

South Australia

# Police Superannuation Act 1990

An Act to provide superannuation benefits for members of the police force; and for other purposes.

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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 *Police Superannuation Act 1990*.

### **4—Interpretation**

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

***actual or attributed salary***—see subsections (3), (4) and (5);

***actuary*** means a Fellow or Accredited Member of the Institute of Actuaries of Australia;

***adjusted salary*** in relation to a contributor as at a particular time means—

- (a) where the contributor has been employed on a full-time basis throughout his or her contribution period—the contributor's actual or attributed salary as at that time;
- (b) where the contributor has been employed on a part-time basis over the whole or any part of his or her contribution period—the contributor's actual or attributed salary as at that time reduced to reflect the extent of the contributor's employment over the contribution period expressed as a proportion of full-time employment;

***the Board*** means the Police Superannuation Board;

***the Commissioner*** means the Commissioner of Police;

***the Commonwealth Act*** means the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth;

***the Consumer Price Index*** means the Consumer Price Index (All groups index for Adelaide);

***contribution month*** means a month of a contribution period and includes a contribution month credited or attributed to a contributor under this Act;

***contribution period*** in relation to a contributor means a period or periods during which the contributor has contributed to the Scheme and includes—

- (a) in the case of an old scheme contributor, a period falling wholly or partly before the commencement of this Act; and
- (b) contribution months credited or attributed to the contributor under this Act;

***contributor*** means a person who has made contributions pursuant to this Act or a corresponding previous enactment and includes a member, or former member, of the police force who has ceased making contributions unless his or her rights in relation to superannuation have been exhausted and no derivative rights exist in relation to that person under this Act;

***deferred superannuation contributions surcharge*** in relation to a contributor means the amount that the contributor is liable to pay the Commissioner of Taxation under section 15(6) of the Superannuation Contributions Tax Act;

**dependency** in relation to a child means any period for which the child is an eligible child;

**the Deputy Commissioner** means the Deputy Commissioner of Police;

**eligible child** in relation to a deceased contributor means a child—

- (a) who is—
  - (i) a child of the contributor; or
  - (ii) a child in relation to whom the contributor had assumed parental responsibilities and who was cared for and maintained, wholly or in part, by the contributor up to the date of the contributor's death; and
- (b) who is—
  - (i) under the age of 16 years; or
  - (ii) between the ages of 16 and 25 years and in full-time attendance at an educational institution recognised by the Board for the purposes of this definition;

**entitlement day** means—

- (a) in relation to a contributor who becomes entitled to a pecuniary benefit under this Act—the day on which that entitlement arises;
- (b) in relation to a contributor whose employment is terminated by his or her death—the date of the contributor's death;

**the Fund** means the Police Superannuation Fund;

**invalid pension** means a pension payable on account of invalidity;

**invalidity** means physical or mental incapacity to carry out the duties of employment;

**member of the police force** includes a community constable;

**month**—see subsection (2);

**new scheme contributor** means a person who becomes a contributor on or after the commencement of this Act (but excluding a cadet who is an old scheme contributor);

**notional salary** in relation to a contributor whose employment has ceased temporarily or permanently (including a contributor who has died) means the salary (including an allowance for shift work determined by the Board) that the contributor would be receiving if he or she had continued in employment in the same position and at the same grade as were applicable immediately before the cessation of employment and, if the contributor was not in full-time employment immediately before cessation of employment, notional salary will be calculated on the basis of the contributor's average hours of employment (excluding overtime) over the last three years of his or her contribution period;

**old scheme contributor** means a person who became a contributor to the Police Pensions Fund before the commencement of this Act and includes a person who was a cadet immediately before the commencement of this Act and who subsequently becomes a member of the police force;

**pensioner** means a person who is entitled to a pension under this Act (including a person who qualifies for a pension but whose pension is under suspension);

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***pension period*** means the period over which a pension is paid;

***police cadet*** or ***cadet*** means a person appointed under the *Police Act 1952* to be a police cadet;

***putative spouse*** means—

- (a) a person who is a putative spouse within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not; or
- (b) a person in respect of whom a declaration has been made by the District Court under section 4A of this Act;

***the repealed Act*** means the *Police Pensions Act 1971*;

***to retrench*** in relation to a contributor means to terminate the contributor's employment on the ground that work of the kind for which the contributor is qualified and suited is no longer available for the contributor;

***retrenchment pension*** means the pension payable to an old scheme contributor on account of retrenchment;

***salary***, in relation to a contributor who is employed pursuant to a contract under section 13 or section 16 of the *Police Act 1998*, means that proportion of the total remuneration package specified in the contract that has been prescribed by regulation for the purposes of this definition;

***salary***, in relation to a contributor who is not employed pursuant to a contract under section 13 or section 16 of the *Police Act 1998*, includes all forms of remuneration except—

- (a) remuneration related to overtime (other than such remuneration that is paid by way of an annual allowance);
- (b) a loading for shift work;
- (c) a leave loading;
- (d) a loading arising from the conditions under which work is performed;
- (e) allowances (unless declared by regulation to be a component of salary) for accommodation, travelling, subsistence or other expenses;
- (f) remuneration of a kind excluded by regulation from the ambit of this definition (and such a regulation may exclude remuneration of a particular kind for the purpose of calculating contributions but provide for its inclusion as a component of salary for the purpose of calculating benefits);

***the Scheme*** means the scheme of superannuation established by this Act and (where the context admits) includes the scheme of superannuation established by a corresponding previous enactment;

***special deposit account*** means a special deposit account established under section 8 of the *Public Finance and Audit Act 1987*;

***spouse*** includes a putative spouse;

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

***the Superannuation Funds Management Corporation of South Australia or the Corporation*** means the Superannuation Funds Management Corporation of South Australia continued in existence by the *Superannuation Funds Management Corporation of South Australia Act 1995*;

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

- (2) Where a period is to be expressed in months for the purpose of this Act, then, except where express provision is made to the contrary, only completed months will be taken into account and any remainder will be ignored.
- (3) Subject to this Act, contributions and benefits will be calculated in relation to a contributor as at a particular date on the basis of the highest level of salary received by the contributor in the highest grade achieved by the contributor in a permanent position in the police force and—
- (a) for the purpose of calculating benefits—
    - (i) the contributor's actual salary will be used if, at that date, it is at that level (or would be at that level except for a reduction for disciplinary reasons) and the contributor is in full time employment in that grade; or
    - (ii) if, at that date, the contributor's salary is at a lower level (except for a reduction for disciplinary reasons) or the contributor is employed in a lower grade or on a part time basis, the salary that the contributor would have been receiving at that date if he or she had been employed on a full time basis in the highest grade achieved by the contributor and had been receiving salary at that level will be attributed to the contributor;
  - (b) for the purpose of calculating contributions—
    - (i) the contributor's actual salary will be used if, at that date, it is at that level (or would be at that level except for a reduction for disciplinary reasons) and the contributor is employed in that grade (whether on a full time or a part time basis); or
    - (ii) if, at that date, the contributor's salary is at a lower level (except for a reduction for disciplinary reasons) or the contributor is employed in a lower grade, the salary that the contributor would have been receiving (for his or her hours of employment on that date) if he or she had been employed in the highest grade achieved by the contributor and had been receiving salary at that level will be attributed to the contributor.
- (3aa) In the application of subsection (3)(a)(ii) and (3)(b)(ii) an automatic increment in the relevant salary that occurs after the contributor moves to a lower level of salary will be ignored.
- (3a) In subsections (3) and (3aa)—

***automatic increment*** in relation to salary means an increase in the salary that occurs automatically at the end of a specified period.



*permanent position in the police force* includes a position to which the contributor is appointed for a fixed term that is specified in the contract or instrument of appointment as being of one year or more.

- (4) Salary will not be attributed under subsection (3) in respect of a reduction in salary for disciplinary reasons.
- (5) Where a contributor's salary is reduced for disciplinary reasons and is not reinstated before termination of the contributor's employment a salary will be attributed to the contributor in accordance with the following formula for the purpose of calculating benefits:

$$FS = S_1 \left[ \frac{CM - X}{CM} \right] + \frac{S_2 \times X}{CM}$$

Where

*FS* is the salary to be attributed to the contributor

*S<sub>1</sub>* is the salary that would have been the contributor's actual or attributed salary for the purpose of calculating benefits if the contributor's salary had not been reduced for disciplinary reasons

*S<sub>2</sub>* is the salary that would, but for this subsection, have been the contributor's actual or attributed salary for the purpose of calculating benefits

*CM* is the number of contribution months comprising the contributor's contribution period

*X* is the number of contribution months comprising that part, or those parts, of the contributor's contribution period during which the contributor's salary was reduced for disciplinary reasons.

- (6) For the purposes of determining contributions and benefits the actual or attributed salary of a contributor who holds the rank of senior sergeant or a lower rank in the police force will be increased by ten per cent if at any time during the contribution period the contributor was rostered to work on day, afternoon and night shifts, or on any two of those shifts, on a rotating basis.
- (6a) Subsection (6) does not apply in relation to a contributor who is employed on a permanent basis on special duties at a salary level greater than that payable to a senior sergeant.
- (6b) The following provisions apply to the application of subsection (3) in relation to a contributor who has been seconded to another police force or police forces in Australia or in any other country:
- (a) if the contract under which the contributor is serving in the other police force is for a period of five years or more, the seconded position will be taken to be a permanent position in the South Australian police force for the purpose of calculating contributions;

- (b) if the contributor has served under two or more contracts in the same or in two or more interstate or overseas police forces and the aggregate of the periods of those contracts is five years or more, the seconded positions will be taken to be permanent positions in the South Australian police force for the purpose of calculating contributions (but contributions will only be calculated on that basis from the commencement of the contract that results in an aggregate period of five years or more);
- (c) if the contract under which the contributor served in the other police force was for a period of five years or more or if the contributor served under two or more contracts in the same or in two or more interstate or overseas police forces and the aggregate of the periods of those contracts was five years or more, the seconded position or positions will be taken to be a permanent position or positions in the South Australian police force for the purpose of calculating benefits;
- (d) if paragraph (c) applies the following provisions apply to and in relation to the calculation of benefits under subsection (3):
- (i) separate salaries will be determined under subsection (3) in respect of the contributor's period of employment in the South Australian police force and his or her period of employment in the other police force or police forces;
  - (ii) the salary for the purpose of calculating benefits will be the average of those salaries determined in accordance with the following formula:

$$A = \frac{(X \times P_1) + (Y \times P_2)}{T}$$

Where

*A* is the average salary

*X* is the salary determined under subsection (3) in respect of the contributor's period of employment in the South Australian police force

*P*<sub>1</sub> is the period of the contributor's employment in the South Australian police force

*Y* is the salary determined under subsection (3) in respect of the contributor's period of employment in the other police force or police forces

*P*<sub>2</sub> is the period of the contributor's employment in the other police force or police forces

*T* is the aggregate of the periods of the contributor's employment in the South Australian police force and the other police force or forces;

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- (e) if paragraphs (a) and (c) or (b) and (c) are not applicable because the period or periods of secondment are less than five years, the contributor will be taken, for the purpose of calculating contributions and benefits, to be employed during the period of secondment in the position in which he or she was employed in the South Australian police force immediately before the commencement of the relevant period of secondment;
- (f) a reference in this subsection to another police force in Australia or in any other country includes—
- (i) all law enforcement agencies; and
  - (ii) a body established by the Australian Police Ministers Council; and
  - (iii) a body established by the Council of Police Commissioners of Australia; and
  - (iv) a body prescribed for the purposes of this paragraph by regulation.
- (7) Subject to subsection (7a) where a contributor's employment terminates or is terminated for any reason except the contributor's death and the contributor has reached the age of 55 years, the contributor will be taken for the purposes of this Act to have retired from employment.
- (7a) An old scheme contributor whose employment terminates on the ground of invalidity in circumstances that entitle the contributor to a benefit under section 31 will only be taken to have retired from employment if he or she had reached the age of 60 years before the employment terminated.
- (8) Where a new scheme contributor who has not reached the age of 55 years terminates his or her employment (except on the ground of invalidity in circumstances that entitle the contributor to a benefit under section 25)—
- (a) the contributor will be taken to have retired if he or she had reached the age of 50 years but not the age of 55 years and was entitled to retire under section 21(2) and (3);
  - (b) in every other case the contributor will be taken to have resigned.
- (8a) Where an old scheme contributor who has not reached the age of 55 years terminates his or her employment (except on the ground of invalidity in circumstances that entitle the contributor to a benefit under section 31)—
- (a) the contributor will be taken to have retired if he or she—
    - (i) had reached the age of 50 years but not the age of 55 years; and
    - (ii) was entitled to retire under section 28(3) and (4); and
    - (iii) had, within three months after termination of the employment, informed the Board in writing that he or she had retired from employment;
  - (b) in every other case the contributor will be taken to have resigned.
- (9) A position in the police force or the Public Service of the State will be taken to be available to a contributor if the position has been offered to the contributor or the contributor has refused to make a genuine application for appointment to the position after being requested to do so by the Commissioner or the Board.

#### 4A—Putative spouses

- (1) For the purposes of this Act, two persons of the same sex were, on a certain date, the putative spouses one of the other if the District Court has made a declaration under this section that they were, on that date, cohabiting with each other in a relationship that has the distinguishing characteristics of a relationship between a married couple (except for the characteristics of different sex and legally recognised marriage and other characteristics arising from either of those characteristics) and that they—
  - (a) had so cohabited with each other continuously for the period of five years immediately preceding that date; or
  - (b) had during the period of six years immediately preceding that date so cohabited with each other for periods aggregating not less than five years.
- (2) A person whose rights depend on whether—
  - (a) he or she and another person; or
  - (b) two other persons,were, on a certain date, putative spouses one of the other may apply to the District Court for a declaration under this section.
- (3) If it is proved to the satisfaction of the Court that the persons in relation to whom the declaration under this section is sought did, on the date in question, fulfil the requirements of subsection (1), the Court must make a declaration accordingly.
- (4) A declaration may be made under this section—
  - (a) whether or not one or both of the persons in relation to whom the declaration is sought are, or have ever been, domiciled in this State; or
  - (b) despite the fact that one or both of them are dead.
- (5) It must not be inferred from the fact that the Court has declared that two persons were putative spouses one of the other, on a certain date, that they were putative spouses as at any prior or subsequent date.

#### 4B—Restriction on publication of court proceedings

- (1) **Protected information** is information relating to an application under section 4A (including images) that identifies, or may lead to the identification of—
  - (a) an applicant; or
  - (b) a person who is related to, or associated with, an applicant or is, or is alleged to be, in any other way connected in the matter to which the application relates; or
  - (c) a witness in the hearing of the application.
- (2) A person who publishes protected information is guilty of an offence.  
Maximum penalty: \$5 000 or imprisonment for 1 year.
- (3) A person who discloses protected information knowing that, in consequence of the disclosure, the information will, or is likely to, be published is guilty of an offence.  
Maximum penalty: \$5 000 or imprisonment for 1 year.

- (4) This section does not apply to—
- (a) the publication or disclosure of material—
    - (i) by the District Court or an employee of the Courts Administration Authority (so long as such publication or disclosure is made in connection with the administrative functions of the Court); or
    - (ii) for purposes associated with the administration of this Act; or
  - (b) the publication in printed or electronic form of material that—
    - (i) consists solely or primarily of the reported judgements or decisions of the Court; or
    - (ii) is of a technical nature designed primarily for use by legal practitioners.

- (5) In this section—

***newspaper*** means a newspaper, journal, magazine or other publication that is published at periodic intervals;

***publish*** means publish by newspaper, radio or television, or on the internet, or by some other similar means of communication to the public.



## **Part 2—Administration**

### **Division 1—The Board**

#### **5—The Board**

- (1) The Police Superannuation Board is established.
- (2) The Board is a body corporate.
- (3) The Board has full juristic capacity to exercise any powers that are by their nature capable of being exercised by a body corporate.
- (4) Where a document appears to bear the common seal of the Board, it will be presumed, in the absence of proof to the contrary, that the document was duly executed by the Board.

#### **6—Function of the Board**

The Board is responsible to the Minister for all aspects of the administration of this Act except the management and investment of the Fund.

#### **7—The Board's membership**

- (1) The Board consists of the following members:
  - (a) a presiding member (who must not be a member of the police force) appointed by the Governor; and
  - (b) two members (who must be members of the police force) appointed by the Governor on the nomination of the Police Association of South Australia; and
  - (c) two members appointed by the Governor on the Minister's nomination.
- (3) The Governor may appoint a deputy to a member of the Board and the deputy may, in the absence or during a temporary vacancy in the office of that member, act as a member of the Board.
- (4) Subject to subsection (5), a member of the Board will be appointed for a term of three years.
- (5) A member appointed to fill a casual vacancy will be appointed for the balance of the term of his or her predecessor.
- (6) The office of a member of the Board becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) is removed from office by the Governor on the ground of—
    - (i) mental or physical incapacity to carry out official duties satisfactorily; or
    - (ii) neglect of duty; or
    - (iii) misconduct.

## **8—Procedure at meetings of the Board**

- (1) A meeting will be chaired by the presiding member or, in his or her absence, by a member chosen by those present.
- (2) Subject to subsection (3), the Board may act notwithstanding vacancies in its membership.
- (3) Three members constitute a quorum for a meeting of the Board.
- (4) A decision in which a majority of the members present at a meeting concur is a decision of the Board.
- (5) Subject to this Act, the Board may determine its own procedures.
- (6) The Board must keep minutes of its proceedings.

## **9—Staff of the Board**

- (1) The Board may, with the Minister's approval, appoint staff to assist it in carrying out its responsibilities under this Act.
- (2) A person appointed under subsection (1) is not a Public Service employee.
- (3) The Board may, with the approval of a Minister responsible for a particular administrative unit of the Public Service, make use of the staff or facilities of that administrative unit.

## **Division 2—The Fund**

### **10—The Fund**

- (1) The Police Superannuation Fund is established.
- (2) The assets of the Fund belong (both at law and in equity) to the Crown.
- (3) The Fund is subject to the management and control of the Superannuation Funds Management Corporation of South Australia.
- (4) The Treasurer must pay into the Fund from the Consolidated Account (which is appropriated to the necessary extent) or from a special deposit account established by the Treasurer for that purpose periodic contributions reflecting the contributions paid to the Treasurer by contributors with respect to the relevant period.
- (5) All interest and accretions arising from investment of the Fund must be paid into the Fund.
- (6) The Fund will be treated as made up of three major divisions—
  - (a) one proportioned to—
    - (i) the aggregate balance, as at a date determined by the Board, of contribution accounts maintained in the names of old scheme contributors;
    - (ii) the amount, as at the date referred to in subparagraph (i), that represents income of the Fund referable to old scheme contributors that is not reflected in contribution accounts;



- (iii) the amount, as at the date referred to in subparagraph (i), that is referable to contributions of old scheme contributors whose contribution accounts have been closed;
    - (iv) subsequent contributions and payments referable to old scheme contributors;
    - (v) subsequent income of the Fund attributable to investment of this division of the Fund;
  - (b) one proportioned to—
    - (i) the aggregate balance, as at the date referred to in paragraph (a)(i), of contribution accounts maintained in the names of new scheme contributors; and
    - (ii) subsequent contributions and payments referable to new scheme contributors; and
    - (iii) subsequent income of the Fund attributable to investment of this division of the Fund;
  - (c) one proportioned to the aggregate balance of investors' accounts under Part 5A.
- (7) The following amounts will be paid from the Fund:
- (a) administrative costs and other expenses related to the management and investment of the Fund;
  - (b) the prescribed percentage of the other costs of administering this Act;
  - (c) any reimbursement of the Consolidated Account or a special deposit account that the Treasurer charges against the Fund in pursuance of this Act.
- (8) The Superannuation Funds Management Corporation of South Australia must determine the value of each division of the Fund as at the end of each financial year.

## **11—Investment of the Fund**

- (1) The Fund will be invested in a manner determined by the Superannuation Funds Management Corporation of South Australia.
- (2) The Corporation may enter into transactions affecting the Fund—
  - (a) for the purpose of investment; or
  - (b) for purposes incidental, ancillary or otherwise related to investment.

## **Division 3—Contributors' accounts**

### **13—Contributors' accounts**

- (1) The Board must maintain accounts in the names of all contributors.
- (2) A contributor's account must be debited with any payment that is, in pursuance of this Act, to be charged against that account.

- (3) At the end of each financial year, each contributor's account that has a credit balance will be increased—
  - (a) if the account is in the name of an old scheme contributor—to reflect a rate of return determined by the Board in relation to the contribution accounts of old scheme contributors for the relevant financial year;
  - (b) if the account is in the name of a new scheme contributor—to reflect a rate of return determined by the Board in relation to the contribution accounts of new scheme contributors for the relevant financial year.
- (4) In determining a rate of return for the purposes of subsection (3), the Board should have regard to—
  - (a) the net rate of return achieved by investment of the relevant division of the Fund over the financial year; and
  - (b) the desirability of reducing undue fluctuations in the rate of return on contributors' accounts.
- (5) Where, in pursuance of subsection (4)(b), the Board determines a rate of return that is at variance with the net rate of return achieved by investment of the relevant division of the Fund, the Board must include its reasons for the determination in its report for the relevant financial year.
- (6) Where it is necessary to determine the balance of a contributor's account and the Board has not yet determined a rate of return in relation to the relevant financial year, the balance will be determined by applying a percentage rate of return on accounts estimated by the Board.
- (6a) A balance determined under subsection (6) will not be adjusted when a rate of return is subsequently determined under subsection (3).
- (7) The Board must, within six months after the end of each financial year, provide each contributor with a written statement of the amount standing to the credit of the contributor's contribution account at the end of the financial year and the amount by which the balance of the account has been increased pursuant to subsection (3) in respect of that financial year.
- (8) A reference in this section to *rate of return* is a reference to a positive or a negative rate of return.

## **Division 4—Payment of benefits**

### **14—Payment of benefits**

- (1) Any payment to be made under this Act to a contributor, a deceased contributor's estate, a spouse or child of a deceased contributor or to another fund or scheme on behalf of a contributor must be made by the Treasurer out of the Consolidated Account (which is appropriated to the necessary extent) or out of a special deposit account established by the Treasurer for that purpose.
- (2) A proportion of a pension or lump sum paid to, or in relation to, a contributor under this Act will be charged against the contributor's contribution account to the extent of the amount standing to the credit of the account or, if the account has been closed, will be charged against the relevant division of the Fund.

- (3) The proportion for the purposes of subsection (2) will—
- (a) in the case of a new scheme contributor, be equivalent to the proportion of the benefits payable in the future under Part 4 that can, in the opinion of the Board, be met from the division of the Fund relating to new scheme contributors; and
  - (b) in the case of an old scheme contributor, be equivalent to the proportion of the benefits payable in the future under Part 5 that can, in the opinion of the Board, be met from the division of the Fund relating to old scheme contributors.
- (3a) The opinion of the Board must be based on the most recent triennial report under section 15(4).
- (4) The Treasurer may reimburse the Consolidated Account or special deposit account by charging the relevant division of the Fund with the amount of any payment or proportion of any payment that is, in pursuance of this Act, to be charged against a contributor's contribution account.

## **Division 5—Reports**

### **15—Reports**

- (1) The Board must, on or before 31 October in each year, submit a report to the Minister on the operation of this Act during the financial year ending on 30 June in that year.
- (4) The Minister must, in relation to the triennium ending 30 June 1993, and thereafter in relation to each succeeding triennium, obtain a report within 12 months after the end of the relevant triennium—
- (a) on the cost of the Scheme to the Government at the time of the report and in the foreseeable future; and
  - (b) estimating the proportion of future benefits under this Act that can be met from the Fund.
- (4a) A report under subsection (4) must be prepared by an actuary, not being a member of the Board, appointed by the Minister.
- (5) The Minister must, within six sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.



## Part 3—Contributors, contribution rates and contribution points

### 16—Contributors

- (1) Subject to this Act the following members of the police force must contribute to the Scheme:
  - (a) a person who was appointed as a member of the police force on or before 3 May 1994;
  - (b) a person appointed as a member of the police force pursuant to a written offer of appointment made before 4 May 1994;
  - (c) a person appointed as a member of the police force following a period of cadetship that commenced on or before 31 May 1994;
  - (d) a person appointed as a member of the police force on or before 31 March 1995 and who was previously employed by the State Transport Authority as a transit officer.
- (1a) A person who is appointed as a member of the police force on or after 4 May 1994 but before 1 July 1995 (not being a person referred to in subsection (1)) must contribute to the Scheme but will—
  - (a) be a member of the Southern State Superannuation Scheme established by the *Southern State Superannuation Act 1994* on and from 1 July 1995 and will be taken to have elected to contribute to that scheme at the rate of 4.5 per cent of salary; and
  - (b) be taken to be under the age of 55 years and to resign from employment for the purposes of this Act on 30 June 1995 and to carry over the employee component of his or her accrued superannuation benefits on 1 July 1995 to his or her member's contribution account under the Southern State Superannuation Scheme and to carry over the employer component of those benefits on 1 July 1995 to his or her employer contribution account under that scheme.
- (2) A member's contributions may be deducted from his or her salary.

### 17—Contribution rates

- (1) A contributor must make contributions to the Treasurer at the rate prescribed in Schedule 2.
- (2) A contributor's contributions will be fixed in relation to each financial year, as from a day in that financial year determined by the Board—
  - (a) on the basis of the contributor's actual or attributed salary as at 31 March last preceding the commencement of the financial year or, if the contributor's hours of employment have increased or decreased between that date and the commencement of the financial year, on the basis of the contributor's salary following the last such increase or decrease in the hours of employment;
  - (b) —

- (i) if the contributor had not then commenced his or her employment, the contributions will be fixed on the basis of the contributor's commencing salary;
  - (ii) if the contributor was then on leave without pay or at a reduced rate of pay, the contributor will be taken for the purposes of determining the contributor's actual or attributed salary to be employed for the number of hours that the contributor would have been employed and to be receiving the salary that the contributor would have been receiving, if not on leave;
  - (iii) if after the date on which contributions for a particular financial year are fixed there is a reduction in the contributor's salary resulting from a reduction in hours of work (other than a temporary reduction of less than two weeks' duration), there will be a proportionate reduction in the contributor's contributions (but such a contributor may, with the Board's approval, elect to contribute as if there had been no reduction in salary and in that event benefits payable under this Act will be calculated as if there had been no reduction of salary);
  - (iv) if the reason for the reduction in hours of work is an illness or injury suffered by the contributor, an election under subparagraph (iii) may, with the Board's approval, operate during subsequent years despite paragraph (a).
- (3) If on the 31st day of March in any year a contributor is receiving weekly workers compensation payments those payments will be regarded as salary or a component of salary and contributions will be based on the aggregate of the contributor's salary (if any) and the weekly workers compensation payments as at that date.
- (3a) If, after a contributor's contributions have been fixed in relation to a financial year, the contributor receives weekly workers compensation payments and the aggregate of the contributor's salary (if any) and the weekly payments is less than the salary on which the contributions were based the Board must make a proportionate reduction in the amount of the contributions.
- (4) The following provisions apply to leave without pay:
  - (a) any period of leave without pay of two weeks or less will be treated as a period of employment in respect of which contributions are payable;
  - (b) if leave without pay is taken for a continuous period exceeding two weeks, no contribution is payable in respect of that period unless the contributor elects to contribute and the election is approved by the Board;
  - (c) the Board must only approve an election in respect of a period of leave without pay that exceeds 12 months if satisfactory arrangements have been made for reimbursement of the costs of benefits attributable to that period.
- (5) An old scheme contributor will cease to contribute to the Scheme if before termination of the contributor's employment the following conditions are satisfied:
  - (a) the contributor is of or above the age of 60 years; and
  - (b) the contributor has not less than—

- (i) an aggregate of 360 contribution points; or
  - (ii) an aggregate number of contribution points equal to the number of months between the date on which he or she became a contributor and the date on which he or she reached the age of 60 years,  
whichever is the greater number.
- (6) A new scheme contributor will cease to contribute to the Scheme if before termination of the contributor's employment the following conditions are satisfied:
- (a) the contributor is of or above the age of 60 years; and
  - (b) the contributor has an aggregate of at least 420 contribution points.

## **18—Contribution points**

- (1) Contribution points accrue to a contributor who is employed on a full-time basis at the rate of one point for each contribution month.
- (2) Where a contributor is employed on a part-time basis a proportion of one contribution point accrues to the contributor in respect of a contribution month equal to the proportion that the amount actually contributed in respect of that month bears to the amount that would have been contributed if the contributor had been employed on a full-time basis.
- (3) A contributor will not be credited with contribution points in respect of a period—
  - (a) during which the contributor is on leave without pay and is not contributing to the Scheme;
  - (b) during which the contributor is suspended from the police force without pay.
- (4) Where a formula in this Act requires the extrapolation of a contributor's contribution points to a particular age the following provisions apply:
  - (a) if the contributor has then reached the age to which the points are to be extrapolated, the number of points to be used in the formula is the aggregate of the accrued contribution points;
  - (b) in any other case—
    - (i) if the contributor has been in full-time employment throughout the contribution period—the number of points to be used in the formula is the aggregate of the accrued contribution points plus a number equal to the number of months' difference between the contributor's age as at the entitlement day and the age to which the points are to be extrapolated (an incomplete month occurring in that period being taken to be a whole month);
    - (ii) if the contributor has not been in full-time employment throughout the contribution period—the number of points to be used in the formula is the aggregate of the accrued contribution points plus the relevant proportion of the number of months' difference between the contributor's age as at the entitlement day and the age to which the points are to be extrapolated (an incomplete month occurring in that period being taken to be a whole month).

- (5) The reference in subsection (4) to *the relevant proportion* is a reference to a proportion arrived at by expressing the contributor's employment as a proportion of full-time employment.

### **19—Attribution of contribution points and months**

The Minister may, in appropriate cases—

- (a) attribute additional contribution points to a contributor;
- (b) attribute additional contribution months to a contributor.



## Part 4—Superannuation benefits—new scheme contributors

### 20—Application of this Part

- (1) Subject to subsection (2), this Part applies only to new scheme contributors.
- (2) Sections 24, 25 and 26 (excluding benefits payable to a contributor's estate on death) also apply to a person who becomes a police cadet on or after the commencement of this Act but before 1 June 1994 as though he or she were a contributor.
- (3) A cadet referred to in subsection (2) is not required to contribute to the Scheme but will be credited with contribution points and contribution months as if he or she were contributing.

### 21—Retirement

- (1) A contributor who retires from employment after reaching the age of 55 years is entitled to a lump sum payment calculated as follows:

$$LS = 6 \times A \times FS \times \left( 1 + \frac{0.2778 \times X}{100} \right) + Pn \left( \frac{FS \times 1.36 \times M}{480} \right)$$

Where—

*LS* is the lump sum payment

*A* is the lesser of the following:

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by 420 or, where the contributor has not reached the age of 60 years, by the addition of 360 and *X*

*FS* is the contributor's actual or attributed salary (expressed as an annual amount)

*X* is the number of months (if any) by which the contributor's age, at retirement, exceeds 55 years

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*M* is the number of months of the contributor's contribution period occurring after 31 December 1987.

- (2) A contributor may, subject to subsection (3), retire after reaching the age of 50 years and if the contributor retires before reaching the age of 55 years he or she is entitled to a lump sum payment calculated as follows:

$$LS = 5.4545 \times A \times FS \times \left( 1 + \frac{0.1667 \times X}{100} \right) + Pn \left( \frac{FS \times 1.36 \times M}{480} \right)$$

Where—

*LS* is the lump sum

*A* is the lesser of the following:

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by 360

*FS* is the contributor's actual or attributed salary (expressed as an annual amount)

*X* is the number of months (if any) by which the contributor's age, at retirement, exceeds 50 years

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*M* is the number of months of the contributor's contribution period occurring after 31 December 1987.

- (3) The number of contributors who may retire pursuant to subsection (2) is subject to restriction by regulation.

## **22—Resignation and preservation**

- (1) A contributor who resigns from employment may elect—

- (a) to take immediately an amount (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of the contributor's contribution account; or
- (b) to preserve his or her accrued superannuation benefits; or
- (c) to carry over his or her accrued superannuation benefits to some other superannuation fund or scheme approved by the Board.

- (1aa) A contributor who fails to inform the Board in writing of his or her election under subsection (1) within three months after resignation will be taken to have elected to preserve his or her accrued superannuation benefits.

- (1ab) If the Board is of the opinion that the limitation period referred to in subsection (1aa) would unfairly prejudice a contributor, the Board may extend the period as it applies to the contributor.

- (1a) Where a contributor resigns and elects to take the amount referred to in subsection (1)(a) the contributor is also entitled to a superannuation payment in accordance with the following provisions:

- (a) if the amount of the superannuation payment is less than \$200, the contributor is entitled to the payment on resignation;
- (b) if the amount of the payment is \$200 or more the contributor may elect to preserve the payment or to carry it over to some other superannuation fund or scheme approved by the Board;

- (c) if the contributor elects to preserve the payment—
- (ai) the Board must—
    - (A) not less than 6 months before the contributor's 60th birthday—notify the contributor in writing of the contributor's entitlement to require the Board to make the payment under subparagraph (i); and
    - (B) not less than 6 months before the contributor's 55th birthday—notify the contributor in writing of the contributor's entitlement to require the Board to make the payment under subparagraph (ii);
  - (i) the contributor may at any time after reaching 60 years of age require the Board to make the payment and, if no such requirement has been made on or before the date on which the contributor reaches 65 years of age, the Board will make the payment;
  - (ii) if the contributor has reached the age of 55 years and is not employed by an employer within the meaning of the Commonwealth Act, the contributor may require the Board to make the payment to the contributor;
  - (iii) if the contributor has become incapacitated and satisfies the Board that his or her incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent, the Board will make the payment to the contributor;
  - (iv) if the contributor dies, the payment will be made to the spouse of the deceased contributor or, if he or she left no surviving spouse, to the contributor's estate,

(and a payment under any of the above subparagraphs excludes further rights so that a claim cannot be subsequently made under some other subparagraph).

- (1b) The amount of the superannuation payment referred to in subsection (1a) is made up of the following components:
- (a) a component being the amount of the minimum contribution required to avoid payment of the superannuation guarantee charge in respect of the contributor under the Commonwealth Act together with interest from the date of resignation; and
  - (b) where the contributor was a member of the police force at any time during the period commencing on 1 January 1988 and ending on 30 June 1992—a component calculated as follows:

$$C = Pn \left( \frac{AFS \times 1.36 \times M}{480} \right)$$

Where—

*C* is the component

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring during the period commencing on 1 January 1988 and ending on 30 June 1992—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*AFS* is the contributor's actual or attributed salary as at the date of resignation (expressed as an annual amount) adjusted to reflect changes in the Consumer Price Index since the date of resignation

*M* is the number of months of the contributor's contribution period occurring during the period commencing on 1 January 1988 and ending on 30 June 1992.

- (1c) The amount of interest referred to in subsection (1b)(a) will be calculated and credited to the contributor at the end of each financial year and will be calculated on the amount referred to in subsection (1b)(a) at the end of the first financial year and on the aggregate of that amount and the interest previously credited at the end of each subsequent financial year.
- (1d) The rate of interest will be determined by the Board in respect of each financial year in accordance with section 13.
- (2) Where the contributor elects to preserve his or her accrued superannuation benefits, the following provisions apply:
  - (aa) the Board must, not less than 6 months before the contributor's 55th birthday, notify the contributor in writing of the contributor's entitlement to require the Board to make a superannuation payment under paragraph (a);
  - (a) the contributor may at any time after reaching 55 years of age require the Board to make a superannuation payment and, if no such requirement has been made on or before the date on which the contributor reaches 60 years of age, the Board must make such a payment;
  - (b) if the contributor has become incapacitated and satisfies the Board that his or her incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent, the Board must make a superannuation payment to the contributor;
  - (c) if the contributor dies, a payment must be made to the spouse of the deceased contributor or, if he or she left no surviving spouse, to the contributor's estate, (and a payment under any of the above paragraphs excludes further rights so that a claim cannot be subsequently made under some other paragraph).
- (3) A payment under subsection (2) (except where the contributor dies before reaching 55 years of age) will be calculated as follows:

$$LS = (6 \times A \times AFS) + Pn \left( \frac{AFS \times 1.36 \times M}{480} \right)$$

- (4) A payment under subsection (2) where the contributor dies before reaching 55 years of age will be calculated as follows:

$$LS = (4 \times A \times AFS) + Pn \left( \frac{AFS \times 1.36 \times M}{480} \right)$$

- (5) In subsections (3) and (4)—

*LS* is the superannuation payment

*A* is the numerical value obtained by dividing the number of the contributor's accrued contribution points by—

- (a) in the case of a contributor whose contribution period commenced before reaching the age of 25 years—the number of months between the contributor's age as at the date of commencement of the contribution period and the age of 55 years;
- (b) in any other case—360

*AFS* is the contributor's actual or attributed salary as at the date of resignation (expressed as an annual amount) adjusted to reflect changes in the Consumer Price Index since the date of resignation

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*M* is the number of months of the contributor's contribution period occurring after 31 December 1987.

- (6) Where the contributor elects to carry over his or her accrued superannuation benefits to an approved superannuation fund or scheme, the following provisions apply:
- (a) the contributor must satisfy the Board by such evidence as it may require that he or she has been admitted to membership of the fund or scheme; and
  - (b) the Treasurer must make a payment on behalf of the contributor to the fund or scheme made up of three components:
    - (i) an employee component (to be charged against the contributor's contribution account) equivalent to the amount standing to the credit of the contributor's contribution account; and
    - (ii) an employer component which will, subject to subsection (7), be equal to twice the amount of the employee component; and
    - (iii) a component calculated as follows:

$$C = Pn \left( \frac{AFS \times 1.36 \times M}{480} \right)$$

Where—

*C* is the component

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*AFS* is the contributor's actual or attributed salary as at the date of resignation (expressed as an annual amount) adjusted to reflect changes in the Consumer Price Index since the date of resignation

*M* is the number of months of the contributor's contribution period occurring after 31 December 1987.

- (7) The employer component referred to in subsection (6)(b)(ii) cannot exceed 3.86 times the contributor's adjusted salary immediately before resignation (expressed as an annual amount) adjusted to reflect changes in the Consumer Price Index since the date of resignation.
- (8) For the purposes of this section, a contributor who has not reached the age of 55 years will be taken to resign if the contributor is not to be taken to have retired from employment pursuant to section 4(8) and the contributor's employment terminates or is terminated for any reason except invalidity (in circumstances entitling the contributor to benefits under this Act), retrenchment or death.
- (9) Where but for section 46A, benefits would be payable under the Police Occupational Superannuation Scheme to or in relation to a contributor who resigned from employment before the commencement of the *Police Superannuation (Miscellaneous) Amendment Act 2001*, the benefits payable to, or in relation to, the contributor under this section—
  - (a) will not include the part of the benefit represented by
 
$$Pn \left( \frac{AFS \times 1.36 \times M}{480} \right)$$
 in the relevant formula; but
  - (b) will include the amount referred to in section 46A(2)(f).

### 23—Retrenchment

- (1) Where a contributor's employment is terminated by retrenchment the contributor may elect—
  - (a) to take a lump sum payment; or
  - (b) to preserve his or her superannuation benefits.
- (2) A lump sum payment under this section will be calculated as follows:

$$LS = 5.4545 \times A \times FS \times \left( 1 + \frac{0.1667 \times X}{100} \right) + Pn \left( \frac{FS \times 1.36 \times M}{480} \right)$$

Where—

*LS* is the lump sum

*A* is the lesser of the following:

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by 360

*FS* is the contributor's actual or attributed salary (expressed as an annual amount)

*X* is the number of months (if any) by which the contributor's age, at termination of the employment, exceeds 50 years

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*M* is the number of months of the contributor's contribution period occurring after 31 December 1987.

- (3) Where a contributor elects to preserve his or her superannuation benefits, this Act applies in the same way as if the contributor had made that election on resignation.
- (4) Where a contributor's employment is to be terminated by retrenchment, the Commissioner must give the Board notice of that fact in accordance with the regulations at least one month before the termination takes effect.

## 24—Disability pension

- (1) Subject to this section, a contributor who is temporarily or permanently incapacitated for work, and has not reached the age of 55 years, is entitled to a disability pension.
- (2) A contributor who becomes incapacitated for work in a particular position will not be regarded as incapacitated for work for the purposes of this section if some other position in the police force, carrying a salary of at least 80 per cent of the salary applicable to the former position, is available to the contributor and the contributor could reasonably be expected to take that other position.
- (3) A disability pension is not payable in respect of—
  - (a) a period in respect of which the contributor is entitled to sick leave; or
  - (b) a period in respect of which the contributor is entitled to weekly payments of workers compensation; or
  - (c) a period for which the contributor is on recreation leave or long service leave.
- (4) The Board will not pay a disability pension in respect of a period of incapacity of less than one week and may decline to pay a disability pension if it appears that the duration of the incapacity is likely to be less than six months.
- (5) The amount of a disability pension will be two-thirds of the contributor's notional salary.

- (6) A disability pension cannot be paid for a continuous period of more than 12 months unless the Board thinks that there are special reasons for extending that limit, in which case it may extend the pension period by not more than a further six months.
- (7) A disability pension cannot be paid, in respect of the same incapacity, for an aggregate period of more than 18 months in any one period of 36 months.
- (8) A contributor is not required to make any contributions over a period for which the contributor receives a disability pension but will be credited with contribution points and contribution months in respect of any such period as if the contributor were contributing in respect of that period.

## **25—Termination of employment on invalidity**

- (1) A contributor whose employment terminates on the ground of invalidity is entitled to a benefit under this section.
- (2) If the Board is satisfied that the contributor's incapacity for all kinds of work (both inside and outside the police force) is 60 per cent or more and is likely to be permanent the contributor is entitled to a lump sum payment calculated as follows:

$$LS = (6 \times A \times FS) + Pn \left( \frac{FS \times 1.36 \times M}{480} \right)$$

Where—

*LS* is the lump sum

*A* is the lesser of the following:

- (a) unity;
- (b) whichever of the following is applicable in the circumstances of the case:
  - (i) if the contributor is not receiving, and is not entitled to receive, weekly workers compensation payments in relation to the invalidity—the numerical value obtained by dividing the number of the contributor's contribution points extrapolated to the age of 55 years by 360;
  - (ii) if the contributor is receiving, or is entitled to receive, weekly workers compensation payments in relation to the invalidity based on total incapacity for work—the numerical value obtained by dividing the number of the contributor's accrued contribution points by 360;
  - (iii) if the contributor is receiving, or is entitled to receive, weekly workers compensation payments based on partial incapacity for work, the numerical value obtained from the following formula:

$$n = \frac{acp + (1 - x)(ecp - acp)}{360}$$

Where—

*n* is the numerical value

*acp* is the number of the contributor's accrued contribution points



*ecp* is the number of the contributor's contribution points extrapolated to the age of 55 years

*x* is the extent of the contributor's incapacity for work expressed as a proportion of total incapacity

*FS* is the contributor's actual or attributed salary immediately before termination of employment (expressed as an annual amount)

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*M* is the number of months of the contributor's contribution period occurring after 31 December 1987.

- (3) If the Board is not satisfied as to one or both of the matters referred to in subsection (2) the contributor is entitled to a lump sum calculated in accordance with subsection (3a) and a further lump sum payment that is the greater of the following:

- (a) twice the contributor's actual or attributed salary (expressed as an annual amount); or
- (b)  $LS = 5.4545 \times A \times FS \times \left(1 + \frac{0.1667 \times X}{100}\right)$

Where—

*LS* is the lump sum

*A* is the lesser of the following:

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by 360

*FS* is the contributor's actual or attributed salary immediately before termination of employment (expressed as an annual amount)

*X* is the number of months (if any) by which the contributor's age, at termination of the employment, exceeds 50 years.

- (3a) The lump sum referred to in subsection (3) is calculated as follows:

$$LS = Pn \left( \frac{FS \times 1.36 \times M}{480} \right)$$

Where—

*LS* is the lump sum

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;

- (b) in any other case—the numerical value arrived at by expressing the contributor's employment during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*FS* is the contributor's actual or attributed salary (expressed as an annual amount)

*M* is the number of months of the contributor's contribution period occurring after 31 December 1987.

- (4) Subject to subsection (5), a contributor's employment will be taken to have terminated on account of invalidity if and only if—
  - (a) the Governor or the Commissioner terminates the employment on the ground of the contributor's invalidity; or
  - (b) —
    - (i) the contributor satisfies the Board (before termination of employment) that he or she is incapacitated for work in the contributor's present position; and
    - (ii) the Board is satisfied that there is no other position in the police force or in the Public Service of the State, carrying a salary of at least 80 per cent of the salary applicable to the contributor's present position, which the contributor could reasonably be expected to take, available to the contributor; and
    - (iii) the contributor has been on sick leave, weekly payments of workers compensation or disability pension for at least 12 months or periods aggregating at least 12 months on account of the invalidity; and
    - (iv) the contributor, after giving notice to the Board as required by the regulations, resigns from employment.
- (5) If—
  - (a) the contributor refuses employment in some other position in the police force or the Public Service of the State that carries a salary of at least 80 per cent of the salary applicable to the contributor's present position which the contributor could reasonably be expected to have taken; and
  - (b) the Governor or the Commissioner subsequently terminates the contributor's employment,the contributor will be taken to have retired or resigned from employment.
- (6) For the purposes of subsection (5)(a) a contributor will be taken to have refused employment in a position in the police force or the Public Service of the State if he or she refuses an offer of employment in that position or refuses to make a genuine application for appointment to the position after being requested to do so by the Commissioner or the Board.
- (7) Where the Commissioner proposes to terminate a contributor's employment on the ground of invalidity, the Commissioner must, at least one month before doing so, give the Board notice of the proposal in accordance with the regulations.

## 26—Death of contributor

- (1) Where a contributor's employment is terminated by the contributor's death—
- (a) if the contributor is survived by a spouse—a lump sum payment will be made to the spouse;
  - (b) if the contributor is survived by a spouse and an eligible child or eligible children—a pension will be paid to each eligible child throughout any period of dependency;
  - (ba) if the contributor is not survived by a spouse but is survived by an eligible child or eligible children—a lump sum will be paid to the contributor's estate and a pension will be paid to each eligible child throughout any period of dependency;
  - (c) if the contributor is not survived by a spouse or an eligible child—a lump sum payment will be made to the contributor's estate.
- (2) The lump sum to be paid to a surviving spouse, will be calculated as follows:

$$LS = (5 \times A \times FS) + Pn \left( \frac{FS \times 1.36 \times M}{480} \right)$$

Where—

*LS* is the lump sum payment

*A* is the lesser of the following:

- (a) unity;
- (b) whichever of the following is applicable in the circumstances of the case:
  - (i) if the spouse is not receiving, and is not entitled to receive, weekly workers compensation payments in relation to the contributor's death—the numerical value obtained by dividing the number of the contributor's contribution points extrapolated to the age of 60 years by 420;
  - (ii) if the spouse is receiving, or is entitled to receive, weekly workers compensation payments in relation to the contributor's death based on full dependency—the numerical value obtained by dividing the number of the contributor's accrued contribution points by 420;
  - (iii) if the spouse is receiving, or is entitled to receive, weekly workers compensation payments in relation to the contributor's death based on partial dependency—the numerical value obtained from the following formula:

$$n = \frac{acp + (1-x)(ecp - acp)}{420}$$

Where—

*n* is the numerical value

*acp* is the number of the contributor's accrued contribution points

*ecp* is the number of the contributor's contribution points extrapolated to the age of 60 years

*x* is the extent of the spouse's dependency expressed as a proportion of full dependency

*FS* is the contributor's actual or attributed salary immediately before the contributor's death (expressed as an annual amount)

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*M* is the number of months of the contributor's contribution period occurring after 31 December 1987.

(2a) However, a surviving spouse will not be entitled to a benefit under this section if section 38K applies to the spouse.

(3) The pension for an eligible child is calculated as follows:

(a) where the contributor is survived by a spouse, then—

(i) if there are no more than three eligible children—

$$P = A \times .05 \times FS$$

(ii) if there are more than three eligible children—

$$P = \frac{A \times .15 \times FS}{n}$$

(b) where the contributor is not survived by a spouse, then—

(i) if there are no more than three eligible children—

$$P = A \times .15 \times FS$$

(ii) if there are more than three eligible children—

$$P = \frac{A \times .45 \times FS}{n}$$

Where—

*P* is the amount of the pension (expressed as an amount per fortnight)

*A* is the lesser of the following:

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's contribution points extrapolated to the age of 60 years by 420

*FS* is the contributor's actual or attributed salary immediately before the contributor's death (expressed as an amount per fortnight)

$n$  is the number of eligible children.

- (4) The pension for an eligible child will be indexed.
- (5) The lump sum to be paid to the estate of a contributor who is not survived by a spouse but is survived by an eligible child or eligible children will be the aggregate of an amount calculated under subsection (5a) and the greater of the following amounts:
- (a) an amount equivalent to the amount standing to the credit of the contributor's contribution account;
  - (b) an amount equivalent to twice the amount of the contributor's actual or attributed salary immediately before the contributor's death (expressed as an annual amount).
- (5a) The amount referred to in subsection (5) is calculated as follows:

$$A = Pn \left( \frac{FS \times 1.36 \times M}{480} \right)$$

Where—

$A$  is the amount

$Pn$  is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

$FS$  is the contributor's actual or attributed salary (expressed as an annual amount)

$M$  is the number of months of the contributor's contribution period occurring after 31 December 1987.

- (6) The estate of a contributor who is not survived by a spouse or an eligible child is entitled to a lump sum payment in accordance with the following provisions:
- (a) if the contributor died in the course of duty the lump sum is the greater of the following:

(i)  $LS = (7 \times A \times FS) + Pn \left( \frac{FS \times 1.36 \times M}{480} \right)$

(ii)  $LS = (3 \times FS) + Pn \left( \frac{FS \times 1.36 \times M}{480} \right)$

- (b) if the contributor did not die in the course of duty the lump sum is calculated as follows:

$$LS = (7 \times A \times FS) + Pn \left( \frac{FS \times 1.36 \times M}{480} \right)$$

In both paragraphs (a) and (b)—

$LS$  is the lump sum payment

*A* is the lesser of the following:

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by 420;

*FS* is the contributor's actual or attributed salary (expressed as an annual amount)

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*M* is the number of months of the contributor's contribution period occurring after 31 December 1987.

### **26A—Commutation to pay deferred superannuation contributions surcharge—contributor**

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

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

- (3) If a contributor has made a request under subsection (2)(b), the contributor must, before the expiration of 2 months following the issue of a surcharge notice in respect of the contributor, advise the Board in the approved form that the notice has been issued and the Board must, within 7 days of receiving that advice—
  - (a) convert into a pension—
    - (i) if the amount of the surcharge payable by the contributor is less than the withheld amount—a portion of the withheld amount equal to the amount payable; or
    - (ii) in any other case—the whole of the withheld amount; and

- (b) immediately after converting the withheld amount, or a portion of the withheld amount, into a pension under paragraph (a)—commute the pension; and
- (c) pay to the contributor—
  - (i) the lump sum resulting from the commutation of the pension; and
  - (ii) the balance (if any) of the withheld amount.
- (4) The Board may reject an application under subsection (1) if—
  - (a) it is not satisfied that, if the application were accepted, the resulting lump sum will be applied in payment of the surcharge; or
  - (b) the contributor fails to satisfy the Board that the contributor has, or will have, a surcharge liability to the Commissioner of Taxation.
- (5) The factors to be applied in—
  - (a) the conversion of a withheld amount (or part of a withheld amount) into a pension; and
  - (b) the commutation of a pension,will be determined by the Treasurer on the recommendation of an actuary.

**26B—Commutation to pay deferred superannuation contributions surcharge following death of contributor**

- (1) If a contributor who is liable for a deferred superannuation contributions surcharge dies—
  - (a) having made a request of the Board under section 26A for part of his or her benefit to be withheld but before receiving a surcharge notice; or
  - (b) having received a surcharge notice but before requesting commutation of his or her pension under section 26A,the contributor's spouse or, if the contributor is not survived by a spouse, the contributor's legal representative, may, before the expiration of the period of 2 months immediately following the contributor's death or the issue of the surcharge notice (whichever is the later), apply to the Board—
  - (c) to receive the amount withheld by the Board on behalf of the deceased contributor under section 26A in the form of a commutable pension; and
  - (d) to fully commute the pension.
- (2) The Board must, on receipt of an application under subsection (1)—
  - (a) convert into a pension—
    - (i) if the amount of the surcharge payable by the spouse or estate is less than the withheld amount—a portion of the withheld amount equal to the amount payable; or
    - (ii) in any other case—the whole of the withheld amount; and
  - (b) immediately after converting the withheld amount, or a portion of the withheld amount, into a pension under paragraph (a)—commute the pension; and

- (c) pay to the spouse or estate—
  - (i) the lump sum resulting from the commutation of the pension; and
  - (ii) the balance (if any) of the withheld amount.
- (3) If a contributor dies without having made a request under section 26A, the contributor's spouse or, if the contributor is not survived by a spouse, the contributor's legal representative, may—
  - (a) estimate the amount of the surcharge the spouse or estate will become liable to pay (the *estimated surcharge amount*); and
  - (b) request the Board, in the approved form, to—
    - (i) withhold from the spouse's benefit or the benefit payable to the estate an amount equal to the estimated surcharge amount (the *withheld amount*); and
    - (ii) pay the balance of the benefit to the spouse or estate,and the Board must, subject to subsection (6), comply with the request.
- (4) An application under subsection (3) must be made in writing to the Board before payment of the benefit to the spouse or legal representative.
- (5) The spouse or legal representative must, before the expiration of 2 months following the issue of a surcharge notice in respect of the contributor, advise the Board in the approved form that the notice has been issued and the Board must, within 7 days of receiving that advice—
  - (a) convert into a pension—
    - (i) if the amount of the surcharge payable by the spouse or estate is less than the withheld amount—a portion of the withheld amount equal to the amount payable; or
    - (ii) in any other case—the whole of the withheld amount; and
  - (b) immediately after converting the withheld amount, or a portion of the withheld amount, into a pension under paragraph (a)—commute the pension; and
  - (c) pay to the spouse or estate—
    - (i) the lump sum resulting from the commutation of the pension; and
    - (ii) the balance (if any) of the withheld amount.
- (6) The Board may reject an application under subsection (1) or (3) if it is not satisfied that, if the application were accepted, the resulting lump sum will be applied in payment of the surcharge or be used to reimburse the deceased contributor's estate, or the spouse or other person who has paid the surcharge on behalf of the estate.
- (7) The factors to be applied in—
  - (a) the conversion of a withheld amount (or part of a withheld amount) into a pension; and
  - (b) the commutation of a pension,will be determined by the Treasurer on the recommendation of an actuary.



(8) In this section—

*legal representative*, in relation to a deceased contributor, means a person—

- (a) holding office as executor of the will of the deceased contributor where probate of the will has been granted or resealed in South Australia or any other State or a Territory; or
- (b) holding office in South Australia or any other State or a Territory as administrator of the estate of the deceased contributor.

## **26C—Withheld amount**

An amount withheld under section 26A or 26B—

- (a) must be paid by the Treasurer into the Consolidated Account or a special deposit account established by the Treasurer for that purpose; and
- (b) will be charged against the relevant contributor's contribution account in accordance with section 14 as if the amount had been paid to the contributor; and
- (c) will be credited with interest at a rate determined by the Treasurer; and
- (d) may be paid to the contributor (or the contributor's spouse or legal representative)—
  - (i) in accordance with section 26A or 26B; or
  - (ii) at the direction of the Board if the Board—
    - (A) has not, within 2 years of withholding the amount, received advice that a surcharge notice has been issued in respect of the contributor; or
    - (B) considers, at any time, there is other good reason for doing so.



## Part 5—Superannuation benefits—old scheme contributors

### Division 1—Pension benefits

#### 27—Application of this Part

- (1) Subject to subsection (2), this Part applies only to old scheme contributors.
- (2) Sections 30, 31 and 32 also apply to a person who was a police cadet immediately before the commencement of this Act as though he or she were a contributor and if that person subsequently becomes a member of the police force all the provisions of this Part will then apply to that person.
- (3) A cadet is not required to contribute to the Scheme but will be credited with contribution points and contribution months as if he or she were contributing.

#### 28—Retirement

- (1) A contributor who retires from employment after reaching the age of 55 years is entitled to a lump sum calculated in accordance with subsection (1a) and a pension calculated as follows:

$$P = A \times \frac{2}{3} \times K \times FS \times \left( 1 + \frac{X}{600} \right)$$

Where—

**P** is the amount of the pension (expressed as an amount per fortnight)

**A** is the lesser of the following:

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by 360 or, where the contributor has not reached the age of 60 years, by the addition of 300 and the number of months (if any) by which the contributor's age, at retirement, exceeds 55 years

**K** is a reduction factor that varies with the contributor's age expressed in years and completed months (for the value of **K** see Schedule 3)

**FS** is the contributor's actual or attributed salary (expressed as an amount per fortnight)

**X** is the number of months (if any) by which the contributor's age, at retirement, exceeds 60 years.

- (1a) The lump sum referred to in subsection (1) is calculated as follows:

$$LS = Pn \left( \frac{FS \times 0.91 \times M}{480} \right)$$

Where—

**LS** is the lump sum

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*FS* is the contributor's actual or attributed salary (expressed as an annual amount)

*M* is the number of months of the contributor's contribution period occurring after 31 December 1987.

- (2) A retirement pension will be indexed.
- (3) A contributor may, subject to subsection (4), retire after reaching the age of 50 years and if the contributor retires before reaching the age of 55 years he or she is entitled to a lump sum payment calculated as follows:

$$LS = 5.4545 \times A \times FS \times \left( 1 + \frac{0.1667 \times X}{100} \right) + Pn \left( \frac{FS \times 0.91 \times M}{480} \right)$$

Where—

*LS* is the lump sum

*A* is the lesser of the following:

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by 360

*FS* is the contributor's actual or attributed salary (expressed as an annual amount)

*X* is the number of months (if any) by which the contributor's age, at retirement, exceeds 50 years

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*M* is the number of months of the contributor's contribution period occurring after 31 December 1987.

- (4) The number of contributors who may retire pursuant to subsection (3) is subject to restriction by regulation.

## **29—Retrenchment**

(1) Where—

- (a) a contributor's employment is terminated by retrenchment;
- (b) the contributor has been a contributor for not less than 5 years;

- (c) the Board is satisfied that there is no other position in the police force, carrying a salary of at least 80 per cent of the salary applicable to the former employment, which the contributor could reasonably be expected to take, available to the contributor,

the contributor is entitled to a pension and a lump sum under this section.

- (2) The amount of the pension is calculated as follows:

$$P = A \times \frac{2}{3} \times FS$$

Where—

*P* is the amount of the pension (expressed as an amount per fortnight)

*A* is the numerical value obtained by dividing the number of the contributor's accrued contribution points by—

- (a) in the case of a contributor whose contribution period commenced before reaching the age of 30 years—the number of months between the contributor's age as at the date of commencement of the contribution period and the age of 60 years;
- (b) in any other case—360

*FS* is the contributor's actual or attributed salary (expressed as an amount per fortnight) immediately before retrenchment.

- (2a) The amount of the lump sum is calculated as follows:

$$LS = Pn \left( \frac{FS \times 0.91 \times M}{480} \right)$$

Where—

*LS* is the lump sum

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*FS* is the contributor's actual or attributed salary (expressed as an annual amount)

*M* is the number of months of the contributor's contribution period occurring after 31 December 1987.

- (3) A retrenchment pension will be indexed.

### 30—Temporary disability pension

- (1) Subject to this section, a contributor—

- (a) who is temporarily or permanently incapacitated for work but whose employment has not been terminated on that ground; and
- (b) who has not reached 60 years of age,

is entitled to a disability pension.

- (2) A contributor who becomes incapacitated for work in a particular position will not be regarded as incapacitated for work for the purposes of this section if some other position, in the police force carrying a salary of at least 80 per cent of the salary applicable to the former position, is available to the contributor and the contributor could reasonably be expected to take that other position.
- (3) A disability pension is not payable in respect of—
  - (a) a period in respect of which the contributor is entitled to sick leave; or
  - (b) a period in respect of which the contributor is entitled to weekly payments of workers compensation; or
  - (c) a period for which the contributor is on recreation leave or long service leave.
- (4) The Board will not pay a disability pension in respect of a period of incapacity of less than one week and may decline to pay a disability pension if it appears that the duration of the incapacity is likely to be less than six months.
- (5) The amount of the pension is calculated as follows:

$$P = A \times \frac{2}{3} \times FS$$

Where—

**P** is the amount of the pension (expressed as an amount per fortnight)

**A** is the numerical value obtained by dividing the number of the contributor's contribution points extrapolated to the age of 60 years by—

- (a) in the case of a contributor whose contribution period commenced before reaching the age of 30 years—the number of months between the contributor's age as at the date of commencement of the contribution period and the age of 60 years;
- (b) in any other case—360

**FS** is the contributor's actual or attributed salary (expressed as an amount per fortnight) immediately before the pension becomes payable.

- (6) A disability pension cannot be paid for a continuous period of more than 12 months unless the Board thinks that there are special reasons for extending that limit, in which case it may extend the pension period by not more than a further six months.
- (7) A disability pension cannot be paid, in respect of the same incapacity, for an aggregate period of more than 18 months in any one period of 36 months.
- (8) A contributor is not required to make any contribution over a period for which the contributor receives a disability pension but will be credited with contribution points and contribution months in respect of any such period as if the contributor were contributing in respect of that period.

### **31—Invalidity**

- (1) A contributor whose employment terminates on the ground of invalidity is entitled to a benefit under this section.

- (2) If the Board is satisfied that the contributor's incapacity for all kinds of work (both inside and outside the police force) is 60 per cent or more and is likely to be permanent, the contributor is entitled to a lump sum calculated in accordance with subsection (4a) and a pension calculated as follows:

$$P = A \times \frac{2}{3} \times FS$$

Where—

*P* is the amount of the pension (expressed as an amount per fortnight)

*A* is the numerical value obtained by dividing the number of the contributor's contribution points extrapolated to the age of 60 years by—

- (a) in the case of a contributor whose contribution period commenced before reaching the age of 30 years—the number of months between the contributor's age as at the date of commencement of the contribution period and the age of 60 years;
- (b) in any other case—360

*FS* is the contributor's actual or attributed salary (expressed as an amount per fortnight) immediately before termination of employment.

- (3) The pension will be indexed.
- (4) If the Board is not satisfied as to one or both of the matters referred to in subsection (2), the contributor is entitled to a lump sum calculated in accordance with subsection (4a) and a further lump sum payment that is the greater of the following:

- (a) twice the contributor's actual or attributed salary (expressed as an annual amount); or
- (b)  $LS = 5.4545 \times A \times FS \times \left(1 + \frac{0.1667 \times X}{100}\right)$

Where—

*LS* is the lump sum

*A* is the lesser of the following:

- (i) unity;
- (ii) the numerical value obtained by dividing the number of the contributor's accrued contribution points by 360

*FS* is the contributor's actual or attributed salary (expressed as an annual amount)

*X* is the number of months (if any) by which the contributor's age at termination of the employment, exceeds 50 years.

- (4a) The lump sum referred to in subsections (2) and (4) is calculated as follows:

$$LS = Pn \left( \frac{FS \times 0.91 \times M}{480} \right)$$

Where—

*LS* is the lump sum

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*FS* is the contributor's actual or attributed salary (expressed as an annual amount)

*M* is the number of months of the contributor's contribution period occurring after 31 December 1987.

- (5) Subject to subsection (6), a contributor's employment will be taken to have terminated on account of invalidity if and only if—
  - (a) the Governor or the Commissioner terminates the employment on the ground of the contributor's invalidity; or
  - (b) —
    - (i) the contributor satisfies the Board (before termination of employment) that he or she is incapacitated for work in the contributor's present position; and
    - (ii) the Board is satisfied that there is no other position in the police force or in the Public Service of the State, carrying a salary of at least 80 per cent of the salary applicable to the contributor's present position, which the contributor could reasonably be expected to take, available to the contributor; and
    - (iii) the contributor has been on sick leave, weekly payments of workers compensation or disability pension for at least 12 months or periods aggregating at least 12 months on account of the invalidity; and
    - (iv) the contributor, after giving notice to the Board as required by the regulations, resigns from employment.
- (6) If—
  - (a) the contributor refuses employment in some other position in the police force or the Public Service of the State that carries a salary of at least 80 per cent of the salary applicable to the contributor's present position which the contributor could reasonably be expected to have taken; and
  - (b) the Governor or the Commissioner subsequently terminates the contributor's employment,

the contributor will be taken to have retired or resigned from employment.

- (7) For the purposes of subsection (6)(a) a contributor will be taken to have refused employment in a position in the police force or the Public Service of the State if he or she refuses an offer of employment in that position or refuses to make a genuine application for appointment to the position after being requested to do so by the Commissioner or the Board.



- (8) Where the Commissioner proposes to terminate a contributor's employment on the ground of invalidity, the Commissioner must, at least one month before doing so, give the Board notice of the proposal in accordance with the regulations.

### 32—Benefits payable on contributor's death

- (1) Where a contributor dies—
- (a) a person referred to in subsection (1aa) is entitled to—
    - (i) a pension equal to two-thirds of the deceased contributor's notional pension and, if the contributor's employment was terminated by his or her death, a lump sum calculated in accordance with subsection (1ab); and
    - (ii) where the contributor retired from employment after the commencement of the repealed Act but before the commencement of this Act—a lump sum equal to two-thirds of the lump sum paid to the contributor upon retirement; and
  - (b) an eligible child is entitled to a pension in accordance with subsection (2).

(1aa) The following persons are entitled to a benefit under subsection (1)(a):

- (a) the deceased contributor's lawful spouse if—
  - (i) he or she became the contributor's lawful spouse before termination of the contributor's employment; or
  - (ii) he or she was the contributor's lawful spouse for a period of five years immediately preceding the contributor's death; or
  - (iii) he or she is entitled to a benefit under paragraph (b);
- (b) a person who was cohabiting with the contributor at the time of his or her death as the lawful spouse or the husband or wife *de facto* of the contributor—
  - (i) if he or she had cohabited with the contributor either as the lawful spouse or the husband or wife *de facto* of the contributor (or in both of those capacities at different times)—
    - (A) continuously for the period of five years immediately preceding the contributor's death; or
    - (B) during the period of six years immediately preceding the contributor's death for periods aggregating not less than five years; or
  - (ii) if he or she is the natural parent of a child of whom the contributor was the other natural parent;
- (c) a person who was cohabiting with the contributor at the time of his or her death as the putative spouse of the contributor.

(1ab) The lump sum referred to in subsection (1)(a)(i) is calculated as follows:

$$LS = Pn \left( \frac{FS \times 0.91 \times M}{480} \right)$$

Where—

*LS* is the lump sum

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*FS* is the contributor's actual or attributed salary (expressed as an annual amount)

*M* is the number of months of the contributor's contribution period occurring after 31 December 1987.

- (1a) Where a surviving spouse would, but for an election under this subsection, be entitled to a lump sum under subsection (1)(a)(ii), the spouse may instead, by written notice given to the Board before the lump sum is paid, elect to receive a pension equal to one-third of the deceased contributor's notional pension in addition to the pension referred to in subsection (1)(a)(i).
- (1b) However, a surviving spouse will not be entitled to a benefit under this section if section 38K applies to the spouse and the amount of any benefit payable to a person must take into account any reduction that has been made under section 38J.
- (2) Subject to subsection (3) the amount of the pension for each eligible child is as follows:
  - (a) if a pension is being paid to a surviving spouse—
    - (i) where there are no more than two eligible children—a pension equal to one-ninth of the deceased contributor's notional pension;
    - (ii) where there are three or more eligible children—a pension calculated by dividing one-third of the deceased contributor's notional pension by the number of eligible children;
  - (b) if no pension is being paid to a surviving spouse—
    - (i) where there is one eligible child—a pension equal to 45 per cent of the deceased contributor's notional pension;
    - (ii) where there are two eligible children—a pension equal to 40 per cent of the deceased contributor's notional pension;
    - (iii) where there are three eligible children—a pension equal to 30 per cent of the deceased contributor's notional pension;
    - (iv) where there are four or more eligible children—a pension calculated by dividing the deceased contributor's notional pension by the number of eligible children.
- (3) If the amount of a pension for an eligible child would, but for this subsection, be less than the prescribed amount, the pension will be increased to the prescribed amount.

- (4) A reference in this section to a deceased contributor's notional pension is—
- (a) where the contributor's employment had terminated before the date of death—a reference to the amount of the contributor's pension immediately before his or her death except where the contributor's employment terminated before the commencement of this Act and the contributor had made an election under section 37(2) of the repealed Act or under a corresponding provision of a previous enactment in which case the notional pension will be the pension that the contributor would have been receiving immediately before his or her death if he or she had not made that election;
  - (b) where the contributor's employment terminated on his or her death and the contributor reached the age of 60 years on or before the date of death—a reference to the amount of the retirement pension to which the contributor would have been entitled if he or she had retired on the date of death;
  - (c) where the contributor's employment terminated on his or her death and the contributor had not reached the age of 60 years on the date of death—a reference to the amount of the retirement pension to which the contributor would have been entitled if he or she had not died and—
    - (i) had continued in employment until reaching the age of 60 years (but without change to the contributor's actual or attributed salary as at the date of death); and
    - (ii) had been credited with a number of contribution points in respect of the period from the date of death to the age of 60 years equivalent to—
      - (A) in the case of a contributor who had been in full-time employment throughout the contribution period—the number of months between the end of the last complete month of the contribution period and the age of 60 years (an incomplete month being counted as a whole month);
      - (B) in the case of a contributor who had not been in full-time employment throughout the contribution period—the number that bears the same proportion to the number of months referred to in subparagraph (A) as the contributor's employment bears to full-time employment; and
    - (iii) had retired on reaching the age of 60 years.
- (5) Subject to subsection (6), a deceased contributor's notional pension will be indexed as if it were (or remained) an actual pension and consequential adjustments will be made to pensions calculated by reference to the notional pension.
- (6) A deceased contributor's notional pension will not be indexed for the purpose of determining the amount of a pension payable to a surviving spouse under subsection (1a).

### 33—Benefits payable to contributor's estate

- (1) The estate of a contributor who dies and is not survived by a spouse but is survived by an eligible child or eligible children is entitled to a lump sum that is—

- (a) where the contributor's employment was terminated by his or her death—made up of the following amounts:
- (i) an amount that is the greater of the following amounts:
- (A) an amount equivalent to the amount standing to the credit of the contributor's contribution account; or
- (B) an amount equivalent to twice the amount of the contributor's actual or attributed salary (expressed as an annual amount); and

- (ii) an amount calculated as follows:

$$A = Pn \left( \frac{FS \times 0.91 \times M}{480} \right)$$

Where—

*A* is the amount

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*FS* is the contributor's actual or attributed salary (expressed as an annual amount)

*M* is the number of months of the contributor's contribution period occurring after 31 December 1987;

- (b) in any other case—an amount equivalent to the amount standing to the credit of the contributor's contribution account.

- (2) The estate of a contributor whose employment was terminated by his or her death and who is not survived by a spouse or an eligible child is entitled to a lump sum calculated in accordance with subsection (3) and a further lump sum payment in accordance with the following provisions:

- (a) if the contributor died in the course of duty the lump sum is the greater of the following:

(i)  $LS = 7 \times A \times FS$

(ii)  $LS = 3 \times FS$

- (b) if the contributor did not die in the course of duty the lump sum is calculated as follows:

$$LS = 7 \times A \times FS$$

In both paragraphs (a) and (b)—

**LS** is the lump sum payment

**A** is the lesser of the following:

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by 360;

**FS** is the contributor's actual or attributed salary (expressed as an annual amount).

- (3) The lump sum referred to in subsection (2) is calculated as follows:

$$LS = Pn \left( \frac{FS \times 0.91 \times M}{480} \right)$$

Where—

**LS** is the lump sum

**Pn** is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

**FS** is the contributor's actual or attributed salary (expressed as an annual amount)

**M** is the number of months of the contributor's contribution period occurring after 31 December 1987.

### **34—Resignation and preservation of benefits**

- (1) A contributor who resigns from employment may elect—

- (a) to take immediately an amount (to be charged against the contributor's contribution account) equivalent to the total balance of the account; or
- (b) to preserve his or her accrued superannuation benefits in the Scheme.

- (1aa) A contributor who fails to inform the Board in writing of his or her election under subsection (1) within three months after resignation will be taken to have elected to preserve his or her accrued superannuation benefits.

- (1ab) If the Board is of the opinion that the limitation period referred to in subsection (1aa) would unfairly prejudice a contributor, the Board may extend the period as it applies to the contributor.

- (1a) Where a contributor resigns and elects to take the amount referred to in subsection (1)(a) the contributor is also entitled to a superannuation payment in accordance with the following provisions:

- (a) if the amount of the superannuation payment is less than \$200, the contributor is entitled to the payment on resignation;

- (b) if the amount of the payment is \$200 or more the contributor may elect to preserve the payment or to carry it over to some other superannuation fund or scheme approved by the Board;
- (c) if the contributor elects to preserve the payment—
  - (ai) the Board must—
    - (A) not less than 6 months before the contributor's 60th birthday—notify the contributor in writing of the contributor's entitlement to require the Board to make the payment under subparagraph (i); and
    - (B) not less than 6 months before the contributor's 55th birthday—notify the contributor in writing of the contributor's entitlement to require the Board to make the payment under subparagraph (ii);
  - (i) the contributor may at any time after reaching 60 years of age require the Board to make the payment and, if no such requirement has been made on or before the date on which the contributor reaches 65 years of age, the Board will make the payment;
  - (ii) if the contributor has reached the age of 55 years and is not employed by an employer within the meaning of the Commonwealth Act, the contributor may require the Board to make the payment to the contributor;
  - (iii) if the contributor has become incapacitated and satisfies the Board that his or her incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent, the Board will make the payment to the contributor;
  - (iv) if the contributor dies, the payment will be made to the spouse of the deceased contributor or, if he or she left no surviving spouse, to the contributor's estate,

(and a payment under any of the above subparagraphs excludes further rights so that a claim cannot be subsequently made under some other subparagraph).

- (1b) The amount of the superannuation payment referred to in subsection (1a) is made up of the following components:
  - (a) a component being the amount of the minimum contribution required to avoid payment of the superannuation guarantee charge in respect of the contributor under the Commonwealth Act together with interest from the date of resignation; and
  - (b) where the contributor was a member of the police force at any time during the period commencing on 1 January 1988 and ending on 30 June 1992—a component calculated as follows:

$$C = Pn \left( \frac{AFS \times 0.91 \times M}{480} \right)$$

Where—

*C* is the component

*P<sub>n</sub>* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring during the period commencing on 1 January 1988 and ending on 30 June 1992—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*AFS* is the contributor's actual or attributed salary as at the date of resignation (expressed as an annual amount) adjusted to reflect changes in the Consumer Price Index since the date of resignation

*M* is the number of months of the contributor's contribution period occurring during the period commencing on 1 January 1988 and ending on 30 June 1992.

- (1c) The amount of interest referred to in subsection (1b)(a) will be calculated and credited to the contributor at the end of each financial year and will be calculated on the amount referred to in subsection (1b)(a) at the end of the first financial year and on the aggregate of that amount and the interest previously credited at the end of each subsequent financial year.
- (1d) The rate of interest will be determined by the Board in respect of each financial year in accordance with section 13.
- (2) Where a contributor resigns after a contribution period of less than 120 months and elects to preserve his or her accrued superannuation benefits, the following provisions apply:
  - (aa) the Board must, not less than 6 months before the contributor's 55th birthday, notify the contributor in writing of the contributor's entitlement to require the Board to make a superannuation payment under paragraph (a);
  - (a) the contributor may at any time after reaching 55 years of age require the Board to make a superannuation payment and, if no such requirement has been made on or before the date on which the contributor reaches 60 years of age, the Board must make such a payment;
  - (b) if the contributor has become incapacitated and satisfies the Board that his or her incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent, the Board must make a superannuation payment to the contributor;
  - (c) if the contributor dies, a payment must be made to the spouse of the deceased contributor or, if he or she left no surviving spouse, to the contributor's estate, (and a payment under any of the above paragraphs excludes further rights so that a claim cannot be subsequently made under some other paragraph).
- (3) A payment under subsection (2) will be made up of a lump sum calculated in accordance with subsection (3a) and a further lump sum made up of two components—
  - (a) an employee component (to be charged against the contributor's contribution account) equivalent to the total balance of the account; and

- (b) an employer component which will be equal to  $2\frac{1}{2}$  times the amount of the employee component.

- (3a) The lump sum referred to in subsection (3) is calculated as follows:

$$LS = Pn \left( \frac{AFS \times 0.91 \times M}{480} \right)$$

Where—

*LS* is the lump sum

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*AFS* is the contributor's actual or attributed salary as at the date of resignation (expressed as an annual amount) adjusted to reflect changes in the Consumer Price Index since the date of resignation

*M* is the number of months of the contributor's contribution period occurring after 31 December 1987.

- (4) Where a contributor resigns after a contribution period of 120 months or more and elects to preserve his or her accrued superannuation benefits, the following provisions apply:
- (aa) the Board must, not less than 6 months before the contributor's 55th birthday, notify the contributor in writing of the contributor's entitlement to require the payment of a lump sum and retirement pension under paragraph (a);
- (a) the contributor may, at any time after reaching 55 years of age, require the Board to pay the lump sum and commence paying the retirement pension referred to in subsection (5) and, if no such requirement has been made on or before the date on which the contributor reaches 60 years of age, the Board must pay the lump sum and commence paying the pension on and from that date;
- (b) if the contributor has become incapacitated and satisfies the Board that his or her incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent, the Board must pay a lump sum and an invalid pension to the contributor in accordance with subsection (5);
- (c) if the contributor dies and is survived by a spouse, a lump sum and a pension must be paid to the spouse of the deceased contributor in accordance with subsection (6);
- (d) if the contributor dies and is survived by an eligible child, or two or more eligible children, a pension must be paid to each eligible child in accordance with subsection (7);



- (e) if the contributor dies and is not survived by a spouse but is survived by an eligible child or eligible children, a lump sum must be paid to the contributor's estate in accordance with subsection (8b) in addition to the pension payable under paragraph (d) to the eligible child or children;
  - (f) if the contributor dies and is not survived by a spouse or an eligible child, a lump sum that is the aggregate of the lump sums calculated under subsections (8a) and (8c) must be paid to the contributor's estate.
- (5) The lump sum payable to the contributor under paragraph (a) or (b) of subsection (4) will be calculated in accordance with subsection (8a) and the pension payable to the contributor under either of those paragraphs will be calculated as follows:

$$P = 0.5181 \times A \times AFS$$

Where—

*P* is the amount of the pension (expressed as an amount per fortnight)

*A* is the numerical value obtained by dividing the number of the contributor's accrued contribution points by—

- (a) in the case of a contributor whose contribution period commenced before reaching the age of 30 years—the number of months between the contributor's age as at the commencement of the contribution period and the age of 55 years;
- (b) in any other case—300

*AFS* is the contributor's actual or attributed salary as at the date of resignation (expressed as an amount per fortnight) adjusted to reflect changes in the Consumer Price Index since the date of resignation.

- (6) The lump sum payable to the spouse of a deceased contributor under subsection (4) will be calculated in accordance with subsection (8a) and the pension payable to the spouse under that subsection will be two-thirds of the deceased contributor's notional pension.
- (7) Subject to subsection (8) the amount of the pension for each eligible child is as follows:
- (a) if a pension is being paid to a surviving spouse—
    - (i) where there are no more than two eligible children—a pension equal to one-ninth of the deceased contributor's notional pension;
    - (ii) where there are three or more eligible children—a pension calculated by dividing one-third of the deceased contributor's notional pension by the number of eligible children;
  - (b) if no pension is being paid to a surviving spouse—
    - (i) where there is one eligible child—a pension equal to 45 per cent of the deceased contributor's notional pension;
    - (ii) where there are two eligible children—a pension equal to 40 per cent of the deceased contributor's notional pension;
    - (iii) where there are three eligible children—a pension equal to 30 per cent of the deceased contributor's notional pension;

- (iv) where there are four or more eligible children—a pension calculated by dividing the deceased contributor's notional pension by the number of eligible children.
- (8) If the amount of a pension for an eligible child would, but for this subsection, be less than the prescribed amount, the pension will be increased to the prescribed amount.
- (8a) The lump sum is calculated as follows:

$$LS = Pn \left( \frac{AFS \times 0.91 \times M}{480} \right)$$

Where—

*LS* is the lump sum

*Pn* is—

- (a) in the case of a contributor who was in full-time employment during that part of the contribution period occurring after 31 December 1987—1;
- (b) in any other case—the numerical value arrived at by expressing the contributor's employment during that part of the contribution period as a proportion of full-time employment during that part of the contribution period

*AFS* is the contributor's actual or attributed salary as at the date of resignation (expressed as an annual amount) adjusted to reflect changes in the Consumer Price Index since the date of resignation

*M* is the number of months of the contributor's contribution period occurring after 31 December 1987.

- (8b) The amount of the lump sum payable to the estate of the deceased contributor under subsection (4)(e) is the aggregate of—
- (a) the amount standing to the credit of the contributor's contribution account; and
- (b) the lump sum calculated under subsection (8a).

- (8c) The second of the lump sums referred to in subsection (4)(f) is calculated as follows:

$$LS = 7 \times A \times AFS$$

Where—

*LS* is the lump sum

*A* is the lesser of the following:

- (a) unity;
- (b) the numerical value obtained by dividing the number of the contributor's accrued contribution points by 360

*AFS* is the contributor's actual or attributed salary as at the date of resignation (expressed as an annual amount) adjusted to reflect changes in the Consumer Price Index since the date of resignation.

- (9) Pensions payable under this section will be indexed.

- (10) A reference in this section to a deceased contributor's notional pension is a reference to a pension calculated in accordance with subsection (5).
- (11) For the purposes of this section, a contributor who has not reached the age of 55 years will be taken to resign if the contributor is not to be taken to have retired from employment pursuant to section 4(8a) and the contributor's employment terminates or is terminated for any reason except invalidity (in circumstances entitling the contributor to benefits under this Act), retrenchment or death.
- (12) Where but for section 46A, benefits would be payable under the Police Occupational Superannuation Scheme to or in relation to a contributor who resigned from employment before the commencement of the *Police Superannuation (Miscellaneous) Amendment Act 2001*, the benefits payable to, or in relation to, the contributor under this section—
  - (a) will not include a lump sum calculated under subsection (3a) or (8a); but
  - (b) will include the amount referred to in section 46A(2)(f).

## **Division 2—General**

### **35—Commutation of proportion of pension**

- (1) The Board will, on the application of a person who is entitled to a pension (other than a temporary disability pension or an eligible child's pension), commute a pension, or a proportion of a pension, to a lump sum payment.
- (2) The right of commutation is subject to the qualifications prescribed by regulation.
- (3) In the commutation of a pension, commutation factors promulgated by regulation will be applied.

### **35A—Commutation to pay deferred superannuation contributions surcharge**

- (1) The Board will, on the application of a contributor who is entitled to a pension (other than a temporary disability pension) and who is liable for a deferred superannuation contributions surcharge, commute so much of the pension as is required to provide a lump sum equivalent to the amount of the surcharge.
- (2) An application under subsection (1) must be made in writing to the Board before the expiration of the period of three months immediately following the date on which the notice given to the contributor by the Commissioner of Taxation under section 15(7) of the Superannuation Contributions Tax Act was issued.
- (3) Where—
  - (a) —
    - (i) a contributor who is liable for a deferred superannuation contributions surcharge dies before notice by the Commissioner of Taxation under section 15(7) of the Superannuation Contributions Tax Act is issued; or
    - (ii) a contributor who is liable for a deferred superannuation contributions surcharge dies within three months after the issue of such a notice without having commuted his or her pension under subsection (1); and

- (b) the contributor is survived by a spouse who is entitled to a pension as the contributor's spouse under this Act,

the Board will, subject to subsection (5) on the application of the spouse, commute so much of the spouse's pension as is required to provide a lump sum equivalent to the amount of the surcharge.

- (4) An application under subsection (3) must be made in writing to the Board before the expiration of the period of six months immediately following the contributor's death or the issue of the notice under section 15(7) of the Superannuation Contributions Tax Act, whichever is the later.
- (5) The Board must not commute a pension under subsection (3) unless it is satisfied that the resulting lump sum will be applied in payment of the surcharge or be used to reimburse the deceased contributor's estate or the spouse or other person who has paid the surcharge on behalf of the estate.
- (6) The commutation factors to be applied in the commutation of a pension under this section will be determined by the Treasurer on the recommendation of an actuary.
- (7) If the Board is satisfied that—
- (a) a contributor, or the spouse of a contributor, is entitled to commute the whole of his or her pension under section 35 and has done so except for a part that the contributor or spouse wishes to retain for the purpose of commutation under this section in order to pay the contributor's deferred superannuation contributions surcharge; and
  - (b) after commutation under this section for that purpose there will still be a part of the pension remaining uncommuted; and
  - (c) the part of the pension originally retained for commutation under this section was a reasonable estimate of the amount of the pension that would be required for that purpose,

the Board will, on the application of the contributor or spouse made at the same time as his or her application under subsection (1) or (3), commute the remaining uncommuted part of the pension using the factors applicable under section 35.

### **36—Medical examination etc of invalid pensioner**

- (1) The Board may from time to time require an invalid pensioner who has not reached the age of 60 years—
- (a) to submit to a medical examination by a specified medical practitioner; or
  - (b) to undergo specified medical treatment; or
  - (c) to avail himself or herself of specified assistance.
- (2) The cost of a medical examination under this section will be met by the Board.
- (3) A pensioner will not be required to submit to a particular form of medical treatment if there is a conflict of opinion between recognised medical experts as to the desirability of the treatment.
- (4) If a pensioner fails to comply with a requirement under this section, the Board may suspend the pension until the requirement is complied with.

### 37—Effect on pension of pensioner's re-employment

- (1) If, at the request of the Board, an invalid or retrenchment pensioner accepts an offer of appropriate employment in the police force or the Public Service of the State or, at the request of the Board, applies for such employment and is successful the following provisions apply:
- (a) if the pensioner returns to permanent employment in the police force, whether immediately or after a period of temporary employment—see subsection (1a);
  - (b) if the pensioner is employed on a permanent basis in the Public Service (whether immediately or after a period of temporary employment) the pension will be suspended but—
    - (i) if—
      - (A) after reaching the age of 55 years the contributor's employment is terminated for any reason; or
      - (B) before reaching that age the contributor is retrenched or his or her employment is terminated on the ground of invalidity, the pension will be reinstated;
    - (ii) if the contributor dies a surviving spouse and any eligible children will be entitled to a pension as if the contributor's pension had not been suspended under this paragraph;
  - (c) if the pensioner is employed in the police force or the Public Service on a temporary basis—
    - (i) the pension will be reduced or suspended under section 40;
    - (ii) in the case of a pensioner employed on a temporary basis in the police force, the pensioner is not liable to contribute to the Scheme during the period of temporary employment.
- (1a) If the pensioner is employed on a permanent basis in the police force the pension will terminate but the former pensioner will be credited with contribution points and contribution months as if he or she had continued in employment and contributed over the period that he or she was not employed on a permanent basis in the police force and if the pensioner had received a lump sum payment on the original termination of his or her employment under the repealed Act or had commuted part of the original pension to a lump sum the following provisions apply:
- (a) upon termination of the contributor's subsequent period of employment the contributor or other person entitled to a benefit may pay to the Treasurer the amount of the lump sum;
  - (b) if a payment is not made under paragraph (a) and a pension is payable to or in respect of the contributor—the pension must be reduced by an amount calculated by dividing the amount of the lump sum by 11.5;
  - (c) if a payment is not made under paragraph (a) and a pension is not payable to or in respect of the contributor—any lump sum that is payable to or in respect of the contributor must be reduced by the amount of the lump sum received on the original termination of the contributor's employment or on commutation.

- (2) If a pensioner who has not reached the age of 60 years and has received a request from the Board under subsection (1), refuses the offer of employment or refuses to make a genuine application for employment in pursuance of the request, the Board may suspend the pension until the pensioner reaches the age of 60 years.
- (3) In determining whether a particular form of employment is appropriate to a particular pensioner, the following factors will be taken into account:
  - (a) the pensioner's qualifications;
  - (b) the pensioner's previous employment;
  - (c) the pensioner's state of health;
  - (d) the place at which the employment is available.
- (4) Employment will not be regarded as appropriate to a particular pensioner if the rate of salary applicable to the employment (expressed as an hourly rate) is less than 80 per cent of the rate of the pensioner's notional salary (expressed as an hourly rate).

### **38—Notional extension of period of employment**

Where—

- (a) a contributor becomes entitled, on termination of his or her employment, to a pension; and
- (b) the contributor was, immediately before termination of employment, entitled to a period of recreation leave and is paid, or entitled to, a lump sum in lieu of that leave,

the contributor's employment will be taken to have been extended for a period equivalent to the period of recreation leave and the contributor is liable for contributions in respect of that period and is entitled to benefits at the end of that period as though he or she had remained in employment and had received the lump sum as salary during that period.

### **38A—Closure of contribution accounts**

- (1) The Board may close the account of a contributor if—
  - (a) the contributor has retired or resigned from employment and is in receipt of a pension under this Part; or
  - (b) the contributor's employment has been terminated by retrenchment or on account of invalidity and the contributor—
    - (i) has reached the age of 60 years; and
    - (ii) is in receipt of a pension under this Part; or
  - (c) the contributor has died.
- (2) If, after a contribution account has been closed under subsection (1), a benefit becomes payable under this Part that depends wholly or partly on the balance standing to the credit of the account, the benefit will be determined on the basis of the balance that would have stood to the credit of the account if it had not been closed.

## **Part 5A—Contributors' investment accounts and rollover accounts**

### **Division 1—Investment accounts**

#### **38B—Interpretation**

In this Part—

*investor* means a contributor who is making, or has made, payments under section 38C.

#### **38C—Payments by investors**

- (1) A contributor whose employment as a member of the police force has not terminated may make payments under this section for the purpose of providing himself or herself or his or her dependants with additional benefits in the same kinds of circumstances as those in which benefits are provided by the Scheme.
- (2) Payments under this section must be made to the Treasurer in accordance with terms and conditions determined by the Board.
- (3) The Treasurer must pay into the Fund from the Consolidated Account (which is appropriated to the necessary extent) or from a special deposit account established by the Treasurer for the purpose periodic payments reflecting the payments made to the Treasurer under this section with respect to the relevant period.

#### **38D—Investor's accounts**

- (1) The Board must maintain accounts in the names of all investors under this Part.
- (2) At the end of each financial year, each investor's account that has a credit balance will be adjusted to reflect a rate of return determined by the Board for the relevant financial year.
- (3) In determining a rate of return for the purposes of subsection (2), the Board should have regard to—
  - (a) the net rate of return achieved by investment of the relevant division of the Fund over the financial year or, if an investor has made a nomination under Division 3, the net rate of return achieved by the class of investments, or the combination of classes of investments, nominated by the investor; and
  - (b) the desirability of reducing undue fluctuations in the rate of return on investors' accounts.
- (4) Where, in pursuance of subsection (3)(b), the Board determines a rate of return that is at variance with the net rate of return achieved by investment of the relevant division of the Fund, the Board must include its reasons for the determination in its report for the relevant financial year.
- (5) Where it is necessary to determine the balance of an investor's account and the Board has not yet determined a rate of return in relation to the relevant financial year, the balance will be determined by applying a percentage rate of return on accounts estimated by the Board.

- (6) A balance determined under subsection (5) will not be adjusted when a rate of return is subsequently determined under subsection (2).
- (7) The Board must, within six months after the end of each financial year, provide each investor with a written statement of the amount standing to the credit of the investor's investment account at the end of the financial year and the amount by which the balance of the account has been adjusted pursuant to subsection (2) in respect of that financial year.
- (8) A reference in this section to *rate of return* is a reference to a positive or a negative rate of return.

### **38E—Benefits**

- (1) An amount equivalent to the balance standing to the credit of an investor's investment account will be paid to, or to the spouse or a dependant of, the investor in circumstances determined by the Board.
- (2) The payment must be made by the Treasurer from the Consolidated Account (which is appropriated to the necessary extent) or from a special deposit account established by the Treasurer for that purpose.
- (3) The amount paid will be charged against the investor's investment account and the Treasurer may reimburse the Consolidated Account or special deposit account by charging the relevant division of the Fund with that amount.

## **Division 2—Rollover accounts**

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

- (1) The Board may, on such terms and conditions as it thinks fit, accept the payment of benefits on behalf of a contributor from another superannuation fund or scheme.
- (2) Money that is rolled over to the Scheme from another superannuation fund or scheme must be paid to the Treasurer.
- (3) The Treasurer must pay into the Fund from the Consolidated Account (which is appropriated to the necessary extent) or from a special deposit account established by the Treasurer for the purpose periodic payments reflecting the payments made to the Treasurer under this section.

### **38EB—Rollover accounts**

- (1) The Board must maintain a rollover account in the name of a contributor for whom an amount of money has been carried over from another superannuation fund or scheme to the Scheme.
- (2) A contributor's rollover account must be credited with the money referred to in subsection (1) and must be debited with any payment that is, in pursuance of this Act, to be charged against the account.
- (3) At the end of each financial year, each rollover account that has a credit balance will be adjusted to reflect a rate of return determined by the Board for the relevant financial year.



- (4) In determining a rate of return for the purposes of subsection (3), the Board should have regard to—
  - (a) the net rate of return achieved by investment of the relevant division of the Fund over the financial year or, if a contributor has made a nomination under Division 3, the net rate of return achieved by the class of investments, or the combination of classes of investments, nominated by the contributor; and
  - (b) the desirability of reducing undue fluctuations in the rate of return on contributors' rollover accounts.
- (5) If, in pursuance of subsection (4)(b), the Board determines a rate of return that is at variance with the net rate of return achieved by investment of the relevant division of the Fund, the Board must include its reasons for the determination in its report for the relevant financial year.
- (6) If it is necessary to determine the balance of a contributor's rollover account and the Board has not yet determined a rate of return in relation to the relevant financial year, the balance will be determined by applying a percentage rate of return on accounts estimated by the Board.
- (7) A balance determined under subsection (6) will not be adjusted when a rate of return is subsequently determined under subsection (3).
- (8) The Board must, within six months of the end of each financial year, provide each contributor in whose name a rollover account is maintained with a written statement of the amount standing to the credit of the contributor's rollover account at the end of the financial year and the amount by which the balance of the account has been adjusted pursuant to subsection (3) in respect of that financial year.
- (9) A reference in this section to *rate of return* is a reference to a positive or negative rate of return.

### **Division 3—Investment choice**

#### **38EC—Investment choice**

- (1) If the Fund is invested in different classes of investments, the Board may, with the agreement of the Superannuation Funds Management Corporation of South Australia, permit contributors, on such terms and conditions as it thinks fit, to nominate the class of investments, or the combination of classes of investments, for the purpose of determining a rate of return under this Part.
- (2) However, a class of investments, or combination of classes of investments, nominated by an investor for the purposes of determining a rate of return under Division 1 must be the same as any class of investments, or combination of classes of investments, nominated by the investor for the purposes of determining a rate of return under Division 2.
- (3) If a contributor, after nominating a class of investments under subsection (1), subsequently varies the nominated class of investments, the Board may charge a fee (to be determined by the Board) to the contributor's contribution account in a manner determined by the Board.



## Part 5B—Family Law Act provisions

### Division 1—Preliminary

#### 38F—Purpose of this Part

The purpose of this Part is to facilitate the division under the *Family Law Act 1975* of the Commonwealth of superannuation interests between spouses who have separated.

#### 38G—Interpretation

In this Part, unless the contrary intention appears—

*age of retirement* has the meaning assigned by the regulations;

*Commonwealth regulations* means the *Family Law (Superannuation) Regulations 2001* (No. 303 as amended) of the Commonwealth;

*defined benefit interest* means—

- (a) a benefit or superannuation interest that is a function of salary and membership or service; or
- (b) an interest brought within the ambit of this definition by the regulations;

*eligible person*, in relation to a superannuation interest of a contributor, has the same meaning as in section 90MZB of the *Family Law Act 1975* of the Commonwealth;

*flag lifting agreement* has the same meaning as in Part VIIIIB of the *Family Law Act 1975* of the Commonwealth;

*growth phase* has the same meaning as in the Commonwealth regulations;

*member spouse* has the same meaning as in Part VIIIIB of the *Family Law Act 1975* of the Commonwealth;

*non-member spouse* has the same meaning as in Part VIIIIB of the *Family Law Act 1975* of the Commonwealth;

*operative time* has the same meaning as in Part VIIIIB of the *Family Law Act 1975* of the Commonwealth;

*payment phase* has the same meaning as in the Commonwealth regulations;

*payment split* has the same meaning as in Part VIIIIB of the *Family Law Act 1975* of the Commonwealth;

*relevant date* has the same meaning as in the Commonwealth regulations;

*SIS Act* means the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

*Southern State Superannuation Fund* means the fund of that name established under the *Southern State Superannuation Act 1994*;

*splitting instrument* means—

- (a) a superannuation agreement; or
- (b) a flag lifting agreement that provides for a payment split; or

(c) a splitting order;

*splitting order* has the same meaning as in Part VIIIB of the *Family Law Act 1975* of the Commonwealth;

*superannuation agreement* has the same meaning as in Part VIIIB of the *Family Law Act 1975* of the Commonwealth.

### **38H—Value of superannuation interest**

- (1) For the purposes of this Part (but subject to subsection (2)), the value of any superannuation interest will be determined in accordance with Part 5 of the Commonwealth regulations (insofar as those regulations provide a method for determining that value), subject to any modification prescribed by regulation under this Act.
- (2) An approval of the Commonwealth Minister under regulation 38 or 43A of the Commonwealth regulations that relates to a superannuation interest under this Act will have effect for the purposes of this Part.

### **38I—Board to comply with Commonwealth requirements**

The Board must comply with the requirements imposed on the Board under Part VIIIB of the *Family Law Act 1975* of the Commonwealth.

### **38J—Reduction in contributor's entitlement**

- (1) Despite the other provisions of this Act, if a payment split is payable with respect to the superannuation interest of a contributor, there is a corresponding reduction in the entitlement of the contributor under this Act.
- (2) A reduction in the entitlement of a contributor will be given effect as follows:
  - (a) the contributor's contribution account will be subject to a charge that takes effect by reducing the balance of that account at the operative time (insofar as a balance exists) by a percentage equal to the percentage that the non-member spouse's share in the relevant superannuation interest bears to the total value of the contributor's accrued superannuation benefit at the operative time (and any relevant method or factor that applies under section 38H will be applied); and
  - (b) except with respect to a pension in the payment phase, any entitlement in respect of a pension in the growth phase and any employer-funded component of a superannuation benefit payable to the contributor after the creation of the relevant interest for the benefit of the non-member spouse will, as from the operative date, be subject to a reduction that takes effect by reducing—
    - (i) the number of contribution points; and
    - (ii) factor "M" in a formula under this Act (insofar as this is relevant to a determination of an employer-funded component in the particular case),

to the extent necessary to take into account, to its full extent, the employer-funded component of the value of the non-member spouse's interest (and any relevant method or factor that applies under section 38H will be applied); and

- (c) any pension in the payment phase will, depending on the terms of the splitting instrument, be reduced by—
  - (i) the value of the non-member spouse's share in the relevant superannuation interest; or
  - (ii) the percentage of the relevant superannuation interest to be shared with the non-member spouse.
- (3) A reduction in the entitlement of a contributor will not extend to any superannuation benefit that is not a splittable payment under Part VIII B of the *Family Law Act 1975* of the Commonwealth.
- (4) A reduction in contribution points in connection with the operation of this Part does not affect the aggregate of contribution points that would apply under section 18 but for the operation of subsection (2).
- (5) If 2 or more reductions must be made with respect to an entitlement of a contributor because 2 or more splitting instruments have been served on the Board, the Board may determine to apply the reductions separately, or in aggregate.

### **38K—Benefit not payable to spouse on death of member if split has occurred**

If a contributor dies and is survived by a spouse who has received, is receiving or is entitled to receive a benefit under a splitting instrument, the spouse is not entitled to a benefit under this Act in relation to the deceased contributor (except in accordance with the instrument) and will not be considered to be a spouse of the contributor for the purposes of section 41 (if relevant).

## **Division 2—New scheme contributors**

### **38L—Application of Division**

This Division applies only to the division of superannuation interests in respect of member spouses who are new scheme contributors.

### **38M—Accrued benefit multiple**

- (1) For the purposes of the Commonwealth regulations, the *accrued benefit multiple* in respect of a superannuation interest payable as a lump sum is the multiple of annual salary that the member spouse would be entitled to receive at the prescribed date assuming that the member spouse retired on that day at or over the age of retirement (as the case requires) with the member spouse's accrued contribution points and contribution period as at that day.
- (2) In addition to any other information that may be provided by the Board in connection with this Part, the Board may, on application, provide to an eligible person a statement of the value of a superannuation interest of a member spouse who is a new scheme contributor, as at a particular date specified in the application.
- (3) In this section—

*prescribed date* is the date that is relevant to the determination of an accrued benefit multiple in the particular circumstances.

### 38N—Non-member spouse's entitlement

- (1) The Board must, on service of a splitting instrument in respect of a lump sum benefit, create an interest for the non-member spouse named in the instrument in accordance with the provisions of the instrument, with effect from the operative time.
- (2) The value of the non-member spouse's interest will be determined by reference to the provisions of the instrument but in any event may not exceed the value of the member spouse's interest.
- (3) The interest of a non-member spouse under subsection (1) will, according to the election of the non-member spouse—
  - (a) be paid out to the extent (if any) that payment can be made in accordance with the SIS Act; or
  - (b) be rolled over to the credit of the non-member spouse in an account (which may need to be established) in the name of the non-member spouse in the Southern State Superannuation Fund; or
  - (c) be rolled over or transferred to some other superannuation fund or scheme approved by the Board.
- (4) The Board must take the action required under subsection (3) within 28 days after receiving the relevant election.
- (5) However, if an election is not made by the non-member spouse before the end of 28 days after the Board gives notice to the non-member spouse in the manner contemplated by the regulations, the Board must, subject to the regulations, roll over the interest to the credit of the non-member spouse under subsection (3)(b).

## Division 3—Old scheme contributors

### 38O—Application of Division

This Division applies only to the division of superannuation interests in respect of member spouses who are old scheme contributors.

### 38P—Accrued benefit multiple

- (1) For the purposes of the Commonwealth regulations, the *accrued benefit multiple* in respect of a superannuation interest payable as a pension is the percentage of annual salary that the member spouse would be entitled to receive as a pension at the prescribed date assuming that the member spouse retired on that day at or over the age of retirement (as the case requires) with the member spouse's accrued contribution points and contribution period as at that day.
- (2) For the purposes of the Commonwealth regulations, the *accrued benefit multiple* in respect of a superannuation interest payable as a lump sum that is a defined benefit interest is the multiple of annual salary that the member spouse would be entitled to receive at the prescribed date assuming that the member spouse retired on that day at or over the age of retirement (as the case requires) and was taking his or her entitlement under the Act on that day.

- (3) In addition to any other information that may be provided by the Board in connection with this Part, the Board may, on application, provide to an eligible person a statement of the value of a superannuation interest of a member spouse who is an old scheme contributor, as at a particular date specified in the application.

- (4) In this section—

*prescribed date* is the date that is relevant to the determination of an accrued benefit multiple in the particular circumstances.

### **38Q—Non-member spouse's entitlement**

- (1) The Board must, on service of a splitting instrument, create an interest for the non-member spouse named in the instrument, with effect from the operative time.
- (2) The form of the non-member spouse's interest will be determined on the basis of whether the superannuation interest is in the growth phase or the payment phase, by the nature of the member spouse's superannuation interest, and by reference to the provisions of the instrument.

### **38R—Non-member spouse's entitlement where pension is in growth phase**

- (1) If the Board is served with a splitting instrument in respect of a pension that is in the growth phase, the non-member spouse is not entitled to receive his or her entitlement in the form of a pension commencing at the termination of the member spouse's period of service but is, instead, entitled to have a lump sum determined under this section paid on his or her behalf in accordance with this Part.
- (2) The lump sum to which the non-member spouse is entitled, as at the operative time, will be determined—
- (a) where the splitting instrument specifies a percentage of the member spouse's superannuation interest for the percentage of the split—by applying that percentage split to the member's superannuation interest based on the relevant accrued benefit multiple and by applying any relevant method or factor that applies under section 38H;
  - (b) subject to subsection (3), where the splitting instrument specifies a lump sum for the purposes of the split—by adopting that lump sum.
- (3) The value of a lump sum payable to a non-member spouse under this section must not exceed the value of the member spouse's interest.

### **38S—Non-member spouse's entitlement where pension is in payment phase**

- (1) If the Board is served with a splitting instrument in respect of a pension that is in the payment phase, the Board must divide the pension between the member spouse and non-member spouse in accordance with the instrument, with effect from the operative time.
- (2) The non-member spouse may—
- (a) —
    - (i) in accordance with the terms of the splitting instrument; or
    - (ii) by notice in writing given to the Board within the prescribed period,

elect to have the whole of his or her share of the superannuation interest determined under subsection (1) converted to (and taken as) a separate pension entitlement (to be referred to as an *associate pension* for the purposes of this Act) for the lifetime of the non-member spouse; or

- (b) by notice in writing given to the Board within the prescribed period, elect to have the whole of his or her share of the superannuation interest determined under subsection (1) commuted to a lump sum.
- (3) The following provisions will apply with respect to an associate pension:
- (a) the amount of the pension will be determined by applying the methods and factors prescribed by the regulations;
  - (b) the non-member spouse will not be taken to be a contributor on account of the entitlement to the pension;
  - (c) the pension will be indexed;
  - (d) no derivative, reversionary or other rights will arise or continue on account of the entitlement to the pension after the death of the non-member spouse.
- (4) A lump sum under subsection (2)(b) will be determined by applying the methods and factors prescribed by the regulations.
- (5) If the non-member spouse is taking his or her entitlement as a pension (other than an associate pension) and there is a reduction in the member spouse's pension under this Act, there will be a corresponding reduction in the non-member spouse's pension.
- (6) If the non-member spouse is taking his or her entitlement as a pension (other than an associate pension) and the payment of the member spouse's pension ceases, there will be a corresponding cessation in the payment of the non-member spouse's pension.
- (7) If the non-member spouse dies while entitled to, or in receipt of, a pension under this section (other than an associate pension), the non-member spouse's legal representative may, by notice in writing given to the Board within the prescribed period, elect to have the pension commuted to a lump sum.
- (8) A lump sum under subsection (7) will be determined by applying the methods and factors prescribed by the regulations to the non-member spouse's entitlement.
- (9) In this section—

***legal representative***, in relation to a deceased non-member spouse, means a person—

- (a) holding office as executor of the will of the deceased non-member spouse where probate of the will has been granted or resealed in South Australia or any other State or a Territory; or
- (b) holding office in South Australia or any other State or a Territory as administrator of the estate of the deceased non-member spouse.



**38T—Payment of non-member spouse's entitlement**

- (1) If the interest of a non-member spouse created under this Part after service of a splitting instrument or after the commutation of a pension payable to the non-member spouse is a lump sum, the interest will, according to the election of the non-member spouse—
  - (a) be paid out to the extent (if any) that payment can be made in accordance with the SIS Act; or
  - (b) be rolled over to the credit of the non-member spouse in an account (which may need to be established) in the name of the non-member spouse in the Southern State Superannuation Fund; or
  - (c) be rolled over or transferred to some other superannuation fund or scheme approved by the Board.
- (2) The Board must take the action required under subsection (1) within 28 days after receiving the relevant election.
- (3) However, if an election is not made by the non-member spouse before the end of 28 days after the Board gives notice to the non-member spouse in the manner contemplated by the regulations, the Board must, subject to the regulations, roll over the interest to the credit of the non-member spouse under subsection (1)(b).
- (4) If the interest of a non-member spouse created under this Part after service of a splitting instrument is a pension (and the non-member spouse has not directed that the pension be commuted to a lump sum), the Board must split the relevant pension within the prescribed period after receipt of the splitting instrument (with effect from the relevant date), and begin to make the payments in accordance with the regulations (subject to any cessation of the payment of the member spouse's pension).

**Division 4—Fees****38U—Fees**

- (1) The Board may fix fees in respect of matters in relation to which fees may be charged under regulation 59 of the Commonwealth regulations.
- (2) Any fee fixed under subsection (1) that is payable by a member spouse or a non-member spouse and has not been paid within 1 month of the amount becoming payable may be deducted by the Board—
  - (a) if the outstanding fee is payable by a member spouse—
    - (i) from the member spouse's contribution account; or
    - (ii) from any benefit payable to the member spouse under this Act;
  - (b) if the outstanding fee is payable by a non-member spouse—
    - (i) from any interest that is to be rolled over or transferred to a fund for the benefit of the non-member spouse; or
    - (ii) from any other benefit payable to the non-member spouse under this Act.



## Part 6—Miscellaneous

### 39—Review of the Board's decisions

- (1) Any person who is dissatisfied with a decision of the Board under this Act may appeal to the Administrative and Disciplinary Division of the District Court or to the Board against the decision.
- (4) On an appeal to the Board, the Board may substitute another decision for its original decision or confirm its original decision.

### 40—Effect of workers compensation etc on pension

- (1) Where at any time during a financial year a contributor who is receiving, or would, but for this subsection, be entitled to receive, a pension under another provision of this Act is also receiving or entitled to receive—
  - (a) weekly payments of workers compensation; or
  - (b) in the case of a relevant contributor—income from remunerative activities engaged in by the contributor,

the following provisions apply:

- (c) the pension will be reduced by the amount of the workers compensation payments and, if those payments equal or exceed the amount of the pension, the pension will be suspended;
- (d) if the contributor is a relevant contributor—
  - (i) the Board must estimate the income (if any) that the contributor is likely to receive during the financial year from remunerative activities engaged in by the contributor; and
  - (ii) it must be assumed that the income estimated by the Board will be paid at a uniform rate throughout the financial year;
- (f) if the aggregate of the pension and the workers compensation payments (if any) and, if the contributor is a relevant contributor, the income from remunerative activities (paid at the rate assumed by paragraph (d)(ii)) exceeds the contributor's notional salary, the pension will be reduced by the amount of the excess and, if that amount equals or exceeds the amount of the pension, the pension will be suspended;
- (g) at the end of the financial year the Board must, if the contributor is a relevant contributor, determine the income from remunerative activities actually received by the contributor during that year and if, on the basis of the income actually received—
  - (i) the pension has been underpaid, an amount equivalent to the underpayment must be paid to the contributor or if the contributor has died, to his or her estate;

- (ii) the pension has been overpaid, the amount overpaid may be deducted from future payments of pension or from any other amount to be paid to the contributor under this Act or, if the contributor has died, the amount overpaid is a debt due by the contributor's estate to the Treasurer.
- (1a) Income of a kind referred to in subsection (1)(a) and (b) will—
  - (a) in the case of workers compensation payments—be taken to include payments lawfully made to some person other than the contributor;
  - (b) in the case of income from remunerative activities—be taken to include—
    - (i) the monetary value of income that is in a non-monetary form; and
    - (ii) income lawfully paid to some person other than the contributor.
- (2) Where—
  - (a) the spouse of a deceased contributor is receiving or would, but for this subsection, be entitled to receive a pension under this Act;
  - (b) the spouse is also receiving, or entitled to receive, weekly workers compensation payments in consequence of the contributor's death,the following provisions apply:
  - (c) if the weekly workers compensation payments equal or exceed the amount of the pension, the pension will be suspended;
  - (d) in any other case, the pension will be reduced so that the aggregate equals the pension that the spouse would have received if there had been no entitlement to workers compensation.
- (3) Where an eligible child of a deceased contributor is receiving or entitled to receive weekly workers compensation payments in consequence of the contributor's death, the following provisions apply:
  - (a) if the weekly workers compensation payments equal or exceed the amount of the pension, the pension will be suspended;
  - (b) in any other case, the pension will be reduced so that the aggregate equals the pension that the child would have received if there had been no entitlement to workers compensation.
- (4) Where a right to weekly workers compensation payments has been surrendered in whole or in part by commutation or by agreement, the person who would have been entitled to those payments if the right to them had not been surrendered will be taken, for the purposes of this section, to be receiving them unless—
  - (a) if the person is a contributor—the contributor has reached the age of 60; or
  - (b) if the person is the spouse of a deceased contributor—the contributor would have reached the age of 60 if he or she were still alive.
- (5) Where a contributor whose pension is subject to suspension or reduction under this section dies, the suspension or reduction will be ignored in calculating any pension that becomes payable on the contributor's death to a spouse or eligible child of the contributor.

(6) In this section—

*relevant contributor* means a contributor—

- (a) who has not reached the age of 60; and
- (b) whose entitlement to receive a pension under another provision of this Act does not relate to a pension granted on the basis of his or her age.

#### **41—Division of benefit where deceased contributor is survived by lawful and putative spouses**

- (1) If a deceased contributor is survived by a lawful spouse and a putative spouse, any benefit to which a surviving spouse is entitled under this Act will be divided between them in a ratio determined by reference to the relative length of the periods for which each of them cohabited with the deceased as his or her spouse.
- (2) Where a number of periods of cohabitation are to be aggregated for the purpose of determining an aggregate period of cohabitation for the purpose of subsection (1), any separate period of cohabitation of less than three months will be disregarded.
- (3) A surviving spouse must, at the request of the Board, supply it with any information that it requires for the purpose of making a division under subsection (1).
- (4) A putative spouse is not entitled to any benefit under this section, unless the deceased contributor and that spouse were putative spouses as at the date of the contributor's death.
- (5) Where—
  - (a) a deceased contributor is survived by a lawful and a putative spouse; and
  - (b) a benefit is paid to one of them on the assumption that he or she is the sole surviving spouse of the deceased,

the other spouse has no claim on the benefit insofar as it has been already paid unless that spouse gave the Board notice of his or her claim before the date of the payment.

#### **42—Adjustment of pensions**

- (1) Where a pension is expressed to be indexed, the Board must adjust the amount of the pension from the first payment of pension in each adjustment period to reflect—
  - (a) in the case of an April adjustment period—the percentage variation (rounded to two decimal places) between the Consumer Price Index for the immediately preceding December quarter and the Consumer price Index for the immediately preceding June quarter; and
  - (b) in the case of an October adjustment period—the percentage variation (rounded to two decimal places) between the Consumer Price Index for the immediately preceding June quarter and the Consumer Price Index for the immediately preceding December quarter.
- (2) If on the first day of the relevant adjustment period, the pension has been payable for a period of less than six months, the extent of the adjustment will be reduced to reflect the proportion which the period of payment of the pension bears to six months.
- (3) To avoid a reduction in pensions the Treasurer may direct that subsection (1) does not apply in relation to a particular adjustment period.

- (4) In that event an adjustment in the next adjustment period in relation to which subsection (1) applies will be based on the variation between the Consumer Price Index for the June or December quarter (whichever is applicable) immediately preceding that period and the Consumer Price Index for the June or December quarter (whichever is applicable) immediately preceding the adjustment period in relation to which subsection (1) last applied.

- (5) In this section—

*adjustment period* means the period of six months commencing at the commencement of 1 April and 1 October in each year;

*April adjustment period* means an adjustment period commencing at the commencement of 1 April in any year;

*October adjustment period* means an adjustment period commencing at the commencement of 1 October in any year.

#### **42A—Subsequent roll over of benefits to another fund or scheme**

A contributor who is entitled to benefits in the form of a lump sum that is preserved under this Act may, at any time before reaching the age of 55 years, require the Board to pay those benefits to some other superannuation fund or scheme approved by the Board.

#### **43—Repayment of balance in contribution account**

- (1) Where—

- (a) a contributor's employment has terminated or has been terminated; and
- (b) no pension has been paid under this Act to or in relation to the contributor following termination of the employment; and
- (c) no benefit (other than the benefit referred to in section 34(4)(f)) is payable (either immediately or prospectively) under any other provision of this Act,

an amount equivalent to the balance standing to the credit of the contributor's contribution account will be paid to the contributor or the contributor's estate and will be charged against that account.

- (2) Where—

- (a) a contributor's employment terminates or is terminated; and
- (b) either immediately or after a period of preservation of the contributor's benefits—
  - (i) a pension is paid under this Act to the contributor; or
  - (ii) a pension is paid under this Act to the contributor and then, on the contributor's death, a pension is paid under this Act to the spouse of the contributor; or
  - (iii) the contributor's employment is terminated by death and a pension is paid under this Act to the spouse of the contributor; or
  - (iv) the contributor dies after a period of preservation before receiving a pension and a pension is paid under this Act to his or her spouse; and

- (c) the pension, or the last of the pensions to be payable, ceases before the expiration of the period of 4.5 years after the pension, or the first of the pensions, commenced and no actual or prospective right to a pension exists and no other benefit is payable under this Act,

an amount determined in accordance with subsection (3) is payable to the contributor's estate.

- (3) The amount referred to in subsection (2) is the amount that would have been payable to, or in relation to, the contributor by way of a pension or pensions during the period referred to in subsection (2)(c) if the pension or pensions had not ceased, reduced by—
  - (a) the amount of the lump sum, or the aggregate of the lump sums, (if any) paid on commutation of the pension or pensions; and
  - (b) the amount of the pension or pensions actually paid to, or in relation to, the contributor.
- (4) When computing the amount of the pension or pensions that would have been payable during the period referred to in subsection (2)(c)—
  - (a) it will be assumed that the pension or pensions were not reduced by commutation or reduced or suspended under section 40; and
  - (b) the provisions of this Act for indexation of pensions will be ignored.

#### **44—Special provision for payment in case of infancy or death**

- (1) Where a pension or monetary sum is payable under this Act to a child, the Board may, in its discretion, pay it—
  - (a) to the child; or
  - (b) to a parent, guardian or trustee on behalf of the child.
- (2) Where a person to whom money is payable under this Act dies, the Board may, in its discretion, pay the money to—
  - (a) the personal representative of the deceased; or
  - (b) the spouse of the deceased; or
  - (c) the children of the deceased.

#### **45—Pension not to be assignable**

- (1) A right to a pension under this Act cannot be assigned.
- (2) This section does not prevent the making of a garnishee order in relation to a pension.

#### **45A—Rounding off of contributions and benefits**

The amount of contributions and benefits under this Act must be rounded off to the nearest multiple of five cents.

#### **46—Liabilities may be set off against benefits**

Any liability of a contributor arising under this Act or the repealed Act may be set off against any payment that is to be made to or in relation to the contributor under this Act.

#### **46A—Termination of the Police Occupational Superannuation Scheme**

- (1) Contributors are not entitled to benefits under the Police Occupational Superannuation Scheme.
- (2) Where—
  - (a) a contributor's employment terminated, or was terminated, before the commencement of subsection (1); and
  - (b) immediately before the commencement of that subsection preserved benefits were to be paid at some future time to, or in relation to, the contributor under this Act and under the Police Occupational Superannuation Scheme,

the following provisions apply:

- (c) the Board must establish and maintain an account to be called the POSS Preserved Benefits Account;
- (d) the Board must credit to the account in the name of the contributor an amount equivalent to the amount of the preserved benefits that would have been payable to the contributor under the Police Occupational Superannuation Scheme if they had become payable immediately before the commencement of subsection (1);
- (e) at the end of each financial year the balance standing to the credit of each contributor in the POSS Preserved Benefits Account must be adjusted to reflect the rate of return determined by the Board under section 13 for the division of the Scheme under this Act to which the contributor belongs;
- (f) when preserved benefits become payable under this Act to, or in relation to, the contributor, the Treasurer must pay from the Consolidated Account (which is appropriated to the necessary extent) or from a special deposit account to the contributor (or, if the contributor is dead, to his or her spouse or, if the contributor is not survived by a spouse, to the contributor's estate) an amount equivalent to the amount standing to the credit of the contributor in the POSS Preserved Benefits Account;
- (g) the amount standing to the credit of the contributor for the purposes of paragraph (f) must be adjusted to the date of payment to reflect a rate of return determined or estimated by the Board under section 13.

#### **47—Annuities**

- (1) The Board may, with the Minister's approval, provide annuities on terms and conditions fixed by the Board.
- (2) The Board can only undertake to provide an annuity—
  - (a) to, or in relation to, a contributor; or
  - (b) to, or in relation to, a person who is, or has been, a member of some other public sector superannuation scheme.

#### **47A—Post retirement investment**

- (1) The Board may offer to accept money from police superannuation beneficiaries for investment with the Superannuation Funds Management Corporation of South Australia.



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- (2) An offer will be on terms and conditions that have been determined by the Board and the Corporation and have been approved by the Treasurer.
  - (3) Money accepted by the Board under subsection (1) will, subject to the terms and conditions of the offer referred to in subsection (2), be invested by the Corporation in a manner determined by it.
  - (4) The Corporation may enter into transactions affecting that money—
    - (a) for the purposes of investment; or
    - (b) for purposes incidental, ancillary or otherwise related to investment.
  - (5) Money that may be invested by police superannuation beneficiaries under this section is not limited to money received by the investor from the Scheme.
  - (6) The Board must, in respect of each financial year—
    - (a) keep proper accounts of receipts and payments in relation to money accepted by it under this section; and
    - (b) prepare financial statements in relation to those receipts and payments.
  - (7) The Auditor-General may at any time, and must at least once in each year, audit the accounts and financial statements referred to in subsection (6).
  - (8) In this section—

*police superannuation beneficiary* means a person who has received a benefit under this Act.

#### **48—Power to obtain information**

- (1) The Board may, from time to time, require the Commissioner, a workers compensation authority, a contributor or pensioner to supply the Board with any information that it reasonably requires for the purposes of this Act.
- (2) The Board may require a contributor or pensioner to verify information supplied under this section by statutory declaration or by the production of income tax assessments or such other evidence as the Board specifies.
- (3) The board may require the spouse of a deceased contributor to verify information supplied under section 41(3) by statutory declaration or by such other evidence as the Board specifies.
- (4) If a pensioner fails to comply with a requirement under this section, the Board may suspend payment of the pension until the requirement is complied with.
- (5) A person who—
  - (a) fails to comply with a requirement under subsection (1) or section 41(3); or
  - (b) supplies information in response to such a requirement that is false or misleading in a material particular,

is guilty of an offence.

Penalty: \$10 000.

- (6) Where a contributor commits an offence against subsection (5), the Board may expel the contributor from membership of the Scheme and, in that event—
- (a) an amount equivalent to the amount standing to the credit of the former contributor's contribution account will be paid to the contributor and will be charged against that account; and
  - (b) no further benefit will be payable under this Act to or in relation to the former contributor.
- (7) For the purposes of any other Act or law, a workers compensation authority will be taken, when acting under this section, to be disclosing information in the course of official duties.
- (8) In this section—
- workers compensation authority** includes any person or authority with power to determine or manage claims for workers compensation.

#### 49—Confidentiality

- (1) A member or former member of the Board or the board of directors of Superannuation Funds Management Corporation of South Australia, or a person employed or formerly employed in the administration of this Act, must not divulge information as to the entitlements or benefits of any person under this Act except—
- (a) to, or with the consent of, that person; or
  - (b) to the Commissioner; or
  - (c) to any other person for purposes related to the administration of this Act; or
  - (d) as may be required by a court; or
  - (e) as may be required or authorised by another State Act or an Act of the Commonwealth.

Penalty: \$10 000.

- (1a) A member or former member of the Board or the board of directors of the Superannuation Funds Management Corporation of South Australia, or a person employed or formerly employed in the administration of this Act, must not divulge information if to do so is inconsistent with a requirement imposed on the trustee of an eligible superannuation plan under Part VIIIB of the *Family Law Act 1975* of the Commonwealth.

Maximum penalty: \$10 000.

- (2) This section does not prevent the disclosure of statistical or other information related to contributors generally or to a class of contributors rather than to an individual contributor.

#### 50—Resolution of doubts or difficulties

If, in the opinion of the Board, any doubt or difficulty arises in the application of this Act to particular circumstances, the Board may give such directions as are reasonably necessary to resolve the doubt or difficulty and this Act will apply subject to a direction given by the Board under this section.

## **51—Summary offences**

An offence against this Act is a summary offence.

## **52—Regulations**

- (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.
- (2) Any such regulation may impose a penalty, not exceeding \$2 000, for breach of or non-compliance with a provision of the regulations.
- (3) Without limiting subsection (1), the regulations may make any provision that is necessary in view of the provisions of Part VIII B of the *Family Law Act 1975* of the Commonwealth, including by modifying the operation of any provision of this Act in prescribed circumstances in order to ensure that this Act operates in a manner that is consistent with, and complementary to, the requirements of that Commonwealth Act.



## **Schedule 1—Transitional provisions**

### **1—Starting balance of contribution account of old scheme contributors**

- (1) The Board will establish a contribution account in the name of every old scheme contributor—
  - (a) who continues as a contributor under this Act; or
  - (b) to, or in relation to, whom a pension is being paid at the commencement of this Act.
- (2) The balance of the account, as at the commencement of this Act, of a contributor who was still in employment at the commencement of this Act will be an amount calculated in accordance with section 43 of the repealed Act as if the contributor had become entitled to a payment under that section on the commencement of this Act.
- (3) The balance of the account, as at the commencement of this Act, of a contributor whose employment had ceased before the commencement of this Act will be an amount calculated in accordance with section 47 of the repealed Act as if an entitlement to a payment under that section had arisen at the commencement of this Act.

### **2—Pensions that commenced under previous enactments**

- (1) A pension that commenced under the repealed Act, or under a corresponding previous enactment, is, subject to this Act, payable as if this Act had been in force when the pension commenced.
- (2) This Act, apart from provisions relating to indexation, commutation and reduction or suspension of pensions, does not affect the amount of any such pension.
- (3) A pension referred to in subclause (1) will, subject to subclause (4), be indexed by the Board in accordance with the repealed Act unless part of the pension has been commuted under this Act in which case the remaining pension will be indexed under this Act.
- (4) Pensions will be indexed as from the first payment of pension in July, 1990, for the year from 1 April, 1989, to 31 March, 1990, by reference to the Consumer Price Index for the March quarters of 1989 and 1990 and pensions will again be indexed as from the first payment of pension in October, 1990, for the period from 1 April, 1990, to 30 June, 1990, by reference to movements in the Consumer Price Index over that period and thereafter pensions will be indexed as from the first payment of pension in October in each year by reference to movements in the Consumer Price Index from one June quarter to the next.
- (5) Where a contributor had made an election under section 37(2) of the repealed Act, section 37(2) and (3) of the repealed Act will continue to apply to the pension payable to, or in relation to, the contributor except where part of the pension has been commuted under this Act in which case the remaining pension will be indexed under this Act.

## **2A—Eligible child's pension**

Where—

- (a) a contributor who was in receipt of a pension under the repealed Act at the commencement of this Act dies after the commencement of this Act; and
- (b) a pension is being paid to the contributor's spouse,

and there are—

- (c) no more than two eligible children—each of those children is entitled to a pension equal to four twenty sevenths of the deceased contributor's notional pension; or
- (d) three or more eligible children—each of those children is entitled to a pension calculated by dividing four-ninths of the deceased contributor's notional pension by the number of eligible children.

## **3—Contribution points carried over by old scheme contributors**

- (1) Subject to subclause (2), the number of contribution points to be credited to an old scheme contributor at the commencement of this Act will be equal to the number of months during which the contributor contributed to the Police Pensions Fund.
- (2) The number of contribution points to be credited to an old scheme contributor whose contribution period commenced—
  - (a) after he or she reached the age of 30 years; but
  - (b) before the commencement of the repealed Act, will be equal to the number of months from the contributor's thirtieth birthday to the commencement of this Act.
- (3) For the purposes of this clause part of a month will be treated as a whole month.

## **4—Preservation of benefits**

- (1) A contributor to the Police Pension Fund under the repealed Act who resigned from the police force on or after 20 November, 1989, but before the commencement of this Act may elect to preserve his or her accrued superannuation benefits in accordance with this Act as though he or she had been an old scheme contributor under this Act.
- (2) For the purposes of subclause (1), this Act will be taken to have come into operation immediately before the contributor resigned from the police force.

## **5—Rights of contributors denied benefits under repealed Act**

- (1) The Governor may direct that a contributor who has been denied payment of a pension and lump sum under the repealed Act on technical grounds be paid benefits under this clause.
- (2) If the Governor gives a direction under subclause (1) in relation to a contributor the following provisions apply:
  - (a) this Act applies to, and in relation to, the contributor as though he or she had been entitled to the pension and lump sum under the repealed Act;

- (b) the contributor is entitled to a payment equivalent to the aggregate of the pension payments denied to the contributor reduced by any *ex gratia* payment made before the commencement of this Act on account of those payments;
- (c) the contributor is entitled to a payment equivalent to the lump sum denied to the contributor adjusted to reflect changes in the Consumer Price Index since the date on which the lump sum would have become payable under the repealed Act but reduced by any *ex gratia* payment made before the commencement of this Act on account of the lump sum;
- (d) any *ex gratia* payment made before the commencement of this Act on account of the pension or lump sum must be taken into account when establishing the contributor's contribution account under clause 1;
- (e) the prescribed proportion of a payment made under paragraph (b) or (c) must be debited against the contributor's contribution account.

## 6—Election to retire under repealed Act

- (1) An old scheme contributor who retires from employment within five years after the commencement of this Act may elect to retire pursuant to the provisions of the repealed Act and in that case benefits payable to, or in relation to, the contributor will be determined in accordance with the repealed Act and all the relevant provisions of the repealed Act will apply to and in relation to the contributor to the exclusion of the provisions of this Act.
- (2) The benefits payable to, or in relation to, the contributor will be paid by the Treasurer out of the Consolidated Account (which is appropriated to the necessary extent) or out of a special deposit account established by the Treasurer for that purpose and the prescribed proportion of benefits will be charged against the contributor's contribution account to the extent of the amount standing to the credit of that account.

## 7—Assets and liabilities of Police Pensions Fund

The assets and liabilities of the Police Pensions Fund are transferred to the Police Superannuation Fund.

## 8—Contributions in first year

- (1) For the purpose of calculating contributions in respect of the period from 1 July 1990 to 30 June 1991 the following provisions apply in place of subsections (1), (2) and (3) of section 17:
  - (1) A contributor must make contributions to the Treasurer at the rate prescribed in Schedule 2.
  - (2) A contributor's contributions will be fixed in relation to the 1990/1991 financial year, as from a day in that financial year determined by the Board—
    - (a) on the basis of the contributor's actual salary as at 31 March 1990; but
    - (b) —
      - (i) if the contributor had not then commenced his or her employment, the contributions will be fixed on the basis of the contributor's commencing salary;

- (ii) if the contributor was then on leave without pay or at a reduced rate of pay, the contributions will be fixed on the basis of the salary that the contributor would then have been receiving if not on leave.
  - (3) If over a particular period a contributor receives (while remaining in employment) weekly workers compensation payments for total or partial incapacity for work, contributions will be payable as if the weekly payments were salary or a component of salary (as the case requires) but if the aggregate of the weekly payments and the salary (if any) of the contributor is less than the salary that the contributor would have received if not incapacitated, the Board may allow a proportionate reduction in the amount of the contributions for that period.
- (2) Section 4(6) does not apply for the purpose of calculating contributions in respect of the period from 1 July 1990 to 30 June 1991.

### **9—Special provision relating to police aides**

Subject to the regulations, this Act applies to a person who was a special constable employed as an Aboriginal police aide during the period from 1 July 1992 until the commencement of the *Police (Police Aides) Amendment Act 1992* as if that person had been a member of the police force and had contributed as a contributor under the new scheme for the time during that period for which the person was so employed.

### **10—Operation of sections 22(1b), (1c) and (1d) and 34 (1b), (1c) and (1d)**

- (1) Sections 22(1b), (1c) and (1d) and 34(1b), (1c) and (1d) inserted by the *Police Superannuation (Miscellaneous) Amendment Act 1998* operate in relation to the 1997/1998 and subsequent financial years.
- (2) Where section 22(1b) or 34(1b) repealed by the *Police Superannuation (Miscellaneous) Amendment Act 1998* applied in relation to a contributor who resigned before 1 July 1997, the amount of the superannuation payment adjusted to reflect changes in the Consumer Price Index will be determined under the appropriate subsection up to 1 July 1997 and section 22(1c) and (1d) or section 34(1c) and (1d) inserted by that Act will be applied in relation to that amount in respect of the 1997/1998 and subsequent financial years.

### **11—Operation of amendments made by *Statutes Amendment (Equal Superannuation Entitlements for Same Sex Couples) Act 2003***

An amendment made by the *Statutes Amendment (Equal Superannuation Entitlements for Same Sex Couples) Act 2003* to a provision of this Act that provides for, or relates to, the payment of a pension, lump sum or other benefit to a person on the death of a contributor applies only if the death occurs on or after 3 July 2003.

## **Schedule 2—Contribution rates**

### **Old scheme**

An old scheme contributor must contribute at the rate at which he or she was contributing immediately before the commencement of this Act.



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## New scheme

A new scheme contributor must contribute at the appropriate rate set out below—

Age (next birthday) at commencement of contribution period	Rate (percentage of salary)
20 or less	5.0
21	5.2
22	5.4
23	5.6
24	5.8
25	6.0

## Cadets

The contribution rate for a member of the police force who was a police cadet immediately before the commencement of this Act will be the rate at which he or she would have been contributing to the Police Pensions Fund immediately before the commencement of this Act if he or she had been a member of the police force at that time.

## Schedule 3

Contributor's Age	Value of K
60	1.0000
59	0.9553
58	0.9108
57	0.8663
56	0.8218
55	0.7773

### Note—

Where the age of the contributor is a number of years and a number of completed months, the value of K shown in the table must be proportionately adjusted to reflect the number of months.



## Legislative history

### Notes

- This version is comprised of the following:
 

Part 1	19.8.2004—substituted
Part 2	19.8.2004
Part 3	19.8.2004
Part 4	19.8.2004
Part 5	19.8.2004
Part 5A	19.8.2004
Part 5B	19.8.2004
Part 6	19.8.2004
Schedules	19.8.2004—substituted
- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Police Superannuation Act 1990* repealed the following:

*Police Pensions Act 1971*

### Legislation amended by principal Act

The *Police Superannuation Act 1990* amended the following:

*Police Act 1952*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1990	39	<i>Police Superannuation Act 1990</i>	10.5.1990	1.6.1990 ( <i>Gazette 31.5.1990 p1478</i> )
1992	52	<i>Police Superannuation (Miscellaneous) Amendment Act 1992</i>	29.10.1992	1.6.1990 except ss 6—9—29.10.1992: s 2
1992	60	<i>Police (Police Aides) Amendment Act 1992</i>	12.11.1992	18.3.1993 ( <i>Gazette 18.3.1993 p914</i> )
1992	69	<i>Statutes Amendment (Public Actuary) Act 1992</i>	19.11.1992	10.12.1992 ( <i>Gazette 10.12.1992 p1752</i> )

**Police Superannuation Act 1990—19.8.2004 to 12.1.2005**

## Legislative history

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1993	12	<i>Police Superannuation (Superannuation Guarantee) Amendment Act 1993</i>	25.3.1993	1.7.1992: s 2
1994	46	<i>Statutes Amendment (Closure of Superannuation Schemes) Act 1994</i> as amended by 53/1994 and 57/1994	9.6.1994	3.5.1994 except s 9—21.10.1994: s 2
1994	53	<i>Statutes Amendment (Closure of Superannuation Schemes) (Extension of Time) Amendment Act 1994</i>	15.9.1994	30.9.1994: s 2
1994	57	<i>Statutes Amendment (Closure of Superannuation Schemes) Amendment Act 1994</i>	20.10.1994	20.10.1994: s 2
1995	38	<i>Superannuation Funds Management Corporation of South Australia Act 1995</i>	27.4.1995	1.7.1995 ( <i>Gazette</i> 25.5.1995 p2199)
1997	7	<i>Police Superannuation (Miscellaneous) Amendment Act 1997</i>	20.3.1997	3.4.1997 ( <i>Gazette</i> 3.4.1997 p1386) except ss 6 & 7—1.7.1996: s 2
1997	25	<i>Statutes Amendment (Superannuation) Act 1997</i>	10.4.1997	Pt 4 (ss 7—11)—24.4.1997 ( <i>Gazette</i> 24.4.1997 p1618)
1998	16	<i>Police Superannuation (Miscellaneous) Amendment Act 1998</i>	2.4.1998	23.4.1998 ( <i>Gazette</i> 23.4.1998 p1926)
1998	20	<i>Statutes Amendment (Adjustment of Superannuation Pensions) Act 1998</i>	2.4.1998	Pt 4 (s 6)—1.10.1997: s 2
1998	55	<i>Police Act 1998</i>	3.9.1998	Sch 3 (cl 2)—1.7.1999 ( <i>Gazette</i> 30.6.1999 p3310)
1999	23	<i>Statutes Amendment (Commutation for Superannuation Surcharge) Act 1999</i>	1.4.1999	1.4.1999
1999	54	<i>Police Superannuation (Increments in Salary) Amendment Act 1999</i>	12.8.1999	26.8.1999 ( <i>Gazette</i> 26.8.1999 p954)
2000	4	<i>District Court (Administrative and Disciplinary Division) Amendment Act 2000</i>	20.4.2000	Sch 1 (cl 33)—1.6.2000 ( <i>Gazette</i> 18.5.2000 p2554)
2001	12	<i>Police Superannuation (Miscellaneous) Amendment Act 2001</i>	12.4.2001	1.7.2001 ( <i>Gazette</i> 14.6.2001 p2220)
2001	40	<i>Statutes Amendment (Indexation of Superannuation Pensions) Act 2001</i>	3.8.2001	Pt 5 (s 8)—1.1.2002: s 2
2003	13	<i>Statutes Amendment (Equal Superannuation Entitlements for Same Sex Couples) Act 2003</i>	12.6.2003	Pt 3 (ss 6—8)—3.7.2003 ( <i>Gazette</i> 3.7.2003 p2877)
2003	21	<i>Statutes Amendment (Notification of Superannuation Entitlements) Act 2003</i>	17.7.2003	Pt 3 (ss 6 & 7)—17.8.2003: s 2
2003	49	<i>Statutes Amendment (Division of Superannuation Interests under Family Law Act) Act 2003</i>	20.11.2003	Pt 4 (ss 10—14)—18.12.2003 ( <i>Gazette</i> 18.12.2003 p4527)
2004	37	<i>Statutes Amendment (Miscellaneous Superannuation Measures) Act 2004</i>	5.8.2004	Pt 2 (ss 4—12)—19.8.2004 ( <i>Gazette</i> 19.8.2004 p3280)
<b>2004</b>	<b>51</b>	<b><i>Statutes Amendment (Miscellaneous Superannuation Measures No 2) Act 2004</i></b>	<b>16.12.2004</b>	<b>Pt 4 (s 10(3) &amp; (4))—1.7.1999: s 2(2); Pt 4 (s 19)—3.7.2003: s 2(3); Pt 4 (ss 10(1), (2), (5) &amp; 11—18)—uncommenced</b>

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## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	3.7.2003
Pt 1		
s 2	omitted under <i>Legislation Revision and Publication Act 2002</i>	3.7.2003
s 3	omitted under <i>Legislation Revision and Publication Act 2002</i>	3.7.2003
s 4		
s 4(1)		
actuary	inserted by 69/1992 s 22	10.12.1992
co-contribution	inserted by 51/2004 s 10(1)	uncommenced—not incorporated
co-contribution account	inserted by 51/2004 s 10(1)	uncommenced—not incorporated
the Commonwealth Act	inserted by 12/1993 s 3	1.7.1992
deferred superannuation contributions surcharge	inserted by 37/2004 s 4(1)	19.8.2004
member of the police force	inserted by 60/1992 Sch 2	18.3.1993
	amended by 55/1998 Sch 3 (cl 2)	1.7.1999
putative spouse	inserted by 13/2003 s 6	3.7.2003
rollover account	inserted by 51/2004 s 10(2)	uncommenced—not incorporated
<b>salary, in relation to a contributor who is employed</b>	<b>inserted by 51/2004 s 10(3)</b>	<b>1.7.1999</b>
<b>salary, in relation to a contributor who is not employed</b>	<b>amended by 51/2004 s 10(4)</b>	<b>1.7.1999</b>
SIS Act	inserted by 51/2004 s 10(5)	uncommenced—not incorporated
special deposit account	inserted by 25/1997 s 7	24.4.1997
Superannuation Contributions Tax Act	inserted by 37/2004 s 4(2)	19.8.2004
the Superannuation Funds Management Corporation of South Australia or the Corporation	inserted by 38/1995 Sch 2	1.7.1995
surcharge notice	inserted by 37/2004 s 4(3)	19.8.2004

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<i>the Trust</i>	<i>deleted by 38/1995 Sch 2</i>	<i>1.7.1995</i>
s 4(3)	substituted by 52/1992 s 3(a)	1.6.1990
s 4(3aa)	inserted by 54/1999 s 3(a)	26.8.1999
s 4(3a)	inserted by 16/1998 s 3(a)	23.4.1998
	amended by 54/1999 s 3(b)	26.8.1999
automatic increment	inserted by 54/1999 s 3(c)	26.8.1999
permanent position in the police force	amended by 55/1998 Sch 3 (cl 2)	1.7.1999
s 4(4) and (5)	substituted by 52/1992 s 3(a)	1.6.1990
s 4(6)	amended by 52/1992 s 3(b)	1.6.1990
s 4(6a)	inserted by 52/1992 s 3(c)	1.6.1990
s 4(6b)	inserted by 16/1998 s 3(b)	23.4.1998
s 4(7)	amended by 16/1998 s 3(c)	23.4.1998
	amended by 12/2001 s 3(a)	1.7.2001
s 4(7a)	inserted by 12/2001 s 3(b)	1.7.2001
s 4(8)	substituted by 7/1997 s 3	3.4.1997
	amended by 16/1998 s 3(d), (e)	23.4.1998
s 4(8a)	inserted by 7/1997 s 3	3.4.1997
	amended by 16/1998 s 3(f), (g)	23.4.1998
ss 4A and 4B	inserted by 13/2003 s 7	3.7.2003
Pt 2		
s 7		
s 7(2)	<i>deleted by 69/1992 s 23</i>	<i>10.12.1992</i>
s 10		
s 10(3)	amended by 38/1995 Sch 2	1.7.1995
s 10(4)	amended by 25/1997 s 8(a)	24.4.1997
	substituted by 51/2004 s 11(1)	uncommenced—not incorporated
s 10(6)	amended by 12/2001 s 4	1.7.2001
	amended by 51/2004 s 11(2)	uncommenced—not incorporated
s 10(7)	amended by 25/1997 s 8(b)	24.4.1997
s 10(8)	amended by 38/1995 Sch 2	1.7.1995
s 11		
s 11(1) and (2)	amended by 38/1995 Sch 2	1.7.1995
s 11(3) and (4)	<i>deleted by 38/1995 Sch 2</i>	<i>1.7.1995</i>
s 12	<i>deleted by 38/1995 Sch 2</i>	<i>1.7.1995</i>
s 13		
s 13(6)	substituted by 16/1998 s 4(a)	23.4.1998
s 13(6a)	inserted by 16/1998 s 4(a)	23.4.1998
s 13(8)	inserted by 16/1998 s 4(b)	23.4.1998
s 14		
s 14(1)	amended by 25/1997 s 9(a)	24.4.1997
s 14(2)	substituted by 12/2001 s 5	1.7.2001
	amended by 51/2004 s 12(1)	uncommenced—not incorporated

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s 14(3)	substituted by 12/2001 s 5	1.7.2001
s 14(3a)	inserted by 12/2001 s 5	1.7.2001
s 14(3b)	inserted by 51/2004 s 12(2)	uncommenced—not incorporated
s 14(4)	amended by 25/1997 s 9(b)	24.4.1997
s 15		
s 15(2) and (3)	<i>deleted by 38/1995 Sch 2</i>	1.7.1995
s 15(4)	substituted by 69/1992 s 24	10.12.1992
	amended by 12/2001 s 6	1.7.2001
s 15(4a)	inserted by 69/1992 s 24	10.12.1992
Pt 3		
s 16		
s 16(1)	substituted by 46/1994 s 9 as substituted by 57/1994 s 9	21.10.1994
s 16(1a)	inserted by 46/1994 s 6	3.5.1994
	substituted by 46/1994 s 9 as substituted by 57/1994 s 9	21.10.1994
s 16(1b)	<i>inserted by 46/1994 s 6</i>	3.5.1994
	<i>deleted by 46/1994 s 9</i>	21.10.1994
s 17		
s 17(2)	amended by 52/1992 s 4(a), (b)	1.6.1990
	amended by 16/1998 s 5	23.4.1998
s 17(3)	substituted by 52/1992 s 4(c)	1.6.1990
s 17(3a)	inserted by 52/1992 s 4(c)	1.6.1990
Pt 4		
s 20		
s 20(2)	amended by 46/1994 s 7(a)	3.5.1994
s 20(3)	amended by 46/1994 s 7(b)	3.5.1994
s 21		
s 21(1)	amended by 12/2001 s 7(a), (b)	1.7.2001
s 21(2)	amended by 12/2001 s 7(c), (d)	1.7.2001
s 22		
s 22(1)	amended by 16/1998 s 6(a)	23.4.1998
s 22(1aa) and (1ab)	inserted by 16/1998 s 6(b)	23.4.1998
s 22(1a)	inserted by 12/1993 s 4	1.7.1992
	amended by 16/1998 s 6(c)	23.4.1998
	amended by 21/2003 s 6(a)	17.8.2003
s 22(1b)	inserted by 12/1993 s 4	1.7.1992
	substituted by 16/1998 s 6(d)	23.4.1998
	substituted by 12/2001 s 8(a)	1.7.2001
s 22(1c)	inserted by 16/1998 s 6(d)	23.4.1998
	substituted by 12/2001 s 8(a)	1.7.2001
s 22(1d)	inserted by 16/1998 s 6(d)	23.4.1998
s 22(2)	amended by 16/1998 s 6(e)	23.4.1998

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	amended by 21/2003 s 6(b)	17.8.2003
s 22(3)	amended by 12/2001 s 8(b)	1.7.2001
s 22(4)	amended by 12/2001 s 8(c)	1.7.2001
s 22(5)	amended by 12/2001 s 8(d)	1.7.2001
s 22(6)	amended by 25/1997 s 10	24.4.1997
	amended by 12/2001 s 8(e), (f)	1.7.2001
s 22(7)	substituted by 12/2001 s 8(g)	1.7.2001
s 22(8)	substituted by 16/1998 s 6(f)	23.4.1998
s 22(9)	inserted by 12/2001 s 8(h)	1.7.2001
s 23		
s 23(2)	amended by 12/2001 s 9	1.7.2001
s 25		
s 25(2)	amended by 12/2001 s 10(a), (b)	1.7.2001
s 25(3)	amended by 12/2001 s 10(c)	1.7.2001
s 25(3a)	inserted by 12/2001 s 10(d)	1.7.2001
s 25(4)	amended by 55/1998 Sch 3 (cl 2)	1.7.1999
s 25(5)	amended by 7/1997 s 4	3.4.1997
	amended by 55/1998 Sch 3 (cl 2)	1.7.1999
s 25(7)	substituted by 55/1998 Sch 3 (cl 2)	1.7.1999
s 26		
s 26(1)	amended by 12/1993 s 5(a), (b)	1.7.1992
s 26(2)	amended by 12/2001 s 11(a), (b)	1.7.2001
s 26(2a)	inserted by 49/2003 s 10	18.12.2003
s 26(5)	substituted by 12/1993 s 5(c)	1.7.1992
	amended by 12/2001 s 11(c)	1.7.2001
s 26(5a)	inserted by 12/2001 s 11(d)	1.7.2001
s 26(6)	substituted by 12/1993 s 5(c)	1.7.1992
	amended by 12/2001 s 11(e)—(g)	1.7.2001
ss 26A—26C	inserted by 37/2004 s 5	19.8.2004
Pt 5		
s 28		
s 28(1)	amended by 12/2001 s 12(a)	1.7.2001
s 28(1a)	inserted by 12/2001 s 12(b)	1.7.2001
s 28(3)	amended by 12/2001 s 12(c), (d)	1.7.2001
s 29		
s 29(1)	amended by 12/2001 s 13(a)	1.7.2001
s 29(2a)	inserted by 12/2001 s 13(b)	1.7.2001
s 30		
s 30(1)	amended by 12/2001 s 14	1.7.2001
s 31		
s 31(2)	amended by 12/2001 s 15(a)	1.7.2001
s 31(4)	amended by 12/2001 s 15(b)	1.7.2001
s 31(4a)	inserted by 12/2001 s 15(c)	1.7.2001



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s 31(5) and (6)	amended by 55/1998 Sch 3 (cl 2)	1.7.1999
s 31(6)	amended by 7/1997 s 5	3.4.1997
s 31(8)	substituted by 55/1998 Sch 3 (cl 2)	1.7.1999
s 32		
s 32(1)	amended by 52/1992 s 5	1.6.1990
	amended by 16/1998 s 7(a)	23.4.1998
	amended by 12/2001 s 16(a)	1.7.2001
s 32(1aa)	inserted by 16/1998 s 7(b)	23.4.1998
	amended by 13/2003 s 8	3.7.2003
s 32(1ab)	inserted by 12/2001 s 16(b)	1.7.2001
s 32(1a)	inserted by 7/1997 s 6(a)	1.7.1996
s 32(1b)	inserted by 49/2003 s 11	18.12.2003
s 32(4)	amended by 16/1998 s 7(c)	23.4.1998
s 32(5)	amended by 7/1997 s 6(b)	1.7.1996
s 32(6)	inserted by 7/1997 s 6(c)	1.7.1996
s 33	substituted by 12/1993 s 6	1.7.1992
s 33(1)	amended by 12/2001 s 17(a)	1.7.2001
s 33(2)	amended by 12/2001 s 17(b)	1.7.2001
s 33(3)	inserted by 12/2001 s 17(c)	1.7.2001
s 34		
s 34(1aa) and (1ab)	inserted by 16/1998 s 8(a)	23.4.1998
s 34(1a)	inserted by 12/1993 s 7	1.7.1992
	amended by 16/1998 s 8(b)	23.4.1998
	amended by 21/2003 s 7(a)	17.8.2003
s 34(1b)	inserted by 12/1993 s 7	1.7.1992
	substituted by 16/1998 s 8(c)	23.4.1998
	substituted by 12/2001 s 18(a)	1.7.2001
s 34(1c)	inserted by 16/1998 s 8(c)	23.4.1998
	substituted by 12/2001 s 18(a)	1.7.2001
s 34(1d)	inserted by 16/1998 s 8(c)	23.4.1998
s 34(2)	amended by 16/1998 s 8(d)	23.4.1998
	amended by 21/2003 s 7(b)	17.8.2003
s 34(3)	amended by 12/2001 s 18(b)	1.7.2001
s 34(3a)	inserted by 12/2001 s 18(c)	1.7.2001
s 34(4)	amended by 16/1998 s 8(e)	23.4.1998
	substituted by 12/2001 s 18(d)	1.7.2001
	amended by 21/2003 s 7(c)	17.8.2003
s 34(5)	amended by 12/2001 s 18(e)	1.7.2001
s 34(6)	substituted by 12/2001 s 18(f)	1.7.2001
s 34(8a)—(8c)	inserted by 12/2001 s 18(g)	1.7.2001
s 34(11)	inserted by 52/1992 s 6	29.10.1992
	substituted by 16/1998 s 8(f)	23.4.1998
s 34(12)	inserted by 12/2001 s 18(h)	1.7.2001

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s 35A	inserted by 23/1999 s 5	1.4.1999
s 35A(2)	amended by 37/2004 s 6(1)	19.8.2004
s 35A(3)	amended by 37/2004 s 6(2)	19.8.2004
s 35A(4)	amended by 37/2004 s 6(3)	19.8.2004
s 35A(8)	deleted by 37/2004 s 6(4)	19.8.2004
s 37		
s 37(1)	amended by 52/1992 s 7(a)—(c)	29.10.1992
s 37(1a)	inserted by 52/1992 s 7(d)	29.10.1992
s 38	substituted by 52/1992 s 8	29.10.1992
s 38A	inserted by 12/2001 s 19	1.7.2001
Pt 5A	inserted by 12/2001 s 20	1.7.2001
	heading substituted by 37/2004 s 7	19.8.2004
	heading substituted by 51/2004 s 13	uncommenced—not incorporated
Pt 5A Div 1	heading inserted by 37/2004 s 7	19.8.2004
s 38D		
s 38D(3)	amended by 37/2004 s 8	19.8.2004
Pt 5A Div 2	heading substituted by 51/2004 s 14	uncommenced—not incorporated
	inserted by 37/2004 s 9	19.8.2004
s 38EB		
s 38EB(1)	substituted by 51/2004 s 15(1)	uncommenced—not incorporated
s 38EB(2a)	inserted by 51/2004 s 15(2)	uncommenced—not incorporated
s 38EB(3)	amended by 51/2004 s 15(3)	uncommenced—not incorporated
s 38EB(4)	amended by 51/2004 s 15(4)	uncommenced—not incorporated
s 38EB(6)	amended by 51/2004 s 15(5)	uncommenced—not incorporated
s 38EB(8)	amended by 51/2004 s 15(6)	uncommenced—not incorporated
s 38EBA	inserted by 51/2004 s 16	uncommenced—not incorporated
Pt 5A Div 3	inserted by 37/2004 s 9	19.8.2004
Pt 5B	inserted by 49/2003 s 12	18.12.2003
s 38J		
s 38J(2)	amended by 51/2004 s 17(1), (2)	uncommenced—not incorporated
s 38K	substituted by 51/2004 s 18	uncommenced—not incorporated
Pt 6		
s 39		
s 39(1)	amended by 16/1998 s 9(a)	23.4.1998
	amended by 4/2000 s 9(1) (Sch 1 cl 33(a))	1.6.2000
s 39(2)	<i>amended by 16/1998 s 9(b)</i>	23.4.1998
	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 33(b))</i>	1.6.2000
s 39(3)	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 33(c))</i>	1.6.2000
s 39(4)	inserted by 16/1998 s 9(c)	23.4.1998
	amended by 4/2000 s 9(1) (Sch 1 cl 33(d))	1.6.2000
s 40		
s 40(1)	amended by 12/2001 s 21(a)—(c)	1.7.2001
	amended by 37/2004 s 10(1)—(6)	19.8.2004

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	(e) deleted by 37/2004 s 10(3)	19.8.2004
s 40(1a)	inserted by 12/2001 s 21(d)	1.7.2001
	amended by 37/2004 s 10(7)	19.8.2004
s 40(2)	amended by 12/2001 s 21(e)	1.7.2001
s 40(4)	substituted by 16/1998 s 10	23.4.1998
	amended by 37/2004 s 10(8)	19.8.2004
s 40(6)	inserted by 37/2004 s 10(9)	19.8.2004
s 42		
s 42(1)	substituted by 20/1998 s 6(a)	1.10.1997
	substituted by 40/2001 s 8(a)	1.1.2002
s 42(2)	amended by 20/1998 s 6(b)	1.10.1997
	substituted by 40/2001 s 8(a)	1.1.2002
s 42(3)	inserted by 20/1998 s 6(c)	1.10.1997
	amended by 40/2001 s 8(b)	1.1.2002
s 42(4)	inserted by 20/1998 s 6(c)	1.10.1997
	amended by 40/2001 s 8(c), (d)	1.1.2002
s 42(5)	inserted by 20/1998 s 6(c)	1.10.1997
	substituted by 40/2001 s 8(e)	1.1.2002
s 42A	inserted by 12/2001 s 22	1.7.2001
s 42B	inserted by 12/2001 s 22	1.7.2001
	deleted by 37/2004 s 11	19.8.2004
s 43		
s 43(1)	amended by 12/2001 s 23(a)	1.7.2001
s 43(2)	substituted by 12/2001 s 23(b)	1.7.2001
s 43(3) and (4)	inserted by 12/2001 s 23(b)	1.7.2001
s 45A	inserted by 52/1992 s 9	29.10.1992
s 46A	inserted by 12/2001 s 24	1.7.2001
s 47A	inserted by 12/2001 s 25	1.7.2001
s 48		
s 48(1)	amended by 37/2004 s 12(1)	19.8.2004
s 48(7) and (8)	inserted by 37/2004 s 12(2)	19.8.2004
s 49		
s 49(1)	amended by 38/1995 Sch 2	1.7.1995
	amended by 16/1998 s 11	23.4.1998
s 49(1a)	inserted by 49/2003 s 13	18.12.2003
s 50	substituted by 12/1993 s 8	1.7.1992
s 52		
s 52(3)	inserted by 49/2003 s 14	18.12.2003
Sch 1		
cl 2A	inserted by 7/1997 s 7	1.7.1996
cl 6		
cl 6(2)	amended by 25/1997 s 11	24.4.1997
cl 8	inserted by 52/1992 s 10	1.6.1990

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cl 9	inserted by 60/1992 Sch 2	18.3.1993
cl 10	inserted by 16/1998 s 12	23.4.1998
<b>cl 11</b>	<b>inserted by 51/2004 s 19</b>	<b>3.7.2003</b>
Sch 4	omitted under <i>Legislation Revision and Publication Act 2002</i>	3.7.2003

## **Transitional etc provisions associated with Act or amendments**

### ***Statutes Amendment (Division of Superannuation Interests under Family Law Act) Act 2003, Sch 1***

#### **1—Interpretation**

In this Schedule—

**relevant Act** means an Act amended by this Act;

**relevant authority** means—

- (a) the Police Superannuation Board; or
- (b) the South Australian Parliamentary Superannuation Board; or
- (c) the South Australian Superannuation Board; or
- (d) the Treasurer.

#### **2—Prior action**

Any step taken by a relevant authority before a section of this Act is brought into operation that corresponds to a step that may be taken by the relevant authority under a relevant Act after this Act is brought into operation will be taken to be valid and effectual for the purposes of a relevant Act as if it had been taken after the commencement of this Act.

#### **3—Instruments**

Any splitting instrument, or other instrument, lodged with a relevant authority before the commencement of this Act may take effect for the purposes of a relevant Act after the commencement of this Act.

#### **4—Other matters**

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from an earlier day, but not before 28 December 2002.
- (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
  - (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.

- (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule (or regulations made under this Schedule), apply to any amendment effected by this Act.

## Historical versions

Retrospective amendments not included in Reprints 11—18 (see s 2(2) of 51/2004)

Retrospective amendment not included in Reprints 16—18 (see s 2(3) of 51/2004)

Reprint No 1—29.10.1992

Reprint No 2—10.12.1992

Reprint No 3—25.3.1993

Reprint No 4—9.6.1994

Reprint No 5—21.10.1994

Reprint No 6—1.7.1995

Reprint No 7—20.3.1997

Reprint No 8—24.4.1997

Reprint No 9—23.4.1998

Reprint No 10—1.4.1999

Reprint No 11—1.7.1999

Reprint No 12—26.8.1999

Reprint No 13—1.6.2000

Reprint No 14—1.7.2001

Reprint No 15—1.1.2002

Reprint No 16—3.7.2003

Reprint No 17—17.8.2003

Reprint No 18—18.12.2003