

South Australia

Statutes Amendment (Miscellaneous Superannuation Measures No 2) Act 2004

An Act to amend the *Judges' Pensions Act 1971*, the *Police Act 1998*, the *Police Superannuation Act 1990*, the *Southern State Superannuation Act 1994* and the *Superannuation Act 1988*.

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Schedule 1—Transitional provision

- 1 Transitional provision
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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 *Statutes Amendment (Miscellaneous Superannuation Measures No 2) Act 2004*.

2—Commencement

- (1) Subject to subsections (2) and (3), this Act will come into operation on a day to be fixed by proclamation.
- (2) Section 10(3) and (4) will be taken to have come into operation on 1 July 1999.

- (3) Sections 19, 39 and 46 will be taken to have come into operation on 3 July 2003.

3—Amendment provisions

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

Part 2—Amendment of *Judges' Pensions Act 1971*

4—Amendment of section 4—Interpretation

- (1) Section 4(1), definition of **Judge**, (b)—delete paragraph (b) and substitute:
- (b) a Judge of the District Court of South Australia but does not include an acting Judge appointed under section 12(3) of the *District Court Act 1991*; or
- (2) Section 4(1), definition of **Judge**, (c) and (ca)—delete paragraphs (c) and (ca) and substitute:
- (c) a Judge of the Industrial Relations Court of South Australia; or
 - (ca) a Presidential Member of the Industrial Relations Commission of South Australia; or

5—Repeal of section 12

Section 12—delete the section

6—Repeal of section 17

Section 17—delete the section

7—Substitution of section 17K

Section 17K—delete the section and substitute:

17K—Pension not payable to spouse on death of Judge if split has occurred

If a Judge 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 Judge's pension 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 Judge (except in accordance with the instrument).

8—Repeal of Schedule

Schedule—delete the Schedule

Part 3—Amendment of *Police Act 1998*

9—Amendment of section 45—Physical or mental disability or illness

Section 45(2)—delete subsection (2) and substitute:

- (2) The Commissioner must not terminate the appointment of a police officer under subsection (1) without first complying with—
 - (a) if the officer is a contributor in relation to the scheme of superannuation established by the *Police Superannuation Act 1990*—the requirements of that Act; or
 - (b) if the officer is a member of the Southern State Superannuation Scheme established by the *Southern State Superannuation Act 1994*—the requirements of that Act.

Part 4—Amendment of *Police Superannuation Act 1990*

10—Amendment of section 4—Interpretation

- (1) Section 4(1)—after the definition of *the Board* insert:

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;

- (2) Section 4(1)—after the definition of *retrenchment pension* insert:

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

- (3) Section 4(1)—before the definition of *salary* insert:

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

- (4) Section 4(1), definition of *salary*—before "includes all forms" insert:

, in relation to a contributor who is not employed pursuant to a contract under section 13 or section 16 of the *Police Act 1998*,

- (5) Section 4(1)—after the definition of *the Scheme* insert:

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

11—Amendment of section 10—The Fund

- (1) Section 10(4)—delete subsection (4) and substitute:
 - (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 contributors with respect to the relevant period; and
 - (b) 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.
- (2) Section 10(6)(c)—delete "investors" and substitute:

the

12—Amendment of section 14—Payment of benefits

- (1) Section 14(2)—after "under this Act" insert:

, other than an amount paid under Part 5A,
- (2) Section 14—after subsection (3a) insert:
 - (3b) If a payment under subsection (1) relates to an amount paid under Part 5A, 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.

13—Substitution of heading to Part 5A

Heading to Part 5A—delete the heading and substitute:

Part 5A—Contributors' investment accounts, rollover accounts and co-contribution accounts

14—Substitution of heading to Part 5A Division 2

Heading to Part 5A Division 2—delete the heading and substitute:

Division 2—Rollover accounts and co-contribution accounts

15—Amendment of section 38EB—Rollover accounts and co-contribution accounts

- (1) Section 38EB(1)—delete subsection (1) and substitute:
 - (1) The Board must—
 - (a) maintain a rollover account in the name of a contributor for whom an amount of money has been carried over from another superannuation fund or scheme to the Scheme; and

- (b) maintain a co-contribution account in the name of a contributor in respect of whom a co-contribution has been paid to the Board.
- (2) Section 38EB—after subsection (2) insert:
 - (2a) A contributor's co-contribution account must be credited with the amount of any co-contribution paid to the Board in respect of the member.
- (3) Section 38EB(3)—after "rollover account" insert:
 - and co-contribution account
- (4) Section 38EB(4)(b)—after "rollover accounts" insert:
 - and co-contribution accounts
- (5) Section 38EB(6)—after "rollover account" insert:
 - or co-contribution account
- (6) Section 38EB(8)—after "rollover account" wherever occurring insert:
 - or co-contribution account

16—Insertion of section 38EBA

After section 38EB insert:

38EBA—Payment of co-contribution component

- (1) If the employment of a contributor who has reached the age of 55 terminates or is terminated for any reason except the contributor's death, the contributor is entitled to payment of the co-contribution component (if any) to the extent that the payment can be made in accordance with the SIS Act.
- (2) If the employment of a contributor who has not reached the age of 55 terminates or is terminated for any reason except the contributor's death, the contributor may elect to—
 - (a) take immediately the co-contribution component (if any) to the extent that the payment 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) A co-contribution component that cannot be paid in accordance with the SIS Act must be preserved.

- (4) If a co-contribution component is preserved under subsection (3), or a contributor elects to preserve a co-contribution component, the following provisions apply subject to restrictions imposed by the SIS Act:
- (a) the Board must, not less than 6 months before the contributor's 55th birthday, notify the contributor in writing of the contributor's entitlement to require the Board to authorise payment of the component;
 - (b) the contributor 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 contributor reaches 65 years of age, the Board will authorise payment of the component to the contributor;
 - (c) if the contributor has become incapacitated and satisfies the Board that his or her incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent, the Board will authorise payment of the component to the contributor;
 - (d) if the contributor dies, the component will be paid to the spouse of the contributor or, if he or she left no surviving spouse, to the contributor's estate.
- (5) If a contributor's employment is terminated by the contributor's death, the contributor's co-contribution component will be paid to the contributor's spouse or, if the contributor is not survived by a spouse, to the contributor's estate.
- (6) In this section—

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

17—Amendment of section 38J—Reduction in contributor's entitlement

- (1) Section 38J(2)(a)—after "contribution account" insert:
 , and any rollover account or co-contribution account,
- (2) Section 38J(2)(a)—delete "that account" and substitute:
 any such account

18—Substitution of section 38K

Section 38K—delete the section and substitute:

38K—Benefit not payable to spouse on death of contributor if split has occurred

If a contributor 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 contributor'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 contributor (except in accordance with the instrument) and will not be considered to be a spouse of the deceased contributor for the purposes of section 41 (if relevant).

19—Amendment of Schedule 1—Transitional provisions

Schedule 1—after clause 10 insert:

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

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

Part 5—Amendment of *Southern State Superannuation Act 1994*

20—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *charge percentage* insert:

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;

- (2) Section 3(1), definition of *employment to which this Act applies* or *employment*, (c)—after "Southern State Superannuation Scheme" insert:

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

21—Amendment of section 4—The Fund

Section 4—after subsection (4a) insert:

- (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.

22—Substitution of heading to Part 2 Division 2

Heading to Part 2 Division 2—delete the heading and substitute:

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

23—Amendment of section 7—Contribution, co-contribution and rollover accounts

- (1) Section 7—after subsection (2b) insert:
 - (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.
- (2) Section 7(3)—after paragraph (b) insert:
 - (c) a member's co-contribution account,
- (3) Section 7(3)—delete "(or both)" and substitute:

(or one or more of the above)
- (4) Section 7—after subsection (3) insert:
 - (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.
- (5) Section 7—after subsection (4) insert:
 - (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).

24—Amendment of section 7A—Accretions to member's accounts

- (1) Section 7A(1)—delete "and rollover account" and substitute:

, rollover account (if any) and co-contribution account

(2) Section 7A(4)—after "section 27(4)" insert:

(but this requirement does not apply if the member only has a co-contribution account)

25—Amendment of section 12—Payment of benefits

Section 12(2)—delete subsection (2) and substitute:

- (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.

26—Amendment of section 14—Membership

(1) Section 14—after subsection (10) insert:

- (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.

(2) Section 14(11)—after "subsection (10)" insert:

or (10a)

(3) Section 14(11)—delete "that subsection" and substitute:

either of those subsections

27—Amendment of section 16—Duration of membership

Section 16—after subsection (4) insert:

- (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.

28—Amendment of section 21—Basic invalidity/death insurance

Section 21(2)—delete subsection (2) and substitute:

- (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.

29—Amendment of section 22—Application for additional invalidity/death insurance

Section 22(1b)—delete subsection (1b) and substitute:

- (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.

30—Amendment of section 25—Contributions

Section 25(2)—delete subsection (2) and substitute:

- (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.

31—Amendment of section 30—Interpretation

Section 30—before the definition of *the employee component* insert:

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

32—Amendment of section 31—Retirement

(1) Section 31(1)—delete subsection (1) and substitute:

- (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.

(2) Section 31(1a)—after "the part of a rollover component," insert:
or a co-contribution component,

33—Amendment of section 32—Resignation

- (1) Section 32—after subsection (2a) insert:
 - (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.
- (2) Section 32(4)—delete "or (2a)" and substitute:

, (2a) or (2b)
- (3) Section 32(4)—delete "or rollover component" and substitute:

, rollover or co-contribution component
- (4) Section 32(6)—delete "or rollover component" and substitute:

, rollover or co-contribution component
- (5) Section 32(6a)—after "rollover component" insert:

or a co-contribution component
- (6) Section 32(7)—delete "or rollover component" and substitute:

, rollover component or co-contribution component
- (7) Section 32(8)—delete subsection (8) and substitute:
 - (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.
- (8) Section 32(9)—delete "or rollover component" and substitute:

, rollover or co-contribution component
- (9) Section 32(10)—delete subsection (10) and substitute:
 - (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.

34—Amendment of section 33—Retrenchment

- (1) Section 33(1)—delete subsection (1) and substitute:
 - (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) Section 33(2)—delete "or rollover component" and substitute:

, rollover or co-contribution component

35—Amendment of section 34—Termination of employment on invalidity

- (1) Section 34(1)—after paragraph (c) insert:
 - (ca) the co-contribution component (if any); and
- (2) Section 34(6a)—after "the rollover component (if any)" insert:

and the co-contribution component (if any)
- (3) Section 34(6a)—after "rollover component" second occurring insert:

and the co-contribution component

36—Amendment of section 35—Death of member

- (1) Section 35(2)—after paragraph (c) insert:
 - (ca) the co-contribution component (if any); and
- (2) Section 35(7a)—after "the rollover component (if any)" insert:

and the co-contribution component (if any)
- (3) Section 35(7a)—after "rollover component" second occurring insert:

and the co-contribution component

37—Amendment of section 35E—Reduction in member's entitlement

- Section 35E(2)—after "rollover account" insert:

, co-contribution account

38—Substitution of section 35F

Section 35F—delete section 35F and substitute:

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).

39—Amendment of Schedule 3—Transitional provisions

Schedule 3—after clause 12 insert:

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.

Part 6—Amendment of *Superannuation Act 1988*

40—Amendment of section 4—Interpretation

- (1) Section 4(1)—after the definition of *the Board* insert:

co-contribution means a payment made to the Board 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;

- (2) Section 4(1)—after the definition of *the Scheme* insert:

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

- (3) Section 4(1)—after the definition of *TEC contract* insert:

Triple S scheme means the Southern State Superannuation Scheme established by the *Southern State Superannuation Act 1994*.

41—Amendment of section 17—The Fund

- (1) Section 17(4)—delete subsection (4) and substitute:

- (4) The Treasurer must pay into the Fund periodic contributions reflecting—

- (a) the contributions paid to the Treasurer by contributors; and
- (b) any co-contribution paid to the Board on behalf of a contributor (but received by the Treasurer on behalf of the Board),

with respect to the relevant period.

- (2) Section 17(6)—delete "two" and substitute:

3

- (3) Section 17(6)(b)—delete "the other" and substitute:

one

- (4) Section 17(6)—after paragraph (b) insert:

- (c) one proportioned to the aggregate balance of co-contribution accounts to the extent that they hold the amount of any co-contributions that have been paid to the Board.

42—Insertion of section 20ABA

After section 20A insert:

20ABA—Co-contribution accounts

The Board must—

- (a) establish a co-contribution account in the name of a contributor 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) immediately on a co-contribution account being credited with the amount of a co-contribution—transfer the amount to a co-contribution account maintained by the Board in the name of the contributor in the Southern State Superannuation Fund; and
- (d) advise the contributor in writing that—
 - (i) the co-contribution has been transferred to the Southern State Superannuation Fund; and

- (ii) the contributor is, by virtue of section 14 of the *Southern State Superannuation Act 1994*, a member of the Triple S scheme.

43—Amendment of section 20B—Payment of benefits

Section 20B—after subsection (2) insert:

- (3) If any such payment, or a proportion of any such payment, relates to 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 may reimburse the Consolidated Account or special deposit account by charging the relevant division of the Fund with the amount of that payment or the relevant proportion of that payment (as the case requires).

44—Amendment of section 43AC—Interpretation

Section 43AC, definition of *Southern State Superannuation Fund*—delete the definition

45—Substitution of section 43AG

Section 43AG—delete the section and substitute:

43AG—Benefit not payable to spouse on death of contributor if split has occurred

If a contributor 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 contributor'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 contributor (except in accordance with the instrument) and will not be considered to be a spouse of the deceased contributor for the purposes of section 46 (if relevant).

46—Amendment of Schedule 1—Transitional provisions

Schedule 1—after clause 20 insert:

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

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

Schedule 1—Transitional provision

1—Transitional provision

A regulation made for the purposes of the definition of *salary* that is being inserted into section 4(1) of the *Police Superannuation Act 1990* by section 10(3) of this Act may, if the regulation so provides, take effect from 1 July 1999 or from a later day.