

SOUTH AUSTRALIA

SOUTHERN STATE SUPERANNUATION ACT 1994

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **23 December 1999**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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SOUTHERN STATE SUPERANNUATION ACT 1994

being

Southern State Superannuation Act 1994 No. 66 of 1994
[Assented to 3 November 1994]¹

as amended by

Superannuation Funds Management Corporation of South Australia Act 1995 No. 38 of 1995 [Assented to 27 April 1995]²
Statutes Amendment (Superannuation) Act 1997 No. 25 of 1997 [Assented to 10 April 1997]³
Southern State Superannuation (Merger of Schemes) Amendment Act 1998 No. 66 of 1998 [Assented to 10 September 1998]⁴
Southern State Superannuation (Salary) Amendment Act 1999 No. 86 of 1999 [Assented to 2 December 1999]⁵
Statutes Amendment (Visiting Medical Officers Superannuation) Act 1999 No. 87 of 1999 [Assented to 2 December 1999]⁶

¹ Came into operation 1 July 1995: s. 2.

² Came into operation 1 July 1995: *Gaz.* 25 May 1995, p. 2199.

³ Ss. 16 and 17 came into operation 1 July 1995: s. 2(2); ss. 12-15, 18 and 19 came into operation 24 April 1997: *Gaz.* 24 April 1997, p. 1618.

⁴ Came into operation 1 July 1998: s. 2.

⁵ **Came into operation 1 December 1999: s. 2.**

⁶ **Part 2 (s. 4) came into operation 23 December 1999: *Gaz.* 23 December 1999, p. 3670.**

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *Entries appearing in bold type indicate the amendments incorporated since the last reprint.*
- *For the legislative history of the Act see Appendix.*

An Act to provide a contributory superannuation scheme for persons employed in the public sector; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Southern State Superannuation Act 1994*.

Commencement

2. This Act will come into operation on 1 July 1995.

Interpretation

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

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

"**basic future service benefit**" in relation to a member means the basic future service benefit prescribed by regulation under section 34 or 35 in relation to the member;

"**the Benefit Scheme**" means the scheme of superannuation established by the *Superannuation (Benefit Scheme) Act 1992*;

"**the Board**" means the South Australian Superannuation Board continued in existence by the *Superannuation Act 1988*;

"**charge percentage**" means—

- (a) in the case of a member whose conditions of employment are specified in a contract negotiated between the member and his or her employer and which includes an agreement between the member and the employer that the value of the charge percentage will be greater than the value prescribed by paragraph (b) or (c)—the number representing that value;
- (ab) in the case of a person referred to in subsection (4), (5) or (6) of section 14—the charge percentage fixed by or under subsection (4), (5) or (7) of that section;
- (b) in the case of a member who is not a member referred to in paragraph (a) or (ab) but who is making contributions under Part 3 Division 3 at a rate of at least 4.5 per cent—the percentage set out in Schedule 2 or the charge percentage applicable under the Commonwealth Act to the employer of the member, whichever is the greater;
- (c) in any other case—the percentage set out in Schedule 1 or the charge percentage applicable under the Commonwealth Act to the employer of the member in relation to whom the term is used, whichever is the greater;

"**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);

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"employer contribution account" in relation to a member means the account maintained by the Board under Part 4 in the name of the member;

"employing authority" in relation to a member means—

- (a) the chief executive to whom the member is answerable on matters relating to his or her employment;
- (b) if there is no chief executive—the authority, body or person to whom the member is answerable;

"employment to which this Act applies" or **"employment"** means employment by virtue of which the person employed—

- (a) is a member of the Triple S scheme; or
- (b) was a member of the Benefit Scheme; or
- (c) in the case of a member of the State Scheme who elects to become a member of the Southern State Superannuation Scheme—was entitled to apply for acceptance as a contributor to the State Scheme;

"the Fund" means the Southern State Superannuation Fund established by this Act;

"future service benefit" means the benefit payable under section 34 or 35 in respect of future service on invalidity or death;

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

"member" means a member of the Southern State Superannuation Scheme established by this Act;

"member's contribution account" in relation to a member means the contribution account (if any) maintained by the Board under Part 2 Division 2 in the name of the member;

"member of the police force" includes a police aide;

"non-monetary remuneration", in relation to a member, means remuneration in any form (including money paid on behalf, or for the benefit, of the member) resulting from the sacrifice by the member of part of his or her salary;

"notional salary" in relation to a member who is entitled to a disability pension means the salary that the member would be receiving if he or she had not become incapacitated and had continued in active employment in the same position and at the same grade as were applicable immediately before the commencement of his or her incapacity and, if the member was not then in full-time employment, the notional salary will be calculated on the basis of the member's average hours of employment (excluding overtime) over the period (not exceeding the last three years) of his or her employment;

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

"the PSESS Scheme" means the superannuation scheme known as the Public Sector Employees Superannuation Scheme established pursuant to a deed of arrangement dated 27 September 1989 between the Treasurer and the secretary of the United Trades and Labor Council;

"retrenchment" in relation to a member means the termination of the member's employment by his or her employer for any reason except on account of—

- (a) invalidity in the circumstances referred to in section 34(7) or (8); or
- (b) the unsatisfactory performance by the member of his or her duties (including the member's failure to meet performance standards); or
- (c) the loss by the member of a qualification that is necessary for the proper performance of his or her duties; or
- (d) the member's bankruptcy or insolvency; or
- (e) the fact that the member has engaged in remunerative employment or an occupation or business outside the duties of his or her position; or
- (f) any other conduct that justifies termination of the member's employment;

"rollover account" means an account maintained by the Board in the name of a member of money carried over to the Triple S scheme from another superannuation fund or scheme;

"salary" in relation to a member includes all forms of remuneration received by the member except—

- (a) non-monetary remuneration referred to in subsection (3a);
- (b) remuneration related to overtime (other than remuneration related to overtime that is paid by way of an annual allowance);
- (c) an amount paid in lieu of recreation leave, long service leave or any other kind of leave;
- (d) an amount paid to the member as a consequence of the termination of the member's employment;

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

"the Southern State Superannuation Scheme" or **"the scheme"** means the scheme of superannuation established by this Act;

"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;

"the State Scheme" means the scheme of superannuation established by the *Superannuation Act 1988*;

"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*;

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"**supplementary future service benefit**" in relation to a member means the supplementary future service benefit prescribed by regulation under section 34 or 35 in relation to the member;

"**supplementary future service benefit member**"—see *Part 3 Division 2*;

"**the Triple S scheme**" means the Southern State Superannuation Scheme established by this Act.

(2) Where a member and his or her employer enter into an agreement as to the value of the charge percentage, the employing authority must give the Board written notice of the agreement.

(3) Non-monetary remuneration received by a member as the result of the sacrifice by the member of part of his or her salary in accordance with—

(a) an award; or

(b) an enterprise agreement prescribed by regulation for the purpose of this subsection,

is included in the definition of "**salary**" in subsection (1).

(3a) All other non-monetary remuneration is excluded from the definition of "**salary**" in subsection (1).

(3b) For the purposes of determining the amount of the salary received by a member who is in receipt of non-monetary remuneration of a kind referred to in subsection (3), the value of the non-monetary remuneration will be taken to be the amount of salary sacrificed by the member in order to receive the remuneration in that form.

(3c) A regulation referred to in subsection (3)(b) may prescribe an enterprise agreement by reference to the agreement or by reference to a class to which the agreement belongs.

(4) References in this Act to resignation from, or termination of, employment will be read subject to the qualification that resignation from a particular position so that the member can take up some other position in employment to which this Act applies, or so that he or she can take up employment in the same position but on a different basis, will be ignored unless there is an interval of more than one month between the time the resignation or termination of employment takes effect and the commencement of the new employment.

(4a) Where a member is employed—

(a) pursuant to a contract for a fixed term; or

(b) pursuant to an arrangement of the kind referred to in subsection (6); or

(c) on a temporary basis for a particular period or until the occurrence of a particular event,

and the employment is not renewed at the end of the term or period, the member's employment will be taken to have been terminated by retirement or resignation (depending on the member's age).

(5) Subject to subsections (6) and (7), the following provisions apply for the purposes of this Act to and in relation to a member who is employed on a casual basis:

- (a) subject to this subsection, the member will be taken to remain in employment for a period of 12 months after the last time that he or she performed work for the employer and accordingly—
 - (i) if the member is incapacitated during that 12 month period he or she may be entitled to benefits on invalidity under this Act (and for that purpose if the member is totally or partially incapacitated for work immediately before the expiration of that period section 34(8) will apply as if the member's employment had been terminated by his or her employer at the expiration of that period); and
 - (ii) if the member dies during that period his or her spouse or estate will be entitled to benefits under this Act;
- (b) at the expiration of that period of 12 months the member's employment will be taken to have been terminated (if not terminated by invalidity or death) by retirement or resignation (depending on the member's age).

(6) Subsection (5) does not apply where the member is employed pursuant to an arrangement under which the member is to work for three or more separate periods during a designated period or a period determined by the occurrence of a particular event.

(7) A member may at any time reduce the period of 12 months referred to in subsection (5) by notice in writing to the Board specifying the reduced period.

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**PART 2
ADMINISTRATION**

DIVISION 1—THE SOUTHERN STATE SUPERANNUATION FUND

The Fund

4. (1) The Southern State 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 members with respect to the relevant period.

(4a) Where money is rolled over from another superannuation fund or scheme to the Triple S scheme, 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 an amount or amounts equivalent to the amount or amounts rolled over.

(5) All interest and accretions arising from investment of the Fund must be paid into the Fund.

(6) 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) any reimbursement of the Consolidated Account or a special deposit account that the Treasurer charges against the Fund in pursuance of this Act.

(7) The Superannuation Funds Management Corporation of South Australia must determine the value of the Fund as at the end of each financial year.

Investment of the Fund

5. (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.

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DIVISION 2—MEMBERS' CONTRIBUTION ACCOUNTS AND ROLLOVER ACCOUNTS

Members' contribution accounts and rollover accounts

7. (1) The Board must maintain contribution accounts in the names of all members who are making or have made contributions to the scheme.

(2) A member's contribution account must be credited with the amount of contributions made by the member and must be debited with any payment that is, in pursuance of this Act, to be charged against the account.

(2a) The Board must maintain a rollover account in the name of a member for whom an amount of money has been carried over from another superannuation fund or scheme to the Triple S scheme.

(2b) A member's rollover account must be credited with the money referred to in subsection (2a) and must be debited with any payment that is, in pursuance of this Act, to be charged against the account.

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Accretions to members' accounts

7A. (1) At the end of each financial year, each member's contribution account and rollover account (if any) that has a credit balance will be adjusted to reflect a rate of return determined by the Board in relation to members' accounts for the relevant financial year.

(2) In determining a rate of return for the purposes of subsection (1), the Board should have regard to—

- (a) the net rate of return achieved by investment of the Fund over the financial year or, where a member has made a nomination under subsection (3), the net rate of return achieved by the class of investments, or the combination of classes of investments, nominated by the member; and
- (b) the desirability of reducing undue fluctuations in the rate of return on members' accounts.

(3) Where 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 members, 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 the rate of return under this section.

(4) A member cannot nominate a class of investments, or a combination of classes of investments, under subsection (3) if he or she does not at the same time nominate the same class or combination of classes of investments under section 27(4).

(5) Where, in pursuance of subsection (2)(b), the Board determines a rate of return that is at variance with the net rate of return achieved by investment 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 member'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.

(7) A balance determined under subsection (6) will not be adjusted when a rate of return is subsequently determined under subsection (1).

(8) A reference in this section to "rate of return" is a reference to a positive or a negative rate of return.

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Rollover of money from other funds or schemes

7B. Money that is rolled over to the Triple S scheme from another superannuation fund or scheme must be paid to the Treasurer.

Other accounts to be kept by Board

8. (1) The Board must in respect of each financial year—

- (a) maintain proper accounts of receipts of member's contributions paid under this Act; and
- (b) maintain proper accounts of payments to, on behalf of, or in respect of, members; and
- (c) prepare financial statements in relation to those receipts and payments.

(2) The Auditor-General may at any time, and must at least once in each year—

- (a) audit the accounts and financial statements referred to in subsection (1); and
- (b) audit the other accounts to be maintained by the Board under this Act.

DIVISION 3—THE SOUTHERN STATE SUPERANNUATION (EMPLOYERS) FUND

The Southern State Superannuation (Employers) Fund

9. (1) The Treasurer must establish a fund to be named the Southern State Superannuation (Employers) Fund.

(2) The following amounts will be credited to the fund:

- (a) payments to the Treasurer by employers under Part 3 Division 4;
- (ab) the amount transferred by the Treasurer pursuant to clause 4 of schedule 3;
- (b) all interest and accretions arising from investment of the fund.

(3) The following amounts will be paid from the fund:

- (a) the reimbursement of the Consolidated Account or a special deposit account in respect of the employer component of benefits payable under this Act or of future service benefits payable under this Act;
- (b) the administrative costs and other expenses of or relating to the administration of this Act (including the costs and expenses of or relating to the investment of the fund itself);
- (c) the reimbursement of the Treasurer for an amount (if any) paid (whether before or after the commencement of this paragraph) by the Treasurer for a purpose referred to in paragraph (b) together with interest on that amount fixed by the Treasurer.

Accounts and audit

10. (1) The Treasurer must keep proper accounts of receipts and payments in relation to the fund and must, in respect of each financial year, prepare financial statements in relation to the fund.

(2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the fund and the financial statements.

Determination of rate of return

11. (1) At the end of each financial year the Board must determine a rate of return on investment of the fund in respect of that financial year and, where a member or members have nominated a class of investments, or combination of classes of investments, under section 27(4), a rate of return on investments of that class or combination of classes.

(2) In determining a rate of return for the purposes of subsection (1), the Board should have regard to—

- (a) the net rate of return achieved by investment of the fund over the financial year and, where a member or members have nominated a class of investments, or combination of classes of investments, the net rate of return achieved by the class of investments, or combination of classes of investments, nominated by the member; and
- (b) the desirability of reducing undue fluctuations in the rate of return on the fund.

(3) Where, in pursuance of subsection (2)(b), the Board determines a rate of return that is at variance with the net rate of return achieved by investment of the fund, the Board must include its reasons for the determination in its report for the relevant financial year.

DIVISION 4—PAYMENT OF BENEFITS

Payment of benefits

12. (1) A payment to be made under this Act to or on behalf of a member or to a spouse of a deceased member or to a deceased member's estate, 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) If the payment includes an employee component or a rollover component, an amount equivalent to the amount standing to the credit of the member's contribution account or rollover account is to be charged against the appropriate account and the Treasurer must reimburse the Consolidated Account or special deposit account by charging the Fund with that amount.

(3) If the payment includes an employer component or a future service benefit, the Consolidated Account or special deposit account is to be reimbursed with the amount of that component or benefit by charging it against the Southern State Superannuation (Employers) Fund.

(4) Where, upon the invalidity or death of a member who was a member of the police force, an amount greater than the aggregate of the employee and employer components and a future service benefit (if any) is payable by way of benefits under section 34(6) or 35(7) to or in respect of the member, the amount payable will be taken, for the purposes of this section, to include the employee and employer components and a future service benefit (if any).

DIVISION 5—REPORTS

Reports

13. (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.

(2) The report must include—

- (a) a copy of the financial statements prepared by the Board in relation to receipts of members' contributions and relating to payments to, on behalf of, or in relation to, members; and

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- (b) the audited accounts and statements of the Southern State Superannuation (Employers) Fund.

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(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.

Report as to cost of future service benefit

13A. (1) The Minister must obtain a report within 12 months after 30 June 2001 and thereafter within 12 months after the end of each triennium following that date.

(2) Each report must report on the cost of basic and supplementary future service benefits at the time of the report and in the foreseeable future and must be prepared by an actuary (not being a member of the Board) appointed by the Minister.

(3) 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
MEMBERSHIP AND CONTRIBUTIONS**

DIVISION 1—MEMBERSHIP OF THE SCHEME

Membership

14. (1) Subject to this section, a person in relation to whom the Crown, or an agency or instrumentality of the Crown, is liable to pay a superannuation guarantee charge under the Commonwealth Act is a member of the Southern State Superannuation Scheme.

(2) Subject to this section, a person who was a member of the Benefit Scheme immediately before the repeal of the *Superannuation (Benefit Scheme) Act 1992* is a member of the Triple S scheme.

(3) Subject to subsections (4), (5) and (6) the following persons are not members of the scheme:

(a) a person who is a member of a scheme of superannuation established by or under some other Act;

(b) a person who is a member of a scheme of superannuation established for the benefit of the employees of an agency or instrumentality of the Crown (not being a scheme referred to in paragraph (a));

(c) a person employed pursuant to a fixed term contract that—

(i) requires the employer to provide for or contribute towards benefits for the employee in a scheme of superannuation other than the Triple S scheme; and

(ii) does not expressly state that the provision or contribution by the employer referred to in subparagraph (i) is in addition to the employee's membership of the Triple S scheme;

(d) a person whose earnings from employment to which this Act applies are less than the amount prescribed by regulation during the period prescribed by regulation for that purpose;

(e) the employees of an agency or instrumentality of the Crown that has been excluded from the operation of this section by regulation;

(f) a person employed in employment prescribed by regulation for the purposes of this paragraph.

(4) A member of—

(a) the State Scheme or of any other scheme established by or under an Act; or

(b) a scheme of superannuation established for the benefit of employees of an agency or instrumentality of the Crown,

becomes a member of the Triple S scheme whenever an entitlement to benefits needs to accrue to the member under the Triple S scheme to satisfy the requirements of the Commonwealth Act and, in that event, the amount of the charge percentage in respect of the member for the purposes of this Act will be—

(c) the amount declared by regulation for that purpose; or

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- (d) if no amount has been declared under paragraph (c)—the amount required to reduce the charge percentage under the Commonwealth Act in respect of the member to zero.
- (5) Where the employer contributions pursuant to a contract referred to in subsection (3)(c) are not sufficient to reduce the charge percentage under the Commonwealth Act to zero—
- (a) the employee is a member of the Triple S scheme; and
- (b) the amount of the charge percentage in respect of that employee for the purposes of this Act is the amount required to reduce the charge percentage under the Commonwealth Act to zero.
- (6) The Governor may, by regulation, declare the members of a scheme of superannuation established by or under some other Act or established for the benefit of employees of an agency or instrumentality of the Crown to be members of the Triple S scheme in order to provide them with superannuation benefits in place of benefits that would have accrued to them under the PSESS Scheme if that scheme had continued for their benefit after 30 June 1992.
- (7) The amount of the charge percentage in respect of members referred to in subsection (6) will be fixed by regulation.
- (8) A regulation for the purposes of subsection (4) or (7) may be retrospective to 1 July 1998.

Election by contributor to the State Scheme

15. (1) A contributor within the meaning of the *Superannuation Act 1988* may elect to become a member of the Southern State Superannuation Scheme if the employment on which his or her status as such a contributor is based has not terminated.

(2) An election takes effect on a date fixed by the Board being a date occurring within two months after the election was made.

(3) For the purposes of the *Superannuation Act 1988*, a contributor who has made an election under subsection (1) will be taken—

- (a) to have resigned from employment and to have preserved his or her accrued superannuation benefits (whether he or she has reached the age of 55 years or not); and
- (b) not to reach the age of 55 years until he or she reaches that age and ceases to be employed in employment to which that Act applies.

(4) An election under this section—

- (a) must be made in writing to the Board; and
- (b) may specify the rate (if any) at which the member elects to contribute to the scheme.

Election by visiting medical officer

15A. (1) A person appointed as a visiting medical officer may elect to become a member of the Southern State Superannuation Scheme.

(2) If the election is made within one month after the date of the person's appointment as a visiting medical officer, the election takes effect on the date of the appointment.

- (3) If subsection (2) does not apply and the election is made—
 - (a) before 1 June in a financial year it takes effect at the commencement of the next financial year;
 - (b) on or after 1 June in a financial year it takes effect at the commencement of the second financial year after it was made.
- (4) An election under this section—
 - (a) must be made in writing to the Board; and
 - (b) may specify the rate (if any) at which the member elects to contribute to the scheme.
- (5) In this section—

"visiting medical officer" has the same meaning as in the *Superannuation (Visiting Medical Officers) Act 1993*.

Duration of membership

16. (1) A person who fulfils the requirements for membership of the scheme under this Division remains a member of the scheme until benefits payable under this Act to, on behalf of, or in respect of, the member have been paid even though the member may have subsequently ceased to fulfil the requirements for membership under this Division.

(2) Subject to section 37, during a period in which a member does not fulfil the requirements for membership of the scheme under this Division an annual employer contribution does not accrue under this Act to the member in respect of that period.

(3) Where a member becomes a member of a scheme of superannuation established for the benefit of the employees of an agency or instrumentality of the Crown, his or her membership of the Triple S scheme that is attributable to his or her employment by the agency or instrumentality is terminated and the member's employee and employer components and rollover component (if any) (as defined in section 30) attributable to that membership are carried over to the other superannuation scheme.

(4) Where an annual employer contribution has not accrued to a member under this Act or the repealed *Superannuation (Benefit Scheme) Act 1992* for a period of three years or more because the member has been an active contributor during that period under the *Superannuation Act 1988*, an amount equivalent to the balance standing to the credit of the member's employer contribution account and the member's rollover account (if any) may be paid by the Treasurer to the credit of the member's rollover account under the *Superannuation Act 1988* and in that event the member ceases to be a member of the Triple S scheme.

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DIVISION 2—SUPPLEMENTARY FUTURE SERVICE BENEFIT MEMBERS

Acceptance as a supplementary future service benefit member

22. (1) The Board may, on the application of a member, accept the member as a supplementary future service benefit member.

(1a) A person who is employed on a casual basis can only be accepted as a supplementary future service benefit member if he or she is employed pursuant to an arrangement under which he or she is to work for nine or more hours each week or for periods that average, over a three month period, nine or more hours each week.

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(1b) A person who is a member of the scheme by virtue of section 14(4), (5) or (6) cannot be accepted as a supplementary future service benefit member.

(2) An application must be made in a manner approved by the Board and must specify the level of supplementary future service benefits that the member is applying for.

(3) All members of the police force and all police cadets who are members of the scheme are supplementary future service benefit members and are entitled to the highest level of supplementary future service benefits prescribed by the regulations and are obliged to make contributions in respect of those benefits at the corresponding level prescribed by the regulations.

(4) Subject to subsection (8), the applicant must provide the Board with prescribed information as to the applicant's state of health and the Board may require an applicant to provide satisfactory evidence of the state of the applicant's health.

(5) The cost of any medical examination to which an applicant is required to submit for the purposes of subsection (4) must be paid by the applicant.

(6) If it appears to the Board—

(a) that an applicant's state of health is such as to create a risk of invalidity or premature death; or

(b) that an applicant has in the past engaged in an activity of a prescribed kind that increases the risk of invalidity or premature death; or

(c) that an applicant is likely in the future to engage in an activity of a kind referred to in paragraph (b),

the Board may refuse the application or may grant it on conditions (being conditions authorised by the regulations).

(7) If it appears to the Board that an applicant withheld information required in relation to his or her application under this section, the Board may withhold or reduce a supplementary future service benefit under this Act.

(8) If within three months after electing to become a member of the Triple S scheme, a contributor under the *Superannuation Act 1988* applies to the Board under this section for acceptance as a supplementary future service benefit member—

(a) subsection (4) does not apply to the applicant; and

(b) the Board must accept the application and the only conditions that it can impose on its acceptance are the conditions (if any) to which the applicant's membership of the State Scheme is subject or conditions to which the applicant agrees.

Variation of benefits

23. (1) A supplementary future service benefit member (other than a member of the police force or a police cadet) may apply to the Board to vary the level of supplementary future service benefits applicable to the member.

(2) An application must be made in a manner approved by the Board and must specify the new level of benefits that the member is applying for.

(3) If an application is for an increase in the level of benefits, this Division will apply as though it were an application for acceptance of the applicant as a supplementary future service benefit member.

(4) The variation of the level of supplementary future service benefits under this section operates from the commencement of the financial year following the Board's granting of the application for variation.

Election to terminate status as a supplementary future service benefit member

24. (1) A supplementary future service benefit member (other than a member of the police force or a police cadet) may, by notice in writing to the Board, elect to terminate his or her status as a supplementary future service benefit member.

(2) An election under subsection (1) operates from the commencement of the financial year occurring after the day on which it is made.

DIVISION 3—CONTRIBUTIONS BY MEMBERS

Contributions

25. (1) Subject to this section a member may elect to make contributions to the Treasurer at one of the following percentages of salary:

- 1%
- 2%
- 3%
- 4%
- 4.5%
- 5%
- 6%
- 7%
- 8%
- 9%
- 10%

(2) A person who is a member of the scheme by virtue of section 14(4), (5) or (6) is not entitled to make contributions.

(3) A member of the police force must contribute at a rate of at least 4.5 per cent of salary.

(3a) Subsection (3) does not apply to a member of the police force who is employed pursuant to a contract having a fixed term.

(4) A police cadet is not obliged to contribute but may elect to do so.

(5) A member who has elected to contribute may subsequently elect to contribute at a different rate or to cease contributing.

(6) An election under this section must be made to the Board in writing and, subject to subsection (7), will operate from a date to be fixed by the Board.

(7) Subject to subsection (7a), an election by a member under subsection (5) cannot operate until at least one year has passed since the member's previous election came into operation.

(7a) Where the Board is satisfied that a member needs to reduce his or her contributions because of financial hardship, the Board may permit an election to operate from an earlier date.

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(8) A member'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 member's salary as at 31 March last preceding the commencement of the financial year or, if the member's hours of employment have increased or decreased between that date and the commencement of the financial year, on the basis of the member's salary following the last such increase or decrease in the hours of employment; but
- (b) —
 - (i) if the member had not then commenced his or her employment, the contributions will be fixed on the basis of the member's commencing salary;
 - (ii) if the member 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 member would then have been receiving if not on leave;
 - (iii) if the member's employment is of a casual nature, the contributions will be fixed on the basis of a notional salary fixed by the Board in relation to the member;
 - (iv) if after the date on which contributions for a particular financial year are fixed there is a reduction in the member'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 member's contributions (but the member may, with the Board's approval, elect to contribute as if there had been no reduction in salary);
 - (iva) if the reason for the reduction in hours of work is an illness or injury suffered by the member, an election under subparagraph (iv) may, with the Board's approval, operate during subsequent years despite paragraph (a);
 - (v) if during the financial year the member commences a period of leave without pay or at a reduced rate of pay (of more than two weeks duration), the member's contributions will be suspended or reduced proportionately (but the member may, with the Board's approval, elect to contribute as if he or she had not been on leave).

(8a) When determining a member's salary for the purposes of subsection (8)(a), an amount that does not usually form part of the member's salary will be disregarded.

(9) If over a particular period a member 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 member is less than the salary that the member would have received if not incapacitated, the Board may allow a proportionate reduction in the amount of the contributions for that period.

(10) Contributions are payable on the days on which the member's salary is paid or, in the case of a member who is on leave without pay, on the days on which the member's salary would have been paid if he or she had not been on leave.

(11) A member whose membership of the scheme commences on the commencement of the member's employment will commence making contributions on a date fixed by the Board.

Additional contributions

25A. (1) A member who is making contributions to the Treasurer under section 25 may make additional contributions to the Treasurer under this section.

(2) The amount of each additional contribution must be equal to or exceed the amount prescribed by regulations for the purposes of this section.

DIVISION 4—PAYMENTS BY EMPLOYERS

Payments by employers

26. (1) Within seven days after salary is paid to a member, the member's employer must pay to the Treasurer an amount calculated as follows:

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

Where—

A is the amount to be paid

S is the amount of salary paid to the member

CP is the charge percentage applicable in respect of the member for the period during which the salary was paid.

(2) If an employer fails to pay the amount referred to in subsection (1) within the time allowed by that subsection, the employer is liable to pay to the Treasurer a penalty (not being greater than 10 per cent of the amount unpaid) fixed by the Board.

(3) In this section—

"**employer**" means—

(a) the administrative unit in which the member is employed; or

(b) the agent or instrumentality of the Crown, or other person or body, that employs the member,

as the case requires.

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**PART 4
THE EMPLOYER COMPONENT OF BENEFITS**

Employer contribution accounts

27. (1) The Board must maintain employer contribution accounts in the names of all members.

(2) Subject to subsection (7), a member's employer contribution account must be credited with amounts that are equivalent to the amounts paid or payable by the member's employer to the Treasurer under section 26 in respect of salary paid to the member.

(3) At the end of each financial year, each member's employer contribution account will be adjusted to reflect a rate of return equivalent to the rate of return on investments of the Southern State Superannuation (Employers) Fund determined by the Board under section 11 in respect of the relevant financial year or, where the member has made a nomination under subsection (4), equivalent to the rate of return on the nominated class of investments, or combination of classes of investments, determined by the Board.

(4) Where the Southern State Superannuation (Employers) Fund is invested in different classes of investments, the Board may, with the agreement of the Treasurer, permit members, on such terms and conditions as it thinks fit, to nominate the class of investments, or combination of classes of investments, for the purpose of determining the rate of return under subsection (3).

(5) A member cannot nominate a class of investments, or a combination of classes of investments, under subsection (4) if he or she does not at the same time nominate the same class or combination of classes of investments under section 7A(3).

(6) If, when the employer component is to be paid under Part 5 or an amount is to be paid under section 16(4), the rate of return for the relevant financial year has not been determined under section 11, the rate of return will be equivalent to the rate of return on investments of the Southern State Superannuation (Employers) Fund estimated by the Board for that year (there will be no adjustment when the rate of return is subsequently determined under section 11).

(7) The amounts to be credited under subsection (2) must be reduced by—

(a) an administrative charge to be prescribed by regulation (different charges may be prescribed depending on the balance of members' accounts or any other relevant factor); and

(b) the future service benefit factor which, subject to subsection (8), has the value prescribed by regulation; and

(c) the disability pension factor which, subject to subsection (9), has the value prescribed by regulation.

(8) The value of the future service benefit factor is zero in relation to a member referred to in section 34(5) or (5a) or section 35(6) or (6a).

(9) The value of the disability pension factor is zero in relation to a member who is not entitled to a disability pension under section 33A under any circumstances.

(10) A reference in this section to "rate of return" is a reference to a positive or a negative rate of return.

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**PART 5
SUPERANNUATION BENEFITS**

Interpretation

30. In this Part—

"**the employee component**" in relation to a member means the amount standing to the credit of the member's contribution account;

"**the employer component**" in relation to a member means the amount standing to the credit of the member's employer contribution account;

"**the future service benefit factor**" means the future service benefit factor referred to in section 27(7)(b);

"**the rollover component**" in relation to a member means the amount standing to the credit of the member's rollover account.

Retirement

31. (1) A member who retires from employment is entitled to payment of the employee component and the employer component and to payment of the rollover component (if any) to the extent that that payment can be made in accordance with the SIS Act.

(1a) A rollover component, or the part of a rollover component, that cannot be paid in accordance with the SIS Act must be preserved and subsections (6) and (6a) of section 32 apply to and in relation to it.

(2) For the purposes of this section a member retires from employment if—

(a) the member has reached the age of 55 years; and

(b) the member's employment terminates or is terminated for any reason (except the member's death).

Resignation

32. (1) Where a member resigns from employment before reaching the age of 55 years the member may elect—

(a) to take immediately the employee component; or

(b) to preserve the employee component; or

(c) to carry the employee component over to some other superannuation fund or scheme approved by the Board.

(2) Where a member resigns from employment before reaching the age of 55 years the member may elect—

(a) if the circumstances referred to in subsection (3) apply—to take immediately the employer component; or

(b) to preserve the employer component; or

(c) to carry the employer component over to some other superannuation fund or scheme approved by the Board.

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(2a) Where a member resigns from employment before reaching the age of 55 years the member may elect—

- (a) to take immediately the rollover component (if any) to the extent that payment of that component can be made in accordance with the SIS Act; or
- (b) to preserve the rollover component; or
- (c) to carry the rollover component over to some other superannuation fund or scheme approved by the Board.

(3) The circumstances referred to in subsection (2)(a) are as follows:

- (a) the amount of the employer component is less than \$200; or
- (b) the member satisfies the Board that—
 - (i) he or she intends leaving Australia on a permanent basis; or
 - (ii) he or she is residing out of Australia and will continue to do so on a permanent basis.

(4) A member who fails to inform the Board in writing of his or her election under subsection (1), (2) or (2a) within three months after resignation will be taken to have elected to preserve the employee, employer or rollover component as the case requires.

(5) If the Board is of the opinion that the limitation period referred to in subsection (4) would unfairly prejudice a member, the Board may extend the period as it applies to the member.

(6) Where the member elects to preserve the employee, employer or rollover component, the following provisions apply subject to subsection (6a):

- (a) the member may at any time after reaching 55 years of age require the Board to authorise payment of the component and, if no such requirement has been made on or before the date on which the member reaches 65 years of age, the Board will authorise payment of the component to the member;
- (b) if the member 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 authorise payment of the component to the member;
- (c) if the member dies, the component will be paid to the spouse of the deceased member or, if he or she left no surviving spouse, to the member'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).

(6a) Subsection (6) applies to a rollover component subject to restrictions imposed by the SIS Act.

(7) A member who has elected, or has been taken to have elected, to preserve his or her employee component, employer component or rollover component and to whom the component has not been paid under subsection (6), may elect to withdraw that election and to elect to carry the component over to some other superannuation fund or scheme approved by the Board.

(8) If two or three components have been preserved, a member cannot make an election under subsection (7) to carry one or two but not both or all of them over.

(9) Where the member elects to carry over the employee, employer or rollover component to an approved superannuation fund or scheme, the following provisions apply:

- (a) the member 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) on being so satisfied the Board will authorise payment of the component on behalf of the member to the fund or scheme.

(10) Where a member has resigned from employment and has elected to preserve the employee, employer or rollover component but has subsequently been re-employed in employment by virtue of which he or she becomes a member of the scheme, the Board may maintain separate member's contribution accounts or employer contribution accounts or rollover accounts or a combined member's contribution account or employer contribution account or rollover account in the name of the member.

(11) For the purposes of this section and subject to any other provision of this Act a member who has not reached the age of 55 years will be taken to resign if the member's employment terminates or is terminated for any reason except invalidity (in circumstances entitling the member to benefits under this Act), retrenchment or death.

Retrenchment

33. (1) Subject to subsection (2), where a member's employment is terminated by retrenchment the member is entitled to payment of the employee component and the employer component and to payment of the rollover component (if any) to the extent that that payment can be made in accordance with the SIS Act.

(2) The member may elect to preserve his or her employee, employer or rollover component or to carry it over to some other superannuation fund or scheme and in the event of such an election the provisions of section 32 will apply as if the member had resigned from employment.

Disability pension

33A. (1) Subject to this section, a member who is temporarily or permanently incapacitated for work, and has not reached the age of 55 years, is entitled to a disability pension.

(2) The amount of a disability pension will be two-thirds of the member's notional salary.

(3) A member 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, carrying a salary of at least 80 per cent of the salary applicable to the former position, is available to the member and the member could reasonably be expected to take that other position.

(4) Subject to subsection (5), a member is only entitled to a pension if he or she has made contributions under this Act for a period of at least 12 months before the commencement of the incapacity.

(5) Subsection (4) does not apply to a member if—

- (a) the incapacity was caused by accidental injury; or
- (b) the member is a supplementary future service benefit member.

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(6) However, a member will not be entitled to a pension by reason of subsection (5)(b) if he or she would not have been entitled to, or would have been entitled to a reduced, supplementary future service benefit (because of conditions placed by the Board on its acceptance of the member as a supplementary future service benefit member) on termination of his or her employment on account of invalidity.

(7) A disability pension is not payable in respect of—

(a) a period in respect of which the member is entitled to sick leave; or

(b) a period in respect of which the member is entitled to weekly payments of workers compensation; or

(c) a period for which the member is on recreation leave or long service leave.

(8) The Board will not authorise the payment of a disability pension in respect of a period of incapacity of less than one week and may decline to authorise a disability pension if it appears that the duration of the incapacity is likely to be less than six months.

(9) 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 6 months.

(10) 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.

(11) A member is not required to make any contribution over a period for which the member receives a disability pension.

(12) A right to a disability pension under this section cannot be assigned.

(13) Subsection (12) does not prevent the making of a garnishee order in relation to a pension.

Termination of employment on invalidity

34. (1) If a member's employment terminates on account of invalidity before the member reaches the age of 55 years the member is entitled to benefits made up of the following components:

(a) the employee component; and

(b) the employer component; and

(c) the rollover component (if any); and

(d) subject to this section, the basic future service benefit and, where the member is a supplementary future service benefit member, a supplementary future service benefit.

(2) The basic and supplementary future service benefits are not payable—

(a) unless the Board is satisfied that the member's incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent;

- (b) to a member whose employment terminated on account of invalidity within one year after the commencement of his or her membership of the scheme unless—
- (i) he or she was a member of the Benefit Scheme, the State Scheme or any other scheme of superannuation established for the benefit of the employees of an agency or instrumentality of the Crown immediately before becoming a member of the Triple S scheme and the termination of his or her employment occurred on or after the first anniversary of the commencement of his or her membership of the Benefit Scheme, the State Scheme or other scheme; or
 - (ii) the invalidity was caused by accidental injury; or
 - (iii) the member is a supplementary future service benefit member (but, in that case, payment of both the basic future service benefit and the supplementary future service benefit is subject to the conditions (if any) imposed by the Board when granting the member's application to be accepted as a supplementary future service benefit member).

(3) The value of the basic and supplementary future service benefits and the value of the future service benefit factor will be fixed by, or the method for determining the value set out in, regulations (the regulations may provide for different values depending on the member's age or whether the member was employed on a full time, part time or casual basis or on any other relevant factor).

(3a) The basic future service benefit is payable to a member who is on leave without pay when his or her employment is terminated on account of invalidity if termination occurs on or before the first anniversary of the commencement of the leave but not if it occurs after that date.

(3b) The supplementary future service benefit is not payable to a member who is on leave without pay when his or her employment is terminated on account of invalidity—

- (a) unless a direction had been made by the Minister under section 37 in relation to the member; or
- (b) except where the member's employment was terminated on or before the first anniversary of the commencement of the leave and the member had paid to the Treasurer, or had made arrangements for payment approved by the Board of, an amount determined by the Board equivalent to the future service benefit factor in respect of the supplementary future service benefit for the first year of the leave.

(4) A future service benefit is not payable to a member who is receiving or entitled to receive weekly workers compensation payments or to a member who would have been entitled to receive weekly workers compensation payments if the right to those payments had not been surrendered by commutation or by agreement.

(5) A person who is a member of the scheme by virtue of section 14(4), (5) or (6) is not entitled to a future service benefit under this section.

(5a) A member who has received a future service benefit under this section (or a future service benefit, or a benefit in the nature of a future service benefit, under any other Act that provides for the payment of benefits by the Treasurer) and is subsequently employed in employment to which this Act applies is not entitled to a future service benefit under this section in respect of his or her subsequent employment.

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(6) If—

(a) the member was, immediately before termination of his or her employment, a member of the police force; and

(b) the member's incapacity resulted from injuries received in the course of duty,

the member is entitled to benefits under subsection (1) or to payment of an amount calculated as follows whichever is the greater:

$$A = 3 \times S$$

Where—

A is the amount

S is—

(a) if the member—

(i) held the rank of senior sergeant or a lower rank immediately before termination of his or her employment; and

(ii) was at any time during his or her membership of the police force rostered to work on day, afternoon and night shifts, or on any two of those shifts, on a rotating basis; and

(iii) was not, immediately before termination of his or her employment, employed on a permanent basis on special duties at a salary level greater than that payable to a senior sergeant,

the member's actual or attributed salary as defined by the *Police Superannuation Act 1990* (expressed as an annual amount) increased by ten per cent;

(b) in any other case—the member's actual or attributed salary as defined by the *Police Superannuation Act 1990* (expressed as an annual amount).

(6a) When determining for the purposes of subsection (6) whether a member is entitled to benefits under subsection (1) or to a payment under subsection (6), the rollover component (if any) will be disregarded (the member is entitled to payment of the rollover component in addition to a payment under subsection (6)).

(7) Subject to subsection (8) a member's employment will be taken to have terminated on account of invalidity if and only if—

(a) the employer (acting with the written approval of the Board) terminates the employment on the ground of the member's invalidity; or

(b) —

(i) the employer or the member satisfies the Board (before termination of employment) that the member is incapacitated for work in the member's present position and that there is no other position, carrying a salary of at least 80 per cent of the salary applicable to the member's present position, which the member could reasonably be expected to take, available to the member; and

- (ii) after notice has been given to the Board as required by the regulations, the employer terminates the employment or the member resigns from employment.

(8) A member's employment will be taken to have terminated on account of invalidity if—

(a) at a time when the member is totally or partially incapacitated for work in the member's present position the member's employment is terminated by the employer—

- (i) in circumstances that would, but for this subsection, constitute retrenchment of the member; or

- (ii) on account of the unsatisfactory performance by the member of his or her duties (including the member's failure to meet performance standards) caused by the member's incapacity; or

- (iii) for any other reason that is caused by or is the direct result of the member's incapacity; and

(b) the Board is satisfied that the member has been totally or partially incapacitated for work in the member's former position since the termination of his or her employment (being a period of at least six months) and that the incapacity is likely to be permanent.

(9) A member referred to in subsection (8) who claims to be entitled to benefits under this section, or a person acting on his or her behalf, must within six months after the termination of the member's employment, give written notice to the Board claiming that the member is entitled to benefits under this section.

Death of member

35. (1) Where a member's employment is terminated by the member's death—

- (a) if the deceased member is survived by a spouse—a payment will be made to the spouse;

- (b) if the deceased member is not survived by a spouse—a payment will be made to the member's estate.

(2) The amount of the payment under subsection (1)(a) or (b) is the aggregate of the following amounts:

- (a) the employee component; and

- (b) the employer component; and

- (c) the rollover component (if any); and

- (d) subject to this section, in the case of a member who had not reached the age of 60 years, the basic future service benefit and, where the member was a supplementary future service benefit member, a supplementary future service benefit.

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(3) The basic and supplementary future service benefits are not payable in respect of a member who died within one year after the commencement of his or her membership of the scheme unless—

- (a) he or she was a member of the Benefit Scheme, the State Scheme or any other scheme of superannuation established for the benefit of the employees of an agency or instrumentality of the Crown immediately before becoming a member of the Triple S scheme and his or her death occurred on or after the first anniversary of the commencement of his or her membership of the Benefit Scheme, the State Scheme or other scheme; or
- (b) death was caused by accidental injury; or
- (c) the member was a supplementary future service benefit member (but, in that case, payment of both the basic future service benefit and the supplementary future service benefit is subject to the conditions (if any) imposed by the Board when granting the member's application to be accepted as a supplementary future service benefit member).

(4) The value of the basic and supplementary future service benefits and the value of the future service benefit factor will be fixed by, or the method of determining the value set out in, regulations (the regulations may provide for different values depending on the member's age or whether the member was employed on a full time, part time or casual basis or on any other relevant factor).

(4a) The basic future service benefit is payable in respect of a member who was on leave without pay when he or she died if death occurred on or before the first anniversary of the commencement of the leave but not if it occurred after that date.

(4b) The supplementary future service benefit is not payable in respect of a member who was on leave without pay when he or she died—

- (a) unless a direction had been made by the Minister under section 37 in relation to the member; or
- (b) except where the member died on or before the first anniversary of the commencement of the leave and the member had paid to the Treasurer, or had made arrangements for payment approved by the Board of, an amount determined by the Board equivalent to the future service benefit factor in respect of the supplementary future service benefit for the first year of the leave.

(5) A future service benefit is not payable to the spouse of a member if the spouse is receiving or entitled to receive weekly workers compensation payments in relation to the member's death or would have been entitled to receive such payments if the right to those payments had not been surrendered by commutation or agreement.

(6) A future service benefit is not payable under this section in respect of a person who was a member of the scheme by virtue of section 14(4), (5) or (6).

(6a) A future service benefit is not payable in respect of a member who has died if—

- (a) the member was previously employed in employment to which this Act applies or any other employment; and
- (b) the employment was terminated on account of invalidity; and
- (c) the member had received a future service benefit under section 34 or a future service benefit, or a benefit in the nature of future service benefit, under any other Act that provides for the payment of benefits by the Treasurer.

(7) If—

- (a) the member was, immediately before his or her death, a member of the police force, and
- (b) the member died from injuries received in the course of duty,

the member's spouse or estate is entitled to benefits under subsection (2) or to payment of an amount calculated as follows whichever is the greater:

$$A = 3 \times S$$

Where—

A is the amount

S is—

(a) if the member—

- (i) held the rank of senior sergeant or a lower rank immediately before his or her death; and
- (ii) was at any time during his or her membership of the police force rostered to work on day, afternoon and night shifts, or on any two of those shifts, on a rotating basis; and
- (iii) was not, immediately before his or her death, employed on a permanent basis on special duties at a salary level greater than that payable to a senior sergeant,

the member's actual or attributed salary as defined by the *Police Superannuation Act 1990* (expressed as an annual amount) increased by ten per cent;

(b) in any other case—the member's actual or attributed salary as defined by the *Police Superannuation Act 1990* (expressed as an annual amount).

(7a) When determining for the purposes of subsection (7) whether a member's spouse or estate is entitled to benefits under subsection (2) or to a payment under subsection (7), the rollover component (if any) will be disregarded (the spouse or estate is entitled to payment of the rollover component in addition to a payment under subsection (7)).

(8) If a member who has died is not survived by a spouse and probate or letters of administration in relation to the deceased's estate have not been granted to any person, the Board may use the amount payable under this section, or such part of it as is required, to pay the funeral expenses of the deceased member or to reimburse a person who has paid those expenses.

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**PART 6
MISCELLANEOUS**

Information to be given to certain members

36. The Board must provide members of the scheme who do not contribute or who are not supplementary future service benefit members with information as to the benefits of contributing or applying for supplementary future service benefit membership.

Employer benefits and contributions where member on leave without pay

37. Where a member is on leave without pay, the Minister may, at the request of the employing authority, direct that Part 3 Division 4 and Part 4 will apply in relation to the member as though he or she were not on leave without pay and, for that purpose, the member will be taken to be receiving the salary that he or she would have received if he or she were not on leave without pay.

Exclusion of benefits under awards, etc.

38. (1) A person who employs a member of the Southern State Superannuation Scheme in employment to which this Act applies cannot be required by or under the *Industrial and Employee Relations Act 1994* or by an award, enterprise agreement or industrial agreement to make a payment or payments—

- (a) in the nature of superannuation; or
- (b) to a superannuation fund,

for the benefit of the member or for the benefit of some other person in respect of the member.

(2) An award cannot be made or varied under the *Industrial and Employee Relations Act 1994* on or after 1 July 1992 under which an employer is required to make a payment or payments in respect of a period of PSESS Scheme employment occurring before that date—

- (a) in the nature of superannuation; or
- (b) to a superannuation fund,

for the benefit of a PSESS Scheme employee or for the benefit of some other person in respect of that employee.

(3) In subsection (2)—

"PSESS Scheme employee" means a person to whom benefits have been credited under the PSESS Scheme;

"PSESS Scheme employment", in relation to an employee, means employment by virtue of which the employee is credited with benefits under the PSESS Scheme.

Police Occupational Superannuation Scheme

39. A member of the police force who is a member of the Southern State Superannuation Scheme is not entitled to benefits under the Police Occupational Superannuation Scheme in respect of a period of employment occurring after 3 May 1994.

Review of the Board's decision

40. (1) Any person who is dissatisfied with a decision of the Board under this Act may apply to the District Court or to the Board for a review of the decision.

(2) On a review by the Court, the Court may—

- (a) confirm the Board's decision;
- (b) substitute any decision that should, in the Court's opinion, have been made in the first instance;
- (c) make any consequential or ancillary orders.

(3) The Court is not bound by rules of evidence in proceedings under this section.

(4) On a review by the Board, the Board may substitute another decision for its original decision or confirm its original decision.

Power to obtain information

41. (1) The Board may, from time to time, require an employing authority or a member to supply the Board with any information that it reasonably requires for the purposes of this Act.

(2) The Board may require a member to verify information supplied under this section or any other provision of this Act by statutory declaration.

(3) A person who—

- (a) fails to comply with a requirement under subsection (1); or
- (b) supplies information under this section or any other provision of this Act that is false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: \$20 000.

(4) If an employing authority fails to supply information to the Board in accordance with a requirement under subsection (1) within 7 days of the requirement (or such longer period as the Board allows), the employer is liable to pay to the Treasurer a penalty (not exceeding the amount calculated in accordance with the following formula) fixed by the Board:

$$A = S \times \frac{CP}{100} \times \frac{1}{10}$$

Where—

A is the amount

S is the aggregate amount of salary paid or payable by the employer to all of its employees who are members of the scheme during the month in which the Board required the information

CP is the charge percentage applicable under the Commonwealth Act in respect of the month in which the Board required the information.

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(5) In subsection (4)—

"**employer**" means—

- (a) an administrative unit in which members of the scheme are employed; or
- (b) an agent or instrumentality of the Crown, or other person or body, that employs members of the scheme.

Delegation by Board

42. (1) The Board may delegate any of its powers or functions under this Act (except this power of delegation) to any person or body.

(2) A delegation under this section—

- (a) must be by instrument in writing; and
- (b) may be conditional or unconditional; and
- (c) does not derogate from the power of the Board to act in any matter; and
- (d) is revocable at will by the Board.

Division of benefit where deceased member is survived by lawful and putative spouses

43. (1) If a deceased member 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, furnish it with any information that it requires for the purposes of making a division under subsection (1).

(4) A putative spouse is not entitled to any benefit under this section, unless the deceased member and that spouse were putative spouses as at the date of the member's death.

(5) Where—

- (a) a deceased member is survived by a lawful and a putative spouse;
- (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 payment.

Payment in case of death

44. (1) Subject to subsection (2), where a person to whom a payment is to be made under this Act dies, the Board may, in its discretion, make the payment to—

- (a) the personal representative of the deceased; or

- (b) the spouse of the deceased; or
- (c) the children of the deceased.

(2) The Board may use the amount payable, or such part of it as is required, to pay the funeral expenses of the person who has died or to reimburse a person who has paid those expenses.

Payments in foreign currency

45. Where—

- (a) an amount becomes payable to, on behalf of, or in respect of, a member; and
- (b) the member was immediately before the amount became payable, employed outside Australia and paid a salary in a currency other than Australian currency,

the Board may, with the agreement of the person to whom the amount is to be paid, pay the amount in that other currency.

Rounding off of benefits

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

Liabilities may be set off against benefits

47. A liability of a member arising under this Act may be set off against a payment that is to be made to, on behalf of, or in respect of the member under this Act.

Confidentiality

47A. (1) 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 as to the entitlements or benefits of any person under this Act except—

- (a) as required by or under any Act of the State or the Commonwealth; or
- (b) to, or with the consent of, that person; or
- (c) to that person's employing authority; or
- (d) to any other person for purposes related to the administration of this Act; or
- (e) as may be required by a court.

Maximum penalty: \$10 000.

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

Post retirement investment

47B. (1) The Board may offer to accept money from public sector superannuation beneficiaries for investment with the Superannuation Funds Management Corporation of South Australia.

(2) An offer will be on terms and conditions determined by the Board and the Corporation.

(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.

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(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 public sector superannuation beneficiaries under this section is not limited to money received by the investor from a public sector superannuation 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—

"public sector superannuation beneficiary" means a person who has received a benefit—

(a) under this Act or under any other Act that establishes a scheme of superannuation; or

(b) under any other scheme of superannuation established for the benefit of employees of any agency or instrumentality of the Crown.

Annuities

47C. (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 to a person who is, or has been—

(a) a member of the Triple S scheme or some other scheme of superannuation established by an Act; or

(b) a member of some other scheme of superannuation established for the benefit of employees of an agency or instrumentality of the Crown.

Resolution of doubts or difficulties

48. 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.

Regulations

49. (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 a fine of \$2 500, for breach of or non-compliance with a provision of the regulations.

SCHEDULE 1

Percentage for definition of charge percentage	Period during which percentage applies
6	1 July 1995 to 30 June 1998
7	1 July 1998 to 30 June 2000
8	1 July 2000 to 30 June 2002
9	1 July 2002 onwards.

SCHEDULE 2

Percentage for definition of charge percentage	Period during which percentage applies
9	1 July 1995 to 30 June 2002
10	1 July 2002 onwards.

Southern State Superannuation Act 1994**SCHEDULE 3***Repeal and Transitional Provisions*

1. The *Superannuation (Benefit Scheme) Act 1992* is repealed.
2. Subject to clause 3, on the commencement of the *Southern State Superannuation (Merger of Schemes) Amendment Act 1998*, the employer contribution account under this Act of a member who was a member of the Benefit Scheme immediately before the repeal of the *Superannuation (Benefit Scheme) Act 1992* will be credited with the amount of the balance of the member's superannuation account under that Act.
3. That part (if any) of the balance of a member's superannuation account under the repealed *Superannuation (Benefit Scheme) Act 1992* comprising an amount credited from another superannuation fund or scheme under section 18 of the *Superannuation (Benefit Scheme) Act 1992* and all accretions attributable to that amount will, on the commencement of the *Southern State Superannuation (Merger of Schemes) Amendment Act 1998*, be credited to the member's rollover account under this Act.
4. On the commencement of the *Southern State Superannuation (Merger of Schemes) Amendment Act 1998* the Treasurer must transfer from the Consolidated Account (which is appropriated to the necessary extent) or from a special deposit account to the Southern State Superannuation (Employers) Fund an amount equivalent to the aggregate of the amounts credited to members' employer contribution accounts under clause 2.
5. (1) The Board will continue to maintain accounts maintained by it under section 28 of the repealed *Superannuation (Benefit Scheme) Act 1992*.
(2) The balance standing to the credit of an account referred to in subclause (1) will attract interest at the end of each financial year at a rate equivalent to the rate of return on investments of the Southern State Superannuation (Employers) Fund determined by the Board under Part 2 Division 3 in respect of the relevant financial year.
(3) An administration fee prescribed by regulation may be deducted by the Board from an account referred to in subclause (1) at the end of each financial year.
6. Section 15(3) does not apply to, or in relation to, a contributor who made an election under section 17(1) of this Act before the commencement of the *Southern State Superannuation (Merger of Schemes) Amendment Act 1998* and, despite its repeal, section 17(2) continues to apply to, and in relation to, such a contributor.
7. (1) Where the employment of a member who was a member of the Benefit Scheme on 30 June 1998 terminates on account of invalidity or death on or before 30 June 1999, the basic future service benefit paid or payable to or in respect of the member under section 34 or 35 must not be less than the future service benefit that would have been payable to or in respect of the member under section 15 or 16 of the *Superannuation (Benefit Scheme) Act 1992* if that Act had remained in force and the member had remained a member of the Benefit Scheme.
(2) Where the employment of a member who was a member of the Triple S scheme on 30 June 1998 terminates on account of invalidity or death on or before 30 June 1999, the basic future service benefit paid or payable to or in respect of the member under section 34 or 35 must not be less than the future service benefit (calculated on the assumption that the member was not a supplementary future service benefit member) that would have been payable to or in respect of the member under the relevant section if the *Southern State Superannuation (Merger of Schemes) Amendment Act 1998* had not come into operation.
8. (1) A calculation will be made in respect of each Benefit Scheme member to determine the amount of the future service benefit to which he or she would have been entitled if—
 - (a) the member's employment had been terminated on account of invalidity on 1 January 1999; and
 - (b) this Act had not been amended by the *Southern State Superannuation (Merger of Schemes) Amendment Act 1998* and the *Superannuation (Benefit Scheme) Act 1992* had not been repealed.
(2) If the amount determined under clause (1) in respect of a member is greater than the amount of the basic future service benefit to which the member would have been entitled under this Act (as amended by the *Southern State Superannuation (Merger of Schemes) Amendment Act 1998*) if his or her employment had been terminated on account of invalidity on 1 January 1999, the following provisions apply:
 - (a) the member will be taken to be a supplementary future service benefit member and, subject to this subclause, will be entitled to a supplementary future service benefit equivalent to the difference in the two amounts;

- (b) the member will be entitled to the supplementary future service benefit on and after 1 July 1999 and the member's future service benefit factor will be adjusted to reflect the member's entitlement under this clause from that date;
- (c) the Board may increase a member's benefit and benefit factor referred to in paragraphs (a) and (b) in order to match a level of supplementary future service benefit and future service benefit factor prescribed by regulation;
- (d) a member may, on giving at least two months written notice to the Board, elect to—
 - (i) reduce the level of the benefit to which he or she is entitled under this subclause and the benefit factor applicable to it to a lower level prescribed by regulation; or
 - (ii) discontinue the benefit;
- (e) a notice under paragraph (d) may operate from 1 July 1999 or from the commencement of a subsequent financial year;
- (f) a member referred to in this clause may apply to the Board under section 23 for an increase in the level of his or her supplementary future service benefit, but the Board may refuse the application or may grant it subject to conditions in accordance with section 22;
- (g) the Board must inform each member in writing of his or her entitlement to a supplementary future service benefit under this clause.

(3) In this clause—

"Benefit Scheme member" means a person who was a member of the Benefit Scheme immediately before the repeal of the *Superannuation (Benefit Scheme) Act 1992* and who is a member of the Triple S scheme by virtue of section 14(2).

9. Regulations made under section 27(7)(c) prescribing the disability pension factor may provide for their retrospective operation from 1 July 1998.

10. Regulations made under section 34(3) or 35(4) may—

- (a) provide for their retrospective operation from 1 July 1998;
- (b) include provisions of a transitional nature that may modify the provisions of this Act.

Southern State Superannuation Act 1994

APPENDIX

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Section 3(1):	definition of "annual employer contribution" repealed by 66, 1998, s. 3(a) definition of "actuary" inserted by 66, 1998, s. 3(a) definition of "basic future service benefit" substituted by 66, 1998, s. 3(b) definition of "charge percentage" amended by 66, 1998, s. 3(c), (d) definition of "employment to which this Act applies" amended by 66, 1998, s. 3(e) definition of "member's contribution account" amended by 66, 1998, s. 3(f) definition of "non-monetary remuneration" inserted by 86, 1999, s. 3(a) definition of "notional salary" inserted by 66, 1998, s. 3(g) definition of "the PSESS Scheme" inserted by 66, 1998, s. 3(h) definition of "rollover account" inserted by 66, 1998, s. 3(i) definition of "salary" amended by 86, 1999, s. 3(b) definition of "the SIS Act" inserted by 66, 1998, s. 3(j) definition of "special deposit account" inserted by 25, 1997, s. 12 definition of "the Superannuation Funds Management Corporation of South Australia" or "the Corporation" inserted by 38, 1995, Sched. 2 definition of "supplementary future service benefit" substituted by 66, 1998, s. 3(k) definition of "the Trust" repealed by 38, 1995, Sched. 2 definition of "the Triple S scheme" inserted by 66, 1998, s. 3(l) repealed by 66, 1998, s. 3(m); inserted by 86, 1999, s. 3(c)
Section 3(3):	inserted by 86, 1999, s. 3(c)
Section 3(3a) - (3c):	inserted by 86, 1999, s. 3(c)
Section 3(4a):	inserted by 66, 1998, s. 3(n)
Section 3(5):	amended by 66, 1998, s. 3(o), (p)
Section 3(6) and (7):	inserted by 66, 1998, s. 3(q)
Section 4(3):	amended by 38, 1995, Sched. 2
Section 4(4):	amended by 25, 1997, s. 13(a)
Section 4(4a):	inserted by 66, 1998, s. 4
Section 4(6):	amended by 25, 1997, s. 13(b)
Section 4(7):	amended by 38, 1995, Sched. 2
Section 5(1) and (2):	amended by 38, 1995, Sched. 2
Section 5(3) - (5):	repealed by 38, 1995, Sched. 2
Section 6:	repealed by 38, 1995, Sched. 2
Part 2 Division 2 heading:	amended by 66, 1998, s. 5
Section 7(1):	substituted by 66, 1998, s. 6(a)
Section 7(2a) and (2b):	inserted by 66, 1998, s. 6(b)
Section 7(3):	repealed by 66, 1998, s. 6(c)
Section 7(4) - (7):	repealed by 66, 1998, s. 6(d)
Sections 7A and 7B:	inserted by 66, 1998, s. 7
Section 9(2):	amended by 66, 1998, s. 8
Section 9(3):	substituted by 25, 1997, s. 14
Section 11(1):	amended by 66, 1998, s. 9(a)
Section 11(2):	amended by 66, 1998, s. 9(b)
Section 12(1):	amended by 25, 1997, s. 15(a)
Section 12(2):	amended by 25, 1997, s. 15(b); substituted by 66, 1998, s. 10
Section 12(3):	amended by 25, 1997, s. 15(b)
Section 13(3) and (4):	repealed by 38, 1995, Sched. 2
Section 13A:	inserted by 66, 1998, s. 11
	Division 1 of Part 3 comprising ss. 14 - 21 and heading amended by 25, 1997, s. 16; repealed and ss. 14 - 16 and heading inserted in its place by 66, 1998, s. 12
Section 15A:	inserted by 87, 1999, s. 4
Section 22(1a) and (1b):	inserted by 66, 1998, s. 13(a)
Section 22(4):	amended by 66, 1998, s. 13(b)
Section 22(8):	inserted by 66, 1998, s. 13(c)
Section 23(4):	inserted by 66, 1998, s. 14

Section 25(1):	amended by 66, 1998, s. 15(a)
Section 25(2):	substituted by 66, 1998, s. 15(b)
Section 25(3a):	inserted by 25, 1997, s. 17(a)
Section 25(5):	amended by 25, 1997, s. 17(b); substituted by 66, 1998, s. 15(c)
Section 25(6) and (7):	substituted by 66, 1998, s. 15(c)
Section 25(7a):	inserted by 66, 1998, s. 15(c)
Section 25(8):	amended by 66, 1998, s. 15(d)
Section 25(8a):	inserted by 66, 1998, s. 15(e)
Section 25A:	inserted by 66, 1998, s. 16
Section 27:	amended by 25, 1997, s. 18; substituted by 66, 1998, s. 17
Section 28:	repealed by 66, 1998, s. 18
Section 29:	repealed by 25, 1997, s. 19
Section 30:	substituted by 66, 1998, s. 19
Section 31(1):	amended by 66, 1998, s. 20(a)
Section 31(1a):	inserted by 66, 1998, s. 20(b)
Section 32(1):	amended by 66, 1998, s. 21(a)
Section 32(2):	amended by 66, 1998, s. 21(b)
Section 32(2a):	inserted by 66, 1998, s. 21(c)
Section 32(3):	amended by 66, 1998, s. 21(d)
Section 32(4):	substituted by 66, 1998, s. 21(e)
Section 32(6):	substituted by 66, 1998, s. 21(f)
Section 32(6a):	inserted by 66, 1998, s. 21(f)
Section 32(7):	amended by 66, 1998, s. 21(g), (h)
Section 32(8):	substituted by 66, 1998, s. 21(i)
Section 32(9):	amended by 66, 1998, s. 21(j), (k)
Section 32(10):	substituted by 66, 1998, s. 21(l)
Section 32(11):	substituted by 66, 1998, s. 21(m)
Section 33(1):	amended by 66, 1998, s. 22(a)
Section 33(2):	substituted by 66, 1998, s. 22(b)
Section 33A:	inserted by 66, 1998, s. 23
Section 34(1):	amended by 66, 1998, s. 24(a), (b)
Section 34(2) and (3):	substituted by 66, 1998, s. 24(c)
Section 34(3a) and (3b):	inserted by 66, 1998, s. 24(c)
Section 34(5):	substituted by 66, 1998, s. 24(d)
Section 34(5a):	inserted by 66, 1998, s. 24(d)
Section 34(6a):	inserted by 66, 1998, s. 24(e)
Section 35(2):	amended by 66, 1998, s. 25(a)
Section 35(3) and (4):	substituted by 66, 1998, s. 25(b)
Section 35(4a) and (4b):	inserted by 66, 1998, s. 25(b)
Section 35(6):	substituted by 66, 1998, s. 25(c)
Section 35(6a):	inserted by 66, 1998, s. 25(c)
Section 35(7a):	inserted by 66, 1998, s. 25(d)
Section 36:	substituted by 66, 1998, s. 26
Section 38(3):	definition of "the PSESS Scheme" repealed by 66, 1998, s. 27
Section 40(1):	amended by 66, 1998, s. 28
Section 41(3):	amended by 66, 1998, s. 29
Sections 47A - 47C:	inserted by 66, 1998, s. 30
Section 49(2):	amended by 66, 1998, s. 31
Schedule 3:	inserted by 66, 1998, s. 32