

Passed by both Houses



New South Wales

# Superannuation Legislation Further Amendment Bill 2002

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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, , 2002*



New South Wales

## **Superannuation Legislation Further Amendment Bill 2002**

Act No , 2002

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An Act to amend various superannuation Acts with respect to death and incapacity benefits for firefighters, disengagement benefits for police officers, investment of superannuation contributions and transfer of benefits; and for other purposes.

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*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.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Superannuation Legislation Further Amendment Act 2002*.

**2 Commencement**

This Act commences on the date of assent.

**3 Amendment of Acts**

The Acts specified in Schedules 1–4 are amended as set out in those Schedules.

**4 Explanatory notes**

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

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## Schedule 1 Amendment of First State Superannuation Act 1992 No 100

(Section 3)

### [1] Part 4A

Insert after Part 4:

### Part 4A Death or incapacity benefits for firefighters

#### 20A Definitions

In this Part:

*death or incapacity benefit* means a benefit payable to or in respect of a firefighter under a firefighters award (whether provided for in that award or by or under any Act, law or instrument) if:

- (a) the firefighter dies, or
- (b) the firefighter suffers total and permanent incapacity or partial and permanent incapacity.

*firefighter* means:

- (a) a member of the permanent fire brigade, or
- (b) a member of a volunteer fire brigade,

under the *Fire Brigades Act 1989*.

*firefighters award* means a State industrial instrument applying to firefighters and prescribed by the regulations for the purposes of this definition.

#### 20B Application of Part

This Part has effect despite any other provision of this Act, the regulations, the trust deed or the rules under this Act.

#### 20C Provision to be made with respect to death or incapacity benefits for firefighters

- (1) The trust deed, and rules made by FTC, may make provision for or with respect to the following:

- (a) the payment of amounts from the Fund in respect of death or incapacity benefits payable to or in respect of a member or former member who is or was a firefighter,
  - (b) the benefits payable to or in respect of a member or former member who is or was a firefighter and who is covered for a death or incapacity benefit, including the reduction or application of any benefit otherwise payable to or in respect of the member or former member under this Act or the trust deed,
  - (c) the payment of benefits payable to or in respect of a member or former member who is or was a firefighter and who is covered for a death or incapacity benefit,
  - (d) the effect on coverage under this Act or the trust deed for a death or invalidity benefit of a member or former member who is or was a firefighter and is covered for a death or incapacity benefit,
  - (e) any other matter that is necessary or convenient for the purposes of complying with or giving effect to a firefighters award or this Part.
- (2) A provision made under subsection (1) may apply:
- (a) to a benefit that was payable (but unpaid) before the commencement of this section, and
  - (b) to a benefit that was deferred or preserved before that commencement.
- (3) Without limiting section 20B, a provision of the trust deed or the rules made for the purposes of this Part is not required to comply with section 15, 16 or 17, but only to the extent that the inconsistency with any of those provisions is necessary for the purpose of compliance with or giving effect to a firefighters award.

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**[2] Part 5A, heading**

Omit the heading to the Part. Insert instead:

**Part 5A Preserved or deferred benefits  
transferred to First State  
Superannuation Fund**

**[3] Section 37 Definitions**

Omit the definitions of *eligible preserved benefit*, *transfer day* and *transferred member*.

Insert instead:

*eligible preserved benefit* means:

- (a) an eligible preserved benefit or associated preserved benefit within the meaning of Part 4B of the *State Authorities Non-contributory Superannuation Act 1987*, or
- (b) an eligible deferred benefit within the meaning of Part 5B of the *State Authorities Superannuation Act 1987*.

*transfer day* means, in relation to a person whose benefit is transferred under any of the transfer provisions, the day on which the benefit is transferred by STC under the provision concerned.

*transfer provision* means any of the following provisions:

- (a) Part 4B of the *State Authorities Non-contributory Superannuation Act 1987*,
- (b) Part 5B of the *State Authorities Superannuation Act 1987*.

*transferred member* means a person whose eligible preserved benefit is transferred under a transfer provision.

**[4] Section 38 Transfer to First State Superannuation Fund**

Omit “section 27AD of the *State Authorities Non-contributory Superannuation Act 1987*” wherever occurring.

Insert instead “a transfer provision”.

**[5] Section 40 Rights, liabilities and other matters**

Insert after section 40 (1):

(1A) Nothing in the *Superannuation Legislation Further Amendment Act 2002* affects the following:

- (a) any rights, liabilities or obligations of STC relating to eligible deferred benefits under the *State Authorities Superannuation Act 1987* or associated preserved benefits under the *State Authorities Non-contributory Superannuation Act 1987* in existence immediately before the transfer day,
- (b) any rights, liabilities or obligations of a transferred member arising under the *State Authorities Superannuation Act 1987* or the *State Authorities Non-contributory Superannuation Act 1987* and in existence immediately before the transfer day.

**[6] Section 40 (2)**

Insert “or (1A)” after “subsection (1)”.

**[7] Schedule 3 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Superannuation Legislation Further Amendment Act 2002*

**Explanatory note**

**Firefighters death and incapacity benefits**

Item [1] inserts proposed Part 4A (proposed sections 20A–20C) which provides for the amendment of the trust deed and the making of rules to give effect to the provisions of specified industrial awards under which firefighters are entitled to death or incapacity benefits as a result of death or injury arising out of work as firefighters. The trust deed and rules may contain provisions that apply or reduce benefits under the Principal Act in cases where a death or incapacity benefit is payable to or in respect of firefighters or former firefighters who are or were members of the First State Superannuation Fund. This, and other regulation-making powers relating to the payment of benefits, will enable the benefits so applied or reduced to be offset against the death or incapacity benefit. Provision may also be able to be made as to the effect on existing coverage under the Principal Act for a death or invalidity benefit if a member or former member is covered for a death or incapacity benefit under a firefighters award.

**Transfer of deferred or preserved benefits**

Under proposed Part 5B of the *State Authorities Superannuation Act 1987* (as inserted by Schedule 4) a former contributor to the State Authorities Superannuation Fund who has reached the retirement age may elect to have, or have, a deferred or preserved benefit transferred to the First State Superannuation Fund.

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Items [2]–[6] make a person whose deferred or preserved benefits are transferred to the First State Superannuation Fund under the proposed Part a member of the Fund and enable rules to be made as to the account of any such person in the Fund, as well as inserting a savings provision.

**Savings and transitional provisions**

Item [7] enables the making of savings and transitional regulations consequential on the proposed Act.



## **Schedule 2 Amendment of Police Regulation (Superannuation) Act 1906 No 28**

(Section 3)

**[1] Section 8A Disengagement benefit for members aged between 45–55**

Omit “50” from section 8A (2) (a). Insert instead “45”.

**[2] Section 8A (2) (b)**

Omit “30”. Insert instead “20”.

**[3] Schedule 6 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Superannuation Legislation Further Amendment Act 2002*

**Explanatory note**

**Disengagement benefits**

Currently, under the Police Superannuation Scheme established under the *Police Regulation (Superannuation) Act 1906* a disengagement benefit may be offered by the Commissioner of Police to a police officer or class of police officers who are aged between 50–55 years and have at least the equivalent of 30 years full-time service.

Items [1] and [2] enable a disengagement benefit to be offered to police officers or a class of police officers who are aged between 45–55 years and have at least the equivalent of 20 years full-time service.

**Savings and transitional provisions**

Item [3] enables the making of savings and transitional regulations consequential on the proposed Act.

## **Schedule 3    Amendment of State Authorities Non-contributory Superannuation Act 1987 No 212**

(Section 3)

### **[1]    Section 27AD Transfer of eligible preserved benefits and associated preserved benefits**

Insert in alphabetical order in section 27AD (1):

*associated preserved benefit* means a benefit (other than an eligible preserved benefit) preserved by or on behalf of a person whose benefit is transferred under Part 5B of the *State Authorities Superannuation Act 1987*.

### **[2]    Section 27AD (2A)**

Insert after section 27AD (2):

(2A)    STC must, on the transfer of an eligible deferred benefit to the First State Superannuation Fund under Part 5B of the *State Authorities Superannuation Act 1987*, transfer the amount of any associated preserved benefit to FTC for crediting to the First State Superannuation Fund.

### **[3]    Section 27AD (3)**

Insert “or an associated preserved benefit” after “eligible preserved benefit”.

### **[4]    Part 4C**

Insert after Part 4B:

## **Part 4C    Death or incapacity benefits for firefighters**

### **27AE    Definitions**

In this Part:

*death or incapacity benefit* means a benefit payable to or in respect of a firefighter under a firefighters award (whether provided for in that award or by or under any Act, law or instrument) if:

- (a) the firefighter dies, or
- (b) the firefighter suffers total and permanent incapacity or partial and permanent incapacity.

*firefighter* means:

- (a) a member of the permanent fire brigade, or
- (b) a member of a volunteer fire brigade,

under the *Fire Brigades Act 1989*.

*firefighters award* means a State industrial instrument applying to firefighters and prescribed by the regulations for the purposes of this definition.

**27AF    Application of Part**

This Part has effect despite any other provision of this Act or the regulations.

**27AG    Provision to be made with respect to death or incapacity benefits for firefighters**

- (1) The regulations may make provision for or with respect to the following:
  - (a) the payment of amounts from a fund in respect of death or incapacity benefits payable to or in respect of an employee or former employee who is or was a firefighter,
  - (b) the benefits payable to or in respect of an employee or former employee who is or was a firefighter and who is covered for a death or incapacity benefit, including the reduction or application of any benefit otherwise payable to or in respect of the employee or former employee under this Act,
  - (c) the payment of benefits payable to or in respect of an employee or former employee who is or was a firefighter and who is covered for a death or incapacity benefit,
  - (d) any other matter that is necessary or convenient for the purposes of complying with or giving effect to a firefighters award or this Part.

- (2) A regulation made under subsection (1) may apply:
  - (a) to a benefit that was payable (but unpaid) before the commencement of this section, and
  - (b) to a benefit that was preserved before that commencement.
- (3) Without limiting section 27AF, regulations may be made under this Part that are inconsistent with Part 3, 4 or 5, or any regulations made under those Parts, but only to the extent that the inconsistency with any of those provisions is necessary for the purpose of compliance with or giving effect to a firefighters award.

**[5] Schedule 5 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Superannuation Legislation Further Amendment Act 2002*

**Explanatory note**

**Transfer of deferred or preserved benefit**

Under proposed Part 5B of the *State Authorities Superannuation Act 1987* (as inserted by Schedule 4) a former contributor to the State Authorities Superannuation Fund who has reached the retirement age may elect to have, or have, a deferred or preserved benefit transferred to the First State Superannuation Fund.

Items [1]–[3] provide for the transfer to that Fund of benefits preserved under the *State Authorities Non-contributory Superannuation Act 1987* by or on behalf of a person whose benefit is transferred to that Fund from the State Authorities Superannuation Scheme.

**Firefighters death and incapacity benefits**

Item [4] inserts proposed Part 4C (proposed sections 27AE–27AG) which provides for the making of regulations to give effect to the provisions of specified industrial awards under which firefighters are entitled to death or incapacity benefits as a result of death or injury arising out of work as firefighters. Regulations may be made to apply or reduce benefits under the Principal Act in cases where a death or incapacity benefit is payable to or in respect of firefighters or former firefighters who are or were employees under the Principal Act. This, and other regulation-making powers relating to the payment of benefits, will enable the benefits so applied or reduced to be offset against the death or incapacity benefit.

**Savings and transitional provisions**

Item [5] enables the making of savings and transitional regulations consequential on the proposed Act.

## **Schedule 4 Amendment of State Authorities Superannuation Act 1987 No 211**

(Section 3)

### **[1] Section 14 Reserves for employers**

Insert after section 14 (4):

- (4A) Despite any other provision of this Act, there is to be debited to the Crown employer reserve such amount of the administration costs incurred by STC in respect of the transfer of an eligible deferred benefit under Part 5B as is approved by the Treasurer.

### **[2] Section 15 Other accounts and reserves and assets portfolios**

Insert at the end of the section:

- (2) Without limiting subsection (1), STC may establish separate asset portfolios, comprising assets of the Fund allocated by STC, for the purposes of the Fund.
- (3) A contributor or former contributor may at any time lodge with STC an election to have the contributor or former contributor's account, or part of the account, treated, for the purpose of allocating Fund earnings, as being invested as part of one or more particular asset portfolios nominated by STC to the contributor or former contributor. The contributor or former contributor may elect to revoke or vary any such election.
- (4) STC may determine that a contributor's or former contributor's account, or part of an account, is to be treated, for the purpose only of allocating the income of the Fund, as being invested as part of one or more particular asset portfolios if the contributor or former contributor does not make an election or revokes an election without making another election.
- (5) STC may treat an account (other than a contributor's or former contributor's account) or a reserve, or part of an account or reserve, for the purpose only of allocating Fund income, as being invested as part of one or more particular asset portfolios.

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**[3] Section 16 Adjustment of accounts and reserves for interest etc**

Insert “and the earnings, as determined by STC, of any asset portfolio or portfolios in which the accounts or reserves or parts of them are treated as being invested” after “Fund” in section 16 (1).

**[4] Section 16 (2)**

Insert “or former contributor’s” after “contributor’s”.

**[5] Section 16 (3) and (4)**

Insert after section 16 (2):

- (3) In adjusting accounts or reserves under this section, STC may fix different rates for accounts or reserves, or parts of accounts or reserves, that are treated as being invested in different asset portfolios.
- (4) For the purpose of adjusting accounts and reserves, STC may allocate any income of the Fund, or any losses, as being attributable to a particular asset portfolio or portfolios, as it thinks fit.

**[6] Section 45 Interest**

Insert at the end of section 45:

- (2) In paying interest under this section, STC may have regard to the treatment under section 16 of an account or reserve, or any part of an account or reserve, from which any part of the benefit is paid.

**[7] Part 5B**

Insert after Part 5A:

**Part 5B Transfer of eligible deferred benefits**

**46AE Transfer of eligible deferred benefits**

- (1) In this section:  
*eligible deferred benefit* means a benefit deferred or preserved under this Act by or on behalf of an eligible person.

***eligible person*** means a person who has deferred or preserved a benefit under this Act who:

- (a) has reached the retirement age, and
- (b) is not a contributor.

***FTC*** means the FSS Trustee Corporation established under the *Superannuation Administration Act 1996*.

***retirement age*** means the earliest age at which a benefit is payable merely because the person has reached a specified age.

- (2) An eligible person must after reaching the retirement age, and within the election period approved by STC for the purposes of this section, apply for payment of an eligible deferred benefit or elect to transfer the benefit to the First State Superannuation Fund.
- (3) STC must, on the written election of an eligible person, transfer the amount of any eligible deferred benefit to FTC for crediting to the First State Superannuation Fund.
- (4) If an eligible person fails to make an application for payment or an election within the approved period, STC must transfer the amount of any eligible deferred benefit to FTC for crediting to the First State Superannuation Fund.
- (5) On the transfer of an eligible deferred benefit, the person by or on behalf of whom the benefit was deferred or preserved ceases to be entitled to payment of the benefit under this Act.

**[8] Part 5C**

Insert after Part 5B:

**Part 5C Death or incapacity benefits for firefighters**

**46AF Definitions**

In this Part:

***death or incapacity benefit*** means a benefit payable to or in respect of a firefighter under a firefighters award (whether provided for in that award or by or under any Act, law or instrument) if:

- 
- (a) the firefighter dies, or
  - (b) the firefighter suffers total and permanent incapacity or partial and permanent incapacity.

*firefighter* means:

- (a) a member of the permanent fire brigade, or
- (b) a member of a volunteer fire brigade,

under the *Fire Brigades Act 1989*.

*firefighters award* means a State industrial instrument applying to firefighters and prescribed by the regulations for the purposes of this definition.

**46AG Application of Part**

This Part has effect despite any other provision of this Act or the regulations.

**46AH Provision to be made with respect to death or incapacity benefits for firefighters**

- (1) The regulations may make provision for or with respect to the following:
  - (a) the payment of amounts from the Fund in respect of death or incapacity benefits payable to or in respect of a contributor or former contributor who is or was a firefighter,
  - (b) the benefits payable to or in respect of a contributor or former contributor who is or was a firefighter and who is covered for a death or incapacity benefit, including the reduction or application of any benefit otherwise payable to or in respect of the contributor or former contributor under this Act,
  - (c) the payment of benefits payable to or in respect of a contributor or former contributor who is or was a firefighter and who is covered for a death or incapacity benefit,
  - (d) the effect on coverage under this Act for an additional benefit, and liability to pay the additional benefit levy, of a contributor or former contributor who is or was a firefighter and who is covered for a death or incapacity benefit,



- (e) any other matter that is necessary or convenient for the purposes of complying with or giving effect to a firefighters award or this Part.
- (2) A regulation made under subsection (1) may apply:
  - (a) to a benefit that was payable (but unpaid) before the commencement of this section, and
  - (b) to a benefit that was preserved or deferred before that commencement.
- (3) Without limiting section 46AG, regulations may be made under this Part that are inconsistent with Part 3, 4, 5 or 6, or any regulations made under those Parts, but only to the extent that the inconsistency with any of those provisions is necessary for the purpose of compliance with or giving effect to a firefighters award.

**[9] Schedule 6 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Superannuation Legislation Further Amendment Act 2002*

**Explanatory note**

**Investment in different asset portfolios**

Item [2] enables the SAS Trustee Corporation (**STC**), the trustee of the State Authorities Superannuation Scheme, to establish separate asset portfolios for investment of accounts and reserves, or parts of accounts and reserves, under that Scheme and to treat those accounts and reserves, or parts, as being invested in particular investment portfolios. Contributors or former contributors may elect to have their accounts, or part of them, treated as being invested as part of a particular investment portfolio.

Items [3]–[5] enable accounts and reserves treated as being invested in different asset portfolios to be adjusted differently for different earnings.

Item [6] enables STC to have regard to the adjustments made to different accounts, or parts of accounts or reserves, when exercising its discretion to pay interest when paying a benefit under the State Authorities Superannuation Scheme.

**Transfer of deferred or preserved benefits to First State Superannuation Fund**

Item [7] inserts proposed Part 5B (proposed section 46AE) which requires a person who has a deferred or preserved benefit in the State Authorities Superannuation Scheme, and who has reached the earliest age at which a benefit can be paid merely because an age has been reached, to apply for payment of the benefit or elect to have the benefit transferred to the First State Superannuation Fund within a specified period after reaching that age. In a case where no application or election is made, the benefit concerned is to be transferred to the First State Superannuation Fund. Schedule 1 contains amendments relating to the treatment of transferred benefits and members.

Item [1] enables the costs of the transfer to be debited from the Crown employer reserve, if approved by the Treasurer.

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**Firefighters death and incapacity benefits**

Item [8] inserts proposed Part 5C (proposed sections 46AF–46AH) which provides for the making of regulations to give effect to the provisions of specified industrial awards under which firefighters are entitled to death or incapacity benefits as a result of death or injury arising out of work as firefighters. Regulations may be made to apply or reduce benefits under the Principal Act in cases where a death or incapacity benefit is payable to or in respect of firefighters or former firefighters who are or were contributors to the State Authorities Superannuation Scheme. This, and other regulation-making powers relating to the payment of benefits, will enable the benefits so applied or reduced to be offset against the death or incapacity benefit. Regulations may also be able to be made as to the effect on existing coverage under the Principal Act for a death or invalidity benefit, and liability to pay the additional benefit levy, if a contributor or former contributor is covered for a death or incapacity benefit under a firefighters award.

**Savings and transitional provisions**

Item [9] enables the making of savings and transitional regulations consequential on the proposed Act.