



New South Wales

Superannuation Legislation Amendment (Miscellaneous) Act 2001 No 98

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New South Wales

Superannuation Legislation Amendment (Miscellaneous) Act 2001 No 98

Act No 98, 2001

An Act to amend various public sector superannuation Acts with respect to the transfer of certain preserved benefits under the State Authorities Non-contributory Superannuation Scheme to the First State Superannuation Fund, salary for the purposes of contributions to that Fund and the application of certain Government trust deed schemes; and for other purposes. [Assented to 11 December 2001]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Superannuation Legislation Amendment (Miscellaneous) Act 2001*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Amendment of First State Superannuation Act 1992 No 100

The *First State Superannuation Act 1992* is amended as set out in Schedule 1.

4 Amendment of State Authorities Non-contributory Superannuation Act 1987 No 212

The *State Authorities Non-contributory Superannuation Act 1987* is amended as set out in Schedule 2.

5 Amendment of Superannuation Administration Act 1996 No 39

The *Superannuation Administration Act 1996* is amended as set out in Schedule 3.

Schedule 1 Amendment of First State Superannuation Act 1992

(Section 3)

[1] Section 3A Meaning of “salary or wages”

Omit section 3A (1) (a). Insert instead:

- (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, and
 - (iii) allowances and other payments of a kind prescribed by the regulations for the purposes of this subsection, and
 - (iv) if employment benefits of a kind prescribed by the regulations for the purposes of this subsection are provided to the member, the cost of providing the employment benefits, or

[2] Section 3A (1A)

Insert after section 3A (1):

- (1A) A regulation made for the purposes of subsection (1) (a) (iii) or (iv):
 - (a) may only be made with the concurrence of the Treasurer, and
 - (b) may apply to all members who are not executive officers, or to specified members or classes of members who are not executive officers.

[3] Section 3A (10)

Insert at the end of section 3A:

(10) In this section:

employment benefit means a benefit provided to a member at the cost of the member's employer (being a benefit of a private nature).

[4] Part 5A

Insert after Part 5:

Part 5A Preserved benefits transferred under State Authorities Non-contributory Superannuation Act 1987 to First State Superannuation Fund

37 Definitions

In this Part:

eligible preserved benefit has the same meaning as it has in Part 4B of the *State Authorities Non-contributory Superannuation Act 1987*.

transfer day means the day on which the eligible preserved benefits are transferred by STC under Part 4B of the *State Authorities Non-contributory Superannuation Act 1987*.

transferred member means a person whose eligible preserved benefit is transferred under section 27AD of the *State Authorities Non-contributory Superannuation Act 1987*.

STC means the SAS Trustee Corporation.

38 Transfer to First State Superannuation Fund

- (1) On and from the transfer day, a person whose benefit is transferred to FTC for crediting to the Fund under section 27AD of the *State Authorities Non-contributory Superannuation Act 1987*, and who is not already a member of the superannuation scheme established under this Act and the trust deed, is transferred as an inactive member of the Fund.

- (2) FTC must establish in the Fund an account in respect of any such inactive member.
- (3) FTC must credit to the Fund the amount transferred to FTC under section 27AD of the *State Authorities Non-contributory Superannuation Act 1987*.
- (4) FTC must credit to the account of each transferred member an amount equal to the amount of the eligible preserved benefit of the transferred member immediately before the transfer day.
- (5) Any such amount is taken to have been credited to the account on the day following the transfer day.
- (6) An amount credited under this section to an account of a transferred member 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 transferred member.

39 Matters to be dealt with by trust deed

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

- (a) the establishment of accounts in respect of transferred members,
- (b) the crediting of amounts to accounts of transferred members,
- (c) the investment of amounts held in accounts of transferred members.

40 Rights, liabilities and other matters

- (1) Nothing in the *Superannuation Legislation Amendment (Miscellaneous) Act 2001* affects the following:
 - (a) any rights, liabilities or obligations of STC relating to eligible preserved benefits under the *State Authorities Non-contributory Superannuation Act 1987* in existence immediately before the transfer day,

- (b) any rights, liabilities or obligations of a transferred member arising under the *State Authorities Non-contributory Superannuation Act 1987* 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 do so.

[5] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Superannuation Legislation Amendment (Miscellaneous) Act 2001

[6] Schedule 3, clause 11

Insert after clause 10:

11 Validation

Anything:

- (a) that was done or omitted to be done for the purposes of Part 5A before the date of assent to the *Superannuation Legislation Amendment (Miscellaneous) Act 2001*, and
- (b) that would have been lawful if Part 5A had been in force when the thing was done or omitted to be done,

is as valid as it would have been had that Part been in force when the thing was done or omitted to be done.

[7] Dictionary

Insert at the end of the definition of *inactive member*:

- , or
- (c) who becomes an inactive member by operation of Part 5A and who has a preserved benefit in the Fund.

Schedule 2 Amendment of State Authorities Non-contributory Superannuation Act 1987

(Section 4)

[1] Section 9 Funds etc

Insert at the end of section 9 (3):

, and

- (d) any other amount payable from any such Fund under this or any other Act.

[2] Section 10 Reserves for employers

Insert after 10 (4):

- (4A) Despite any other provision of this Act, there is to be debited to the Crown employer reserve such amount of the administration costs incurred by STC in respect of the transfer of a preserved benefit under Part 4B as is approved by the Treasurer.

[3] Section 11A Source of administration costs payments

Insert “, except as provided by section 10 (4A)” after “Act” in section 11A (2).

[4] Part 4B

Insert after Part 4AA:

Part 4B Transfer of certain preserved benefits

27AD Transfer of eligible preserved benefits

- (1) In this section:

eligible preserved benefit means:

- (a) a benefit preserved under section 26I, or

- (b) any other benefit preserved under this Act on or before 9 December 2001 by or on behalf of a person who is not a contributor to, or who does not have a benefit preserved or deferred under, any other STC fund or scheme.

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

STC fund or scheme has the same meaning as it has in the *Superannuation Administration Act 1996*.

- (2) STC must on 9 December 2001, or as soon as practicable after that day, transfer the amount of any eligible preserved benefit preserved in respect of a person to FTC for crediting to the First State Superannuation Fund.
- (3) On the transfer of an eligible preserved benefit, the person in respect of whom the benefit was preserved ceases to be entitled to payment of the benefit under this Act.

[5] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

Superannuation Legislation Amendment (Miscellaneous) Act 2001

[6] Schedule 5, Part 5

Insert after Part 4:

**Part 5 Superannuation Legislation Amendment
(Miscellaneous) Act 2001**

5 Validation

Anything:

- (a) that was done or omitted to be done for the purposes of Part 4B before the date of assent to the *Superannuation Legislation Amendment (Miscellaneous) Act 2001*, and

- (b) that would have been lawful if Part 4B had been in force when the thing was done or omitted to be done, is as valid as it would have been had that Part been in force when the thing was done or omitted to be done.

Schedule 3 Amendment of Superannuation Administration Act 1996

(Section 5)

[1] Section 127 Additional State public sector superannuation schemes

Omit section 127 (1). Insert instead:

- (1) The Minister may approve the preparation of a trust deed providing for a superannuation scheme (a *trust deed scheme*) for the benefit of any one or more of the following:
 - (a) State public sector employees,
 - (b) a class or classes of State public sector employees (including employees of a local authority or a public authority),
 - (c) employees, or a class or classes of employees, or former employees, of employers or former employers under FTC or STC schemes,
 - (d) other employees, or a class or classes of other employees, approved by the Minister.
- (1A) The Minister may approve the extension of the application of a trust deed scheme to additional employees or classes of employees, being employees or a class or classes of employees of a kind referred to in subsection (1).

[2] Section 127 (3)

Omit “superannuation scheme”. Insert instead “trust deed scheme”.

[3] Section 128A Mobility between public sector schemes and EISS and LGSS

Omit “127” from section 128A (3) (a). Insert instead “128 or 128B”.

[4] Section 128B

Insert after section 128A:

128B Provisions consequent on extension of superannuation schemes to additional employees

- (1) Regulations may be made for or with respect to the following matters, in relation to the extension of the application of a superannuation scheme established under a trust deed approved by the Minister under section 127 (the *trust deed scheme*) to additional persons:
 - (a) the transfer of any such persons who are members or former members of, or contributors or former contributors to, an FTC scheme or an STC scheme from that scheme to the trust deed scheme,
 - (b) the rights of the persons (if any) to remain as members of, or contributors to, an FTC scheme or an STC scheme,
 - (c) the transfer of assets and liabilities of an FTC Scheme or an STC scheme, in respect of any such persons who are transferred members or contributors or former members or contributors, to the trust deed scheme,
 - (d) the payment of pensions and other benefits in respect of any such persons who are former members of, or former contributors to, an FTC scheme or an STC scheme under the trust deed scheme,
 - (e) the preservation or deferral of benefits of persons transferring to the trust deed scheme,
 - (f) the entitlements, rights and obligations of any such persons who are members or former members of, or contributors or former contributors to, an FTC scheme or an STC scheme.
- (2) A regulation made under this section has effect despite any provision of an Act under which an FTC scheme or an STC scheme is constituted.

[5] Schedule 3 Savings and transitional provisions

Omit “this Act and the *Superannuation (Axiom Funds Management Corporation) Act 1996*” from clause 1 (1).

Insert instead:

this Act and the following Acts:

Superannuation (Axiom Funds Management Corporation) Act 1996

Superannuation Legislation Amendment (Miscellaneous) Act 2001 (but only to the extent that it amends this Act)

[6] Schedule 3, clause 25

Insert after clause 24:

25 Extension of trust deed schemes during transitional period

- (1) The Minister may approve of the extension of a trust deed scheme under section 127 (as amended by the 2001 amending Act) to an employee or class of employees on and from a date that is earlier than the commencement of the 2001 amending Act.
- (2) Any such extension may only be in respect of an employee or class of employees referred to in section 127 (1) (as inserted by the 2001 amending Act).
- (3) A regulation made for the purposes of section 128B with respect to any such employee or class of employees may take effect from the date on which the trust deed is taken to have been extended to the employee or class of employees and may contain any necessary savings or transitional provisions.
- (4) This clause ceases to have effect 6 months after the commencement of the 2001 amending Act.

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Amendment of Superannuation Administration Act 1996

Schedule 3

(5) In this clause:

2001 amending Act means the *Superannuation Legislation Amendment (Miscellaneous) Act 2001*.

[Minister's second reading speech made in—
Legislative Assembly on 16 November 2001
Legislative Council on 4 December 2001]

BY AUTHORITY
