

South Australia

Southern State Superannuation Act 1994

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

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

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

3—Interpretation

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

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

additional invalidity/death insurance means invalidity/death insurance granted by the Board under section 22 in addition to basic invalidity/death insurance;

additional invalidity/death insurance benefits means benefits payable in respect of additional invalidity/death insurance;

basic invalidity/death insurance means invalidity/death insurance to which a member is entitled by virtue of his or her membership of the scheme;

basic invalidity/death insurance benefits means benefits payable in respect of basic invalidity/death insurance;

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 as to the value of the charge percentage—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;
- (ac) in the case of a visiting medical officer—a percentage determined by reference to and in accordance with the Department of Human Services Visiting Medical Specialist (VMS) Agreement 2001 (or its successor);
- (b) in the case of a member who is not a member referred to in paragraph (a), (ab) or (ac) 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;

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

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

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);

contributions means contributions made under section 25 or section 25A;

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

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 or who is a member of the Southern State Superannuation Scheme solely by virtue of being a person in respect of whom a co-contribution has been paid to the Board—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;

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

invalidity/death insurance benefits means basic or additional invalidity/death insurance benefits;

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;

monetary salary means salary of a kind other than non-monetary salary;

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;

non-monetary salary means non-monetary remuneration of a kind referred to in subsection (3);

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;

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 3A of this Act;

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 established and maintained by the Board as a rollover account in accordance with the requirements of this Act;

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*;

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;

teaching hospital means the Royal Adelaide Hospital, the North Western Adelaide Health Service, the Flinders Medical Centre, the Repatriation General Hospital, the Women's and Children's Hospital or Noarlunga Health Services;

the Triple S scheme means the Southern State Superannuation Scheme established by this Act;

visiting medical officer means a person appointed as a senior visiting medical specialist or a visiting medical specialist by the Department of Human Services or by a teaching hospital, the Institute of Medical and Veterinary Science or by any other hospital or health centre incorporated under the *South Australian Health Commission Act 1976* that is declared by proclamation to be a hospital or health centre in relation to which this definition applies.

- (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) a contract negotiated between the member and his or her employer that specifies the conditions of the member's employment; or
 - (b) an award; or
 - (c) 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.
- (8) For the purposes of this Act, an amount of money rolled over for payment into the Fund under the provisions of another Act that operate in conjunction with Part VIII B of the *Family Law Act 1975* of the Commonwealth will, subject to this Act, be taken to be money rolled over from a superannuation scheme to the Triple S scheme.

3A—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.

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- (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.

3B—Restriction on publication of court proceedings

- (1) *Protected information* is information relating to an application under section 3A (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 to 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 Southern State Superannuation Fund

4—The Fund

- (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.
- (4b) The Treasurer must also 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 the amount of any co-contributions paid to the Board on behalf of a contributor (but received by the Treasurer on behalf of the Board) with respect to any relevant period.
- (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.

5—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 2—Members' contribution accounts, rollover accounts and co-contribution accounts

7—Contribution, co-contribution and rollover accounts

- (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.
 - (2c) The Board must—
 - (a) maintain a co-contribution account in the name of—
 - (i) a member of the State Scheme; or
 - (ii) a member of the Triple S scheme,in respect of whom a co-contribution has been paid to the Board; and
 - (b) credit the account with the amount of any co-contribution paid to the Board in respect of the member; and
 - (c) debit the account with any payment that is to be charged against the account under this Act.
- (3) The Board may, in an appropriate case, debit against—
 - (a) a member's contribution account established pursuant to Part 5A of this Act or established to accept money rolled over under the provisions of another Act that correspond to Part 5A of this Act; or
 - (b) a member's rollover account; or
 - (c) a member's co-contribution account,(or one or more of the above), an administrative charge fixed by the Board.
- (3a) However, an administrative charge may not be debited against a member's co-contribution account if the Board is maintaining a contribution account or a rollover account in the name of the member and the credit balance (if any) of either or both of those accounts is sufficient to pay the administrative charge.
- (4) The Board may, for the purposes of subsection (3), fix different charges depending on the balance of members' accounts or any other relevant factor.

- (5) Despite a preceding subsection, if a member whose only account in the scheme is a co-contribution account satisfies the Board that he or she is unlikely to receive any further co-contributions that will be payable to the Board in respect of the member, the Board may allow the member to carry over the balance of the account to some other superannuation fund or scheme approved by the Board (and when the balance has been carried over by the Board the person will cease to be a member of the Triple S scheme).

7A—Accretions to members' accounts

- (1) At the end of each financial year, each member's contribution account, rollover account (if any) and co-contribution 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) (but this requirement does not apply if the member only has a co-contribution account).
- (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.

7B—Rollover of money from other funds or schemes

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

8—Other accounts to be kept by Board

- (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**9—The Southern State Superannuation (Employers) Fund**

- (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;
 - (aaa) payments to the Treasurer by or on behalf of employers under section 15B;
 - (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 invalidity/death insurance 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.

10—Accounts and audit

- (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.
 - (1a) The financial statements must set out the aggregate of the amounts debited against employer contribution accounts under section 27(7)(b) in respect of premiums for invalidity/death insurance.

- (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.

11—Determination of rate of return

- (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

12—Payment of benefits

- (1) A payment to be made under this Act to or on behalf of a member or to any other person who has an entitlement to the payment of a benefit or other amount with respect to a superannuation interest, 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, a rollover component or a co-contribution component, an amount equal to the amount of the payment 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 an invalidity/death insurance 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 an invalidity/death insurance 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 the invalidity/death insurance benefit (if any).

Division 5—Reports

13—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.
- (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
 - (b) the audited accounts and statements of the Southern State Superannuation (Employers) Fund.
- (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.

13A—Report as to cost of invalidity/death insurance benefits

- (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 additional invalidity/death insurance 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, invalidity/death insurance and contributions

Division 1—Membership of the scheme

14—Membership

- (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
 - (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.

- (9) A person who has made an election under section 15B(1) is a member of the Triple S scheme.
- (10) If—
- (a) a person who is not a member of the Triple S scheme has an entitlement to a lump sum under Part 5A of this Act or under the provisions of another Act that correspond to that Part; and
 - (b) that entitlement is to be retained in the Fund, or rolled over for payment into the Fund (as the case may be),
- then that person becomes a member of the Triple S scheme by force of this subsection.
- (10a) If a co-contribution is paid to the Board on behalf of a person who is a member of the State Scheme but not, at the time of the payment, a member of the Triple S scheme, the person becomes a member of the Triple S scheme by virtue of this subsection when the payment is received by the Board.
- (11) The Governor may, by regulation, make any provision in connection with the operation of subsection (10) or (10a), including by providing that a specified provision of this Act does not apply to a person who becomes a member of the Triple S scheme by virtue of either of those subsections, or applies to such a person subject to any modification prescribed by the regulations.

15—Election by contributor to the State Scheme

- (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.

15B—Salary sacrifice by members of State Scheme

- (1) A person who is an active contributor to the State Scheme may elect, by notice in writing to the Board, to become a member of the Triple S scheme in order to establish an entitlement to the employer component of benefits under Part 5 by sacrificing part of his or her salary in accordance with—
- (a) a contract negotiated between the person and his or her employer that specifies the conditions of the person's employment; or

- (b) an award; or
 - (c) an enterprise agreement prescribed by regulation for the purposes of section 3(3).
- (2) Subject to subsection (3), where a person has elected to become a member of the Triple S scheme under subsection (1), the employer must, within seven days after salary is paid to the member, pay to the Treasurer an amount (or arrange for the payment within that period to the Treasurer of an amount) equivalent to the member's non-monetary salary that is allocated for the purpose of the employer component of benefits under Part 5 in accordance with the contract, award or enterprise agreement.
- (3) Subsection (2) does not apply to, or in relation to, a member during a period in which he or she is not an active contributor to the State Scheme except where the member is not an active contributor because of section 23(7) of the *Superannuation Act 1988*.
- (4) The amount of the charge percentage in respect of a person who has elected to become a member of the Triple S scheme under subsection (1) is zero.
- (5) A person who has elected to become a member of the Triple S scheme under subsection (1)—
 - (a) is not entitled to make contributions under section 25;
 - (b) is entitled to the employer component of benefits under Part 5 but is not entitled to any other benefit under this Act in his or her capacity as a member under this section.

16—Duration of membership

- (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.

- (5) However, if the Board is maintaining a co-contribution account on behalf of a member of the State Scheme because of co-contribution payments received in respect of that membership, the member does not cease to be a member of the Triple S scheme by virtue of the operation of subsection (4).
- (6) If—
- (a) a person is a member of the scheme solely by virtue of being a member of the State Scheme in respect of whom a co-contribution has been paid to the Board; and
 - (b) the person becomes entitled to the payment of benefits under the *Superannuation Act 1988* and to the payment of the amount standing to the credit of the person's co-contribution account,
- then the person ceases to be a member of the Triple S scheme on the payment of the balance of the co-contribution account.

Division 2—Invalidity/death insurance

21—Basic invalidity/death insurance

- (1) Subject to this section, each member of the scheme is entitled to basic invalidity/death insurance regardless of the state of health of the member.
- (2) A person who is a member of the scheme by virtue only of section 14(4), (5), (6), (10) or (10a) or section 15B (including any combination of these provisions) is not entitled to basic invalidity/death insurance.
- (3) A member who has received invalidity insurance benefits under this Act (or a benefit in the nature of invalidity insurance benefits 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 basic invalidity insurance in respect of his or her subsequent employment.

22—Application for additional invalidity/death insurance

- (1) Subject to this section, a member may apply to the Board for additional invalidity/death insurance.
- (1a) A person who is employed on a casual basis can only apply for additional invalidity/death insurance 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.
- (1b) A person who is a member of the scheme by virtue only of section 14(4), (5), (6), (10) or (10a) or section 15B (including any combination of these provisions) cannot apply for additional invalidity/death insurance.
- (2) An application must be made in a manner approved by the Board and must specify the additional invalidity/death insurance that the member is applying for.
- (3) All members of the police force and all police cadets who are members of the scheme have such additional invalidity/death insurance as is prescribed by regulation and are liable for premiums in respect of that insurance fixed by or under 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 additional invalidity/death insurance benefits that the applicant would otherwise have been entitled to.
- (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 additional invalidity/death insurance that will entitle the applicant to benefits that will not, in the Board's opinion, exceed the benefits in the nature of invalidity and death insurance to which the applicant would have been entitled under the *Superannuation Act 1988*—
 - (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.
- (9) Where the Board grants an application for additional invalidity/death insurance or for an increase or decrease in the level of additional insurance, the Board must fix the date for the commencement of the insurance or of the increase or decrease in the level of insurance.

23—Variation of additional insurance

- (1) Subject to subsection (2), a member who has additional invalidity/death insurance may apply to the Board to increase or decrease the level of the insurance.
- (2) A member of the police force or a police cadet cannot apply to reduce his or her additional invalidity/death insurance below the level prescribed by regulation under section 22(3).
- (3) An application must be made in a manner approved by the Board.
- (4) This Division applies to an application to increase the level of insurance as though it were an initial application for additional insurance.

24—Amount of invalidity/death insurance benefits and amount of premiums

- (1) The amount of basic and additional invalidity/death insurance benefits and the amount of the premiums in respect of those benefits will be fixed by or under regulation.
- (2) The regulations may provide—
 - (a) for different amounts of basic and additional invalidity/death insurance 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; and
 - (b) for annual increases in the amount of basic and additional invalidity/death insurance for the benefit of members who wish to have annual increases in their insurance; and
 - (c) for the amount of premiums to be fixed by the Board.
- (3) Premiums will be debited against each member's employer contribution account.
- (4) If the debiting of a premium under subsection (3) would result in a debit balance in the account—
 - (a) the premium will be debited against the account to the extent of the credit balance in the account; and
 - (b) the member's basic and additional invalidity/death insurance is suspended from the expiration of the month following the month in which the premium was debited until the account is again sufficiently in credit to enable the debiting of premiums without resulting in a debit balance.
- (5) In subsection (4)—

month means any one of the 12 named months of a calendar year.

24A—Voluntary suspension of invalidity/death insurance

- (1) A person who is employed on a casual basis and who does not have additional invalidity/death insurance may, by notice in writing to the Board, suspend his or her basic invalidity/death insurance.
- (2) Subject to subsection (3) an employee (not being an employee referred to in subsection (1)) may, by notice in writing to the Board, suspend his or her basic invalidity/death insurance and his or her additional invalidity/death insurance (if any).
- (3) An employee can only suspend insurance under subsection (2) if the Board is satisfied that he or she will not be in receipt of any income from his or her employer during the period of suspension.
- (4) An employee may at any time, by notice in writing to the Board, reinstate his or her suspended insurance.
- (5) Basic and additional invalidity/death insurance benefits are only payable to or in respect of an employee whose employment terminates on account of invalidity or death within one year after his or her insurance is reinstated under subsection (4) if the invalidity or death was caused by accidental injury.

Division 3—Contributions by members

25—Contributions

- (1) Subject to this section a member may elect to make contributions to the Treasurer at one of the following percentages of the combined value of the monetary and non-monetary salary (if any) to which the member is entitled in each period in respect of which salary is paid to the member:
 - 1%
 - 2%
 - 3%
 - 4%
 - 4.5%
 - 5%
 - 6%
 - 7%
 - 8%
 - 9%
 - 10%
- (2) A person who is a member of the scheme by virtue only of section 14(4), (5), (6), (10) or (10a) (including any combination of these provisions) 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 will operate from a date to be fixed by the Board.
- (7) Where, following a change in a member's salary, it will be difficult for an employer to determine the amount of the member's contribution for the first payment period to which the new contribution applies, the Board may, by notice in writing to the employer, direct that the member's contributions will, until a date specified in the notice, be determined in accordance with this section as in force immediately before the commencement of the *Southern State Superannuation (Contributions) Amendment Act 2000*.
- (8) A notice under subsection (7) may be varied or revoked by the Board by subsequent notice served on the employer.

- (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).
- (10) Contributions are payable from the member's monetary salary on the days on which monetary salary is paid to the member.
- (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.

25A—Other contributions

- (1) A member who is making contributions to the Treasurer under section 25 may make additional monetary contributions to the Treasurer under this section that are not related to the member's salary.
- (1a) A member whose employment has not terminated but who is not making contributions under section 25 may make monetary contributions to the Treasurer under this section.
- (2) The amount of each contribution under this section must be equal to or exceed the amount prescribed by regulations for the purposes of this section.

Division 4—Payments by employers

26—Payments by employers

- (1) Within a period (to be determined by the Board) 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 or, if the member is entitled to both monetary and non-monetary salary, *S* is the aggregate of the monetary and non-monetary salary to which the member is entitled

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

- (1a) Where pursuant to an award or enterprise agreement the whole or part of a member's non-monetary salary is allocated for the purpose of increasing the employer component of the member's benefits under Part 5, the employer must, within seven days after salary is paid to the member, pay to the Treasurer an amount (or arrange for the payment within that period to the Treasurer of an amount) equivalent to the member's non-monetary salary that is allocated for that purpose.
- (2) If an employer fails to pay the amount referred to in subsection (1) or (1a) 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.
- (2a) This section does not apply in relation to a person who is a member of the scheme by virtue of section 14(10).

(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.

Part 4—The employer component of benefits

27—Employer contribution accounts

- (1) The Board must maintain employer contribution accounts in the names of all members.
- (2) 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(1) in respect of salary paid to the member.
- (2a) The employer contribution account of a member referred to in section 26(1a) must be credited with amounts that are equivalent to the amounts paid or payable by, or on behalf of, the member's employer to the Treasurer under section 26(1a) in respect of the member.
- (2b) The employer contribution account of a person who has elected to become a member of the Triple S scheme under section 15B must be credited with amounts that are equivalent to the amounts paid or payable by, or on behalf of, the member's employer to the Treasurer under section 15B(2) in respect of 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).

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- (7) The following amounts must be debited against the employer contribution accounts of members (other than members referred to in subsection (7a)):
- (a) an administrative charge to be fixed by the Board (different charges may be fixed depending on the balance of members' accounts or any other relevant factor); and
 - (b) the amount of the premium fixed by or under the regulations in respect of the basic invalidity/death insurance and the additional invalidity/death insurance (if any) for each member; and
 - (c) the disability pension factor which, subject to subsection (9), has the value fixed by the Board.
- (7a) An administrative charge to be fixed by the Board must be debited against the employer contribution accounts of persons who have elected to become members of the Triple S scheme under section 15B (different charges may be fixed depending on the balance of members' accounts or any other relevant factor).
- (8) The Board must keep a record of the aggregate of the amounts debited against employer contribution accounts under subsection (7)(b) and must provide the Treasurer with that information for the purposes of section 10(1a).
- (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.
- (11) This section does not apply in relation to a person who is a member of the scheme by virtue of section 14(10).

Part 5—Superannuation benefits

30—Interpretation

In this Part—

co-contribution component in relation to a member means the amount standing to the credit of the member's co-contribution account;

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

31—Retirement

- (1) A member who retires from employment is entitled to—
- (a) payment of the employee component and the employer component; and
 - (b) payment of—
 - (i) the rollover component (if any); and

- (ii) the co-contribution component (if any),
to the extent that payment of the component can be made in accordance with the SIS Act.
- (1a) A rollover component, or the part of a rollover component, or a co-contribution 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).

32—Resignation

- (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.
- (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.
- (2b) If a member resigns from employment before reaching the age of 55 years, the member may elect—
 - (a) to take immediately the co-contribution component (if any) to the extent that payment of the component can be made in accordance with the SIS Act; or
 - (b) to preserve the co-contribution component; or
 - (c) to carry the co-contribution 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), (2a) or (2b) within three months after resignation will be taken to have elected to preserve the employee, employer, rollover or co-contribution 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, rollover or co-contribution 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 or a co-contribution 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, rollover component or co-contribution 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 more components have been preserved, a member cannot make an election under subsection (7) unless the member elects to carry both or all of the components over.
- (9) Where the member elects to carry over the employee, employer, rollover or co-contribution 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) If a member has resigned from employment and has elected to preserve the employee, employer, rollover or co-contribution 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 co-contribution accounts or a combined member's contribution account or employer contribution account or rollover account or co-contribution 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.

33—Retrenchment

- (1) Subject to subsection (2), if a member's employment is terminated by retrenchment the member is entitled to—
 - (a) payment of the employee component and the employer component; and
 - (b) payment of—
 - (i) the rollover component (if any); and
 - (ii) the co-contribution component (if any),to the extent that the payment can be made in accordance with the SIS Act.
- (2) The member may elect to preserve his or her employee, employer, rollover or co-contribution 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.

33A—Disability pension

- (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 for a period of at least 12 months immediately before the commencement of the incapacity—
 - (a) the member made contributions from his or her salary under section 25; or
 - (b) in the case of a member whose charge percentage is determined in a contract of employment negotiated between the member and his or her employer—the charge percentage was greater than the charge percentage or percentages fixed by Schedule 1 for that period; or

- (c) the member's employer was required to pay, or arrange for the payment of, amounts to the Treasurer under section 26(1a) in respect of the member; or
 - (d) the circumstances referred to in two or all of paragraphs (a), (b) and (c) applied at the same time or at different times throughout that period.
- (5) Subsection (4) does not apply to a member if—
- (a) the incapacity was caused by accidental injury and, when the incapacity occurred—
 - (i) the member was making contributions from his or her salary under section 25; or
 - (ii) in the case of a member whose charge percentage is determined in a contract of employment negotiated between the member and his or her employer—the charge percentage was greater than the charge percentage applicable under Schedule 1 at that time; or
 - (iii) the member's employer was required to pay, or arrange for the payment of, amounts to the Treasurer under section 26(1a) in respect of the member; or
 - (b) when the incapacity occurred the member was entitled to additional invalidity/death insurance granted by the Board under section 22 or by virtue of being a member of the police force or a police cadet and—
 - (i) was making contributions from his or her salary under section 25; or
 - (ii) in the case of a member whose charge percentage is determined in a contract of employment negotiated between the member and his or her employer—the charge percentage was greater than the charge percentage applicable under Schedule 1 at that time; or
 - (iii) the member's employer was required to pay, or arrange for the payment of, amounts to the Treasurer under section 26(1a) in respect of the member.
- (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 reduced, additional invalidity/death insurance benefits (because of conditions placed by the Board when it granted the additional insurance).
- (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.

34—Termination of employment on invalidity

- (1) If a member's employment terminates on account of invalidity before the member reaches the age of 60 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
 - (ca) the co-contribution component (if any); and
 - (d) subject to this section, the basic invalidity insurance benefit and the additional invalidity insurance benefit (if any).
- (2) The basic and additional invalidity insurance benefits are not payable 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.
- (3) The basic invalidity insurance benefit is not payable 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—
 - (a) he or she was a member of 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 State Scheme or other scheme; or
 - (b) the invalidity was caused by accidental injury; or
 - (c) the member has applied for and been granted additional invalidity/death insurance.
- (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) and the co-contribution component (if any) will be disregarded (the member is entitled to payment of the rollover component and the co-contribution 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.

35—Death of member

- (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
 - (ca) the co-contribution component (if any); and
 - (d) subject to this section, the basic death insurance benefit and the additional death insurance benefit (if any).
- (2a) However, a surviving spouse will not be entitled to a benefit under this section if section 35F applies to the spouse.
- (3) Subject to subsection (4), the basic death insurance benefit is 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 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 State Scheme or other scheme; or
 - (b) death was caused by accidental injury; or
 - (c) the member has applied for and been granted additional invalidity/death insurance.

- (4) Subject to subsection (4aa), where a member takes his or her life—
- (a) within one year after the commencement of his or her membership of the scheme; or
 - (b) within one year after the commencement of, or increase in the level of, additional invalidity/death insurance,
- the following provisions apply:
- (c) where death occurs within one year after the commencement of membership of the scheme or commencement of additional invalidity/death insurance—neither basic nor additional death insurance benefits are payable;
 - (d) where death occurs within one year after an increase in the level of additional invalidity/death insurance—additional death insurance benefits are not payable in respect of the increased insurance.
- (4aa) Subsection (4)(c) does not apply in relation to a member who was a member of 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 if his or her death occurred on or after the first anniversary of the commencement of his or her membership of the State Scheme or other scheme.
- (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) and the co-contribution component (if any) will be disregarded (the spouse or estate is entitled to payment of the rollover component and the co-contribution 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.
- (9) Where—
 - (a) a member's employment terminates or is terminated for any reason (except the member's death); and
 - (b) the member dies within one month after the termination of his or her employment,

the member's spouse or estate is entitled to the basic death insurance benefit and the additional death insurance benefit (if any) that the spouse or estate would have been entitled to if the member's employment had been terminated by the member's death.

35AA—Commutation to pay deferred superannuation contributions surcharge—member

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

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

- (3) If a member has made a request under subsection (2)(b), the member must, before the expiration of 2 months following the issue of a surcharge notice in respect of the member, 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 member 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 member—
 - (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 member fails to satisfy the Board that the member 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.

35AAB—Commutation to pay deferred superannuation contributions surcharge following death of member

- (1) If a member who is liable for a deferred superannuation contributions surcharge dies—
- (a) having made a request of the Board under section 35AA 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 35AA,

the member's spouse or, if the member is not survived by a spouse, the member's legal representative, may, before the expiration of the period of 2 months immediately following the member'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 member under section 35AA 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 member dies without having made a request under section 35AA, the member's spouse or, if the member is not survived by a spouse, the member'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 member, 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 member'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 member, means a person—
- (a) holding office as executor of the will of the deceased member 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 member.

35AAC—Withheld amount

An amount withheld under section 35AA or 35AAB—

- (a) must be retained in the Southern State Superannuation (Employers) Fund; and
- (b) will be credited with interest at the rate of return determined by the Board under section 11; and
- (c) may be paid to the member (or the member's spouse or legal representative)—
 - (i) in accordance with section 35AA or 35AAB; 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 member; or
 - (B) considers, at any time, there is other good reason for doing so.

Part 5A—Family Law Act provisions

35A—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.

35B—Interpretation

In this Part, unless the contrary intention appears—

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

eligible person, in relation to a superannuation interest of a member, 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;

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

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 VIIIIB of the *Family Law Act 1975* of the Commonwealth;

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

35C—Non-member spouse entitlement

- (1) The Board must, on service of a splitting instrument, 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.

35D—Payment of lump sum

- (1) The interest of a non-member spouse under section 35C 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 retained to the credit of the non-member spouse in an account in the name of the non-member spouse in the Fund; or
 - (c) be rolled over or transferred to some other superannuation fund or scheme approved by the Board.
- (2) The Board must, if necessary, establish a member's contribution account so as to provide for the requirements of subsection (1)(b).
- (3) The Board must take the action required under subsection (1) within 28 days after receiving the relevant election.

- (4) 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, transfer the interest to the credit of the non-member spouse under subsection (1)(b).

35E—Reduction in member's entitlement

- (1) Despite the other provisions of this Act, if a payment split is payable with respect to the superannuation interest of a member, there is a corresponding reduction in the entitlement of the member under this Act.
- (2) A reduction in the entitlement of a member will be given effect on the basis that the member's contribution account, rollover account, co-contribution account and employer contribution account (insofar as they exist) will be subject to a charge that takes effect by reducing the balance of each of those accounts 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 (subject to any relevant method or factor adopted or applied by the regulations and to the extent necessary to take into account the full value of the entitlement of the non-member spouse).
- (3) A reduction in the entitlement of a member 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) If 2 or more reductions must be made with respect to an entitlement of a member because 2 or more splitting instruments have been served on the Board, the Board may determine to apply the reductions separately, or in aggregate.

35F—Lump sum not payable to spouse on death of member if split has occurred

If a member dies and is survived by a spouse who—

- (a) has received, is receiving or is entitled to receive a benefit under a splitting instrument; or
- (b) is, under the terms of a splitting instrument, not entitled to any amount arising out of the member's superannuation interest under this Act (or any proportion of such an interest),

the spouse is not entitled to a benefit under this Act in respect of the deceased member (except in accordance with the instrument) and will not be considered to be a spouse of the deceased member for the purposes of section 43 (if relevant).

35G—Board to comply with Commonwealth requirements

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

35H—Provision of information

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, as at a particular date specified in the application.

35I—Payment from contribution account in name of non-member spouse

Where the interest of a spouse (or former spouse) is paid into a contribution account under section 35D(1)(b), or is rolled over for payment into an account under this Act under the provisions of another Act that correspond to this Part of this Act, the amount paid into the account will be taken to be a rollover component that may be paid out in accordance with section 32(6).

35J—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 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

36—Information to be given to certain members

The Board must provide members of the scheme who do not contribute or who are not entitled to additional invalidity/death insurance with information as to the benefits of contributing or applying for additional invalidity/death insurance.

37—Employer benefits and contributions where member on leave without pay

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.

38—Exclusion of benefits under awards etc

- (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.

39—Police Occupational Superannuation Scheme

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.

40—Review of the Board's decision

- (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.

41—Power to obtain information

- (1) The Board may, from time to time, require an employing authority, a workers compensation 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.

- (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.

- (6) 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.

- (7) In this section—

workers compensation authority includes any person or authority with power to determine or manage claims for workers compensation.

42—Delegation by Board

- (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.

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

- (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.

44—Payment in case of death

- (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.

45—Payments in foreign currency

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.

46—Rounding off of benefits

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

47—Liabilities may be set off against benefits

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.

47A—Confidentiality

- (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.

- (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 members generally or to a class of members rather than to an individual member.

47B—Post retirement investment

- (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.
- (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.

47C—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 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.

48—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.

49—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 a fine of \$2 500, 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

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

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

Schedule 3—Transitional provisions

- 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.

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- (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 subclause (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.

11 (1) A member of the scheme who was, immediately before the commencement of the *Southern State Superannuation (Invalidity/Death Insurance) Amendment Act 2001* (the **amending Act**) a member—

- (a) who would have been entitled to a basic future service benefit in the circumstances referred to in section 34; or
- (b) in respect of whom a basic future service benefit would have been payable in the circumstances referred to in section 35,

but who was not a supplementary future service benefit member is entitled to a level of basic invalidity/death insurance that, in the opinion of the Board, will give the member invalidity and death insurance equivalent to or greater than the level of basic insurance that he or she was entitled to immediately before the commencement of the amending Act.

(2) A person who was immediately before the commencement of the amending Act a supplementary future service benefit member of the scheme is entitled to a level of basic and additional invalidity/death insurance the combined value of which will, in the opinion of the Board, give the member invalidity and death insurance equivalent to or greater than the combined level of basic and supplementary insurance that he or she was entitled to immediately before the commencement of the amending Act.

(3) A member referred to in subclause (1) may reduce the level of basic invalidity/death insurance to which he or she is entitled under that subclause to the level permitted by regulation.

(4) Section 23 applies to, and in relation to, a member when reducing the level of insurance under subclause (3) as though the basic invalidity/death insurance were additional invalidity/death insurance referred to in that section.

(5) The entitlement of a person to additional invalidity/death insurance under subclause (2) is subject to the same conditions (if any) that his or her entitlement to supplementary future service benefits was subject immediately before the commencement of the amending Act.

12 (1) Subject to this clause, a transferred visiting medical officer is entitled (without being required to undergo a medical examination) to maintain the insurance cover the member enjoyed under the VMO Fund immediately prior to the repeal of the *Superannuation (Visiting Medical Officers) Act 1993* (subject to any adjustments that would have occurred from time to time under the terms of that insurance).

- (2) The insurance cover to which a transferred visiting medical officer is entitled under subclause (1)—
- (a) will be in substitution for invalidity/death insurance under Part 3 Division 2 of this Act (and that Division will not apply while the insurance cover under subclause (1) is maintained); and
 - (b) will, if the transferred visiting medical officer has attained the age of 60 at the time he or she becomes a member of the scheme (but has not yet attained the age of 65)—
 - (i) be available to the member despite the fact that he or she has attained the age of 60; and
 - (ii) continue to be available to the member until he or she attains the age of 65; and
 - (c) will be subject to premiums, determined by the Board, being premiums that do not exceed the premiums the member was paying under the VMO Fund immediately before 1 July 2003.
- (3) If a transferred visiting medical officer suffers from a medical condition or restriction relevant to the determination of his or her entitlements under the VMO Fund, any insurance cover to which he or she is entitled under subclause (1) may be subject to such authorised conditions as the Board thinks fit to impose.
- (4) A transferred visiting medical officer may apply to the Board to cancel or vary the insurance cover provided by subclause (1) but, in such a case, the transferred visiting medical officer will then be subject to the operation of Part 3 Division 2 of this Act.
- (5) Despite any other provision, if an entitlement to invalidity/death insurance under the VMO Fund in respect of a transferred visiting medical officer arises on or after 1 July 2003 and before the day on which the retrospective commencement of the *Southern State Superannuation (Visiting Medical Officers) Amendment Act 2003* occurs, there will be no corresponding entitlement to insurance under subclause (1).
- (6) In this clause—

authorised condition means a condition authorised by the regulations for the purposes of section 22(6);

transferred visiting medical officer means a visiting medical officer who, immediately before 1 July 2003, was a member of the VMO Fund;

VMO Fund means the SAHC Visiting Medical Officers Superannuation Fund established by a trust deed dated 24 February 1983.

13—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 lump sum or other benefit to a person on the death of a member applies only if the death occurs on or after 3 July 2003.

Legislative history

Notes

- 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.

Legislation repealed by principal Act

The *Southern State Superannuation Act 1994* repealed the following:

Superannuation (Benefit Scheme) Act 1992

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1994	66	<i>Southern State Superannuation Act 1994</i>	3.11.1994	1.7.1995: 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	25	<i>Statutes Amendment (Superannuation) Act 1997</i>	10.4.1997	ss 16 & 17—1.7.1995: s 2(2); ss 12—15 and 18 & 19—24.4.1997 (<i>Gazette</i> 24.4.1997 p1618)
1998	66	<i>Southern State Superannuation (Merger of Schemes) Amendment Act 1998</i>	10.9.1998	1.7.1998: s 2
1999	86	<i>Southern State Superannuation (Salary) Amendment Act 1999</i>	2.12.1999	1.12.1999: s 2
1999	87	<i>Statutes Amendment (Visiting Medical Officers Superannuation) Act 1999</i>	2.12.1999	Pt 2 (s 4)—23.12.1999 (<i>Gazette</i> 23.12.1999 p3670)
2000	4	<i>District Court (Administrative and Disciplinary Division) Amendment Act 2000</i>	20.4.2000	Sch 1 (cl 39)—1.6.2000 (<i>Gazette</i> 18.5.2000 p2554)
2000	56	<i>Southern State Superannuation (Contributions) Amendment Act 2000</i>	20.7.2000	10.8.2000 (<i>Gazette</i> 10.8.2000 p444)

2001	39	<i>Southern State Superannuation (Invalidity/Death Insurance) Amendment Act 2001</i>	3.8.2001	27.9.2001 (<i>Gazette</i> 27.9.2001 p4296) except ss 3(a), (b), (d)—(f), 4—13, 16—18, 19(b), (c), 19(d) (except the part that strikes out s 34(4)), 20(a)—(e), 20(f) (except the part that strikes out s 35(5)), 20(g), 21 and 22—1.7.2002 (<i>Gazette</i> 27.6.2002 p2681)
2003	13	<i>Statutes Amendment (Equal Superannuation Entitlements for Same Sex Couples) Act 2003</i>	12.6.2003	Pt 4 (ss 9 & 10)—3.7.2003 (<i>Gazette</i> 3.7.2003 p2877)
2003	49	<i>Statutes Amendment (Division of Superannuation Interests under Family Law Act) Act 2003</i>	20.11.2003	Pt 5 (ss 15—27) and Sch 1—18.12.2003 (<i>Gazette</i> 18.12.2003 p4527)
2003	59	<i>Southern State Superannuation (Visiting Medical Officers) Amendment Act 2003</i>	11.12.2003	1.7.2003: s 2
2004	37	<i>Statutes Amendment (Miscellaneous Superannuation Measures) Act 2004</i>	5.8.2004	Pt 3 (ss 13—15)—19.8.2004 (<i>Gazette</i> 19.8.2004 p3280)
2004	51	<i>Statutes Amendment (Miscellaneous Superannuation Measures No 2) Act 2004</i>	16.12.2004	Pt 5 (s 39)—3.7.2003: s 2(3); Pt 5 (ss 20—38)—13.1.2005 (<i>Gazette</i> 13.1.2005 p69)
2006	40	<i>Southern State Superannuation (Insurance, Spouse Accounts and Other Measures) Amendment Act 2006</i>	14.12.2006	1.2.2007 (<i>Gazette</i> 25.1.2007 p277) except ss 4(4), (8), 5, 7—9, new s 21(2)(b) (as inserted by s 12), 18, new s 33A(14)(a) (as inserted by s 20), 24, 26—29, 30(2), (3), 32—uncommenced
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 81 (ss 196—198)—uncommenced

Provisions amended

New entries appear in bold.

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

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	3.7.2003
s 3		
s 3(1)		
additional invalidity/death insurance	inserted by 39/2001 s 3(a)	1.7.2002
additional invalidity/death insurance benefits	inserted by 39/2001 s 3(a)	1.7.2002
<i>annual employer contribution</i>	<i>deleted by 66/1998 s 3(a)</i>	1.7.1998
actuary	inserted by 66/1998 s 3(a)	1.7.1998
<i>basic future service benefit</i>	<i>substituted by 66/1998 s 3(b)</i>	1.7.1998

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Legislative history

	<i>deleted by 39/2001 s 3(b)</i>	1.7.2002
basic invalidity/death insurance	inserted by 39/2001 s 3(b)	1.7.2002
basic invalidity death insurance benefits	inserted by 39/2001 s 3(b)	1.7.2002
charge percentage	amended by 66/1998 s 3(c), (d)	1.7.1998
	amended by 56/2000 s 3(a)	10.8.2000
	amended by 59/2003 s 4(1), (2)	1.7.2003
co-contribution	inserted by 51/2004 s 20(1)	13.1.2005
co-contribution account	inserted by 51/2004 s 20(1)	13.1.2005
contributions	inserted by 39/2001 s 3(c)	27.9.2001
deferred superannuation contributions surcharge	inserted by 37/2004 s 13(1)	19.8.2004
employment to which this Act applies	amended by 66/1998 s 3(e)	1.7.1998
	amended by 51/2004 s 20(2)	13.1.2005
<i>future service benefit</i>	<i>deleted by 39/2001 s 3(d)</i>	1.7.2002
invalidity/death insurance benefits	inserted by 39/2001 s 3(e)	1.7.2002
member's contribution account	amended by 66/1998 s 3(f)	1.7.1998
monetary salary	inserted by 56/2000 s 3(b)	10.8.2000
non-monetary remuneration	inserted by 86/1999 s 3(a)	1.12.1999
non-monetary salary	inserted by 56/2000 s 3(c)	10.8.2000
notional salary	inserted by 66/1998 s 3(g)	1.7.1998
the PSESS Scheme	inserted by 66/1998 s 3(h)	1.7.1998
putative spouse	inserted by 13/2003 s 9	3.7.2003
rollover account	inserted by 66/1998 s 3(i)	1.7.1998
	substituted by 49/2003 s 15(1)	18.12.2003
salary	amended by 86/1999 s 3(b)	1.12.1999
the SIS Act	inserted by 66/1998 s 3(j)	1.7.1998
special deposit account	inserted by 25/1997 s 12	24.4.1997

the Superannuation Funds Management Corporation of South Australia	inserted by 38/1995 Sch 2	1.7.1995
teaching hospital	inserted by 59/2003 s 4(3)	1.7.2003
Superannuation Contributions Tax Act	inserted by 37/2004 s 13(2)	19.8.2004
<i>supplementary future service benefit</i>	<i>substituted by 66/1998 s 3(k)</i>	<i>1.7.1998</i>
	<i>deleted by 39/2001 s 3(f)</i>	<i>1.7.2002</i>
<i>supplementary future service benefit member</i>	<i>deleted by 39/2001 s 3(f)</i>	<i>1.7.2002</i>
surcharge notice	inserted by 37/2004 s 13(3)	19.8.2004
<i>the Trust</i>	<i>deleted by 38/1995 Sch 2</i>	<i>1.7.1995</i>
the Triple S scheme	inserted by 66/1998 s 3(1)	1.7.1998
visiting medical officer	inserted by 59/2003 s 4(4)	1.7.2003
s 3(3)	<i>deleted by 66/1998 s 3(m)</i>	<i>1.7.1998</i>
	<i>inserted by 86/1999 s 3(c)</i>	<i>1.12.1999</i>
	<i>substituted by 56/2000 s 3(d)</i>	<i>10.8.2000</i>
s 3(3a)—(3c)	inserted by 86/1999 s 3(c)	1.12.1999
s 3(4a)	inserted by 66/1998 s 3(n)	1.7.1998
s 3(5)	amended by 66/1998 s 3(o), (p)	1.7.1998
s 3(6) and (7)	inserted by 66/1998 s 3(q)	1.7.1998
s 3(8)	inserted by 49/2003 s 15(2)	18.12.2003
ss 3A and 3B	inserted by 13/2003 s 10	3.7.2003
Pt 2		
Pt 2 Div 1		
s 4		
s 4(3)	amended by 38/1995 Sch 2	1.7.1995
s 4(4)	amended by 25/1997 s 13(a)	24.4.1997
s 4(4a)	inserted by 66/1998 s 4	1.7.1998
s 4(4b)	inserted by 51/2004 s 21	13.1.2005
s 4(6)	amended by 25/1997 s 13(b)	24.4.1997
s 4(7)	amended by 38/1995 Sch 2	1.7.1995
s 5		
s 5(1) and (2)	amended by 38/1995 Sch 2	1.7.1995
s 5(3)—(5)	<i>deleted by 38/1995 Sch 2</i>	<i>1.7.1995</i>
s 6	<i>deleted by 38/1995 Sch 2</i>	<i>1.7.1995</i>
Pt 2 Div 2	heading amended by 66/1998 s 5	1.7.1998

	heading substituted by 51/2004 s 22	13.1.2005
s 7		
s 7(1)	substituted by 66/1998 s 6(a)	1.7.1998
s 7(2a) and (2b)	inserted by 66/1998 s 6(b)	1.7.1998
s 7(2c)	inserted by 51/2004 s 23(1)	13.1.2005
s 7(3)	deleted by 66/1998 s 6(c)	1.7.1998
	inserted by 49/2003 s 16	18.12.2003
	amended by 51/2004 s 23(2), (3)	13.1.2005
s 7(3a)	inserted by 51/2004 s 23(4)	13.1.2005
s 7(4)	deleted by 66/1998 s 6(d)	1.7.1998
	inserted by 49/2003 s 16	18.12.2003
s 7(5)	inserted by 51/2004 s 23(5)	13.1.2005
s 7(5)—(7)	<i>deleted by 66/1998 s 6(d)</i>	<i>1.7.1998</i>
s 7A	inserted by 66/1998 s 7	1.7.1998
s 7A(1)	amended by 51/2004 s 24(1)	13.1.2005
s 7A(4)	amended by 51/2004 s 24(2)	13.1.2005
s 7B	inserted by 66/1998 s 7	1.7.1998
Pt 2 Div 3		
s 9		
s 9(2)	amended by 66/1998 s 8	1.7.1998
	amended by 56/2000 s 4	10.8.2000
s 9(3)	substituted by 25/1997 s 14	24.4.1997
	amended by 39/2001 s 4	1.7.2002
s 10		
s 10(1a)	inserted by 39/2001 s 5	1.7.2002
s 11		
s 11(1)	amended by 66/1998 s 9(a)	1.7.1998
s 11(2)	amended by 66/1998 s 9(b)	1.7.1998
Pt 2 Div 4		
s 12		
s 12(1)	amended by 25/1997 s 15(a)	24.4.1997
	amended by 49/2003 s 17	18.12.2003
s 12(2)	amended by 25/1997 s 15(b)	24.4.1997
	substituted by 66/1998 s 10	1.7.1998
	substituted by 51/2004 s 25	13.1.2005
s 12(3)	amended by 25/1997 s 15(b)	24.4.1997
	amended by 39/2001 s 6(a)	1.7.2002
s 12(4)	amended by 39/2001 s 6(b), (c)	1.7.2002
Pt 2 Div 5		
s 13		
s 13(3) and (4)	<i>deleted by 38/1995 Sch 2</i>	<i>1.7.1995</i>
s 13A	inserted by 66/1998 s 11	1.7.1998
s 13A(2)	amended by 39/2001 s 7	1.7.2002

Pt 3	heading substituted by 39/2001 s 8	1.7.2002
Pt 3 Div 1	amended by 25/1997 s 16	1.7.1995
	substituted by 66/1998 s 12	1.7.1998
s 14		
s 14(9)	inserted by 56/2000 s 5	10.8.2000
s 14(10)	inserted by 49/2003 s 18	18.12.2003
s 14(10a)	inserted by 51/2004 s 26(1)	13.1.2005
s 14(11)	inserted by 49/2003 s 18	18.12.2003
	amended by 51/2004 s 26(2), (3)	13.1.2005
s 15A	<i>inserted by 87/1999 s 4</i>	<i>23.12.1999</i>
	<i>deleted by 59/2003 s 5</i>	<i>1.7.2003</i>
s 15B	inserted by 56/2000 s 6	10.8.2000
s 16		
s 16(5) and (6)	inserted by 51/2004 s 27	13.1.2005
Pt 3 Div 2	heading substituted by 39/2001 s 9	1.7.2002
s 21	inserted by 39/2001 s 10	1.7.2002
s 21(2)	amended by 49/2003 s 19	18.12.2003
	amended by 59/2003 s 6	1.7.2003
	substituted by 51/2004 s 28	13.1.2005
s 22		
s 22(1)	substituted by 39/2001 s 11(a)	1.7.2002
s 22(1a)	inserted by 66/1998 s 13(a)	1.7.1998
	amended by 39/2001 s 11(b)	1.7.2002
s 22(1b)	inserted by 66/1998 s 13(a)	1.7.1998
	amended by 39/2001 s 11(c)	1.7.2002
	amended by 49/2003 s 20	18.12.2003
	amended by 59/2003 s 7	1.7.2003
	substituted by 51/2004 s 29	13.1.2005
s 22(2)	amended by 39/2001 s 11(d)	1.7.2002
s 22(3)	substituted by 39/2001 s 11(e)	1.7.2002
s 22(4)	amended by 66/1998 s 13(b)	1.7.1998
s 22(7)	amended by 39/2001 s 11(f)	1.7.2002
s 22(8)	inserted by 66/1998 s 13(c)	1.7.1998
	amended by 39/2001 s 11(g)	1.7.2002
s 22(9)	inserted by 39/2001 s 11(h)	1.7.2002
s 23	amended by 66/1998 s 14	1.7.1998
	substituted by 39/2001 s 12	1.7.2002
s 24	substituted by 39/2001 s 13	1.7.2002
s 24A	inserted by 39/2001 s 13	1.7.2002
Pt 3 Div 3		
s 25		
s 25(1)	amended by 66/1998 s 15(a)	1.7.1998
	amended by 56/2000 s 7(a)	10.8.2000

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Legislative history

s 25(2)	substituted by 66/1998 s 15(b)	1.7.1998
	amended by 49/2003 s 21	18.12.2003
	substituted by 51/2004 s 30	13.1.2005
s 25(3a)	inserted by 25/1997 s 17(a)	1.7.1995
s 25(5)	amended by 25/1997 s 17(b)	1.7.1995
	substituted by 66/1998 s 15(c)	1.7.1998
s 25(6)	substituted by 66/1998 s 15(c)	1.7.1998
	substituted by 56/2000 s 7(b)	10.8.2000
s 25(7)	substituted by 66/1998 s 15(c)	1.7.1998
	substituted by 56/2000 s 7(c)	10.8.2000
s 25(7a)	<i>inserted by 66/1998 s 15(c)</i>	<i>1.7.1998</i>
	<i>deleted by 56/2000 s 7(c)</i>	<i>10.8.2000</i>
s 25(8)	amended by 66/1998 s 15(d)	1.7.1998
	substituted by 56/2000 s 7(c)	10.8.2000
s 25(8a)	<i>inserted by 66/1998 s 15(e)</i>	<i>1.7.1998</i>
	<i>deleted by 56/2000 s 7(c)</i>	<i>10.8.2000</i>
s 25(9)	amended by 56/2000 s 7(d)	10.8.2000
s 25(10)	inserted by 56/2000 s 7(e)	10.8.2000
s 25A		
s 25A	inserted by 66/1998 s 16	1.7.1998
s 25A(1)	amended by 56/2000 s 8	10.8.2000
s 25A(1a)	inserted by 39/2001 s 14(a)	27.9.2001
s 25A(2)	amended by 39/2001 s 14(b)	27.9.2001
Pt 3 Div 4		
s 26		
s 26(1)	amended by 56/2000 s 9(a)	10.8.2000
	amended by 39/2001 s 15	27.9.2001
s 26(1a)	inserted by 56/2000 s 9(b)	10.8.2000
s 26(2)	amended by 56/2000 s 9(c)	10.8.2000
s 26(2a)	inserted by 49/2003 s 22	18.12.2003
Pt 4		
s 27	amended by 25/1997 s 18	24.4.1997
	substituted by 66/1998 s 17	1.7.1998
s 27(2)	amended by 56/2000 s 10(a), (b)	10.8.2000
s 27(2a) and (2b)	inserted by 56/2000 s 10(c)	10.8.2000
s 27(7)	substituted by 56/2000 s 10(d)	10.8.2000
	amended by 39/2001 s 16(a)	1.7.2002
s 27(7a)	inserted by 56/2000 s 10(d)	10.8.2000
s 27(8)	substituted by 39/2001 s 16(b)	1.7.2002
s 27(11)	inserted by 49/2003 s 23	18.12.2003
s 28	<i>deleted by 66/1998 s 18</i>	<i>1.7.1998</i>
s 29	<i>deleted by 25/1997 s 19</i>	<i>24.4.1997</i>
Pt 5		

s 30	substituted by 66/1998 s 19	1.7.1998
co-contribution component	inserted by 51/2004 s 31	13.1.2005
<i>the future service benefit factor</i>	<i>deleted by 39/2001 s 17</i>	<i>1.7.2002</i>
s 31		
s 31(1)	amended by 66/1998 s 20(a) substituted by 51/2004 s 32(1)	1.7.1998 13.1.2005
s 31(1a)	inserted by 66/1998 s 20(b) amended by 51/2004 s 32(2)	1.7.1998 13.1.2005
s 32		
s 32(1)	amended by 66/1998 s 21(a)	1.7.1998
s 32(2)	amended by 66/1998 s 21(b)	1.7.1998
s 32(2a)	inserted by 66/1998 s 21(c)	1.7.1998
s 32(2b)	inserted by 51/2004 s 33(1)	13.1.2005
s 32(3)	amended by 66/1998 s 21(d)	1.7.1998
s 32(4)	substituted by 66/1998 s 21(e) amended by 51/2004 s 33(2), (3)	1.7.1998 13.1.2005
s 32(6)	substituted by 66/1998 s 21(f) amended by 51/2004 s 33(4)	1.7.1998 13.1.2005
s 32(6a)	inserted by 66/1998 s 21(f) amended by 51/2004 s 33(5)	1.7.1998 13.1.2005
s 32(7)	amended by 66/1998 s 21(g), (h) amended by 51/2004 s 33(6)	1.7.1998 13.1.2005
s 32(8)	substituted by 66/1998 s 21(i) substituted by 51/2004 s 33(7)	1.7.1998 13.1.2005
s 32(9)	amended by 66/1998 s 21(j), (k) amended by 51/2004 s 33(8)	1.7.1998 13.1.2005
s 32(10)	substituted by 66/1998 s 21(l) substituted by 51/2004 s 33(9)	1.7.1998 13.1.2005
s 32(11)	substituted by 66/1998 s 21(m)	1.7.1998
s 33		
s 33(1)	amended by 66/1998 s 22(a) substituted by 51/2004 s 34(1)	1.7.1998 13.1.2005
s 33(2)	substituted by 66/1998 s 22(b) amended by 51/2004 s 34(2)	1.7.1998 13.1.2005
s 33A	inserted by 66/1998 s 23	1.7.1998
s 33A(4)	substituted by 56/2000 s 11	10.8.2000
s 33A(5)	substituted by 56/2000 s 11 amended by 39/2001 s 18(a)	10.8.2000 1.7.2002
s 33A(6)	substituted by 39/2001 s 18(b)	1.7.2002
s 34		
s 34(1)	amended by 66/1998 s 24(a), (b)	1.7.1998

	amended by 39/2001 s 19(a)	27.9.2001
	amended by 39/2001 s 19(b)	1.7.2002
	amended by 51/2004 s 35(1)	13.1.2005
s 34(2) and (3)	substituted by 66/1998 s 24(c)	1.7.1998
	substituted by 39/2001 s 19(c)	1.7.2002
s 34(3a) and (3b)	<i>inserted by 66/1998 s 24(c)</i>	<i>1.7.1998</i>
	<i>deleted by 39/2001 s 19(d)</i>	<i>1.7.2002</i>
s 34(4)	<i>deleted by 39/2001 s 19(d)</i>	<i>27.9.2001</i>
s 34(5)	<i>substituted by 66/1998 s 24(d)</i>	<i>1.7.1998</i>
	<i>deleted by 39/2001 s 19(d)</i>	<i>1.7.2002</i>
s 34(5a)	<i>inserted by 66/1998 s 24(d)</i>	<i>1.7.1998</i>
	<i>deleted by 39/2001 s 19(d)</i>	<i>1.7.2002</i>
s 34(6a)	inserted by 66/1998 s 24(e)	1.7.1998
	amended by 51/2004 s 35(2), (3)	13.1.2005
s 35		
s 35(2)	amended by 66/1998 s 25(a)	1.7.1998
	amended by 39/2001 s 20(a)	1.7.2002
	amended by 51/2004 s 36(1)	13.1.2005
s 35(2a)	inserted by 49/2003 s 24	18.12.2003
s 35(3)	substituted by 66/1998 s 25(b)	1.7.1998
	amended by 39/2001 s 20(b)—(d)	1.7.2002
s 35(4)	substituted by 66/1998 s 25(b)	1.7.1998
	substituted by 39/2001 s 20(e)	1.7.2002
s 35(4aa)	inserted by 39/2001 s 20(e)	1.7.2002
s 35(4a) and (4b)	<i>inserted by 66/1998 s 25(b)</i>	<i>1.7.1998</i>
	<i>deleted by 39/2001 s 20(f)</i>	<i>1.7.2002</i>
s 35(5)	<i>deleted by 39/2001 s 20(f)</i>	<i>27.9.2001</i>
s 35(6)	<i>substituted by 66/1998 s 25(c)</i>	<i>1.7.1998</i>
	<i>deleted by 39/2001 s 20(f)</i>	<i>1.7.2002</i>
s 35(6a)	<i>inserted by 66/1998 s 25(c)</i>	<i>1.7.1998</i>
	<i>deleted by 39/2001 s 20(f)</i>	<i>1.7.2002</i>
s 35(7a)	inserted by 66/1998 s 25(d)	1.7.1998
	amended by 51/2004 s 36(2), (3)	13.1.2005
s 35(9)	inserted by 39/2001 s 20(g)	1.7.2002
ss 35AA—35AAC	inserted by 37/2004 s 14	19.8.2004
Pt 5A	inserted by 49/2003 s 25	18.12.2003
s 35E		
s 35E(2)	amended by 51/2004 s 37	13.1.2005
s 35F	substituted by 51/2004 s 38	13.1.2005
Pt 6		
s 36	substituted by 66/1998 s 26	1.7.1998
	amended by 39/2001 s 21	1.7.2002
s 38		

s 38(3)		
<i>the PSESS Scheme</i>	<i>deleted by 66/1998 s 27</i>	1.7.1998
s 40		
s 40(1)	amended by 66/1998 s 28	1.7.1998
	amended by 4/2000 s 9(1) (Sch 1 cl 39(a))	1.6.2000
s 40(2)	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 39(b))</i>	1.6.2000
s 40(3)	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 39(c))</i>	1.6.2000
s 40(4)	amended by 4/2000 s 9(1) (Sch 1 cl 39(d))	1.6.2000
s 41		
s 41(1)	amended by 37/2004 s 15(1)	19.8.2004
s 41(3)	amended by 66/1998 s 29	1.7.1998
s 41(6) and (7)	inserted by 37/2004 s 15(2)	19.8.2004
s 47A	inserted by 66/1998 s 30	1.7.1998
s 47A(1a)	inserted by 49/2003 s 26	18.12.2003
ss 47B and 47C	inserted by 66/1998 s 30	1.7.1998
s 49		
s 49(2)	amended by 66/1998 s 31	1.7.1998
s 49(3)	inserted by 49/2003 s 27	18.12.2003
Sch 3	inserted by 66/1998 s 32	1.7.1998
cl 1	<i>omitted under Legislation Revision and Publication Act 2002</i>	3.7.2003
cl 11	inserted by 39/2001 s 22	1.7.2002
cl 12	inserted by 59/2003 s 8	1.7.2003
cl 13	inserted by 51/2004 s 39	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 amendment not included in Reprints 9 and 10 (see 51/2004)

Reprint No 1—1.7.1995

Reprint No 2—24.4.1997

Reprint No 3—1.7.1998

Reprint No 4—23.12.99

Reprint No 5—1.6.2000

Reprint No 6—10.8.2000

Reprint No 7—27.9.2001

Reprint No 8—1.7.2002

Reprint No 9—3.7.2003

Reprint No 10—18.12.2003

19.8.2004