

SOUTH AUSTRALIA

PARLIAMENTARY SUPERANNUATION ACT, 1974

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 September 1986.

The Commissioner of Statute Revision is authorized by the Acts Republication Act, 1967, to make textual alterations of various kinds to an Act in preparing it for reprint. These alterations do not affect the substantive law; they are designed to bring the form and language of the Act into conformity with contemporary standards of good drafting (so far as that object can be achieved without risk of semantic change).

A report has been prepared containing a comprehensive list of the textual alterations made under the Acts Republication Act, 1967, in the preparation of this reprint. Copies of the report are available, on request, from the office of the Commissioner of Statute Revision, 11th Floor, S.G.I.C. Building, Victoria Square, Adelaide.

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SECOND SCHEDULE

PARLIAMENTARY SUPERANNUATION ACT, 1974

being

Parliamentary Superannuation Act, 1974, No. 15 of 1974 [Assented to 4 April 1974]¹

as amended by

Parliamentary Superannuation Act Amendment Act, 1974, No. 79 of 1974 [Assented to 31 October 1974];
Parliamentary Superannuation Act Amendment Act, 1978, No. 7 of 1978 [Assented to 9 March 1978]²;
Parliamentary Superannuation Act Amendment Act, (No. 2), 1978, No. 112 of 1978 [Assented to 7 December 1978]³;
Parliamentary Superannuation Act Amendment Act, 1981, No. 4 of 1981 [Assented to 26 February 1981]⁴;
Parliamentary Superannuation Act Amendment Act, 1982, No. 18 of 1982 [Assented to 11 March 1982]⁵;
Parliamentary Superannuation Act Amendment Act, 1985, No. 105 of 1985 [Assented to 7 November 1985]⁶;

and

Statute Law Revision Act, 1986, No. 14 of 1986 [Assented to 20 March 1986]⁷.

An Act to provide for the payment of superannuation benefits to persons who have served as members of Parliament; and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

1. This Act may be cited as the "Parliamentary Superannuation Act, 1974". Short title.

2. This Act shall come into operation on a day to be fixed by proclamation¹. Commencement.

* * * * * S. 3 repealed by 14, 1986, s. 3 (1) (6th Sched.).

* * * * * S. 4 repealed by 14, 1986, s. 3 (1) (6th Sched.).

5. (1) In this Act, unless the contrary intention appears— Interpretation.

¹ Came into operation 4 April 1974: *Gaz.* 4 April 1974, p. 1132.

² Came into operation 1 June 1978: *Gaz.* 1 June 1978, p. 1878.

³ Came into operation 21 December 1978: *Gaz.* 21 December 1978, p. 2307.

⁴ S. 7 came into operation 21 December 1978: (s. 2 (2)); remainder of Act came into operation 21 October 1982: *Gaz.* 21 October 1982, p. 1162.

⁵ Came into operation 21 October 1982: *Gaz.* 21 October 1982, p. 1160.

⁶ S. 10 (c) and (d) came into operation 1 July 1979: (s. 2 (3)); remainder of Act came into operation 21 November 1985: *Gaz.* 21 November 1985, p. 1542.

⁷ Came into operation (except Third, Fourth and Sixth Schedules) 31 July 1986: *Gaz.* 17 July 1986, p. 269; Sixth Schedule came into operation 1 September 1986: *Gaz.* 7 August 1986, p. 474.

Def. substituted
by 18, 1982,
s. 3 (a); 14, 1986,
s. 3 (1) (6th
Sched.).

“additional salary” means the amount by which the salary of a member who holds Ministerial or other Parliamentary office exceeds the basic salary of a member, and includes any remuneration declared by proclamation to be additional salary for the purposes of this Act:

Def. inserted by
14, 1986, s. 3 (1)
(6th Sched.).

“basic salary” of a member means—

- (a) where the member holds no Ministerial or Parliamentary office—the salary to which the member is entitled under the Remuneration Act, 1985;
- (b) where the member holds a Ministerial or Parliamentary office—the salary to which the member would be entitled under the Remuneration Act, 1985, if the member held no such office:

“child benefit” means child benefit payable pursuant to Division II of Part V:

“contribution” means any contribution paid by a member to the Fund pursuant to the repealed Act or this Act:

“determination day”, in relation to a pension payable to—

- (a) a former member, means the day on which that pension first became payable;
- (b) the spouse of a deceased member, means the day on which that pension first became payable;
- (c) the spouse of a member pensioner, means the day on which the pension of that member pensioner first became payable,

whether, in any case, that day occurred before, on or after the commencement of this Act:

“eligible child” means the child or adopted child—

- (a) of a deceased member or deceased member pensioner;
- or
- (b) of the spouse of a deceased member or deceased member pensioner, not being a child—
 - (i) born of a pregnancy that commenced after the death of the member or pensioner;
 - or
 - (ii) adopted after the death of the member or pensioner;

who—

- (c) has not attained the age of 16 years;
- or
- (d) having attained that age, has not attained the age of 25 years and is in full time attendance at an educational institution recognized by the Trustees for the purposes of this Act:

“the Fund” means the Parliamentary Superannuation Fund continued in existence by this Act:

“member” means a member of either House of Parliament of the State, and includes a person who, having ceased to be such a member, is still in receipt of salary:

“member pensioner” means a former member who is entitled to a pension under this Act notwithstanding that, at the material time, payment of that pension may be suspended:

“notional pension”—

(a) in relation to a deceased member, means the amount of pension that would have been payable to that deceased member on the day in relation to which the expression is used if—

(i) on the day that he died, he had retired in the circumstances referred to in section 18;

and

(ii) he had been alive and in receipt of a pension on the day in relation to which the expression is used;

and

(b) in relation to a deceased member pensioner, means the amount of pension that would have been payable to that pensioner if he had been alive and in receipt of pension on the day in relation to which the expression is used:

“pension day”, in relation to a pension, means the day on which a periodical payment of that pension is usually made:

“prescribed office” means an office or position in respect of which additional salary is payable:

Def. inserted by 112, 1978, s. 3.

“the repealed Act” means the Parliamentary Superannuation Act, 1948:

Def. amended by 14, 1986, s. 3 (1) (6th Sched.).

“salary” means basic salary (expressed as an annual salary):

Def. amended by 18, 1982, s. 3 (b); substituted by 14, 1986, s. 3 (1) (6th Sched.).

“service”, in relation to a member, means the member’s service as determined by the rules set out in section 7:

“spouse”—

(a) in relation to a member, means a person who is lawfully married to that member;

and

(b) in relation to a member pensioner, means a person who is lawfully married to that pensioner and was so married to that pensioner when that pensioner was a member:

“spouse pension” means—

(a) a pension payable to the widow or widower of a member or former member under the repealed Act that was so

payable immediately before the commencement of this Act;

or

(b) a pension payable to the spouse of a deceased member or deceased member pensioner and first payable on or after the commencement of this Act:

“the Trustees” means the Trustees for the time being of the Fund.

(2) The Governor may, by proclamation, declare any remuneration payable to a member to be additional salary for the purposes of this Act and the Governor may, by proclamation, amend, vary or revoke any such declaration.

Voluntary and involuntary retirement.
Subsec. (1) substituted by 4, 1981, s. 3 (a).

6. (1) For the purposes of this Act, a former member shall be deemed to have retired involuntarily if his term of office expires or he resigns and a judge is satisfied that, upon so ceasing to be a member—

(a) he genuinely sought to be elected at an election for the Parliament of this State (whether or not for the same electorate or the same House), another State, the Northern Territory or the Commonwealth (being an election not later than the next general election for that Parliament occurring after he ceased to be a member) but—

(i) having stood as a candidate, was defeated;

or

(ii) failed to be a candidate due to—

(A) his failure to secure the support of a political party from which he reasonably sought support;

(B) his expulsion from a political party;

(C) ill health;

or

(D) any other good and sufficient reason;

or

(b) he sought to be and was elected at an election for the Parliament of another State, the Northern Territory or the Commonwealth (being an election not later than the next general election for that Parliament occurring after he ceased to be a member).

Subsec. (2) repealed by 4, 1981, s. 3 (a).

* * * * *

(3) Where a member ceases to be a member otherwise than—

(a) by death;

(b) by retirement in circumstances specified in section 18;

or

(c) in circumstances referred to in subsection (1),

Para. (c) amended by 4, 1981, s. 3 (b).

that member shall, for the purposes of this Act, be deemed to have retired voluntarily.

(4) In this section—

“judge” means a judge of the Supreme Court nominated by the Governor to deal with matters arising under this section.

Def. amended by 14, 1986, s. 3 (1) (6th Sched.).

7. In computing the length of a member’s service the following rules shall be observed:

Computation of service.

- (a) if a member is elected to Parliament between the 28th day of February and the 1st day of August in any year, except in the case of such a member elected to fill a casual vacancy, his service shall be reckoned from the 1st day of March of that year;
- (b) if a member ceases to be a member of Parliament by reason of a dissolution taking place within 2 months before the expiration of the House of Assembly by effluxion of time, his service shall be deemed to continue until the day on which the House of Assembly would have so expired;
- (c) service whether occurring before or after the commencement of this Act shall be taken into account;
- (d) where the continuity of a member’s service has been broken, the former period of service (and any service by the member in a prescribed office during that former period) shall not be taken into account unless by virtue of section 20 or 36 that former period of service is to be counted as service for the purposes of this Act;

Para. (d) substituted by 112, 1978, s. 4 (a).

and

- (e) subject to this section and section 36, only the actual service of a member shall be regarded as service.

Para. (e) substituted by 112, 1978, s. 4 (b).

PART II

ADMINISTRATION

DIVISION I—THE FUND

8. (1) The Parliamentary Superannuation Fund shall continue in existence.

Continuation of the Fund.

(2) The Fund shall continue to consist of—

Subsec. (1) substituted by 14, 1986, s. 3 (1) (6th Sched.).

- (a) contributions paid by members pursuant to the repealed Act or this Act;
- (b) money paid into the Fund by the Treasurer pursuant to the repealed Act or this Act;

and

- (c) all interest and other income earned by the investment of the Fund or any part of it.

(3) For the purposes of the Fund, the Trustees may borrow money from the Treasurer and, with the consent of the Treasurer, from any person.

(4) Any liability incurred with the consent of the Treasurer referred to in subsection (3) is guaranteed by the Treasurer.

(5) Any liability incurred by the Treasurer under a guarantee arising by virtue of subsection (4) shall be satisfied out of the General Revenue of the State which is, to the necessary extent, appropriated accordingly.

(6) The Fund is vested in and shall be managed by the Trustees.

Officers to assist
Trustees.
S. 9 amended
by 14, 1986,
s. 3 (1) (6th
Sched.).

9. The Treasurer may make available to the Trustees the services of any person employed in the Public Service, for the purposes of assisting the Trustees in the exercise of their powers and functions under this Act.

Investment of the
Fund.

10. The Trustees may invest the Fund, or any part of it, in such investments as the Trustees think proper.

Accounts and
audit.

11. (1) The Trustees shall keep complete and proper accounts in relation to their financial transactions.

Subsec. (2)
substituted by
105, 1985, s. 3.

(2) The Auditor-General may at any time, and shall at least once in every year, audit the accounts kept by the Trustees pursuant to subsection (1).

Report.
S. 11a inserted by
105, 1985, s. 4.

11a. (1) The Trustees shall on or before the 30th day of September in each year, deliver to the Treasurer a report upon the administration of this Act during the period of 12 months that ended on the preceding 30th day of June.

(2) The report must incorporate the audited accounts kept by the Trustees in relation to the relevant period and any comments made by the Auditor-General in relation to the accounts that the Auditor-General has requested be included in the report.

(3) The Treasurer shall cause a copy of the report to be laid before each House of Parliament.

Exemption from
State tax.

12. The income of the Fund shall not be subject to any tax imposed by a law of the State.

DIVISION II—THE TRUSTEES

Continuation of
body corporate.
Subsec. (1)
repealed by 14,
1986, s. 3 (1) (6th
Sched.).

13. (1) * * * * *

Subsec. (2)
amended by 14,
1986, s. 3 (1) (6th
Sched.).

(2) The persons for the time being holding the offices of President of the Legislative Council, Speaker of the House of Assembly and Under Treasurer shall continue to be the Trustees of the Fund.

Subsec. (3)
substituted by 14,
1986, s. 3 (1) (6th
Sched.).

(3) The Trustees shall continue to be a body corporate—

(a) entitled "The Trustees of the Parliamentary Superannuation Fund";

(b) with perpetual succession and a common seal;

and

(c) with power to acquire and hold property of all kinds for the purposes of this Act.

(4) If the President of the Legislative Council or the Speaker of the House of Assembly ceases to be a member by reason of the expiration of

his term of office as a member, he shall, subject to subsection (5), continue to be a Trustee until his successor is appointed.

(5) Notwithstanding anything in subsection (4), where the President of the Legislative Council or the Speaker of the House of Assembly is not re-elected as a member, he may resign his office as Trustee.

(6) If at any time a vacancy occurs in the office of Trustee, the Governor may appoint a temporary Trustee to hold office as Trustee until the vacancy is filled by the person designated by this section to hold office.

(7) Meetings of the Trustees shall be conducted in accordance with such procedure as the Trustees determine and a decision concurred in by not less than 2 Trustees shall be binding on the Trustees.

PART III

CONTRIBUTIONS

14. (1) Every member shall contribute to the Fund.

Contributions by members.

(2) Every member (not being a member who is in receipt of additional salary) shall contribute to the Fund at the rate of 11.5 per cent of his salary.

Subsec. (2) substituted by 112, 1978, s. 5 (a).

(3) Every member who is in receipt of additional salary shall contribute to the Fund at the rate of 11.5 per cent of the aggregate of his salary and additional salary.

Subsec. (3) substituted by 112, 1978, s. 5 (a).

(4) The contributions payable under this section shall be deducted by the Treasurer in instalments from every amount of salary or additional salary payable to the member, and the amounts so deducted shall be paid by the Treasurer into the Fund.

* * * * *

Subsecs. (5) and (6) inserted by 112, 1978, s. 5 (b); repealed by 14, 1986, s. 3 (1) (6th Sched.).

* * * * *

S. 14a inserted by 79, 1974, s. 2; amended by 7, 1978, s. 3; repealed by 112, 1978, s. 6.

15. The Treasurer shall also pay into the Fund—

Contributions by Treasurer.

(a) not later than 14 days after the end of each month, a sum equal to the contributions paid or payable during that month pursuant to section 14;

and

(b) not later than 3 months after the end of each financial year, such additional sums as the Public Actuary considers to be necessary in order to make provision for payment out of the Fund of benefits payable under this Act.

PART IV

PENSION AND BENEFITS FOR FORMER MEMBERS

DIVISION I—ENTITLEMENT TO PENSION

Entitlement to a pension on retirement.
Para. (a) substituted by 79, 1974, s. 3 (a).

16. A former member who—

(a) has retired involuntarily, having had not less than 6 years service;

(b) has retired voluntarily—

(i) having had not less than 15 years service;

or

(ii) having been a member of not less than 5 Parliaments and having had not less than 13 years service;

or

Para. (c) substituted by 79, 1974, s. 3 (b).

(c) having attained the age of 60 years, has retired voluntarily having had not less than 6 years service,

shall, on and from the day next succeeding the day on which he retired, be entitled to a pension for life in an amount calculated by reference to section 17.

Amount of pension on retirement.
Subsec. (1) amended by 79, 1974, s. 4 (a), (b); 112, 1978, s. 7 (a); 14, 1986, s. 3 (1) (6th Sched.).

17. (1) Subject to this section, the amount of annual pension payable to a former member referred to in section 16 shall be an amount equal to 41.2 per cent of the salary payable to him immediately before he ceased to be a member plus 0.2 per cent of that salary for each whole month of the member's service after 6 years service but the annual pension shall not, in any case, exceed 75 per cent of that salary.

Subsec. (2) substituted by 112, 1978, s. 7 (b); amended by 18, 1982, s. 4 (a).

(2) Where a former member was in receipt of additional salary at any time during his service, the amount of the annual pension payable to that former member shall be determined by reference to the following formula:

$$P = \frac{(BP - X) HS}{BS} + X$$

where—

P is the annual pension payable to the former member;

BP is the annual pension that would, apart from this subsection, be payable to the former member;

X is an amount arrived at by subtracting from BP the amount of the annual pension that would, apart from this subsection, be payable to the former member if the reference to 6 years service in subsection (1) were a reference to 8 years service;

HS is the sum of BS and the amount arrived at by calculating the total amount that would have been payable to the former member by way of additional salary—

(a) upon the assumption that the rates of additional salary applicable on the date of his retirement had applied during the whole of his period of service;

and

- (b) where he held prescribed offices during his period of service for a total period of more than 6 years—by taking into account only periods of his service for which he held prescribed office that equal in aggregate 6 years, those periods that would have been the most remunerative for him in terms of additional salary at the rates referred to in paragraph (a) being first taken into account and (if necessary) those periods that would have been the next most remunerative for him in terms of additional salary at those rates being next taken into account and so on until the periods equal in aggregate 6 years;

BS is an amount equal to 6 times the salary applicable to the member on the date of his retirement.

(2a) For the purposes of subsection (2)—

- (a) if a member did not elect to make contributions to the Fund in respect of the additional salary paid for a period of service in a prescribed office commencing after the commencement of this Act and concluding on or before the commencement of the Parliamentary Superannuation Act Amendment Act (No. 2), 1978, that period of service shall not be regarded as a period of service in a prescribed office;
- (b) if a member held a prescribed office during the member's period of service and the prescribed office does not exist on the date of the member's retirement, the rate of additional salary applicable to that office on that date shall be deemed to be a rate of salary determined by the Public Actuary having regard to the rate of additional salary last applicable to that office before the date of retirement of the member and the movements (if any) in salaries and additional salaries up to the date of retirement of the member;
- (c) if—
- (i) a member held a prescribed office during the member's period of service;
 - (ii) the additional salary payable in respect of that prescribed office is, in comparison with the additional salaries payable in respect of other prescribed offices, proportionately less on the date of the member's retirement than it was at any time at which the member actually held that office;
 - (iii) the Trustees are of the opinion that a determination under this paragraph is necessary in order to avoid substantial injustice,

Subsec. (2a)
inserted by 112,
1978, s. 7 (b);
substituted by
105, 1985, s. 5.

the rate of additional salary applicable to that office on the date of the member's retirement shall be deemed to be the rate of salary determined by the Public Actuary on the assumption that the additional salary in question had not been reduced in comparison to additional salaries payable in respect of other prescribed offices.

Subsec. (2b)
inserted by 18,
1982, s. 4 (b);
repealed by 105,
1985, s. 5.

* * * * *

Subsec. (3)
inserted by 79,
1974, s. 4 (c).

(3) Where a member who is entitled to a pension on his voluntary retirement retires at any time after—

(a) the day on which he first becomes so entitled;

or

(b) the day on which a determination made pursuant to the Parliamentary Salaries and Allowances Act, 1966, in relation to his salary, last took effect,

whichever is the later, and at any time after that day and before the day on which he actually retires the amount of pension under this Act is adjusted pursuant to section 35, the amount of pension that shall be payable to that member shall be the greater of—

(c) the amount of pension that would have been payable to him on the day he actually retired if he had retired on the day immediately following the later of the days mentioned in paragraphs (a) and (b);

or

(d) the amount of pension that would have been payable to him had this subsection not been enacted.

Subsec. (4)
inserted by 79,
1974, s. 4 (c).

(4) Where a member who is entitled to a pension on his involuntary retirement retires involuntarily at any time after—

(a) the day on which he first became so entitled;

or

(b) the day on which a determination made pursuant to the Parliamentary Salaries and Allowances Act, 1966, in relation to his salary, last took effect,

whichever is the later and at any time after that day and before the day on which he actually retires the amount of pension under this Act is adjusted pursuant to section 35, the amount of pension that shall be payable to that member shall be the greater of—

(c) the amount of pension that would have been payable to him on the day he actually retired involuntarily if he had retired involuntarily on the day immediately following the later of the days mentioned in paragraphs (a) and (b);

or

(d) the amount of pension that would have been payable to him had this subsection not been enacted.

Invalidity
retirement and
amount of
pension.

18. (1) Where a member satisfies a judge that he is unable to continue as a member on the grounds of invalidity, that member shall, on and from the day next succeeding the day on which he so satisfies that judge, be entitled to an annual pension for life ascertained by reference to subsection (2).

(2) The amount of annual pension referred to in subsection (1) shall be—

- (a) in the case of a member who had less than 6 years service, the amount of annual pension that he would have received ascertained by reference to section 17 if, on the day on which he so satisfied the judge, he had retired involuntarily having, on that day, attained 6 years service;

Para. (a) amended by 112, 1978, s. 8.

or

- (b) in any other case, the amount of annual pension ascertained by reference to section 17 that he would have received if, on the day on which he so satisfied the judge, he had retired involuntarily.

- (3) In this section—

“judge” means a judge of the Supreme Court nominated by the Governor to deal with matters arising under this section.

Def. amended by 14, 1986, s. 3 (1) (6th Sched.).

19. (1) Where a member pensioner occupies a prescribed office or position, the pension payable to the member pensioner pursuant to this Act shall be reduced by the amount of the salary, or other remuneration, paid in respect of that office or position.

Reduction of pension in certain circumstances. S. 19 amended by 7, 1978, s. 4; 4, 1981, s. 4; substituted by 105, 1985, s. 6.

(2) Where a member pensioner, or the member pensioner's spouse or child or another person, becomes entitled to superannuation or a retirement allowance by virtue of the member pensioner having held or occupied a prescribed office or position, any pension or child benefit payable under this Act to the member pensioner, the member pensioner's spouse or child or that other person shall be reduced by the prescribed amount.

- (3) For the purposes of subsection (2), the prescribed amount is—

- (a) where the whole of the superannuation or retirement allowance referred to in that subsection is paid to the member pensioner, the member pensioner's spouse or child or another person by way of a pension and no part of it has been paid by way of a lump sum—the pension so paid;
- (b) where, as the result of an election made by the member pensioner, the member pensioner's spouse or child or that other person, the whole or a part of that superannuation or retirement allowance is paid as a lump sum—the amount of the pension that would have been payable in respect of that superannuation or retirement allowance if that election had not been made;
- (c) where, without an election being made, the whole or a part of that superannuation or retirement allowance is paid as a lump sum—the amount determined in accordance with the following formula:

$$PA = P + \frac{LS}{10}$$

where—

PA is the prescribed amount expressed as an annual pension;

P is that part (if any) (expressed as an annual pension) of the superannuation or retirement allowance that is paid as a pension;

LS is the lump sum that was paid in total or partial satisfaction of the entitlement of the member pensioner (or of the member pensioner's spouse or child or another person) to the superannuation or retirement allowance.

(4) Where a pension or child benefit is reduced pursuant to this section, the person entitled (or who would have been entitled but for the reduction) or, where 2 or more persons are so entitled, all of those persons acting together, may by notice in writing to the Trustees require the Trustees to pay to that person, or to those persons, out of the Fund an amount ascertained by reference to the following formula:

$$A = [TC (1 + .03 [N - 1])] - P$$

where—

A is the amount expressed in dollars and cents;

TC is the total contributions expressed in dollars and cents paid to the Fund by the member pensioner under this Act or under the repealed Act other than any such contributions that have been refunded to the member pensioner and have not been repaid;

N is one or the number of whole years of service of the member pensioner whichever is the greater;

P is the total of all pensions and benefits (if any) received by the member pensioner, his spouse or an eligible child in respect of the member pensioner under this Act and under the repealed Act,

and upon payment of that amount no further pension or benefit shall be paid to, or in respect of, the member pensioner.

(5) A notice referred to in subsection (4) may be given on behalf of a child who is under the age of 18 years by the child's parent or guardian.

(6) A payment under subsection (4) shall—

(a) if made to a spouse and a child or children—be divided between them as to $\frac{3}{4}$ to the spouse and as to $\frac{1}{4}$ to the child or children;

(b) if made only to children—be divided equally between them.

(7) In this section—

“prescribed office or position” means an office or position established under the law of this State, the Commonwealth, another State of the Commonwealth or a Territory of the Commonwealth which has been declared by regulation to be a prescribed office or position for the purposes of this section.

Cessation of pension.

20. (1) If a member pensioner again becomes a member of either House of Parliament, the pension payable to that pensioner shall cease and determine.

(2) The previous service of a member whose pension has ceased and determined pursuant to subsection (1) shall be counted as service for the purposes of this Act.

DIVISION II—COMMUTATION OF PENSION

21. (1) Subject to this Division, a former member who is entitled to a pension under this Act may, by notice in writing to the Trustees, elect to commute a percentage of that pension, not exceeding the maximum percentage of that pension ascertained by reference to the second schedule.

Commutation of pension.
Subsec. (1) amended by 79, 1974, s. 5; 105, 1985, s. 7 (a).

(1a) A member pensioner who is deemed by this Act to have retired involuntarily by virtue of seeking and obtaining election to the Parliament of another State, the Northern Territory or the Commonwealth may not commute a pension under subsection (1) unless, on ceasing to be a member of that Parliament, the member pensioner is not entitled to superannuation or a retirement allowance by virtue of having been a member of that Parliament.

Subsec. (1a) inserted by 105, 1985, s. 7 (b).

(1b) A member pensioner who—

(a) is deemed by this Act to have retired involuntarily by virtue of seeking and obtaining election to the Parliament of another State, the Northern Territory or the Commonwealth;

Subsec. (1b) inserted by 105, 1985, s. 7 (b).

and

(b) has, on ceasing to be a member of that Parliament, become entitled to superannuation or a retirement allowance no part of which is attributable to his or her years of service as a member of the Parliament of this State,

is entitled to payment from the Fund of an amount equal to the amount that the member pensioner would have been entitled to receive by way of commutation if the member pensioner had been entitled to commute a pension under subsection (1a).

(1c) A member pensioner who wishes to commute a percentage of the pension or to apply to the Trustees for a payment from the Fund under subsection (1b) must do so within 3 months after first becoming so entitled.

Subsec. (1c) inserted by 105, 1985, s. 7 (b).

(2) Where a member pensioner elects to commute a percentage of his pension pursuant to this section, the Trustees shall, out of the Fund, pay to the member pensioner an amount equal to \$10 for each \$1 of annual pension so commuted.

Subsec. (2) amended by 105, 1985, s. 7 (c).

(3) On payment of an amount pursuant to subsection (1b), any pension payable under this Act to the member pensioner shall be reduced as though the amount paid under subsection (1b) had been made by way of commutation of the pension.

Subsec. (3) substituted by 105, 1985, s. 7 (d).

21a. In the application of section 21 to a member pensioner who has had not less than 20 years service, the second schedule shall apply and have effect as if for the expressions “30%”, “34%” and “38%” there were substituted, in each case, the expression “40%”.

Application of section 21 to certain member pensioners.
S. 21a inserted by 79, 1974, s. 6; amended by 4, 1981, s. 5.

DIVISION III—OTHER BENEFITS

22. Where a member ceases to be a member and no pension or other benefit under this Act is payable to, or in relation to, that former member, then there shall be payable from the Fund to that former member, or, as the case requires, to the legal personal representative of that former member, a sum calculated by reference to the following formula:

Benefit where no pension available.
S. 22 amended by 4, 1981, s. 6.

$$A = TC [1 + .03 (N - 1)]$$

where—

A is the amount expressed in dollars and cents;

TC is the total contributions expressed in dollars and cents paid to the Fund by the former member under this Act or under the repealed Act other than any such contributions that have been refunded to the former member and have not been repaid;

N is 1 or the number of whole years of service of the former member, whichever is the greater.

Provision where contributions exceed benefits. S. 23 amended by 14, 1986, s. 3 (1) (6th Sched.).

23. Where a member or former member is dead and the Trustees are satisfied that no pension or benefit is payable, or no further pension or benefit is payable, to any spouse or person who is, or may become, an eligible child in relation to that member or former member and the total contributions paid by that member or former member under this Act and under the repealed Act exceed the total benefits paid in relation to that member or former member, then there shall be payable out of the Fund to the legal personal representative of that deceased member or former member the amount by which those contributions exceed those benefits.

PART V

PENSION FOR SPOUSE AND CHILD BENEFIT

DIVISION I—PENSION FOR SPOUSE

Pension for spouse of deceased pensioner. Subsec. (1) amended by 14, 1986, s. 3 (1) (6th Sched.).

24. (1) Where a member pensioner dies, there shall be payable to the spouse of that former member pensioner—

(a) an annual pension equal to 75 per cent of the notional pension of that pensioner on the day that he died;

or

(b) an annual pension equal to the prescribed amount,

whichever is the greater.

Subsec. (2) amended by 4, 1981, s. 7 (a), (b).

(2) In this section—

“prescribed amount” means—

Para. (a) amended by 112, 1978, s. 9 (a).

(a) where the member pensioner had commuted a percentage of his pension, an amount ascertained by reference to the following formula:

$$A = \frac{(100 - P) \times S}{100}$$

where—

A is the amount expressed in dollars and cents;

P is the percentage of the pension so commuted;

S is 40 per cent of the relevant amount multiplied by the appropriate factor;

Para. (b) amended by 112, 1978, s. 9 (b).

(b) where the member pensioner had not commuted a percentage of his pension, an amount equal to 40 per cent

of the relevant amount multiplied by the appropriate factor;

or

- (c) where the amount determined under paragraph (a) or (b) exceeds the notional pension of the member pensioner on the day that he died, the amount of that notional pension.

Para. (c) inserted by 4, 1981, s. 7 (b).

(3) In this section—

“the appropriate factor” means a factor arrived at by dividing the amount of the notional pension of the member pensioner on the day of his death by the amount of the pension to which he was entitled when he became a member pensioner, or, where he commuted a percentage of his pension, by the amount of the pension to which he was entitled immediately after he commuted that percentage:

Subsec. (3) inserted by 112, 1978, s. 9 (c); amended by 105, 1985, s. 8 (a), (b). Def. amended by 18, 1982, s. 5 (a); 105, 1985, s. 8 (b).

“the relevant amount” means—

- (a) in relation to a member pensioner who was not in receipt of additional salary at any time during his service—the annual salary of the member pensioner immediately before he became a member pensioner;

Para. (a) amended by 105, 1985, s. 8 (a), (b).

or

- (b) in relation to a member pensioner who was in receipt of additional salary at any time during his service—the sum of the annual salary of the member pensioner immediately before he became a member pensioner and $\frac{1}{6}$ of the amount arrived at by calculating the total amount that would have been payable to the member pensioner by way of additional salary—

Para. (b) substituted by 18, 1982, s. 5 (b); amended by 105, 1985, s. 8 (a).

- (i) upon the assumption that the rates of additional salary applicable immediately before he became a member pensioner had applied during the whole of his period of service;

Subpara. (i) amended by 105, 1985, s. 8 (b).

and

- (ii) where he held prescribed offices during his period of service for a total period of more than 6 years—by taking into account only periods of his service for which he held prescribed office that equal in aggregate 6 years, those periods that would have been the most remunerative for him in terms of additional salary at the rates referred to in subparagraph (i) being first taken into account and (if necessary) those periods that would have been the next most remunerative for him in terms of additional salary at those rates being next taken into account and so on until the periods equal in aggregate 6 years.

(4) For the purposes of subsection (3)—

- (a) if a member pensioner had not elected to make contributions to the Fund in respect of the additional salary paid for a period

Subsec. (4) inserted by 112, 1978, s. 9 (c); substituted by 105, 1985, s. 8 (c).

of service in a prescribed office commencing after the commencement of this Act and concluding on or before the commencement of the Parliamentary Superannuation Act Amendment Act (No. 2), 1978, that period of service shall not be regarded as a period of service in a prescribed office;

(b) if a member pensioner held a prescribed office during the member pensioner's period of service and the prescribed office did not exist immediately before the member pensioner became a member pensioner, the rate of additional salary applicable to that office immediately before the member pensioner became a member pensioner shall be deemed to be a rate of salary determined by the Public Actuary having regard to the rate of additional salary last applicable to that office before the member pensioner became a member pensioner and the movements (if any) in salaries and additional salaries up to the date on which the member pensioner became a member pensioner;

(c) if—

(i) a member pensioner held a prescribed office during the member pensioner's period of service;

(ii) the additional salary payable in respect of that prescribed office was, in comparison with the additional salaries payable in respect of other prescribed offices, proportionately less, immediately before the member pensioner became a member pensioner, than it was at any time at which the member pensioner actually held that office;

and

(iii) the Trustees are of the opinion that a determination under this paragraph is necessary in order to avoid substantial injustice,

the rate of additional salary applicable to that office immediately before the member pensioner became a member pensioner shall be deemed to be the rate of salary determined by the Public Actuary on the assumption that the additional salary in question had not been reduced in comparison to additional salaries payable in respect of other prescribed offices.

Subsec. (5)
inserted by 18,
1982, s. 5 (c);
repealed by 105,
1985, s. 8 (c).

* * * * *

Pension for
spouse of
deceased member.
S. 25 redesignated
s. 25 (1) by 112,
1978, s. 10 (b);
amended by 14,
1986, s. 3 (1) (6th
Sched.).

25. (1) Where a member dies, there shall be payable to the spouse of that member—

Para. (a) amended
by 4, 1981, s. 8
(a).

(a) an annual pension equal to 75 per cent of the pension that would have been payable to the former member if, on the day that he died, he had retired in the circumstances referred to in section 18;

or

(b) an annual pension equal to 40 per cent of the relevant amount, whichever is the greater.

Para. (b) amended by 112, 1978, s. 10 (a).

(2) In this section—

Subsec. (2) inserted by 112, 1978, s. 10 (b).

“the relevant amount” has the same meaning as in section 24.

(3) For the purposes of this section, a former member shall be deemed to have been a member at death if a judge is satisfied that, upon the expiration of the member’s term of office or upon the member’s resignation, the member genuinely sought to be elected at an election for the Parliament of this State (whether or not for the same electorate or the same House), another State, the Northern Territory or the Commonwealth (being an election not later than the next general election for that Parliament occurring after the former member ceased to be a member) but that the member died before the election took place.

Subsec. (3) inserted by 4, 1981, s. 8 (b); substituted by 14, 1986, s. 3 (1) (6th Sched.).

26. A spouse pension payable under this Division shall be payable for the life of the spouse.

Spouse pension. S. 26 substituted by 79, 1974, s. 7.

DIVISION II—CHILD BENEFIT

26a. For the purposes of this Division, a former member shall be deemed to have been a member at death if a judge is satisfied that, upon the expiration of the member’s term of office or upon the member’s resignation, the member genuinely sought to be elected at an election for the Parliament of this State (whether or not for the same electorate or the same House), another State, the Northern Territory or the Commonwealth (being an election not later than the next general election for that Parliament occurring after the former member ceased to be a member) but that the member died before the election took place.

Certain former members deemed members at time of death. S. 26a inserted by 4, 1981, s. 9; substituted by 14, 1986, s. 3 (1) (6th Sched.).

27. For the purposes of sections 28 and 29, the amount of child benefit for each eligible child deriving his entitlement for a child benefit from a member or member pensioner shall be determined—

Determination of child benefit. S. 27 amended by 4, 1981, s. 10.

(a) on each occasion on which a person becomes entitled to a child benefit derived from that member or pensioner;

(b) on the number of persons entitled to a child benefit derived from that member or pensioner diminishing;

and

(c) on each occasion on which pensions are adjusted pursuant to section 35.

28. (1) Except as is provided in section 29, there shall be payable in respect of each person who becomes an eligible child in relation to a deceased member or deceased member pensioner a child benefit ascertained in the manner provided by subsection (2).

Child benefit, general.

(2) The child benefit referred to in subsection (1) shall, subject to subsection (3), be a payment in respect of each eligible child of an amount—

(a) in the case of 1 or 2 eligible children, equal to $\frac{1}{3}$ of the prescribed amount;

and

(b) in the case of 3 or more such eligible children, equal to the prescribed amount divided by the number of eligible children.

(3) In this section—

“prescribed amount” is an amount equal to the difference between the amount of the notional pension of the deceased member or member pensioner from whom the entitlement to a child benefit is derived and the amount of the spouse pension payable to the spouse of the deceased member or deceased member pensioner.

Child benefit where no spouse's pension payable. Subsec. (1) amended by 4, 1981, s. 11.

29. (1) There shall be payable in respect of each person who becomes an eligible child in relation to a deceased member or deceased member pensioner, where a pension deriving from that deceased member or deceased pensioner is not payable to a spouse of that member or pensioner, a child benefit ascertained in the manner provided by subsection (2).

(2) The child benefit referred to in subsection (1) shall, subject to subsection (3) be a payment in respect of each such eligible child of an amount—

(a) in the case of 1 eligible child, equal to 45 per cent of the notional pension for the time being of the member or member pensioner from whom the entitlement to a child benefit is derived;

(b) in the case of 2 such eligible children, equal to 40 per cent of the notional pension for the time being of the member or member pensioner from whom the entitlement to a child benefit is derived;

(c) in the case of 3 such eligible children, equal to 30 per cent of the notional pension for the time being of the member or member pensioner from whom the entitlement to a child benefit is derived;

and

(d) in the case of 4 or more such eligible children, equal to the notional pension for the time being of the member or member pensioner from whom the entitlement to a child benefit is derived divided by the number of such children.

Payment to, or on behalf of, child. S. 30 substituted by 105, 1985, s. 9.

30. An amount payable under this Act to a person who is, or was, an eligible child may, if that person is under the age of 18 years, be paid—

(a) to that person;

or

(b) to that person's parent or guardian on that person's behalf,

as the Trustees direct.

Cessation of child benefit.

31. A child benefit under this Division shall cease to be payable in respect of a person who is an eligible child on that person ceasing to be an eligible child.

PART VI

ADJUSTMENT OF PENSIONS

DIVISION I—PENSIONERS UNDER REPEALED ACT

32. Subject to this Act, every pension that was payable under the repealed Act immediately before the commencement of this Act shall continue to be payable under this Act.

Pensions to continue.

33. A spouse pension continued under section 32 shall be payable for the life of the spouse.

Spouse pension continued.
S. 33 substituted by 79, 1974, s. 8.

34. Where a former member became entitled to a pension under the repealed Act and, by reason of section 14 (2) of that Act, that former member was not entitled to receive that pension until he attained the age of 50 years and, immediately before the commencement of this Act—

Suspension of certain pensions.
S. 34 amended by 14, 1986, s. 3 (1) (6th Sched.).

(a) that former member has not attained the age of 50 years;

and

(b) that former member has not elected to receive a refund of his contributions to the Fund,

that former member shall be entitled to receive a pension for life at a rate equal to the rate that would have been payable if, on the day on which he had been entitled to that pension, he had received that pension.

DIVISION II—FUTURE ADJUSTMENT

35. (1) In this section—

Adjustment of pensions.

“adjustment percentage”, in relation to a prescribed pension day, means the adjustment percentage, if any, declared for that prescribed pension day:

“the Index” means the Consumer Price Index (All groups index for Adelaide) published by the Commonwealth Statistician under the *Census and Statistics Act 1905* of the Commonwealth:

Def. amended by 14, 1986, s. 3 (1) (6th Sched.).

“June quarter”, in relation to a year, means the period commencing on and including the 1st day of April of that year and concluding on and including the 30th day of June in that year:

“prescribed pension day” means the first pension day in the month of October in each year.

Def. amended by 14, 1986, s. 3 (1) (6th Sched.).

(2) As soon as practicable after the end of the June quarter in each year, the Public Actuary shall, by certificate in writing to the Minister, state the percentage calculated to 2 decimal places by which the Index for that June quarter is greater or less than the Index for the June quarter of the year immediately preceding the year in respect of which the certificate is given.

Subsec. (2) amended by 14, 1986, s. 3 (1) (6th Sched.).

(3) On receipt of a certificate under subsection (2) in which it is stated that the percentage is equal to or greater than 1 per cent, the Minister shall, by notice published in the *Gazette*, declare the adjustment percentage, for the prescribed pension day next following the June quarter in respect of which the certificate was given, to be the percentage stated in that certificate, and the Minister shall state whether the adjustment percentage shall be applied so as to reduce or increase pensions.

(4) Where the percentage stated in the certificate under subsection (2) is less than 1 per cent, no adjustment percentage shall be declared by the Minister for the prescribed pension day next following the June quarter in respect of which the certificate was given.

(5) In any year that next follows a year in respect of which no adjustment percentage was declared, the certificate of the Public Actuary shall state the percentage by which the Index for the June quarter is greater or less than the Index for the June quarter of the year in relation to which an adjustment percentage was last declared and, for the purposes of this section, such a certificate shall be deemed to be a certificate under subsection (2).

Subsec. (6)
amended by 14,
1986, s. 3 (1) (6th
Sched.).

(6) On and from each prescribed pension day, the amount of each pension—

(a) that had a determination day that occurred on or before the 30th day of September of the year last preceding the year in which the prescribed pension day occurs shall be increased, or, as the case may be, decreased, by the adjustment percentage declared for that prescribed pension day;

(b) that had a determination day that occurred on or after the 1st day of October of the year last preceding the year in which the prescribed pension day occurs and on or before the 31st day of December in that year shall be increased, or, as the case may be, decreased, by $\frac{3}{4}$ of the adjustment percentage declared for that prescribed pension day;

(c) that had a determination day that occurred on or after the 1st day of January in the year in which the prescribed pension day occurs and on or before the 31st day of March in that year shall be increased, or, as the case may be, decreased, by $\frac{1}{2}$ of the adjustment percentage declared for that prescribed pension day;

and

(d) that had a determination day that occurred on or after the 1st day of April in the year in which the prescribed pension day occurs and on or before the 30th day of June of that year shall be increased, or, as the case may be, decreased, by $\frac{1}{4}$ of the adjustment percentage declared for that prescribed pension day.

Subsec. (7)
repealed by 14,
1986, s. 3 (1) (6th
Sched.).

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PART VII

MISCELLANEOUS

Provisions as to
previous service.

36. (1) Where a former member has received a payment under section 22 of this Act or a refund under section 18 of the repealed Act and that former member again becomes a member, then—

(a) that former member shall, within 3 months after again becoming such a member or within such further period as the Trustees may allow, repay to the Fund the amount so paid or refunded;

and

(b) upon such payment being made, the previous service of that former member in respect of which that payment was made shall be counted as service for the purposes of this Act.

(2) Where a former member, not being a former member referred to in subsection (1) or a member pensioner, again becomes a member, the previous service of that former member shall be counted as service for the purposes of this Act.

(3) Where a member pensioner again becomes a member, that member pensioner—

(a) shall, within 3 months after again becoming such a member or within such further period as the Trustees may allow, repay to the Fund an amount equal to the prescribed amount;

and

(b) upon such payment being made, the previous service of that member pensioner in respect of which that payment was made shall be counted as service for the purposes of this Act.

(4) In subsection (3)—

“member pensioner” means a member pensioner who has been paid an amount pursuant to section 21 (2):

“prescribed amount”, in relation to a member pensioner, means an amount determined by reference to the following formula:

Def. amended by 105, 1985, s. 10 (a), (b).

$$A = C - (P - LP)$$

where—

A is the amount expressed in dollars and cents;

C is the amount received by the member pensioner pursuant to Division II of Part IV;

P is the total amount of pension that the member pensioner would have received in respect of the prescribed period if he had not received an amount pursuant to Division II of Part IV in relation to that period;

LP is the total amount of pension that the member pensioner received in respect of the prescribed period:

“prescribed period” means the period commencing on and including the day on which the member pensioner last became a member pensioner and concluding on and including the day on which the member pensioner again became a member.

* * * * *

Subsecs. (4a)-(4c) inserted by 4, 1981, s. 12 (a); repealed by 18, 1982, s. 6 (a).

(5) In this section, a reference to a former member or member pensioner who again becomes a member shall be read as including a reference to a former member who again becomes a member before the commencement of this Act.

(6) Where—

(a) a member has been a member of the Parliament of the Commonwealth or another State or the Northern Territory;

Subsec. (6) inserted by 112, 1978, s. 11; substituted by 4, 1981, s. 12 (b).

(b) the member became a member within the period of 4 years after ceasing or last ceasing to be a member of such other Parliament;
and

(c) within 3 months after becoming a member or within such further period as the Trustees may allow, he makes a contribution to the Fund of an amount equal to the prescribed amount,

the period, or aggregate of the periods, of service of that member as a member of such other Parliament or Parliaments shall be counted as service for the purposes of this Act.

Para. (c) amended by 18, 1982, s. 6 (b).

(7) In subsection (6)—

“prescribed amount” means an amount equal to 11.5 per cent of the total salary that he would have been paid if, for a period equal to the period to be counted as service under subsection (6), he had been in receipt of the salary first payable to him after he became a member.

Subsec. (7) inserted by 4, 1981, s. 12 (b).

(7a) Where—

(a) a member stands for re-election but is not returned as having been re-elected;

(b) the Court of Disputed Returns subsequently declares the member to have been duly elected at that election or it declares the election void and the member is elected at the subsequent by-election;

and

(c) the member complies with the requirements of subsection (7b), the member's period of service for the purposes of this Act shall include—

(d) previous service that the member was, at the termination of the member's immediately preceding period of service, entitled to have counted as service under this Act;

and

(e) the period during which the member was unable to take his or her seat in Parliament by reason of not being returned as elected in the first instance.

Subsec. (7a) inserted by 105, 1985, s. 10 (c).

Para. (e) amended by 14, 1986, s. 3 (1) (6th Sched.).

(7b) The member shall, within 3 months—

(a) after a declaration by the Court of Disputed Returns that the member has been duly elected;

or

(b) after the member's re-election following a declaration by the Court that the original election was void,

or within such further period as the Trustees may allow—

(c) make a contribution to the Fund of an amount equal to 11.5 per cent of the salary that was lost by reason of the fact that the member was not returned as elected in the first instance;

and

(d) repay to the Fund an amount equal to the amount (if any) paid to the member pursuant to this Act (whether by way of a

Subsec. (7b) inserted by 105, 1985, s. 10 (c); amended by 14, 1986, s. 3 (1) (6th Sched.).

pension or a lump sum, or both, or by way of a payment pursuant to Division III of Part IV) following the return made at the election.

(8) Where the Trustees allow a member a further period to pay an amount under subsection (1), (3), (6) or (7b), they may impose such conditions (including a condition requiring payment of interest on that amount) as they think fit, and a member shall not be regarded as having paid that amount within the further period allowed unless he complies with those conditions.

Subsec. (8) inserted by 18, 1982, s. 6 (c); amended by 105, 1985, s. 10 (d).

(9) The Trustees may vary or revoke a condition under subsection (8).

Subsec. (9) inserted by 18, 1982, s. 6 (c).

37. (1) Payment of annual pensions and child benefit under this Act shall be by means of equal periodical payments made on the 15th and last days of each month.

Payment of pensions.

(2) Pensions under this Act shall be apportionable in point of time.

38. Pensions and other rights under this Act shall not be assigned or charged or pass by operation of law.

Pensions not assignable.

39. (1) The money which the Treasurer is required by this Act to pay into the Fund shall be payable out of the General Revenue of the State which is, to the necessary extent, appropriated accordingly.

Financial provision.

(2) The costs of the administration of this Act shall be paid out of the Fund.

* * * * *

S. 39a inserted by 112, 1978, s. 12; repealed by 14, 1986, s. 3 (1) (6th Sched.).

40. The Governor may make regulations prescribing any matters necessary or convenient to be prescribed for the administration of this Act or for giving effect to the objects of this Act.

Regulations.

1st Sched.
repeated by 14,
1986, s. 3 (1) (6th
Sched.).

S. 21.

2nd Sched.
amended by 105,
1985, s. 11.

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SECOND SCHEDULE

TABLE SHOWING MAXIMUM PERCENTAGE OF PENSION THAT MAY BE COMMUTED

Age of member pensioner on birthday next following day on which he first becomes entitled to elect to commute a percentage of pension	Maximum Percentage
45 years or less	75%
46 years.....	72½%
47 years.....	70%
48 years.....	67½%
49 years.....	65%
50 years.....	62½%
51 years.....	60%
52 years.....	57½%
53 years.....	55%
54 years.....	52½%
55 years.....	50%
56 years.....	46%
57 years.....	42%
58 years.....	38%
59 years.....	34%
60 years or more.....	30%