

[Act 1996 No 92]



New South Wales

Superannuation Legislation Amendment Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend various Acts relating to public sector superannuation in relation to the provision of death or incapacity benefits, the transfer of benefits to other superannuation schemes, benefits payable to spouses, the payment of preserved benefits to senior executives and the adjustment of reserves, as well as in relation to other matters.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the Act, except for 2 amendments, which are to be taken to have commenced on 1 January 1996 and 1 March 1996, respectively.

Clause 3 is a formal provision giving effect to the amendments to the *Coal and Oil Shale Mine Workers (Superannuation) Act 1941*, the *First State Superannuation Act 1992*, the *Local Government and Other Authorities (Superannuation) Act 1927*, the *Parliamentary Contributory Superannuation Act 1971* the *Police Association Employees (Superannuation) Act 1969*, the *Police Regulation (Superannuation) Act 1906*, the *Public Sector Executives Superannuation Act 1989*, the *State Authorities Superannuation Act 1987* and the *Superannuation Act 1916* set out in Schedule 1.

Clause 4 omits provisions relating to dependency tests for widowers from the *Police Superannuation Regulation 1995*, as a consequence of the repeal of such requirements by Schedule 1.6.

Schedule 1 Amendment of Acts

1.1 Coal and Oil Shale Mine Workers (Superannuation) Act 1941 No 45

Item [1] amends section 19AC of the Act so as to require mine owners to provide an annual certificate by an auditor certifying that a sufficient amount has been contributed in respect of each mine worker employed by the owner concerned to fulfil the requirements under the Act. It will be an offence with a maximum penalty of 5 penalty units not to do so.

Item [3] inserts proposed clause 6A into Schedule 2. The provision clarifies that a person who was entitled to, and received, a lump sum benefit under section 14L of the Act, as in force before the reconstitution of the previous superannuation schemes under the Act, is entitled to the greater of the amounts of benefit referred to in that section. **Item [2]** enables regulations to be made as to further savings and transitional provisions, if required.

1.2 First State Superannuation Act 1992 No 100

Item [1] substitutes sections 13 and 14 relating to cover for basic death or invalidity benefits. Basic death or invalidity cover will no longer be

automatic for full members whose accounts are less than an amount determined by the First State Trustee Corporation (FTC), the trustee of the First State Superannuation Scheme. Such members may elect to provide for the basic death or invalidity benefit. If a member is employed at the same time by two or more employers (as defined for the purposes of the Act), the member is covered for a basic or additional death or invalidity benefit in respect of one of those employers only. The provisions will exclude from cover for a basic invalidity or death benefit under the Act full members of the Fund who have previously received a total and permanent invalidity benefit under other State superannuation legislation. **Item [3]** makes a consequential amendment.

Item [2] substitutes section 36 relating to when benefits under the Act are payable. The new provision will enable part of a benefit under the Act in respect of a person to be paid if payment can be made without contravening Commonwealth superannuation standards for regulated superannuation funds and will allow benefits to be paid in additional circumstances other than death or ceasing to be an employee, if this will not contravene any Commonwealth superannuation standards for regulated superannuation funds. **Item [4]** makes a consequential amendment.

Item [5] enables the management costs associated with the provision of basic death or disability benefits to be paid from the Death or Invalidity Benefit Management Reserve. Currently, they are payable in the same way as other management costs, that is, from members' accounts, which may result in members who are not covered for the benefit having to pay costs for it.

Item [6] amends the section relating to the payment of management costs. The amendment prohibits the payment of management costs associated with the provision of death or disability cover from a member's account if the member is not covered. An employer may also be required to pay the management costs relating to a failure by the employer to provide information, or accurate information, required to be provided by the employer under the Act.

Item [7] enables savings and transitional regulations to be made as a consequence of the amendments made by the proposed Act.

Item [8] makes it clear that a person determined by the Board to have an entitlement to zero cover before the commencement of the amendments relating to the requirements for basic death or disability cover is taken not to have been liable to pay death or disability premiums during the relevant period.

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

The Act provides for the payment to former local government employees of benefits under the Local Government Pension Fund (which is now closed). One of the provisions of the Act provides for a gratuity paid to or in respect of a former local government employee to be deducted from the maximum superannuation benefit payable when the superannuation entitlements of the employee are determined. The amendments update old references to gratuities given under the *Local Government Act 1919* and also relieve the trustee for the scheme from a mandatory requirement to recover any excess benefits paid in the period after the repeal of the gratuity provision under the *Local Government Act 1919* and before the commencement of the amendment.

1.4 Parliamentary Contributory Superannuation Act 1971 No 53

Items [1]–[15] extend the application of provisions of the Act relating to benefits for widows and widowers of members of the Parliamentary Superannuation Scheme, as well as other provisions relating to widows and widowers, to de facto spouses of such members. **Item [19]** inserts a transitional provision to make it clear that the amendments do not enable a person to have a benefit in relation to a person who died before the amendment commenced.

Item [17] inserts proposed sections 26B and 26C. The proposed sections enable members who were formerly federal members of Parliament to pay benefits received from the Commonwealth Parliamentary Superannuation Scheme into the State Parliamentary Superannuation Fund and for any such person to receive credit for previous service as a federal member when service as a State member ends for the purpose of determining benefits under the State scheme. The provisions also provide for the determination of matters in relation to such members to be used for the purpose of calculating future benefits. **Item [16]** makes a consequential amendment.

Item [18] inserts proposed section 30B. The proposed section provides for the manner in which benefits are to be paid if a member is survived by more than one spouse.

1.5 Police Association Employees (Superannuation) Act 1969 No 33

Item [1] enables benefits paid under the Act (and not currently linked to benefits paid under the *Police Regulation (Superannuation) Act 1906*) to be preserved in the Police Superannuation Fund under the same conditions as equivalent benefits paid under that Act. The provisions also provide for the amount of benefit payable when the preserved benefit becomes payable.

Item [2] removes a provision restricting the circumstances when widowers of female former employees are entitled to a superannuation allowance under the Act. Section 3 (11D) of the Act currently imposes a dependency test on those widowers which precludes them from receiving the allowance unless the requirements of the test are satisfied.

1.6 Police Regulation (Superannuation) Act 1906 No 28

Item [1] prevents members of the senior executive service of the police service who are entitled to preserve benefits before they cease to be police employees from accessing preserved benefits while still employed as police officers. **Items [2], [3] and [4]** make consequential amendments.

Item [6] removes provisions restricting the circumstances when widowers of female former police officers are entitled to a superannuation allowance under the Act. Section 11C of the Act currently imposes a dependency test on those widowers which precludes them from receiving the allowance unless the requirements of the test are satisfied. **Item [5]** makes a consequential amendment. (Proposed section 4 makes a consequential amendment to the regulations under the Act.)

1.7 Public Sector Executives Superannuation Act 1989 No 105

Item [1] inserts a definition of *spouse* of a deceased member or deceased former member.

Item [2] inserts proposed section 58A. The proposed section provides for the manner in which benefits are to be paid if a member is survived by more than one spouse.

Item [3] inserts proposed section 58A. The proposed section prevents the application of provisions of the Act empowering FTC (the trustee) to determine applications for additional benefit cover, applications for benefits and other related matters if additional benefit cover is being arranged by another person or body by contract or arrangement with FTC. These matters will be dealt with under the contract or arrangement and generally determined by the other person or body, though the contract or arrangement may provide for the excluded provisions of the Act to apply.

1.8 State Authorities Superannuation Act 1987 No 211

Item [1] prevents contributors to the State Authorities Superannuation Scheme who are members of the senior executive service of the public service and who are entitled to preserve benefits before they cease to be employees from accessing preserved benefits while still employed in the public service. **Items [2], [3], [4] and [5]** make consequential amendments.

1.9 Superannuation Act 1916 No 28

Item [1] inserts proposed section 8B. The proposed section enables the trustee of the State Superannuation Scheme (STC) to adjust reserves within the State Superannuation Fund if an actuary (under section 10 or otherwise appointed by STC) recommends the adjustment be made. An adjustment can be made only with the Minister's consent and may be made as at a date before, on or after the commencement of the proposed section.

Item [2] prevents contributors to the State Superannuation Scheme who are members of the senior executive service of the public service and who are entitled to preserve benefits before they cease to be employees from accessing preserved benefits while still employed in the public service. **Items [3], [4], [5] and [6]** make consequential amendments.

Item [7] omits a provision under which new members could be admitted into the State Superannuation Scheme, even though the Scheme has been closed to new members since 1985. The amendment will not prevent existing or previous applications under the omitted provision from being determined and acted on (**Items [8] and [9]**).