

Legislative Council—No 92A

As reported with amendments and suggested amendments, report adopted, Standing Orders suspended and passed remaining stages, 4 May 2021

South Australia

Statutes Amendment (Fund Selection and Other Superannuation Matters) Bill 2020

A BILL FOR

An Act to amend the *Southern State Superannuation Act 2009* and the *Superannuation Act 1988*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Southern State Superannuation Act 2009*

- 4 Amendment of section 3—Interpretation
- 5 Amendment of section 5—Employer contribution percentage
- 6 Amendment of section 15—Other accounts to be kept by Board
- 7 Amendment of section 19—Membership of scheme
- 8 Amendment of section 20—Contributions
- 9 Amendment of section 21—Payments by employers
- 10 Insertion of Part 3A

Part 3A—Portability and fund selection

Division 1—Interpretation

- 21A Interpretation

Division 2—Portability

- 21B Transfer of funds

Division 3—Fund selection

- 21C Member may direct employer contributions to other fund
- 21D Effect of fund selection
- 21E Employer obligations
- 21F Matters affecting eligibility of funds
- ~~21G~~ ~~[Change in employer]~~
- 21H Person may elect to return to Triple S scheme
- 21I Immunity from liability
- 21J Employer to report to Board
- 11 Amendment of section 24—Employer benefits and contributions if person on leave without pay
- 12 Amendment of section 28—Confidentiality
- 13 Amendment of section 30—Regulations
- 14 Amendment of Schedule 1—Transitional provisions

Part 3—Amendment of *Superannuation Act 1988*

- 15 Amendment of section 8—Board's membership
 - 16 Insertion of section 9A
 - 9A Chief executive officer
 - 17 Amendment of section 10—Staff of Board
 - 18 Amendment of section 21—Reports
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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 (Fund Selection and Other Superannuation Matters) Act 2020*.

5 2—Commencement

- (1) Subject to this section, this Act comes into operation on the day on which it is assented to by the Governor.
- (2) Part 2 and Part 3 (other than section 17) come into operation on a day to be fixed by proclamation.
- 10 (3) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act.

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 *Southern State Superannuation Act 2009*

15 4—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *employing authority*—delete "member" wherever occurring and substitute in each case:

person

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

20 *fund* includes a scheme or account;

fund selection—see section 21C(5);

- (3) Section 3(1), definition of *non-monetary salary*—delete "member" wherever occurring and substitute in each case:

person

- 25 (4) Section 3(1), definition of *salary*—delete "member" wherever occurring and substitute in each case:

person

- (5) Section 3(1), definition of *salary*, (b) and (c)—delete "member's" wherever occurring and substitute in each case:

30 person's

- (6) Section 3(1), definition of *salary sacrifice contribution*—delete "member" and substitute:

person

- (7) Section 3(1), definition of *salary sacrifice contribution*—delete "member's" wherever occurring and substitute in each case:

person's

- (8) Section 3(1), definition of *salary sacrifice contribution*—after "contribution account" insert:

or, in the case of a person who has made a fund selection, to the person's selected fund

- (9) Section 3(2)—delete "member" wherever occurring and substitute in each case:

person

- (10) Section 3(3)—delete "member" wherever occurring and substitute in each case:

person

5—Amendment of section 5—Employer contribution percentage

- (1) Section 5(1)—delete "member" and substitute:

person

- (2) Section 5(2)—delete "member" and substitute:

person

- (3) Section 5(3)—delete "of a member" and substitute:

of a person

- (4) Section 5(3)(a)(i)—delete "member (other than a prescribed member)" and substitute:

person (other than a prescribed person)

- (5) Section 5(3)(a)(i)—delete "to the Treasurer"

- (6) Section 5(3)(a)(ii)—delete "member" and substitute:

person

- (7) Section 5(3)(a)(ii)—delete "to the Treasurer"

- (8) Section 5(3)(a)—delete "of the member" and substitute:

of the person

- (9) Section 5(3)(b)—delete "member" and substitute:

person

- (10) Section 5(4), definition of *prescribed member*—delete the definition and substitute:

prescribed person means—

- (a) a police member (other than a police cadet or a police officer employed on a contract having a fixed term); or

- (b) a person—

- (i) who has ceased to be a member of the scheme by virtue of section 19(2)(b); but

- (ii) who would, if they were a member of the scheme, be a member to whom paragraph (a) applies; or
- (c) a person or a class of persons prescribed by the regulations for the purposes of this definition.

5 **6—Amendment of section 15—Other accounts to be kept by Board**

Section 15—after subsection (1) insert:

- (1a) However, the Board is not required to maintain accounts of employer contributions paid to another fund pursuant to a fund selection.

10 **7—Amendment of section 19—Membership of scheme**

Section 19(2)—delete subsection (2) and substitute:

- (2) However, a person—
 - (a) who is—
 - (i) a member of a scheme of superannuation established by or under some other Act; or
 - (ii) a member of a scheme of superannuation established for the benefit of the employees of an agency or instrumentality of the Crown (not being a scheme referred to in subparagraph (i)); or
 - (b) who—
 - (i) makes a fund selection; and
 - (ii) opts to have all amounts standing to the credit of accounts maintained by the Board on behalf of the person rolled over to a complying superannuation fund (within the meaning of Part 3A),
- is not, subject to section 21H and regulations under subsection (3), a member of the Triple S scheme.

25 **8—Amendment of section 20—Contributions**

- (1) Section 20(1)—after "Subject to" insert:

subsection (1b) and

- (2) Section 20(1)(b)—delete paragraph (b) and substitute:

- (b) a police member (other than a police cadet or a police officer employed on a contract having a fixed term) must, subject to subsection (1a), make contributions—
 - (i) to the Treasurer; or
 - (ii) if the member has made a fund selection in their capacity as a police member—to the fund selected for the purposes of that fund selection,

as a deduction from salary at a rate that equals or exceeds the prescribed percentage; and

Note—

If police members are prescribed as designated members for the purposes of Part 3A, their ability to make a fund selection will be limited as they will only be able to select a fund that has been prescribed by regulation.

(3) Section 20—after subsection (1a) insert:

(1b) A member who has made a fund selection—

- (a) may not make contributions to the Treasurer under subsection (1)(a) or (b) as a deduction from the salary received by the member from the employer to which the fund selection relates; but
- (b) may, if the Board is continuing to maintain a contribution account on behalf of the member, make contributions to the Treasurer under subsection (1)(d).

(1c) Subsection (1b)(a) does not apply if the member has subsequently given a valid direction to their employer under section 21H(1).

(4) Section 20(2)(b)—delete paragraph (b) and substitute:

(b) require specified members, or members of a specified class, to make contributions as a deduction from salary at a prescribed rate—

- (i) to the Treasurer; or
- (ii) if the member has made 1 or more fund selections—
 - (A) to a fund selected by the member for the purposes of a fund selection; or
 - (B) if the regulations so require, to a fund specified in the regulations,

(and a regulation under this paragraph may prescribe different rates or specify different funds in respect of different members or different classes of member); or

9—Amendment of section 21—Payments by employers

(1) Section 21(1)—delete "member" first occurring and substitute:

prescribed person

(2) Section 21(1)—delete "the member's employer must pay to the Treasurer" and substitute:

the person's employer must pay to the person's designated superannuation authority

(3) Section 21(1), definition of *ECP*—delete "member" and substitute:

person

(4) Section 21(1), definition of *S*—delete "member" and substitute:

person

(5) Section 21—after subsection (1) insert:

(1a) However, if—

- 5
- (a) the person has made a fund selection; and
 - (b) the selected fund is precluded under a law of the Commonwealth from receiving contributions in respect of a salary that is higher than the maximum contribution base; and
 - 10 (c) the person's salary for the quarter in which the payment is being made exceeds the maximum contribution base applying for that quarter,

the following provisions apply for the purposes of interpreting the formula in subsection (1):

- 15
- (d) *ECP* is a percentage equal to the charge percentage applicable under the Commonwealth Act to the employer of the person;
 - (e) *S* is an amount equal to the maximum contribution base applying for that quarter.

(6) Section 21(2)—delete "member" first occurring and substitute:

prescribed person

20 (7) Section 21(2)—delete "member" second occurring and substitute:

person

(8) Section 21(2)—delete "Treasurer" wherever occurring and substitute in each case:

person's designated superannuation authority

(9) Section 21(2)—delete "member's" and substitute:

25 person's

(10) Section 21(3a) and (3b)—delete subsections (3a) and (3b) and substitute:

(3a) An employer may satisfy the requirement under this section to pay an amount on behalf of a prescribed person by paying the amount to an approved clearing house, provided that—

- 30
- (a) the approved clearing house then makes the contribution, as agent for the employer, to the person's designated superannuation authority; and
 - (b) any other conditions prescribed by regulation are complied with.

35 (11) Section 21(5)—before the definition of *employer* insert:

approved clearing house means a body that is an approved clearing house for the purposes of the Commonwealth Act;

designated superannuation authority—a prescribed person's designated superannuation authority is—

- (a) in the case of a person whose superannuation arrangements have been transferred to another fund under section 21C—that fund; and
- (b) in any other case—the Treasurer;

(12) Section 21(5), definition of *employer*—delete "member" wherever occurring and substitute in each case:

prescribed person

(13) Section 21(5), definition of *prescribed scheme*—delete the definition and substitute:

maximum contribution base means the maximum contribution base determined under the Commonwealth Act;

prescribed person means—

- (a) a member; or
- (b) a former member whose superannuation arrangements have been transferred to another fund under section 21C.

10—Insertion of Part 3A

After Part 3 insert:

Part 3A—Portability and fund selection

Division 1—Interpretation

21A—Interpretation

In this Part—

complying fund means—

- (a) a complying superannuation fund; or
- (b) an RSA;

complying superannuation fund has the meaning given by section 45 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

designated member means a member of a class prescribed by regulation for the purposes of this definition;

eligible fund—a fund is an eligible fund for the purposes of a fund selection if—

- (a) it is a complying fund; and
- (b) the employer of the person who made the selection is able to contribute to the fund for the benefit of the person at the time the selection is made; and
- (c) in the case of a selection made, or purportedly made, by a designated member—it is a fund prescribed by regulation for the purposes of this definition;

~~[existing member] [means a person who was a member of the Triple S scheme before the commencement of this Part;]~~

fund selection notice—see section 21C(3);

~~[new member] [means a person who becomes a member of the Triple S scheme after the commencement of this Part;]~~

RSA has the same meaning as in the *Retirement Savings Accounts Act 1997* of the Commonwealth;

selected fund, of a person who has made a fund selection, means ~~the fund specified by the person in the fund selection notice given to the person's employer~~ a fund specified by the person in a fund selection notice given to an employer of the person;

successor fund has the same meaning as in the *Income Tax Assessment Act 1997* of the Commonwealth.

Division 2—Portability

21B—Transfer of funds

- (1) Subject to this section, amounts standing to the credit of 1 or more accounts maintained by the Board on behalf of a member may, at the option of the member, in accordance with the regulations, be transferred to another complying fund.
- (2) The combined balance of accounts maintained by the Board on behalf of a member for whom amounts are transferred under subsection (1) must, immediately after the amounts are transferred, be equal to, or greater than, the applicable minimum amount for the member.
- (3) For the purposes of subsection (2), the *applicable minimum amount* for a member is—
 - (a) in the case of—
 - (i) a police member; or
 - (ii) a member of a class prescribed by regulation for the purposes of this subsection,the minimum amount prescribed by regulation; and
 - (b) in the case of any other member—the minimum amount determined by the Board.
- (4) The Board may, for the purposes of subsection (3)(b), determine that different minimum amounts apply to different members or classes of member.
- (5) Amounts standing to the credit of accounts maintained by the Board on behalf of a member cannot be transferred under this section if—
 - (a) the member is prevented from dealing with their superannuation interests by an instrument in force under the *Family Law Act 1975* of the Commonwealth; or

(b) the combined balance of accounts maintained by the Board on behalf of the member is less than the applicable minimum amount for the member for the purposes of subsection (2); or

(c) the member has a liability that arose under this Act.

(6) However, the Board may determine to permit a member to transfer amounts standing to the credit of the member's accounts despite the member having a liability that arose under this Act if the Board is satisfied that the liability will be discharged in full.

(7) Regulations made for the purposes of this section—

(a) may include conditions and limitations that apply to all members or to specified members or classes of member; and

(b) may exclude specified members or classes of member from the operation of this section.

Division 3—Fund selection

21C—Member may direct employer contributions to other fund

(1) This section applies to a person who is a member of the Triple S scheme if—

(a) ~~the person's employer~~ an employer of the person is required to pay an amount to the Treasurer on behalf of the person under section 21; and

(b) the person is not a member of the scheme solely by virtue of an arrangement under section 6 with a participating employer; and

(c) the person is not excluded from the operation of this section by the regulations.

(2) A regulation made for the purposes of subsection (1)(c) may exclude specified persons, or classes of persons, from the operation of this section.

(3) Subject to this section, a person to whom this section applies may, by giving a notice (a ***fund selection notice***) to ~~the person's employer~~ an employer of the person, direct the employer to make payments required to be made by the employer on behalf of the person under section 21 to an eligible fund specified in the notice.

(4) A fund selection notice must—

(a) be in a form approved by the Board; and

(b) contain or be accompanied by such information (if any) as may be required by the Board or the employer; and

(c) comply with any other requirements set out in the regulations.

- 5
- (5) A person who gives a valid direction under subsection (3) makes a ***fund selection*** for the purposes of this Act.
- (5a) ~~If a notice given by a person to their employer for the purposes of making a fund selection does not comply with all requirements under this section, the employer may nevertheless accept the notice if satisfied (whether on receipt of the notice or after consultation with the person) that it complies substantially with those requirements, and, in that case—~~
- 10
- (a) ~~the notice will be taken to be a fund selection notice; and~~
- (b) ~~the person will be taken to have given a valid direction under subsection (3).~~
- (6) A person who has made a fund selection ~~in respect of a particular employer~~ may, by giving a further fund selection notice to ~~their~~ that employer, vary the selection so as to select another eligible fund.
- 15
- (7) Only 1 fund may apply ~~[in relation to a person]~~ for a person in respect of a particular employer of the person under this section at any 1 time.
- (8) Transfer of the superannuation interests of a person who has made a fund selection from their selected fund to a successor fund does not, if the successor fund is an eligible fund, affect the person's fund selection.
- 20
- (9) An employer may not charge a fee in connection with the making of a fund selection by a person.
- (10) A person who was, on the commencement of this section, a member of a prescribed scheme (within the meaning of section 21 as in force immediately before the commencement of section 9 of the *Statutes Amendment (Fund Selection and Other Superannuation Matters) Act 2020*) will be taken to have made a fund selection for the purposes of this Act.
- 25
- (11) The regulations may make further provision in relation to procedural and other matters associated with a person's right to make a fund selection under this Division.
- 30

21D—Effect of fund selection

- 35
- (1) If a person makes a fund selection, the liability of the person's employer to make payments on behalf of the person under section 21 will be determined in accordance with that section.

(2) All amounts standing to the credit of accounts maintained by the Board on behalf of a member who has made a fund selection may, at the option of the member, be rolled over to ~~[the member's selected fund]~~ a complying fund (which, in the case of a designated member, must be the eligible fund selected by the member in their capacity as a designated member) unless—

(a) the member is prevented from dealing with their superannuation interests by an instrument in force under the *Family Law Act 1975* of the Commonwealth; or

(b) the member has a liability that arose under this Act ~~[,]; or~~

(c) ~~another employer of the member is required to make contributions to the Treasurer on behalf of the member under section 21.~~

(3) However, the Board may determine to permit a member to roll over amounts standing to the credit of the member's accounts despite the member having a liability that arose under this Act if the Board is satisfied that the liability will be discharged in full.

(4) An amount standing to the credit of a spouse account maintained by the Board on behalf of the spouse of a person who ceases to be a member by virtue of ~~[subsection (2)]~~ section 19(2)(b) must be preserved in accordance with the regulations.

~~[(5)] [If a new member makes a fund selection within 7 days, or such other period as may be prescribed by regulation, after becoming a member of the Triple S scheme—]~~

~~[(a)] [the member's selection takes effect immediately; and]~~

~~[(b)] [the member's employer must, as soon as possible, commence making payments required under section 21 to the selected fund (and is not required to make a payment to the Treasurer); and]~~

~~[(c)] [the member will be taken to have been covered by invalidity and death insurance provided under this Act, to the extent set out in the regulations, from the commencement of their employment until the end of the day on which the first contribution to the selected fund is made by the employer.]~~

~~[(6)] [A new member who does not make a fund selection within the period applying for the purposes of subsection (5) is not entitled to give a direction under section 21C(3) unless they have been a member of the Triple S scheme for—]~~

~~[(a)] [6 months; or]~~

~~[(b)] [if another period is prescribed by regulation for the purposes of this definition— that period.]~~

~~[(7)] [The regulations may prescribe variations to the procedures set out in subsections (5) and (6).]~~

~~[(8)] If an existing member makes a fund selection, the member's employer must (unless the circumstances specified in section 21E(1)(c) apply) commence making contributions required under section 21 to the member's selected fund within 2 months, or such other period as may be prescribed by regulation, following the day on which the fund selection notice is received by the employer.]~~

(5) If a member makes a fund selection, the member's employer must commence making contributions required under section 21 to the member's selected fund within 2 months, or such other period as may be prescribed by regulation, following the day on which the fund selection notice is received by the employer.

(6) The regulations may prescribe variations or additions to the procedure set out in subsection (5) (and any such regulation has effect according to its terms).

(9) An employer may refuse to comply with a direction given under section 21C(3) made by a person within 12 months of the giving of a previous fund selection made by the person (and, in that case, the direction will be taken to have been invalid for the purposes of this Act).

(10) Subsection (9) does not apply in relation to a direction given under section 21F(c).

21E—Employer obligations

(1) Subject to subsection (2), an employer of a person to whom section 21C applies may provide a fund selection notice to the person at any time but must provide the person with a fund selection notice as follows:

(a) in the case of a person who requests the notice from the employer, the notice must be provided to the person not more than 28 days after the request;

(b) in the case of person who ~~is a new member~~ becomes a member of the Triple S scheme after the commencement of this Part, the notice must be provided to the person immediately on the commencement of the person's employment;

(c) if the employer becomes aware that it is ~~not~~ no longer possible to contribute to the person's selected fund ~~[(whether the person is a new member or an existing member)]~~, or that the person's selected fund is ~~not~~ no longer an eligible fund, the notice must be provided to the person not more than 28 days after the employer becomes aware of that fact.

(2) Subsection (1) does not apply in prescribed circumstances.

(3) If a person who makes a fund selection has not previously given a direction under section 21C(3), the person's employer must notify the Board that the direction has been given.

21F—Matters affecting eligibility of funds

If—

- (a) a person has given a direction under section 21C(3); and
- (b) the person's specified fund—
 - (i) ceases to exist; or
 - (ii) ceases to accept contributions under this Part; or
 - (iii) ceases to be an eligible fund; and
- (c) the person does not, within the prescribed period, give their employer a new fund selection notice specifying a different eligible fund,

section 21 applies as if a fund selection had not been made by the person.

~~21G—[Change in employer]~~

~~[(1)] [If—]~~

- ~~[(a)] [a person has given a direction under section 21C(3); and]~~
- ~~[(b)] [the person subsequently commences employment with another employer; and]~~
- ~~[(c)] [the other employer is an employer who is required to make payments on behalf of the person under section 21.]~~

~~[the following provisions apply:]~~

- ~~[(d)] [if employment with the other employer commences within the prescribed period after the person's employment with the first employer ends—the person's direction continues to operate despite the change in employers:]~~
- ~~[(e)] [in any other case—section 21 applies as if a fund selection had not been made by the person.]~~

~~[(2)] [A regulation made for the purposes of subsection (1)(d) may prescribe different periods that apply in respect of different persons or classes of person.]~~

21H—Person may elect to return to Triple S scheme

- (1) A person who has made a fund selection may, by giving a further notice to the person's employer, direct the employer to make payments required to be made by the employer on behalf of the person under section 21 to the Triple S scheme.
- (2) A notice under subsection (1) must—
 - (a) be in a form approved by the Board; and
 - (b) contain or be accompanied by such information (if any) as may be required by the Board or the employer; and

(c) comply with any other requirements set out in the regulations.

(3) If a person gives a direction under subsection (1)—

(a) the person will, if their membership of the Triple S scheme has ceased under ~~section 21D~~section 19(2)(b) but they are eligible to be a member of the scheme, become a member of the scheme; and

(b) the person's employer must commence making contributions required under section 21 to the Treasurer as the designated superannuation authority within 2 months, or such other period as may be prescribed by regulation, following the day on which the notice is received by the employer; and

(c) the notice takes effect on the day the first such contribution is made.

21I—Immunity from liability

No liability attaches to an employer or the Board in connection with any action taken in compliance with a direction under this Division.

21J—Employer to report to Board

(1) An employer of a person who has made a fund selection must report to the Board on matters relating to the fund selection as required by the Board.

(2) A report under subsection (1) must be in the form, and contain the information, determined by the Board.

11—Amendment of section 24—Employer benefits and contributions if person on leave without pay

(1) Section 24—delete "member" first occurring and substitute:

person whose employer is required to pay an amount on behalf of the person under section 21

(2) Section 24—delete "member" second and third occurring and substitute in each case:

person

12—Amendment of section 28—Confidentiality

Section 28(1)(ca)—delete paragraph (ca) and substitute:

(ca) to a person responsible for the administration of a fund—

(i) that is a selected fund for the purposes of a fund selection; or

(ii) to which amounts are to be, or have been, transferred on behalf of a member under Part 3A,

for purposes related to the administration of this Act; or

13—Amendment of section 30—Regulations

Section 30—after subsection (4) insert:

- (4a) However, charges may not be fixed in connection with the making of a fund selection.

14—Amendment of Schedule 1—Transitional provisions

- (1) Schedule 1, clause 12(1)—after "repealed Act" insert:

if the member has not made a fund selection

- (2) Schedule 1, clause 12(3)—after paragraph (b) insert:

and

- (c) if amounts standing to the credit of 1 or more accounts maintained by the Board on behalf of a member have been transferred to another fund under section 21B, the benefits to which the member would, but for subclause (2), be entitled under the regulations are to be determined as if no such transfer had occurred.

Part 3—Amendment of *Superannuation Act 1988*

15—Amendment of section 8—Board's membership

Section 8(2)—after "*Southern State Superannuation Act 2009*" insert:

(other than as chief executive officer of the Board)

16—Insertion of section 9A

After section 9 insert:

9A—Chief executive officer

- (1) The Governor must appoint a person nominated by the Board to be the chief executive officer of the Board.
- (2) The Board may nominate 1 of their number or any other suitable person.
- (3) The chief executive officer will be appointed for a term, not exceeding 5 years, specified in the instrument of appointment and will, at the expiration of the term of appointment, be eligible for reappointment.
- (4) The Governor may remove the chief executive officer from office—
- (a) for misconduct; or
- (b) for failure or incapacity to carry out the duties of their office satisfactorily; or
- (c) without limiting paragraph (b)—for non-compliance by the chief executive officer with a duty imposed by this or any other Act.

- (5) The office of the chief executive officer becomes vacant if they—
- (a) die; or
 - (b) complete a term of office and are not reappointed; or
 - (c) resign by written notice to the Minister; or
 - 5 (d) become bankrupt or apply to take the benefit of a law for the relief of insolvent debtors; or
 - (e) are convicted of an indictable offence or sentenced to imprisonment for an offence; or
 - 10 (f) in the case of a chief executive officer who is also a member of the Board—cease to be a member; or
 - (g) are removed from office under subsection (4).
- (6) The chief executive officer is entitled to be paid such remuneration, allowances and expenses as the Board determines.
- 15 (7) The chief executive officer is an employee of the Board and is responsible to the Board for the day to day conduct of the business of the Board.

17—Amendment of section 10—Staff of Board

- (1) Section 10(1)—after "this" insert:
or any other
- 20 (2) Section 10—after subsection (3) insert:
- (4) A person appointed under subsection (1) may assist in the administration of other superannuation schemes or funds established or administered by the Board, or otherwise assist the Board in the performance or exercise of any other functions or powers.
 - 25 (5) Without limiting subsection (4), a person appointed under subsection (1) may also assist in the administration of other superannuation schemes established for the benefit of members or former members of the Parliament of the State or the South Australian public sector.
 - 30 (6) The Board is declared not to be a national system employer for the purposes of the *Fair Work Act 2009* of the Commonwealth.

18—Amendment of section 21—Reports

- Section 21—after subsection (1) insert:
- 35 (2) A report under subsection (1) must include the prescribed information relating to the remuneration of the chief executive officer of the Board.