

South Australia

# Superannuation Act 1988

An Act to provide superannuation benefits for certain employees; and for other purposes.

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## Legislative history

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Superannuation Act 1988*.

### **4—Interpretation**

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

***active contributor*** means a contributor who is contributing to the Fund;

***actual or attributed salary***—see subsections (3) and (4);

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

***adjusted salary*** in relation to a contributor as at a particular time means—

- (a) where the contributor has been employed on a full-time basis throughout his or her contribution period—the contributor's actual or attributed salary as at that time;
- (b) where the contributor has been employed on a part-time or casual basis over the whole or any part of his or her contribution period—the contributor's actual or attributed salary as at that time reduced to reflect the extent of the contributor's employment over the contribution period expressed as a proportion of full-time employment;

***age of retirement*** means—

- (a) in relation to an old scheme contributor for whom 55 years was the age of retirement under the repealed Act—55 years;
- (b) in all other cases—60 years;

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

***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;

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

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

***contracting out agreement*** means an agreement between a Minister or other agent or instrumentality of the Crown and another person or persons—

- (a) under which—

- (i) a function previously undertaken by the Crown is to be undertaken by the private sector; or
  - (ii) a service previously provided by the Crown to the public, or to a section of the public or to the Crown itself, is to be provided by the private sector; and
- (b) under which persons who had been public sector employees employed in undertaking that function or providing that service are offered employment in the private sector;

**contribution month**—see subsection (2a);

**contribution period** means—

- (a) in relation to an old scheme contributor—a period (including a period falling wholly or partly before the commencement of this Act) over which the contributor is (or was) an active contributor;
- (b) in relation to a new scheme contributor—a period over which the contributor is (or was) an active contributor;

**contributor** means a person accepted as a contributor (either under this Act or under an earlier Act) and includes such a person who has ceased making contributions unless his or her rights in relation to superannuation have been exhausted and no derivative rights exist in relation to that person under this Act (but does not include a person as a member of an administered scheme under Schedule 3);

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

**dependency** in relation to a child means any period for which the child is an eligible child;

**eligible child** in relation to a deceased contributor means a child—

- (a) who is—
  - (i) a child of the contributor; or
  - (ii) a child in relation to whom the contributor had assumed parental responsibilities and who was cared for and maintained, wholly or in part, by the contributor up to the date of the contributor's death; and
- (b) who is—
  - (i) under the age of 16 years; or
  - (ii) between the ages of 16 and 25 years and in full-time attendance at an educational institution recognised by the Board for the purposes of this definition;

**employee** means—

- (a) a statutory officer of the Crown (including a Magistrate but not a Judge);
- (b) a person—
  - (i) employed in the Public Service under the *Government Management and Employment Act 1985*; or



- (ii) employed under the *Education Act 1972* or the *Further Education Act 1975*; or
- (iii) employed by—
  - TransAdelaide;
  - the Commissioner of Highways;
  - the South Australian Health Commission;
  - an employer with which the Board has entered into superannuation arrangements under this Act; or
- (iv) employed by a Minister, or the Chief Executive Officer of a Public Service administrative unit, on a weekly, daily or hourly basis; or
- (v) employed under the *Parliament (Joint Services) Act 1985*; or
- (vi) employed to provide services to the House of Assembly or the Legislative Council and under the control of the Speaker or the President; or
- (vii) employed as a member of the Governor's staff; or
- (viii) employed in an office or position declared by regulation to be an office or position to which this Act extends;

***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;

***entitlement day*** means—

- (a) in relation to a contributor who becomes entitled to a pecuniary benefit under this Act—the day on which that entitlement arises;
- (b) in relation to a contributor whose employment is terminated by his or her death—the date of the contributor's death;

***the Fund*** means the South Australian Superannuation Fund;

***invalid pension*** means a pension payable on account of invalidity;

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

***month*** means a period starting at the beginning of any day of one of the 12 named months and ending—

- (a) immediately before the beginning of the corresponding day of the next named month; or
- (b) if there is no such corresponding day, at the end of the next named month;

***new scheme contributor*** means a person accepted as a contributor on or after 31 May, 1986 (but does not include any such person who is classified by the Board as an old scheme contributor);

**notional salary** in relation to a contributor whose employment has ceased temporarily or permanently (including a contributor who has died) means the salary that the contributor would be receiving if he or she had continued in employment in the same position and at the same grade as were applicable immediately before the cessation of employment and, if the contributor was not in full-time employment immediately before cessation of employment, notional salary will be calculated on the basis of the contributor's average hours of employment (excluding overtime) over the last three years of his or her contribution period;

**old scheme contributor** means a person who was accepted as a contributor to the Fund before 31 May, 1986 (and includes a person accepted as a contributor after that date if that person is classified as an old scheme contributor by the Board);

**outplaced employee** means a contributor who has retired or resigned from employment to take up employment in the private sector pursuant to an offer of employment in a contracting out agreement;

**pensioner** means a person who is entitled to a pension under this Act (including a person who qualifies for a pension but whose pension is under suspension but not including a person as a member of an administered scheme under Schedule 3);

**pension period** means the period over which a pension is paid;

**private sector employer** means the employer with whom an outplaced employee takes up employment upon retiring or resigning from employment in the public sector;

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

**putative spouse** means—

- (a) a person who is a putative spouse within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not; or
- (b) a person in respect of whom a declaration has been made by the District Court under section 4A of this Act;

**the repealed Act** means the *Superannuation Act 1974*;

**to retrench** in relation to a contributor means to terminate the contributor's employment on the ground that work of the kind for which the contributor is qualified and suited is no longer available for the contributor;

**retrenchment pension** means the pension payable to an old scheme contributor on account of retrenchment;

**salary**, in relation to a contributor who is employed pursuant to a TEC contract, means that proportion of the value of the total remuneration package specified in the contract that has been prescribed by regulation for the purposes of this definition;

**salary**, in relation to a contributor who is not employed pursuant to a TEC contract, includes all forms of remuneration except—

- (a) remuneration related to overtime (other than such remuneration that is paid by way of an annual allowance);
- (b) a leave loading;

- (c) a loading arising from the casual nature of the employment or the conditions under which work is performed;
- (d) allowances (unless declared by regulation to be a component of salary) for accommodation, travelling, subsistence or other expenses;
- (da) non-monetary remuneration referred to in subsection (2d);
- (e) remuneration of a kind excluded by regulation from the ambit of this definition (and such a regulation may exclude remuneration of a particular kind for the purpose of calculating contributions but provide for its inclusion as a component of salary for the purpose of calculating benefits);

**the Scheme** means the scheme of superannuation established by this Act and (where the context admits) includes the scheme of superannuation established by a corresponding previous enactment (but does not include any administered scheme under Schedule 3);

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

**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;

**standard contribution rate** means—

- (a) in relation to an old scheme contributor whose standard contribution rate is under clause 2 of Schedule 1 some rate other than 6% of salary—that other rate of contribution;
- (b) in all other cases—6% of salary;

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

**the Superannuation Funds Management Corporation of South Australia or the Corporation** means the Superannuation Funds Management Corporation of South Australia continued in existence by the *Superannuation Funds Management Corporation of South Australia Act 1995*;

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

**TEC contract** means a contract of employment between a contributor and his or her employer under which the value of the total remuneration package specified in the contract reflects the total employment cost to the employer of employing the contributor;

**Triple S scheme** means the Southern State Superannuation Scheme established by the *Southern State Superannuation Act 1994*.

- (2) Where a period is to be expressed in months for the purpose of this Act, then, except where express provision is made to the contrary, only completed months will be taken into account and any remainder will be ignored.
- (2a) The number of contribution months in a contribution period is calculated by multiplying the number of days in the period by 0.032854.

- (2b) A regulation prescribing the proportion of the value of the total remuneration package for the purposes of the first definition of *salary* in subsection (1)—
- (a) may prescribe different proportions in relation to old scheme contributors and new scheme contributors; and
  - (b) in relation to a contributor whose salary would be less under the first definition of *salary* in subsection (1) than if it were determined under the second definition of *salary* in that subsection—may prescribe a proportion to ensure that the value of the contributor's salary for the purposes of this Act is not less than it would be if determined under the second definition of *salary*.
- (2c) Non-monetary remuneration received by a contributor as the result of the sacrifice by the contributor of part of his or her salary in accordance with—
- (a) an award; or
  - (b) an enterprise agreement prescribed by regulation for the purpose of this subsection,
- is included in the second definition of *salary* in subsection (1).
- (2d) All non-monetary remuneration, except for non-monetary remuneration referred to in subsection (2c), is excluded from the second definition of *salary* in subsection (1).
- (2e) For the purposes of determining the amount of the salary received by a contributor who is in receipt of non—monetary remuneration of a kind referred to in subsection (2c), the value of the non-monetary remuneration of that kind will be taken to be the amount of salary sacrificed by the contributor in order to receive that remuneration.
- (2f) A regulation referred to in subsection (2c)(b) may prescribe an enterprise agreement by reference to the agreement or by reference to a class to which the agreement belongs.
- (3) Subject to subsection (4), a contributor's actual or attributed salary, as at a particular date, is—
- (a) where the contributor is, at that date, employed on a full-time basis—the contributor's salary;
  - (b) in any other case—the salary that the contributor would have been receiving, at that date, if the contributor had then been employed on a full-time basis.
- (4) If—
- (a) there is a reduction in a contributor's rate of salary (not being a reduction resulting from disciplinary action against the contributor);
  - (b) the contributor elects in a manner approved by the Board to contribute as if the reduction had not occurred,

the contributor's contributions will be based on the salary of the position or office held by the contributor immediately before the reduction occurred or, if that position or office ceases to exist or the classification of the position or office is changed, the contributions will be based on the salary of that position or office immediately before it ceased to exist or its classification was changed, adjusted to reflect changes in the Consumer Price Index from that time and the contributor's actual or attributed salary as at a particular date will be determined as if the notional salary in respect of which the contributor was contributing at that date were the contributor's actual salary.

- (5) Where it is necessary to calculate what would have been the amount standing to the credit of a contributor's contribution account, as at a particular time, if the contributor had contributed at the standard contribution rate throughout his or her contribution period, the calculation may be made as follows:

$$A = B \times \frac{C}{D} \times P$$

Where—

*A* is the amount

*B* is the actual credit of the contribution account at the relevant time

*C* is the number of months in the contribution period

*P* is—

- (a) in the case of a contributor who was in full-time employment throughout his or her contribution period—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment during his or her contribution period as a proportion of full-time employment during that period

*D* is the number of the contributor's contribution points.

- (6) 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 to which this Act applies, 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 person is employed in employment to which this Act applies for a particular term and the term expires the person will be taken to have resigned—
    - (i) if he or she makes an election under this subparagraph—at the expiration of the term; or
    - (ii) if no election is made under subparagraph (i)—at the expiration of 12 months from the expiration of the term except where the person is re-employed in employment to which this Act applies (not being employment on a casual basis) before that time in which case any interruption of employment will be ignored;

- (c) a person whose employment is terminated on the ground of incompetence will be taken to have retired or resigned from employment depending on whether he or she has then reached the age of 55 years.
- (7) A person referred to in subsection (6)(b) cannot make contributions under this Act in respect of a period before he or she is taken to have resigned under that subsection and during which he or she is not employed in employment to which this Act applies.
- (8) For the purposes of this Act a contributor who is on leave without pay is not an active contributor if a contribution payable by the contributor has remained unpaid for 14 days or more.
- (9) Subsection (8) does not apply if the contributor did not know, and could not reasonably have been expected to know, that the contribution had remained unpaid for 14 days.
- (10) For the purposes of subsections (8) and (9), contributions become payable at the times at which salary would have been payable to the contributor if he or she had not been on leave without pay.

#### **4A—Putative spouses**

- (1) For the purposes of this Act, two persons of the same sex were, on a certain date, the putative spouses one of the other if the District Court has made a declaration under this section that they were, on that date, cohabiting with each other 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 that they—
  - (a) had so cohabited with each other continuously for the period of five years immediately preceding that date; or
  - (b) had during the period of six years immediately preceding that date so cohabited with each other for periods aggregating not less than five 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.

#### 4B—Restriction on publication of court proceedings

- (1) **Protected information** is information relating to an application under section 4A (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 proceedings relate; or
  - (c) a witness to 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.

#### 5—Superannuation arrangements

- (1) Subject to subsection (2), the Board may enter into arrangements with—
  - (a) an instrumentality or agency of the Crown; or
  - (b) a prescribed authority, body or person,
 under which the employees of that instrumentality, agency, authority, body or person become eligible to apply to be accepted as contributors.
- (1a) An arrangement under subsection (1) may modify the provisions of this Act in their application to, or in relation to, employees to which the arrangement relates but not so as to put those employees in a more advantageous position than other contributors.

- (1b) An arrangement may be varied at any time by agreement between the Board and the instrumentality, agency, authority, body or person.
- (2) An arrangement under subsection (1) is not effective unless its terms are approved by the Minister.
- (2a) Where an instrumentality or agency of the Crown that has entered into an arrangement with the Board under this section ceases to be an instrumentality or agency of the Crown, the Minister may by written notice to the Board and to the former instrumentality or agency of not less than one month—
  - (a) declare that benefits will cease accruing to contributors in respect of their employment with the former instrumentality or agency; and
  - (b) vary the terms of the arrangement in such manner as he or she thinks fit.
- (3) Subject to subsection (4), an instrumentality or agency of the Crown or an authority, body or person who has entered into an arrangement with the Board under this section (whether before or after the commencement of the *Superannuation (Scheme Revision) Amendment Act 1992*) may, by written notice to the Board of not less than one month, declare that benefits will cease accruing to contributors in respect of employment with the instrumentality, agency, authority, body or person.
- (4) A declaration cannot be made under subsection (3)—
  - (a) without the approval in writing of a majority of those persons who—
    - (i) are contributors by virtue of the arrangement; and
    - (ii) are currently employed by the instrumentality, agency, authority, body or person; and
  - (b) unless the Board has given its approval to the declaration.
- (5) Before giving its approval under subsection (4)(b), the Board must have obtained from an actuary an actuarial assessment of the account (if any) established to meet the employer component of benefits that have accrued to employees of the instrumentality, agency, authority, body or person under this Act.
- (6) When giving its approval under subsection (4)(b), the Board must be satisfied on the basis of the actuary's assessment that the amount standing to the credit of the account will be sufficient to meet the employer component of benefits.
- (7) The following provisions apply on the cessation of the accrual of benefits under subsection (2a) or (3):
  - (a) those contributors currently employed by the instrumentality, agency, authority, body or person who are of or over the age of 60 years will be taken for the purposes of this Act to have retired from employment; and
  - (b) those contributors currently employed by the instrumentality, agency, authority, body or person who have not reached the age of 60 years will be taken for the purposes of this Act to have resigned from employment; and
  - (c) section 28 or 39 (as the case requires) applies to and in relation to a contributor referred to in paragraph (b) despite the fact that he or she is of or over the age of 55 years; and
  - (d) a contributor referred to in paragraph (b) who has elected to preserve his or her benefits is not entitled to them (except on account of incapacity) until—



- (i) he or she has reached the age of 55 years and has ceased to be employed by the instrumentality, agency, authority, body or person;  
or
- (ii) he or she has reached the age of 60 years.



## Part 2—Administration

### Division 1—The Board

#### 6—The Board

- (1) The Board continues in existence.
- (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.

#### 7—Functions of the Board

- (1) The Board is responsible to the Minister for all aspects of the administration of this Act except the management and investment of the Fund.

#### 8—The Board's membership

- (1) The Board consists of the following members:
  - (a) a presiding member (who must not be an employee) appointed by the Governor; and
  - (b) two members elected by the contributors and members of the superannuation benefit scheme (established by the *Superannuation (Benefit Scheme) Act 1992*) and the Southern State Superannuation Scheme (established by the *Southern State Superannuation Act 1994*); and
  - (c) two members appointed by the Governor on the Minister's nomination.
- (2) A person who is employed in duties connected with the administration of this Act, the *Superannuation (Benefit Scheme) Act 1992* or the *Southern State Superannuation Act 1994* is not eligible to be elected as a member of the Board.
- (3) The Governor may appoint a deputy to a member of the Board and the deputy may, in the absence or during a temporary vacancy in the office of that member, act as a member of the Board.
- (4) Subject to subsection (5), a member of the Board will be appointed or elected for a term not exceeding three years.
- (5) A member appointed or elected to fill a casual vacancy will be appointed or elected for the balance of the term of his or her predecessor.
- (6) The office of a member of the Board becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed or re-elected; or
  - (c) resigns by written notice to the Minister; 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.
- (7) If the office of an elected member becomes vacant and the balance of the term of the office is 12 months or less, the Governor may appoint to the vacant office a person nominated by the Public Service Association of South Australia Incorporated and the South Australian Institute of Teachers.

## **9—Procedures at meetings of the Board**

- (1) A meeting will be chaired by the presiding member or, in his or her absence, by a member chosen by those present.
- (2) Subject to subsection (3), the Board may act notwithstanding vacancies in its membership.
- (3) Three members constitute a quorum for a meeting of the Board.
- (4) A decision in which a majority of the members present at a meeting concur is a decision of the Board.
- (4a) A conference by telephone or other electronic means between members of the Board will, for the purposes of this section, be taken to be a meeting of the Board at which the participating members are present if—
  - (a) notice of the conference is given to all members in the manner determined by the Board for that purpose; and
  - (b) each participating member is capable of communicating with every other participating member during the conference.
- (5) Subject to this Act, the Board may determine its own procedures.
- (6) The Board must keep minutes of its proceedings.

## **10—Staff of the Board**

- (1) The Board may, with the Minister's approval, appoint staff to assist it in carrying out its responsibilities under this Act.
- (2) A person appointed under subsection (1) is not a Public Service employee.
- (3) 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.

## **10A—Delegation by the Board**

- (1) The Board may delegate any of the Board's 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
  - (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 3—The Fund**

### **17—The Fund**

- (1) The Fund continues in existence.
- (2) The assets of the Fund belong (both at law and in equity) to the Crown.
- (3) The Fund is subject to the management and control of the Superannuation Funds Management Corporation of South Australia.
- (4) The Treasurer must pay into the Fund periodic contributions reflecting—
  - (a) the contributions paid to the Treasurer by contributors; and
  - (b) any co-contribution paid to the Board on behalf of a contributor (but received by the Treasurer on behalf of the Board),

with respect to the relevant period.

- (5) All interest and accretions arising from investment of the Fund must be paid into the Fund.
- (6) The Fund will be treated as made up of 3 major divisions—
  - (a) one proportioned to—
    - (i) the aggregate balance, as at a date determined by the Board, of contribution accounts maintained in the names of old scheme contributors;
    - (ii) the amount, as at the date referred to in subparagraph (i), that represents income of the Fund referable to old scheme contributors that is not reflected in contribution accounts;
    - (iii) the amount, as at the date referred to in subparagraph (i), that is referable to contributions of old scheme contributors whose contribution accounts have been closed;
    - (iv) subsequent contributions and payments referable to old scheme contributors;
    - (v) subsequent income of the Fund attributable to investment of this division of the Fund;
  - (b) one proportioned to—
    - (i) the aggregate balance, as at the date referred to in paragraph (a)(i), of contribution accounts maintained in the names of new scheme contributors; and
    - (ii) subsequent contributions and payments referable to new scheme contributors; and
    - (iii) subsequent income of the Fund attributable to investment of this division of the Fund;

- (c) one proportioned to the aggregate balance of co-contribution accounts to the extent that they hold the amount of any co-contributions that have been paid to the Board.
- (7) The following amounts will be paid from the Fund:
- (a) administrative costs and other expenses related to the management and investment of the Fund;
  - (b) the prescribed percentage of the other costs of administering this Act;
  - (c) any reimbursement of the Consolidated Account or a special deposit account that the Treasurer charges against the Fund in pursuance of this Act.
- (8) The Superannuation Funds Management Corporation of South Australia must determine the value of each division of the Fund as at the end of each financial year.

## **19—Investment of the Fund**

- (1) The Fund will be invested in a manner determined by the Superannuation Funds Management Corporation of South Australia.
- (2) The Corporation may enter into transactions affecting the Fund—
  - (a) for the purpose of investment; or
  - (b) for purposes incidental, ancillary or otherwise related to investment.

## **Division 3A—Accounts**

### **20A—Contributors' accounts**

- (1) The Board will maintain accounts in the names of all contributors and each account will state whether the contributor is an old scheme contributor or a new scheme contributor.
- (2) A contributor's account must be debited with any payment that is, in pursuance of this Act, to be charged against that account.
- (3) At the end of each financial year, each contributor's account that has a credit balance will be varied—
  - (a) if the account is in the name of an old scheme contributor—to reflect a rate of return determined by the Board in relation to the contribution accounts of old scheme contributors for the relevant financial year;
  - (b) if the account is in the name of a new scheme contributor—to reflect a rate of return determined by the Board in relation to the contribution accounts of new scheme contributors for the relevant financial year.
- (4) In determining a rate of return for the purposes of subsection (3), the Board should have regard to—
  - (a) the net rate of return achieved by investment of the relevant division of the Fund over the financial year or, if a new scheme contributor has made a nomination under subsection (4a), the net rate of return achieved by the class of investments, or the combination of classes of investments, nominated by the contributor; and

- (b) the desirability of reducing undue fluctuations in the rate of return on contributors' accounts.
- (4a) If the Fund is invested in different classes of investments, the Board may, with the agreement of the Superannuation Funds Management Corporation of South Australia, permit new scheme contributors, on such terms and conditions as it thinks fit, to nominate the class of investments, or the combination of classes of investments, for the purpose of determining the rate of return under this section.
- (4b) If a contributor, after nominating a class of investments under subsection (4a), subsequently varies the nominated class of investments, the Board may charge a fee (to be fixed by the Board) to the contributor's contribution account in a manner determined by the Board.
- (5) Where, in pursuance of subsection (4)(b), the Board determines a rate of return that is at variance with the net rate of return achieved by investment of the relevant division of the Fund, the Board must include its reasons for the determination in its report for the relevant financial year.
- (6) Where it is necessary to determine the balance of a contributor'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.
- (6a) A balance determined under subsection (6) will not be adjusted when a rate of return is subsequently determined under subsection (3).
- (7) A reference in this section to *rate of return* is a reference to a positive or a negative rate of return.

## **20ABA—Co-contribution accounts**

The Board must—

- (a) establish a co-contribution account in the name of a contributor 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; and
- (c) immediately on a co-contribution account being credited with the amount of a co-contribution—transfer the amount to a co-contribution account maintained by the Board in the name of the contributor in the Southern State Superannuation Fund; and
- (d) advise the contributor in writing that—
  - (i) the co-contribution has been transferred to the Southern State Superannuation Fund; and
  - (ii) the contributor is, by virtue of section 14 of the *Southern State Superannuation Act 1994*, a member of the Triple S scheme.

## **20AB—Other accounts to be kept by Board**

- (1) The Board must keep proper accounts of receipts and payments relating to the payment of benefits under this Act.

- (2) The Auditor-General may at any time, and must at least once in each year, audit the accounts kept by the Board under subsection (1).

## **Division 3B—Payment of benefits**

### **20B—Payment of benefits**

- (1) Any benefit or other entitlement payable under this Act must be paid out of the Consolidated Account (which is appropriated to the necessary extent) or out of a special deposit account established by the Treasurer for the purpose.
- (2) If any such payment, or a proportion of any such payment, is, in pursuance of this Act, to be charged against the contributor's contribution account or against the Fund, the Treasurer may reimburse the Consolidated Account or special deposit account by charging the relevant division of the Fund with the amount of that payment or the relevant proportion of that payment (as the case requires).
- (3) If any such payment, or a proportion of any such payment, relates to a rollover account or a co-contribution account, an amount equal to the amount of the payment is to be charged against the appropriate account and the Treasurer may reimburse the Consolidated Account or special deposit account by charging the relevant division of the Fund with the amount of that payment or the relevant proportion of that payment (as the case requires).
- (4) This section does not apply in relation to an administered scheme under Schedule 3.

## **Division 4—Reports**

### **21—Reports**

- (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.
- (4) The Minister must, in relation to the triennium ending 30 June 1992, and thereafter in relation to each succeeding triennium, obtain a report within 12 months after the end of the relevant triennium—
  - (a) on the cost of the Scheme to the Government at the time of the report and in the foreseeable future; and
  - (b) estimating the proportion of future benefits under Part 5 that can be met from the Fund.
- (4a) A report under subsection (4) must be prepared by an actuary, not being a member of the Board, appointed by the Minister.
- (5) 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.



## Part 3—Contributors, contribution and contribution points

### 22—Entry of contributors to the scheme

- (1) The Board may, on the application of an employee, accept the employee as a contributor.
- (2) An application can only be made in a manner approved by the Board.
- (3) The Board may require an applicant to provide satisfactory evidence of the state of the applicant's health.
- (4) The cost of any medical examination to which an applicant is required to submit under subsection (3) will be paid by the Board.
- (5) If it appears to the Board—
  - (a) that an applicant's state of health is such as to create a risk of invalidity or premature death; or
  - (b) that an applicant has in the past engaged in an activity of a prescribed kind that increases the risk of invalidity or premature death; or
  - (c) that the applicant is likely in the future to engage in an activity of a kind referred to in paragraph (b),

the Board may accept the application on conditions (being conditions authorised by the regulations) limiting the benefits payable under this Act in the event of the contributor's invalidity or death before the age of 55 years (and any such condition prevails to the extent of any inconsistency with any provision of this Act).

- (5a) Unless conditions referred to in subsection (5) provide otherwise, a contributor whose benefits in the event of invalidity or death are limited by conditions under that subsection or by conditions referred to in clause 7 of Schedule 1 is not entitled to a disability pension under Part 4 or 5 in respect of the illness, condition or disability to which the limitations relate during the period of five years from the commencement of this Act or the contributor's acceptance into the Scheme whichever is the later.
- (6) If an applicant—
  - (a) is a contributor to some other superannuation scheme funded wholly or in part by the applicant's employer; or
  - (b) receives an allowance or salary loading related to superannuation,the Board will, unless there is good reason to the contrary, reject the application.
- (7) The Board cannot accept an application from a person who is employed on a casual basis.
- (8) If it appears to the Board that a contributor withheld information required in relation to his or her application for membership of the Scheme, the Board may withhold or reduce a benefit under this Act (other than one that is to be charged against the contributor's contribution account).
- (9) The contribution period of an employee accepted as a contributor will commence on the date fixed for that purpose by the Board.

- (10) Subject to this section, an application for acceptance as a contributor under subsection (1) must be made on or before 3 May 1994.
- (11) A person who commenced employment to which this Act applies on or after 3 February 1994 pursuant to a written offer received by the person on or before 3 May 1994 may make an application for acceptance as a contributor under subsection (1) on or before 3 August 1994 or the expiration of three months after the employment commenced whichever is the later.
- (12) An application under subsection (1) will be taken to have been made on the day on which the application was received by the Board.
- (13) An employee who is not a person referred to in subsection (11) may apply for acceptance as a contributor under subsection (1) on or after 4 May 1994 and before 1 July 1995 but if accepted the contributor will—
- (a) be a member of the Southern State Superannuation Scheme established by the *Southern State Superannuation Act 1994* on and from 1 July 1995 and will be taken to have elected to contribute to that scheme at the rate of 6 per cent of salary; and
  - (b) will be taken to be under the age of 55 years and to resign from employment for the purposes of this Act on 30 June 1995 and to carry over the employee component of his or her accrued superannuation benefits on 1 July 1995 to his or her member's contribution account under the Southern State Superannuation Scheme and to carry over the employer component of those benefits on 1 July 1995 to his or her employer contribution account under that scheme.
- (14) An employee may make an application for acceptance as a contributor under subsection (1) on or after 4 May 1994 if he or she—
- (a) had been a member of the Police superannuation scheme; and
  - (b) had resigned or retired from the employment that entitled him or her to membership of that scheme in order to take up employment to which this Act applies; and
  - (c) had taken up that employment within three months after resignation or retirement from the previous employment; and
  - (d) in the case of resignation from the previous employment, had preserved his or her benefits under the Police superannuation scheme.
- (15) Subject to subsection (16), the application referred to in subsection (14) must be made within three months after the employee commences employment to which this Act applies.
- (16) An employee referred to in subsection (14) who commenced employment to which this Act applies during the period commencing on 3 February 1994 and ending on the commencement of the *Superannuation (Employee Mobility) Amendment Act 1997* may make an application for acceptance as a contributor under subsection (1) within three months after the commencement of that Act.

(17) The Board may not refuse an application by an employee referred to in subsection (14) on medical grounds and the only conditions that the Board may place on its acceptance of such an application are those conditions (if any) to which the employee's membership of the Police superannuation scheme had been subject immediately before his or her retirement or resignation from the previous employment.

(18) An employee referred to in subsection (14) who is accepted as a contributor under subsection (1) is only entitled to his or her benefits under the Police superannuation scheme after his or her employment to which this Act applies has terminated.

(19) In this section—

*Police superannuation scheme* means the old or new scheme of superannuation established by the *Police Superannuation Act 1990*.

### 23—Contribution rates

(1) Subject to this section, a contributor will make contributions to the Treasurer at the standard contribution rate until termination of the contributor's employment.

(2) Subject to subsection (2a), a contributor may elect—

(a) to contribute at any one of the following rates:

3.0%

4.5%

6.0%

7.5%

9.0%;

(b) to cease contributing;

(c) in the case of a contributor whose standard contribution rate is not 6%—to contribute at the contributor's standard contribution rate.

(2a) A contributor who is employed pursuant to a TEC contract must contribute at the contributor's standard contribution rate or at a higher rate referred to in subsection (2) unless he or she was contributing at a lower rate during the financial year in which the term of the contract commenced in which event he or she must contribute at that rate or a higher rate referred to in subsection (2).

(2b) Subsection (2a) operates in relation to the financial year following the financial year in which section 5A of the *Superannuation (Miscellaneous) Amendment Act 2000* comes into operation and in relation to subsequent financial years.

(3) Subject to subsection (3a), an election under subsection (2) can only be made in a manner approved by the Board and will operate as from the commencement of a financial year (and only elections received by the Board two months or more before the commencement of a particular financial year will operate in relation to that financial year).

(3a) Where the Board is satisfied that a contributor needs to reduce his or her contributions because of financial hardship, the Board may permit the contributor to make an election under subsection (2) that will operate before the commencement of the next financial year.

- (4) A contributor's contributions will be fixed in relation to each financial year, as from a day in that financial year determined by the Board—
- (a) on the basis of the contributor's salary as at the 31st day of March last preceding the commencement of the financial year or, if the contributor's hours of employment have increased or decreased between that date and the commencement of the financial year, on the basis of the contributor's salary following the last such increase or decrease in the hours of employment; but
  - (b) —
    - (i) if the contributor had not then commenced his or her employment, the contributions will be fixed on the basis of the contributor's commencing salary;
    - (ii) if the contributor was then on leave without pay or at a reduced rate of pay, the contributions will be fixed on the basis of the salary that the contributor would then have been receiving if not on leave;
    - (iii) if the contributor's employment is of a casual nature, the contributions will be fixed on the basis of a notional salary fixed by the Board in relation to the contributor;
    - (iv) if after the date on which contributions for a particular financial year are fixed there is a reduction in the contributor's salary resulting from a reduction in hours of work (other than a temporary reduction of less than two weeks' duration), there will be a proportionate reduction in the contributor's contributions (but such a contributor may, with the Board's approval, elect to contribute as if there had been no reduction in salary and in that event benefits payable under this Act will be calculated as if there had been no reduction of salary);
    - (v) if the reason for the reduction in hours of work is an illness or injury suffered by the contributor, an election under subparagraph (iv) may, with the Board's approval, operate during subsequent years despite paragraph (a).
- (5) If over a particular period a contributor receives (while remaining in employment) weekly workers compensation payments for total or partial incapacity for work, contributions will be payable as if the weekly payments were salary or a component of salary (as the case requires) but if the aggregate of the weekly payments and the salary (if any) of the contributor is less than the salary that the contributor would have received if not incapacitated, the Board may allow a proportionate reduction in the amount of the contributions for that period.
- (6) The following provisions apply to leave without pay—
- (a) any period of leave without pay of two weeks or less will be treated as a period of employment in respect of which contributions are payable;
  - (b) if leave without pay is taken for a continuous period exceeding two weeks, no contribution is payable in respect of that period unless the contributor elects to contribute and the election is approved by the Board (but such an election in respect of more than 12 months' leave without pay can only be made—

- (i) if the Board is satisfied with arrangements that have been made for reimbursement of the cost of benefits attributable to that period; and
  - (ii) in circumstances in which the approval is authorised by the regulations).
- (6a) Where a contributor has been, or will be, on leave for more than 12 months and the period of leave is, or will be, made up of two or more components of leave without pay connected by one or more components of paid leave, an election under subsection (6)(b) in relation to a component of that period that will extend it beyond 12 months or that commences after the first 12 months of the period has passed must comply with the requirements of that subsection even though the component itself is less than 12 months in duration.
- (7) An old scheme contributor will cease to contribute if—
  - (a) before termination of the contributor's employment the following conditions are satisfied:
    - (i) in the case of a person who was accepted as a contributor under the repealed Act—the contributor is of or above the age of retirement and has—
      - (A) an aggregate of 360 contribution points; or
      - (B) an aggregate number of contribution points equal to the number of months between the date on which he or she became a contributor and the date on which he or she reached the age of retirement,whichever is the greater number;
    - (ii) in the case of a person who was accepted as a contributor before the commencement of the repealed Act—the contributor is of or above the age of retirement and has an aggregate of 360 contribution points; or
  - (b) on retirement he or she would be entitled to the maximum pension prescribed by section 34(5).

## 24—Contribution points

- (1) A contributor conforms to the theoretical standard if the contributor—
  - (a) is employed on a full-time basis; and
  - (b) contributes at the standard rate of contribution.
- (2) Contribution points accrue to a contributor who conforms to the theoretical standard at the rate of one point for each contribution month.
- (3) Subject to subsection (5), where a contributor does not conform to the theoretical standard, a proportion of one contribution point (which may exceed unity) accrues to the contributor in respect of a contribution month equal to the proportion that the amount actually contributed in respect of that month bears to the amount that would have been contributed if the contributor had conformed to the theoretical standard.

- (4) A contributor's extrapolated contribution points as at an entitlement day are calculated as follows:
- (a) if the contributor has then reached the age of retirement—the number is, subject to subsection (5), the aggregate of the accrued contribution points;
  - (b) in any other case—
    - (i) if the contributor has been in full-time employment throughout the contribution period—the number is, subject to subsection (5), the aggregate of the accrued contribution points plus a number equal to the number of months' difference between the contributor's age as at the entitlement day and the age of retirement (an incomplete month being counted as a whole month);
    - (ii) if the contributor has not been in full-time employment throughout the contribution period—the number is, subject to subsection (5), the aggregate of the accrued contribution points plus the relevant proportion of the number of months' difference between the contributor's age as at the entitlement day and the age of retirement (an incomplete month being counted as a whole month).
- (5) When the aggregate of a contributor's accrued contribution points are to be calculated as at an entitlement day, the aggregate cannot exceed—
- (a) in the case of a contributor who was in full-time employment throughout the contribution period—the number of months of the contribution period;
  - (b) in any other case—the relevant proportion of the number of months of the contribution period.
- (6) The reference in subsections (4) and (5) to *the relevant proportion* is a reference to a proportion arrived at by expressing the contributor's employment while an active contributor as a proportion of full-time employment.

## **25—Attribution of additional contribution points and contribution months**

- (1) The Minister may, in appropriate cases—
- (a) attribute additional contribution points to a contributor;
  - (b) attribute additional contribution months to a contributor.
- (2) The Minister must provide the Board with details of the attribution of contribution points or months under subsection (1) and the Board must include those details in its report to the Minister under Division 4 of Part 2.

## Part 4—Superannuation benefits—new scheme contributors

### 26—Application of this Part

This Part applies only to new scheme contributors.

### 27—Retirement

- (1) A contributor who retires from employment is entitled to a superannuation payment made up of two components—
  - (a) an employee component (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of the contributor's contribution account; and
  - (b) an employer component calculated in accordance with the following provisions of this section.
- (2) The employer component is the lesser of the following:

$$(a) \quad EC = (FS \times A \times 4.5) + Pn \left( \frac{FS \times 0.85 \times M}{300} \right)$$

$$(b) \quad EC = \left[ FS \times 4.5 \times \left( 1 - \frac{X}{420} \right) \right] + Pn \left( \frac{FS \times 0.85 \times M}{300} \right)$$

Where—

*EC* is the employer component

*FS* is the contributor's actual or attributed salary immediately before retirement (expressed as an annual amount)

*A* is the lesser of the following:

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by 420

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 30 June 1992—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment while an active contributor during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*M* is the number of months of the contributor's contribution period occurring after 30 June 1992

*X* is—

- (a) in relation to a contributor who is at retirement under the age of 60 years—the number of months by which the contributor's age falls short of 60 years;

- (b) in any other case—zero.
- (3) For the purposes of this section, a contributor retires from employment if—
  - (a) the contributor has attained the age of 55 years; and
  - (b) the contributor's employment terminates or is terminated for any reason (except the contributor's death).
- (4) This section does not apply to an outplaced employee who had reached the age of 55 years when he or she retired from employment unless he or she has made an election in accordance with section 28B to take the retirement benefit provided by this section.

## **28—Resignation and preservation of benefits**

- (1) A contributor who resigns from employment before reaching the age of 55 years may elect—
  - (a) to take immediately an amount (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of the contributor's contribution account; or
  - (b) to preserve his or her accrued superannuation benefits; or
  - (c) to carry over his or her accrued superannuation benefits to some other superannuation fund or scheme approved by the Board.
- (1a) A contributor who fails to inform the Board in writing of his or her election under subsection (1) within three months after resignation will be taken to have elected to preserve his or her accrued superannuation benefits.
- (1b) If the Board is of the opinion that the limitation period referred to in subsection (1a) would unfairly prejudice a contributor, the Board may extend the period as it applies to the contributor.
- (1c) Where a contributor resigns and elects to take the amount referred to in subsection (1)(a) the contributor is also entitled to a superannuation payment in accordance with the following provisions:
  - (a) the contributor may at any time require the Board to make the payment to some other superannuation fund or scheme approved by the Board;
  - (ab) the Board must—
    - (i) not less than 6 months before the contributor's 60th birthday—notify the contributor in writing of the contributor's entitlement to require the Board to make the payment under paragraph (b); and
    - (ii) not less than 6 months before the contributor's 55th birthday—notify the contributor in writing of the contributor's entitlement to require the Board to make the payment under paragraph (c);
  - (b) the contributor may at any time after reaching the age of retirement require the Board to make the payment and, if no such requirement has been made on or before the date on which the contributor reaches 65 years of age, the Board will make the payment;
  - (c) if the contributor has reached the age of 55 years and is not employed by an employer within the meaning of the Commonwealth Act, the contributor may require the Board to make the payment to the contributor;



- (d) if the contributor 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 make the payment to the contributor;
- (e) if the contributor dies, the payment will be made to the spouse of the deceased contributor or, if he or she left no surviving spouse, to the contributor'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).

- (1d) The amount of the superannuation payment referred to in subsection (1c) is the amount of the minimum contribution required to avoid payment of the superannuation guarantee charge in respect of the contributor under the Commonwealth Act together with interest from the date of resignation.
- (1e) The amount of interest will be calculated and credited to the contributor at the end of each financial year and will be calculated on the amount referred to in subsection (1d) at the end of the first financial year and on the aggregate of that amount and the interest previously credited at the end of each subsequent financial year.
- (1f) The rate of interest will be determined by the Board in respect of each financial year in accordance with section 20A.
- (2) Where the contributor elects to preserve his or her accrued superannuation benefits, the following provisions apply—
  - (aa) the Board must, not less than 6 months before the contributor's 55th birthday, notify the contributor in writing of the contributor's entitlement to require the Board to make a superannuation payment under paragraph (a);
  - (a) the contributor may at any time after reaching 55 years of age require the Board to make a superannuation payment and, if no such requirement has been made on or before the date on which the contributor reaches 65 years of age, the Board will make such a payment;
  - (b) if the contributor 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 make the payment to the contributor;
  - (c) if the contributor dies, a payment will be made to the spouse of the deceased contributor or, if he or she left no surviving spouse, to the contributor'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).

- (3) A payment under subsection (2) will be made up of two components—
  - (a) an employee component (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of the contributor's contribution account; and
  - (b) an employer component calculated in accordance with subsection (4).

- (4) The employer component will be the lesser of the following:

$$(a) \quad EC = (AFS \times A \times 4.5) + Pn \left( \frac{AFS \times 0.85 \times M}{300} \right)$$

$$(b) \quad EC = \left[ AFS \times 4.5 \times \left( 1 - \frac{X}{420} \right) \right] + Pn \left( \frac{AFS \times 0.85 \times M}{300} \right)$$

Where—

**EC** is the employer component

**AFS** is the contributor's actual or attributed salary as at the date of resignation (expressed as an annual amount) adjusted to reflect changes in the Consumer Price Index since the date of resignation

**A** is the lesser of the following—

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by 420

**Pn** is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 30 June 1992—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment while an active contributor during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

**M** is the number of months of the contributor's contribution period occurring after 30 June 1992

**X** is—

- (a) where the contributor is under the age of 60 years when the payment is made or where the contributor dies under the age of 60 years—the lesser of 60 and the number of months by which the contributor's age falls short of 60 years;
- (b) in any other case—zero.

- (5) Where the contributor elects to carry over his or her accrued superannuation benefits to an approved superannuation fund or scheme, the following provisions apply—
- (a) the contributor 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 make a payment on behalf of the contributor to the fund or scheme made up of two components—
    - (i) an employee component (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of the contributor's contribution account; and
    - (ii) an employer component which will be the aggregate of the following amounts:

- (A) an amount equal to the lesser of twice the amount of the employee component or twice the amount that would have constituted the employee component if the contributor had contributed to the Scheme at the standard contribution rate throughout the contributor's contribution period; and
- (B) an amount calculated as follows:

$$A = Pn \left( \frac{FS \times 0.85 \times M}{300} \right)$$

Where—

*A* is the amount

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 30 June 1992—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment while an active contributor during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*FS* is the contributor's actual or attributed salary immediately before resignation (expressed as an annual amount)

*M* is the number of months of the contributor's contribution period occurring after 30 June 1992.

- (7) For the purposes of this section, a contributor will be taken to resign if the contributor's employment terminates or is terminated for any reason except invalidity (in circumstances entitling the contributor to benefits under this Act), retrenchment or death.
- (8) This section does not apply to, or in relation to, an outplaced employee who resigned from employment before reaching the age of 55 years unless he or she has made an election in accordance with section 28C to preserve his or her accrued superannuation benefits under this section or is taken under section 28C to have made such an election.

### **28A—Resignation pursuant to a voluntary separation package**

- (1) This section applies to a contributor who resigns from his or her employment before reaching the age of 55 years pursuant to a voluntary separation package—
  - (a) that includes a term that this section is to apply to the contributor; and
  - (b) that has been approved by the Treasurer.
- (2) Section 28 does not apply to a contributor to whom this section applies.

- (3) A contributor to whom this section applies is entitled to a lump sum made up of—
- (a) an employee component (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of that account; and
  - (b) an employer component that is equal to the lesser of twice the amount of the employee component or twice the amount that would have constituted the employee component if the contributor had contributed to the Scheme at the standard contribution rate throughout the contributor's contribution period.
- (3a) A part of the lump sum referred to in subsection (3) being an amount equivalent to the minimum contribution required to avoid payment of the superannuation guarantee charge in respect of the contributor under the Commonwealth Act is preserved.
- (3b) The contributor is entitled to the balance of the lump sum at the time of resignation.
- (3c) The amount preserved under subsection (3a) together with interest is payable in accordance with the following provisions:
- (aa) the Board must, not less than 6 months before the contributor's 55th birthday, notify the contributor in writing of the contributor's entitlement to require the Board to pay the amount under paragraph (a);
  - (a) the contributor 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 contributor reaches 65 years of age, the Board will pay the amount to the contributor;
  - (b) if the contributor 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 pay the amount to the contributor;
  - (c) if the contributor dies, the amount will be paid to the spouse of the deceased contributor or, if he or she left no surviving spouse, to the contributor'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).
- (3d) The amount of interest will be calculated and credited to the contributor at the end of each financial year and will be calculated on the amount referred to in subsection (3a) at the end of the first financial year and on the aggregate of that amount and the interest previously credited at the end of each subsequent financial year.
- (3e) The rate of interest will be determined by the Board in respect of each financial year in accordance with section 20A.
- (4) In this section—
- voluntary separation package* means an agreement between a contributor and his or her employer pursuant to which the contributor resigns from employment.

## **28B—Outplaced employees—55 and over**

- (1) A contributor who had reached the age of 55 years when he or she retired from employment to take up employment in the private sector pursuant to an offer of employment in a contracting out agreement may elect—
- (a) to take the retirement benefit provided by section 27; or

- (b) to preserve his or her accrued superannuation benefits under section 28 as though he or she had resigned from employment before reaching the age of 55 years.
- (2) A contributor who fails to inform the Board in writing of his or her election under subsection (1) within one month after retiring will be taken to have made an election under subsection (1)(b).
- (3) If the Board is of the opinion that the limitation period referred to in subsection (2) would unfairly prejudice a contributor, the Board may extend the period as it applies to the contributor.
- (4) Where a contributor has made, or is taken to have made, an election under subsection (1)(b), section 28 applies to, and in relation to, the contributor except that he or she is not entitled to require the Board to make a superannuation payment under section 28(2)(a), and the Board must not make such a payment under that provision, until the contributor has ceased employment with the private sector employer.

### **28C—Outplaced employees under 55**

- (1) A contributor who had not reached the age of 55 years when he or she resigned from employment to take up employment in the private sector pursuant to an offer of employment in a contracting out agreement may elect—
  - (a) to preserve his or her accrued superannuation benefits under section 28; or
  - (b) to take the benefits provided by section 28A.
- (2) A contributor who fails to inform the Board in writing of his or her election under subsection (1) within one month after resigning will be taken to have made an election under subsection (1)(a).
- (3) If the Board is of the opinion that the limitation period referred to in subsection (2) would unfairly prejudice a contributor, the Board may extend the period as it applies to the contributor.
- (4) Where a contributor has made, or is taken to have made, an election under subsection (1)(a), section 28 applies to, and in relation to, the contributor except that he or she is not entitled to require the Board to make a superannuation payment under section 28(2)(a), and the Board must not make such a payment under that provision, until the contributor has reached the age of 55 years and has ceased employment with the private sector employer.
- (5) Where a contributor has made an election under subsection (1)(b), section 28A applies to the contributor as though the requirements of section 28A(1) had been met.

### **29—Retrenchment**

- (1) Where the employment of a contributor who has not reached the age of 55 years is terminated by retrenchment, the contributor may elect—
  - (a) to take a lump sum payment; or
  - (b) to preserve his or her superannuation benefits.
- (1a) A contributor who fails to inform the Board in writing of his or her election under subsection (1) within three months after retrenchment will be taken to have elected to preserve his or her superannuation benefits.

- (1b) If the Board is of the opinion that the limitation period referred to in subsection (1a) would unfairly prejudice a contributor, the Board may extend the period as it applies to the contributor.
- (2) A lump sum payment under this section will be made up of two components—
- (a) an employee component (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of the contributor's contribution account; and
  - (b) an employer component which will be the aggregate of the following amounts:
    - (i) an amount equal to the lesser of twice the amount of the employee component or twice the amount that would have constituted the employee component if the contributor had contributed to the Scheme at the standard contribution rate throughout the contributor's contribution period; and
    - (ii) an amount calculated as follows:

$$A = Pn \left( \frac{FS \times 0.85 \times M}{300} \right)$$

Where—

*A* is the amount

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 30 June 1992—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment while an active contributor during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*FS* is the contributor's actual or attributed salary immediately before retrenchment (expressed as an annual amount)

*M* is the number of months of the contributor's contribution period occurring after 30 June 1992.

- (4) Where a contributor elects to preserve his or her superannuation benefits, this Act applies in the same way as if the contributor had made that election on resignation.
- (5) Where a contributor's employment is to be terminated by retrenchment, the employing authority must give the Board notice of that fact in accordance with the regulations at least one month before the termination takes effect.

### 30—Disability pension

- (1) Subject to this section, a contributor who is temporarily or permanently incapacitated for work, and has not reached the age of 55 years, is entitled to a disability pension.

- (2) A contributor who becomes incapacitated for work in a particular position will not be regarded as incapacitated for work for the purposes of this section if some other position, carrying a salary of at least 80 per cent of the salary applicable to the former position, is available to the contributor and the contributor could reasonably be expected to take that other position.
- (3) A disability pension is not payable in respect of—
  - (a) a period in respect of which the contributor is entitled to sick leave; or
  - (b) a period in respect of which the contributor is entitled to weekly payments of workers compensation; or
  - (c) a period for which the contributor is on recreation leave or long service leave.
- (4) The Board will not pay a disability pension in respect of a period of incapacity of less than one week and may decline to pay a disability pension if it appears that the duration of the incapacity is likely to be less than six months.
- (5) The amount of a disability pension will be two-thirds of the contributor's notional salary.
- (6) A disability pension cannot be paid for a continuous period of more than 12 months unless the Board thinks that there are special reasons for extending that limit, in which case it may extend the pension period by not more than a further 6 months.
- (7) A disability pension cannot be paid, in respect of the same incapacity, for an aggregate period of more than 18 months in any one period of 36 months.
- (8) A contributor is not required to make any contribution over a period for which the contributor receives a disability pension but if the contributor was an active contributor immediately before the commencement of the pension period, the employer component of any superannuation payment that is subsequently made to, or in relation to, the contributor will be calculated as if the contributor had continued as an active contributor over the pension period and had continued to contribute at the rate applicable immediately before the commencement of that period.

### **30A—Rehabilitation etc of disability pensioner**

- (1) Where, in the opinion of the Board, an attempt should be made to rehabilitate a disability pensioner or to find alternative employment for such a pensioner, the Board may serve notice on the pensioner's employer requiring the employer to do one or both of the following—
  - (a) take measures specified in the notice to rehabilitate the pensioner;
  - (b) take measures specified in the notice to find alternative employment for the pensioner.
- (2) A notice under subsection (1) may require the employer to periodically report in writing to the Board on the progress it is making in complying with the requirements of the notice.

- (3) If an employer does not comply with a notice under subsection (1) to the satisfaction of the Board, the Board may, by further notice served on the employer, require the employer to reimburse the Treasurer for the amount of the disability pension paid to the pensioner from the date of service of that notice until the Board informs the employer in writing that it is satisfied with the employer's compliance with the original notice.
- (4) The amount of the pension referred to in subsection (3) is a debt due by the employer to the Treasurer.

### 31—Termination of employment on invalidity

- (1) If—
  - (a) a contributor's employment terminates on account of invalidity before the contributor reaches the age of 55 years; and
  - (b) the Board is satisfied that the contributor's incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent,the contributor is entitled to a superannuation payment made up of two components—
  - (c) an employee component (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of the contributor's contribution account; and
  - (d) an employer component calculated in accordance with subsection (2).
- (2) The employer component is calculated as follows:

$$EC = (A \times 3.86 \times FS) + X + Pn \left( \frac{FS \times 0.85 \times M}{300} \right)$$

Where—

*EC* is the employer component

*A* is the lesser of the following—

- (a) unity;
- (b) whichever of the following is applicable in the circumstances of the case:
  - (i) if the contributor is not receiving, and is not entitled to receive, weekly workers compensation payments in relation to the invalidity and was an active contributor immediately before termination of the employment—the numerical value obtained by dividing the number of the contributor's extrapolated contribution points by 360;
  - (ii) if the contributor is receiving, or is entitled to receive, weekly workers compensation payments in relation to the invalidity based on partial incapacity for work and was an active contributor immediately before termination of employment, the numerical value obtained from the following formula:

$$n = \frac{acp + (1 - x)(ecp - acp)}{360}$$

Where—



*n* is the numerical value

*acp* is the number of the contributor's accrued contribution points

*ecp* is the number of the contributor's extrapolated contribution points

*x* is the extent of the contributor's incapacity for work expressed as a proportion of total incapacity;

- (iii) in any other case—the numerical value obtained by dividing the number of the contributor's accrued contribution points by 360

*FS* is the contributor's actual or attributed salary immediately before termination of employment (expressed as an annual amount)

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 30 June 1992—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment while an active contributor during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*X* is—

- (a) where the contributor was an active contributor immediately before the commencement of the invalidity—the amount (if any) by which the employee component falls short of twice the contributor's adjusted final salary;
- (b) where the contributor was not then an active contributor—zero

*M* is—

- (a) where the contributor was an active contributor immediately before termination of employment—the aggregate of the number of months of the contributor's contribution period occurring after 30 June 1992 and the number of months difference between the contributor's age as at the entitlement day and the age of retirement;
- (b) in any other case—the number of months of the contributor's contribution period occurring after 30 June 1992.

(2a) When determining the number of a contributor's extrapolated superannuation points for the purposes of calculating the employer component under subsection (2), the number of months' difference between the contributor's age as at the entitlement day and the age of 55 years will be used (and for that purpose an incomplete month will be counted as a whole month).

(2b) If the Board is not satisfied as to one or both of the matters referred to in subsection (1)(b) the contributor is entitled to a superannuation payment that is the greater of the following:

- (a) twice the contributor's adjusted salary immediately before termination of employment (expressed as an annual amount); or
- (b) an amount made up of two components—

- (i) an employee component (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of the contributor's contribution account; and
- (ii) an employer component calculated as follows:

$$EC = (A \times 3.86 \times FS) + Pn \left( \frac{FS \times 0.85 \times M}{300} \right)$$

Where—

**EC** is the employer component

**A** is the lesser of the following:

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by 360

**FS** is the contributor's actual or attributed salary immediately before termination of employment (expressed as an annual amount)

**Pn** is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 30 June 1992—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment while an active contributor during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

**M** is the number of months of the contributor's contribution period occurring after 30 June 1992.

- (2c) A superannuation payment under subsection (2b)(a) will be made up of two components—
  - (a) an employee component (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of the contributor's contribution account; and
  - (b) an employer component being the difference between the employee component and twice the contributor's actual or attributed salary immediately before termination of employment (expressed as an annual amount).
- (3) A contributor'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 contributor's invalidity; or
  - (b) —

- (i) the employer or the contributor satisfies the Board (before termination of employment) that the contributor is incapacitated for work in the contributor'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 contributor's present position, which the contributor could reasonably be expected to take, available to the contributor; and
  - (ii) the contributor has been on sick leave, weekly payments of workers compensation, or disability pension for at least 12 months or periods aggregating at least 12 months on account of the invalidity; and
  - (iii) after notice has been given to the Board as required by the regulations, the employer terminates the employment or the contributor resigns from employment.
- (4) Notwithstanding any other Act or law to the contrary an employer cannot terminate the employment of a contributor on the ground of invalidity unless the requirements of subsection (3)(a) or (b) have been satisfied.

### 32—Death of contributor

- (1) Where a contributor's employment is terminated by the contributor's death—
- (a) if the contributor is survived by a spouse—a lump sum payment will be made to the spouse;
  - (b) if the contributor is survived by a spouse and an eligible child or eligible children—a pension will be paid to each eligible child throughout any period of dependency;
  - (ba) if the contributor is not survived by a spouse but is survived by an eligible child or eligible children—a lump sum will be paid to the contributor's estate and a pension will be paid to each eligible child throughout any period of dependency;
  - (c) if the contributor is not survived by a spouse or an eligible child—a lump sum payment will be made to the contributor's estate.
- (2) The lump sum to be paid to a surviving spouse, will be made up of two components—
- (a) an employee component (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of the contributor's contribution account; and
  - (b) an employer component calculated as follows:
    - (i) if the contributor reached the age of 55 years on or before the date of death and is not survived by an eligible child—the employer component is calculated in the same way as the employer component of the lump sum that would have been payable to the contributor if he or she had retired on the date of death;
    - (ii) in any other case the employer component is calculated in accordance with the following formula:

$$EC = (A \times 3 \times FS) + X + Pn \left( \frac{FS \times 0.85 \times M}{300} \right)$$

Where—

*EC* is the employer component

*A* is the lesser of the following:

- (a) unity;
- (b) whichever of the following is applicable in the circumstances of the case:
  - (i) if the spouse is not receiving, and is not entitled to receive, weekly workers compensation payments in relation to the contributor's death and the contributor was an active contributor immediately before the contributor's death—the numerical value obtained by dividing the number of the contributor's extrapolated contribution points by 420;
  - (ii) if the spouse is receiving, or is entitled to receive, weekly workers compensation payments in relation to the contributor's death based on partial dependency and the contributor was an active contributor immediately before his or her death—the numerical value obtained from the following formula:

$$n = \frac{acp + (1 - x)(ecp - acp)}{420}$$

Where—

*n* is the numerical value

*acp* is the number of the contributor's accrued contribution points

*ecp* is the number of the contributor's extrapolated contribution points

*x* is the extent of the spouse's dependency expressed as a proportion of full dependency;

- (iii) in any other case—the numerical value obtained by dividing the number of the contributor's accrued contribution points by 420

*FS* is the contributor's actual or attributed salary immediately before the contributor's death (expressed as an annual amount);

*X* is—

- (a) where the contributor was an active contributor immediately before the date of death—the amount (if any) by which the employee component falls short of twice the contributor's adjusted final salary immediately before the contributor's death (expressed as an annual amount);

- (b) where the contributor was not then an active contributor—zero.

***Pn*** is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 30 June 1992—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment while an active contributor during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

***M*** is—

- (a) where the contributor was an active contributor immediately before termination of employment—the aggregate of the number of months of the contributor's contribution period occurring after 30 June 1992 and the number of months difference between the contributor's age as at the entitlement day and the age of retirement;
- (b) in any other case—the number of months of the contributor's contribution period occurring after 30 June 1992.

(2a) However, a surviving spouse will not be entitled to a benefit under this section if section 43AG applies to the spouse.

(3) The pension for an eligible child is calculated as follows:

(a) where the contributor is survived by a spouse, then—

(i) if there are no more than three eligible children:

$$P = A \times .05 \times FS$$

(ii) if there are more than three eligible children:

$$P = 1/n(A \times .15 \times FS)$$

(b) where the contributor is not survived by a spouse, then—

(i) if there are no more than three eligible children:

$$P = A \times .15 \times FS$$

(ii) if there are more than three eligible children:

$$P = 1/n(A \times .45 \times FS)$$

Where—

***P*** is the amount of the pension (expressed as an amount per fortnight)

***A*** is the lesser of the following:

- (a) unity
- (b) —

- (i) where the contributor was an active contributor immediately before the contributor's death—the numerical value obtained by dividing the number of the contributor's extrapolated contribution points by 420;
- (ii) where the contributor was not an active contributor immediately before the contributor's death—the numerical value obtained by dividing the number of the contributor's accrued contribution points by 420

*FS* is the contributor's actual or attributed salary immediately before the contributor's death (expressed as an amount per fortnight)

*n* is the number of eligible children.

- (3a) The lump sum to be paid to the estate of a contributor who is not survived by a spouse but is survived by an eligible child or eligible children will be charged against the contributor's contribution account to the extent of the amount standing to the credit of the account and will be the aggregate of the following amounts:

- (a) —
  - (i) where the contributor was an active contributor immediately before his or her death—the greater of the following amounts:
    - (A) an amount equivalent to the amount standing to the credit of the contributor's contribution account;
    - (B) an amount equivalent to twice the amount of the contributor's adjusted salary immediately before the contributor's death (expressed as an annual amount);
  - (ii) where the contributor was not an active contributor immediately before his or her death—an amount equivalent to the amount standing to the credit of the contributor's contribution account; and

- (b) an amount calculated as follows:

$$A = Pn \left( \frac{FS \times 0.85 \times M}{300} \right)$$

Where—

*A* is the amount

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 30 June 1992—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment while an active contributor during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*FS* is the contributor's actual or attributed salary immediately before the contributor's death (expressed as an annual amount)

***M*** is—

- (a) where the contributor was an active contributor immediately before termination of employment—the aggregate of the number of months of the contributor's contribution period occurring after 30 June 1992 and the number of months difference between the contributor's age as at the entitlement day and the age of retirement;
  - (b) in any other case—the number of months of the contributor's contribution period occurring after 30 June 1992.
- (4) The pension for an eligible child will be indexed.
- (5) The lump sum to be paid to the estate of a contributor who is not survived by a spouse or an eligible child will be made up of two components—
- (a) an employee component (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of the contributor's contribution account; and
  - (b) an employer component that is the lesser of the following:

(i) 
$$EC = (FS \times A \times 4.5) + Pn \left( \frac{FS \times 0.85 \times M}{300} \right)$$

(ii) 
$$EC = \left[ FS \times 4.5 \times \left( 1 - \frac{X}{420} \right) \right] + Pn \left( \frac{FS \times 0.85 \times M}{300} \right)$$

Where—

***EC*** is the employer component

***FS*** is the contributor's actual or attributed salary immediately before death (expressed as an annual amount)

***A*** is the lesser of the following:

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by 420

***Pn*** is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 30 June 1992—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment while an active contributor during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

***X*** is—

- (a) in relation to a contributor who was at the date of death under the age of 60 years—the lesser of 60 and the number of months by which the contributor's age fell short of 60 years;
- (b) in any other case—zero

*M* is the number of months of the contributor's contribution period occurring after 30 June 1992.

### **32A—PSESS benefit**

- (1) Subject to this section, a person who is entitled to a benefit under this Part is entitled also to payment of the amount standing to the credit of the contributor's account under subsection (6) being an amount equivalent to the amount accrued under the Public Sector Employees Superannuation Scheme in respect of the contributor.
- (2) Where a contributor who has resigned from employment elects to take the amount standing to the credit of his or her contribution account, the amount referred to in subsection (1) will—
  - (a) be paid to or in relation to the contributor at the time at which, and in the circumstances under which, payment of benefits would be made to or in relation to the contributor if he or she had preserved his or her accrued superannuation benefits; or
  - (b) be carried over to some other superannuation fund or scheme approved by the Board.
- (3) Where a contributor who has resigned from employment elects to carry over his or her accrued superannuation benefits to an approved superannuation fund or scheme and the Board is satisfied that the contributor has been admitted to membership of the fund or scheme, the amount referred to in subsection (1) will be paid on behalf of the contributor to the fund or scheme.
- (4) If at the time payment is to be made under subsection (1) the contributor has died, the payment will be made to the contributor's spouse or if the contributor is not survived by a spouse, to the contributor's estate.
- (5) If the amount referred to in subsection (1) has not been determined when it would otherwise be payable under this section, the amount is not payable until the expiration of seven days after it has been determined.
- (6) The Board will maintain an account in the name of each contributor and the Board must—
  - (a) credit to each account (when the amount has been determined) an amount equivalent to the amount accrued under the Public Sector Employees Superannuation Scheme as at 30 June 1992 in respect of the contributor; and
  - (b) credit to each account at the end of the 1992/1993 financial year and at the end of each succeeding financial year—an amount that reflects the rate of return determined by the Board in relation to the contribution accounts of new scheme contributors for the relevant financial year.
- (7) Where there is a delay in crediting the amount referred to in subsection (6)(a), the amount referred to in subsection (6)(b) will be determined on the assumption that the amount referred to in subsection (6)(a) had been credited on 1 July 1992.
- (8) Where it is necessary to determine the balance of an account referred to in subsection (6) at some time other than the end of a financial year, the balance will be extrapolated by applying a percentage rate of return estimated by the Board.



### 32B—Commutation to pay deferred superannuation contributions surcharge—contributor

- (1) A contributor who is liable for a deferred superannuation contributions surcharge as a result of a benefit becoming payable to the contributor 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.
- (2) A contributor who has become entitled to a benefit, or will shortly become entitled to a benefit, may—
  - (a) estimate the amount of the surcharge the contributor will become liable to pay (the *estimated surcharge amount*); and
  - (b) request the Board, in the approved form, to—
    - (i) withhold from the contributor's benefit an amount equal to the estimated surcharge amount (the *withheld amount*); and
    - (ii) pay the balance of the benefit to the contributor (being, in the case of a benefit to which the contributor is yet to become entitled, a payment after the entitlement arises),and the Board must, subject to subsection (4), comply with the contributor's request.
- (3) If a contributor has made a request under subsection (2)(b), the contributor must, before the expiration of 2 months following the issue of a surcharge notice in respect of the contributor, 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 contributor 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 contributor—
    - (i) the lump sum resulting from the commutation of the pension; and
    - (ii) the balance (if any) of the withheld amount.
- (4) The Board may reject an application under subsection (1) 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 contributor fails to satisfy the Board that the contributor has, or will have, a surcharge liability to the Commissioner of Taxation.

- (5) 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.

### **32C—Commutation to pay deferred superannuation contributions surcharge following death of contributor**

- (1) If a contributor who is liable for a deferred superannuation contributions surcharge dies—
- (a) having made a request of the Board under section 32B 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 32B,

the contributor's spouse or, if the contributor is not survived by a spouse, the contributor's legal representative, may, before the expiration of the period of 2 months immediately following the contributor'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 contributor under section 32B in the form of a commutable pension; and
  - (d) to fully commute the pension.
- (2) The Board must, on receipt of an application under subsection (1)—
- (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.
- (3) If a contributor dies without having made a request under section 32B, the contributor's spouse or, if the contributor is not survived by a spouse, the contributor'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 (6), comply with the request.
- (4) An application under subsection (3) must be made in writing to the Board before payment of the benefit to the spouse or legal representative.
- (5) The spouse or legal representative must, before the expiration of 2 months following the issue of a surcharge notice in respect of the contributor, 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.
- (6) The Board may reject an application under subsection (1) or (3) 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 contributor's estate, or the spouse or other person who has paid the surcharge on behalf of the estate.
- (7) 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.
- (8) In this section—

*legal representative*, in relation to a deceased contributor, means a person—

  - (a) holding office as executor of the will of the deceased contributor 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 contributor.

### **32D—Withheld amount**

An amount withheld under section 32B or 32C—

- (a) must be paid by the Treasurer into the Consolidated Account or a special deposit account established by the Treasurer for that purpose; and
- (b) will be charged against the relevant contributor's contribution account (to the extent possible) as if the amount had been paid to the contributor; and
- (c) will be credited with interest at a rate determined by the Treasurer; and
- (d) may be paid to the contributor (or the contributor's spouse or legal representative)—
  - (i) in accordance with section 32B or 32C; 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 contributor; or
    - (B) considers, at any time, there is other good reason for doing so.

## Part 5—Superannuation benefits—old scheme contributors

### Division 1—Pension benefits

#### 33—Application of this Part

This Part applies only to old scheme contributors.

#### 34—Retirement

- (1) A contributor who retires on or after reaching the age of retirement and who is not entitled to a pension under subsection (2), is entitled to a pension calculated as follows:

$$P = FS \left[ \left( A \times \frac{2}{3} \right) \left( 1 + \frac{X}{E} \right) \right] + \frac{FS}{100} + FS \left( \frac{7.4}{100} \times \frac{n}{420} \right)$$

Where—

*P* is the amount of the pension (expressed as an amount per fortnight)

*FS* is the contributor's actual or attributed salary (expressed as an amount per fortnight) immediately before retirement

*A* is the lesser of the following:

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by—
  - (i) in the case of a contributor who was accepted as a contributor under the repealed Act before reaching the age of 30 years—the number of months between the date of acceptance and the age of retirement;
  - (ii) in any other case—360

*E* is—

- (a) in relation to a contributor whose contribution period at the age of retirement was 360 months or more—600;
- (b) in relation to a contributor whose contribution period at the age of retirement was 300 months or more but less than 360 months—1 200

*X* is the number of months by which the contributor's age at retirement exceeds the age of retirement

*n* is 420 or the aggregate number of contribution points that accrued to the contributor between 1 July 1992 and the date of retirement whichever is the lesser (for the purposes of this definition contribution points will be taken to accrue to a contributor who is no longer making contributions because of section 23(7) at the rate of one point per month).

- (2) A contributor (other than a contributor whose membership of the Scheme antedates the commencement of the repealed Act) who retires on or after reaching the age of retirement is entitled to a pension calculated in accordance with the following formula if the number of months between the date of the contributor's acceptance as a contributor and the date on which the contributor reached the age of retirement was less than 300:

$$P = FS \times Z \left[ \left( \frac{A}{540} \times \frac{60 - B}{60} \right) + \left( \frac{C \times B}{60} \right) \right] + \frac{FS}{100} + FS \left( \frac{7.4}{100} \times \frac{n}{420} \right)$$

Where—

**P** is the amount of the pension (expressed as an amount per fortnight)

**FS** is the contributor's actual or attributed salary (expressed as an amount per fortnight) immediately before retirement

**Z** is the numerical value obtained by dividing the number of the contributor's accrued contribution points by the number of months in the contribution period

**A** is the number of months in the contribution period on the date on which the contributor reached the age of retirement

**B** is the number of months between the day on which the contributor reached the age of retirement and the day on which he or she retired reduced by the number of months (if any) in that period during which the contributor was not an active contributor

**C** is the number obtained from Schedule 2 by reference to the value of A applicable to the contributor

**n** is 420 or the aggregate number of contribution points that accrued to the contributor between 1 July 1992 and the date of retirement whichever is the lesser (for the purposes of this definition contribution points will be taken to accrue to a contributor who is no longer making contributions because of section 23(7) at the rate of one point per month).

- (3) A contributor who retires after reaching the age of 55 years but before the age of retirement is entitled to a pension calculated as follows:

$$P = \left[ FS \times A \left( \frac{50}{100} + \frac{17.6 \times n_2}{100 \times 60} \right) \right] + \left[ FS \times \frac{n_1}{420} \left( \frac{6}{100} + \frac{1.4 \times n_2}{100 \times 60} \right) \right]$$

Where—

**P** is the amount of the pension (expressed as an amount per fortnight)

**FS** is the contributor's actual or attributed salary (expressed as an amount per fortnight) immediately before retirement

**A** is the lesser of the following:

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by—
  - (i) in the case of a contributor who was accepted as a contributor under the repealed Act before reaching the age of 30 years—the number of months between the date of acceptance and the date of retirement;

(ii) in any other case— $300 + n_2$

$n_1$  is 420 or the aggregate number of contribution points that accrued to the contributor between 1 July 1992 and the date of retirement whichever is the lesser

$n_2$  is the number of months between the day on which the contributor reached the age of 55 years and the day on which he or she retired.

- (4) A retirement pension will be indexed.
- (5) The amount of a retirement pension will be the amount calculated under this section or 75 per cent of the contributor's actual or attributed salary immediately before retirement (expressed as an amount per fortnight), whichever is the lesser.
- (6) For the purposes of this section, a contributor retires from employment if—
  - (a) the contributor has attained the age of 55 years and the contributor's employment terminates or is terminated before the contributor reaches the age of retirement for any reason except invalidity (in circumstances entitling the contributor to benefits under this Act), retrenchment or death; or
  - (b) the contributor's employment terminates or is terminated on or after the contributor reaches the age of retirement for any reason (except the contributor's death).
- (7) This section does not apply to an outplaced employee.

### 35—Retrenchment

- (1) Where—
  - (a) a contributor's employment is terminated by retrenchment;
  - (b) the contributor has reached the age of 45 years but not the age of retirement;
  - (c) the contributor has been a contributor for not less than 5 years;
  - (d) the Board is satisfied that there is no suitable employment (being employment attracting a salary of at least 80% of the salary applicable to the former employment) available to the contributor,

the contributor is entitled to a pension and a lump sum under this section.

- (2) The amount of the pension is calculated as follows:

$$P = A \times \frac{2}{3} \times FS$$

Where—

$P$  is the amount of the pension (expressed as an amount per fortnight)

$A$  is the lesser of the following:

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's contribution points by—

- (i) in the case of a contributor who was accepted as a contributor under the repealed Act before reaching the age of 30 years—the number of months between the contributor's age as at the date of acceptance and the age of retirement;
- (ii) in any other case—360.

***FS*** is the contributor's actual or attributed salary (expressed as an amount per fortnight) immediately before retrenchment.

(2a) In subsection (2)—

***contribution points*** means—

- (a) in the case of a contributor who was an active contributor immediately before retrenchment—extrapolated contribution points;
- (b) in the case of a contributor who was not an active contributor immediately before retrenchment—accrued contribution points.

(2b) The amount of the lump sum under subsection (1) is calculated as follows:

$$LS = Pn \left( FS \times \frac{0.85}{450} \times M \right)$$

Where—

***LS*** is the lump sum

***Pn*** is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment while an active contributor during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

***FS*** is the contributor's actual or attributed salary (expressed as an annual amount) immediately before retrenchment

***M*** is the number of months of the contributor's contribution period occurring after 31 December 1987.

(3) A retrenchment pension will be indexed.

(4) Where—

- (a) a contributor's employment is terminated by retrenchment; and
  - (b) the contributor is not entitled to a pension and a lump sum under subsection (1); and
  - (c) the contributor has not made an election under subsection (6),
- the contributor is entitled to a lump sum payment.



- (5) The lump sum is made up of two components—
- (a) an employee component (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of the contributor's contribution account; and
  - (b) an employer component calculated as follows:

$$EC = \left(2\frac{1}{3}A - P\right) + Pn \left( FS \times \frac{0.85}{450} \times M \right)$$

Where—

**EC** is the employer component

**A** is the aggregate of the contributor's contributions unless that aggregate amount exceeds what it would have been if the contributor had contributed throughout the contribution period at the standard contribution rate, in which case **A** is the latter amount

**P** is the amount (if any) of pension paid under this Act or the repealed Act to the contributor

**Pn** is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment while an active contributor during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

**FS** is the contributor's actual or attributed salary (expressed as an annual amount) immediately before retrenchment

**M** is the number of months of the contributor's contribution period occurring after 31 December 1987.

- (6) If a contributor whose employment is terminated by retrenchment but who is not entitled to a pension and a lump sum under subsection (1) makes an election under this subsection by written notice to the Board within three months after termination of the employment, the contributor will be taken—
- (a) if the contributor had not reached the age of 55 years at the termination of his or her employment—to have resigned and elected to preserve his or her accrued superannuation benefits; or
  - (b) if the contributor had reached that age at the termination of his or her employment—to have retired.

### 36—Temporary disability pension

- (1) Subject to this section, a contributor—
- (a) who is temporarily or permanently incapacitated for work but whose employment has not been terminated on that ground; and
  - (b) who has not reached the age of retirement,

is entitled to a disability pension.

- (2) A contributor who becomes incapacitated for work in a particular position will not be regarded as incapacitated for work for the purposes of this section if some other position, carrying a salary of at least 80 per cent of the salary applicable to the former position, is available to the contributor and the contributor could reasonably be expected to take that other position.
- (3) A disability pension is not payable in respect of—
  - (a) a period in respect of which the contributor is entitled to sick leave; or
  - (b) a period in respect of which the contributor is entitled to weekly payments of workers compensation; or
  - (c) a period for which the contributor is on recreation leave or long service leave.
- (4) The Board will not pay a disability pension in respect of a period of incapacity of less than one week and may decline to pay a disability pension if it appears that the duration of the incapacity is likely to be less than six months.
- (5) The amount of the pension is calculated as follows:

$$P = A \times \frac{2}{3} \times FS$$

Where—

**P** is the amount of the pension (expressed as an amount per fortnight)

**A** is the lesser of the following:

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's extrapolated superannuation points by—
  - (i) in the case of a contributor who was accepted as a contributor under the repealed Act before reaching the age of 30 years—the number of months between the contributor's age as at the date of acceptance and the age of retirement;
  - (ii) in any other case—360.

**FS** is the contributor's actual or attributed salary (expressed as an amount per fortnight) immediately before the pension becomes payable.

- (6) A disability pension cannot be paid for a continuous period of more than 12 months unless the Board thinks that there are special reasons for extending that limit, in which case it may extend the pension period by not more than a further 6 months.
- (7) A disability pension cannot be paid, in respect of the same incapacity, for an aggregate period of more than 18 months in any one period of 36 months.
- (8) A contributor is not required to make any contribution over a period for which the contributor receives a disability pension but will be credited with contribution points and contribution months in respect of any such period as if the contributor were contributing at the standard contribution rate in respect of that period.

### 36A—Rehabilitation etc of disability pensioner

- (1) Where, in the opinion of the Board, an attempt should be made to rehabilitate a disability pensioner or to find alternative employment for such a pensioner, the Board may serve notice on the pensioner's employer requiring the employer to do one or both of the following—
  - (a) take measures specified in the notice to rehabilitate the pensioner;
  - (b) take measures specified in the notice to find alternative employment for the pensioner.
- (2) A notice under subsection (1) may require the employer to periodically report in writing to the Board on the progress it is making in complying with the requirements of the notice.
- (3) If an employer does not comply with a notice under subsection (1) to the satisfaction of the Board, the Board may, by further notice served on the employer, require the employer to reimburse the Treasurer for the amount of the disability pension paid to the pensioner from the date of service of that notice until the Board informs the employer in writing that it is satisfied with the employer's compliance with the original notice.
- (4) The amount of the pension referred to in subsection (3) is a debt due by the employer to the Treasurer and the prescribed proportion of that amount must not be charged against the contributor's contribution account under section 43A.

### 37—Invalidity

- (1) If a contributor's employment terminates on account of invalidity and the Board is satisfied that the contributor's incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent, the contributor is entitled to a pension under this section.
- (2) The amount of the pension is calculated as follows:

$$P = FS \left( A \times \frac{2}{3} \right) + \frac{FS}{100} + FS \left( \frac{7.4}{100} \times \frac{n}{420} \right)$$

Where—

*P* is the amount of the pension (expressed as an amount per fortnight)

*FS* is the contributor's actual or attributed salary (expressed as an amount per fortnight) immediately before termination of employment

*A* is the lesser of the following:

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's contribution points by—
  - (i) in the case of a contributor who was accepted as a contributor under the repealed Act before reaching the age of 30 years—the number of months between the date of acceptance and the age of retirement;
  - (ii) in any other case—360

*n* is—

- (a) 420; or
- (b) the sum of the aggregate of the contributor's contribution points that accrue after 30 June 1992 and the number of months difference between the contributor's age as at the entitlement day and the age of retirement,

whichever is the lesser.

(2a) In subsection (2)—

**contribution points** means—

- (a) in the case of a contributor who was an active contributor immediately before termination of employment—extrapolated contribution points;
- (b) in the case of a contributor who was not an active contributor immediately before termination of employment—accrued contribution points.

(3) The pension will be indexed.

(3a) If the Board is not satisfied as to one or both of the matters referred to in subsection (1) the contributor is entitled to a superannuation payment that is the greater of the following:

- (a) twice the contributor's adjusted salary immediately before termination of employment (expressed as an annual amount); or
- (b) an amount made up of two components—
  - (i) an employee component (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of the contributor's contribution account; and
  - (ii) an employer component calculated as follows:

$$EC = (A \times 5.83 \times FS) + Pn \left( \frac{FS \times 0.85 \times M}{450} \right)$$

Where—

**EC** is the employer component

**A** is the lesser of the following:

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by—
  - (i) in the case of a contributor who was accepted under the repealed Act before reaching the age of 30 years—the number of months between the age of acceptance and the age of 55 years;
  - (ii) in any other case—300

**FS** is the contributor's actual or attributed salary immediately before termination of employment (expressed as an annual amount)

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment while an active contributor during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*M* is the number of months of the contributor's contribution period occurring after 31 December 1987.

- (3b) A superannuation payment under subsection (3a)(a) will be made up of two components—
  - (a) an employee component (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of the contributor's contribution account; and
  - (b) an employer component being the difference between the employee component and twice the contributor's actual or attributed salary immediately before termination of employment (expressed as an annual amount).
- (3c) If—
  - (a) a contributor's employment terminates on account of invalidity; and
  - (b) the Board is not satisfied as to one or both of the matters referred to in subsection (1); and
  - (c) the contributor makes an election under this subsection by written notice to the Board within three months after receiving written notice from the Board of its decision under paragraph (b),the contributor will be taken—
  - (d) if the contributor had not reached the age of 55 years at the termination of his or her employment—to have resigned and elected to preserve his or her accrued superannuation benefits; or
  - (e) if the contributor had reached that age at the termination of his or her employment—to have retired.
- (4) A contributor'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 contributor's invalidity; or
  - (b) —

- (i) the employer or the contributor satisfies the Board (before termination of employment) that the contributor is incapacitated for work in the contributor'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 contributor's present position, which the contributor could reasonably be expected to take, available to the contributor; and
  - (ii) the contributor has been on sick leave, weekly payments of workers compensation, or disability pension for at least 12 months or periods aggregating at least 12 months on account of the invalidity; and
  - (iii) after notice has been given to the Board as required by the regulations, the employer terminates the employment or the contributor resigns from employment.
- (5) Notwithstanding any other Act or law to the contrary an employer cannot terminate the employment of a contributor on the ground of invalidity unless the requirements of subsection (4)(a) or (b) have been satisfied.

### **38—Death of contributor**

- (1) Where a contributor dies—
  - (a) a person referred to in subsection (1a) is entitled to a pension equal to two-thirds of the deceased contributor's notional pension; and
  - (b) if the contributor is survived by a spouse and an eligible child or eligible children—each eligible child is entitled to a pension in accordance with subsection (2); and
  - (c) if the contributor is not survived by a spouse but is survived by an eligible child or eligible children—the contributor's estate is entitled to a lump sum in accordance with subsection (6) and each eligible child is entitled to a pension in accordance with subsection (2); and
  - (d) if the contributor's employment is terminated by the contributor's death and the contributor is not survived by a spouse or an eligible child—the contributor's estate is entitled to a lump sum in accordance with subsection (7).
- (1a) The following persons are entitled to a benefit under subsection (1)(a):
  - (a) the deceased contributor's lawful spouse if—
    - (i) he or she became the contributor's lawful spouse before termination of the contributor's employment; or
    - (ii) he or she was the contributor's lawful spouse for a period of five years immediately preceding the contributor's death; or
    - (iii) he or she is entitled to a benefit under paragraph (b);
  - (b) a person who was cohabiting with the contributor at the time of his or her death as the lawful spouse or the husband or wife *de facto* of the contributor—

- (i) if he or she had cohabited with the contributor either as the lawful spouse or the husband or wife *de facto* of the contributor (or in both of those capacities at different times)—
      - (A) continuously for the period of five years immediately preceding the contributor's death; or
      - (B) during the period of six years immediately preceding the contributor's death for periods aggregating not less than five years; or
    - (ii) if he or she is the natural parent of a child of whom the contributor was the other natural parent;
  - (c) a person who was cohabiting with the contributor at the time of his or her death as the putative spouse of the contributor.
- (1b) However, a surviving spouse will not be entitled to a benefit under this section if section 43AG applies to the spouse and the amount of any benefit payable to a person must take into account any reduction that has been made under section 43AF.
- (2) Subject to subsection (3) the amount of the pension for each eligible child is as follows:
- (a) if a pension is being paid to a surviving spouse—
    - (i) where there are no more than two eligible children—a pension equal to one-ninth of the deceased contributor's notional pension;
    - (ii) where there are three or more eligible children—a pension calculated by dividing one-third of the deceased contributor's notional pension by the number of eligible children;
  - (b) if no pension is being paid to a surviving spouse—
    - (i) where there is one eligible child—a pension equal to 45% of the deceased contributor's notional pension;
    - (ii) where there are two eligible children—a pension equal to 40% of the deceased contributor's notional pension;
    - (iii) where there are three eligible children—a pension equal to 30% of the deceased contributor's notional pension;
    - (iv) where there are four or more eligible children—a pension calculated by dividing the deceased contributor's notional pension by the number of eligible children.
- (3) If the amount of a pension for an eligible child would, but for this subsection, be less than the prescribed amount, the pension will be equal to the prescribed amount.
- (4) A reference in this section to a deceased contributor's notional pension is—
- (a) where the contributor's employment had terminated before the date of death—a reference to the amount of the contributor's pension immediately before his or her death or, if portion of that pension was commuted to a lump sum before the commencement of this Act and no further commutation has occurred after the commencement of this Act, a reference to the amount of the pension to which the contributor would have been entitled immediately before his or her death if no portion of the pension had been commuted;

- (b) where the contributor's employment terminated on his or her death and the contributor reached the age of retirement on or before the date of death—a reference to the amount of the retirement pension to which the contributor would have been entitled if he or she had retired on the date of death;
  - (c) where the contributor's employment terminated on his or her death, the contributor had not reached the age of retirement on the date of death and the contributor was an active contributor immediately before the date of death—a reference to the amount of the retirement pension to which the contributor would have been entitled if he or she had not died and—
    - (i) had continued in employment until reaching the age of retirement (but without change to the contributor's actual or attributed salary as at the date of death); and
    - (ii) had been credited with a number of contribution points in respect of the period from the date of death to the age of retirement equivalent to—
      - (A) in the case of a contributor who had been in full-time employment throughout the contribution period—the number of months between the end of the last complete month of the contribution period and the age of retirement (an incomplete month being counted as a whole month);
      - (B) in the case of a contributor who had not been in full-time employment throughout the contribution period—the number that bears the same proportion to the number of months referred to in subsubparagraph (A) as the contributor's employment while an active contributor bears to full-time employment; and
    - (iii) had retired on reaching the age of retirement;
  - (d) where the contributor's employment terminated on his or her death, the contributor had not reached the age of retirement on the date of death and the contributor was not an active contributor immediately before the date of death—a reference to the amount of the retirement pension to which the contributor would have been entitled if he or she had reached the age of retirement on the date of death and had retired on that date.
- (5) A deceased contributor's notional pension will be indexed as if it were (or remained) an actual pension and consequential adjustments will be made to pensions calculated by reference to the notional pension.
- (6) The lump sum to be paid to the estate of a contributor who is not survived by a spouse but is survived by an eligible child or eligible children will be charged against the contributor's contribution account to the extent of the amount standing to the credit of the account and will be—
- (a) where the contributor's employment was terminated by the contributor's death and the contributor was an active contributor immediately before his or her death—the greater of the following amounts:
    - (i) an amount equivalent to the amount standing to the credit of the contributor's contribution account;



- (ii) an amount equivalent to twice the amount of the contributor's adjusted salary immediately before the contributor's death (expressed as an annual amount);
  - (b) in any other case—an amount equivalent to the amount standing to the credit of the contributor's contribution account.
- (7) Where a contributor's employment is terminated by the contributor's death and the contributor is not survived by a spouse or an eligible child a lump sum will be paid to the estate of the contributor made up of two components—
  - (a) an employee component (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of the contributor's contribution account; and
  - (b) an employer component that is the lesser of the following:

(i) 
$$EC = (A \times 4.5 \times FS) + Pn \left( FS \times \frac{0.85}{450} \times M \right)$$

(ii) 
$$EC = \left[ FS \times 4.5 \times \left( 1 - \frac{X}{360} \right) \right] + Pn \left[ FS \times \frac{0.85}{450} \times M \right]$$

Where—

**EC** is the employer component

**A** is the lesser of the following—

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by 360

**FS** is the contributor's actual or attributed salary immediately before the contributor's death (expressed as an annual amount)

**X** is—

- (a) in relation to a contributor who was at the date of death under the age of 60 years—the lesser of 60 and the number of months by which the contributor's age fell short of 60 years;
- (b) in any other case—zero

**Pn** is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment while an active contributor during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

**M** is the number of months of the contributor's contribution period occurring after 31 December 1987.

### **39—Resignation and preservation of benefits**

- (1) A contributor who resigns from employment before reaching the age of 55 years may elect—
- (a) to take immediately an amount (to be charged against the contributor's contribution account) equivalent to the total balance of the account; or
  - (b) to preserve his or her accrued superannuation benefits.
- (1a) A contributor who fails to inform the Board in writing of his or her election under subsection (1) within three months after resignation will be taken to have elected to preserve his or her accrued superannuation benefits.
- (1b) If the Board is of the opinion that the limitation period referred to in subsection (1a) would unfairly prejudice a contributor, the Board may extend the period as it applies to the contributor.
- (1c) Where a contributor resigns and elects to take the amount referred to in subsection (1)(a) the contributor is also entitled to a superannuation payment in accordance with the following provisions:
- (a) the contributor may at any time require the Board to make the payment to some other superannuation fund or scheme approved by the Board;
  - (ab) the Board must—
    - (i) not less than 6 months before the contributor's 60th birthday—notify the contributor in writing of the contributor's entitlement to require the Board to make the payment under paragraph (b); and
    - (ii) not less than 6 months before the contributor's 55th birthday—notify the contributor in writing of the contributor's entitlement to require the Board to make the payment under paragraph (c);
  - (b) the contributor may at any time after reaching the age of retirement require the Board to make the superannuation payment and, if no such requirement has been made on or before the date on which the contributor reaches 65 years of age, the Board will make the payment;
  - (c) if the contributor has reached the age of 55 years and is not employed by an employer within the meaning of the Commonwealth Act the contributor may require the Board to make the payment to the contributor;
  - (d) if the contributor 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 make the payment to the contributor;
  - (e) if the contributor dies, the payment will be made to the spouse of the deceased contributor or, if he or she left no surviving spouse, to the contributor'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).

(1d) The amount of the superannuation payment referred to in subsection (1c) is the aggregate of—

(a) an amount calculated as follows:

$$A = Pn \left( AFS \times \frac{0.85}{450} \times M \right)$$

Where—

*A* is the amount

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment while an active contributor during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*AFS* is the contributor's actual or attributed salary as at the date of resignation (expressed as an annual amount) adjusted to reflect changes in the Consumer Price Index since the date of resignation

*M* is the number of months of the contributor's contribution period occurring after 31 December 1987 and before 1 July 1992; and

- (b) the amount (if any) of the minimum contribution required to avoid payment of the superannuation guarantee charge in respect of the contributor under the Commonwealth Act together with interest from the date of resignation.

(1da) The amount of interest will be calculated and credited to the contributor at the end of each financial year and will be calculated on the amount referred to in subsection (1d) at the end of the first financial year and on the aggregate of that amount and the interest previously credited at the end of each subsequent financial year.

(1db) The rate of interest will be determined by the Board in respect of each financial year in accordance with section 20A.

(2) Where a contributor resigns after a contribution period of less than 120 months and elects to preserve his or her accrued superannuation benefits, the following provisions apply—

- (aa) the Board must, not less than 6 months before the contributor's 55th birthday, notify the contributor in writing of the contributor's entitlement to require the Board to make a superannuation payment under paragraph (a);
- (a) the contributor may at any time after reaching 55 years of age require the Board to make a superannuation payment and, if no such requirement has been made on or before the date on which the contributor reaches 65 years of age, the Board will make such a payment;

- (b) if the contributor 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 make the payment to the contributor;
- (c) if the contributor dies, a payment will be made to the spouse of the deceased contributor or, if he or she left no surviving spouse, to the contributor'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).

- (3) A payment under subsection (2) will be made up of two components—
  - (a) an employee component (to be charged against the contributor's contribution account) equivalent to the total balance of the account; and
  - (b) an employer component that is the aggregate of—
    - (i) an amount that is, subject to subsection (4), equal to  $2\frac{1}{3}$  times the amount of the employee component; and
    - (ii) an amount calculated as follows:

$$A = Pn \left( AFS \times \frac{0.85}{450} \times M \right)$$

Where—

*A* is the amount

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment while an active contributor during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*AFS* is the contributor's actual or attributed salary as at the date of resignation (expressed as an annual amount) adjusted to reflect changes in the Consumer Price Index since the date of resignation

*M* is the number of months of the contributor's contribution period occurring after 31 December 1987.

- (4) The amount referred to in subsection (3)(b)(i) cannot exceed  $2\frac{1}{3}$  times the amount that would have constituted the employee component if the contributor had contributed at the standard rate of contribution throughout the contributor's contribution period.
- (5) Where a contributor resigns after a contribution period of 120 months or more and elects to preserve his or her accrued superannuation benefits, the following provisions apply—
  - (aa) the Board must, not less than 6 months before the contributor's 55th birthday, notify the contributor in writing of the contributor's entitlement to require the payment of a retirement pension under paragraph (a);

- (a) the contributor may, at any time after reaching 55 years of age require the Board to commence paying a retirement pension and, if no such requirement has been made on or before the date on which the contributor reaches 60 years of age, the Board will commence paying a retirement pension as from that date;
  - (b) if the contributor 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 pay an invalid pension to the contributor;
  - (c) if the contributor dies and is survived by a spouse (not being a person who became the contributor's spouse after the contributor's resignation and less than five years before the date of his or her death), a pension will be paid to the spouse of the deceased contributor;
  - (d) if the contributor dies and is survived by a spouse and an eligible child or eligible children, a pension will be paid to each eligible child;
  - (e) if the contributor dies and is not survived by a spouse but is survived by an eligible child or eligible children, a lump sum will be paid to the contributor's estate and a pension will be paid to each eligible child;
  - (f) if the contributor dies and is not survived by a spouse or an eligible child a lump sum will be paid to the contributor's estate.
- (6) Subject to subsection (7), a pension payable under subsection (5) will be calculated in the same way as if—
- (a) the contributor had continued in his or her former employment between the date of resignation and the date on which a pension first became payable under that subsection but had elected to make no contribution in respect of that period;
  - (b) the contributor's actual or attributed salary for the purpose of calculating the pension were that salary as at the date of resignation adjusted to reflect changes in the Consumer Price Index between the date of resignation and the date on which the pension first became payable;
  - (c) in the case of a retirement pension—the contributor had retired on the date on which the retirement pension first became payable under this section;
  - (d) in the case of an invalid pension—the contributor's employment had been terminated on the ground of invalidity on the date on which he or she satisfied the Board of the matters referred to in subsection (5)(b).
- (7) When calculating a pension under subsection (6) in respect of a contributor who was accepted as a contributor before the prescribed age and before the commencement of the repealed Act, a factor in the relevant formula designated "A" will be replaced by a factor calculated as follows:

$$A_1 = A \times \frac{M}{NM} \times \frac{CP}{S}$$

Where—

$A_1$  is the substituted factor

*A* is the factor designated "A" in the relevant formula

*M* is—

- (a) in the case of a contributor for whom the age of retirement is 55 years—360;
- (b) in the case of a contributor for whom the age of retirement is 60 years—
  - (i) in the case of a retirement pension where the contributor is 55 years or more but less than 60 years when the pension first becomes payable— $300 + n$ ;
  - (ii) in all other cases—360

*NM* is the number of months between the date on which the contributor was accepted as a contributor and—

- (a) in the case of a retirement pension—the date on which the pension first became payable or the date on which the contributor reached or will reach the age of retirement whichever occurs first;
- (b) in all other cases—the date on which the contributor will reach, or would have reached, the age of retirement

*CP* is the number of months in the contribution period to the date of resignation

*S* is the number of months in the contribution period after the date on which the contributor reached the prescribed age

*n* is the number of months between the day on which the contributor reached the age of 55 years and the day on which the pension first became payable.

(7a) In subsection (7)—

*the prescribed age* means—

- (a) in relation to a contributor for whom the age of retirement is 55 years—the age of 25 years;
  - (b) in relation to all other contributors—the age of 30 years.
- (8) Where a retirement pension calculated in accordance with subsection (7) exceeds the pension to which the contributor would have been entitled if he or she had continued in employment from the date of resignation to the date on which the retirement pension first became payable under this section and had contributed at the standard contribution rate over that period, the pension will be reduced to that latter amount.
- (8a) The lump sum to be paid to the estate of a contributor who is not survived by a spouse but is survived by an eligible child or eligible children will be the amount standing to the credit of the contributor's contribution account and will be charged against that account.
- (8b) The lump sum to be paid to the estate of a contributor who is not survived by a spouse or an eligible child will be made up of two components—
- (a) an employee component (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of the contributor's contribution account; and
  - (b) an employer component that is the lesser of the following:

$$(i) \quad EC = (A \times 4.5 \times AFS) + Pn \left( AFS \times \frac{0.85}{450} \times M \right)$$

$$(ii) \quad EC = \left[ AFS \times 4.5 \times \left( 1 - \frac{X}{360} \right) \right] + Pn \left( AFS \times \frac{0.85}{450} \times M \right)$$

Where—

**EC** is the employer component

**A** is the lesser of the following—

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by 360

**AFS** is the contributor's actual or attributed salary as at the date of resignation (expressed as an annual amount) adjusted to reflect changes in the Consumer Price Index from the date of resignation until the contributor's death

**X** is—

- (a) in relation to a contributor who was at the date of death under the age of 60 years—the lesser of 60 and the number of months by which the contributor's age fell short of 60 years;
- (b) in any other case—zero

**Pn** is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment while an active contributor during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

**M** is the number of months of the contributor's contribution period occurring after 31 December 1987.

- (8c) Subject to this Act, benefits under this section will be calculated by using the appropriate formula in force under this Part on the day on which the contributor resigned or is taken to have resigned by virtue of some other provision of this Act.
- (9) The right to preserve accrued superannuation benefits under this section does not apply for the benefit of a contributor who was, when he or she resigned, an employee—
  - (a) of the Australian National Railways Commission; or
  - (b) of a prescribed employer.
- (10) Subsection (9)(a) does not apply to former employees of the Australian National Railways Commission who resigned to take up employment with the National Rail Corporation.

- (10a) For the purposes of this section, a contributor will be taken to resign if the contributor's employment terminates or is terminated for any reason except invalidity (in circumstances entitling the contributor to benefits under this Act), retrenchment or death.
- (10b) A contributor who is taken by clause 7(6)(a) of Schedule 2 of the *State Bank (Corporatisation) Act 1994* to have resigned from his or her employment and to have elected to preserve his or her accrued benefits under this section will, for the purposes of the application of subsection (5), be taken to have resigned after a contribution period of 120 months or more.
- (11) This section does not apply to, or in relation to, an outplaced employee who resigned from employment before reaching the age of 55 years unless he or she has made an election in accordance with section 39C to preserve his or her accrued superannuation benefits under this section or is taken under section 39C to have made such an election.

### **39A—Resignation or retirement pursuant to a voluntary separation package**

- (1) This section applies to a contributor who resigns or retires from his or her employment before reaching the age of retirement pursuant to a voluntary separation package—
  - (a) that includes a term that this section is to apply to the contributor; and
  - (b) that has been approved by the Treasurer.
- (2) Section 34 or 39 does not apply to a contributor to whom this section applies.
- (3) A contributor to whom this section applies who resigns before reaching the age of 55 years is entitled—
  - (a) if he or she had not reached the age of 45 years at resignation—to benefits under subsection (3a); or
  - (b) if he or she had reached that age at resignation—to benefits under subsection (3a) unless he or she elects (as a term of the voluntary separation package) to take benefits under subsection (3g).
- (3a) A contributor who is entitled to benefits under this subsection is entitled to a lump sum made up of—
  - (a) an employee component (to be charged against the contributor's contribution account) equivalent to the total balance of the account; and
  - (b) an employer component that is equal to the lesser of 2.5 times the amount of the employee component or 2.5 times the amount that would have constituted the employee component if the contributor had contributed at the standard contribution rate throughout the contributor's contribution period.
- (3b) A part of the lump sum referred to in subsection (3a) being an amount equivalent to the minimum contribution required to avoid payment of the superannuation guarantee charge in respect of the contributor under the Commonwealth Act is preserved.
- (3c) The contributor is entitled to the balance of the lump sum at the time of resignation.



- (3d) The amount preserved under subsection (3b) together with interest is payable in accordance with the following provisions:
- (aa) the Board must, not less than 6 months before the contributor's 55th birthday, notify the contributor in writing of the contributor's entitlement to require payment of the amount under paragraph (a);
  - (a) the contributor 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 contributor reaches 65 years of age, the Board will pay the amount to the contributor;
  - (b) if the contributor 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 pay the amount to the contributor;
  - (c) if the contributor dies, the amount will be paid to the spouse of the deceased contributor or, if he or she left no surviving spouse, to the contributor'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).
- (3e) The amount of interest will be calculated and credited to the contributor at the end of each financial year and will be calculated on the amount referred to in subsection (3b) at the end of the first financial year and on the aggregate of that amount and the interest previously credited at the end of each subsequent financial year.
- (3f) The rate of interest will be determined by the Board in respect of each financial year in accordance with section 20A.
- (3g) A contributor who is entitled to benefits under this subsection is entitled to a pension calculated as follows:

$$P = FS \times \left[ \frac{A \times \left\{ 22 + \left[ (2.1 + 0.07(X - 45)) \times (X - 45) \right] \right\}}{100} \right] \times \left[ 1 + \left( \frac{n}{420} \times \frac{6}{A} \times \frac{1}{50} \right) \right]$$

Where—

**P** is the amount of the pension (expressed as an amount per fortnight)

**FS** is the contributor's actual or attributed salary (expressed as an amount per fortnight)

**A** is the lesser of the following

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by—
  - (i) in the case of a contributor who was accepted as a contributor under the repealed Act before reaching the age of 30 years—the number of months between the date of acceptance and the date of resignation;
  - (ii) in any other case—the number of months between the contributor's 30th birthday and the date of resignation

*X* is the contributor's age at resignation in years and completed months expressed to two decimal places

*n* is 420 or the aggregate number of contribution points that accrued to the contributor between 1 July 1992 and the date of resignation whichever is the lesser.

- (4) A contributor to whom this section applies who retires on or after reaching the age of 55 years is entitled to a lump sum that is equivalent to the amount that the contributor would have received if section 34 had applied to the contributor and he or she—
- (a) had been entitled to commute the whole of his or her retirement pension; and
  - (b) had commuted the whole of the pension pursuant to the regulations.
- (5) In this section—

*voluntary separation package* means an agreement between a contributor and his or her employer pursuant to which the contributor resigns or retires from employment.

### **39B—Outplaced employees—55 and over**

- (1) A contributor who had reached the age of 55 years when he or she retired from employment to take up employment in the private sector pursuant to an offer of employment in a contracting out agreement may elect—
- (a) to preserve his or her accrued superannuation benefits under section 39 as though he or she had resigned from employment before reaching the age of 55 years; or
  - (b) to take the benefit provided by section 39A.
- (2) A contributor who fails to inform the Board in writing of his or her election under subsection (1) within one month after retiring will be taken to have made an election under subsection (1)(a).
- (3) If the Board is of the opinion that the limitation period referred to in subsection (2) would unfairly prejudice a contributor, the Board may extend the period as it applies to the contributor.
- (4) Where a contributor has made, or is taken to have made, an election under subsection (1)(a), section 39 applies to, and in relation to, the contributor except that—
- (a) section 39(5) (instead of section 39(2)) will apply to, and in relation to, a contributor whose contribution period is less than 120 months; and
  - (b) the contributor is not entitled to require the Board to commence paying a retirement pension under section 39(5)(a), and the Board must not commence paying such a pension under that provision, until the contributor has ceased employment with the private sector employer.
- (5) Where the contributor has made an election under subsection (1)(b), section 39A applies to the contributor as though the requirements of section 39A(1) had been met.

### **39C—Outplaced employees under 55**

- (1) A contributor who had not reached the age of 55 years when he or she resigned from employment to take up employment in the private sector pursuant to an offer of employment in a contracting out agreement may elect—
  - (a) to preserve his or her accrued superannuation benefits under section 39; or
  - (b) to take the benefits provided by section 39A.
- (2) A contributor who fails to inform the Board in writing of his or her election under subsection (1) within one month after resigning will be taken to have made an election under subsection (1)(a).
- (3) If the Board is of the opinion that the limitation period referred to in subsection (2) would unfairly prejudice a contributor, the Board may extend the period as it applies to the contributor.
- (4) Where a contributor has made, or is taken to have made, an election under subsection (1)(a), section 39 applies to, and in relation to, the contributor except that (subject to subsection (5))—
  - (a) section 39(5) (instead of section 39(2)) applies to, and in relation to, a contributor whose contribution period is less than 120 months; and
  - (b) the contributor is not entitled to require the Board to commence paying a retirement pension under section 39(5)(a), and the Board must not commence paying such a pension under that provision, until the contributor has reached the age of 55 years and has ceased employment with the private sector employer.
- (5) A contributor who has made, or is taken to have made, an election under subsection (1)(a) and whose contribution period is less than 120 months may inform the Board in writing within one month after resigning that section 39(2) and not section 39(5) is to apply to, and in relation to, the contributor and in that case—
  - (a) section 39(2) applies to, and in relation to, the contributor; but
  - (b) the contributor is not entitled to require the Board to make a superannuation payment under section 39(2)(a), and the Board must not make a superannuation payment under that provision until the contributor has reached the age of 55 years and has ceased employment with the private sector employer.
- (6) If the Board is of the opinion that the limitation period referred to in subsection (5) would unfairly prejudice a contributor, the Board may extend the period as it applies to the contributor.
- (7) Where the contributor has made an election under subsection (1)(b), section 39A applies to the contributor as though the requirements of section 39A(1) had been met.

## **Division 2—General**

### **40—Commutation of pension**

- (1) The Board will, on the application of a person who is entitled to a pension (other than a temporary disability pension or an eligible child's pension), commute a pension, or a proportion of a pension, to a lump sum payment.

- (2) The right of commutation is subject to the qualifications prescribed by regulation.
- (3) In the commutation of a pension, commutation factors promulgated by regulation will be applied.
- (4) The amount of a commutation factor fixed under subsection (3) may reflect the loss of the benefit provided by section 38(4)(a) or section 47(3) as a result of the commutation of the pension or a proportion of the pension.

#### **40A—Commutation to pay deferred superannuation contributions surcharge**

- (1) The Board will, on the application of a contributor who is entitled to a pension (other than a temporary disability 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 contributor by the Commissioner of Taxation under section 15(7) of the Superannuation Contributions Tax Act was issued.
- (3) Where—
  - (a) —
    - (i) a contributor who is liable for a deferred superannuation contributions surcharge dies before notice by the Commissioner of Taxation under section 15(7) of the Superannuation Contributions Tax Act is issued; or
    - (ii) a contributor 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 contributor is survived by a spouse who is entitled to a pension as the contributor'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 contributor's death or the issue of the notice under section 15(7) of the Superannuation Contributions Tax 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 contributor'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 contributor, or the spouse of contributor, is entitled to commute the whole of his or her pension under section 40 and has done so except for a part that the contributor or spouse wishes to retain for the purpose of commutation under this section in order to pay the contributor'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 contributor 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 40.

#### **41—Medical examination etc of invalid pensioner**

- (1) The Board may from time to time require an invalid pensioner who has not reached the age of retirement—
  - (a) to submit to a medical examination by a specified medical practitioner; or
  - (b) to undergo specified medical treatment; or
  - (c) to avail himself or herself of specified assistance.
- (2) The cost of a medical examination under this section will be met by the Board.
- (3) A pensioner will not be required to submit to a particular form of medical treatment if there is a conflict of opinion between recognised medical experts as to the desirability of the treatment.
- (4) If a pensioner fails to comply with a requirement under this section, the Board may suspend the pension until the requirement is complied with.

#### **42—Suspension of pension if pensioner declines appropriate employment**

- (1) If appropriate employment is offered, at the request of the Minister, to an invalid or retrenchment pensioner who has not reached the age of retirement, the following provisions apply:
  - (a) if the pensioner accepts the offer and returns to employment—the pension will terminate but the former pensioner will be credited with contribution points and contribution months as if he or she had continued in employment and contributed at the standard contribution rate over the period of absence from employment;
  - (b) if the pensioner does not accept the offer—the Board may suspend the pension until the pensioner reaches the age of retirement.
- (2) In determining whether a particular form of employment is appropriate to a particular pensioner, the following factors will be taken into account—
  - (a) the pensioner's qualifications;
  - (b) the pensioner's previous employment;

- (c) the pensioner's state of health;
  - (d) the place at which the employment is available.
- (3) Employment will not be regarded as appropriate to a particular pensioner if the rate of salary applicable to the employment (expressed as an hourly rate) is less than 80 per cent of the rate of the pensioner's notional salary (expressed as an hourly rate).

#### **42A—Offer of lump sum to certain invalid pensioners**

- (1) If—
- (a) the Board is satisfied on the advice of two medical practitioners that an invalid pensioner who has not reached the age of retirement is fit to be employed in full time or part time employment; but
  - (b) appropriate employment has not been offered to the pensioner under section 42,

the Board may offer to pay a lump sum to the pensioner instead of his or her pension.

- (2) The amount of the lump sum will be the greater of the following:
- (a) an amount equivalent to the amount that would be produced by commutation of the whole of a pension calculated as follows:

$$P = \frac{P_1 \times (360 - M)}{360}$$

Where—

*P* is the pension

*P*<sub>1</sub> is the pension to which the pensioner was entitled immediately before the payment of the lump sum (expressed as an annual amount)

*M* is the number of complete months between the time when the lump sum is paid and when the pensioner would reach the age of retirement;

- (b) an amount equivalent to three times the amount of the pensioner's annual pension immediately before the lump sum is paid.
- (3) For the purposes of the commutation referred to in subsection (2)—
- (a) the commutation factors applicable on the commutation of a retirement pension will be used; and
  - (b) the contributor's age will be taken to be his or her age when the lump sum is paid or 55 years whichever is the greater.
- (4) If the pensioner accepts the Board's offer under subsection (1), the pensioner's right to future payments of the pension and all derivative rights cease on payment of the lump sum.

#### **43—Notional extension of period of employment**

Where—

- (a) a contributor becomes entitled, on termination of his or her employment, to a pension; and

- (b) the contributor was, immediately before termination of employment, entitled to a period of recreation leave and is paid, or entitled to, a lump sum in lieu of that leave,

the contributor's employment will be taken to have been extended for a period equivalent to the period of recreation leave and the contributor is liable for contributions in respect of that period and is entitled to benefits at the end of that period as though he or she had remained in employment and had received the lump sum as salary during that period.

#### **43A—Proportion of pension etc to be charged against contribution account etc**

- (1) A proportion of a pension or lump sum paid to, or in relation to, a contributor will be charged against the contributor's contribution account or, if the account has been closed, will be charged against the relevant division of the Fund.
- (2) The proportion for the purposes of subsection (1) will be equivalent to the proportion of the future benefits payable under this Part that can, in the opinion of the Board, be met from the Fund.
- (3) The opinion of the Board must be based on the most recent triennial report under section 21(4).

#### **43AA—Closure of contribution accounts**

- (1) The Board may close the account of a contributor if—
  - (a) the contributor has retired or resigned from employment and is in receipt of a pension under this Part; or
  - (b) the contributor's employment has been terminated by retrenchment or on account of invalidity and the contributor—
    - (i) has reached the age of retirement; and
    - (ii) is in receipt of a pension under this Part; or
  - (c) the contributor has died.
- (2) If, after a contribution account has been closed under subsection (1), a benefit becomes payable under this Part that depends wholly or partly on the balance standing to the credit of the account, the benefit will be determined on the basis of the balance that would have stood to the credit of the account if it had not been closed.





## Part 5A—Family Law Act provisions

### Division 1—Preliminary

#### 43AB—Purpose of 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 (other than with respect to interests arising under an administered scheme under Schedule 3).

#### 43AC—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;

***defined benefit interest*** means a benefit or superannuation interest that is a function of salary and membership or service;

***eligible person***, in relation to a superannuation interest of a contributor, 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 VIIIIB 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 VIIIIB of the *Family Law Act 1975* of the Commonwealth;

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

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

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

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

***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 VIIIIB of the *Family Law Act 1975* of the Commonwealth;

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

#### **43AD—Value of superannuation interest**

- (1) For the purposes of this Part (but subject to subsection (2)), the value of any superannuation interest 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.

#### **43AE—Board to comply with Commonwealth requirements**

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

#### **43AF—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 contributor, there is a corresponding reduction in the entitlement of the contributor under this Act.
- (2) A reduction in the entitlement of a contributor will be given effect as follows:
  - (a) the contributor'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 spouse's share in the relevant superannuation interest bears to the total value of the contributor's accrued superannuation benefit at the operative time (and any relevant method or factor that applies under section 43AD 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 employer-funded component of a superannuation benefit payable to the contributor after the creation of the relevant interest for the benefit of the non-member spouse will, as from the operative time, be subject to a reduction that takes effect by reducing—
    - (i) the number of contribution points; and
    - (ii) factors "M" and "n" in a formula under this Act (insofar as they are relevant to a determination of an employer-funded component in the particular case),  
to the extent necessary to take into account, to its full extent, the employer-funded component of the value of the non-member spouse's interest (and any relevant method or factor that applies under section 43AD 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 contributor will not extend to any superannuation benefit that is not a splittable payment under Part VIII B of the *Family Law Act 1975* of the Commonwealth.
- (4) A reduction in contribution points in connection with the operation of this Part does not affect the aggregate of contribution points that would apply under section 24 but for the operation of subsection (2).
- (5) If 2 or more reductions must be made with respect to an entitlement of a contributor because 2 or more splitting instruments have been served on the Board, the Board may determine to apply the reductions separately, or in aggregate.

#### **43AG—Benefit not payable to spouse on death of contributor if split has occurred**

If a contributor 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 contributor'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 contributor (except in accordance with the instrument) and will not be considered to be a spouse of the deceased contributor for the purposes of section 46 (if relevant).

### **Division 2—New scheme contributors**

#### **43AH—Application of Division**

This Division applies only to the division of superannuation interests in respect of member spouses who are new scheme contributors.

#### **43AI—Accrued benefit multiple**

- (1) For the purposes of the Commonwealth regulations, the *accrued benefit multiple* in respect of a superannuation interest payable as a lump sum is the multiple of annual salary that the member spouse would be entitled to receive at the prescribed date assuming that the member spouse retired on that day at or over the age of retirement (as the case requires) with the member spouse's accrued contribution points and contribution period as at that day.
- (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 who is a new scheme contributor, 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.

### 43AJ—Non-member spouse's entitlement

- (1) The Board must, on service of a splitting instrument in respect of a lump sum benefit, create an interest for the non-member spouse named in the instrument in accordance with the provisions of the instrument, with effect from the operative time.
- (2) The value of the non-member spouse's interest 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.
- (3) The interest of a non-member spouse under subsection (1) 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.
- (4) The Board must take the action required under subsection (3) within 28 days after receiving the relevant election.
- (5) 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 (3)(b).

### Division 3—Old scheme contributors

#### 43AK—Application of Division

This Division applies only to the division of superannuation interests in respect of member spouses who are old scheme contributors.

#### 43AL—Accrued benefit multiple

- (1) For the purposes of the Commonwealth regulations, the *accrued benefit multiple* in respect of a superannuation interest payable as a pension is the percentage of annual salary that the member spouse would be entitled to receive as a pension at the prescribed date assuming that the member spouse retired on that day at or over the age of retirement (as the case requires) with the member spouse's accrued contribution points and contribution period as at that day.
- (2) For the purposes of the Commonwealth regulations, the *accrued benefit multiple* in respect of a superannuation interest payable as a lump sum that is a defined benefit interest is the multiple of annual salary that the member spouse would be entitled to receive at the prescribed date assuming that the member spouse retired on that day at or over the age of retirement (as the case requires) and was taking his or her entitlement under the Act on that day.

- (3) 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 who is an old scheme contributor, as at a particular date specified in the application.
- (4) In this section—  
*prescribed date* is the date that is relevant to the determination of an accrued benefit multiple in the particular circumstances.

#### **43AM—Non-member spouse's entitlement**

- (1) The Board must, on service of a splitting instrument, create an interest for the non-member spouse named in the instrument, with effect from the operative time.
- (2) The form of the non-member spouse's interest 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.

#### **43AN—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, 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 a 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 entitlement based on the relevant accrued benefit multiple and by applying any relevant method or factor that applies under section 43AD;
  - (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.

#### **43AO—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 split 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) the non-member spouse will not be taken to be a contributor on account of the entitlement to the pension;
  - (c) the pension will be indexed;
  - (d) no derivative, reversionary or other rights will arise or continue on account of the 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.

### **43AP—Payment of non-member spouse's entitlement**

- (1) If the interest of a non-member spouse created under this Division 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 Division 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 the payment of the member spouse's pension).

## **Division 4—Fees**

### **43AQ—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;
  - (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 6—Miscellaneous

### 43B—Exclusion of benefits under awards etc

- (1) A person who employs a contributor in employment to which this Act applies 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 contributor or for the benefit of some other person in respect of the contributor.
- (2) An award cannot be made or varied under the *Industrial Relations Act (S.A.) 1972* on or after 1 July 1992 under which a person who employs, or has employed, a contributor is required to make a payment or payments in respect of a period of employment to which this Act applies occurring before that date—
  - (a) in the nature of superannuation; or
  - (b) to a superannuation fund,for the benefit of the contributor or for the benefit of some other person in respect of the contributor.

### 44—Review of the Board's decisions

- (1) Any person who is dissatisfied with a decision of the Board under this Act may appeal to the Administrative and Disciplinary Division of the District Court or to the Board against the decision.
- (4) On an appeal to the Board, the Board may substitute another decision for its original decision or confirm its original decision.

### 45—Effect of workers compensation etc on pension

- (1) Where at any time during a financial year a contributor who is receiving, or would, but for this subsection, be entitled to receive, a pension under another provision of this Act is also receiving or entitled to receive—
  - (a) weekly payments of workers compensation; or
  - (b) in the case of a relevant contributor—income from remunerative activities engaged in by the contributor,the following provisions apply:
  - (c) the pension will be reduced by the amount of the workers compensation payments and if those payments equal or exceed the amount of the pension, the pension will be suspended;
  - (d) if the contributor is a relevant contributor—
    - (i) the Board must estimate the income (if any) that the contributor is likely to receive during the financial year from remunerative activities engaged in by the contributor; and

- (ii) it must be assumed that the income estimated by the Board will be paid at a uniform rate throughout the financial year;
  - (f) if the aggregate of the pension and the workers compensation payments (if any) and, if the contributor is a relevant contributor, the income from remunerative activities (if any) (paid at the rate assumed, by paragraph (d)(ii)) exceeds the contributor's notional salary, the pension will be reduced by the amount of the excess and, if that amount equals or exceeds the amount of the pension, the pension will be suspended;
  - (g) at the end of the financial year the Board must, if the contributor is a relevant contributor, determine the income from remunerative activities actually received by the contributor during that year and if, on the basis of the income actually received—
    - (i) the pension has been underpaid, an amount equivalent to the underpayment must be paid to the contributor or if the contributor has died, to his or her estate;
    - (ii) the pension has been overpaid, the amount overpaid may be deducted from future payments of pension or from any other amount to be paid to the contributor under this Act or, if the contributor has died, the amount overpaid is a debt due by the contributor's estate to the Treasurer.
- (1a) Income of a kind referred to in subsection (1)(a) and (b) will—
- (a) in the case of workers compensation payments—be taken to include payments lawfully made to some person other than the contributor;
  - (b) in the case of income from remunerative activities—be taken to include—
    - (i) the monetary value of income that is in a non-monetary form; and
    - (ii) income lawfully paid to some person other than the contributor.
- (2) Where—
- (a) the spouse of a deceased contributor is receiving or would, but for this subsection, be entitled to receive, a pension under this Act; and
  - (b) the spouse is also receiving, or entitled to receive weekly workers compensation payments in consequence of the contributor's death,
- the following provisions apply—
- (c) if the weekly workers compensation payments equal or exceed the amount of the pension, the pension will be suspended;
  - (d) in any other case, the pension will be reduced so that the aggregate equals the pension that the spouse would have received if there had been no entitlement to workers compensation.
- (3) Where an eligible child of a deceased contributor is receiving or entitled to receive weekly workers compensation payments in consequence of the contributor's death, the following provisions apply—
- (a) if the weekly workers compensation payments equal or exceed the amount of the pension, the pension will be suspended;

- 
- (b) in any other case, the pension will be reduced so that the aggregate equals the pension that the child would have received if there had been no entitlement to workers compensation.
- (4) Where a right to weekly workers compensation payments has been surrendered in whole or in part by commutation or by agreement, the person who would have been entitled to those payments if the right to them had not been surrendered will be taken, for the purposes of this section, to be receiving them unless—
- (a) if the person is a contributor—the contributor has reached the age of retirement; or
- (b) if the person is the spouse of a deceased contributor—the contributor would have reached the age of retirement if he or she were still alive.
- (5) Where a contributor whose pension is subject to suspension or reduction under this section dies, the suspension or reduction will be ignored in calculating any pension that becomes payable on the contributor's death to a spouse or eligible child of the contributor.
- (6) Where part of a retrenchment pension has been commuted—
- (a) the amount of the pension for the purposes of subsection (1)(f) will be the amount of the pension that the contributor would have been receiving if part of it had not been commuted; and
- (b) the amount (if any) by which the pension is to be reduced under subsection (1)(f) must be deducted from the part of the pension that has not been commuted.
- (7) In this section—
- relevant contributor** means a contributor—
- (a) who has not reached the age of retirement; and
- (b) whose entitlement to receive a pension under another provision of this Act does not relate to a pension granted on the basis of his or her age.

#### **46—Division of benefit where deceased contributor is survived by lawful and putative spouses**

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

(5) Where—

- (a) a deceased contributor 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 the payment.

#### 47—Adjustment of pensions

- (1) Where a pension is expressed to be indexed, the Board must adjust the amount of the pension 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) 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.
- (3) If the pension was partially commuted to a lump sum under the repealed Act and no further commutation has occurred under this Act, the variation will be based on the amount of the pension that would have been payable if the commutation had not occurred rather than on the actual pension.
- (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;

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

#### **47A—Subsequent roll over of benefits to another fund or scheme**

A contributor who is entitled to benefits in the form of a lump sum that is preserved under this Act may, at any time before reaching the age of 55 years, require the Board to pay those benefits to some other superannuation fund or scheme approved by the Board.

#### **47B—Roll over of benefits from another fund or scheme**

The Board may, on such terms and conditions as it thinks fit, accept the payment of benefits on behalf of a contributor from another superannuation fund or scheme.

#### **48—Repayment of contribution account balance and minimum benefits**

(1) Where—

- (a) a contributor's employment has terminated or has been terminated; and
- (b) no pension has been paid under this Act to or in relation to the contributor following termination of the employment; and
- (c) no benefit is payable (either immediately or prospectively) under any other provision of this Act,

an amount equivalent to the balance standing to the contributor's contribution account will be paid to the contributor or the contributor's estate (and charged against that account).

(2) Where—

- (a) a contributor's employment terminates or is terminated; and
- (b) either immediately or after a period of preservation of the contributor's benefits—
  - (i) a pension is paid under this Act to the contributor; or
  - (ii) a pension is paid under this Act to the contributor and then, on the contributor's death, a pension is paid under this Act to the spouse of the contributor; or
  - (iii) the contributor's employment is terminated by death and a pension is paid under this Act to the spouse of the contributor; or
  - (iv) the contributor dies after a period of preservation before receiving a pension and a pension is paid under this Act to his or her spouse; 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 (2a) is payable to the contributor's estate.

- (2a) The amount referred to in subsection (2) is the amount of the pension or pensions that would have been payable to, or in relation to, the contributor during the period referred to in subsection (2)(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 contributor.
- (2b) When computing the amount of the pension or pensions that would have been payable during the period referred to in subsection (2)(c)—
- (a) it will be assumed that the pension or pensions were not reduced by commutation or reduced or suspended under section 45; and
  - (b) the provisions of this Act for indexation of pensions will be ignored.
- (3) Where—
- (a) a contributor's employment terminates or is terminated; and
  - (b) a pension becomes payable under this Act to or in relation to the contributor; and
  - (c) the amount standing to the credit of the contributor's contribution account exceeds what would have been the balance of the account if the contributor had contributed throughout his or her contribution period at the standard contribution rate,

the amount of the excess will be paid to the contributor or the contributor's estate (as the case requires).

#### **49—Special provision for payment in case of infancy or death**

- (1) Where a pension or monetary sum is payable under this Act to a child, the Board may, in its discretion, pay it—
- (a) to the child; or
  - (b) to a parent, guardian or trustee on behalf of the child.
- (2) Where a person to whom money is payable under this Act dies, the Board may, in its discretion, pay the money to—
- (a) the personal representative of the deceased; or
  - (b) the spouse of the deceased; or
  - (c) the children of the deceased.

#### **50—Pension not to be assignable**

- (1) A right to a pension under this Act cannot be assigned.
- (2) This section does not prevent the making of a garnishee order in relation to a pension.

## **51—Liabilities may be set off against benefits**

Any liability of a contributor arising under this Act or the repealed Act may be set off against any payment that is to be made to or in relation to the contributor under this Act.

## **51A—Method of making contributions**

- (1) Contributions to be made to the Treasurer by a contributor under section 23 are to be deducted from the contributor's salary and paid to the Treasurer.
- (2) A contributor cannot make any contribution to the Scheme in addition to the contributions he or she makes under section 23.

## **52—Annuities**

- (1) The Board may, with the Minister's approval, provide annuities on terms and conditions fixed by the Board.
- (2) The Board can only undertake to provide an annuity—
  - (a) to, or in relation to, a contributor; or
  - (b) to, or in relation to, a person who is, or has been, a member of some other public sector superannuation scheme.

## **53—Continuation of the Voluntary Savings Account**

- (1) The Board may continue to maintain the Voluntary Savings Account for the benefit of contributors and such other persons as the Board determines.
- (2) The terms on which money is accepted on deposit in the Voluntary Savings Account will be as determined by the Board from time to time.
- (3) The cost of administering the Voluntary Savings Account will be paid from the income of that account.

## **54—Power to obtain information**

- (1) The Board may, from time to time, require an employing authority, workers compensation authority, employee, contributor or 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, contributor or pensioner to verify information supplied under this section by statutory declaration.
- (3) If a pensioner fails to comply with a requirement under this section, the Board may suspend payment of the pension until the requirement is complied with.
- (4) A person who—
  - (a) fails to comply with a requirement under subsection (1); or
  - (b) supplies information in response to such a requirement that is false or misleading in a material particular,is guilty of an offence.  
Penalty: \$10 000.

- (5) Where a contributor commits an offence against subsection (4), the Board may expel the contributor from membership of the Scheme and, in that event—
- (a) the amount standing to the credit of the former contributor's contribution account will be repaid to the contributor; and
  - (b) no further benefit will be payable under this Act to or in relation to the former contributor.
- (6) For the purposes of any other Act or law, a workers compensation authority will be taken, when acting under this section, to be disclosing information in the course of official duties.
- (7) In this section—
- workers compensation authority* includes any person or authority with power to determine or manage claims for workers compensation.

## 55—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 of a personal or private nature, or information as to the entitlements or benefits of any person under this Act (including under an administered scheme under Schedule 3) 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 that person's employer or employing authority; or
  - (d) to any other person for purposes related to the administration of this Act or, if relevant, an administered scheme under Schedule 3; or
  - (e) as may be required by a court; or
  - (f) if relevant, as may be allowed under the rules of an administered scheme under Schedule 3.

Penalty: \$10 000.

- (1a) 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 VIII B of the *Family Law Act 1975* of the Commonwealth.

Maximum penalty: \$10 000.

- (2) This section does not prevent the disclosure of statistical or other information related to a class or classes of persons (rather than to an individual).



## 56—Resolution of difficulties

- (1) If, in the opinion of the Board, any doubt or difficulty arises in the application of this Act to particular circumstances or the provisions of this Act do not address particular circumstances that have arisen, the Board may give such directions as are reasonably necessary to resolve the doubt or difficulty or to address the circumstances (but only insofar as the Board determines it to be fair and reasonable in the circumstances) and any such direction will have effect according to its terms.
- (2) If, in the opinion of the Board—
  - (a) a time limit under this Act should be extended in particular circumstances; or
  - (b) a procedural step under this Act should be waived in particular circumstances,the Board may extend the time limit (even if it has already expired) or waive compliance with the procedural step.
- (3) In determining whether to take action under subsection (2), the Board should have regard to—
  - (a) in a case under subsection (2)(a)—
    - (i) the length of delay that has occurred; and
    - (ii) the explanation for the delay; and
    - (iii) any hardship that will occur if the time limit is not extended; and
    - (iv) the extent to which it will cause any unfairness if the time limit is not extended; and
    - (v) any other relevant factor;
  - (b) in a case under subsection (2)(b)—
    - (i) the conduct of the person who would benefit from the action; and
    - (ii) any hardship that will occur if the procedural step is not waived; and
    - (iii) the extent to which it will cause any unfairness if the procedural step is not waived; and
    - (iv) any other relevant factor.
- (4) Subsections (2) and (3) do not derogate from any other provision of this Act or the regulations that makes specific provision for the extension of time.

## 57—Summary offences

An offence against this Act is a summary offence.

## 58—Pensions payable in foreign currency

- (1) Where—
  - (a) a lump sum or pension becomes payable to or in relation to a contributor;
  - (b) the contributor was immediately before the lump sum or pension became payable, employed outside Australia and paid a salary in a currency other than Australian currency,the lump sum or pension will be paid in that other currency.

- (2) An indexed pension that is paid in some currency other than Australian currency may be indexed on some basis that the Board considers reasonable instead of by reference to the Consumer Price Index.

### **58A—Rounding off of contributions and benefits**

The Board may round off the amount of contributions and benefits under this Act to the nearest multiple of five cents.

### **59—Regulations**

- (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.
- (1a) In particular a regulation may—
- (a) prescribe the salary, or an amount to be taken to be the salary, of a contributor for the purpose of determining contributions or benefits in relation to the contributor notwithstanding any provision to the contrary in this Act;
  - (b) where a contributor was previously a contributor to another superannuation scheme and money is paid in respect of the contributor from that other scheme to the scheme established by this Act—modify the provisions of this Act in their application to the contributor in order to comply with conditions under which the payment is made;
  - (c) make any provision that is necessary in view of the provisions of Part VIIIB 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;
  - (d) without limiting a preceding paragraph, provide that a specified provision of this Act does not apply in prescribed circumstances, subject to any condition to which the regulation is expressed to be subject.
- (2) Any such regulation may impose a penalty, not exceeding \$2 000, for breach of or non-compliance with a provision of the regulations.

## **Schedule 1—Transitional provisions**

### **1—Continuity of contributor status**

- (1) All employees who were, immediately before the commencement of this Act, contributors to the Scheme under the repealed Act continue as contributors under this Act.
- (2) All employees who were, immediately before the commencement of this Act, contributors to the Provident Account under the repealed Act—
  - (a) become, on the commencement of this Act, contributors to the Scheme; and
  - (b) will be classified for the purposes of this Act as old scheme contributors; and
  - (c) will, subject to clause 6, be treated in the same way as other old scheme contributors.
- (2a) A person who, immediately before the commencement of this Act, was an employee of the Australian National Railways Commission and was also a contributor to the Fund or the Provident Account will be taken to be an employee for the purposes of this Act until he or she ceases to be an employee of the Australian National Railways Commission.
- (3) A new scheme contributor who was accepted as a contributor before the commencement of this Act may, within three months after the commencement of this Act, elect to resign from membership of the Fund and in that event—
  - (a) the balance standing to the credit of the contributor's contribution account will be refunded; and
  - (b) he or she will cease to be a contributor.

### **2—Contributions by old scheme and certain new scheme contributors**

- (1) This clause applies to—
  - (a) old scheme contributors; and
  - (b) new scheme contributors who were accepted as contributors before the commencement of this Act.
- (2) For the purposes of this Act, the standard contribution rate for a contributor to which this clause applies is the percentage which—
  - (a) in the case of a higher benefit contributor (as defined in the repealed Act)—constituted the contributor's standard percentage of contribution for the purposes of the repealed Act;
  - (b) in the case of a lower benefit contributor (as defined in the repealed Act)—is equal to twice the percentage that constituted the contributor's standard percentage of contribution for the purposes of the repealed Act,  
  
(but this subclause applies to new scheme contributors only until the date fixed by the Board under subclause (3) when the standard contribution rate for such a contributor will become 6% of salary).
- (3) The amount contributed by a contributor to which this clause applies will continue to be governed by the repealed Act until a date fixed by the Board.

### **3—Starting balance of contribution account of old scheme contributors**

- (1) The Board will establish a contribution account in the name of every old scheme contributor—
  - (a) who continues as a contributor under this Act; or
  - (b) to, or in relation to, whom a pension is being paid at the commencement of this Act.
- (2) The balance of the account, as at the commencement of this Act, of a contributor who was still in employment at the commencement of this Act will be an amount calculated in accordance with section 79 of the repealed Act as if the contributor had become entitled to a payment under that section on the commencement of this Act.
- (3) The balance of the account, as at the commencement of this Act, of a contributor whose employment had ceased before the commencement of this Act will be an amount calculated in accordance with section 81 of the repealed Act as if an entitlement to a payment under that section had arisen at the commencement of this Act.

### **3A—Starting balance for certain new scheme contributors**

- (1) The contribution account of a new scheme contributor who was accepted as a contributor before the commencement of this Act will be credited with the following amounts:
  - (a) the aggregate amount of contributions made by the contributor before the commencement of this Act; and
  - (b) an amount determined by the Board to be the return attributable to the investment of those contributions before the commencement of this Act; and
  - (c) where the amount referred to in paragraph (b) was not credited to the contributor's contribution account on 1 July, 1988, an amount determined by the Board to be the return that would have been attributable to the investment of that amount if it had been credited to the account on 1 July, 1988.
- (2) The amount to be credited to a contribution account under subclause (1)(b) and (c) must be debited against the unallocated portion of the old scheme division of the Fund.

### **4—Special provision as to contribution period of certain contributors**

The contribution period of an old scheme contributor who was accepted as a contributor—

- (a) after reaching the age of 30 years; but
- (b) before the commencement of the repealed Act, will be taken to have commenced when the contributor reached the age of 30 years.

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## 5—Superannuation points carried over by old scheme contributors

- (1) To calculate the number of superannuation points of an old scheme contributor as at the commencement of this Act, proceed as follows:
- (a) calculate the pension (ignoring any neglected unit reduction, fund share reduction or excess unit addition) to which the contributor would be, or would have been, entitled under the repealed Act on retirement at the age of retirement assuming that the contributor had retired, or were to retire, at that age and, in the case of a contributor under that age at the commencement of this Act—
    - (i) that the repealed Act remained in force; and
    - (ii) that the contributor's rate of contribution remained constant until the contributor attained that age; and
    - (iii) that the contributor's contribution salary (as defined in the repealed Act) were the contributor's actual salary and remained constant until the contributor retired at the age of retirement;
  - (b) express this pension as a proportion of the theoretical maximum pension;
  - (c) convert this proportion to the fraction with a denominator of 360;
  - (d) the number of points is then given by the following formula:

$$P = x - m(p - n - q) - y$$

Where—

**P** is the number of points

**x** is the numerator of the fraction arrived at under paragraph (c)

**n** is—

- (a) in relation to a person who was accepted as a contributor under the repealed Act before the age of 30 years—the number of months from the date of acceptance to the age of 30 years or the commencement of this Act whichever is the earlier (and, if the period is not exactly divisible into whole months, any remainder will be treated as a whole month);
- (b) in any other case—0

**p** is the number of months (if any) by which the contributor's age, as at the commencement of this Act, falls short of the age of retirement or 360 (whichever is the lesser)

**m** is—

- (a) in relation to a contributor contributing for higher benefits under the repealed Act—1;
- (b) in relation to a contributor contributing for lower benefits under the repealed Act— $\frac{1}{2}$

$y$  is—

- (a) in relation to a person who became a higher benefit contributor by virtue of an election under section 57B of the repealed Act—

$$n \left( 1 - \frac{x}{360} \right)$$

- (b) in any other case—0

$q$  is the number of months (if any) by which the contributor's age, as at the commencement of this Act, exceeds the age of retirement.

- (2) In this clause—

***theoretical maximum pension*** in relation to a contributor means the pension that would be payable to the contributor on retirement at the age of retirement assuming—

- (a) that the repealed Act remained in force; and  
(b) that the contributor were employed throughout any future period of his or her employment at the contributor's contribution salary as it was immediately before the commencement of this Act; and  
(c) that the contributor were a new contributor (as defined in the repealed Act) and had elected for higher benefits; and  
(d) that the contributor attained 360 contribution months on or before attaining the age of retirement.

## 6—Special provisions for contributors to the Provident Account

- (1) Where—

- (a) a contributor was a contributor to the Provident Account under the repealed Act;  
(b) the contributor's employment is terminated by death or on account of invalidity before the contributor reaches the age of retirement;  
(c) the death or invalidity arises in circumstances or under conditions determined by the Board in relation to the contributor,

the Board may determine not to pay, or to discontinue payment of, a pension or pensions under this Act to or in relation to the contributor and to pay instead a lump sum calculated as follows to the contributor or the contributor's estate:

$$LS = A \times \frac{2}{3} \times FS \times Z + Pn \left( FS \times \frac{0.85}{450} \times M \right)$$

Where—

$LS$  is the amount of the lump sum

$A$  is the lesser of the following:

- (a) unity;  
(b) the numerical value obtained by dividing the number of the contributor's accrued superannuation points by—

- (i) in the case of a contributor who was accepted as a contributor under the repealed Act before reaching the age of 30 years—the number of months between the contributor's age as at the date of acceptance and the age of retirement;
- (ii) in any other case—360

*FS* is the contributor's actual or attributed salary immediately before termination of employment (expressed as an annual amount)

*Z* is—

- (a) in relation to a contributor who is 55 years of age or less—11.5;
- (b) in relation to a contributor who is over the age of 55 years—11.5 less 0.0167 for every month by which the contributor's age exceeds 55 years

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment while an active contributor during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*M* is the number of months of the contributor's contribution period occurring after 31 December 1987.

- (2) A determination for the purposes of subclause (1)(c) must be made within three months after the commencement of this Act.

## 7—Limited benefit contributors

- (1) Subject to subclause (2), a contributor who was immediately before the commencement of this Act affected by conditions imposed under section 65 of the repealed Act remains subject to those conditions after the commencement of this Act.
- (2) The Board will relax or revoke any such condition if satisfied by evidence provided by the contributor that there is proper cause to do so.
- (3) Where a contributor is entitled to the payment of a lump sum but is not entitled to a pension under this Act by virtue of conditions referred to in subclause (1), the lump sum will be the aggregate of three and one-half times the balance standing to the credit of the contributor's contribution account and an amount calculated as follows:

$$A = Pn \left( FS \times \frac{0.85}{450} \times M \right)$$

Where—

*A* is the amount

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;

- (b) in any other case—the numerical value arrived at by expressing the contributor's employment while an active contributor during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*FS* is the contributor's actual or attributed salary (expressed as an annual amount) immediately before termination of employment

*M* is the number of months of the contributor's contribution period occurring after 31 December 1987.

## **8—Preservation of excess unit addition**

Where—

- (a) a pension becomes payable to or in relation to an old scheme contributor after the commencement of this Act;
- (b) the pension would if the repealed Act had continued in operation be increased by an excess unit addition,

there will be a corresponding increase of the pension payable under this Act.

## **9—Neglected unit and fund share reduction**

- (1) Subject to this Act, where a pension to, or in relation to, an old scheme contributor would, if granted under the repealed Act, have been subject to a neglected unit reduction or a fund share reduction, the corresponding pension under this Act will be subject to a corresponding reduction.

(1a) Where—

- (a) an old scheme contributor resigns from employment and elects to preserve his or her accrued superannuation benefits; and
- (b) the contributor was, before resignation, making pension maintenance payments or neglected unit maintenance payments, or purchasing contribution months by fortnightly contributions,

a pension that subsequently becomes payable to or in relation to the contributor will be reduced to an extent determined by the Board.

- (2) A contributor may reduce or eliminate a reduction of pension under this clause by payment to the Treasurer of a lump sum determined by the Board.
- (3) A contributor who desires to reduce or eliminate a reduction of pension under this clause must, within one month after first becoming entitled to receive the pension inform the Board in writing of his or her intention to do so, and must pay the appropriate lump sum within one month after receiving notification from the Board of the relevant amount.

## **10—Pensions that commenced under previous enactments**

- (1) A pension that commenced under the repealed Act, or under a corresponding previous enactment, is, subject to this Act, payable as if this Act had been in force when the pension commenced.
- (2) This Act, apart from provisions relating to indexation, commutation and reduction or suspension of pensions, does not affect the amount of any such pension.



### **11—Abolition of Provident Account, and Retirement Benefit Account**

- (1) The Provident Account and the Retirement Benefit Account established under section 99 of the repealed Act are abolished.
- (2) Any contributions to the Provident Account will be treated as contributions made in accordance with the Scheme.
- (3) The balance standing to the credit of any person in the Retirement Benefit Account will be returned to that person.

### **12—Continuation of superannuation arrangements**

- (1) Any arrangements in force under section 11 of the repealed Act immediately before the commencement of this Act will continue in force as if they had been made under section 5 of this Act.
- (2) Money paid by an employer pursuant to an arrangement referred to in subclause (1) and held by the Superannuation Funds Management Corporation of South Australia does not form part of the Fund and must be applied by the Superannuation Funds Management Corporation of South Australia in accordance with the arrangement.

### **13—Continuation of membership of elected members of the Board**

- (1) Any members elected to the Board before the commencement of this Act continue in office subject to this Act as if it had been in force when they were elected and they had then been elected under it.
- (2) The offices of the other members of the Board become vacant on the commencement of this Act.

### **14—Retrospective operation of preservation rights**

The rights conferred by section 39 extend to a contributor who resigned before the commencement of this Act but on or after 1 January, 1988.

### **15—Benefits under Parts 4 and 5**

- (1) Subject to clause 15A, Parts 4 and 5 as in force immediately before the commencement of the *Superannuation (Scheme Revision) Amendment Act 1992* continue to apply to and in relation to the following contributors:
  - (a) a contributor who was a contributor immediately before 1 July 1992 and in relation to whom benefits did not accrue under the Public Sector Employees Superannuation Scheme;
  - (b) a contributor who has received or is entitled to receive benefits under the Public Sector Employees Superannuation Scheme or in relation to whom such benefits have been paid or are payable;
  - (c) a contributor who would receive a higher benefit, or in relation to whom a higher benefit would be payable, under those provisions immediately before amendment by the *Superannuation (Scheme Revision) Amendment Act 1992*.

- (2) A contributor whose employment terminates or is terminated on or after 1 July 1992 and who is entitled to a benefit under the Public Sector Employees Superannuation Scheme or a person who is entitled to such a benefit in relation to a contributor whose employment was terminated by death on or after 1 July 1992 may renounce the entitlement by instrument in writing to the Board within three months after becoming entitled or within three months after the Governor assents to the *Superannuation (Scheme Revision) Amendment Act 1992*, whichever is later and upon renunciation the contributor or other person will be taken for the purposes of subclause (1)(b) never to have been entitled.
- (3) Where benefits under the Public Sector Employees Superannuation Scheme have been credited to an account maintained by the Board in the name of a contributor under section 28 of the *Superannuation (Benefit Scheme) Act 1992*, the contributor will be taken, for the purposes of subclause (1)(b), to have received those benefits.

### 15A—Early retirement benefit for certain contributors

- (1) A contributor—
- (a) who resigned from employment before 1 July 1992 after a contribution period of 120 months or more and preserved his or her accrued superannuation benefits under section 39; and
- (b) who, on or before reaching the age of retirement, requires the Board to commence paying a retirement pension,

is entitled to the following benefits:

- (c) if the contributor was accepted as a contributor before the age of 30 years and before commencement of the repealed Act, the contributor is entitled to a pension in accordance with section 39(7) and (8) as in force immediately before the *Superannuation (Miscellaneous) Amendment Act 1994* came into operation;
- (d) in any other case the contributor is entitled to a pension calculated as follows:

$$P = AFS \times A \times \left( \frac{45.5}{100} + \frac{21.1 \times n_2}{100 \times 60} \right)$$

Where—

*P* is the amount of the pension (expressed as an amount per fortnight)

*AFS* is the contributor's actual or attributed salary (expressed as an amount per fortnight) immediately before resignation adjusted to reflect changes in the Consumer Price Index between the date of resignation and the date on which the pension first became payable

*A* is the lesser of the following:

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by—

- (i) in the case of a contributor who was accepted as a contributor under the repealed Act before reaching the age of 30 years—the number of months between the date of acceptance and the date on which the pension first became payable;
- (ii) in any other case— $300 + n_2$

$n_2$  is the number of months between the day on which the contributor reached the age of 55 years and the day on which the pension first became payable.

- (2) For the purpose of applying section 39(7) as required by subclause (1)(c), the factor "NP" in the formula in section 39(7) is the amount of pension that would have been payable to the contributor if it were calculated under subclause (1)(d).
- (3) A contributor referred to in clause 15(1) who is an old scheme contributor and who retires on or after reaching the age of 55 years but before the age of retirement is entitled to a pension calculated as follows:

$$P = FS \times A \times \left( \frac{45.5}{100} + \frac{21.1 \times n_2}{100 \times 60} \right)$$

Where—

$P$  is the amount of the pension (expressed as an amount per fortnight)

$FS$  is the contributor's actual or attributed salary (expressed as an amount per fortnight) immediately before retirement

$A$  is the lesser of the following:

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by—
  - (i) in the case of a contributor who was accepted as a contributor under the repealed Act before reaching the age of 30 years—the number of months between the date of acceptance and the date on which the pension first became payable;
  - (ii) in any other case— $300 + n_2$

$n_2$  is the number of months between the day on which the contributor reached the age of 55 years and the day on which the pension first became payable.

## 16—Transference from old scheme to new scheme

- (1) Subject to subclause (8), an old scheme contributor may, by notice in writing given to the Board on or before 31 December 1993, elect to become a contributor to the new scheme.
- (2) A contributor who makes an election under subclause (1) will be taken to have become a new scheme contributor on 1 July 1992.

- (3) Where conditions limiting the payment of benefits applied in relation to the contributor under the old scheme the same conditions will, if they can be applied without modification, apply in relation to the contributor under the new scheme, but if not the Board will apply conditions that are, in its opinion, appropriate limiting the payment of benefits to or in relation to, the contributor under the new scheme.
- (4) For the purpose of determining the benefits payable to, or in relation to, the contributor under the old scheme and the time at which they are payable, the contributor will be taken to have resigned from employment on 30 June 1992 and to have elected to preserve his or her accrued superannuation benefits under section 39.
- (5) Benefits that are preserved by virtue of subclause (4) are not payable to the contributor while the contributor is employed in employment to which this Act applies.
- (6) For the purpose of calculating the contributor's benefits under the new scheme—
  - (a) contribution points accrued before 1 July 1992 and contribution months occurring before that date will be disregarded; and
  - (b) the Board will establish a new account in the name of the contributor as at 1 July 1992.
- (7) The standard contribution rate that applied in relation to the contributor before 1 July 1992 will continue to apply in relation to the contributor from 1 July 1992 until 30 June following the election made by the contributor under subclause (1).
- (8) This clause does not apply for the benefit of—
  - (a) an employee of the Australian National Railways Commission;
  - (b) a contributor who has reached the age of retirement.

- (9) In this clause—

*the new scheme* means the scheme of superannuation established by Part 4 of this Act;

*the old scheme* means the scheme of superannuation established by Part 5 of this Act.

## **17—Payment of contributions while on leave without pay**

Section 4(8) does not apply to a contributor who is on leave without pay when the *Superannuation (Miscellaneous) Amendment Act 1994* comes into operation in respect of that period of leave.

## **18—Repeal of contribution rate**

- (1) A contributor who was contributing at the rate of 1.5% at the commencement of the *Superannuation (Miscellaneous) Amendment Act 1998* is entitled to continue contributing at that rate until 1 July 1998.
- (2) A contributor referred to in subclause (1) who fails to elect some other rate of contribution under section 23 in respect of the 1998/1999 financial year will be taken to have elected to cease contributing in respect of that year.

## **19—Operation of sections 28(1f) and 39(1db)**

Section 28(1f) and 39(1db) substituted by the *Superannuation (Miscellaneous) Amendment Act 1998* operate in relation to the 1997/1998 and subsequent financial years and the provisions they replace operate in relation to the 1996/1997 and previous financial years.

## **20—Election on retrenchment under section 29**

A new scheme contributor who—

- (a) was retrenched one year or less before the commencement of the *Superannuation (Miscellaneous) Amendment Act 1998*; and
- (b) had not reached the age of 55 years at that time; and
- (c) had not made an election under section 29(1) at that time,

is entitled to make the election within three months after the commencement of that Act.

## **21—Operation of amendments made by *Statutes Amendment (Equal Superannuation Entitlements for Same Sex Couples) Act 2003***

An amendment made by 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 contributor applies only if the death occurs on or after 3 July 2003.

## **Schedule 1A—Provisions relating to other public sector superannuation schemes**

- 1 (1) Subject to subclause (2), the Governor may make regulations—
  - (aaa) declaring a group of employees who are members of a public sector superannuation scheme to be contributors for the purposes of this Act;
  - (a) transferring all the assets and liabilities of a fund established for the purposes of a public sector superannuation scheme to the South Australian Superannuation Fund or transferring part of those assets and liabilities to that Fund and the remainder to an account to be kept at the Treasury pursuant to an arrangement under section 5;
  - (b) modifying the provisions of this Act in their application to the group of employees referred to in paragraph (aaa);
  - (c) providing for transitional matters upon the making of a declaration under paragraph (aaa).
- (2) The Governor must not make a regulation under subclause (1) unless the majority of the group of employees affected by the regulation and their employer have given their consent to the proposed regulation.

- 2 (1) Where, pursuant to a law of the Commonwealth, tax is payable on the income of a fund established for the purposes of a public sector superannuation scheme, the Governor may, at the request of the trustees of the fund or the employer in relation to whom the scheme was established, make regulations reducing the benefits payable to, or in relation to, members of the scheme to offset the amount of the tax payable and making consequential alterations to any trust deed or other document establishing the scheme.
- (2) A regulation whenever made under subclause (1) will, unless otherwise provided in the regulation, have effect from the time at which the tax referred to in subclause (1) first became payable.
- 3 In this Schedule—
- public sector superannuation scheme* means a superannuation scheme established for the benefit of employees of an instrumentality or agency of the Crown.

## Schedule 1B—Transfer of certain members of the Electricity Industry Superannuation Scheme to the State Scheme

### Part 1—Preliminary

#### 1—Interpretation

In this Schedule, unless the contrary intention appears—

*the contributory lump sum schemes* means Divisions 2 and 4 of the Electricity Industry Superannuation Scheme providing for contributions by members and lump sum benefits for members;

*Division 4* of the Electricity Industry Superannuation Scheme means the division of the Scheme formerly known as the "R.G. Scheme";

*the Electricity Industry pension scheme* means Division 3 of the Electricity Industry Superannuation Scheme providing for pension benefits;

*the Electricity Industry Superannuation Board* includes a subsequent trustee of the Electricity Industry Superannuation Scheme;

*the Electricity Industry Superannuation Scheme* means the ETSA Contributory and Non-Contributory Superannuation Schemes continued in existence as the Electricity Industry Superannuation Scheme by clause 3 of the Electricity Industry Superannuation Scheme Trust Deed appearing at the end of Schedule 1 of the *Electricity Corporations Act 1994*;

*the relevant day* means the day on which the approval of the Treasurer ceases to be required for the variation or replacement of the Rules of the Electricity Industry Superannuation Scheme;

*the State Scheme* means the scheme of superannuation established by this Act;

*Trustee* means the Electricity Industry Superannuation Board and includes subsequent trustees of the Electricity Industry Superannuation Scheme.

## Part 2—Transfer of members

### 2—Transfer of existing pensioners before the relevant day

- (1) The Treasurer may, by notice to the Electricity Industry Superannuation Board and the South Australian Superannuation Board under clause 7 before the relevant day, transfer a person who is in receipt of a pension under the Electricity Industry Superannuation Scheme from that scheme to the State Scheme.
- (2) A person transferred under subclause (1)—
  - (a) is entitled to a pension under this Act which, at the time of transfer, is of equivalent value to the pension he or she was receiving immediately before the transfer; and
  - (b) except in the case of a person entitled to a derivative benefit, will be taken to be an old scheme contributor; and
  - (c) in the case of a person who is entitled to a derivative benefit, will be taken to derive the benefit from an old scheme contributor.
- (3) If—
  - (a) an old scheme contributor referred to in subclause (2) dies before the expiration of three years after he or she first became entitled to a pension under the Electricity Industry Superannuation Scheme; or
  - (b) a person—
    - (i) referred to in subclause (2) who is entitled to a derivative benefit; or
    - (ii) who is entitled to a derivative benefit from an old scheme contributor referred to in paragraph (a),  
dies before the expiration of three years after the contributor from whom the benefit was derived—
      - (iii) first became entitled to a pension under the Electricity Industry Superannuation Scheme; or
      - (iv) died while still in employment without ever becoming entitled to such a pension,and—
  - (c) in the case referred to in paragraph (a), no one is entitled to a derivative benefit under this Act in respect of the contributor; or
  - (d) in the case referred to in paragraph (b), all derivative entitlements have ceased before the expiration of that period,  
the contributor's estate is entitled to a lump sum equivalent to—
    - (e) where paragraph (c) applies—the aggregate of the pension payments that the contributor would have received between the date of death and the third anniversary of the commencement of the pension if he or she had survived; or

- (f) where paragraph (d) applies—the aggregate of the pension payments that the contributor from whom the benefit was derived would have received between the date when the derivative entitlement, or the last of the derivative entitlements, ceased and the third anniversary of the commencement of the pension (or the date of the contributor's death) if the contributor had survived during that period,

(the lump sum will be determined on the assumption that the pension will not be adjusted under section 47 during that period).

- (4) Where a person who is transferred under this clause was, immediately before the transfer, entitled to commute a part, or the whole, of his or her pension under the Electricity Industry Superannuation Scheme, he or she is entitled to commute the whole or a part of the pension in accordance with this Act within a period that terminates—
- (a) when the period for commutation under the Electricity Industry Superannuation Scheme would have terminated; or
- (b) at the expiration of three months after the transfer,
- whichever is the later.
- (5) An amount equivalent in value to that part of the Scheme assets of the Electricity Industry Superannuation Scheme that is attributable to the membership of the Scheme of a person transferred to the State Scheme under this clause, or of the contributor from whom a person transferred to the State Scheme under this clause derives benefits, (to be determined by an actuary appointed by the Treasurer) must be paid by the Trustee from the Scheme assets to the Treasurer.
- (6) The Treasurer must pay into the South Australian Superannuation Fund a contribution reflecting the amount paid to the Treasurer under subclause (5).

### **3—Transfer of existing and future pensioners after the relevant day**

- (1) After the relevant day, the Treasurer may, at the request of the Trustee, enter into an agreement with the Trustee under which a person or persons referred to in subclause (2) may be transferred from the Electricity Industry Superannuation Scheme to the State Scheme.
- (2) The following persons may be transferred pursuant to an agreement under subclause (1):
- (a) a person who is in receipt of a pension under the Electricity Industry Superannuation Scheme;
- (b) a person who is a member of the Electricity Industry pension scheme and who is presently entitled to receive, but is not yet in receipt of, a pension following the termination of his or her employment;
- (c) a person who is entitled to a pension as a derivative benefit under the Electricity Industry Superannuation Scheme but who is not yet in receipt of the pension.
- (3) The Treasurer may, by notice to the Electricity Industry Superannuation Board and the South Australian Superannuation Board under clause 7, transfer a person from the Electricity Industry Superannuation Scheme to the State Scheme in pursuance of an agreement referred to in subclause (1).



- (4) A person transferred under subclause (3)—
- (a) is, in the case of a person who was in receipt of a pension at the time of transfer, entitled to a pension under this Act which, at the time of transfer, is of equivalent value to the pension he or she was receiving immediately before the transfer; and
  - (b) is, in the case of a person referred to in subclause (2)(b) or (c), entitled to a pension under this Act which, at the time of transfer, is of equivalent value to the initial pension that he or she would have received if he or she had not been transferred; and
  - (c) except in the case of a person entitled to a derivative benefit, will be taken to be an old scheme contributor; and
  - (d) in the case of a person who is entitled to a derivative benefit, will be taken to derive the benefit from an old scheme contributor.
- (5) If—
- (a) an old scheme contributor referred to in subclause (4) who was in receipt of, or was entitled to, a pension at the time of transfer, dies before the expiration of three years after he or she first became entitled to a pension under the Electricity Industry Superannuation Scheme; or
  - (b) a person—
    - (i) referred to in subclause (4) who was in receipt of, or was entitled to, a derivative pension at the time of transfer; or
    - (ii) who is entitled to a derivative benefit from an old scheme contributor referred to in paragraph (a),  
dies before the expiration of three years after the contributor from whom the benefit was derived—
      - (iii) first became entitled to a pension under the Electricity Industry Superannuation Scheme; or
      - (iv) died while still in employment without ever becoming entitled to such a pension,
- and—
- (c) in the case referred to in paragraph (a), no one is entitled to a derivative benefit under this Act in respect of the contributor; or
  - (d) in a case referred to in paragraph (b), all derivative entitlements have ceased before the expiration of that period,
- the contributor's estate is entitled to a lump sum equivalent to—
- (e) where paragraph (c) applies—the aggregate of the pension payments that the contributor would have received between the date of death and the third anniversary of the commencement of the pension if he or she had survived; or

- (f) where paragraph (d) applies—the aggregate of the pension payments that the contributor from whom the benefit was derived would have received between the date when the derivative entitlement, or the last of the derivative entitlements, ceased and the third anniversary of the commencement of the pension (or the date of the contributor's death) if the contributor had survived during that period,

(the lump sum will be determined on the assumption that the pension will not be adjusted under section 47 during that period).

- (6) Where a person who is transferred under this clause was, immediately before the transfer, entitled to commute a part, or the whole, of his or her pension under the Electricity Industry Superannuation Scheme, he or she is entitled to commute the whole or a part of the pension in accordance with this Act within a period that terminates—
- (a) when the period for commutation under the Electricity Industry Superannuation Scheme would have terminated; or
- (b) at the expiration of three months after the transfer,
- whichever is the later.
- (7) An amount equivalent in value to that part of the Scheme assets of the Electricity Industry Superannuation Scheme that is attributable to the contributions (and the interest and other income and other accretions arising from investment of those contributions) to the Scheme of a person transferred to the State Scheme under this clause who was in receipt of, or entitled to, a pension at the time of transfer, or of the contributor from whom a person transferred to the State Scheme under this clause derives benefits, (to be determined by an actuary appointed by the Treasurer) must be paid by the Trustee from the Scheme assets to the Treasurer.
- (8) The Treasurer must pay into the South Australian Superannuation Fund a contribution reflecting the amount paid to the Treasurer under subclause (7).
- (9) An amount equivalent in value to the aggregate value of the employer components of benefits payable under this Act to, or in respect of, persons transferred under this clause (to be determined by an actuary appointed by the Treasurer) must be paid by the Trustee from the Scheme assets of the Electricity Industry Superannuation Scheme to the Treasurer.

#### **4—Transfer of persons entitled to preserved benefits**

- (1) The Treasurer may, by notice to the Electricity Industry Superannuation Board and the South Australian Superannuation Board under clause 7 before the relevant day, transfer a person referred to in subclause (2) from the Electricity Industry Superannuation Scheme to the State Scheme.
- (2) A person who—
- (a) is a member of the Electricity Industry pension scheme or either of the contributory lump sum schemes; and
- (b) is entitled to preserved benefits in the relevant scheme; and
- (c) is not accruing benefits under any other division of the Electricity Industry Superannuation Scheme,

may be transferred under this clause.

- (3) After the transfer—
  - (a) a person who had been a member of the Electricity Industry pension scheme will be taken to be an old scheme contributor under this Act; and
  - (b) a person who had been a member of either of the contributory lump sum schemes will be taken to be a new scheme contributor under this Act.
- (4) The South Australian Superannuation Board must open a contribution account in the name of each person transferred under this clause and must credit to the account an amount equivalent to the amount standing to the credit of the person's contribution account in the Electricity Industry Superannuation Scheme immediately before the transfer.
- (5) An amount equivalent to the aggregate of the amounts credited to contribution accounts under subclause (4) must be paid by the Trustee from the Scheme assets of the Electricity Industry Superannuation Scheme to the Treasurer.
- (6) The Treasurer must pay into the South Australian Superannuation Fund a contribution reflecting the amount paid to the Treasurer under subclause (5).
- (7) Where—
  - (a) a person who was a member of the Electricity Industry pension scheme before being transferred to the State Scheme under subclause (1) or the spouse or eligible child of such a person is entitled to a pension under section 39(5), the pension will—
    - (i) in the case of a retirement pension or an invalid pension payable to the person—be equivalent to his or her notional pension;
    - (ii) in the case of a pension payable to a spouse or eligible child—be determined in accordance with section 38 on the basis that the person's notional pension as defined in subclause (8) is the notional pension referred to in section 38;
  - (b) the estate of a person referred to in paragraph (a) is entitled to a lump sum under section 39(5)(e) or (f), the lump sum will—
    - (i) where section 39(5)(e) applies—be the amount stated in section 39(8a);
    - (ii) where section 39(5)(f) applies—be the aggregate of the following amounts:
      - (A) an employee component (to be charged against the person's contribution account) equivalent to the amount standing to the credit of that account; and
      - (B) an employer component being an amount equivalent to 1.8 times the employee component.

- (8) In subclause (7)—

*notional pension* in relation to a person means the pension that the person would have been entitled to receive under the Electricity Industry pension scheme if he or she had become entitled to receive that pension immediately before being transferred to the State Scheme adjusted to reflect changes in the Consumer Price Index from the date on which the person was transferred;

*spouse* means a person referred to in section 38(1a).

- (9) A person who was a member of either of the contributory lump sum schemes before being transferred to the State Scheme under subclause (1) will (or, where the person has died, the spouse or estate of the person will) be entitled to a lump sum under section 28(2) that is the aggregate of the following amounts:
- (a) an employee component (to be charged against the person's contribution account) equivalent to the amount standing to the credit of that account; and
  - (b) the person's notional employer component adjusted to reflect changes in the Consumer Price Index from the date on which the person was transferred.

- (10) In subclause (9)—

*notional employer component* in relation to a person means the employer component that the person would have been entitled to receive under the contributory lump sum scheme if he or she had become entitled to receive that component immediately before being transferred to the State Scheme.

## **5—Transfer of certain other persons**

- (1) The Treasurer may, with the consent of the person, by notice to the Electricity Industry Superannuation Board and the South Australian Superannuation Board under clause 7, transfer a person who is a member of the Electricity Industry Superannuation Scheme and who also falls within the definition of *employee* in section 4 from that scheme to the State Scheme.
- (2) After the transfer—
- (a) a person who had been a member of the Electricity Industry pension scheme will be taken to be an old scheme contributor under this Act; and
  - (b) a person who had been a member of either of the contributory lump sum schemes will be taken to be a new scheme contributor under this Act.
- (3) The South Australian Superannuation Board must open a contribution account in the name of each person transferred under this clause and must credit to the account an amount equivalent to the amount standing to the credit of the person's contribution account in the Electricity Industry Superannuation Scheme immediately before the transfer.
- (4) An amount equivalent to the aggregate of the amounts credited to contribution accounts under subclause (3) must be paid by the Trustee from the Scheme assets of the Electricity Industry Superannuation Scheme to the Treasurer.
- (5) The Treasurer must pay into the South Australian Superannuation Fund a contribution reflecting the amount paid to the Treasurer under subclause (4).

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- (6) An amount equivalent in value to the aggregate value of the employer components of those parts of benefits payable under this Act to, or in respect of, persons transferred under this clause that are attributable to contributors' employment up to the time of transfer (to be determined by an actuary appointed by the Treasurer) must be paid by the Trustee from the Scheme assets of the Electricity Industry Superannuation Scheme to the Treasurer.
- (7) The Minister must attribute to each person transferred under this clause (other than a person who was immediately before the transfer a member of Division 4 of the Electricity Industry Superannuation Scheme) a number of contribution points that is sufficient—
- (a) to provide the person with an accrued entitlement under this Act at the time of transfer that is not less than his or her accrued entitlement under the Electricity Industry Superannuation Scheme immediately before the transfer; and
  - (b) in the case of a person who was entitled to defined benefits under the Electricity Industry Superannuation Scheme, to ensure that the level of benefits on retirement at age 60 that the person was to be entitled to under that Scheme are maintained.
- (8) The Treasurer must pay into the South Australian Superannuation Fund a contribution reflecting the amount paid to the Treasurer under subclause (6) in respect of persons who were immediately before the transfer members of Division 4 of the Electricity Industry Superannuation Scheme, and the South Australian Superannuation Board must open an account under section 47B in the name of each person transferred from Division 4 and credit to each account that part of the contribution paid by the Treasurer that is attributable to the person in whose name the account has been opened.
- (9) In the application of Part 4 in relation to a person transferred under this clause who was, immediately before the transfer, a member of Division 4 of the Electricity Industry Superannuation Scheme—
- (a) the number "4.5" wherever appearing in a formula in that Part will be changed to "4.9"; and
  - (b) the number "3.86" wherever appearing in such a formula will be changed to "4.2"; and
  - (c) the number "420" wherever appearing in such a formula will be changed to "360".
- (10) Subject to an election under subclause (11), a person transferred under this clause is required to contribute at the rate of 6 per cent of salary until he or she makes an election under section 23 to contribute at some other rate.
- (11) A person may, within 14 days after service of a notice under clause 7(3), elect, in a manner approved by the Board, to contribute at any of the rates set out in section 23.
- (12) The Board may, in a particular case, extend the period of 14 days referred to in subclause (11).

## **Part 3—General**

### **6—Employer contributions**

- (1) Money standing to the credit of the fund or funds referred to in clause 18A of Schedule 1 of the *Electricity Corporations Act 1994* (before its repeal by the *Electricity Corporations (Restructuring and Disposal) Act 1999*) must be paid to the Treasurer.
- (2) The employer of a person who has been transferred to the State Scheme under clause 5 will be taken to have entered into an arrangement with the Board under section 5.
- (3) The terms of the arrangement will be determined by the Treasurer after consultation with the employer.

### **7—Notices**

- (1) The Treasurer may serve notice on the Electricity Industry Superannuation Board and the South Australian Superannuation Board transferring a member or members of the Electricity Industry Superannuation Scheme to the State Scheme under this Schedule.
- (2) The notice must—
  - (a) be in writing; and
  - (b) identify the member or members to whom it applies; and
  - (c) identify the clause of this Schedule in relation to which it will operate.
- (3) On receipt of a notice under subclause (1), the Electricity Industry Superannuation Board must give notice to each member transferred advising him or her of the transfer.

### **8—Cessation of entitlements under the Electricity Industry Superannuation Scheme**

On the transfer of a person to the State Scheme under this Schedule, his or her entitlements under the Electricity Industry Superannuation Scheme cease.

### **9—Power to obtain information**

- (1) The South Australian Superannuation Board may, from time to time, require the Electricity Industry Superannuation Board to provide it with information in its possession relating to persons transferred to the State Scheme under this Schedule.
- (2) Despite any other Act or law to the contrary, the Electricity Industry Superannuation Board must comply with a requirement under subclause (1).

### **10—Transfer effective despite *Electricity Corporations Act 1994***

Transfers under this Schedule have effect despite provisions of Schedule 1 of the *Electricity Corporations Act 1994* as to membership of the Electricity Industry Superannuation Scheme.

### **11—Regulations may be made for transitional purposes**

- (1) The Governor may, by regulation, make provisions of a transitional nature in relation to the transfer of persons under this Schedule to the State Scheme.

- (2) A regulation made under this clause may—
- (a) modify the provisions of this Act in their application to a person transferred under this Schedule;
  - (b) operate prospectively or retrospectively from a date specified in the regulation.

## Schedule 2

Value of A	Corresponding Value of C	Value of A	Corresponding Value of C	Value of A	Corresponding Value of C
0	0.1378	30	0.2150	60	0.2890
1	0.1404	31	0.2175	61	0.2914
2	0.1430	32	0.2200	62	0.2938
3	0.1457	33	0.2225	63	0.2962
4	0.1483	34	0.2250	64	0.2986
5	0.1509	35	0.2275	65	0.3010
6	0.1535	36	0.2300	66	0.3034
7	0.1561	37	0.2325	67	0.3058
8	0.1587	38	0.2350	68	0.3082
9	0.1613	39	0.2375	69	0.3106
10	0.1639	40	0.2400	70	0.3129
11	0.1665	41	0.2425	71	0.3153
12	0.1690	42	0.2450	72	0.3177
13	0.1716	43	0.2474	73	0.3201
14	0.1742	44	0.2499	74	0.3224
15	0.1768	45	0.2524	75	0.3248
16	0.1794	46	0.2548	76	0.3272
17	0.1819	47	0.2573	77	0.3295
18	0.1845	48	0.2598	78	0.3319
19	0.1870	49	0.2622	79	0.3342
20	0.1896	50	0.2647	80	0.3366
21	0.1922	51	0.2671	81	0.3389
22	0.1947	52	0.2696	82	0.3412
23	0.1972	53	0.2720	83	0.3436
24	0.1998	54	0.2744	84	0.3459
25	0.2023	55	0.2769	85	0.3482
26	0.2049	56	0.2793	86	0.3506
27	0.2074	57	0.2817	87	0.3529
28	0.2099	58	0.2841	88	0.3552

**Superannuation Act 1988—23.6.2006 to 31.5.2007**  
 Schedule 2

<b>Value of A</b>	<b>Corresponding Value of C</b>	<b>Value of A</b>	<b>Corresponding Value of C</b>	<b>Value of A</b>	<b>Corresponding Value of C</b>
29	0.2124	59	0.2866	89	0.3575
90	0.3598	120	0.4275	150	0.4921
91	0.3621	121	0.4297	151	0.4942
92	0.3644	122	0.4319	152	0.4962
93	0.3667	123	0.4341	153	0.4983
94	0.3690	124	0.4363	154	0.5004
95	0.3713	125	0.4385	155	0.5025
96	0.3736	126	0.4407	156	0.5046
97	0.3759	127	0.4429	157	0.5067
98	0.3782	128	0.4450	158	0.5087
99	0.3805	129	0.4472	159	0.5108
100	0.3827	130	0.4494	160	0.5129
101	0.3850	131	0.4516	161	0.5149
102	0.3873	132	0.4537	162	0.5170
103	0.3896	133	0.4559	163	0.5190
104	0.3918	134	0.4580	164	0.5211
105	0.3941	135	0.4602	165	0.5231
106	0.3963	136	0.4623	166	0.5252
107	0.3986	137	0.4645	167	0.5272
108	0.4008	138	0.4666	168	0.5293
109	0.4031	139	0.4688	169	0.5313
110	0.4053	140	0.4609	170	0.5333
111	0.4075	141	0.4730	171	0.5354
112	0.4098	142	0.4752	172	0.5374
113	0.4120	143	0.4773	173	0.5394
114	0.4142	144	0.4794	174	0.5414
115	0.4165	145	0.4815	175	0.5434
116	0.4187	146	0.4836	176	0.5454
117	0.4209	147	0.4857	177	0.5474
118	0.4231	148	0.4879	178	0.5494
119	0.4253	149	0.4900	179	0.5514



Value of A	Corresponding Value of C	Value of A	Corresponding Value of C	Value of A	Corresponding Value of C
180	0.5534	210	0.6116	240	0.6667
181	0.5554	211	0.6135	241	0.6673
182	0.5574	212	0.6154	242	0.6678
183	0.5594	213	0.6173	243	0.6684
184	0.5614	214	0.6192	244	0.6689
185	0.5634	215	0.6210	245	0.6695
186	0.5653	216	0.6229	246	0.6700
187	0.5673	217	0.6248	247	0.6706
188	0.5693	218	0.6266	248	0.6712
189	0.5712	219	0.6285	249	0.6717
190	0.5732	220	0.6303	250	0.6723
191	0.5751	221	0.6322	251	0.6728
192	0.5771	222	0.6340	252	0.6734
193	0.5790	223	0.6359	253	0.6740
194	0.5810	224	0.6377	254	0.6745
195	0.5829	225	0.6396	255	0.6751
196	0.5849	226	0.6414	256	0.6756
197	0.5868	227	0.6432	257	0.6762
198	0.5887	228	0.6451	258	0.6767
199	0.5907	229	0.6469	259	0.6773
200	0.5926	230	0.6487	260	0.6778
201	0.5945	231	0.6505	262	0.6784
202	0.5964	232	0.6523	262	0.6789
203	0.5983	233	0.6541	263	0.6795
204	0.6003	234	0.6559	264	0.6800
205	0.6022	235	0.6577	265	0.6806
206	0.6041	236	0.6595	266	0.6811
207	0.6060	237	0.6613	267	0.6817
208	0.6079	238	0.6631	268	0.6822
209	0.6098	239	0.6649	269	0.6828

**Superannuation Act 1988—23.6.2006 to 31.5.2007**  
 Schedule 2

<b>Value of A</b>	<b>Corresponding Value of C</b>	<b>Value of A</b>	<b>Corresponding Value of C</b>	<b>Value of A</b>	<b>Corresponding Value of C</b>
270	0.6833	300	0.7000	330	0.7166
271	0.6839	301	0.7006	331	0.7172
272	0.6845	302	0.7011	332	0.7178
273	0.6850	303	0.7017	333	0.7183
274	0.6856	304	0.7022	334	0.7189
275	0.6861	305	0.7028	335	0.7194
276	0.6867	306	0.7033	336	0.7200
277	0.6873	307	0.7039	337	0.7206
278	0.6878	308	0.7045	338	0.7211
279	0.6884	309	0.7050	339	0.7217
280	0.6889	310	0.7056	340	0.7222
281	0.6895	311	0.7061	341	0.7228
282	0.6900	312	0.7067	342	0.7233
283	0.6906	313	0.7073	343	0.7239
284	0.6911	314	0.7078	344	0.7244
285	0.6917	315	0.7084	345	0.7250
286	0.6922	316	0.7089	346	0.7255
287	0.6928	317	0.7095	347	0.7261
288	0.6933	318	0.7100	348	0.7266
289	0.6939	319	0.7106	349	0.7272
290	0.6944	320	0.7111	350	0.7277
291	0.6950	321	0.7117	351	0.7283
292	0.6955	322	0.7122	352	0.7288
293	0.6961	323	0.7128	353	0.7294
294	0.6966	324	0.7133	354	0.7299
295	0.6972	325	0.7139	355	0.7305
296	0.6978	326	0.7144	356	0.7311
297	0.6983	327	0.7150	357	0.7316
298	0.6989	328	0.7155	358	0.7322
299	0.6994	329	0.7161	359	0.7327

## Schedule 3—Administered schemes

### Part 1—Interpretation

#### 1—Interpretation

- (1) In this Schedule, unless the contrary intention appears—

**director** of a body corporate means a person who is a member of the governing body of the body corporate;

**rules**, in relation to a superannuation scheme, means any rules contained in a trust instrument or other document governing the establishment or operation of the superannuation scheme (subject to any provision made by this Schedule);

**special resolution** means—

- (a) in relation to the directors of a body corporate—a resolution passed by at least two-thirds of the votes cast by the directors of the body corporate voting with respect to the matter;
- (b) in relation to the trustees of a superannuation scheme—a resolution passed by at least two-thirds of the votes cast by the trustees of the superannuation scheme voting with respect to the matter;

**superannuation scheme** means a scheme (whether established within the private sector or the public sector) that—

- (a) is established for the purposes of providing superannuation or retirement benefits (and may provide for other benefits such as invalidity or death benefits); and
- (b) provides for an indefinitely continuing fund,

other than a scheme established under another part of this Act, or under another Act;

**Super SA** means the agency or body designated from time to time for the purposes of this Schedule by the Minister by notice in the Gazette as being the entity primarily involved in assisting in the administration of public sector superannuation schemes within the State;

**trustee**, in relation to a superannuation scheme, means—

- (a) if there is a trustee (within the ordinary meaning of that expression) of the superannuation scheme—the trustee; or
- (b) in any other case—the person who administers the superannuation scheme under the rules of the scheme.

- (2) For the purposes of this Schedule, an **administered scheme** is a superannuation scheme that is within the ambit of a declaration under clause 2.
- (3) For the purposes of this Schedule, a **superannuation fund** is a pool of assets accumulated for the purposes of a superannuation scheme.
- (4) A reference in this Schedule to **rate of return** is a reference to a positive or a negative rate of return.

## Part 2—Management of schemes

### 2—Application of Schedule to schemes

- (1) The Minister may, by notice in the Gazette, declare that this Schedule applies to or in relation to a superannuation scheme in 1 or more of the following respects:
  - (a) that the superannuation scheme and its associated superannuation fund will be a scheme and fund established under this Act;
  - (b) that the superannuation scheme will be administered by Super SA;
  - (c) that the superannuation fund will be invested and managed by the Superannuation Funds Management Corporation of South Australia;
  - (d) that the superannuation scheme and its associated superannuation fund will have the Board as its trustee.
- (2) The Minister may not make a declaration under subclause (1) unless—
  - (a) the superannuation scheme is a qualifying scheme; and
  - (b) the Minister is acting on the basis of an application made by the trustee of the scheme.
- (3) The following provisions apply in connection with the operation of paragraph (a) of subclause (2):
  - (a) a superannuation scheme is a *qualifying scheme* if the operations of the employer of the members of the scheme are wholly or substantially funded by money provided by—
    - (i) the Government of the State; or
    - (ii) an agency or instrumentality of the Crown; or
    - (iii) some other public authority prescribed by the regulations for the purposes of this paragraph; and
  - (b) once a declaration has been made under subclause (1) in relation to a superannuation scheme, it is irrelevant if the scheme ceases to be a qualifying scheme (and the Minister may, if due application has been made, make a further declaration under subclause (1) on the basis that paragraph (a) of subclause (2) no longer applies).
- (4) The following provisions apply in connection with the operation of paragraph (b) of subclause (2):
  - (a) an application under that paragraph must be made in a manner and form determined by the Minister and be accompanied by such information as the Minister thinks fit; and
  - (b) —
    - (i) if the trustee of the superannuation scheme is a body corporate with 3 or more directors—an application under that paragraph must be made pursuant to a special resolution of the directors of the body corporate;

- (ii) if the superannuation scheme has 3 or more trustees—an application under that paragraph must be made pursuant to a special resolution of the trustees.
- (5) A declaration under subclause (1)—
  - (a) will have effect according to its terms; and
  - (b) will take effect on a day fixed by the Minister by notice in the Gazette (either as part of the declaration or by a separate notice published at a later time).
- (6) If a declaration is made under subclause (1)(a), the declaration will have the effect of establishing a new scheme in place of the scheme and fund to which the declaration relates—
  - (a) with the same assets, subject to any provision as to their administration or management under subclause (1)(b) or (c) and to the operation of any other provision of this Schedule and subject to future variations; and
  - (b) with the same trustee or trustees, subject to the operation of a declaration under subclause (1)(d) and subject to future changes in arrangements made in accordance with any relevant provision in the trust deed for the scheme; and
  - (c) with the same members and benefits, subject to the operation of any other provision of this Schedule or the trust deed or rules of the scheme and subject to future changes in membership or variations to that trust deed or rules; and
  - (d) with a trust deed and rules applying (from time to time) under clause 3.
- (7) If a declaration is made under subclause (1)(d), the Board will, if the Minister so determines—
  - (a) indemnify a trustee of the superannuation scheme holding office before the declaration against any liabilities that the trustee was indemnified against before the making of the declaration;
  - (b) be subrogated to the rights of a trustee of the superannuation scheme holding office before the declaration.

### **3—Arrangements as to trust deed and rules**

- (1) Each administered scheme is to have—
  - (a) a trust deed; and
  - (b) a set of rules.
- (2) The trust deed and the rules will be contained in instruments recognised by the Minister by notice in the Gazette.
- (3) The Minister must not publish a notice under subclause (2) unless the Minister—
  - (a) is acting on the basis of an application made by the trustee of the relevant superannuation scheme; and
  - (b) is satisfied that the trust deed and rules of the administered scheme confer on members of the scheme equivalent rights to the rights that members had under the original fund in respect of benefits.

- (4) A trust deed or rules may be varied in accordance with the terms of the trust deed or rules and subclauses (2) and (3) will apply to any variation in the same manner as they applied to the original trust deed or rules (as the case requires).
- (5) For the purposes of subclause (3), if the application is made—
  - (a) by a body corporate that has 3 or more directors—the application must be made pursuant to a special resolution of the directors of the body corporate;
  - (b) by the trustees of a superannuation scheme that has 3 or more trustees—the application must be made pursuant to a special resolution of the trustees.

#### **4—Arrangements as to assets**

- (1) Where a declaration has been made under clause 2, the trustee of the relevant superannuation scheme may, by instrument in writing, transfer any assets of the scheme to the Superannuation Funds Management Corporation of South Australia so that those assets may be invested and managed under this Schedule.
- (2) Any monetary asset received under subclause (1) must be paid into a fund established for the purposes of the administered scheme under Part 3.
- (3) Super SA or the Superannuation Funds Management Corporation of South Australia may also receive and hold records and other information that have been created or obtained in connection with the operation of an administered scheme.

### **Part 3—Establishment of funds and contribution accounts**

#### **Division 1—Establishment of funds**

##### **5—Establishment of funds**

- (1) The Superannuation Funds Management Corporation of South Australia must establish a fund for the purposes of an administered scheme that is the subject of a declaration under clause 2(1)(c).
- (2) The assets of a fund established under this clause must be held for the benefit of the relevant superannuation scheme and the beneficiaries of that scheme, and will not belong to the Crown.
- (3) A fund established under this clause will be subject to the management of the Corporation.
- (4) Subject to the following subclauses, a fund established under this clause will be invested by the Corporation and accordingly the Corporation may enter into transactions affecting the fund—
  - (a) for the purposes of investment; or
  - (b) for purposes incidental, ancillary or otherwise related to investment.
- (5) The Corporation must consult with the trustee of the relevant superannuation scheme to determine the risk/return objectives and strategic asset allocation policies to be adopted with respect to the management and investment of the fund.
- (6) Subject to subclause (7), the trustee of the scheme will be ultimately responsible for setting the risk/return objectives and the Corporation will be ultimately responsible for determining the strategic asset allocation policies.

- (7) If a disagreement arises between the trustee and the Corporation with respect to the investment of the fund, the matter must be referred to the Treasurer and a decision of the Treasurer will determine the matter (and will have effect according to its terms).
- (8) If a fund is established under this clause then, subject to any other arrangements under the rules of the relevant superannuation scheme, or approved by the trustee of the relevant superannuation scheme—
  - (a) Super SA must pay into the fund all contributions received for the purposes of the relevant superannuation scheme; and
  - (b) all interest and accretions arising from the investment of the fund must be paid into the fund; and
  - (c) all benefits under the relevant superannuation scheme must be paid from the fund.
- (9) The Corporation will also pay from a fund established under this clause—
  - (a) administrative costs and other expenses related to the management and investment of the fund by the Corporation; and
  - (b) if relevant, administrative charges payable under clause 11; and
  - (c) any other amount payable in connection with the management or operation of the relevant superannuation scheme determined to be payable from the fund pursuant to the rules of the scheme or a determination of the trustee of the scheme.
- (10) The Corporation must determine the value of a fund established under this clause as at the end of each financial year.

## **6—Division of funds into distinct parts**

- (1) The Superannuation Funds Management Corporation of South Australia must, at the request of the trustee of the administered scheme—
  - (a) divide a fund established for the purposes of an administered scheme into 2 or more distinct divisions; and
  - (b) further divide a distinct division into subdivisions.
- (2) Different divisions or subdivisions of a fund may be invested in different ways (and different rates of return may apply to different divisions or subdivisions).

## **Division 2—Contribution accounts**

### **7—Contribution accounts**

- (1) Super SA may, for the purposes of an administered scheme (insofar as may be relevant), establish and maintain contribution accounts—
  - (a) in the names of the members of the scheme;
  - (b) in the name of the employer of the members of the scheme.

- (2) Super SA may—
- (a) credit and debit contribution accounts in accordance with the terms of the relevant superannuation scheme or otherwise to reflect the operation of this Schedule;
  - (b) provide for rates of return to be reflected in contribution accounts on the basis of a determination of the trustee of the scheme after taking into account the relevant rates of return that apply to the investment of a fund established under Division 1.

## **Part 4—Miscellaneous**

### **8—Insurance arrangements**

- (1) Super SA may, with the approval of the Minister, establish (and maintain) arrangements that provide members of one or more administered schemes with death, disability or other forms of insurance.
- (2) The terms and conditions of insurance established under this clause (including as to any premiums to be paid by members of administered schemes or, if it is so determined, by the employer of the members of the scheme) may be—
- (a) included in the rules of an administered scheme; or
  - (b) prescribed by regulations made for the purposes of this provision.
- (3) Super SA may, in establishing and maintaining insurance under this clause—
- (a) establish a pool of funds or other assets that relate to more than 1 administered scheme;
  - (b) invest any funds or other assets as it thinks fit;
  - (c) enter into insurance or re-insurance arrangements with other entities;
  - (d) establish arrangements, provide or offer benefits, or set premiums or other terms or conditions, that vary between different administered schemes, or different classes of members of administered schemes;
  - (e) undertake any activity through the Minister (as a body corporate), the Board, the Superannuation Funds Management Corporation of South Australia, or any other entity determined by Super SA after consultation with the Minister;
  - (f) take such other action that is necessary or expedient for the purposes of providing insurance under this clause.
- (4) Any funds or other assets relating to insurance arrangements established under this clause may be held separately from any funds or other assets administered under Part 2 and Part 3.

### **9—Accounts and audit**

- (1) Super SA must, in respect of each financial year for which it is the manager of an administered scheme, in respect of each administered scheme—
- (a) maintain proper accounts of amounts paid to Super SA for the purposes of the scheme; and



- (b) maintain proper accounts of payments to, on behalf of, or in respect of, members of the scheme; and
  - (c) maintain proper accounts of any other associated receipts or payments; and
  - (d) prepare financial statements in relation to those receipts and payments.
- (2) Subject to subclause (3), the Auditor-General must, on an annual basis, audit—
  - (a) the accounts and financial statements referred to in subclause (1); and
  - (b) any other accounts or financial statements of an administered scheme.
- (3) The Auditor-General may, as the Auditor-General thinks fit, appoint or authorise another person to conduct an audit on behalf of, or instead of, the Auditor-General.
- (4) The Auditor-General may, at any other time, audit the accounts and financial statements of Super SA under this Schedule, or of an administered scheme within the scope of this Schedule.

## 10—Reports

- (1) Super SA must, in conjunction with each annual report of the Board under this Act, provide a report on the operation of this Schedule in relation to any administered scheme that is within the ambit of a declaration under clause 2(1)(b) during the financial year to which the annual report relates.
- (2) A report under subclause (1) must include—
  - (a) a copy of any accounts or financial statements that are required to be audited under this Schedule in respect of each relevant scheme for the financial year; and
  - (b) if a fund has been in existence under Part 3 Division 1 in respect of any part of the relevant financial year—a copy of the audited accounts and financial statements for that fund provided by the Superannuation Funds Management Corporation of South Australia.
- (3) In addition, the trustee of an administered scheme that is within the ambit of a declaration that does not extend beyond clause 2(1)(a) must, on or before 31 October in each year, furnish to the Minister the trustee's annual report for the scheme for the financial year ending on 30 June in that year.
- (4) The Minister must, within 6 sitting days after receiving a report under this clause, have copies of the report laid before both Houses of Parliament.
- (5) Super SA must also report in accordance with any requirements imposed on Super SA under the rules of an administered scheme, or under the regulations.

## 11—Fees

- (1) The Minister may establish and impose an administrative charge in connection with Super SA acting as manager of an administered scheme under this Schedule.
- (2) The Board may, after consultation with the Minister, establish and impose an administrative charge in connection with the Board acting as trustee of an administered scheme under this Schedule.

- (3) The Minister or the Board may, in connection with the operation of subclause (1) or (2)—
- (a) fix different charges with respect to different funds or different circumstances;
  - (b) recover any charge imposed under this clause from any fund of an administered scheme or, if the trust deed of the administered scheme so provides, from any employer of any members of an administered scheme;
  - (c) arrange for any contribution account to be debited to reflect any charge imposed under this clause;
  - (d) vary a charge from time to time.

## **12—Cessation of scheme**

- (1) The Minister may, by notice in the Gazette, revoke a declaration relating to an administered scheme under this Schedule.
- (2) The Minister may, by notice in the Gazette, transfer any assets of the relevant fund in order to give effect to the change in circumstances.

## **13—Stamp duty**

- (1) No stamp duty is payable under a law of this State in respect of any transfer of assets connected with, or arising out of, the operation of this Schedule.
- (2) No person has an obligation under the *Stamp Duties Act 1923* to lodge a statement or return relating to a matter referred to in subclause (1), or to include in a statement or return a record or information relating to such a matter.

## **14—Transitional provisions**

- (1) The Governor may, by regulation, make provisions of a saving or transitional nature in relation to a declaration of the Minister under this Schedule.
- (2) A regulation made under subclause (1) may—
  - (a) modify the provisions of this Schedule in their application to a particular scheme;
  - (b) operate prospectively or retrospectively from a date specified in the regulation.

## Legislative history

### Notes

- This version is comprised of the following:
 

Part 1	23.6.2006
Part 2	23.6.2006
Part 3	19.8.2004
Part 4	19.8.2004
Part 5	19.8.2004
Part 5A	23.6.2006
Part 6	23.6.2006
Schedules	23.6.2006
- 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](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Superannuation Act 1988* repealed the following:

*Superannuation Act 1974*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1988	37	<i>Superannuation Act 1988</i>	28.4.1988	1.7.1988 ( <i>Gazette 19.5.1988 p1246</i> )
1989	9	<i>Superannuation Act Amendment Act 1989</i>	30.3.1989	20.4.1989 ( <i>Gazette 13.4.1989 p1006</i> ) except s 9(b) & 14—1.7.1988: s 2(2)
1989	54	<i>Superannuation Act Amendment Act (No. 2) 1989</i>	19.10.1989	19.10.1989
1990	78	<i>Superannuation Act Amendment Act 1990</i>	20.12.1990	17.1.1991 ( <i>Gazette 17.1.1991 p182</i> )
1991	67	<i>Superannuation (Miscellaneous) Amendment Act 1991</i>	5.12.1991	19.12.1991 ( <i>Gazette 19.12.1991 p1905</i> ) except s 15—17.1.1991: s 2(1)
1992	69	<i>Statutes Amendment (Public Actuary) Act 1992</i>	19.11.1992	10.12.1992 ( <i>Gazette 10.12.1992 p1752</i> )
1992	91	<i>Superannuation (Scheme Revision) Amendment Act 1992</i>	10.12.1992	1.7.1992 except s 8(b) & (c)—10.12.1992: s 2

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1993	12	<i>Police Superannuation (Superannuation Guarantee) Amendment Act 1993</i>	25.3.1993	s 9—19.12.1991: s 2
1993	44	<i>Superannuation (Voluntary Separation) Amendment Act 1993</i>	20.5.1993	27.5.1993 ( <i>Gazette 27.5.1993 p1753</i> )
1994	30	<i>Passenger Transport Act 1994</i>	26.5.1994	Sch 4—1.7.1994 ( <i>Gazette 30.6.1994 p1843</i> )
1994	37	<i>Superannuation (Miscellaneous) Amendment Act 1994</i>	2.6.1994	2.6.1994 ( <i>Gazette 2.6.1994 p1524</i> ) except s 14(i)—5.6.1992: s 2(2)
1994	46	<i>Statutes Amendment (Closure of Superannuation Schemes) Act 1994</i> as amended by 53/1994 and 57/1994	9.6.1994	Pt 2 (ss 4 & 5)—3.5.1994 and Pt 4 (s 8)—21.10.1994: s 2
1994	53	<i>Statutes Amendment (Closure of Superannuation Schemes) (Extension of Time) Amendment Act 1994</i>	15.9.1994	30.9.1994: s 2
1994	57	<i>Statutes Amendment (Closure of Superannuation Schemes) Amendment Act 1994</i>	20.10.1994	20.10.1994: s 2
1995	38	<i>Superannuation Funds Management Corporation of South Australia Act 1995</i>	27.4.1995	1.7.1995 ( <i>Gazette 25.5.1995 p2199</i> )
1995	97	<i>Superannuation (Contracting Out) Amendment Act 1995</i>	7.12.1995	14.12.1995 ( <i>Gazette 14.12.1995 p1642</i> )
1997	9	<i>Superannuation (Employee Mobility) Amendment Act 1997</i>	20.3.1997	20.3.1997
1997	45	<i>Superannuation (Miscellaneous) Amendment Act 1997</i>	24.7.1997	24.7.1997 except s 8—1.7.1992: s 2
1998	20	<i>Statutes Amendment (Adjustment of Superannuation Pensions) Act 1998</i>	2.4.1998	Pt 5 (s 7)—1.10.1997 : s 2
1998	24	<i>Superannuation (Miscellaneous) Amendment Act 1998</i>	2.4.1998	16.4.1998 ( <i>Gazette 16.4.1998 p1707</i> ) except s 18(h)—1.7.1994 : s 2(2)
1999	23	<i>Statutes Amendment (Commutation for Superannuation Surcharge) Act 1999</i>	1.4.1999	1.4.1999
1999	36	<i>Electricity Corporations (Restructuring and Disposal) Act 1999</i>	1.7.1999	Sch 3( Pt 3)—1.12.1999 ( <i>Gazette 23.9.1999 p1214</i> )
1999	57	<i>Superannuation (Voluntary Separation Packages) Amendment Act 1999</i>	12.8.1999	1.7.1999: s 2
2000	4	<i>District Court (Administrative and Disciplinary Division) Amendment Act 2000</i>	20.4.2000	Sch 1 (cl 41)—1.6.2000 ( <i>Gazette 18.5.2000 p2554</i> )
2000	41	<i>Superannuation (Miscellaneous) Amendment Act 2000</i>	13.7.2000	17.8.2000 ( <i>Gazette 17.8.2000 p498</i> ) except s 13—1.7.1988: s 2(2)
2001	12	<i>Police Superannuation (Miscellaneous) Amendment Act 2001</i>	12.4.2001	1.7.2001 ( <i>Gazette 14.6.2001 p2220</i> )
2001	40	<i>Statutes Amendment (Indexation of Superannuation Pensions) Act 2001</i>	3.8.2001	Pt 6 (s 9)—1.1.2002 : s 2
2003	13	<i>Statutes Amendment (Equal Superannuation Entitlements for Same Sex Couples) Act 2003</i>	12.6.2003	Pt 5 (ss 11—13)—3.7.2003 ( <i>Gazette 3.7.2003 p2877</i> )

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2003	21	<i>Statutes Amendment (Notification of Superannuation Entitlements) Act 2003</i>	17.7.2003	Pt 4 (ss 8—11)—17.8.2003: s 2
2003	44	<i>Statute Law Revision Act 2003</i>	23.10.2003	Sch 1—24.11.2003 ( <i>Gazette 13.11.2003 p4048</i> )
2003	49	<i>Statutes Amendment (Division of Superannuation Interests under Family Law Act) Act 2003</i>	20.11.2003	Pt 6 (s 28—33)—18.12.2003 ( <i>Gazette 18.12.2003 p4527</i> )
2003	54	<i>Passenger Transport (Dissolution of Passenger Transport Board) Amendment Act 2003</i>	4.12.2003	Sch 1 (cl 4)—1.1.2004 ( <i>Gazette 18.12.2003 p4525</i> )
2004	37	<i>Statutes Amendment (Miscellaneous Superannuation Measures) Act 2004</i>	5.8.2004	Pt 4 (ss 16—21)—19.8.2004 ( <i>Gazette 19.8.2004 p3280</i> )
2004	51	<i>Statutes Amendment (Miscellaneous Superannuation Measures No 2) Act 2004</i>	16.12.2004	Pt 6 (s 46)—3.7.2003: s 2(3); Pt 6 (ss 40—45)—13.1.2005 ( <i>Gazette 13.1.2005 p69</i> )
<b>2006</b>	<b>5</b>	<b><i>Superannuation (Administered Schemes) Amendment Act 2006</i></b>	<b>23.6.2006</b>	<b>Pt 2 (ss 3—10) &amp; Sch 1 (cl 5 &amp; 6)—23.6.2006</b>
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 83 (ss 206—209)—1.6.2007 ( <i>Gazette 26.4.2007 p1352</i> )

## Provisions amended

New entries appear in bold.

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

Provision	How varied	Commencement
Long title	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
Pt 1		
<i>ss 2 and 3</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
s 4		
s 4(1)		
actuary	inserted by 69/1992 s 25	10.12.1992
co-contribution	inserted by 51/2004 s 40(1)	13.1.2005
co-contribution account	inserted by 51/2004 s 40(1)	13.1.2005
the Commonwealth Act	inserted by 91/1992 s 3(a)	1.7.1992
contracting out agreement	inserted by 97/1995 s 3(a)	14.12.1995
contribution month	substituted by 24/1998 s 3(a)	16.4.1998
contributor	amended by 54/1989 s 10 (Sch)	19.10.1989
	<b>amended by 5/2006 s 3(1)</b>	<b>23.6.2006</b>
deferred superannuation contributions surcharge	inserted by 37/2004 s 16(1)	19.8.2004
employee	amended by 30/1994 Sch 4 cl 2(c)(i)	1.7.1994
	amended by 54/2003 Sch 1 cl 4	1.1.2004

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month	substituted by 24/1998 s 3(b)	16.4.1998
new scheme contributor	amended by 54/1989 s 10 (Sch)	19.10.1989
notional salary	amended by 9/1989 s 3(a)	20.4.1989
outplaced employee	inserted by 97/1995 s 3(b)	14.12.1995
<b>pensioner</b>	<b>amended by 5/2006 s 3(2)</b>	<b>23.6.2006</b>
private sector employer	inserted by 97/1995 s 3(c)	14.12.1995
Public Sector Employees Superannuation Scheme	inserted by 91/1992 s 3(b)	1.7.1992
putative spouse	inserted by 13/2003 s 11	3.7.2003
salary	inserted by 41/2000 s 3(a)	17.8.2000
salary (second occurring)	amended by 9/1989 s 3(b), (c)	20.4.1989
	amended by 41/2000 s 3(b), (c)	17.8.2000
the Scheme	inserted by 54/1989 s 10 (Sch)	19.10.1989
	<b>amended by 5/2006 s 3(3)</b>	<b>23.6.2006</b>
Southern State Superannuation Fund	inserted by 51/2004 s 40(2)	13.1.2005
special deposit account	inserted by 24/1998 s 3(c)	16.4.1998
Superannuation Contributions Tax Act	inserted by 37/2004 s 16(2)	19.8.2004
the Superannuation Funds Management Corporation of South Australia or the Corporation	inserted by 38/1995 Sch 2	1.7.1995
surcharge notice	inserted by 37/2004 s 16(3)	19.8.2004
TEC contract	inserted by 41/2000 s 3(d)	17.8.2000
Triple S scheme	inserted by 51/2004 s 40(3)	13.1.2005
<i>the Trust</i>	<i>deleted by 38/1995 Sch 2</i>	<i>1.7.1995</i>
s 4(2a)	inserted by 24/1998 s 3(d)	16.4.1998
s 4(2b)—(2f)	inserted by 41/2000 s 3(e)	17.8.2000
s 4(3)	amended by 41/2000 s 3(f)	17.8.2000
s 4(4)	amended by 54/1989 s 10 (Sch)	19.10.1989
	amended by 91/1992 s 3(c)	1.7.1992
s 4(5)	inserted by 9/1989 s 3(d)	20.4.1989
	amended by 45/1997 s 3(a)	24.7.1997
P	inserted by 45/1997 s 3(b)	24.7.1997
s 4(6)	inserted by 9/1989 s 3(d)	20.4.1989
	amended by 91/1992 s 3(d)	1.7.1992
	amended by 37/1994 s 3(a)	2.6.1994

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s 4(7)	inserted by 91/1992 s 3(e)	1.7.1992
s 4(8)—(10)	inserted by 37/1994 s 3(b)	2.6.1994
ss 4A and 4B	inserted by 13/2003 s 12	3.7.2003
s 5		
s 5(1)	amended by 54/1989 ss 2, 10 (Sch)	19.10.1989
s 5(1a)	inserted by 91/1992 s 4(a)	1.7.1992
s 5(1b)	inserted by 41/2000 s 4(a)	17.8.2000
s 5(2a)	inserted by 41/2000 s 4(b)	17.8.2000
s 5(3)	inserted by 91/1992 s 4(b)	1.7.1992
	amended by 41/2000 s 4(c), (d)	17.8.2000
s 5(4)—(7)	inserted by 41/2000 s 4(e)	17.8.2000
Pt 2		
Pt 2 Div 1		
s 7		
s 7(2)	<i>amended by 54/1989 s 10 (Sch)</i>	<i>19.10.1989</i>
	<i>deleted by 46/1994 s 4</i>	<i>3.5.1994</i>
s 8		
s 8(1)	amended by 45/1997 s 4(a)	24.7.1997
s 8(2)	amended by 69/1992 s 26	10.12.1992
	amended by 45/1997 s 4(b)	24.7.1997
s 8(4)	amended by 24/1998 s 4	16.4.1998
s 8(7)	inserted by 37/1994 s 4	2.6.1994
	amended by 45/1997 s 4(c)	24.7.1997
s 9		
s 9(4a)	inserted by 24/1998 s 5	16.4.1998
s 10A	inserted by 91/1992 s 5	1.7.1992
Pt 2 Div 2	<i>amended by 54/1989 ss 3, 4</i>	<i>19.10.1989</i>
	<i>amended by 69/1992 s 27</i>	<i>10.12.1992</i>
	<i>amended by 37/1994 s 5</i>	<i>2.6.1994</i>
	<i>deleted by 38/1995 Sch 2</i>	<i>1.7.1995</i>
Pt 2 Div 3		
s 17	substituted by 54/1989 s 5	19.10.1989
s 17(3)	amended by 38/1995 Sch 2	1.7.1995
s 17(4)	substituted by 51/2004 s 41(1)	13.1.2005
s 17(6)	amended by 51/2004 s 41(2)—(4)	13.1.2005
s 17(7)	amended by 24/1998 s 6	16.4.1998
s 17(8)	amended by 38/1995 Sch 2	1.7.1995
s 18	<i>amended by 9/1989 s 4</i>	<i>20.4.1989</i>
	<i>deleted by 54/1989 s 6</i>	<i>19.10.1989</i>
s 19		
s 19(1) and (2)	amended by 38/1995 Sch 2	1.7.1995
s 19(3)	<i>substituted by 37/1994 s 6(a)</i>	<i>2.6.1994</i>
	<i>deleted by 38/1995 Sch 2</i>	<i>1.7.1995</i>

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<i>s 19(3a)</i>	<i>inserted by 37/1994 s 6(a)</i>	2.6.1994
	<i>deleted by 38/1995 Sch 2</i>	1.7.1995
<i>s 19(4)</i>	<i>amended by 37/1994 s 6(b)</i>	2.6.1994
	<i>deleted by 38/1995 Sch 2</i>	1.7.1995
<i>s 20</i>	<i>amended by 78/1990 s 3</i>	17.1.1991
	<i>deleted by 38/1995 Sch 2</i>	1.7.1995
Pt 2 Div 3A	inserted by 54/1989 s 7	19.10.1989
	heading substituted by 44/2003 s 3(1) (Sch 1)	24.11.2003
<i>s 20A</i>		
<i>s 20A(1)</i>	amended by 91/1992 s 6	1.7.1992
<i>s 20A(3)</i>	amended by 45/1997 s 5(a)	24.7.1997
<i>s 20A(4)</i>	amended by 37/2004 s 17(1)	19.8.2004
<i>s 20A(4a) and (4b)</i>	inserted by 37/2004 s 17(2)	19.8.2004
<i>s 20A(6)</i>	substituted by 24/1998 s 7	16.4.1998
<i>s 20A(6a)</i>	inserted by 24/1998 s 7	16.4.1998
<i>s 20A(7)</i>	inserted by 45/1997 s 5(b)	24.7.1997
<i>s 20ABA</i>	inserted by 51/2004 s 42	13.1.2005
<i>s 20AB</i>	inserted by 91/1992 s 7	1.7.1992
Pt 2 Div 3B	inserted by 54/1989 s 7	19.10.1989
	heading substituted by 44/2003 s 3(1) (Sch 1)	24.11.2003
<i>s 20B</i>		
<i>s 20B(1)</i>	amended by 24/1998 s 8(a)	16.4.1998
	amended by 49/2003 s 28	18.12.2003
<i>s 20B(2)</i>	amended by 24/1998 s 8(b)	16.4.1998
	amended by 41/2000 s 5	17.8.2000
<i>s 20B(3)</i>	inserted by 51/2004 s 43	13.1.2005
<b><i>s 20B(4)</i></b>	<b>inserted by 5/2006 s 4</b>	<b>23.6.2006</b>
Pt 2 Div 4		
<i>s 21</i>		
<i>s 21(2) and (3)</i>	<i>deleted by 38/1995 Sch 2</i>	1.7.1995
<i>s 21(4)</i>	amended by 78/1990 s 4	17.1.1991
	substituted by 69/1992 s 28	10.12.1992
	amended by 41/2000 s 6	17.8.2000
<i>s 21(4a)</i>	inserted by 69/1992 s 28	10.12.1992
Pt 3		
<i>s 22</i>		
<i>s 22(1)</i>	amended by 54/1989 s 10 (Sch)	19.10.1989
<i>s 22(5)</i>	substituted by 91/1992 s 8(a)	1.7.1992
<i>s 22(5a)</i>	inserted by 91/1992 s 8(b)	10.12.1992
<i>s 22(6)</i>	amended by 78/1990 s 5	17.1.1991
<i>s 22(7)</i>	substituted by 91/1992 s 8(c)	10.12.1992
<i>s 22(8)</i>	amended by 54/1989 s 10 (Sch)	19.10.1989
<i>s 22(9)</i>	inserted by 91/1992 s 8(d)	1.7.1992



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s 22(10)	inserted by 46/1994 s 5	3.5.1994
	amended by 46/1994 s 8(a) as substituted by 57/1994 s 3	21.10.1994
s 22(11) and (12)	inserted by 46/1994 s 5	3.5.1994
s 22(13)	inserted by 46/1994 s 8(b) as substituted by 57/1994 s 3	21.10.1994
s 22(14)	inserted by 9/1997 s 2	20.3.1997
	amended by 36/1999 Sch 3 (Pt 3 cl 3(a))	1.12.1999
s 22(15) and (16)	inserted by 9/1997 s 2	20.3.1997
s 22(17) and (18)	inserted by 9/1997 s 2	20.3.1997
	amended by 36/1999 Sch 3 (Pt 3 cl 3(a))	1.12.1999
s 22(19)	inserted by 9/1997 s 2	20.3.1997
<i>ETSA superannuation scheme</i>	<i>deleted by 36/1999 Sch 3 (Pt 3 cl 3(b))</i>	<i>1.12.1999</i>
s 23		
s 23(1)	amended by 54/1989 s 10 (Sch)	19.10.1989
s 23(2)	amended by 54/1989 s 10 (Sch)	19.10.1989
	amended by 24/1998 s 9(a)	16.4.1998
	amended by 41/2000 s 7(a)	17.8.2000
s 23(2a)—(2b)	inserted by 41/2000 s 7(b)	17.8.2000
s 23(3)	amended by 91/1992 s 9(a)	1.7.1992
s 23(3a)	inserted by 91/1992 s 9(b)	1.7.1992
s 23(4)	amended by 78/1990 s 6	17.1.1991
	amended by 24/1998 s 9(b)	16.4.1998
s 23(6)	amended by 37/1994 s 7(a)	2.6.1994
	amended by 24/1998 s 9(c)	16.4.1998
s 23(6a)	inserted by 37/1994 s 7(b)	2.6.1994
s 23(7)	amended by 9/1989 s 5	20.4.1989
	amended by 54/1989 s 10 (Sch)	19.10.1989
	substituted by 24/1998 s 9(d)	16.4.1998
s 24		
s 24(1)	amended by 54/1989 s 10 (Sch)	19.10.1989
s 24(4)	amended by 78/1990 s 7	17.1.1991
s 25		
s 25(2)	substituted by 78/1990 s 8	17.1.1991
Pt 4		
s 27		
s 27(1)	amended by 54/1989 s 10 (Sch)	19.10.1989
s 27(2)	substituted by 91/1992 s 10	1.7.1992
s 27(4)	inserted by 97/1995 s 4	14.12.1995
s 28		
s 28(1)	amended by 54/1989 s 10 (Sch)	19.10.1989
	amended by 45/1997 s 6	24.7.1997

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s 28(1a) and (1b)	inserted by 78/1990 s 9	17.1.1991
s 28(1c)	inserted by 91/1992 s 11(a)	1.7.1992
	amended by 24/1998 s 10(a)	16.4.1998
	amended by 21/2003 s 8(a)	17.8.2003
s 28(1d)	inserted by 91/1992 s 11(a)	1.7.1992
	amended by 37/1994 s 8(a)	2.6.1994
s 28(1e)	inserted by 37/1994 s 8(b)	2.6.1994
s 28(1f)	inserted by 37/1994 s 8(b)	2.6.1994
	substituted by 24/1998 s 10(b)	16.4.1998
s 28(2)	amended by 54/1989 s 10 (Sch)	19.10.1989
	amended by 24/1998 s 10(c)	16.4.1998
	amended by 21/2003 s 8(b)	17.8.2003
s 28(3)	amended by 54/1989 s 10 (Sch)	19.10.1989
s 28(4)	substituted by 67/1991 s 3	19.12.1991
	substituted by 91/1992 s 11(b)	1.7.1992
s 28(5)	amended by 54/1989 s 10 (Sch)	19.10.1989
	amended by 91/1992 s 11(c)	1.7.1992
s 28(6)	<i>amended by 54/1989 s 10 (Sch)</i>	<i>19.10.1989</i>
	<i>deleted by 91/1992 s 11(d)</i>	<i>1.7.1992</i>
s 28(7)	amended by 24/1998 s 10(d)	16.4.1998
s 28(8)	inserted by 97/1995 s 5	14.12.1995
s 28A	inserted by 44/1993 s 3	27.5.1993
s 28A(3)	substituted by 57/1999 s 3	1.7.1999
s 28A(3a) and (3b)	inserted by 57/1999 s 3	1.7.1999
s 28A(3c)	inserted by 57/1999 s 3	1.7.1999
	amended by 21/2003 s 9	17.8.2003
s 28A(3d) and (3e)	inserted by 57/1999 s 3	1.7.1999
ss 28B and 28C	inserted by 97/1995 s 6	14.12.1995
s 29		
s 29(1)	amended by 24/1998 s 11(a)	16.4.1998
s 29(1a) and (1b)	inserted by 24/1998 s 11(b)	16.4.1998
s 29(2)	amended by 54/1989 s 10 (Sch)	19.10.1989
	amended by 91/1992 s 12(a)	1.7.1992
s 29(3)	<i>amended by 54/1989 s 10 (Sch)</i>	<i>19.10.1989</i>
	<i>deleted by 91/1992 s 12(b)</i>	<i>1.7.1992</i>
s 30		
s 30(3)	amended by 9/1989 s 6	20.4.1989
s 30(8)	amended by 54/1989 s 10 (Sch)	19.10.1989
s 30A	inserted by 78/1990 s 10	17.1.1991
s 31		
s 31(1)	amended by 54/1989 s 10 (Sch)	19.10.1989
	substituted by 37/1994 s 9(a)	2.6.1994
s 31(2)	amended by 91/1992 s 13(a)	1.7.1992

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A	amended by 78/1990 s 11(a)	17.1.1991
	amended by 67/1991 s 4	19.12.1991
Pn	inserted by 91/1992 s 13(b)	1.7.1992
M	inserted by 91/1992 s 13(c)	1.7.1992
s 31(2a)	inserted by 78/1990 s 11(b)	17.1.1991
s 31(2b)	inserted by 37/1994 s 9(b)	2.6.1994
	amended by 24/1998 s 12	16.4.1998
s 31(2c)	inserted by 37/1994 s 9(b)	2.6.1994
s 31(3)	substituted by 78/1990 s 11(c)	17.1.1991
	amended by 45/1997 s 7	24.7.1997
s 31(4)	substituted by 78/1990 s 11(c)	17.1.1991
s 32		
s 32(1)	amended by 67/1991 s 5(a)	19.12.1991
s 32(2)	amended by 54/1989 s 10 (Sch)	19.10.1989
	amended by 91/1992 s 14(a)	1.7.1992
A	amended by 67/1991 s 5(b)	19.12.1991
Pn	inserted by 91/1992 s 14(b)	1.7.1992
M	inserted by 91/1992 s 14(b)	1.7.1992
s 32(2a)	inserted by 49/2003 s 29	18.12.2003
s 32(3)		
A	amended by 67/1991 s 5(c)	19.12.1991
s 32(3a)	inserted by 67/1991 s 5(d)	19.12.1991
	substituted by 91/1992 s 14(c)	1.7.1992
	amended by 24/1998 s 13	16.4.1998
s 32(5)	amended by 54/1989 s 10 (Sch)	19.10.1989
	amended by 67/1991 s 5(e)	19.12.1991
	amended by 91/1992 s 14(d)	1.7.1992
s 32A	inserted by 91/1992 s 15	1.7.1992
s 32A(2)	amended by 24/1998 s 14	16.4.1998
ss 32B—32D	inserted by 37/2004 s 18	18.9.2004
Pt 5		
s 34	amended by 9/1989 s 7	20.4.1989
	amended by 54/1989 s 10 (Sch)	19.10.1989
	amended by 69/1992 s 29	10.12.1992
	substituted by 91/1992 s 16	1.7.1992
s 34(1)	amended by 41/2000 s 8(a)	17.8.2000
n	amended by 45/1997 s 8	1.7.1992
s 34(2)	amended by 34/2000 s 8(b)	1.6.2000
B	amended by 37/1994 s 10(a)	2.6.1994
n	amended by 45/1997 s 8	1.7.1992
s 34(5)	inserted by 37/1994 s 10(b)	2.6.1994
s 34(6)	inserted by 37/1994 s 10(b)	2.6.1994
	amended by 24/1998 s 15	16.4.1998

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s 34(7)	inserted by 97/1995 s 7	14.12.1995
s 35		
s 35(1)	amended by 91/1992 s 17(a)	1.7.1992
s 35(2)		
A	amended by 67/1991 s 6(a)	19.12.1991
s 35(2a)	inserted by 67/1991 s 6(b)	19.12.1991
s 35(2b)	inserted by 91/1992 s 17(b)	1.7.1992
s 35(4)	amended by 91/1992 s 17(c)	1.7.1992
	amended by 37/1994 s 11(a)	2.6.1994
s 35(5)	amended by 54/1989 s 10 (Sch)	19.10.1989
	amended by 91/1992 s 17(d)	1.7.1992
Pn	inserted by 91/1992 s 17(e)	1.7.1992
FS	inserted by 91/1992 s 17(e)	1.7.1992
M	inserted by 91/1992 s 17(e)	1.7.1992
s 35(6)	inserted by 37/1994 s 11(b)	2.6.1994
s 36		
s 36(1)	substituted by 9/1989 s 8(a)	20.4.1989
s 36(3)	amended by 9/1989 s 8(b)	20.4.1989
s 36(8)	amended by 54/1989 s 10 (Sch)	19.10.1989
s 36A	inserted by 78/1990 s 12	17.1.1991
s 37		
s 37(1)	substituted by 37/1994 s 12(a)	2.6.1994
s 37(2)	amended by 67/1991 s 7(a)	19.12.1991
	substituted by 91/1992 s 18	1.7.1992
s 37(2a)	inserted by 67/1991 s 7(b)	19.12.1991
s 37(3a)	inserted by 37/1994 s 12(b)	2.6.1994
	amended by 24/1998 s 16	16.4.1998
s 37(3b) and (3c)	inserted by 37/1994 s 12(b)	2.6.1994
s 37(4) and (5)	substituted by 78/1990 s 13	17.1.1991
s 38		
s 38(1)	amended by 67/1991 s 8(a)	19.12.1991
	amended by 12/1993 s 9(a)	19.12.1991
	amended by 45/1997 s 9(a)	24.7.1997
s 38(1a)	inserted by 45/1997 s 9(b)	24.7.1997
	amended by 13/2003 s 13	3.7.2003
s 38(1b)	inserted by 49/2003 s 30	18.12.2003
s 38(4)	amended by 54/1989 s 10 (Sch)	19.10.1989
	amended by 67/1991 s 8(b), (c)	19.12.1991
	amended by 37/1994 s 13	2.6.1994
s 38(6)	inserted by 67/1991 s 8(d)	19.12.1991
	amended by 24/1998 s 17	16.4.1998
s 38(7)	inserted by 67/1991 s 8(d)	19.12.1991
	amended by 91/1992 s 19(a)	1.7.1992

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	amended by 12/1993 s 9(b)	19.12.1991
X	substituted by 91/1992 s 19(b)	1.7.1992
Pn	inserted by 91/1992 s 19(b)	1.7.1992
M	inserted by 91/1992 s 19(b)	1.7.1992
s 39		
s 39(1)	amended by 54/1989 s 10 (Sch)	19.10.1989
	amended by 78/1990 s 14(a)	17.1.1991
	amended by 37/1994 s 14(a)	2.6.1994
s 39(1a) and (1b)	inserted by 78/1990 s 14(b)	17.1.1991
s 39(1c)	inserted by 91/1992 s 20(a)	1.7.1992
	amended by 24/1998 s 18(a), (b)	16.4.1998
	amended by 21/2003 s 10(a)	17.8.2003
	(a)—(d) redesignated as (b)—(e) by 24/1998 s 18(a)	16.4.1998
s 39(1d)	inserted by 91/1992 s 20(a)	1.7.1992
	amended by 37/1994 s 14(b), (c)	2.6.1994
s 39(1da)	inserted by 37/1994 s 14(d)	2.6.1994
s 39(1db)	inserted by 37/1994 s 14(d)	2.6.1994
	substituted by 24/1998 s 18(c)	16.4.1998
<i>s 39(1e)</i>	<i>inserted by 91/1992 s 20(a)</i>	<i>1.7.1992</i>
	<i>deleted by 24/1998 s 18(d)</i>	<i>16.4.1998</i>
s 39(2)	amended by 78/1990 s 14(c)	17.1.1991
	amended by 24/1998 s 18(e)	16.4.1998
	amended by 21/2003 s 10(b)	17.8.2003
s 39(3)	amended by 54/1989 s 10 (Sch)	19.10.1989
	amended by 91/1992 s 20(b)	1.7.1992
s 39(4)	amended by 54/1989 s 10 (Sch)	19.10.1989
	amended by 37/1994 s 14(e)	2.6.1994
s 39(5)	amended by 54/1989 s 10 (Sch)	19.10.1989
	amended by 67/1991 s 9(a)	19.12.1991
	amended by 24/1998 s 18(f)	16.4.1998
	amended by 21/2003 s 10(c)	17.8.2003
s 39(6)	amended by 9/1989 s 9(a)	20.4.1989
	amended by 54/1989 s 10 (Sch)	19.10.1989
	amended by 24/1998 s 18(g)	16.4.1998
s 39(7)	amended by 54/1989 s 10 (Sch)	19.10.1989
	amended by 91/1992 s 20(c), (d)	1.7.1992
	substituted by 37/1994 s 14(f)	2.6.1994
	amended by 41/2000 s 9(a)	17.8.2000
M	substituted by 41/2000 s 9(b)	17.8.2000
NM	amended by 45/1997 s 10	24.7.1997
	substituted by 41/2000 s 9(c)	17.8.2000
S	amended by 41/2000 s 9(d)	17.8.2000

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s 39(7a)	inserted by 41/2000 s 9(e)	17.8.2000
s 39(8)	amended by 54/1989 s 10 (Sch)	19.10.1989
	amended by 37/1994 s 14(g)	2.6.1994
s 39(8a)	inserted by 67/1991 s 9(b)	19.12.1991
s 39(8b)	inserted by 67/1991 s 9(b)	19.12.1991
	amended by 91/1992 s 20(e)	1.7.1992
X	substituted by 91/1992 s 20(f)	1.7.1992
Pn	inserted by 91/1992 s 20(f)	1.7.1992
M	inserted by 91/1992 s 20(f)	1.7.1992
s 39(8c)	inserted by 91/1992 s 20(g)	1.7.1992
	amended by 37/1994 s 14(h)	2.6.1994
s 39(9)	inserted by 9/1989 s 9(b)	1.7.1988
s 39(10)	inserted by 37/1994 s 14(i)	5.6.1994
s 39(10a) and (10b)	inserted by 24/1998 s 18(h)	1.7.1994
s 39(11)	inserted by 97/1995 s 8	14.12.1995
s 39A	inserted by 44/1993 s 4	27.5.1993
s 39A(1)	amended by 37/1994 s 15(a)	2.6.1994
s 39A(2)	substituted by 37/1994 s 15(b)	2.6.1994
s 39A(3)	substituted by 57/1999 s 4	1.7.1999
s 39A(3a)—(3c)	inserted by 57/1999 s 4	1.7.1999
s 39A(3d)	inserted by 57/1999 s 4	1.7.1999
	amended by 21/2003 s 11	17.8.2003
s 39A(3e)—(3g)	inserted by 57/1999 s 4	1.7.1999
s 39A(4)	substituted by 37/1994 s 15(c)	2.6.1994
s 39A(5)	amended by 37/1994 s 15(d)	2.6.1994
ss 39B and 39C	inserted by 97/1995 s 9	14.12.1995
s 40		
s 40(4)	inserted by 67/1991 s 10	19.12.1991
s 40A	inserted by 23/1999 s 6	1.4.1999
s 40A(2)	amended by 37/2004 s 19(1)	19.8.2004
s 40A(3)	amended by 37/2004 s 19(2)	19.8.2004
s 40A(4)	amended by 37/2004 s 19(3)	19.8.2004
s 40A(8)	deleted by 37/2004 s 19(4)	19.8.2004
s 42A	inserted by 41/2000 s 10	17.8.2000
s 43	amended by 78/1990 s 15	17.1.1991
	substituted by 67/1991 s 11	19.12.1991
s 43A	inserted by 54/1989 s 8	19.10.1989
	amended by 37/1994 s 16	2.6.1994
	substituted by 41/2000 s 11	17.8.2000
s 43AA	inserted by 41/2000 s 12	17.8.2000
Pt 5A	inserted by 49/2003 s 31	18.12.2003
s 43AB	<b>amended by 5/2006 s 5</b>	<b>23.6.2006</b>
s 43AC		

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<i>Southern State Superannuation Fund</i>	<i>deleted by 51/2004 s 44</i>	13.1.2005
s 43AG	substituted by 51/2004 s 45	13.1.2005
Pt 6		
s 43B	inserted by 91/1992 s 21	1.7.1992
s 43B(1)	s 43B redesignated as s 43B(1) by 37/1994 s 17	2.6.1994
s 43B(2)	inserted by 37/1994 s 17	2.6.1994
s 44		
s 44(1)	amended by 37/1994 s 18(a)	2.6.1994
	amended by 24/1998 s 19	16.4.1998
	amended by 4/2000 s 9(1) (Sch 1 cl 41(a))	1.6.2000
s 44(2)	<i>amended by 37/1994 s 18(b)</i>	2.6.1994
	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 41(b))</i>	1.6.2000
s 44(3)	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 41(c))</i>	1.6.2000
s 44(4)	inserted by 37/1994 s 18(c)	2.6.1994
	amended by 4/2000 s 9(1) (Sch 1 cl 41(d))	1.6.2000
s 45		
s 45(1)	amended by 9/1989 s 10	20.4.1989
	amended by 41/2000 s 13(a)—(c)	1.7.1988
	amended by 37/2004 s 20(1)—(6)	19.8.2004
	(e) deleted by 37/2004 s 20(3)	19.8.2004
s 45(1a)	inserted by 24/1998 s 20(a)	16.4.1998
	substituted by 41/2000 s 13(d)	1.7.1988
	amended by 37/2004 s 20(7)	19.8.2004
s 45(2)	amended by 24/1998 s 20(b)	16.4.1998
	amended by 41/2000 s 13(e)	1.7.1988
	(ba) deleted by 37/2004 s 20(8)	19.8.2004
s 45(4)	substituted by 67/1991 s 12	19.12.1991
	amended by 37/2004 s 20(9)	19.8.2004
s 45(6)	inserted by 37/1994 s 19	2.6.1994
	amended by 41/2000 s 13(f)	1.7.1988
s 45(7)	inserted by 37/2004 s 20(10)	19.8.2004
s 46		
s 46(4) and (5)	inserted by 9/1989 s 11	20.4.1989
s 47		
s 47(1)	amended by 78/1990 s 16	17.1.1991
	substituted by 20/1998 s 7(a)	1.10.1997
	amended by 40/2001 s 9(a)	1.1.2002
s 47(2)	amended by 20/1998 s 7(b)	1.10.1997
	substituted by 40/2001 s 9(a)	1.1.2002
s 47(4)	inserted by 20/1998 s 7(c)	1.10.1997
	amended by 40/2001 s 9(b)	1.1.2002

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s 47(5)	inserted by 20/1998 s 7(c)	1.10.1997
	amended by 40/2001 s 9(c), (d)	1.1.2002
s 47(6)	inserted by 20/1998 s 7(c)	1.10.1997
	substituted by 40/2001 s 9(e)	1.1.2002
ss 47A and 47B	inserted by 24/1998 s 21	16.4.1998
s 48		
s 48(1)	substituted by 9/1989 s 12(a)	20.4.1989
	amended by 54/1989 s 10 (Sch)	19.10.1989
s 48(2)	amended by 9/1989 s 12(b)	20.4.1989
	amended by 54/1989 s 10 (Sch)	19.10.1989
	substituted by 41/2000 s 14	17.8.2000
	substituted by 12/2001 s 26	1.7.2001
s 48(2a) and (2b)	inserted by 41/2000 s 14	17.8.2000
s 48(3)	inserted by 9/1989 s 12(c)	20.4.1989
s 51A	inserted by 41/2000 s 15	17.8.2000
s 54		
s 54(1)	amended by 37/2004 s 21(1)	19.8.2004
s 54(5)	amended by 54/1989 s 10 (Sch)	19.10.1989
s 54(6) and (7)	inserted by 37/2004 s 21(2)	19.8.2004
s 55		
s 55(1)	amended by 38/1995 Sch 2	1.7.1995
	amended by 24/1998 s 22	16.4.1998
	(a)—(d) redesignated as (b)—(e) by 24/1998 s 22	16.4.1998
	<b>amended by 5/2006 s 6(1)—(5)</b>	<b>23.6.2006</b>
s 55(1a)	inserted by 49/2003 s 32	18.12.2003
s 55(2)	<b>substituted by 5/2006 s 6(6)</b>	<b>23.6.2006</b>
s 56		
s 56(1)	s 56 substituted by 24/1998 s 23	16.4.1998
	<b>s 56 amended and redesignated as s 56(1) by 5/2006 s 7(1)—(4)</b>	<b>23.6.2006</b>
s 56(2)—(4)	<b>inserted by 5/2006 s 7(4)</b>	<b>23.6.2006</b>
s 58A	inserted by 91/1992 s 22	1.7.1992
s 59		
s 59(1a)	inserted by 78/1990 s 17	17.1.1991
	amended by 67/1991 s 13	19.12.1991
	amended by 49/2003 s 33	18.12.2003
	<b>amended by 5/2006 s 8</b>	<b>23.6.2006</b>
s 60	<i>inserted by 9/1989 s 13</i>	<i>20.4.1989</i>
	<i>deleted by 54/1989 s 9</i>	<i>19.10.1989</i>
Sch 1		
cl 1		
cl 1(1) and (2)	amended by 54/1989 s 10 (Sch)	19.10.1989



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cl 1(2a)	inserted by 9/1989 s 14	1.7.1988
cl 2		
cl 2(1)	amended by 54/1989 s 10 (Sch)	19.10.1989
cl 2(4)	<i>amended by 54/1989 s 10 (Sch)</i>	<i>19.10.1989</i>
	<i>amended by 67/1991 s 14</i>	<i>19.12.1991</i>
	<i>deleted by 24/1998 s 24(a)</i>	<i>16.4.1998</i>
cl 3A	inserted by 78/1990 s 18	17.1.1991
cl 4	amended by 54/1989 s 10 (Sch)	19.10.1989
cl 5		
cl 5(1)	amended by 54/1989 s 10 (Sch)	19.10.1989
cl 6		
cl 6(1)	amended by 9/1989 s 15(a)	20.4.1989
	amended by 37/1994 s 20(a)	2.6.1994
FS	substituted by 37/1994 s 20(b)	2.6.1994
Z	inserted by 9/1989 s 15(b)	20.4.1989
Pn	inserted by 37/1994 s 20(c)	2.6.1994
M	inserted by 37/1994 s 20(c)	2.6.1994
cl 7		
cl 7(3)	inserted by 91/1992 s 23(a)	1.7.1992
cl 9		
cl 9(1a)	inserted by 9/1989 s 16(a)	20.4.1989
	amended by 54/1989 s 10 (Sch)	19.10.1989
	amended by 69/1992 s 30(a)	10.12.1992
cl 9(2)	amended by 54/1989 s 10 (Sch)	19.10.1989
	amended by 69/1992 s 30(b)	10.12.1992
cl 9(3)	inserted by 9/1989 s 16(b)	20.4.1989
	amended by 69/1992 s 30(c)	10.12.1992
	amended by 91/1992 s 23(b)	1.7.1992
cl 10	substituted by 9/1989 s 17	20.4.1989
cl 11		
cl 11(2)	amended by 54/1989 s 10 (Sch)	19.10.1989
cl 12		
cl 12(2)	inserted by 54/1989 s 10 (Sch)	19.10.1989
	amended by 38/1995 Sch 2	1.7.1995
cl 15	inserted by 91/1992 s 23(c)	1.7.1992
cl 15(1)	amended by 37/1994 s 20(d)	2.6.1994
cl 15(3)	inserted by 37/1994 s 20(e)	2.6.1994
cl 15A	inserted by 37/1994 s 20(f)	2.6.1994
cl 16	inserted by 91/1992 s 23(c)	1.7.1992
cl 17	inserted by 37/1994 s 20(g)	2.6.1994
cll 18—20	inserted by 24/1998 s 24(b)	16.4.1998
cl 21	inserted by 51/2004 s 46	3.7.2003
Sch 1A	inserted by 78/1990 s 19	17.1.1991

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cl 1		
cl 1(1)	amended by 37/1994 s 21	2.6.1994
cl 1(2)	amended by 67/1991 s 15(a)	17.1.1991
	amended by 30/1994 Sch 4 cl 2(c)(ii)	1.7.1994
	<b>substituted by 5/2006 s 9</b>	<b>23.6.2006</b>
cl 2		
cl 2(1)	cl 2 amended and redesignated as cl 2(1) by 67/1991 s 15(b), (c)	17.1.1991
cl 2(2)	inserted by 67/1991 s 15(c)	17.1.1991
Sch 1B	inserted by 36/1999 Sch 3 (Pt 3 cl 3(c))	1.12.1999
cl 4		
cl 4(7)	substituted by 41/2000 s 16	17.8.2000
cl 4(8)—(10)	inserted by 41/2000 s 16	17.8.2000
Sch 3	deleted by 91/1992 s 24	1.7.1992
	<b>inserted by 5/2006 s 10</b>	<b>23.6.2006</b>

## Transitional etc provisions associated with Act or amendments

### *Statutes Amendment (Division of Superannuation Interests under Family Law Act) Act 2003, Sch 1*

#### 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.

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#### 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.

#### *Superannuation (Administered Schemes) Amendment Act 2006, Sch 1*

#### 5—Interpretation

In this Part—

*principal Act* means the *Superannuation Act 1988*.

#### 6—Transitional provision

Subsections (2) and (3) of section 56 of the principal Act (as enacted by this Act) do not apply with respect to a matter where the relevant time limit expired, or the procedural step was required to be taken, before the commencement of this clause unless the South Australian Superannuation Board is satisfied, on application by a person seeking to obtain the benefit of this clause, that the failure to comply with the time limit or procedural step was attributable to a person's physical or mental disability at the relevant time.

#### Historical versions

Retrospective amendment not included in Reprints 20—23 (see 51/2004)

Reprint No 1—15.1.1992

Reprint No 2—10.12.1992

Reprint No 3—25.3.1993

Reprint No 4—27.5.1993

Reprint No 5—9.6.1994

Reprint No 6—1.7.1994

Reprint No 7—21.10.1994

Reprint No 8—1.7.1995

Reprint No 9—14.12.1995

Reprint No 10—20.3.1997

Reprint No 11—24.7.1997

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Reprint No 12—16.4.1998

Reprint No 13—1.4.1999

Reprint No 14—12.8.1999

Reprint No 15—1.12.1999

Reprint No 16—1.6.2000

Reprint No 17—17.8.2000

Reprint No 18—1.7.2001

Reprint No 19—1.1.2002

Reprint No 20—3.7.2003

Reprint No 21—17.8.2003

Reprint No 22—18.12.2003

Reprint No 23—1.1.2004

19.8.2004

13.1.2005