

# House of Assembly—No 43

As laid on the table and read a first time, 13 November 2008

South Australia

## **Statutes Amendment (Entitlements of Elected Representatives) Bill 2008**

A BILL FOR

An Act to amend the *City of Adelaide Act 1998*; the *Local Government Act 1999*; the *Parliamentary Remuneration Act 1990*; the *Parliamentary Superannuation Act 1974*; and the *Remuneration Act 1990*.

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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 (Entitlements of Elected Representatives) Act 2008*.

### **2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

### **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 *City of Adelaide Act 1998***

### **4—Substitution of section 24**

Section 24—delete the section and substitute:

#### **24—Allowances**

- (1) A member of the Council is entitled to receive an annual allowance from the Council for performing and discharging official functions and duties.
- (2) The annual allowance payable to a member of the Council will be the amount determined, from time to time, by the Remuneration Tribunal.
- (3) The rates of the annual allowances determined by the Remuneration Tribunal may vary from office to office.

## **Part 3—Amendment of *Local Government Act 1999***

### **5—Substitution of section 76**

Section 76—delete the section and substitute:

#### **76—Allowances**

- (1) A member of a council is entitled to receive an annual allowance from the council for performing and discharging official functions and duties.
- (2) The annual allowance payable to a member of a council will be the amount determined, from time to time, by the Remuneration Tribunal.
- (3) The rates of the annual allowances determined by the Remuneration Tribunal may vary from office to office.

## Part 4—Amendment of *Parliamentary Remuneration Act 1990*

### 6—Amendment of section 3—Interpretation

- (1) Section 3, definition of *basic salary*—delete the definition and substitute:

*basic salary* means the amount determined, from time to time, by the Remuneration Tribunal to be the annual basic salary payable to a member of Parliament;

- (2) Section 3, definition of *Commonwealth basic salary*—delete the definition

### 7—Amendment of section 4—Remuneration of members of Parliament

Section 4—after subsection (5) insert:

- (6) Salary, allowances, expenses and benefits must not be paid to any member of Parliament except as provided for by this Act.

### 8—Repeal of section 6A

Section 6A—delete the section

## Part 5—Amendment of *Parliamentary Superannuation Act 1974*

### 9—Amendment of section 5—Interpretation

- (1) Section 5(1)—after the definition of *PSS 3* insert:

*PSS 4*—see section 7C(4);

- (2) Section 5(1)—after the definition of *PSS 3 member* insert:

*PSS 4 member* means a member of PSS 4—see section 7D(4a);

- (3) Section 5(3)—delete subsection (3) and substitute:

- (3) For the purposes of the definition of *basic salary* in subsection (1), the salary to which a member is entitled under the *Parliamentary Remuneration Act 1990* includes the amount of any contribution that the member makes towards the cost of providing an article, motor vehicle, equipment or service by way of a salary sacrifice (as contemplated by section 4A(2) of that Act) and the amount of any superannuation salary sacrifice (as contemplated by section 4B of that Act for the relevant period).

### 10—Amendment of section 7C—Arrangement of schemes

Section 7C—after subsection (3) insert:

- (4) The scheme of superannuation established under Schedule 4 will be known as *PSS 4*.

### 11—Amendment of section 7D—Membership of schemes

- (1) Section 7D(1)—before the definition of *relevant date* insert:

*commencement date* means the date of the poll for the first general election of the House of Assembly held after 31 December 2007;

- (2) Section 7D(1) and (3)—delete "relevant date" wherever occurring and substitute in each case:

relevant PSS 3 date

- (3) Section 7D(4)—delete subsection (4) and substitute:

(4) Subject to this section, a member—

- (a) who first becomes a member of either House of Parliament of the State on or after the relevant PSS 3 date and before the commencement date; or
- (b) who, on or after the relevant PSS 3 date but before the commencement date, again becomes a member of either House of Parliament of the State after a break in membership of the Parliament (disregarding for the purposes of this paragraph any case where a member's term comes to an end on the dissolution of the House of which he or she is a member or by virtue of a resignation or expires by the effluxion of time and the member is then returned at the election that next follows that dissolution, resignation or expiry, or any case where a member is returned at a joint sitting in prescribed circumstances),

will be a member of PSS 3.

(4a) A member—

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

will be a member of PSS 4.

- (4) Section 7D(5)—after "subsection (4b)" insert:

and (4a)(b)

## **12—Amendment of section 7E—PSS 3 or PSS 4 member may elect to participate in other schemes**

- (1) Section 7E(1), definition of *eligible member*—delete the definition and substitute:

*eligible member* means—

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

- (b) a PSS 4 member, other than a person who is a member of PSS 4 by virtue of section 7D(4a)(b);
- (2) Section 7E(1), definition of *prescribed period*—delete "PSS 3 member" and substitute:
- 5 PSS 3 or PSS 4 member (as the case may be)
- (3) Section 7E(5)(a)—after "PSS 3" insert:
- or PSS 4

### 13—Insertion of Schedule 4

After Schedule 3 insert:

## Schedule 4—PSS 4

### 1—Interpretation

In this Schedule, unless the contrary intention appears—

*commencement date* means the date of the poll for the first general election of the House of Assembly held after 31 December 2007;

15 *participating member* means—

- (a) a member who first becomes a member of either House of Parliament on or after the commencement date; or
- (b) a pre-2007 scheme member who transfers to the trust scheme under clause 5; or
- 20 (c) a pre-2007 scheme member—
- (i) who is not a member of Parliament immediately before the commencement date; or
- (ii) who ceases to be a member of Parliament on or after the commencement date,

25 and who again becomes a member of Parliament on a subsequent date;

*pre-2007 scheme* means PSS 1, PSS 2 or PSS 3;

*pre-2007 scheme member* means a member of a pre-2007 scheme;

*Tribunal* means the Remuneration Tribunal;

30 *trust deed* means the trust deed included in the report of the Tribunal under clause 2(9) (as amended from time to time under clause 3);

*trust scheme* means the parliamentary superannuation scheme constituted under this Schedule (being PSS 4).

### 2—Investigation into superannuation scheme that is to apply

- 35 (1) The Tribunal must conduct an inquiry into an appropriate superannuation scheme for members of Parliament.

- 5
- (2) Before commencing proceedings for the purposes of the inquiry the Tribunal must, by notice published in a newspaper circulating generally throughout the State, invite written representations from any person on the matter (within a period determined by the Tribunal).
- (3) The Tribunal must consider all representations made in response to an invitation under subclause (2) and may, in its discretion, hold any preliminary hearing and hear and consider any evidence or argument submitted to it in relation to the matter.
- 10
- (4) The Tribunal must then—
- (a) cause a draft trust scheme to be prepared; and
  - (b) send a copy of the draft to—
    - 15 (i) each person who made a representation under subclause (2); and
    - (ii) the Board; and
  - (c) give notice, by means of an advertisement published in a newspaper circulating generally throughout the State, of a place or places at which copies of the draft are to be available for inspection and purchase (at a price to be determined by the Tribunal).
- 20
- (5) For the purposes of subclause (4)(b)(i), a draft will be taken to have been sent to a person if it is posted to his or her last address known to the Tribunal.
- (6) The Tribunal must then—
- 25 (a) hold a public hearing in relation to the matter; and
  - (b) consider any submissions made at that hearing.
- (7) The Tribunal must also consult with the Board on the draft.
- (8) The Tribunal must then, after taking into account such other submissions and matters as it thinks fit, prepare a report on the outcome of the inquiry.
- 30
- (9) The report must include an instrument in the form of a trust deed that sets out the rules for the parliamentary superannuation scheme that, on the basis of the determination of the Tribunal, is to apply to all participating members from the commencement date.
- 35
- (10) The report must be prepared by 30 September 2008.
- (11) The Tribunal must—
- (a) deliver a copy of the report to—
    - (i) the Board; and
    - (ii) the Treasurer; and
  - 40 (b) cause a copy of the report to be published in the Gazette.

- (12) The Treasurer must, as soon as practicable after receiving the report, cause copies of the report to be laid before both Houses of Parliament.

### **3—Constitution of superannuation scheme**

- 5 (1) Subject to this clause, the rules set out in the trust deed will constitute PSS 4, being the parliamentary superannuation scheme for participating members from the commencement date (and the participating members and the Crown will be bound by the trust deed).
- 10 (2) The Tribunal may, either before or after the commencement date, by notice in the Gazette, amend the trust deed.
- (3) However, the Tribunal must not make an amendment increasing the liability of the Crown under the trust scheme unless the Tribunal has given the Treasurer a reasonable opportunity to make submissions in relation to the matter.
- 15 (4) Subclause (3) does not apply if—
- (a) the Tribunal is acting at the request of the Treasurer; or
- (b) the Tribunal has certified that the only purpose of the amendment is to make a technical variation to a rule contained in the trust deed to give effect to the original intention of the rule.
- 20 (5) For the purposes of this clause, an amendment of the trust deed may include the replacement of the trust deed with a new trust deed.

### **4—Board to administer trust scheme**

- 25 (1) The Board will be responsible for the administration of the trust scheme (and the Tribunal must ensure that this is reflected in the trust deed).
- (2) The Board may engage the Superannuation Funds Management Corporation of South Australia to assist it in its administration of the trust deed and to perform any function on behalf of the Board.
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### **5—Transference**

- (1) A pre-2007 scheme member may, by notice in writing to the Board, elect to transfer to the trust scheme.
- 35 (2) A person who has made an election under this clause may not subsequently revoke the election.
- (3) If a person makes an election under this clause—
- (a) the Board must close the contribution account in the name of the person under Part 2B; and
- (b) the Board must establish a contribution account in the name of the person under the trust scheme and credit to that account the statutory minimum.
- 40



(4) In subclause (3)—

*statutory minimum*, in relation to a person, is the sum of the following amounts:

- 5 (a) the balance standing to the credit of the person's contribution account under Part 2B on the day of receipt by the Board of the notice under subclause (1);
- 10 (b) the total of the minimum amounts that the State would have to contribute to a complying superannuation fund or scheme within the meaning of section 7 of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth for the person in order to avoid having any individual superannuation guarantee shortfalls in respect of the person within the meaning of the *Superannuation Guarantee (Administration) Act 1992* if it were assumed that—
- 15 (i) the only capacity in which the person was, or had ever been, an employee of the State (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) was the person's capacity as a member of the Parliament of the State (see section 12(5) of that Act); and
- 20 (ii) the pre-2007 schemes did not exist; and
- (iii) the contributions were made on a monthly basis;
- 25 (c) the interest that would have accrued on the contributions covered by paragraph (b) assuming that the contributions were contributions made to the credit of the person's contribution account under this Act.

## **6—Interaction with other Commonwealth and State legislation**

- 30 (1) The Tribunal must ensure that the employer contributions to be made under the trust scheme will avoid the occurrence of an individual superannuation guarantee shortfall within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth in respect of any participating member.
- 35 (2) A participating member does not become, by virtue of the operation of this Schedule, a member of the Southern State Superannuation Scheme.
- (3) The rules set out in the trust deed (and any amendments made to those rules) are not subject to the *Subordinate Legislation Act 1978*.

## **7—Actuarial review of scheme**

- 40 (1) The Board must, at least once in every 3 years, obtain a report from an actuary on the state and sufficiency of the trust scheme (from an actuarial perspective).

(2) The Board must, within 1 month after receiving the report, deliver a copy of the report to—

- (a) the Tribunal; and
- (b) the Treasurer.

(3) The Treasurer must, as soon as practicable after receiving the report, cause copies of the report to be laid before both Houses of Parliament.

(4) In this clause—

*actuary* means a person who is a Fellow of the Institute of Actuaries of Australia.

## Part 6—Amendment of *Remuneration Act 1990*

### 14—Amendment of section 14—Additional jurisdiction as conferred by other Acts or by proclamation

Section 14(1)—delete subsection (1) and substitute:

(1) The Tribunal has, in addition—

- (a) the jurisdiction granted to the Tribunal by Schedule 4 of the *Parliamentary Superannuation Act 1974*; and
- (b) jurisdiction to determine the remuneration, or a specified part of the remuneration, payable in respect of any office (other than those previously referred to in this Part) if such jurisdiction is conferred on the Tribunal—
  - (i) by any other Act; or
  - (ii) by the Governor by proclamation.

## Schedule 1—Transitional provisions

### 1—Transitional provisions

(1) The amount that is, immediately before the commencement of this Act, payable to—

- (a) a member of The Corporation of the City of Adelaide as the member's annual allowance under section 24 of the *City of Adelaide Act 1998*; or
- (b) a member of another council as the member's annual allowance under section 76 of the *Local Government Act 1999*,

is, on the commencement of this Act, taken to be the annual allowance payable to the member in accordance with a determination of the Remuneration Tribunal made in accordance with either of those sections as substituted by this Act.

(2) The amount that is, immediately before the commencement of this Act, payable to a member of Parliament as the member's basic salary (within the meaning of section 3 of the *Parliamentary Remuneration Act 1990*) is, on the commencement of this Act, taken to be the basic salary within the meaning of that section as amended by this Act.