

**SUPERANNUATION LEGISLATION (SUPERANNUATION
GUARANTEE CHARGE) AMENDMENT ACT 1992 No. 102**

NEW SOUTH WALES



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**SUPERANNUATION LEGISLATION (SUPERANNUATION
GUARANTEE CHARGE) AMENDMENT ACT 1992 No. 102**

NEW SOUTH WALES



Act No. 102, 1992

An Act to make amendments to various Acts relating to superannuation guarantee legislation of the Commonwealth and the enactment of the First State Superannuation Act 1992. [Assented to 8 December 1992]

The Legislature of New South Wales enacts:**Short title**

1. This Act may be cited as the Superannuation Legislation (Superannuation Guarantee Charge) Amendment Act 1992.

Commencement

2. This Act commences on the commencement of the First State Superannuation Act 1992.

Amendment of Acts

3. The Acts specified in Schedules 1–6 are amended as set out in those Schedules.

Explanatory notes

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

**SCHEDULE 1—AMENDMENT OF POLICE ASSOCIATION
EMPLOYEES (SUPERANNUATION) ACT 1969**

(Sec. 3)

**Section 3 (Employees of Association transferring from
employment as police officers):**

After section 3 (7), insert:

(7A) Section 9C of the Police Regulation (Superannuation) Act 1906 applies to a benefit payable to or in respect of a prescribed person.

Explanatory note

The amendment amends the provisions relating to superannuation benefits payable to certain employees of the Police Association of New South Wales who were formerly police officers to make it clear that provisions to be inserted by Schedule 2 relating to the preservation of benefits under the Police Superannuation Scheme also apply to benefits payable in respect of those employees.

* The matter marked “†” in the explanatory notes was inserted after the introduction of the Bill in the Legislative Assembly to explain amendments to the Bill that were moved in Committee.

**SCHEDULE 2—AMENDMENT OF POLICE REGULATION
(SUPERANNUATION) ACT 1906**

(Sec. 3)

Consequential amendment(1) Section 1 (**Short title, commencement and definitions**):

In section 1 (2), insert in alphabetical order:

“Commonwealth occupational superannuation standard” means a standard prescribed in respect of occupational superannuation schemes by a law of the Commonwealth;

“superannuation guarantee shortfall” has the same meaning as in the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth.

Explanatory note—item (1)

The amendment defines “Commonwealth occupational superannuation standard” and “superannuation guarantee shortfall”, terms used in the new sections inserted by items (2) and (3).

Preservation of minimum benefits under superannuation guarantee legislation

(2) After section 9B, insert:

Preservation of minimum benefits under superannuation guarantee legislation

9C. (1) **Benefit to be preserved.** Despite any other provision of this Act, the Board may, when a superannuation allowance or lump sum becomes payable under this Act, preserve all or part of so much of the allowance or lump sum as is employer-financed for the purpose of complying with an applicable Commonwealth occupational superannuation standard. The amount of the allowance or lump sum to be preserved in respect of a former member of the police force for the purpose of this section is as determined by the Board after obtaining actuarial advice.

(2) **Preservation in Fund.** The amount is to be preserved in the Fund together with interest from the member’s exit date to the date of payment at a rate determined by the Board.

SCHEDULE 2—AMENDMENT OF POLICE REGULATION
(SUPERANNUATION) ACT 1906—*continued*

(3) **Benefit may be commuted.** For the purpose of preserving a benefit under this section the Board may commute to a lump sum so much of the superannuation allowance as is employer-financed, up to the amount determined by the Board to be equal to the amount that is required to, be preserved. The remainder of the superannuation allowance is to be dealt with as otherwise required or permitted by this Act.

(4) **Payment of preserved benefit.** A benefit preserved under this section is payable by the Board on the death of the former member or in the circumstances in which it is specified in an applicable Commonwealth occupational superannuation standard that a preserved benefit must or may be paid.

(5) **Persons to whom benefit is payable.** A benefit provided by subsection (4) is payable:

- (a) unless the former member has died—to the former member; or
- (b) if the former member has died and is survived by a spouse—to the surviving spouse; or
- (c) if the former member has died and is not survived by a spouse—to the personal representatives of the former member or, if appropriate, in accordance with section 18B (Payment without grant of probate etc.).

Explanatory note—item (2)

The amendment inserts new section 9C which enables the Board to preserve employer-financed benefits if an applicable Commonwealth occupational superannuation standard requires the benefits to be preserved. The preserved benefit is payable only in the circumstances permitted under applicable Commonwealth occupational superannuation standards and accrues interest in the Fund until it is paid out. This amendment has been made for the purpose of compliance with applicable Commonwealth occupational superannuation standards in relation to new employer-financed benefits and will apply to increases in benefits as a result of the commencement of sections 15 and 15AA.

SCHEDULE 2—AMENDMENT OF POLICE REGULATION
(SUPERANNUATION) ACT 1906—*continued*

Compliance with superannuation guarantee legislation

(3) Before section 15A, insert:

Compliance with superannuation guarantee legislation

15. (1) **Minimum benefits.** The Board must, after obtaining actuarial advice, determine what the minimum employer-financed benefit would have to be to ensure that there is no superannuation guarantee shortfall.

(2) **Increase in benefits.** So much of a superannuation allowance or lump sum as is employer-financed is, despite any other provision of this or any other Act, not to be less than the minimum benefit determined under subsection (1). The allowance or lump sum that would otherwise be payable under this Act is increased to the extent necessary for the purpose of complying with this section.

(3) **Increase in benefit to be paid from non-contributory scheme.** The amount of any increase in benefit is to be debited by the Board from the employer reserve of the employer concerned established under the State Authorities Non-contributory Superannuation Act 1987.

(4) **Definition.** In this section, “**employer-financed benefit**” means the sum of so much of a superannuation allowance or lump sum as is employer-financed under this Act, any basic benefit under the State Authorities Non-contributory Superannuation Act 1987 and any employer-financed benefit of a kind provided by the State Authorities Non-contributory Superannuation Act 1987.

Application of section 15 to period from 1.7.1992

15AA. A benefit that is preserved under this Act after 1 July 1992 and before the commencement of the First State Superannuation Act 1992, or that is paid after 1 July 1992 and before that commencement, is to be adjusted by the Board in accordance with section 15.

Explanatory note—item (3)

The Superannuation Guarantee (Administration) Act 1992 and the Superannuation Guarantee Charge Act 1992 of the Commonwealth establish a scheme to provide for the payment by employers of superannuation contributions at specified rates related to employers’ annual national payrolls. If an employer fails to contribute at the specified rate, a superannuation guarantee shortfall occurs and a corresponding charge is payable by the relevant employer.

**SCHEDULE 2—AMENDMENT OF POLICE REGULATION
(SUPERANNUATION) ACT 1906— *continued***

In the case of “defined benefit” superannuation schemes such as the Police Superannuation Scheme, the “charge percentage” used to calculate the superannuation guarantee shortfall under such a scheme is generally reduced by the amount of the notional employer contribution rate for the scheme. The notional employer contribution rate for such a scheme is set out in a benefit certificate under the Commonwealth Act and is the contribution rate required to meet the employers’ long-term costs of providing the minimum employer-financed benefits under the scheme.

Thus, for the purpose of enabling employers under the Scheme to avoid paying a charge resulting from a superannuation guarantee shortfall, it is necessary to ensure that the minimum employer-financed benefits payable under the Scheme are sufficient so that the notional employer contribution rate for the Scheme reduces the charge percentage to nought. The amendment inserts new sections 15 and 15AA to enable the Board to calculate the minimum benefit that is accordingly to be payable in individual cases if employer contributions are adjusted. If necessary the Board may increase those benefits. Payment of the increase in benefits is to be made from the appropriate employer reserve in the State Authorities Non-contributory Superannuation Scheme.

**SCHEDULE 3—AMENDMENT OF PUBLIC SECTOR
EXECUTIVES SUPERANNUATION ACT 1989**

(Sec. 3)

Consequential amendment

(1) Section 3 (**Definitions**):

In section 3 (1), insert in alphabetical order:

“superannuation guarantee shortfall” has the same meaning as in the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth;

Explanatory note—item (1)

The amendment defines “superannuation guarantee shortfall”, a term used in the new section inserted by item (2).

Compliance with superannuation guarantee legislation

(2) After section 43, insert:

Compulsory contributions by employers for purposes of superannuation guarantee legislation

43A. (1) An employer must pay to the Fund, for each member employed by the employer, an amount determined by the employer in relation to the member.

**SCHEDULE 3—AMENDMENT OF PUBLIC SECTOR
EXECUTIVES SUPERANNUATION ACT 1989— *continued***

(2) The amount determined is to be sufficient to avoid a **superannuation guarantee shortfall** from arising in respect of the member for any period during which the member has been a member, whether occurring before or after the commencement of this section.

(3) In determining the amount payable by an employer in relation to a member, any contributions paid or payable by the employer under this Act in relation to the member on or after 1 July 1992 may be taken into account.

(4) An employer's contributions to the Fund under this section are to be calculated on the basis of the contribution periods applicable to the members in relation to whom those contributions are to be made, and a contribution payable by an employer in respect of a contribution period must be paid to the Board within 7 days after the last day of that period.

(5) This section does not apply to or in respect of a member who is a contributor to another superannuation scheme under which the member's employer's contributions are taken into account for the purposes of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth.

Explanatory note—item (2)

The amendment inserts a new section 43A that requires employers of members to make contributions to the Public Sector Executives Superannuation Scheme for the purposes of payment of employer funded superannuation in accordance with the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth. Under that Act, employers who wish to avoid a taxation penalty or charge must contribute to employees' superannuation at a rate that is at least equal to the rate specified for avoidance of liability for payment of a charge.

**SCHEDULE 4—AMENDMENT OF STATE AUTHORITIES
NON-CONTRIBUTORY SUPERANNUATION ACT 1987**

(Sec. 3)

Closure of scheme for new employees

(1) Before section 21, insert:

Scheme closed for new employees

20A. (1) On and from the commencement of the First State Superannuation Act 1992, there is to be no benefit provided by this Act for:

**SCHEDULE 4—AMENDMENT OF STATE AUTHORITIES
NON-CONTRIBUTORY SUPERANNUATION ACT 1987— *continued***

- (a) an employee who ceases to be an employee on or after that commencement, unless he or she was a contributing employee immediately before that commencement or elected or is taken to have elected on or after that commencement and before 19 December 1992 to contribute to the Fund under the State Authorities Superannuation Act 1987; or
- (b) a non-contributing employee who commenced employment before 1 July 1992.
- (2) The expressions “contributing employee” and “non-contributing employee” have the meanings given in Part 4A.
- (3) Any determination of the Board under section 19 (Transfer of employees) is to be taken into account in determining for the purposes of this section whether an employee was employed on a particular date.

Explanatory note—item (1)

The amendment inserts new section 20A which closes the existing non-contributory “basic benefit” scheme under the Act to new members so that it will only provide benefits for employees who either contribute to one of the existing public Sector superannuation schemes or became employees before 1 July 1992.

† In addition, employees who elect or are taken to have elected to join the State Authorities Superannuation Scheme before its closure will also be provided with benefits under the “basic benefit” scheme.

The proposed First State Superannuation Scheme will provide a basic non-contributory benefit for employees who do not contribute to a superannuation scheme for service after 30 June 1992, and for new employees.

Special provisions for non-contributing employees

- (2) After Part 4, insert:

**PART 4A—SPECIAL PROVISIONS FOR
NON-CONTRIBUTING EMPLOYEES.**

Definitions

26C. In this Part:

“contributing employee” means an employee who:

SCHEDULE 4—AMENDMENT OF STATE AUTHORITIES
NON-CONTRIBUTORY SUPERANNUATION ACT 1987— *continued*

- (a) is a contributor to an associated superannuation scheme (within the meaning of the Superannuation Administration Act 1991 as in force immediately before the commencement of the First State Superannuation Act 1992); or
- (b) elected or is taken to have elected before 19 December 1992 to contribute to the Fund under the State Authorities Superannuation Act 1987.

“non-contributing employee” means an employee who is not a contributing employee.

Contributing employees not affected

26D. This Part does not apply to contributing employees. Non-contributing employees to have deferred accrued benefit instead of basic benefit

26E. (1) On and from the commencement of the First State Superannuation Act 1992, the basic benefit provided by this Act for a non-contributing employee is to be replaced with a deferred accrued benefit. This does not affect benefits that were payable or required to be preserved before that commencement.

(2) The deferred accrued benefit is an amount calculated in accordance with Schedule 4.

(3) Sections 23–26B apply to the deferred accrued benefit in the same way as they apply to a basic benefit.

Deferred accrued benefit to be preserved on transfer of employment

26F. (1) A non-contributing employee is taken to have ceased to be an employee for the purposes of the application of section 24 (Benefit to be preserved) to the deferred accrued benefit provided by this Part when the employee leaves the employment of the employer who employed him or her on 30 June 1992.

(2) Subsection (1) applies even when the employee becomes the employee of another employer after leaving but does not apply in the case of a change of employment occasioned merely by the operation of an administrative change.

SCHEDULE 4—AMENDMENT OF STATE AUTHORITIES
NON-CONTRIBUTORY SUPERANNUATION ACT 1987— *continued*

(3) This section applies even if the employee left the employment of the employer before the commencement of the First State Superannuation Act 1992.

Increase in benefit for non-contributing employees who cease employment before start of FSS Scheme

26G. (1) This section applies to a person who ceases to be an employee before the commencement of the First State Superannuation Act 1992 and who was a non-contributing employee at the time he or she ceased to be an employee.

(2) The Board must, after obtaining actuarial advice, determine what the minimum basic benefit provided for the person would have to be to ensure that there is no superannuation guarantee shortfall.

(3) The basic benefit provided by this Act for the person is, despite any other provision of this Act, not to be less than the minimum basic benefit determined under subsection (2). The basic benefit provided for the person is to be increased to the extent necessary for the purpose of complying with this section.

(4) Subsection (3) applies to a benefit even if it has already been paid or preserved.

(5) In this section:

“**superannuation guarantee shortfall**” has the same meaning as in the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth.

Transfers of contributions to FSS Scheme

26H. (1) The Board is to transfer any contribution made by an employer under this Act that the Board determines is in respect of the salary of an employee for a period for which there is or will be no liability for a benefit under this Act.

(2) The Board is to consult with any employer who would be affected by a determination under this section before making the determination.

(3) There is to be added to and transferred with any such contribution interest on the contribution (at a rate determined

SCHEDULE 4—AMENDMENT OF STATE AUTHORITIES
NON-CONTRIBUTORY SUPERANNUATION ACT 1987— *continued*

by the Board) for the period from the date the contribution was made until its transfer under this section.

(4) The Board's determination of interest is to be based on the rate of return achieved in respect of the investment of the contribution while invested by the Board during the period for which that interest is payable.

(5) There is to be deducted from any funds to be transferred the costs of the Board in managing those funds and in transferring them under this section.

(6) Transfers under this section are to be made from the appropriate employer reserves and are to be paid into the appropriate accounts under the First State Superannuation Act 1992, as determined by the Board.

Explanatory note—item (2)

The amendment inserts a new Part 4A. It requires the basic benefit entitlements of non-contributing employees which have accrued up to 1 July 1992 to be provided for by means of a "deferred accrued benefit" (calculated as provided in the amendments made by item (3)). This will cover their service up to 1 July 1992. The benefit will be deferred until the employee leaves public sector employment and is then paid to the employee or "preserved" in the same way as any other superannuation benefit.

Employees who transfer from one public sector employer to another will have their deferred accrued benefit "preserved" as soon as they transfer.

As a transitional arrangement, special provision is made for non-contributing employees who leave employment before the commencement of the new First State Superannuation Scheme. The existing scheme will continue to apply to them (even if they became employees after 30 June 1992) and in addition the basic benefit provided by the Act will be increased (for service after 30 June 1992) in line with employers' obligations under the superannuation guarantee legislation of the Commonwealth.

Consequential arrangements are also made for the transfer of employer contributions under the Act to the First State Superannuation Scheme that are referable to a period of service of an employee for which, as a result of these amendments, no benefit will be payable under the Act.

The new Part does not affect employees who contribute to one of the existing public sector superannuation schemes.

SCHEDULE 4—AMENDMENT OF STATE AUTHORITIES
NON-CONTRIBUTORY SUPERANNUATION ACT 1987— *continued*

Calculation of deferred accrued benefit

(3) After Schedule 3, insert:

**SCHEDULE 4—CALCULATION OF DEFERRED
ACCRUED BENEFIT FOR NON-CONTRIBUTING
EMPLOYEES**

(Sec. 26E)

The deferred accrued benefit provided by Part 4A for an employee is an amount calculated in accordance with whichever of the following provisions is appropriate in the particular case:

**PART 1—EMPLOYEES OTHER THAN
IRREGULAR EMPLOYEES**

The deferred benefit = $0.03 \times \text{FAS} \times Y$,

where:

FAS = the employee's final average salary (as defined in section 21); and

Y = the years of eligible service on a daily basis, commencing on or after the appointed day and ending on 30 June 1992.

PART 2—IRREGULAR EMPLOYEES

The deferred benefit = $B \times \text{AWOTE factor}$,

where:

B = the basic benefit that would have been provided by section 22 if the employee had ceased to be an employee by reason of resignation on 1. July 1992; and

AWOTE factor = the factor calculated as set out below (for the purpose of indexing the benefit (B) in line with movements in average weekly earnings between 30 June 1992 and the final payment/preservation date for the benefit).

The final payment/preservation date for the benefit is the date on which the benefit is payable under section 23 or on which it is required to be preserved under section 24, whichever happens first.

**SCHEDULE 4—AMENDMENT OF STATE AUTHORITIES
NON-CONTRIBUTORY SUPERANNUATION ACT 1987— *continued***

Calculation of AWOTE factor

The AWOTE factor is calculated by dividing the AWOTE applicable as at the final payment/preservation date for the benefit by the June 1992 AWOTE. If the AWOTE factor works out to be a number less than 1, it is instead to be taken to be 1.

The AWOTE applicable at the final payment/preservation date for the benefit is the dollar amount last published before that date by the Australian Statistician under the Census and Statistics Act 1905 of the Commonwealth as the amount of average weekly ordinary time earnings.

The June 1992 AWOTE is the dollar amount last published before 30 June 1992 by the Australian Statistician under the Census and Statistics Act 1905 of the Commonwealth as the amount of average weekly ordinary time earnings.

Explanatory note—item (3)

The amendment inserts new Schedule 4 which provides for the manner of calculating the deferred accrued benefit to be provided to employees who are not contributors to an existing public sector superannuation scheme.

For regular employees, the benefit is to be calculated on the same basis as the ordinary basic benefit (generally 3% of final average salary for each year of service) except that final average salary will be determined as at the time in the future when the employee leaves public sector employment and only years of service up to 1 July 1992 will be counted.

For irregular employees, the benefit is to be calculated on the same basis as the ordinary basic benefit but is to be calculated as if the employee had resigned on 1 July 1992 and will then be increased in line with increases in average weekly earnings (until it is paid or preserved).

**SCHEDULE 5—AMENDMENT OF STATE AUTHORITIES
SUPERANNUATION ACT 1987**

(Sec. 3)

Consequential amendments

(1) Section 3 (**Definitions**):

(a) In section 3 (1), insert in alphabetical order:

“superannuation guarantee shortfall” has the same meaning as in the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth;

SCHEDULE 5—AMENDMENT OF STATE AUTHORITIES
SUPERANNUATION ACT 1987— *continued*

- (b) In section 3 (1), in the definition of “preserved benefit”, after “section 43”, insert “or preserved under section 43AAA”.

Explanatory note—item (1)

The amendment defines “superannuation guarantee shortfall”, a term used in the new section 43AAA inserted by item (3) and makes a consequential amendment to the definition of “preserved benefit”.

Preservation of minimum benefits under superannuation guarantee legislation

- (2) After section 43AA, insert:

Preservation of minimum benefits under superannuation guarantee legislation

43AAA. (1) **Benefit to be preserved.** Despite any other provision of this Act, the Board may, when an employer-financed benefit becomes payable under this Act, preserve all or part of the employer-financed benefit for the purpose of complying with an applicable Commonwealth occupational superannuation standard. The amount of the employer-financed benefit to be preserved in respect of a former contributor for the purpose of this section is as determined by the Board after obtaining actuarial advice.

(2) **Preservation in Fund.** The amount is to be preserved in the Fund together with interest from the contributor’s exit date to the date of payment at a rate determined by the Board.

(3) **Payment of preserved benefit.** A benefit preserved under this section is payable by the Board on the death of the former contributor or in the circumstances in which it is specified in an applicable Commonwealth occupational superannuation standard that a preserved benefit must or may be paid.

(4) **Persons to whom benefit is payable.** A benefit provided by subsection (3) 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

SCHEDULE 5—AMENDMENT OF STATE AUTHORITIES
SUPERANNUATION ACT 1987— *continued*

- (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.).

Explanatory note—item (2)

The amendment inserts new section 43AAA which enables the Board to preserve employer-financed benefits if an applicable Commonwealth occupational superannuation standard requires the benefits to be preserved. The preserved benefit is payable only in the circumstances permitted under applicable Commonwealth occupational Superannuation standards specified and accrues interest in the Fund until it is paid out. This amendment has been made for the purpose of compliance with applicable Commonwealth occupational superannuation standards in relation to new employer-financed benefits and will apply to increases in benefits as a result of the commencement of sections 45D and 45E.

Compliance with superannuation guarantee legislation

- (3) After section 45C, insert:

Compliance with superannuation guarantee legislation

45D. (1) **Minimum benefits.** The Board must, after obtaining actuarial advice, determine what the minimum employer-financed benefit would have to be to ensure that there is no superannuation guarantee shortfall.

(2) **Increase in benefits.** An employer-financed benefit provided by an employer is, despite any other provision of this or any other Act, not to be less than the minimum benefit determined under subsection (1). The benefit that would otherwise be payable under this Act is increased to the extent necessary for the purposes of complying with this section.

(3) **Increase in benefit to be paid from non-contributory scheme.** The amount of any increase in benefit is to be debited by the Board from the employer reserve of the employer concerned established under the State Authorities Non-contributory Superannuation Act 1987.

(4) **Definition.** In this section, “**employer-financed benefit**” means the sum of the employer-financed benefit under this Act, any basic benefit under the State Authorities

SCHEDULE 5—AMENDMENT OF STATE AUTHORITIES
SUPERANNUATION ACT 1987— *continued*

Non-contributory Superannuation Act 1987 and any employer-financed benefit of a kind provided by the State Authorities Non-contributory Superannuation Act 1987.

Application of section 45D to period from 1.7.1992

45E. A benefit that is:

- (a) preserved under this Act after 1 July 1992 and before the commencement of the First State Superannuation Act 1992, or that is paid after 1 July 1992 and before that commencement; or
- (b) is preserved under section 2B,

is to be adjusted by the Board in accordance with section 45D.

Explanatory note—item (3)

The Superannuation Guarantee (Administration) Act 1992 and the Superannuation Guarantee Charge Act 1992 of the Commonwealth establish a scheme to provide for the payment by employers of superannuation contributions at specified rates related to employers' annual national payrolls. If an employer fails to contribute at the specified rate, a superannuation guarantee shortfall occurs and a corresponding charge is payable by the relevant employer.

In the case of "defined benefit" superannuation schemes such as the State Authorities Superannuation Scheme, the "charge percentage" used to calculate the superannuation guarantee shortfall under such a Scheme is generally reduced by the amount of the notional employer contribution rate for the scheme. The notional employer contribution rate for such a scheme is set out in a benefit certificate under the Commonwealth Act and is the contribution rate required to meet the employers' long-term costs of providing the minimum employer-financed benefits under the scheme.

Thus, for the purpose of enabling employers under the Scheme to avoid paying a charge resulting from a superannuation guarantee shortfall, it is necessary to ensure that the minimum employer-financed benefits payable under the Scheme are sufficient that the notional employer contribution rate for the Scheme reduces the charge percentage to nought. The amendment inserts new sections 45D and 45E to enable the Board to calculate the minimum benefit that is accordingly to be payable in individual cases if employer contributions are adjusted. If necessary the Board may increase benefits. Payment of the increase in benefits is to be made from the appropriate employer reserve in the State Authorities Non-contributory Superannuation Scheme.

**SCHEDULE 6—AMENDMENT OF SUPERANNUATION ACT
1916**

(Sec. 3)

Consequential amendment**(1) Section 3 (Definitions):**

In section 3 (1), insert in alphabetical order:

“**Superannuation guarantee shortfall**” has the same meaning as in the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth.

Explanatory note—item (1)

The amendment defines “superannuation guarantee shortfall”, a term used in the new section 61U inserted by item (3).

Preservation of minimum benefits under superannuation guarantee legislation**(2) After Division 3C of Part 4, insert:****Division 3D—Preservation of minimum
employer-financed benefits****Preservation of minimum benefits under superannuation
guarantee legislation**

52Y. (1) **Benefit to be preserved.** Despite any other provision of this Act, the Board may, when a benefit becomes payable under this Act, preserve all or part of so much of the pension component of the benefit or of the lump sum component of the benefit as is employer-financed for the purpose of complying with an applicable Commonwealth occupational superannuation standard. The amount of the pension component or lump sum to be preserved in respect of a former contributor for the purposes of this section is as determined by the Board after obtaining actuarial advice.

(2) **Preservation in Fund.** The amount is to be preserved in the Fund together with interest from the contributor’s exit date to the date of payment at a rate determined by the Board.

SCHEDULE 6—AMENDMENT OF SUPERANNUATION ACT
1916—*continued*

(3) **Benefit may be commuted.** For the purpose of preserving a benefit under this section the Board may commute to a lump sum an amount of the pension component as is employer-financed, up to the amount determined by the Board to be equal to the amount that is required to be preserved. The remainder of the benefit is to be dealt with as otherwise required or permitted by this Act.

(4) **Payment of preserved benefit.** A benefit preserved under this section is payable by the Board on the death of the former contributor or in the circumstances in which it is specified in an applicable Commonwealth occupational superannuation standard that a preserved benefit must or may be paid.

(5) **Persons to whom benefit is payable.** A benefit provided by subsection (4) 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.).

Explanatory note—item (2)

The amendment inserts new section 52Y which enables the Board to preserve employer-financed benefits if an applicable Commonwealth occupational superannuation standard requires the benefits to be preserved. The preserved benefit is payable only in the circumstances permitted under applicable Commonwealth occupational superannuation standards and accrues interest in the Fund until it is paid out. This amendment has been made for the purpose of compliance with applicable Commonwealth occupational superannuation standards in relation to new employer-financed benefits and will apply to increases in benefits as a result of the commencement of sections 61U and 61V.

SCHEDULE 6—AMENDMENT OF SUPERANNUATION ACT
1916—*continued*

Compliance with superannuation guarantee legislation

(3) After section 61T, insert:

Compliance with superannuation guarantee legislation

61U. (1) **Minimum benefits.** The Board must, after obtaining actuarial advice, determine what the minimum employer-financed benefit would have to be to ensure that there is no superannuation guarantee shortfall.

(2) **Increase in benefits.** So much of a pension component of a benefit or lump sum as is employer-financed is, despite any other provision of this or any other Act, not to be less than the minimum benefit determined under subsection (1). The benefit that would otherwise be payable under this Act is increased to the extent necessary for the purpose of complying with this section.

(3) **Increase in benefit to be paid from non-contributory scheme.** The amount of any increase in benefit is to be debited by the Board from the employer reserve of the employer concerned established under the State Authorities Non-contributory Superannuation Act 1987.

(4) **Definition.** In this section, “employer-financed benefit” means the sum of so much of a pension component of a benefit or lump sum as is employer-financed under this Act, any basic benefit under the State Authorities Non-contributory Superannuation Act 1987 and any employer-financed benefit of a kind provided by the State Authorities Non-contributory Superannuation Act 1987.

Application of section 61U to period from 1.7.1992

61V. A benefit that is preserved under this Act after 1 July 1992 and before the commencement of the First State Superannuation Act 1992, or that is paid after 1 July 1992 and before that commencement, is to be adjusted by the Board in accordance with section

Explanatory note—item (3)

The Superannuation Guarantee (Administration) Act 1992 and the Superannuation Guarantee Charge Act 1992 of the Commonwealth establish a scheme to provide for the payment by employers of superannuation contributions at specified rates related to employers’ annual national payrolls. If an employer fails to contribute at the specified rate, a superannuation guarantee shortfall occurs and a corresponding charge is payable by the relevant employer.

**SCHEDULE 6—AMENDMENT OF SUPERANNUATION ACT
1916—*continued***

In the case of “defined benefit” superannuation schemes such as the State Authorities Superannuation Scheme, the “charge percentage” used to calculate the superannuation guarantee shortfall under such a Scheme is generally reduced by the amount of the notional employer contribution rate for the Scheme. The notional employer contribution rate for such a scheme is set out in a benefit certificate under the Commonwealth Act and is the contribution rate required to meet the employers’ long-term costs of providing the minimum employer-financed benefits under the scheme.

Thus, for the purpose of enabling employers under the Scheme to avoid paying a charge resulting from a superannuation guarantee shortfall, it is necessary to ensure that the minimum employer-financed benefits payable under the scheme are sufficient so that the notional employer contribution rate for the Scheme reduces the charge percentage to nought. The amendment inserts new sections 61U and 61V to enable the Board to calculate the minimum benefit that is accordingly to be payable in individual cases if employer contributions are adjusted. If necessary the Board may increase those benefits. Payment of the increase in benefits is to be made from the appropriate employer reserve in the State Authorities Non-contributory Superannuation Scheme.

*[Minister’s second reading speech made in—
Legislative Assembly on 29 October 1992
Legislative Council on 26 November 1992]*