

South Australia

Parliamentary Superannuation Act 1974

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

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

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

5—Interpretation

- (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 *Parliamentary Remuneration Act 1990*;
- (b) where the member holds a Ministerial or Parliamentary office—the salary to which the member would be entitled under the *Parliamentary Remuneration Act 1990* 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;

co-contribution means a payment made to the Board in respect of a person by the Commissioner of Taxation pursuant to the requirements of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* of the Commonwealth;

co-contribution account means an account established and maintained by the Board as a co-contribution account in accordance with the requirements of this Act;

complying superannuation fund has the meaning given by section 45 of the SIS Act;

contribution means any contribution paid by a member pursuant to the repealed Act or this Act;

death insurance benefit is the death insurance to which a PSS 3 member is entitled by virtue of his or her membership of PSS 3;

deferred superannuation contributions surcharge in relation to a member means the amount that the member is liable to pay the Commissioner of Taxation under section 15(6) of the Superannuation Contributions Tax Act;

eligible child means the child or adopted child—

- (a) of a deceased PSS 1 or PSS 2 member or deceased PSS 1 or PSS 2 member pensioner; or
- (b) of the spouse of a deceased PSS 1 or PSS 2 member or deceased PSS 1 or PSS 2 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;

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 PSS 1 member means a person who was a PSS 1 member immediately before ceasing to be a member;

former PSS 2 member means a person who was a PSS 2 member immediately before ceasing to be a member;

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

invalidity insurance benefit is the invalidity insurance to which a PSS 3 member is entitled by virtue of his or her membership of PSS 3;

judge means a judge of the Supreme Court nominated by the Chief Justice to exercise the powers of a judge under 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 but does not include a non-participating member;

member pensioner means a former member who is entitled to a pension under this Act by virtue of being a PSS 1 member or a PSS 2 member notwithstanding that, at the material time, payment of that pension may be suspended or the pension may be preserved under this Act;

non-participating member means a member of either House of Parliament who has made an election under section 7E;

notional pension—

- (a) in relation to a deceased PSS 1 or PSS 2 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;

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;

PSS 1—see section 7C(1);

PSS 2—see section 7C(2);

PSS 3—see section 7C(3);

PSS 1 member means a member of PSS 1—see section 7D(2);

PSS 1 member pensioner means a member pensioner who was a PSS 1 member immediately before ceasing to be a member;

PSS 2 member means a member of PSS 2—see section 7D(3);

PSS 2 member pensioner means a member pensioner who was a PSS 2 member immediately before ceasing to be a member;

PSS 3 member means a member of PSS 3—see sections 7D(4) and 7F;

putative spouse—see section 7A;

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;

SIS Act means the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

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 PSS 1 or PSS 2 member or deceased member pensioner and first payable on or after the commencement of this Act.

State includes a Territory of the Commonwealth;

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

superannuation salary sacrifice means any salary that a member is sacrificing for the purposes of superannuation under section 4B of the *Parliamentary Remuneration Act 1990*;

surcharge notice means a notice issued by the Commissioner of Taxation under section 15(7) of the *Superannuation Contributions Tax Act*.

- (2) The Governor may, by proclamation, declare any remuneration to which a member is entitled to be additional salary for the purposes of this Act and the Governor may, by proclamation, amend, vary or revoke any such declaration.
- (3) For the purposes of the definition of *basic salary* in subsection (1), the salary to which a member is entitled under the *Parliamentary Remuneration Act 1990* includes the amount of any contribution that the member makes towards the cost of providing an article, motor vehicle, equipment or service by way of a salary sacrifice (as contemplated by section 4A(2) of that Act), the amount of any superannuation salary sacrifice (as contemplated by section 4B of that Act for the relevant period), and the amount of any contribution that the member makes towards the cost of providing an allowance or benefit by way of salary sacrifice (as contemplated by section 6A(2) of that Act).

6—Voluntary and involuntary retirement

- (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
- (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).

- (2) In addition, a former member will be taken to have retired involuntarily if—
- (a) at the conclusion of his or her last term of office as a member of the Parliament (the *preceding term of office*) the former member stood as a candidate for re-election to the same House at the ensuing election but was defeated; and
 - (b) both at the time of his or her election for the preceding term of office and at the ensuing election the former member was—
 - (i) endorsed by the same political party; or
 - (ii) an independent candidate.
- (3) Where a member ceases to be a member otherwise than—
- (a) by death; or
 - (b) on the grounds of invalidity or ill health that prevents the member from being able to carry out the duties of office to a reasonable degree; or
 - (c) in circumstances referred to in subsection (1) or (2),
- that member shall, for the purposes of this Act, be deemed to have retired voluntarily.

7—Computation of service

In computing the length of a member's service for the purposes of PSS 1 or PSS 2 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 (subject to paragraph (f) and to the operation of section 20); and
- (e) subject to this section, only the actual service of a member shall be regarded as service; and
- (f) actual service may include previous service if so provided by another section of this Act (including a section that made provision as to service before its repeal by the *Parliamentary Superannuation (Scheme for New Members) Amendment Act 2005*).

7A—Putative spouses

- (1) For the purposes of this Act, a person is, on a certain date, the *putative spouse* of another person if—
 - (a) he or she is, on that date, cohabiting with the other person as his or her wife or husband de facto and—
 - (i) the person—
 - (A) has been so cohabiting with the other person continuously for the preceding period of 3 years; or
 - (B) has during the preceding period of 4 years so cohabited with the other person for periods aggregating not less than 3 years; or
 - (ii) a child, of whom both persons are the parents, has been born (whether or not the child is still living); or
 - (b) where the 2 persons are of the same sex—he or she is, on that date, cohabiting with the other person in a relationship that has the distinguishing characteristics of a relationship between a married couple (except for the characteristics of different sex and legally recognised marriage and other characteristics arising from either of those characteristics) and the person—
 - (i) has been so cohabiting with the other person continuously for the preceding period of 3 years; or
 - (ii) has during the preceding period of 4 years so cohabited with the other person for periods aggregating not less than 3 years.
- (2) A person whose rights depend on whether—
 - (a) he or she and another person; or
 - (b) two other persons,were, on a certain date, putative spouses one of the other may apply to the District Court for a declaration under this section.
- (3) If it is proved to the satisfaction of the Court that the persons in relation to whom the declaration under this section is sought did, on the date in question, fulfil the requirements of subsection (1), the Court must make a declaration accordingly.
- (4) A declaration may be made under this section—
 - (a) whether or not one or both of the persons in relation to whom the declaration is sought are, or have ever been, domiciled in this State; or
 - (b) despite the fact that one or both of them are dead.
- (5) It must not be inferred from the fact that the Court has declared that two persons were putative spouses one of the other, on a certain date, that they were putative spouses as at any prior or subsequent date.

7B—Restriction on publication of court proceedings

- (1) **Protected information** is information relating to an application under section 7A (including images) that identifies, or may lead to the identification of—
 - (a) an applicant; or
 - (b) a person who is related to, or associated with, an applicant or is, or is alleged to be, in any other way connected in the matter to which the application relates; or
 - (c) a witness in the hearing of the application.
- (2) A person who publishes protected information is guilty of an offence.
Maximum penalty: \$5 000 or imprisonment for 1 year.
- (3) A person who discloses protected information knowing that, in consequence of the disclosure, the information will, or is likely to, be published is guilty of an offence.
Maximum penalty: \$5 000 or imprisonment for 1 year.
- (4) This section does not apply to—
 - (a) the publication or disclosure of material—
 - (i) by the District Court or an employee of the Courts Administration Authority (so long as such publication or disclosure is made in connection with the administrative functions of the Court); or
 - (ii) for purposes associated with the administration of this Act; or
 - (b) the publication in printed or electronic form of material that—
 - (i) consists solely or primarily of the reported judgements or decisions of the Court; or
 - (ii) is of a technical nature designed primarily for use by legal practitioners.
- (5) In this section—

newspaper means a newspaper, journal, magazine or other publication that is published at periodic intervals;

publish means publish by newspaper, radio or television, or on the internet, or by some other similar means of communication to the public.

7C—Arrangement of schemes

- (1) The scheme of superannuation established by this Act in relation to persons who first became members of either House of Parliament of the State before the commencement of the *Parliamentary Superannuation (New Scheme) Amendment Act 1995* (disregarding members who have transferred out of that scheme) will continue as *PSS 1*.
- (2) The scheme of superannuation established by virtue of the enactment of the *Parliamentary Superannuation (New Scheme) Amendment Act 1995* will continue as *PSS 2*.

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- (3) The scheme of superannuation established by virtue of the enactment of the *Parliamentary Superannuation (Scheme for New Members) Amendment Act 2005* will be known as PSS 3.

7D—Membership of schemes

- (1) In this section—

relevant date means the date of the election held to determine membership of the fifty-first Parliament of the State.

- (2) Subject to this section, 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* (other than a member who transferred to PSS 2 by virtue of an election of the kind referred to in subsection (3)(b)) will be a member of PSS 1.

- (3) Subject to this section, a member—

- (a) 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 before the relevant date; or
- (b) who has made an election in accordance with section 35A of this Act (as enacted by the *Parliamentary Superannuation (New Scheme) Amendment Act 1995* and as repealed by the *Parliamentary Superannuation (Scheme for New Members) Amendment Act 2005*),

will be a member of PSS 2.

- (4) A member—

- (a) who first becomes a member of either House of Parliament of the State on or after the relevant date; or
- (b) who, on or after the relevant date, again becomes a member of either House of Parliament of the State after a break in membership of the Parliament (disregarding for the purposes of this paragraph any case where a member's term comes to an end on the dissolution of the House of which he or she is a member or by virtue of a resignation or expires by the effluxion of time and the member is then returned at the election that next follows that dissolution, resignation or expiry, or any case where a member is returned at a joint sitting in prescribed circumstances),

will be a member of PSS 3.

- (5) For the purposes of the cases described in subsection (4)(b)—

- (a) a member may be taken to be returned at an election even if the member, at the relevant election, is returned as a member of the House that is the other House to the House of which he or she was a member before the election; and

- (b) a member is returned at a joint sitting in prescribed circumstances if (and only if) the member is a person who was a member of the Parliament (and a member of PSS 1 or PSS 2) and who is then chosen under section 13 of the *Constitution Act 1934* to be a member of the Legislative Council within 3 months after the date of an election (for either House of Parliament) so that his or her period of not being a member of Parliament does not exceed 6 months.
- (6) Despite a preceding subsection, if—
- (a) a PSS 1 or PSS 2 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, within 3 months—
- (i) after a declaration by the Court that the member has been re-elected; or
- (ii) after re-election following a declaration by the Court that the election was void,
- or within such further period as the Board (in its absolute discretion) allows, makes an election under subsection (7),
- then the member may continue as a member of PSS 1 or PSS 2 (as the case may be).
- (7) An election under this subsection—
- (a) must be made in writing in a manner determined by the Board; and
- (b) subject to any other determination of the Treasurer, must be accompanied by a payment to the Treasurer of—
- (i) 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
- (ii) 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 Part 4 Division 3) following the return made at the original election.
- (8) For the purposes of this Act, the period of service of a member who continues as a PSS 1 or PSS 2 member under subsection (6) will be taken to include—
- (a) 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
- (b) 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.

- (9) If the Treasurer allows a further period to pay an amount under subsection (7), the Treasurer may impose such conditions (including a condition requiring payment of interest on any outstanding amount) as the Treasurer thinks fit, and the member will not be regarded as having complied with that subsection unless the member complies with those conditions.
- (10) The Treasurer may vary or revoke a condition under subsection (9).
- (11) If—
- (a) a PSS 3 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,
- then the member must, in accordance with a determination of the Board, pay to the Treasurer—
- (c) an amount equal to the contributions that the member would have paid under Part 3 Division 3 assuming that the member had been returned in the first instance and been liable to make contributions at the rate that applied to the member immediately before the original election; and
 - (d) an amount equal to the amount (if any) paid to the member pursuant to this Act following the return made at the original election.
- (12) When a member makes a payment under subsection (11)(c), the Treasurer must pay into the PSS 3-Government Contributions Division of the Fund, and the Board must credit to the member's Government contribution account, an amount equal to the amount that would have been payable under Part 3 Division 4 assuming that the member had been returned in the first instance and applying such other assumptions as the Board, with the agreement of the Treasurer, determines.
- (13) The fact that a former PSS 1 or former PSS 2 member who returns to Parliament then becomes a PSS 3 member under this section does not prejudice any entitlement that he or she may have under this Act with respect to his or her former membership of PSS 1 or PSS 2 before the break in membership of the Parliament.

7E—PSS 3 member may elect to participate in other schemes

- (1) In this section—

eligible member means a PSS 3 member, other than a person who is a member of PSS 3 by virtue of section 7D(4)(b) or 7F;

fund includes a scheme or account;

prescribed period, in relation to an eligible member, means the period of 3 months from the date on which the person became a PSS 3 member;

RSA has the same meaning as in the *Retirement Savings Accounts Act 1997* of the Commonwealth;

self managed superannuation fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

specified fund means a fund specified in a notice under subsection (4)(a) or (10)(a).

- (2) An eligible member may, by notice in writing furnished to the Board during the prescribed period, elect to transfer his or her superannuation arrangements under this Act to a fund that complies with subsection (3).
- (3) A fund (a *complying fund*) complies with this subsection if it is—
 - (a) a complying superannuation fund, other than a self managed superannuation fund; or
 - (b) an RSA.
- (4) A notice under subsection (2) must—
 - (a) specify the name of, and contact details for, the relevant fund; and
 - (b) specify the date from which the election is to take effect, being a date—
 - (i) that is at least 14 days but not more than 2 months from the date on which the notice is furnished to the Board; and
 - (ii) that coincides with a date on which salary is due to be paid to the member; and
 - (c) be accompanied by evidence that the fund will accept contributions under this section; and
 - (d) contain or be accompanied by such other information (if any) as may be required by the Board.
- (5) If a person makes an election under subsection (2)—
 - (a) the person will cease to be a member of PSS 3; and
 - (b) the Board will cease to maintain (or, if relevant, will not be required to establish) an account in the name of the person under this Act (and Part 2B will cease to apply in relation to the person); and
 - (c) any amount standing to the credit of the person's contribution account or Government contribution account (if any) must be carried over to the specified fund; and
 - (d) the person will cease to be liable to make contributions under this Act; and
 - (e) no entitlement or benefit will be payable to the person, or to any other person in respect of the person, under this Act (other than as provided by paragraph (f)); and
 - (f) the Treasurer must, while the person is a member of either House of Parliament, make contributions to the specified fund for that person's benefit, in accordance with subsection (6).
- (6) For the purposes of subsection (5)(f), the contributions must be made in accordance with the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth as if the person were an employee of the State (see section 12(5) of that Act) and in order to avoid having an individual superannuation guarantee shortfall in respect of the person within the meaning of that Act.
- (7) An eligible member cannot make an election under this section if the Board has been served with a splitting instrument within the meaning of Part 4A in respect of the member's superannuation interest under this Act.

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- (8) An election under subsection (2) is irrevocable.
- (9) However, a person may, by notice in writing furnished to the Board, vary an election under this section so as to select another complying fund for the purposes of this section.
- (10) A notice under subsection (9) must—
- (a) specify the name of, and contact details for, the new fund; and
 - (b) be accompanied by evidence that the new fund will accept contributions under this section; and
 - (c) contain or be accompanied by such other information (if any) as may be required by the Board.
- (11) A notice under subsection (9) will take effect on a date determined by the Board after consultation with the person who has furnished the notice.
- (12) A person who makes an election under this section does not become, by virtue of any liability under this section, a member of the Southern State Superannuation Scheme.
- (13) There can only be 1 fund that applies in relation to a member under this section at any particular time.
- (14) If—
- (a) a person makes an election under this section; and
 - (b) the specified fund applying for the purposes of the election—
 - (i) ceases to exist; or
 - (ii) ceases to accept contributions under this section; or
 - (iii) ceases to be a complying fund; and
 - (c) the person does not, within the prescribed period, vary the election to specify another complying fund for the purposes of this section,
- then the Treasurer may, after consultation with the Board, specify another complying fund (which will then be taken to be a fund specified by the person for the purposes of this section).

7F—Special provisions relating to rollovers for PSS 1 and PSS 2 members

- (1) The Board must, on application under this section, permit—
- (a) a PSS 1 or PSS 2 member for whom an amount of money may be carried over from another superannuation fund or scheme; or
 - (b) a former PSS 2 member who has a lump sum preserved under Part 4,
- to become a PSS 3 member in order to establish a rollover account for the person under this Act.
- (1a) If a PSS 1 or PSS 2 member for whom a rollover account has been established is, before the establishment of the account, a member of PSS 3 by virtue of section 7G, the member will, on the establishment of the account for the member, be taken for the purposes of this Act to be a member of PSS 3 by virtue of both this section and section 7G.

- (2) The following provisions apply in connection with the operation of subsection (1):
- (a) in the case of a former PSS 2 member under subsection (1)(b)—the preserved lump sum amount will, when paid into the rollover account, be taken to be a rollover component under Part 4 Division 2A (and will cease to be a preserved amount under another Division of Part 4);
 - (b) Part 3 Divisions 3 and 4 will not apply to a person who is a PSS 3 member by virtue only of this section;
 - (c) a person who is a PSS 3 member by virtue only of this section will not be entitled to any of the following under Part 4 Division 2A:
 - (i) a Government-funded component of benefits;
 - (ii) a member-funded component of benefits;
 - (iii) an invalidity/death insurance benefit;
 - (d) the Governor may, by regulation, make any other provision as the Governor thinks fit, including by providing that other provisions of this Act do not apply to a person who is a PSS 3 member by virtue of this section, or apply to such a member subject to any modifications prescribed by the regulations.

7G—Special provisions relating to salary sacrifice by members

- (1) The Board must, on application under this section, permit a PSS 1 or PSS 2 member who has elected to make a superannuation salary sacrifice to become a PSS 3 member in order to establish a Government contribution account for the member under this Act.
- (2) If a PSS 1 or PSS 2 member who has elected to make a superannuation salary sacrifice is, before making the election, a member of PSS 3 by virtue of section 7F, the member will be taken for the purposes of this Act to be a member of PSS 3 by virtue of both section 7F and this section.
- (3) The following provisions apply in connection with the operation of subsection (1):
- (a) Part 3 Division 3 and section 14C(1) will not apply to a PSS 1 or PSS 2 member who is a PSS 3 member by virtue of this section;
 - (b) a PSS 1 or PSS 2 member who is a PSS 3 member by virtue of this section will not be entitled to either of the following under Part 4 Division 2A:
 - (i) a member-funded component of benefits;
 - (ii) an invalidity/death insurance benefit;
 - (c) the Governor may, by regulation, make any other provision as the Governor thinks fit, including by providing that other provisions of this Act do not apply to a PSS 1 or PSS 2 member who is a PSS 3 member by virtue of this section, or apply to such a member subject to any modifications prescribed by the regulations.

Part 2—The South Australian Parliamentary Superannuation Board

8—The Board

- (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.

9—The Board's membership

- (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).

10—Procedure at meetings of the Board

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

11—Availability of Public Service employees

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.

12—Report

- (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

13—The Fund

- (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.
- (3a) The Superannuation Funds Management Corporation of South Australia must establish—
 - (a) a distinct part of the Fund under the name *PSS 3—Government Contributions Division*; and
 - (b) a distinct part of the Fund proportioned to the aggregate balance of co-contribution accounts.
- (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 the entitlements of PSS 1 and PSS 2 members are fully funded as required; and
 - (c) any amount that is received by the Treasurer under this Act on account of money carried over from another superannuation fund or scheme and to be paid into a rollover account of a member; and
 - (d) the contributions required under sections 7G and 14C (to be held in the PSS 3—Government Contributions Division); and
 - (da) any co-contribution paid to the Board on behalf of a member (but received by the Treasurer on behalf of the Board) (to be paid into the part of the Fund proportioned to the aggregate of co-contribution accounts); and

- (e) any amount that is required to be paid to satisfy the payment of an invalidity/death insurance benefit; and
 - (f) any other amount that must be credited to the Fund by the Treasurer under another provision of this Act.
- (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.

Part 2B—Members' contribution accounts

13A—Members' contribution accounts

- (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.

13AB—Rollover accounts

- (1) The Board must maintain a rollover account in the name of—
 - (a) a PSS 3 member (including such a member who is also a PSS 1 or PSS 2 member who has made application under section 7F or is a PSS 3 member by virtue of section 7G) for whom an amount of money has been carried over from another superannuation fund or scheme; or
 - (b) a PSS 3 member who is a former PSS 2 member who has made application under section 7F in relation to a preserved amount.
- (2) A PSS 3 member's rollover account must be credited with the relevant amount under subsection (1) and must be debited with any payment that is, in pursuance of this Act, to be charged against the account.
- (3) The Board may debit against a PSS 3 member's rollover account an administrative charge fixed by the Board.

- (4) The Board may, for the purposes of subsection (3), fix different charges depending on the balance of members' accounts or any other relevant factor.

13B—Accretions to members' accounts

- (1) At the end of each financial year, each member's contribution account and rollover account (if any) 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 relevant financial year; and
 - (b) if a PSS 3 member has made a nomination under subsection (2a), the net rate of return achieved by the classes of investments, or the combination of classes of investments, nominated by the member.
- (2a) If the Fund is invested in different classes of investments, the Board must permit a PSS 3 member, on such terms and conditions as the Board thinks fit, to nominate the class of investments, or combination of classes of investments, for the purpose of determining the rate of return under this section.
- (2b) A PSS 3 member cannot nominate a class of investments, or a combination of classes of investments, under subsection (2a) if he or she does not at the same time nominate the same class or combination of classes of investments under section 14D(4) (unless he or she is a PSS 3 member by virtue of section 7F).
- (3) Where, in pursuance of subsection (2)(a), 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.

13C—Rollover of money from other funds or schemes

Money that is rolled over to PSS 3 from another superannuation fund or scheme must be paid to the Treasurer.

13D—Co-contribution accounts

- (1) The Board must—
- (a) establish a co-contribution account in the name of a member in respect of whom a co-contribution has been paid to the Board; and

- (b) credit the account with the amount of any co-contribution paid to the Board in respect of the member.
- (2) The Board is to determine the terms and conditions on which the balance of a member's co-contribution account is, subject to subsection (3), payable to—
 - (a) the member; or
 - (b) if the member dies before the payment is made—
 - (i) the member's spouse; or
 - (ii) if the member does not have a spouse—the member's estate.
- (3) A person is entitled to payment of an amount standing to the credit of a co-contribution account only to the extent that the payment can be made in accordance with the SIS Act.

Part 3—Contributions

Division 1—Preliminary

14—Preliminary

Every member is liable to make contributions to the Treasurer in accordance with this Act.

Division 2—Contributions by members of PSS 1 or PSS 2

14A—Contributions by members of PSS 1 or PSS 2

- (1) Subject to subsection (2), the contributions payable by PSS 1 or PSS 2 members will be 11.5 per cent of the basic salary and additional salary (if any) payable to each member and must be deducted by the Treasurer when paying salary to members.
- (2) The contribution payable by a PSS 1 or PSS 2 member whose period of service as a member of Parliament is equal to or exceeds 20 years and 1 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).

Division 3—Contributions by members of PSS 3

14B—Contributions by members of PSS 3

- (1) Subject to this Act, a PSS 3 member may elect to make contributions to the Treasurer at a whole number percentage of the combined value of the basic salary and additional salary (if any) payable to the member and such contributions must be deducted by the Treasurer when paying salary to the member.
- (2) A PSS 3 member may, from time to time, elect to vary a rate of contribution under subsection (1).
- (3) An election under subsection (2) must be made to the Board in writing and will operate from a date to be fixed by the Board.
- (4) In addition, a PSS 3 member may make additional monetary contributions to the Treasurer under this subsection that are not related to the member's salary.

- (5) The amount of each contribution under subsection (4) must be equal to or exceed the amount prescribed by the regulations for the purposes of subsection (4).

Division 4—Government contributions with respect to PSS 3

14C—Government contributions

- (1) Within 7 days after basic salary and additional salary (if any) is paid to a PSS 3 member, the Treasurer must pay into the PSS 3—Government Contributions Division of the Fund an amount calculated as follows:

$$A = S \times \frac{15.4}{100}$$

Where—

A is the amount to be paid;

S is the amount of basic salary and additional salary (if any) paid to (or in relation to) the member (including the amount of any salary sacrifice under the *Parliamentary Remuneration Act 1990* that applies for the relevant period).

- (2) In addition, if a PSS 3 member (including a person who is a member of PSS 3 by virtue of section 7G) has elected to make a superannuation salary sacrifice that applies in relation to a period in respect of which salary is paid to the member, the Treasurer must, within 7 days after payment of that salary to the member, pay into the PSS 3—Government Contributions Division of the Fund the amount so sacrificed.

14D—Government contribution accounts

- (1) The Board must maintain Government contribution accounts in the names of all PSS 3 members (including PSS 1 and PSS 2 members who are members of PSS 3 by virtue of section 7G).
- (2) A PSS 3 member's Government contribution account must be credited with amounts that are equivalent to the amounts paid under section 14C in respect of the member.
- (3) At the end of each financial year, each PSS 3 member's Government contribution account will be adjusted to reflect a rate of return determined by the Board—
- having regard to the net rate of return achieved by investment of the PSS 3—Government Contributions Division of the Fund over the relevant financial year; and
 - if the member has made a nomination under subsection (4), having regard to the net rate of return on the nominated class of investments, or combination of classes of investments, determined by the Board under section 13B(2)(b).
- (4) If the PSS 3—Government Contributions Division of the Fund is invested in different classes of investments, the Board must permit a PSS 3 member, on such terms and conditions as the Board thinks fit, to nominate the class of investments, or combination of classes of investments, for the purpose of determining the rate of return under subsection (3).

- (5) A PSS 3 member cannot nominate a class of investments, or a combination of classes of investments, under subsection (4) if he or she does not at the same time nominate the same class or combination of classes of investments under section 13B(2a) (and any variation of a nominated class under that section will then have effect for the purposes of this section).
- (6) If, when the Government component is to be paid under Part 4 Division 2A with respect to a PSS 3 member, the rate of return for the relevant financial year has not been determined under this Act, the rate of return will be equivalent to the rate of return on investments of the PSS 3—Government Contributions Division of the Fund estimated by the Board for that year (and there will be no adjustment when the rate of return is subsequently determined).
- (7) An administrative charge to be fixed by the Board must be debited against the Government contribution accounts of PSS 3 members (and different charges may be fixed depending on the balance of members' accounts, the level of invalidity/death insurance benefit that may apply to members under this Act, or any other relevant factor).
- (8) A charge to be fixed by the Board may also be debited against the Government contribution account of a PSS 3 member who, after nominating a class of investments under subsection (4), subsequently varies the nomination.
- (9) A reference in this section to *rate of return* is a reference to a positive or a negative rate of return.

Part 4—Pension and benefits for former members

Division 1—Entitlement to pension

15—Application of Division

This Division applies in relation to PSS 1 and PSS 2 members.

16—Entitlement to a pension on retirement

A former PSS 1 or PSS 2 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.

17—Amount of pension for PSS 1 member pensioners

- (1) Subject to this section, the amount of annual pension payable to a former PSS 1 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 PSS 1 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.

17A—Amount of pension for PSS 2 member pensioners

- (1) Subject to this section, the amount of the annual pension payable to a former PSS 2 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 PSS 2 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 PSS 2 member under this Act will be—

- (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 PSS 2 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.

17B—Supplementary provisions

- (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.

18—Invalidity retirement

- (1) Where a PSS 1 or PSS 2 member satisfies a judge that he is unable to continue as a member on the grounds of invalidity that prevents the member from being able to carry out the duties of office to a reasonable degree, 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.

19—Reduction of pension in certain circumstances

- (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 PSS 2 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).
- (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.

19A—Preservation of pension in certain cases

- (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:
 - (aa) the Board must, not less than 6 months before the member pensioner's 55th birthday, notify the member pensioner in writing of the member pensioner's entitlement to require the payment of a pension under paragraph (a);
 - (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;
 - (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).
 - (4) Section 19(1) will not apply in relation to a pension payable under subsection (3)(a).

20—Suspension of pension

- (1) If a member pensioner again becomes a member of either House of Parliament, the pension payable to that pensioner will be suspended during the period for which the member is again a member of the Parliament (and will then become payable again after he or she ceases to be a member of the Parliament on the basis of his or her previous service).

Division 2—Commutation of pension

21—Commutation of pension

- (1) Subject to this Division, a former PSS 1 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 PSS 2 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.

21A—Application of section 21 to certain member pensioners

In the application of section 21 to a PSS 1 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%".

Division 2A—Superannuation benefits for PSS 3 members

21AB—Application of Division

This Division applies in relation to PSS 3 members.

21AC—Interpretation

In this Division—

Government-funded component in relation to a member (other than a member who is a PSS 3 member by virtue only of section 7F) means the amount standing to the credit of the member's Government contribution account;

member-funded component in relation to a member (other than a member who is a PSS 3 member by virtue of section 7F or 7G) means the amount standing to the credit of the member's contribution account;

rollover component in relation to a member means the amount standing to the credit of the member's rollover account.

21AD—Retirement at or above age 55

- (1) A PSS 3 member who—
- (a) has retired (either voluntarily or involuntarily); and
 - (b) has reached the age of 55 years,

is entitled to payment of the member-funded component and the Government-funded component and to payment of the rollover component (if any) to the extent that that payment can be made in accordance with the SIS Act.

- (2) Subject to subsection (3), a PSS 3 member who does not apply to the Board in writing for the payment of an entitlement under subsection (1) within 3 months after retirement will be taken to have preserved the relevant components and section 21AF will apply to and in relation to them.
- (3) A PSS 3 member who has retired and reached the age of 65 years must immediately be paid any entitlement under subsection (1).
- (4) However, a rollover component, or part of a rollover component, that cannot be paid in accordance with the SIS Act must be preserved and section 21AF will apply to and in relation to it.
- (5) This section does not apply to or in relation to a case involving the death of a PSS 3 member (see section 21AH) and does not derogate from the ability of a member to apply for a benefit under section 21AG (rather than taking a benefit under this section).

21AE—Cessation of membership before age 55

- (1) Subject to this section, a PSS 3 member who retires (either voluntarily or involuntarily) before reaching the age of 55 years may—
 - (a) elect—
 - (i) to take immediately the member-funded component; or
 - (ii) to preserve the member-funded component; or
 - (iii) to carry the member-funded component over to another superannuation fund or scheme that is a complying superannuation fund (as a preserved employee component); and
 - (b) elect—
 - (i) to preserve the Government-funded component; or
 - (ii) to carry the Government-funded component over to another superannuation fund or scheme that is a complying superannuation fund (as a preserved employer component); and
 - (c) elect—
 - (i) to take immediately the rollover component (if any) to the extent that payment of that component can be made in accordance with the SIS Act; or
 - (ii) to preserve the rollover component; or
 - (iii) to carry the rollover component over to another superannuation fund or scheme that is a complying superannuation fund.
- (2) A PSS 3 member who does not inform the Board in writing of his or her election under subsection (1) within 3 months after ceasing to be a member will be taken to have elected to preserve the relevant components and section 21AF will apply to and in relation to them.
- (3) If the Board is of the opinion that the limitation period referred to in subsection (2) would unfairly prejudice a member, the Board may extend the period that applies to the member.

- (4) A PSS 3 member who has elected, or has been taken to have elected, to preserve his or her member-funded component, Government-funded component or rollover component and to whom the component has not been paid under section 21AF, may elect to withdraw the election and to elect to carry the component over to a complying superannuation fund.
- (5) If 2 or 3 components have been preserved, a member cannot make an election under subsection (4) to carry 1 or 2 but not both or all of them over.
- (6) If a member elects to carry over a component to a complying superannuation fund, the following provisions apply:
 - (a) the member must satisfy the Board by such evidence as it may require that he or she has been admitted to membership of the fund; and
 - (b) on being so satisfied the Board will authorise payment of the component on behalf of the member to the fund.
- (7) If a PSS 3 member has ceased to be a member of the Parliament of the State and has elected to preserve the member-funded, Government-funded or rollover component but has subsequently again become a member of the Parliament, the Board may maintain separate member's contribution accounts or Government contribution accounts or rollover accounts or a combined member's contribution account or Government contribution account or rollover account in the name of the member.
- (8) This section does not apply to or in relation to a case involving—
 - (a) a cessation of membership on the ground of invalidity (in circumstances entitling the member to a benefit under section 21AG); or
 - (b) the death of a PSS 3 member (see section 21AH).

21AF—Preservation of components

- (1) If a superannuation component has been preserved under section 21AD(2) or (4) or 21AE, then the following provisions will apply (subject to subsection (2)):
 - (a) the Board must in relation to a component preserved under section 21AE, not less than 6 months before the relevant member's 55th birthday (unless that period has already been reached), notify the relevant member in writing of his or her entitlement to require the Board to make a payment under paragraph (b);
 - (b) the relevant member may at any time after reaching 55 years of age require the Board to authorise payment of the component and, if no such requirement has been made on or before the date on which the member reaches 65 years of age, the Board will authorise payment of the component to the member;
 - (c) if the relevant member has become incapacitated and satisfies the Board that his or her incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent, the Board will authorise payment of the component to the member;
 - (d) if the relevant member dies, the component will be paid to the spouse of the deceased member or, if he or she left no surviving spouse, to the 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).

- (2) Subsection (1) applies to a rollover component subject to restrictions imposed by the SIS Act.

21AG—Cessation of membership on ground of invalidity

- (1) If—

- (a) a PSS 3 member ceases to be a member of the Parliament of the State before reaching the age of 70 years; and
- (b) a judge is satisfied that the cessation is due to ill health that prevents the member from being able to carry out the duties of office to a reasonable degree,

then the member is entitled to benefits made up of the following components:

- (c) the member-funded component; and
- (d) the Government-funded component; and
- (e) the rollover component (if any); and
- (f) subject to this section, the invalidity insurance benefit (if any) for PSS 3 members (see section 21AI).

- (2) The invalidity insurance benefits are not payable unless the Board is satisfied that the member's incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent.

- (3) The invalidity insurance benefit is not payable to a member within 1 year after becoming a PSS 3 member unless the Board is satisfied (by the production of such evidence as the Board thinks fit) that—

- (a) the invalidity is attributable to a medical condition arising after the member became a PSS 3 member and is not attributable (or is not attributable in any material degree) to a medical condition existing before the member became a PSS 3 member; or
- (b) the invalidity is attributable to a medical condition existing before the member became a PSS 3 member in a situation where, at the time of becoming a PSS 3 member, there was no reason for the member to believe that such a condition existed; or
- (c) the invalidity was caused by accidental injury.

- (4) A member who claims to be entitled to benefits under this section (or a person acting on his or her behalf) must make the claim (being a claim for benefits that have not otherwise been paid) to the Board within 3 months after ceasing to be a member of the Parliament of the State.

21AH—Death of PSS 3 member

- (1) If a PSS 3 member ceases to be a member of the Parliament of the State by reason of his or her death—
- (a) if the deceased member is survived by a spouse—a payment will be made to the spouse;

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Division 2A—Superannuation benefits for PSS 3 members

- (b) if the deceased member is not survived by a spouse—a payment will be made to the member's estate.
- (2) A payment under subsection (1)(a) or (b) is to be made up of the following components:
- (a) the member-funded component; and
 - (b) the Government-funded component; and
 - (c) the rollover component (if any); and
 - (d) subject to this section, the death insurance benefit (if any).
- (3) A surviving spouse will not be entitled to a benefit under this section if section 23J applies to the spouse.
- (4) The death insurance benefit is not payable in respect of a member who dies within 1 year after becoming a PSS 3 member unless the Board is satisfied (by the production of such evidence as the Board thinks fit) that—
- (a) the death is attributable to a medical condition arising after the member became a PSS 3 member and is not attributable (or is not attributable in any material degree) to a medical condition existing before the member became a PSS 3 member; or
 - (b) the death is attributable to a medical condition existing before the member became a PSS 3 member in a situation where, at the time of becoming a PSS 3 member, there was no reason for the member to believe that such a condition existed; or
 - (c) death was caused by accidental injury.
- (5) If a PSS 3 member who has died is not survived by a spouse and probate or letters of administration in relation to the deceased's estate have not been granted to any person, the Board may use the amount payable under this section, or such part of it as is required, to pay the funeral expenses of the deceased member or to reimburse a person who has paid those expenses.
- (6) If—
- (a) a PSS 3 member ceases to be a member of the Parliament of the State for any reason other than his or her death; and
 - (b) the member dies within 1 month after that cessation,
- the member's spouse or estate is entitled to the death insurance benefit (if any) that the spouse or estate would have been entitled to if the member had ceased to be a member of Parliament by virtue of the member's death unless—
- (c) an invalidity insurance benefit has been paid; or
 - (d) the member has taken his or her own life.

21AI—Determination of invalidity/death insurance

- (1) For the purposes of this Division, a PSS 3 member is entitled to the following level of invalidity/death insurance by virtue of his or her membership of PSS 3:

$$B = F \left(BS + \frac{AS}{4} \right) - GCA$$

Where—

B is the amount of benefit;

F is—

- (a) in the case of a PSS 3 member who has not reached the age of 66 years at the relevant time—5;
- (b) in the case of a PSS 3 member who is 66 years of age at the relevant time—4;
- (c) in the case of a PSS 3 member who is 67 years of age at the relevant time—3;
- (d) in the case of a PSS 3 member who is 68 years of age at the relevant time—2;
- (e) in the case of a PSS 3 member who is 69 years of age at the relevant time—1;
- (f) in the case of a PSS 3 member who has reached the age of 70 years at the relevant time—0;

BS is the member's basic salary at the relevant time (expressed as an annual salary);

AS is—

- (a) in the case of a member who has held a prescribed office at any time—an amount arrived at by taking the rate of remuneration for the highest prescribed office that the member held, being the rate applying to the holder or holders of such an office immediately before the relevant time, and—
 - (i) in the case of a member who held prescribed offices for a total period exceeding 4 years, or who held any prescribed office immediately before the relevant time—applying that rate over a period of 4 years;
 - (ii) in any other case—applying that rate over the period or periods over which the member held any prescribed office before the relevant time;
- (b) in any other case—0;

GCA is the amount standing to the credit of the member's Government contribution account at the relevant time, less any amount credited to that account due to superannuation salary sacrifice payments under section 14C(2).

- (2) For the purposes of subsection (1), the **relevant time** is—
- (a) in the case of invalidity insurance—the date on which the relevant member ceases to be a member of the Parliament of the State;
 - (b) in the case of death insurance—the date on which the relevant member dies or, if the relevant member died after leaving the Parliament of the State (see section 21AH(6)), the date on which he or she ceased to be a member of the Parliament of the State.

- (3) If an entitlement under this section would be a negative number (or zero), there is no entitlement.

Division 3—Related matters

22—Other benefits under PSS 1

- (1) Where a PSS 1 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.

22A—Other benefits under PSS 2

- (1) Where a PSS 2 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 a Government-funded 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 Government-funded 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 Government-funded 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—

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- (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 Government-funded 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 Government-funded 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 Government-funded 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.
- (5) The following provisions apply to the payment of a component preserved by or under subsection (4):
- (aa) the Board must, not less than 6 months before the former member's 55th birthday, notify the former member in writing of the former member's entitlement to require payment of the component under paragraph (a);
 - (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 Government-funded 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.

23—Pension paid for limited period

(1) If—

- (a) a PSS 1 or PSS 2 member ceases to be a member of the Parliament of the State; and
- (b) either immediately or after a period of preservation of the former member's benefits—
 - (i) a pension is paid under this Act to the former member; or
 - (ii) a pension is paid under this Act to the former member and then, on his or her death, a pension is paid under this Act to his or her spouse or an eligible child (or both); or
 - (iii) the cessation of membership is by reason of his or her death and a pension is paid under this Act to his or her spouse or an eligible child (or both); or
 - (iv) the former member dies after a period of preservation before receiving a pension and a pension is paid under this Act to his or her spouse or an eligible child (or both); and
- (c) the pension, or the last of the pensions to be payable, ceases before the expiration of the period of 4.5 years after the pension, or the first of the pensions, commenced and no actual or prospective right to a pension exists and no other benefit is payable under this Act,

an amount determined in accordance with subsection (2) or (2a) (as the case requires) is payable to the former member's estate.

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- (2) The amount referred to in subsection (1) is the amount of the pension or pensions that would have been payable to, or in relation to, the former member during the period referred to in subsection (1)(c) if the pension or pensions had not ceased, reduced by—
- (a) the amount of the lump sum, or the aggregate of the lump sums, (if any) paid on commutation of the pension or pensions; and
 - (b) the amount of the pension or pensions actually paid to, or in relation to, the former member.
- (2a) However, if a pension was paid to 1 or more eligible children but not to a spouse, the amount referred to in subsection (1) is the amount of the pension or pensions that would have been payable to, or in relation to, the former member during the period referred to in subsection (1)(c) if—
- (a) a pension had been payable to a spouse of the former member during that period (in addition to any pension payable to the former member or an eligible child); and
 - (b) the pension or pensions had not ceased,
- reduced by—
- (c) the amount of the lump sum, or the aggregate of the lump sums, (if any) paid on commutation of the pension or pensions; and
 - (d) the amount of the pension or pensions actually paid to, or in relation to, the former member.
- (3) When computing the amount of the pension or pensions that would have been payable during the period referred to in subsection (1)(c)—
- (a) it will be assumed that the pension or pensions were not reduced by commutation; and
 - (b) the provisions of this Act for indexation of pensions will be ignored.
- (4) For the purposes of this section, if the cessation under subsection (1)(a) relates to a PSS 1 or PSS 2 member who had been a member of the Parliament, then ceased to be a member and then, after a period of time, returned as a member and has again ceased to be a member, then any previous cessation of service, and any previous benefits paid on account of that cessation, will be disregarded.

23AA—Commutation to pay deferred superannuation contributions surcharge—pension entitlements

- (1) The Board will, on the application of a former PSS 1 or PSS 2 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) a PSS 1 or PSS 2 member, or a former PSS 1 or PSS 2 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 PSS 1 or PSS 2 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
 - (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*.

23AAB—Commutation to pay deferred superannuation contributions surcharge—lump sum entitlements

(1) In this section—

prescribed member means—

- (a) a former PSS 2 member who has an amount preserved under this Part by virtue of his or her membership of PSS 2; or
 - (b) a PSS 3 member, or a former PSS 3 member.
- (2) A prescribed member who is liable for a deferred superannuation contributions surcharge as a result of a benefit becoming payable to the prescribed member may apply to the Board, in accordance with this section—
- (a) to receive part of the benefit in the form of a commutable pension; and
 - (b) to fully commute the pension.
- (3) A prescribed member who has become entitled to a benefit, or will shortly become entitled to a benefit, may—
- (a) estimate the amount of the surcharge the prescribed member will become liable to pay (the *estimated surcharge amount*); and
 - (b) request the Board, in the approved form, to—
 - (i) withhold from the prescribed member's benefit an amount equal to the estimated surcharge amount (the *withheld amount*); and
 - (ii) pay the balance of the benefit to the prescribed member (being, in the case of a benefit to which the prescribed member is yet to become entitled, a payment after the entitlement arises),

and the Board must, subject to subsection (5), comply with the prescribed member's request.

(4) If a prescribed member has made a request under subsection (3)(b), the prescribed member must, before the expiration of 2 months following the issue of a surcharge notice in respect of the prescribed member, advise the Board in the approved form that the notice has been issued and the Board must, within 7 days of receiving that advice—

- (a) convert into a pension—
 - (i) if the amount of the surcharge payable by the prescribed member is less than the withheld amount—a portion of the withheld amount equal to the amount payable; or
 - (ii) in any other case—the whole of the withheld amount; and
- (b) immediately after converting the withheld amount, or a portion of the withheld amount, into a pension under paragraph (a)—commute the pension; and
- (c) pay to the prescribed member—

- (i) the lump sum resulting from the commutation of the pension; and
 - (ii) the balance (if any) of the withheld amount.
- (5) The Board may reject an application under subsection (2) if—
 - (a) it is not satisfied that, if the application were accepted, the resulting lump sum will be applied in payment of the surcharge; or
 - (b) the prescribed member fails to satisfy the Board that the prescribed member has, or will have, a surcharge liability to the Commissioner of Taxation.
- (6) The factors to be applied in—
 - (a) the conversion of a withheld amount (or part of a withheld amount) into a pension; and
 - (b) the commutation of a pension,will be determined by the Treasurer on the recommendation of an actuary.

23AAC—Commutation to pay deferred superannuation contributions surcharge following death of member

- (1) In this section—

prescribed member has the same meaning as in section 23AAB.
- (2) If a prescribed member who is liable for a deferred superannuation contributions surcharge dies—
 - (a) having made a request of the Board under section 23AAB for part of his or her benefit to be withheld but before receiving a surcharge notice; or
 - (b) having received a surcharge notice but before requesting commutation of his or her pension under section 23AAB,the prescribed member's spouse or, if the prescribed member is not survived by a spouse, the prescribed member's legal representative, may, before the expiration of the period of 2 months immediately following the prescribed member's death or the issue of the surcharge notice (whichever is the later), apply to the Board—
 - (c) to receive the amount withheld by the Board on behalf of the deceased prescribed member under section 23AAB in the form of a commutable pension; and
 - (d) to fully commute the pension.
- (3) The Board must, on receipt of an application under subsection (2)—
 - (a) convert into a pension—
 - (i) if the amount of the surcharge payable by the spouse or estate is less than the withheld amount—a portion of the withheld amount equal to the amount payable; or
 - (ii) in any other case—the whole of the withheld amount; and
 - (b) immediately after converting the withheld amount, or a portion of the withheld amount, into a pension under paragraph (a)—commute the pension; and

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- (c) pay to the spouse or estate—
- (i) the lump sum resulting from the commutation of the pension; and
 - (ii) the balance (if any) of the withheld amount.
- (4) If a prescribed member dies without having made a request under section 23AAB, the prescribed member's spouse or, if the prescribed member is not survived by a spouse, the prescribed member's legal representative, may—
- (a) estimate the amount of the surcharge the spouse or estate will become liable to pay (the *estimated surcharge amount*); and
 - (b) request the Board, in the approved form, to—
 - (i) withhold from the spouse's benefit or the benefit payable to the estate an amount equal to the estimated surcharge amount (the *withheld amount*); and
 - (ii) pay the balance of the benefit to the spouse or estate,and the Board must, subject to subsection (7), comply with the request.
- (5) An application under subsection (4) must be made in writing to the Board before payment of the benefit to the spouse or legal representative.
- (6) The spouse or legal representative must, before the expiration of 2 months following the issue of a surcharge notice in respect of the member, advise the Board in the approved form that the notice has been issued and the Board must, within 7 days of receiving that advice—
- (a) convert into a pension—
 - (i) if the amount of the surcharge payable by the spouse or estate is less than the withheld amount—a portion of the withheld amount equal to the amount payable; or
 - (ii) in any other case—the whole of the withheld amount; and
 - (b) immediately after converting the withheld amount, or a portion of the withheld amount, into a pension under paragraph (a)—commute the pension; and
 - (c) pay to the spouse or estate—
 - (i) the lump sum resulting from the commutation of the pension; and
 - (ii) the balance (if any) of the withheld amount.
- (7) The Board may reject an application under subsection (2) or (4) if it is not satisfied that, if the application were accepted, the resulting lump sum will be applied in payment of the surcharge or be used to reimburse the deceased prescribed member's estate, or the spouse or other person who has paid the surcharge on behalf of the estate.
- (8) The factors to be applied in—
- (a) the conversion of a withheld amount (or part of a withheld amount) into a pension; and
 - (b) the commutation of a pension,

will be determined by the Treasurer on the recommendation of an actuary.

(9) In this section—

legal representative, in relation to a deceased prescribed member, means a person—

- (a) holding office as executor of the will of the deceased prescribed member where probate of the will has been granted or resealed in South Australia or any other State or a Territory; or
- (b) holding office in South Australia or any other State or a Territory as administrator of the estate of the deceased prescribed member.

23AAD—Withheld amount

An amount withheld under section 23AAB or 23AAC—

- (a) must be retained in the PSS 3—Government Contributions Division of the Fund; and
- (b) will be credited with interest at the rate of return determined by the Board under section 14D(3); and
- (c) may be paid to the prescribed member (or the prescribed member's spouse or legal representative)—
 - (i) in accordance with section 23AAB or 23AAC; or
 - (ii) at the direction of the Board if the Board—
 - (A) has not, within 2 years of withholding the amount, received advice that a surcharge notice has been issued in respect of the prescribed member; or
 - (B) considers, at any time, there is other good reason for doing so.

Part 4A—Family Law Act provisions

23A—Purpose of this Part

The purpose of this Part is to facilitate the division under the *Family Law Act 1975* of the Commonwealth of superannuation interests between spouses who have separated.

23B—Interpretation

In this Part, unless the contrary intention appears—

Commonwealth regulations means the *Family Law (Superannuation) Regulations 2001* (No. 303 as amended) of the Commonwealth;

eligible person, in relation to the superannuation interest of a member, has the same meaning as in section 90MZB of the *Family Law Act 1975* of the Commonwealth;

flag lifting agreement has the same meaning as in Part VIIIB of the *Family Law Act 1975* of the Commonwealth;

growth phase has the same meaning as in the Commonwealth regulations;

member spouse has the same meaning as in Part VIIIB of the *Family Law Act 1975* of the Commonwealth;

non-member spouse has the same meaning as in Part VIII B of the *Family Law Act 1975* of the Commonwealth;

operative time has the same meaning as in Part VIII B of the *Family Law Act 1975* of the Commonwealth;

payment phase has the same meaning as in the Commonwealth regulations;

payment split has the same meaning as in Part VIII B of the *Family Law Act 1975* of the Commonwealth;

relevant date has the same meaning as in the Commonwealth regulations;

scheme means the superannuation scheme for members under this Act;

Southern State Superannuation Fund means the fund of that name established under the *Southern State Superannuation Act 1994*;

splitting instrument means—

- (a) a superannuation agreement; or
- (b) a flag lifting agreement that provides for a payment split; or
- (c) a splitting order;

splitting order has the same meaning as in Part VIII B of the *Family Law Act 1975* of the Commonwealth;

superannuation agreement has the same meaning as in Part VIII B of the *Family Law Act 1975* of the Commonwealth.

23C—Accrued benefit multiple

- (1) For the purposes of the Commonwealth regulations, the *accrued benefit multiple* for a pension payable in respect of a superannuation interest of a PSS 1 or PSS 2 member is determined as follows:

- (a) if the member has not attained 6 years of service at the prescribed date:

$$\frac{.412 \times T1}{T2}$$

Where—

T1 is the number of days in the period beginning on the day on which the member joined the scheme and ending on the prescribed date;

T2 is the number of days in the period beginning on the day on which the member joined the scheme and ending on the sixth anniversary of that day;

- (b) if the member has attained 6 years of service at the prescribed date:

$$.412 + \left[\frac{.338 \times T1}{T2} \right]$$

Where—

T1 is the number of days in the period beginning on the day immediately following the sixth anniversary of the day on which the member joined the scheme and ending on the prescribed date or on the 14 year 1 month anniversary of the day on which the member attained 6 years of service, whichever is the earlier;

T2 is the number of days in the period beginning on the day immediately following the sixth anniversary of the day on which the member joined the scheme and ending on the 14 year 1 month anniversary of the day on which the member attained 6 years of service.

- (2) In addition to any other information that may be provided by the Board in connection with this Part, the Board may, on application, provide to an eligible person a statement of the value of a superannuation interest of a member spouse, as at a particular date specified in the application.

- (3) In this section—

prescribed date is the date that is relevant to the determination of an accrued benefit multiple in the particular circumstances.

23D—Value of superannuation interest

- (1) For the purposes of this Part (but subject to subsection (2)), the value of any superannuation interest of a PSS 1 or PSS 2 member will be determined in accordance with Part 5 of the Commonwealth regulations (insofar as those regulations provide a method for determining that value), subject to any modification prescribed by regulation under this Act.
- (2) An approval of the Commonwealth Minister under regulation 38 or 43A of the Commonwealth regulations that relates to a superannuation interest under this Act will have effect for the purposes of this Part.

23E—Non-member spouse's entitlement

- (1) Subject to subsection (2), the Board must, on service of a splitting instrument, create an interest for the non-member spouse named in the instrument.
- (2) If the member spouse has less than 6 years service at the time of service of the splitting instrument on the Board and the member spouse is a PSS 1 or PSS 2 member, the Board will create the interest for the non-member spouse when—
- (a) the member spouse attains 6 years of service; or
 - (b) the member spouse ceases to be a member of the Parliament,
- whichever first occurs.
- (3) The form of the non-member spouse's interest with respect to PSS 1 or PSS 2 will be determined on the basis of whether the superannuation interest is in the growth phase or the payment phase, by the nature of the member spouse's superannuation interest, and by reference to the provisions of the instrument.
- (4) The value of the non-member spouse's interest with respect to PSS 3 will be determined by reference to the provisions of the instrument but in any event may not exceed the value of the member spouse's interest.

23F—Non-member spouse's entitlement where pension is in growth phase

- (1) If the Board is served with a splitting instrument in respect of a pension that is in the growth phase, the non-member spouse is not entitled to receive his or her entitlement in the form of a pension commencing at the same time as the member spouse's pension under this Act but is, instead, (subject to section 23E(2)) entitled to have a lump sum determined under this section paid on his or her behalf in accordance with this Part.
- (2) The lump sum to which the non-member spouse is entitled, as at the operative time, will be determined—
 - (a) where the splitting instrument specifies a percentage of the member spouse's superannuation interest for the purposes of the split—by applying that percentage split to the member spouse's superannuation interest based on the relevant accrued benefit multiple and by applying any relevant method or factor that applies under section 23D;
 - (b) subject to subsection (3), where the splitting instrument specifies a lump sum amount for the purposes of the split—by adopting that lump sum.
- (3) The value of a lump sum payable to a non-member spouse under this section must not exceed the value of the member spouse's interest.

23G—Non-member spouse's entitlement where pension is in payment phase

- (1) If the Board is served with a splitting instrument in respect of a pension that is in the payment phase, the Board must divide the pension between the member spouse and non-member spouse in accordance with the instrument, with effect from the operative time.
- (2) The non-member spouse may—
 - (a) —
 - (i) in accordance with the terms of the splitting instrument; or
 - (ii) by notice in writing given to the Board within the prescribed period, elect to have the whole of his or her share of the superannuation interest determined under subsection (1) converted to (and taken as) a separate pension entitlement (to be referred to as an *associate pension* for the purposes of this Act) for the lifetime of the non-member spouse; or
 - (b) by notice in writing given to the Board within the prescribed period, elect to have the whole of his or her share of the superannuation interest determined under subsection (1) commuted to a lump sum.
- (3) The following provisions will apply with respect to an associate pension:
 - (a) the amount of the pension will be determined by applying the methods and factors prescribed by the regulations;
 - (b) no derivative, reversionary or other rights will arise or continue on account of an entitlement to the pension after the death of the non-member spouse.
- (4) A lump sum under subsection (2)(b) will be determined by applying the methods and factors prescribed by the regulations.

- (5) If the non-member spouse is taking his or her entitlement as a pension (other than an associate pension) and there is a reduction in the member spouse's pension under this Act, there will be a corresponding reduction in the non-member spouse's pension.
- (6) If the non-member spouse is taking his or her entitlement as a pension (other than an associate pension) and the payment of the member spouse's pension ceases, there will be a corresponding cessation in the payment of the non-member spouse's pension.
- (7) If the non-member spouse dies while entitled to, or in receipt of, a pension under this section (other than an associate pension), the non-member spouse's legal representative may, by notice in writing given to the Board within the prescribed period, elect to have the pension commuted to a lump sum.
- (8) A lump sum under subsection (7) will be determined by applying the methods and factors prescribed by the regulations to the non-member spouse's entitlement.
- (9) In this section—
legal representative, in relation to a deceased non-member spouse, means a person—
 - (a) holding office as executor of the will of the deceased non-member spouse where probate of the will has been granted or resealed in South Australia or any other State or a Territory; or
 - (b) holding office in South Australia or any other State or a Territory as administrator of the estate of the deceased non-member spouse.

23H—Payment of non-member spouse's entitlement

- (1) If the interest of a non-member spouse created under this Part after service of a splitting instrument or after the commutation of a pension payable to the non-member spouse is a lump sum, the interest will, according to the election of the non-member spouse—
 - (a) be paid out to the extent (if any) that payment can be made in accordance with the SIS Act; or
 - (b) be rolled over to the credit of the non-member spouse in an account (which may need to be established) in the name of the non-member spouse in the Southern State Superannuation Fund; or
 - (c) be rolled over or transferred to some other superannuation fund or scheme approved by the Board.
- (2) The Board must take the action required under subsection (1) within 28 days after receiving the relevant election.
- (3) However, if an election is not made by the non-member spouse before the end of 28 days after the Board gives notice to the non-member spouse in the manner contemplated by the regulations, the Board must, subject to the regulations, roll over the interest to the credit of the non-member spouse under subsection (1)(b).
- (4) If the interest of a non-member spouse created under this Part after service of a splitting instrument is a pension (and the non-member spouse has not directed that the pension be commuted to a lump sum), the Board must split the relevant pension within the prescribed period after receipt of the splitting instrument (with effect from the relevant date), and begin to make the payments in accordance with the regulations (subject to any cessation of payment of the member spouse's pension).

23I—Reduction in member's entitlement

- (1) Despite the other provisions of this Act, if a payment split is payable with respect to the superannuation interest of a member, there is a corresponding reduction in the entitlement of the member under this Act.
- (2) A reduction in the entitlement of a member will be given effect as follows:
 - (a) the member's contribution account will be subject to a charge that takes effect by reducing the balance of that account at the operative time (insofar as a balance exists) by a percentage equal to the percentage that the non-member's share in the relevant superannuation interest bears to the total value of the member's accrued superannuation benefit at the operative time (and any relevant method or factor that applies under section 23D will be applied); and
 - (b) except with respect to a pension in the payment phase, any entitlement in respect of a pension in the growth phase and any component in the nature of an employer-funded component of a superannuation benefit payable to the member after the creation of the relevant interest for the benefit of the non-member spouse will, as from the operative date, be reduced by a percentage equal to the percentage that the non-member's share in the relevant superannuation interest bears to the total value of the member's accrued superannuation benefit at the operative time (and any relevant method or factor that applies under section 23D will be applied); and
 - (c) any pension in the payment phase will, depending on the terms of the splitting instrument, be reduced by—
 - (i) the value of the non-member spouse's share in the relevant superannuation interest; or
 - (ii) the percentage of the relevant superannuation interest to be shared with the non-member spouse.
- (3) A reduction in the entitlement of a member will not extend to any superannuation benefit that is not a splittable payment under Part VIIIB of the *Family Law Act 1975* of the Commonwealth.
- (4) If 2 or more reductions must be made with respect to an entitlement of a member because 2 or more splitting instruments have been served on the Board, the Board may determine to apply the reductions separately, or in aggregate.

23J—Benefit not payable to spouse on death of member if split has occurred

If a member or former member dies and is survived by a spouse who—

- (a) has received, is receiving or is entitled to receive a benefit under a splitting instrument; or
- (b) is, under the terms of a splitting instrument, not entitled to any amount arising out of the member's superannuation interest under this Act (or any proportion of such an interest),

the spouse is not entitled to a benefit under this Act in respect of the deceased member (except in accordance with the instrument) and will not be considered to be a spouse of the deceased person for the purposes of section 36A (if relevant).

23K—Board to comply with Commonwealth requirements

The Board must comply with the requirements imposed on the Board under Part VIII B of the *Family Law Act 1975* of the Commonwealth.

23L—Fees

- (1) The Board may fix fees in respect of matters in relation to which fees may be charged under regulation 59 of the Commonwealth regulations.
- (2) Any fee fixed under subsection (1) that is payable by a member spouse or a non-member spouse and has not been paid within 1 month of the amount becoming payable may be deducted by the Board—
 - (a) if the outstanding fee is payable by a member spouse—
 - (i) from the member spouse's contribution account; or
 - (ii) from any benefit payable to the member spouse under this Act; or
 - (b) if the outstanding fee is payable by a non-member spouse—
 - (i) from any interest that is to be rolled over or transferred to a fund for the benefit of the non-member spouse; or
 - (ii) from any other benefit payable to the non-member spouse under this Act.

Part 5—Pension for spouse and child benefit

Division 1—Pension for spouse

24—Pension for spouse of deceased PSS 1 member pensioner

- (1) Where a PSS 1 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:

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.

25—Pension for spouse of deceased PSS 1 member

- (1) Where a PSS 1 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.

25A—Pension for spouse of PSS 2 member pensioner

- (1) An annual pension is payable to the spouse of a deceased PSS 2 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.

25B—Pension for spouse of deceased PSS 2 member

- (1) Where a PSS 2 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.

25C—Interpretation

- (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.

26—Spouse pension

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

26AAA—Spouse entitlement subject to any Family Law determination

A surviving spouse will not be entitled to a benefit under this Division where section 23J applies to the spouse and the amount of any benefit payable to any other spouse must take into account any reduction that has been made under section 23I.

Division 1A—Commutation of spouse pension

26AA—Commutation of pension

- (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

26AAB—Application of Division

This Division applies in relation to members (or former members) of PSS 1 or PSS 2.

26A—Certain former members deemed members at time of death

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.

27—Determination of child benefit

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.

28—Child benefit, general

- (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.

29—Child benefit where no spouse's pension payable

- (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.

30—Payment to, or on behalf of, child

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.

31—Cessation of child benefit

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 (PSS 1 or PSS 2)

31A—Benefits payable to member's estate (PSS 1 or PSS 2)

- (1) Where a PSS 1 or PSS 2 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.

Part 6—Adjustment of pensions

Division 1—Pensioners under repealed Act

32—Pensions to continue

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.

33—Spouse pension continued

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

34—Suspension of certain pensions

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

35—Adjustment of pensions

- (1) The Board must adjust the amount of pensions under this Act from the first payment of pension in each adjustment period to reflect—
 - (a) in the case of an April adjustment period—the percentage variation (rounded to two decimal places) between the Consumer Price Index for the immediately preceding December quarter and the Consumer Price Index for the immediately preceding June quarter; and
 - (b) in the case of an October adjustment period—the percentage variation (rounded to two decimal places) between the Consumer Price Index for the immediately preceding June quarter and the Consumer Price Index for the immediately preceding December quarter.

- (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 period, the pension has been payable for a period of less than six months, the extent of the adjustment will be reduced to reflect the proportion which the period of payment of the pension bears to six months.
- (4) To avoid a reduction in pensions the Treasurer may direct that subsection (1) does not apply in relation to a particular adjustment period.
- (5) In that event an adjustment in the next adjustment period in relation to which subsection (1) applies will be based on the variation between the Consumer Price Index for the June or December quarter (whichever is applicable) immediately preceding that period and the Consumer Price Index for the June or December quarter (whichever is applicable) immediately preceding the adjustment period in relation to which subsection (1) last applied.

- (6) In this section—

adjustment period means the period of six months commencing at the commencement of 1 April and 1 October in each year;

April adjustment period means an adjustment period commencing at the commencement of 1 April in any year;

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

October adjustment period means an adjustment period commencing at the commencement of 1 October in any year.

Part 7—Miscellaneous

36A—Division of benefit where deceased member is survived by lawful and putative spouses

- (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.

36B—Power to obtain information

- (1) The Board may, from time to time, require an employing authority, employee or PSS 2 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 PSS 2 member pensioner to verify information supplied under this section by statutory declaration.
- (3) If a PSS 2 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.

Maximum 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.

37—Payment of benefits

- (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.
- (3) If a payment made under this Act includes a member-funded component or a rollover component, an amount equivalent to the amount standing to the credit of the member's contribution account or rollover account is to be charged against the appropriate account.

- (4) If a payment made under this Act includes a Government-funded component or relates to a superannuation salary sacrifice, the amount of that component is to be charged against the relevant member's Government contribution account.
- (5) The Board may close the account of a member or former member if—
 - (a) he or she has retired (either voluntarily or involuntarily) and is in receipt of a pension under this Act, or no further benefit or amount is payable to, or in relation to, the member or former member under this Act; or
 - (b) he or she has died (and no further benefit or amount is payable in relation to the member or former member under this Act).

38—Pensions not assignable

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

39—Financial provision

- (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.

39A—Confidentiality

- (1) A member or former member of the Board or the board of directors of the Superannuation Funds Management Corporation of South Australia, or a person employed or formerly employed in the administration of this Act, must not divulge information as to the entitlements or benefits of any person under this Act except—
 - (a) as required by or under any Act of the State or the Commonwealth; or
 - (b) to, or with the consent of, that person; or
 - (c) to an employee of either House of Parliament of the State for purposes related to the administration of this Act; or
 - (d) to any other person for purposes related to the administration of this Act; or
 - (e) as may be required by a court.

Maximum penalty: \$10 000.

- (2) A member or former member of the Board or the board of directors of the Superannuation Funds Management Corporation of South Australia, or a person employed or formerly employed in the administration of this Act, must not divulge information if to do so is inconsistent with a requirement imposed on the trustee of an eligible superannuation plan under Part VIIIB of the *Family Law Act 1975* of the Commonwealth.

Maximum penalty: \$10 000.

- (3) This section does not prevent the disclosure of statistical or other information related to members generally or to a class of members rather than to an individual member.

40—Regulations

- (1) 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.
- (2) Without limiting subsection (1), the regulations may make any provision that is necessary in view of the provisions of Part VIIIIB of the *Family Law Act 1975* of the Commonwealth, including by modifying the operation of any provision of this Act in prescribed circumstances in order to ensure that this Act operates in a manner that is consistent with, and complementary to, the requirements of that Commonwealth Act.

Schedule 1—Transitional provision

1—Transitional provision

An amendment made by a provision of the *Statutes Amendment (Equal Superannuation Entitlements for Same Sex Couples) Act 2003* to a provision of this Act that provides for, or relates to, the payment of a pension, lump sum or other benefit to a person on the death of a member, or former member, applies only if the death occurs on or after 3 July 2003.

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%

Note—

Under section 21A the maximum percentage for a PSS 1 member pensioner who is 58 years of age

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
or more and has had not less than 20 years service is 40%.	

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

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1974	15	<i>Parliamentary Superannuation Act 1974</i>	4.4.1974	4.4.1974 (<i>Gazette 4.4.1974 p1132</i>)
1974	79	<i>Parliamentary Superannuation Act Amendment Act 1974</i>	31.10.1974	31.10.1974
1978	7	<i>Parliamentary Superannuation Act Amendment Act 1978</i>	9.3.1978	1.6.1978 (<i>Gazette 1.6.1978 p1878</i>)
1978	112	<i>Parliamentary Superannuation Act Amendment Act (No. 2) 1978</i>	7.12.1978	21.12.1978 (<i>Gazette 21.12.1978 p2307</i>)
1981	4	<i>Parliamentary Superannuation Act Amendment Act 1981</i>	26.2.1981	21.10.1982 (<i>Gazette 21.10.1982 p1162</i>) except s 7—21.12.1978: s 2(2)
1982	18	<i>Parliamentary Superannuation Act Amendment Act 1982</i>	11.3.1982	21.10.1982 (<i>Gazette 21.10.1982 p1160</i>)
1985	105	<i>Parliamentary Superannuation Act Amendment Act 1985</i>	7.11.1985	21.11.1985 (<i>Gazette 21.11.1985 p1542</i>) except s 10(c) & (d)—1.7.1979: s 2(3)
1986	14	<i>Statute Law Revision Act 1986</i>	20.3.1986	Sch 6—1.9.1986 (<i>Gazette 7.8.1986 p474</i>)
1989	21	<i>Parliamentary Superannuation Act Amendment Act 1989</i>	27.4.1989	11.5.1989 (<i>Gazette 11.5.1989 p1252</i>)
1992	18	<i>Parliamentary Superannuation (Miscellaneous) Amendment Act 1992</i>	7.5.1992	7.5.1992
1992	69	<i>Statutes Amendment (Public Actuary) Act 1992</i>	19.11.1992	10.12.1992 (<i>Gazette 10.12.1992 p1752</i>)
1995	59	<i>Parliamentary Superannuation (New Scheme) Amendment Act 1995</i>	3.8.1995	24.8.1995 (<i>Gazette 24.8.1995 p499</i>)
1997	25	<i>Statutes Amendment (Superannuation) Act 1997</i>	10.4.1997	Pt 3 (s 6)—24.4.1997 (<i>Gazette 24.4.1997 p1618</i>)
1998	20	<i>Statutes Amendment (Adjustment of Superannuation Pensions) Act 1998</i>	2.4.1998	Pt 3 (s 5)—1.10.1997: s 2
1999	8	<i>Parliamentary Superannuation (Establishment of Fund) Amendment Act 1999</i>	18.3.1999	1.7.1998: s 2

1999	23	<i>Statutes Amendment (Commutation for Superannuation Surcharge) Act 1999</i>	1.4.1999	1.4.1999
2001	40	<i>Statutes Amendment (Indexation of Superannuation Pensions) Act 2001</i>	3.8.2001	Pt 4 (s 7)—1.1.2002: s 2
2003	13	<i>Statutes Amendment (Equal Superannuation Entitlements for Same Sex Couples) Act 2003</i>	12.6.2003	Pt 2 (ss 4 & 5)—3.7.2003 (<i>Gazette</i> 3.7.2003 p2877)
2003	21	<i>Statutes Amendment (Notification of Superannuation Entitlements) Act 2003</i>	17.7.2003	Pt 2 (ss 4 & 5)—17.8.2003: s 2
2003	34	<i>Parliamentary Remuneration (Powers of Remuneration Tribunal) Amendment Act 2003</i>	31.7.2003	31.7.2003
2003	49	<i>Statutes Amendment (Division of Superannuation Interests under Family Law Act) Act 2003</i>	20.11.2003	Pt 3 (ss 6—9) & Sch 1—18.12.2003 (<i>Gazette</i> 18.12.2003 p4527)
2005	43	<i>Parliamentary Superannuation (Scheme for New Members) Amendment Act 2005</i>	21.7.2005	Pt 2 (s 47)—3.7.2003: s 2(2); ss 4—46 & Sch 1—15.9.2005 (<i>Gazette</i> 15.9.2005 p3346)
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 59 (ss 159—161)—1.6.2007 (<i>Gazette</i> 26.4.2007 p1352)
2010	15	<i>Statutes Amendment (Members' Benefits) Act 2010</i>	7.10.2010	Pt 3 (s 14(1) & (2))—20.3.2010: s 2(2); ss 7—13, 14(3), 15—17 & Sch 1—7.10.2010: s 2(1); s 18—1.7.2011 (<i>Gazette</i> 23.6.2011 p2697)

Provisions amended since 3 February 1976

- 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.

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	3.7.2003
<i>ss 3 and 4</i>	<i>deleted by 14/1986 s 3(1) (Sch 6)</i>	1.9.1986
s 5		
s 5(1)		
additional salary	substituted by 18/1982 s 3(a)	21.10.1982
	substituted by 14/1986 s 3(1) (Sch 6)	1.9.1986
basic salary	inserted by 14/1986 s 3(1) (Sch 6)	1.9.1986
	amended by 34/2003 Sch cl 1(1)	31.7.2003

the Board	inserted by 21/1989 s 3(a)	11.5.1989
co-contribution	inserted by 15/2010 s 7	7.10.2010
co-contribution account	inserted by 15/2010 s 7	7.10.2010
complying superannuation fund	inserted by 43/2005 s 4(1)	15.9.2005
contribution	amended by 21/1989 s 3(b)	11.5.1989
death insurance benefit	inserted by 43/2005 s 4(2)	15.9.2005
deferred superannuation contributions surcharge	inserted by 43/2005 s 4(2)	15.9.2005
<i>determination day</i>	<i>deleted by 59/1995 s 3(a)</i>	<i>24.8.1995</i>
eligible child	amended by 21/1989 s 3(c)	11.5.1989
	amended by 43/2005 s 4(3), (4)	15.9.2005
<i>former new scheme member</i>	<i>inserted by 59/1995 s 3(b)</i>	<i>24.8.1995</i>
	<i>deleted by 43/2005 s 4(5)</i>	<i>15.9.2005</i>
<i>former old scheme member</i>	<i>inserted by 59/1995 s 3(b)</i>	<i>24.8.1995</i>
	<i>deleted by 43/2005 s 4(5)</i>	<i>15.9.2005</i>
former PSS 1 member	inserted by 43/2005 s 4(5)	15.9.2005
former PSS 2 member	inserted by 43/2005 s 4(5)	15.9.2005
the Fund	deleted by 21/1989 s 3(d)	11.5.1989
	inserted by 8/1999 s 3(a)	1.7.1998
invalidity insurance benefit	inserted by 43/2005 s 4(6)	15.9.2005
judge	inserted by 43/2005 s 4(6)	15.9.2005
member	amended by 43/2005 s 4(7)	15.9.2005
member pensioner	amended by 59/1995 s 3(c)	24.8.1995
	amended by 43/2005 s 4(8)	15.9.2005
<i>new scheme member</i>	<i>inserted by 59/1995 s 3(d)</i>	<i>24.8.1995</i>
	<i>deleted by 43/2005 s 4(9)</i>	<i>15.9.2005</i>
<i>new scheme member pensioner</i>	<i>inserted by 59/1995 s 3(d)</i>	<i>24.8.1995</i>
	<i>deleted by 43/2005 s 4(9)</i>	<i>15.9.2005</i>
non-participating member	inserted by 43/2005 s 4(9)	15.9.2005
notional pension	amended by 43/2005 s 4(10)	15.9.2005
<i>old scheme member</i>	<i>inserted by 59/1995 s 3(e)</i>	<i>24.8.1995</i>
	<i>deleted by 43/2005 s 4(11)</i>	<i>15.9.2005</i>
<i>old scheme member pensioner</i>	<i>inserted by 59/1995 s 3(e)</i>	<i>24.8.1995</i>

	<i>deleted by 43/2005 s 4(11)</i>	15.9.2005
prescribed office	inserted by 112/1978 s 3	21.12.1978
PSS 1	inserted by 43/2005 s 4(12)	15.9.2005
PSS 2	inserted by 43/2005 s 4(12)	15.9.2005
PSS 3	inserted by 43/2005 s 4(12)	15.9.2005
PSS 1 member	inserted by 43/2005 s 4(12)	15.9.2005
PSS 1 member pensioner	inserted by 43/2005 s 4(12)	15.9.2005
PSS 2 member	inserted by 43/2005 s 4(12)	15.9.2005
PSS 2 member pensioner	inserted by 43/2005 s 4(12)	15.9.2005
PSS 3 member	inserted by 43/2005 s 4(12)	15.9.2005
putative spouse	inserted by 13/2003 s 4	3.7.2003
	substituted by 43/2006 s 159	1.6.2007
the repealed Act	amended by 14/1986 s 3(1) (Sch 6)	1.9.1986
salary	amended by 18/1982 s 3(b)	21.10.1982
	substituted by 14/1986 s 3(1) (Sch 6)	1.9.1986
SIS Act	inserted by 43/2005 s 4(13)	15.9.2005
special deposit account	inserted by 8/1999 s 3(b)	1.7.1998
spouse	substituted by 59/1995 s 3(f)	24.8.1995
spouse pension	amended by 43/2005 s 4(14)	15.9.2005
State	inserted by 59/1995 s 3(g)	24.8.1995
Superannuation Contributions Tax Act	inserted by 43/2005 s 4(15)	15.9.2005
superannuation salary sacrifice	inserted by 43/2005 s 4(15)	15.9.2005
surcharge notice	inserted by 43/2005 s 4(15)	15.9.2005
<i>the Trustees</i>	<i>deleted by 21/1989 s 3(e)</i>	11.5.1989
s 5(2)	amended by 34/2003 Sch cl 1(2)	31.7.2003
s 5(3)	inserted by 34/2003 Sch cl 1(3)	31.7.2003
	amended by 43/2005 s 4(16)	15.9.2005
s 6		
s 6(1)	substituted by 4/1981 s 3(a)	21.10.1982
	amended by 59/1995 s 4	24.8.1995
s 6(2)	deleted by 4/1981 s 3(a)	21.10.1982
	inserted by 43/2005 s 5(1)	15.9.2005
s 6(3)	amended by 4/1981 s 3(b)	21.10.1982
	amended by 43/2005 s 5(2), (3)	15.9.2005
s 6(4)	<i>amended by 14/1986 s 3(1) (Sch 6)</i>	1.9.1986
	<i>deleted by 43/2005 s 5(4)</i>	15.9.2005
s 7	amended by 112/1978 s 4	21.12.1978
	amended by 43/2005 s 6(1)—(4)	15.9.2005

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s 7A	inserted by 13/2003 s 5	3.7.2003
s 7A(1)	substituted by 43/2006 s 160	1.6.2007
s 7B	inserted by 13/2003 s 5	3.7.2003
ss 7C—7E	inserted by 43/2005 s 7	15.9.2005
s 7F	inserted by 43/2005 s 7	15.9.2005
s 7F(1a)	inserted by 15/2010 s 8(1)	7.10.2010
s 7F(2)	amended by 15/2010 s 8(2), (3)	7.10.2010
s 7G	inserted by 15/2010 s 9	7.10.2010
Pt 2	amended by 105/1985 ss 3 and 4	21.11.1985
	amended by 14/1986 s 3(1) (Sch 6)	1.9.1986
	substituted by 21/1989 s 4	11.5.1989
Pt 2A	inserted by 8/1999 s 4	1.7.1998
s 13		
s 13(3a)	inserted by 43/2005 s 8(1)	15.9.2005
	amended by 15/2010 s 10(1)	7.10.2010
s 13(4)	amended by 43/2005 s 8(2)	15.9.2005
	amended by 15/2010 s 10(2), (3)	7.10.2010
Pt 2B	inserted by 8/1999 s 4	1.7.1998
s 13AB	inserted by 43/2005 s 9	15.9.2005
s 13AB(1)	amended by 15/2010 s 11	7.10.2010
s 13B		
s 13B(1)	amended by 43/2005 s 10(1)	15.9.2005
s 13B(2)	substituted by 43/2005 s 10(2)	15.9.2005
s 13B(2a) and (2b)	inserted by 43/2005 s 10(2)	15.9.2005
s 13B(3)	amended by 43/2005 s 10(3)	15.9.2005
s 13C	inserted by 43/2005 s 11	15.9.2005
s 13D	inserted by 15/2010 s 12	7.10.2010
<i>Pt 3 before substitution by 43/2005</i>	<i>amended by 7/1978 s 3</i>	<i>1.6.1978</i>
	<i>amended by 112/1978 ss 5, 6</i>	<i>21.12.1978</i>
	<i>amended by 14/1986 s 3(1) (Sch 6)</i>	<i>1.9.1986</i>
	<i>substituted by 21/1989 s 5</i>	<i>11.5.1989</i>
s 14		
s 14(2)	<i>amended by 59/1995 s 5(a)</i>	<i>24.8.1995</i>
s 14(3)	<i>inserted by 59/1995 s 5(b)</i>	<i>24.8.1995</i>
Pt 3	substituted by 43/2005 s 12	15.9.2005
s 14B		
s 14B(1)	substituted by 15/2010 s 13	7.10.2010
s 14C		
s 14C(1)	amended by 15/2010 s 14(1)	20.3.2010
CP	deleted by 15/2010 s 14(2)	20.3.2010
s 14C(2)	substituted by 15/2010 s 14(3)	7.10.2010
s 14D		

s 14D(1)	amended by 15/2010 s 15	7.10.2010
Pt 4		
Pt 4 Div 1		
s 15	inserted by 43/2005 s 13	15.9.2005
s 16	amended by 18/1992 s 2	7.5.1992
	amended by 59/1995 s 6	24.8.1995
	amended by 43/2005 s 14	15.9.2005
s 17		
s 17(1)	amended by 112/1978 s 7(a)	21.12.1978
	amended by 14/1986 s 3(1) (Sch 6)	1.9.1986
	amended by 59/1995 s 7(a)	24.8.1995
	amended by 43/2005 s 15(1)	15.9.2005
s 17(2)	substituted by 112/1978 s 7(b)	21.12.1978
	amended by 18/1982 s 4(a)	21.10.1982
	amended by 59/1995 s 7(b)	24.8.1995
	amended by 43/2005 s 15(2)	15.9.2005
s 17(2a)	<i>inserted by 112/1978 s 7(b)</i>	<i>21.12.1978</i>
	<i>substituted by 105/1985 s 5</i>	<i>21.11.1985</i>
	<i>amended by 21/1989 s 6</i>	<i>11.5.1989</i>
	<i>amended by 69/1992 s 19</i>	<i>10.12.1992</i>
	<i>deleted by 59/1995 s 7(c)</i>	<i>24.8.1995</i>
s 17(2b)	<i>inserted by 18/1982 s 4(b)</i>	<i>21.10.1982</i>
	<i>deleted by 105/1985 s 5</i>	<i>21.11.1985</i>
s 17(3) and (4)	<i>deleted by 59/1995 s 7(c)</i>	<i>24.8.1995</i>
s 17A	inserted by 59/1995 s 8	24.8.1995
s 17A(1)	amended by 43/2005 s 16(1)	15.9.2005
s 17A(2)	amended by 43/2005 s 16(2), (3)	15.9.2005
s 17A(6)	amended by 43/2005 s 16(4)	15.9.2005
s 17B	inserted by 59/1995 s 8	24.8.1995
s 18		
s 18(1)	amended by 43/2005 s 17(1), (2)	15.9.2005
s 18(2)	amended by 112/1978 s 8	21.12.1978
	amended by 59/1995 s 9	24.8.1995
s 18(3)	<i>amended by 14/1986 s 3(1) (Sch 6)</i>	<i>1.9.1986</i>
	<i>deleted by 43/2005 s 17(3)</i>	<i>15.9.2005</i>
s 19	amended by 7/1978 s 4	1.6.1978
	amended by 4/1981 s 4	21.10.1982
	substituted by 105/1985 s 6	21.11.1985
s 19(2)	amended by 59/1995 s 10(a)	24.8.1995
s 19(2a)	inserted by 59/1995 s 10(b)	24.8.1995
	amended by 43/2005 s 18	15.9.2005
s 19(2b)	inserted by 59/1995 s 10(b)	24.8.1995
s 19(4)	amended by 21/1989 s 7	11.5.1989

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s 19A	inserted by 59/1995 s 11	24.8.1995
s 19A(3)	amended by 21/2003 s 4	17.8.2003
s 19A(4)	inserted by 43/2005 s 19	15.9.2005
s 20		
s 20(1)	amended by 43/2005 s 20(1)	15.9.2005
s 20(2)	<i>deleted by 43/2005 s 20(2)</i>	15.9.2005
Pt 4 Div 2		
s 21		
s 21(1)	amended by 105/1985 s 7(a)	21.11.1985
	amended by 21/1989 s 8(a)	11.5.1989
	amended by 59/1995 s 12(a)	24.8.1995
	amended by 43/2005 s 21(1)	15.9.2005
s 21(1a)	inserted by 105/1985 s 7(b)	21.11.1985
	substituted by 59/1995 s 12(b)	24.8.1995
	amended by 43/2005 s 21(2)	15.9.2005
s 21(1b)	inserted by 105/1985 s 7(b)	21.11.1985
	amended by 21/1989 s 8(b)	11.5.1989
	substituted by 59/1995 s 12(b)	24.8.1995
s 21(1c)	inserted by 105/1985 s 7(b)	21.11.1985
	amended by 21/1989 s 8(c)	11.5.1989
	amended by 59/1995 s 12(c)	24.8.1995
s 21(2)	amended by 105/1985 s 7(c)	21.11.1985
	amended by 21/1989 s 8(d)	11.5.1989
s 21(3)	<i>substituted by 105/1985 s 7(d)</i>	21.11.1985
	<i>deleted by 59/1995 s 12(d)</i>	24.8.1995
s 21A	amended by 4/1981 s 5	21.10.1982
	amended by 59/1995 s 13	24.8.1995
	amended by 43/2005 s 22	15.9.2005
s 21AA—see s 23AA		
Pt 4 Div 2A	inserted by 43/2005 s 24	15.9.2005
s 21AC		
Government-funded component	amended by 15/2010 s 16(1)	7.10.2010
member-funded component	amended by 15/2010 s 16(2)	7.10.2010
Pt 4 Div 3		
heading	substituted by 43/2005 s 25	15.9.2005
s 21B	<i>inserted by 59/1995 s 14</i>	24.8.1995
	<i>deleted by 8/1999 s 5</i>	1.7.1998
s 22	amended by 4/1981 s 6	21.10.1982
	amended by 21/1989 s 9	11.5.1989
	substituted by 18/1992 s 3	7.5.1992
s 22(1)	amended by 59/1995 s 15(a)—(c)	24.8.1995

	amended by 8/1999 s 6	1.7.1998
	amended by 43/2005 s 26	15.9.2005
<i>s 22(2) and (3)</i>	<i>deleted by 59/1995 s 15(d)</i>	24.8.1995
s 22A	inserted by 59/1995 s 16	24.8.1995
s 22A(1)	amended by 43/2005 s 27(1), (2)	15.9.2005
s 22A(2)	substituted by 8/1999 s 7(a)	1.7.1998
	amended by 43/2005 s 27(3), (4)	15.9.2005
s 22A(2a)	inserted by 8/1999 s 7(a)	1.7.1998
s 22A(4)	substituted by 8/1999 s 7(b)	1.7.1998
	amended by 43/2005 s 27(5)	15.9.2005
s 22A(4a)	inserted by 8/1999 s 7(b)	1.7.1998
	amended by 43/2005 s 27(6)	15.9.2005
s 22A(4b)	inserted by 8/1999 s 7(b)	1.7.1998
s 22A(4c)	inserted by 8/1999 s 7(b)	1.7.1998
	amended by 43/2005 s 27(7)	15.9.2005
s 22A(5)	amended by 21/2003 s 5	17.8.2003
s 22A(5a)	inserted by 8/1999 s 7(c)	1.7.1998
	amended by 43/2005 s 27(8)	15.9.2005
<i>s 23 before substitution by 43/2005</i>	<i>amended by 14/1986 s 3(1) (Sch 6)</i>	1.9.1986
	<i>amended by 21/1989 s 10</i>	11.5.1989
s 23	substituted by 43/2005 s 28	15.9.2005
s 23(1)	amended by 15/2010 s 17(1)—(4)	7.10.2010
s 23(2a)	inserted by 15/2010 s 17(5)	7.10.2010
s 23AA	s 21AA inserted by 23/1999 s 4	1.4.1999
	s 21AA redesignated as s 23AA by 43/2005 s 23(5)	15.9.2005
s 23AA(1)	amended by 43/2005 s 23(1)	15.9.2005
s 23AA(3)	amended by 43/2005 s 23(2), (3)	15.9.2005
s 23AA(8)		
<i>deferred superannuation contributions surcharge</i>	<i>deleted by 43/2005 s 23(4)</i>	15.9.2005
ss 23AAB—23AAD	inserted by 43/2005 s 29	15.9.2005
Pt 4A	inserted by 49/2003 s 6	18.12.2003
s 23B		
<i>SIS Act</i>	<i>deleted by 43/2005 s 30</i>	15.9.2005
s 23C		
s 23C(1)	amended by 43/2005 s 31	15.9.2005
s 23D		
s 23D(1)	amended by 43/2005 s 32	15.9.2005
s 23E		

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s 23E(2)	amended by 43/2005 s 33(1)	15.9.2005
s 23E(3)	amended by 43/2005 s 33(2)	15.9.2005
s 23E(4)	inserted by 43/2005 s 33(3)	15.9.2005
s 23J	substituted by 43/2005 s 34	15.9.2005
Pt 5		
Pt 5 Div 1		
s 24		
s 24(1)	amended by 14/1986 s 3(1) (Sch 6)	1.9.1986
	amended by 59/1995 s 17	24.8.1995
	amended by 43/2005 s 35	15.9.2005
s 24(2)	amended by 112/1978 s 9(a), (b)	21.12.1978
	amended by 4/1981 s 7	21.12.1978
s 24(3)	inserted by 112/1978 s 9(c)	21.12.1978
	amended by 18/1982 s 5(a), (b)	21.10.1982
	amended by 105/1985 s 8(a), (b)	21.11.1985
s 24(4)	inserted by 112/1978 s 9(c)	21.12.1978
	substituted by 105/1985 s 8(c)	21.11.1985
	amended by 21/1989 s 11	11.5.1989
	amended by 69/1992 s 20	10.12.1992
s 24(5)	<i>inserted by 18/1982 s 5(c)</i>	<i>21.10.1982</i>
	<i>deleted by 105/1985 s 8(c)</i>	<i>21.11.1985</i>
s 25		
s 25(1)	s 25 amended and redesignated as s 25(1) by 112/1978 s 10	21.12.1978
	amended by 4/1981 s 8(a)	21.10.1982
	amended by 14/1986 s 3(1) (Sch 6)	1.9.1986
	amended by 59/1995 s 18(a)	24.8.1995
	amended by 43/2005 s 36	15.9.2005
s 25(2)	inserted by 112/1978 s 10(b)	21.12.1978
s 25(3)	<i>inserted by 4/1981 s 8(b)</i>	<i>21.10.1982</i>
	<i>substituted by 14/1986 s 3(1) (Sch 6)</i>	<i>1.9.1986</i>
	<i>deleted by 59/1995 s 18(b)</i>	<i>24.8.1995</i>
s 25A	inserted by 59/1995 s 19	24.8.1995
s 25A(1)	amended by 43/2005 s 37	15.9.2005
s 25B	inserted by 59/1995 s 19	24.8.1995
s 25B(1)	amended by 43/2005 s 38	15.9.2005
s 25C	inserted by 59/1995 s 19	24.8.1995
s 25C(2)	<i>deleted by 43/2005 s 39</i>	<i>15.9.2005</i>
s 26AAA	inserted by 49/2003 s 7	18.12.2003
Pt 5 Div 1A	inserted by 59/1995 s 20	24.8.1995
Pt 5 Div 2		
s 26AAB	inserted by 43/2005 s 40	15.9.2005
s 26A	inserted by 4/1981 s 9	21.10.1982

	substituted by 14/1986 s 3(1) (Sch 6)	1.9.1986
	amended by 59/1995 s 21	24.8.1995
s 27	amended by 4/1981 s 10	21.10.1982
s 29		
s 29(1)	amended by 4/1981 s 11	21.10.1982
s 30	substituted by 105/1985 s 9	21.11.1985
	amended by 21/1989 s 12	11.5.1989
Pt 5A	inserted by 18/1992 s 4	7.5.1992
	heading substituted by 43/2005 s 41	15.9.2005
s 31A		
s 31A(1)	amended by 59/1995 s 22(a)	24.8.1995
	amended by 43/2005 s 42	15.9.2005
s 31A(2)	substituted by 59/1995 s 22(b)	24.8.1995
s 31A(3)	<i>deleted by 59/1995 s 22(b)</i>	24.8.1995
Pt 6		
s 34	amended by 14/1986 s 3(1) (Sch 6)	1.9.1986
	amended by 21/1989 s 13	11.5.1989
s 35	amended by 14/1986 s 3(1) (Sch 6)	1.9.1986
	amended by 69/1992 s 21	10.12.1992
	substituted by 59/1995 s 23	24.8.1995
s 35(1)	substituted by 20/1998 s 5(a)	1.10.1997
	substituted by 40/2001 s 7(a)	1.1.2002
s 35(3)	amended by 20/1998 s 5(b)	1.10.1997
	substituted by 40/2001 s 7(b)	1.1.2002
s 35(4)	substituted by 20/1998 s 5(c)	1.10.1997
	amended by 40/2001 s 7(c)	1.1.2002
s 35(5)	inserted by 20/1998 s 5(c)	1.10.1997
	amended by 40/2001 s 7(d), (e)	1.1.2002
s 35(6)	inserted by 20/1998 s 5(c)	1.10.1997
	substituted by 40/2001 s 7(f)	1.1.2002
Pt 6A	<i>inserted by 59/1995 s 24</i>	24.8.1995
	<i>deleted by 43/2005 s 43</i>	15.9.2005
Pt 7		
	<i>s 36 before deletion by 43/2005</i>	
s 36(1)	<i>amended by 21/1989 s 14(a)</i>	11.5.1989
s 36(3)	<i>amended by 21/1989 s 14(b)</i>	11.5.1989
s 36(4)		
<i>prescribed amount</i>	<i>amended by 105/1985 s 10(a), (b)</i>	21.11.1985
s 36(4a)—(4c)	<i>inserted by 4/1981 s 12(a)</i>	21.10.1982
	<i>deleted by 18/1982 s 6(a)</i>	21.10.1982
s 36(6)	<i>inserted by 112/1978 s 11</i>	21.12.1978
	<i>substituted by 4/1981 s 12(b)</i>	21.10.1982

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	<i>amended by 18/1982 s 6(b)</i>	21.10.1982
	<i>amended by 21/1989 s 14(c)</i>	11.5.1989
	<i>amended by 59/1995 s 25(a), (b)</i>	24.8.1995
s 36(7)	<i>inserted by 4/1981 s 12(b)</i>	21.10.1982
s 36(7a)	<i>inserted by 105/1985 s 10(c)</i>	1.7.1979
	<i>amended by 14/1986 s 3(1) (Sch 6)</i>	1.9.1986
s 36(7b)	<i>inserted by 105/1985 s 10(c)</i>	1.7.1979
	<i>amended by 14/1986 s 3(1) (Sch 6)</i>	1.9.1986
	<i>amended by 21/1989 s 14(d), (e)</i>	11.5.1989
s 36(8)	<i>inserted by 18/1982 s 6(c)</i>	21.10.1982
	<i>amended by 105/1985 s 10(d)</i>	1.7.1979
	<i>amended by 21/1989 s 14(f)—(h)</i>	11.5.1989
s 36(9)	<i>inserted by 18/1982 s 6(c)</i>	21.10.1982
	<i>amended by 21/1989 s 14(i)</i>	11.5.1989
s 36(10)	<i>inserted by 59/1995 s 25(c)</i>	24.8.1995
s 36	<i>deleted by 43/2005 s 44</i>	15.9.2005
	<i>inserted by 15/2010 s 18</i>	<i>uncommenced—not incorporated</i>
s 36A	<i>inserted by 59/1995 s 26</i>	24.8.1995
s 36B	<i>inserted by 59/1995 s 26</i>	24.8.1995
s 36B(1)	<i>amended by 43/2005 s 45(1)</i>	15.9.2005
s 36B(2)	<i>amended by 43/2005 s 45(2)</i>	15.9.2005
s 36B(3)	<i>amended by 43/2005 s 45(3)</i>	15.9.2005
s 37		
s 37(1)	<i>amended by 18/1992 s 5</i>	7.5.1992
s 37(3)—(5)	<i>inserted by 43/2005 s 46</i>	15.9.2005
s 39	<i>substituted by 21/1989 s 15</i>	11.5.1989
	<i>substituted by 25/1997 s 6</i>	24.4.1997
s 39(2)	<i>substituted by 8/1999 s 8</i>	1.7.1998
s 39A	<i>inserted by 112/1978 s 12</i>	21.12.1978
	<i>deleted by 14/1986 s 3(1) (Sch 6)</i>	1.9.1986
	<i>inserted by 49/2003 s 8</i>	18.12.2003
s 40		
s 40(1)	<i>s 40 redesignated as s 40(1) by 49/2003 s 9</i>	18.12.2003
s 40(2)	<i>inserted by 49/2003 s 9</i>	18.12.2003
Sch 1	<i>deleted by 14/1986 s 3(1) (Sch 6)</i>	1.9.1986
	<i>inserted by 21/1989 s 16</i>	11.5.1989
	<i>deleted by 8/1999 s 9</i>	1.7.1998
	<i>inserted by 43/2005 s 47</i>	3.7.2003
Sch 2	<i>amended by 105/1985 s 11</i>	21.11.1985
Sch 3	<i>inserted by 59/1995 s 27</i>	24.8.1995

Transitional etc provisions associated with Act or amendments

Statutes Amendment (Division of Superannuation Interests under Family Law Act) Act 2003

1—Interpretation

In this Schedule—

relevant Act means an Act amended by this Act;

relevant authority means—

- (a) the Police Superannuation Board; or
- (b) the South Australian Parliamentary Superannuation Board; or
- (c) the South Australian Superannuation Board; or
- (d) the Treasurer.

2—Prior action

Any step taken by a relevant authority before a section of this Act is brought into operation that corresponds to a step that may be taken by the relevant authority under a relevant Act after this Act is brought into operation will be taken to be valid and effectual for the purposes of a relevant Act as if it had been taken after the commencement of this Act.

3—Instruments

Any splitting instrument, or other instrument, lodged with a relevant authority before the commencement of this Act may take effect for the purposes of a relevant Act after the commencement of this Act.

4—Other matters

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from an earlier day, but not before 28 December 2002.
- (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
 - (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.
- (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule (or regulations made under this Schedule), apply to any amendment effected by this Act.

Parliamentary Superannuation (Scheme for New Members) Amendment Act 2005, Sch 1—Transitional provisions

1—Continuity of entitlements

- (1) In this clause—
principal Act means the *Parliamentary Superannuation Act 1974*.
- (2) A person who was, immediately before the commencement of this clause, an old scheme member pensioner under the principal Act will continue as a PSS 1 member pensioner.
- (3) A person who was, immediately before the commencement of this clause, a new scheme member pensioner under the principal Act will continue as a PSS 2 member pensioner.
- (4) A reference in the principal Act (as amended by this Act) to a former PSS 1 member will be taken to include a reference to a former old scheme member under the principal Act immediately before the commencement of this clause.
- (5) A reference in the principal Act (as amended by this Act) to a former PSS 2 member will be taken to include a reference to a former new scheme member under the principal Act immediately before the commencement of this clause.
- (6) A reference in the principal Act (as amended by this Act) to a deceased PSS 1 or PSS 2 member will be taken to include a reference to a deceased old scheme member or a deceased new scheme member (as the case requires) under the principal Act immediately before the commencement of this clause.

2—Other provisions

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.
- (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
 - (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.
- (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule (or regulations made under this Schedule), apply to any amendment effected by this Act.

Statutes Amendment (Domestic Partners) Act 2006

161—Transitional provision

An amendment made by a provision of this Act to a provision of the *Parliamentary Superannuation Act 1974* that relates to the payment of a pension, lump sum or other benefit to a person on the death of a member, or former member, applies only if the death occurs after the commencement of the amendment.

Statutes Amendment (Members' Benefits) Act 2010, Sch 1—Transitional provisions

1—Member contributions—*Parliamentary Superannuation Act 1974*

- (1) If a member of Parliament was, immediately before the commencement of section 13, making contributions to the Treasurer at a rate of 4.5% of salary on the basis of an election made by the member under section 14B(1) or (2) of the *Parliamentary Superannuation Act 1974*—
- (a) the member will be taken to have made an election under section 14B(2) of that Act, on the day of that commencement, to vary the rate of contribution to 4% of salary; and
 - (b) the variation will operate on and from the first day of the month following the month in which that commencement occurs.
- (2) In this clause—

salary, in relation to a member, means the combined value of the basic and additional salary (if any) payable to the member.

2—Increased Government contribution—*Parliamentary Superannuation Act 1974*

- (1) Within 14 days after the relevant day—
- (a) the Treasurer must pay the relevant amount into the PSS 3—Government Contributions Division of the Parliamentary Superannuation Fund; and
 - (b) a PSS 3 member's Government contribution account must be credited with an amount equivalent to the component of the relevant amount attributable to the salary paid to the member in the relevant period.
- (2) No interest is to be taken to have accrued in relation to an amount referred to in subclause (1) before the day on which the relevant amount is paid into the PSS 3—Government Contributions Division of the Parliamentary Superannuation Fund.
- (3) For the purposes of determining the amount payable by the Treasurer under the *Parliamentary Superannuation Act 1974* in respect of a prescribed PSS 3 member following the election for the Parliament of this State that took place on 20 March 2010, section 14C of the *Parliamentary Superannuation Act 1974* is to be taken to have operated as if it had not been amended by section 14(1) and (2) of this Act.
- (4) In this clause—

prescribed PSS 3 member means a PSS 3 member who sought to be, but was not, elected at the election for the Parliament of this State that took place on 20 March 2010;

PSS 3 means the scheme of superannuation known as PSS 3 under the *Parliamentary Superannuation Act 1974*;

PSS 3 member means a member of PSS 3 under the *Parliamentary Superannuation Act 1974*, other than a person who is only a member of PSS 3 in order to establish—

- (a) a rollover account under section 7F of that Act; or

(b) a Government contribution account under section 7G of that Act,
(or both);

relevant amount means the amount of the difference between—

- (a) the amount paid by the Treasurer into the PSS 3—Government Contributions Division of the Parliamentary Superannuation Fund under section 14C of the *Parliamentary Superannuation Act 1974* in respect of the relevant period before the relevant day; and
- (b) the total amount payable by the Treasurer into the PSS 3—Government Contributions Division of the Parliamentary Superannuation Fund under section 14C of the *Parliamentary Superannuation Act 1974* in respect of the relevant period as a consequence of the amendments to that section made by section 14(1) and (2) of this Act;

relevant day means the last day of the month in which this Act is assented to by the Governor;

relevant period means the period commencing on 20 March 2010 and ending on the relevant day;

salary means basic salary and additional salary (if any) (within the meaning of the *Parliamentary Superannuation Act 1974*).

Historical versions

*Retrospective amendment not included in Reprints 10—13 (see 43/2005)

Reprint —1.9.1986

Reprint No 1—15.11.1991

Reprint No 2—7.5.1992

Reprint No 3—10.12.1992

Reprint No 4—24.8.1995

Reprint No 5—24.4.1997

Reprint No 6—2.4.1998

Reprint No 7—18.3.1999

Reprint No 8—1.4.1999

Reprint No 9—1.1.2002

Reprint No 10—3.7.2003*

Reprint No 11—31.7.2003*

Reprint No 12—17.8.2003*

Reprint No 13—18.12.2003*

18.12.2003—substituted

15.9.2005

1.6.2007

20.3.2010 (electronic only)