



New South Wales

Superannuation Legislation Further Amendment Act 1997 No 149

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New South Wales

Superannuation Legislation Further Amendment Act 1997 No 149

Act No 149, 1997

An Act to amend various public sector superannuation Acts to enable compliance with certain Commonwealth requirements for regulated superannuation funds, and in relation to the Commonwealth surcharge on superannuation contributions, and to make other miscellaneous amendments relating to public sector superannuation schemes; and for other purposes. [Assented to 17 December 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Superannuation Legislation Further Amendment Act 1997*.

2 Commencement

- (1) This Act commences on the date of assent, except as provided by this section.
- (2) Schedule 1.1 [4], 1.6 [20] and 1.7 [6] commence on a day to be appointed by proclamation.

3 Amendment of Acts

The Acts specified in Schedule 1 are amended as set out in that Schedule.

Schedule 1 Amendment of Acts

(Section 3)

1.1 First State Superannuation Act 1992 No 100

[1] Section 5 Members of the Fund

Insert “16 or” before “18” in section 5 (2).

[2] Section 5 (2A)

Insert after section 5 (2):

- (2A) The spouse of an employee or a person who is a member of the Parliamentary superannuation scheme may become an optional member of the Fund if the employee or person makes an election under section 18 to contribute to the Fund on behalf of his or her spouse and his or her spouse continues to be such a member while the election is in force.

[3] Section 5A

Insert after section 5:

5A Employees eligible to contribute to trust deed superannuation schemes

- (1) Despite section 5 (1), an employee who is eligible to contribute to a superannuation scheme established under section 127 of the *Superannuation Administration Act 1996* is not a full member of the Fund unless the person notifies his or her employer that the person elects to be a full member.
- (2) Any such employee who so notifies his or her employer is a full member of the Fund.

[4] Sections 16, 16A

Omit section 16. Insert instead:

16 Optional employer contributions

- (1) An employee who is a full member may at any time elect, with the consent of the employee's employer, to have contributions made to the Fund by the employee's employer in addition to the compulsory contributions payable by the employer under this Act.
- (2) The additional contributions may, but need not, be made by deduction on a pre-tax basis from the full member's salary.
- (3) An employee who is not a full member may at any time elect, with the consent of the employee's employer, to have contributions made to the Fund by the employee's employer by deduction on a pre-tax basis from the employee's salary. On any such election taking effect, and while it is in force, the employee is an optional member of the Fund.
- (4) An election is to be made by lodging with FTC an election in a form approved by FTC and is to be accompanied by such information as FTC may require.
- (5) Except as provided by subsection (3), an employer may not make contributions to the Fund in respect of an optional member.

16A When does an election take effect?

- (1) An election by an employee to have contributions made to the Fund by the employee's employer takes effect not later than on the day determined under rules made by FTC for the purposes of this section.
- (2) An election ceases to be in force (to the extent to which it specifies the amount of any contributions) if a variation of contributions takes effect or on notification by the member to FTC that the contributions are to cease to be made.

[5] Section 18 Optional employee contributions

Insert after section 18 (2):

- (2A) An employee or a person who is a member of the Parliamentary superannuation scheme may at any time elect to make contributions to the Fund on behalf of the employee's or person's spouse and on any such election taking effect, and while it is in force, the spouse is an optional member of the Fund.
- (2B) For the purposes of this section, an employee or person may make an election on behalf of his or her spouse only if his or her spouse is qualified under the rules to be the subject of such an election.

[6] Section 19 When does an election to contribute take effect?

Omit "or an employee" from section 19 (1).

Insert instead " , optional member, employee or member of the Parliamentary superannuation scheme".

[7] Section 19 (1)

Insert " , or to contribute to the Fund on behalf of a spouse," after "Fund".

[8] Section 20 Rules as to payment of contributions and other matters

Insert at the end of section 20:

- (2) FTC may make rules for or with respect to the qualifications for spouses on behalf of whom elections under section 18 may be made and the payment periods for and manner of payment of contributions on behalf of such spouses.

[9] Section 21

Omit the section. Insert instead:

21 Contributions may be varied

A member, an employee who has elected to contribute on behalf of the employee's spouse or a member of the Parliamentary superannuation scheme who has elected to contribute on behalf of the member's spouse, may from time to time, by notice in writing to FTC, vary the amount of contributions to be paid to the Fund by the member or on behalf of the employee's or member's spouse.

[10] Part 2, Division 4, heading

Insert "or temporary incapacity cover" after "cover".

[11] Section 22 Members eligible to apply for cover

Insert "(other than an optional member referred to in section 18 (2A))" after "member" where secondly occurring in section 22 (1).

[12] Section 22 (1A)

Insert after section 22 (1):

(IA) A full member or an optional member (other than an optional member referred to in section 18 (2A)) may apply to FTC to contribute to the Fund for the *temporary incapacity benefit*.

[13] Section 22 (2)

Insert "or temporary incapacity benefit" after "benefit".

[14] Section 23 Applications for cover

Insert “or temporary incapacity benefit” after “benefit” in section 23 (1).

[15] Section 24 FTC may request medical examinations

Insert “or temporary incapacity benefit” after “benefit” in section 24 (1).

[16] Section 25 FTC may refuse or approve an application

Insert “or temporary incapacity benefit” after “benefit” wherever occurring in section 25 (1) and (2).

[17] Section 26 Premiums payable for cover

Insert after section 26 (1):

- (1A) A member whose application to be covered for the temporary incapacity benefit is approved by FTC becomes, and remains, liable for payment of the temporary incapacity premium on and from the day that the member’s cover for the benefit commences.

[18] Section 26 (2) and (3)

Insert “or temporary incapacity premium” after “premium” wherever occurring.

[19] Section 27A

Insert after section 27:

27A When temporary incapacity cover ceases

- (1) A person’s cover for the temporary incapacity benefit ceases:
 - (a) when the person ceases to be a member, unless otherwise provided in a contract between FTC and the person providing the cover, or

- (b) on notification by the member to FTC that the member is to cease to provide the cover, or
 - (c) if the person ceases to pay the temporary incapacity premium.
- (2) On ceasing to be covered for the benefit, the person:
- (a) ceases to be liable for payment of the temporary incapacity premium, and
 - (b) is not entitled to a refund of any premiums paid for the cover.

[20] Section 28 FTC may revoke cover

Insert “or temporary incapacity cover” after “cover” in section 28 (1).

[21] Section 29 Effect of revocation of an approval

Insert “or temporary incapacity benefit” after “benefit” where firstly occurring in section 29 (1).

[22] Section 29 (1)

Insert “or temporary incapacity premium” after “premium”.

[23] Section 30 Rules as to coverage

Insert “or temporary incapacity benefit” after “benefit” wherever occurring.

[24] Section 34

Insert after section 33:

34 Amount of temporary incapacity benefit

- (1) The temporary incapacity benefit is to be an amount paid in the form required for the purpose of complying with the requirements of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth for payment of such a benefit from a regulated superannuation fund.

- (2) Despite subsection (1), the amount of the benefit is not to be more than the amount received by FTC from any person providing cover for the temporary incapacity benefit.

[25] Section 36 When is a benefit or preserved benefit payable?

Insert “or may be paid in respect of a member of such a fund under any such requirements” after “requirements” in section 36 (1) (c).

[26] Section 36 (4), (5)

Insert after section 36 (3):

- (4) For the purposes of the payment under subsection (1) (c) of a benefit on compassionate grounds, FTC may exercise any function that the Insurance and Superannuation Commissioner appointed under the *Insurance and Superannuation Commissioner Act 1987* of the Commonwealth may exercise for the purpose of determining whether a benefit is payable.
- (5) A benefit payable under subsection (1) (c) on compassionate grounds or on the grounds of severe financial hardship:
- (a) is to be paid only to a person who has preserved a benefit in the Fund, and
 - (b) is not to exceed the amount of any such preserved benefit.

[27] Section 37 When is a death or invalidity benefit payable under this Act?

Insert after section 37 (3):

- (4) The temporary incapacity benefit payable under this Act is payable to or in respect of a person who is covered for the benefit if FTC is satisfied that the circumstances are such that a benefit would be payable on the grounds of temporary incapacity if the person were a member of a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

[28] Section 48 Transfer of benefit from other funds to Fund

Insert after section 48 (1):

(1A) An employee or a member of the Parliamentary superannuation scheme may:

(a) at the time of making an election on behalf of the employee's or member's spouse to contribute to the Fund, or

(b) at any time after that,

elect to pay a benefit received, or any amount held to the credit of the spouse, under another complying superannuation fund or under an approved deposit fund into the account established or to be established for the spouse in the Fund.

[29] Section 48 (2) (b)

Insert "or on behalf of the spouse" after "employee".

[30] Section 48 (4)

Insert "or on behalf of" before "the member".

[31] Section 51 Payments from Fund

Insert "or temporary incapacity cover" after "cover" where secondly occurring in section 51(1) (d).

[32] Section 53 Payments to be credited to members' accounts

Insert "or on behalf of" after "by" in section 53 (b).

[33] Section 54 Payments to be debited to members' accounts

Insert "or the temporary incapacity benefit" after "benefit" where secondly occurring in section 54 (a).

[34] Section 54 (d)

Insert “or superannuation contributions surcharge” after “tax”.

[35] Section 55 Death or Invalidity Benefit Management Reserve

Insert “or temporary incapacity premiums” after “premiums” where secondly occurring in section 55 (2).

[36] Section 55 (3)

Insert “or any temporary incapacity benefits” after “benefits” where secondly occurring.

[37] Section 55 (3)

Insert “or temporary incapacity cover” after “cover” where secondly occurring.

[38] Section 57A

Insert after section 57:

57A Other adjustments of accounts and reserves

FTC may, from time to time, adjust any of the accounts and reserves established under this Part as it thinks appropriate for the following purposes:

- (a) to reflect a change in circumstances,
- (b) to correct mistakes relating to amounts credited or debited to the accounts or reserves,
- (c) to reflect changes in the law applicable to the accounts or reserves.

[39] Section 61 How other costs may be paid

Insert “or temporary incapacity cover” after “cover” where secondly occurring in section 61 (2).

[40] Section 62 FTC must deduct tax liabilities from members' accounts

Omit “in respect of an employer’s contributions to a member’s account in the Fund, FTC is required to debit to the account the amount of any such income tax”.

Insert instead “or an amount of superannuation contributions surcharge in respect of an employer’s contributions to a member’s account in the Fund, FTC is required to debit to the account the amount of any such income tax or superannuation contributions surcharge”.

[41] Section 64 Employer to provide information

Insert “or temporary incapacity benefit” after “benefit” in section 64 (2) (a).

[42] Section 65 Employee or claimant to provide information

Insert “or temporary incapacity” after “invalidity” in section 65 (c).

[43] Section 66 When may FTC require employee or claimant to provide information?

Insert “or temporary incapacity benefit” after “benefit” in section 66 (a).

[44] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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[45] Schedule 3, clause 4

Insert after clause 3:

4 Adjustment of accounts

Any adjustment made before the commencement of section 57A (as inserted by the *Superannuation Legislation Further Amendment Act 1997*) by FTC to an account or reserve established under Part 5 that is in accordance with the powers contained in that section is validated.

[46] Dictionary, definition of “full member”

Insert “or 5A” after “5”.

[47] Dictionary, definition of “optional member”

Omit the definition. Insert instead:

optional member means:

- (a) an employee who is not a full member and who has made an election under section 16 or 18 that is still in force to contribute to the Fund, or
- (b) the spouse of an employee or member of the Parliamentary superannuation scheme on whose behalf an election under section 18 has been made that is still in force to contribute to the Fund.

[48] Dictionary, definitions of “Parliamentary superannuation scheme”, “spouse”, “superannuation contributions surcharge”, “temporary incapacity benefit”, “temporary incapacity premium”

Insert in alphabetical order:

Parliamentary superannuation scheme means the superannuation scheme established under the *Parliamentary Contributory Superannuation Act 1971*.

spouse of a person means:

- (a) the wife or husband, as the case may be, of the person, or

- (b) if the person is a man and is living with a woman as her husband on a bona fide domestic basis—the woman with whom he is so living, or
- (c) if the person is a woman and is living with a man as his wife on a bona fide domestic basis—the man with whom she is *so* living.

superannuation contributions surcharge means the superannuation contributions surcharge imposed under the *Superannuation Contributions Tax Imposition Act 1997* of the Commonwealth.

temporary incapacity benefit means the benefit referred to in section 34.

temporary incapacity premium means the premium that, in order to attract the temporary incapacity benefit for a member, is paid by transfer from the member's account.

1.2 Parliamentary Contributory Superannuation Act 1971 No 53

[1] Sections 2, 4, Schedule

Omit the sections and the Schedule.

[2] Section 3 Definitions

Omit paragraph (c) of the definition of *salary* in section 3 (1).
Insert instead:

- (c) if the member or former member is or was a recognised office holder (within the meaning of the *Parliamentary Remuneration Act 1989*), all remuneration payable to him or her under that Act by way of basic salary, additional salary, expense allowance and electoral allowance (not including any amount exceeding the minimum amount of electoral allowance payable to any member) while holding office as a recognised office holder, and

- (d) if the member or former member is or was not such a recognised office holder, all remuneration payable to him or her under that Act by way of basic salary or additional salary and electoral allowance (not including any amount exceeding the minimum amount of electoral allowance payable to any member) while holding office as a member,

[3] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

superannuation contributions surcharge means the superannuation contributions surcharge imposed under the *Superannuation Contributions Tax Imposition Act 1997* of the Commonwealth.

[4] Section 6 Payments into and out of the Fund

Insert “and any payments made by members under section 31A” after “Part 3” in section 6 (1) (b).

[5] Section 19 Members’ superannuation benefit

Insert after section 19 (5):

- (6) If the trustees have made a determination under section 26D in relation to a benefit provided by this section, the amount of the benefit is reduced by the amount specified in the trustees’ determination.

[6] Section 19 (8)

Insert “and the amount of any reduction resulting from a determination under section 26D” after “Act” where lastly occurring.

[7] Section 22 Pension on retirement on grounds of ill-health

Insert after section 22 (2):

- (3) If the trustees have made a determination under section 26D in relation to a benefit provided by this section, the amount of the benefit is reduced by the amount specified in the trustees' determination.

[8] Section 22A Contributors not entitled to pension

Insert after section 22A (5):

- (6) If the trustees have made a determination under section 26D in relation to a benefit provided by this section, the amount of the benefit is reduced by the amount specified in the trustees' determination.

[9] Section 22B Preservation of minimum benefits under superannuation guarantee legislation

Insert after section 22B (6):

- (7) **Adjustment of benefits.** If the trustees have made a determination under section 28C in relation to a benefit provided by this section, the amount of the benefit is reduced by the amount specified in the trustees' determination.

[10] Section 22C

Insert after section 22B:

22C Benefits on attaining age 65 or 70

- (1) A member who attains the age of 70 years must be paid any pension or other benefit under this Act to which the member would be entitled on retirement on that age as if the member had ceased to be a member at that age, but:
 - (a) may elect, in the case of a pension, to commute to a lump sum all or part of the pension, and
 - (b) if such an election is made, may also elect to preserve the whole of any lump sum benefit in the Fund.

- (2) A member who attains the age of 65 years may elect to be paid any pension or other benefit under this Act to which the member would be entitled on retirement on that age as if the member had ceased to be a member at that age, but:
- (a) may elect, in the case of a pension, to commute to a lump sum all or part of the pension, and
 - (b) if such an election is made, may also elect to preserve the whole of any lump sum benefit in the Fund,
- even though the member has not ceased to be a member.
- (3) On an election to commute to a lump sum all or part of a pension, the pension is to be commuted in accordance with this Act as if the person had ceased to be a member on attaining the age of 70 years or on making the election, whichever is the earlier.
- (4) A benefit preserved under this section is payable by the trustees on the death of the member or in any circumstances in which it is specified in a relevant Commonwealth superannuation standard that a preserved benefit must or may be paid.
- (5) A benefit provided by subsection (4) is payable:
- (a) unless the member has died—to the member, or
 - (b) if the member has died and is survived by a spouse—to the surviving spouse, or
 - (c) if the member has died and is not survived by a spouse—to the personal representative of the member or such other person as the trustees direct.
- (6) A member who has been paid or who preserves a benefit under this section is not entitled to any further benefit under this Act or to contribute to the Fund.
- (7) Subsection (6) does not affect any requirement to contribute to the Fund in respect of the member to comply with section 30, or the payment of any benefit resulting from such contributions.

- (8) If the trustees have made a determination under section 28C in relation to a benefit provided by subsection (4), the amount of the benefit is reduced by the amount specified in the trustees' determination.

[11] Section 23 Pension for spouses

Insert after section 23 (11):

- (12) If the trustees have made a determination under section 26D in relation to a benefit provided by subsection (2) or (3), the amount of the benefit is reduced by the amount specified in the trustees' determination.

[12] Section 26A Arrangements for transfer to Commonwealth scheme

Insert after section 26A (5):

- (6) If the trustees have made a determination under section 26D in relation to a lump sum to be paid as provided by this section, the amount is reduced by the amount specified in the trustees' determination.

[13] Section 26D

Insert after section 26C:

26D Power of trustees to reduce benefits to offset certain liabilities of the Fund

- (1) Whenever:
- (a) a right to a benefit under this Act accrues to or in respect of a member or former member, and
 - (b) the trustees have paid or are liable to pay an amount of superannuation contributions surcharge in respect of the employer contributions paid to the Fund on behalf of the member or former member,

the trustees must determine in writing the surcharge deduction amount that, in the opinion of the trustees, it would be fair and reasonable to take into account in working out the amount of the benefit and must make a determination reducing the benefit accordingly.

- (2) In determining the surcharge deduction amount in respect of a benefit payable to a member or former member, the trustees may have regard to any or all of the following matters:
- (a) the amount of superannuation contributions surcharge payable or paid by the trustees in respect of the member or former member,
 - (b) the amount by which the member's or former member's surcharge debt account is in debit when the benefit emerges or commences to be paid,
 - (c) the value of the employer-financed portion of the benefit,
 - (d) the value of the benefits that, for the purpose of working out (under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth) the notional surchargeable contribution factors applicable to the member or former member, were assumed to be likely to be payable to the member or former member on his or her ceasing to hold office as a member of the Legislative Council or Legislative Assembly,
 - (e) whether the member or former member has qualified for a benefit after having been a member for an aggregate period of 7 years or more,
 - (f) the amount of any payments under section 31A,
 - (g) any other matter the trustees consider relevant.
- (3) The surcharge deduction amount determined by the trustees must not exceed an amount that is 15% of the employer-financed portion of that part of the benefit payable to the member or former member that accrued after 20 August 1996.

- (4) For the purpose of determining the surcharge deduction amount, the trustees may obtain actuarial advice or advice from any other persons, as the trustees think fit.
- (5) The balance of any additional amount payable by the trustees for superannuation contributions surcharge in respect of a member or former member, after payment of the balance of the relevant surcharge debt account, is to be paid by the trustees from the Fund under section 6 (2).
- (6) Subsection (1) does not authorise the reduction of a benefit as a result of a liability for superannuation contributions surcharge unless the benefit is a benefit under section 19, 22, 22A, 23 (2) or (3) or 26A.
- (7) In this section:
surcharge debt account, in relation to a member or former member, means the surcharge debt account kept for the member or former member (while holding office as a member) under section 16 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth.

[14] Section 27A Power of trustees to adjust benefits to comply with certain standards relating to superannuation

Omit “and section 27C” from section 27A (5).

[15] Section 27B Special provisions applicable to members who have reached 65 years of age

Omit the section.

[16] Sections 28A, 28B, 28C, 28D

Insert after section 28:

28A Payment or release of benefit in other circumstances

- (1) The trustees may, on the written application of a former member who has preserved a benefit in the Fund, and who is not otherwise entitled to be paid a benefit under this Act, pay the former member a benefit on the grounds of the former member’s severe financial hardship.

- (2) The trustees may only pay the benefit if they are satisfied that the circumstances are such that a benefit would be payable on the grounds of severe financial hardship if the former member were a member of a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.
- (3) The amount of the benefit:
 - (a) is to be the amount payable for the purpose of complying with the requirements of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth for payment of such a benefit from a regulated superannuation fund, and
 - (b) is not to exceed the amount of any benefit preserved by the former member.
- (4) A former member may, at any time, lodge with the trustees an election to vary or revoke an election under this section.
- (5) An election under this section is to be in a form approved by the trustees for the purposes of this section.

28B Payment or release of benefit on compassionate grounds

- (1) The trustees may, on the written election of a former member who has preserved a benefit in the Fund, and who is not otherwise entitled to be paid a benefit under this Act, pay the former member a benefit on compassionate grounds.
- (2) The trustees may only pay the benefit if they are satisfied that the circumstances are such that the Insurance and Superannuation Commissioner appointed under the *Insurance and Superannuation Commissioner Act 1987* of the Commonwealth would be entitled to determine that the amount could be released on compassionate grounds if the former member were a member of a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

- (3) The amount of the benefit:
 - (a) is to be the amount payable for the purpose of complying with the requirements of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth for payment of such a benefit from a regulated superannuation fund, and
 - (b) is not to exceed the amount of any benefit preserved by the former member.
- (4) A former member may, at any time, lodge with the trustees an election to vary or revoke an election under this section.
- (5) An election under this section is to be in a form approved by the trustees for the purposes of this section.

28C Adjustment of benefit

If a benefit is paid to a person under section 28A or 28B, and the person subsequently becomes entitled to another benefit under this Act, the trustees must make a determination reducing the amount of the subsequent benefit to take into account any benefits previously paid under section 28A or 28B. The trustees may for that purpose obtain actuarial advice.

28D Commutation of pensions for adjustment of benefit

- (1) If a determination reducing a benefit that may be taken in the form of a pension is made under section 26D, the trustees may, at their discretion and with the consent of the member or former member concerned, commute part of the pension to a lump sum for the purposes of payment to the trustees of the amount of the reduction.
- (2) Commutation of part of a pension under this section:
 - (a) does not affect any other right that the member or former member has to commute the pension under this Act, and

- (b) is not to be taken into account for the purpose of determining whether, and to what extent, any such other right may be exercised, and
- (c) is to be done on a basis determined by the trustees for the purposes of this section.
- (3) The trustees may obtain actuarial advice for the purpose of determining the basis on which part of a pension is to be commuted under this section.
- (4) This section has effect despite any other provision of this Act.

[17] Sections 31A, 31B

Insert after section 31:

31A Payments to cover superannuation contributions surcharge

- (1) A member may at any time lodge with the trustees an election to pay amounts to the Fund in respect of the superannuation contributions surcharge payable in respect of the member.
- (2) Payments may be made on a periodic or a single payment basis.
- (3) An election is to specify the amounts to be paid and the manner in which the payments are to be made.
- (4) A member may, at any time, lodge with the trustees an election to vary or revoke an election under this section.
- (5) An election under this section is to be in a form approved by the trustees for the purposes of this section.
- (6) An election under this section remains in force until a subsequent election takes effect.

31B Repayment of excess payments

The trustees must refund to a member or former member any excess amount of payments made under section 31A remaining in the Fund after payment of the debt owed for superannuation contributions surcharge in respect of the member or former member, together with interest on that excess amount at a rate determined by the trustees.

[18] Section 35

Insert after section 34:

35 Savings, transitional and other provisions

Schedule 1 has effect.

[19] Schedule 1

Insert at the end of the Act:

Schedule 1 Savings, transitional and other provisions

(Section 35)

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

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- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

1.3 Police Regulation (Superannuation) Act 1906 No 28

[1] Section 1 Short title, commencement and definitions

Insert in alphabetical order in section 1 (2):

superannuation contributions surcharge means the superannuation contributions surcharge imposed under the *Superannuation Contributions Tax Imposition Act 1997* of the Commonwealth.

[2] Section 3 Police Superannuation Fund

Insert “or 20A” after “section 5A” in section 3 (2) (b1).

[3] Section 3 (3) (b)

Insert “or an amount of superannuation contributions surcharge” after “law”.

[4] Section 5 Contributions to Fund

Omit section 5 (3). Insert instead:

- (3) A member of the Police Service who is a contributor, or an employee of the Police Association of New South Wales who is a contributor, is a qualified person for the purposes of this section if the member or employee is under 70 years of age.

[5] Section 5AC

Insert after section 5AB:

5AC Other contributions by members of the Police Service

- (1) A member of the Police Service, or an employee of the Police Association of New South Wales, who is not required by this Act to contribute to the Fund under this

Act merely because the person is on authorised leave without pay as such a member or employee, is entitled to remain a contributor to the Fund even though the member or employee is not contributing to the Fund.

- (2) This section applies to a member or employee only if
- (a) the leave is for the purposes of raising children of whom the member or employee is a parent, or for whom he or she has assumed the responsibility of a parent, and
 - (b) he or she has been on that leave for less than 7 years consecutively, and
 - (c) he or she has a statutory or contractual right to resume employment at the end of the leave.
- (3) Any period during which this section applies to a member or employee is not taken to be a period of service for the purposes of this Act.
- (4) In this section:
- authorised leave* means:
- (a) leave approved by the Commissioner of Police or the Police Association, as the case requires, or
 - (b) leave authorised by an agreement certified, or an award made, by a tribunal or body having the authority to do so under a law of the State or the Commonwealth.

[6] Section 8A Disengagement benefit for members aged between 50–55

Insert after section 8A (9):

- (10) If STC has made a determination under section 14AA in relation to a benefit under this section, the amount of the benefit is reduced by the amount specified in the determination.

[7] Section 14AA Power of STC to reduce benefits to offset certain tax liabilities of the Fund

Insert after section 14AA (1):

(1A) Whenever:

- (a) a right to a benefit under this Act accrues to or in respect of a contributor or former contributor, and
- (b) STC has paid or is liable to pay an amount of superannuation contributions surcharge in respect of the employer contributions paid to the Fund, or in respect of contributions made under the *State Authorities Non-contributory Superannuation Act 1987*, on behalf of the contributor or former contributor,

STC must determine in writing the surcharge deduction amount that, in the opinion of STC, it would be fair and reasonable to take into account in working out the amount of the benefit and must make a determination reducing the benefit accordingly.

(1B) In determining the surcharge deduction amount in respect of a benefit payable to a contributor or former contributor, STC may have regard to any or all of the following matters:

- (a) the amount of superannuation contributions surcharge payable or paid by STC in respect of the contributor or former contributor,
- (b) the amount by which the contributor's or former contributor's surcharge debt account is in debit when the benefit emerges or commences to be paid,
- (c) the value of the employer-financed portion of the benefit,
- (d) the value of the benefits that, for the purpose of working out (under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth) the notional surchargeable contribution factors applicable to

- the contributor or former contributor, were assumed to be likely to be payable to the contributor or former contributor on his or her ceasing to be a member of the police force,
- (e) whether the contributor or former contributor has qualified for a benefit that includes an employer-financed component,
 - (f) the amount of any payments under section 20A,
 - (g) any other matter STC considers relevant.
- (1C) The surcharge deduction amount determined by STC must not exceed an amount that is 15% of the employer-financed portion of that part of the benefit payable to the contributor or former contributor that accrued after 20 August 1996.
- (1D) For the purpose of determining the surcharge deduction amount, STC may obtain actuarial advice or advice from any other persons, as STC thinks fit.
- (1E) The balance of any additional amount payable by STC for superannuation contributions surcharge in respect of a contributor or former contributor, after payment of the balance of the relevant surcharge debt account, is to be paid by STC from the Fund under section 3 (3).

[8] Section 14AA (3), (4)

Insert after section 14AA (2):

- (3) Subsection (1A) does not authorise the reduction of a benefit as a result of a liability for superannuation contributions surcharge unless the benefit is of a kind prescribed by the regulations for the purposes of this section.
- (4) In this section:
surcharge debt account, in relation to a contributor or former contributor, means the surcharge debt account kept for the contributor or former contributor (while an employee) under section 16 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth.

[9] Section 14AC

Insert after section 14AB:

14AC Commutation of pensions for adjustment of benefits

- (1) If a determination reducing a benefit that may be taken in the form of a pension is made under section 14AA, STC may, at its discretion and with the consent of the contributor or former contributor concerned, commute part of the pension to a lump sum for the purposes of payment to STC of the amount of the reduction.
- (2) Commutation of part of a pension under this section:
 - (a) does not affect any other right that the contributor or former contributor has to commute the pension under this Act, and
 - (b) is not to be taken into account for the purpose of determining whether, and to what extent, any such other right may be exercised, and
 - (c) is to be done on a basis determined by STC for the purposes of this section.
- (3) STC may obtain actuarial advice for the purpose of determining the basis on which part of a pension is to be commuted under this section.
- (4) This section has effect despite any other provision of this Act.

[10] Section 14M Benefit on attaining age 65 or 70

Omit section 14M (1). Insert instead:

- (1) A contributor who attains the age of 70 years must be paid any pension or other benefit under this Act to which the contributor would be entitled on retirement on that

age as if the contributor had ceased to be a contributor at that age but:

- (a) may elect under section 14J, in the case of a superannuation allowance, to commute to a lump sum all of the allowance, and
- (b) if such an election is made, may also elect to preserve the whole of any lump sum benefit in the Fund.

[11] Section 14M (4)

Omit the subsection.

[12] Section 14M (4A)

Omit “Despite subsections (1) and (4), a contributor who was aged 60 years or more on 1 July 1990 is entitled”.

Insert instead “A contributor who has attained the age of 65 years may elect”.

[13] Sections 20A, 20B

Insert after section 20:

20A Payments to cover superannuation contributions surcharge

- (1) A contributor may at any time lodge with STC a written election to pay amounts to the Fund in respect of the superannuation contributions surcharge payable in respect of the contributor.
- (2) Payments may be made on a periodic or a single payment basis.
- (3) An election is to specify the amounts to be paid and the manner in which the payments are to be made.

- (4) A contributor may, at any time, lodge with STC an election to vary or revoke an election under this section.
- (5) An election under this section is to be in a form approved by STC for the purposes of this section.
- (6) An election under this section remains in force until a subsequent election takes effect.

20B Repayment of excess payments

STC must refund to a contributor or former contributor any excess amount of payments made under section 20A remaining in the Fund after payment of the amount of debt (including accrued interest) owed for superannuation contributions surcharge in respect of the contributor or former contributor, together with interest on the excess amount at a rate determined by STC.

[14] Schedule 6 Savings and transitional provisions

Insert at the end of clause 1 (1):

Superannuation Legislation Further Amendment Act 1997

[15] Schedule 6, Part 3

Insert after Part 2:

Part 3 Superannuation Legislation Further Amendment Act 1997

7 Authorised leave

A person who commenced a period of authorised leave before the commencement of section 5AC (as inserted by the *Superannuation Legislation Further Amendment Act 1997*) is entitled to the benefit of that section if the person was still on leave immediately before the commencement of that section.

**1.4 Public Sector Executives Superannuation Act 1989
No 106**

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

superannuation contributions surcharge means the superannuation contributions surcharge imposed under the *Superannuation Contributions Tax Imposition Act 1997* of the Commonwealth.

[2] Section 22 Establishment of the Fund

Insert “or payments” after “contributions” in section 22 (2) (a).

[3] Section 22 (3) (b)

Insert “or superannuation contributions surcharge” after “law”.

[4] Section 23 Members' accounts

Insert “or payments” after “contributions” in section 23 (2) (a).

[5] Section 31 FTC must deduct tax liabilities from members' accounts

Insert “or an amount of superannuation contributions surcharge” after “law”.

[6] Section 31

Insert “or superannuation contributions surcharge” after “tax” where secondly occurring.

[7] Section 34 How does an employee become a member of the Fund?

Omit “65” from section 34 (4). Insert instead “70”.

[8] Section 34 (7)

Insert “or the employee has previously been paid or preserved a benefit under this Act” after “scheme”.

[9] Section 43 Liability of employee to contribute

Omit section 43 (1A). Insert instead:

- (1A) An employee is not entitled to contribute to the Fund, and FTC is not to accept a contribution to the Fund offered by an employee, unless the employee is under 70 years of age.

[10] Section 44 Liability of employer to contribute

Omit section 44 (3). Insert instead:

- (3) An employer is not to contribute to the Fund in relation to an employee, and FTC is not to accept a contribution to the Fund offered by an employer in relation to an employee, unless the employee is under 70 years of age.

[11] Section 46A

Insert after section 46:

46A Other contributions by members

- (1) A person who is not required by this Act to contribute to the Fund under this Act merely because the person is on authorised leave as an employee may elect to contribute to the Fund at the rate applicable if the person was so required to contribute.

- (2) This section applies to a person only if:
 - (a) the leave is for the purposes of raising children of whom the person is a parent, or for whom he or she has assumed the responsibility of a parent, and
 - (b) he or she has been on that leave for less than 7 years consecutively, and
 - (c) he or she has a statutory or contractual right to resume employment at the end of the leave.
- (3) A person may, at any time, lodge with FTC an election to vary or revoke an election under this section.
- (4) An election under this section is to be in a form approved by FTC for the purposes of this section.
- (5) An election under this section remains in force until it is revoked.
- (6) This section has effect despite section 46.
- (7) In this section:

authorised leave means:

 - (a) leave approved by the person's employer, or
 - (b) leave authorised by an agreement certified, or an award made, by a tribunal or body having the authority to do so under a law of the State or the Commonwealth.

[12] Section 47 Benefit at or after early retirement

Omit section 47 (1). Insert instead:

- (1) The benefit provided by this section must be paid to a member by FTC:
 - (a) when the member retires from employment with an employer on or after attaining the early retirement age and before attaining the age of 70 years, or

- (b) when the member attains the age of 65 years and elects to take the benefit, or
- (c) when the member attains the age of 70 years.

[13] Section 47 (4)

Insert “, or who elects to have a benefit paid,” after “benefit paid”.

[14] Section 51 Preserved benefit—employer-financed contributions

Insert “or may be paid in respect of a member of such a fund under any such requirements” after “requirements” in section 51 (4) (c).

[15] Section 51 (6), (6A)

Insert after section 51 (5):

- (6) For the purposes of the payment under subsection (4) (c) of a benefit on compassionate grounds, FTC may exercise any function that the Insurance and Superannuation Commissioner appointed under the *Insurance and Superannuation Commissioner Act 1987* of the Commonwealth may exercise for the purpose of determining whether a benefit is payable.
- (6A) A benefit payable under subsection (4) (c) on compassionate grounds or on the grounds of severe financial hardship:
 - (a) is to be paid only to a person who has preserved a benefit in the Fund, and
 - (b) is not to exceed the amount of any such preserved benefit.

[16] Section 52 Preserved benefit—member-financed contributions

Omit “65” from section 52 (5) (a). Insert instead “70”.

[17] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

*Superannuation Legislation Further Amendment Act
1997*

[18] Schedule 5, clause 2

Insert after clause 1:

2 Authorised leave

A person who commenced a period of authorised leave before the commencement of section 46A (as inserted by the *Superannuation Legislation Further Amendment Act 1997*) is entitled to the benefit of that section if the person was still on leave immediately before the commencement of that section.

**1.5 State Authorities Non-contributory Superannuation Act
1987 No 212**

[1] Section 23 When benefits are payable

Insert “or may be paid in respect of a member of such a fund under any such requirements” after “requirements” in section 23 (1) (c).

[2] Section 23 (4), (5)

Insert after section 23 (3):

- (4) For the purposes of the payment under subsection (1) (c) of a benefit on compassionate grounds, STC may exercise any function that the Insurance and Superannuation Commissioner appointed under the *Insurance and Superannuation Commissioner Act 1987* of the Commonwealth may exercise for the purpose of determining whether a benefit is payable.

(5) A benefit payable under subsection (1) (c) on compassionate grounds or on the grounds of severe financial hardship:

- (a) is to be paid only to a person who has preserved a benefit in the Fund, and
- (b) is not to exceed the amount of any such preserved benefit.

[3] Section 23A Benefit on attaining 65

Insert “elect to” after “age may” in section 23A (1).

[4] Section 23A (2) and (3)

Omit the subsections.

[5] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

Superannuation Legislation Further Amendment Act 1997

1.6 State Authorities Superannuation Act 1987 No 211

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

superannuation contributions surcharge means the superannuation contributions surcharge imposed under the *Superannuation Contributions Tax Imposition Act 1997* of the Commonwealth.

[2] Section 11 Establishment of the Fund

Insert “or payments” after “contributions” in section 11 (3) (a).

[3] Section 11 (4) (b)

Insert “or an amount of superannuation contributions surcharge payable” after “law”.

[4] Section 19 Election to contribute to the Fund

Omit “65” from section 19 (5). Insert instead “70”.

[5] Section 25 Liability to contribute

Omit section 25 (5) and (6). Insert instead:

- (5) An employee is not entitled to contribute to the Fund, and STC is not to accept a contribution to the Fund offered by an employee, unless the employee is under 70 years of age.
- (6) A contributor is not entitled to accrue benefit points after attaining the age of 70 years.

[6] Section 29A

Insert after section 29:

29A Other contributions by contributors

- (1) A contributor, who is not required by this Act to contribute to the Fund under this Act merely because the contributor is on authorised leave without pay as an employee, is entitled to remain a contributor to the Fund even though the contributor is not contributing to the Fund.

- (2) This section applies to a contributor only if:
 - (a) the leave is for the purposes of raising children of whom the contributor is a parent, or for whom he or she has assumed the responsibility of a parent, and
 - (b) he or she has been on that leave for less than 7 years consecutively, and
 - (c) he or she has a statutory or contractual right to resume employment at the end of the leave.
- (3) A contribution period in respect of which a contributor is a contributor to whom this section applies is not an applicable contribution period in relation to the contributor.
- (4) This section has effect despite section 29.
- (5) In this section:
 - authorised leave* means:
 - (a) leave approved by the contributor's employer, or
 - (b) leave authorised by an agreement certified, or an award made, by a tribunal or body having the authority to do so under a law of the State or the Commonwealth.

[7] Section 42A Benefit on attaining 65 or 70

Omit "65" from section 42A (1). Insert instead "70".

[8] Section 42A (2)

Omit the subsection.

[9] Section 42A (2A)

Omit "Despite subsections (1) and (2), an employee who was aged 60 years or more on 1 July 1990".
Insert instead "An employee".

[10] Section 42A (5)

Omit the subsection. Insert instead:

- (5) A person paid a benefit under this section is not entitled:
 - (a) to any further benefit under this Act in respect of the same period of service, or
 - (b) to contribute to the Fund or to accrue any further benefits under this Act.

[11] Section 43 Preserved benefit

Omit section 43 (3) (f). Insert instead:

- (f) on STC being satisfied that the former member has attained the age of 70 years even though the former member is employed for more than 10 but less than 30 hours a week,

[12] Section 43 (7A)

Insert “43D or” before “45A”.

[13] Sections 43B, 43C, 43D

Insert after section 43AB:

43B Payment or release of benefit in other circumstances

- (1) STC may, on the application of a former contributor who has preserved a benefit in the Fund, and who is not otherwise entitled to be paid a benefit under this Act, pay the former contributor a benefit on the grounds of the former contributor’s severe financial hardship.
- (2) STC may only pay the benefit if STC is satisfied that the circumstances are such that a benefit would be payable on the grounds of severe financial hardship if the former

contributor were a member of a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

- (3) The amount of the benefit:
 - (a) is to be the amount payable for the purpose of complying with the requirements of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth for payment of such a benefit from a regulated superannuation fund, and
 - (b) is not to exceed the amount of any benefit that would be payable to the former contributor under section 43 (7), if the former contributor was eligible to be paid such a benefit.
- (4) A former contributor may, at any time, vary or revoke an application under this section.

43C Payment or release of benefit on compassionate grounds

- (1) STC may, on the written election of a former contributor who has preserved a benefit in the Fund, and who is not otherwise entitled to be paid a benefit under this Act, pay the former contributor a benefit on compassionate grounds.
- (2) STC may only pay the benefit if STC is satisfied that the circumstances are such that the Insurance and Superannuation Commissioner appointed under the *Insurance and Superannuation Commissioner Act 1987* of the Commonwealth would be entitled to determine that the amount could be released on compassionate grounds if the former contributor were a member of a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

- (3) The amount of the benefit:
- (a) is to be the amount payable for the purpose of complying with the requirements of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth for payment of such a benefit from a regulated superannuation fund, and
 - (b) is not to exceed the amount of any benefit that would be payable to the former contributor under section 43 (7), if the former contributor was eligible to be paid such a benefit.
- (4) A former contributor may, at any time, vary or revoke an application under this section.

43D Adjustment of benefit

If a benefit is paid to a person under section 43B or 43C, and the person subsequently becomes entitled to another benefit under this Act, STC must make a determination reducing the amount of the subsequent benefit to take into account any benefits previously paid under section 43B or 43C. STC may for that purpose obtain actuarial advice.

[14] Section 44 Application for payment of benefit

Insert “, 43B or 43C” after “43” in section 44 (1) (a).

[15] Section 45A Power of STC to reduce benefits to offset certain tax liabilities of the Fund

Insert after section 45A (1):

- (1A) Whenever:
- (a) a right to a benefit under this Act accrues to or in respect of a contributor or former contributor, and
 - (b) STC has paid or is liable to pay an amount of superannuation contributions surcharge in respect

of the employer contributions paid or payable to the Fund, or in respect of contributions made under the *State Authorities Non-contributory Superannuation Act 1987*, on behalf of the contributor or former contributor,

STC must determine in writing the surcharge deduction amount that, in the opinion of STC, it would be fair and reasonable to take into account in working out the amount of the benefit and must make a determination reducing the benefit accordingly.

- (1B) In determining the surcharge deduction amount in respect of a benefit payable to a contributor or former contributor, STC may have regard to any or all of the following matters:
- (a) the amount of superannuation contributions surcharge payable or paid by STC in respect of the contributor or former contributor,
 - (b) the amount by which the contributor's or former contributor's surcharge debt account is in debit when the benefit emerges or commences to be paid,
 - (c) the value of the employer-financed portion of the benefit,
 - (d) the value of the benefits that, for the purpose of working out (under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth) the notional surchargeable contribution factors applicable to the contributor or former contributor, were assumed to be likely to be payable to the person on his or her ceasing to be an employee,
 - (e) whether the contributor or former contributor has qualified for a benefit that includes an employer-financed component,
 - (f) the amount of any payments under section 52A,
 - (g) any other matter STC considers relevant.

- (1C) The surcharge deduction amount determined by STC must not exceed an amount that is 15% of the employer-financed portion of that part of the benefit payable to the contributor or former contributor that accrued after 20 August 1996.
- (1D) For the purpose of determining the surcharge deduction amount, STC may obtain actuarial advice or advice from any other persons, as STC thinks fit.
- (1E) The balance of any additional amount payable by STC for superannuation contributions surcharge in respect of a contributor or former contributor, after payment of the balance of the relevant surcharge debt account, is to be paid by STC from the Fund under section 11 (4) and debited to the appropriate employer reserve.

[16] Section 45A (3), (4)

Insert after section 45A (2):

- (3) Subsection (IA) does not authorise the reduction of a benefit as a result of a liability for superannuation contributions surcharge unless the benefit is of a kind prescribed by the regulations for the purposes of this subsection.
- (4) In this section:
surcharge debt account, in relation to a contributor or former contributor, means the surcharge debt account kept for the contributor or former contributor (while an employee) under section 16 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth.

[17] Section 46 Employers and employees

Insert after section 46 (1) (d):

- (d1) amend Schedule 1 by omitting the name of an employer if the employer no longer employs any employees who are contributors,

[18] Section 46 (IA), (1B)

Insert after section 46 (1):

- (1A) The Governor may, by order published in the Gazette, make an order amending Schedule 1 by inserting, in relation to an employer listed in Schedule 1, such limitations as are specified in the amendment.
- (1B) An order under subsection (1A) may not impose limitations that operate to the prejudice of an existing contributor.

[19] Sections 52A, 52B

Insert after section 52:

52A Payments to cover superannuation contributions surcharge

- (1) A contributor may at any time lodge with STC an election to pay amounts to the Fund in respect of the superannuation contributions surcharge payable in respect of the contributor.
- (2) Payments may be made on a periodic or a single payment basis.
- (3) An election is to specify the amounts to be paid and the manner in which the payments are to be made.
- (4) A contributor may, at any time, lodge with STC an election to vary or revoke an election under this section.
- (5) An election under this section is to be in a form approved by STC for the purposes of this section.
- (6) An election under this section remains in force until a subsequent election under this section takes effect.

52B Repayment of excess payments

STC must refund to a contributor or former contributor any excess amount of payments made under section 52A remaining after payment of the debt (including accrued interest) owed for superannuation contributions

surcharge in respect of the contributor or former contributor, together with interest on the excess amount at a rate determined by STC.

[20] Schedule 2 Excluded persons

Insert after clause 1 (2):

- (3) Clause 1 (1) (a) does not apply to an employee for whom additional pre-tax employer contributions are made to another superannuation scheme.

[21] Schedule 6 Savings and transitional provisions

Insert at the end of clause 1 (I):

Superannuation Legislation Further Amendment Act 1997

[22] Schedule 6, Part 3

Insert after Part 2:

Part 3 Superannuation Legislation Further Amendment Act 1997

5 Authorised leave

A person who commenced a period of authorised leave before the commencement of section 29A (as inserted by the *Superannuation Legislation Further Amendment Act 1997*) is entitled to the benefit of that section if the person was still on leave immediately before the Commencement of that section.

1.7 Superannuation Act 1916 No 28

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Superannuation contributions surcharge means the superannuation contributions surcharge imposed under the *Superannuation Contributions Tax Imposition Act 1997* of the Commonwealth.

[2] Section 4 Reconstitution of the Fund

Insert “or payments” after “contributions” in section 4 (3) (a).

[3] Section 4 (4) (d)

Insert “or an amount of superannuation contributions surcharge payable by the Fund” after “law”.

[4] Section 10SA

Omit the section. Insert instead:

10SA Cessation of contributions

An employee is not entitled to contribute to the Fund, and STC is not to accept a contribution to the Fund offered by an employee, after the employee attains 70 years of age.

[5] Section 12D

Insert after section 12CA:

12D Other contributions by contributors

- (1) A contributor, who is not required by this Act to contribute to the Fund under this Act merely because the contributor is on authorised leave without pay as an employee, is entitled to remain a contributor to the Fund even though the contributor is not contributing to the Fund.
- (2) This section applies to a contributor only if
 - (a) the leave is for the purposes of raising children of whom the contributor is a parent, or for whom he or she has assumed the responsibility of a parent, and

- (b) he or she has been on that leave for less than 7 years consecutively, and
- (c) he or she has a statutory or contractual right to resume employment at the end of the leave.
- (3) Section 12B (1) and (2) apply to a contributor, and to the period of leave of the contributor, during any period during which this section applies to the contributor.
- (4) In this section:
authorised leave means:
 - (a) leave approved by the contributor's employer, or
 - (b) leave authorised by an agreement certified, or an award made, by a tribunal or body having the authority to do so under a law of the State or the Commonwealth.

[6] Section 521A Effect of contributor becoming a contributor to another scheme while employed by the same employer

Insert at the end of section 521A:

- (3) Subsection (1) does not apply to an employee for whom additional pre-tax employer contributions are made to another superannuation scheme.

[7] Section 52W Benefit on attaining 65 or 70

Omit "was under the age of 60 years on 1 July 1990 and attains the age of 65" from section 52W (1).

Insert instead "attains the age of 70".

[8] Section 52W (2)

Omit the subsection.

[9] Section 52W (2A)

Omit “Despite subsections (1) and (2), an employee who was aged 60 years or more on 1 July 1990”.

Insert instead “An employee”.

[10] Section 52W (6)

Insert “or who has elected to be paid” after “entitled” where firstly occurring.

[11] Section 52X Compulsory payment of preserved or other benefit

Omit “and is” from section 52X (2) (b).

Insert instead “even though the person is”.

[12] Section 61RA Power of STC to reduce pensions and other benefits to offset certain tax liabilities of the Fund

Insert after section 61RA (1):

(1A) Whenever:

- (a) a right to a benefit under this Act accrues to or in respect of a contributor or former contributor, and
- (b) STC has paid or is liable to pay an amount of superannuation contributions surcharge in respect of the employer contributions paid or payable to the Fund, or in respect of contributions made under the *State Authorities Non-contributory Superannuation Act 1987*, on behalf of the contributor or former contributor,

STC must determine in writing the surcharge deduction amount that, in the opinion of STC, it would be fair and reasonable to take into account in working out the amount of the benefit and must make a determination reducing the benefit accordingly.

- (1B) In determining the surcharge deduction amount in respect of a benefit payable to a contributor or former contributor, STC may have regard to any or all of the following matters:
- (a) the amount of superannuation contributions surcharge payable or paid by STC in respect of the contributor or former contributor,
 - (b) the amount by which the contributor's or former contributor's surcharge debt account is in debit when the benefit emerges or commences to be paid,
 - (c) the value of the employer-financed portion of the benefit,
 - (d) the value of the benefits that, for the purpose of working out (under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth) the notional surchargeable contribution factors applicable to the contributor or former contributor, were assumed to be likely to be payable to the person on his or her ceasing to be an employee,
 - (e) whether the contributor or former contributor has qualified for a benefit that includes an employer-financed component,
 - (f) the amount of any payments under section 91B,
 - (g) any other matter STC considers relevant.
- (1C) The surcharge deduction amount determined by STC must not exceed an amount that is 15% of the employer-financed portion of that part of the benefit payable to the contributor or former contributor that accrued after 20 August 1996.
- (1D) For the purpose of determining the surcharge deduction amount, STC may obtain actuarial advice or advice from any other persons, as STC thinks fit.

- (1E) The balance of any additional amount payable by STC for superannuation contributions surcharge in respect of a contributor or former contributor, after payment of the balance of the relevant surcharge debt account, is to be paid by STC from the Fund under section 4 (4) and debited to the appropriate employer reserve.

[13] Section 61RA (3), (4)

Insert after section 61RA (2):

- (3) Subsection (1A) does not authorise the reduction of a benefit as a result of a liability for superannuation contributions surcharge unless the benefit is of a kind to which section 61RD applies.

- (4) In this section:

surcharge debt account, in relation to a contributor or former contributor, means the surcharge debt account kept for the contributor or former contributor (while an employee) under section 16 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth.

[14] Section 61RE

Insert after section 61RD:

61RE Commutation of pensions for adjustment of benefits

- (1) If a determination reducing a benefit that may be taken in the form of a pension is made under section 61RA, STC may, at its discretion and with the consent of the contributor or former contributor concerned, commute part of the pension to a lump sum for the purposes of payment to STC of the amount of the reduction.

- (2) Commutation of part of a pension under this section:
 - (a) does not affect any other right that the contributor or former contributor has to commute the pension under this Act, and
 - (b) is not to be taken into account for the purpose of determining whether, and to what extent, any such other right may be exercised, and
 - (c) is to be done on a basis determined by STC for the purposes of this section.
- (3) STC may obtain actuarial advice for the purpose of determining the basis on which part of a pension is to be commuted under this section.
- (4) This section has effect despite any other provision of this Act.

[15] Sections 91B, 91C

Insert after section 91A:

91B Payments to cover superannuation contributions surcharge

- (1) A contributor may at any time lodge with STC an election to pay amounts to the Fund in respect of the superannuation contributions surcharge payable in respect of the contributor.
- (2) Payments may be made on a periodic or a single payment basis.
- (3) An election is to specify the amounts to be paid and the manner in which the payments are to be made.
- (4) A contributor may, at any time, lodge with STC an election to vary or revoke an election under this section.
- (5) An election under this section is to be in a form approved by STC for the purposes of this section.
- (6) An election under this section remains in force until a subsequent election under this section takes effect.

91C Repayment of excess payments

STC must refund to a contributor or former contributor any excess amount of payments made under section 91B remaining in the contributor's or former contributor's account after payment of the amount of debt (including accrued interest) owed for superannuation contributions surcharge in respect of the contributor or former contributor, together with interest on the excess amount at a rate determined by STC.

[16] Section 92 Power to amend Schedule 3 (List of employers)

Insert after section 92 (1) (d):

- (d1) amend Schedule 3 by omitting the name of an employer if the employer no longer employs any employees who are contributors, or

[17] Section 92 (1A), (1B)

Insert after section 92 (1):

- (1A) The Governor may, by order published in the Gazette, make an order amending Schedule 3 by inserting, in relation to an employer listed in Schedule 3, such limitations as are specified in the amendment.
- (1B) An order under subsection (1A) may not impose limitations that operate to the prejudice of an existing contributor.

[18] Schedule 25 Savings and transitional provisions

Insert at the end of clause 1 (1):

*Superannuation Legislation Further Amendment Act
1997*

[19] Schedule 25, Part 4

Insert after Part 3:

**Part 4 Superannuation Legislation Further
Amendment Act 1997**

7 Authorised leave

A person who commenced a period of authorised leave before the commencement of section 12D (as inserted by the *Superannuation Legislation Further Amendment Act 1997*) is entitled to the benefit of that section if the person was still on leave immediately before the commencement of that section.

[Minister's second reading speech made in—
Legislative Assembly on 27 November 1997 p.m.
Legislative Council on 5 December 1997]