

Superannuation Legislation Amendment Bill 2006

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 make it clear that, despite the judicial decision in *Berrick Boland v SAS Trustee Corporation* [1999] NSWIRComm 488, in determining, for the purposes of the *Police Regulation (Superannuation) Act 1906*, whether

members of the police force hurt on duty are incapable of discharging their duties, those duties include the general duties imposed on all police officers (and, as a consequence, to validate previous certificates given on that basis),

(b) to impose mutual obligations on NSW Police and injured police officers to whom the *Police Regulation (Superannuation) Act 1906* applies in relation to an injury management program,

(c) to make it clear that hurt on duty benefits are payable to a former member of the police force under the *Police Regulation (Superannuation) Act 1906* only if the former member actually was incapable of discharging the duties of the member's office at the time of the member's resignation or retirement,

(d) to provide that a hurt on duty superannuation allowance or additional amount under that Act is not payable unless an application is made before the member reaches the age of 60 years or not later than 5 years after the member resigns or retires, whichever is the later, and to provide for when the allowance is first payable,

(e) to provide for certain superannuation allowance commutations under the *Police Regulation (Superannuation) Act 1906* to be able to be made after a member reaches the age of 55 years (rather than the current age requirement of 60 years),

(f) to provide for the partial commutation of certain superannuation allowances payable under the *Police Regulation (Superannuation) Act 1906*,

(g) to amend the *State Authorities Superannuation Act 1987* to provide for the employer of a contributor to the State Authorities Superannuation Fund to be able to make salary sacrifice contributions to that Fund on the employee's behalf,

(h) to amend Acts regulating the New South Wales public sector defined benefit superannuation schemes and the Parliamentary Contributory Superannuation Scheme to enable a person entitled to a pension under the relevant scheme to nominate a date that is later than that on which payment would otherwise commence as the date on which payment commences,

(i) to amend the *Superannuation Act 1916*, the *State Authorities Superannuation Act 1987* and the *State Authorities Non-contributory Superannuation Act 1987* to enable the regulations under the relevant Act to provide that the salary of an employee or class of employees (other than an executive officer) for the purposes of that Act is to be determined in the manner prescribed by the regulations if the basis on which the remuneration of the employee or class of employees is determined has been changed to an annualised basis.

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 set out

in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have 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 Acts

Schedule 1.1 amends the *Parliamentary Contributory Superannuation Act 1971* to insert proposed section 32D, a provision that enables a person entitled to a pension under that Act to nominate the date on which payment of the pension commences (but has no effect on when the person becomes entitled to the pension). Any such nomination must be made within 3 months of when payment of the pension would otherwise commence and may not be revoked.

Schedule 1.2 amends the *Police Regulation (Superannuation) Act 1906* as follows.

Schedule 1.2 [4] amends section 9A to modify the date a former member of the police force who resigned or retired becomes entitled to an annual superannuation allowance granted under section 10. The amendment made by **Schedule 1.2 [33]** also applies to such an allowance, enabling the person to nominate when payment of the allowance commences (but having no effect on when the person becomes entitled to the allowance).

Schedule 1.2 [8] amends section 10 to provide that a superannuation allowance or additional amount under that section is not payable unless an application is made before the member reaches the age of 60 years or not later than 5 years after the member resigns or retires, whichever is the later. The amendment also provides for when the allowance is first payable.

Schedule 1.2 [11] inserts proposed section 10A to provide for an injury management program that a member of the police force must participate in if the member is to receive hurt on duty benefits.

Schedule 1.2 [32] provides for a person aggrieved by a decision of the Commissioner of Police in relation to participation in such an injury management program to apply to the District Court for a determination in relation to that decision.

Schedule 1.2 [14] amends section 10B (2B) to make it clear that STC may give a certification necessary for a hurt on duty superannuation allowance to be granted to a former member of the police force who resigned or retired if the former member actually was incapable of discharging the duties of the member's office at the time of the member's resignation or retirement.

Schedule 1.2 [7] and [13] make consequential amendments.

Schedule 1.2 [12] makes a corresponding amendment to section 10B to make it clear that the certification necessary for a hurt on duty superannuation allowance to be granted on discharge is to be certification of incapacity from a specified infirmity at the actual time of the certification.

Schedule 1.2 [15] amends section 10B to make it clear that, for the purposes of determining whether a member of the police force hurt on duty is incapable of discharging the duties of the office in the police force in which the member is then or was employed, the duties include (but are not limited to) the duties of a police officer referred to in section 14 (1) of the *Police Act 1990*. This amendment clarifies the law as it currently stands after the judicial decision in *Berrick Boland v SAS Trustee Corporation* [1999] NSWIRComm 488.

Schedule 1.2 [2] makes a corresponding amendment to section 8 in respect of incapacity of a member of the police force not hurt on duty.

Schedule 1.2 [26]–[30] amend section 14J to provide for the partial commutation of superannuation allowances payable under section 7 (other than to a disabled member) or section 7AA and to provide for elections for such commutations to be made on retirement, or if not made on retirement, at age 60.

Schedule 1.2 [31] substitutes section 14K to provide for the partial commutation of

superannuation allowances payable to disabled members of the police force and for elections for such commutations under that section to be made at age 55, or if not made at age 55, at age 60. Certain transitional arrangements apply under **Schedule 1.2 [36]** in relation to these amendments.

Schedule 1.2 [1], [3], [5], [6], [9], [10], [16]–[25] and [34] make consequential amendments.

Schedule 1.2 [33] inserts proposed section 23D, a provision that enables a person entitled to a superannuation allowance to nominate the date on which payment of the allowance commences (but has no effect on when the person becomes entitled to the allowance). Any such nomination must be made within 3 months of when payment of the allowance would otherwise commence and may not be revoked.

Schedule 1.2 [35] enables the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1.2 [36] inserts savings and transitional provisions in respect of the amendments made by the proposed Act.

Schedule 1.3 amends the *State Authorities Non-contributory Superannuation Act 1987* as follows.

Schedule 1.3 [1] amends section 4 to enable the regulations to provide that the salary of an employee or class of employees (other than an executive officer) for the purposes of the Act is to be determined in the manner prescribed by the regulations if the basis on which the remuneration of the employee or class of employees is determined has been changed to an annualised basis.

Schedule 1.3 [2] inserts proposed section 4B to provide for the making of salary sacrifice contributions under the *State Authorities Superannuation Act 1987*, as is provided for by amendments made by **Schedule 1.4**, not to affect the amount that would otherwise constitute the salary of an employee for the purposes of the *State Authorities Non-contributory Superannuation Act 1987*.

Schedule 1.3 [3] enables the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1.4 amends the *State Authorities Superannuation Act 1987* as follows.

Schedule 1.4 [2] amends section 4 to enable the regulations to provide that the salary of an employee or class of employees (other than an executive officer) for the purposes of the Act is to be determined in the manner prescribed by the regulations if the basis on which the remuneration of the employee or class of employees is determined has been changed to an annualised basis.

Schedule 1.4 [9] inserts proposed section 19A to enable contributions to be made on behalf of a contributor by the contributor's employer in accordance with an agreement between the contributor and the employer under which the contributor is to forego remuneration the contributor is yet to earn and the employer is to apply the remuneration foregone to the cost of making contributions on behalf of the contributor (**salary sacrifice contributions**).

Schedule 1.4 [9] also inserts proposed section 19B to make provision for the amount payable in respect of a salary sacrifice contribution to be grossed up by the contributions tax payable on the contribution, that is, the amount payable is the amount necessary to result in an amount consistent with the rate specified by the contributor remaining after contributions tax is deducted.

Schedule 1.4 [4], [6]–[8], [10]–[13] and [15]–[26] make consequential amendments.

Schedule 1.4 [1] inserts definitions of **employee contribution** and **salary sacrifice contribution** that are used in the provisions regarding salary sacrifice contributions.

Schedule 1.4 [3] inserts proposed section 4B to provide for the making of salary sacrifice contributions not to affect the amount that would otherwise constitute the salary of a contributor for the purposes of the Act.

Schedule 1.4 [5] makes a corresponding amendment to section 12 to provide for the contributions tax payable in respect of a salary sacrifice contribution to be debited

from the relevant contributor's account so that the cost of the contributions tax is not borne by the State Authorities Superannuation Fund but is funded out of the amount contributed on behalf of the contributor.

Schedule 1.4 [27] makes a corresponding amendment to section 45A to make it clear that a provision enabling STC to reduce benefits to offset certain tax liabilities does not apply to a contributions tax liability on a salary sacrifice contribution if the contributions tax has already been deducted from the relevant contributor's account.

Schedule 1.4 [14] amends section 25 to provide that an employer is not entitled to pay a salary sacrifice contribution to the Fund on behalf of an employee, and STC is not to accept a salary sacrifice contribution to the Fund on behalf of an employee, unless the employee is under 70 years of age.

Schedule 1.4 [28] enables the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1.5 amends the *Superannuation Act 1916* as follows.

Schedule 1.5 [1] amends section 3A to enable the regulations to provide that the salary of an employee or class of employees (other than an executive officer) for the purposes of the Act is to be determined in the manner prescribed by the regulations if the basis on which the remuneration of the employee or class of employees is determined has been changed to an annualised basis.

Schedule 1.5 [2] makes an amendment in the nature of statute law revision.

Schedule 1.5 [3] makes an amendment in the nature of statute law revision to omit references to a repealed provision.

Schedule 1.5 [4] makes an amendment in the nature of statute law revision to omit words made redundant by the repeal of a provision.

Schedule 1.5 [5] inserts proposed section 61VA, a provision that enables a person entitled to a pension to nominate the date on which payment of the pension commences (but has no effect on when the person becomes entitled to the pension). Any such nomination must be made within 3 months of when payment of the pension would otherwise commence and may not be revoked.

Schedule 1.5 [6] enables the making of savings and transitional regulations consequent on the enactment of the proposed Act.