



New South Wales

Superannuation Legislation Amendment Act 2007 No 28

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New South Wales

Superannuation Legislation Amendment Act 2007 No 28

Act No 28, 2007

An Act to amend the *Superannuation Act 1916*, the *State Authorities Superannuation Act 1987* and the *State Authorities Non-contributory Superannuation Act 1987* with respect to the payment of compulsory employee superannuation contributions by way of salary sacrifice arrangements and the transfer of benefits to other superannuation schemes; to amend the *Superannuation Administration Act 1996* with respect to the provision of indemnities by the SAS Trustee Corporation; and for other purposes. [Assented to 4 July 2007]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Superannuation Legislation Amendment Act 2007*.

2 Commencement

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

3 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 1.

4 Amendment of State Authorities Superannuation Act 1987 No 211

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

5 Amendment of Superannuation Act 1916 No 28

The *Superannuation Act 1916* is amended as set out in Schedule 3.

6 Amendment of Superannuation Administration Act 1996 No 39

The *Superannuation Administration Act 1996* is amended as set out in Schedule 4.

7 Repeal of Act

This Act is repealed on the day following the day on which this Act commences.

**Schedule 1 Amendment of State Authorities
Non-contributory Superannuation Act
1987**

(Section 3)

[1] Section 4 Salary

Insert after section 4 (1) (a):

- (a1) if salary sacrifice contributions under an STC Act are made in respect of the employee, the cost of the contributions, and

[2] Section 4A Salary of executive officers

Insert “, other than salary sacrifice contributions,” after “superannuation” in section 4A (3).

[3] Section 4B Salary not to be affected by salary sacrifice

Omit the section.

[4] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

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Schedule 2 Amendment of State Authorities Superannuation Act 1987

(Section 4)

[1] Section 3 Definitions

Omit “section 19A (b)” from the definition of *salary sacrifice contribution* in section 3 (1).

Insert instead “section 19A (1) (b)”.

[2] Section 4 Salary

Insert after section 4 (1) (a):

- (a1) if salary sacrifice contributions are made in respect of the contributor, the amounts payable for those contributions under section 19B, and

[3] Section 4A Salary of executive officers

Insert “, other than salary sacrifice contributions,” after “superannuation” in section 4A (3).

[4] Section 4B Salary not to be affected by salary sacrifice

Omit the section.

[5] Sections 12 (3) (a1) and 19B

Omit “income” wherever occurring.

[6] Section 19A

Omit the section. Insert instead:

19A Contributions by or on behalf of employees

- (1) Contributions may be made to the Fund for crediting to a contributor’s account:
 - (a) by the contributor (*employee contributions*), and
 - (b) by the contributor’s employer in accordance with an agreement between the contributor and the employer under which the contributor is to forgo remuneration yet to be earned and the remuneration foregone is to be applied by the employer to contributions on behalf of the contributor (*salary sacrifice contributions*).

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- (2) In this Act and the regulations, a reference (however expressed) to a contribution by an employee or a contributor or a contributor-financed portion of a benefit is taken to include a reference to a salary sacrifice contribution or any part of a benefit financed by a salary sacrifice contribution.
- (3) In this Act and the regulations, a reference (however expressed) to an employer contribution or an employer-financed portion of a benefit does not include a reference to a salary sacrifice contribution or any part of a benefit financed by a salary sacrifice contribution.

[7] Section 30A Contributor who is executive officer

Omit section 30A (5) (d). Insert instead:

- (d) except as provided by subsection (6), is not entitled to be paid the benefit provided by section 43 (6) until on or after first ceasing to be an employee after making the election and unless there exist the circumstances set out in section 43 (3), and

[8] Section 30A (6)

Omit the subsection. Insert instead:

- (6) If a contributor makes an election under subsection (5) (e), STC must, as soon as practicable after the election is made, pay to the trustee or provider of the nominated fund or account the amount of the benefit provided by section 43 (6) to which the contributor is entitled having regard to this section.

[9] Schedule 6 Savings and transitional provisions

Insert at the end of clause 1 (1):

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Schedule 3 Amendment of Superannuation Act 1916

(Section 5)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Salary sacrifice contribution—see section 10U (2).

[2] Section 3AA Salary of executive officers

Insert “, other than salary sacrifice contributions,” after “superannuation” wherever occurring in section 3AA (3) and (6B).

[3] Section 3A Salary

Insert after section 3A (1) (a):

- (a1) if salary sacrifice contributions are made in respect of the contributor, the amounts payable for those contributions under section 10U (3) (a) and (b), and

[4] Section 10U

Insert after section 10T:

10U Salary sacrifice contributions

- (1) The whole or part of an amount that is required to be contributed to the Fund by an employee under this Act may be paid by salary sacrifice contributions.
- (2) A *salary sacrifice contribution* is a contribution paid in accordance with an agreement between an employee and the employee’s employer under which the employee is to forgo remuneration yet to be earned and the remuneration foregone is to be applied by the employer to the amount payable for the employee contributions under this Act.
- (3) The amount payable to the Fund for a salary sacrifice contribution to meet the requirement for an employee contribution under this Act is to comprise the following:
 - (a) the amount necessary (taking into account any contributions not made on a salary sacrifice basis) to meet the required employee contribution under this Act (the *contribution element*),
 - (b) the amount necessary to meet any tax payable under Commonwealth taxation law in respect of the amount paid under paragraph (a).

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- (4) A salary sacrifice contribution is to be paid within the same period as a contribution made by deduction from the salary or wage of a contributor under section 20.
 - (5) In this Act and the regulations, a reference (however expressed) to any of the following is taken to include a reference to the contribution element of a salary sacrifice contribution in accordance with an agreement under this section:
 - (a) a contribution by an employee or a contributor,
 - (b) the cost to an employee or a contributor of a unit of pension,
 - (c) an instalment for a unit of pension paid by an employee or a contributor.
 - (6) In this Act and the regulations, a reference (however expressed) to an employer contribution or an employer-financed portion of a benefit does not include a reference to a salary sacrifice contribution or any part of a benefit financed by a salary sacrifice contribution.
 - (7) This section has effect despite any other provision of this Act.

[5] Section 20AB Contributor who is executive officer

Omit section 20AB (5) (d). Insert instead:

- (d) except as provided by subsection (6), is not entitled to be paid the benefit provided by Division 3A of Part 4 until on or after first ceasing to be an employee after making the election and unless there exist the circumstances in which a person referred to in section 52A (1) is entitled to be paid a benefit under that Division, and

[6] Section 20AB (6)

Omit the subsection. Insert instead:

- (6) If a contributor makes an election under subsection (5) (e), STC must, as soon as practicable after the election is made, pay to the trustee or provider of the nominated fund or account the amount of the benefit provided by Division 3A of Part 4 to which the contributor is entitled under subsections (7) and (8).

[7] Section 20AB (7)

Omit “subsection (6) (a)”. Insert instead “subsection (6)”.

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Schedule 3 Amendment of Superannuation Act 1916

[8] Schedule 25 Savings and transitional provisions

Insert at the end of clause 1 (1):

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Schedule 4 **Amendment of Superannuation Administration Act 1996**

(Section 6)

[1] Section 80A

Insert after section 80:

80A STC not to indemnify officers without Ministerial approval

- (1) STC may indemnify a person who is or has been an officer of STC against a liability incurred as an officer of STC, or enter into an indemnity agreement, only with the written approval of the Minister.
- (2) For the purposes of this section, an *indemnity agreement* means an agreement or arrangement (whether made by deed or otherwise), between STC and a person who is or has been an officer of STC, that contains any one or more of the following provisions:
 - (a) a provision that requires STC to indemnify the person against any liability incurred as an officer of STC,
 - (b) a provision that requires STC to maintain an insurance policy in respect of any liability incurred by the person as an officer of STC,
 - (c) a provision that requires STC to pay money to or on behalf of the person to assist in defending or responding to any claim, investigation or other proceedings relating to the person's term of office as an officer of STC (including a provision that requires payment in advance of any liability being incurred by the person),
 - (d) a provision that confers on the person a right of access to documents held by STC, in any specified circumstances, in connection with any claim, investigation or other proceedings relating to the person's term of office as an officer of STC.
- (3) If an indemnity agreement is entered into by STC in accordance with the approval of the Minister under this section, STC may indemnify a person, as required by that agreement, without obtaining a further approval from the Minister.
- (4) The approval of the Minister under this section:
 - (a) may be given generally or may be limited to a particular case or class of cases, and

(b) is subject to such conditions (if any) as are specified in the approval.

(5) In this section:

officer of STC means the following:

- (a) a member of the STC Board,
- (b) the chief executive officer of STC.

[2] Schedule 3 Savings and transitional provisions

Insert at the end of clause 1 (1):

Superannuation Legislation Amendment Act 2007

[3] Schedule 3, Part 5

Insert after Part 4:

Part 5 Provisions consequent on the enactment of the Superannuation Legislation Amendment Act 2007

30 Indemnification agreements entered into before commencement

(1) Section 80A, as inserted by the *Superannuation Legislation Amendment Act 2007*, does not prevent STC from indemnifying a person who is or has been an officer of STC against a liability incurred as an officer of STC, without the approval of the Minister, if the indemnity is provided pursuant to a deed or other written agreement entered into by STC before the commencement of section 80A.

(2) In this clause:

officer of STC means the following:

- (a) a member of the STC Board,
- (b) the chief executive officer of STC.

[Agreement in principle speech made in Legislative Assembly on 8 June 2007

Second reading speech made in Legislative Council on 27 June 2007]

BY AUTHORITY