



New South Wales

Police Superannuation Legislation Amendment Bill 2007

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Police Regulation (Superannuation) Act 1906* (the **Principal Act**) which establishes the Police Superannuation Scheme, to permit members of that scheme to have compulsory employee contributions paid on a salary sacrifice basis,
- (b) to amend the Principal Act with respect to the transfer of benefits to other schemes by police executive officers,
- (c) to amend the Principal Act to clarify the circumstances when a police officer or former police officer may be certified to be medically unfit for the purposes of payment of a superannuation allowance or gratuity,
- (d) to amend the Principal Act to enable the payment of gratuities payable to members hurt on duty in respect of loss of limbs, medical expenses and other matters other than from the fund established under the Police Superannuation Scheme,
- (e) to make other minor and consequential amendments to that Act and the *Police Association Employees (Superannuation) Act 1969*.

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.

Clause 3 is a formal provision that gives effect to the amendments to the *Police Association Employees (Superannuation) Act 1969* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Police Regulation (Superannuation) Act 1906* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after the proposed Act commences. Once commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Police Association Employees (Superannuation) Act 1969

The Schedule amends the *Police Association Employees (Superannuation) Act 1969* to enable Police Association employees, who are contributors to the Police Superannuation Scheme, to make employee contributions to that Scheme by way of salary sacrifice contributions and to make a consequential amendment.

Schedule 2 Amendment of Police Regulation (Superannuation) Act 1906

Salary sacrifice contributions

Schedule 2 [7] inserts proposed section 5AD into the Principal Act. The proposed section enables a contributor to the Police Superannuation Scheme to enter into an agreement with the Commissioner of Police to sacrifice remuneration to pay all or part of the compulsory employee contributions to that Scheme. The remuneration is foregone and the contributions are paid by the employer to the Scheme instead of being paid by the employee from his or her salary after payment of tax. The contributor is also required to pay an amount to meet the cost of any tax payable in respect of a salary sacrifice contribution. The proposed section also makes it clear that such salary sacrifice contributions are to be treated in the same way as employee contributions for the purposes of the Principal Act and that any subsequent benefit is not an employer-financed benefit. **Schedule 2 [2]** makes a consequential amendment.

Schedule 2 [1] and [4] amend the definitions of *salary of office* contained in section 1, and section 1AA, of the Principal Act to make it clear that, in calculating the superable salary of a contributor, the cost of any salary sacrifice contributions is to be included.

Incapacity benefits

Benefits are payable under the Principal Act to members or former members of the Police Superannuation Scheme who are discharged, or who have been hurt on duty, and who are certified by the SAS Trustee Corporation to be incapable, from infirmity of body or mind, of discharging the duties of the member's duties of office. **Schedule 2 [13] and [17]** amend sections 8 and 10B of the Principal Act to make it clear that such a certificate is to be given if the member or former member is incapable, from infirmity of body or mind, of exercising the functions (including powers, authorities and duties) of a police officer referred to in section 14 (1) of the *Police Act 1990*. The functions referred to in that section are those conferred or imposed on a constable by or under any law (including the common law) of the State. The new provisions also make it clear that the SAS Trustee Corporation must not base its determination on the member's or former member's actual rank or position or functions and must not determine that a member or former member has the capacity to exercise a function unless it can be personally exercised (other than by delegation).

The proposed amendments remove the requirement to consider whether the member or former member is incapable of performing the duties of their actual office as well as the current prohibition on giving a certificate unless a member or former member is incapable of discharging the duties of their own office and any other available and reasonable office.

The proposed amendments are intended to overcome the effect of the decision in *Morley v SAS Trustee Corporation* [2007] NSWIRComm 90 in which the Industrial Court held that, in considering whether an officer was capable of performing the duties of a constable as referred to in section 14 of the *Police Act 1990* and the officer's duties generally, it was appropriate to have regard to the particular rank or office of the police officer concerned. As referred to above, the proposed amendments expressly state that regard is not to be had to a police officer's or former police officer's actual rank or functions when determining incapacity.

Schedule 2 [12], [19] and [20] make amendments consequential on the amendment made by Schedule 2 [13].

Schedule 2 [16] and [20] make amendments consequential on the amendment made by Schedule 2 [17].

Schedule 2 [18] amends section 12D of the Principal Act to make it clear that a gratuity under that section (which provides for payments in respect of work-related injuries) may be paid by a person other than the trustee of the Police Superannuation Scheme and from a source other than the Police Superannuation Fund.

Other amendments

Schedule 2 [3] amends section 1 of the Principal Act to provide that notes included in that Act do not form part of that Act.

Schedule 2 [6] amends section 2I of the Principal Act to remove a reference to a function under a repealed provision of the *Police Act 1990*. **Schedule 2 [5]** makes a consequential amendment.

Schedule 2 [8] and [9] amend section 5B of the Principal Act to make it clear that the deferred benefit of a contributor who is an executive officer, and who elects not to continue to contribute to the Police Superannuation Scheme and to have his or her deferred benefit paid to the First State Superannuation Fund, another complying superannuation fund, a complying approved deposit fund or a retirement savings account, is to be paid as soon as practicable after the election is made. **Schedule 2 [10] and [11]** make consequential amendments.

Schedule 2 [14] and [15] amend section 9B of the Principal Act to substitute 2 provisions that provide for the form of an election with a single provision.

Schedule 2 [21] amends section 14L of the Principal Act to correct an incorrect reference.

Schedule 2 [22] amends Schedule 6 to the Principal Act to enable regulations containing savings and transitional provisions to be made as a consequence of the enactment of the proposed Act.

Schedule 2 [23] contains a validation of existing certificates under section 8 or 10B of the Principal Act that would be valid if given after the commencement of the amendments to those sections.



New South Wales

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New South Wales

Police Superannuation Legislation Amendment Bill 2007

No. , 2007

A Bill for

An Act to amend the *Police Association Employees (Superannuation) Act 1969* and the *Police Regulation (Superannuation) Act 1906* with respect to the payment of compulsory employee superannuation contributions by way of salary sacrifice arrangements, the payment of incapacity benefits and the transfer of benefits to other superannuation schemes; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Police Superannuation Legislation Amendment Act 2007</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6
3 Amendment of Police Association Employees (Superannuation) Act 1969 No 33	7 8
The <i>Police Association Employees (Superannuation) Act 1969</i> is amended as set out in Schedule 1.	9 10
4 Amendment of Police Regulation (Superannuation) Act 1906 No 28	11
The <i>Police Regulation (Superannuation) Act 1906</i> is amended as set out in Schedule 2.	12 13
5 Repeal of Act	14
(1) This Act is repealed on the day following the day on which this Act commences.	15 16
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	17 18

Schedule 1	Amendment of Police Association	1
	Employees (Superannuation) Act 1969	2
	(Section 3)	3
[1]	Section 2B Salary of office: executive officers	4
	Insert “, other than salary sacrifice contributions,” after “superannuation” in	5
	section 2B (3).	6
[2]	Section 3 Employees of Association transferring from employment as	7
	police officers	8
	Insert after section 3 (2AB):	9
	(2AC) Section 5AD of the <i>Police Regulation (Superannuation) Act</i>	10
	<i>1906</i> applies, with any necessary modifications, in respect of an	11
	amount required to be paid under subsection (2AA) (a) by the	12
	prescribed person in the same way as it applies to an amount	13
	required to be deducted under section 5 of that Act.	14

Schedule 2	Amendment of Police Regulation (Superannuation) Act 1906	1 2
	(Section 4)	3
[1] Section 1 Name of Act, commencement and definitions		4
	Insert after paragraph (a) of the definition of <i>salary of office</i> in section 1 (2) in relation to a member of the NSW Police Force other than an executive officer:	5 6
	(a1) if salary sacrifice contributions are made in respect of the member, the amounts payable for those contributions under section 5AD (3) (a) and (b), and	7 8 9
[2] Section 1 (2)		10
	Insert in alphabetical order:	11
	<i>salary sacrifice contribution</i> —see section 5AD (2).	12
[3] Section 1 (7)		13
	Insert after section 1 (6):	14
	(7) Notes included in this Act do not form part of this Act.	15
[4] Section 1AA Salary of office: executive officers		16
	Insert “, other than salary sacrifice contributions,” after “superannuation” in section 1AA (3).	17 18
[5] Section 2I Functions of Committee		19
	Omit “STC,” from section 2I (a). Insert instead “STC, and”.	20
[6] Section 2I (b)		21
	Omit the paragraph.	22
[7] Section 5AD		23
	Insert after section 5AC:	24
5AD Salary sacrifice contributions		25
	(1) The whole or part of an amount that is required to be deducted from the salary of office of a qualified person under section 5 may be paid by salary sacrifice contributions.	26 27 28
	(2) A <i>salary sacrifice contribution</i> is a contribution paid in accordance with an agreement between a qualified person and the Commissioner of Police under which the person is to forgo remuneration yet to be earned and the remuneration foregone is	29 30 31 32

	to be applied by the employer to the amount payable for the deductions under section 5.	1 2
(3)	The amount payable for a salary sacrifice contribution to meet the requirement for a deduction under section 5 is to include the following:	3 4 5
	(a) the amount necessary (taking into account any deductions not made on a salary sacrifice basis) to meet the required deduction under section 5 (the <i>deduction element</i>),	6 7 8
	(b) the amount necessary to meet any tax payable under Commonwealth taxation law in respect of the amount paid under paragraph (a).	9 10 11
(4)	In this Act and the regulations, a reference (however expressed) to any of the following is taken to include a reference to the deduction element of a salary sacrifice contribution in accordance with an agreement under this section:	12 13 14 15
	(a) a deduction from the salary of office for the purposes of section 5,	16 17
	(b) a contribution by a contributor.	18
(5)	In this Act and the regulations, a reference (however expressed) to an employer contribution or an employer-financed benefit does not include a reference to a salary sacrifice contribution or any part of a benefit financed by a salary sacrifice contribution.	19 20 21 22
(6)	This section has effect despite any other provision of this Act.	23
[8]	Section 5B Contributor who is executive officer	24
	Omit section 5B (5) (d). Insert instead:	25
	(d) except as provided by subsection (6), is not entitled to be paid the benefit provided by section 9B (6) or (6AA) until on or after first ceasing to be employed in the NSW Police Force after making the election and unless there exist the circumstances set out in section 9B (3), and	26 27 28 29 30
[9]	Section 5B (6)	31
	Omit the subsection. Insert instead:	32
	(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 9B (6) or (6AA) to which the contributor is entitled under subsection (7) or (7A).	33 34 35 36 37

[10] Section 5B (7) and (7A)	1
Omit “subsection (6) (a)” wherever occurring. Insert instead “subsection (6)”.	2
[11] Section 5B (7) and (7A)	3
Omit “electing to become a member of the First State Superannuation Fund” wherever occurring.	4
Insert instead “making an election under subsection (5) (e)”.	5
[12] Section 7 Superannuation allowance except where member hurt on duty	6
Omit “discharging the duties of the member’s office” from section 7 (1).	7
Insert instead “personally exercising the functions of a police officer referred to in section 14 (1) of the <i>Police Act 1990</i> ”.	8
[13] Section 8 Determination of members medically unfit	9
Omit section 8 (1)–(2A). Insert instead:	10
(1) A superannuation allowance or gratuity must not be granted or paid under section 7 or 14 to a member of the police force who:	11
(a) is discharged after the commencement of the <i>Police Regulation (Superannuation and Appeals) Amendment Act 1973</i> , and	12
(b) at the time of the member’s discharge is under the age of 60 years,	13
unless STC (having regard to medical advice on the condition and fitness for employment of the member) has certified the member to be incapable, from infirmity of body or mind, of personally exercising the functions of a police officer referred to in section 14 (1) of the <i>Police Act 1990</i> .	14
Note. Section 14 (1) of the <i>Police Act 1990</i> provides that a police officer has the functions conferred or imposed on a constable by or under any other law (including the common law) of the State.	15
(2) For the purposes of determining a member’s incapacity:	16
(a) STC is not to have regard to the member’s actual rank or position or functions (other than the functions referred to in subsection (1)), and	17
(b) the capacity to exercise a function by delegation is not taken to be a capacity to personally exercise the function.	18
[14] Section 9B Preserved benefit	19
Omit section 9B (1A).	20

[15] Section 9B (10)	1
Omit the subsection. Insert instead:	2
(10) An election under this section must be made in such form, and within such period, as may be specified by STC.	3 4
[16] Section 10 Superannuation allowance where member hurt on duty	5
Omit “discharging the duties of the member’s office” wherever occurring in the definition of <i>disabled member of the police force</i> in section 10 (1).	6 7
Insert instead “personally exercising the functions of a police officer referred to in section 14 (1) of the <i>Police Act 1990</i> ”.	8 9
[17] Section 10B Medical examination of disabled member and determination of whether hurt on duty	10 11
Omit section 10B (1)–(2BA). Insert instead:	12
(1) An annual superannuation allowance or gratuity must not be granted under section 10 to a member of the police force who is discharged unless STC (having regard to medical advice on the condition and fitness for employment of the member) has certified the member to be incapable, from a specified infirmity of body or mind, of personally exercising the functions of a police officer referred to in section 14 (1) of the <i>Police Act 1990</i> .	13 14 15 16 17 18 19
(2) An annual superannuation allowance or gratuity must not be granted under section 10 to a former member of the police force who resigned or retired unless:	20 21 22
(a) the former member notified the Commissioner of Police before the member’s resignation or retirement and within 6 months of receiving the injury which has caused the member’s infirmity of body or mind, of that injury, and	23 24 25 26
(b) if the regulations so require, the notification was in the prescribed form, and	27 28
(c) STC (having regard to medical advice on the condition and fitness for employment of the member) has certified that the former member was incapable, from that infirmity of body or mind, of personally exercising the functions of a police officer referred to in section 14 (1) of the <i>Police Act 1990</i> at the time of the member’s resignation or retirement.	29 30 31 32 33 34
(2A) For the purposes of determining a member’s or former member’s incapacity under this section:	35 36
(a) STC is not to have regard to the member’s or former member’s actual rank or position or any functions (other than the functions referred to in subsection (2) (c)) of the	37 38 39

	member or former member at the time to which the certification relates, and	1
		2
	(b) the capacity to exercise a function by delegation is not taken to be a capacity to personally exercise the function.	3
		4
[18]	Section 12D Gratuities to members hurt on duty in respect of loss of limbs, medical expenses etc	5
		6
	Insert after section 12D (4):	7
	(5) Despite any other provision of this section or any other provision of this Act, a gratuity or part of a gratuity payable under this section may, with the approval of the Minister, be paid by a person other than STC and from a source other than the Fund.	8
		9
		10
		11
[19]	Section 14 Gratuity for discharged members not hurt on duty	12
	Omit “discharging the duties of the member’s office” from section 14 (1) (b).	13
	Insert instead “personally exercising the functions of a police officer referred to in section 14 (1) of the <i>Police Act 1990</i> ”.	14
		15
[20]	Section 14I Definitions	16
	Omit “discharging the duties of his or her office” from the definition of <i>disabled member of the police force</i> .	17
		18
	Insert instead “personally exercising the functions of a police officer referred to in section 14 (1) of the <i>Police Act 1990</i> ”.	19
		20
[21]	Section 14L Payment of lump sum to personal representatives	21
	Omit “this section”. Insert instead “this Division”.	22
[22]	Schedule 6 Savings and transitional provisions	23
	Insert at the end of clause 1 (1):	24
	<i>Police Superannuation Legislation Amendment Act 2007</i>	25
[23]	Schedule 6, Part 10	26
	Insert after Part 9:	27
	Part 10 Police Superannuation Legislation Amendment Act 2007	28
		29
	30 Certification not invalid if in compliance with Act as amended	30
	A certification given by STC under section 8 (1) or 10B (2A) or (2B) is not invalid merely because of a failure to comply with this	31
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Act as in force before the commencement of this clause, if the certification was given before that commencement and would have been valid had it been given under section 8 or 10B as in force after the commencement of Schedule 2 [13] or [17] to the *Police Superannuation Legislation Amendment Act 2007*.

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