

South Australia

# Superannuation Regulations 2016

under the *Superannuation Act 1988*

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## Part 1—Preliminary

### 1—Short title

These regulations may be cited as the *Superannuation Regulations 2016*.

### 2—Commencement

These regulations will come into operation on 1 September 2016.

### 3—Interpretation

In these regulations, unless the contrary intention appears—

*1988 revoked regulations* means the revoked *Superannuation Regulations 1988*;

*2001 revoked regulations* means the revoked *Superannuation Regulations 2001*;

*Act* means the *Superannuation Act 1988*;

*South Australian Superannuation Scheme* or *Scheme* means the scheme of superannuation established by the Act and (if the context requires) includes the scheme of superannuation established by a corresponding previous enactment.

## Part 2—Election of members of Board

### 4—Interpretation

In this Part, unless the contrary intention appears—

*Electoral Commissioner* means the Electoral Commissioner under the *Electoral Act 1985*;

*hour of nomination* means the hour by which nominations must be received by the Electoral Commissioner;

*voter* means a person who is, by virtue of regulation 7, eligible to vote at an election.

### 5—Election of members

The election of members of the Board must be conducted by the Electoral Commissioner in accordance with this Part.

### 6—Timetable for elections

- (1) The Electoral Commissioner must publish in a daily newspaper circulating throughout the State a notice setting out the timetable for each election held under this Part.
- (2) The notice must—
  - (a) fix the date (not being less than 14 days from publication of the notice) and the hour by which nominations must be received by the Electoral Commissioner; and
  - (b) fix the date on or before which the Electoral Commissioner will post ballot papers to voters or give ballot papers to employers for distribution to voters; and

- (c) fix the date (not being less than 21 days nor more than 28 days after the date fixed under paragraph (b)) and the hour by which completed ballot papers must be returned to the Electoral Commissioner.
- (3) The Electoral Commissioner must determine the timetable in consultation with the Board.

### **7—Persons eligible to vote**

- (1) Persons who were—
  - (a) contributors as defined in section 4(1) of the Act; or
  - (b) members or spouse members of the Triple S scheme; or
  - (c) persons provided with investment services or other products or services pursuant to regulations under section 30(2)(g) of the *Southern State Superannuation Act 2009*,

on the last business day before the 7 day period immediately preceding the day on which notice was published under regulation 6 are eligible to vote at the election.

- (2) The Board must within 7 days after the notice was published give the Electoral Commissioner a list of the voters who are eligible to vote at the election.
- (3) In this regulation—

*business day* means any day other than a Saturday, Sunday or other public holiday.

### **8—Nominations**

A nomination for election must be—

- (a) in a form approved by the Electoral Commissioner; and
- (b) signed by at least 3 voters; and
- (c) received by the Electoral Commissioner at or before the hour of nomination.

### **9—Election without ballot**

- (1) If the number of persons nominated is the same as or less than the number of vacancies to be filled by election, the Electoral Commissioner must, by notice in a daily newspaper circulating throughout the State and in the Gazette—
  - (a) declare that the vacancy or vacancies has or have been filled by the person or persons nominated; and
  - (b) in relation to each elected person—specify the day on which the person's term of office commences and the length of the term for which the person has been elected.
- (2) If the number of persons nominated is greater than the number of vacancies to be filled the following regulations apply.

## 10—Ballot papers

- (1) The Electoral Commissioner must provide each voter (other than a voter who is a lost member for the purposes of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth) with a ballot paper and an envelope addressed to the Commissioner for the purpose of returning the ballot paper after completion.
- (2) The names of the candidates must appear on the ballot papers in a vertical list in an order determined by the Electoral Commissioner by lot.
- (3) If ballot papers are not printed on watermarked paper they must be initialled by the Electoral Commissioner or by a person authorised for that purpose by the Commissioner.
- (4) The Electoral Commissioner may provide a voter with a ballot paper and envelope—
  - (a) by posting the ballot paper and envelope to the voter at the voter's last known address; or
  - (b) by giving the ballot paper and envelope to the voter's employer to give to the voter.

## 11—Electoral material to be provided with ballot papers

- (1) Subject to this regulation, the Electoral Commissioner must, at the request of a candidate, include with ballot papers provided to voters material provided by the candidate promoting the candidate's election.
- (2) The material—
  - (a) must be provided to the Electoral Commissioner at or before the hour of nomination; and
  - (b) must not include more than 200 words or more than 1 photograph; and
  - (c) may be printed by the Electoral Commissioner in a form as the Commissioner thinks fit for the purpose of posting or distributing to voters.

## 12—Voting

- (1) A voter who wishes to vote must—
  - (a) indicate on the ballot paper the candidate to whom the voter gives first preference and the voter may indicate the order of preferences for the other candidates; and
  - (b) place the ballot paper in the envelope provided, seal the envelope and sign it; and
  - (c) return the envelope to the Electoral Commissioner.
- (2) A voter's preference for candidates must be indicated by consecutive numbers (commencing with the number 1) placed in the squares opposite the names of the candidates on the ballot paper.
- (3) For the purposes of this regulation, if a voter places a tick or a cross on a ballot paper, the tick or cross will be taken to be equivalent to the number 1.

### **13—Duplication and late return of ballot papers**

- (1) If more than 1 ballot paper is returned under the name of the same voter all ballot papers, except the first to be returned, will be rejected or, if the Electoral Commissioner does not know which was returned first, all ballot papers, except the first to be recorded against the name of the voter, will be rejected.
- (2) If more than 1 ballot paper is returned in an envelope, none of the ballot papers returned in that envelope will be counted.
- (3) A ballot paper returned to the Electoral Commissioner after the date and the hour by which completed ballot papers must be returned to the Electoral Commissioner will not be counted.

### **14—Counting of votes**

The following provisions apply to the counting of votes:

- (a) after counting first preferences, the candidate with the fewest first preferences must be excluded, and if more candidates remain than the number of vacancies to be filled, each ballot paper counted to the excluded candidate must be counted to the candidate (if any) next in order of the voter's preference;
- (b) this process must be continued until the number of candidates remaining is equal to the number of vacancies to be filled;
- (c) if 2 candidates have an equal number of votes and 1 of them must be excluded, the Electoral Commissioner must determine the question by lot.

### **15—Scrutineers**

- (1) Subject to subregulation (2), the Electoral Commissioner may permit such scrutineers as the Commissioner thinks fit to be present at the counting of votes.
- (2) A candidate in the election cannot be a scrutineer.

### **16—Declaration of election**

If the number of candidates remaining is equal to the number of vacancies to be filled, the Electoral Commissioner must, by notice in a daily newspaper circulating throughout the State and in the Gazette—

- (a) declare that the candidate or candidates has or have been elected to fill the vacancy or vacancies; and
- (b) in relation to each elected person—specify the day on which the person's term of office commences and the length of the term for which the person has been elected.

## **Part 3—Commutation of pensions**

### **Division 1—Preliminary**

#### **17—Interpretation**

For the purposes of this Part, a pensioner's annual pension is the pensioner's fortnightly pension multiplied by 313 and divided by 12.

**Division 2—Commutation of pensions****18—Right to apply for commutation**

- (1) A pensioner referred to in the left column of the following table may apply to the Board for commutation of the whole or a part of a pension in accordance with this Division during the period set out in the right column of the table:

<b>Pensioner who may commute</b>	<b>Period for application</b>
A pensioner who is entitled to a retirement pension	within 3 months after the pension first becomes payable.
A pensioner in receipt of an invalidity pension (subject to subregulation (3))	within 3 months after reaching the age of retirement.
A pensioner in receipt of a retrenchment pension	within 3 months after the pensioner reaches the age of 55 years or the pension first becomes payable, whichever is later.
A contributor who resigns before reaching 55 years of age pursuant to a voluntary separation package and is entitled to a pension under section 39A(3g) of the Act	within 3 months after the pension first becomes payable.
A non-member spouse who is entitled under section 43AO(2)(b) of the Act to have the whole of a share in a superannuation interest commuted to a lump sum	within 3 months of the operative time.

- (2) Despite subregulation (1), a contributor who—
- (a) is in receipt of a draw down benefit under section 33A of the Act; and
  - (b) has retired from employment,
- may apply to the Board for the commutation of the draw down benefit within 6 months after the benefit first becomes payable.
- (3) A pensioner in receipt of an invalidity pension may apply to the Board to commute up to 20% of the pension in accordance with this Division at any time before the pensioner reaches the age of retirement.
- (4) The spouse of a deceased contributor who is entitled to a pension may apply to the Board for commutation of the whole or part of the pension in accordance with this Division—
- (a) within 6 months after the death of the contributor; or
  - (b) if the pension has been suspended under section 45 of the Act—within 3 months after the spouse first becomes entitled to the pension.
- (5) For the purposes of section 43AO(7) of the Act, if a non-member spouse dies while entitled to, or in receipt of, a pension under that section (other than an associate pension), an election by the non-member spouse's legal representative for the pension to be commuted to a lump sum must be made within 6 months of the non-member spouse's death.

- (6) If a pension payable to a spouse is reduced (but not suspended) under section 45 of the Act, an application for commutation of the part of the pension previously denied to the spouse may be made within 3 months after the spouse first becomes entitled to it (but only if a part or the whole of the other part of the pension has already been commuted).
- (7) If—
- (a) part only of a retrenchment pension is available to a pensioner because the pension is reduced under section 45 of the Act; and
  - (b) the pensioner has commuted the whole, or a part, of that part of the pension,
- the pensioner may, in accordance with this Division within 3 months after the pensioner reaches the age of retirement, commute the whole or a part of the part of the pension previously denied to the pensioner because of the reduction.
- (8) The Board must commute the pension within 1 month after receiving the application and must pay the lump sum within 14 days after commutation.
- (9) The Board may extend the time within which a person may apply for commutation of a pension if, in the Board's opinion, the person was not at fault in failing to apply within the time prescribed by this regulation.
- (10) A person who has applied successfully to the Board for commutation of part of a pension under a preceding subregulation may not apply to the Board for a further commutation in relation to the pension under that subregulation.

## **19—Commutation factors**

The following tables set out commutation factors:

- (a) in the case of a pension payable to a contributor—

<b>Age at time of commutation</b>	<b>Amount of lump sum for each dollar of annual pension commuted</b>
less than 55	\$11.50
55 – 56	\$11.50 – \$11.30
56 – 57	\$11.30 – \$11.10
57 – 58	\$11.10 – \$10.90
58 – 59	\$10.90 – \$10.70
59 – 60	\$10.70 – \$10.50
60 – 61	\$10.50 – \$10.30
61 – 62	\$10.30 – \$10.10
62 – 63	\$10.10 – \$9.90
63 – 64	\$9.90 – \$9.70
64 – 65	\$9.70 – \$9.50
65 – 66	\$9.50 – \$9.30
66 – 67	\$9.30 – \$9.10
67 – 68	\$9.10 – \$8.80
68 – 69	\$8.80 – \$8.50



<b>Age at time of commutation</b>	<b>Amount of lump sum for each dollar of annual pension commuted</b>
69 – 70	\$8.50 – \$8.20
70 – 71	\$8.20 – \$7.90
71 – 72	\$7.90 – \$7.60
72 – 73	\$7.60 – \$7.30
73 – 74	\$7.30 – \$7.00
74 – 75	\$7.00 – \$6.70

(b) in the case of a spouse of a deceased contributor—

<b>Age of spouse at time of commutation</b>	<b>Amount of lump sum for each dollar of annual pension commuted</b>
less than 50	\$11.50
50 – 55	\$11.50 – \$11.00
55 – 60	\$11.00 – \$9.75
60 – 65	\$9.75 – \$8.50
65 – 70	\$8.50 – \$7.25
70 – 80	\$7.25 – \$4.75
80 – 90	\$4.75 – \$2.25
90 – 100	\$2.25 – \$0.00

(c) in the case of—

- (i) a non-member spouse who elects under section 43AO(2)(b) of the Act to have a share of a superannuation interest commuted to a lump sum; or
- (ii) the legal representative of a deceased non-member spouse who elects under section 43AO(7) of the Act to have a pension that the non-member spouse was receiving, or was entitled to receive, commuted to a lump sum—

<b>Age of member spouse at time of commutation</b>	<b>Amount of lump sum for each dollar of annual pension commuted</b>
less than 55	\$11.50
55 – 60	\$11.50 – \$10.50
60 – 65	\$10.50 – \$ 9.50
65 – 70	\$ 9.50 – \$ 8.20
70 – 75	\$ 8.20 – \$ 6.70
75 – 80	\$ 6.70 – \$ 5.30
80 – 85	\$ 5.30 – \$ 3.90
85 – 90	\$ 3.90 – \$ 2.80
90 – 95	\$ 2.80 – \$ 2.10
95 – 100	\$ 2.10 – \$ 0.00

- (d) in the case of an invalid pensioner who elects under regulation 18(3) to commute up to 20% of a pension to a lump sum prior to reaching the age of retirement—

<b>Age at date of commutation</b>	<b>Amount of lump sum for each dollar of annual pension commuted</b>
less than 50	\$7.70
50 – 55	\$7.70 – \$7.30
55 – 60	\$7.30 – \$6.50

## **Division 3—General**

### **20—Commutation under section 40B of Act**

Pursuant to section 40B(6) of the Act, the commutation factors set out in regulation 19 are to be applied in making a commutation under that section.

### **21—Restriction on commutation**

- (1) The Board must not pay a lump sum to the spouse of a contributor unless it is satisfied that no other spouse of the contributor is entitled to part of the pension commuted by the Board.
- (2) The Board is not liable to any person in respect of a payment made by the Board in accordance with subregulation (1).

### **22—Adjustment of commutation factors**

When determining the amount of the lump sum payable on commutation, the commutation factor must be adjusted proportionately to the age of the applicant expressed in years and completed months.

### **23—Rounding off lump sums**

When determining the amount of a lump sum payable on commutation, the Board may round the amount to the nearest dollar.

## **Part 4—Transition to retirement**

### **24—Adjustments under section 26A of Act**

- (1) Pursuant to section 26A(9) of the Act, when a contributor for whom a draw down benefit has been determined under that section retires, the contributor's entitlement under section 27 of the Act will be subject to a reduction that takes effect by reducing—
  - (a) the number of the contributor's contribution points; and
  - (b) the factor "M" in the formulae under section 27(2) of the Act,to the extent necessary to take into account, to its full extent, the employer funded component of the value of the draw down benefit determined for the contributor.

- (2) Pursuant to section 26A(10) of the Act, when the employment of a contributor for whom a draw down benefit has been determined under that section is terminated by the contributor's death, an entitlement under section 32 of the Act will be subject to a reduction that takes effect by reducing—

- (a) the number of the contributor's contribution points; and
- (b) the factor "M" in the formula under section 32 of the Act relevant to the determination of the entitlement,

to the extent necessary to take into account, to its full extent, the employer funded component of the value of the draw down benefit determined for the contributor.

- (3) If 2 or more reductions are to be made under subregulation (1) or (2) in respect of a contributor's entitlement because the Board has determined 2 or more draw down benefits for the contributor, the Board may determine to apply the reductions to the entitlement separately or in aggregate.

## **25—Modification of section 26A(5) of Act**

Pursuant to section 26A(15) of the Act, subsection (5) of that section is modified so as to allow a contributor who has—

- (a) retired from employment; or
- (b) reached the age of 65 years,

to commute an entitlement to a draw down payment so that investment of the draw down benefit on account of which the payment is made is brought to an end and the balance paid to the member.

## **26—Adjustments under section 33A of Act**

- (1) Pursuant to section 33A(9)(b) of the Act, if the employment arrangements of a contributor who is receiving a draw down benefit under that section alter so that there is an increase in salary, the contributions payable by the contributor under section 23 of the Act will, despite section 33A(8) of the Act and any provision of section 23 of the Act to the contrary, be fixed for a particular financial year on the basis of the contributor's salary as on 31 March of the year in which that financial year commences.
- (2) Pursuant to section 33A(10) of the Act, when a contributor to whom a draw down benefit has been paid under that section retires, the contributor's entitlement under section 34 of the Act will be subject to a reduction that takes effect by reducing—
- (a) the number of the contributor's contribution points; and
  - (b) the factors "n", "n<sub>1</sub>" and "n<sub>2</sub>" in the formula under section 34 of the Act relevant to the determination of the entitlement (or such of those factors as appear in the relevant formula),

to the extent necessary to take into account, to its full extent, the value of the draw down benefit paid to the contributor.

- (3) Pursuant to section 33A(11) of the Act, if the employment of a contributor to whom a draw down benefit has been paid under that section terminates on account of invalidity, the contributor's entitlement under section 37 of the Act (if any) will be adjusted in the following manner:
- (a) in the case of an entitlement under section 37(1) of the Act—the entitlement will be subject to a reduction that takes effect by reducing—
    - (i) the number of the contributor's contribution points; and
    - (ii) the factor "n" in the formula under subsection (2) of that section,to the extent necessary to take into account, to its full extent, the value of the draw down benefit paid to the contributor;
  - (b) in the case of an entitlement under paragraph (a) of section 37(3a) of the Act—the entitlement will be reduced by an amount determined by applying to the balance that would, but for this subregulation, have been payable to the contributor under that paragraph the aggregate of the proportions of the contributor's notional retirement benefit that have been paid to the contributor as 1 or more draw down benefits;
  - (c) in the case of an entitlement under paragraph (b) of section 37(3a) of the Act—
    - (i) the employee component payable under subparagraph (i) of that paragraph will be reduced by an amount determined by applying to the balance that would, but for this subregulation, have been payable to the contributor under that subparagraph the aggregate of the proportions of the contributor's notional retirement benefit that have been paid to the contributor as 1 or more draw down benefits; and
    - (ii) the employer component payable under subparagraph (ii) of that paragraph will be subject to a reduction that takes effect by reducing—
      - (A) the number of the contributor's contribution points; and
      - (B) the factor "M" in the formula under subparagraph (ii),to the extent necessary to take into account the aggregate of the proportions of the contributor's notional retirement benefit that have been paid to the contributor as 1 or more draw down benefits.
- (4) If 2 or more reductions are to be made under subregulation (2) or (3)(a) in respect of a contributor's entitlement because the Board has determined 2 or more draw down benefits for the contributor, the Board may determine to apply the reductions to the entitlement separately or in aggregate.

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- (5) Pursuant to section 33A(12) of the Act, if the employment of a contributor to whom a draw down benefit has been paid under that section terminates on account of the contributor's death, an entitlement under section 38 of the Act will be adjusted in accordance with the following:
- (a) for the purposes of subsection (4) of section 38 of the Act, in calculating the amount of a pension to which a contributor would have been entitled if circumstances specified in paragraph (b) or (c) of that subsection applied, the amount of each draw down benefit paid to the contributor as an indexed pension (if any) is to be added to the amount that would, but for this paragraph, have been determined under the relevant provision to be the amount of the pension;
  - (b) in the case of an entitlement under section 38(6)(a) or (b) of the Act—the entitlement will be reduced by an amount determined by applying to the balance that would, but for this subregulation, have been payable to the contributor under the relevant paragraph the aggregate of the proportions of the contributor's notional retirement benefit that have been paid to the contributor as 1 or more draw down benefits;
  - (c) in the case of an entitlement under subsection (7) of section 38 of the Act—
    - (i) the employee component payable under paragraph (a) of that subsection will be reduced by an amount determined by applying to the balance that would, but for this subregulation, have been payable to the contributor under that paragraph the aggregate of the proportions of the contributor's notional retirement benefit that have been paid to the contributor as 1 or more draw down benefits; and
    - (ii) the employer component payable under paragraph (b) of that subsection will be subject to a reduction that takes effect by reducing—
      - (A) the number of the contributor's contribution points; and
      - (B) the factor "M" in the formulae under paragraph (b),
 to the extent necessary to take into account the aggregate of the proportions of the contributor's notional retirement benefit that have been paid to the contributor as 1 or more draw down benefits.
- (6) In this regulation—
- notional retirement benefit***—a contributor's notional retirement benefit is the amount that would be payable to the contributor under section 34 of the Act if the contributor had retired from employment immediately before the date on which the Board determined that the contributor was entitled to a draw down benefit (expressed as an amount per fortnight).

## **27—Application for benefit in respect of rollover account**

- (1) Pursuant to section 33A(15) of the Act, a contributor who has a rollover account by virtue of the operation of section 47B of the Act may, in conjunction with an application under section 33A(1) of the Act, apply for a benefit with respect to the rollover account (after taking into account the operation of subregulation (2)).

- (2) The following provisions apply in relation to an application by a contributor for a benefit in respect of a rollover account:
- (a) the Board will determine a benefit (a *rollover draw down benefit*) on the basis of the contributor's application and on the basis that the maximum rollover draw down benefit to which the contributor is entitled will be a percentage of the balance of the contributor's rollover account equal to the percentage that the draw down benefit determined by the Board in respect of the contributor's associated application under section 33A(1) of the Act bears to the total benefit that would have been payable had the contributor retired from employment;
  - (b) the Board will then, according to an election made by the contributor as part of the application, invest (on behalf of and in the name of the contributor) the rollover draw down benefit—
    - (i) with the Superannuation Funds Management Corporation of South Australia; or
    - (ii) with another entity that will provide a non-commutable income stream for the contributor while the contributor continues to be employed in the workforce,so that the contributor receives (and only receives) a payment in the form of a pension or an annuity (a *rollover draw down payment*) on account of the benefit;
  - (c) the investment of a rollover draw down benefit under paragraph (b)(i) will be on terms and conditions determined by the Board;
  - (d) an entitlement to a rollover draw down payment is not commutable until the contributor retires from employment or reaches the age of 65 years;
  - (e) the determination of a benefit under this regulation must take into account the operation of a provision under Part 5A of the Act.

## **28—Certain provisions do not apply**

Pursuant to section 59 of the Act, sections 28A, 28B, 35, 39A and 39B of the Act do not apply in respect of a contributor for whom a draw down benefit has been determined under section 26A or 33A of the Act.

## **Part 5—Salary**

### **Division 1—Non TEC salary**

#### **29—Interpretation**

In this Division, unless the contrary intention appears—

*salary* means salary as defined by the second definition of *salary* in section 4(1) of the Act.

**30—Exclusion of certain remuneration from salary**

- (1) Subject to this regulation, the following allowances and payments are excluded from the definition of *salary* in the Act:
- (a) district and locality allowances;
  - (b) construction or industry allowances not being those paid on an annual basis;
  - (c) remote call or on call allowances not being those paid on an annual basis;
  - (d) travelling allowances;
  - (e) meal allowances;
  - (f) living away from home allowances;
  - (g) shift work allowances;
  - (h) allowances for work on public holidays or weekends not being those paid on an annual basis;
  - (i) special justices allowances;
  - (j) underground allowances;
  - (k) payments for overtime at penalty rates;
  - (l) allowances for rent, house allowed rent free, light and fuel;
  - (m) the Dental Services Officer Country Incentive Allowance;
  - (n) performance allowances that are payable only if it is determined that specified criteria have been met;
  - (o) attraction and retention allowances not being any of the following:
    - (i) those paid on an annual basis and not subject to an annual review;
    - (ii) those paid without any requirement for a determination that specified criteria have been met;
    - (iii) those to which regulation 31 applies;
  - (p) payments made in lieu of a period of long service leave to which an employee has accrued an entitlement;
  - (q) a monetary amount to which an accrued entitlement to skills and experience retention leave has been converted;
  - (r) a one-off payment paid under clause 7 of the *South Australian Public Sector Wages Parity Enterprise Agreement: Salaried 2012*.
- (2) A higher duties allowance is excluded from the definition of *salary* in the Act for the purpose of calculating contributions and if such an allowance has been paid for a continuous period of less than 12 months it is excluded from the definition of *salary* for the purposes of calculating benefits as well but if such an allowance has been paid for a continuous period of 12 months or more, it will, subject to subregulation (3), be included as a component of salary for the purpose of calculating benefits.

- (3) If the amount of the allowances has changed during the period of 12 months immediately preceding termination of the contributor's employment, the allowance will be included as a component of salary for the purpose of calculating benefits at the lowest level paid during that period.
- (4) In subregulation (2)—  
*higher duties allowance* does not include remuneration received by a contributor pursuant to a fixed term appointment within the meaning of regulation 35.
- (5) Allowances or other payments in respect of membership of a statutory body are excluded from the definition of *salary*.
- (6) The following allowances and payments are excluded from the definition of *salary*:
  - (a) an allowance to compensate an employee for being denied a right of private practice or for being unable to exercise a right of private practice because of the nature of the employment;
  - (b) an allowance or payment to compensate an employee in respect of money that was earned by the employee in the exercise of a right of private practice but was paid to the employer.
- (7) Expense allowances paid to the Agent-General are a component of the Agent-General's salary for the purposes of the definition of *salary*.
- (8) The annual overtime allowance payable under the *South Australian Government Wages Parity (Weekly Paid) Enterprise Agreement 2004* (or its successor) and the *Chauffeurs (Ministerial) Public Service Award* is, for the purposes of the definition of *salary*, a component of the salary paid to a person under the agreement or award.
- (9) This regulation does not exclude an allowance or payment from the definition of *salary* in the Act that was paid to an employee and treated as salary at the commencement of the Act unless the employee has elected, by notice in writing to the Board, to exclude the allowance or payment for the purpose of determining the employee's salary.

### **31—Inclusion of certain allowances as component of salary**

- (1) This regulation applies to the following allowances:
  - (a) an Attraction and Retention Allowance payable under the *Department of Health Salaried Medical Officers Enterprise Agreement 2008* (or its successor) or otherwise payable to a person registered as a medical practitioner under the law of this State;
  - (b) an Attraction and Retention Allowance payable to a person in connection with the person's employment on the APY lands;
  - (c) the Dental Services Officer Attraction and Retention Allowance;
  - (d) the Dental Services Officer Clinical Leader Management/Leadership Allowance;
  - (e) the Dental Services Officer Regional Director/Evaluation Director Management/Leadership Allowance;
  - (f) the Dental Services Officer Registered Dental Specialists Management/Leadership Allowance;



- (g) the Dental Services Officer Policy and Program Director Management/Leadership Allowance;
- (h) the Dental Therapist Rural Attraction and Retention Allowance;
- (i) the Child Protection Unit - Forensic Child Protection Consultant Allowance.
- (2) Despite any other regulation (and despite any provision to the contrary in the Act), but subject to subregulation (4), an allowance to which this regulation applies will be included as a component of salary for the purposes of determining benefits payable to a contributor who has received the allowance during the contributor's membership of the Scheme in accordance with the following formula:

$$FS = S_1 \left[ \frac{CM - X}{CM} \right] + \frac{S_2 \times X}{CM}$$

where—

**FS** is the salary

**S<sub>1</sub>** is the contributor's actual or attributed salary, excluding the allowance, immediately before the cessation of the contributor's employment

**S<sub>2</sub>** is the contributor's actual or attributed salary, including the allowance, immediately before the cessation of the contributor's employment

**CM** is the number of contribution months in the contributor's contribution period

**X** is the number of contribution months in that part of the contributor's contribution period during which the contributor was in receipt of the allowance (with any part of a contribution month being taken to be a full contribution month).

- (3) If a contributor was, immediately before the commencement of the *Department of Health Salaried Medical Officers Enterprise Agreement 2008*, in receipt of an Intensive Care Unit Consultant Allowance or a Psychiatrist Attraction and Retention Loading, the period of time during which the contributor was in receipt of that allowance or loading is to be taken into account for the purposes of determining **X** in subregulation (2).
- (4) If the amount determined to be **FS** in subregulation (2) for a contributor who is a Consultant (other than an Intensive Care Unit Consultant or a Consultant Psychiatrist) is less than the amount of the contributor's notional salary, the contributor's salary for the purposes of determining benefits will be taken to be the contributor's notional salary.
- (5) Pursuant to section 59(1a)(d) of the Act, if an allowance to which this regulation applies absorbs, or is paid in lieu of, some other allowance (a **prior allowance**), section 4(4) of the Act does not apply in respect of any reduction of salary resulting from the discontinuation of the prior allowance.
- (6) In this regulation—

**APY lands** means the lands vested in Anangu Pitjantjatjara Yankunytjatjara under the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*;

**Consultant** has the same meaning as in the *South Australian Medical Officers Award* (as in force on the day on which this regulation comes into operation);

*notional salary* of a contributor means the contributor's actual or attributed salary immediately before the cessation of the contributor's employment—

- (a) excluding any allowance referred to in subregulation (1); but
- (b) incorporating any loading or allowance to which the contributor was entitled under an award or enterprise agreement immediately before the commencement of the *Department of Health Salaried Medical Officers Enterprise Agreement 2008*.

### **32—Exclusion of non-monetary remuneration**

If a non-monetary component of a contributor's remuneration that is excluded from the definition of *salary* is changed—

- (a) to a monetary amount that is included as salary under the Act and these regulations for the purpose of determining both contributions and benefits; or
- (b) to another form of non-monetary remuneration that is included as salary under section 4(2c) of the Act for the purpose of determining both contributions and benefits,

the amount of the contributor's salary will be taken not to include that component for the purpose of determining benefits unless at least 5 years has elapsed since the change occurred and the value of the component has been included as a component of salary for the purpose of calculating contributions continuously since the change occurred.

## **Division 2—TEC salary**

### **33—Proportion of remuneration package that is salary**

- (1) Subject to this regulation and to Division 3, the proportion of the value of the total remuneration package specified in a TEC contract for the purposes of the first definition of *salary* in section 4(1) of the Act is—
  - (a) in respect of a new scheme contributor—82.5%;
  - (b) in respect of an old scheme contributor—78.5%.
- (2) If a component of the total remuneration package specified in a TEC contract is—
  - (a) a higher duties allowance; or
  - (b) a bonus; or
  - (c) an allowance to compensate an employee for being denied a right of private practice or for being unable to exercise a right of private practice because of the nature of the employment; or
  - (d) an allowance or payment to compensate an employee in respect of money that was earned by the employee in the exercise of a right of private practice but was paid to the employer,

the amount of the contributor's salary for the purpose of determining both contributions and benefits will be taken to be an amount equivalent to the relevant proportion prescribed by subregulation (1) of the value of the total remuneration package excluding the value of that component.

- (3) If, on the commencement of regulation 24AC of the 1988 revoked regulations, the salary of a contributor whose salary is to be determined under the first definition of *salary* in section 4(1) of the Act would have been less than it would be if determined under the second definition of *salary* in the Act, the proportion of the value of the total remuneration package specified in the contributor's TEC contract is the proportion that ensures that the value of the contributor's salary under both definitions of *salary* in the Act was the same at the commencement of that regulation.
- (4) The proportion determined under subregulation (3) as at the commencement of regulation 24AC of the 1988 revoked regulations will continue to apply in relation to the contributor during the contributor's membership of the Scheme.

### **Division 3—Related provisions**

#### **34—Interpretation**

In this Division—

*relevant entity* means an entity that has entered into an arrangement with the Board under section 5 of the Act;

*salary* means the salary defined by the first or second definitions of *salary* in the Act as modified by the provisions of Division 1 or 2 applicable from time to time in relation to a contributor.

#### **35—Salary in relation to fixed term appointments**

- (1) This regulation applies to, and in relation to, a contributor whether the contributor is employed pursuant to a TEC contract or not.
- (2) Subject to subregulations (4) and (6), if a contributor has, during the contributor's membership of the Scheme, been appointed to a higher position for a limited term of less than 5 years, the contributor's salary for the purpose of determining contributions and benefits will, during the term of the appointment, be taken to be the contributor's basic salary.
- (3) Subject to subregulation (8), if a contributor has, during the contributor's membership of the Scheme, been appointed to a higher position for a limited term of 5 years or more, the contributor's salary for the purpose of determining contributions and benefits will thereafter be taken to be the highest level of salary achieved by the contributor during the contributor's membership of the Scheme.
- (4) A contributor who has been appointed to a higher position for a limited term of less than 5 years will be taken, for the purposes of subregulations (2) and (3), to have been appointed for a term of 5 years or more if the term of that appointment when aggregated with the term of a previous appointment or appointments to higher positions during the contributor's membership of the Scheme is 5 years or more.
- (5) A contributor who is an officer of the teaching service within the meaning of the *Education Act 1972* will be taken, for the purposes of subregulations (2) and (3), to have been appointed to a higher position for a limited term of 5 years or more if the contributor is appointed to a higher position for a term that falls short of 5 years only because it expires before the beginning of the first school term within a calendar year.

- (6) A contributor who has been appointed to a higher position for a limited term of less than 5 years will, if the term is extended to 5 years or more, be taken, for the purposes of subregulations (2) and (3) to have been appointed for a term of 5 years or more on the day on which the term is extended.
- (7) The highest level of salary achieved by the contributor will be determined by comparing the salary levels for the time being of all positions held by the contributor during the contributor's membership of the Scheme and the following provisions will apply for the purpose of the comparison:
- (a) if the salary applicable to the position that the contributor holds or to a position previously held by the contributor has been reduced (except for disciplinary reasons) or the position has ceased to exist, the salary of the position will be taken to be—
    - (i) if the salary has been reduced—the salary of that position on the last day on which the contributor was employed in the position before the reduction;
    - (ii) if the position has ceased to exist and subparagraph (i) does not apply—the salary of that position on the last day on which the contributor was employed in the position,  
adjusted to reflect changes in the Consumer Price Index between that day and the day on which the comparison is made;
  - (b) if the contributor holds, or held, a position pursuant to special conditions as to salary negotiated with the contributor's employer, the salary of the position will be taken to be the salary for the time being of the position (or the notional salary of the position determined under paragraph (a) if applicable) increased in accordance with the special conditions.
- (8) The contributor's salary for the purposes of determining contributions and benefits will be taken to be the contributor's basic salary if the contributor has, by notice in writing to the Board within 2 months of the commencement of the fixed term appointment referred to in subregulation (3), made an election to that effect.
- (9) An election referred to in subregulation (8) cannot be revoked and, as well as applying in relation to the fixed term appointment in relation to which it was made, applies also in relation to all subsequent periods served by the contributor pursuant to fixed term appointments.
- (10) An election made by an officer of the teaching service—
  - (a) before regulation 24B of the 1988 revoked regulations came into force under the corresponding regulation in force at that time; or
  - (b) under regulation 29(8) of the 2001 revoked regulations,will be taken to be an election referred to in subregulation (8) of this regulation.
- (11) A person who is employed pursuant to a fixed term appointment when the person becomes a member of the Scheme will be taken, for the purposes of this regulation, to have been appointed to the higher position on the day on which the person became a member of the Scheme.

- (12) Subregulations (3) and (4) do not apply to, or in relation to, the appointment of a contributor to a higher position for a limited term of 2 years or less if that term commences during the limited term of an existing appointment and expires on or before the end of the longer term.
- (13) A determination of salary under this regulation must, if relevant, take into account, and operate subject to, the provisions of regulation 36.
- (14) In this regulation, unless the contrary intention appears—
- basic salary***, in relation to a contributor on a particular day, means—
- (a) if the contributor was not employed pursuant to a fixed term appointment on that day—the contributor's salary on that day;
  - (b) if the contributor was employed pursuant to a fixed term appointment on that day—the salary for the time being payable in respect of the position (or an equivalent position) held by the contributor immediately before the commencement of the fixed term appointment or, if the contributor has held 2 or more consecutive fixed term appointments, immediately before the commencement of the first of those appointments;

***fixed term appointment***, in relation to a contributor, means the appointment of the contributor to a higher position for a limited term;

***higher position***, in relation to a contributor, means a position in which the salary, or the aggregate of the various components of the salary, received by the contributor exceeds the salary, or the aggregate of the various components of the salary, received by the contributor in the same or some other position held by the contributor immediately before appointment to the higher position.

### **36—Special provision relating to certain TEC contracts without tenure**

- (1) Despite any other regulation (and despite any provision to the contrary in the Act), but subject to subregulation (3), if a contributor employed pursuant to a TEC contract without tenure has, at any time before entering into that contract, been employed pursuant to a TEC contract with tenure (including such a contract at a lower position and including such a contract entered into before the commencement of this regulation), then, during the first 12 months of employment pursuant to the TEC contract without tenure, 86.9565% of the proportion of the value of the total remuneration package specified in the contract that applies under regulation 33 will be taken to be the contributor's salary for the purpose of determining contributions and benefits with respect to the contributor's membership of the Scheme.
- (2) If the contributor's term of appointment under the TEC contract without tenure commenced before the day on which that contract was entered into, the contributor's employment under the contract will nevertheless be taken, for the purposes of subregulation (1), to have commenced on the day on which the contract was entered into.
- (3) Subregulation (1) does not apply—
  - (a) in respect of a contributor who has been previously employed pursuant to another TEC contract without tenure, other than where the contributor, at any time after the end of that TEC contract without tenure, was employed pursuant to a TEC contract with tenure or was employed in a position with permanency; or

- (b) for the purpose of determining benefits with respect to a contributor's membership of the Scheme in a case involving—
  - (i) the invalidity of the contributor (irrespective of the age of the contributor); or
  - (ii) the termination of the relevant contract by an act of the employer (including a retrenchment); or
  - (iii) the termination of the contributor's employment on the expiry of the relevant contract because the position occupied by the contributor under the contract has ceased to exist; or
  - (iv) the death of the contributor; or
- (c) in respect of a contributor if—
  - (i) the contributor has, during the contributor's membership of the Scheme, been appointed to a position with permanency, or for a limited term of 5 years or more (or is taken for the purposes of regulation 35 to have been so appointed); and
  - (ii) the contributor has not, or has not been taken to have, made an election under regulation 35(8) or 41(2) (or any such election made by the contributor has been revoked); and
  - (iii) the highest level of salary received by the contributor during the contributor's membership of the Scheme before the contributor entered into the TEC contract without tenure is higher than the amount that would, but for this paragraph, be taken under subregulation (1) to be the contributor's salary for the purpose of determining contributions and benefits with respect to the contributor's membership of the Scheme.

(4) In this regulation—

***TEC contract with tenure***, in relation to a contributor, means a TEC contract—

- (a) that provides that the contributor will be entitled to some other specified appointment as an employee (without any requirement for selection processes to be conducted) in the event that the employee is not reappointed to the position held under the contract at the end of a term of appointment or employment or in other circumstances specified in the contract (whether or not the contract is under Part 7 of the *Public Sector Act 2009*); or
- (b) that is a contract of a kind referred to in Schedule 3 clause 3(3)(c) of the *Public Sector Act 2009*;

***TEC contract without tenure***, in relation to a contributor, means a TEC contract that is not a TEC contract with tenure.

### **37—Special provision relating to certain transferred contributors**

- (1) Subregulation (2) applies to a contributor who—
  - (a) is employed by a relevant entity; and

- 
- (b) is, while retaining the contributor's position with the entity (the *substantive position*), occupying an alternative position whereby the contributor is working in the Public Service (an *alternative position*).
- (2) Despite any other regulation (and despite any provision to the contrary in the Act), the salary of a contributor to whom this subregulation applies will, for the purpose of determining contributions and benefits, be determined in accordance with the following:
- (a) if the contributor has occupied an alternative position for less than 12 months, the contributor's salary for the purpose of determining contributions and benefits will be taken to be the salary received by the contributor in respect of the substantive position immediately before beginning to occupy an alternative position;
- (b) if—
- (i) the contributor has occupied an alternative position for 12 months or more; and
- (ii) the contributor's remuneration in respect of such a position is the same as, or less than 25% higher than, the contributor's remuneration in respect of the substantive position immediately before beginning to occupy an alternative position,
- the contributor's salary for the purpose of determining contributions and benefits will be taken to be the highest level of salary received by the contributor in respect of an alternative position occupied by the contributor;
- (c) if—
- (i) the contributor has occupied an alternative position for 12 months or more; and
- (ii) the contributor's occupation of such a position commenced before the relevant day; and
- (iii) the contributor's remuneration in respect of such a position is at least 25% higher than the contributor's remuneration in respect of the substantive position immediately before beginning to occupy an alternative position,
- the contributor's salary for the purpose of determining contributions and benefits will be taken to be salary determined in accordance with subregulation (4);
- (d) if—
- (i) the contributor has occupied an alternative position for 12 months or more; and
- (ii) the contributor's occupation of such a position commenced on or after the relevant day; and
- (iii) the contributor's remuneration in respect of such a position is at least 25% higher than the contributor's remuneration in respect of the substantive position immediately before beginning to occupy an alternative position,

the following provisions apply:

- (iv) the contributor's salary for the purpose of determining contributions while the contributor is occupying an alternative position will be taken to be the highest level of salary received by the contributor in respect of any such position;
  - (v) the contributor's salary for the purpose of determining benefits will be taken to be salary determined in accordance with subregulation (5).
- (3) Despite any other regulation (and despite any provision to the contrary in the Act), the salary of a contributor who transfers from employment with a relevant entity to employment with the Public Service, and whose employment with the entity ceases on or following the transfer, will, for the purpose of determining contributions and benefits, be determined in accordance with the following:
- (a) if the contributor's remuneration in respect of employment with the Public Service is the same as, or less than 25% higher than, the contributor's remuneration in respect of employment with the entity immediately before the contributor's transfer to the Public Service, the contributor's salary for the purpose of determining contributions and benefits will be taken to be the highest level of salary received by the contributor in respect of the contributor's employment with the Public Service;
  - (b) if—
    - (i) the contributor's remuneration in respect of employment with the Public Service is at least 25% higher than the contributor's remuneration in respect of employment with the entity immediately before the contributor's transfer to the Public Service; and
    - (ii) the contributor's employment with the Public Service commenced before the relevant day,

the contributor's salary for the purpose of determining contributions and benefits will be taken to be salary determined in accordance with subregulation (4);

- (c) if—
  - (i) the contributor's remuneration in respect of employment with the Public Service is at least 25% higher than the contributor's remuneration in respect of employment with the entity immediately before the contributor's transfer to the Public Service; and
  - (ii) the contributor's employment with the Public Service commenced on or after the relevant day,

the following provisions apply:

- (iii) the contributor's salary for the purpose of determining contributions during the period of the contributor's employment in the Public Service will be taken to be the highest level of salary received by the contributor in respect of that employment;



- (iv) the contributor's salary for the purpose of determining benefits will be taken to be salary determined in accordance with subregulation (5).
- (4) Salary for the purposes of determining contributions and benefits under subregulation (2)(c) and subregulation (3)(b) is to be determined in accordance with the following formula:

$$S = S_1 + ((S_2 - S_1) \times 25\%)$$

where—

*S* is the salary

*S<sub>1</sub>* is the highest level of salary received by the contributor while employed by, and undertaking duties for, the relevant entity, adjusted to reflect any movement in salaries for the same classification with that employer

*S<sub>2</sub>* is the highest level of salary received by the contributor in respect of the contributor's employment with the Public Service, adjusted to reflect any movement in salaries for the same classification with that employer.

- (5) Salary for the purposes of determining benefits under subregulation (2)(d)(v) and subregulation (3)(c)(iv) is to be determined in accordance with the following formula:

$$S = S_1 \left[ \frac{CM - X}{CM} \right] + \frac{S_2 \times X}{CM}$$

where—

*S* is the salary

*S<sub>1</sub>* is the highest level of salary received by the contributor while employed by, and undertaking duties for, the relevant entity, adjusted to reflect any movement in salaries for the same classification with that employer

*S<sub>2</sub>* is the highest level of salary received by the contributor in respect of the contributor's employment with the Public Service, adjusted to reflect any movement in salaries for the same classification with that employer

*CM* is the number of contribution months in the contributor's contribution period

*X* is the number of contribution months in that part of the contributor's contribution period during which the contributor was employed with the Public Service (with any part of a contribution month being taken to be a full contribution month).

- (6) For the purposes of the definitions of *S<sub>1</sub>* and *S<sub>2</sub>* in subregulations (4) and (5), if the classification level of the position occupied by a contributor no longer exists when the contributor's salary is to be determined, adjustments will then be made according to changes in the Consumer Price Index from the day on which the classification level ceased to exist.
- (7) In this regulation—
- relevant day** means the day on which the *Superannuation (Salary) Variation Regulations 2008* came into operation.

### 38—Determination of salary for contributor transferred to entity outside of Public Service

- (1) This subregulation applies to a contributor who—
- (a) is employed in the Public Service; and
  - (b) is, while retaining a position in the Public Service (a *substantive position*), occupying a position with a host employer (the *alternative position*).
- (2) Despite any other regulation (and despite any provision to the contrary in the Act), the salary of a contributor to whom subregulation (1) applies will, for the purposes of determining contributions and benefits, be determined in accordance with the following:
- (a) if—
    - (i) the contributor has occupied the alternative position for 12 months or more; and
    - (ii) the contributor's host employer has entered into an arrangement with the Board under which the employer agrees to pay to the Treasurer an amount sufficient to meet the cost of the employer financed share of benefits payable to the contributor that is attributable to the contributor's employment with the host employer,

the following provisions apply:

- (iii) if the contributor's remuneration in respect of the alternative position is the same as, or less than 25% higher than, the contributor's remuneration in respect of a substantive position occupied by the contributor immediately before beginning to occupy the alternative position, the contributor's salary for the purpose of determining contributions and benefits will be taken to be the contributor's salary in respect of the alternative position;
- (iv) if the contributor's remuneration in respect of the alternative position is at least 25% higher than the contributor's remuneration in respect of a substantive position occupied by the contributor immediately before beginning to occupy the alternative position, the contributor's salary for the purpose of determining contributions and benefits will be taken to be salary determined in accordance with the following formula:

$$S = S_1 + ((S_2 - S_1) \times 25\%)$$

where—

$S$  is the salary

$S_1$  is the highest level of salary received by the contributor in employment in the Public Service, adjusted to reflect any movement in salaries for the same classification with that employer

$S_2$  is the highest level of salary received by the contributor in respect of employment in the alternative position, adjusted to reflect any movement in salaries for the same classification with that employer;

- (b) if paragraph (a) does not apply to the determination of the contributor's salary, the contributor's salary for the purpose of determining contributions and benefits will be taken to be the contributor's salary in respect of the substantive position occupied by the contributor immediately before beginning to occupy the alternative position.
- (3) If—
- (a) subregulation (1) ceases to apply to a contributor because the contributor is no longer occupying a position with a host employer and has returned to a substantive position; and
- (b) the contributor's remuneration in respect of such a substantive position is lower than the contributor's remuneration in respect of the alternative position immediately before the contributor ceased to occupy that position,

the contributor's salary for the purpose of determining benefits is, subject to subregulation (4), to be determined in accordance with the following formula:

$$S = S_1 \left[ \frac{CM - X}{CM} \right] + \frac{S_2 \times X}{CM}$$

where—

$S$  is the salary

$S_1$  is the highest level of salary received by the contributor in employment in the Public Service, adjusted to reflect any movement in salaries for the same classification with that employer

$S_2$  is the highest level of salary received by the contributor in the contributor's employment with the host employer, adjusted to reflect any movement in salaries for the same position with that employer

$CM$  is the number of contribution months in the contributor's contribution period

$X$  is the number of contribution months in that part of the contributor's contribution period during which the contributor was employed by the host employer (with any part of a contribution month being taken to be a full contribution month).

- (4) If the contributor's salary for the purpose of determining benefits would, but for subregulation (3), exceed the salary determined in accordance with that subregulation, subregulation (3) does not apply.
- (5) For the purposes of the definitions of  $S_1$  and  $S_2$  in subregulations (2)(a)(iv) and (3), if the position, or the classification level of the position, occupied by a contributor no longer exists when the contributor's salary is to be determined, adjustments will then be made according to changes in the Consumer Price Index from the day on which the position or classification level ceased to exist.
- (6) In this regulation—
- host employer** means—
- (a) a body owned, or substantially or wholly funded, by the Government of the State; or
- (b) a body owned, or substantially or wholly funded, by the Government of the Commonwealth; or

- (c) a body owned, or substantially or wholly funded, by—
  - (i) the Government of the State; and
  - (ii) the Government of the Commonwealth or the Government of another State.

### **39—Determination of salary for contributor returning to Public Service after employment with relevant entity**

- (1) This regulation applies to a contributor employed in the Public Service after having occupied a position with a relevant entity if—
  - (a) the contributor was employed by the entity pursuant to an arrangement under which the definition of salary in the Act was modified in its application to, or in relation to, employees to which the arrangement related; and
  - (b) a purpose of the modification was to ensure that the salary received by employees in their employment with the relevant entity was recognised for the purposes of the definition of salary only in respect of the period of the employee's service with the entity.
- (2) Despite any other regulation (and despite any provision to the contrary in the Act), if the highest level of salary received by a contributor to whom this regulation applies in the contributor's position with the relevant entity was higher than the salary received by the contributor in the contributor's employment with the Public Service, the contributor's salary will, for the purposes of determining contributions and benefits, be determined in accordance with the method for determining salary specified under the arrangement.

### **40—Determination of salary if contributor employed by more than 1 employer**

- (1) This regulation applies to contributors who occupy more than 1 position or office by virtue of which they are contributors to the Scheme.
- (2) Subject to this regulation, the salary of a contributor to whom this regulation applies will, for the purpose of determining contributions and benefits, be taken to be the aggregate of the salaries paid or payable to the contributor in respect of each position or office occupied by the contributor.
- (3) Subject to subregulations (4) and (5), if there is, by reason of an act of an employer, a reduction in the rate, or discontinuance, of the salary payable in respect of 1 or more of the positions or offices occupied by a contributor to whom this regulation applies, the contributor's salary will, for the purpose of determining contributions and benefits, be taken to be the aggregate of the salaries paid or payable to the contributor in respect of each such position or office immediately before the reduction or discontinuance occurred, adjusted from time to time to reflect changes in salary for each relevant position or office.
- (4) If a position or office by reference to which the amount taken to be salary is determined under subregulation (3) ceases to exist, or the classification of the position or office is changed, the contributor's salary in respect of that position or office will, for the purpose of determining contributions and benefits under that subregulation, be taken to be the salary payable in respect 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.

- (5) If, following a reduction or discontinuance referred to in subregulation (3), there is an increase in the time worked by a contributor to whom this regulation applies, the following provisions apply:
- (a) the contributor's salary in respect of the position or office in relation to which the reduction or discontinuance occurred will, for the purpose of determining contributions and benefits, be determined in accordance with subregulation (3) as if any increase in salary associated with the increase in time worked had not occurred;
  - (b) however, if the contributor elects, in a manner approved by the Board, to have the increase in salary taken into account, subregulation (3) will cease to apply in relation to the contributor and, instead, the contributor's salary will, for the purpose of determining contributions and benefits, be determined in accordance with subregulation (2).

#### 41—Election to reduce salary

- (1) A contributor's salary will not be taken under regulation 35 to be the highest level of salary achieved by the contributor if the contributor has made an election under this regulation which has not been revoked.
- (2) If—
  - (a) the highest level of salary achieved by a contributor was achieved, pursuant to a TEC contract; and
  - (b) the contributor is now receiving a reduced salary (except where the reduction is due to a reduction in hours of employment or for disciplinary reasons),
 the contributor may, by written notice to the Board, elect that regulation 35 will not apply to the contributor.
- (3) An election made or taken to have been made under subregulation (2) that has not been revoked remains in force despite the fact that the requirements of subregulation (2)(a) or (b) are no longer satisfied.
- (4) If an election made or taken to have been made under subregulation (2) is in force, the contributor's salary for the purposes of calculating benefits will be determined in accordance with the following formula:

$$S = S_1 \left[ \frac{CM - X}{CM} \right] + \frac{S_2 \times X}{CM}$$

where—

**S** is the salary

**S<sub>1</sub>** is the highest level of salary (as determined in accordance with regulation 35) achieved by the contributor before the contributor's election under subregulation (1) adjusted to reflect changes in the level of remuneration under TEC contracts since the time of that election

**CM** is the number of contribution months in the contributor's contribution period

**X** is the number of contribution months in that part of the contributor's contribution period occurring after the election

$S_2$  is the amount that would, but for this subregulation, have been the contributor's salary for the purpose of determining benefits.

- (5) Subject to subregulation (6), an election made or taken to have been made under subregulation (2) cannot be revoked.
- (6) An election made or taken to have been made under subregulation (2) may be revoked by the contributor by written notice to the Board if the value in relation to the contributor of  $S_2$  in the formula in subregulation (4) exceeds the value of  $S_1$  in the formula.
- (7) An election made by a contributor under regulation 30(2) of the 2001 revoked regulations that regulation 29 of those regulations will not apply to the contributor will, if in force when this regulation commences, be taken to be an election by the contributor under subregulation (2) that regulation 35 will not apply to the contributor.

## **Part 6—Non-member spouse entitlements**

### **42—Procedure for payment of lump sum**

- (1) For the purposes of sections 43AJ(5) and 43AP(3) of the Act, notice given by the Board to a non-member spouse of the non-member spouse's right to make an election in respect of a non-member spouse interest must—
  - (a) be in writing; and
  - (b) advise the non-member spouse of—
    - (i) the option to make an election and the consequences of a failure to do so within 28 days; and
    - (ii) the value of the interest; and
    - (iii) the basis of any adjustments that have been, or will be, applied to the interest; and
  - (c) notify the non-member spouse that the interest cannot be retained in the Scheme.
- (2) If a non-member spouse interest is rolled over to the credit of the non-member spouse in the Southern State Superannuation Fund because an election has not been made, the Board must, within 14 days of the interest being rolled over—
  - (a) advise the non-member spouse that the interest has been rolled over to the Southern State Superannuation Fund; and
  - (b) provide the non-member spouse with a membership identification number, a copy of the most recent annual report prepared in respect of the Southern State Superannuation Fund and any other information that, according to a determination of the Board, may be of assistance to the non-member spouse.

### **43—Procedure for payment of pension**

For the purposes of section 43AP(4) of the Act, if the interest of a non-member spouse following 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 following provisions apply:

- (a) the Board must—

- (i) split the relevant pension within 14 days of receipt of the splitting instrument; and
  - (ii) advise the non-member spouse of the value of the interest and the basis of any adjustments that have been, or will be, applied to the interest;
- (b) the non-member spouse must, before the Board can commence payment of the pension—
- (i) advise the Board of their name, address, date of birth and bank account details; and
  - (ii) provide any other relevant information at the request of the Board (including documents verifying the non-member spouse's personal details).

#### 44—Associate pension

- (1) For the purposes of section 43AO(2)(a)(ii) of the Act, notice of an election by a non-member spouse to have the whole of a share of a superannuation interest converted to, and taken as, an associate pension must be given in writing within 3 months of the date on which notification of the non-member spouse's right to make the election is given by the Board.
- (2) For the purposes of section 43AO(3) of the Act, the amount of an associate pension will be determined by applying the following method:

$$AP = \frac{P(Mx + m)}{Ny + n}$$

where—

**AP** is the amount of the associate pension payable for the life of the non-member spouse

**P** is the amount of the non-member spouse's share of the pension determined under section 43AO(1) of the Act

***Mx + m*** is the conversion factor relating to the member spouse at age *x* completed years and *m* completed months and is derived by interpolating between age *x* and *x*+1, the factors from the table in Schedule 1 for the relevant type of pension interest and gender of the member spouse

***Ny + n*** is the conversion factor relating to the non-member spouse at age *y* completed years and *n* completed months and is derived by interpolating between age *y* and *y*+1, the factors from the table in Schedule 1 for the relevant type of pension interest and gender of the non-member spouse.

## Part 7—General

#### 45—Prescribed authorities etc

The following are prescribed for the purposes of section 5(1)(b) of the Act:

- (a) Aboriginal Lands Trust;
- (b) AIDS Council of South Australia Incorporated;

- (c) Australian Education Union, South Australian Branch;
- (d) Australian Prudential Regulation Authority;
- (e) Australian Quarantine and Inspection Service;
- (f) Foundation for Multi-Disciplinary Education in Community Health;
- (g) Murray-Darling Basin Authority (established under the *Water Act 2007* of the Commonwealth);
- (h) National Measurement Institute (established under the *National Measurement Act 1960* of the Commonwealth);
- (i) Office of the National Rail Safety Regulator;
- (j) The Ombudsman;
- (k) Public Service Association of South Australia Incorporated;
- (l) South Australian Health and Medical Research Institute Limited;
- (m) The South Australian Primary Principals Association Incorporated;
- (n) South Australian Secondary Principals Association Incorporated.

#### **46—Fund's share of administration costs**

For the purposes of section 17(7)(b) of the Act, the prescribed percentage is 30.

#### **47—Removal or variation of conditions on benefits**

If the benefits payable to or in relation to a contributor are subject to a condition because the contributor's health at the time of acceptance as a contributor appeared to the Board to create a risk of invalidity or premature death, the Board may, on the basis of medical evidence submitted to it—

- (a) remove the condition; or
- (b) vary the condition (but only if the variation is for the benefit of the contributor or of another person in respect of the contributor).

#### **48—Classification of contributors as old scheme contributors**

A person who applies for acceptance as a contributor after 31 May 1986 cannot be classified by the Board as an old scheme contributor unless—

- (a) immediately before becoming an employee within the meaning of the Act, the applicant was an employee of an instrumentality or agency of the Crown and was a contributor to a superannuation fund or scheme that provided pension benefits to employees of that instrumentality or agency; and
- (b) the applicant had been a contributor to that superannuation fund or scheme since 31 May 1986; and
- (c) the application was made immediately after the applicant became an employee within the meaning of the Act.



#### **49—Contributions by employee on leave without pay**

A contributor who is on leave without pay for a period of more than 12 months may, with the Board's approval, elect to make contributions during the period of leave after the first 12 months of leave in the following circumstances:

- (a) the contributor is participating in an overseas aid programme;
- (b) the contributor is on secondment to another employer.

#### **50—Notice to the Board on retrenchment**

A notice given to the Board by an employing authority under section 29(5) of the Act must inform the Board of any inquiries made by the employing authority or by the Commissioner for Public Sector Employment as to other suitable employment available to the contributor with that or any other employing authority and the result of those inquiries.

#### **51—Notice to the Board on invalidity**

- (1) The period of notice of termination of employment or resignation pursuant to sections 31(3)(b)(iii) and 37(4)(b)(iii) of the Act is 1 month.
- (2) A notice must—
  - (a) be accompanied by a certificate in a form approved by the Board from a medical practitioner stating the nature of the invalidity; and
  - (b) inform the Board of any inquiries made by the employer or by the Commissioner for Public Sector Employment as to other suitable employment, carrying a salary of at least 80% of the salary applicable to the contributor's present position, available to the contributor with that or any other employer and the result of those inquiries; and
  - (c) inform the Board of the contributor's existing or future entitlement (if any) to weekly payments of workers compensation.

#### **52—Minimum pension payable to eligible children**

For the purposes of section 38(3) of the Act the prescribed amount of the fortnightly pension is—

- (a) \$8 if a benefit is payable or has been paid to a spouse of the contributor; or
- (b) \$12 if no such benefit is or was payable.

#### **53—Payment in case of pensioner who is incompetent**

- (1) If the Board is satisfied that a person who is entitled to a pension under the Act is not mentally or physically competent to give the Board directions as to payment of the pension the Board may—
  - (a) continue to make payments in a manner authorised by the pensioner when competent; or
  - (b) pay the pension into an account with a financial institution in the name of the pensioner; or
  - (c) pay the pension to a person who is caring for the pensioner on condition that it is applied for the maintenance and benefit of the pensioner.

- (2) Subregulation (1) is subject to the right of a manager appointed under the *Aged and Infirm Persons' Property Act 1940*, or an administrator appointed under the *Guardianship and Administration Act 1993*, to payment of the pension.
- (3) In this regulation—  
*financial institution* has the same meaning as in the *Financial Institutions Duty Act 1983*.

#### **54—Employment of medical practitioner**

The Board must employ a medical practitioner to advise it on matters relating to the state of health of contributors.

#### **55—Notification to Board on change in working hours**

If there is a reduction in the time worked by a contributor in full-time employment or a reduction or increase in the time worked by a contributor in part-time employment, the employer must, by notice in writing given to the Board within 14 days of the change, inform the Board of—

- (a) the date of the change; and
- (b) the contributor's salary after the change and the salary that the contributor would receive if in full-time employment; and
- (c) the period during which the changed time is likely to apply; and
- (d) any illness or disability known to the employer that has caused or contributed to the change.

## Schedule 1—Factors for determination of associate pension

Conversion Factors for Determination of Associate Pension						
Superannuation Act 1988						
Type of Interest:-	Age Pension		Invalidity Pension		Spouse Pension	
Gender:-	Male	Female	Male	Female	Male	Female
Age						
18	23.906	24.178	21.456	20.718	23.906	24.178
19	23.825	24.107	21.384	20.660	23.825	24.107
20	23.740	24.033	21.309	20.599	23.740	24.033
21	23.651	23.954	21.229	20.534	23.651	23.954
22	23.558	23.870	21.146	20.466	23.558	23.870
23	23.460	23.782	21.058	20.394	23.460	23.782
24	23.357	23.689	20.965	20.318	23.357	23.689
25	23.250	23.591	20.869	20.239	23.250	23.591
26	23.137	23.489	20.767	20.155	23.137	23.489
27	23.020	23.381	20.661	20.068	23.020	23.381
28	22.897	23.270	20.550	19.976	22.897	23.270
29	22.769	23.154	20.434	19.881	22.769	23.154
30	22.635	23.034	20.312	19.780	22.635	23.034
31	22.496	22.909	20.186	19.676	22.496	22.909
32	22.351	22.779	20.053	19.566	22.351	22.779
33	22.199	22.643	19.914	19.452	22.199	22.643
34	22.042	22.503	19.769	19.332	22.042	22.503
35	21.877	22.357	19.617	19.206	21.877	22.357
36	21.706	22.205	19.458	19.075	21.706	22.205
37	21.528	22.047	19.292	18.938	21.528	22.047
38	21.343	21.882	19.118	18.794	21.343	21.882
39	21.150	21.712	18.936	18.643	21.150	21.712
40	20.949	21.535	18.746	18.486	20.949	21.535
41	20.741	21.351	18.547	18.321	20.741	21.351
42	20.524	21.160	18.339	18.149	20.524	21.160
43	20.298	20.962	18.121	17.968	20.298	20.962
44	20.064	20.756	17.893	17.779	20.064	20.756
45	19.821	20.544	17.654	17.581	19.821	20.544
46	19.569	20.323	17.404	17.374	19.569	20.323
47	19.308	20.095	17.142	17.156	19.308	20.095
48	19.037	19.859	16.868	16.929	19.037	19.859
49	18.758	19.615	16.580	16.690	18.758	19.615
50	18.469	19.362	16.279	16.440	18.469	19.362
51	18.171	19.101	15.963	16.177	18.171	19.101
52	17.863	18.832	15.643	15.911	17.863	18.832
53	17.546	18.554	15.318	15.642	17.546	18.554
54	17.220	18.267	14.988	15.370	17.220	18.267
55	16.884	17.971	14.655	15.094	16.884	17.971
56	16.540	17.666	14.318	14.816	16.540	17.666

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## Schedule 1—Factors for determination of associate pension

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57	16.186	17.352	13.978	14.535	16.186	17.352
58	15.823	17.028	13.635	14.252	15.823	17.028
59	15.452	16.694	13.289	13.966	15.452	16.694
60	15.072	16.350	12.942	13.677	15.072	16.350
61	14.683	15.996	12.592	13.386	14.683	15.996
62	14.287	15.632	12.242	13.093	14.287	15.632
63	13.883	15.257	11.890	12.798	13.883	15.257
64	13.472	14.872	11.539	12.501	13.472	14.872
65	13.054	14.476	11.187	12.202	13.054	14.476
66	12.629	14.071	10.836	11.902	12.629	14.071
67	12.200	13.657	10.486	11.599	12.200	13.657
68	11.770	13.235	10.137	11.295	11.770	13.235
69	11.338	12.806	9.790	10.989	11.338	12.806
70	10.905	12.371	9.446	10.681	10.905	12.371
71	10.472	11.929	9.105	10.371	10.472	11.929
72	10.039	11.482	8.767	10.059	10.039	11.482
73	9.606	11.030	8.432	9.745	9.606	11.030
74	9.174	10.574	8.103	9.429	9.174	10.574
75	8.745	10.115	7.777	9.109	8.745	10.115
76	8.319	9.656	7.457	8.786	8.319	9.656
77	7.898	9.198	7.143	8.459	7.898	9.198
78	7.487	8.744	6.835	8.128	7.487	8.744
79	7.085	8.297	6.533	7.791	7.085	8.297
80	6.696	7.858	6.238	7.447	6.696	7.858
81	6.321	7.428	5.951	7.095	6.321	7.428
82	5.962	7.007	5.671	6.733	5.962	7.007
83	5.618	6.596	5.399	6.358	5.618	6.596
84	5.292	6.197	5.137	5.995	5.292	6.197
85	4.985	5.811	4.883	5.644	4.985	5.811
86	4.697	5.441	4.640	5.307	4.697	5.441
87	4.430	5.091	4.407	4.988	4.430	5.091
88	4.185	4.763	4.187	4.690	4.185	4.763
89	3.965	4.462	3.981	4.414	3.965	4.462
90	3.771	4.187	3.790	4.161	3.771	4.187
91	3.608	3.941	3.619	3.931	3.608	3.941
92	3.472	3.722	3.472	3.722	3.472	3.722
93	3.356	3.530	3.356	3.530	3.356	3.530
94	3.242	3.351	3.242	3.351	3.242	3.351
95	3.125	3.181	3.125	3.181	3.125	3.181
96	3.007	3.019	3.007	3.019	3.007	3.019
97	2.882	2.861	2.882	2.861	2.882	2.861
98	2.748	2.704	2.748	2.704	2.748	2.704
99	2.599	2.542	2.599	2.542	2.599	2.542

**Schedule 2—Revocation of *Superannuation Regulations 2001***

The *Superannuation Regulations 2001* are revoked.

## Legislative history

### Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- 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).

### Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2016	201	<i>Gazette 25.8.2016 p3429</i>	1.9.2016: r 2
2020	64	<i>Gazette 21.5.2020 p2457</i>	1.7.2020: r 2