

South Australia

**SOUTHERN STATE SUPERANNUATION ACT 1994**

No. 66 of 1994

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A.D. 1994

No. 66 of 1994

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

[Assented to 3 November 1994]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

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

Commencement

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

Interpretation

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

"**annual employer contribution**" in relation to a member means the amount that is credited annually to the member's employer contribution account under this Act and that is determined under section 28 by reference to the member's salary;

"**basic future service benefit**" means the future service benefit to which every member is entitled on invalidity or death;

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

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

"charge percentage" means—

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

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

"the Consumer Price Index" means the Consumer Price Index (All groups index for Adelaide);

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

"employing authority" in relation to a member means—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**spouse**" includes a putative spouse;

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

"**supplementary future service benefit**" means the benefit represented by the factor "A" in the formulas in sections 34(2) and (3) and 35(3) and (4);

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

"the Trust" means the South Australian Superannuation Fund Investment Trust continued in existence by the *Superannuation Act 1988*.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix.

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

(3) For the purposes of this Act, the employment of a member who was employed for a particular term (not being employment on a temporary or casual basis) will be taken to have been terminated by the employer if the term expires and the employer—

- (a) decides not to re-employ the member in his or her former position; and
- (b) fails to offer the member employment in an alternative position carrying a salary of at least 80 per cent of the salary applicable to the member's former position which the member could reasonably be expected to take.

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

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

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

**PART 2
ADMINISTRATION**

DIVISION 1—THE SOUTHERN STATE SUPERANNUATION FUND

The Fund

4. (1) The Southern State Superannuation Fund is established.
- (2) The assets of the Fund belong (both at law and in equity) to the Crown.
- (3) The Fund is subject to the management and control of the Trust.
- (4) The Treasurer must pay into the Fund periodic contributions reflecting the contributions paid to the Treasurer by members with respect to the relevant period.
- (5) All interest and accretions arising from investment of the Fund must be paid into the Fund.
- (6) The following amounts will be paid from the Fund:
- (a) administrative costs and other expenses related to the management and investment of the Fund;
- (b) any reimbursement of the Consolidated Account that the Treasurer charges against the Fund in pursuance of this Act.
- (7) The Trust must determine the value of the Fund as at the end of each financial year.

Investment of the Fund

5. (1) The Fund will be invested in a manner determined by the Trust.
- (2) The Trust may enter into transactions affecting the Fund—
- (a) for the purpose of investment; or
- (b) for purposes incidental, ancillary or otherwise related to investment.
- (3) The Fund may not be invested—
- (a) in property outside Australia; or
- (b) in real property outside the State,
- unless the Minister has authorised the investment specifically or by reference to the class of investment to which it belongs.
- (4) The Minister may vary or revoke an authorisation under subsection (3).
- (5) A certificate signed by the Minister certifying—
- (a) that a particular transaction is of a kind authorised by subsection (2); or

(b) that a particular transaction has been authorised by the Minister under subsection (3), will be accepted in legal proceedings as conclusive evidence of the matter so certified.

Accounts and audit

6. (1) The Trust must keep proper accounts of receipts and payments in relation to the Fund and must, in respect of each financial year, prepare financial statements in relation to the Fund in a form approved by the Minister.

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

DIVISION 2—MEMBERS' CONTRIBUTION ACCOUNTS

Members' contribution accounts

7. (1) The Board must maintain accounts in the names of all members.

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

(3) Subject to this or any other Act, an amount that is to be carried over from another superannuation fund or scheme to the Southern State Superannuation Scheme on behalf of a member will be paid into the Fund and be credited to the member's contribution account.

(4) At the end of each financial year, each members' contribution account that has a credit balance will be adjusted to reflect a rate of return determined by the Board in relation to members' contribution accounts for the relevant financial year.

(5) In determining a rate of return for the purposes of subsection (4), the Board should have regard to—

(a) the net rate of return achieved by investment of the Fund over the financial year; and

(b) the desirability of reducing undue fluctuations in the rate of return on members' contribution accounts.

(6) Where, in pursuance of subsection (5)(b), the Board determines a rate of return that is at variance with the net rate of return achieved by investment of the Fund, the Board must include its reasons for the determination in its report for the relevant financial year.

(7) Where it is necessary to determine the balance of a member's account at some time other than the end of a financial year, the balance will be extrapolated by applying a percentage rate of return on accounts in the Fund estimated by the Board.

Other accounts to be kept by Board

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

(a) maintain proper accounts of receipts of member's contributions paid under this Act; and

(b) maintain proper accounts of payments to, on behalf of, or in respect of, members; and

(c) prepare financial statements in relation to those receipts and payments.

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

(a) audit the accounts and financial statements referred to in subsection (1); and

(b) audit the other accounts to be maintained by the Board under this Act.

DIVISION 3—THE SOUTHERN STATE SUPERANNUATION (EMPLOYERS) FUND

The Southern State Superannuation (Employers) Fund

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

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

(a) payments to the Treasurer by employers under Part 3 Division 4;

(b) all interest and accretions arising from investment of the fund.

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

(a) the reimbursement of the Consolidated Account in respect of the employer component of benefits payable under this Act or of future service benefits payable under this Act;

(b) the reimbursement of the Consolidated Account in respect of the administration charge prescribed under Part 4;

(c) administrative costs and other expenses related to investment of the fund.

Accounts and audit

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

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

Determination of rate of return

11. (1) At the end of each financial year the Board must determine a rate of return on investment of the fund in respect of that financial year.

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

(a) the net rate of return achieved by investment of the fund over the financial year; and

(b) the desirability of reducing undue fluctuations in the rate of return on the fund.

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

DIVISION 4—PAYMENT OF BENEFITS**Payment of benefits**

12. (1) A payment to be made under this Act to or on behalf of a member or to a spouse of a deceased member or to a deceased member's estate, must be made out of the Consolidated Account (which is appropriated to the necessary extent).

(2) If the payment includes an employee component, an amount equivalent to the amount standing to the credit of the member's contribution account is to be charged against that account and the Treasurer must reimburse the Consolidated Account by charging the Fund with that amount.

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

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

DIVISION 5—REPORTS**Reports**

13. (1) The Board must, on or before 31 October in each year, submit a report to the Minister on the operation of this Act during the financial year ending on 30 June in that year.

(2) The report must include—

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

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

(3) The Trust must, on or before 31 October in each year, submit a report to the Minister on the management and investment of the Fund during the financial year ending on 30 June in that year.

(4) The report under subsection (3) must include—

(a) the audited accounts and statements of the Fund for the relevant financial year; and

(b) a copy of the valuation of the Fund made as at the end of the relevant financial year.

(5) The Minister must, within six sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

**PART 3
MEMBERSHIP AND CONTRIBUTIONS**

DIVISION 1—MEMBERSHIP OF THE SCHEME

Interpretation

14. (1) In this Division—

"the commencement date" in relation to a person who has elected to become a member of the Southern State Superannuation Scheme means the date fixed by the Board for the commencement of that person's membership of the scheme.

(2) For the purposes of this Division, a person who is a member of the Benefit Scheme or any other scheme of superannuation or is a contributor within the meaning of the *Superannuation Act 1988* or the *Police Superannuation Act 1990* will be taken not to be such a member or contributor if the employment on which his or her status as such a member or contributor is based has terminated.

Election by new employee

15. A person who, on commencing employment, would, but for an election under this section, have become a member of the Benefit Scheme may, before his or her employment commences, elect to become a member of the Southern State Superannuation Scheme.

Election by member of the Benefit Scheme

16. (1) A person who is a member of the Benefit Scheme but who is not—

(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 employees of an agency or instrumentality of the Crown,

may elect to become a member of the Southern State Superannuation Scheme.

(2) Where a person makes an election under subsection (1), the amount standing to the credit of his or her superannuation account under the *Superannuation Benefit Scheme Act 1992* will be carried over to the Southern State Superannuation Scheme on the commencement date and will be credited to his or her employer contribution account.

(3) A person who is appointed as a police cadet on or after 1 June 1994 but before 1 July 1995 will be taken to have elected to become a member of the Southern State Superannuation Scheme under subsection (1) on 1 July 1995.

Election by contributor to the State Scheme

17. (1) A contributor within the meaning of the *Superannuation Act 1988* may elect to become a member of the Southern State Superannuation Scheme.

(2) On and after the commencement date, benefits do not accrue under the *Superannuation Act 1988* to a person who makes an election under subsection (1) and such a person cannot make contributions under that Act.

(3) Where a person who makes an election under subsection (1) is also a member of the Benefit Scheme, the amount standing to the credit of his or her superannuation account under the *Superannuation (Benefit Scheme) Act 1992* will be carried over to the Southern State Superannuation Scheme on the commencement date and will be credited to his or her employer contribution account.

Commencement of membership

18. (1) The membership of a person who makes an election under section 15 commences on the commencement of the member's employment.

(2) The membership of a person who makes an election under section 16 or 17 will commence on a date fixed by the Board ("the commencement date") being a date occurring within two months after the election was made.

Members of the police force

19. All members of the police force, and all police cadets, who are not contributors within the meaning of the *Police Superannuation Act 1990* are members of the Southern State Superannuation Scheme.

Elections

20. An election under this Division—

(a) must be made in writing to the Board;

(b) must specify the rate at which the member elects to contribute to the scheme;

(c) will—

(i) in the case of an election received by the Board before this Act comes into operation—be taken to have been made on the day on which this Act comes into operation;

(ii) in any other case—be taken to have been made on the day on which it is received by the Board.

Duration of membership

21. A member remains a member of the scheme until the benefits payable under this Act to, on behalf of, or in respect of, the member have been paid.

DIVISION 2—SUPPLEMENTARY FUTURE SERVICE BENEFIT MEMBERS

Acceptance as a supplementary future service benefit member

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

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

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

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

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

(6) If it appears to the Board—

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

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

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

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

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

Variation of benefits

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

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

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

Election to terminate status as a supplementary future service benefit member

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

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

DIVISION 3—CONTRIBUTIONS BY MEMBERS**Contributions**

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

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

(2) Subject to subsection (3), a member may from time to time elect the rate at which he or she will make contributions.

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

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

(5) A member (who is not a member of the police force) may elect not to contribute to the scheme but such an election cannot operate until the member has contributed to the scheme for at least one financial year.

(6) An election must be made in writing to the Board at least two months before the end of a financial year and will operate from the commencement of the next financial year.

(7) Where the Board is satisfied that a member needs to reduce his or her contributions because of financial hardship, the Board may permit the member to make an election under subsection (6) that will operate in contravention of subsection (5) or before the commencement of the next financial year (or both).

(8) A member's contributions will be fixed in relation to each financial year, as from a day in that financial year determined by the Board—

(a) on the basis of the member's salary as at 31 March last preceding the commencement of the financial year or, if the member's hours of employment have increased or decreased between that date and the commencement of the financial year, on the basis of the member's salary following the last such increase or decrease in the hours of employment; but

(b) —

(i) if the member had not then commenced his or her employment, the contributions will be fixed on the basis of the member's commencing salary;

(ii) if the member was then on leave without pay or at a reduced rate of pay, the contributions will be fixed on the basis of the salary that the member would then have been receiving if not on leave;

- (iii) if the member's employment is of a casual nature, the contributions will be fixed on the basis of a notional salary fixed by the Board in relation to the member;
- (iv) if after the date on which contributions for a particular financial year are fixed there is a reduction in the member's salary resulting from a reduction in hours of work (other than a temporary reduction of less than two weeks duration), there will be a proportionate reduction in the member's contributions (but the member may, with the Board's approval, elect to contribute as if there had been no reduction in salary);
- (v) if during the financial year the member commences a period of leave without pay or at a reduced rate of pay (of more than two weeks duration), the member's contributions will be suspended or reduced proportionately (but the member may, with the Board's approval, elect to contribute as if he or she had not been on leave).

(9) If over a particular period a member receives (while remaining in employment) weekly workers compensation payments for total or partial incapacity for work, contributions will be payable as if the weekly payments were salary or a component of salary (as the case requires) but if the aggregate of the weekly payments and the salary (if any) of the member is less than the salary that the member would have received if not incapacitated, the Board may allow a proportionate reduction in the amount of the contributions for that period.

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

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

DIVISION 4—PAYMENTS BY EMPLOYERS

Payments by employers

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

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

Where—

A is the amount to be paid

S is the amount of salary paid to the member

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

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

(3) In this section—

"employer" means—

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

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

as the case requires.

PART 4
THE EMPLOYER COMPONENT OF BENEFITS

Employer contribution accounts

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

(2) On 30 June 1996 and on 30 June in each succeeding year the Board must credit to each account an amount calculated as follows:

$$A = AEC + \left[\left(B + \frac{AEC}{2} \right) \times \frac{I}{100} \right]$$

Where—

A is the amount to be credited

AEC is the annual employer contribution for the financial year in respect of which the amount is to be credited—see section 28

B is the balance (if any) of the account at the beginning of the financial year in respect of which the amount is to be credited (but if an amount was carried over from the Benefit Scheme or from any other superannuation fund or scheme when the member's membership of the scheme commenced, "B" is, in respect of the first financial year of his or her membership of the scheme, the amount so credited)

I is the interest rate and is equivalent to the rate of return on investments of the Southern State Superannuation (Employers) Fund determined by the Board under Part 2 Division 3 in respect of the relevant financial year.

(3) The interest component of an amount calculated under subsection (2) in respect of the first year of membership must be reduced in proportion to the part of the year (if any) occurring before the membership commenced.

(4) Immediately before the employer component is paid to, on behalf of, or in respect of a member under Part 5, the Board must credit to the member's employer contribution account an amount calculated as follows:

$$A = AEC + \left[\left(B + \frac{AEC}{2} \right) \times \frac{I}{100} \times \frac{Y}{D} \right]$$

but if the member's membership of the scheme commenced during the relevant financial year and an amount was carried over from the Benefit Scheme or from any other superannuation fund or scheme when the member's membership of the scheme commenced, the amount to be credited by the Board will be calculated as follows:

$$A = AEC + \left[\left(B_1 + \frac{AEC}{2} \right) \times \frac{I}{100} \times \frac{Y}{D} \right]$$

Where—

- A is the amount to be credited
- AEC is the annual employer contribution for the relevant financial year—see section 28
- B is the balance (if any) of the account at the beginning of the relevant financial year
- B₁ is the amount carried over on behalf of the member and credited to the member's employer contribution account
- I is the interest rate and is equivalent to the rate of return on investments of the Southern State Superannuation (Employers) Fund estimated by the Board in respect of that part of the relevant financial year occurring before the last day on which interest is payable
- Y is the number of days from the commencement of the member's membership of the scheme or from the commencement of the relevant financial year (whichever is later) to the last day on which interest is payable
- D is the number of days in the relevant financial year.

(5) Where the Board has given to a member, or to the spouse or personal representatives of a deceased member, at least one month's written notice of its requirements to enable it to make payment of superannuation benefits under this Act to, on behalf of, or in respect of, the member and those requirements have not been met within the time specified in the notice, the Board may by notice in writing to the member, or to the spouse or personal representatives of a deceased member, certify that interest will cease to be payable under subsection (4) on the date specified in the notice.

(6) In this section—

"the last day on which interest is payable" means—

- (a) where the Board has issued a certificate under subsection (5), the day specified in the certificate;
- (b) in any other case, the day on which the amount referred to in subsection (4) is credited to the member's employer contribution account;

"the relevant financial year" means the financial year in which the last day on which interest is payable occurs.

Annual employer contribution

28. (1) The annual employer contribution in respect of a member is calculated as follows:

$$AEC = S \times \left[\frac{CP - N}{100} \right]$$

Where—

AEC is the annual employer contribution

S is the amount of salary paid or payable to the member during the financial year in relation to which the calculation is made where the member was a member of the scheme throughout the year or, where the member was a member of the scheme for part only of the year, S is the amount of salary paid or payable to the member during that part of the year

CP is the charge percentage

N is the future service benefit factor and is—

- (a) in the case of a supplementary future service benefit member—a number (being a number greater than the number referred to in paragraph (b)) fixed by or in accordance with the regulations in respect of the member; or
- (b) in any other case—0.3 or such other number as is prescribed from time to time by regulation.

(2) If two or more charge percentages apply in relation to a member at different times during a financial year, the annual employer contribution in respect of the financial year will be the aggregate of the amounts calculated under subsection (1) in respect of the parts of the year during which each of the charge percentages applied and for the purpose of those calculations "S" will be the salary paid or payable to the member for the relevant part of the financial year.

Administration charge

29. (1) At the end of each financial year the Board must debit each employer contribution account with the amount of the administration charge.

(2) Immediately before the employer component is paid to, on behalf of, or in respect of a member under Part 5, the member's employer contribution account must be debited with the amount of the administration charge in respect of the financial year in which the employer component is paid.

(3) The amount of the administration charge will be prescribed by regulation.

(4) At the end of each financial year the Consolidated Account is to be reimbursed with the aggregate amount of the administration charge debited against each employer contribution account in respect of that year by charging that amount against the Southern State Superannuation (Employers) Fund.

**PART 5
SUPERANNUATION BENEFITS**

Interpretation**30. In this Part—**

"the employee component" in relation to a member means an amount that is equivalent to the greater of the amount standing to the credit of the member's contribution account and the amount that would have stood to the credit of that account if instead of the Board adjusting the balance to reflect a rate of return determined by the Board the balance had been adjusted to reflect a rate of return equal to movements in the Consumer Price Index plus 4 per cent;

"the employer component" in relation to a member means an amount that is equivalent to the greater of the amount standing to the credit of the member's employer contribution account and the amount that would have stood to the credit of that account if the amounts credited to the account had not included an interest component but the balance of the account had been adjusted to reflect a rate of return equal to movements in the Consumer Price Index plus 4 per cent.

Retirement

31. (1) A member who retires from employment is entitled to payment of the employee component and the employer component.

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

- (a)** the member has reached the age of 55 years; and
- (b)** the member's employment terminates or is terminated for any reason (except the member's death).

Resignation

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

- (a)** to take immediately the employee component; or
- (b)** to preserve the employee component; or
- (c)** to carry the employee component over to some other superannuation fund or scheme approved by the Board in accordance with criteria prescribed by the regulations for the purposes of this paragraph.

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

- (a)** if the circumstances referred to in subsection (3) apply—to take immediately the employer component; or
- (b)** to preserve the employer component; or
- (c)** to carry the employer component over to some other superannuation fund or scheme approved by the Board in accordance with criteria prescribed by the regulations for the purposes of this paragraph.

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

- (a) the amount of the employer component is less than \$500; or
- (b) the member satisfies the Board that—
 - (i) he or she intends leaving Australia on a permanent basis; or
 - (ii) he or she is residing out of Australia and will continue to do so on a permanent basis.

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

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

(6) Where the member elects to preserve the employee or employer component (or both), the following provisions apply:

- (a) the member may at any time after reaching 55 years of age require the Board to pay the component and, if no such requirement has been made on or before the date on which the member reaches 65 years of age, the Board will pay the component to the member;
- (b) if the member satisfies the Board that he or she has become totally and permanently incapacitated for work, the Board will pay the component to the member;
- (c) if the member dies, the component will be paid to the spouse of the deceased member or, if he or she left no surviving spouse, to the member's estate,

(and a payment under any of the above paragraphs excludes further rights so that a claim cannot be subsequently made under some other paragraph).

(7) A member who has elected, or has been taken to have elected, to preserve his or her employee component or employer component (or both) and to whom the component has not been paid under subsection (6), may elect to withdraw that election and to elect to carry the component over to some other superannuation fund or scheme approved by the Board in accordance with criteria prescribed by the regulations for the purposes of this subsection.

(8) If both components have been preserved a member cannot make an election under subsection (7) to carry only one of them over.

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

- (a) the member must satisfy the Board by such evidence as it may require that he or she has been admitted to membership of the fund or scheme; and
- (b) on being so satisfied the Board will pay the component on behalf of the member to the fund or scheme.

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

(11) For the purposes of this section and subject to any other provision of this Act a member will be taken to resign if the member's employment terminates or is terminated for any reason (except invalidity, retrenchment or death).

Retrenchment

33. (1) Subject to subsection (2), where a member's employment is terminated by retrenchment the member is entitled to payment of the employee component and the employer component.

(2) The member may elect to preserve his or her employee or employer component or to carry the employee or employer component over to some other superannuation fund or scheme as if the member had resigned from employment.

Termination of employment on invalidity

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

- (a) the employee component; and
- (b) a component consisting of—
 - (i) the employer component; and
 - (ii) subject to this section, a future service benefit calculated in accordance with subsection (2) or (3).

(2) Where the member had been a member of the scheme for a period that included the last three complete financial years before termination of the member's employment, the future service benefit will be \$20 000 or an amount calculated as follows whichever is the greater:

$$FSB = \frac{S}{3} \times \frac{(5 + A)}{100} \times \frac{M}{12}$$

Where—

FSB is the future service benefit

S is the amount of salary paid to the member during the last three complete financial years

A is the supplementary future service benefit and is—

- (a) if—
- (i) the Board is satisfied that the member's incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent; and
 - (ii) the member is a supplementary future service benefit member; and
 - (iii) the member was contributing to the scheme when his or her employment was terminated (this requirement does not apply to a police cadet),

a number fixed by or in accordance with the regulations in respect of the member;

- (b) in any other case—zero

M is the number of months between the member's age at the termination of his or her employment and the age of 60 years (an incomplete month being counted as a whole month).

(3) In any other case the future service benefit will be \$20 000 or an amount calculated as follows whichever is the greater:

$$FSB = \frac{S}{D} \times 365 \times \frac{(5 + A)}{100} \times \frac{M}{12}$$

Where—

FSB is the future service benefit

S is the amount of salary paid to the member during the period of his or her membership of the scheme

D is the number of days of the member's membership of the scheme

A is the supplementary future service benefit and is—

- (a) if—
- (i) the Board is satisfied that the member's incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent; and
 - (ii) the member is a supplementary future service benefit member; and
 - (iii) the member was contributing to the scheme when his or her employment was terminated (this requirement does not apply to a police cadet),

a number fixed by or in accordance with the regulations in respect of the member;

- (b) in any other case—zero

M is the number of months between the member's age at the termination of his or her employment and the age of 60 years (an incomplete month being counted as a whole month).

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

(5) A future service benefit is not payable to a member whose employment terminated on account of invalidity within two years after the commencement of the member's membership of the scheme—

(a) unless the invalidity was caused by accidental injury; or

(b) where the invalidity was not caused by accidental injury—unless the member is a supplementary future service benefit member (but, in that case, payment of both the basic future service benefit and the supplementary future service benefit is subject to the conditions (if any) imposed by the Board when granting the member's application to be accepted as a supplementary future service benefit member.)

(6) If—

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

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

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

$$A = 3 \times S$$

Where—

A is the amount

S is—

(a) if the member—

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

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

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

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

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

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

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

(b) —

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

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

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

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

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

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

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

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

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

Death of member

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

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

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

- (a) the employee component; and
- (b) the employer component; and
- (c) subject to this section in the case of a member who had not reached the age of 60 years, a future service benefit calculated in accordance with subsection (3) or (4).

(3) Where the member had been a member of the scheme for a period that included the last three complete financial years before the member's death, the future service benefit will be \$20 000 or an amount calculated as follows whichever is the greater:

$$FSB = \frac{S}{3} \times \frac{(5 + A)}{100} \times \frac{M}{12}$$

Where—

FSB is the future service benefit

S is the amount of salary paid to the member during the last three complete financial years

A is the supplementary future service benefit and is—

(a) if—

- (i) the member was a supplementary future service benefit member; and
- (ii) was contributing to the scheme at the time of his or her death (this requirement does not apply in relation to a police cadet),

a number fixed by or in accordance with the regulations in respect of the member; or

(b) in any other case—zero

M is the number of months between the member's age at death and the age of 60 years (an incomplete month being counted as a whole month).

(4) In any other case the future service benefit will be \$20 000 or an amount calculated as follows whichever is the greater:

$$FSB = \frac{S}{D} \times 365 \times \frac{(5 + A)}{100} \times \frac{M}{12}$$

Where—

FSB is the future service benefit

S is the amount of salary paid to the member during the period of his or her membership of the scheme

D is the number of days of the member's membership of the scheme

A is the supplementary future service benefit and is—

(a) if—

(i) the member was a supplementary future service benefit member; and

(ii) was contributing to the scheme at the time of his or her death (this requirement does not apply in relation to a police cadet),

a number fixed by or in accordance with the regulations in respect of the member; or

(b) in any other case—zero

M is the number of months between the member's age at death and the age of 60 years (an incomplete month being counted as a whole month).

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

(6) A future service benefit is not payable in respect of a member who dies within two years after the commencement of the member's membership of the scheme—

(a) unless the death was caused by accidental injury; or

(b) where the death was not caused by accidental injury—unless the member was a supplementary future service benefit member (but, in that case, payment of both the basic future service benefit and the supplementary future service benefit is subject to the conditions (if any) imposed by the Board when granting the member's application to be accepted as a supplementary future service benefit member.)

(7) If—

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

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

$$A = 3 \times S$$

Where—

A is the amount

S is—

(a) if the member—

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

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

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

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

**PART 6
MISCELLANEOUS**

Employees to be informed of their rights to membership of the scheme

36. The Board must ensure that persons who are entitled to become members of the scheme are provided with relevant information in relation to the scheme.

Employer benefits and contributions where member on leave without pay

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

Exclusion of benefits under awards, etc.

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

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

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

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

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

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

(3) In subsection (2)—

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

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

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

Police Occupational Superannuation Scheme

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

Review of the Board's decision

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

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

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

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

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

Power to obtain information

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

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

(3) A person who—

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

is guilty of an offence.

Penalty: Division 4 fine.

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

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

Where—

A is the amount

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

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

(5) In subsection (4)—

"employer" means—

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

Delegation by Board

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

(2) A delegation under this section—

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

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

43. (1) If a deceased member is survived by a lawful spouse and a putative spouse, any benefit to which a surviving spouse is entitled under this Act will be divided between them in a ratio determined by reference to the relative length of the periods for which each of them cohabited with the deceased as his or her spouse.

(2) Where a number of periods of cohabitation are to be aggregated for the purpose of determining an aggregate period of cohabitation for the purpose of subsection (1), any separate period of cohabitation of less than three months will be disregarded.

(3) A surviving spouse must, at the request of the Board, furnish it with any information that it requires for the purposes of making a division under subsection (1).

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

(5) Where—

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

- (b) a benefit is paid to one of them on the assumption that he or she is the sole surviving spouse of the deceased,

the other spouse has no claim on the benefit insofar as it has been already paid unless that spouse gave the Board notice of his or her claim before the date of payment.

Payment in case of death

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

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

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

Payments in foreign currency

45. Where—

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

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

Rounding off of benefits

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

Liabilities may be set off against benefits

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

Resolution of doubts or difficulties

48. If, in the opinion of the Board, any doubt or difficulty arises in the application of this Act to particular circumstances, the Board may give such directions as are reasonably necessary to resolve the doubt or difficulty and this Act will apply subject to a direction given by the Board under this section.

Regulations

49. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Any such regulation may impose a penalty, not exceeding a division 7 penalty, for breach of or non-compliance with a provision of the regulations.

SCHEDULE 1

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

SCHEDULE 2

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

APPENDIX

DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of assent to this Act divisional penalties and expiation fees are, as provided by section 28a of the *Acts Interpretation Act 1915*, as follows:

| Division | Maximum imprisonment | Maximum fine | Expiation fee |
|----------|----------------------|--------------|---------------|
| 1 | 15 years | \$60 000 | — |
| 2 | 10 years | \$40 000 | — |
| 3 | 7 years | \$30 000 | — |
| 4 | 4 years | \$15 000 | — |
| 5 | 2 years | \$8 000 | — |
| 6 | 1 year | \$4 000 | \$300 |
| 7 | 6 months | \$2 000 | \$200 |
| 8 | 3 months | \$1 000 | \$150 |
| 9 | — | \$500 | \$100 |
| 10 | — | \$200 | \$75 |
| 11 | — | \$100 | \$50 |
| 12 | — | \$50 | \$25 |

Note: This appendix is provided for convenience of reference only.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor