

Legislative Council—No 40

As received from the House of Assembly and read a first time, 15 September 2010

South Australia

Statutes Amendment (Members' Benefits) Bill 2010

A BILL FOR

An Act to amend the *Parliamentary Remuneration Act 1990* and the *Parliamentary Superannuation Act 1974*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Parliamentary Remuneration Act 1990*

- 4 Amendment of section 3—Interpretation
- 5 Amendment of section 4B—Salary sacrifice for superannuation purposes
- 6 Insertion of section 5A
 - 5A Involuntary retirement payment

Part 3—Amendment of *Parliamentary Superannuation Act 1974*

- 7 Amendment of section 5—Interpretation
- 8 Amendment of section 7F—Special provisions relating to rollovers for PSS 1 and PSS 2 members
- 9 Insertion of section 7G
 - 7G Special provisions relating to salary sacrifice by members
- 10 Amendment of section 13—The Fund
- 11 Amendment of section 13AB—Rollover accounts
- 12 Insertion of section 13D
 - 13D Co-contribution accounts
- 13 Amendment of section 14B—Contributions by members of PSS 3
- 14 Amendment of section 14C—Government contributions
- 15 Amendment of section 14D—Government contribution accounts
- 16 Amendment of section 21AC—Interpretation
- 17 Amendment of section 23—Pension paid for limited period
- 18 Insertion of section 36
 - 36 Additional invalidity/death insurance

Schedule 1—Transitional provisions

- 1 Member contributions—*Parliamentary Superannuation Act 1974*
 - 2 Increased Government contribution—*Parliamentary Superannuation Act 1974*
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Members' Benefits) Act 2010*.

2—Commencement

- 5 (1) Subject to subsections (2) and (3), this Act will come into operation on the day on which it is assented to by the Governor.
- (2) Section 14(1) and (2) will be taken to have come into operation on 20 March 2010.
- (3) Section 18 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 *Parliamentary Remuneration Act 1990*

5 4—Amendment of section 3—Interpretation

Section 3—after the definition of *Commonwealth basic salary* insert:

non-participating member means a member of either House of Parliament who has made an election under section 7E of the *Parliamentary Superannuation Act 1974*;

10 *PSS 3* means the scheme of superannuation known as PSS 3 under the *Parliamentary Superannuation Act 1974*.

5—Amendment of section 4B—Salary sacrifice for superannuation purposes

(1) Section 4B(1), definitions of *eligible member*, *non-participating member*, *PSS 3* and *PSS 3 member*—delete the definitions

15 (2) Section 4B(2)—delete "An eligible member" and substitute:

A member of Parliament

(3) Section 4B(2)(a) and (b)—delete paragraphs (a) and (b) and substitute:

20 (a) in the case of a non-participating member—to the complying fund that applies in relation to the member under section 7E of the *Parliamentary Superannuation Act 1974*; and

(b) in any other case—to PSS 3,

(4) Section 4B(7)(b)(i) and (ii)—delete subparagraphs (i) and (ii) and substitute:

25 (i) in the case of a non-participating member—to the complying fund that applies in relation to the member under section 7E of the *Parliamentary Superannuation Act 1974*; and

(ii) in any other case—in accordance with section 14C(2) of the *Parliamentary Superannuation Act 1974*.

6—Insertion of section 5A

After section 5 insert:

30 5A—Involuntary retirement payment

(1) An eligible member who retires involuntarily following the commencement of this section is entitled to an involuntary retirement payment equal to 12 weeks of basic salary (which will be taken to be remuneration for the purposes of section 6).

35 (2) A former member will be taken to have retired involuntarily for the purposes of subsection (1) if, and only if, the former member is taken to have retired involuntarily for the purposes of the *Parliamentary Superannuation Act 1974*.

(3) However, a former member who is taken to have retired involuntarily for the purposes of the *Parliamentary Superannuation Act 1974* on the basis that, following the expiration of the member's term of office or his or her resignation, the member sought to be and was elected at an election for the Parliament of another State or the Commonwealth will not be taken to have retired involuntarily for the purposes of subsection (1).

(4) In this section—

eligible member means—

- (a) a PSS 3 member; or
- (b) a non-participating member;

PSS 3 member means a member of PSS 3 under the *Parliamentary Superannuation Act 1974*, other than—

- (a) a person who is only a member of PSS 3 in order to establish—
 - (i) a rollover account under section 7F of that Act; or
 - (ii) a Government contribution account under section 7G of that Act,(or both); or
- (b) a person who is also a member pensioner (within the meaning of that Act).

Part 3—Amendment of *Parliamentary Superannuation Act 1974*

7—Amendment of section 5—Interpretation

Section 5(1)—after the definition of **child benefit** insert:

co-contribution means a payment made to the Board in respect of a person by the Commissioner of Taxation pursuant to the requirements of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* of the Commonwealth;

co-contribution account means an account established and maintained by the Board as a co-contribution account in accordance with the requirements of this Act;

8—Amendment of section 7F—Special provisions relating to rollovers for PSS 1 and PSS 2 members

(1) Section 7F—after subsection (1) insert:

- (1a) If a PSS 1 or PSS 2 member for whom a rollover account has been established is, before the establishment of the account, a member of PSS 3 by virtue of section 7G, the member will, on the establishment of the account for the member, be taken for the purposes of this Act to be a member of PSS 3 by virtue of both this section and section 7G.

(2) Section 7F(2)(b)—after "by virtue" insert:
only

(3) Section 7F(2)(c)—after "by virtue" insert:
only

5 **9—Insertion of section 7G**

After section 7F insert:

7G—Special provisions relating to salary sacrifice by members

- 10 (1) The Board must, on application under this section, permit a PSS 1 or
PSS 2 member who has elected to make a superannuation salary
sacrifice to become a PSS 3 member in order to establish a
Government contribution account for the member under this Act.
- 15 (2) If a PSS 1 or PSS 2 member who has elected to make a
superannuation salary sacrifice is, before making the election, a
member of PSS 3 by virtue of section 7F, the member will be taken
for the purposes of this Act to be a member of PSS 3 by virtue of
both section 7F and this section.
- (3) The following provisions apply in connection with the operation of
subsection (1):
- 20 (a) Part 3 Division 3 and section 14C(1) will not apply to a
PSS 1 or PSS 2 member who is a PSS 3 member by virtue of
this section;
- (b) a PSS 1 or PSS 2 member who is a PSS 3 member by virtue
of this section will not be entitled to either of the following
under Part 4 Division 2A:
- 25 (i) a member-funded component of benefits;
- (ii) an invalidity/death insurance benefit;
- (c) the Governor may, by regulation, make any other provision
as the Governor thinks fit, including by providing that other
provisions of this Act do not apply to a PSS 1 or PSS 2
30 member who is a PSS 3 member by virtue of this section, or
apply to such a member subject to any modifications
prescribed by the regulations.

10—Amendment of section 13—The Fund

35 (1) Section 13(3a)—delete "a distinct part of the Fund under the name *PSS 3—
Government Contributions Division*" and substitute:

-
- (a) a distinct part of the Fund under the name *PSS 3—Government
Contributions Division*; and
- 40 (b) a distinct part of the Fund proportioned to the aggregate balance of
co-contribution accounts.

(2) Section 13(4)(d)—after "under section" insert:

7G and

(3) Section 13(4)—after paragraph (d) insert:

(da) any co-contribution paid to the Board on behalf of a member (but received by the Treasurer on behalf of the Board) (to be paid into the part of the Fund proportioned to the aggregate of co-contribution accounts); and

11—Amendment of section 13AB—Rollover accounts

Section 13AB(1)(a)—after "who has made application under section 7F" insert:

or is a PSS 3 member by virtue of section 7G

12—Insertion of section 13D

After section 13C insert:

13D—Co-contribution accounts

(1) The Board must—

(a) establish a co-contribution account in the name of a member in respect of whom a co-contribution has been paid to the Board; and

(b) credit the account with the amount of any co-contribution paid to the Board in respect of the member.

(2) The Board is to determine the terms and conditions on which the balance of a member's co-contribution account is, subject to subsection (3), payable to—

(a) the member; or

(b) if the member dies before the payment is made—

(i) the member's spouse; or

(ii) if the member does not have a spouse—the member's estate.

(3) A person is entitled to payment of an amount standing to the credit of a co-contribution account only to the extent that the payment can be made in accordance with the SIS Act.

13—Amendment of section 14B—Contributions by members of PSS 3

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

(1) Subject to this Act, a PSS 3 member may elect to make contributions to the Treasurer at a whole number percentage of the combined value of the basic salary and additional salary (if any) payable to the member and such contributions must be deducted by the Treasurer when paying salary to the member.

14—Amendment of section 14C—Government contributions

- (1) Section 14C(1), formula—delete the formula and substitute:

$$A = S \times \frac{15.4}{100}$$

- (2) Section 14C(1), definition of *CP*—delete the definition

- (3) Section 14C(2)—delete subsection (2) and substitute:

- (2) In addition, if a PSS 3 member (including a person who is a member of PSS 3 by virtue of section 7G) has elected to make a superannuation salary sacrifice that applies in relation to a period in respect of which salary is paid to the member, the Treasurer must, within 7 days after payment of that salary to the member, pay into the PSS 3—Government Contributions Division of the Fund the amount so sacrificed.

15—Amendment of section 14D—Government contribution accounts

Section 14D(1)—after "all PSS 3 members" insert:

(including PSS 1 and PSS 2 members who are members of PSS 3 by virtue of section 7G)

16—Amendment of section 21AC—Interpretation

- (1) Section 21AC, definition of *Government-funded component*—after "by virtue" insert:

only

- (2) Section 21AC, definition of *member-funded component*—after "section 7F" insert:

or 7G

17—Amendment of section 23—Pension paid for limited period

- (1) Section 23(1)(b)(ii)—after "spouse" insert:

or an eligible child (or both)

- (2) Section 23(1)(b)(iii)—after "spouse" insert:

or an eligible child (or both)

- (3) Section 23(1)(b)(iv)—after "spouse" insert:

or an eligible child (or both)

- (4) Section 23(1)—after "in accordance with subsection (2)" insert:

or (2a) (as the case requires)

(5) Section 23(2)—after subsection (2) insert:

(2a) However, if a pension was paid to 1 or more eligible children but not to a spouse, the amount referred to in subsection (1) is the amount of the pension or pensions that would have been payable to, or in relation to, the former member during the period referred to in subsection (1)(c) if—

(a) a pension had been payable to a spouse of the former member during that period (in addition to any pension payable to the former member or an eligible child); and

(b) the pension or pensions had not ceased,

reduced by—

(c) the amount of the lump sum, or the aggregate of the lump sums, (if any) paid on commutation of the pension or pensions; and

(d) the amount of the pension or pensions actually paid to, or in relation to, the former member.

18—Insertion of section 36

Before section 36A insert:

36—Additional invalidity/death insurance

(1) A member of Parliament who is a PSS 3 member (other than solely by virtue of section 7F) may elect, in a manner and form determined by the Board, to take out voluntary invalidity/death insurance provided under the *Southern State Superannuation Act 2009*.

(2) Premiums payable in respect of such insurance are to be paid, and credited to the Triple S scheme, in accordance with the regulations.

(3) The regulations may make further provision with respect to the taking out of voluntary invalidity/death insurance in connection with elections under subsection (1).

(4) The provision of voluntary invalidity/death insurance under the *Southern State Superannuation Act 2009* to a member who makes an election under subsection (1) is to be subject to terms and conditions prescribed by regulations made under that Act.

(5) If a member who elects to take out voluntary invalidity/death insurance provided under the *Southern State Superannuation Act 2009* is not a member of the Triple S scheme at the time of making the election—

(a) he or she becomes a member of the Triple S scheme on making the election; but

(b) his or her membership is subject to terms and conditions prescribed by regulations made under the *Southern State Superannuation Act 2009*.

(6) In this section—

Triple S scheme means the Southern State Superannuation Scheme continued in existence by the *Southern State Superannuation Act 2009*.

5 **Schedule 1—Transitional provisions**

1—Member contributions—*Parliamentary Superannuation Act 1974*

(1) If a member of Parliament was, immediately before the commencement of section 13, making contributions to the Treasurer at a rate of 4.5% of salary on the basis of an election made by the member under section 14B(1) or (2) of the *Parliamentary Superannuation Act 1974*—

- (a) the member will be taken to have made an election under section 14B(2) of that Act, on the day of that commencement, to vary the rate of contribution to 4% of salary; and
- (b) the variation will operate on and from the first day of the month following the month in which that commencement occurs.

(2) In this clause—

salary, in relation to a member, means the combined value of the basic and additional salary (if any) payable to the member.

2—Increased Government contribution—*Parliamentary Superannuation Act 1974*

(1) Within 14 days after the relevant day—

- (a) the Treasurer must pay the relevant amount into the PSS 3—Government Contributions Division of the Parliamentary Superannuation Fund; and
- (b) a PSS 3 member's Government contribution account must be credited with an amount equivalent to the component of the relevant amount attributable to the salary paid to the member in the relevant period.

(2) No interest is to be taken to have accrued in relation to an amount referred to in subclause (1) before the day on which the relevant amount is paid into the PSS 3—Government Contributions Division of the Parliamentary Superannuation Fund.

(3) For the purposes of determining the amount payable by the Treasurer under the *Parliamentary Superannuation Act 1974* in respect of a prescribed PSS 3 member following the election for the Parliament of this State that took place on 20 March 2010, section 14C of the *Parliamentary Superannuation Act 1974* is to be taken to have operated as if it had not been amended by section 14(1) and (2) of this Act.

(4) In this clause—

prescribed PSS 3 member means a PSS 3 member who sought to be, but was not, elected at the election for the Parliament of this State that took place on 20 March 2010;

PSS 3 means the scheme of superannuation known as PSS 3 under the *Parliamentary Superannuation Act 1974*;

PSS 3 member means a member of PSS 3 under the *Parliamentary Superannuation Act 1974*, other than a person who is only a member of PSS 3 in order to establish—

- (a) a rollover account under section 7F of that Act; or
- (b) a Government contribution account under section 7G of that Act,

5 (or both);

relevant amount means the amount of the difference between—

- 10 (a) the amount paid by the Treasurer into the PSS 3—Government Contributions Division of the Parliamentary Superannuation Fund under section 14C of the *Parliamentary Superannuation Act 1974* in respect of the relevant period before the relevant day; and
- 15 (b) the total amount payable by the Treasurer into the PSS 3—Government Contributions Division of the Parliamentary Superannuation Fund under section 14C of the *Parliamentary Superannuation Act 1974* in respect of the relevant period as a consequence of the amendments to that section made by section 14(1) and (2) of this Act;

relevant day means the last day of the month in which this Act is assented to by the Governor;

relevant period means the period commencing on 20 March 2010 and ending on the relevant day;

20 **salary** means basic salary and additional salary (if any) (within the meaning of the *Parliamentary Superannuation Act 1974*).