



New South Wales

Superannuation Legislation Amendment Act 1998 No 72

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New South Wales

Superannuation Legislation Amendment Act 1998 No 72

Act No 72, 1998

An Act to amend various public sector superannuation Acts with respect to extending certain benefits under the First State Superannuation Scheme, recognising part-time work for the purposes of the Police Superannuation Scheme, removing certain approval requirements for fund managers appointed by the FSS Trustee Corporation, improving continuity of service provisions in the State Authorities Superannuation Scheme, improving retrenchment and withdrawal benefits and rights to commute certain pensions in the State Superannuation Fund; and for other purposes. [Assented to 14 July 1998]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Superannuation Legislation Amendment Act 1998*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 1.1, 1.3 and 1.5 commence on the date of assent to this Act.

3 Amendment of Acts

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

4 Explanatory notes

The matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act.

Schedule 1 Amendments

(Section 3)

1.1 First State Superannuation Act 1992 No 100

Section 36 When is a benefit or preserved benefit payable?

Omit section 36 (5). Insert instead:

- (5) A benefit payable under subsection (1) (c) on compassionate grounds or on the grounds of severe financial hardship is not to exceed the amount of the balance at credit in the member's account in the Fund when the benefit is paid.

Explanatory note

This amendment enables benefits payable on compassionate grounds or on the grounds of severe hardship to members of the First State Superannuation Scheme to be paid to active members as well as members who have preserved benefits in the Fund. The amendment makes it clear that the amount of any such benefit must not exceed the actual amount credited to the member in the Fund.

1.2 Police Regulation (Superannuation) Act 1906 No 28

[1] Section 1 Short title, commencement and definitions

Insert in alphabetical order in section 1 (2):

attributed salary of office of a contributor at any time means:

- (a) if the contributor is a full-time member of the police force at the time, the salary of office of the contributor at that time, or
- (b) if the contributor is a part-time member of the police force at the time, the salary of office that would be payable to the contributor at that time if employed as a full-time member of the police force.

equivalent full-time service means the cumulative total of all periods worked by a contributor as a member of the police force (as a full-time member of the police force or a part-time member of the police force, or both) expressed as the nearest equivalent period of full-time service.

equivalent service ratio is defined in section 6.

full-time member of the police force means a member of the police force whose salary ratio is equal to 1.

part-time member of the police force means a member of the police force whose salary ratio is less than 1 but at least 0.1.

salary ratio of a contributor during a period means the number ascertained by dividing the salary of office of the contributor at the commencement of the period by the attributed salary of office of the contributor at that commencement.

[2] Section 1 (5) and (6)

Insert after section 1 (4):

- (5) In this Act, a reference to the salary of office of a member of the police force, other than an executive officer, who is a part-time member of the police force (including a member who fills a full-time position but is on part-time leave without pay) is a reference to the actual salary of office received by the officer while working as a part-time member of the police force.
- (6) In this Act, a reference to part-time service includes any period during which a member of the police force is employed as a part-time employee or takes part-time leave without pay and is required by this Act to contribute to the Fund.

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

Insert after section 1AA (6):

(6A) Change of salary on change of work

The amount of salary nominated for the purposes of this Act is, on an executive officer becoming a full-time member of the police force after being a part-time member of the police force or becoming a part-time member of the police force after being a full-time member of the police force, changed so that it is an amount equal to the same percentage of the officer's remuneration package after the change in work as the amount previously nominated was of the remuneration package before the change. This subsection does not prevent an executive officer from making an election under subsection (5) or (6) at any time after the change in work.

[4] Section 5A Leave without pay

Insert after section 5A (3A):

(3B) If a member of the police force takes part-time leave without pay (not being special leave without pay) and receives a salary of office for part-time service during the period of leave, subsection (2) does not apply and deductions from the member's salary of office under section 5 are to be made on the basis that:

- (a) the member is a full-time member of the police force during the initial period, and
- (b) the member is a part-time member of the police force during any period of part-time leave without pay extending after the initial period.

(3C) The initial period is, in respect of any member of the police force who takes part-time leave without pay (not being special leave without pay), to be treated under this Act as a period of full-time service.

(3D) If a member of the police force takes part-time leave without pay that is special leave and receives a salary of office for part-time service during the period of leave, subsections (3) and (3A) do not apply and deductions from the member's salary of office under section 5 are to continue to be made for any period of part-time service that occurs during the period of special leave.

[5] Section 5B Contributor eligible for membership or a member of the Public Sector Executives Superannuation Fund

Omit the formula in section 5B (7) (b). Insert instead:

$$L = [E \times \frac{S}{S + P} \times 0.94^{(55-A)}] \times \text{ESR}$$

[6] Section 5B (7)

Omit the definitions of *E*, *S* and *P* in section 5B (7).
Insert instead:

E represents the lump sum that would have been payable if the contributor:

- (a) were to continue as a member of the police force until attaining the age of 55 years at the same attributed salary of office as at the date the contributor makes the election under this section, and
- (b) had always worked as a full-time member of the police force, and
- (c) were to commute the superannuation allowance otherwise payable to the contributor.

S represents the total number of months of both full-time and part-time service that has been completed by the contributor.

P represents the additional months of full-time service that the contributor would have completed if he or she were to continue as a full-time member of the police force until the age of 55 years.

[7] Section 5B (7)

Insert after the definition of A:

ESR represents the equivalent service ratio of the contributor as at the date of the contributor's election.

[8] Section 6

Insert before section 7:

6 Equivalent service ratio

In this Part and section 5B:

actual contributory service (or **ACS**) of a contributor or member of the police force is the sum of the figures obtained by multiplying each month during which the person has been a contributor whether as a full-time or part-time member of the police force (up to a maximum of 360 months of equivalent full-time service and not including any month that is not taken to be a period of service because of section 5A (4)) by the salary ratio of the person for that month.

equivalent service ratio (or *ESR*) of a contributor or member of the police force means:

$$\frac{\text{ACS}}{\text{PCS}}$$

potential contributory service (or *PCS*) of a contributor or member of the police force means the total number of months during which the person has been a contributor whether as a full-time or part-time member of the police force (up to a maximum of 360 months of equivalent full-time service and not including any month that is not taken to be a period of service because of section 5A (4)).

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

Omit subsection (1) (other than the Table to subsection (1)).
Insert instead:

- (1) The annual superannuation allowance for a member of the police force who has served 20 years or more of equivalent full-time service and retires on or after attaining the age of 60 years or, being under that age, is discharged after being certified under section 8 (1) to be incapable, from infirmity of body or mind, of discharging the duties of the member's office, is an amount calculated in accordance with the following formula:

$$P = Y \times ESR$$

where:

P represents the amount of the annual superannuation allowance payable.

Y represents a percentage of the member's attributed salary of office at the date of the member's retirement or discharge equal to the sum of:

- (a) the percentage specified in the Second Column of the Table to this subsection opposite the total number of years of both full-time and part-time service specified in the First Column of that Table that has been completed by the member, and
- (b) in the case of a person who has completed less than 30 years of equivalent full-time service, one-twelfth of 2.425 per cent for each month of full-time or part-time service that has been completed by the member after the last completed year of service referred to in paragraph (a).

ESR represents the equivalent service ratio of the member as at the date of the member's retirement or discharge.

[10] Section 7 (1)

Insert “both full-time and part-time” before “service” in the First Column of the Table.

[11] Section 7AA Superannuation allowance on early retirement

Omit the formula in section 7AA (2). Insert instead:

$$P = \frac{0.02425}{12} \times S \times V \times [1 - \frac{0.04}{12} \times (720 - A)] \times ESR$$

[12] Section 7AA (2)

Insert “attributed” before “salary” in the definition of *S* .

[13] Section 7AA (2)

Omit the definition of *V* . Insert instead:

V represents the total number of months of both full-time and part-time service that has been completed by the member (subject to a maximum of 360 months of equivalent full-time service).

[14] Section 7AA (2)

Insert after the definition of *A* :

ESR represents the equivalent service ratio of the member as at the date of the member’s retirement.

[15] Section 7AA (2A)

Omit section 7AA (2A). Insert instead:

(2A) For the purposes of *V* in the formula in subsection (2), if the total number of months of both full-time and part-time service is not a whole number of months, any part of a month is to be disregarded.

(2AA) For the purposes of *A* in the formula in subsection (2), a part of a month of age is to be disregarded.

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

Insert “of equivalent full-time service” after “years” in section 8A (2) (b).

[17] Section 8A (5)

Omit the formula. Insert instead:

$$L = [E \times \frac{S}{S + P} \times 0.97^{(55-A)}] \times ESR$$

[18] Section 8A (5)

Omit “salary of office” from the definition of *E* .
Insert instead “attributed salary of office, and had always worked as a full-time member of the police force”.

[19] Section 8A (5)

Omit “number of months of service” from the definition of *S* .
Insert instead “total number of months of both full-time and part-time service”.

[20] Section 8A (5)

Insert “full-time” before “service” in the definition of *P* .

[21] Section 8A (5)

Insert “full-time” before “member” where lastly occurring in the definition of *P* .

[22] Section 8A (5)

Insert after the definition of *A* :

ESR represents the equivalent service ratio of the member as at the date of the member’s retirement.

[23] Section 8A (6)

Omit section 8A (6). Insert instead:

- (6) For the purposes of *S* in the formula in subsection (5), if the total number of months of both full-time and part-time service is not a whole number of months, any part of a month is to be disregarded.
- (6A) For the purposes of *P* in the formula in subsection (5), a part of a month of full-time service is to be disregarded.

[24] Section 9B Preserved benefit

Omit the formula from section 9B (6) (b). Insert instead:

$$L = [E \times \frac{S}{S + P} \times 0.97^{(55-A)}] \times \text{ESR}$$

[25] Section 9B (6)

Omit “salary of office” from the definition of *E* .

Insert instead “attributed salary of office, and had always worked as a full-time member of the police force”.

[26] Section 9B (6)

Omit “number of months of service” from the definition of *S* .

Insert instead “total number of months of both full-time and part-time service”.

[27] Section 9B (6)

Insert “full-time” before “service” in the definition of *P* .

[28] Section 9B (6)

Insert “full-time” before “member” where lastly occurring in the definition of *P* .

[29] Section 9B (6)

Insert after the definition of *A*:

ESR represents the equivalent service ratio of the member as at the date the former member ceased to be a member.

[30] Section 9B (8)

Omit section 9B (8). Insert instead:

- (8) For the purposes of *S* in the formula in subsection (6) (b), if the total number of months of both full-time and part-time service is not a whole number of months, any part of a month is to be disregarded.
- (8A) For the purposes of *P* in the formula in subsection (6) (b), a part of a month of full-time service is to be disregarded.

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

Omit the definition of *salary of office* from section 10 (1).

Insert instead:

attributed salary of office means:

- (a) in relation to a member of the police force who is discharged—the member's attributed salary of office at the date of the member's discharge, or
- (b) in relation to a former member of the police force who resigned or retired—the member's attributed salary of office at the date of the member's resignation or retirement.

[32] Section 10 (1A)

Insert "attributed" before "salary of office" wherever occurring (except in paragraph (c)).

[33] Section 10 (1A) (c)

Omit the paragraph. Insert instead:

- (c) if the disabled member is totally incapacitated for work outside the police force and, in the opinion of STC, the member was hurt on duty because the member was required to be exposed to risks to which members of the general workforce would normally not be required to be exposed in the course of their employment, an additional amount that is:
 - (i) not less than 12.25 per cent and not more than 27.25 per cent of the member's attributed salary of office, and
 - (ii) commensurate, in the opinion of STC, with the risks to which the member was so required to be exposed,

multiplied by the equivalent service ratio of the member as at the date of the member's discharge, resignation or retirement.

[34] Section 12 Superannuation allowance where a member or former member dies as a result of being hurt on duty

Omit section 12 (1AA) (a). Insert instead:

- (a) in the case of the death of a member of the police force:
 - (i) 55 per cent of the attributed salary of office of the deceased member at the time of death, and
 - (ii) if, in the opinion of STC, the member was hurt on duty because the member was required to be exposed to risks to which members of the general workforce would normally not be required to be exposed in the course of their employment, an additional rate that is not more than 7.5 per cent of that attributed salary of office and

that is, in the opinion of STC, commensurate with the risks to which the member was required to be exposed, multiplied by the equivalent service ratio for the member as at the member's date of death, or

[35] Section 12 (1AA) (b) (i)

Insert "attributed" before "salary".

[36] Section 12 (1AA) (b) (i)

Insert ", multiplied by the equivalent service ratio for the member at that time," after "subsection (3A)".

[37] Section 12(1B)

Insert "attributed" before "salary" wherever occurring.

[38] Section 13 Gratuity where deceased member not hurt on duty

Omit the formula in section 13 (1). Insert instead:

$$G = 0.01 \times (AS + AS + PS) \times S \times ESR$$

[39] Section 13 (1)

Omit the definitions of *AS* and *PS*. Insert instead:

AS represents the total number of months of both full-time and part-time service that has been completed by the member (subject to a maximum of 360 months of equivalent full-time service).

PS represents (in the case of a member dying before the age of 55 years) the number of additional months of full-time service that the deceased member would have completed if the deceased member had reached the age of 55 years as a full-time member (subject to the maximum number necessary so that the total of *AS* + *PS* does not exceed 360 months of equivalent full-time service).

[40] Section 13 (1)

Insert "attributed" before salary in the definition of *S*.

[41] Section 13 (1)

Insert after the definition of *S*:

ESR represents the equivalent service ratio for the deceased member as at the member's date of death.

[42] Section 13 (2)

Omit section 13 (2). Insert instead:

(2) For the purposes of AS in the formula in subsection (1), if the total number of months of both full-time and part-time service is not a whole number of months, any part of a month is to be disregarded.

(2AA) For the purposes of PS in the formula in subsection (1), a part of a month of full-time service is to be disregarded.

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

Insert "of equivalent full-time service" after "20 years" in section 14 (1) (a).

[44] Section 14 (1)

Omit "salary of office".

Insert instead "attributed salary of office".

[45] Section 14I Definitions

Omit the definition of *salary of office*.

Insert instead in alphabetical order:

attributed salary of office means:

- (a) in relation to a member of the police force who commutes a superannuation allowance under section 7—the attributed salary of office of the member at the date of retirement or discharge, or
- (b) in relation to a member of the police force who commutes a superannuation allowance under section 7AA or 10—the attributed salary of office of the member within the meaning of that section.

[46] Section 14J (4)

Insert “attributed” before “salary”.

[47] Section 14J (4)

Insert “and by the equivalent service ratio for the person as at the date the person retired” after “Schedule 3”.

[48] Schedule 3 Lump sum benefits for normal or early retirement—commutation factors (multiples of final salary)

Omit “**final salary**” from the heading to the Schedule.
Insert instead “**attributed final salary of office**”.

[49] Schedule 3, clause 1 (1) (a)

Insert “(whether as a full-time or part-time member, or both)” after “continuous”.

[50] Schedule 6 Savings and transitional provisions

Insert at the end of clause 1 (1):

Superannuation Legislation Amendment Act 1998

[51] Schedule 6, Part 4

Insert after Part 3:

Part 4 Superannuation Legislation Amendment Act 1998

8 Part-time members of the police force

- (1) A contributor who, immediately before the commencement of this clause, worked as a part-time member of the police force is, on and from that commencement, to contribute to the Fund on the basis of the salary of office received by the contributor.

- (2) For the purposes of this Act, any period before the commencement of this clause during which a contributor or a former member contributed to the Fund as if the contributor or former member were a full-time member of the police force is to be treated as a period of full-time service, whether or not the contributor or former member actually worked as a full-time member of the police force during that period.

9 Benefits

The amendment, by the *Superannuation Legislation Amendment Act 1998*, of a provision of this Act entitling a member or former member of the police force to a benefit does not affect the entitlement to any such benefit, or the amount of any such benefit, payable under that provision before the commencement of the amendment.

Explanatory note

The amendments enable periods of part-time service as a member of the police force to be taken into account, and contributed for, on a pro rata basis in the Police Superannuation Scheme. Generally, contributions will be based on actual salary of office paid and benefits will be adjusted accordingly by applying a ratio based on service. Additionally, the amendments adjust the treatment of periods of part-time leave without pay so that contributions can still be made during a period in which a member of the police force who would otherwise be a full-time officer works part-time and takes part-time leave without pay.

Item [1] inserts expressions related to part-time employment and the calculation of benefits.

Item [2] makes it clear that salary of office in the Act means the actual salary paid according to whether a member of the police force is working on a part-time or full-time basis.

Item [3] changes the nominated salary of an executive officer who changes from full-time to part-time work or from part-time to full-time work.

Item [4] requires members of the police force who take part-time leave without pay to be treated as part-time employees for any period after an initial period of leave to be prescribed by the regulations. If the leave is special leave (for example, sick leave or maternity leave), payment is to be made from the commencement of the period of leave. During the initial period, persons who take part-time leave without pay that is not special leave will be required to make contributions as if they were employed on the same basis as before the period of leave commenced.

Superannuation Legislation Amendment Act 1998 No 72

Schedule 1 Amendments

Items [5] and [6] provide for the calculation of benefits received by executive officers who elect to preserve a benefit when they become eligible to be members of the Public Sector Executives Superannuation Scheme. The benefit is currently based on the benefit payable if the person had continued until the early retirement age. This amount is to be reduced by applying the equivalent service ratio, so that any periods of part-time service are taken into account. Item [7] makes a consequential amendment.

Item [8] defines the equivalent service ratio, which is the ratio of actual contributory service to potential contributory service, for the purposes of the calculation of benefits under the Police Superannuation Scheme.

Item [9] changes the calculation of the superannuation allowance payable to a contributor who retires at age 60 or more or because of incapacity. The benefit is currently based on a percentage related to the member's years of service. This amount is to be reduced by applying the equivalent service ratio, so that any periods of part-time service are taken into account. Item [10] makes a consequential amendment.

Item [11] changes the calculation of the superannuation allowance payable to a contributor who retires on or after age 55 and before age 60. The benefit is currently based on the member's years of service. This amount is to be reduced by applying the equivalent service ratio, so that any periods of part-time service are taken into account. Items [12], [13], [14] and [15] make consequential amendments.

Item [17] changes the calculation of the disengagement benefit payable to a member of the police force on or after age 50 and who has served for at least 30 years. The benefit is currently based on the benefit payable if the person had continued until the early retirement age. This amount is to be reduced by applying the equivalent service ratio, so that any periods of part-time service are taken into account. Items [16] and [18]–[23] make consequential amendments. Item [24] changes the calculation of the preserved benefit payable to a former contributor. The benefit is currently based on the benefit payable if the person had continued until the early retirement age. This amount is to be reduced by applying the equivalent service ratio, so that any periods of part-time service are taken into account. Items [25]–[30] make consequential amendments.

Item [33] changes the calculation of the superannuation allowance payable to a member of the police force who is hurt on duty. The benefit is currently based on the member's years of service. This amount is to be reduced by applying the equivalent service ratio, so that any periods of part-time service are taken into account. Items [31] and [32] make consequential amendments.

Item [34] changes the calculation of the superannuation allowance payable to a member of the police force who dies after being hurt on duty. The benefit is currently based on the member's years of service. This amount is to be reduced by applying the equivalent service ratio, so that any periods of part-time service are taken into account. Items [35]–[37] make consequential amendments.

Item [38] changes the calculation of the gratuity payable to a member of the police force who dies but who was not hurt on duty. The benefit is currently based on the member's years of service. This amount is to be reduced by applying the equivalent service ratio, so that any periods of part-time service are taken into account. Items [39]–[42] make consequential amendments.

Items [43] and [44] adjust the calculation of the gratuity payable to a member of the police force who is discharged after less than 20 years of service so that the benefit is based on equivalent full-time service.

Item [47] changes the calculation of the lump sum benefit payable to a member of the police force who elects to commute a superannuation allowance. The benefit is currently based on the member's years of service. This amount is to be reduced by applying the equivalent service ratio, so that any periods of part-time service are taken into account. Items [45], [46], [48] and [49] make consequential amendments.

Item [50] enables savings and transitional regulations to be made as a consequence of the amendments.

Item [51] inserts a transitional provision relating to members of the police force who contribute to the Police Superannuation Scheme and who have previously worked part-time and a transitional provision making it clear existing benefits payable before the amendments commence are not affected by the proposed amendments.

1.3 State Authorities Superannuation Act 1987 No 211

[1] Section 30 Resumption of contributions after break in employment

Omit subsections (2), (3), (4) and (5). Insert instead:

- (2) If the contributor resumes employment as an employee (with the same or any other employer) before the end of the period of 3 months after the contributor ceased employment in circumstances referred to in subsection (1), the contributor may apply to STC to resume making contributions to the Fund.
- (3) If STC approves the application:
 - (a) any intervening contribution period is taken to be an applicable contribution period in relation to the contributor as an employee of the employer with whom the contributor resumed employment, and

- (b) the contributor and the employer with whom the contributor has resumed employment are liable to make contributions to the Fund in respect of the intervening contribution period or periods, as if the contributor had been employed with the employer for the duration of the intervening contribution period or periods.
- (4) A contribution in respect of any intervening contribution period is payable in accordance with such directions as may be given by STC.
- (5) In this section, an *intervening contribution period* means any contribution period that:
 - (a) begins before a contributor ceases employment in the circumstances referred to in subsection (1) and has not finished when the contributor ceases that employment, or
 - (b) begins after a contributor ceases employment in the circumstances referred to in subsection (1) and finishes before the contributor's application under subsection (2) takes effect.

[2] Schedule 6 Savings and transitional provisions

Insert at the end of clause 1 (1):

Superannuation Legislation Amendment Act 1998

[3] Schedule 6, Part 4

Insert after Part 3:

Part 4 Superannuation Legislation Amendment Act 1998

6 Application of amendments to section 30

- (I) The amendments made to section 30 by the *Superannuation Legislation Amendment Act 1998* apply to any resumption in employment as an employee by a

contributor on or after the date of assent to that Act, even if the contributor's previous employment with an employer ceased, in the circumstances referred to in section 30 (1), before that date.

- (2) Section 30, as in force immediately before the date of assent to the *Superannuation Legislation Amendment Act 1998*, continues to apply in respect of any resumption in employment by a contributor before that date.

Explanatory note

At present, section 30 of the *State Authorities Superannuation Act 1987* allows a contributor, in certain circumstances, to resume making contributions to the State Authorities Superannuation Fund after a break in employment. The break in employment must be less than 2 contribution periods (that is, less than 2 months). Item [1] amends section 30 so as to allow a contributor to resume making contributions to the Fund after a break in employment not exceeding 3 months. If the application to resume making contributions to the Fund is accepted by the trustee (SAS Trustee Corporation), the contributor and the new employer are liable to pay the contributions that would have been payable if there had been no break in employment.

Items [2] and [3] provide for transitional matters.

1.4 Superannuation Act 1916 No 28

[1] Sections 21A, 21AA and 21B

Omit the sections.

[2] Section 21C Commuting of pension

Omit section 21C (1). Insert instead:

- (1) A person who is entitled or becomes entitled to a pension under this Act may commute the whole or part of that pension (subject to this section and Part 6 of Schedule 25).

[3] Section 21E Interest to be paid on commuted amounts

Omit "21A, 21B or".

[4] Section 32C Refund in certain cases where spouse dies leaving children

Omit “21A, 21B or” from paragraph (e).

[5] Section 33A Variation of pension in certain circumstances

Omit subsections (3) and (4).

[6] Section 37A Retrenchment benefits payable to contributors having not less than 3 years’ contributory service

Omit “0.92” from the definition of C in subsection (5).
Insert instead “0.96”.

[7] Section 38A Withdrawal benefit

Omit paragraphs (b) and (c) of the definition of *prescribed rate* in subsection (1).

Insert instead:

- (b) in respect of any relevant period beginning on or after 1 July 1972—the rate as fixed by STC from time to time, having regard to the earnings of the Fund and such other matters as STC considers relevant.

[8] Section 38A (4) (c)

Omit the definition of *T*. Insert instead:

T represents the sum of the amounts referred to in paragraphs (a) and (b), and

[9] Section 38A (5A)

Insert after section 38A (5):

- (5A) Despite subsections (2), (3) and (4), the maximum amount that a contributor is entitled to receive from the Fund under this section is:

- (a) in the case of a contributor who has not attained the age of 55 years—the amount calculated by STC, on the basis of actuarial advice, as the capitalised value of the pension that would have been payable to the contributor had he or she been 55 years of age and elected to retire on pension, or
- (b) in the case of a contributor who has attained the age of 55 years—the amount calculated by STC as the capitalised value of the pension that would have been payable to the contributor if the contributor had elected to retire on pension at his or her current age.

[10] Section 47D Benefits payable in respect of reduced value units

Omit subsections (5) and (6).

[11] Section 61B Definitions

Omit “21A, 21B or” from the definition of *pension*.

[12] Section 91 Time for making elections, applications and choices

Omit “21A, 21B or” wherever occurring in subsections (1) (c), (3), (4) and (6) (a).

[13] Schedule 18 Increases in certain pensions

Insert “(before the repeal of those sections by the *Superannuation Legislation Amendment Act 1998*)” after “section 21A or 21B” in the definition of *pension* in clause 1.

[14] Schedule 25 Savings and transitional provisions

Insert at the end of clause 1 (1):

Superannuation Legislation Amendment Act 1998

[15] Schedule 25, Part 6

Insert at the end of Schedule 25:

Part 6 Superannuation Legislation Amendment Act 1998

11 Definitions

In this Part:

amending Act means the *Superannuation Legislation Amendment Act 1998*.

eligible pensioner means a person who is in receipt of a pension under this Act and who, on the repeal of section 21A by the amending Act:

- (a) has not attained the age of 60 years and 6 months, and
- (b) has not made an election to commute any part of that pension under section 21A or whose election to commute under that section has not taken effect.

12 Amendments do not confer new commutation rights on persons who are not eligible pensioners

- (1) Section 21C (1), as substituted by the amending Act, does not apply to or in respect of any pension to which a person became entitled under this Act before 1 July 1985 if the person who is in receipt of that pension is not an eligible pensioner and, accordingly, section 21C does not confer on such a person an entitlement to commute the whole or part of that pension.
- (2) The repeal of section 21A by the amending Act does not affect any election made by a person (not being an eligible pensioner) under section 21A before that repeal, and this Act continues to apply in respect of such an election as if it had not been amended by the amending Act.
- (3) This clause is subject to clause 13.

13 Commutation of mandatory residual pension under section 21C

- (1) If a person who became entitled to a pension under this Act before 1 July 1985 elected to commute the whole of his or her pension (other than the mandatory residual pension) in accordance with this Act, before the repeal of section 21A by the amending Act:
 - (a) section 21C, as amended by that Act, extends to that mandatory residual pension, and
 - (b) the person may make one election under section 21C in respect of that mandatory residual pension within the period of 6 months after the commencement of this clause (despite section 21D).
- (2) STC may, subject to such terms and conditions as it may impose, accept an election that is made after that period of 6 months and deal with it as if that time had been indefinitely extended if
 - (a) it is proved to the satisfaction of STC that an election was not made because:
 - (i) the person entitled to make the election did not know of the person's right to make the election, or
 - (ii) circumstances substantially beyond the person's control prevented the person's making an election, and
 - (b) STC is satisfied that in the circumstances of the case it is desirable that the election should be accepted.
- (3) This clause does not authorise the commutation of a pension payable in respect of children.
- (4) In this clause:

mandatory residual pension means any amount of pension per fortnight that a person was not entitled to commute under section 21A (1), (1A), (1B) or (1C), as in force immediately before the repeal of those provisions by the amending Act.

14 Saving of commutation entitlements of eligible pensioners

- (1) Section 21C (1), as substituted by the amending Act, applies to or in respect of a pension to which a person became entitled under this Act before 1 July 1985 if the person who is in receipt of that pension is an eligible pensioner.
- (2) Accordingly, an eligible pensioner may commute the whole or part of that pension in accordance with sections 21C and 21D.
- (3) If an eligible pensioner attained the section 21C commutation age before the commencement of this clause:
 - (a) the eligible pensioner is taken, for the purposes of section 21D (1) and (2), to have attained the section 21C commutation age on the commencement of this clause, and
 - (b) the reference in section 21D (3) to the time prescribed is taken to be a reference to the time prescribed by that section as modified by this clause.
- (4) If an eligible pensioner made an election to commute any part of his or her pension under section 21A before the repeal of that section by the amending Act (being an election that has not taken effect):
 - (a) that election is to be treated as an election under section 21C, and
 - (b) the eligible pensioner may, without the approval of STC being necessary, make a further election under section 21C in accordance with section 21D (as modified by subclause (3), if applicable).
- (5) In this clause, the *section 21C commutation age* means:
 - (a) in the case of a person who is in receipt of a pension payable under section 29, the maturity age, or
 - (b) in any other case, 55 years.

15 References to amounts commuted under repealed provisions

- (1) The reference in section 21C (18) to the spouse of a person who dies, having commuted the whole or part of any pension payable to the person pursuant to section 21C, extends to the spouse of a person who dies on or after the commencement of this clause, having commuted the whole or any part of any pension payable to the person pursuant to section 21A or 21B (before the repeal of those sections by the amending Act or in accordance with an election referred to in clause 12 (2)).
- (2) A reference in section 32C or 61B to any lump sum paid, or any pension that has been commuted, under section 21C extends to any lump sum paid, or pension that has been commuted, under section 21A or 21B (before the repeal of those sections by the amending Act or in accordance with an election referred to in clause 12 (2)).

16 Changes to method of calculation

- (1) The amendment made to section 37A by the amending Act does not apply to the calculation of a benefit payable to a contributor who became entitled to the benefit before the commencement of that amendment. Section 37A, as in force immediately before the commencement of that amendment, continues to apply in respect of such a calculation.
- (2) The amendments made to section 38A by the amending Act do not apply to the calculation of any amount payable to a contributor who became entitled to the amount before the commencement of the amendments. Section 38A, as in force immediately before the commencement of those amendments, continues to apply in respect of such a calculation.

Explanatory note

item [1] repeals section 21A of the Act, and other provisions of the Act, that relate to a person's entitlement to commute a pension to which he or she became entitled before 1 July 1985. Such a person will now have the same commutation entitlements as any person who became or becomes entitled to a pension on or after 1 July 1985 (see item [2]). The principal consequence of these amendments is that there will no longer be a requirement to retain a fortnightly pension. At

present, pensioners who became entitled to their pension before 1 July 1985 are not permitted to commute the whole of their pension. A certain amount must be retained as a fortnightly pension. This “mandatory residual pension” will no longer apply and pensioners will be able to take the whole of their pension as a lump sum. Transitional provisions will allow any person who did commute the whole of his or her pension (other than the mandatory residual pension) under section 21A to commute the remainder of that pension (see item [15]). However, the amendments will not confer new commutation rights on persons who were entitled to commute their pension under section 21A and did not do so, or did not elect to commute the whole of their pension (other than the mandatory residual pension), within the time required under the repealed provisions (see item [15]). Items [3], [4], [5], [10], [11], [12] and [13] are consequential amendments.

Item [6] increases the retrenchment benefit payable to a contributor who is retrenched from the service of an employer and, at the time of retrenchment, has completed 3 years’ continuous contributory service. At present, the lump sum benefit payable is discounted at a rate of 8 per cent per year (depending on the age of the contributor) to account for early payment of the benefit. The amendment reduces the discount rate to 4 per cent.

Items [7] and [8] change the way in which interest is calculated on withdrawal benefits for contributors who are retrenched, resign or are dismissed or discharged from the service of an employer after having completed more than 5 years’ service. At present, interest on periods after 1 July 1972 (but before 1 July 1990) is calculated at the rate of 4.5 per cent per year. The amendments allow STC to determine the interest rate to be applied, having regard to the earnings of the Fund and such other matters as STC considers relevant.

Item [9] sets a “cap” on withdrawal benefits. The maximum amount payable for a withdrawal benefit will be the amount calculated by STC as the capitalised value of the pension that would have been payable if the person had retired (assuming the person were of or over 55 years of age).

Items [14] and [15] provide for transitional matters.

1.5 Superannuation Administration Act 1996 No 39

Section 15 Investment manager to be appointed

Insert after section 15 (1):

- (1A) FTC may engage an investment manager to provide superannuation investment management services under section 15 of this Act without the approval of the Treasurer under section 25 of the *Public Authorities (Financial Arrangements) Act 1987* and that Act applies as if any investment manager so engaged were an approved funds manager under section 25 of that Act.

Explanatory note

Section 15 of the *Superannuation Administration Act 1996* requires FTC to appoint one or more investment managers to provide superannuation investment management services on behalf of FTC. This amendment provides that such an investment manager may be engaged without the approval of the Treasurer under section 25 of the *Public Authorities (Financial Arrangements) Act 1987* (which deals with the appointment of funds managers by statutory corporations).

[Minister's second reading speech made in—
Legislative Assembly on 24 June 1998
Legislative Council on 29 June 1998]