

South Australia

## **Southern State Superannuation Act 2009**

An Act to continue the Triple S contributory superannuation scheme for persons employed in the public sector; to make consequential amendments to certain other Acts; to repeal the *Southern State Superannuation Act 1994*; and for other purposes.

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## Legislative history

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Southern State Superannuation Act 2009*.

### **2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

### **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;

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

**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;

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

**contribution account** means—

- (a) in relation to a member—the contribution account maintained by the Board under section 12 in the name of the member;
- (b) in relation to a spouse member—the contribution account (if any) maintained by the Board in the name of the spouse member;

**employer contribution percentage**—see section 5;

**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; or
- (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**—see subsection (3);

**Fund** means the Southern State Superannuation Fund continued in existence by this Act;

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

**member** means a person who is a member of the scheme under section 19 (but a reference in this Act or the regulations to a member does not include a reference to a spouse member);

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

**non-monetary salary**, in relation to a member, means remuneration in any form resulting from the sacrifice by the member of part of his or her salary;

**participating employer**—see section 6;

**police cadet** means a person appointed under the *Police Act 1998* to be a police cadet;

**police member** means a police officer who is a police member of the Triple S scheme pursuant to regulations made under section 19(3)(b);

**Police Superannuation Scheme** means the scheme of superannuation established by the *Police Superannuation Act 1990*;

**putative spouse**—see section 7;

**repealed Act** means the *Southern State Superannuation Act 1994*;

**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 (including non-monetary salary) received by the member other than—

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

**Note—**

See subsection (2).

**Southern State Superannuation Scheme** or **scheme** means the scheme of superannuation continued in existence 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;

**spouse account** means—

- (a) a contribution account; or
- (b) a rollover account; or
- (c) a co-contribution account,

established and maintained by the Board for the benefit of a spouse member in accordance with the requirements of this Act;

**spouse member** means a person who is a spouse member of the Triple S scheme pursuant to regulations made under section 19(3)(c);

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

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

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

- (2) For the purposes of determining the amount of salary received by a member who is in receipt of non-monetary salary, the value of the non-monetary salary will be taken to be the amount of salary sacrificed by the member in order to receive the non-monetary salary.
- (3) This Act applies to employment by or on behalf of—
  - (a) the Crown, or an instrumentality or agency of the Crown; or
  - (b) an employer who has entered into an arrangement with the Board under section 6,

and a reference in this Act to ***employment***, in relation to a member, is a reference to employment of the member in employment to which this Act applies.

#### **4—Continuation of Triple S scheme**

- (1) The scheme of superannuation established by the repealed Act continues in existence under this Act (subject to any provision made by or under this Act).
- (2) The scheme will continue to be known as the Southern State Superannuation Scheme or the "Triple S scheme".

#### **5—Employer contribution percentage**

- (1) Subject to subsection (3), the employer contribution percentage applicable in respect of a member will be fixed by regulation.
- (2) A regulation made for the purposes of subsection (1) may fix different amounts for different classes of member.
- (3) The employer contribution percentage applicable in respect of a member in relation to whom an employer contribution percentage is not fixed by regulation under subsection (1) will be—
  - (a) in the case of a member who is making contributions under section 20(1)(a) or (b) at a rate of at least 4.5%—10% or a percentage equal to the charge percentage applicable under the Commonwealth Act to the employer of the member, whichever is the greater; and
  - (b) in any other case—9% or a percentage equal to the charge percentage applicable under the Commonwealth Act to the employer of the member, whichever is the greater.

#### **6—Participating employers**

- (1) Subject to subsection (3), the Board may enter into an arrangement with an approved employer under which the employees of the employer become eligible to apply to be accepted as members of the scheme.

- (2) An arrangement under subsection (1)—
- (a) may modify the provisions of this Act or the regulations in their application to, or in relation to, employees to which the arrangement relates (but not so as to put those employees or their spouses in a more advantageous position than other members or spouse members); and
  - (b) may be varied at any time by agreement between the Board and the approved employer.
- (3) An arrangement under subsection (1) or a variation under subsection (2) is not effective unless its terms are approved by the Minister.
- (4) In this section—
- approved employer** means—
- (a) an instrumentality or agency of the Crown in right of the Commonwealth or any State or Territory; or
  - (b) another authority, body or person,
- approved by the Minister for the purposes of this section.

## 7—Putative spouses

- (1) For the purposes of this Act, a person is, on a certain date, the *putative spouse* of another person if—
- (a) he or she is, on that date, cohabiting with the other person as his or her wife or husband de facto and—
    - (i) the person—
      - (A) has been so cohabiting with the other person continuously for the preceding period of 3 years; or
      - (B) has during the preceding period of 4 years so cohabited with the other person for periods aggregating not less than 3 years; or
    - (ii) a child, of whom both persons are the parents, has been born (whether or not the child is still living); or
  - (b) where the 2 persons are of the same sex—he or she is, on that date, cohabiting with the other person 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 the person—
    - (i) has been so cohabiting with the other person continuously for the preceding period of 3 years; or
    - (ii) has during the preceding period of 4 years so cohabited with the other person for periods aggregating not less than 3 years.
- (2) A person whose rights depend on whether—
- (a) he or she and another person; or
  - (b) 2 other persons,

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were, on a certain date, putative spouses 1 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 1 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 1 or both of them are dead.
- (5) It must not be inferred from the fact that the Court has declared that 2 persons were putative spouses 1 of the other, on a certain date, that they were putative spouses as at any prior or subsequent date.

### **8—Restriction on publication of court proceedings**

- (1) **Protected information** is information relating to an application under section 7 (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 judgments or decisions of the Court; or
    - (ii) is of a technical nature designed primarily for use by legal practitioners.
- (5) In this section—  
**newspaper** means a newspaper, journal, magazine or other publication that is published at periodic intervals;

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

## **Part 2—Administration**

### **Division 1—The Board**

#### **9—Function of Board**

The Board—

- (a) is responsible to the Minister for all aspects of the administration of this Act except the management and investment of the Fund; and
- (b) is to provide advice to the Minister about any matter referred to it by the Minister or any matter it sees fit to advise the Minister about in connection with its responsibilities under this Act.

### **Division 2—The Southern State Superannuation Fund**

#### **10—The Fund**

- (1) The Southern State Superannuation Fund continues in existence.
- (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 the purpose—
  - (a) periodic contributions reflecting the contributions paid to the Treasurer by members and spouse members with respect to the relevant period; and
  - (b) the amount of any co-contributions paid or transferred to the Board on behalf of a member or spouse member (but received by the Treasurer on behalf of the Board); and
  - (c) an amount or amounts equivalent to any amount or amounts rolled over from another superannuation fund or scheme to the Triple S scheme; and
  - (d) payments to the Treasurer by employers under section 21; and
  - (e) payments to the Treasurer by or on behalf of employers as required under the regulations.
- (5) All earnings 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 of or relating to the administration of this Act and 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 under this Act, including reimbursement in respect of benefits payable under this Act or of insurance benefits payable under this Act;



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

### **11—Investment of Fund**

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

## **Division 3—Accounts**

### **12—Accounts**

- (1) Subject to this section, the Board must maintain—
  - (a) a contribution account in the name of—
    - (i) a member who is making or has made contributions to the scheme, or in relation to whom contributions are being or have been made by the member's employer; and
    - (ii) a spouse member who is making or has made contributions to the scheme, or in relation to whom contributions are being or have been made by a member in accordance with the regulations; and
  - (b) a rollover account in the name of—
    - (i) a member or spouse member for whom an amount of money has been rolled over from another fund or scheme to the Triple S scheme; and
    - (ii) a member of the Police Superannuation Scheme in respect of whom an amount of money rolled over from another fund or scheme has been accepted by the Police Superannuation Board and paid to the Treasurer under section 13B of the *Police Superannuation Act 1990*; and
  - (c) a co-contribution account in the name of—
    - (i) a member or spouse member, or a member of the State Scheme, in respect of whom a co-contribution has been paid to the Board; and
    - (ii) a member of the Police Superannuation Scheme in respect of whom the amount of a co-contribution has been transferred from that scheme to the Board; and
  - (d) any other account that the Board is required to maintain under the regulations.
- (2) An account must be maintained in accordance with requirements specified in the regulations.

- (3) The regulations may make further provision in relation to the maintenance of accounts by the Board and, in particular, may—
  - (a) provide that the Board is, or is not, required to maintain a particular type of account for particular members or spouse members, or particular classes of member or spouse member; or
  - (b) specify details that are to be included in accounts, including amounts to be credited to, or debited against, accounts; or
  - (c) specify adjustments that are to be made to accounts.
- (4) The Board must establish a scheme under which each member's or spouse member's beneficial interest in the Fund, as held in the accounts of the Board, is represented by 1 or more units (including, if relevant, parts of units), with each unit being an undivided beneficial interest in the Fund.

### **13—Accretions to accounts**

- (1) Each contribution account, rollover account and co-contribution account that has a credit balance will be adjusted from time to time by the Board to reflect movements in the value of units allocated to each account under the scheme established by the Board.
- (2) In determining movements in the value of each unit of beneficial interest held in the name of each member or spouse member, the Board must have regard to the earnings achieved on the class of investments in which the accounts of a member or spouse member are allocated.
- (3) If a member or member spouse has made a nomination under section 14, in determining movements in the value of each unit of beneficial interest held in the name of the member or spouse member, the Board must have regard to the earnings achieved on the class of investments, or the combination of classes of investments, nominated by the member or spouse member.

### **14—Investment choice**

- (1) If the Fund is invested in different classes of investments, the Board may, with the agreement of the Superannuation Funds Management Corporation of South Australia, permit members or spouse 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 adjustment to be made to accounts under section 13.
- (2) If a member or spouse member has not made a nomination under subsection (1), the Board will allocate the accounts of the member or spouse member to a class of investments according to a determination of the Board.

### **15—Other accounts to be kept by Board**

- (1) The Board must, in respect of each financial year—
  - (a) maintain proper accounts of—
    - (i) receipts of members' contributions, spouse members' contributions and employer contributions paid under this Act; and
    - (ii) payments to, on behalf of, or in respect of, members and spouse members; and

- (iii) payments made from members' contribution accounts to spouse accounts; and
    - (iv) amounts transferred from spouse accounts to other accounts for the purpose of amalgamating accounts; and
  - (b) prepare financial statements in relation to those receipts, payments and transfers; and
  - (c) maintain other accounts and prepare other financial statements as required by the regulations.
- (2) The financial statements must include the information (if any) required by the regulations.
- (3) 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.

## **16—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 copy of the financial statements prepared by the Board in relation to receipts of members' contributions, spouse members' contributions and employer contributions, and relating to payments to, on behalf of, or in relation to, members and spouse members.
- (3) The Minister must, within 6 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

## **17—Report as to cost and funding of insurance benefits**

- (1) The Minister must obtain a report on the cost and funding of insurance benefits (including disability pensions) provided through the scheme within 12 months after 30 June 2010 and thereafter within 12 months after the end of each triennium following that date.
- (2) Each report must be prepared by an actuary (not being a member of the Board) appointed by the Minister and must report on—
  - (a) the cost of insurance benefits; and
  - (b) the extent to which premiums paid by members and held by the Board are sufficient to meet the scheme's anticipated insurance liabilities,at the time of the report and in the foreseeable future.
- (3) The Minister must, within 6 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

## Division 4—Payment of benefits

### 18—Payment of benefits

- (1) A payment to be made under this Act to or on behalf of a member or spouse member, or to another 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 amount standing to the credit of a contribution account, a rollover account or a co-contribution account, 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 invalidity or death insurance benefit, the Consolidated Account or special deposit account is to be reimbursed with the amount of the benefit by charging it against the Fund.
- (4) If, on the invalidity or death of a member who was a police officer, an amount greater than the aggregate of the balance of the member's contribution account and an insurance benefit (if any) is payable by way of benefits under the regulations to or in respect of the member, the amount payable will be taken, for the purposes of this section, to include the balance of the contribution account and the insurance benefit (if any).
- (5) This section does not apply in relation to a payment to be made to a person in connection with an investment service or some other product or service provided by the Board pursuant to regulations made under section 30(2)(g).

## Part 3—Membership and contributions

### 19—Membership of scheme

- (1) Subject to this section, a person—
  - (a) 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; or
  - (b) who—
    - (i) is employed by a participating employer; and
    - (ii) has been accepted as a member of the scheme; or
  - (c) who was a member of the Triple S scheme immediately before the repeal of the *Southern State Superannuation Act 1994*,is a member of the Triple S scheme.
- (2) However, a person who is—
  - (a) a member of a scheme of superannuation established by or under some other Act; or

- (b) 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)),
- is not, subject to regulations under subsection (3), a member of the Triple S scheme.
- (3) The regulations may make further provision in relation to membership and spouse membership of the Triple S scheme and, in particular, may provide—
- (a) that particular persons, or particular classes of persons are, or are not, or have ceased to be, members of the scheme; or
  - (b) that a police officer who is a member of the scheme is, or is not, a police member of the scheme; or
  - (c) that a person who is or was the spouse of a member is, subject to conditions specified in the regulations, a spouse member of the scheme; or
  - (d) that a specified provision of this Act does not apply, or applies subject to prescribed modifications, to a member or a class of members, or to a spouse member or a class of spouse members.

## **20—Contributions**

- (1) Subject to regulations made under subsection (2), and to conditions (if any) prescribed by regulation—
- (a) a member may elect to make contributions to the Treasurer as a deduction from salary; and
  - (b) a police member (other than a police cadet or a police officer employed on a contract having a fixed term) must make contributions to the Treasurer as a deduction from salary at a rate that equals or exceeds the prescribed percentage; and
  - (c) a member who is making contributions to the Treasurer as a deduction from salary may make additional monetary contributions to the Treasurer that are not related to the member's salary; and
  - (d) a member whose employment has not terminated but who is not making contributions to the Treasurer as a deduction from salary may make monetary contributions to the Treasurer.
- (2) The regulations may—
- (a) provide that particular members, or particular classes of member, are not entitled to make contributions under this section or must contribute at a specified rate; or
  - (b) require specified members, or members of a specified class, to make contributions to the Treasurer as a deduction from salary at a prescribed rate (and a regulation under this paragraph may prescribe different rates in respect of different members or different classes of member); or
  - (c) require that a monetary contribution under subsection (1)(c) or (d) be equal to, or exceed, a specified amount; or
  - (d) make provision for the payment of contributions by or on behalf of spouse members (subject to specified conditions).

## 21—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:

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

where—

*A* is the amount to be paid

*ECP* is the employer contribution percentage applicable in respect of the member for the period during which the salary was paid

*S* is the amount of salary paid to the member.

- (2) If pursuant to an award or enterprise agreement the whole or part of a member's non-monetary salary is allocated for the purpose of being credited to the member's contribution account, the employer must, within 7 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.
- (3) If an employer fails to pay the amount referred to in subsection (1) or (2) within the time allowed by that subsection, the employer is liable to pay to the Treasurer a penalty (not being greater than 10% of the amount unpaid) fixed by the Board.
- (4) This section does not apply in relation to—
- (a) a person who is a member of the Triple S scheme solely by virtue of being—
    - (i) a contributor to the Police Superannuation Scheme in respect of whom—
      - (A) a co-contribution has been paid or transferred to the Board; or
      - (B) an amount of money rolled over from another fund or scheme has been accepted by the Police Superannuation Board and paid to the Treasurer under section 13B of the *Police Superannuation Act 1990*; or
    - (ii) a contributor to the State Scheme in respect of whom a co-contribution has been paid to the Board; or
  - (b) a member, or a member of a class, prescribed by regulation for the purposes of this subsection.
- (5) 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—Miscellaneous**

### **22—Insurance benefits**

- (1) The following is to be provided through the Triple S scheme on terms and conditions prescribed by regulation:
  - (a) invalidity insurance, death insurance and income protection for members;
  - (b) death insurance for spouse members.
- (2) Invalidity or death insurance may also be provided through the scheme for other persons on terms and conditions prescribed by regulation.
- (3) Regulations made for the purposes of this section—
  - (a) may provide—
    - (i) for different amounts of invalidity or death insurance depending on a person's age or occupation, or whether the person was employed on a full time, part time or casual basis, or on any other relevant factor; and
    - (ii) for annual increases in the amount of invalidity or death insurance for the benefit of persons who wish to have annual increases in their insurance; and
    - (iii) for the amount of premiums to be fixed by the Board; and
  - (b) may make different provision according to the various classes of members, matters or circumstances to which they are expressed to apply; and
  - (c) may provide that specified members or spouse members, or members or spouse members of a specified class, cannot apply for, or are not entitled to, invalidity insurance, death insurance or income protection.

### **23—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.

### **24—Employer benefits and contributions if member on leave without pay**

If a member is on leave without pay, the Minister may, at the request of the employing authority, direct that section 21 and any relevant provision of the regulations relating to employer contributions 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.

### **25—Review of Board's decision**

- (1) A 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.
- (2) On an appeal to the Board, the Board may substitute another decision for its original decision or confirm its original decision.

## 26—Power to obtain information

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

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

*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.

- (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.

## 27—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.

## **28—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 or the repealed Act, must not divulge information of a personal or private nature, or information as to the entitlements or benefits of a person under this Act except—
  - (a) as required by or under an 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 another person for purposes related to the administration of this Act; or
  - (e) as may be required by a court.

Maximum penalty: \$10 000.

- (2) 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 or the repealed 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.

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

## **29—Resolution of difficulties**

- (1) If, in the opinion of the Board, any doubt or difficulty arises in the application of this Act or the regulations to particular circumstances or the provisions of this Act or the regulations do not address particular circumstances that have arisen, the Board may give such directions as are reasonably necessary to resolve the doubt or difficulty or to address the circumstances (but only insofar as the Board determines it to be fair and reasonable in the circumstances) and any such direction will have effect according to its terms.
- (2) If, in the opinion of the Board—
  - (a) a time limit under this Act or the regulations should be extended in particular circumstances; or
  - (b) a procedural step under this Act or the regulations should be waived in particular circumstances,

the Board may extend the time limit (even if it has already expired) or waive compliance with the procedural step.

- (3) In determining whether to take action under subsection (2), the Board should have regard to—
- (a) in a case under subsection (2)(a)—
    - (i) the length of delay that has occurred; and
    - (ii) the explanation for the delay; and
    - (iii) any hardship that will occur if the time limit is not extended; and
    - (iv) the extent to which it will cause any unfairness if the time limit is not extended; and
    - (v) any other relevant factor;
  - (b) in a case under subsection (2)(b)—
    - (i) the conduct of the person who would benefit from the action; and
    - (ii) any hardship that will occur if the procedural step is not waived; and
    - (iii) the extent to which it will cause any unfairness if the procedural step is not waived; and
    - (iv) any other relevant factor.
- (4) Subsections (2) and (3) do not derogate from any other provision of this Act or the regulations that makes specific provision for the extension of time.
- (5) If the Board gives a direction under subsection (1), or extends a time limit or waives compliance with a procedural step under subsection (2), the Board's report to the Minister in respect of the financial year in which the Board takes that action must include details of the action.

### 30—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) Without limiting the generality of subsection (1), regulations may be made in relation to—
- (a) administration of the scheme; and
  - (b) contributions to be made to the Fund; and
  - (c) charges to be made against the Fund; and
  - (d) accounts and other records to be kept by the Board; and
  - (e) benefits and how and when they are paid or dealt with; and
  - (f) the division under the *Family Law Act 1975* of the Commonwealth of superannuation interests between spouses who have separated; and
  - (g) provision by the Board of investment services and other products and services (including through the Superannuation Funds Management Corporation of South Australia and including for the benefit of persons who have retired or otherwise ceased to be employed); and

- (h) the establishment and management of separate funds or accounts relating to investment of the money received or held by the Board in the provision of investment or other services.
- (3) Regulations under this Act may—
  - (a) be of general application or limited application; or
  - (b) make different provision according to the matters or circumstances to which they are expressed to apply; or
  - (c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or the Board.
- (4) A regulation under this Act may provide for administrative charges to be fixed by the Board and for different charges to be fixed depending on the balance of members' accounts or spouse members' accounts or any other relevant factor.
- (5) A regulation under this Act 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.
- (6) A regulation under this Act may modify the operation of—
  - (a) a provision of the *Superannuation Act 1988* in its application to members of the State Scheme who are also members of the Triple S scheme; or
  - (b) a provision of the *Police Superannuation Act 1990* in its application to members of the Police Superannuation Scheme who are also members of the Triple S scheme.
- (7) Subject to subsection (8), a regulation under this Act comes into operation 4 months after the day on which it is made or from such later date as is specified in the regulation.
- (8) A regulation may come into operation from an earlier day specified in the regulation if—
  - (a) it revokes a regulation without making provision in substitution for that regulation; or
  - (b) it corrects an error or inaccuracy in a regulation; or
  - (c) it is required to ensure that the scheme is consistent with an Act that comes into operation on assent or less than 4 months after assent; or
  - (d) it is required to ensure that the scheme complies with a provision of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth; or
  - (e) it confers a benefit or right on a person (other than the Board); or
  - (f) the Minister certifies that the Minister is satisfied that it is necessary or appropriate that the regulation come into operation on the specified day.
- (9) A regulation under this Act may not reduce the amount of a person's accrued benefits unless the regulation is necessary—
  - (a) to ensure compliance with a law of the Commonwealth; or

- (b) to rectify a mistake; or
  - (c) to facilitate the division under the *Family Law Act 1975* of the Commonwealth of superannuation interests between spouses who have separated.
- (10) Regulations that—
- (a) will or may affect the financial rights or obligations of the Crown under this Act; or
  - (b) relate to a matter referred to in subsection (2)(g),
- cannot be made under this section unless they have been approved by the Treasurer.
- (11) A regulation must not be made under this Act unless the Minister has consulted with the Board on the proposed regulation and given due regard to any submission made by the Board in relation to the matter.
- (12) Section 10AA of the *Subordinate Legislation Act 1978* does not apply to a regulation under this Act.

## **Schedule 1—Related amendments, repeal and transitional provisions**

### **Part 1—Preliminary**

#### **1—Amendment provisions**

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### **Part 2—Amendment of *Police Superannuation Act 1990***

#### **2—Amendment of section 4—Interpretation**

- (1) Section 4(1), definition of *contributor*—after "in relation to superannuation" insert:  
under this Act
- (2) Section 4(1), definition of *Triple S scheme*—after "established by the *Southern State Superannuation Act 1994*" insert:  
and continued in existence by the *Southern State Superannuation Act 2009*

#### **3—Amendment of section 13A—Investment option**

- (1) Section 13A(3)(a)—delete "(Employers)"
- (2) Section 13A(3)(b)—delete "section 15C of the *Southern State Superannuation Act 1994*" and substitute:  
regulations made pursuant to section 19(3) of the *Southern State Superannuation Act 2009*

#### **4—Amendment of section 34—Resignation and preservation of benefits**

Section 34(1a)(c)(iii)—delete "be a preserved employer component under section 32 of the *Southern State Superannuation Act 1994*" and substitute:

have been preserved under regulations made pursuant to section 30(2)(e) of the *Southern State Superannuation Act 2009*

#### **5—Amendment of section 38G—Interpretation**

Section 38G, definition of *Southern State Superannuation Fund*—after "*Southern State Superannuation Act 1994*" insert:

and continued in existence by the *Southern State Superannuation Act 2009*

### **Part 3—Amendment of *Subordinate Legislation Act 1978***

#### **6—Amendment of section 16A—Regulations to which this Part applies**

Section 16A—after paragraph (ea) insert:

(eb) regulations under the *Southern State Superannuation Act 2009*; and

### **Part 4—Amendment of *Superannuation Funds Management Corporation of South Australia Act 1995***

#### **7—Amendment of section 3—Interpretation**

- (1) Section 3(1), definition of *public sector superannuation funds*, (caa)—delete paragraph (caa)
- (2) Section 3(1), definition of *public sector superannuation funds*, (f)—delete paragraph (f) and substitute:
  - (f) money received or held by the South Australian Superannuation Board in the provision of investment or other services that is to be invested by the Corporation in accordance with regulations made under the *Southern State Superannuation Act 2009*;

### **Part 5—Repeal of *Southern State Superannuation Act 1994***

#### **8—Repeal of Act**

The *Southern State Superannuation Act 1994* is repealed.

### **Part 6—Transitional provisions**

#### **9—Interpretation**

In this Part—

*new scheme* means the Southern State Superannuation Scheme continued in existence under this Act;

*old scheme* means the Southern State Superannuation Scheme under the repealed Act;

*relevant day* means the day on which the *Southern State Superannuation Act 1994* is repealed.

## 10—Southern State Superannuation (Employers) Fund

- (1) The Southern State Superannuation (Employers) Fund is dissolved and the money constituting that Fund immediately before the relevant day is incorporated into the Southern State Superannuation Fund continued in existence under this Act.
- (2) The balance of a member's employer contribution account immediately before the relevant day is credited to the member's contribution account.

## 11—Balances of accounts

- (1) An account maintained by the Board for the purposes of the old scheme immediately before the relevant day (other than an employer contribution account) is to be continued under the new scheme until such time as the Board is no longer required under this Act to maintain the account.
- (2) Subject to clause 10(2), the balance on the relevant day of an account continued under the new scheme is to be equivalent to the balance of the account immediately before that day.

## 12—Former members of Police Superannuation Scheme

- (1) This clause applies to a person who became a member of the Triple S scheme by virtue of section 14(2a) of the repealed Act.
- (2) If the member—
  - (a) made contributions as a deduction from salary under the repealed Act at the applicable percentage from 1 July 2008 until the relevant day; and
  - (b) makes contributions as a deduction from salary under this Act at the applicable percentage until his or her retirement from employment,he or she is entitled, on that retirement, to—
  - (c) the benefits to which he or she would, but for this subclause, be entitled on retirement under the regulations; or
  - (d) benefits determined in accordance with the method prescribed by regulation, whichever is the greater.
- (3) For the purposes of subclause (2)—
  - (a) the *applicable percentage* in relation to a member is a percentage equal to the rate at which the member was required to contribute under the *Police Superannuation Act 1990* immediately before 1 July 2008; and
  - (b) a member retires from employment if—
    - (i) the member has reached the retirement age (within the meaning of the regulations); and
    - (ii) the member's employment terminates or is terminated for any reason (except the member's death) and no insurance benefit is payable under this Act in connection with that termination.

- (4) If benefits are to be paid to the member under subclause (2)(d), the Treasurer must pay into the Fund from the Consolidated Account (which is appropriated to the necessary extent) the amount by which the amount of benefits payable to the member under that subclause exceeds the amount of benefits to which he or she would have been entitled under the regulations if subclause (2) did not apply.
- (5) If, by virtue of Schedule 3 Part 2 clause 16(1) of the repealed Act, section 24 of the *Police Superannuation Act 1990* (the **repealed section**) (other than subsection (8)) is, immediately before the relevant day, taken to continue in force in relation to a disability pension received by the member, the following provisions apply:
- (a) the repealed section (other than subsection (8)) will be taken to continue in force in relation to the pension as if the member were a contributor within the meaning of that section (but the member will not be required to make contributions under the *Police Superannuation Act 1990*);
  - (b) the member will not be entitled to a disability pension under this Act in respect of the incapacity that gave rise to the entitlement to the pension.
- (6) However, if the *Police Superannuation Act 1990* was, immediately before the relevant day, taken to continue in force in relation to the member by virtue of Schedule 3 Part 2 clause 16(2) of the repealed Act—
- (a) Schedule 3 Part 2 clause 15(2) to (10) (inclusive) of the repealed Act (the **relevant provisions**) will operate in relation to the member on and from (but not before) the relevant day as if the relevant provisions were still in force, subject to the following modifications:
    - (i) a reference in the relevant provisions to the prescribed date is to be taken to be a reference to the relevant day;
    - (ii) the Board will not be required to establish an employer contribution account in the name of the member;
    - (iii) the amount that would constitute the balance of the member's employer contribution account under clause 15(4) if the Board were required to establish such an account is to be credited to the member's contribution account; and
  - (b) Schedule 3 Part 2 clause 20 of the repealed Act will be taken to continue in force insofar as that clause is relevant to the establishment of contribution and rollover accounts by the Board under the relevant provisions; and
  - (c) subclause (2) (other than paragraph (a)) will apply to the member on and from the relevant day; and
  - (d) the costs associated with—
    - (i) determining the balances of accounts under the *Police Superannuation Act 1990*; and
    - (ii) establishing, and determining the balances of, new accounts under this Act; and
    - (iii) transferring Police Superannuation Scheme contributors to the Triple S scheme; and
    - (iv) any other administrative act required under, or necessary or expedient for the purposes of, this clause,

will be recoverable from the Police Superannuation Fund.

### **13—Children in receipt of pension under *Police Superannuation Act 1990***

- (1) If a person was, immediately before 1 July 2008, an eligible child in receipt of a pension payable under section 26 of the *Police Superannuation Act 1990* (the *repealed section*), the pension will continue to be paid to the child throughout any period of dependency as if that Act had not been amended by the *Statutes Amendment (Police Superannuation) Act 2008*.
- (2) Despite section 14 of the *Police Superannuation Act 1990*, a pension to be paid under the repealed section pursuant to this clause is not to be charged against the Police Superannuation Fund.

### **14—Amounts preserved for certain contributors to Police Superannuation Scheme**

If—

- (a) the Board is maintaining a rollover account for a member who is a former contributor to the Police Superannuation Scheme; and
- (b) the account was established under Schedule 3 Part 2 clause 19(1) or (2) of the repealed Act,

the provisions of the regulations applicable to amounts preserved by members on resignation from employment before reaching the retirement age (within the meaning of the regulations) will apply in relation to the amount standing to the credit of the account as if the amount were a component preserved by the member under the regulations.

### **15—Operation of nominations and elections under old scheme**

- (1) Subject to this clause, if a nomination or election made by a member or spouse member for a particular purpose under the old scheme is operative immediately before the relevant day, the member or spouse member will be taken to have made the same nomination or election for that purpose under the new scheme.
- (2) However, a nomination by a member of a class of investments, or a combination of classes of investments, for the purpose of determining a rate of return in respect of an employer contribution account maintained for the member under the old scheme will be taken to be a nomination by the member of a class of investments, or a combination of classes of investments, for the purpose of determining a rate of return in respect of the contribution account maintained for the member under the new scheme.

### **16—Insurance and disability pension**

- (1) Insurance cover enjoyed by a member or other person under the old scheme immediately before the relevant day continues under the new scheme at the same level and, subject to the regulations, with the same terms and conditions.
- (2) A disability pension payable to a member immediately before the relevant day continues to be payable to the member, subject to the regulations, with the same terms and conditions.



## 17—Other provisions

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act or on the amendment of this Act by another Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulation so provides—
  - (a) in the case of a regulation consequent on the enactment of this Act—take effect from the commencement of this Act or from a later day; and
  - (b) in the case of a regulation consequent on the enactment of an amendment to this Act—take effect from the commencement of the amendment or from a later day.
- (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 or repeal effected by this Act.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act

Year	No	Title	Assent	Commencement
2009	27	<i>Southern State Superannuation Act 2009</i>	11.6.2009	1.8.2009 ( <i>Gazette</i> 23.7.2009 p3282)