



New South Wales

Superannuation Legislation Amendment Act 1999 No 6

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New South Wales

Superannuation Legislation Amendment Act 1999 No 6

Act No 6, 1999

An Act to amend various public sector superannuation Acts with respect to conversion of contributors from defined benefit schemes to the First State Superannuation Scheme and other superannuation schemes; and for other purposes. [Assented to 7 June 1999]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Superannuation Legislation Amendment Act 1999*.

2 Commencement

This Act commences on the date of assent.

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 9

Omit the section. Insert instead:

9 Membership on making conversion election

- (1) An employee who makes a conversion election under Part 3B of the *Police Regulation (Superannuation) Act 1906*, section 3 (14) of the *Police Association Employees (Superannuation) Act 1969* or Part 3B of the *Superannuation Act 1916* is, on the election taking effect, a full member of the Fund.

Note. Under section 5J of the *Police Regulation (Superannuation) Act 1906* and section 20M of the *Superannuation Act 1916*, the SAS Trustee Corporation must pay the conversion benefit to FTC as soon as practicable after the conversion election takes effect.

- (2) The salary or wages of an employee who is an executive officer and who becomes a member under this section is, despite any other provision of this Act, taken to be the salary nominated by the employee in the conversion election until another nomination is made under this Act.

Explanatory note

Under amendments to be made to the *Police Regulation (Superannuation) Act 1906*, the *Police Association Employees (Superannuation) Act 1969* and the *Superannuation Act 1916* by this Schedule, contributors are to be offered the opportunity to elect to receive a conversion benefit, leave the superannuation schemes established under those Acts and to become members of the First State Superannuation Fund established under the *First State Superannuation Act 1992*.

Schedule 1.1 replaces section 9 which makes it clear that, on an election taking effect under the provisions as amended, a person who is an employee under the *First State Superannuation Act 1992* who makes the election is to be a full member of the First State Superannuation Fund.

1.2 Police Association Employees (Superannuation) Act 1969 No 33

[1] Section 3 Employees of Association transferring from employment as police officers

Insert after section 3 (13):

- (14) Part 3B of the *Police Regulation (Superannuation) Act 1906* applies, with any necessary modifications, to a prescribed person in respect of whom the requirements of subsection (2AA) are met in the same way as it applies to a contributor under that Act and for that purpose the following provisions have effect:
- (a) a conversion benefit is payable, in accordance with that Part, in respect of a prescribed person who makes a conversion election under that Part as so applied (the *applied Part*),
 - (b) service by the prescribed person as a member of the police force, as well as service by the prescribed person as an employee of the Association, is to be taken into account for the purpose of calculating the conversion benefit payable under the applied Part,
 - (c) a prescribed person who makes a conversion election, or any one else who would otherwise be a beneficiary under this Act through the prescribed person, is not entitled to a benefit under any provision of this Act after the conversion election takes effect, other than a conversion benefit,
 - (d) the conversion benefit is to be paid in accordance with the applied Part,
 - (e) sections 5K and 5L of the *Police Regulation (Superannuation) Act 1906* apply in respect of the Treasurer, STC, FTC, the FTC Board, the STC Board and other persons referred to in those sections in relation to the applied Part, and anything done or omitted to be done under the applied Part.

[2] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Superannuation Legislation Amendment Act 1999

Explanatory note

Schedule 1.2 [1] entitles police officers who are employees of the Police Association of New South Wales, and who are contributors to the Police Superannuation Fund, to participate in the conversion offer to be made under Part 3B (Conversion of existing entitlements) of the *Police Regulation (Superannuation) Act 1906*. That proposed Part contains a new scheme involving an offer to contributors to be paid a conversion benefit in return for ceasing to be members of the defined benefits scheme under the *Police Regulation (Superannuation) Act 1906* and losing the right to benefits under the *State Authorities Non-contributory Superannuation Act 1987*. The benefit is to be paid to the First State Superannuation Fund and contributors are to become members of that Fund, with payment of that benefit and future benefits subject to the rules of that Fund. For that purpose, the proposed amendment applies the provisions of the proposed Part 3B to the Police Association employees, with necessary modifications.

Schedule 1.2 [2] enables savings and transitional regulations to be made as a consequence of the proposed Act.

1.3 Police Regulation (Superannuation) Act 1906 No 28

[1] Section 1 Name of Act, commencement and definitions

Insert in alphabetical order in section 1 (2):

FTC means the FSS Trustee Corporation established under the *Superannuation Administration Act 1996*.

[2] Section 4 Fund deficiencies charged against Consolidated Revenue

Insert “, or interest,” after “benefit”.

[3] Part 3B

Omit the Part. Insert instead:

Part 3B Conversion of existing entitlements

5C Conversion notice

- (1) A conversion notice is a notification by the Treasurer to a contributor notifying the contributor of the right to make a conversion election under this Part.
- (2) The Treasurer must send to each contributor a conversion notice.
- (3) A conversion notice must be in writing in the form determined by the Treasurer and may consist of one or more documents.
- (4) A conversion notice is to be sent in the manner determined by the Treasurer.
- (5) Without limiting any other matters that may be included, a conversion notice must set out the following matters:
 - (a) a statement to the effect that on taking effect a conversion election will terminate the contributor's membership of the Fund and of the Fund under the *State Authorities Non-contributory Superannuation Act 1987* and terminate any right of the contributor to any benefit (other than a conversion benefit) from those Funds,
 - (b) the estimated benefits payable in respect of the contributor under this Part on making a conversion election and the estimated amount of benefits payable if the contributor does not make the election,
 - (c) details of any benefits forgone by the contributor, whether under this Act or the *State Authorities Non-contributory Superannuation Act 1987*, on a conversion election taking effect,

- (d) the date on which a conversion election is to take effect (in this Part referred to as the *conversion date*) and the last date for making an election,
- (e) a statement to the effect that on and from the conversion date a contributor who makes the conversion election is required to become a member of the First State Superannuation Fund,
- (f) a statement to the effect that independent financial advice should be obtained before making a conversion election and particulars of persons who are available to provide that advice,
- (g) a statement of the manner in which a conversion election is to be made,
- (h) a statement of the manner in which a conversion election may be amended or revoked and the last date on which it may be amended or revoked.

5D Conversion election

- (1) A contributor may make a conversion election.
- (2) A conversion election is an election:
 - (a) to make provision for the conversion benefit, and
 - (b) to cease to be a contributor and become a full member of the First State Superannuation Fund, and
 - (c) to pay the conversion benefit to the credit of the contributor in the First State Superannuation Fund.
- (3) If a contributor is an executive officer, the conversion election must nominate an amount of salary or wages of the officer for the purposes of the *First State Superannuation Act 1992*.
- (4) If a contributor fails to make a conversion election on or before the last date for making an election specified in the conversion notice sent to the contributor, or purports to make an election after that date, the contributor is taken to have elected not to make a conversion election.

- (5) A contributor who makes a conversion election, and anyone else who would otherwise be a beneficiary under this Act through the contributor, is not entitled to a benefit under any provision of this Act after the conversion election takes effect, other than a conversion benefit.
- (6) A conversion election made by a contributor takes effect on the conversion date specified in the conversion notice given to the contributor.
- (7) The employer of a contributor who makes a conversion election must, on being notified by a person or body authorised by the Treasurer for the purposes of this subsection that the contributor has made a conversion election, provide the person or body with particulars of the contributor's salary as at the conversion date within the period requested by the person or body.

5E Making, amendment and revocation of conversion election

- (1) A conversion election must be in writing in the form determined by the Treasurer.
- (2) A conversion election is not validly made, or amended or revoked, by a contributor unless it is made, amended or revoked as determined by the Treasurer and as specified in the conversion notice.
- (3) A conversion election may be amended or revoked by a contributor at any time on or before the last date for making a conversion election specified in the conversion notice for the contributor but may not be amended or revoked after that date.
- (4) The Treasurer, or a person or body authorised by the Treasurer for the purposes of this subsection, must notify STC when a conversion election takes effect in respect of a contributor.

5F Circumstances in which a conversion election revoked or may not be made

- (1) If a benefit is paid or becomes payable or is deferred or preserved in respect of a contributor under this Act before the conversion date for the contributor:

- (a) the contributor is not eligible to make a conversion election, and
 - (b) if the contributor has made a conversion election, the election is taken to be revoked.
- (2) This section does not apply in respect of a gratuity paid or payable under section 12D to a contributor.

5G Matters to be determined by Treasurer

The Treasurer may, for the purposes of this Part, determine the following matters:

- (a) the form of the conversion notice and the conversion election,
- (b) the conversion date for a contributor, or class of contributors,
- (c) the information to be provided to contributors, employers and other persons in respect of the conversion benefit and related matters,
- (d) the period, or periods, within which a conversion notice is to be sent to a contributor or conversion notices are to be sent to classes of contributors,
- (e) the manner in which a conversion notice, or information about a conversion notice or the conversion benefit, is to be sent to a contributor or a class of contributors or any other persons,
- (f) the manner in which a conversion election is to be made, amended or revoked, the form of the conversion election and the period, or periods, within which a conversion election may be made, amended or revoked by a contributor or class of contributors.

5H Conversion benefit

- (1) The conversion benefit provided for a contributor under this Part is the amount that is equal to the sum of the benefits set out in subsections (2) and (3).

- (2) The benefit provided under this subsection is the amount of the lump sum benefit payable in respect of the contributor, calculated in accordance with section 9B (6) (b) as if the contributor retired on the conversion date for the contributor. However, if the contributor has reached the age of 55 years, the formula contained in section 9B (6) (b) is to be applied with the following modifications:
 - (a) item “P” equals zero,
 - (b) the reference in the definition of item “E” to 55 years is taken to be a reference to the age of the contributor when the conversion election takes effect,
 - (c) item “A” equals 55.
- (3) The benefit provided under this subsection is an amount equal to the greater of the following amounts:
 - (a) the amount of the basic benefit provided to the contributor under the *State Authorities Non-contributory Superannuation Act 1987*, calculated as if the contributor had been retrenched on the conversion date for the contributor and the benefit was payable on that date, and reduced by the amount, if any, that it would have been reduced by under section 26A of that Act if it had been so payable,
 - (b) \$18,000.
- (4) If the amount of the conversion benefit calculated under this section is less than the minimum benefit payable to the contributor, the amount of the conversion benefit is to be the amount of the minimum benefit.
- (5) STC may make a determination under section 14AA only in respect of the amount of the conversion benefit that consists of the amount of the benefit provided under subsection (2).
- (6) If STC has made a determination under section 14AA in relation to a conversion benefit, the amount of the benefit is reduced by the amount specified in the determination.

5I Minimum benefit

- (1) For the purposes of section 5H, the minimum benefit payable to the contributor is the minimum benefit that would be payable to satisfy the requirements of section 15, as determined by STC.
- (2) For the purposes of this section, STC may obtain actuarial advice.

5J Payment of conversion benefit

- (1) If a person makes a conversion election in accordance with this Part, STC must, as soon as practicable after being notified that the conversion election has taken effect, pay the amount of the conversion benefit payable but not paid in respect of the person to FTC.
- (2) STC is liable to pay interest, at a rate determined by the Treasurer, on any outstanding amount of a conversion benefit not paid to FTC on the conversion date for the contributor concerned.
- (3) STC may meet the requirement to pay an amount under this section by transferring assets equivalent to the value of that amount or by paying part of the amount and transferring assets of the value of the remaining amount payable.
- (4) FTC must credit the amount of the conversion benefit, and any interest payable under this section, to an account to be established to the credit of the person in the First State Superannuation Fund established under the *First State Superannuation Act 1992*, or to any existing account of the person under that Act.
- (5) Duty under the *Duties Act 1997* is not payable in respect of the transfer of any assets by STC to FTC under this section.

5K Information and assistance to be provided by STC

STC must, at the request of the Treasurer, provide to the Treasurer such information and assistance as the Treasurer requires for the purposes of this Part.

5L Liability for actions taken under Part

- (1) A matter or thing done or omitted to be done by the Treasurer, or any person acting under the direction of the Treasurer, does not, if the matter or thing was done or omitted to be done in good faith:
- (a) in connection with obtaining or making a conversion election, or
 - (b) in connection with the provision of information in relation to this Part, or
 - (c) for the purpose of executing this Part,
- subject the Treasurer, a person so acting, FTC, STC, the FTC Board, the STC Board, a member of either of those Boards, or any person acting under the direction of FTC, STC or either of those Boards, to any action, liability, claim or demand.
- (2) Without limiting subsection (1), the Treasurer, FTC, STC, the FTC Board, the STC Board, a member of either of those Boards, or any person acting under the direction of the Treasurer, FTC, STC or either of those Boards, is not liable for any action, liability, claim or demand relating to the duties of FTC or STC as a trustee in respect of anything done or omitted to be done by the Treasurer, or any person acting under the direction of the Treasurer, as referred to in that subsection.
- (3) A matter or thing done or omitted to be done by STC, the STC Board, a member of the Board or any person acting under the direction of STC or the Board, does not, if the matter or thing was done or omitted in good faith:
- (a) in connection with obtaining or making a conversion election, or
 - (b) in connection with the provision of information in relation to this Part, or
 - (c) for the purpose of executing this Part,
- subject STC, a member of the Board or a person so acting, to any action, liability, claim or demand.

- (4) A matter or thing done or omitted to be done by FTC, the FTC Board, a member of the Board or any person acting under the direction of FTC or the Board, does not, if the matter or thing was done or omitted in good faith:
- (a) in connection with obtaining or making a conversion election, or
 - (b) in connection with the provision of information in relation to this Part, or
 - (c) for the purpose of executing this Part,
- subject FTC, a member of the Board or a person so acting, to any action, liability, claim or demand.
- (5) This section has effect despite the *Superannuation Administration Act 1996* or any other law.

[4] Schedule 6 Savings and transitional provisions

Insert at the end of clause 1 (1):

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[5] Schedule 6, Part 5

Insert at the end of Part 4:

Part 5 Superannuation Legislation Amendment Act 1999

10 Definitions

In this Part:

conversion election means an election made under Part 3B.

workers compensation Acts means the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*.

11 Workers compensation

- (1) For the purposes of the application of the workers compensation Acts to a person who makes a conversion election, the following provisions have effect:

- (a) the workers compensation Acts apply in respect of an injury that was received while the person was a contributor, on or after 21 November 1979 and before the conversion election took effect, as if the person was a worker under those Acts when the injury was received,
 - (b) the workers compensation Acts apply whether or not the person has received a gratuity under section 12D in respect of the injury,
 - (c) the person, or any person claiming through the person, is not, except as provided by paragraph (d), entitled to compensation under the workers compensation Acts in respect of any such injury that would have become payable to the person before the conversion election took effect if the workers compensation Acts had applied to the person at that time,
 - (d) nothing in paragraph (c) prevents the person from obtaining compensation under section 66 or 67 of the *Workers Compensation Act 1987* in respect of the injury, but only to the extent that compensation for the loss or pain and suffering has not been paid under this Act,
 - (e) any period of notice or for making a claim for compensation under the workers compensation Acts is taken to commence when the conversion election takes effect, or as required under the workers compensation Acts, whichever is the later date,
 - (f) the workers compensation Acts apply as referred to in this subclause with all necessary modifications and prescribed modifications.
- (2) The regulations may, for the purposes of the application of the workers compensation Acts in respect of an injury or person referred to in subclause (1):
- (a) make further provision with respect to the application of the workers compensation Acts in respect of any such injury or person or classes of injuries or persons, and

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- (b) prescribe modifications of the workers compensation Acts and subclause (1) for that purpose.

Explanatory note

Schedule 1.3 [3] repeals and re-enacts Part 3B (Conversion of existing entitlements), sections 5C–5L. The proposed Part contains a new scheme involving an offer to contributors to be paid a conversion benefit in return for ceasing to be members of the defined benefits scheme under the Principal Act and losing the right to benefits under the *State Authorities Non-contributory Superannuation Act 1987*. The benefit is to be paid to the First State Superannuation Fund and contributors are to become members of that Fund, with payment of that benefit and future benefits subject to the rules of that Fund. Proposed section 5C requires the Treasurer to send notice of the offer to each contributor and sets out matters to be included in the notice. Proposed section 5D requires a conversion election to be made by the date specified in the conversion notice and provides that entitlements to benefits (other than the conversion benefit) cease on any election taking effect. Proposed section 5E sets out how a conversion election is to be made and that it may be amended or revoked by a contributor at any time on or before the day specified for making a conversion election. Proposed section 5F automatically revokes a conversion election if a benefit becomes payable, or is deferred or preserved, in respect of a person who made the election before it takes effect and also prevents a person from making an election in those circumstances. Proposed section 5G sets out matters to be determined by the Treasurer for the purposes of the proposed Part. Proposed section 5H sets out how the lump sum conversion benefit is to be calculated. Proposed section 5I sets out the minimum amount that may be received as a conversion benefit. Proposed section 5J provides for the conversion benefit, and any interest, to be paid to the FSS Trustee Corporation for payment to the First State Superannuation Fund. Proposed section 5K requires the SAS Trustee Corporation to provide information and assistance to the Treasurer if requested to do so for the purposes of the proposed Part. Proposed section 5L exempts the Treasurer, or any person acting at the direction of the Treasurer, from liability for things done in good faith in connection with obtaining or making conversion elections, in connection with the provision of information for the purpose of the proposed Part or for the purpose of executing the proposed Part. It also exempts the Treasurer, the SAS Trustee Corporation and the FSS Trustee Corporation, Board members and other persons from liability relating to any breach of trustee duties that might arise from any such thing done or omitted to be done by the Treasurer or any person acting at the direction of the Treasurer. Exemptions from liability relating to actions of both trustees that are done in good faith in connection with obtaining or making conversion elections, in connection with the provision of information for the purpose of the proposed Part or for the purpose of executing the proposed Part are also contained in the proposed section.

Schedule 1.3 [1] and [2] make consequential amendments.

Schedule 1.3 [4] enables savings and transitional regulations to be made as a consequence of the proposed Act.

Schedule 1.3 [5] inserts provisions enabling contributors who make the conversion election to claim compensation under workers compensation legislation for injuries received before the conversion election took effect. However, this will not extend to payments for matters for which compensation under such legislation would have become payable before the conversion election took effect if it had applied at that time, except in relation to compensation for loss of capacity or pain and suffering where compensation has not previously been paid. Currently, contributors to the Fund are entitled to hurt on duty benefits under the Principal Act but not to compensation under workers compensation legislation. A person who makes a conversion election will no longer be entitled to hurt on duty benefits provided under the Principal Act and will be covered by workers compensation legislation in the same way as other police officers.

1.4 State Authorities Non-contributory Superannuation Act 1987 No 212

[1] Section 26B

Omit the section. Insert instead:

26B Benefits not payable if conversion election not made

- (1) This section applies to a person in respect of whom a conversion election has taken effect under Part 3B of the *Police Regulation (Superannuation) Act 1906*, section 3 (14) of the *Police Association Employees (Superannuation) Act 1969* or Part 3B of the *Superannuation Act 1916* and who was, before the election took effect, an employee.
- (2) A person to whom this section applies, and anyone else who would otherwise be a beneficiary under this Act through the contributor, is not eligible to be paid, or to defer or preserve, any benefit under this Act, despite any other provision of this Act.

- (3) As soon as practicable after being notified that a conversion election has taken effect in respect of a person who was a contributor under the *Police Regulation (Superannuation) Act 1906*, or a prescribed person within the meaning of section 3 of the *Police Association Employees (Superannuation) Act 1969*, STC must pay to the Fund under the *Police Regulation (Superannuation) Act 1906*:
- (a) the amount of the benefit payable in respect of the person under section 5H (3) of the *Police Regulation (Superannuation) Act 1906*, or payable under that provision as applied by the *Police Association Employees (Superannuation) Act 1969*, and
 - (b) if section 5H (4) of the *Police Regulation (Superannuation) Act 1906* applies to the conversion benefit, an amount equal to the difference between the amount of the conversion benefit payable and the amount that would have been payable if that provision did not apply to the benefit.
- (4) As soon as practicable after being notified that a conversion election has taken effect in respect of a person who was a contributor under the *Superannuation Act 1916*, STC must pay to the reserve of the person's employer in the Fund under the *Superannuation Act 1916*:
- (a) the amount of the benefit payable in respect of the person under section 20K (3) of the *Superannuation Act 1916*, and
 - (b) if section 20K (5) of the *Superannuation Act 1916* applies to the conversion benefit, an amount equal to the difference between the amount of the conversion benefit payable and the amount that would have been payable if that provision did not apply to the benefit.
- (5) Any amount payable under this section is to be paid in accordance with section 9 as if it were a benefit under this Act.

[2] Schedule 2 Excluded persons

Omit paragraph (e). Insert instead:

- (e) if the person is a person in respect of whom a conversion election has taken effect under Part 3B of the *Police Regulation (Superannuation) Act 1906*, section 3 (14) of the *Police Association Employees (Superannuation) Act 1969* or Part 3B of the *Superannuation Act 1916*.

Explanatory note

Schedule 1.4 [1] prohibits benefits being paid or deferred or preserved under the Principal Act in respect of a person who makes a conversion election under Part 3B of the *Police Regulation (Superannuation) Act 1906*, section 3 (14) of the *Police Association Employees (Superannuation) Act 1969* or Part 3B of the *Superannuation Act 1916* and requires the amount of the benefit that would otherwise have been payable or preserved, and certain additional amounts, to be paid by STC to the Fund or employer reserve from which the conversion benefit is required to be paid.

Schedule 1.4 [2] excludes the Principal Act from applying to a person in respect of whom a conversion election has taken effect.

1.5 Superannuation Act 1916 No 28

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

FTC means the FSS Trustee Corporation established under the *Superannuation Administration Act 1996*.

[2] Part 3B

Omit the Part. Insert instead:

Part 3B Conversion of existing entitlements

20E Eligible contributors

- (1) This Part applies to a contributor who is eligible to make a conversion election.

- (2) A contributor is eligible to make a conversion election if the contributor is an employee of an employer listed in Part 1 or Part 2 of Schedule 26.
- (3) The Governor may by order published in the Gazette amend Schedule 26.
- (4) An order under this section, and any order varying or revoking such an order, may be made to take effect on and from a day specified in the order, whether or not the day is earlier than the day of publication of the order.
- (5) The name of an employer may not be added to or omitted from Part 2 of Schedule 26 by an order under this section, except with the written consent of the employer.

20F Conversion notice

- (1) A conversion notice is a notification by the Treasurer to a contributor notifying the contributor of the right to make a conversion election under this Part.
- (2) The Treasurer must send to each contributor a conversion notice.
- (3) A conversion notice must be in writing in the form determined by the Treasurer and may consist of one or more documents.
- (4) A conversion notice is to be sent in the manner determined by the Treasurer.
- (5) Without limiting any other matters that may be included, a conversion notice must set out the following matters:
 - (a) a statement to the effect that on taking effect a conversion election will terminate the contributor's membership of the Fund and of the Fund under the *State Authorities Non-contributory Superannuation Act 1987* and terminate any right of the contributor to any benefit (other than a conversion benefit) from those Funds,

- (b) the estimated benefits payable in respect of the contributor under this Part on making a conversion election and the estimated amount of benefits payable under this Act if the contributor does not make the election,
- (c) details of any benefits forgone by the contributor, whether under this Act or the *State Authorities Non-contributory Superannuation Act 1987*, on a conversion election taking effect,
- (d) the date on which a conversion election is to take effect (in this Part referred to as the **conversion date**) and the last date for making an election,
- (e) a statement to the effect that on and from the conversion date a contributor who makes a conversion election is required to become a member of the First State Superannuation Fund or, if the contributor is required by this Part to become a member of another specified superannuation fund or a superannuation fund of a specified kind, the fund or kind of fund to which STC is required to pay the conversion benefit,
- (f) a statement to the effect that independent financial advice should be obtained before making a conversion election and particulars of persons who are available to provide that advice,
- (g) a statement of the manner in which a conversion election is to be made,
- (h) a statement of the manner in which a conversion election may be amended or revoked and the last date on which it may be amended or revoked.

20G Conversion election

- (1) A contributor may make a conversion election.
- (2) A conversion election is an election:
 - (a) to make provision for the conversion benefit, and
 - (b) to cease to be a contributor, and
 - (c) to pay the conversion benefit in accordance with section 20M.

- (3) If a contributor is an executive officer, the conversion election must nominate an amount of salary or wages of the officer for the purposes of the *First State Superannuation Act 1992*.
- (4) If a contributor fails to make a conversion election on or before the last date for making an election specified in the conversion notice sent to the contributor, or purports to make an election after that date, the contributor is taken to have elected not to make a conversion election.
- (5) A contributor who makes a conversion election, and anyone else who would otherwise be a beneficiary under this Act through the contributor, is not entitled to a benefit under any provision of this Act after the conversion election takes effect, other than a conversion benefit.
- (6) A conversion election made by a contributor takes effect on the conversion date specified in the conversion notice given to the contributor.
- (7) The employer of a contributor who makes a conversion election must, on being notified by a person or body determined by the Treasurer for the purposes of this subsection that the contributor has made a conversion election, provide the person or body with particulars of the contributor's salary as at the conversion date for the contributor within the period requested by the person or body.

20H Making, amendment and revocation of conversion election

- (1) A conversion election must be in writing in the form determined by the Treasurer.
- (2) A conversion election is not validly made, amended or revoked, by a contributor unless it is made, amended or revoked as determined by the Treasurer and as specified in the conversion notice.
- (3) A conversion election may be amended or revoked in writing at any time by a contributor on or before the last date for making an election specified in the conversion notice for the contributor but may not be amended or revoked after that date.

- (4) The Treasurer, or a person or body authorised by the Treasurer for the purposes of this subsection, must notify STC when a conversion election takes effect in respect of a contributor.

20I Circumstances in which a conversion election revoked or may not be made

If a benefit is paid or becomes payable or is deferred or preserved in respect of a contributor under this Act before the conversion date for the contributor:

- (a) the contributor is not eligible to make a conversion election, and
- (b) if the contributor has made a conversion election, the election is taken to be revoked.

20J Matters to be determined by Treasurer

The Treasurer may, for the purposes of this Part, determine the following matters:

- (a) the form of the conversion notice and the conversion election,
- (b) the conversion date for a contributor, or class of contributors,
- (c) the information to be provided to contributors, employers and other persons in respect of the conversion benefit and related matters,
- (d) the period, or periods, within which a conversion notice is to be sent to a contributor or conversion notices are to be sent to classes of contributors,
- (e) the manner in which a conversion notice, and information about a conversion notice or the conversion benefit, is to be sent to a contributor or a class of contributors or any other persons,
- (f) the manner in which a conversion election is to be made, amended or revoked, the form of the conversion election and the period, or periods, within which a conversion election may be made, amended or revoked by a contributor or class of contributors.

20K Conversion benefit

- (1) The conversion benefit provided for a contributor under this Part is the amount that is equal to the sum of the benefits set out in subsections (2), (3) and (4).
- (2) The benefit provided under this subsection is the amount of a benefit payable in respect of a contributor calculated in accordance with section 37A (4) (a) as if the contributor were retrenched on the conversion date for the contributor and was eligible for such a benefit. However, for the purposes of section 37A (5), if the contributor has reached the maturity age on or before the conversion date, item “M”, as referred to in section 37A (6), is taken to be equal in value to item “A”, as referred to in that subsection.
- (3) The benefit provided under this subsection is an amount equal to the greater of the following amounts:
 - (a) the amount of the basic benefit provided to the contributor under the *State Authorities Non-contributory Superannuation Act 1987*, calculated as if the contributor had been retrenched on the conversion date for the contributor and the benefit was payable on that date, and reduced by the amount, if any, that it would have been reduced by under section 26A of that Act if it had been so payable,
 - (b) \$18,000.
- (4) The benefit provided under this subsection is an amount equal to the amount, if any, that would be payable under section 15A (6AB) in respect of the contributor if the contributor were retrenched on the conversion date for the contributor.
- (5) If the amount of the conversion benefit calculated under this section is less than the minimum benefit payable to the contributor, the amount of the conversion benefit is to be the amount of the minimum benefit.

- (6) STC may make a determination under section 61RA only in respect of the amount of the conversion benefit that consists of the amount of the benefit provided under subsection (2).
- (7) If STC has made a determination under section 61RA in relation to a conversion benefit, the amount of the benefit is reduced by the amount specified in the determination.

20L Minimum benefit

- (1) For the purposes of section 20K, the minimum benefit payable to the contributor is the minimum benefit that would be payable to satisfy the requirements of section 61U, as determined by STC.
- (2) For the purposes of this section, STC may obtain actuarial advice.

20M Payment of conversion benefit

- (1) If a person makes a conversion election in accordance with this Part, STC must, as soon as practicable after being notified that the election has taken effect, pay the amount of the conversion benefit payable but not paid in respect of the person:
 - (a) if the person's employer is an employer under the *First State Superannuation Act 1992*, to FTC, or
 - (b) if the person's employer is a university, to Unisuper Limited, or
 - (c) in any other case, if the employer consents, to another superannuation scheme that is an accumulation scheme and is a regulated fund under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.
- (2) STC is liable to pay interest, at a rate determined by the Treasurer, on any outstanding amount of a conversion benefit not paid on the conversion date for the contributor concerned.

- (3) STC may meet the requirement to pay an amount under this section by transferring assets equivalent to the value of that amount or by paying part of the amount and transferring assets of the value of the remaining amount payable.
- (4) If the conversion benefit is payable to FTC, FTC must credit the amount of the conversion benefit to an account to be established to the credit of the person in the First State Superannuation Fund established under the *First State Superannuation Act 1992*, or to any existing account of the person under that Act.
- (5) If the conversion benefit is payable to Unisuper Limited, Unisuper Limited must credit the amount of the conversion benefit to an account to be established to the credit of the person in the accumulation division of the Superannuation Scheme for Australian Universities, or to any existing account of the person under that Division.
- (6) Duty under the *Duties Act 1997* is not payable in respect of the transfer of any assets by STC to FTC under this section.
- (7) In this section:
university includes the following:
 - (a) University of Wollongong Recreation and Sports Association,
 - (b) Armidale Union-University of New England.

20N Reserves from which conversion benefit to be paid

- (1) A conversion benefit payable under this Part is to be paid from the reserves of the Fund in accordance with section 33B.
- (2) If there is not a sufficient amount in the appropriate employer reserve of an employer for whom the Crown contributes amounts to the Fund, the amount of the insufficiency is payable from the Crown reserve established in the Fund or assets acquired using funds from the Crown reserve.

200 Information and assistance to be provided by STC

STC must, at the request of the Treasurer, provide to the Treasurer such information and assistance as the Treasurer requires for the purposes of this Part.

20P Liability for actions taken under Part

(1) A matter or thing done or omitted to be done by the Treasurer, or any person acting under the direction of the Treasurer, does not, if the matter or thing was done or omitted to be done in good faith:

- (a) in connection with obtaining or making a conversion election, or
- (b) in connection with the provision of information in relation to this Part, or
- (c) for the purpose of executing this Part,

subject the Treasurer, a person so acting, FTC, STC, the FTC Board, the STC Board, a member of either of those Boards, or any person acting under the direction of FTC, STC or either of those Boards, to any action, liability, claim or demand.

(2) Without limiting subsection (1), the Treasurer, FTC, STC, the FTC Board, the STC Board, a member of either of those Boards, or any person acting under the direction of the Treasurer, FTC, STC or either of those Boards, is not liable for any action, liability, claim or demand relating to the duties of FTC or STC as a trustee in respect of anything done or omitted to be done by the Treasurer, or any person acting under the direction of the Treasurer, as referred to in that subsection.

(3) A matter or thing done or omitted to be done by STC, the STC Board, a member of the Board or any person acting under the direction of STC or the Board, does not, if the matter or thing was done or omitted in good faith:

- (a) in connection with obtaining or making a conversion election, or
- (b) in connection with the provision of information in relation to this Part, or
- (c) for the purpose of executing this Part,

- subject STC, a member of the Board or a person so acting, to any action, liability, claim or demand.
- (4) A matter or thing done or omitted to be done by FTC, the FTC Board, a member of the Board or any person acting under the direction of FTC or the Board, does not, if the matter or thing was done or omitted in good faith:
- (a) in connection with obtaining or making a conversion election, or
 - (b) in connection with the provision of information in relation to this Part, or
 - (c) for the purpose of executing this Part,
- subject FTC, a member of the Board or a person so acting, to any action, liability, claim or demand.
- (5) This section has effect despite the *Superannuation Administration Act 1996* or any other law.

[3] Schedule 25 Savings and transitional provisions

Insert at the end of clause 1 (1):

Superannuation Legislation Amendment Act 1999

[4] Schedule 26

Omit the Schedule. Insert instead:

Schedule 26

(Section 20E)

Part 1 Public Authorities

Department of Aboriginal Affairs
Ageing and Disability Department
Department of Agriculture
Ministry for the Arts
Attorney General's Department
Department of Rural Fire Service

Cabinet Office
Department of Community Services
Department of Energy
Department of Fair Trading
New South Wales Fire Brigades
Department of Gaming and Racing
Department of Health
Heritage Office
Department of Housing
Department of Industrial Relations
Department of Juvenile Justice
Department of Land and Water Conservation
Department of Local Government
Department of Mineral Resources
Olympic Co-ordination Authority
Olympic Roads and Transport Authority
Ministry for Police
Premier's Department
Department of Public Works and Services
Department of Education and Training
Department of Sport and Recreation
Department of State and Regional Development
Department of Transport
The Treasury
Ministry of Urban Infrastructure Management
Valuer-General's Department
Department for Women
The Audit Office of New South Wales
Office of the Board of Studies

Community Services Commission
Department of Corrective Services
New South Wales Crime Commission
New South Wales Dairy Corporation
Darling Harbour Authority
Office of the Director of Public Prosecutions
Environment Protection Authority
Ethnic Affairs Commission
NSW Fisheries
Forestry Commission
Home Purchase Assistance Authority
HomeFund Commissioner's Office
New South Wales Institute of Sport
Legal Aid Commission
Office of Marine Administration
New South Wales Meat Industry Authority
Motor Accidents Authority
National Parks and Wildlife Service
Ombudsman's Office
Parliamentary Counsel's Office
Public Trust Office
Royal Botanic Gardens and Domain Trust
Rural Assistance Authority
State Electoral Office
State Emergency Service
State Forests
Tourism New South Wales
Department of Urban Affairs and Planning
WorkCover Authority

The Legislature
Ambulance Service of New South Wales
Australian Museum Trust
Bathurst-Orange Development Corporation
The Broken Hill Water Board
Colleambally Irrigation Corporation
Delta Electricity
Financial Institutions Commission
Freight Rail Corporation
FSS Trustee Corporation
Greyhound Racing Control Board
Harness Racing New South Wales
Hawkesbury-Nepean Catchment Management Trust
Health Administration Authority
Home Care Service of New South Wales
Hunter Catchment Management Trust
Hunter Water Corporation Limited
Independent Commission Against Corruption
Independent Pricing and Regulatory Tribunal of New South Wales
Independent Audit Bureau of New South Wales
Judicial Commission of New South Wales
Lord Howe Island Board
Macquarie Generation
Murrumbidgee Irrigation Corporation
New South Wales Aboriginal Land Council
New South Wales Casino Control Authority
New South Wales Dried Fruits Board
New South Wales Film and Television Office

New South Wales Lotteries Corporation
New South Wales Treasury Corporation
Newcastle Port Corporation
Pacific Power
Parramatta Park Reserve Trust
Parramatta Stadium Trust
Police Service
Port Kembla Port Corporation
Rail Access Corporation
Railways Services Authority
Roads and Traffic Authority of New South Wales
SAS Trustee Corporation
State Rail Authority of New South Wales
State Transit Authority of New South Wales
Superannuation Administration Authority of New South
Wales
Sydney Cove Redevelopment Authority
The Sydney Opera House Trust
Sydney Organising Committee for the Olympic Games
Sydney Ports Corporation
Sydney Water Corporation Limited
TAFE Commission
Trustee of Arakoon State Recreation Area
Trustee of Bent Basin State Recreation Area
Trustee of Burrendong State Recreation Area
Trustee of Burrinjuck State Recreation Area
Trustee of Copeton State Recreation Area
Trustee of Grabine State Recreation Area
Trustee of Killalea State Recreation Area

Trustee of Lake Glenbawn State Recreation Area
Trustee of Lake Keepit State Recreation Area
Trustee of Wyangala State Recreation Area
United Dental Hospital
Waste planning and management boards constituted under the *Waste Minimisation and Management Act 1995*

Upper Parramatta River Catchment Trust
Waste Recycling and Processing Service
Water Administration Ministerial Corporation
Waterways Authority
Wentworth Park Trust
Western Lands Commissioner
Wild Dog Destruction Board
Zoological Parks Board of New South Wales
Central Coast Waste Planning and Management Board
Hunter Waste Planning and Management Board
Illawarra Coast Waste Planning and Management Board
Inner Sydney Waste Planning and Management Board
Macarthur Waste Planning and Management Board
Northern Sydney Waste Planning and Management Board
Southern Sydney Waste Planning and Management Board
Western Sydney Waste Planning and Management Board
A rural lands protection board constituted under the *Rural Lands Protection Act 1989*
Corrections Health Service
Far West Health Service
The Gower Wilson Memorial Hospital Lord Howe Island
Greater Murray Health Service

Macquarie Health Service
Mid North Coast Health Service
Mid Western Health Service
New England Health Service
Northern Rivers Health Service
The Royal Alexandra Hospital for Children
Southern Health Service
The Stewart House Preventorium, Curl Curl
Catholic Health Care Services Ltd, in respect of
Bodington, Wentworth Falls
Benevolent Society of New South Wales, in respect of
Scarba Services
Hope Healthcare Ltd, in respect of Braeside Hospital,
Prairiewood
Buckland Convalescent Hospital Ltd
Calvary Hospital Kogarah Ltd
The trustee of the Carrington Centennial Trust
Dame Edith Walker Convalescent Hospital for Men
Hope Healthcare Ltd, in respect of Eversleigh Hospital,
Petersham
Hope Healthcare Ltd, in respect of Graythwaite Nursing
Home, in respect of Eversleigh Hospital, Petersham
Hope Healthcare Ltd, in respect of Greenwich Hospital,
Greenwich
Karitane
Mercy Care Centre Ltd, in respect of Mercy Care Centre,
Young
Hope Healthcare Ltd, in respect of Neringah Hospital,
Wahroonga
The trustee of the Sisters of Mercy, Singleton, in respect
of Newcastle Mater Misericordiae Hospital, Waratah

The trustee of the Daughters of Charity of St Vincent de Paul, in respect of Our Lady of Loreto Nursing Home for the Aged, Strathfield

Royal Rehabilitation Centre, Sydney

St Vincent's Hospital Sydney Ltd, in respect of Sacred Heart Hospice

St Anthony's and St Joseph's Centre of Care Ltd, in respect of St Anthony's Home, Croydon

The trustee of the Daughters of Charity of St Vincent de Paul, in respect of St Catherine's Villa, Eastwood

St John of God Health Care System Inc, in respect of St John of God Hospital, Goulburn

The trustee of the Roman Catholic Church for the diocese of Maitland-Newcastle, in respect of St Joseph's Home, Sandgate

St Joseph's Hospital Ltd, in respect of St Joseph's Hospital, Auburn

The trustee of the Roman Catholic Church for the diocese of Bathurst, in respect of St Vincent's Community Hospital, Bathurst

St Vincent's Hospital Sydney Ltd, in respect of St Vincent's Hospital, Darlinghurst

St Vincent's Hospital Sydney Ltd, in respect of Babworth House (After Care Unit), Darling Point

The trustee of the Roman Catholic Church for the diocese of Lismore, in respect of St Vincent's Community Hospital, Lismore, in respect of the day hospital, the rehabilitation unit and the community health facilities

Royal Society for the Welfare of Mothers and Babies, in respect of Tresillian Family Care Centres at Penrith, Petersham, Willoughby and Wollstonecraft

The trustee of the Roman Catholic Church for the diocese of Bathurst, in respect of Lourdes House, Dubbo

Uniting Church in Australia, in respect of Lottie Stewart Hospital

Uniting Church in Australia, in respect of War Memorial Hospital, Waverley

Uniting Church in Australia, in respect of Uniting Church Nursing Service, Menindee

An area health service constituted under the *Health Services Act 1997*

Australian Red Cross Society, in respect of The NSW Blood Transfusion Service

Part 2 Other Employers

Explanatory note

Schedule 1.5 [2] repeals and re-enacts Part 3B (Conversion of existing entitlements), sections 20E–20P. The proposed Part contains a new scheme involving an offer to contributors to be paid a conversion benefit in return for ceasing to be members of the defined benefits scheme under the Principal Act and losing the right to benefits under the *State Authorities Non-contributory Superannuation Act 1987*. The benefit is to be paid to the First State Superannuation Fund, except in specified cases, and the contributors are to become members of that Fund, with payment of that benefit and future benefits subject to the rules of that Fund. Proposed section 20E provides that the contributors who are employees of employers set out in Schedule 26 are eligible to make a conversion election. Proposed section 20F requires the Treasurer to send notice of the offer to each eligible contributor and sets out matters to be included in the notice. Proposed section 20G requires a conversion election to be made by the date specified in the conversion notice and provides that entitlements to benefits (other than the conversion benefit) cease on any election taking effect. Proposed section 20H sets out how a conversion election is to be made and that it may be amended or revoked by a contributor at any time on or before the day specified for making a conversion election. Proposed section 20I automatically revokes a conversion election if a benefit becomes payable, or is preserved, in respect of a person who made the election before it takes effect and also prevents a person from making an election in those circumstances. Proposed section 20J sets out matters to be determined by the Treasurer for the purposes of the proposed Part. Proposed section 20K sets out how the lump sum conversion benefit is to be calculated. Proposed section 20L sets out the minimum amount that may be received as a conversion benefit. Proposed section 20M provides for the conversion benefit, and any interest, to be paid to the FSS Trustee Corporation for payment to the First State Superannuation Fund. The benefit must be paid to the Superannuation Scheme for Australian Universities if the person's employer is a university and may be paid to another superannuation fund if the person's employer is not an employer for the purposes of the First State Superannuation Fund. Proposed section 20N provides for the manner in which the employer-funded part of the conversion benefit is to be paid. Proposed section 20O requires the SAS Trustee Corporation to provide information and assistance to the Treasurer if requested to do so for the purposes of the proposed Part. Proposed section 20P exempts the Treasurer, or any person acting at the direction of the Treasurer, from liability for things done in good faith in connection with obtaining or making conversion elections, in connection with the provision of information for the purpose of the proposed Part or for the purpose of executing the proposed Part. It also exempts the Treasurer, the SAS Trustee Corporation and the FSS Trustee

Corporation, Board members and other persons from liability relating to any breach of trustee duties that might arise from any such thing done or omitted to be done by the Treasurer or any person acting at the direction of the Treasurer. Exemptions from liability relating to actions of both trustees that are done in good faith in connection with obtaining or making conversion elections, in connection with the provision of information for the purpose of the proposed Part or for the purpose of executing the proposed Part are also contained in the proposed section.

Schedule 1.5 [1] makes a consequential amendment.

Schedule 1.5 [3] enables savings and transitional regulations to be made as a consequence of the proposed Act.

Schedule 1.5 [4] substitutes the list of employers of eligible contributors.

1.6 Superannuation Administration Act 1996 No 39

[1] Section 29 Chief executive officer of FTC

Insert after section 29 (5):

- (5A) The Chairperson of the FTC Board may, in the absence of any appointment of a person under subsection (5), appoint a member of staff of FTC to act during the absence or illness of the chief executive officer, and the person, while so acting, has all the functions of the chief executive officer and is taken to be the chief executive officer.
- (5B) The Chairperson of the FTC Board may, at any time, remove a person appointed under subsection (5A) from office.
- (5C) An appointment under subsection (5A) ceases to have effect:
- (a) on the appointment of a person under subsection (1), or
 - (b) on the expiration of 3 months after the appointment was made, or
 - (c) on the removal of the person from office as chief executive officer,
- whichever first occurs.

[2] Section 35 Personal and other liability

Omit section 35 (5) and (6).

[3] Section 74 Chief executive officer of STC

Insert after section 74 (5):

- (5A) The Chairperson of the STC Board may, in the absence of any appointment of a person under subsection (5), appoint a member of staff of STC to act during the absence or illness of the chief executive officer, and the person, while so acting, has all the functions of the chief executive officer and is taken to be the chief executive officer.
- (5B) The Chairperson of the STC Board may, at any time, remove a person appointed under subsection (5A) from office.
- (5C) An appointment under subsection (5A) ceases to have effect:
 - (a) on the appointment of a person under subsection (1), or
 - (b) on the expiration of 3 months after the appointment was made, or
 - (c) on the removal of the person from office as chief executive officer,whichever first occurs.

[4] Section 80 Personal and other liability

Omit section 80 (5) and (6).

[5] Section 81 Amalgamation of funds and adjustment of accounts

Insert after section 81 (3):

- (4) STC may, at the request of an employer, from time to time adjust the amounts credited to the employer's reserve in an account established under this section by debiting an amount and crediting that amount to the employer's reserve in another account established in the amalgamated fund in relation to another STC scheme.

- (5) STC may, at the request of the Treasurer, adjust the amounts credited to an employer's reserve (being an employer for whom the Crown makes contributions to the amalgamated fund) in an account established under this section by debiting an amount and crediting that amount to the employer's reserve, or the employer reserve of another employer for whom the Crown makes contributions to the amalgamated fund, in the same or another account established under this section.

[6] Section 100A Provision of administration services for conversion offers

Insert “(including accepting conversion elections)” after “benefits” in section 100A (1).

Explanatory note

Schedule 1.6 [1] enables the Chairperson of the FSS Trustee Corporation Board to appoint and remove an acting chief executive officer for the FSS Trustee Corporation in the event of the illness or absence of the chief executive officer.

Schedule 1.6 [2] and **[4]** omit provisions relating to liability. Provisions relating to liability are to be inserted in Part 3B of the *Police Regulation (Superannuation) Act 1906* and Part 3B of the *Superannuation Act 1916*.

Schedule 1.6 [3] enables the Chairperson of the SAS Trustee Corporation Board to appoint and remove an acting chief executive officer for the SAS Trustee Corporation in the event of the illness or absence of the chief executive officer.

Schedule 1.6 [5] enables the SAS Trustee Corporation to adjust money between employer reserves in the different accounts held for each public sector superannuation scheme in the amalgamated fund.

Schedule 1.6 [6] makes it clear that the Superannuation Administration Authority may provide administrative services relating to the acceptance of conversion elections.

[Minister's second reading speech made in—

Legislative Council on 13 May 1999

Legislative Assembly on 1 June 1999]