



New South Wales

Superannuation Legislation Further Amendment Act 1999 No 86

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New South Wales

Superannuation Legislation Further Amendment Act 1999 No 86

Act No 86, 1999

An Act to amend various public sector superannuation Acts with respect to the closure of the Public Sector Executives Superannuation Scheme, salary and wages of executive officers, actuarial investigation of funds, administration costs, contributions during part-time leave without pay and resignation, withdrawal and invalidity benefits; and for other purposes. [Assented to 3 December 1999]

The Legislature of New South Wales enacts:**1 Name of Act**

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

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Section 5 and Schedule 1 (other than Schedule 1.4) commence on 1 March 2000.
- (3) Schedule 2.1 [1], [2], [4], [5] and [6] and 2.6 [1]–[3] are taken to have commenced on 1 July 1999.
- (4) Schedule 2.2 and 2.3 [2] are taken to have commenced on 1 July 1990.
- (5) Schedule 2.6 [13] and [14] commence, or are taken to have commenced, on 30 November 1999.

3 Amendments relating to closure of Public Sector Executives Superannuation Scheme

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

4 Miscellaneous amendments

The Acts specified in Schedule 2 are amended as set out in Schedule 2.

5 Repeal of Public Sector Executives Superannuation Act 1989 No 106

The *Public Sector Executives Superannuation Act 1989* is repealed.

6 Explanatory notes

The matter appearing under the heading “Explanatory note” in Schedules 1 and 2 does not form part of this Act.

Schedule 1 Amendments relating to closure of Public Sector Executives Superannuation Scheme

(Section 3)

1.1 First State Superannuation Act 1992 No 100

[1] Section 10A Membership on transfer from PSESS Fund

Omit the section.

[2] Part 5

Insert after Part 4:

Part 5 Transfer of Public Sector Executives Superannuation Fund members to First State Superannuation Fund

Division 1 Preliminary

21 Definitions

In this Part:

additional benefit means the additional benefit provided under the former Act.

former Act means the *Public Sector Executives Superannuation Act 1989*.

former Scheme means the superannuation scheme established under the former Act.

insurance contract or arrangement means a contract or arrangement entered into by FTC under sections 12 and 20 of the *Superannuation Administration Act 1996* with another

person (the *insurer*) for the insurance by that person or the arranging of insurance by that person (on an individual or a group basis) of persons for the purpose of coverage for additional benefits.

PSES Fund means the Public Sector Executives Superannuation Fund established under the former Act.

transfer day means 1 March 2000.

transferred member means a member of the former Scheme who is transferred to the Fund under this Part and includes a person referred to in section 23 (2).

22 Effect of Part

This Part has effect despite any other provision of this Act or the trust deed.

Division 2 Transfer to, and membership of, Fund

23 Transfer of members of former Scheme

- (1) A person who is a member of the former Scheme immediately before the transfer day is, on and from that day, transferred from the former Scheme to the superannuation scheme established under this Act and the trust deed.
- (2) A person who, immediately before the transfer day, had preserved a benefit in the PSES Fund is, on and from that day, transferred from the former Scheme to the superannuation scheme established under this Act and the trust deed.

24 Amalgamation of Funds

- (1) On and from the transfer day, the PSES Fund is taken to have been amalgamated with and to have become part of the Fund.
- (2) The balance standing to the credit of each account or reserve forming part of the PSES Fund is, on the transfer day, taken to be transferred to the corresponding account or reserve in the Fund.

25 Transferred members' accounts

- (1) FTC must, on the transfer day, establish in the Fund in accordance with the trust deed an account in respect of each person made a member by this Part.
- (2) The trust deed must provide for each account to have a balance at credit equal to the balance at credit immediately before the transfer day in the account established in the PSES Fund in respect of the person.
- (3) Despite any other provision of this section, if a transferred member was a member of the Fund immediately before the transfer day, the trust deed must provide for the member's account to be credited with an amount equal to the balance at credit immediately before the transfer day in the account established in the PSES Fund in respect of the person.
- (4) An amount credited to an account on the transfer to the Fund of a person under this Part is, for the purposes of this Act and the trust deed, to be treated as if it were contributed or preserved under this Act and the trust deed by or on behalf of the person, or the person's employer, as the case requires.

26 Salary or wages on transfer

- (1) The salary or wages of a transferred member who is a full member for the purposes of this Act and the trust deed is, despite any other provision of this Act, taken to be the salary or wages of the transferred member for the purposes of the former Scheme immediately before the transfer day until another nomination is made under this Act.
- (2) Subsection (1) does not apply to a transferred member who was, immediately before the transfer day, a full member of the Fund.

27 Matters to be dealt with by trust deed

Without limiting section 13, 14, 18 or 20, the trust deed and rules under the trust deed may make provision for or with respect to the following:

- (a) the category of membership of transferred members,

- (b) the establishment of accounts in respect of transferred members,
- (c) the crediting of amounts to accounts of transferred members,
- (d) the investment of amounts held in accounts of transferred members,
- (e) the treatment of additional contributions made by transferred members under the former Scheme during a period ending immediately before the transfer day.

Division 3 Additional benefit cover

28 Application of Division to other persons

- (1) A person who became a full member under section 10A, as in force before the transfer day, has the same rights and obligations under this Division as a transferred member.
- (2) For the purposes of subsection (1), a reference in this Division:
 - (a) to a transferred member includes a reference to a person referred to in that subsection, and
 - (b) to the transfer day includes a reference to the day on which the person concerned became a member.

29 Additional benefit cover

- (1) A former member who, immediately before the transfer day, was covered for the additional benefit under the former Scheme continues, on and from the transfer day, to be covered for the same amount of additional benefit and is liable for payment of the additional benefit premium.
- (2) A transferred member who, immediately before the transfer day, was not covered for the additional benefit under the former Scheme is, while a member of the Fund, entitled to apply to FTC to be covered, and to be covered (if otherwise eligible), for the additional benefit.

- (3) A transferred member who, immediately before the transfer day, had applied to be covered for the additional benefit but whose application had not been determined is taken to have applied under this Act and the trust deed to be covered for the additional benefit.

30 Insurance contracts and arrangements

- (1) Any insurance contract or arrangement in force immediately before the transfer day, and applicable to a transferred member, continues in force and applies to transferred members in the same way as it applied to members of the former Scheme immediately before the transfer day.
- (2) Any such contract or arrangement may be varied or terminated or renewed in the manner provided for by the contract or arrangement or in any other manner permitted by law.
- (3) However, the contract or arrangement may not be terminated solely because of the closure of the former Scheme and the transfer of members to the Fund.

31 Matters to be dealt with by trust deed

- (1) Without limiting section 13, 14, 18 or 20, the trust deed and rules under the trust deed may make provision for or with respect to the following:
- (a) coverage of transferred members for the basic death or invalidity benefit or the additional death or disability benefit,
 - (b) applications for coverage for additional benefits,
 - (c) variation and revocation of cover for additional benefits (including cover continued by this Part),
 - (d) payment of additional benefits.
- (2) The trust deed may make provision for any matter referred to in subsection (1) by applying the provisions of the former Act relating to additional benefits.

Division 4 Miscellaneous

32 Recovery of money owing to PSES Fund

FTC may recover any money owed to the PSES Fund immediately before the transfer day as if any such money were owed to the Fund.

33 Disputes

Any dispute under the former Scheme is to be dealt with in accordance with the procedures applicable to disputes arising under this Act.

34 Rights, liabilities and other matters

- (1) Nothing in the *Superannuation Legislation Further Amendment Act 1999* affects the following:
 - (a) any rights, liabilities or obligations of the PSES Fund, or of FTC in respect of that Fund or the former Scheme, in existence immediately before the transfer day,
 - (b) any rights, liabilities or obligations of a transferred member arising under the former Act and in existence immediately before the transfer day,
 - (c) any rights, liabilities or obligations of any person in respect of the provision of coverage for the additional benefit and in existence immediately before the transfer day.
- (2) A provision of the trust deed or a rule may not detrimentally affect any right, liability or obligation referred to in subsection (1) and is void to the extent to which it purports to.

35 Regulations

- (1) The regulations may make provision for or with respect to the rights, liabilities and obligations of transferred members.

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- (2) A provision referred to in subsection (1) may not restrict or remove any rights a transferred member has as a member under this Act (other than this Part), but may confer additional rights, having regard to the rights and obligations of the transferred member under the former Scheme.
- (3) A provision referred to in subsection (1) may, if the regulations so provide, take effect from the transfer day or a later day.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

36 Transactions and other matters not liable for duty

Duty under the *Duties Act 1997* is not payable in respect of any transaction or other document or matter resulting from the closure of the former Scheme and the operation of this Part.

[3] Schedule 1 Employers

Insert at the end of Part 1:

Police Integrity Commission

[4] Dictionary

Omit the definition of *chief executive officer*. Insert instead:

chief executive officer means:

- (a) a chief executive officer within the meaning of the *Public Sector Management Act 1988*, or
- (b) an employee (not being an officer referred to in paragraph (a)) of an employer specified in Schedule 1, being an employee who holds an office designated by the Director-General of the Premier's Department as the office of a chief executive officer.

[5] Dictionary

Insert after paragraph (b) of the definition of *executive officer*:

- (b1) a police executive officer within the meaning of the *Police Service Act 1990*, or

[6] Dictionary

Omit the definition of *senior executive officer*. Insert instead:

senior executive officer means:

- (a) a senior executive officer within the meaning of the *Public Sector Management Act 1988*, or
- (b) an employee (not being an officer referred to in paragraph (a)) of an authority specified in Schedule 1, being an employee who holds an office designated by the Director-General of the Premier's Department as the office of a senior executive officer.

1.2 Local Government and Other Authorities (Superannuation) Act 1927 No 35

[1] Section 3 Definitions

Omit the definitions of *Chief executive officer*, *Public Sector Executives Superannuation Scheme* and *Senior executive officer* from section 3.

[2] Section 3A Salary

Omit "(other than a servant who is eligible to become or who is a member of the Public Sector Executives Superannuation Scheme)" from section 3A (1).

[3] Section 3B Salary of executive officers

Omit the section.

[4] Part 3F Provisions relating to certain senior executives

Omit the Part.

1.3 Police Regulation (Superannuation) Act 1906 No 28

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

Omit “*Public Sector Executives Superannuation Act 1989*” wherever occurring in paragraphs (c) and (d) of the definition of *executive officer* in section 1 (2).

Insert instead “*Public Sector Management Act 1988*”.

[2] Section 1 (2), definition of “First State Superannuation Fund”

Insert in alphabetical order:

First State Superannuation Fund means the First State Superannuation Fund established under the *First State Superannuation Act 1992*.

[3] Section 1 (2), definition of “Public Sector Executives Superannuation Scheme”

Omit the definition.

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

Omit section 1AA (10) (c). Insert instead:

- (c) in the case of any other executive officer, the monetary remuneration payable to the officer.

[5] Section 5B Contributor who is executive officer

Omit “eligible to become a member of the Public Sector Executives Superannuation Scheme” from section 5B (1).

Insert instead “an executive officer”.

[6] Section 5B (3)

Omit “Public Sector Executives Superannuation Scheme”.

Insert instead “First State Superannuation Fund”.

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Schedule 1 Amendments relating to closure of Public Sector Executives
Superannuation Scheme

[7] Section 5B (3)

Omit “Scheme” where secondly occurring. Insert instead “Fund”.

[8] Section 5B (4)

Omit “eligible to become or being a member of the Public Sector Executives Superannuation Scheme”.

Insert instead “an executive officer”.

[9] Section 5B (5) (e)

Omit “Public Sector Executives Superannuation Scheme”.

Insert instead “First State Superannuation Fund”.

[10] Section 5B (6) (c)

Omit “Public Sector Executives Superannuation Fund under the *Public Sector Executives Superannuation Act 1989*”.

Insert instead “First State Superannuation Fund”.

[11] Section 5B (7) and (7A)

Omit “Public Sector Executives Superannuation Scheme” wherever occurring.

Insert instead “First State Superannuation Fund”.

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

Omit “eligible to become or who is a member of the Public Sector Executives Superannuation Scheme” from section 8A (8).

Insert instead “an executive officer”.

[13] Section 9B Preserved benefit

Omit section 9B (6AA) (a). Insert instead:

- (a) was an executive officer, and

1.4 Public Sector Executives Superannuation Act 1989 No 106

Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

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1.5 Public Sector Management Act 1988 No 33

Section 95 Certain other Acts not to be affected

Omit "Public Sector Executives Superannuation Act 1989" from section 95 (1).

Insert instead "*First State Superannuation Act 1992*".

1.6 State Authorities Non-contributory Superannuation Act 1987 No 212

[1] Section 3 Definitions

Omit the definition of *chief executive officer* from section 3 (1).

Insert instead:

chief executive officer means:

- (a) a chief executive officer within the meaning of the *Public Sector Management Act 1988*, or
- (b) an employee (not being an officer referred to in paragraph (a)) of an employer specified in Schedule 1, being an employee who holds an office designated by the Director-General of the Premier's Department as the office of a chief executive officer.

[2] Section 3 (1), definition of “First State Superannuation Fund”

Insert in alphabetical order:

First State Superannuation Fund means the First State Superannuation Fund established under the *First State Superannuation Act 1992*.

[3] Section 3 (1), definitions of “Public Sector Executives Superannuation Fund” and “Public Sector Executives Superannuation Scheme”

Omit the definitions.

[4] Section 3 (1), definition of “senior executive officer”

Omit the definition. Insert instead:

senior executive officer means:

- (a) a senior executive officer within the meaning of the *Public Sector Management Act 1988*, or
- (b) an employee (not being an officer referred to in paragraph (a)) of an authority specified in Schedule 1, being an employee who holds an office designated by the Director-General of the Premier’s Department as the office of a senior executive officer.

[5] Section 4A Salary of executive officers

Omit section 4A (10) (c). Insert instead:

- (c) in the case of any other executive officer, the monetary remuneration payable to the officer.

[6] Section 24 Benefit to be preserved

Omit section 24 (2) (a) and (b). Insert instead:

- (a) an executive officer who is an optional member of the First State Superannuation Fund ceases to be a contributor to any other superannuation scheme established by or under an Act, or

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- (b) an executive officer who is not a member of any other superannuation scheme established by or under an Act becomes a member of the First State Superannuation Fund, or

[7] Schedule 2 Excluded persons

Omit “eligible to become or who is a member of the Public Sector Executives Superannuation Scheme” from paragraph (a).

Insert instead “an executive officer”.

[8] Schedule 2, paragraph (d)

Omit “a member of the Public Sector Executives Superannuation Scheme”.

Insert instead “an executive officer who is an optional member of the First State Superannuation Fund”.

1.7 State Authorities Superannuation Act 1987 No 211

[1] Section 3 Definitions

Omit the definition of *chief executive officer* from section 3 (1).

Insert instead:

chief executive officer means:

- (a) a chief executive officer within the meaning of the *Public Sector Management Act 1988*, or
- (b) an employee (not being an officer referred to in paragraph (a)) of an employer specified in Schedule 1, being an employee who holds an office designated by the Director-General of the Premier’s Department as the office of a chief executive officer.

[2] Section 3 (1), definition of “First State Superannuation Fund”

Insert in alphabetical order:

First State Superannuation Fund means the First State Superannuation Fund established under the *First State Superannuation Act 1992*.

[3] Section 3 (1), definition of “Public Sector Executives Superannuation Scheme”

Omit the definition.

[4] Section 3 (1), definition of “senior executive officer”

Omit the definition. Insert instead:

senior executive officer means:

- (a) a senior executive officer within the meaning of the *Public Sector Management Act 1988*, or
- (b) an employee (not being an officer referred to in paragraph (a)) of an authority specified in Schedule 1, being an employee who holds an office designated by the Director-General of the Premier’s Department as the office of a senior executive officer.

[5] Section 4A Salary of executive officers

Omit section 4A (10) (c). Insert instead:

- (c) in the case of any other executive officer, the monetary remuneration payable to the officer.

[6] Section 30A Contributor who is executive officer

Omit “eligible to become a member of the Public Sector Executives Superannuation Scheme” from section 30A (1).

Insert instead “an executive officer”.

[7] Section 30A (3)

Omit “Public Sector Executives Superannuation Scheme”.

Insert instead “First State Superannuation Fund”.

[8] Section 30A (3)

Omit “that Scheme”. Insert instead “that Fund”.

[9] Section 30A (4)

Omit “eligible to become or being a member of the Public Sector Executives Superannuation Scheme”.

Insert instead “an executive officer”.

[10] Section 30A (5) (e)

Omit “Public Sector Executives Superannuation Scheme”.

Insert instead “First State Superannuation Fund”.

[11] Section 30A (5) (e)

Omit “that scheme”. Insert instead “that Fund”.

[12] Section 30A (6) (c)

Omit the paragraph. Insert instead:

- (c) the FSS Trustee Corporation must credit the amount to the account established or to be established for the person in the First State Superannuation Fund.

[13] Section 43 Deferred benefit

Omit “eligible to become or who is a member of the Public Sector Executives Superannuation Scheme” from section 43 (8).

Insert instead “an executive officer”.

[14] Schedule 2 Excluded persons

Omit clause 1 (2) (a). Insert instead:

- (a) who is an executive officer, and

[15] Schedule 2, clause 1 (2) (b)

Omit “so eligible or such a member”.

Insert instead “an executive officer”.

1.8 Superannuation Act 1916 No 28

[1] Section 3 Definitions

Omit the definition of *Chief executive officer* from section 3 (1).

Insert instead:

Chief executive officer means:

- (a) a chief executive officer within the meaning of the *Public Sector Management Act 1988*, or
- (b) an employee (not being an officer referred to in paragraph (a)) of an employer specified in Schedule 3, being an employee who holds an office designated by the Director-General of the Premier's Department as the office of a chief executive officer.

[2] Section 3 (1), definition of "First State Superannuation Fund"

Insert in alphabetical order:

First State Superannuation Fund means the First State Superannuation Fund established under the *First State Superannuation Act 1992*.

[3] Section 3 (1), definition of "Public Sector Executives Superannuation Scheme"

Omit the definition.

[4] Section 3 (1), definition of "Senior executive officer"

Omit the definition. Insert instead:

Senior executive officer means:

- (a) a senior executive officer within the meaning of the *Public Sector Management Act 1988*, or
- (b) an employee (not being an officer referred to in paragraph (a)) of an authority specified in Schedule 3, being an employee who holds an office designated by the Director-General of the Premier's Department as the office of a senior executive officer.

[5] Section 3AA Salary of executive officers

Omit section 3AA (10) (c). Insert instead:

- (c) in the case of any other executive officer, the monetary remuneration payable to the officer.

[6] Section 20AB Contributor who is executive officer

Omit “eligible to become a member of the Public Sector Executives Superannuation Scheme” from section 20AB (1).

Insert instead “an executive officer”.

[7] Section 20AB (3)

Omit “Public Sector Executives Superannuation Scheme”.

Insert instead “First State Superannuation Fund”.

[8] Section 20AB (3) and (5) (e)

Omit “that Scheme” wherever occurring. Insert instead “that Fund”.

[9] Sections 20AB (4) and 52IA (1)

Omit “eligible to become or being a member of the Public Sector Executives Superannuation Scheme” wherever occurring.

Insert instead “an executive officer”.

[10] Section 20AB (6) (c)

Omit “Public Sector Executives Superannuation Fund established under the *Public Sector Executives Superannuation Act 1989*”.

Insert instead “First State Superannuation Fund”.

1.9 Superannuation Administration Act 1996 No 39

[1] Section 4 Definitions

Omit paragraph (b) of the definition of *FTC fund* or *FTC scheme*.

[2] Section 9 Principal functions of FTC, note

Omit the note.

Explanatory note

Transfer of former Scheme members after closure of former Scheme

The *Public Sector Executives Superannuation Act 1989* (the **former Act**) is repealed by the proposed Act and the members of the former Scheme (the **transferred members**) are transferred to the First State Superannuation Fund (the **Fund**). The former Scheme was a scheme established to provide superannuation for public sector executive officers (that is, chief executive officers, senior executive officers, police executive officers and certain statutory office holders). It was an accumulation style superannuation scheme, as is the scheme to which its members are being transferred.

Schedule 1.1 [2] inserts proposed Part 5 into the *First State Superannuation Act 1992* which contains provisions relating to the transfer and its consequences.

Proposed Division 1 (proposed sections 21 and 22) defines words and expressions and makes it clear that the provisions of the proposed Part have effect despite any other provisions of the Act or the trust deed regulating the Fund.

Proposed Division 2 (proposed sections 23–27) provides for the transfer of members to the Fund, the status of the Public Sector Executives Superannuation Fund (the **PSES Fund**) and transferred members' accounts and contributions. Proposed section 23 transfers the transferred members from the transfer day (1 March 2000). Proposed section 24 amalgamates the PSES Fund and the Fund. Proposed section 25 provides for the establishment of accounts in the Fund for new transferred members and the payment of amounts to accounts on transfer. Proposed section 26 establishes the amount of salary or wages of a transferred member on transfer. Proposed section 27 enables the trust deed to provide for matters relating to membership and transferred members' accounts and contributions.

Proposed Division 3 (proposed sections 28–31) retains the transferred members' rights to additional benefits, as established under the former Scheme. Proposed section 28 also applies these rights to certain members who transferred voluntarily to the Fund before the transfer day. Proposed section 29 provides that additional benefit cover is to continue and that transferred members not covered as at the transfer day are entitled to apply to be covered (if otherwise eligible). It also preserves applications for cover made before the transfer day. Proposed section 30 continues existing insurance contracts and arrangements for the provision of additional benefits. Proposed section 31 enables the trust deed to provide for certain matters related to coverage for additional benefits.

Proposed Division 4 (proposed sections 32–36) deals with other matters relating to the transfer. Proposed section 32 makes it clear that the trustee may recover money owed to the PSES Fund before the transfer day. Proposed section 33 applies procedures under the Principal Act to disputes existing before the transfer day. Proposed section 34 preserves the rights, liabilities and obligations of the PSES Fund, transferred members,

and any persons in respect of provision of additional benefit cover, in existence before the transfer day. Proposed section 35 enables regulations to be made with respect to the rights, liabilities and obligations of transferred members. Proposed section 36 excludes transactions, matters or documents relating to the closure of the former Scheme or the proposed Part from being chargeable for duty.

Schedule 1.1 [1] and [4]–[6] make consequential amendments.

Schedule 1.1 [3] adds the Police Integrity Commission (an employer under the former Act) to the list of employers in the *First State Superannuation Act 1992*.

Schedule 1.2 [1]–[4] amend the *Local Government and Other Authorities (Superannuation) Act 1927* to omit unnecessary provisions relating to executive officers.

Schedule 1.3 [1]–[13] make consequential amendments to the *Police Regulation (Superannuation) Act 1906* as a result of the closure of the former Scheme. The amendments change references to the former Scheme and the former Act and insert a definition of the Fund.

Schedule 1.4 amends the *Public Sector Executives Superannuation Act 1989* to enable savings and transitional regulations to be made in the period before the closure of the scheme takes place.

Schedule 1.5 amends the *Public Sector Management Act 1988* to update a reference to the former Act.

Schedule 1.6 [1]–[8] make consequential amendments to the *State Authorities Non-contributory Superannuation Act 1987* as a result of the closure of the former Scheme. The amendments change references to the former Scheme and the former Act and insert a definition of the Fund.

Schedule 1.7 [1]–[15] make consequential amendments to the *State Authorities Superannuation Act 1987* as a result of the closure of the former Scheme. The amendments change references to the former Scheme and the former Act and insert a definition of the Fund.

Schedule 1.8 [1]–[10] make consequential amendments to the *Superannuation Act 1916* as a result of the closure of the former Scheme. The amendments change references to the former Scheme and the former Act and insert a definition of the Fund.

Schedule 1.9 [1] and [2] make consequential amendments to the *Superannuation Administration Act 1996* as a result of the closure of the former Scheme. The amendments omit references to the former Scheme and the former Act.

Schedule 2 Miscellaneous amendments

(Section 4)

2.1 First State Superannuation Act 1992 No 100

[1] Section 3A

Insert after section 3:

3A Meaning of “salary or wages”

- (1) For the purposes of this Act, the *salary or wages* of a member is:
 - (a) in the case of a member who is not an executive officer, the total of:
 - (i) earnings in respect of ordinary hours of work, and
 - (ii) earnings consisting of over-award payments, shift-loading or commission, or
 - (b) in the case of a member who is an executive officer, the salary or wages as last nominated or changed in accordance with this section.
- (2) An amount of salary or wages for the purposes of this Act must be nominated to the employer of a member who is an executive officer by the member on, or as soon as practicable after, becoming a member or being appointed as an executive officer (whichever occurs first). An amount may also be nominated to the employer by the member on, or as soon as practicable after, being reappointed, or appointed to another position, as an employee.
- (3) The amount nominated is to be not less than:
 - (a) the monetary remuneration payable to the member at the date of nomination, or
 - (b) the maximum contribution base, within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth, applicable at that time, whichever is the lower.

- (4) The amount nominated is to be not more than the total value of the remuneration package paid to the member (less the cost of providing employer's contributions to superannuation and any performance-related incentive payment), expressed as an annual rate.
- (5) If the member fails to nominate an amount of salary or wages within 28 days after first becoming a member or being appointed as an executive officer (whichever occurs first) or within such further period as FTC may allow, the member is taken to have nominated an amount of salary or wages that is equal to the monetary remuneration payable to the member at the end of the applicable period.
- (6) A member who is an executive officer may, from time to time, by notice to the member's employer elect to reduce the amount of salary or wages nominated under this section, but not so that the amount is less than the monetary remuneration payable to the member at the date of the election.
- (7) A member who is an executive officer may, from time to time, by notice to the member's employer elect to increase the amount of salary or wages nominated under this section, but not so as to increase the amount nominated by a percentage of that amount that is more than the percentage by which the remuneration package of the member has increased since the amount of the salary or wages was last nominated or changed.
- (8) An employer must notify FTC of a nomination or election under this section. Any such nomination or election takes effect on the date of notification to FTC or on such other date as FTC may determine with the consent of the member concerned.
- (9) Nothing in this section requires the nominated amount of salary or wages to be increased if, because of a variation in the remuneration package of a member or in the proportions of the remuneration package comprising monetary remuneration and employment benefits of the member, the amount of salary or wages as last nominated or changed for the purposes of this section is less than the monetary remuneration of the member.

[2] Section 9 Membership on making conversion election

Omit the second sentence in section 9 (2).

[3] Section 12A

Insert after section 12:

12A Certain employees may elect to have employer contributions cease

- (1) An employee may give his or her employer a written notice requiring the employer to cease to make the contributions payable to FTC under section 12 in respect of the employee.
- (2) The notice may be given only if it is accompanied by the statements referred to in section 19 (4) (b) of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth.
- (3) A notice given under this section is irrevocable.
- (4) An employer who is given a notice under this section:
 - (a) must comply with it, and
 - (b) is not required to make the contributions referred to in section 12 in respect of the employee concerned.

[4] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Superannuation Legislation Further Amendment Act 1999

[5] Schedule 3, clause 10

Insert after clause 9:

10 Executive officer taken to have nominated salary or wages

- (1) A member who, on the commencement of section 3A (as inserted by the *Superannuation Legislation Further Amendment Act 1999*), is an executive officer is taken, on that commencement, to have nominated under that section the amount of salary or wages on which contributions in respect of the executive officer are calculated as at that commencement.
- (2) Nothing in this clause prevents such an executive officer from reducing or increasing, in accordance with section 3A, the amount of salary or wages so nominated.

[6] Dictionary

Omit the definition of *salary or wages*. Insert instead:

salary or wages has the same meaning as in section 3A.

Explanatory note

Meaning of “salary or wages”

Schedule 2.1 [1] inserts proposed section 3A in the *First State Superannuation Act 1992* (the **Act**). The proposed section sets out the meaning of **salary or wages** of a member of the First State Superannuation Fund (the **Fund**). In the case of a member who is an executive officer (within the meaning of the Act), the salary or wages is to be the amount nominated by the member (within the limits allowed by the section). The section provides a mechanism by which that nomination may be changed by the member concerned.

Schedule 2.1 [2] and **[6]** make consequential amendments. **Schedule 2.1 [5]** inserts a transitional provision into Schedule 3 (Savings, transitional and other provisions) to the Act. That provision concerns nomination of salary or wages by members of the Fund who are executive officers on the commencement of proposed section 3A.

Cessation of employer contributions

Section 12 of the Act requires employers to make contributions to the FSS Trustee Corporation in respect of each full member of the Fund. The contributions (generally known as the “superannuation guarantee charge”) are required as a result of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth. That Act has a provision (section 19) enabling an employee to elect that his or her employer should not be liable to the superannuation guarantee charge if (in effect) certain benefits or entitlements of the employee exceed the **pension reasonable benefit limit** under the *Income Tax Assessment Act 1936* of the Commonwealth.

Schedule 2.1 [3] inserts a provision to the same effect in the *First State Superannuation Act 1992*.

Savings and transitional regulations

Schedule 2.1 [4] enables savings and transitional regulations to be made.

2.2 Police Association Employees (Superannuation) Act 1969 No 33

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

Omit section 3 (5) (a) (iii) and (iv). Insert instead:

- (iii) in the case of a prescribed person who resigned or was discharged (but not in the case of a prescribed person who was dismissed)—at the rate of 4.5 per cent per annum compounded on 30 June in each year of service of the prescribed person as an employee of the Association, and as

- a member of the police force, during the period beginning with 23 November 1984 and ending with 30 June 1990, and also compounded on the date of the resignation or discharge of the prescribed person from employment by the Association if it occurred during that period, and
- (iv) in the case of all prescribed persons—at the rate from time to time fixed by STC under section 16 of the *State Authorities Superannuation Act 1987*, compounded on 30 June in each year of the service of the prescribed person as an employee of the Association, and as a member of the police force, from and including 1 July 1990, and also compounded on the date of the resignation, dismissal or discharge of the prescribed person from employment by the Association if it occurred on or after 1 July 1990, and

[2] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Superannuation Legislation Further Amendment Act 1999

Explanatory note

Interest on refund of contribution

Section 3 of the *Police Association Employees (Superannuation) Act 1969* (which was included in the original enactment) provides for a refund of deductions of personal contributions to the Police Superannuation Fund to certain employees of the Police Association (**prescribed persons**) who resign or are dismissed or discharged. Originally, no interest was payable on the refunded contributions.

In 1984, an amendment to the section provided for interest to be paid to any prescribed person who had served for a period of 5 years or more and was not dismissed. The interest was to compound annually on 30 June (and on the date of the resignation or discharge).

Subsequent amendments which took effect on 1 July 1992 both removed the requirement for a minimum period of service and provided for compound interest also to be paid to a prescribed person who is dismissed on or after that date.

Schedule 2.2 [1] makes it clear that interest payable to a dismissed prescribed person does not begin to compound until 30 June 1991.

Savings and transitional regulations

Schedule 2.2 [2] enables savings and transitional regulations to be made.

2.3 Police Regulation (Superannuation) Act 1906 No 28

[1] Section 9A Commencement of pension

Omit section 9A (2).

[2] Section 17 Refund of deductions

Omit section 17 (1) (a). Insert instead:

- (a) the total of all amounts deducted under this Act from that member's salary of office, with the addition of interest on those amounts:
 - (i) in the case of a member who resigned or was discharged (but not in the case of a member who was dismissed)—at the rate of 4.5 per cent per annum compounded on 30 June in each year of that member's service during the period beginning with 23 November 1984 and ending with 30 June 1990, and also compounded on the date of the member's resignation or discharge if it occurred during that period, and
 - (ii) in the case of all members—at the rate from time to time fixed by STC under section 16 of the *State Authorities Superannuation Act 1987*, compounded on 30 June in each year of the member's service from and including 1 July 1990, and also compounded on the date of that member's resignation, dismissal or discharge if it occurs on or after 1 July 1990, and

[3] Section 23B Actuarial investigation

Omit “12 months” from section 23B (2). Insert instead “6 months”.

[4] Section 23B (4)

Omit “2 months”. Insert instead “1 month”.

[5] Schedule 6 Savings and transitional provisions

Insert at the end of clause 1 (1):

Superannuation Legislation Further Amendment Act 1999

Explanatory note

Payment of superannuation allowances on discharge

Currently, a superannuation allowance payable to a police officer who is discharged is not payable until after the date when all leave of absence owing to the officer (other than extended leave) on discharge would have ended. This provision was originally inserted at a time when many contributors could not take the value of accrued leave as a lump sum.

Schedule 2.3 [1] removes this restriction so as to enable immediate payment of superannuation allowances.

Interest on refund of contribution

Section 17 of the *Police Regulation (Superannuation) Act 1906* (which was first enacted in 1974) provides for a refund of deductions of personal contributions to the Police Superannuation Fund to a member of the police force who resigns or is dismissed or discharged. Originally, no interest was payable on the refunded contributions.

In 1984, an amendment to the section provided for interest to be paid to any member who had served for a period of 5 years or more and was not dismissed. The interest was to compound annually on 30 June (and on the date of the resignation or discharge). The requirement for a minimum period of service was subsequently removed.

Subsequent amendments which took effect on 1 July 1990 (and were required, in part, by Commonwealth legislation relating to superannuation funds) provided for compound interest also to be paid to a member of the police force who is dismissed on or after that date.

Schedule 2.3 [2] makes it clear that interest payable to a dismissed police officer does not begin to compound until 30 June 1991.

Actuarial investigations of fund

Section 23B requires an investigation as to the state and sufficiency of the Police Superannuation Fund to be carried out every 3 years by an actuary appointed by the trustee of that fund. Currently, the actuary must report the results of the investigation not later than 12 months after the date of the investigation and the trustee must forward the report (together with such comments as it thinks fit) to the Minister not later than 2 months after the trustee receives the report.

Schedule 2.3 [3] reduces the time allowed for the making of the report to 6 months after the date of the investigation, and **Schedule 2.3 [4]** reduces the time allowed for forwarding the report to the Minister to 1 month after the trustee receives it.

Savings and transitional provisions

Schedule 2.3 [5] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

2.4 State Authorities Non-contributory Superannuation Act 1987 No 212

[1] Section 13 Actuarial investigation

Omit “12 months” from section 13 (2). Insert instead “6 months”.

[2] Section 13 (3)

Omit “2 months”. Insert instead “1 month”.

[3] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

Superannuation Legislation Further Amendment Act 1999

Explanatory note

Actuarial investigations of funds

Section 13 requires an investigation as to the state and sufficiency of any of the funds established under the *State Authorities Non-contributory Superannuation Act 1987* to be carried out every 3 years by an actuary appointed by the trustee of the funds. Currently, the actuary must report the results of the investigation not later than 12 months after the date of the investigation and the trustee must forward the report (together with such comments as it thinks fit) to the Minister not later than 2 months after the trustee receives the report.

Schedule 2.4 [1] reduces the time allowed for the making of the report to 6 months after the date of the investigation, and **Schedule 2.4 [2]** reduces the time allowed for forwarding the report to the Minister to 1 month after the trustee receives it.

Savings and transitional regulations

Schedule 2.4 [3] enables savings and transitional regulations to be made.

2.5 State Authorities Superannuation Act 1987 No 211

[1] Section 18 Actuarial investigation

Omit “12 months” from section 18 (2). Insert instead “6 months”.

[2] Section 18 (3)

Omit “2 months”. Insert instead “1 month”.

[3] Schedule 6 Savings and transitional provisions

Insert at the end of clause 1 (1):

Superannuation Legislation Further Amendment Act 1999

Explanatory note

Actuarial investigations of funds

Section 18 requires an investigation as to the state and sufficiency of the funds established under the *State Authorities Superannuation Act 1987* to be carried out every 3 years by an actuary appointed by the trustee of the funds. Currently, the actuary must report the results of the investigation not later than 12 months after the date of the investigation and the trustee must forward the report (together with such comments as it thinks fit) to the Minister not later than 2 months after the trustee receives the report.

Schedule 2.5 [1] reduces the time allowed for the making of the report to 6 months after the date of the investigation, and **Schedule 2.5 [2]** reduces the time allowed for forwarding the report to the Minister to 1 month after the trustee receives it.

Savings and transitional regulations

Schedule 2.5 [3] enables savings and transitional regulations to be made.

2.6 Superannuation Act 1916 No 28

[1] Section 6 Contributors' reserve

Omit section 6 (2). Insert instead:

- (2) STC must ensure that there is debited to the contributors' reserve that portion of any benefit payable to or in respect of a contributor from the contributors' reserve in accordance with section 33B (2) (a).

[2] Section 7 Employer reserves

Omit section 7 (2) (b). Insert instead:

- (b) administration costs incurred by STC under the *Superannuation Administration Act 1996* in relation to:
 - (i) the employer (or an employer to whom the reserve relates), and
 - (ii) contributors who are employees of that employer, and

[3] Section 8A Source of administration costs payments

Omit “the contributors’ reserve in the Fund” from section 8A (1).

Insert instead “such other reserves (the contributor’s reserve excepted) and accounts in the Fund as STC considers appropriate”.

[4] Section 10 Actuary or actuaries to conduct periodic investigations into the Fund

Omit “12 months” from section 10 (3). Insert instead “6 months”.

[5] Section 10 (4)

Omit “2 months”. Insert instead “1 month”.

[6] Section 10WC Commencement of or change to part-time employment

Omit section 10WC (1). Insert instead:

- (1) In this section, a reference to a change in the employment status of a contributor is a reference:
 - (a) to a contributor who is appointed to a full-time position being appointed to a part-time position, or
 - (b) to a contributor who is appointed to a full-time position and who is on part-time leave without pay making an election under section 12C (1A) to be treated as a part-time employee, or
 - (c) to the salary ratio (as defined in section 12C (1)) of a contributor who is appointed to a part-time position changing so that it is less than it was previously, or
 - (d) to a contributor who is appointed to a full-time position and who is on part-time leave without pay making an election under section 12C (3A) in respect of a decrease in the salary ratio (as defined in section 12C (1)) of the contributor.

[7] Section 12C Deduction factors in relation to part-time employment

Omit the definition of *part-time employee* from section 12C (1).

Insert instead:

part-time employee means:

- (a) a person appointed to a part-time position and certified to STC by the person's employer to have a salary ratio of less than one, or
- (b) a person appointed to a full-time position and on part-time leave without pay, and certified to STC by the person's employer to have a salary ratio of less than one, who has made an election, that is in force under this section, to be treated as a part-time employee.

[8] Section 12C (1A)

Insert after section 12C (1):

- (1A) A person who is appointed to a full-time position and who commences a period of part-time leave without pay may elect to be treated as a part-time employee for the purposes of this section.

[9] Section 12C (3A)

Insert after section 12 (3):

- (3A) However, subsection (3) does not apply in respect of a part-time employee who has made an election under subsection (1A), and whose salary ratio decreases, unless the employee elects that subsection (3) is to apply in respect of that changed salary ratio.

[10] Section 29 Breakdown pensions

Omit section 29 (5).

[11] Section 29 (6)

Omit "pursuant to subsection (5)".

[12] Section 32B Death after retirement and before payment of pension

Omit the section.

[13] Section 38A Withdrawal benefit

Omit “, 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” from section 38A (5A) (a).
Insert instead “as the value of the lump sum that would have been payable to the contributor had he or she retired at 55 years of age and elected under section 21C to commute the whole of the pension to which the person was entitled on retirement at that age”.

[14] Section 38A (5A) (b)

Omit “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”.

Insert instead “as the value of the lump sum that would have been payable to the contributor had he or she retired at his or her current age and elected under section 21C to commute the whole of the pension to which the person was entitled on retirement”.

[15] Schedule 25 Savings and transitional provisions

Insert at the end of clause 1 (1):

Superannuation Legislation Further Amendment Act 1999

[16] Schedule 25, Part 8

Insert after Part 7:

Part 8 Superannuation Legislation Further Amendment Act 1999

24 Definition

In this Part:

amending Act means the *Superannuation Legislation Further Amendment Act 1999*.

25 Existing part-time contributors

- (1) A contributor who, at any time during the period from 1 April 1999 to the date of assent to the amending Act, was a full-time employee on part-time leave without pay may, in respect of any period during which a deduction factor was applied, or applicable, under section 12C because of that leave, apply to STC to have the person's contributions and entitlements in respect of that period adjusted, or treated, as if the person were a part-time employee.
- (2) On an election being made, STC must adjust or treat the contributions and entitlements accordingly and may, for that purpose, make any appropriate arrangements with the contributor.
- (3) If an election is not made under subclause (1), the person's contributions and entitlements in respect of the period concerned are to be adjusted, or treated, as if the person were a full-time employee during that period.
- (4) A person who, immediately before the date of assent to the amending Act, was a full-time employee and who was on part-time leave without pay is entitled to make an election under section 12C, as amended by the amending Act, within 2 months of that date or such later time as STC determines in respect of any part of that period of leave occurring on or after that date.
- (5) Any action, or omission, by STC in respect of the treatment of contributors under section 12C that:
 - (a) occurred on or after 1 April 1999 and before the amendment of section 12C by the amending Act, and
 - (b) would have been validly done or omitted to be done if section 12C, as amended by the amending Act, had been in force,

is taken to have been, and always to have been, validly done or omitted.

26 Payments of invalidity pensions

- (1) Section 29, as amended by the amending Act, applies to any person entitled to a pension on the date of assent to the amending Act but who was, immediately before that date, not entitled (because of section 29 (5)) to payment of that pension.
- (2) Any payment of an invalidity pension under section 29 that:
 - (a) was made on or after 1 July 1999 and before the repeal of section 29 (5) by the amending Act, and
 - (b) would have been validly made if section 29 (5), as in force immediately before its repeal by the amending Act, had been in force,

is taken to have been, and always to have been, validly made.

Explanatory note

Administration fees not to be payable from contributors' reserve

Under the *Superannuation Act 1916* (the **Act**), the SAS Trustee Corporation (**STC**) is required to establish and maintain within the State Superannuation Fund a reserve for contributors' contributions and various reserves for employers. It may also establish and maintain within that Fund such other reserves and accounts as it considers necessary or convenient for the proper management of the Fund and the administration of the Act.

At present, various administration costs are payable partly out of the contributors' reserve. Schedule 2.6 [1]–[3] ensure that this will no longer be the case.

Schedule 2.6 [1] repeals and re-enacts section 6 (2) of the Act so as to require STC to debit the contributors' reserve with the portion of any benefit payable to or in respect of a contributor. (Currently, section 6 (2) also requires STC to debit the contributors' reserve with administration costs incurred by STC under the *Superannuation Administration Act 1996* in relation to contributors and with other amounts that are "properly payable" from the reserve.)

Schedule 2.6 [2] repeals and re-enacts section 7 (2) (b) of the Act so as to ensure that administration costs incurred by STC under the *Superannuation Administration Act 1996* in relation to contributors are debited to the employer reserve of the contributors concerned.

Schedule 2.6 [3] amends section 8A of the Act so as to make it clear that administration costs in respect of the superannuation schemes established under the Act are not to be paid from the contributors' reserve.

Actuarial investigations of fund

Section 10 requires an investigation as to the state and sufficiency of the State Superannuation Fund established for the purposes of the *Superannuation Act 1916* to be carried out every 3 years by an actuary appointed by the trustee of the Fund. Currently, the actuary must report the results of the investigation not later than 12 months after the date of the investigation and the trustee must forward the report (together with such comments as it thinks fit) to the Minister not later than 2 months after the trustee receives the report.

Schedule 2.6 [4] reduces the time allowed for the making of the report to 6 months after the date of the investigation, and **Schedule 2.6 [5]** reduces the time allowed for forwarding the report to the Minister to 1 month after the trustee receives it.

Contributions during part-time leave without pay

The position of contributors who are employed in a full-time position but who take part-time leave without pay has, since the commencement of amendments made by the *Superannuation Legislation Further Amendment Act 1998*, been the same as contributors who are employed in part-time positions. The effect of this is that the contributors have been liable to have their contributions reduced and accordingly their entitlements to benefits reduced. Before the amendments commenced, contributors who took part-time leave without pay were required to maintain their contributions as full-time employees.

Schedule 2.6 [8] enables a person who commences a period of part-time leave without pay to elect to be treated as a part-time employee during the period of leave. The effect of making the election is that the unit entitlements of the person will be reduced.

Schedule 2.6 [9] provides that the unit entitlements of a person who elects to be treated as a part-time employee are not to be reduced if the person's salary ratio decreases unless the person elects to have deduction factors applied in respect of the decreased salary ratio.

Schedule 2.6 [6] applies provisions which reduce the contributions of part-time employees to contributors who take part-time leave without pay and make an election to be treated as part-time employees or to such contributors who make an election when their salary ratio decreases.

Schedule 2.6 [7] makes a consequential amendment.

Schedule 2.6 [16] makes provision with respect to persons currently on part-time leave without pay who have been required to reduce contributions and have been, since 1 April 1999, treated or could have been treated as part-time employees. They will be able to make arrangements with STC to have their contributions adjusted so that they are treated as part-time employees for any period since 1 April 1999 and if they do not so elect will be treated as full-time employees in respect of any such period. Elections may be made to treat any current period of leave as a period of part-time employment.

Payment of invalidity pensions

Currently, a pension payable to a contributor who is retired on the ground of invalidity or physical or mental incapacity to perform his or her duties is not payable until after the date when all leave of absence owing to the contributor (other than extended leave) on retirement would have ended. This provision was originally inserted at a time when many contributors could not take the value of accrued leave as a lump sum.

Schedule 2.6 [10] removes this restriction so as to enable immediate payment of invalidity pensions.

Schedule 2.6 [11] and **[12]** make consequential amendments.

Schedule 2.6 [16] applies the amended invalid pension provisions to persons eligible for a pension but not able to receive payment when the amendments commence. It also validates payments of pensions made on or after 1 July 1999, and before the amendment relating to the time when invalidity pensions may be paid commences, that would otherwise have contravened the Act but would comply with the Act as amended by Schedule 2.6 [10].

Payment of withdrawal benefits

Currently, a contributor is entitled to be paid a withdrawal benefit when the contributor is retrenched, resigns or is dismissed. The maximum amount payable is limited to the capitalised value of the pension that would have been payable on retirement on age 55 (or if a contributor is older than 55) on retirement at that age.

Schedule 2.6 [13] amends the maximum amount payable to be the maximum amount of lump sum of commuted pension that a person could receive on retirement at the relevant age.

Schedule 2.6 [14] makes a consequential amendment.

Savings and transitional provisions

Schedule 2.6 [15] enables savings and transitional regulations to be made.

[Minister's second reading speech made in—
Legislative Assembly on 18 November 1999
Legislative Council on 25 November 1999]