of the former member's salary immediately before he or she ceased to be a member.

(5) The component of the pension determined under subsection (1)(b) or (2)(d) cannot exceed 75 per cent of the additional salary payable in respect of the prescribed office on the date of the former member's retirement but, if the former member held two or more such offices, the component cannot exceed 75 per cent of the highest of the salaries attached to those offices on the date of the former member's retirement.

(6) Where, in relation to a particular period—

- (a) a new scheme member pensioner who has not reached the age of 60 years is receiving, or would but for this subsection be entitled to receive, a pension under this section; and
- (b) the pensioner is also receiving or entitled to receive income from remunerative activities engaged in by the pensioner or another person is receiving or entitled to receive income from remunerative activities engaged in by the pensioner,

the pension payable in respect of that period will be reduced by one dollar for each two dollars of income referred to in paragraph (b).

(7) In the application of subsection (6), income that does not comprise money will be taken to have the monetary value determined by the Board.

(8) In this section—

"income" includes goods, services and any other thing of value;

"remunerative activity" engaged in by a pensioner means an activity of the pensioner that produces income for the benefit of the pensioner or for the benefit of another person either at the pensioner's direction or by means of a company, trust or other device used by the pensioner to direct the income to the other person.

Supplementary provisions

17B. (1) If a member held a prescribed office during the member's period of service and the prescribed office does not exist on the date of the member's retirement, the rate of additional salary applicable to that office on that date for the purposes of this Division will be taken to be a rate of salary determined by the Board having regard to the rate of additional salary last applicable to that office before the date of retirement of the member and the movements (if any) in salaries and additional salaries up to the date of retirement of the member.

(2) If—

- (a) a member held a prescribed office during the member's period of service; and
- (b) the additional salary payable in respect of that prescribed office is, in comparison with the additional salaries payable in respect of other prescribed offices, proportionately less on the date of the member's retirement than it was at any time at which the member actually held that office; and
- (c) the Board is of the opinion that a determination under this subsection is necessary in order to avoid substantial injustice,

the rate of additional salary applicable to that office on the date of the member's retirement for the purposes of this Division will be taken to be the rate of salary determined by the Board on the assumption that the additional salary in question had not been reduced in comparison to additional salaries payable in respect of other prescribed offices.

Invalidity retirement

18. (1) Where a member satisfies a judge that he is unable to continue as a member on the grounds of invalidity, that member shall, on and from the day next succeeding the day on which he so satisfies that judge, be entitled to an annual pension for life ascertained by reference to subsection (2).

(2) The amount of annual pension referred to in subsection (1) shall be—

- (a) in the case of a member who had less than 6 years service, the amount of annual pension that he would have received ascertained by reference to section 17 or 17A if, on the day on which he so satisfied the judge, he had retired involuntarily having, on that day, attained 6 years service; or
- (b) in any other case, the amount of annual pension ascertained by reference to section 17 or 17A that he would have received if, on the day on which he so satisfied the judge, he had retired involuntarily.

(3) In this section—

"**judge**" means a judge of the Supreme Court nominated by the Governor to deal with matters arising under this section.

Reduction of pension in certain circumstances

19. (1) Where a member pensioner occupies a prescribed office or position, the pension payable to the member pensioner pursuant to this Act shall be reduced by the amount of the salary, or other remuneration, paid in respect of that office or position.

(2) Subject to subsections (2a) and (2b), where a member pensioner, or the member pensioner's spouse or child or another person, becomes entitled to superannuation or a retirement allowance by virtue of the member pensioner having held or occupied a prescribed office or position, any pension or child benefit payable under this Act to the member pensioner, the member pensioner's spouse or child or that other person shall be reduced by the prescribed amount.

(2a) A pension payable under section 17A(2) to a former new scheme member and a pension or child benefit payable under this Act to such a former member's spouse or child or to any other person in relation to such a former member will not be reduced under subsection (2) because of the pension payable to, or in relation to, the former member in respect of his or her service as a member of the other Parliament referred to in section 17A(2).

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(2b) A pension payable under this Act to a member pensioner to whom section 19A applies and the pension or child benefit payable under this Act to the spouse or child of such a member pensioner or to any other person in relation to such a member pensioner will not be reduced under subsection (2).

(3) For the purposes of subsection (2), the prescribed amount is—

- (a) where the whole of the superannuation or retirement allowance referred to in that subsection is paid to the member pensioner, the member pensioner's spouse or child or another person by way of a pension and no part of it has been paid by way of a lump sum—the pension so paid;
- (b) where, as the result of an election made by the member pensioner, the member pensioner's spouse or child or that other person, the whole or a part of that superannuation or retirement allowance is paid as a lump sum—the amount of the pension that would have been payable in respect of that superannuation or retirement allowance if that election had not been made;
- (c) where, without an election being made, the whole or a part of that superannuation or retirement allowance is paid as a lump sum—the amount determined in accordance with the following formula:

$$PA = P + \frac{LS}{10}$$

where—

- PA is the prescribed amount expressed as an annual pension;
- P is that part (if any) (expressed as an annual pension) of the superannuation or retirement allowance that is paid as a pension;
- LS is the lump sum that was paid in total or partial satisfaction of the entitlement of the member pensioner (or of the member pensioner's spouse or child or another person) to the superannuation or retirement allowance.

(4) Where a pension or child benefit is reduced pursuant to this section, the person entitled (or who would have been entitled but for the reduction) or, where 2 or more persons are so entitled, all of those persons acting together, may by notice in writing to the Board require the Treasurer to pay to that person, or to those persons, an amount ascertained by reference to the following formula:

$$A = [TC (1 + .03 [N - 1])] - P$$

where—

- A is the amount expressed in dollars and cents;
- TC is the total contributions expressed in dollars and cents made by the member pensioner under this Act or under the repealed Act other than any such contributions that have been refunded to the member pensioner and have not been repaid;

- N is one or the number of whole years of service of the member pensioner whichever is the greater;
- P is the total of all pensions and benefits (if any) received by the member pensioner, his spouse or an eligible child in respect of the member pensioner under this Act and under the repealed Act,

and upon payment of that amount no further pension or benefit shall be paid to, or in respect of, the member pensioner.

(5) A notice referred to in subsection (4) may be given on behalf of a child who is under the age of 18 years by the child's parent or guardian.

(6) A payment under subsection (4) shall—

- (a) if made to a spouse and a child or children—be divided between them as to $\frac{3}{4}$ to the spouse and as to $\frac{1}{4}$ to the child or children;
- (b) if made only to children—be divided equally between them.

(7) In this section—

"prescribed office or position" means an office or position established under the law of this State, the Commonwealth, another State of the Commonwealth or a Territory of the Commonwealth which has been declared by regulation to be a prescribed office or position for the purposes of this section.

Preservation of pension in certain circumstances

19A. (1) This section applies to, and in relation to, a member pensioner if the member pensioner—

- (a) is deemed to have retired (whether before or after the commencement of the *Parliamentary Superannuation (New Scheme) Amendment Act 1995*) involuntarily because of election to the Parliament of another State or the Commonwealth; and
- (b) —
- (i) the superannuation scheme available to the member pensioner as a member of that other Parliament does not provide for the member pensioner to be credited with his or her service as a member of the South Australian Parliament; or
- (ii) the superannuation scheme available to the member pensioner as a member of that other Parliament provides for the member pensioner to make an election under which he or she will not be credited with that service and the member pensioner makes that election.

(2) If a member pensioner to whom this section applies has not reached the age of 55 years at the time of his or her retirement or at the time of making the election referred to in subsection (1)(b)(ii), the pension payable to the pensioner under this Act is preserved.

(3) Where a pension is preserved by subsection (2) the following provisions apply:

- (a) the member pensioner may, at any time after reaching the age of 55 years, require the Board to commence paying the pension to the member pensioner and if no such requirement has been made on or before the date on which the member pensioner reaches 60 years of age, the Board will commence payment of the pension;

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- (b) if the member pensioner satisfies the Board that he or she has ceased to be a member of the Parliament referred to in subsection (1), the Board will commence payment of the pension,

(and a payment under paragraph (a) or (b) excludes further rights so that a claim cannot be subsequently made under the other paragraph).

Cessation of pension

20. (1) If a member pensioner again becomes a member of either House of Parliament, the pension payable to that pensioner shall cease and determine.

(2) The previous service of a member whose pension has ceased and determined pursuant to subsection (1) shall be counted as service for the purposes of this Act.

DIVISION 2—COMMUTATION OF PENSION

Commutation of pension

21. (1) Subject to this Division, a former old scheme member who is entitled to a pension under this Act may, by notice in writing to the Board, elect to commute a percentage of that pension, not exceeding the maximum percentage of that pension ascertained by reference to schedule 2.

(1a) Subject to this Division, a former new scheme member who is in receipt of a pension or who is entitled to receive a pension under this Act may, by notice in writing to the Board, elect to commute the whole of the pension or such lesser proportion of it as he or she thinks fit.

(1b) A member pensioner who is deemed by this Act to have retired involuntarily by virtue of seeking and obtaining election to the Parliament of another State or the Commonwealth may not commute a pension under subsection (1) or (1a) unless, on ceasing to be a member of that Parliament—

- (a) the member pensioner is not entitled to superannuation or a retirement allowance by virtue of having been a member of that Parliament; or
- (b) no part of the superannuation or retirement allowance to which the member pensioner is entitled by virtue of having been a member of that Parliament is attributable to his or her period of service as a member of the South Australian Parliament.

(1c) A member pensioner who wishes to commute a percentage of the pension must do so within 3 months after first becoming so entitled.

(2) Where a member pensioner elects to commute a percentage of his pension pursuant to this section, the Treasurer must pay to the member pensioner an amount equal to \$10 for each \$1 of annual pension so commuted.

* * * * *

Application of s. 21 to certain member pensioners

21A. In the application of section 21 to an old scheme member pensioner who has had not less than 20 years service, schedule 2 shall apply and have effect as if for the expressions "30%", "34%" and "38%" there were substituted, in each case, the expression "40%".

Commutation to pay deferred superannuation contributions surcharge

21AA. (1) The Board will, on the application of a former old scheme or new scheme member who is entitled to a pension and who is liable for a deferred superannuation contributions surcharge, commute so much of the pension as is required to provide a lump sum equivalent to the amount of the surcharge.

(2) An application under subsection (1) must be made in writing to the Board before the expiration of the period of three months immediately following the date on which the notice given to the former member by the Commissioner of Taxation under section 15(7) of the Commonwealth Act was issued.

(3) Where—

(a) —

(i) an old scheme or new scheme member, or a former old scheme or new scheme member, who is liable for a deferred superannuation contributions surcharge dies before notice by the Commissioner of Taxation under section 15(7) of the Commonwealth Act is issued; or

(ii) a former old scheme or new scheme member who is liable for a deferred superannuation contributions surcharge dies within three months after the issue of such a notice without having commuted his or her pension under subsection (1); and

(b) the former member is survived by a spouse who is entitled to a pension as the former member's spouse under this Act,

the Board will, subject to subsection (5) on the application of the spouse, commute so much of the spouse's pension as is required to provide a lump sum equivalent to the amount of the surcharge.

(4) An application under subsection (3) must be made in writing to the Board before the expiration of the period of six months immediately following the former member's death or the issue of the notice under section 15(7) of the Commonwealth Act, whichever is the later.

(5) The Board must not commute a pension under subsection (3) unless it is satisfied that the resulting lump sum will be applied in payment of the surcharge or be used to reimburse the deceased former member's estate or the spouse or other person who has paid the surcharge on behalf of the estate.

(6) The commutation factors to be applied in the commutation of a pension under this section will be determined by the Treasurer on the recommendation of an actuary.

(7) If the Board is satisfied that—

(a) a former member, or the spouse of a member or former member, is entitled to commute the whole of his or her pension under section 21 or 26AA and has done so except for a part that the former member or spouse wishes to retain for the purpose of commutation under this section in order to pay the former member's deferred superannuation contributions surcharge; and

(b) after commutation under this section for that purpose there will still be a part of the pension remaining uncommuted; and

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- (c) the part of the pension originally retained for commutation under this section was a reasonable estimate of the amount of the pension that would be required for that purpose,

the Board will, on the application of the former member or spouse made at the same time as his or her application under subsection (1) or (3), commute the remaining uncommuted part of the pension using the factors applicable under section 21 or 26AA.

(8) In this section—

"**actuary**" means a Fellow or Accredited Member of the Institute of Actuaries of Australia;

"**the Commonwealth Act**" means the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*;

"**deferred superannuation contributions surcharge**" in relation to a member means the amount that the member is liable to pay to the Commissioner under section 15(6) of the Commonwealth Act.

DIVISION 3—OTHER BENEFITS

* * * * *

Other benefits under the old scheme

22. (1) Where an old scheme member ceases to be a member and no pension or other benefit under this Act is payable to, or in relation to, the former member, there is payable to the former member a lump sum equivalent to the balance standing to the credit of the former member's contribution account.

* * * * *

Other benefits under the new scheme

22A. (1) Where a new scheme member ceases to be a member and no pension or other benefit under this Act is payable to, or in relation to, the former member, the following benefits are payable to the former member:

- (a) a lump sum made up of an employee component and an employer component; and
- (b) where the former member retired involuntarily—a lump sum calculated in accordance with subsection (6).

(2) The values of the components referred to in subsection (1)(a) are as follows:

- (a) the value of the employee component is equal to the balance standing to the credit of the former member's contribution account;
- (b) the value of the employer component is—
 - (i) if the employee component is to be paid to or in respect of the former member at the same time as the employer component—equal to the value of the employee component;
 - (ii) in any other case—equal to the amount that would be the value of the employee component if it were paid when the employer component is paid.

(2a) The value of the employee component under subsection (2) in respect of a former member who ceased to be a member before 1 July 1998 will be determined as follows:

- (a) the balance standing to the credit of the former member's notional contribution account as at 30 June 1998 will be determined under section 21B as though that section had not been repealed;
- (b) the value of the former member's employee component for the purposes of subsection (2) will be taken to be the balance of the former member's notional contribution account referred to in paragraph (a) adjusted under section 13B as though it were the former member's contribution account.

(3) If the former member had reached the age of 55 years when he or she ceased to be a member both components are payable to the member.

(4) If the former member had not reached that age when he or she ceased to be a member, the former member may—

- (a) in the case of the employee component, elect—
 - (i) to take the component immediately; or
 - (ii) to preserve the component; or
 - (iii) to carry the component over to some other superannuation fund or scheme approved by the Board;
- (b) in the case of the employer component, elect—
 - (i) to preserve the component; or
 - (ii) to carry the component over to some other superannuation fund or scheme approved by the Board.

(4a) A former member who fails to inform the Board in writing of his or her election under subsection (4)(a) or (b) within three months after he or she ceases to be a member will be taken to have elected to preserve the employee or the employer component (as the case requires).

(4b) If the Board is of the opinion that the limitation period referred to in subsection (4a) would unfairly prejudice the former member, the Board may extend the period as it applies to the former member.

(4c) Where the former member elects to carry over the employee or the employer component to an approved superannuation fund or scheme, the following provisions apply:

- (a) the former member must satisfy the Board by such evidence as it may require that he or she has been admitted to membership of the fund or scheme; and
- (b) on being so satisfied the Board will authorise payment of the component on behalf of the former member to the fund or scheme.

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(5) The following provisions apply to the payment of a component preserved by or under subsection (4):

- (a) the former member may at any time after reaching 55 years of age require the Board to pay the component to him or her and, if no such requirement has been made on or before the date on which the former member reaches 65 years of age, the Board will make the payment;
- (b) if the former member satisfies the Board that he or she has become totally and permanently incapacitated for work, the Board will pay the component to the former member;
- (c) if the former member satisfies the Board that he or she is suffering financial hardship and that the Board should pay the component to the former member to relieve that hardship, the Board will pay the component to the former member;
- (d) if the former member dies, the component will be paid to the spouse of the deceased former member or, if he or she left no surviving spouse, to the former member's estate,

(and a payment under any of the above paragraphs excludes further rights so that a claim cannot be subsequently made under some other paragraph).

(5a) A former member who has elected, or has been taken to have elected, to preserve his or her employee or employer component and to whom the component has not been paid under this section, may elect to withdraw that election and to elect to carry the component over to some other superannuation fund or scheme approved by the Board.

(6) The lump sum referred to in subsection (1)(b) is calculated as follows:

$$LS = \frac{S}{12} \times \frac{M}{12}$$

Where—

LS is the lump sum

S is the salary payable to the former member immediately before he or she retired

M is the number of complete months of the former member's period of service.

(7) A benefit is not payable under subsection (6) to a former member who is deemed to have retired involuntarily by reason of having been elected to the Parliament of another State or the Commonwealth.

Provision where contributions exceed benefits

23. Where a member or former member is dead and the Board is satisfied that no pension or benefit is payable, or no further pension or benefit is payable, to any spouse or person who is, or may become, an eligible child in relation to that member or former member and the total contributions paid by that member or former member under this Act and under the repealed Act exceed the total benefits paid in relation to that member or former member, then there shall be payable to the legal personal representative of that deceased member or former member the amount by which those contributions exceed those benefits.

PART 5
PENSION FOR SPOUSE AND CHILD BENEFIT

DIVISION 1—PENSION FOR SPOUSE

Pension for spouse of deceased old scheme member pensioner

24. (1) Where an old scheme member pensioner dies, there shall be payable to the spouse of that former member pensioner—

- (a) an annual pension equal to 75 per cent of the notional pension of that pensioner on the day that he died; or
- (b) an annual pension equal to the prescribed amount,

whichever is the greater.

(2) In this section—

"prescribed amount" means—

- (a) where the member pensioner had commuted a percentage of his pension, an amount ascertained by reference to the following formula:

$$A = \frac{(100 - P) \times S}{100}$$

where—

- A is the amount expressed in dollars and cents;
 - P is the percentage of the pension so commuted;
 - S is 40 per cent of the relevant amount multiplied by the appropriate factor; or
- (b) where the member pensioner had not commuted a percentage of his pension, an amount equal to 40 per cent of the relevant amount multiplied by the appropriate factor; or
 - (c) where the amount determined under paragraph (a) or (b) exceeds the notional pension of the member pensioner on the day that he died, the amount of that notional pension.

(3) In this section—

"the appropriate factor" means a factor arrived at by dividing the amount of the notional pension of the member pensioner on the day of his death by the amount of the pension to which he was entitled when he became a member pensioner, or, where he commuted a percentage of his pension, by the amount of the pension to which he was entitled immediately after he commuted that percentage:

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"the relevant amount" means—

- (a) in relation to a member pensioner who was not in receipt of additional salary at any time during his service—the annual salary of the member pensioner immediately before he became a member pensioner; or
 - (b) in relation to a member pensioner who was in receipt of additional salary at any time during his service—the sum of the annual salary of the member pensioner immediately before he became a member pensioner and $\frac{1}{6}$ of the amount arrived at by calculating the total amount that would have been payable to the member pensioner by way of additional salary—
 - (i) upon the assumption that the rates of additional salary applicable immediately before he became a member pensioner had applied during the whole of his period of service; and
 - (ii) where he held prescribed offices during his period of service for a total period of more than 6 years—by taking into account only periods of his service for which he held prescribed office that equal in aggregate 6 years, those periods that would have been the most remunerative for him in terms of additional salary at the rates referred to in subparagraph (i) being first taken into account and (if necessary) those periods that would have been the next most remunerative for him in terms of additional salary at those rates being next taken into account and so on until the periods equal in aggregate 6 years.
- (4) For the purposes of subsection (3)—
- (a) if a member pensioner had not elected to make contributions in respect of the additional salary paid for a period of service in a prescribed office commencing after the commencement of this Act and concluding on or before the commencement of the *Parliamentary Superannuation Act Amendment Act (No. 2) 1978*, that period of service shall not be regarded as a period of service in a prescribed office;
 - (b) if a member pensioner held a prescribed office during the member pensioner's period of service and the prescribed office did not exist immediately before the member pensioner became a member pensioner, the rate of additional salary applicable to that office immediately before the member pensioner became a member pensioner shall be deemed to be a rate of salary determined by the Board having regard to the rate of additional salary last applicable to that office before the member pensioner became a member pensioner and the movements (if any) in salaries and additional salaries up to the date on which the member pensioner became a member pensioner;
 - (c) if—
 - (i) a member pensioner held a prescribed office during the member pensioner's period of service; and
 - (ii) the additional salary payable in respect of that prescribed office was, in comparison with the additional salaries payable in respect of other prescribed offices, proportionately less, immediately before the member pensioner became a member pensioner, than it was at any time at which the member pensioner actually held that office; and

- (iii) the Board is of the opinion that a determination under this paragraph is necessary in order to avoid substantial injustice,

the rate of additional salary applicable to that office immediately before the member pensioner became a member pensioner shall be deemed to be the rate of salary determined by the Board on the assumption that the additional salary in question had not been reduced in comparison to additional salaries payable in respect of other prescribed offices.

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Pension for spouse of deceased old scheme member

25. (1) Where an old scheme member dies, there shall be payable to the spouse of that member—

- (a) an annual pension equal to 75 per cent of the pension that would have been payable to the former member if, on the day that he died, he had retired in the circumstances referred to in section 18; or
- (b) an annual pension equal to 40 per cent of the relevant amount,

whichever is the greater.

(2) In this section—

"**the relevant amount**" has the same meaning as in section 24.

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Pension for spouse of new scheme member pensioner

25A. (1) An annual pension is payable to the spouse of a deceased new scheme member pensioner.

(2) The pension is equal to 75 per cent of the pension payable to the member pensioner immediately before he or she died or that would have been payable to the member pensioner if his or her pension had not been preserved, reduced or suspended under this Act.

Pension for spouse of deceased new scheme member

25B. (1) Where a new scheme member dies an annual pension is payable to the spouse of the deceased member.

(2) The pension is the greater of the following:

- (a) an annual pension equal to 75 per cent of the pension that would have been payable to the former member if, on the day on which he or she died, he or she had retired in the circumstances referred to in section 18;
- (b) an annual pension equal to 75 per cent of 41.2 per cent of the salary payable to the member immediately before he or she died.

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Interpretation

25C. (1) For the purposes of this Division, a former member will be taken to have been a member when he or she died if a judge is satisfied that, upon the expiration of the member's term of office or upon the member's resignation, the member genuinely sought to be elected at an election for the Parliament of this State (whether or not for the same electorate or the same House), another State or the Commonwealth (being an election not later than the next general election for that Parliament occurring after the former member ceased to be a member) but that the member died before the election took place.

(2) In this section—

"**judge**" means a judge of the Supreme Court nominated by the Governor to deal with matters arising under this section.

Spouse pension

26. A spouse pension payable under this Division shall be payable for the life of the spouse.

DIVISION 1A—COMMUTATION OF SPOUSE PENSION**Commutation of pension**

26AA. (1) The spouse of a deceased member or deceased member pensioner who is entitled to a pension under Division 1 may, by notice in writing to the Board within six months after first becoming entitled to the pension, elect to commute the whole of the pension or such lesser proportion of the pension as he or she thinks fit.

(2) The amount of the lump sum payable on commutation of a pension under subsection (1) will be determined by the application of the commutation factors set out in schedule 3.

(3) When determining the amount of the lump sum payable on commutation the applicable commutation factor must be adjusted proportionately to the age of the spouse expressed in years and completed months.

(4) A person who became entitled to a pension under this Division on or after 1 January 1993 but before the commencement of the *Parliamentary Superannuation (New Scheme) Amendment Act 1995* may by notice in writing to the Board within six months after the commencement of that Act, elect to commute the pension in accordance with this section.

DIVISION 2—CHILD BENEFIT**Certain former members deemed members at time of death**

26A. For the purposes of this Division, a former member shall be deemed to have been a member at death if a judge is satisfied that, upon the expiration of the member's term of office or upon the member's resignation, the member genuinely sought to be elected at an election for the Parliament of this State (whether or not for the same electorate or the same House), another State or the Commonwealth (being an election not later than the next general election for that Parliament occurring after the former member ceased to be a member) but that the member died before the election took place.

Determination of child benefit

27. For the purposes of sections 28 and 29, the amount of child benefit for each eligible child deriving his entitlement for a child benefit from a member or member pensioner shall be determined—

(a) on each occasion on which a person becomes entitled to a child benefit derived from that member or pensioner; and

- (b) on the number of persons entitled to a child benefit derived from that member or pensioner diminishing; and
- (c) on each occasion on which pensions are adjusted pursuant to section 35.

Child benefit, general

28. (1) Except as is provided in section 29, there shall be payable in respect of each person who becomes an eligible child in relation to a deceased member or deceased member pensioner a child benefit ascertained in the manner provided by subsection (2).

(2) The child benefit referred to in subsection (1) shall, subject to subsection (3), be a payment in respect of each eligible child of an amount—

- (a) in the case of 1 or 2 eligible children, equal to $\frac{1}{3}$ of the prescribed amount; and
- (b) in the case of 3 or more such eligible children, equal to the prescribed amount divided by the number of eligible children.

(3) In this section—

"prescribed amount" is an amount equal to the difference between the amount of the notional pension of the deceased member or member pensioner from whom the entitlement to a child benefit is derived and the amount of the spouse pension payable to the spouse of the deceased member or deceased member pensioner.

Child benefit where no spouse's pension payable

29. (1) There shall be payable in respect of each person who becomes an eligible child in relation to a deceased member or deceased member pensioner, where a pension deriving from that deceased member or deceased pensioner is not payable to a spouse of that member or pensioner, a child benefit ascertained in the manner provided by subsection (2).

(2) The child benefit referred to in subsection (1) shall, subject to subsection (3) be a payment in respect of each such eligible child of an amount—

- (a) in the case of 1 eligible child, equal to 45 per cent of the notional pension for the time being of the member or member pensioner from whom the entitlement to a child benefit is derived; and
- (b) in the case of 2 such eligible children, equal to 40 per cent of the notional pension for the time being of the member or member pensioner from whom the entitlement to a child benefit is derived; and
- (c) in the case of 3 such eligible children, equal to 30 per cent of the notional pension for the time being of the member or member pensioner from whom the entitlement to a child benefit is derived; and
- (d) in the case of 4 or more such eligible children, equal to the notional pension for the time being of the member or member pensioner from whom the entitlement to a child benefit is derived divided by the number of such children.

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Payment to, or on behalf of, child

30. An amount payable under this Act to a person who is, or was, an eligible child may, if that person is under the age of 18 years, be paid—

(a) to that person; or

(b) to that person's parent or guardian on that person's behalf,

as the Board directs.

Cessation of child benefit

31. A child benefit under this Division shall cease to be payable in respect of a person who is an eligible child on that person ceasing to be an eligible child.

PART 5A
BENEFIT PAYABLE TO MEMBER'S ESTATE

Benefits payable to estate

31A. (1) Where a member dies and a pension or other benefit is not payable under this Act to the spouse or a child of the member, a lump sum is payable to the member's estate that is the greater of the following amounts:

- (a) the amount that would be produced by the commutation of two-thirds of the former member's notional pension using the commutation factors set out in schedule 3;
- (b) an amount that would be produced by commutation of two-thirds of 41.2 per cent of the former member's salary immediately before his or her death using the commutation factors set out in schedule 3.

(2) When determining the amount that would be produced on commutation, the applicable commutation factor must be adjusted proportionately to the age of the deceased member when he or she died expressed in years and completed months.

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**PART 6
ADJUSTMENT OF PENSIONS**

DIVISION 1—PENSIONERS UNDER REPEALED ACT

Pensions to continue

32. Subject to this Act, every pension that was payable under the repealed Act immediately before the commencement of this Act shall continue to be payable under this Act.

Spouse pension continued

33. A spouse pension continued under section 32 shall be payable for the life of the spouse.

Suspension of certain pensions

34. Where a former member became entitled to a pension under the repealed Act and, by reason of section 14(2) of that Act, that former member was not entitled to receive that pension until he attained the age of 50 years and, immediately before the commencement of this Act—

- (a) that former member has not attained the age of 50 years; and
- (b) that former member has not elected to receive a refund of his contributions,

that former member shall be entitled to receive a pension for life at a rate equal to the rate that would have been payable if, on the day on which he had been entitled to that pension, he had received that pension.

DIVISION 2—FUTURE ADJUSTMENT

Adjustment of pensions

35. (1) The Board must adjust the amount of pensions under this Act as from the first payment of pension in each adjustment year to reflect the percentage variation (rounded to two decimal places) between the Consumer Price Index for the June quarter immediately preceding the present adjustment year and the Consumer Price Index for the June quarter immediately preceding the previous adjustment year.

(2) A pension must be adjusted notwithstanding that it is not payable, or part of it is not payable, at the time of the adjustment because it is preserved, reduced (except on account of commutation) or suspended.

(3) If on the first day of the relevant adjustment year, the pension has been payable for a period of less than a year, the extent of the adjustment will be reduced to reflect the proportion which that period bears to one year.

(4) To avoid a reduction in pensions the Treasurer may direct that subsection (1) does not apply in relation to a particular adjustment year.

(5) In that event an adjustment in the next adjustment year in relation to which subsection (1) applies will be based on the variation between the Consumer Price Index for the June quarter immediately preceding that year and the Consumer Price Index for the June quarter immediately preceding the adjustment year in relation to which subsection (1) last applied.

(6) In this section—

"adjustment year" means a period of 12 months commencing at the commencement of 1 October in each year;

"the Consumer Price Index" means the Consumer Price Index (All groups index for Adelaide).

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**PART 6A
TRANSFERENCE FROM THE OLD SCHEME TO THE NEW SCHEME**

Transference

35A. (1) An old scheme member may by notice in writing to the Board elect to transfer to the new scheme.

(2) The member's period of service and contributions as an old scheme member will be credited to the member as a new scheme member.

(3) An election is made—

(a) by enclosing the notice of election in a sealed envelope that includes the following statement on the front of the envelope:

"This envelope contains an election under section 35A of the *Parliamentary Superannuation Act 1974* and must not be opened until after the polling day referred to in that section"; and

(b) by delivering the envelope to the Board on or before the day preceding the poll for the first general election of the House of Assembly after the commencement of the *Parliamentary Superannuation (New Scheme) Amendment Act 1995* or by posting the envelope to the Board so as to be received by the Board in the ordinary course of post on or before that day.

(4) A person who opens an envelope in contravention of the statement referred to in subsection (3)(a) appearing on the front of the envelope is guilty of an offence.

Penalty: \$10 000.

**PART 7
MISCELLANEOUS**

Provisions as to previous service

36. (1) Where a former member has received a payment under section 22 of this Act or a refund under section 18 of the repealed Act and that former member again becomes a member, then—

- (a) that former member shall, within 3 months after again becoming such a member or within such further period as the Board allows, repay to the Treasurer the amount so paid or refunded; and
- (b) upon such payment being made, the previous service of that former member in respect of which that payment was made shall be counted as service for the purposes of this Act.

(2) Where a former member, not being a former member referred to in subsection (1) or a member pensioner, again becomes a member, the previous service of that former member shall be counted as service for the purposes of this Act.

(3) Where a member pensioner again becomes a member, that member pensioner—

- (a) shall, within 3 months after again becoming such a member or within such further period as the Board allows, repay to the Treasurer an amount equal to the prescribed amount; and
- (b) upon such payment being made, the previous service of that member pensioner in respect of which that payment was made shall be counted as service for the purposes of this Act.

(4) In subsection (3)—

"**member pensioner**" means a member pensioner who has been paid an amount pursuant to section 21(2);

"**prescribed amount**", in relation to a member pensioner, means an amount determined by reference to the following formula:

$$A = C - (P - LP)$$

where—

- A is the amount expressed in dollars and cents;
- C is the amount received by the member pensioner pursuant to Division 2 of Part 4;
- P is the total amount of pension that the member pensioner would have received in respect of the prescribed period if he had not received an amount pursuant to Division 2 of Part 4 in relation to that period;
- LP is the total amount of pension that the member pensioner received in respect of the prescribed period;

"**prescribed period**" means the period commencing on and including the day on which the member pensioner last became a member pensioner and concluding on and including the day on which the member pensioner again became a member.

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(5) In this section, a reference to a former member or member pensioner who again becomes a member shall be read as including a reference to a former member who again becomes a member before the commencement of this Act.

(6) Where—

- (a) a member has been a member of the Parliament of the Commonwealth or another State; and
- (b) the member became a member within the period of 4 years after ceasing or last ceasing to be a member of such other Parliament; and
- (ba) the member is not entitled to a pension but has received or is entitled to a lump sum in respect of his or her period of service as a member of that other Parliament; and
- (c) within 3 months after becoming a member or within such further period as the Board allows, he or she makes a contribution of an amount equal to the prescribed amount,

the period, or aggregate of the periods, of service of that member as a member of such other Parliament or Parliaments shall be counted as service for the purposes of this Act.

(7) In subsection (6)—

"**prescribed amount**" means an amount equal to 11.5 per cent of the total salary that he would have been paid if, for a period equal to the period to be counted as service under subsection (6), he had been in receipt of the salary first payable to him after he became a member.

(7a) Where—

- (a) a member stands for re-election but is not returned as having been re-elected; and
- (b) the Court of Disputed Returns subsequently declares the member to have been duly elected at that election or it declares the election void and the member is elected at the subsequent by-election; and
- (c) the member complies with the requirements of subsection (7b),

the member's period of service for the purposes of this Act shall include—

- (d) previous service that the member was, at the termination of the member's immediately preceding period of service, entitled to have counted as service under this Act; and
- (e) the period during which the member was unable to take his or her seat in Parliament by reason of not being returned as elected in the first instance.

(7b) The member shall, within 3 months—

- (a) after a declaration by the Court of Disputed Returns that the member has been duly elected; or
- (b) after the member's re-election following a declaration by the Court that the original election was void,

or within such further period as the Board allows—

- (c) make a contribution of an amount equal to 11.5 per cent of the salary that was lost by reason of the fact that the member was not returned as elected in the first instance; and
- (d) repay an amount equal to the amount (if any) paid to the member pursuant to this Act (whether by way of a pension or a lump sum, or both, or by way of a payment pursuant to Division 3 of Part 4) following the return made at the election.

(8) Where the Board allows a member a further period to pay an amount under subsection (1), (3), (6) or (7b), it may impose such conditions (including a condition requiring payment of interest on that amount) as it thinks fit, and a member shall not be regarded as having paid that amount within the further period allowed unless he complies with those conditions.

(9) The Board may vary or revoke a condition under subsection (8).

(10) Where a former old scheme member or an old scheme member pensioner again becomes a member on or after the commencement of the *Parliamentary Superannuation (New Scheme) Amendment Act 1995*, in circumstances referred to in this section, the member is an old scheme member.

Division of benefit where deceased member is survived by lawful and putative spouses

36A. (1) If a deceased member, or deceased member pensioner, is survived by a lawful spouse and a putative spouse, any benefit to which a surviving spouse is entitled under this Act will be divided between them in a ratio determined by reference to the relative length of the periods for which each of them cohabited with the deceased as his or her spouse.

(2) Where a number of periods of cohabitation are to be aggregated for the purpose of determining an aggregate period of cohabitation for the purpose of subsection (1), any separate period of cohabitation of less than three months will be disregarded.

(3) A surviving spouse must, at the request of the Board, furnish it with any information that it requires for the purposes of making a division under subsection (1).

(4) A putative spouse is not entitled to any benefit under this section, unless the deceased member, or member pensioner, and that spouse were putative spouses as at the date of the member's, or the member pensioner's, death.

(5) Where—

- (a) a deceased member, or member pensioner, is survived by a lawful and a putative spouse;
- (b) a benefit is paid to one of them on the assumption that he or she is the sole surviving spouse of the deceased,

the other spouse has no claim on the benefit insofar as it has been already paid unless that spouse gave the Board notice of his or her claim before the date of payment.

Power to obtain information

36B. (1) The Board may, from time to time, require an employing authority, employee or new scheme member pensioner to supply the Board with any information that it reasonably requires for the purposes of this Act.

(2) The Board may require an employee or new scheme member pensioner to verify information supplied under this section by statutory declaration.

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(3) If a new scheme member pensioner fails to comply with a requirement under this section, the Board may suspend payment of the pension until the requirement is complied with.

(4) A person who—

(a) fails to comply with a requirement under subsection (1); or

(b) supplies information in response to such a requirement that is false or misleading in a material particular,

is guilty of an offence.

Penalty: \$10 000.

(5) Where a member pensioner commits an offence against subsection (4), the Board may expel the member pensioner from membership of the scheme and, in that event, no further benefit will be payable under this Act to or in relation to the former member pensioner.

(6) Notwithstanding subsection (5), an amount equivalent to the excess (if any) of the contributions paid by the former member pensioner under this Act over the amount of the pension and any other benefits paid to the former member pensioner will be paid to him or her or to his or her estate.

(7) In this section—

"**employing authority**" in relation to an employee means—

(a) the chief executive officer to whom the employee is answerable on matters relating to his or her employment;

(b) if there is no such officer—the authority, body or person to whom the employee is answerable.

Payment of pensions

37. (1) Payment of annual pensions and child benefit under this Act shall be by means of equal periodical payments determined by the Board.

(2) Pensions under this Act shall be apportionable in point of time.

Pensions not assignable

38. Pensions and other rights under this Act shall not be assigned or charged or pass by operation of law.

Financial provision

39. (1) Money required for the purposes of this Act is payable by the Treasurer from the Consolidated Account (which is appropriated to the necessary extent) or from a special deposit account established by the Treasurer for that purpose.

(2) The Treasurer may reimburse the Consolidated Account or special deposit account in respect of benefits paid to, or in respect of, a member or former member under subsection (1) by charging the Fund with the amount of those benefits.

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Regulations

40. The Governor may make regulations prescribing any matters necessary or convenient to be prescribed for the administration of this Act or for giving effect to the objects of this Act.

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SCHEDULE 2

Table showing maximum percentage of pension that may be commuted

Age of member pensioner on birthday next following day on which he first becomes entitled to elect to commute a percentage of pension	Maximum Percentage
45 years or less	75%
46 years	72½%
47 years	70%
48 years	67½%
49 years	65%
50 years	62½%
51 years	60%
52 years	57½%
53 years	55%
54 years	52½%
55 years	50%
56 years	46%
57 years	42%
58 years	38%
59 years	34%
60 years or more	30%

SCHEDULE 3

Commutation Factors for Spouse Pensions

Age of spouse at time of commutation	Amount of lump sum for each dollar of annual pension commuted
50 or under	\$11.50
50 — 55	\$11.50 — \$11.00
55 — 60	\$11.00 — \$ 9.75
60 — 65	\$ 9.75 — \$ 8.50
65 — 70	\$ 8.50 — \$ 7.25
70 — 80	\$ 7.25 — \$ 4.75
80 — 90	\$ 4.75 — \$ 2.25
90 — 100	\$ 2.25 — \$ 0.00

APPENDIX

LEGISLATIVE HISTORY

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 7 of The Public General Acts of South Australia 1837-1975 at page 785.
- Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 1 September 1986. A schedule of these alterations was laid before Parliament on 16 September 1986.
- Legislative history since 3 February 1976 (**entries in bold type indicate amendments incorporated since the last reprint**) is as follows:

Sections 3 and 4:

repealed by 14, 1986, s. 3(1) (Sched. 6)

Section 5(1):

definition of "additional salary" substituted by 18, 1982, s. 3(a);

14, 1986, s. 3(1) (Sched. 6)

definition of "basic salary" inserted by 14, 1986, s. 3(1) (Sched. 6)

definition of "the Board" inserted by 21, 1989, s. 3(a)

definition of "contribution" amended by 21, 1989, s. 3(b)

definition of "determination day" repealed by 59, 1995, s. 3(a)

definition of "eligible child" amended by 21, 1989, s. 3(c)

definition of "former new scheme member" inserted by 59, 1995, s. 3(b)

definition of "former old scheme member" inserted by 59, 1995, s. 3(b)

definition of "the Fund" repealed by 21, 1989, s. 3(d); inserted by 8, 1999, s. 3(a)

definition of "member pensioner" amended by 59, 1995, s. 3(c)

definition of "new scheme member" inserted by 59, 1995, s. 3(d)

definition of "new scheme member pensioner" inserted by 59, 1995, s. 3(d)

definition of "old scheme member" inserted by 59, 1995, s. 3(e)

definition of "old scheme member pensioner" inserted by 59, 1995, s. 3(e)

definition of "prescribed office" inserted by 112, 1978, s. 3

definition of "the repealed Act" amended by 14, 1986, s. 3(1) (Sched. 6)

definition of "salary" amended by 18, 1982, s. 3(b); substituted by 14, 1986, s. 3(1) (Sched. 6)

definition of "special deposit account" inserted by 8, 1999, s. 3(b)

definition of "spouse" substituted by 59, 1995, s. 3(f)

definition of "State" inserted by 59, 1995, s. 3(g)

definition of "the Trustees" repealed by 21, 1989, s. 3(e)

Section 6(1):

substituted by 4, 1981, s. 3(a); amended by 59, 1995, s. 4

Section 6(2):

repealed by 4, 1981, s. 3(a)

Section 6(3):

amended by 4, 1981, s. 3(b)

Section 6(4):

amended by 14, 1986, s. 3(1) (Sched. 6)

Section 7:

amended by 112, 1978, s. 4

Part 2 comprising ss. 8 - 13 and headings amended by 105, 1985, ss. 3 and 4; 14, 1986, s. 3(1) (Sched. 6); repealed and ss. 8 - 12 and heading inserted in its place by 21, 1989, s. 4

Part 2A comprising s. 13 and heading inserted by 8, 1999, s. 4

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	Part 2B comprising ss. 13A, 13B and heading inserted by 8, 1999, s. 4
	Part 3 comprising ss. 14 - 15 and heading amended by 7, 1978, s. 3; 112, 1978, ss. 5, 6; 14, 1986, s. 3(1) (Sched. 6); repealed and s. 14 and heading inserted in its place by 21, 1989, s. 5
Section 14(2):	amended by 59, 1995, s. 5(a)
Section 14(3):	inserted by 59, 1995, s. 5(b)
Section 16:	amended by 18, 1992, s. 2; 59, 1995, s. 6
Section 17(1):	amended by 112, 1978, s. 7(a); 14, 1986, s. 3(1) (Sched. 6); 59, 1995, s. 7(a)
Section 17(2):	substituted by 112, 1978, s. 7(b); amended by 18, 1982, s. 4(a); 59, 1995, s. 7(b)
Section 17(2a):	inserted by 112, 1978, s. 7(b); substituted by 105, 1985, s. 5; amended by 21, 1989, s. 6; 69, 1992, s. 19; repealed by 59, 1995, s. 7(c)
Section 17(2b):	inserted by 18, 1982, s. 4(b); repealed by 105, 1985, s. 5
Section 17(3) and (4):	repealed by 59, 1995, s. 7(c)
Sections 17A and 17B:	inserted by 59, 1995, s. 8
Section 18(2):	amended by 112, 1978, s. 8; 59, 1995, s. 9
Section 18(3):	amended by 14, 1986, s. 3(1) (Sched. 6)
Section 19:	amended by 7, 1978, s. 4; 4, 1981, s. 4; substituted by 105, 1985, s. 6
Section 19(2):	amended by 59, 1995, s. 10(a)
Section 19(2a) and (2b):	inserted by 59, 1995, s. 10(b)
Section 19(4):	amended by 21, 1989, s. 7
Section 19A:	inserted by 59, 1995, s. 11
Section 21(1):	amended by 105, 1985, s. 7(a); 21, 1989, s. 8(a); 59, 1995, s. 12(a)
Section 21(1a):	inserted by 105, 1985, s. 7(b); substituted by 59, 1995, s. 12(b)
Section 21(1b):	inserted by 105, 1985, s. 7(b); amended by 21, 1989, s. 8(b); substituted by 59, 1995, s. 12(b)
Section 21(1c):	inserted by 105, 1985, s. 7(b); amended by 21, 1989, s. 8(c); 59, 1995, s. 12(c)
Section 21(2):	amended by 105, 1985, s. 7(c); 21, 1989, s. 8(d)
Section 21(3):	substituted by 105, 1985, s. 7(d); repealed by 59, 1995, s. 12(d)
Section 21A:	amended by 4, 1981, s. 5; 59, 1995, s. 13
Section 21AA:	inserted by 23, 1999, s. 4
Section 21B:	inserted by 59, 1995, s. 14; repealed by 8, 1999, s. 5
Section 22:	amended by 4, 1981, s. 6; 21, 1989, s. 9; substituted by 18, 1992, s. 3
Section 22(1):	amended by 59, 1995, s. 15(a)-(c); 8, 1999, s. 6
Section 22(2) and (3):	repealed by 59, 1995, s. 15(d)
Section 22A:	inserted by 59, 1995, s. 16
Section 22A(2):	substituted by 8, 1999, s. 7(a)
Section 22A(2a):	inserted by 8, 1999, s. 7(a)
Section 22A(4):	substituted by 8, 1999, s. 7(b)
Section 22A(4a) - (4c):	inserted by 8, 1999, s. 7(b)
Section 22A(5a):	inserted by 8, 1999, s. 7(c)
Section 23:	amended by 14, 1986, s. 3(1) (Sched. 6); 21, 1989, s. 10
Section 24(1):	amended by 14, 1986, s. 3(1) (Sched. 6); 59, 1995, s. 17
Section 24(2):	amended by 112, 1978, s. 9(a), (b); 4, 1981, s. 7
Section 24(3):	inserted by 112, 1978, s. 9(c); amended by 18, 1982, s. 5(a), (b); 105, 1985, s. 8(a), (b)
Section 24(4):	inserted by 112, 1978, s. 9(c); substituted by 105, 1985, s. 8(c); amended by 21, 1989, s. 11; 69, 1992, s. 20
Section 24(5):	inserted by 18, 1982, s. 5(c); repealed by 105, 1985, s. 8(c)
Section 25(1):	amended and redesignated as s. 25(1) by 112, 1978, s. 10; 4, 1981, s. 8(a); amended by 14, 1986, s. 3(1) (Sched. 6); 59, 1995, s. 18(a)

Section 25(2):	inserted by 112, 1978, s. 10(b)
Section 25(3):	inserted by 4, 1981, s. 8(b); substituted by 14, 1986, s. 3(1) (Sched. 6); repealed by 59, 1995, s. 18(b)
Sections 25A - 25C:	inserted by 59, 1995, s. 19
	Division 1A of Part 5 comprising s. 26AA and heading inserted by 59, 1995, s. 20
Section 26A:	inserted by 4, 1981, s. 9; substituted by 14, 1986, s. 3(1) (Sched. 6); amended by 59, 1995, s. 21
Section 27:	amended by 4, 1981, s. 10
Section 29(1):	amended by 4, 1981, s. 11
Section 30:	substituted by 105, 1985, s. 9; amended by 21, 1989, s. 12
	Part 5A comprising s. 31A and heading inserted by 18, 1992, s. 4
Section 31A(1):	amended by 59, 1995, s. 22(a)
Section 31A(2):	substituted by 59, 1995, s. 22(b)
Section 31A(3):	repealed by 59, 1995, s. 22(b)
Section 34:	amended by 14, 1986, s. 3(1) (Sched. 6); 21, 1989, s. 13
Section 35:	amended by 14, 1986, s. 3(1) (Sched. 6); 69, 1992, s. 21; substituted by 59, 1995, s. 23
Section 35(1):	substituted by 20, 1998, s. 5(a)
Section 35(3):	amended by 20, 1998, s. 5(b)
Section 35(4):	substituted by 20, 1998, s. 5(c)
Section 35(5) and (6):	inserted by 20, 1998, s. 5(c)
	Part 6A comprising s. 35A and heading inserted by 59, 1995, s. 24
Section 36(1):	amended by 21, 1989, s. 14(a)
Section 36(3):	amended by 21, 1989, s. 14(b)
Section 36(4):	definition of "prescribed amount" amended by 105, 1985, s. 10(a), (b)
Section 36(4a) - (4c):	inserted by 4, 1981, s. 12(a); repealed by 18, 1982, s. 6(a)
Section 36(6):	inserted by 112, 1978, s. 11; substituted by 4, 1981, s. 12(b); amended by 4, 1982, s. 6(b); 21, 1989, s. 14(c); 59, 1995, s. 25(a), (b)
Section 36(7):	inserted by 4, 1981, s. 12(b)
Section 36(7a):	inserted by 105, 1985, s. 10(c); amended by 14, 1986, s. 3(1) (Sched. 6)
Section 36(7b):	inserted by 105, 1985, s. 10(c); amended by 14, 1986, s. 3(1) (Sched. 6); 21, 1989, s. 14(d), (e)
Section 36(8):	inserted by 4, 1982, s. 6(c); amended by 105, 1985, s. 10(d); 21, 1989, s. 14(f)-(h)
Section 36(9):	inserted by 4, 1982, s. 6(c); amended by 21, 1989, s. 14(i)
Section 36(10):	inserted by 59, 1995, s. 25(c)
Sections 36A and 36B:	inserted by 59, 1995, s. 26
Section 37(1):	amended by 18, 1992, s. 5
Section 39:	substituted by 21, 1989, s. 15; 25, 1997, s. 6
Section 39(2):	substituted by 8, 1999, s. 8
Section 39A:	inserted by 112, 1978, s. 12; repealed by 14, 1986, s. 3(1) (Sched. 6)
Schedule 1:	repealed by 14, 1986, s. 3(1) (Sched. 6); inserted by 21, 1989, s. 16; repealed by 8, 1999, s. 9
Schedule 2:	amended by 105, 1985, s. 11
Schedule 3:	inserted by 59, 1995, s. 27