

Superannuation Legislation Amendment Bill 2004

New South Wales

Explanatory note

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

Overview of Bill

The object of this Bill is to amend various public sector superannuation Acts for the following purposes:

- (a) to provide for contributions to be accepted into the First State Superannuation Fund in respect of members who are not employees,
- (b) to make it clear that employer contributions to superannuation under the *State Authorities Non-contributory Superannuation Act 1987* are not included in the salary of office of senior executive officers for the purposes of other State public sector defined benefit superannuation schemes,
- (c) to enable co-contributions made by the Commissioner of Taxation under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* of the Commonwealth to be accepted into the scheme under the *State Authorities Non-contributory Superannuation Act 1987* in respect of employees covered by the public sector defined benefit superannuation schemes,
- (d) to enable the SAS Trustee Corporation (**STC**) to increase certain death benefits payable under the *State Authorities Superannuation Act 1987*, *Superannuation Act 1916*, *State Authorities Non-contributory Superannuation Act 1987* and the *Police Regulation (Superannuation Act) 1906* to restore amounts by which the benefits were reduced because of income tax liability in respect of employers' contributions,
- (e) to clarify certain matters relating to police hurt on duty benefits under the *Police Regulation (Superannuation) Act 1906*,
- (f) to re-enact and streamline provisions relating to the preservation and payment of benefits as a result of changes in scheme membership caused by Government initiatives,
- (g) to enable regulations to be made to provide for who is liable to pay benefits and other employer liabilities that occur during periods where an employee is eligible to elect to leave, or transfer from, a public sector superannuation scheme and before the employee elects to do so,
- (h) to enable STC to adjust employer reserves in the State Authorities Superannuation Fund and the State Superannuation Fund for the purpose of pooling employer liabilities for death and disability benefits paid out of the Fund,
- (i) to make it clear that the FSS Trustee Corporation (**FTC**) and STC may delegate the disputes determination function conferred on those Corporations to committees.

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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Acts specified in Schedules 1–7 as set out in those Schedules.

Schedule 1 Amendment of First State Superannuation Act 1992 No 100

Schedule 1 amends section 14 of the Principal Act, to include the contributions that may be paid on behalf of members who are not employees as a matter that may be

included in the trust deed for the First State Superannuation Fund.

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

No 33

Schedule 2 [1] amends section 2B of the Principal Act, which sets out how the salary of office of an executive officer is calculated for the purposes of superannuation contributions and benefits. The amendment makes it clear that employer contributions to superannuation under the *State Authorities Non-contributory Superannuation Act 1987* may not be included as part of the remuneration paid to an officer for the purpose of calculating the maximum salary that may be nominated by the officer for the purposes of the superannuation scheme established by the Principal Act.

Schedule 2 [2] enables regulations containing savings and transitional provisions to be made as a consequence of the enactment of the proposed Act.

**Schedule 3 Amendment of Police Regulation
(Superannuation) Act 1906 No 28**

Salary of office of executive officers

Schedule 3 [1] amends section 1AA of the Principal Act, which sets out how the salary of office of an executive officer is calculated for the purposes of superannuation contributions and benefits. The amendment makes it clear that employer contributions to superannuation under the *State Authorities Non-contributory Superannuation Act 1987* may not be included as part of the remuneration paid to an officer for the purpose of calculating the maximum salary that may be nominated by the officer for the purposes of the superannuation scheme established by the Principal Act.

Hurt on duty benefits

Under section 12D of the Principal Act, STC may pay a police officer or former police officer who is a member of the Police Superannuation Scheme, and who was hurt on duty, a gratuity in the nature of a workers compensation payment. The gratuity is not payable unless the officer is receiving an annual superannuation allowance under section 10 (that is, an allowance paid because the officer was hurt on duty) or the injury for which the gratuity is paid is determined by the Commissioner of Police to have been caused by being hurt on duty.

Schedule 3 [2] and [3] amend section 12D to make it clear that STC may pay a gratuity under that section without a need for a further determination about whether an injury arose out of being hurt on duty only if it is for the same injury for which a superannuation allowance is already being paid. However, in any other case, a gratuity is only payable after the Commissioner of Police decides that the injury to which the claim relates was caused by the member being hurt on duty. The amendment also removes the requirement that a determination by the Commissioner of Police as to the cause of an injury must be made at the request of STC.

**Restoration of death benefit previously reduced to offset contribution
tax liabilities**

Currently section 14AA of the Principal Act requires STC to make a determination reducing a benefit under the Principal Act if STC is liable to pay income tax under a Commonwealth taxation law in respect of certain amounts and a portion of that tax is referable to the part of those amounts used to finance the benefit.

Schedule 3 [4] inserts proposed section 14AAA into the Principal Act. The proposed section enables STC to increase a benefit payable or paid under section 9B of the Principal Act, that has been previously reduced under section 14AA, for the purpose of obtaining an income tax deduction. The benefit is increased by an amount equal to the amount that would be allowable as a deduction from assessable income under section 279D of the *Income Tax Assessment Act 1936* of the Commonwealth in respect of the payment.

Savings and transitional provisions

Schedule 3 [5] enables regulations containing savings and transitional provisions to be made as a consequence of the enactment of the proposed Act.

Schedule 3 [6] validates gratuities granted under section 12D of the Principal Act where the Commissioner of Police made a decision about injury other than at the request of STC.

Schedule 3 [6] also provides that proposed section 14AAA applies to a benefit reduced, but not paid, before the commencement of that section and does not apply to a benefit paid before the commencement of that section.

Schedule 4 Amendment of State Authorities

Non-contributory Superannuation Act

1987 No 212

Salary of executive officers

Schedule 4 [3] amends section 4A of the Principal Act, which sets out how the salary of an executive officer is calculated for the purposes of superannuation contributions and benefits. The amendment makes it clear that employer contributions to superannuation under other public sector superannuation schemes may not be included as part of the remuneration paid to an officer for the purpose of calculating the maximum salary that may be nominated by the officer for the purposes of the superannuation scheme established by the Principal Act.

Schedule 4 [2] makes a consequential amendment.

Acceptance of co-contributions

The *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* of the Commonwealth provides for contributions (**Commonwealth co-contributions**) to be made by the Commonwealth Government towards the superannuation of eligible low income earners. Such contributions are co-contributions, being made when eligible low income earners themselves make eligible personal contributions to superannuation.

The Schedule includes amendments to the Principal Act to enable Commonwealth co-contributions made in respect of employees and former employees, within the meaning of the Principal Act, to be accepted into the superannuation scheme under the Principal Act.

Schedule 4 [5] and [8] amend the Principal Act to enable any such co-contributions to be accepted into funds and employer reserves under that Act.

In certain cases, co-contributions may be recovered by the Commissioner of Taxation as amounts payable as a debt due to the Commonwealth. **Schedule 4 [7] and [9]** amend the Principal Act to enable such amounts to be paid, or debited, as the case may be, from the relevant funds and employer reserves under the Act. **Schedule 4 [9]** also provides for the costs incurred by STC in relation to Commonwealth co-contributions to be debited from relevant employer reserves.

Schedule 4 [11] inserts proposed section 10B into the Principal Act to provide for STC to establish and maintain accounts in respect of co-contributions made in respect of employees and to credit Commonwealth co-contributions to them.

Schedule 4 [13] inserts proposed section 22A into the Principal Act to provide for the benefit (**Commonwealth co-contribution benefit**) provided by the Principal Act for a person in respect of Commonwealth co-contributions to be an amount equal to the balance at credit in the person's Commonwealth co-contribution account at the time the benefit is paid or preserved.

Schedule 4 [14] and [15] amend section 23 of the Principal Act to provide for the Commonwealth co-contribution benefit to be payable in the same circumstances as the basic benefit is payable.

Schedule 4 [17] and [18] amend section 24 of the Principal Act to provide for any Commonwealth co-contribution benefit in respect of a person to be preserved if the basic benefit in respect of that person is not otherwise payable under the Principal

Act.

Schedule 4 [19] inserts proposed section 24 (1A) and (1B) into the Principal Act to provide that Commonwealth co-contributions received by STC in respect of a former employee while a basic benefit is preserved by STC in respect of the former employee must be preserved, and any preserved Commonwealth co-contribution benefit of the person is to be increased by the amount of Commonwealth co-contributions so preserved.

Schedule 4 [1], [12], [16], [20] and [21] make consequential amendments.

Schedule 4 [4] and [6] make statute law revision amendments.

Restoration of death benefit previously reduced to offset contribution tax liabilities

Currently section 26A of the Principal Act requires STC to make a determination reducing a benefit under the Principal Act if STC is liable to pay income tax under a Commonwealth taxation law in respect of certain amounts and a portion of that tax is referable to the benefit.

Schedule 4 [22] inserts proposed section 26AA into the Principal Act. The proposed section enables STC to increase a benefit payable or paid under the Principal Act on the death of an employee or former employee under the Principal Act, that has been previously reduced under section 26A, for the purpose of obtaining an income tax deduction. The benefit is increased by an amount equal to the amount that would be allowable as a deduction from assessable income under section 279D of the *Income Tax Assessment Act 1936* of the Commonwealth in respect of the payment.

Effect of Government initiatives

Currently the Principal Act has 2 different ways of dealing with employees who are required to or elect to leave the Act's superannuation scheme, or whose employer ceases to be an employer under the scheme, as a result of a Government privatisation initiative or other Government initiative. The Schedule amends the Act so that all of these employees are dealt with in the same way.

Schedule 4 [24] substitutes section 27AA of the Principal Act. The proposed section applies Part 4AA to employees who transfer employment or superannuation coverage, or whose employer ceases to be an employer in the Act's superannuation scheme, if the Minister certifies that the cessation of employment or coverage or the removal of the employer is as a consequence of a Government privatisation initiative or other Government initiative. If the Part applies, the basic benefit and any Commonwealth co-contribution benefit in respect of the employee is to be preserved.

Schedule 4 [23] makes a consequential amendment.

Schedule 4 [25] extends provisions of section 27AB of the Principal Act, which currently provide for the adjustment of the liabilities of an employer under the Act on privatisation, to enable adjustment of the liabilities of an employer after other Government initiatives affect employees of the employer. **Schedule 4 [10]** makes a consequential amendment.

Schedule 4 [26] and [27] amend section 27AC of the Principal Act to vest an employer's liability in respect of transferred contributors in the Crown on the relevant transfer of contributors or superannuation coverage taking effect as a result of a Government privatisation initiative or other Government initiative.

Schedule 4 [28] inserts proposed section 27ACA into the Principal Act. The proposed section enables regulations to be made for or with respect to liability for employer contributions, benefits or other employer liabilities under the Principal Act that are payable in respect of any period in which an employee may elect to transfer employment or superannuation coverage and before any such election is made.

Savings and transitional provisions

Schedule 4 [29] enables regulations containing savings and transitional provisions to be made as a consequence of the enactment of the proposed Act.

Schedule 4 [30] provides that proposed section 26AA applies to a benefit reduced,

but not paid, before the commencement of that section and does not apply to a benefit paid before the commencement of that section.

Schedule 5 Amendment of State Authorities Superannuation Act 1987 No 211

Salary of executive officers

Schedule 5 [2] amends section 4A of the Principal Act, which sets out how the salary of an executive officer is calculated for the purposes of superannuation contributions and benefits. The amendment makes it clear that employer contributions to superannuation under the *State Authorities Non-contributory Superannuation Act 1987* may not be included as part of the remuneration paid to an officer for the purpose of calculating the maximum salary that may be nominated by the officer for the purposes of the superannuation scheme established by the Principal Act.

Pooling of liability for death and disability benefits

Schedule 5 [4] inserts proposed section 16A. The proposed section enables STC, after obtaining actuarial advice, to adjust amounts in employers' reserves to achieve an equitable pooling of liability for payment of employer contributions to death and disability benefits among all employers in the State Authorities Superannuation Scheme in the preceding year.

Restoration of death benefit previously reduced to offset contribution tax liabilities

Currently section 45A of the Principal Act requires STC to make a determination reducing the employer-financed portion of a benefit under the Principal Act if STC is liable to pay income tax under a Commonwealth taxation law in respect of certain amounts and a portion of that tax is referable to the employer-financed portion of the benefit.

Schedule 5 [6] inserts proposed section 45AA into the Principal Act. The proposed section enables STC to increase an employer-financed portion of a benefit payable or paid under the Principal Act on the death of a contributor or former contributor, that has been previously reduced under section 45A, for the purpose of obtaining an income tax deduction. The benefit is increased by an amount equal to the amount that would be allowable as a deduction from assessable income under section 279D of the *Income Tax Assessment Act 1936* of the Commonwealth in respect of the payment.

Effect of Government initiatives

Currently the Principal Act has 2 different ways of dealing with contributors who are required to or elect to leave the Act's superannuation scheme, or whose employer ceases to be an employer under the scheme, as a result of a Government privatisation initiative or other Government initiative. The Schedule amends the Act so that all of these contributors are dealt with in the same way.

Schedule 5 [8] inserts proposed section 46AAA of the Principal Act. The proposed section applies Part 5A to contributors who transfer employment or superannuation coverage, if the Minister certifies that the cessation of employment or coverage or the removal of the employer is as a consequence of a Government privatisation initiative or other Government initiative. The Part also applies if an employer ceases to be an employer because of an order made as a result of a Government privatisation initiative. **Schedule 5 [1], [3], [5] and [7]** make consequential amendments.

Schedule 5 [9] inserts a formal provision that gives effect to proposed Part 1 of Schedule 5 to the Principal Act.

Schedule 5 [10] extends provisions of section 46AC of the Principal Act, which currently provide for the determination and adjustment of the liabilities of an employer under the Act on privatisation, to enable adjustment of the liabilities of an employer after other Government initiatives affect contributors employed by the employer.

Schedule 5 [11] and [12] amend section 46AD of the Principal Act to vest an employer's liability in respect of transferred contributors in the Crown on the

relevant transfer of contributors or superannuation coverage taking effect as a result of a Government privatisation initiative or other Government initiative.

Schedule 5 [14] inserts proposed Part 1 of Schedule 5 into the Principal Act. The proposed Part provides for the deferral of a contributor's benefit when Part 5A of the Principal Act applies and permits immediate payment of any such benefit to another superannuation fund or approved deposit fund approved by STC or to purchase a deferred annuity. Otherwise, the deferred benefit may be paid in the same circumstances as other deferred benefits under the Principal Act. The proposed Part also enables regulations to be made for or with respect to liability for employer contributions, benefits or other employer liabilities under the Principal Act that are payable in respect of any period in which a contributor may elect to transfer employment or superannuation coverage and before any such election is made.

Schedule 5 [13] and [15] make consequential amendments.

Savings and transitional provisions

Schedule 5 [16] enables regulations containing savings and transitional provisions to be made as a consequence of the enactment of the proposed Act.

Schedule 5 [17] provides that proposed section 45AA applies to an employer-financed portion of a benefit reduced, but not paid, before the commencement of that section and does not apply to an employer-financed portion of a benefit paid before the commencement of that section.

Schedule 6 Amendment of Superannuation Act 1916

No 28

Salary of executive officers

Schedule 6 [1] amends section 3AA of the Principal Act, which sets out how the salary of an executive officer is calculated for the purposes of superannuation contributions and benefits. The amendment makes it clear that employer contributions to superannuation under the *State Authorities Non-contributory Superannuation Act 1987* may not be included as part of the remuneration paid to an officer for the purpose of calculating the maximum salary that may be nominated by the officer for the purposes of the superannuation scheme established by the Principal Act.

Pooling of liability for death and disability benefits

Schedule 6 [2] inserts proposed section 8C. The proposed section enables STC, after obtaining actuarial advice, to adjust amounts in employers' reserves to achieve an equitable pooling of liability for payment of employer contributions to death and disability benefits among all employers in the State Superannuation Scheme in the preceding year.

Medical examinations

Schedule 6 [3] omits Part 2A of the Principal Act which contains provisions about medical examinations for new contributors and is no longer necessary because the State Superannuation Scheme is closed to new contributors.

Breakdown pensions

Currently, a person who is granted a pension under the Principal Act because of invalidity (a **breakdown pension**) is granted that pension for a specified period only and is subject to being recalled to service if STC is of the opinion that the person's health enables the person to perform suitable duties.

Schedule 6 [4] enables STC, when granting a breakdown pension to a contributor who has attained 55 years, to grant the pension for the remainder of the person's life, but only if the contributor so elects.

Schedule 6 [5] inserts proposed section 51A into the Principal Act, which provides that the provisions that would enable a person to be recalled to service and other related provisions do not apply to a person granted a breakdown pension for life.

Schedule 6 [6] enables STC, when granting a breakdown pension to a former contributor who has previously deferred a benefit and who has attained 55 years, to

grant the pension for the remainder of the person's life, but only if the contributor so elects.

Restoration of death benefit previously reduced to offset contribution tax liabilities

Currently section 61RA of the Principal Act requires STC to make a determination reducing a benefit under the Principal Act if STC is liable to pay income tax under a Commonwealth taxation law in respect of employers' contributions and a portion of that tax is referable to the employer-financed portion of the benefit.

Schedule 6 [7] inserts proposed section 61RAA into the Principal Act. The proposed section enables STC to increase a lump sum benefit under this Act payable or paid on the death of a contributor or former contributor that has been previously reduced under section 61RA for the purpose of obtaining an income tax deduction. The benefit is increased by an amount equal to the amount that would be allowable as a deduction from assessable income under section 279D of the *Income Tax Assessment Act 1936* of the Commonwealth in respect of the payment.

Effect of Government initiatives

Currently the Principal Act has 2 different ways of dealing with contributors who are required to or elect to leave the Act's superannuation scheme, or whose employer ceases to be an employer under the scheme, as a result of a Government privatisation initiative or other Government initiative. The Schedule amends the Act so that all of these contributors are dealt with in the same way.

Schedule 6 [9] inserts proposed section 62A of the Principal Act. The proposed section applies Part 5 to contributors who transfer employment or superannuation coverage, if the Minister certifies that the cessation of employment or coverage or the removal of the employer is as a consequence of a Government privatisation initiative or other Government initiative. The Part also applies if an employer ceases to be an employer because of an order made as a result of a Government privatisation initiative. **Schedule 6 [8]** makes a consequential amendment.

Schedule 6 [10] inserts a formal provision that gives effect to proposed Part 1 of Schedule 23 to the Principal Act.

Schedule 6 [11] extends provisions of section 64 of the Principal Act, which currently provide for the determination and adjustment of the liabilities of an employer under the Act on privatisation, to enable adjustment of the liabilities of an employer after other Government initiatives affect contributors employed by the employer.

Schedule 6 [12] and [13] amend section 65 of the Principal Act to vest an employer's liability in respect of transferred contributors in the Crown on the relevant transfer of contributors or superannuation coverage taking effect as a result of a Government privatisation initiative or other Government initiative.

Schedule 6 [16] inserts proposed Part 1 of Schedule 23 into the Principal Act. The proposed Part provides for the deferral of a contributor's benefit when Part 5 of the Principal Act applies and permits immediate payment of any such benefit to another superannuation fund or approved deposit fund approved by STC or to purchase a deferred annuity. Otherwise, the deferred benefit may be paid in the same circumstances as other deferred benefits under the Principal Act. The proposed Part also enables regulations to be made for or with respect to liability for employer contributions, benefits or other employer liabilities under the Principal Act that are payable in respect of any period in which a contributor may elect to transfer employment or superannuation coverage and before any such election is made.

Schedule 6 [14], [15] and [17] make consequential amendments.

Savings and transitional provisions

Schedule 6 [18] enables regulations containing savings and transitional provisions to be made as a consequence of the enactment of the proposed Act.

Schedule 6 [19] provides that proposed section 61RAA applies to a lump sum

benefit reduced, but not paid, before the commencement of that section and does not apply to a lump sum benefit paid before the commencement of that section.

Schedule 7 Amendment of Superannuation

Administration Act 1996 No 39

Delegation of the function to determine disputes to a disputes committee

The Principal Act provides that one of the principal functions of FTC and STC is to determine disputes under the Acts under which the FTC, or STC, as the case may be, are established or constituted (sections 9 (1) (e) and 50 (1) (e) respectively).

Schedule 7 [6] amends section 32 of the Principal Act to make it clear that FTC may, in respect of a dispute, a class of disputes or all disputes under the Acts under which the FTC schemes are established or constituted, delegate the FTC dispute function to a committee that is comprised of or includes members of the FTC Board (an **FTC disputes committee**). **Schedule 7 [17]** makes a corresponding amendment in respect of STC.

Schedule 7 [8] amends section 40 of the Principal Act to make it clear that an appeal against a determination of a dispute by an FTC disputes committee may be taken to the Industrial Relations Commission in Court Session in the same way as an appeal may be made against a determination of FTC. **Schedule 7 [19]** makes a corresponding amendment in respect of STC.

Schedule 7 [1]–[5], [7] and [9]–[11] make consequential amendments regarding the FTC disputes committee. **Schedule 7 [1], [12]–[14], [16], [18] and [20]–[22]** make consequential amendments regarding the STC disputes committee.

Other amendments

Schedule 7 [15] amends section 67 of the Principal Act to make it clear that the provisions of the Principal Act relating to determination of disputes do not apply to disputes under the *Police Regulation (Superannuation) Act 1906* relating to hurt on duty benefits and determinations.

Schedule 7 [23] makes a statute law revision amendment.

Schedule 7 [24] and [25] amend sections 128A and 128B of the Principal Act to enable regulations to be made for or with respect to liability for employer contributions, benefits, insurance premiums or other employer superannuation liabilities under the Principal Act that are payable during any period, or in respect of any period, in which a transfer option for transfer to and from certain public sector superannuation schemes may be exercised.

Savings and transitional provisions

Schedule 7 [26] enables regulations containing savings and transitional provisions to be made as a consequence of the enactment of the proposed Act.

Schedule 7 [27] provides that the amendments made by the proposed Act to the Principal Act regarding the delegation of the dispute function apply to a dispute that occurred but has not been determined before the commencement of those amendments but do not apply to a dispute determined before the commencement of those amendments.

Schedule 7 [27] also validates a determination of a dispute by a committee on behalf of FTC before the commencement of the amendments made by the proposed Act to the Principal Act regarding the dispute function of FTC.

Schedule 7 [27] also validates a determination of a dispute by a committee on behalf of STC before the commencement of the amendments made by the proposed Act to the Principal Act regarding the dispute function of STC.