



New South Wales

# Superannuation Legislation Further Amendment Act 1998 No 144

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New South Wales

## **Superannuation Legislation Further Amendment Act 1998 No 144**

Act No 144, 1998

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An Act to amend various public sector superannuation Acts with respect to conversion of the First State Superannuation Scheme to a scheme partly regulated by trust deed, conversion of contributors from defined benefit schemes to the First State Superannuation Fund, transfers from the Public Sector Executives Superannuation Fund to the First State Superannuation Fund, application of Commonwealth preservation standards for benefits, allocation to employer reserves of unallocated money within the State Superannuation Fund, improvements to certain benefits and obligations of part-time employees in the State Superannuation Fund, transfers to and from the public sector local government and electricity industry superannuation schemes and dispute resolution under those schemes; and for other purposes. [Assented to 8 December 1998]

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

This Act is the *Superannuation Legislation Further Amendment Act 1998*.

**2 Commencement**

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsections (2) and (3).
- (2) Schedule 2.6 [2], [4] and [6] commence on the date of assent.
- (3) Schedule 2.2, 2.3 [2] and [3], 2.4 [2]–[18], 2.5 [27]–[32] and 2.6 [5], and Schedule 2.5 [38] insofar as it inserts clause 23 of Schedule 25, commence on 1 July 1999.

**3 Amendments relating to conversion from defined benefit schemes**

The Acts set out in Schedule 1 are amended as set out in that Schedule.

**4 Miscellaneous amendments**

The Acts set out in Schedule 2 are amended as set out in that Schedule.

**5 Explanatory notes**

The matter appearing under the heading “Explanatory note” in Schedules 1 and 2 does not form part of this Act.



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## **Schedule 1     Amendments relating to conversion                          from defined benefit schemes**

(Section 3)

### **1.1     First State Superannuation Act 1992 No 100**

#### **Section 9**

Insert after section 8:

#### **9   Membership on making conversion election**

- (1)     An employee who makes a conversion election under Part 3B of the *Police Regulation (Superannuation) Act 1906* or Part 3B of the *Superannuation Act 1916* is, on the election taking effect, a full member of the Fund.

**Note.** Under section 5G of the *Police Regulation (Superannuation) Act 1906* and section 20J of the *Superannuation Act 1916*, the SAS Trustee Corporation must pay the conversion benefit to FTC as soon as practicable after the conversion election takes effect.

- (2)     The salary or wages of an employee who is an executive officer and who becomes a member under this section is, despite any other provision of this Act, taken to be the salary nominated by the employee in the conversion election until another nomination is made under this Act.

#### **Explanatory note**

Under amendments to be made to the *Police Regulation (Superannuation) Act 1906* and the *Superannuation Act 1916* by this Schedule, contributors are to be offered the opportunity to receive a conversion benefit, leave the superannuation schemes established under those Acts and to become members of the First State Superannuation Fund established under the *First State Superannuation Act 1992*. **Schedule 1.1** inserts proposed section 9 which makes it clear that, on an election taking effect under the provisions as amended, the person making the election is to be a full member of the First State Superannuation Fund.

## **1.2 Police Regulation (Superannuation) Act 1906 No 28**

### **[1] Section 4 Fund deficiencies charged against Consolidated Revenue**

Insert "(other than a conversion benefit payable under Part 3B)" after "amounts".

### **[2] Part 3B**

Insert after Part 3A:

#### **Part 3B Conversion of existing entitlements**

##### **5C Conversion notice**

- (1) A conversion notice is a notification by STC to a contributor notifying the contributor of the right to make a conversion election under this Part.
- (2) STC must send to each contributor a conversion notice on or before the date determined by the Minister for the purposes of this section, being a date not later than 1 April 1999.
- (3) A conversion notice must be in writing and must be in the form agreed by the Minister and STC for the purposes of this Part.
- (4) Without limiting any other matters that may be included, a conversion notice must set out the following matters:
  - (a) that on taking effect a conversion election will terminate the contributor's membership of the Fund and of the Fund under the *State Authorities Non-contributory Superannuation Act 1987*,
  - (b) the estimated benefits payable in respect of the contributor under this Part on making a conversion election and the estimated value of benefits payable if the contributor does not make the election,

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- (c) details of any benefits forgone, whether under this Act or the *State Authorities Non-contributory Superannuation Act 1987*, on a conversion election taking effect,
  - (d) that a conversion election is to take effect on and from 2 July 1999 and any benefit from an early election,
  - (e) that on and from 2 July 1999 a contributor who makes a conversion election is required to become a member of the First State Superannuation Fund,
  - (f) that independent financial advice should be obtained before making a conversion election and particulars of persons who are available to provide that advice,
  - (g) the manner in which a conversion election is to be made,
  - (h) the manner in which a conversion election may be revoked and the last date on which it may be revoked.

#### **5D Conversion election**

- (1) A contributor may make a conversion election.
- (2) A conversion election is an election:
  - (a) to make provision for the conversion benefit, and
  - (b) to cease to be a contributor and become a full member of the First State Superannuation Fund, and
  - (c) to pay the conversion benefit to the credit of the contributor in the First State Superannuation Fund.
- (3) If a contributor is an executive officer, the conversion election must nominate an amount of salary or wages of the officer for the purposes of the *First State Superannuation Act 1992*.
- (4) If a contributor fails to make a conversion election on or before 1 July 1999 or purports to make an election after that date, the contributor is taken to have elected not to make a conversion election.



- (5) A contributor who makes a conversion election is not entitled to a benefit under any provision of this Act after the conversion election takes effect, other than a conversion benefit.
- (6) A conversion election made by a contributor takes effect on 2 July 1999.
- (7) The employer of a contributor who makes a conversion election must, on being notified by the Superannuation Administration Authority (established under the *Superannuation Administration Act 1996*) that the contributor has made a conversion election, provide the Authority with particulars of the contributor's salary as at 2 July 1999 within the period requested by the Authority.

#### **5E Conversion benefit**

- (1) The conversion benefit provided for a contributor under this Part is the amount of a disengagement benefit payable in respect of the contributor, calculated in accordance with section 8A (5) as if the contributor retired on 2 July 1999 and was eligible for such a benefit, with the following modifications:
  - (a) if the value of the factor  $(0.97^{55-A})$  in the formula contained in section 8A (5) exceeds 0.85, the formula is to be applied as if the value of the factor were 0.85,
  - (b) if the contributor has reached the age of 55 years, the formula contained in section 8A (5) is to be applied as if the value of item "P" were 0.
- (2) If a contributor makes a conversion election on or before 14 May 1999, the amount of the conversion benefit is increased by \$5,000.
- (3) If the amount of the conversion benefit calculated under this section, including any amount payable under subsection (2), is less than the minimum benefit payable to the contributor, the amount of the conversion benefit is to be the amount of the minimum benefit.

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- (4) If STC has made a determination under section 14AA in relation to a conversion benefit, the amount of the benefit is reduced by the amount specified in the determination.

#### **5F Minimum benefit**

- (1) For the purposes of section 5E, the minimum benefit payable to the contributor is the minimum benefit that would be payable to satisfy the requirements of section 15, as determined by STC.
- (2) For the purposes of this section, STC may obtain actuarial advice.

#### **5G Payment of conversion benefit**

- (1) If a person makes a conversion election in accordance with this Part, STC must, as soon as practicable on or after 2 July 1999, pay the amount of the conversion benefit payable in respect of the person to the FSS Trustee Corporation established under the *Superannuation Administration Act 1996*.
- (2) STC is liable to pay interest, at a rate approved by the Treasurer, on any outstanding amount of a conversion benefit not paid to the FSS Trustee Corporation on or before 31 July 1999.
- (3) STC may meet the requirement to pay an amount under this section by transferring assets equivalent to the value of that amount or by paying part of the amount and transferring assets of the value of the remaining amount payable.
- (4) The FSS Trustee Corporation must credit the amount of the conversion benefit to an account to be established to the credit of the person in the First State Superannuation Fund established under the *First State Superannuation Act 1992*, or to any existing account of the person under that Act.

- (5) Duty under the *Duties Act 1997* is not payable in respect of the transfer of any assets by STC to the FSS Trustee Corporation under this section.

**5H Making, amendment and revocation of conversion election**

- (1) A conversion election is to be in writing in the form approved by STC.
- (2) A conversion election is not validly made unless it is received in the office of STC on or before 1 July 1999.
- (3) A conversion election may be amended or revoked in writing by a contributor at any time on or before 1 July 1999 but may not be amended or revoked after that date.

**5I Circumstances in which a conversion election revoked or may not be made**

If a benefit becomes payable or is deferred or preserved in respect of a contributor under this Act before 2 July 1999:

- (a) the contributor is not eligible to make a conversion election, and
- (b) if the contributor has made a conversion election, the election is taken to be revoked.

**Explanatory note**

**Schedule 1.2 [2]** inserts Part 3B (Conversion of existing entitlements), sections 5C–5I. The proposed Part contains a scheme involving an offer to contributors to be paid a conversion benefit in return for ceasing to be members of the defined benefits scheme under the Principal Act and losing the right to benefits under the *State Authorities Non-contributory Superannuation Act 1987*. The benefit is to be paid to the First State Superannuation Fund and contributors are to become members of that Fund, with payment of that benefit and future benefits subject to the rules of that Fund. Proposed section 5C requires the SAS Trustee Corporation to give notice of the offer not later than 1 April 1999 and sets out matters to be included in the offer. Proposed section 5D requires a conversion election to be made by 1 July 1999 and provides that entitlements to benefits (other than the conversion benefit) cease on an election taking effect. Proposed section 5E sets out how the lump sum conversion benefit is to be calculated and provides for an additional \$5,000 to be payable if the conversion election is made



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by 14 May 1999. Proposed section 5F sets out the minimum amount that may be received as a conversion benefit. Proposed section 5G provides for the conversion benefit to be paid to the FSS Trustee Corporation for payment to the First State Superannuation Fund. Proposed section 5H sets out how a conversion election is to be made and that it may be amended or revoked by a contributor at any time on or before 1 July 1999. Proposed section 5I automatically revokes a conversion election if a benefit becomes payable, or is deferred or preserved, in respect of a person who made the election before it takes effect and also prevents a person from making an election in those circumstances.

**Schedule 1.2 [1]** prevents fund deficiencies for payment of conversion benefits from being a charge against the Consolidated Fund.

### **1.3 State Authorities Non-contributory Superannuation Act 1987 No 212**

#### **[1] Section 26B**

Insert after section 26A:

#### **26B Benefits not payable if conversion election made**

- (1) This section applies to a person in respect of whom a conversion election has taken effect under Part 3B of the *Police Regulation (Superannuation) Act 1906* or Part 3B of the *Superannuation Act 1916* and who was, before the election took effect, an employee.
- (2) A person to whom this section applies is not eligible to be paid, or to defer or preserve, any benefit under this Act, despite any other provision of this Act.
- (3) As soon as practicable after a conversion election takes effect in respect of a person, STC must pay the amount of the basic benefit (and any deferred or preserved basic benefit) that would, but for this section, have been payable to or preserved in respect of the person if the person had been retrenched on 2 July 1999:

- (a) to the Fund under the *Police Regulation (Superannuation) Act 1906*, if the person was a contributor under that Act before the election took effect, or
- (b) to the reserve of the person's employer in the Fund under the *Superannuation Act 1916*, if the person was a contributor under that Act before the election took effect.
- (4) STC may meet the requirement to pay an amount under this section by transferring assets equivalent to the value of that amount or by paying part of the amount and transferring assets of the value of the remaining amount payable.
- (5) Duty under the *Duties Act 1997* is not payable in respect of the transfer of any assets by STC under this section.

**[2] Schedule 2 Excluded persons**

Insert at the end of the Schedule:

, or

- (e) if the person is a person in respect of whom a conversion election has taken effect under Part 3B of the *Police Regulation (Superannuation) Act 1906* or Part 3B of the *Superannuation Act 1916*.

**Explanatory note**

**Schedule 1.3 [1]** prohibits benefits being paid or deferred or preserved under the Principal Act in respect of a person who makes a conversion election under Part 3B of the *Police Regulation (Superannuation) Act 1906* or Part 3B of the *Superannuation Act 1916* and requires the amount of the benefit that would otherwise have been payable or preserved to be paid by STC to the Fund of the relevant Act. Payment may be made by payment of an amount or by transferring assets, or both.

**Schedule 1.3 [2]** excludes the Principal Act from applying to a person in respect of whom a conversion election has taken effect.

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## **1.4 Superannuation Act 1916 No 28**

### **[1] Part 3B**

Insert after Part 3A:

### **Part 3B Conversion of existing entitlements**

#### **20E Eligible contributors**

- (1) This Part applies to a contributor who is eligible to make a conversion election.
- (2) A contributor is eligible to make a conversion election if the contributor is an employee of an employer listed in Part 1 or Part 2 of Schedule 26.
- (3) The Governor may by order published in the Gazette amend Schedule 26.
- (4) An order under this section, and any order varying or revoking such an order, may be made to take effect on and from a day specified in the order, whether or not the day is earlier than the day of publication of the order.
- (5) The name of an employer may not be added to Part 2 of Schedule 26 by an order under this section, except with the written consent of the employer.

#### **20F Conversion notices**

- (1) A conversion notice is a notification by STC to a contributor notifying the contributor of the right to make a conversion election under this Part.
- (2) STC must send to each contributor a conversion notice on or before the date determined by the Minister for the purposes of this section, being a date not later than 1 April 1999.
- (3) A conversion notice must be in writing and must be in the form agreed by the Minister and STC for the purposes of this Part.



- (4) Without limiting any other matters that may be included, a conversion notice must set out the following matters:
- (a) that on taking effect a conversion election will terminate the contributor's membership of the Fund and of the Fund under the *State Authorities Non-contributory Superannuation Act 1987*,
  - (b) the estimated benefits payable in respect of the contributor under this Part on making a conversion election and the value of benefits payable under this Act if the contributor does not make the election,
  - (c) details of any benefits forgone, whether under this Act or the *State Authorities Non-contributory Superannuation Act 1987*, on a conversion election taking effect,
  - (d) that a conversion election is to take effect on and from 2 July 1999 and any benefit from an early election,
  - (e) that on and from 2 July 1999 a contributor who makes a conversion election is required to become a member of the First State Superannuation Fund or, if the contributor is not employed by an employer under that Fund, another superannuation scheme that complies with the requirements of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth,
  - (f) that independent financial advice should be obtained before making a conversion election and particulars of persons who are available to provide that advice,
  - (g) the manner in which a conversion election is to be made,
  - (h) the manner in which a conversion election may be revoked and the last date on which it may be revoked.

## **20G Conversion election**

- (1) A contributor may make a conversion election.

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- (2) A conversion election is an election:
- (a) to make provision for the conversion benefit, and
  - (b) to cease to be a contributor, and
  - (c) to pay the conversion benefit to the credit of the contributor in the First State Superannuation Fund or, if the contributor is not employed by an employer under that Fund, another specified superannuation scheme that complies with the requirements of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.
- (3) If a contributor is an executive officer, the conversion election must nominate an amount of salary or wages of the officer for the purposes of the *First State Superannuation Act 1992*.
- (4) If a contributor fails to make a conversion election on or before 1 July 1999 or purports to make an election after that date, the contributor is taken to have elected not to make a conversion election.
- (5) A contributor who makes a conversion election is not entitled to a benefit under any provision of this Act after the conversion election takes effect, other than a conversion benefit.
- (6) A conversion election made by a contributor takes effect on 2 July 1999.
- (7) The employer of a contributor who makes a conversion election must, on being notified by the Superannuation Administration Authority (established under the *Superannuation Administration Act 1996*) that the contributor has made a conversion election, provide the Authority with particulars of the contributor's salary as at 2 July 1999 within the period requested by the Authority.
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## **20H Conversion benefit**

- (1) The conversion benefit provided for a contributor under this Part is the amount of a benefit payable in respect of a contributor calculated in accordance with section 37A (4) (a), as if the contributor were retrenched on 2 July 1999 and was eligible for such a benefit, with the following modifications:
  - (a) if the value of the factor ( $0.96^{M-A}$ ) in the formula contained in paragraph (a) of item "C" in section 37A (5) exceeds 0.65, item "C" is to be calculated as if the value of the factor were 0.65,
  - (b) if the value of the factor ( $0.98^{M-A}$ ) in the formula contained in item "E" in section 37A (5) exceeds 0.80, item "E" is to be calculated as if the value of the factor were 0.80.
- (2) If a contributor makes a conversion election on or before 14 May 1999, the amount of the conversion benefit is increased by \$5,000.
- (3) If the amount of the conversion benefit calculated under this section, including any amount payable under subsection (2), is less than the minimum benefit payable to the contributor, the amount of the conversion benefit is to be the amount of the minimum benefit.
- (4) If STC has made a determination under section 61RA in relation to a conversion benefit, the amount of the benefit is reduced by the amount specified in the determination.

## **20I Minimum benefit**

- (1) For the purposes of section 20H, the minimum benefit payable to the contributor is the minimum benefit that would be payable to satisfy the requirements of section 61U, as determined by STC.
- (2) For the purposes of this section, STC may obtain actuarial advice.



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**20J Payment of conversion benefit**

- (1) If a person makes a conversion election in accordance with this Part, STC must, as soon as practicable on or after 2 July 1999, pay the amount of the conversion benefit payable but not paid in respect of the person:
  - (a) to the FSS Trustee Corporation established under the *Superannuation Administration Act 1996*, or
  - (b) if the person's employer is not an employer under the *First State Superannuation Act 1992* and the employer consents, to another superannuation scheme that complies with the requirements of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.
- (2) STC is liable to pay interest, at a rate approved by the Treasurer, on any outstanding amount of a conversion benefit not paid to the FSS Trustee Corporation on or before 31 July 1999.
- (3) STC may meet the requirement to pay an amount under this section by transferring assets equivalent to the value of that amount or by paying part of the amount and transferring assets of the value of the remaining amount payable.
- (4) The FSS Trustee Corporation must credit the amount of the conversion benefit to an account to be established to the credit of the person in the First State Superannuation Fund established under the *First State Superannuation Act 1992*, or to any existing account of the person under that Act.
- (5) Duty under the *Duties Act 1997* is not payable in respect of the transfer of any assets by STC to the FSS Trustee Corporation under this section.

**20K Reserves from which conversion benefit to be paid**

- (1) A conversion benefit payable in respect of an employee of an employer listed in Part 1 of Schedule 26 is to be paid from the reserves of the Fund, in accordance with section 33B, except that:

- (a) the portion of the benefit that is, under that section, payable from the appropriate employer reserve is payable from the Crown reserve established in the Fund or assets acquired using funds from the Crown reserve, and
  - (b) STC must, not later than 30 days after payment is made in respect of any conversion benefit, debit to the appropriate employer reserve and credit to the Crown reserve in the Fund an amount equivalent to the value of any amount paid or assets transferred under paragraph (a).
- (2) STC may not require an employer to pay any amount under section 10AL in respect of a conversion benefit if there is insufficient money in an employer reserve to meet the requirements of subsection (1) (b).
- (3) A conversion benefit payable in respect of an employee of an employer listed in Part 2 of Schedule 26 is to be paid from the reserves of the Fund, in accordance with sections 7 and 33B.

**20L Making, amendment and revocation of conversion election**

- (1) A conversion election is to be in writing in the form approved by STC.
- (2) A conversion election is not validly made unless it is received in the office of STC on or before 1 July 1999.
- (3) A conversion election may be amended or revoked in writing at any time by a contributor on or before 1 July 1999 but may not be amended or revoked after that date.

**20M Circumstances in which a conversion election revoked or may not be made**

If a benefit becomes payable or is deferred or preserved in respect of a contributor under this Act before 2 July 1999:

- (a) the contributor is not eligible to make a conversion election, and
- (b) if the contributor has made a conversion election, the election is taken to be revoked.

**[2] Section 61RD Reduction of benefit**

Insert after section 61RD (1) (j):

(k) Part 3B (Conversion of existing entitlements).

**[3] Section 61RD (6) (d)**

Insert "Part 3B or" before "section" where firstly occurring.

**[4] Section 61RD (6) (d)**

Omit "that section". Insert instead "the provision concerned".

**[5] Schedule 26**

Insert after Schedule 25:

**Schedule 26**

(Section 20E)

**Part 1 Public Authorities**

Department of Aboriginal Affairs

Ageing and Disability Department

Department of Agriculture

Ministry for the Arts

Attorney-General's Department

Department of Rural Fire Service

Cabinet Office

Department of Community Services

Department of Energy

Department of Fair Trading  
New South Wales Fire Brigades  
Department of Gaming and Racing  
Department of Health  
Heritage Office  
Department of Housing  
Department of Industrial Relations  
Department of Juvenile Justice  
Department of Land and Water Conservation  
Department of Local Government  
Department of Mineral Resources  
Olympic Co-ordination Authority  
Olympic Roads and Transport Authority  
Ministry for Police  
Premier's Department  
Department of Public Works and Services  
Department of Education and Training  
Department of Sport and Recreation  
Department of State and Regional Development  
Department of Transport  
The Treasury  
Ministry of Urban Infrastructure Management  
Valuer-General's Department  
Department for Women  
The Audit Office of New South Wales



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Office of the Board of Studies  
Community Services Commission  
Department of Corrective Services  
New South Wales Crime Commission  
New South Wales Dairy Corporation  
Darling Harbour Authority  
Office of the Director of Public Prosecutions  
Environment Protection Authority  
Ethnic Affairs Commission  
NSW Fisheries  
Forestry Commission  
Home Purchase Assistance Authority  
HomeFund Commissioner's Office  
New South Wales Institute of Sport  
Legal Aid Commission  
Office of Marine Administration  
New South Wales Meat Industry Authority  
Motor Accidents Authority  
National Parks and Wildlife Service  
Ombudsman's Office  
Parliamentary Counsel's Office  
Public Trust Office  
Royal Botanic Gardens and Domain Trust  
Rural Assistance Authority  
State Electoral Office

State Emergency Service  
State Forests  
Tourism New South Wales  
Department of Urban Affairs and Planning  
WorkCover Authority  
The Legislature  
Ambulance Service of New South Wales  
Australian Museum Trust  
Bathurst-Orange Development Corporation  
The Broken Hill Water Board  
Colleambally Irrigation Corporation  
Delta Electricity  
Financial Institutions Commission  
Freight Rail Corporation  
FSS Trustee Corporation  
Greyhound Racing Control Board  
Harness Racing New South Wales  
Hawkesbury-Nepean Catchment Management Trust  
Health Administration Authority  
Home Care Service of New South Wales  
Hunter Catchment Management Trust  
Hunter Water Corporation Limited  
Independent Commission Against Corruption  
Independent Pricing and Regulatory Tribunal of New South Wales



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Independent Audit Bureau of New South Wales  
Judicial Commission of New South Wales  
Lord Howe Island Board  
Macquarie Generation  
Murrumbidgee Irrigation Corporation  
New South Wales Aboriginal Land Council  
New South Wales Casino Control Authority  
New South Wales Dried Fruits Board  
New South Wales Film and Television Office  
New South Wales Lotteries Corporation  
New South Wales Treasury Corporation  
Newcastle Port Corporation  
Pacific Power  
Parramatta Park Reserve Trust  
Parramatta Stadium Trust  
Police Service  
Port Kembla Port Corporation  
Rail Access Corporation  
Railways Services Authority  
Roads and Traffic Authority of New South Wales  
SAS Trustee Corporation  
State Rail Authority of New South Wales  
State Transit Authority of New South Wales  
Superannuation Administration Authority of New South Wales

Sydney Cove Redevelopment Authority  
The Sydney Opera House Trust  
Sydney Organising Committee for the Olympic Games  
Sydney Ports Corporation  
Sydney Water Corporation Limited  
TAFE Commission  
Trustee of Arakoon State Recreation Area  
Trustee of Bent Basin State Recreation Area  
Trustee of Burrendong State Recreation Area  
Trustee of Burrinjuck State Recreation Area  
Trustee of Copeton State Recreation Area  
Trustee of Grabine State Recreation Area  
Trustee of Killalea State Recreation Area  
Trustee of Lake Glenbawn State Recreation Area  
Trustee of Lake Keepit State Recreation Area  
Trustee of Wyangala State Recreation Area  
United Dental Hospital  
Waste planning and management boards constituted  
under the *Waste Minimisation and Management Act 1995*  
Upper Parramatta River Catchment Trust  
Waste Recycling and Processing Service  
Water Administration Ministerial Corporation  
Waterways Authority  
Wentworth Park Trust  
Western Lands Commissioner

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Wild Dog Destruction Board

Zoological Parks Board of New South Wales

Central Coast Waste Planning and Management Board

Hunter Waste Planning and Management Board

Illawarra Coast Waste Planning and Management Board

Inner Sydney Waste Planning and Management Board

Macarthur Waste Planning and Management Board

Northern Sydney Waste Planning and Management Board

Southern Sydney Waste Planning and Management Board

Western Sydney Waste Planning and Management Board

A rural lands protection board constituted under the  
*Rural Lands Protection Act 1989*

Corrections Health Service

Far West Health Service

The Gower Wilson Memorial Hospital Lord Howe Island

Greater Murray Health Service

Macquarie Health Service

Mid North Coast Health Service

Mid Western Health Service

New England Health Service

Northern Rivers Health Service

The Royal Alexandra Hospital for Children

Southern Health Service

The Stewart House Preventorium, Curl Curl

Catholic Health Care Services Ltd, in respect of  
Bodington, Wentworth Falls

Benevolent Society of New South Wales, in respect of  
Scarba Services

Hope Healthcare Ltd, in respect of Braeside Hospital,  
Prairiewood

Buckland Convalescent Hospital Ltd

Calvary Hospital Kogarah Ltd

The trustee of the Carrington Centennial Trust

Dame Edith Walker Convalescent Hospital for Men

Hope Healthcare Ltd, in respect of Eversleigh Hospital,  
Petersham

Hope Healthcare Ltd, in respect of Graythwaite Nursing  
Home, in respect of Eversleigh Hospital, Petersham

Hope Healthcare Ltd, in respect of Greenwich Hospital,  
Greenwich

Karitane

Mercy Care Centre Ltd, in respect of Mercy Care Centre,  
Young

Hope Healthcare Ltd, in respect of Neringah Hospital,  
Wahroonga

The trustee of the Sisters of Mercy, Singleton, in respect  
of Newcastle Mater Misericordiae Hospital, Waratah

The trustee of the Daughters of Charity of St Vincent de  
Paul, in respect of Our Lady of Loreto Nursing Home for  
the Aged, Strathfield

Royal Rehabilitation Centre, Sydney

St Vincent's Hospital Sydney Ltd, in respect of Sacred  
Heart Hospice



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St Anthony's and St Joseph's Centre of Care Ltd, in respect of St Anthony's Home, Croydon

The trustee of the Daughters of Charity of St Vincent de Paul, in respect of St Catherine's Villa, Eastwood

St John of God Health Care System Inc, in respect of St John of God Hospital, Goulburn

The trustee of the Roman Catholic Church for the diocese of Maitland-Newcastle, in respect of St Joseph's Home, Sandgate

St Joseph's Hospital Ltd, in respect of St Joseph's Hospital, Auburn

The trustee of the Roman Catholic Church for the diocese of Bathurst, in respect of St Vincent's Community Hospital, Bathurst

St Vincent's Hospital Sydney Ltd, in respect of St Vincent's Hospital, Darlinghurst

St Vincent's Hospital Sydney Ltd, in respect of Babworth House (After Care Unit), Darling Point

The trustee of the Roman Catholic Church for the diocese of Lismore, in respect of St Vincent's Community Hospital, Lismore, in respect of the day hospital, the rehabilitation unit and the community health facilities

Royal Society for the Welfare of Mothers and Babies, in respect of Tresillian Family Care Centres at Penrith, Petersham, Willoughby and Wollstonecraft

The trustee of the Roman Catholic Church for the diocese of Bathurst, in respect of Lourdes House, Dubbo

Uniting Church in Australia, in respect of Lottie Stewart Hospital

Uniting Church in Australia, in respect of War Memorial Hospital, Waverley

Uniting Church in Australia, in respect of Uniting Church Nursing Service, Menindee

An area health service constituted under the *Health Services Act 1997*

## Part 2 Other Employers

### Explanatory note

**Schedule 1.4 [1]** inserts Part 3B (Conversion of existing entitlements), sections 20E–20M. The proposed Part contains a scheme involving an offer to contributors to be paid a conversion benefit in return for ceasing to be members of the defined benefits scheme under the Principal Act and losing the right to benefits under the *State Authorities Non-contributory Superannuation Act 1987*. The benefit is to be paid to the First State Superannuation Fund and the contributors are to become members of that Fund, with payment of that benefit and future benefits subject to the rules of that Fund. Proposed section 20E provides that the contributors who are employees of employers set out in Schedule 26 are eligible to make a conversion election. Proposed section 20F requires the SAS Trustee Corporation to give notice of the offer not later than 1 April 1999 and sets out matters to be included in the offer. Proposed section 20G requires a conversion election to be made by 1 July 1999 and provides that entitlements to benefits (other than the conversion benefit) cease on an election taking effect. Proposed section 20H sets out how the lump sum conversion benefit is to be calculated and provides for an additional \$5,000 to be payable if the conversion election is made by 14 May 1999. Proposed section 20I sets out the minimum amount that may be received as a conversion benefit. Proposed section 20J provides for the conversion benefit to be paid to the FSS Trustee Corporation for payment to the First State Superannuation Fund. The benefit may be paid to another superannuation fund if the person's employer is not an employer for the purposes of the First State Superannuation Fund. Proposed section 20K provides for the manner in which the employer-funded part of the conversion benefit is to be paid. In the case of public sector employers it is initially to be paid from a Crown Reserve in the Fund and later repaid from employer reserves. Proposed section 20L sets out how a conversion election is to be made and that it may be amended or revoked by a contributor at any time on or before 1 July 1999. Proposed section 20M automatically revokes a conversion election if a benefit becomes payable, or is preserved, in respect of a person who made the election before it takes effect and also prevents a person from making an election in those circumstances. **Schedule 1.4 [5]** inserts the list of employers of eligible contributors.

**Schedule 1.4 [2], [3] and [4]** make consequential amendments enabling conversion benefits to be reduced in the same way as other benefits under the Principal Act, if required for compliance with Commonwealth requirements relating to superannuation funds.



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## **1.5 Superannuation Administration Act 1996 No 39**

### **[1] Section 35 Personal and other liability**

Insert after section 35 (4):

- (5) A matter or thing done or omitted to be done by FTC, the FTC Board, a member of the Board or any person acting under the direction of FTC or the Board, does not, if the matter or thing was done or omitted in good faith:
  - (a) for the purpose of executing Part 3B of the *Superannuation Act 1916* or Part 3B of the *Police Regulation (Superannuation) Act 1906*, or
  - (b) in connection with the provision of information in relation to those provisions,subject FTC, a member of the Board or a person so acting personally, to any action, liability, claim or demand.
- (6) The protection of FTC under subsection (5) does not extend to any action, claim or liability of a kind for which an exemption from liability in respect of a trustee would be void under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

### **[2] Section 80 Personal and other liability**

Insert after section 80 (4):

- (5) A matter or thing done or omitted to be done by STC, the STC Board, a member of the Board or any person acting under the direction of STC or the Board, does not, if the matter or thing was done or omitted in good faith:
  - (a) for the purpose of executing Part 3B of the *Superannuation Act 1916* or Part 3B of the *Police Regulation (Superannuation) Act 1906*, or
  - (b) in connection with the provision of information in relation to those provisions,subject STC, a member of the Board or a person so acting personally, to any action, liability, claim or demand.

- (6) The protection of STC under subsection (5) does not extend to any action, claim or liability of a kind for which an exemption from liability in respect of a trustee would be void under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

**[3] Section 100A**

Insert after section 100:

**100A Provision of administration services for conversion offers**

- (1) SAA may, at the request of the Minister, provide administrative services related to conversion notices, conversion elections and conversion benefits under State public sector superannuation schemes (whether constituted by legislation or by trust deed or by both).
- (2) As consideration for entering into a contract or an arrangement to provide administrative services related to conversion notices, conversion elections and conversion benefits under State public sector superannuation schemes, SAA may charge the person with whom the contract or arrangement is entered into an amount sufficient to cover:
- (a) the costs that SAA has actually incurred in providing the services, and
  - (b) any other fees or charges that the person has agreed to pay SAA for providing the services.
- (3) SAA may enter into contracts or arrangements to provide administrative services related to conversion offers and conversion benefits under State public sector superannuation schemes.

**[4] Section 108 Personal liability**

Omit "member". Insert instead "chief executive officer".

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**[5] Section 108 (2)**

Insert at the end of section 108:

- (2) A matter or thing done or omitted to be done by SAA, the chief executive officer of SAA, or any person acting under the direction of SAA or the chief executive officer, does not, if the matter or thing was done or omitted in good faith:
- (a) for the purpose of executing Part 3B of the *Superannuation Act 1916* or Part 3B of the *Police Regulation (Superannuation) Act 1906*, or
  - (b) in connection with the provision of information in relation to those provisions,

subject SAA, the chief executive officer or a person so acting personally, to any action, liability, claim or demand.

**Explanatory note**

**Schedule 1.5 [1] and [2]** amend provisions relating to liability to make it clear that the FSS Trustee Corporation and the SAS Trustee Corporation, and their Boards, Board members and persons acting under the direction of the trustees or Boards, are not subject to liability for things done in good faith for the purpose of executing Part 3B of the *Police Regulation (Superannuation) Act 1906* or Part 3B of the *Superannuation Act 1916*, or providing related information. However, the trustees are not exempt from liability for anything for which such an exemption is prohibited under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth. **Schedule 1.5 [5]** makes similar provision with respect to the liability of the Superannuation Administration Authority, its chief executive officer and any person acting under the direction of the Authority or the chief executive officer.

**Schedule 1.5 [4]** corrects a reference.

**Schedule 1.5 [3]** enables the Superannuation Administration Authority to provide administrative services relating to conversion notices, conversion elections and conversion benefits under State public sector superannuation schemes and to charge for the provision of such services.

## **Schedule 2      Miscellaneous amendments**

(Section 4)

### **2.1      First State Superannuation Act 1992 No 100**

#### **[1]      Section 5 Members of the Fund**

Omit "section 16 or 18" from section 5 (2).  
Insert instead "the trust deed".

#### **[2]      Section 5 (2A)**

Omit "section 18". Insert instead "the trust deed".

#### **[3]      Section 5 (3)**

Omit the subsection.

#### **[4]      Section 10 Members may make other arrangements**

Omit "section 18" from section 10 (2).  
Insert instead "the trust deed".

#### **[5]      Section 10A**

Insert after section 10:

#### **10A Membership on transfer from PSESS Fund**

- (1)      An employee who makes an election under section 57A of the *Public Sector Executives Superannuation Act 1989* is, on the election taking effect, a full member of the Fund.



- (2) An amount credited to the Fund as a result of any such election by an employee is, for the purposes of this Act, to be treated as if it were contributed under this Act by or on behalf of the employee or the employee's employer, as the case requires.
- (3) The salary or wages of an employee who becomes a member under this section is, despite any other provision of this Act, taken to be the salary nominated by the employee in the election made under the *Public Sector Executives Superannuation Act 1989* until another nomination is made under this Act.

**[6] Section 11 Information that must be disclosed to members**

Omit the section.

**[7] Part 3, Division 1, heading**

Omit the heading.

**[8] Section 12 Compulsory employer contributions**

Insert after section 12 (2):

- (3) An employer is not required to make a contribution in respect of an employee (despite this section), and an employee may not elect or continue to make contributions to the Fund, if in order to be consistent with any relevant Commonwealth superannuation standard a superannuation fund must not accept contributions from that employee.

**[9] Sections 13–30B**

Omit the sections.

**[10]    Parts 4 and 5**

Omit the Parts. Insert instead:

**Part 4      First State Superannuation Trust Deed**

**13 Trust deed**

- (1)    The Minister and FTC are to enter into a trust deed that makes provision for or with respect to the workings of the superannuation scheme established by this Act, including the entitlements and obligations of members and the obligations of employers.
- (2)    The trust deed is to include provision for the following:
  - (a)    the benefits that are payable to members, and the payment of those benefits,
  - (b)    the preservation of benefits under the Scheme,
  - (c)    the procedures for claiming benefits and making other applications and elections under the Scheme,
  - (d)    the contributions that may be paid by employees,
  - (e)    the variation of employee contributions,
  - (f)    insured benefits for members,
  - (g)    the procedure for amendment of the trust deed,
  - (h)    such other matters as are required to be included in the trust deed by the regulations.
- (3)    The trust deed must include provisions to ensure that a right that a member had immediately before the deed takes effect is not abrogated or reduced. The trust deed may, however, confer additional rights on members.
- (4)    The trust deed may not increase the liability of an employer to contribute under this Act.
- (5)    The trust deed must not make provision for the appointment of another trustee of the Scheme.
- (6)    The trust deed, together with any Scheme rules, forms part of the Scheme.

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- (7) Members and employers are bound by the terms of the trust deed.

**14 Other matters that may or may not be included in trust deed**

- (1) Without limiting section 13, the trust deed may include provision for the following:
- (a) payment of interest on overdue contributions by employers,
  - (b) requiring employers to provide information in connection with the Scheme and to pay costs associated with a failure to provide information,
  - (c) requiring employees or claimants to provide any information or evidence, to provide FTC with an authority to obtain such information or evidence from a third person or to undergo a medical examination or examinations, but only if it is relevant to the assessment of an application for, or claim for payment of, a benefit that applies in the case of death, incapacity or invalidity,
  - (d) providing benefit options for members who have ceased employment with an employer (such as by requiring FTC to purchase a right to an annuity or other form of pension at the request of a member or former member),
  - (e) such other matters as are necessary or convenient for the workings of the Scheme.
- (2) The regulations may specify matters that must not be included in the trust deed.

**15 Trust deed to be consistent with State superannuation legislation**

- (1) FTC must at all times ensure that the trust deed is consistent with this Act and the *Superannuation Administration Act 1996*.



- (2) A provision of the trust deed is void to the extent that it is inconsistent with this Act, the regulations or the *Superannuation Administration Act 1996*.

**16 Trust to be consistent with other relevant legislation**

FTC must at all times ensure that the trust deed is consistent with any relevant Commonwealth legislation.

**17 Amendment of trust deed**

- (1) The trust deed may be amended from time to time by FTC in accordance with the procedure for amendment set out in the trust deed.
- (2) The trust deed may be amended so that the amendment takes effect on a date that is earlier than the date the amendment is made, but only if the amendment does not operate to abrogate or reduce a right that a member had before the amendment.
- (3) Despite subsection (2), such an amendment may be made to ensure that the trust deed complies with any relevant Commonwealth legislation.

**18 First State Superannuation Fund**

- (1) FTC is required to maintain and administer the First State Superannuation Fund in accordance with this Act and the trust deed.
- (2) The trust deed is to make provision for payments into and out of the Fund.
- (3) Without limiting section 13, the trust deed may make provision for or with respect to:
- (a) the establishment, maintenance or adjustment of accounts and reserves in the Fund, and
  - (b) the amounts that may be credited or debited from those accounts and reserves, and
  - (c) the establishment and use of asset portfolios for the purposes of the investment of the Fund, and



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- (d) the recovery from members or employers of the costs incurred by or on behalf of FTC in administering or managing the Fund, and
  - (e) insurance of the Fund or any part of it.
- (4) The Fund cannot be terminated or closed pursuant to the trust deed.

### **19 Trust deed not chargeable with duty**

Duty under the *Duties Act 1997* is not payable in respect of the trust deed, or any amendment to the trust deed.

### **20 FTC may make rules**

- (1) FTC may make rules, not inconsistent with this Act or the trust deed:
  - (a) for or with respect to any matter for which it is by this Act or the trust deed required or permitted to make rules, and
  - (b) for or with respect to any matter that is necessary or convenient for the purpose of giving effect to the trust deed.
- (2) In particular, FTC may make rules for or with respect to the following:
  - (a) the circumstances in which employees are taken to have ceased to be employed for the purposes of this Act,
  - (b) the calculation of salary and wages for the purpose of calculating any death or invalidity benefits,
  - (c) the payment of employee contributions (such as the periods for which contributions are to be made and the manner of payment),
  - (d) the payment and preservation of benefits,
  - (e) applications for payments of benefits,
  - (f) the provision of information to members and other persons,

- (g) the provision of information to FTC from time to time by employers as to employees and contributions for employees,
  - (h) the remittance and collection of contributions to the Fund,
  - (i) the operation of accounts in the Fund,
  - (j) agreements or arrangements with employers and employees as to optional contributions.
- (3) The rules must not be inconsistent with the relevant Commonwealth superannuation standards.
- (4) Except as may be otherwise permitted by this Act, FTC must not make a rule that abrogates or reduces the accrued rights of members under this Act or increases the liability of an employer to contribute under this Act.

**[11] Section 63 Removal of employers from Act**

Omit "section 39 and this Act applies" from section 63 (1).  
Insert instead "this Act and the trust deed, and they apply".

**[12] Sections 64–72**

Omit the sections. Insert instead:

**64 Benefit not to be assigned, charged or treated as an asset in a member's estate**

- (1) A purported assignment of, or purported charge over, a benefit is void.
- (2) If, but for this subsection, a benefit would pass by operation of law to a person other than a person to whom the benefit is payable under this Act, the benefit does not so pass.
- (3) A benefit payable on the death of a member is not an asset in the member's estate that is applicable in payment of the debts and liabilities of the deceased.

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- (4) Nothing in this section prevents FTC from making, at the request of a person to whom an amount by way of a benefit is payable, a payment of the whole or a part of the amount on behalf of the person.
- (5) Any payment made under subsection (4) is to be taken to have been made to the person entitled to the benefit.

**[13] Section 74 Restoration of lost right etc under Act or trust deed**

Insert "or the trust deed" after "this Act" in section 74 (1).

**[14] Section 75 FTC may make rules**

Omit the section.

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

Insert at the end of clause 1 (1):

*Superannuation Legislation Further Amendment Act  
1998*

**[16] Schedule 3**

Insert after clause 4:

**5 Saving of rights and liabilities**

- (1) The repeal or amendment of any provision of this Act by the *Superannuation Legislation Further Amendment Act 1998* does not affect any right that a member of the Fund had immediately before the commencement of Part 4 of this Act (as inserted by that Act).
- (2) The repeal or amendment of any provision of this Act by the *Superannuation Legislation Further Amendment Act 1998* does not affect:

- (a) the right or obligation of a person to contribute to the Fund, or
- (b) any person's membership of the Fund, or
- (c) any benefit payable to or in respect of a member of the Fund, or
- (d) any other right or liability of an employer or member of the Fund.

## **6 Continuation of First State Superannuation Scheme**

- (1) The superannuation scheme provided for by the trust deed and the Scheme rules is a continuation of, and the same scheme as, the superannuation scheme established and maintained under this Act before the commencement of Part 4 of this Act (as inserted by the *Superannuation Legislation Further Amendment Act 1998*).
- (2) Accordingly, a reference in any Act or in any instrument made under any Act or in any other instrument to the superannuation scheme established by this Act or to the First State Superannuation Scheme is a reference to the superannuation scheme as so continued.

## **7 Continuation of First State Superannuation Fund**

- (1) The Fund referred to in section 18, as inserted by the *Superannuation Legislation Further Amendment Act 1998*, is a continuation of, and the same fund as, the Fund established, maintained and administered by FTC pursuant to section 49 of this Act before its repeal by the *Superannuation Legislation Further Amendment Act 1998*.
- (2) Accordingly, a reference in any Act or in any instrument made under any Act or in any other instrument to the First State Superannuation Fund is a reference to the First State Superannuation Fund as so continued.



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## 8 Savings of applications and elections

An election or application made under a provision of this Act before the repeal of that provision by the *Superannuation Legislation Further Amendment Act 1998* has effect as an election or application under the trust deed.

## 9 Repeal of rules

A rule made by FTC pursuant to a provision of this Act that is repealed by the *Superannuation Legislation Further Amendment Act 1998* is repealed on the commencement of Part 4 of this Act (as inserted by the *Superannuation Legislation Further Amendment Act 1998*).

### [17] Dictionary

Omit the definitions of *additional death or invalidity benefit*, *additional death or invalidity premium*, *approved deposit fund*, *basic death or invalidity benefit*, *basic death or invalidity premium*, *Commonwealth taxation law*, *Death or Invalidity Benefit Management Reserve*, *exit date*, *Management Account*, *member's account*, *superannuation contributions surcharge*, *temporary incapacity benefit*, *temporary incapacity premium* and *untrue statement*.

### [18] Dictionary

Insert in alphabetical order:

*chief executive officer* has the same meaning as it has in the *Public Sector Executives Superannuation Act 1989*.

*executive officer* means a member who is:

- (a) a chief executive officer, or
- (b) a senior executive officer, or

- (c) an office holder nominated for the purposes of section 11A of the *Statutory and Other Offices Remuneration Act 1975*.

*senior executive officer* has the same meaning as it has in the *Public Sector Executives Superannuation Act 1989*.

*superannuation guarantee amount* means the minimum amount payable to a superannuation fund or scheme in respect of a person that is sufficient to avoid an individual superannuation guarantee shortfall, within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth, in respect of the officer.

**[19] Dictionary, definition of "Fund"**

Omit "established under this Act".

Insert instead "maintained and administered under the trust deed".

**[20] Dictionary, definition of "full member"**

Insert "or any other provision of this Act" after "5A".

**[21] Dictionary, definition of "optional member"**

Omit "section 16 or 18" from paragraph (a).

Insert instead "the trust deed".

**[22] Dictionary, definition of "optional member"**

Omit "section 18" from paragraph (b).

Insert instead "the trust deed".

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**[23] Dictionary, definition of “preserved benefit”**

Omit “this Act”. Insert instead “the Scheme”.

**[24] Dictionary, definition of “relevant Commonwealth legislation”**

Insert in alphabetical order:

*relevant Commonwealth legislation* means any of the following Acts of the Commonwealth:

*Income Tax Assessment Act 1936*

*Income Tax Assessment Act 1997*

*Superannuation Contributions Tax (Assessment and Collection) Act 1997*

*Superannuation Contributions Tax Imposition Act 1997*

*Superannuation Guarantee (Administration) Act 1992*

*Superannuation Guarantee Charge Act 1992*

**[25] Dictionary, definition of “salary or wages”**

Omit the definition. Insert instead:

*salary or wages* means:

- (a) in the case of a member who is not an executive officer, the total of:
  - (i) earnings in respect of ordinary hours of work, and
  - (ii) earnings consisting of over-award payments, shift-loading or commission, or
- (b) in the case of a member who is an executive officer, the amount nominated by the member, being an amount that is not more than the total amount of the remuneration package for the officer as last determined, less the superannuation guarantee amount payable in respect of the member.

**[26]    Dictionary, definition of “Scheme”**

Omit the definition. Insert instead:

*Scheme* means the First State Superannuation Scheme, being the superannuation scheme established by this Act and maintained and operated in accordance with this Act, the trust deed and any Scheme rules.

**[27]    Dictionary, definition of “Scheme rules”**

Insert in alphabetical order:

*Scheme rules* means any rules made by FTC pursuant to section 20.

**[28]    Dictionary, definition of “the trust deed”**

Insert in alphabetical order:

*the trust deed* means the trust deed entered into by the Minister and FTC pursuant to section 13, as amended from time to time.

**Explanatory note**

**Partial regulation by trust deed**

**Schedule 2.1 [10]** requires the Minister and FSS Trustee Corporation (*FTC*) to enter into a trust deed providing for the workings of the First State Superannuation Scheme. The trust deed is required to include provision for the benefits that are payable to members, the payments of those benefits, the preservation of benefits under the Scheme, the procedure for claiming benefits and making other applications and elections under the Scheme, the contributions that may be paid by employees, payments into and out of the First State Superannuation Fund and other matters. The trust deed must also include provisions that ensure that any right that a member had immediately before the deed takes effect is not abrogated or reduced by the trust deed. The trust deed may include provision for other matters relating to the Scheme. FTC is required to ensure that the trust deed is consistent with State superannuation legislation and



relevant Commonwealth legislation. The trust deed may be amended from time to time. The trust deed is not chargeable with duty. FTC will be allowed to make rules for the purpose of giving effect to the Act and the trust deed.

The trust deed, and the rules to be made by FTC, will replace most of the provisions in the Act relating to the workings of the Scheme and those provisions are repealed accordingly (**Schedule 2.1** [6], [9], [12] and [14]). Provisions relating to the definitions of *employer* and *employer contributions* and relating to membership of the Scheme are retained. Some provisions relating to the Scheme have been re-enacted (**Schedule 2.1** [8] and [12]).

**Schedule 2.1** [1]–[4], [7], [11], [13], [17], [19], [21]–[24], [26] and [27] are consequential amendments.

**Schedule 2.1** [16] provides for transitional matters. In particular, these provisions save existing rights and liabilities in relation to the Scheme, including rights of members. They also make it clear that the superannuation scheme provided for by the trust deed is a continuation of, and the same scheme as, the superannuation scheme established by the Act.

#### **Transfer from Public Sector Executives Superannuation Fund**

Under amendments to be made to the *Public Sector Executives Superannuation Act 1989* by this Schedule, members of the Fund under that Act are to be offered the opportunity to leave the superannuation Fund established under that Act and to become members of the First State Superannuation Fund established under the Principal Act. **Schedule 2.1** [5] inserts proposed section 10A which makes it clear that, on an election taking effect under the provisions as amended, the person making the election is to be a full member of the First State Superannuation Fund. Any amount credited to that Fund on the election taking effect is to be treated as if it were contributed under the Principal Act. The salary of the transferring member is to be the salary nominated in the election to transfer. **Schedule 2.1** [20] makes a consequential amendment.

**Schedule 2.1** [15] enables regulations to be made containing savings and transitional provisions as a consequence of the proposed amendments.

**Schedule 2.1** [18] and [25] insert definitions of expressions used in the Principal Act relating to the salary of executive officers. The new definition of *salary or wages* retains the current definition and applies it to members who are not executive officers. It defines the salary of an executive officer as being the amount of the officer's remuneration package, less the amount payable in respect of a member to avoid a superannuation guarantee shortfall (effectively, the value of the employer's contribution to superannuation under the Principal Act). The new definition of *salary or wages* reflects the way in which executive officers are remunerated.

## **2.2    Public Sector Executives Superannuation Act 1989 No 106**

### **[1]    Section 49A Benefit on retrenchment or discharge**

Insert after section 49A (7):

- (8)    FTC must, when a member becomes entitled to be paid a benefit under this section, preserve all or so much of the benefit as is required to be preserved so as to be consistent with a relevant Commonwealth superannuation standard.
- (9)    An amount preserved under subsection (8) is not payable except in accordance with section 51 (4).

### **[2]    Section 50 Benefit on termination before early retirement age**

Omit section 50 (4) and (5). Insert instead:

- (4)    The benefit provided by this section is not payable except in accordance with section 51 or in any other prescribed circumstances.

### **[3]    Section 51 Preserved benefits**

Insert after section 51 (2):

- (2A)    FTC must, when a member elects to make provision for a benefit provided by subsection (3), preserve all or so much of the benefit as is required to be preserved so as to be consistent with a relevant Commonwealth superannuation standard.
- (2B)    FTC may defer the remaining amount of any benefit if the contributor in respect of whom the benefit is payable so elects.

### **[4]    Section 51 (3)**

Omit "that consists of contributions paid by the member's employer or arises indirectly from any such contributions".

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**[5] Section 52 Preserved benefit—member-financed contributions**

Omit the section.

**[6] Section 57A**

Insert after section 57:

**57A Transfer to First State Superannuation Fund**

- (1) A member may elect, at any time:
  - (a) to make provision for a benefit under section 51, and
  - (b) to cease to be a member and to become a member of the First State Superannuation Fund under the *First State Superannuation Act 1992*.
- (2) An election:
  - (a) must nominate an amount of salary or wages of the member for the purposes of the *First State Superannuation Act 1992*, and
  - (b) may elect to transfer the amount of the benefit under section 51 to the First State Superannuation Fund.
- (3) On an election taking effect:
  - (a) the member ceases to be a member for the purposes of this Act, including any liability for contributions payable by or in respect of the member, and
  - (b) if the member has so elected, the amount of the benefit payable or required to be preserved in respect of the member under section 51 must be paid from the Fund and credited, as soon as practicable, by FTC to an account to be established to the credit of the member in the First State Superannuation Fund.



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

Insert at the end of clause 1 (1):

*Superannuation Legislation Further Amendment Act  
1998*

**[8]      Schedule 5, clause 3**

Insert after clause 2:

**3 Payment of previously preserved benefits**

A benefit preserved under section 51 or 52, or payable under section 49A, as in force immediately before their amendment or repeal by the *Superannuation Legislation Further Amendment Act 1998*, is payable as if those sections had not been amended or repealed.

**Explanatory note**

**Preservation standards**

Regulations under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth set out standards for the preservation and release (or payment) of superannuation benefits. The proposed amendments bring the Public Sector Executives Superannuation Fund (the **Fund**) into line with Commonwealth standards for similar superannuation funds relating to requirements to preserve benefits and make other consequential amendments.

**Schedule 2.2 [1]** and **[3]** requires so much of the benefit payable on retrenchment or when employment is terminated before early retirement age to be preserved, as is required under a relevant Commonwealth superannuation standard and enables the remainder to be deferred. **Schedule 2.2 [4]** and **[5]** make consequential amendments. **Schedule 2.2 [7]** and **[8]** insert savings and transitional provisions consequent on the proposed amendments.

**Schedule 2.2 [2]** makes the benefit payable when employment is terminated before early retirement age payable only in the circumstances set out in section 51 of the Principal Act.

**Transfer to First State Superannuation Fund**

**Schedule 2.2 [6]** inserts proposed section 57A which enables a member of the Public Sector Executives Superannuation Fund to elect to leave the Fund and become a member of the First State Superannuation Fund. The member may also elect to transfer the benefit received on leaving to the new Fund and must nominate an amount of salary for the purposes of the *First State Superannuation Act 1992*.



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**2.3 State Authorities Non-contributory Superannuation Act 1987 No 212**

**[1] Section 20A Scheme closed for new employees**

Insert after section 20A (1) (c):

- (d) employees exercising a transfer option conferred under section 128A of the *Superannuation Administration Act 1996*.

**[2] Schedule 3, heading**

Omit “**Preservation**”. Insert instead “**Voluntary deferral**”.

**[3] Schedule 3, clause 6**

Omit “and then only if the person in respect of whom the benefit is payable has ceased employment or has died”.

**Explanatory note**

**Transfers from certain schemes**

The amendment made by **Schedule 2.3 [1]** is consequential on the enactment of proposed section 128A of the *Superannuation Administration Act 1996*.

**Preservation standards**

The amendments made by **Schedule 2.3 [2]** and **[3]** are consequential on the application of new Commonwealth standards for the preservation of benefits.

**2.4 State Authorities Superannuation Act 1987 No 211**

**[1] Section 2B Employee may resume contributions after break in employment**

Insert at the end of section 2B:

- (2) Section 2A does not prevent an employee from exercising a transfer option conferred under section 128A of the *Superannuation Administration Act 1996*.

**[2]      Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

*deferred benefit*, in relation to a contributor, means a benefit deferred under section 42AA, 43 or 43AA.

**[3]      Section 3 (1)**

Omit “for which the contributor has made provision under section 43 or” from the definition of *preserved benefit*.

**[4]      Section 14B Source of administration costs payments**

Insert “deferred benefits or” before “preserved benefits” in section 14B (2).

**[5]      Section 30 Resumption of contributions after break in employment**

Omit “preserved” from section 30 (1) (b).  
Insert instead “deferred”.

**[6]      Section 35 Transfers of credits between employers of transferred contributors**

Omit “preserved” from the definition of *transfer value* in section 35 (1).  
Insert instead “deferred”.

**[7]      Section 42AA Deferral of benefit on retrenchment before early retirement age**

Omit “preserve” from section 42AA (1) (b).  
Insert instead “defer”.

**[8]      Section 42AA (2)**

Omit “preserved” wherever occurring. Insert instead “deferred”.

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**[9] Sections 42AB–42AD**

Insert after section 42AA:

**42AB Compulsory preservation of benefits after changeover day**

- (1) STC must, when a benefit becomes payable under this Act (including a benefit provided by section 42AA, 43 or 43AA), preserve all or so much of the benefit as is required to be preserved so as to be consistent with a relevant Commonwealth superannuation standard.
- (2) For the purpose of preserving a benefit under this section, STC may convert to a lump sum so much of a superannuation allowance as is required to be preserved. The remainder of the superannuation allowance is to be dealt with as otherwise required or permitted by or under this Act.
- (3) The amount of the benefit to be preserved in respect of a former contributor for the purposes of subsection (1) is as determined by STC, after obtaining actuarial advice.
- (4) The amount of a benefit that must be preserved for the purposes of subsection (1) is to be preserved in the Fund and is to be adjusted, having regard to any adjustment of the contributor's account under section 16 or is to be preserved under section 42AD.

**42AC Payment of compulsorily preserved benefit**

- (1) The whole or part of a benefit preserved under section 42AB is payable by STC in the circumstances in which the whole or part of a benefit may be paid under a relevant Commonwealth superannuation standard.
- (2) The whole or part of a benefit preserved under section 42AB must be paid by STC, if it is required to be paid under a relevant Commonwealth superannuation standard.
- (3) The benefit is payable:
  - (a) unless the former contributor has died—to the former contributor, or

- (b) if the former contributor has died and is survived by a spouse—to the surviving spouse, or
- (c) if the former contributor has died and is not survived by a spouse—to the personal representatives of the former contributor or, if appropriate, in accordance with section 51 (Payment without grant of probate etc).

**42AD Preserved benefits**

- (1) Any amounts preserved by STC under section 42AB may be preserved in such funds, accounts or reserves as STC determines, whether established under this Act or the *Superannuation Administration Act 1996* or for the purposes of any other superannuation scheme administered by STC.
- (2) Any such preserved amounts payable by STC under section 42AB are to be paid from the appropriate fund, account or reserve referred to in this section.

**[10] Section 43 Deferred benefit**

Omit “preserve” wherever occurring in section 43 (3) (a) (i) and (b) (i).

Insert instead “defer”.

**[11] Section 43AA Deferral of benefit for contributors aged 55 years and over in certain circumstances**

Omit “preservation”. Insert instead “deferral”.

**[12] Section 43AAA Preservation of minimum benefits under superannuation guarantee legislation**

Omit the section.

**[13] Section 44 Application for payment of benefit**

Insert “42AC,” before “43,” in section 44 (1) (a).

**[14] Schedule 5, heading**

Omit “preserving”. Insert instead “deferring”.



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**[15] Schedule 5, clauses 2, 3, 4, 4B, 4C, 4D, 8, 9 and 10**

Omit “preserved” wherever occurring. Insert instead “deferred”.

**[16] Schedule 5, headings to Parts 2 and 3**

Omit “**Preservation**” wherever occurring.  
Insert instead “**Deferral**”.

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

Insert at the end of clause 1 (1):

*Superannuation Legislation Further Amendment Act  
1998*

**[18] Schedule 6, Part 5, clause 7**

Insert after Part 4:

**Part 5 Superannuation Legislation Further  
Amendment Act 1998**

**7 Payment of previously preserved benefits**

A benefit preserved under section 43AAA, as in force immediately before its repeal by the *Superannuation Legislation Further Amendment Act 1998*, is payable as if section 43AAA had not been repealed.

**Explanatory note**

**Transfers from certain schemes**

The amendment made by **Schedule 2.4 [1]** is consequential on the enactment of proposed section 128A of the *Superannuation Administration Act 1996*.

**Preservation standards**

Regulations under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth set out standards for the preservation and release (or payment) of superannuation benefits. The proposed amendments bring the State Authorities Superannuation Fund (the **Fund**) into line with Commonwealth standards for similar superannuation funds relating to requirements to preserve benefits and make other consequential amendments.

**Schedule 2.4 [9]** inserts proposed sections 42AB–42AD. Proposed section 42AB requires the SAS Trustee Corporation (**STC**) to preserve all or so much of a benefit as is required to be preserved under a Commonwealth standard that would be applicable if the Fund were a regulated superannuation fund under Commonwealth legislation (a **relevant Commonwealth superannuation standard**), to convert that amount to a lump sum and for interest to accrue in respect of the preserved amount. Proposed section 42AC enables the payment of the whole or part of a preserved benefit in accordance with the requirements of the relevant Commonwealth superannuation standards. Proposed section 42AD enables benefits compulsorily preserved under proposed section 42AB to be preserved in such funds, accounts or reserves as may be determined by STC, whether established under the Principal Act, the *Superannuation Administration Act 1996* or for the purpose of other superannuation schemes administered by STC, and provides for their payment when required.

**Schedule 2.4 [2]–[8]** and **[10]–[16]** amend references to “preserved” benefits to reflect the fact that the benefits have been voluntarily deferred rather than compulsorily preserved.

**Schedule 2.4 [17]** and **[18]** insert savings and transitional provisions consequent on the proposed amendments.

## 2.5      Superannuation Act 1916 No 28

### [1]      Section 1A Closure of Scheme to person employed on or after 1.7.1985

Insert after section 1A (3) (c):

or

- (c1) a person exercising a transfer option conferred under section 128A of the *Superannuation Administration Act 1996* to rejoin the Fund,

### [2]      Section 3 Definitions

Omit the definition of *Part-time employee* from section 3 (1).

Insert instead:

*Part-time employee* has the same meaning as it has in section 12C.

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**[3] Section 3AA Salary of executive officers**

Insert after section 3AA (6):

- (6A) **Change of salary on change of work.** The amount of salary nominated for the purposes of this Act is, on an executive officer becoming a full-time employee after being a part-time employee or becoming a part-time employee after being a full-time employee, changed so that it is an amount equal to the same percentage of the employee's remuneration package after the change in work as the amount previously nominated was of the remuneration package before the change. This subsection does not prevent an executive officer from making an election under subsection (5) or (6) at any time after the change in work.
- (6B) **Limit on part-time salary changes.** An executive officer who is a part-time employee appointed to a full-time position may not make an election under subsection (6) nominating an amount of salary that is more than the amount of the officer's remuneration package, calculated as if the officer were employed in a part-time position (less the cost of providing employer's contributions to superannuation and any performance-related incentive payment).

**[4] Section 9A**

Insert after section 9:

**9A Unallocated amounts**

- (1) On or before 30 June 1999, STC must credit to a general employer holding reserve any amounts held in the Fund in holding accounts, other than any such amounts identified by STC as being amounts to be credited to a particular employer, contributor or Crown reserves or reserves for the purposes of superannuation schemes established under other Acts.



- (2)    STC must, as soon as practicable, credit the whole of the amount held in the general employer holding reserve to the appropriate employer reserves.
- (3)    The appropriate employer reserves, and the amounts to be credited to the appropriate employer reserves under this section, are to be determined by STC after obtaining actuarial advice.
- (4)    Nothing in this section prevents an amount credited to a reserve under this section from being adjusted under section 8B.

**[5]    Section 10WC Commencement of or change to part-time employment**

Omit section 10WC (1) (b). Insert instead:

- (b)    to a contributor becoming a part-time employee or the salary ratio (as defined in section 12C (1)) changing so that it is less than it previously was.

**[6]    Section 12B Deduction factors in relation to certain periods of leave**

Insert “full-time” before “leave” in section 12B (1).

**[7]    Section 12C Deduction factors in relation to part-time employment**

Omit section 12C (1). Insert instead:

- (1)    In this section:

*part-time employee* means a person (whether appointed to a full-time position and on part-time leave without pay, or appointed to a part-time position) certified to STC by the employer to have a salary ratio of less than one.



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*salary ratio* of a person means the ratio of the salary of the person while employed on a part-time basis to the salary certified by the employer of the person to be the salary which would be paid to the person if employed on a full-time basis.

**[8] Section 12C (2)**

Omit “employed in a position as”.

**[9] Section 12C (2)**

Omit “employed as”.

**[10] Section 12C (2)**

Omit “becomes so employed”.

Insert instead “becomes a part-time employee, or the salary ratio changes,”.

**[11] Section 12C (2)**

Omit item “PA”. Insert instead:

PA is the number of years, if any, (including any fractional part of a year calculated on a daily basis) by which the day precedes the known or estimated date on which the period of part-time employment is to cease.

**[12] Section 12C (2A)**

Insert after section 12C (2):

(2A) For the purposes of item “PA” in subsection (2), the known or estimated date on which part-time employment is to cease is:

- (a) in the case of a contributor on part-time leave without pay—the date on which the period of leave approved for the contributor is to cease, or
- (b) in any other case—the date certified in writing by the contributor’s employer to STC for the purposes of this subsection.

**[13]    Section 12C (3)**

Omit “employed in a position as a part-time employee ceases to be employed as a part-time employee or becomes employed in another position in relation to which the salary ratio is different from that of the former position, STC shall, on and from the day on which the contributor becomes employed in the other position”.

Insert instead “a part-time employee ceases to be a part-time employee or the salary ratio of the employee changes, STC must, on and from the day the contributor ceases to be a part-time employee or the salary ratio changes”.

**[14]    Section 12C (3) (a)**

Omit the paragraph. Insert instead:

- (a) instead of the deduction factor required under subsection (2) to be applied, and on and from the day the person commenced to be a part-time employee or to be employed in a position having the former salary ratio,

**[15]    Section 12C (3)**

Insert “employed as a part-time employee or” before “employed in a position having” where lastly occurring.

**[16]    Section 21C Commuting of pension**

Omit section 21C (2). Insert instead:

- (2) A person may not commute the whole or any part of a pension under subsection (1) before attaining the age of 55 years.

**[17]    Section 21C (4)**

Omit the subsection. Insert instead:

- (4) Subject to section 21D, any person desiring to commute pension pursuant to this section may elect to do so at any time after attaining the age of 54 years and 6 months.

**[18] Section 21C (8)**

Insert “, subject to sections 31A (3) and 32A (3)” after “in relation to that person”.

**[19] Section 21D Limitations on elections under section 21C**

Omit section 21D (1). Insert instead:

- (1) Subject to this section, a person may not make an election under section 21C relating to a pension under this Act after the expiration of 6 months after:
  - (a) the day on which the person attained the age of 55 years, or
  - (b) the day on which the person became entitled to that pension,

whichever is the later day.

**[20] Section 21D (2)**

Omit the subsection. Insert instead:

- (2) Subject to this section, if a person makes an election under section 23BA to take up additional units, the person may not make an election under section 21C in respect only of the pension payable in respect of those additional units after the expiration of 6 months after:
  - (a) the day on which the person attained the age of 55 years, or
  - (b) the day on which the person made the election under section 23BA,

whichever is the later day.

**[21]    Section 31A**

Insert after section 31:

**31A Minimum benefit payable in respect of pensioner who dies**

- (1) If a pensioner dies without leaving a spouse to whom pension is payable under this Act, nor a child in respect of whom pension is payable under this Act, there is payable to the personal representatives of the pensioner an amount calculated by deducting from the minimum benefit payable in respect of the pensioner the total of all benefits paid to the pensioner under this Act.
- (2) If a pensioner dies leaving a surviving spouse, and the surviving spouse dies, and there is no child of the pensioner or spouse in respect of whom pension is payable under this Act, there is payable to the personal representatives of the pensioner an amount calculated by deducting from the minimum benefit payable in respect of the pensioner the total of:
  - (a) all benefits paid to the pensioner under this Act, and
  - (b) all benefits paid as a consequence of the death of the pensioner to the spouse or any other person under this Act.
- (3) If a pensioner dies leaving a surviving spouse to whom pension is payable under this Act, and no child of the pensioner or spouse in respect of whom pension is payable under this Act, and the surviving spouse elects to commute the whole of that pension under section 21C, there is payable to the spouse, on that election taking effect, whichever is the greater of the following amounts:
  - (a) the amount that would be payable under section 21C (but for this section), or
  - (b) the amount calculated by deducting from the minimum benefit payable in respect of the pensioner the total of:



- 
- (i) all benefits paid to the pensioner under this Act, and
  - (ii) all benefits paid as a consequence of the death of the pensioner to the spouse or any other person under this Act.
- (4) If subsection (1), (2) or (3) would apply in respect of a pensioner, but for the pensioner leaving a child or children in respect of whom pension is payable under this Act (or would, but for this section, be so payable), STC may, if it considers it to be in the best interests of the child or children, apply this section as if there were no such child or children, in which case pension or pensions are not payable under this Act in respect of the child or children.
- (5) If a pensioner has no personal representatives, an amount payable to the pensioner's personal representatives is to be paid to such person or persons as STC may determine.
- (6) For the purposes of this section, if a pensioner dies and his or her spouse died at the same moment or in circumstances rendering it uncertain which of them survived the other, and the spouse died before a pension became payable to him or her under this Act because of the pensioner's death, the pensioner is taken not to have a surviving spouse.
- (7) For the purposes of this section, the *minimum benefit* payable in respect of a pensioner is the amount to which the pensioner would have been entitled under section 38A if the pensioner had, on the day determined by STC as being the last day on which he or she was an employee, resigned from the service of his or her employer and elected to take the benefit of that section.
- (8) In this section:  
*benefits* includes instalments of pension.  
*pensioner* means a person to whom a pension is payable under this Act because the person was a former contributor, and includes a person who became entitled to a pension under this Act because the person was a former contributor and who commuted that pension in accordance with this Act.

**[22] Section 32A Death of employee before retirement**

Insert after section 32A (2):

- (3) If an employee dies before retirement leaving a surviving spouse in respect of whom pension is payable under this Act, and no child in respect of whom pension is payable under this Act, and the surviving spouse elects to commute the whole of that pension under section 21C, there is payable to the spouse, on that election taking effect, whichever is the greater of the following amounts:
  - (a) the amount that would be payable under section 21C (but for this section), or
  - (b) the amount that would have been payable if the employee had resigned, immediately before dying, from the service of the employee's employer and elected under section 38B to take the benefit of section 38A, less the total of any benefits paid as a consequence of the death of the employee to the spouse or any other person under this Act (including any instalments of pension).
- (4) If subsection (3) would apply in respect of an employee, but for the employee leaving a child or children in respect of whom pension is payable under this Act (or would, but for this section, be so payable), STC may, if it considers it to be in the best interests of the child or children, apply subsection (3) as if there were no such child or children, in which case pension or pensions are not payable under this Act in respect of the child or children.

**[23] Section 37B**

Insert after section 37A:

**37B Deferral of payment of benefits on retrenchment**

- (1) This section applies to a contributor who is retrenched from the service of an employer and who, at the time of retrenchment, is not less than 50 years of age.

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- (2) A contributor to whom this section applies is entitled, subject to section 38B and only with the concurrence of his or her employer, to elect to retire on pension at the early retirement date instead of taking any pension, benefit or other amount that would be payable to the contributor under this Part on the retrenchment of the contributor.
  - (3) If a contributor makes such an election, the contributor is entitled, on the early retirement date, to a pension under section 28, 28A or 28AA (whichever is applicable), as if the contributor had continued in the service of the employer and had elected to retire, and retired, on the early retirement date. Section 21C applies accordingly.
  - (4) The entitlement under this section arises only if the contributor agrees to pay to the Fund, and does pay to the Fund, within the time required by STC, an amount determined by STC, on the basis of actuarial advice, as the present value of the total of all further amounts that the contributor would have been required to contribute to the Fund had the contributor not been retrenched and had continued in service with the employer until the early retirement date.
  - (5) If a contributor elects to take the benefit of this section, Division 7 of Part 3 applies, and continues to apply, in respect of the contributor's employer, as if the contributor were still employed by the employer and had continued in the service of the employer until the early retirement date. Accordingly, the employer must contribute to the Fund as required by those provisions.
  - (6) For the purposes of Division 7 of Part 3, the contributions to be made by the employer are to be determined by STC on the basis of the contributions that would have been payable by the contributor had he or she continued in the service of the employer at the same salary and on the same basis as immediately before his or her retrenchment.



- (7) If a contributor who has been retrenched elects to take the benefit of this section and afterwards enters the service of the same or a different employer, the contributor is not entitled to claim any further benefit in respect of the contributor's previous service, except in accordance with section 38C.
- (8) If a contributor who elects to take the benefit of this section:
- (a) becomes incapacitated before the early retirement date, or
  - (b) dies before the early retirement date,
- STC may treat the contributor (whether or not the election has already taken effect) as having elected to take the benefit of Division 3A immediately before he or she became incapacitated or died, and apply those provisions accordingly. If the contributor has paid a lump sum to the Fund in accordance with this section, STC is to refund to the contributor, or the contributor's personal representatives, an amount determined by STC as being the value of excess contributions paid by the contributor (that is, contributions paid in respect of a period commencing after the contributor's incapacity or death).
- (9) In this section:
- early retirement date*, in relation to a contributor to whom this section applies, means the date on which the contributor will reach the age of 55 years.

**[24] Section 38B Contributor who is retrenched, resigns or is dismissed or discharged to be entitled to the greatest available benefit**

Insert "or" at the end of section 38B (1) (a).

**[25] Section 38B (1) (d)**

Insert after section 38B (1) (c):

, or

- (d) if section 37B applies to the contributor—to take the benefit of that section.



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**[26] Section 38C Break in service may be cured on certain conditions**

Insert after section 38C (11):

- (12) If a person who is deemed under subsection (11) not to have ceased to be an employee had, on ceasing to be an employee, elected to take the benefit of section 37B:
  - (a) the person is deemed not to have elected to take the benefit of that section, and
  - (b) any lump sum amount payable by the employee to the Fund under that section ceases to be payable and, if it has already been paid to the Fund, is to be refunded to the employee.

**[27] Part 4, Division 3A**

Omit the heading. Insert instead:

**Division 3A Voluntarily deferred benefits**

**[28] Part 4, heading to Division 3B**

Omit "or preservation".

**[29] Part 4, Division 3D, sections 52Y–52AA**

Omit the Division. Insert instead:

**Division 3D Compulsory preservation of benefits**

**52Y Compulsory preservation of benefits after changeover day**

- (1) STC must, when a pension or lump sum becomes payable under this Act (including a benefit provided under Division 3A or 3B), preserve all or so much of the pension or lump sum as is required to be preserved so as to be consistent with a relevant Commonwealth superannuation standard.

- (2) For the purpose of preserving a benefit under this section, STC must convert to a lump sum so much of a pension as is required to be preserved. The remainder of the pension is to be dealt with as otherwise required or permitted by or under this Act.
- (3) The amount of the benefit to be preserved in respect of a contributor or former contributor for the purpose of this section is as determined by STC, after obtaining actuarial advice.
- (4) The amount of a benefit that must be preserved for the purposes of subsection (1) is to be preserved in the Fund and is to be adjusted, having regard to any adjustment of the appropriate reserve under section 8 or is to be preserved under section 52AA.

#### **52Z Payment of compulsorily preserved benefit**

- (1) The whole or part of a benefit preserved under section 52Y is payable by STC in the circumstances in which a benefit is payable under a relevant Commonwealth superannuation standard.
- (2) The whole or part of a benefit preserved under section 52Y must be paid by STC, if it is required to be paid under a relevant Commonwealth superannuation standard.
- (3) The benefit is payable:
  - (a) unless the former contributor has died—to the former contributor, or
  - (b) if the former contributor has died and is survived by a spouse—to the surviving spouse, or
  - (c) if the former contributor has died and is not survived by a spouse—to the personal representatives of the former contributor or, if appropriate, in accordance with section 88A (Payment without grant of probate etc).

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**52AA Preserved benefits**

- (1) Any amounts preserved by STC under section 52Y may be preserved in such funds, accounts or reserves as STC determines, whether established under this Act or the *Superannuation Administration Act 1996* or for the purposes of any other superannuation scheme administered by STC.
- (2) Any such preserved amounts payable by STC under section 52Y are to be paid from the appropriate fund, account or reserve referred to in this section.

**[30] Schedule 23, heading**

Omit “preserving”. Insert instead “deferring”.

**[31] Schedule 23, clauses 2, 3, 4, 8, 9 and 12**

Omit “preserved” wherever occurring. Insert instead “deferred”.

**[32] Schedule 23, clause 10**

Omit “preservation” wherever occurring. Insert instead “deferral”.

**[33] Schedule 24 Loading in respect of shift allowance**

Omit “allowance is:” from clause 2 (3).

Insert instead “allowance is to be determined by reference to the number of shifts the contributor is taken to have worked (as calculated in accordance with subclause (5)) during the relevant period. The loading is:”.

**[34] Schedule 24, clause 2 (3) (a)**

Omit “did not work”. Insert instead “is taken not to have worked”.

**[35] Schedule 24, clause 2 (3) (b)–(d)**

Omit “worked” wherever occurring.

Insert instead “is taken to have worked”.

**[36]    Schedule 24, clause 2**

Insert after clause 2 (4):

- (5)    For the purposes of subclause (3), the number of shifts a contributor is taken to have worked during a relevant period, being shifts for which a shift allowance is paid, is the number calculated as follows:

$$N = \frac{H}{H_0} \times S$$

where:

*N* is the number of such shifts the contributor is taken to have worked during the relevant period.

*H* is the number of hours per shift regularly required to be worked in such shifts during the relevant period.

*H*<sub>0</sub> is the smallest number of hours per shift regularly required to be worked (whether by the contributor or any comparable worker) in such shifts during any calendar year after 1987, including the relevant period.

*S* is the number of such shifts the contributor actually worked during the relevant period.

**[37]    Schedule 25 Savings and transitional provisions**

Insert after clause 1 (1):

*Superannuation Legislation Further Amendment Act 1998*

**[38]    Schedule 25, Part 7, clauses 17–23**

Insert after Part 6:

**Part 7      Superannuation Legislation Further  
Amendment Act 1998**

**17 Definitions**

In this Part:

*amending Act* means the *Superannuation Legislation Further Amendment Act 1998*.



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*appointed day* means the day on which Schedule 2.7 [16] to the amending Act commences.

### **18 Existing part-time contributors**

- (1) Sections 3 (1), 3AA, 10WC, 12B and 12C, as in force immediately before their amendment by the amending Act, and any treatment or practices by STC under those provisions applying at the time to a contributor, continue to apply to a contributor on part-time leave without pay immediately before the commencement of this clause as if those amendments had not been made.
- (2) A contributor referred to in subclause (1) may elect to have sections 3 (1), 3AA, 10WC, 12B and 12C, as amended by the amending Act, apply to the contributor.
- (3) Subclause (1) does not apply to a contributor if:
  - (a) an election by the contributor under subclause (2) takes effect, or
  - (b) a period of part-time leave without pay approved in respect of a contributor as at the commencement of this clause ends, whether or not a further period of part-time leave, continuous with the period that ends, is approved.

### **19 Amendments to section 21D—no application to persons of or over the age of 60 years**

The amendments made to section 21D by the amending Act do not apply in respect of any person who is entitled to a pension payable under section 29 and who attains the age of 60 years on or before the appointed day.

### **20 Amendments to section 21D—application to certain persons between 55 and 60 years of age**

- (1) This clause applies in respect of a person who has a maturity age of 60 years and who, on the appointed day:
  - (a) is entitled to a pension payable under section 29 of the Act, and

- (b) has attained the age of 55 years but has not yet attained the age of 60 years.
- (2) Section 21D, as amended by the amending Act, applies in respect of such a person as if the person had attained the age of 55 years on the appointed day. Accordingly:
  - (a) the person may make an election under section 21C, or under section 23BA (if applicable to the person), at any time within the period of 6 months after the appointed day, and
  - (b) the reference in section 21D (3) to the time prescribed by section 21D (1) and (2) is a reference to the time prescribed by those subsections, as modified by this clause.

**21 Application of section 31A and amendments to section 32A**

- (1) Section 31A, as inserted by the amending Act, does not apply to or in respect of a pensioner who died before the commencement of that section.
- (2) Section 32A (3) and (4), as inserted by the amending Act, do not apply to or in respect of an employee who died before the commencement of those subsections.

**22 Application of section 37B**

Section 37B, as inserted by the amending Act, applies only in respect of a contributor referred to in section 37B (1) who is retrenched on or after the commencement of that section.

**23 Payment of previously preserved benefits**

A benefit preserved under section 52Y, as in force immediately before its repeal by the amending Act, is payable as if section 52Y had not been repealed.

**Explanatory note****Transfers from certain schemes**

The amendment made by **Schedule 2.5 [1]** is consequential on the enactment of proposed section 128A of the *Superannuation Administration Act 1996*.

**Part-time workers**

The amendments clarify the basis on which contributors who work part-time are to be treated. Currently, contributors who work in a part-time position are not required to contribute to the State Superannuation Fund at the full-time rate but do not receive a full pension. Contributors who work part-time while being on part-time leave without pay are required to contribute at a full-time rate and are entitled to a full pension. The amendments have the effect that both kinds of employees will be treated in the same way as part-time employees are currently treated, with changes to the way deduction factors are applied to part-time employees.

**Schedule 2.5 [3]** enables changes to be made to the nominated salary of executive officers when officers change from full-time to part-time work or from part-time work to full-time work.

**Schedule 2.5 [7]** extends the provisions relating to deduction factors applicable to part-time employees to persons employed on part-time leave without pay, in addition to persons employed in part-time positions. **Schedule 2.5 [2], [5], [6], [8]–[10] and [12]–[15]** make consequential amendments.

**Schedule 2.5 [12]** amends a factor in the formula for calculating the deduction factor to be applied to a part-time employee. The factor will be applied on the basis that a person will be a part-time employee for a specified period or the period of leave, rather than on the basis that such employment will be until retirement age.

**Allocation of reserves**

**Schedule 2.5 [4]** inserts proposed section 9A which requires unallocated amounts in the State Superannuation Fund to be transferred to a general employer reserve before 30 June 1999 and thereafter to be credited to appropriate employer reserves.

**Commutation of breakdown pension at age 55**

**Schedule 2.5 [16] and [17]** allow persons who are in receipt of a breakdown pension under section 29 of the *Superannuation Act 1916* to commute their pensions at age 55, in the same way as other persons who become entitled to a pension under the Act. At present, a person who is entitled to a pension payable under section 29 of the Act may not commute any of that pension until the person has reached the maturity age. The maturity age is 55 years for women contributors who elected to contribute for retirement at the age of 55 years, and in other cases is 60 years. The amendments will allow all persons who are entitled to a breakdown pension to commute their pension at age 55 years, regardless of their maturity age. **Schedule 2.5 [19] and [20]** are consequential amendments.



### **Minimum benefit**

**Schedule 2.5 [21]** provides for the payment of a minimum benefit in the case of a pensioner who dies. The minimum benefit is the amount to which the pensioner would have been entitled under section 38A of the Act, if he or she had elected to take the benefit of that section on ceasing to be employed, less any amounts of pension or other benefits paid to or in respect of the pensioner under the Act. The minimum benefit is payable if the pensioner dies without leaving a surviving spouse or child to whom a pension is payable under the Act or if the surviving spouse of the pensioner also dies (without having first exhausted the minimum benefit payable in respect of the pensioner). Item [21] also provides that, if a pensioner dies leaving a surviving spouse, and no children in respect of whom pension is payable under the Act, the spouse is, on commutation of that pension, entitled to at least the minimum benefit payable in respect of the pensioner.

Section 32A of the Act currently provides for the payment of a benefit if an employee dies before retirement without leaving a spouse or children in respect of whom a pension is payable under the Act. **Schedule 2.5 [22]** amends section 32A to provide that, if an employee dies leaving a surviving spouse, and no children in respect of whom pension is payable under the Act, the spouse is, on commutation of that pension, entitled to at least a minimum benefit (being the section 38A benefit less any benefits already paid to or in respect of the pensioner).

**Schedule 2.5 [18]** is a consequential amendment.

### **Early retirement benefits for contributors who are retrenched**

**Schedule 2.5 [23]** allows a contributor who is retrenched when he or she is at or over the age of 50 years to defer payment of any benefit under the Act until reaching the age of 55 years, at which time the contributor will be entitled to the relevant early voluntary retirement benefit. A contributor may elect to take the benefit of this provision only if the contributor's employer agrees to the election and only if the contributor pays to the Fund, in a lump sum, the present value of all further contributions the contributor would have been required to make had he or she continued in the service of the employer until age 55. The employer is also required to continue to contribute to the Fund on the contributor's behalf. **Schedule 2.5 [24]** and **[25]** are consequential amendments. **Schedule 2.5 [26]** makes provision for revocation of the election in the event of the contributor re-commencing employment with the employer or another employer after being retrenched.

**Schedule 2.5 [38]** provides for transitional matters.

### **Preservation standards**

Regulations under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth set out standards for the preservation and release (or payment) of superannuation benefits. The proposed amendments bring the State Superannuation Fund (the **Fund**) into line with Commonwealth standards for similar superannuation funds relating to requirements to preserve benefits and make other consequential amendments.



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**Schedule 2.5 [29]** inserts proposed Division 3D of Part 4 (sections 52Y–52AA). Proposed section 52Y requires the SAS Trustee Corporation (**STC**) to preserve all or so much of a benefit as is required to be preserved under a Commonwealth standard that would be applicable if the Fund were a regulated superannuation fund under Commonwealth legislation (a **relevant Commonwealth superannuation standard**), to convert that amount to a lump sum and for interest to accrue in respect of the preserved amount. Proposed section 52Z enables the payment of the whole or part of a preserved benefit in accordance with the requirements of the relevant Commonwealth superannuation standards. Proposed section 52AA enables benefits compulsorily preserved under proposed section 52Y to be preserved in such funds, accounts or reserves as may be determined by STC, whether established under the Principal Act, the *Superannuation Administration Act 1996* or for the purpose of other superannuation schemes administered by STC, and provides for their payment when required.

**Schedule 2.5 [27], [28] and [30]–[32]** amend references to “preserved” benefits to reflect the fact that the benefits have been voluntarily deferred rather than compulsorily preserved.

**Schedule 2.5 [37] and [38]** insert savings and transitional provisions consequent on the proposed amendments.

#### **Shift allowances and salary**

Schedule 24 to the Act regulates the extent to which a shift allowance is counted as “salary” for superannuation purposes. (It is expressed, in the definition of **salary** given in section 3A of the Act, to be a salary “loading”.) For a number of contributors the loading is currently calculated on a graded scale according to the number of shifts worked by the contributor during the calendar year preceding the date at which the loading is calculated. **Schedule 2.5 [33]–[38]** change the method of calculating the shift allowance loading, by requiring it to be reckoned according to a notional number of shifts worked during the relevant 12 months. The object of the amendment is to require the loading to be calculated in a manner that takes account of the number of hours per shift the contributor is required to work as well as the number of shifts worked, so as to prevent erosion of the contributor’s entitlement by increase in the number of hours per shift. Under the new method of calculation by reference to a notional number of shifts worked, the notional number of shifts bears to the actual number of shifts worked during the relevant period the same proportion that the number of hours per shift worked during the period bears to the smallest number of hours per shift that were required during any calendar year since 1987. The amendment does not affect the method of calculation of shift allowance loading for contributors whose loading is currently calculated by reference to industrial awards subsisting in 1987 (ie in accordance with clause 2 (1) of the Schedule).

## **2.6      Superannuation Administration Act 1996 No 39**

### **[1]      Section 12A**

Insert after section 12:

#### **12A Special powers in relation to First State Superannuation Scheme**

- (1)      FTC may enter into a trust deed that makes provision for the workings of the superannuation scheme established by the *First State Superannuation Act 1992*, as provided for by Part 4 of that Act.
- (2)      FTC has, in relation to that scheme, such functions as are conferred or imposed on it by or under the trust deed as are not inconsistent with its functions in relation to the scheme under this Act or with the *First State Superannuation Act 1992*.

### **[2]      Section 22**

Omit the section. Insert instead:

#### **22 Determination of disputes**

- (1)      A dispute under this or any other Act concerning an FTC scheme is to be determined by FTC, except as otherwise provided by the regulations.
- (2)      Regulations made for the purposes of this section may require that a dispute concerning the entitlements or obligations of an employee or beneficiary arising in respect of service by the employee with an employer that:
  - (a)      was responsible for the payment of benefits under an FTC scheme of which the employee was a member or to which the employee was a contributor, and

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- (b) has ceased to be responsible for the payment of benefits under that scheme but is responsible for the payment of benefits under a new superannuation scheme created in accordance with section 127,

be determined, not by FTC, but by the trustee of the new superannuation scheme.

- (3) In determining a dispute, FTC or the relevant trustee may inform itself on any matter in such manner as it thinks fit and, in so doing, is not bound to observe rules of law relating to evidence.
- (4) A trustee acting in accordance with regulations referred to in subsection (2) has and may exercise the powers conferred on FTC by sections 21 and 23.

**[3] Section 44 Service of documents**

Insert after section 44 (1):

- (1A) FTC may approve other arrangements for the service of documents on FTC.

**[4] Section 67**

Omit the section. Insert instead:

**67 Determination of disputes**

- (1) A dispute under this or any other Act concerning an STC scheme is to be determined by STC, except as otherwise provided by the regulations.
- (2) Regulations made for the purposes of subsection (1) may require that a dispute concerning the entitlements or obligations of an employee or beneficiary arising in respect of service by the employee with an employer that:



- (a) was responsible for the payment of benefits under an STC scheme of which the employee was a member or to which the employee was a contributor, and
- (b) has ceased to be responsible for the payment of benefits under that scheme but is responsible for the payment of benefits under a new superannuation scheme created in accordance with section 127,  
  
be determined, not by STC, but by the trustee of the new superannuation scheme.
- (3) In determining a dispute, STC or the relevant trustee may inform itself on any matter in such manner as it thinks fit and, in so doing, is not bound to observe rules of law relating to evidence.
- (4) A trustee acting in accordance with regulations referred to in subsection (2) has and may exercise the powers conferred on STC by sections 66 and 68.

**[5] Section 128 Provisions consequent on establishment of additional superannuation schemes**

Insert "or deferral" after "preservation" in section 128 (1) (f).

**[6] Section 128A**

Insert after section 128:

**128A Mobility between public sector schemes and EISS and LGSS**

- (1) In this section:

*electricity industry superannuation scheme* means the scheme established under a trust deed entered into by the Treasurer and Energy Industries Superannuation Scheme Pty Ltd, as trustee.



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***local government superannuation scheme*** means the scheme established under a trust deed entered into by the Treasurer and LGSS Pty Ltd, as trustee.

***transfer option*** means a right conferred by subsection (2) or (3).

(2) An employee who:

- (a) is a member of or contributor to an STC scheme by reason of employment with a prescribed public sector employer, and
- (b) subsequently transfers employment to an employer that is responsible for the payment of benefits in respect of the electricity industry superannuation scheme or the local government superannuation scheme, and
- (c) meets the eligibility requirements of regulations made under subsection (4),

has a right to transfer from the STC scheme to the electricity industry superannuation scheme or the local government superannuation scheme, as the case may be.

(3) An employee who:

- (a) in accordance with regulations made under section 127, or by the exercise of an option under this Act or any Act establishing an STC scheme, has transferred from an STC scheme to the electricity industry superannuation scheme or the local government superannuation scheme, and
- (b) subsequently transfers employment from an employer that is responsible for the payment of benefits in respect of either of those schemes to a prescribed public sector employer, and

- (c) meets the eligibility requirements of regulations made under subsection (4),

has a right to transfer from either the electricity superannuation industry scheme or the local government superannuation scheme to an STC scheme of which the employee was previously a member or to which the employee previously contributed.

- (4) Regulations may be made for or with respect to eligibility to exercise a transfer option, and for or with respect to:
  - (a) prescribing public sector employers for the purposes of subsections (2) (a) and (3) (b), and
  - (b) defining, for the purposes of subsections (2) (b) and (3) (b), the circumstances in which a transfer of employment is taken to have occurred, and
  - (c) prescribing or providing for the determination of:
    - (i) the manner and form in which, and the time within which, a transfer option may be exercised, and
    - (ii) the terms and conditions on which membership of the scheme to which a person transfers under a transfer option is available, and
  - (d) the transfer of assets and liabilities (relating to the person concerned) of the scheme from which a person is transferred under a transfer option to the scheme to which the person is so transferred, and
  - (e) the rights and obligations of a person exercising a transfer option, and of any associated beneficiaries, in respect of the person's membership of or contributions to the scheme from which the person is transferred under the option, and in particular:

- (i) the preservation or deferral of a benefit in that scheme, and
    - (ii) the calculation of any benefit so preserved or deferred, and
    - (iii) the payment of any such benefit to the scheme to which the person is transferred, and
  - (f) providing for the resolution, by a prescribed authority or person, of all or any prescribed class of disputes concerning the entitlements or obligations of a person exercising a transfer option or any associated beneficiary and arising under the scheme from which the person is transferred under the option.
- (5) Regulations made for the purposes of subsection (4) (e) that make provision for or with respect to preserving or deferring a benefit in the scheme from which a person exercising a transfer option is transferred may provide for the payment of such a benefit in spite of any minimum qualifying period of membership or of making contributions, or other limitation prescribed by that scheme, that would otherwise prevent or restrict the preservation or deferral of benefits in it.
- (6) Regulations made under this section with respect to a transfer option may confer the option on an employee whose transfer of employment (as referred to in subsections (2) (b) and (3) (b)) took place before the regulation took effect.
- (7) This section has effect despite any provision of an Act under which an STC scheme is constituted or of the trust deeds constituting the electricity industry and local government superannuation schemes.



### **Explanatory note**

#### **Trust deed powers**

**Schedule 2.6 [1]** is consequential on the amendments to the *First State Superannuation Act 1992* that provide for a trust deed to be entered into by the Minister and FTC in relation to the workings of the superannuation scheme established by that Act. New section 12A makes it clear FTC has power to enter into that deed and to exercise its functions under that trust deed, subject to the *Superannuation Administration Act 1996* and the *First State Superannuation Act 1992*.

#### **Determination of disputes**

Section 22 of the Act currently requires disputes arising in connection with an employee's membership of an FTC scheme to be resolved by the trustee of the scheme. **Schedule 2.6 [2]** enables the regulations to require such a dispute to be resolved by the trustee of a scheme established under section 127 of the Act for the local government and electricity sectors in certain cases, namely, those in which the employee's former employer has ceased to be associated with the FTC scheme but has become associated with the new scheme established under that section.

Section 67 of the Act currently requires disputes arising in connection with an employee's membership of an STC scheme to be resolved by the trustee of the scheme. **Schedule 2.6 [4]** enables the regulations to require such a dispute to be resolved by the trustee of a scheme established under section 127 of the Act for the local government and electricity sectors in certain cases, namely, those in which the employee's former employer has ceased to be associated with the STC scheme but has become associated with the new scheme established under that section.

#### **Service of notices**

**Schedule 2.6 [3]** allows FTC to approve alternative arrangements for the service of documents on FTC.

#### **Preservation of benefits**

**Schedule 2.6 [5]** makes it clear that regulations may be made under section 128 of the Act with respect to the voluntary deferral, as well as the compulsory preservation, of benefits.

#### **Transfer between schemes**

The effect of proposed section 128A (as inserted by **Schedule 2.6 [6]**) is:

- (a) to give persons who are members of a public sector superannuation scheme, in the event that they transfer employment from any of a prescribed class of public sector employers to an employer that is responsible for the payment of benefits in respect of either the local government or electricity industry superannuation scheme the option of transferring to whichever of those schemes is appropriate, and

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- (b) to give persons who are members of the local government or electricity industry superannuation scheme the option of transferring back to a public sector superannuation scheme to which they previously belonged, in the event that they resume employment with any of a prescribed class of public sector employers.

The option is available in circumstances, and is subject to any eligibility requirements, that may be prescribed by regulations made for facilitating any transfer between schemes. It will be possible for an employee to whom new subsection (3) applies to transfer back to a scheme that is otherwise a closed scheme.

[Minister's second reading speech made in—  
Legislative Assembly on 18 November 1998  
Legislative Council on 25 November 1998]

