

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

(a) to amend the *Police Regulation (Superannuation) Act 1906* (the **Principal Act**) which establishes the Police Superannuation Scheme, to permit members of that scheme to have compulsory employee contributions paid on a salary sacrifice basis,

(b) to amend the Principal Act with respect to the transfer of benefits to other schemes by police executive officers,

(c) to amend the Principal Act to clarify the circumstances when a police officer or former police officer may be certified to be medically unfit for the purposes of payment of a superannuation allowance or gratuity,

(d) to amend the Principal Act to enable the payment of gratuities payable to members hurt on duty in respect of loss of limbs, medical expenses and other matters other than from the fund established under the Police Superannuation Scheme,

(e) to make other minor and consequential amendments to that Act and the *Police Association Employees (Superannuation) Act 1969*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the *Police Association Employees (Superannuation) Act 1969* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Police Regulation (Superannuation) Act 1906* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after the proposed Act commences. Once commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Police Association Employees (Superannuation) Act 1969

The Schedule amends the *Police Association Employees (Superannuation) Act 1969* to enable Police Association employees, who are contributors to the Police Superannuation Scheme, to make employee contributions to that Scheme by way of salary sacrifice contributions and to make a consequential amendment.

Schedule 2 Amendment of Police Regulation (Superannuation) Act 1906

Salary sacrifice contributions

Schedule 2 [7] inserts proposed section 5AD into the Principal Act. The proposed section enables a contributor to the Police Superannuation Scheme to enter into an agreement with the Commissioner of Police to sacrifice remuneration to pay all or part of the compulsory employee contributions to that Scheme. The remuneration is foregone and the contributions are paid by the employer to the Scheme instead of being paid by the employee from his or her salary after payment of tax. The contributor is also required to pay an amount to meet the cost of any tax payable in respect of a salary sacrifice contribution. The proposed section also makes it clear that such salary sacrifice contributions are to be treated in the same way as employee contributions for the purposes of the Principal Act and that any subsequent benefit is not an employer-financed benefit. **Schedule 2 [2]** makes a consequential amendment.

Schedule 2 [1] and [4] amend the definitions of **salary of office** contained in section 1, and section 1AA, of the Principal Act to make it clear that, in calculating the superable salary of a contributor, the cost of any salary sacrifice contributions is to

be included.

Incapacity benefits

Benefits are payable under the Principal Act to members or former members of the Police Superannuation Scheme who are discharged, or who have been hurt on duty, and who are certified by the SAS Trustee Corporation to be incapable, from infirmity of body or mind, of discharging the duties of the member's duties of office. **Schedule 2 [13] and [17]** amend sections 8 and 10B of the Principal Act to make it clear that such a certificate is to be given if the member or former member is incapable, from infirmity of body or mind, of exercising the functions (including powers, authorities and duties) of a police officer referred to in section 14 (1) of the *Police Act 1990*. The functions referred to in that section are those conferred or imposed on a constable by or under any law (including the common law) of the State. The new provisions also make it clear that the SAS Trustee Corporation must not base its determination on the member's or former member's actual rank or position or functions and must not determine that a member or former member has the capacity to exercise a function unless it can be personally exercised (other than by delegation).

The proposed amendments remove the requirement to consider whether the member or former member is incapable of performing the duties of their actual office as well as the current prohibition on giving a certificate unless a member or former member is incapable of discharging the duties of their own office and any other available and reasonable office.

The proposed amendments are intended to overcome the effect of the decision in *Morley v SAS Trustee Corporation* [2007] NSWIRComm 90 in which the Industrial Court held that, in considering whether an officer was capable of performing the duties of a constable as referred to in section 14 of the *Police Act 1990* and the officer's duties generally, it was appropriate to have regard to the particular rank or office of the police officer concerned. As referred to above, the proposed amendments expressly state that regard is not to be had to a police officer's or former police officer's actual rank or functions when determining incapacity.

Schedule 2 [12], [19] and [20] make amendments consequential on the amendment made by Schedule 2 [13].

Schedule 2 [16] and [20] make amendments consequential on the amendment made by Schedule 2 [17].

Schedule 2 [18] amends section 12D of the Principal Act to make it clear that a gratuity under that section (which provides for payments in respect of work-related injuries) may be paid by a person other than the trustee of the Police Superannuation Scheme and from a source other than the Police Superannuation Fund.

Other amendments

Schedule 2 [3] amends section 1 of the Principal Act to provide that notes included in that Act do not form part of that Act.

Schedule 2 [6] amends section 2I of the Principal Act to remove a reference to a function under a repealed provision of the *Police Act 1990*. **Schedule 2 [5]** makes a consequential amendment.

Schedule 2 [8] and [9] amend section 5B of the Principal Act to make it clear that the deferred benefit of a contributor who is an executive officer, and who elects not to continue to contribute to the Police Superannuation Scheme and to have his or her deferred benefit paid to the First State Superannuation Fund, another complying superannuation fund, a complying approved deposit fund or a retirement savings account, is to be paid as soon as practicable after the election is made. **Schedule 2 [10] and [11]** make consequential amendments.

Schedule 2 [14] and [15] amend section 9B of the Principal Act to substitute 2 provisions that provide for the form of an election with a single provision.

Schedule 2 [21] amends section 14L of the Principal Act to correct an incorrect reference.

Schedule 2 [22] amends Schedule 6 to the Principal Act to enable regulations containing savings and transitional provisions to be made as a consequence of the enactment of the proposed Act.

Schedule 2 [23] contains a validation of existing certificates under section 8 or 10B of the Principal Act that would be valid if given after the commencement of the amendments to those sections.