

South Australia

Statutes Amendment (Miscellaneous Superannuation Measures) Act 2004

An Act to amend the *Police Superannuation Act 1990*, the *Southern State Superannuation Act 1994* and the *Superannuation Act 1988*.

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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 *Statutes Amendment (Miscellaneous Superannuation Measures) Act 2004*.

2—Commencement

- (1) Subject to subsection (2), this Act will come into operation on a day to be fixed by proclamation.
- (2) Sections 10 and 20 may not be brought into operation before 1 July 2004.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Police Superannuation Act 1990*

4—Amendment of section 4—Interpretation

- (1) Section 4(1)—after the definition of *contributor* insert:

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;
- (2) Section 4(1)—after the definition of *spouse* insert:

Superannuation Contributions Tax Act means the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* of the Commonwealth;
- (3) Section 4(1)—after the definition of *the Superannuation Funds Management Corporation of South Australia* insert:

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

5—Insertion of sections 26A, 26B and 26C

After section 26 insert:

26A—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.

26B—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 26A 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 26A,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 26A 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 26A, 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.

26C—Withheld amount

An amount withheld under section 26A or 26B—

- (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 in accordance with section 14 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 26A or 26B; 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.

6—Amendment of section 35A—Commutation to pay deferred superannuation contributions surcharge

- (1) Section 35A(2)—delete "Commonwealth Act" and substitute:
Superannuation Contributions Tax Act
- (2) Section 35A(3)(a)(i)—delete "Commonwealth Act" and substitute:
Superannuation Contributions Tax Act
- (3) Section 35A(4)—delete "Commonwealth Act" and substitute:
Superannuation Contributions Tax Act
- (4) Section 35A(8)—delete subsection (8)

7—Substitution of heading to Part 5A

Heading to Part 5A—delete the heading and substitute:

Part 5A—Contributors' investment accounts and rollover accounts

Division 1—Investment accounts

8—Amendment of section 38D—Investor's accounts

Section 38D(3)(a)—after "financial year" insert:

or, if an investor has made a nomination under Division 3, the net rate of return achieved by the class of investments, or the combination of classes of investments, nominated by the investor

9—Insertion of Part 5A Division 2 and Division 3

Part 5A—after Division 1 insert:

Division 2—Rollover accounts

38EA—Roll over of benefits from another fund or scheme

- (1) 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.
- (2) Money that is rolled over to the Scheme from another superannuation fund or scheme must be paid to the Treasurer.

- (3) The Treasurer must pay into the Fund from the Consolidated Account (which is appropriated to the necessary extent) or from a special deposit account established by the Treasurer for the purpose periodic payments reflecting the payments made to the Treasurer under this section.

38EB—Rollover accounts

- (1) The Board must maintain a rollover account in the name of a contributor for whom an amount of money has been carried over from another superannuation fund or scheme to the Scheme.
- (2) A contributor's rollover account must be credited with the money referred to in subsection (1) and must be debited with any payment that is, in pursuance of this Act, to be charged against the account.
- (3) At the end of each financial year, each rollover account that has a credit balance will be adjusted to reflect a rate of return determined by the Board 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 contributor has made a nomination under Division 3, 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' rollover accounts.
- (5) If, 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) If it is necessary to determine the balance of a contributor's rollover 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.
- (7) A balance determined under subsection (6) will not be adjusted when a rate of return is subsequently determined under subsection (3).
- (8) The Board must, within six months of the end of each financial year, provide each contributor in whose name a rollover account is maintained with a written statement of the amount standing to the credit of the contributor's rollover account at the end of the financial year and the amount by which the balance of the account has been adjusted pursuant to subsection (3) in respect of that financial year.
- (9) A reference in this section to "rate of return" is a reference to a positive or negative rate of return.

Division 3—Investment choice

38EC—Investment choice

- (1) 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 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 a rate of return under this Part.
- (2) However, a class of investments, or combination of classes of investments, nominated by an investor for the purposes of determining a rate of return under Division 1 must be the same as any class of investments, or combination of classes of investments, nominated by the investor for the purposes of determining a rate of return under Division 2.
- (3) If a contributor, after nominating a class of investments under subsection (1), subsequently varies the nominated class of investments, the Board may charge a fee (to be determined by the Board) to the contributor's contribution account in a manner determined by the Board.

10—Amendment of section 40—Effect of workers compensation etc on pension

- (1) Section 40(1)—after "during a financial year" insert:

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
- (2) Section 40(1)(a) and (b)—delete paragraphs (a) and (b) and substitute:
 - (a) weekly payments of workers compensation; or
 - (b) in the case of a relevant contributor—income from remunerative activities engaged in by the contributor,
- (3) Section 40(1)(d) and (e)—delete paragraphs (d) and (e) and substitute:
 - (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;
- (4) Section 40(1)(f)—after "payments (if any) and" insert:

, if the contributor is a relevant contributor,
- (5) Section 40(1)(f)—delete "paragraph (e)" and substitute:

paragraph (d)(ii)

- (6) Section 40(1)(g)—after "the Board must" insert:
 , if the contributor is a relevant contributor,
- (7) Section 40(1a)—delete "subsection (1)(b)(i) and (ii)" and substitute:
 subsection (1)(a) and (b)
- (8) Section 40(4)—after "receiving them" insert:
 unless—
 (a) if the person is a contributor—the contributor has reached the age of 60; or
 (b) if the person is the spouse of a deceased contributor—the contributor would have reached the age of 60 if he or she were still alive
- (9) Section 40—after subsection (5) insert:
 (6) In this section—
 relevant contributor means a contributor—
 (a) who has not reached the age of 60; 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.

11—Repeal of section 42B

Section 42B—delete the section

12—Amendment of section 48—Power to obtain information

- (1) Section 48(1)—after "the Commissioner," insert:
 a workers compensation authority,
- (2) Section 48—after subsection (6) insert:
 (7) 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.
 (8) In this section—
 workers compensation authority includes any person or authority with power to determine or manage claims for workers compensation.

Part 3—Amendment of *Southern State Superannuation Act 1994*

13—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *contributions* insert:
 deferred superannuation contributions surcharge in relation to a member means the amount that the member is liable to pay the Commissioner of Taxation under section 15(6) of the Superannuation Contributions Tax Act;

- (2) Section 3(1)—after the definition of *the State Scheme* insert:

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

- (3) Section 3(1)—after the definition of *the Superannuation Funds Management Corporation of South Australia* insert:

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

14—Insertion of sections 35AA, 35AAB and 35AAC

After section 35 insert:

35AA—Commutation to pay deferred superannuation contributions surcharge—member

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

and the Board must, subject to subsection (4), comply with the member's request.

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

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

35AAB—Commutation to pay deferred superannuation contributions surcharge following death of member

- (1) If a member who is liable for a deferred superannuation contributions surcharge dies—
 - (a) having made a request of the Board under section 35AA 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 35AA,the member's spouse or, if the member is not survived by a spouse, the member's legal representative, may, before the expiration of the period of 2 months immediately following the member's death or the issue of the surcharge notice (whichever is the later), apply to the Board—

- (c) to receive the amount withheld by the Board on behalf of the deceased member under section 35AA 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 member dies without having made a request under section 35AA, the member's spouse or, if the member is not survived by a spouse, the member's legal representative, may—
- (a) estimate the amount of the surcharge the spouse or estate will become liable to pay (the *estimated surcharge amount*); and
 - (b) request the Board, in the approved form, to—
 - (i) withhold from the spouse's benefit or the benefit payable to the estate an amount equal to the estimated surcharge amount (the *withheld amount*); and
 - (ii) pay the balance of the benefit to the spouse or estate,
- and the Board must, subject to subsection (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 member, advise the Board in the approved form that the notice has been issued and the Board must, within 7 days of receiving that advice—
- (a) convert into a pension—
 - (i) if the amount of the surcharge payable by the spouse or estate is less than the withheld amount—a portion of the withheld amount equal to the amount payable; or
 - (ii) in any other case—the whole of the withheld amount; and
 - (b) immediately after converting the withheld amount, or a portion of the withheld amount, into a pension under paragraph (a)—commute the pension; and
 - (c) pay to the spouse or estate—
 - (i) the lump sum resulting from the commutation of the pension; and
 - (ii) the balance (if any) of the withheld amount.
- (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 member'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 member, means a person—
- (a) holding office as executor of the will of the deceased member where probate of the will has been granted or resealed in South Australia or any other State or a Territory; or
 - (b) holding office in South Australia or any other State or a Territory as administrator of the estate of the deceased member.

35AAC—Withheld amount

An amount withheld under section 35AA or 35AAB—

- (a) must be retained in the Southern State Superannuation (Employers) Fund; and
- (b) will be credited with interest at the rate of return determined by the Board under section 11; and
- (c) may be paid to the member (or the member's spouse or legal representative)—
 - (i) in accordance with section 35AA or 35AAB; 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 member; or
 - (B) considers, at any time, there is other good reason for doing so.

15—Amendment of section 41—Power to obtain information

- (1) Section 41(1)—after "an employing authority" insert:
 - , a workers compensation authority
- (2) Section 41—after subsection (5) insert:
 - (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.

Part 4—Amendment of *Superannuation Act 1988*

16—Amendment of section 4—Interpretation

- (1) Section 4(1)—after the definition of *contributor* insert:

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;
- (2) Section 4(1)—after the definition of *standard contribution rate* insert:

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

- (3) Section 4(1)—after the definition of *the Superannuation Funds Management Corporation of South Australia* insert:

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

17—Amendment of section 20A—Contributors' accounts

- (1) Section 20A(4)(a)—after "financial year" insert:

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

- (2) Section 20A—after subsection (4) insert:

(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.

18—Insertion of sections 32B, 32C and 32D

After section 32A insert:

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.

19—Amendment of section 40A—Commutation to pay deferred superannuation contributions surcharge

(1) Section 40A(2)—delete "Commonwealth Act" and substitute:

Superannuation Contributions Tax Act

(2) Section 40A(3)(a)(i)—delete "Commonwealth Act" and substitute:

Superannuation Contributions Tax Act

(3) Section 40A(4)—delete "Commonwealth Act" and substitute:

Superannuation Contributions Tax Act

(4) Section 40A(8)—delete subsection (8)

20—Amendment of section 45—Effect of workers compensation etc on pension

- (1) Section 45(1)—after "during a financial year" insert:

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
- (2) Section 45(1)(a) and (b)—delete paragraphs (a) and (b) and substitute:
 - (a) weekly payments of workers compensation; or
 - (b) in the case of a relevant contributor—income from remunerative activities engaged in by the contributor,
- (3) Section 45(1)(d) and (e)—delete paragraphs (d) and (e) and substitute:
 - (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;
- (4) Section 45(1)(f)—after "payments (if any) and" insert:

, if the contributor is a relevant contributor,
- (5) Section 45(1)(f)—delete "paragraph (e)" and substitute:

paragraph (d)(ii)
- (6) Section 45(1)(g)—after "the Board must" insert:

, if the contributor is a relevant contributor,
- (7) Section 45(1a)—delete "subsection (1)(b)(i) and (ii)" and substitute:

subsection (1)(a) and (b)
- (8) Section 45(2)(ba)—delete paragraph (ba)
- (9) Section 45(4)—after "receiving them" insert:

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
- (10) Section 45—after subsection (6) insert:
 - (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.

21—Amendment of section 54—Power to obtain information

- (1) Section 54(1)—after "employing authority," insert:
workers compensation authority,
- (2) Section 54—after subsection (5) insert:
 - (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.