

South Australia

Statutes Amendment (Transition to Retirement— State Superannuation) Act 2008

An Act to amend the *Southern State Superannuation Act 1994* and the *Superannuation Act 1988*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Southern State Superannuation Act 1994*

- 4 Amendment of section 3—Interpretation
- 5 Amendment of section 26—Payments by employers
- 6 Amendment of section 26D—Spouse members and spouse accounts
- 7 Insertion of sections 30A and 30B
 - 30A Transition to retirement
 - 30B Early access to superannuation benefits
- 8 Amendment of section 35E—Effect on member's entitlements

Part 3—Amendment of *Superannuation Act 1988*

- 9 Amendment of section 4—Interpretation
- 10 Insertion of section 26A
 - 26A Transition to retirement
- 11 Amendment of section 28A—Resignation pursuant to a voluntary separation package
- 12 Insertion of section 33A
 - 33A Transition to retirement
- 13 Amendment of section 39A—Resignation or retirement pursuant to a voluntary separation package
- 14 Insertion of section 40B
 - 40B Interaction with judicial remuneration or pension entitlements
- 15 Repeal of section 43A
- 16 Amendment of section 43AF—Effect on contributor's entitlements
- 17 Amendment of section 45—Effect of workers compensation etc on pension
- 18 Insertion of sections 47C and 47D
 - 47C Portion of pension etc to be charged against contribution account etc
 - 47D Charge against Fund if draw down benefit paid

Schedule 1—Transitional provisions

- 1 Interpretation
 - 2 Transitional provisions
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Transition to Retirement—State Superannuation) Act 2008*.

2—Commencement

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

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 *Southern State Superannuation Act 1994*

4—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *police cadet* insert:

preservation age has the same meaning as in Part 6 of the *Superannuation Industry (Supervision) Regulations 1994* of the Commonwealth under the SIS Act;

- (2) Section 3—after subsection (4a) insert:

(4b) Despite subsection (4a), if—

- (a) a member is employed pursuant to a contract for a fixed term; and
- (b) the member is, within the period of 3 months after the end of the term of the contract, employed under a new contract for a fixed term in the same or similar employment,

then—

- (c) the member will, for the purposes of Division 2 of Part 3, be taken to have remained in the relevant employment; and
- (d) if the member was making contributions under section 25 immediately before the end of the period of the first contract, the member will, for the purposes of section 33A, be taken to have made contributions from his or her salary under section 25 during the period between the 2 contracts.

5—Amendment of section 26—Payments by employers

Section 26(2a)—after "section 14(10)" insert:

or (10a)

6—Amendment of section 26D—Spouse members and spouse accounts

Section 26D(2)(b)—after "made by the" insert:
spouse member or

7—Insertion of sections 30A and 30B

After section 30 insert:

30A—Transition to retirement

- (1) For the purposes of this section, the *basic threshold* is an amount prescribed by the regulations for the purposes of this subsection.
- (2) A member may apply to the Board for the benefit of this section if—
 - (a) the member has reached—
 - (i) the age of 55 years; and
 - (ii) his or her preservation age; and
 - (b) the member has entered into an arrangement with his or her employer—
 - (i) to reduce his or her hours of work; or
 - (ii) to alter his or her duties,or both, with the effect that there is a reduction in the member's salary; and
 - (c) the purpose for establishing the arrangement referred to in paragraph (b) relates to the proposed retirement of the member in due course (including by allowing the member to scale down his or her work in the lead-up to retirement); and
 - (d) the member has not applied for the benefit of section 30B.
- (3) The Board may require that an application under subsection (2)—
 - (a) be made in such manner, and comply with such requirements, as the Board thinks fit; and
 - (b) be accompanied by such information or other material specified by the Board to assist the Board to be satisfied as to the matters set out in paragraphs (b) and (c) of that subsection.
- (4) If the Board is satisfied that a valid application has been made under subsection (2), an entitlement will arise as follows:
 - (a) the Board will determine a benefit (a *draw down benefit*) on the basis of the member's application and on the basis that the maximum draw down benefit to which the member is entitled will be determined as follows:

$$B = SP \times \frac{(FS - NS)}{FS}$$

Where—

B is the maximum draw down benefit

SP is the amount that would be payable under section 31 if the member had retired from employment immediately before the date of the determination

FS is the member's actual salary immediately before the commencement of the arrangement envisaged by subsection (2)(b)

NS is the member's actual salary on the commencement of the arrangement envisaged by subsection (2)(b);

- (b) the Board will then, according to an election made by the member as part of his or her application to the Board for the benefit of this section, invest (on behalf of and in the name of the member) the draw down benefit—
- (i) with the Superannuation Funds Management Corporation of South Australia; or
 - (ii) with another entity that will provide a non-commutable income stream for the member while the member continues to be employed in the workforce,

so that the member receives (and only receives) a payment in the form of a pension or an annuity (a ***draw down payment***) on account of the benefit.

- (5) Paragraph (a) of subsection (4) operates subject to the qualification that if *SP* under that paragraph does not exceed the basic threshold then the maximum draw down benefit will be equal to *SP*.
- (6) The draw down benefit will be constituted by the components that would apply under section 31 if the member had retired from employment immediately before the date of the Board's determination, with each component bearing the same proportion to the component that would apply under section 31 as the draw down benefit bears to *SP* under subsection (4)(a).
- (7) The investment of a draw down benefit under subsection (4)(b)(i) will be on terms and conditions determined by the Board.
- (8) An entitlement to a draw down payment is not commutable.
- (9) However—
- (a) a member may, after commencing to receive a draw down payment and before retiring from employment under this Act, take steps to bring the investment to an end and pay the balance of the investment into a rollover account under this Act as if the balance were being carried over from another superannuation scheme to the Triple S scheme; and
 - (b) the value of an investment under subsection (4)(b)(i) may be redeemed in due course under subsection (14).

- (10) When the Board has determined a draw down benefit—
- (a) the various accounts maintained by the Board under section 7 will be immediately adjusted to take into account the payment of the draw down benefit; and
 - (b) section 12(2) and (3) will apply with respect to the relevant components constituting the draw down benefit, as applying under subsection (6) of this section; and
 - (c) the contributions payable by the member under section 25 will (despite any provision made by section 25 to the contrary)—
 - (i) be fixed on the basis of the member's salary under the arrangement established with his or her employer (for so long as the arrangement continues); and
 - (ii) as so fixed, be payable in respect of this salary from the first full pay period after the Board's determination of the draw down benefit; and
 - (d) the relevant employer contribution account will be immediately adjusted to take into account the payment of the draw down benefit.
- (11) If the employment arrangements of a member who is receiving a draw down payment under this section alter so that there is an alteration in his or her salary—
- (a) in the case of a reduction in salary—the member may apply to the Board for a further benefit in accordance with the provisions of this section and this section will then apply to the application and with respect to the relevant arrangement—
 - (i) as if FS under subsection (4)(a) is the member's actual salary immediately before the relevant reduction in salary; and
 - (ii) as if NS is the member's actual salary immediately after the relevant reduction in salary; and
 - (iii) by applying such other modifications as may be necessary for the purpose or as may be prescribed; and
 - (b) in the case of an increase in salary—the draw down payment will continue as if the increase had not occurred but the contributions payable by the member must be adjusted to take into account the increase.

- (12) When a member retires from employment (and is thus entitled to a benefit under section 31), the member's entitlement under section 31 will be adjusted to take into account the draw down benefit provided under this section (and that section will then have effect accordingly).
- (13) If a member's employment is terminated on account of invalidity or by the member's death, any entitlement under section 34 or 35 (as the case requires) will be adjusted to take into account the draw down benefit provided under this section (and the relevant section will then have effect accordingly).
- (14) When a member retires, has his or her employment terminated on account of invalidity or dies (whichever first occurs), an investment being held under subsection (4)(b)(i) may be redeemed (subject to any rules or requirements applicable to the exercise of a power of redemption).
- (15) Despite a preceding subsection, if the maximum draw down benefit under subsection (4)(a) is not sufficient to be invested under subsection (4)(b) in order to obtain a draw down payment—
 - (a) unless paragraph (b) applies—the draw down benefit must be an amount equal to the minimum amount required to obtain a draw down payment (and subsection (4)(a) will apply accordingly);
 - (b) if the minimum amount required to obtain a draw down payment is greater than SP under subsection (4)(a), the Board must reject the application under this section (and no entitlement will arise under subsection (4)).
- (16) The determination of a benefit under this section must take into account the operation of any provision under Part 5A.
- (17) The Governor may, by regulation, declare that any provision of this section is modified in prescribed circumstances (and the regulation will have effect according to its terms).

30B—Early access to superannuation benefits

- (1) For the purposes of this section, the *basic threshold* is an amount prescribed by the regulations for the purposes of this subsection.
- (2) Subject to this section, a member may apply to the Board for the benefit of this section if—
 - (a) the member has reached—
 - (i) the age of 55 years; and
 - (ii) his or her preservation age; and
 - (b) in the case of the first application by the member under this section—the combined balance of his or her eligible contribution accounts equal or exceed the basic threshold; and

- (c) the member has not applied for the benefit of section 30A.
- (3) An application under this section may be made for the payment of the whole, or a specified proportion, of the balance of the member's eligible contribution accounts but, in the case of the first application by a member under this section, the application must seek the payment of an amount that is at least equal to the basic threshold.
- (4) Once a member has made an application under this section, a second or subsequent application cannot be made—
- (a) unless at least 12 months have elapsed from any preceding application; and
 - (b) unless the combined balance of his or her eligible contribution accounts equal or exceed an amount prescribed by the regulations for the purposes of this subsection.
- (5) The Board may require that an application under this section be made in such manner, and comply with such requirements, as the Board thinks fit.
- (6) A payment pursuant to an application under this section will be drawn from the member's contribution account first and then, to the extent (if any) that an additional amount is required for the purposes of the payment, from the member's other eligible contribution account or accounts in accordance with the regulations.
- (7) The payment will, according to an election made by the member as part of his or her application, be invested by the Board (on behalf of and in the name of the member)—
- (a) with the Superannuation Funds Management Corporation of South Australia; or
 - (b) with another entity that will provide a non-commutable income stream for the member while the member continues to be employed in the workforce,
- so that the member receives (and only receives) a payment in the form of a pension or annuity (a *drawn down payment*).
- (8) An investment under subsection (7) will be on terms and conditions determined by the Board.
- (9) An entitlement to a draw down payment is not commutable.
- (10) However, the value of an investment may be redeemed in due course under subsection (14).
- (11) When the Board makes a payment on an application under this section—
- (a) the member's contribution account and, if relevant, any other eligible contribution account, will be immediately adjusted to take into account the payment; and
 - (b) section 12(2) and (3) will apply with respect to the relevant components constituting the payment.

- (12) When a member retires from employment (and is thus entitled to a benefit under section 31), the member's entitlement under section 31 will be adjusted to take into account an entitlement provided under this section (and that section will then have effect accordingly).
- (13) If a member's employment is terminated on account of invalidity or by the member's death, any entitlement under section 34 or 35 (as the case requires) will be adjusted to take into account an entitlement provided under this section (and the relevant section will then have effect accordingly).
- (14) When a member retires, has his or her employment terminated on account of invalidity or dies (whichever first occurs), an investment being held under subsection (7) may be redeemed (subject to any rules or requirements applicable to the exercise of a power of redemption).
- (15) The making of a payment under this section must take into account the operation of any provision under Part 5A.
- (16) The Governor may, by regulation, declare that any provision of this section is modified in prescribed circumstances (and the regulation will have effect according to its terms).
- (17) In this section—
 - eligible contribution accounts* of a member means—
 - (a) the member's contribution account; and
 - (b) the member's employer contribution account; and
 - (c) if the regulations so provide—
 - (i) the member's rollover account;
 - (ii) the member's co-contribution account.

8—Amendment of section 35E—Effect on member's entitlements

Section 35E—after subsection (4) insert:

- (5) If a member has received a draw down benefit under section 30A—
 - (a) the superannuation interest of the member will be taken to include the balance of any draw down benefit that is being held under section 30A(4)(b)(i); and
 - (b) any entitlement under section 30A will be adjusted to take into account the effect of a payment split under this Part.
- (6) If a member has received the benefit of a payment under section 30B—
 - (a) the superannuation interest of the member will be taken to include the balance that is being held under section 30B(7) and (8);
 - (b) any entitlement under section 30B will be adjusted to take into account the effect of a payment split under this Part.

Part 3—Amendment of *Superannuation Act 1988*

9—Amendment of section 4—Interpretation

- (1) Section 4(1)—after the definition of *new scheme contributor* insert:

non-monetary salary, in relation to a contributor who is not employed pursuant to a TEC contract, means remuneration in any form resulting from the sacrifice by the contributor of part of his or her salary;
- (2) Section 4(1)—after the definition of *pension period* insert:

preservation age has the same meaning as in Part 6 of the *Superannuation Industry (Supervision) Regulations 1994* of the Commonwealth under the SIS Act;
- (3) Section 4(1), second definition of *salary*—after "all forms of remuneration" insert:

(including non-monetary salary)
- (4) Section 4(1), second definition of *salary*, (da)—delete paragraph (da)
- (5) Section 4(2c) to (2f)—delete subsections (2c) to (2f) (inclusive) and substitute:
 - (2c) For the purposes of determining the amount of salary received by a contributor 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 contributor in order to receive the non-monetary salary.

10—Insertion of section 26A

After section 26 insert:

26A—Transition to retirement

- (1) A contributor may apply to the Board for the benefit of this section if—
 - (a) the contributor has reached—
 - (i) the age of 55 years; and
 - (ii) his or her preservation age; and
 - (b) the contributor has entered into an arrangement with his or her employer—
 - (i) to reduce his or her hours of work; or
 - (ii) to alter his or her duties,or both, with the effect that there is a reduction in the contributor's salary; and
 - (c) the purpose for establishing the arrangement referred to in paragraph (b) relates to the proposed retirement of the contributor in due course (including by allowing the contributor to scale down his or her work in the lead-up to retirement).

- (2) The Board may require that an application under subsection (1)—
- (a) be made in such manner as the Board thinks fit; and
 - (b) be accompanied by such information or other material specified by the Board to assist the Board to be satisfied as to the matters set out in paragraphs (b) and (c) of that subsection.
- (3) If the Board is satisfied that a valid application has been made under subsection (1), an entitlement will arise as follows:
- (a) the Board will determine a benefit (a *draw down benefit*) on the basis of the contributor's application and on the basis that the maximum draw down benefit to which the contributor is entitled will be determined as follows:

$$B = SP \times \frac{(FS - NS)}{FS}$$

Where—

B is the maximum draw down benefit

SP is the amount that would be payable under section 27 and 47B if the contributor had retired from employment immediately before the date of the determination

FS is the contributor's actual salary immediately before the commencement of the arrangement envisaged by subsection (1)(b)

NS is the contributor's actual salary on the commencement of the arrangement envisaged by subsection (1)(b);

- (b) the Board will then, according to an election made by the contributor as part of his or her application to the Board for the benefit of this section, invest (on behalf of and in the name of the contributor) the draw down benefit—
 - (i) with the Superannuation Funds Management Corporation of South Australia; or
 - (ii) with another entity that will provide a non-commutable income stream for the contributor while the contributor continues to be employed in the workforce,so that the contributor receives (and only receives) a payment in the form of a pension or an annuity (a *draw down payment*) on account of the benefit.
- (4) The investment of a draw down benefit under subsection (3)(b)(i) will be on terms and conditions determined by the Board.
- (5) An entitlement to a draw down payment is not commutable.

- (6) However—
- (a) a contributor may, after commencing to receive a draw down payment and before retiring from employment under this Act, take steps to bring the investment to an end and pay the balance of the investment into a rollover account (which may need to be established) in the name of the contributor as if the balance were being carried over from another superannuation scheme into the scheme pursuant to section 47B; and
 - (b) the value of an investment under subsection (3)(b)(i) may be redeemed in due course under subsection (11).
- (7) When the Board has determined a draw down benefit—
- (a) the account maintained by the Board in the name of the contributor under section 20A, and any account maintained for the purposes of section 47B, will be immediately adjusted by a percentage equal to the percentage that the draw down benefit bears to the total benefit that would have been payable had the contributor retired from employment to take into account the payment of the draw down benefit; and
 - (b) the contributions payable by the contributor under section 23 will (despite any provision made by section 23 to the contrary)—
 - (i) be fixed on the basis of the contributor's salary under the arrangement established with his or her employer (for so long as the arrangement continues); and
 - (ii) as so fixed, be payable in respect of this salary from the first full pay period after the Board's determination of the draw down benefit; and
 - (iii) be at the contributor's standard contribution rate under that section; and
 - (c) the contributor's contribution points will accrue, from the date of the determination until the cessation of the relevant arrangement (unless the contributor ceases to make the contributions envisaged by paragraph (b)), at a rate for each contribution month determined as follows:

$$CP = 1 \times \frac{AS}{FSA}$$

Where—

CP is a proportion of 1 contribution point

AS is the contributor's actual salary under the relevant arrangement (as adjusted from time to time)

FSA is the contributor's actual salary immediately before the commencement of the relevant arrangement, adjusted from time to time to take into account any changes to the salary that would have occurred had the contributor not entered into the relevant arrangement but rather continued to be entitled to that salary.

- (8) If the employment arrangements of a contributor who is receiving a draw down payment under this section alter so that there is an alteration in his or her salary—
- (a) in the case of a reduction in salary—the contributor may apply to the Board for a further benefit in accordance with the provisions of this section and this section will then apply to the application and with respect to the relevant arrangement—
 - (i) as if *FS* under subsection (3)(a) is the contributor's actual salary immediately before the relevant reduction in salary; and
 - (ii) as if *NS* is the contributor's actual salary immediately after the relevant reduction in salary; and
 - (iii) by applying such other modifications as may be necessary for the purpose or as may be prescribed; and
 - (b) in the case of an increase in salary—the draw down payment will continue as if the increase had not occurred and where the contributor makes contributions to the scheme under this Act in respect of the increase in salary the contributions payable by the contributor and the accrual of contribution points must be adjusted to take into account the increase.
- (9) When a contributor retires from employment (and is thus entitled to a benefit under section 27), the contributor's entitlement under section 27 will be adjusted in the manner prescribed by the regulations to take into account the draw down benefit provided under this section (and that section will then have effect accordingly).
- (10) If a contributor's employment is terminated by the contributor's death, any entitlement under section 32 will be adjusted in the manner prescribed by the regulations to take into account the draw down benefit provided under this section (and that section will then have effect accordingly).
- (11) When a contributor retires or dies (whichever first occurs), an investment being held under subsection (3)(b)(i) may be redeemed (subject to any rules or requirements applicable to the exercise of a power of redemption).

- (12) A contributor may, in conjunction with an application under subsection (1), apply for any benefit that would be payable under section 32A as if the contributor had resigned from employment and, in such a case—
 - (a) the application will be taken to be an election under that section; and
 - (b) the amount of entitlement payable under that section will be added to the draw down benefit under subsection (3)(a) (and then invested under subsection (3)(b)).
- (13) Despite a preceding subsection, if the maximum draw down benefit under subsection (3)(a) is not sufficient to be invested under subsection (3)(b) to obtain a draw down payment—
 - (a) unless paragraph (b) applies—the draw down benefit must be an amount equal to the minimum required to obtain a draw down payment (and subsection (3)(a) will apply accordingly);
 - (b) if the minimum amount required to obtain a draw down payment is greater than SP under subsection (3)(a), the Board must reject the application under this section (and no entitlement will arise under subsection (3)).
- (14) The determination of a benefit under this section must take into account the operation of any provision under Part 5A.
- (15) The Governor may, by regulation, declare that any provision of this section is modified in prescribed circumstances (and the regulation will have effect according to its terms).

11—Amendment of section 28A—Resignation pursuant to a voluntary separation package

- (1) Section 28A(1)—after "applies to a contributor" insert:

if the contributor makes an election under subsection (1a) on the basis that the contributor is a contributor
- (2) Section 28A—after subsection (1) insert:
 - (1a) An election under subsection (1) must be made within 3 months after resignation.
- (3) Section 28A(2)—after "applies" insert:

(but if an election is not made under subsection (1a) then section 28 will be taken to apply to the contributor)

12—Insertion of section 33A

After section 33 insert:

33A—Transition to retirement

- (1) A contributor may apply to the Board for the benefit of this section if—
 - (a) the contributor has reached—
 - (i) the age of 55 years; and
 - (ii) his or her preservation age; and
 - (b) the contributor has entered into an arrangement with his or her employer—
 - (i) to reduce his or her hours of work; or
 - (ii) to alter his or her duties,or both, with the effect that there is a reduction in the contributor's salary; and
 - (c) the purpose for establishing the arrangement referred to in paragraph (b) relates to the proposed retirement of the contributor in due course (including by allowing the contributor to scale down his or her work in the lead-up to retirement).
- (2) The Board may require that an application under subsection (1)—
 - (a) be made in such manner as the Board thinks fit; and
 - (b) be accompanied by such information or other material specified by the Board to assist the Board to be satisfied as to the matters set out in paragraphs (b) and (c) of that subsection.
- (3) If the Board is satisfied that a valid application has been made under subsection (1), the contributor will be entitled to a pension (a *draw down benefit*) on the basis of the contributor's application and on the basis that the maximum draw down benefit to which the contributor is entitled will be determined by the Board as follows:

$$B = RP \times \frac{(FS - NS)}{FS}$$

Where—

B is the maximum draw down benefit (expressed as an amount per fortnight)

RP is the amount that would be payable under section 34 if the contributor had retired from employment immediately before the date of the determination (expressed as an amount per fortnight)

FS is the contributor's actual salary immediately before the commencement of the arrangement envisaged by subsection (1)(b)

NS is the contributor's actual salary on the commencement of the arrangement envisaged by subsection (1)(b).

- (4) A draw down benefit may not be commuted until the contributor retires from employment.
- (5) If a contributor who has retired from employment applies for the commutation of a draw down benefit within 6 months after the commencement of the payment of the draw down benefit, the benefit may be commuted in accordance with the regulations as if it were a pension.
- (6) If a contributor who has retired from employment applies for the commutation of a draw down benefit after the expiration of the period that applies under subsection (5), the terms and conditions of the commutation of the benefit will be as determined by the regulations.
- (7) A draw down benefit will be indexed as if it were a pension under this Act.
- (8) When the Board has determined a draw down benefit—
 - (a) the contributions payable by the contributor under section 23 will (despite any provision made by section 23 to the contrary)—
 - (i) be fixed on the basis of the contributor's salary under the arrangement established with his or her employer (for so long as the arrangement continues); and
 - (ii) as so fixed, be payable in respect of this salary from the first full pay period after the Board's determination of the draw down benefit; and
 - (iii) be at the contributor's standard contribution rate under that section; and
 - (b) the contributor's contribution points will accrue, from the date of the determination until the cessation of the relevant arrangement (unless the contributor ceases to make the contributions envisaged by paragraph (a)), at a rate for each contribution month determined as follows:

$$CP = 1 \times \frac{AS}{FSA}$$

Where—

CP is a proportion of 1 contribution point

AS is the contributor's actual salary under the relevant arrangement (as adjusted from time to time)

FSA is the contributor's actual salary immediately before the commencement of the relevant arrangement, adjusted from time to time to take into account any changes to the salary that would have occurred had the contributor not entered into the relevant arrangement but rather continued to be entitled to that salary.

- (9) If the employment arrangements of a contributor who is receiving a draw down benefit under this section alter so that there is an alteration in his or her salary—
- (a) in the case of a reduction in salary—the contributor may apply to the Board for a further benefit in accordance with the provisions of this section and this section will then apply to the application and with respect to the relevant arrangement—
 - (i) as if FS under subsection (3) is the contributor's actual salary immediately before the relevant reduction in salary; and
 - (ii) as if NS under subsection (3) is the contributor's actual salary immediately after the relevant reduction in salary; and
 - (iii) by applying such other modifications as may be necessary for the purpose or as may be prescribed; and
 - (b) in the case of an increase in salary—the draw down benefit will continue as if the increase had not occurred, subject to any adjustments made on account of the benefit, including as to contributions and the accrual of contribution points, as may be prescribed by the regulations.
- (10) When a contributor retires from employment (and is thus entitled to a benefit under section 34), the contributor's entitlement under section 34 will be adjusted in the manner prescribed by the regulations to take into account the draw down benefit provided under this section (and that section will then have effect accordingly).
- (11) If a contributor's employment terminates on account of invalidity in circumstances that give rise to an entitlement under section 37, the entitlement under that section will be adjusted in the manner prescribed by the regulations to take into account the fact that the contributor had elected to receive a draw down benefit under this section (and that section will then have effect accordingly).
- (12) If a contributor's employment is terminated by the contributor's death, any entitlement under section 38 will be adjusted in the manner prescribed by the regulations to take into account the fact that the contributor had elected to receive a draw down benefit under this section (and that section will then have effect accordingly).

- (13) The determination of a benefit under this section must take into account the operation of any provision under Part 5A.
- (14) Despite a preceding subsection, if a contributor who has been receiving a draw down benefit returns to a level of employment that is at least equal to the level that applied immediately before the contributor commenced the arrangement referred to in subsection (1)(b) (the *original level of employment*), the payment of the draw down benefit will be suspended for so long as his or her level of employment is at least equal to the original level of employment (and any adjustments in connection with the operation of this section prescribed by the regulations will apply).
- (15) A contributor who has a rollover account by virtue of the operation of section 47B may, if authorised to do so under the regulations, in conjunction with an application under subsection (1), apply for any benefit that would be payable with respect to that account as if the contributor had resigned from employment and, in such a case—
 - (a) the benefit must be invested in accordance with the regulations; and
 - (b) the investment may be redeemed when the contributor retires from employment under this Act.
- (16) The Governor may, by regulation, declare that any provision of this section is modified in prescribed circumstances (and the regulation will have effect according to its terms).

13—Amendment of section 39A—Resignation or retirement pursuant to a voluntary separation package

Section 39A—after subsection (3g) insert:

- (3h) An election under subsection (3)(b) must be made within 3 months after the date of resignation.
- (3i) A pension under subsection (3g) will be indexed.

14—Insertion of section 40B

After section 40A insert:

40B—Interaction with judicial remuneration or pension entitlements

- (1) If a person would, but for this subsection, be entitled to—
 - (a) the payment of a pension under this Act; and
 - (b) the payment of—
 - (i) salary as a Judge for judicial service; or
 - (ii) a judicial-related pension,
- the right to the payment of a pension under this Act is suspended.

- (2) Subject to this section, the Board will, on the application of a person whose pension is suspended under subsection (1), commute the entitlement to the pension to a lump sum payment.
- (3) An application for commutation must be made—
 - (a) in the case of a suspension under subparagraph (i) of subsection (1)(b)—within 6 months after the pension is suspended due to the circumstances applying under that subparagraph;
 - (b) in the case of a suspension under subparagraph (ii) of subsection (1)(b)—within 3 months after the pension is suspended due to the circumstances applying under that subparagraph.
- (4) If—
 - (a) an application is not made under subsection (3)(a); and
 - (b) the person ceases to receive salary as a Judge for judicial service without an entitlement to a judicial-related pension,the suspension will cease.
- (5) If an application is not made under subsection (3)(b) within the period that applies under that provision, it will be taken that the person has made the application in any event.
- (6) In making the commutation, commutation factors promulgated by regulation will be applied.
- (7) In this section—

Judge has the same meaning as in the *Judges' Pensions Act 1971*;

judicial-related pension means a pension under the *Judges' Pensions Act 1971*;

judicial service has the same meaning as in the *Judges' Pensions Act 1971*.

15—Repeal of section 43A

Section 43A—delete the section

16—Amendment of section 43AF—Effect on contributor's entitlements

Section 43AF—after subsection (5) insert:

- (6) If a contributor has received a draw down benefit under section 26A or 33A—
 - (a) the superannuation interest of the contributor will be taken to include the balance of any draw down benefit that is being held under section 26A(3)(b)(i) or an entitlement under section 33A; and
 - (b) any entitlement under section 26A or 33A will be adjusted to take into account the effect of a payment split under this Part.

17—Amendment of section 45—Effect of workers compensation etc on pension

Section 45—after subsection (1) insert:

- (1aa) Subsection (1) does not apply in relation to a pension that constitutes a draw down benefit under section 33A.

18—Insertion of sections 47C and 47D

After section 47B insert:

47C—Portion of pension etc to be charged against contribution account etc

- (1) A proportion of a pension or lump sum under Part 5 paid to, or in relation to, a contributor will be charged against the contributor's contribution account or, if the account has been closed, will be charged against the relevant division of the Fund.
- (2) The proportion for the purposes of subsection (1) will be equivalent to the proportion of the future benefits payable under Part 5 that can, in the opinion of the Board, be met from the Fund.
- (3) The opinion of the Board must be based on the most recent triennial report under section 21(4).

47D—Charge against Fund if draw down benefit paid

If a contributor becomes entitled to a draw down benefit under section 26A or 33A—

- (a) when the draw down benefit is paid under section 26A—there will be a charge on the relevant division of the Fund equal to the amount charged to the contributor's contribution account and, if relevant, any roll over account, on account of the payment of the draw down benefit;
- (b) when the draw down benefit is paid under section 33A—there will be a charge on the relevant division of the Fund determined by applying the same proportion that applies under section 47C(2) with respect to the payment of a pension.

Schedule 1—Transitional provisions

1—Interpretation

In this Schedule—

principal Act means the *Superannuation Act 1988*.

2—Transitional provisions

- (1) A person—
- (a) who has, before the commencement of this subclause, resigned from employment in circumstances that fall within the ambit of subsection (1) of section 28A of the principal Act (as in existence immediately before that commencement); and
 - (b) who has not received any benefit under that section before the commencement of this subclause,

will have 3 months from that commencement to make an election under this subclause and if such an election is not made by the expiration of that period then section 28 of the principal Act will apply to the person to the exclusion of section 28A of the principal Act.

- (2) A person to whom section 39A of the principal Act applies—
- (a) who resigned or retired from employment before the commencement of this subclause; and
 - (b) who has not made an election under subsection (3)(b) of that section before the commencement of this subclause,

will have 3 months from that commencement to make such election (so that any election made after the expiration of that period by such a person will have no effect).

- (3) Section 40B of the principal Act, as enacted by this Act, applies only to a person whose right to the payment of a pension under the principal Act arises after the commencement of this subclause.