

Passed by both Houses



New South Wales

Police Superannuation Legislation Amendment Bill 2007

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2007*



New South Wales

Police Superannuation Legislation Amendment Bill 2007

Act No , 2007

An Act to amend the *Police Association Employees (Superannuation) Act 1969* and the *Police Regulation (Superannuation) Act 1906* with respect to the payment of compulsory employee superannuation contributions by way of salary sacrifice arrangements, the payment of incapacity benefits and the transfer of benefits to other superannuation schemes; and for other purposes.

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

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Police Superannuation Legislation Amendment Act 2007*.

2 Commencement

This Act commences on the date of assent to this Act.

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

The *Police Association Employees (Superannuation) Act 1969* is amended as set out in Schedule 1.

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

The *Police Regulation (Superannuation) Act 1906* is amended as set out in Schedule 2.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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

(Section 3)

[1] Section 2B Salary of office: executive officers

Insert “, other than salary sacrifice contributions,” after “superannuation” in section 2B (3).

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

Insert after section 3 (2AB):

- (2AC) Section 5AD of the *Police Regulation (Superannuation) Act 1906* applies, with any necessary modifications, in respect of an amount required to be paid under subsection (2AA) (a) by the prescribed person in the same way as it applies to an amount required to be deducted under section 5 of that Act.

Schedule 2 Amendment of Police Regulation (Superannuation) Act 1906

(Section 4)

[1] Section 1 Name of Act, commencement and definitions

Insert after paragraph (a) of the definition of *salary of office* in section 1 (2) in relation to a member of the NSW Police Force other than an executive officer:

- (a1) if salary sacrifice contributions are made in respect of the member, the amounts payable for those contributions under section 5AD (3) (a) and (b), and

[2] Section 1 (2)

Insert in alphabetical order:

salary sacrifice contribution—see section 5AD (2).

[3] Section 1 (7)

Insert after section 1 (6):

- (7) Notes included in this Act do not form part of this Act.

[4] Section 1AA Salary of office: executive officers

Insert “, other than salary sacrifice contributions,” after “superannuation” in section 1AA (3).

[5] Section 2I Functions of Committee

Omit “STC,” from section 2I (a). Insert instead “STC, and”.

[6] Section 2I (b)

Omit the paragraph.

[7] Section 5AD

Insert after section 5AC:

5AD Salary sacrifice contributions

- (1) The whole or part of an amount that is required to be deducted from the salary of office of a qualified person under section 5 may be paid by salary sacrifice contributions.
- (2) A *salary sacrifice contribution* is a contribution paid in accordance with an agreement between a qualified person and the Commissioner of Police under which the person is to forgo remuneration yet to be earned and the remuneration foregone is

to be applied by the employer to the amount payable for the deductions under section 5.

- (3) The amount payable for a salary sacrifice contribution to meet the requirement for a deduction under section 5 is to include the following:
- (a) the amount necessary (taking into account any deductions not made on a salary sacrifice basis) to meet the required deduction under section 5 (the *deduction element*),
 - (b) the amount necessary to meet any tax payable under Commonwealth taxation law in respect of the amount paid under paragraph (a).
- (4) In this Act and the regulations, a reference (however expressed) to any of the following is taken to include a reference to the deduction element of a salary sacrifice contribution in accordance with an agreement under this section:
- (a) a deduction from the salary of office for the purposes of section 5,
 - (b) a contribution by a contributor.
- (5) In this Act and the regulations, a reference (however expressed) to an employer contribution or an employer-financed benefit does not include a reference to a salary sacrifice contribution or any part of a benefit financed by a salary sacrifice contribution.
- (6) This section has effect despite any other provision of this Act.

[8] Section 5B Contributor who is executive officer

Omit section 5B (5) (d). Insert instead:

- (d) except as provided by subsection (6), is not entitled to be paid the benefit provided by section 9B (6) or (6AA) until on or after first ceasing to be employed in the NSW Police Force after making the election and unless there exist the circumstances set out in section 9B (3), and

[9] Section 5B (6)

Omit the subsection. Insert instead:

- (6) If a contributor makes an election under subsection (5) (e), STC must, as soon as practicable after the election is made, pay to the trustee or provider of the nominated fund or account the amount of the benefit provided by section 9B (6) or (6AA) to which the contributor is entitled under subsection (7) or (7A).

[10] Section 5B (7) and (7A)

Omit “subsection (6) (a)” wherever occurring. Insert instead “subsection (6)”.

[11] Section 5B (7) and (7A)

Omit “electing to become a member of the First State Superannuation Fund” wherever occurring.

Insert instead “making an election under subsection (5) (e)”.

[12] Section 7 Superannuation allowance except where member hurt on duty

Omit “discharging the duties of the member’s office” from section 7 (1).

Insert instead “personally exercising the functions of a police officer referred to in section 14 (1) of the *Police Act 1990*”.

[13] Section 8 Determination of members medically unfit

Omit section 8 (1)–(2A). Insert instead:

- (1) A superannuation allowance or gratuity must not be granted or paid under section 7 or 14 to a member of the police force who:
 - (a) is discharged after the commencement of the *Police Regulation (Superannuation and Appeals) Amendment Act 1973*, and
 - (b) at the time of the member’s discharge is under the age of 60 years,

unless STC (having regard to medical advice on the condition and fitness for employment of the member) has certified the member to be incapable, from infirmity of body or mind, of personally exercising the functions of a police officer referred to in section 14 (1) of the *Police Act 1990*.

Note. Section 14 (1) of the *Police Act 1990* provides that a police officer has the functions conferred or imposed on a constable by or under any other law (including the common law) of the State.

- (2) For the purposes of determining a member’s incapacity:
 - (a) STC is not to have regard to the member’s actual rank or position or functions (other than the functions referred to in subsection (1)), and
 - (b) the capacity to exercise a function by delegation is not taken to be a capacity to personally exercise the function.

[14] Section 9B Preserved benefit

Omit section 9B (1A).

[15] Section 9B (10)

Omit the subsection. Insert instead:

- (10) An election under this section must be made in such form, and within such period, as may be specified by STC.

[16] Section 10 Superannuation allowance where member hurt on duty

Omit “discharging the duties of the member’s office” wherever occurring in the definition of *disabled member of the police force* in section 10 (1).

Insert instead “personally exercising the functions of a police officer referred to in section 14 (1) of the *Police Act 1990*”.

[17] Section 10B Medical examination of disabled member and determination of whether hurt on duty

Omit section 10B (1)–(2BA). Insert instead:

- (1) An annual superannuation allowance or gratuity must not be granted under section 10 to a member of the police force who is discharged unless STC (having regard to medical advice on the condition and fitness for employment of the member) has certified the member to be incapable, from a specified infirmity of body or mind, of personally exercising the functions of a police officer referred to in section 14 (1) of the *Police Act 1990*.
- (2) An annual superannuation allowance or gratuity must not be granted under section 10 to a former member of the police force who resigned or retired unless:
- (a) the former member notified the Commissioner of Police before the member’s resignation or retirement and within 6 months of receiving the injury which has caused the member’s infirmity of body or mind, of that injury, and
- (b) if the regulations so require, the notification was in the prescribed form, and
- (c) STC (having regard to medical advice on the condition and fitness for employment of the member) has certified that the former member was incapable, from that infirmity of body or mind, of personally exercising the functions of a police officer referred to in section 14 (1) of the *Police Act 1990* at the time of the member’s resignation or retirement.
- (2A) For the purposes of determining a member’s or former member’s incapacity under this section:
- (a) STC is not to have regard to the member’s or former member’s actual rank or position or any functions (other than the functions referred to in subsection (2) (c)) of the

member or former member at the time to which the certification relates, and

- (b) the capacity to exercise a function by delegation is not taken to be a capacity to personally exercise the function.

[18] Section 12D Gratuities to members hurt on duty in respect of loss of limbs, medical expenses etc

Insert after section 12D (4):

- (5) Despite any other provision of this section or any other provision of this Act, a gratuity or part of a gratuity payable under this section may, with the approval of the Minister, be paid by a person other than STC and from a source other than the Fund.

[19] Section 14 Gratuity for discharged members not hurt on duty

Omit “discharging the duties of the member’s office” from section 14 (1) (b).

Insert instead “personally exercising the functions of a police officer referred to in section 14 (1) of the *Police Act 1990*”.

[20] Section 14I Definitions

Omit “discharging the duties of his or her office” from the definition of *disabled member of the police force*.

Insert instead “personally exercising the functions of a police officer referred to in section 14 (1) of the *Police Act 1990*”.

[21] Section 14L Payment of lump sum to personal representatives

Omit “this section”. Insert instead “this Division”.

[22] Schedule 6 Savings and transitional provisions

Insert at the end of clause 1 (1):

Police Superannuation Legislation Amendment Act 2007

[23] Schedule 6, Part 10

Insert after Part 9:

Part 10 Police Superannuation Legislation Amendment Act 2007

30 Certification not invalid if in compliance with Act as amended

A certification given by STC under section 8 (1) or 10B (2A) or (2B) is not invalid merely because of a failure to comply with this

Act as in force before the commencement of this clause, if the certification was given before that commencement and would have been valid had it been given under section 8 or 10B as in force after the commencement of Schedule 2 [13] or [17] to the *Police Superannuation Legislation Amendment Act 2007*.