

Passed by both Houses



New South Wales

Superannuation Legislation Amendment Bill 2000

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2000*



New South Wales

Superannuation Legislation Amendment Bill 2000

Act No , 2000

An Act to amend various public sector superannuation Acts with respect to the release of benefits on grounds of severe financial hardship or on compassionate grounds, withdrawal benefits, commutation, adjustment and recovery of benefits, obtaining information, acceptance of late elections and waiting periods for elections, payment of superannuation contribution surcharge debts and payment of contributions; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Superannuation Legislation Amendment Act 2000*.

2 Commencement

- (1) This Act commences on the date of assent, except as provided by this section.
- (2) Schedule 2, 3 [3], 4 [3] and [4], 5 [2]–[10] and [12]–[17] and 6 [6] commence on a day or days to be appointed by proclamation.

3 Amendment of First State Superannuation Act 1992 No 100

The *First State Superannuation Act 1992* is amended as set out in Schedule 1.

4 Amendment of Police Association Employees (Superannuation) Act 1969 No 33

The *Police Association Employees (Superannuation) Act 1969* is amended as set out in Schedule 2.

5 Amendment of Police Regulation (Superannuation) Act 1906 No 28

The *Police Regulation (Superannuation) Act 1906* is amended as set out in Schedule 3.

6 Amendment of State Authorities Non-contributory Superannuation Act 1987 No 212

The *State Authorities Non-contributory Superannuation Act 1987* is amended as set out in Schedule 4.

7 Amendment of State Authorities Superannuation Act 1987 No 211

The *State Authorities Superannuation Act 1987* is amended as set out in Schedule 5.

8 Amendment of Superannuation Act 1916 No 28

The *Superannuation Act 1916* is amended as set out in Schedule 6.

9 Explanatory notes

The matter appearing under the heading “Explanatory note” in any of the Schedules does not form part of this Act.

Schedule 1 Amendment of First State Superannuation Act 1992

(Section 3)

[1] Section 12B

Insert after section 12A:

12B Contributions for employees who fund their own superannuation

- (1) This section applies to an employee, other than an executive officer, who is employed under a contract under which contributions made by the employer to the employee's superannuation form part of the total remuneration package of the employee and are deducted from the monetary remuneration otherwise payable to the employee.
- (2) An employee to whom this section applies may give his or her employer a written notice requiring the employer to cease to make contributions payable to FTC under section 12 in respect of an amount of salary or wages of the employee that exceeds the maximum contribution base.
- (3) An employer who is given such a notice:
 - (a) must comply with it, and
 - (b) is not required to make the contributions referred to in section 12 in respect of that part of the salary or wages of the employee that exceeds the maximum contribution base, as applicable from time to time.
- (4) A notice given under this section may be revoked by the employee by further notice in writing given to the employer.
- (5) If the notice is revoked, the employer is required to resume making the contributions referred to in section 12 in respect of that part of the salary or wages of the employee that exceeds the maximum contribution base in the financial year that commences after the notice of revocation is given to the employer.

(6) In this section:

maximum contribution base has the meaning given by the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth.

[2] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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Explanatory note

Maximum salary for superannuation contributions

The object of the amendment set out in item [1] is to allow employees who fund their own superannuation to elect not to have contributions made to superannuation by their employer in respect of amounts exceeding the maximum contribution base applicable under the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth. The employees who will be entitled to make such an election are employees who are employed under a contract under which employer contributions to superannuation form part of the total remuneration package of the employee and are deducted from the monetary remuneration payable to the employee. The amendment will not apply to executive officers, who are already entitled to nominate their salary base for contributions under other provisions of the Principal Act.

Savings and transitional provisions

Item [2] enables savings and transitional regulations to be made consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Police Association Employees (Superannuation) Act 1969

(Section 4)

**[1] Section 3 Employees of Association transferring from employment as
police officers**

Insert “, 12F, 12G” before “, 13” in section 3 (2).

[2] Section 3 (2AA)

Insert at the end of section 3 (2AA) (b):

, and

- (c) in the case of a benefit of a kind payable under section 12F or 12G of that Act, compliance with any applicable requirements of any regulations made under section 12H of that Act.

[3] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

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Explanatory note

Benefits in cases of severe financial hardship and on compassionate grounds

Items [1] and [2] apply to Police Association employees who contribute to the Police Superannuation Fund the right to release of benefits from that Fund on the grounds of severe financial hardship or on compassionate grounds. The same rights are conferred on police officers who contribute to that Fund by amendments made by Schedule 3 to this Act.

Savings and transitional provisions

Item [3] enables regulations of a savings and transitional nature to be made consequent on the enactment of the proposed Act.

Schedule 3 Amendment of Police Regulation (Superannuation) Act 1906

(Section 5)

[1] Section 1 (2) Name of Act, commencement and definitions

Omit the definition of *Insurance and Superannuation Commissioner*.

[2] Section 12E Repayment to STC in certain cases

Insert after section 12E (2):

- (3) If a gratuity is paid under section 12B or 12D to or in respect of a member of the police force who is hurt as referred to in subsection (1), STC is entitled to be indemnified by the person liable to pay the damages (being an indemnity limited to the amount of those damages).
- (4) If any payment is made under the indemnity and, when the payment is made, a judgment has not been obtained against the person paying under the indemnity, the payment is, to the extent of its amount, a defence to proceedings against that person for damages.
- (5) If any payment is made under the indemnity and, when the payment is made, judgment has been obtained for damages against the person paying under the indemnity (but judgment has not been satisfied), the payment, to the extent of its amount, satisfies the judgment.
- (6) For the purpose of applying this section to or in respect of a gratuity paid or payable under section 12B or 12D, STC may request the person to whom the gratuity is payable or has been paid to provide STC with an authority:
 - (a) to obtain from a third person any information or evidence that is relevant to the question of whether damages (as referred to in subsection (1)) have been recovered, and
 - (b) to advise any such person of any payment under this section.

- (7) If a person does not comply with a request to provide the authority, STC is not obliged to proceed to pay the gratuity concerned.
- (8) Nothing in this section limits the operation of section 68 of the *Superannuation Administration Act 1996*.

[3] Sections 12F–12H

Insert after section 12E:

12F Release of benefits on grounds of severe financial hardship

- (1) STC may, on the election of a contributor, or a former contributor who has provided for a benefit under section 9B or had a benefit preserved under section 9C, release to the contributor or former contributor a benefit on the ground of the contributor or former contributor's severe financial hardship.
- (2) STC may release the benefit only if STC is satisfied that the circumstances are such that a benefit would be payable on the grounds of severe financial hardship if the contributor or former contributor were a member of a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.
- (3) The amount paid:
 - (a) is to be the amount payable for the purpose of complying with the requirements of that Act for payment of such a benefit from a regulated superannuation fund, and
 - (b) is not to exceed the amount of any accrued or preserved benefit that would be payable to the contributor or former contributor under this Act if the contributor or former contributor were eligible to be paid such a benefit.
- (4) A contributor or former contributor may, at any time before a benefit is released under this section, vary or revoke an election under this section.
- (5) An amount may not be paid under this section unless any applicable requirements of any regulations made under section 12H have been complied with.

12G Release of benefit on compassionate grounds

- (1) STC may, on the election of a contributor, or a former contributor who has provided for a benefit under section 9B or had a benefit preserved under section 9C, release to the contributor or former contributor a benefit on compassionate grounds.
- (2) STC may release the benefit only if STC is satisfied that the circumstances are such that the Regulator (within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth) would be entitled to determine that the amount could be released on compassionate grounds if the contributor or former contributor were a member or former member of a regulated superannuation fund within the meaning of that Act.
- (3) The amount paid:
 - (a) is to be the amount payable for the purpose of complying with the requirements of that Act for payment of such a benefit from a regulated superannuation fund, and
 - (b) is not to exceed the amount of any accrued or preserved benefit that would be payable to the contributor or former contributor under this Act if the contributor or former contributor were eligible to be paid such a benefit.
- (4) A contributor or former contributor may, at any time before a benefit is released under this section, vary or revoke an election under this section.
- (5) An amount may not be paid under this section unless any applicable requirements of any regulations made under section 12H have been complied with.

12H Effect on benefits

- (1) Regulations may be made for or with respect to the payment and calculation of benefits where part of a benefit has been released to a person under section 12F or 12G.
- (2) Without limiting subsection (1), regulations may be made for or with respect to the following matters:

- (a) the adjustment by STC of a benefit that is paid to a person to whom an amount has been previously released under section 12F or 12G, including interest payable in respect of the amount released,
- (b) the obtaining of consent to any such adjustment,
- (c) the obtaining of actuarial advice by STC for the purpose of any such adjustment,
- (d) enabling the payment to STC of amounts to set-off amounts released under section 12F or 12G against benefits that would otherwise accrue,
- (e) any matter ancillary to or consequential on the matters set out in paragraphs (a)–(d).

[4] Section 14AA Power of STC to reduce benefits to offset certain tax liabilities of the Fund

Insert after section 14AA (3):

- (3A) If STC determines a surcharge deduction amount in respect of a contributor or former contributor under this section, STC may, on the application of the contributor or former contributor, apply the benefit that accrues to or in respect of the contributor or former contributor under the *State Authorities Non-contributory Superannuation Act 1987* toward payment of the surcharge deduction amount, and make a determination reducing the benefit payable under that Act accordingly. In such a case, STC may make a determination reducing the benefit payable under this Act to the extent necessary (if any) to pay the balance of the surcharge deduction amount.

[5] Section 14B Calculation of adjustment percentage

Omit section 14B (2). Insert instead:

- (2) If:
- (a) the percentage calculated for a year in accordance with subsection (1) (b) is less than 1.0 per centum, or
 - (b) the Index number for the June quarter in a year is the same as the Index number for the immediately preceding June quarter,
- there is deemed to be no adjustment percentage for that year.

[6] Section 16A

Insert after section 16:

16A Late elections, applications and choices

- (1) STC may accept an election, application or choice that is not made or received within the time required under this Act if it is satisfied that in all the circumstances of the case it is desirable to do so.
- (2) STC may impose conditions on the acceptance of the election, application or choice.
- (3) STC may deal with the election, application or choice accepted under this section as if it had been made or received within the required time.

[7] Schedule 6 Savings and transitional provisions

Insert at the end of clause 1 (1):

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[8] Schedule 6, clause 8

Omit clause 8 (1).

[9] Schedule 6

Insert at the end of the Schedule with appropriate Part and clause numbers:

Part Superannuation Legislation Amendment Act 2000

Definition

In this Part:

amending Act means the *Superannuation Legislation Amendment Act 2000*.

Application of indemnities relating to damages recovered by recipients of hurt on duty gratuities

- (1) This clause applies to a person to whom a gratuity under section 12B or 12D was paid before the date of assent to the amending Act.
- (2) Section 12E (3)–(5), (7) and (8), as inserted by the amending Act, do not apply to or in respect of any such gratuity.
- (3) Section 12E (6), as inserted by the amending Act, extends to any such gratuity.

Information about other possible payments to recipients of hurt on duty gratuities

- (1) This clause applies to a member of the police force in respect of whom a gratuity was paid under section 12B or 12D before the date of assent to the amending Act.
- (2) STC may request information that is relevant to whether damages (as referred to in section 12E) have been paid or are payable to or in respect of the member of the police force, and the particulars of the damages, from the following persons and bodies:
 - (a) the Commissioner of Police,
 - (b) the Motor Accidents Authority,
 - (c) the Victims Compensation Tribunal,
 - (d) any other person liable to pay damages.
- (3) Despite the provisions of any other Act, a request may be made under subclause (2) without the authority of the person to whom the gratuity was paid or without the authority or consent of any other person whose authority or consent would otherwise be required.
- (4) Despite the provisions of any other Act, a person or body to whom a request is made under subclause (2) must comply with the request.
- (5) In subclause (2), a reference to damages includes a reference to a sum ordered or directed to be paid under a provision of the *Victims Support and Rehabilitation Act 1996* by way of compensation for injury.

Adjustment of superannuation allowances (section 14B)

The amendment made to section 14B by the amending Act does not affect the calculation of an adjustment percentage for a year if the June quarter in that year ended before the commencement of that amendment.

Late conversion elections

- (1) This clause applies to a conversion election made before the commencement of this clause and after the time required under Part 3B for the making of the conversion election.
- (2) Section 16A, as inserted by the amending Act, extends to any such election and STC may deal with the election accordingly.
- (3) Any acceptance by STC, before the commencement of this clause, of a conversion election to which this clause applies is validated.

Explanatory note

Damages paid or payable to recipients of hurt on duty gratuities

Section 12E of the Principal Act provides for the circumstances where a hurt on duty benefit is payable or paid in respect of the death of or injury to a contributor to the Fund and damages are also recoverable from another person. The gratuity is not payable to a person who recovers damages and a person who recovers damages must repay the amount of any gratuity paid.

Item [2] inserts provisions into section 12E entitling STC to an indemnity from the person liable to pay the damages. The indemnity is to be limited to the amount of the damages. Provision is also made as to the effect of payment under an indemnity. The amendment also enables STC to obtain an authority from the person to whom a gratuity is paid or payable to obtain information from a third person that is relevant to the question of whether damages have been recovered. STC may refuse to pay the gratuity if an authority is not provided.

Item [9] inserts proposed transitional provisions into Schedule 6. One provision provides that the new provisions relating to indemnities and the withholding of gratuities if an authority is not given do not apply to gratuities paid before the provisions commence. Another provision enables STC to obtain information from specified third parties about payments of damages to persons paid gratuities before the provisions commence.

Benefits in cases of severe financial hardship and on compassionate grounds

Currently, a benefit may be paid to a member of a superannuation fund regulated by the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth on the grounds of severe financial hardship or on compassionate grounds. Regulations made under that Act set out when such benefits may be released to members of superannuation funds regulated by that Act.

Item [3] inserts proposed sections 12F–12H which extend to current contributors to the Fund, and persons who have preserved benefits in the Fund, the right to release of a benefit on the grounds of severe financial hardship or on compassionate grounds. Such a benefit is only to be payable under the circumstances in which such benefits may be paid to members of superannuation funds regulated under the Commonwealth Act.

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Schedule 3 Amendment of Police Regulation (Superannuation) Act 1906

Proposed section 12H provides for regulations to be made for or with respect to the payment and calculation of future benefits where an amount has been previously released on such grounds.

Reduction of benefit to offset liability for superannuation contributions surcharge

Section 14AA of the Principal Act allows STC to reduce a benefit payable under the Act in order to offset liability for a superannuation contributions surcharge on employer contributions to benefits accruing to a contributor under the Principal Act and the *State Authorities Non-contributory Superannuation Act 1987*. Item [4] amends section 14AA so as to allow STC, on the application of a contributor or former contributor, to apply the benefit payable to the contributor under the *State Authorities Non-contributory Superannuation Act 1987* toward payment of the superannuation contributions surcharge, and reduce the benefit payable under that Act accordingly. The benefit payable under the Principal Act may be reduced if necessary to pay the balance of the superannuation contributions surcharge.

Adjustment of superannuation allowances for CPI changes

Division 2 of Part 4 of the Principal Act provides for the automatic adjustment of superannuation allowances in order to take account of changes in the consumer price index. Superannuation allowances are adjusted by the amount of the "adjustment percentage", calculated by comparing the index number for the June quarter against the index number for the previous June quarter. If the adjustment percentage for a year, as so calculated, is less than 1 per centum, then the change is disregarded, and accordingly superannuation allowances are not adjusted in that year. Item [5] amends section 14B to remove that restriction, but only in so far as it relates to increases in the consumer price index. As a result, if there is a small upward movement in the consumer price index in any year, superannuation allowances will be increased in that year.

Item [9] includes a transitional provision.

Late conversion elections

Item [6] inserts proposed section 16A. The proposed section enables STC to accept late elections, choices and applications if it is satisfied that in all the circumstances of the case it is desirable to do so.

Item [9] inserts a savings and transitional provision into Schedule 6. The provision enables STC to accept late conversion elections that have already been made and validates the acceptance of any late conversion elections before the clause commences. A conversion election is an election under Part 3B of the Principal Act to convert benefits to a lump sum and transfer them to the First State Superannuation Fund or another fund.

Item [8] makes a consequential amendment.

Savings and transitional provisions

Item [7] enables regulations of a savings and transitional nature to be made consequent on the enactment of the proposed Act.

Other amendments

Item [1] omits an unnecessary definition.

Schedule 4 Amendment of State Authorities Non-contributory Superannuation Act 1987

(Section 6)

[1] Section 3 Definitions

Omit the definition of *Insurance and Superannuation Commissioner* from section 3 (1).

[2] Section 23 When benefits are payable

Omit “Insurance and Superannuation Commissioner appointed under the *Insurance and Superannuation Commissioner Act 1987* of the Commonwealth” from section 23 (4).

Insert instead “Regulator (within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth)”.

[3] Section 23 (5) and (6)

Omit section 23 (5). Insert instead:

- (5) An amount of benefit released under subsection (1) (c) on the grounds of severe financial hardship or on compassionate grounds is not to exceed the amount of any accrued or preserved benefit under this Act that would be payable to the person if the person were eligible to be paid such a benefit.
- (6) An amount of benefit released under subsection (1) (c) on the grounds of severe financial hardship or on compassionate grounds may not be paid unless any applicable requirements of any regulations made under section 23B have been complied with.

[4] Section 23B

Insert after section 23A:

23B Effect on other benefits

- (1) Regulations may be made for or with respect to the payment and calculation of benefits where part of a benefit has been released to a person under section 23 (1) (c) on the grounds of severe financial hardship or on compassionate grounds.
- (2) Without limiting subsection (1), regulations may be made for or with respect to the following matters:
 - (a) the adjustment by STC of a benefit that is paid to a person to whom such an amount has been previously released, including interest payable in respect of the amount released,
 - (b) the obtaining of consent to any such adjustment,
 - (c) the obtaining of actuarial advice by STC for the purpose of any such adjustment,
 - (d) enabling the payment to STC of amounts to set-off the amounts released against benefits that would otherwise accrue,
 - (e) any matter ancillary to or consequential on the matters set out in paragraphs (a)–(d).

[5] Section 26A Power of STC to reduce benefits to offset certain tax liabilities of a fund maintained under section 9 (1)

Insert after section 26A (2):

- (3) A benefit may also be reduced by STC in accordance with any of the following provisions (which allow STC to apply the benefit toward payment of a superannuation contributions surcharge):
 - (a) section 14AA of the *Police Regulation (Superannuation) Act 1906*,
 - (b) section 45A of the *State Authorities Superannuation Act 1987*,
 - (c) section 61RA of the *Superannuation Act 1916*.

[6] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

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Explanatory note

Benefits in cases of severe financial hardship and on compassionate grounds

Currently, a benefit may be paid under the Principal Act in circumstances in which a benefit may be paid to a member of a superannuation fund regulated by the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth. These include the payment of benefits on the grounds of severe financial hardship or on compassionate grounds. Regulations made under that Act set out when such benefits may be released to members of superannuation funds regulated by that Act. Currently, a right to the release of such a benefit is limited to former employees who have preserved benefits in the Fund.

Item [3] removes the limitation so as to extend the right to release of such a benefit to current employees.

Item [4] inserts proposed section 23B which provides for regulations to be made for or with respect to the payment and calculation of future benefits where an amount has been previously released on such grounds.

Payment of liability for superannuation contributions surcharge

The *Police Regulation (Superannuation) Act 1906*, the *State Authorities Superannuation Act 1987* and the *Superannuation Act 1916* allow STC to reduce benefits payable under those Acts in order to offset any liability for a superannuation contributions surcharge on employer contributions to benefits accruing to a contributor or former contributor under those Acts and the Principal Act. Amendments to those Acts will allow STC, on the application of the contributor or former contributor, to apply the benefit payable under the Principal Act toward payment of the superannuation contributions surcharge. Item [5] makes a consequential amendment to section 26A of the Principal Act.

Other amendments

Item [1] omits an unnecessary definition and item [2] makes a consequential amendment.

Savings and transitional provisions

Item [6] enables regulations of a savings and transitional nature to be made consequent on the enactment of the proposed Act.

Schedule 5 Amendment of State Authorities Superannuation Act 1987

(Section 7)

[1] Section 3 Definitions

Omit the definition of *Insurance and Superannuation Commissioner* from section 3 (1).

[2] Section 43B Release of benefit on grounds of severe financial hardship

Omit section 43B (1). Insert instead:

- (1) STC may, on the written election of a contributor, or former contributor who has provided for a deferred benefit, release to the contributor or former contributor a benefit on the grounds of the contributor's or former contributor's severe financial hardship.

[3] Section 43B (2)

Omit "only pay the benefit". Insert instead "release the benefit only".

[4] Section 43B (2)

Insert "contributor or" before "former contributor".

[5] Section 43B (3)

Omit "of the benefit". Insert instead "paid".

[6] Section 43B (3) (b)

Omit the paragraph. Insert instead:

- (b) is not to exceed the amount of any accrued or deferred benefit under this Act that would be payable to the contributor or former contributor, if the contributor or former contributor were eligible to be paid such a benefit.

[7] Section 43B (4)

Omit the subsection. Insert instead:

- (4) A contributor or former contributor may, at any time before the release of a benefit under this section, vary or revoke an election under this section.

[8] Section 43B (5)

Insert after section 43B (4):

- (5) An amount may not be paid under this section unless any applicable requirements of any regulations made under section 43D have been complied with.

[9] Section 43C Release of benefit on compassionate grounds

Omit section 43C (1). Insert instead:

- (1) STC may, on the written election of a contributor, or former contributor who has provided for a deferred benefit, release to the contributor or former contributor a benefit on compassionate grounds.

[10] Section 43C (2)

Omit “only pay the benefit”. Insert instead “release the benefit only”.

[11] Section 43C (2)

Omit “Insurance and Superannuation Commissioner appointed under the *Insurance and Superannuation Commissioner Act 1987* of the Commonwealth”.

Insert instead “Regulator (within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth)”.

[12] Section 43C (2)

Insert “contributor or” before “former contributor”.

[13] Section 43C (3)

Omit “of the benefit”. Insert instead “paid”.

[14] Section 43C (3) (b)

Omit the paragraph. Insert instead:

- (b) is not to exceed the amount of any accrued or deferred benefit under this Act that would be payable to the contributor or former contributor, if the contributor or former contributor were eligible to be paid such a benefit.

[15] Section 43C (4)

Omit the subsection. Insert instead:

- (4) A contributor or former contributor may, at any time before the release of a benefit under this section, vary or revoke an election under this section.

[16] Section 43C (5)

Insert after section 43C (4):

- (5) An amount may not be paid under this section unless any applicable requirements of any regulations made under section 43D have been complied with.

[17] Section 43D

Omit the section. Insert instead:

43D Effect on benefits

- (1) Regulations may be made for or with respect to the payment and calculation of future benefits where part of a benefit has been released to a person under section 43B or 43C.
- (2) Without limiting subsection (1), regulations may be made for or with respect to the following matters:
 - (a) the adjustment by STC of a benefit that is paid to a person to whom an amount has been previously released under section 43B or 43C, including interest payable in respect of the amount released,
 - (b) the obtaining of consent to any such adjustment,

-
- (c) the obtaining of actuarial advice by STC for the purpose of any such adjustment,
 - (d) enabling the payment to STC of amounts to set-off amounts released under section 43B or 43C against benefits that would otherwise accrue,
 - (e) any matter ancillary to or consequential on the matters set out in paragraphs (a)–(d).

[18] Section 45A Power of STC to reduce benefits to offset certain tax liabilities of the Fund

Insert after section 45A (3):

- (3A) If STC determines a surcharge deduction amount in respect of a contributor or former contributor under this section, STC may, on the application of the contributor or former contributor, apply the benefit that accrues to or in respect of the contributor or former contributor under the *State Authorities Non-contributory Superannuation Act 1987* toward payment of the surcharge deduction amount, and make a determination reducing the benefit payable under that Act accordingly. In such a case, STC may make a determination reducing the benefit payable under this Act to the extent necessary (if any) to pay the balance of the surcharge deduction amount.

[19] Schedule 6 Savings and transitional provisions

Insert at the end of clause 1 (1):

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Explanatory note

Benefits on grounds of severe financial hardship or on compassionate grounds

Currently a benefit may be paid under the Principal Act from the State Authorities Superannuation Fund on the grounds of severe financial hardship or on compassionate grounds. Regulations made under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth set out when such benefits may be paid to members of funds regulated by that Act. Currently a right to such a benefit is only available under the Principal Act to former contributors who have deferred benefits in the State Authorities Superannuation Fund.

Items [2]–[10] and [12]–[16] remove this limitation by extending the right to release of such a benefit to current contributors.

Item [17] substitutes section 43D. The proposed section provides for regulations to be made for or with respect to the payment and calculation of future benefits where a part of a benefit has been previously released on such grounds.

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Schedule 5

Amendment of State Authorities Superannuation Act 1987

Reduction of benefit to offset liability for superannuation contributions surcharge

Section 45A of the Principal Act allows STC to reduce a benefit payable under the Principal Act in order to offset liability for a superannuation contributions surcharge on employer contributions to benefits accruing to a contributor under the Principal Act and the *State Authorities Non-contributory Superannuation Act 1987*. Item [18] amends section 45A so as to allow STC, on the application of a contributor or former contributor, to apply the benefit payable to the contributor under the *State Authorities Non-contributory Superannuation Act 1987* toward payment of the superannuation contributions surcharge, and reduce the benefit payable under that Act accordingly. The benefit payable under the Principal Act may be reduced if necessary to pay the balance of the superannuation contributions surcharge.

Other amendments

Item [1] omits an unnecessary definition and item [11] makes a consequential amendment.

Savings and transitional provisions

Item [19] enables regulations of a savings and transitional nature to be made consequent on the enactment of the proposed Act.

Schedule 6 Amendment of Superannuation Act 1916

(Section 8)

[1] Section 3 Definitions

Omit the definition of *Insurance and Superannuation Commissioner* from section 3 (1).

[2] Section 20H Making, amendment and revocation of conversion election

Insert after section 20H (4):

- (5) For the avoidance of doubt, section 91 (2) applies to a conversion election.

[3] Section 38A Withdrawal benefit

Insert after section 38A (5A):

- (5B) If STC calculates that the maximum amount that a contributor is entitled to receive from the Fund under subsection (5A) is less than the amount the contributor would have been entitled to receive under this section had the amendments made to this section by the *Superannuation Legislation Amendment Act 1998* not been made, then the contributor is entitled to receive the greater amount (despite those amendments).

[4] Section 61C Calculation of adjustment percentage

Omit section 61C (2). Insert instead:

- (2) If:
- (a) the percentage calculated for a year in accordance with subsection (1) (b) is less than 1.0 per centum, or
 - (b) the Index number for the June quarter for a year is the same as the Index number for the immediately preceding June quarter,
- there is deemed to be no adjustment percentage for that year.

[5] Section 61RA Power of STC to reduce pensions and other benefits to offset certain tax liabilities of the Fund

Insert after section 61RA (3):

- (3A) If STC determines a surcharge deduction amount in respect of a contributor or former contributor under this section, STC may, on the application of the contributor or former contributor, apply the benefit that accrues to or in respect of the contributor or former contributor under the *State Authorities Non-contributory Superannuation Act 1987* toward payment of the surcharge deduction amount, and make a determination reducing the benefit payable under that Act accordingly. In such a case, STC may make a determination reducing the benefit payable under this Act to the extent necessary (if any) to pay the balance of the surcharge deduction amount.

[6] Part 4, Division 7B

Insert after Division 7A:

Division 7B Other benefits

61RF Release of benefits on grounds of severe financial hardship

- (1) STC may, on the election of a contributor, or a former contributor who has provided for a benefit under Division 3A, Division 3B or section 37 or had a benefit preserved under this Act, release to the contributor or former contributor a benefit on the ground of the contributor or former contributor's severe financial hardship.
- (2) STC may release the benefit only if STC is satisfied that the circumstances are such that a benefit would be payable on the grounds of severe financial hardship if the contributor or former contributor were a member of a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.
- (3) The amount paid:
 - (a) is to be the amount payable for the purpose of complying with the requirements of that Act for payment of such a benefit from a regulated superannuation fund, and

- (b) is not to exceed the amount of any accrued, deferred or preserved benefit that would be payable to the contributor or former contributor if the contributor or former contributor were eligible to be paid such a benefit.
- (4) A contributor or former contributor may, at any time before the release of a benefit under this section, vary or revoke an election under this section.
- (5) An amount may not be paid under this section unless any applicable requirements of any regulations made under section 61RH have been complied with.

61RG Release of benefit on compassionate grounds

- (1) STC may, on the election of a contributor, or a former contributor who has provided for a benefit under Division 3A, Division 3B or section 37 or had a benefit preserved under this Act, release to the contributor or former contributor a benefit on compassionate grounds.
- (2) STC may release the benefit only if STC is satisfied that the circumstances are such that the Regulator (within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth) would be entitled to determine that the amount could be released on compassionate grounds if the contributor or former contributor were a member or former member of a regulated superannuation fund within the meaning of that Act.
- (3) The amount paid:
 - (a) is to be the amount payable for the purpose of complying with the requirements of that Act for payment of such a benefit from a regulated superannuation fund, and
 - (b) is not to exceed the amount of any accrued, deferred or preserved benefit that would be payable to the contributor or former contributor if the contributor or former contributor were eligible to be paid such a benefit.

- (4) A contributor or former contributor may, at any time before the release of a benefit under this section, vary or revoke an election under this section.
- (5) An amount may not be paid under this section unless any applicable requirements of any regulations made under section 61RH have been complied with.

61RH Effect on other benefits

- (1) Regulations may be made for or with respect to the payment and calculation of future benefits where a benefit has been released to a person under section 61RF or 61RG.
- (2) Without limiting subsection (1), regulations may be made for or with respect to the following matters:
 - (a) the adjustment by STC of a benefit that is paid to a person to whom an amount has been previously released under section 61RF or 61RG, including interest payable in respect of the amount released,
 - (b) the obtaining of consent to any such adjustment,
 - (c) the obtaining of actuarial advice by STC for the purpose of any such adjustment,
 - (d) enabling the payment to STC of amounts to set-off amounts released under section 61RF or 61RG against benefits that would otherwise accrue,
 - (e) any matter ancillary to or consequential on the matters set out in paragraphs (a)–(d).

[7] Section 91 Time for making elections, applications and choices

Omit section 91 (5) and (5A). Insert instead:

- (5) If an election to commute pension payable under section 28A or 28AA is made under section 21C by a contributor or pensioner who has not attained the age of 55 years, the date or dates determined by STC under subsection (1) (c) as the date or dates from which the election is to take effect must not be earlier than the date on which the contributor or pensioner attains the age of 55 years.

[8] Schedule 25 Savings and transitional provisions

Insert at the end of clause 1 (1):

Superannuation Legislation Amendment Act 2000

[9] Schedule 25

Insert at the end of the Schedule with appropriate Part and clause numbers:

Part Superannuation Legislation Amendment Act 2000

Definition

In this Part:

amending Act means the *Superannuation Legislation Amendment Act 2000*.

Late conversion elections

- (1) This clause applies to a conversion election made before the date of assent to the amending Act and after the time required under Part 3B for the making of the conversion election.
- (2) Section 20H, as amended by the amending Act, extends to any such election and STC may deal with the election accordingly.
- (3) Any acceptance by STC, before the commencement of this clause, of a conversion election to which this clause applies is validated.

Entitlement to withdrawal benefit (section 38A)

- (1) Section 38A (5B), as inserted by the amending Act, applies in respect of the calculation of a contributor's entitlement under section 38A if the contributor's entitlement to an amount under that section arises on or after the commencement of that subsection.
- (2) However, STC may adjust the entitlements of any contributor or former contributor who became entitled to an amount under section 38A on or after 1 December 1998 but before the commencement section 38A (5B), so as to apply that subsection to the contributor.

Adjustment of pensions (section 61C)

The amendment made to section 61C by the amending Act does not affect the calculation of an adjustment percentage for a year if the June quarter in that year ended before the commencement of that amendment.

Removal of waiting period (section 91)

- (1) This clause applies in respect of an election to commute a pension under this Act that was made by a person under section 21C within the period of 6 months before the date of assent to the *Superannuation Legislation Amendment Act 2000* (*the commencement date*).
- (2) If, at the commencement date, the person who made the election is entitled to commute the pension under section 21C and the election has not yet taken effect (and has not been revoked), the election is taken to take effect on the commencement date.
- (3) If, at the commencement date, the person who made the election is not entitled to commute the pension under section 21C, because the person has not yet attained the age of 55 years, the election is taken to take effect on the date that the person attains the age of 55 years, unless sooner revoked.
- (4) If the person who made the election died before the commencement date, having attained the age of 55 years, the election is taken to have taken effect the day before the person died, and section 21C (7) applies accordingly.
- (5) If the person who made the election died before the commencement date, without having attained the age of 55 years, the election is taken to be revoked.
- (6) This clause applies despite any determination made by STC in respect of the election before the commencement date.

Explanatory note

Late conversion elections

Item [2] makes it clear that section 91 of the Principal Act, which enables the SAS Trustee Corporation (**STC**), the trustee of the State Superannuation Fund, to accept late elections, choices and applications if it is satisfied that in all the circumstances of the case it is desirable to do so, applies to conversion elections. A conversion election is an election under Part 3B of the Principal Act to convert benefits to a lump sum and transfer them to the First State Superannuation Fund or another fund.

Item [9] inserts a proposed savings and transitional provision into Schedule 25. The proposed clause enables STC to accept late conversion elections that have already been made and validates the acceptance of any late conversion elections before the clause commences.

Withdrawal benefit

Amendments made to section 38A of the Principal Act by the *Superannuation Legislation Amendment Act 1998* changed the method of determining withdrawal benefits from the Fund so as to provide for the payment of interest on the basis of fund earnings rather than by reference to a fixed statutory interest rate. This was expected to increase the withdrawal benefits payable. The amendments also introduced a cap on withdrawal benefits. Item [3] makes a further amendment to section 38A so as to ensure that contributors are not disadvantaged by those changes. That is, if a contributor's withdrawal benefit, when calculated in accordance with the amendments made to section 38A, is less than the benefit to which the contributor would have been entitled had those amendments not been made, then the contributor is entitled to the greater amount (despite those amendments).

Item [9] includes a transitional provision.

Adjustment of pensions for CPI changes

Division 6 of Part 4 of the Principal Act provides for the automatic adjustment of pensions in order to take account of changes in the consumer price index. Pensions are adjusted by the amount of the "adjustment percentage", calculated by comparing the index number for the June quarter against the index number for the previous June quarter. If the adjustment percentage for a year, as so calculated, is less than 1 per centum, then the change is disregarded, and accordingly pensions are not adjusted in that year. Item [4] amends section 61C so as to remove that restriction, but only in so far as it relates to increases in the consumer price index. As a result, if there is a small upward movement in the consumer price index in any year, pensions will be increased in that year.

Item [9] includes a transitional provision.

Reduction of benefit to offset liability for superannuation contributions surcharge

Section 61RA of the Principal Act allows STC to reduce a benefit payable under the Principal Act in order to offset liability for a superannuation contributions surcharge on employer contributions to benefits accruing to a contributor under the Principal Act and the *State Authorities Non-contributory Superannuation Act 1987*. Item [5] amends section 61RA so as to allow STC, on the application of a contributor or former contributor, to apply the benefit payable to the contributor under the *State Authorities Non-contributory Superannuation Act 1987* toward payment of the superannuation contributions surcharge, and reduce the benefit payable under that Act accordingly. The benefit payable under the Principal Act may be reduced if necessary to pay the balance of the superannuation contributions surcharge.

Benefits in cases of severe financial hardship and on compassionate grounds

Currently, a benefit may be paid to a member of a superannuation fund regulated by Commonwealth legislation on the grounds of severe financial hardship or on compassionate grounds. Regulations made under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth set out when such benefits may be paid for members of superannuation funds regulated by that Act.

Item [6] inserts proposed sections 61RF–61RH which extend to current contributors to the State Superannuation Fund, and persons who have preserved benefits in the Fund, the right to release of a benefit on the grounds of severe financial hardship or on compassionate grounds. Such a benefit is to be payable only under the circumstances in which such benefits may be paid to members of superannuation funds regulated under

Superannuation Legislation Amendment Bill 2000

Schedule 6 Amendment of Superannuation Act 1916

the Commonwealth Act. Proposed section 61RH provides for regulations to be made for or with respect to the payment and calculation of future benefits where an amount has been previously released on such grounds.

Removal of waiting period

A person who becomes entitled to a pension on early retirement under certain provisions of the *Superannuation Act 1916* (sections 28A and 28AA) may commute that pension on attaining the age of 55 years. At present, a person who has not attained the maturity age is required to wait 6 months before an election to commute the pension can take effect. Item [7] amends section 91 of the Principal Act so as to remove that 6-month waiting period.

A transitional provision inserted by item [9] extends the removal of the 6-month waiting period to persons who made elections within 6 months before the removal of the waiting period. An election made within 6 months before the commencement date for the amendment will take effect on the commencement date, or on the date that the person attains the age of 55 years (whichever happens later). If the person who made the election dies before the commencement date, having attained the age of 55 years, the election will be taken to have taken effect immediately before the person died. However, if the person did not attain the age of 55 years before he or she died, the election will be taken to be revoked.

Other amendments

Item [1] omits an unnecessary definition.

Savings and transitional provisions

Item [8] enables regulations of a savings and transitional nature to be made consequent on the enactment of the proposed Act.