

SOUTH AUSTRALIA

SUPERANNUATION (BENEFIT SCHEME) ACT 1992

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 2 June 1994.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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SUPERANNUATION (BENEFIT SCHEME) ACT 1992

being

Superannuation (Benefit Scheme) Act 1992 No. 89 of 1992
[Assented to 10 December 1992]¹

as amended by

Superannuation (Miscellaneous) Amendment Act 1994 No. 37 of 1994 [Assented to 2 June 1994]²

¹ Came into operation 1 July 1992: s. 2.

² Came into operation 2 June 1994: *Gaz.* 2 June 1994, p. 1524.

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the Act see Appendix 1. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.*

An Act to provide superannuation benefits on a non-contributory basis for persons employed in the public sector; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Superannuation (Benefit Scheme) Act 1992*.

Commencement

2. This Act will be taken to have come into operation on 1 July 1992.

Interpretation

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

"**annual superannuation benefit**" means the amount determined by reference to a member's salary that is credited to the member's superannuation account under this Act;

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

"**charge percentage**" means the charge percentage applicable under the Commonwealth Act to the employer of the member in relation to whom the term is used;

"**the Commonwealth Act**" means the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth;

"**employing authority**" in relation to a member means—

- (a) the chief executive officer to whom the member 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 member is answerable;

"**employment**" means employment by virtue of which the person employed is a member of the superannuation benefit scheme;

"**invalidity**" means physical or mental incapacity to carry out the duties of employment;

"**member**"—see section 4;

"**the PSESS Scheme**" means the superannuation scheme known as the Public Sector Employees Superannuation Scheme established pursuant to a deed of arrangement dated 27 September 1989 between the Treasurer and the secretary of the United Trades and Labor Council;

"**retrenchment**" in relation to a member means the termination of the member's employment on the ground that work of the kind for which the member is qualified and suited is no longer available for the member;

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"**salary**" in relation to a member includes all forms of remuneration received by the member except—

- (a) non-monetary remuneration;
- (b) remuneration related to overtime (other than remuneration related to overtime that is paid by way of an annual allowance);
- (c) an amount paid in lieu of recreation leave, long service leave or any other kind of leave;
- (d) an amount paid to the member as a consequence of the termination of the member's employment;

"**section 4(5) member**" means a person declared by regulation under section 4(5) to be a member of the superannuation benefit scheme;

"**section 4(6) member**" means a person declared by regulation under section 4(6) to be a member of the superannuation benefit scheme;

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

"**the State Scheme**" means the scheme of superannuation established by the *Superannuation Act 1988*;

"**the superannuation benefit scheme**" or "**the scheme**" means the scheme of superannuation established by this Act.

(2) References in this Act to resignation from, or termination of, employment will be read subject to the following qualifications:

- (a) resignation from a particular position in order to take up some other position in employment by virtue of which the employee will be a member of the scheme, or to take up employment in the same position but on a different basis, will be ignored unless there is an interval of more than one month between the time the resignation takes effect and the commencement of the new employment;
- (b) where a member who was employed for a particular term is not re-employed in employment by virtue of which he or she will be a member of the scheme within 12 months after the expiration of the term, the member will be taken to have resigned at the expiration of 12 months from the expiration of the term;
- (c) a member who is employed on a casual basis will be taken to remain in employment for 12 months after the end of his or her last period of active employment and at the expiration of that period of 12 months will be taken to have resigned from employment.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

PART 2
MEMBERSHIP AND EMPLOYER CONTRIBUTIONS

DIVISION 1—MEMBERSHIP OF THE SCHEME

Membership

4. (1) Subject to this section, a person in relation to whom the Crown, or an agency or instrumentality of the Crown, is liable to pay a superannuation guarantee charge under the Commonwealth Act is a member of the superannuation benefit scheme.

(2) The employees of an agency or instrumentality of the Crown that has been excluded from the operation of this section by regulation are not members of the superannuation benefit scheme.

(3) Subject to this section the following persons are not members of the superannuation benefit scheme:

- (a) a person who is a member of a scheme of superannuation established by or under some other Act;
- (b) a person who is a member of a scheme of superannuation established for the benefit of the employees of an agency or instrumentality of the Crown,

except where the person is declared by regulation under subsection (5) or (6) to be a member of the superannuation benefit scheme.

(4) A member of the State Scheme or a scheme of superannuation established for the benefit of employees of an agency or instrumentality of the Crown (except a member to whom, maximum benefits have already accrued under the State Scheme or other scheme) is a member of the superannuation benefit scheme during a period in which an entitlement to benefits is not accruing to the member under the other scheme.

(5) Where the employer contributions to a scheme of superannuation established for the benefit of employees of an agency or instrumentality of the Crown is not sufficient to reduce the charge percentage under the Commonwealth Act to zero, the Governor may, by regulation declare—

- (a) that the employees concerned are members of the superannuation benefit scheme; and
- (b) the amount of the charge percentage in respect of those employees for the purposes of this Act.

(6) The Governor may, by regulation, declare the members of a scheme of superannuation established by or under some other Act or established for the benefit of employees of an agency or instrumentality of the Crown to be members of the superannuation benefit scheme in order to provide them with superannuation benefits in place of benefits that would have accrued to them under the PSESS scheme if that scheme had continued for their benefit after 30 June 1992.

Duration of membership

5. (1) A person who fulfills the requirements for membership of the scheme under section 4 remains a member of the scheme until benefits payable under this Act to, or in respect of, the member have been paid even though the member may have ceased to fulfill the requirements for membership under section 4.

(2) An annual superannuation benefit does not accrue under this Act to a member in respect of a period during which the member does not fulfill the requirements for membership of the scheme under section 4.

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DIVISION 2—EMPLOYER CONTRIBUTIONS

Employer contributions

6. (1) The Treasurer may, by notice in writing to the employer of a member of the scheme, direct the employer to pay to the Treasurer an amount calculated as follows:

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

Where—

A is the amount

S is the amount of salary paid by the employer to the member during the period to which the direction relates

CP is—

- (a) in the case of a section 4(5) member—the amount of the charge percentage declared by regulation in respect of the member;
- (b) in the case of a section 4(6) member—3;
- (c) in any other case—the charge percentage applicable in respect of the period to which the direction relates.

(2) A direction under subsection (1) can only relate to a period or periods during which an entitlement to benefits accrues to the member under this Act.

(3) If an employer fails to pay the amount referred to in subsection (1) within seven days of the date for payment specified in the notice, the employer is liable to pay to the Treasurer a penalty (not being greater than 10 per cent of the amount unpaid) fixed by the Board.

PART 3
SUPERANNUATION BENEFITS

Member's accounts

7. (1) The Board will maintain superannuation accounts in the names of all members.

(2) On 30 June 1993 the Board will credit to each account an amount calculated as follows:

$$A = ASB + \left[\frac{ASB}{2} \times \frac{I}{100} \right]$$

and on 30 June in each succeeding year the Board will credit to each account an amount calculated as follows:

$$A = ASB + \left[\left(B + \frac{ASB}{2} \right) \times \frac{I}{100} \right]$$

Where—

A is the amount to be credited

ASB is the annual superannuation benefit—see section 8

B is the balance of the account at the beginning of the financial year in respect of which the amount is to be credited

I is the applicable interest rate—see section 10.

(3) Immediately before the amount standing to the credit of a member's superannuation account is paid to, or in respect of, the member, the Board must credit to the account an amount calculated as follows:

$$A = ASB + \left[\left(B + \frac{ASB}{2} \right) \times \frac{I}{100} \times \frac{Y}{D} \right]$$

Where—

A is the amount to be credited

ASB is the annual superannuation benefit—see section 8

B is the balance of the account at the beginning of the relevant financial year

I is the applicable interest rate—see section 10

Y is the number of days from the commencement of the relevant financial year to the last day on which interest is payable

D is the number of days in the relevant financial year.

(4) Where the Board has given to a member, or to the personal representatives of a deceased member, at least one month's written notice of its requirements to enable it to make payment of superannuation benefits under this Act to, or in respect of, the member and those requirements have not been complied with within the time specified in the notice, the Board may by notice in writing to the member, or to the personal representatives of a deceased member, certify that interest will cease to be payable under subsection (3) on the date specified in the notice.

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(5) In this section—

"the last day on which interest is payable" means—

- (a) where the Board has issued a certificate under subsection (4), the day specified in the certificate;
- (b) in any other case, the day on which the amount referred to in subsection (3) is credited to the member's superannuation account;

"the relevant financial year" means the financial year in which the last day on which interest is payable occurs.

Annual superannuation benefit

8. (1) The annual superannuation benefit in respect of a member is calculated as follows:

$$ASB = S \times \left[\frac{CP - N}{100} \right]$$

Where—

ASB is the annual superannuation benefit

S is the amount of salary paid to the member during the financial year in relation to which the calculation is made where the member was a member of the scheme throughout the year or, where the member was a member of the scheme for part only of the year, S is the amount of salary paid or payable to the member during that part of the year

CP is the charge percentage or, in the case of—

- (a) a section 4(5) member—the amount of the charge percentage declared by regulation in respect of the member
- (b) a section 4(6) member—3

N is—

- (a) in the case of a section 4(5) member or a section 4(6) member—0
- (b) in all other cases—0.3 or such other number as is prescribed from time to time by regulation.

(2) If two or more charge percentages apply at different times during a financial year, the annual superannuation benefit in respect of the financial year will be the aggregate of the amounts calculated under subsection (1) in respect of the parts of the year during which each of the charge percentages applied and for the purpose of those calculations "S" will be the salary paid or payable to the member for the relevant part of the financial year.

(3) The annual superannuation benefit is zero in respect of a member in respect of a period during which the member does not fulfill the requirements for membership of the scheme under section 4.

PSESS benefit

9. (1) The amount accrued under the Public Sector Employees Superannuation Scheme (the PSESS benefit) at 30 June 1992 for the benefit of a person who becomes a member on the commencement of this Act or by virtue of a declaration under section 4(6) will, as soon as the amount has been determined, be credited to the member's superannuation account.

(2) Subsection (1) does not apply in relation to a person who—

- (a) is a member of the State Scheme and was employed in employment to which the *Superannuation Act 1988* applies on 1 July 1992; or
- (b) is a member of a scheme established for the benefit of the employees of an agency or instrumentality of the Crown (except a scheme in relation to which a declaration has been made under section 4(6)).

(3) After the PSESS benefit is credited to the member's superannuation account—

- (a) interest in respect of the 1992/1993 financial year (or part of that year where the benefit is credited before the end of the year) at the rate prescribed by section 10(1) on the PSESS benefit will be credited to the account on the assumption that the PSESS benefit had been credited to the account on 1 July 1992; and
- (b) if the PSESS benefit was credited on or after 1 July 1993 the amounts referred to in section 7 will be calculated (or recalculated) on the assumption that the PSESS benefit had been credited to the account on 1 July 1992 and that the interest referred to in paragraph (a) had been credited to the account on 30 June 1993.

Interest rate

10. (1) The interest rate for the purpose of calculating the amount to be credited to superannuation accounts is the average of the 10 year bond rates declared by the South Australian Government Financing Authority in respect of investments made on the first day of each calendar month of the financial year in respect of which the calculation is made.

(2) The interest rate for the purposes of section 7(3) will be determined in accordance with subsection (1) on the basis of the 10 year bond rates declared on the first days of the calendar months of the financial year occurring before payment of superannuation benefits to, or in respect of the member.

Administration charge

11. (1) At the end of each financial year the Board must deduct the amount of the administration charge from the amount standing to the credit of each superannuation account.

(2) Immediately before the amount standing to the credit of a superannuation account is paid to, or in respect of the member, it must be reduced by the amount of the administration charge in respect of the financial year in which the payment is made.

(3) The amount of the administration charge will be prescribed by regulation and different charges may be prescribed in respect of different classes of members.

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**PART 4
SUPERANNUATION BENEFITS**

Retirement

12. (1) A member who retires from employment is entitled to payment of the amount standing to the credit of his or her superannuation account.

(2) For the purposes of this section a member retires from employment if—

- (a) the member has reached the age of 55 years; and
- (b) the member's employment terminates or is terminated for any reason (except the member's death).

Resignation

13. (1) Where a member resigns from employment before reaching the age of 55 years the following provisions apply:

- (a) the member is entitled to payment of the amount standing to the credit of his or her superannuation account if the aggregate of that amount (including the amount to be credited under section 7(3) and the PSESS benefit (if any)) is less than \$500 or if the member satisfies the Board that—
 - (i) he or she intends leaving Australia within three months after receiving payment to reside out of Australia on a permanent basis; or
 - (ii) he or she is residing out of Australia and will continue to reside out of Australia on a permanent basis;
- (b) if paragraph (a) is not applicable the member may elect—
 - (i) to preserve the amount standing to the credit of his or her superannuation account; or
 - (ii) to carry it over to some other superannuation fund or scheme approved by the Board, in accordance with criteria prescribed by the regulations, for the purposes of this paragraph.

(2) A member who fails to inform the Board in writing of his or her election under subsection (1)(b) within three months after resignation will be taken to have elected to preserve the amount.

(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 as it applies to the member.

(4) Where the member elects to preserve the amount standing to the credit of his or her superannuation account, the following provisions apply:

- (a) the member may at any time after reaching 55 years of age require the Board to pay the amount 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 pay the amount to the member;
- (b) if the member satisfies the Board that he or she has become totally and permanently incapacitated for work, the Board will pay the amount to the member;

- (c) if the member dies, the amount 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).

(5) Where the member elects to carry over the amount standing to the credit of his or her superannuation account to an approved superannuation fund or scheme, 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 or scheme; and
- (b) on being so satisfied the Board will pay the amount on behalf of the member to the fund or scheme.

(6) Where a member has resigned from employment and has elected to preserve the amount standing to the credit of his or her superannuation account but has subsequently been re-employed in employment by virtue of which he or she will be a member of the scheme, the Board may maintain separate superannuation accounts or a combined account in the name of the member.

(7) For the purposes of this section and subject to any other provision of this Act a member will be taken to resign if the member's employment terminates or is terminated for any reason (except invalidity, retrenchment or death).

Retrenchment

14. Where a member's employment is terminated by retrenchment the member is entitled to payment of the amount standing to the credit of his or her superannuation account.

Termination of employment on invalidity

15. (1) A member whose employment terminates on account of invalidity and who has not then reached the age of 55 years is entitled to payment of—

- (a) the amount standing to the credit of his or her superannuation account; and
- (b) subject to this section, a future service benefit calculated in accordance with subsection (2) or (3).

(2) Where the member had fulfilled the requirements for membership of the scheme under section 4 for an uninterrupted period—

- (a) that included the last three complete financial years before termination of the member's employment; and
- (b) that extended up to the termination of the member's employment,

the future service benefit will be \$10 000 or an amount calculated as follows whichever is the greater:

$$\text{FSB} = \frac{S}{3} \times \frac{CP}{100} \times \frac{M}{12}$$

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Where—

FSB is the future service benefit

S is the amount of salary paid to the member during the last three complete financial years

CP is the charge percentage applicable in respect of the period during which the member's employment terminates

M is the number of months between the member's age at the termination of his or her employment and the age of 60 years (an incomplete month being counted as a whole month).

(3) In any other case the future service benefit will be \$10 000 or an amount calculated as follows whichever is the greater:

$$\text{FSB} = \frac{S}{D} \times 365 \times \frac{CP}{100} \times \frac{M}{12}$$

Where—

FSB is the future service benefit

S is the amount of salary paid to the member during the period of his or her membership of the scheme

D is the number of days of the member's membership of the scheme

CP is the charge percentage applicable in respect of the period during which the member's employment terminates

M is the number of months between the member's age at the termination of his or her employment and the age of 60 years (an incomplete month being counted as a whole month).

(4) A future service benefit is not payable to—

(a) a section 4(5) member;

(b) a section 4(6) member;

(c) a member who is receiving or entitled to receive weekly workers compensation payments or to a member who would have been entitled to receive weekly workers compensation payments if the right to those payments had not been surrendered by commutation or by agreement;

(d) a member who is a member of some other superannuation scheme funded wholly or partly by the member's employer if an entitlement to benefits was accruing to the member under that other scheme immediately before termination of the member's employment.

(5) A future service benefit is not payable to a member whose employment terminates on account of invalidity within two years after the commencement or recommencement of the member's membership of the scheme unless the invalidity is caused by accidental injury.

(6) Where an entitlement to benefits accrues to a member of the superannuation benefit scheme under this Act by virtue of the fact that entitlements do not accrue to him or her under the State Scheme or some other scheme, that person's membership of the superannuation benefit scheme will be taken, for the purposes of subsection (5), to commence or recommence at the beginning of each period during which entitlements do not accrue under the other scheme.

(7) A member's employment will be taken to have terminated on account of invalidity if and only if—

(a) the employer (acting with the written approval of the Board) terminates the employment on the ground of the member's invalidity; or

(b) —

(i) the employer or the member satisfies the Board (before termination of employment) that the member is incapacitated for work in the member's present position and that there is no other position, carrying a salary of at least 80 per cent of the salary applicable to the member's present position, which the member could reasonably be expected to take, available to the member; and

(ii) after notice has been given to the Board as required by the regulations, the employer terminates the employment or the member resigns from employment.

(8) Notwithstanding any other Act or law to the contrary an employer cannot terminate the employment of a member on the ground of invalidity unless the requirements of subsection (7)(a) or (b) have been satisfied.

Death of member

16. (1) Where a member's employment is terminated by the member's death—

(a) if the deceased member is survived by a spouse—a superannuation payment will be made to the spouse;

(b) if the deceased member is not survived by a spouse—a superannuation payment will be made to the member's estate.

(2) The amount of the superannuation payment to be made under subsection (1)(a) or (b) is—

(a) the amount standing to the credit of the member's superannuation account; and

(b) subject to this section in the case of a member who had not reached the age of 60 years, a future service benefit calculated in accordance with subsection (3) or (4).

(3) Where the deceased member had fulfilled the requirements for membership of the scheme under section 4 for an uninterrupted period—

(a) that included the last three complete financial years before the member's death; and

(b) that extended up to the member's death,

the future service benefit will be \$10 000 or an amount calculated as follows whichever is the greater:

$$\text{FSB} = \frac{S}{3} \times \frac{CP}{100} \times \frac{M}{12}$$

Where—

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FSB is the future service benefit

S is the amount of salary paid to the member during the last three complete financial years

CP is the charge percentage applicable in respect of the period during which the member died

M is the number of months between the member's age at death and the age of 60 years (an incomplete month being counted as a whole month).

(4) In any other case the future service benefit will be \$10 000 or an amount calculated as follows whichever is the greater:

$$\text{FSB} = \frac{S}{D} \times 365 \times \frac{CP}{100} \times \frac{M}{12}$$

Where—

FSB is the future service benefit

S is the amount of salary paid to the member during the period of his or her membership of the scheme

D is the number of days of the member's membership of the scheme

CP is the charge percentage applicable in respect of the period during which the member died

M is the number of months between the member's age at death and the age of 60 years (an incomplete month being counted as a whole month).

(5) A future service benefit is not payable—

(a) in respect of a section 4(5) member;

(b) in respect of a section 4(6) member;

(c) to the spouse of a member if the spouse is receiving or entitled to receive weekly workers compensation payments in relation to the member's death or would have been entitled to receive such payments if the right to those payments had not been surrendered by commutation or agreement;

(d) in respect of a member who was a member of some other superannuation scheme funded wholly or partly by the member's employer if an entitlement to benefits was accruing to the member under that other scheme immediately before the member's death.

(6) A future service benefit is not payable in respect of a member who dies within two years after the commencement or recommencement of the member's membership of the scheme unless death was caused by accidental injury.

(7) Where an entitlement to benefits accrues to a member of the superannuation benefit scheme under this Act by virtue of the fact that entitlements do not accrue to him or her under the State Scheme or some other scheme, that person's membership of the superannuation benefit scheme will be taken, for the purposes of subsection (6), to commence or recommence at the beginning of each period during which entitlements do not accrue under the other scheme.

Payment of benefits

17. A payment to be made under this Act to a member or to the spouse or estate of a deceased member must be made out of the Consolidated Account (which is appropriated to the necessary extent).

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**PART 5
MISCELLANEOUS**

Rollover of payment from other scheme or fund

18. (1) Where a member's membership of some other superannuation scheme or fund established in relation to the member's employment terminates or is terminated, the Board may credit an amount paid on behalf of the member in consequence of the termination to the member's superannuation account under this Act.

(2) At the end of the financial year in which an amount is credited to a member's superannuation account under subsection (1) the Board must credit to the account interest on that amount at the rate applicable under section 10 in respect of that year.

Exclusion of benefits under awards, etc.

19. (1) A person who employs another person in employment by virtue of which the employee is a member of the superannuation benefit scheme cannot be required by or under the *Industrial Relations Act (S.A.) 1972* or by an award, industrial agreement or contract of employment to make a payment or payments—

- (a) in the nature of superannuation; or
- (b) to a superannuation fund,

for the benefit of the member or for the benefit of some other person in respect of the member.

(2) An award cannot be made or varied under the *Industrial Relations Act (S.A.) 1972* on or after 1 July 1992 under which an employer is required to make a payment or payments in respect of a period of PSESS Scheme employment occurring before that date—

- (a) in the nature of superannuation; or
- (b) to a superannuation fund,

for the benefit of a PSESS Scheme employee or for the benefit of some other person in respect of that employee.

(3) In subsection (2)—

"PSESS Scheme employee" means a person to whom benefits have been credited under the PSESS Scheme;

"PSESS Scheme employment", in relation to an employee, means employment by virtue of which the employee is credited with benefits under the PSESS Scheme.

Power to obtain information

20. (1) The Board may, from time to time, require an employing authority or a member to supply the Board with any information that it reasonably requires for the purposes of this Act.

(2) The Board may require a member to verify information supplied under this section or any other provision of this Act by statutory declaration.

(3) A person who—

- (a) fails to comply with a requirement under subsection (2); or

- (b) supplies information under this section or any other provision of this Act that is false or misleading in a material particular,

is guilty of an offence.

Penalty: Division 4 fine.

(4) If an employing authority fails to supply information to the Board in accordance with a requirement under subsection (1) within 7 days of the requirement (or such longer period as the Board allows), the employer is liable to pay to the Treasurer a penalty (not exceeding the amount calculated in accordance with the following formula) fixed by the Board:

$$A = S \times \frac{CP}{100} \times \frac{1}{10}$$

Where—

A is the amount

S is the aggregate amount of salary paid or payable by the employer to all of its employees who are members of the scheme during the month in which the Board required the information

CP is the charge percentage applicable under the Commonwealth Act in respect of the month in which the Board required the information notwithstanding that a different charge percentage may apply under other provisions of this Act in respect of all or some of the employer's employees.

Accounts and audit

21. (1) The Board must keep proper accounts of payments to, or in relation to, members in respect of each financial year, and prepare financial statements in relation to those payments in a form approved by the Treasurer.

(2) The Auditor-General may at any time, and must at least once in each year, audit the accounts and financial statements referred to in subsection (1).

Report

22. (1) The Board must, on or before 31 October in each year submit a report to the Minister on the operation of this Act during the financial year ending on 30 June in that year.

(2) The report must include a copy of the financial statements prepared by the Board in relation to payments to, or in respect of, members.

(3) The Minister must, within six sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

Delegation by Board

23. (1) The Board may delegate any of its powers or functions under this Act (except this power of delegation) to any person or body.

(2) A delegation under this section—

(a) must be by instrument in writing; and

(b) may be conditional or unconditional; and

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- (c) does not derogate from the power of the Board to act in any matter; and
- (d) is revocable at will by the Board.

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

24. (1) If a deceased member 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 and that spouse were putative spouses as at the date of the member's death.

(5) Where—

- (a) a deceased member 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.

Payment in case of death

25. Where a person to whom a payment is to be made under this Act dies, the Board may, in its discretion, make the payment to—

- (a) the personal representative of the deceased; or
- (b) the spouse of the deceased; or
- (c) the children of the deceased.

Payments in foreign currency

26. Where—

- (a) an amount becomes payable to or in relation to a member;
- (b) the member was immediately before the amount became payable, employed outside Australia and paid a salary in a currency other than Australian currency,

the amount will be paid in that other currency.

Rounding off of benefits

27. The amount of benefits under this Act must be rounded off to the nearest multiple of five cents.

Preserved PSESS benefit

28. (1) Where a person resigns from employment and preserves the benefit to which he or she is entitled under the PSESS Scheme before 1 July 1992, the benefit under that scheme may be credited to an account maintained by the Board in the name of the person until it is payable to, or in respect of the person, in accordance with the conditions of preservation.

(2) The balance standing to the credit of an account referred to in subsection (1) will attract interest at the end of each financial year at the rate applicable under section 10 in respect of that year.

(3) An administration fee prescribed by regulation may be deducted by the Board from an account referred to in subsection (1) at the end of each financial year.

Resolution of doubts or difficulties

29. If, in the opinion of the Board, any doubt or difficulty arises in the application of this Act to particular circumstances, the Board may give such directions as are reasonably necessary to resolve the doubt or difficulty and this Act will apply subject to a direction given by the Board under this section.

Regulations

30. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Any such regulation may impose a penalty, not exceeding a division 7 penalty, for breach of or non-compliance with a provision of the regulations.

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APPENDIX 1

LEGISLATIVE HISTORY

Section 19:	redesignated as s. 19(1) by 37, 1994, s. 22
Section 19(2) and (3):	inserted by 37, 1994, s. 22

APPENDIX 2

DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.