



New South Wales

# Superannuation Legislation Amendment Bill 2010

## 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 public sector superannuation Acts as follows:

- (a) to enable the SAS Trustee Corporation (*STC*) to reduce benefits under public sector defined benefit superannuation schemes if *STC* has been required to pay additional tax on superannuation contributions because the member or contributor concerned has failed to provide his or her tax file number to *STC*,
- (b) to update existing provisions enabling certain death benefits to be increased after being previously reduced to offset contributions tax liabilities,
- (c) to enable former contributors to the State Authorities Superannuation Fund to retain their benefits in that Fund after the benefits become payable,
- (d) to provide for the effect on additional benefits cover under the State Authorities Superannuation Scheme for ambulance officers who are covered for death or incapacity benefits under an award,
- (e) to make other consequential amendments and to provide for savings and transitional provisions consequent on the Bill.

## 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 a day or days to be appointed by proclamation.

### Restoration of certain death benefits

**Schedules 1 [1] and [2], 2 [1] and [2], 3 [1] and [2] and 4 [1] and [2]** amend the *Police Regulation (Superannuation) Act 1906*, the *State Authorities Non-contributory Superannuation Act 1987*, the *State Authorities Superannuation Act 1987* and the *Superannuation Act 1916* to update references to Commonwealth legislation that enables STC to claim a tax deduction if certain death benefits, previously reduced because of tax liabilities, are restored. The amendments also provide that the amount of the increase in the benefits is to be the amount determined by STC, after obtaining actuarial advice, as the amount of increase necessary to obtain the deduction.

### Reduction of benefits for additional tax on contributions

**Schedules 1 [5], 2 [3], 3 [3] and 4 [4]** amend the *Police Regulation (Superannuation) Act 1906*, the *State Authorities Non-contributory Superannuation Act 1987*, the *State Authorities Superannuation Act 1987* and the *Superannuation Act 1916* to enable STC to reduce benefits payable in respect of employees and contributors and former employees and contributors under those Acts. The benefits are to be reduced by the amount of any no-TFN tax liability incurred by STC for the employer-financed portion of the benefits (including any salary sacrifice contributions). The no-TFN tax liability is the difference between the general rate of tax payable on employer contributions by STC and the higher rate payable on employer contributions for employees if information about their tax file numbers is not provided. STC is to determine the amount after obtaining actuarial advice. The lump sum benefit payable under the *State Authorities Non-contributory Superannuation Act 1987* may also be reduced to offset the liability.

**Schedules 1 [3] and [4] and 4 [3] and [5]** make consequential amendments to those Acts.

### Retention of benefits in State Authorities Superannuation Fund

**Schedule 3 [5]** amends the *State Authorities Superannuation Act 1987* to enable a person who reaches the retirement age for the State Authorities Superannuation Scheme and who has a benefit deferred or preserved in the State Authorities Superannuation Fund to elect to retain the benefit in the Fund. Currently, any such person is required to be paid the benefit or have it paid to the First State Superannuation Fund or another complying superannuation fund.

**Schedule 3 [4], [6] and [7]** make consequential amendments.

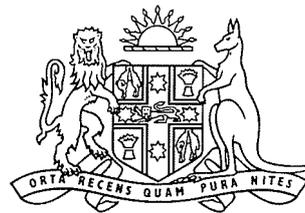
**Death or incapacity benefits for ambulance officers**

**Schedule 3 [8]** inserts proposed Part 5E (sections 46AL–46AN) into the *State Authorities Superannuation Act 1987*. The proposed Part provides for regulations to be made as to the effect on coverage for the additional benefit (payable on death before early retirement age or on total and permanent invalidity before early retirement age) of a contributor or former contributor who is covered for a death or incapacity benefit under an ambulance officers award. The regulations may be inconsistent with provisions of the Act if this is necessary for compliance with or giving effect to the ambulance officers award.

**Savings and transitional provisions**

**Schedules 1 [6], 2 [4], 3 [9] and 4 [6]** amend the *Police Regulation (Superannuation) Act 1906*, the *State Authorities Non-contributory Superannuation Act 1987*, the *State Authorities Superannuation Act 1987* and the *Superannuation Act 1916* to enable regulations to be made containing savings and transitional provisions consequent on the enactment of the proposed Act.





New South Wales

# Superannuation Legislation Amendment Bill 2010

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New South Wales

# Superannuation Legislation Amendment Bill 2010

No. , 2010

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## **A Bill for**

An Act to amend various superannuation Acts with respect to death and disability benefits for ambulance officers, deferred superannuation benefits and reductions and increases in benefits for tax purposes; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Superannuation Legislation Amendment Act 2010</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5

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**Schedule 1      Amendment of Police Regulation  
(Superannuation) Act 1906 No 28**

**[1]      Section 14AAA Restoration of death benefit previously reduced to offset  
contribution tax liabilities**

Omit “section 279D of the *Income Tax Assessment Act 1936*” from  
section 14AAA (1).

Insert instead “section 295-485 of the *Income Tax Assessment Act 1997*”.

**[2]      Section 14AAA (2)**

Omit section 14AAA (2) and (3). Insert instead:

- (2)      The amount of the increase is to be the amount determined by  
STC, after obtaining actuarial advice, as the amount of increase  
required to obtain the deduction referred to in subsection (1).

**[3]      Section 14AB Power of STC to adjust benefits to comply with certain  
standards relating to superannuation**

Insert “or 14AD” after “section 14AA” in section 14AB (10) (a).

**[4]      Section 14AC Commutation of pensions for adjustment of benefits**

Omit “determination reducing a benefit that may be taken in the form of a  
pension is made under section 14AA” from section 14AC (1).

Insert instead “benefit that may be taken in the form of a pension is reduced  
under section 14AA or 14AD”.

**[5]      Section 14AD**

Insert after section 14AC:

**14AD      Power of STC to reduce benefits for no-TFN tax**

- (1)      This section applies to a benefit if:
- (a)      a right to the benefit accrues under this Act to or in respect  
of a contributor or former contributor, and
- (b)      STC has paid or is liable to pay no-TFN tax in respect of  
employer contributions to the Fund, and
- (c)      a portion of that tax is referable to the employer-financed  
portion of that benefit, and
- (d)      the benefit is of a kind prescribed by the regulations for the  
purposes of this section.

Superannuation Legislation Amendment Bill 2010

Schedule 1 Amendment of Police Regulation (Superannuation) Act 1906 No 28

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- (2) The amount of the benefit is reduced by the amount necessary to offset STC's liability to pay no-TFN tax so far as it is referable to the employer-financed portion of that benefit. 1  
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- (3) The amount of the reduced benefit is to be determined by STC after obtaining actuarial advice. 4  
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- (4) A contributor or former contributor may elect to have his or her SANCS benefit reduced instead of the benefit to which this section applies if the SANCS benefit is payable to the contributor or former contributor. On an election being made, the SANCS benefit is reduced accordingly and the benefit to which this section applies is reduced only if it is necessary to do so to meet any shortfall in the amount of offset. 6  
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- (5) The regulations may provide for the establishment of debt accounts in respect of contributors or former contributors for the purposes of this section. 13  
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- (6) In this section: 16  
*employer contribution* includes a salary sacrifice contribution. 17  
*employer-financed portion* of a benefit includes any part of the benefit financed by a salary sacrifice contribution. 18  
*no-TFN tax* means an amount equal to the difference between the amount of: 19  
20  
21
- (a) income tax payable by STC under the *Income Tax Assessment Act 1997* of the Commonwealth on employer contributions to the Fund for a contributor if there is a failure by the contributor to provide information about his or her tax file number to STC, and 22  
23  
24  
25  
26
- (b) income tax that would be so payable if the information about the tax file number was provided. 27  
28
- SANCS benefit* means a benefit that accrues to or in respect of a contributor or former contributor who is an employee or former employee under the *State Authorities Non-contributory Superannuation Act 1987*. 29  
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- [6] **Schedule 6 Savings and transitional provisions** 33
- Insert at the end of clause 1 (1): 34
- Superannuation Legislation Amendment Act 2010* 35

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<b>Schedule 2</b>	<b>Amendment of State Authorities</b>	1
	<b>Non-contributory Superannuation Act</b>	2
	<b>1987 No 212</b>	3
<b>[1]</b>	<b>Section 26AA Restoration of death benefit previously reduced to offset contribution tax liabilities</b>	4
	Omit “section 279D of the <i>Income Tax Assessment Act 1936</i> ” from section 26AA (1).	5
	Insert instead “section 295-485 of the <i>Income Tax Assessment Act 1997</i> ”.	6
<b>[2]</b>	<b>Section 26AA (2)</b>	7
	Omit section 26AA (2) and (3). Insert instead:	8
	(2) The amount of the increase is to be the amount determined by STC, after obtaining actuarial advice, as the amount of increase required to obtain the deduction referred to in subsection (1).	9
<b>[3]</b>	<b>Section 26AB</b>	10
	Insert after section 26AA:	11
<b>26AB</b>	<b>Power of STC to reduce benefits for no-TFN tax</b>	12
	(1) This section applies to a benefit if:	13
	(a) a right to the benefit accrues under this Act to or in respect of an employee or former employee, and	14
	(b) STC has paid or is liable to pay no-TFN tax in respect of employer contributions to the Fund, and	15
	(c) a portion of that tax is referable to that benefit, and	16
	(d) the benefit is of a kind prescribed by the regulations for the purposes of this section.	17
	(2) The amount of the benefit is reduced by the amount necessary to offset STC’s liability to pay no-TFN tax so far as it is referable to that benefit.	18
	(3) The amount of the reduced benefit is to be determined by STC after obtaining actuarial advice.	19
	(4) The regulations may provide for the establishment of debt accounts in respect of employees or former employees for the purposes of this section.	20
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Superannuation Legislation Amendment Bill 2010

Schedule 2      Amendment of State Authorities Non-contributory Superannuation Act 1987  
No 212

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- (5) In this section: 1  
*no-TFN tax* means an amount equal to the difference between 2  
the amount of: 3
- (a) income tax payable by STC under the *Income Tax 4  
Assessment Act 1997* of the Commonwealth on employer 5  
contributions to the Fund for an employee if there is a 6  
failure by the employee to provide information about his or 7  
her tax file number to STC, and 8
- (b) income tax that would be so payable if the information 9  
about the tax file number was provided. 10
- Note.** An employee or former employee may also elect to have a benefit 11  
under this Act reduced, instead of having a benefit in the Police 12  
Superannuation Scheme, the State Authorities Superannuation Scheme 13  
or the State Superannuation Scheme reduced. 14

- [4] Schedule 5 Savings and transitional provisions** 15
- Insert at the end of clause 1 (1): 16
- Superannuation Legislation Amendment Act 2010* 17

<b>Schedule 3</b>	<b>Amendment of State Authorities</b>	1
	<b>Superannuation Act 1987 No 211</b>	2
<b>[1]</b>	<b>Section 45AA Restoration of death benefit previously reduced to offset contribution tax liabilities</b>	3
	Omit “section 279D of the <i>Income Tax Assessment Act 1936</i> ” from section 45AA (1).	4
	Insert instead “section 295-485 of the <i>Income Tax Assessment Act 1997</i> ”.	5
		6
<b>[2]</b>	<b>Section 45AA (2)</b>	7
	Omit section 45AA (2) and (3). Insert instead:	8
	(2) The amount of the increase is to be the amount determined by STC, after obtaining actuarial advice, as the amount of increase required to obtain the deduction referred to in subsection (1).	9
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<b>[3]</b>	<b>Section 45B</b>	13
	Insert after section 45AA:	14
	<b>45B Power of STC to reduce benefits for no-TFN tax</b>	15
	(1) This section applies to a benefit if:	16
	(a) a right to the benefit accrues under this Act to or in respect of a contributor or former contributor, and	17
		18
	(b) STC has paid or is liable to pay no-TFN tax in respect of employer contributions to the Fund, and	19
		20
	(c) a portion of that tax is referable to the employer-financed portion of that benefit, and	21
		22
	(d) the benefit is of a kind prescribed by the regulations for the purposes of this section.	23
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	(2) The amount of the benefit is reduced by the amount necessary to offset STC’s liability to pay no-TFN tax so far as it is referable to the employer-financed portion of that benefit.	25
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	(3) The amount of the reduced benefit is to be determined by STC after obtaining actuarial advice.	28
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	(4) A contributor or former contributor may elect to have his or her SANCS benefit reduced instead of the benefit to which this section applies if the SANCS benefit is payable to the contributor or former contributor. On an election being made, the SANCS benefit is reduced accordingly and the benefit to which this section applies is reduced only if it is necessary to do so to meet any shortfall in the amount of offset.	30
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(5)	The regulations may provide for the establishment of debt accounts in respect of contributors or former contributors for the purposes of this section.	1 2 3
(6)	In this section:	4
	<i>employer contribution</i> includes a salary sacrifice contribution.	5
	<i>employer-financed portion</i> of a benefit includes any part of the benefit financed by a salary sacrifice contribution.	6 7
	<i>no-TFN tax</i> means an amount equal to the difference between the amount of:	8 9
	(a) income tax payable by STC under the <i>Income Tax Assessment Act 1997</i> of the Commonwealth on employer contributions to the Fund for a contributor if there is a failure by the contributor to provide information about his or her tax file number to STC, and	10 11 12 13 14
	(b) income tax that would be so payable if the information about the tax file number was provided.	15 16
	<i>SANCS benefit</i> means a benefit that accrues to or in respect of a contributor or former contributor who is an employee or former employee under the <i>State Authorities Non-contributory Superannuation Act 1987</i> .	17 18 19 20
[4]	<b>Part 5B, heading</b>	21
	Omit “ <b>Transfer</b> ”. Insert instead “ <b>Retention or payment</b> ”.	22
[5]	<b>Section 46AE Retention or payment of eligible deferred benefits</b>	23
	Omit section 46AE (2). Insert instead:	24
	(2) An eligible person who reaches the retirement age may:	25
	(a) elect to retain the eligible deferred benefit in the Fund, or	26
	(b) elect to have the eligible deferred benefit paid or transferred to the First State Superannuation Fund or another complying superannuation fund, complying approved deposit fund or retirement savings account (the <i>nominated fund or account</i> ).	27 28 29 30 31
[6]	<b>Section 46AE (3)</b>	32
	Insert “to transfer an eligible deferred benefit” after “eligible person” where firstly occurring.	33 34
[7]	<b>Section 46AE (4)</b>	35
	Omit the subsection.	36

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<b>[8] Part 5E</b>	1
Insert after Part 5D:	2
<b>Part 5E Death or incapacity benefits for ambulance officers</b>	3
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<b>46AL Definitions</b>	5
In this Part:	6
<i>ambulance officer</i> means a member of the NSW Health Service who is an officer within the meaning of the ambulance officers award.	7
<i>ambulance officers award</i> means a State industrial instrument prescribed by the regulations for the purposes of this definition.	8
<i>amending Act</i> means the <i>Superannuation Legislation Amendment Act 2010</i> .	9
<i>death or incapacity benefit</i> means a benefit payable to or in respect of an ambulance officer under an ambulance officers award (whether provided for in that award or by or under any Act, law or instrument) if:	10
(a) the ambulance officer dies, or	11
(b) the ambulance officer suffers total and permanent incapacity or partial and permanent incapacity.	12
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<b>46AM Application of Part</b>	21
This Part has effect despite any other provision of this Act or the regulations.	22
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<b>46AN Provision to be made with respect to death or incapacity benefits for ambulance officers</b>	24
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(1) The regulations may make provision for or with respect to the following:	26
(a) the effect on coverage under this Act for an additional benefit, and liability to pay the additional benefit levy, of a contributor or former contributor who is or was an ambulance officer and who is covered for a death or incapacity benefit,	27
(b) preventing the repayment of any additional benefit levy paid by a contributor or former contributor who is or was an ambulance officer,	28
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Superannuation Legislation Amendment Bill 2010

Schedule 3 Amendment of State Authorities Superannuation Act 1987 No 211

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(c)	any other matter that is necessary or convenient for the purposes of complying with or giving effect to an ambulance officers award or this Part.	1 2 3
(2)	Any such regulations may take effect from the date of commencement of this Part, as inserted by the amending Act, or the date on which an ambulance officers award first applies to an ambulance officer (whichever is earlier).	4 5 6 7
(3)	Without limiting section 46AM, regulations may be made under this Part that are inconsistent with Part 3, 4, 5 or 6 of this Act, or any regulations made under those Parts, but only to the extent that the inconsistency with any of those provisions is necessary for the purpose of compliance with or giving effect to an ambulance officers award.	8 9 10 11 12 13
<b>[9]</b>	<b>Schedule 6 Savings and transitional provisions</b>	14
	Insert at the end of clause 1 (1):	15
	<i>Superannuation Legislation Amendment Act 2010</i>	16

<b>Schedule 4</b>	<b>Amendment of Superannuation Act 1916</b>	1
	<b>No 28</b>	2
<b>[1]</b>	<b>Section 61RAA Restoration of death benefit previously reduced to offset contribution tax liabilities</b>	3
	Omit “section 279D of the <i>Income Tax Assessment Act 1936</i> ” from section 61RAA (1).	5
	Insert instead “section 295-485 of the <i>Income Tax Assessment Act 1997</i> ”.	7
<b>[2]</b>	<b>Section 61RAA (2)</b>	8
	Omit section 61RAA (2) and (3). Insert instead:	9
	(2) The amount of the increase is to be the amount determined by STC, after obtaining actuarial advice, as the amount of increase required to obtain the deduction referred to in subsection (1).	10
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<b>[3]</b>	<b>Section 61RB Power of STC to adjust benefits to comply with certain Commonwealth standards relating to superannuation</b>	13
	Insert “or 61RC” after “section 61RA” in section 61RB (10) (a).	15
<b>[4]</b>	<b>Section 61RC</b>	16
	Insert after section 61RB:	17
<b>61RC</b>	<b>Power of STC to reduce benefits for no-TFN tax</b>	18
(1)	This section applies to a benefit if:	19
(a)	a right to the benefit accrues under this Act to or in respect of a contributor or former contributor, and	20
		21
(b)	STC has paid or is liable to pay no-TFN tax in respect of employer contributions to the Fund, and	22
		23
(c)	a portion of that tax is referable to the employer-financed portion of that benefit, and	24
		25
(d)	the benefit is of a kind prescribed by the regulations for the purposes of this section.	26
		27
(2)	The amount of the benefit is reduced by the amount necessary to offset STC’s liability to pay no-TFN tax so far as it is referable to the employer-financed portion of that benefit.	28
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(3)	The amount of the reduced benefit is to be determined by STC after obtaining actuarial advice.	31
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(4)	A contributor or former contributor may elect to have his or her SANCS benefit reduced instead of the benefit to which this section applies if the SANCS benefit is payable to the contributor	33
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or former contributor. On an election being made, the SANCS benefit is reduced accordingly and the benefit to which this section applies is reduced only if it is necessary to do so to meet any shortfall in the amount of offset.	1 2 3 4
(5) The regulations may provide for the establishment of debt accounts in respect of contributors or former contributors for the purposes of this section.	5 6 7
(6) In this section:	8
<i>employer contribution</i> includes a salary sacrifice contribution.	9
<i>employer-financed portion</i> of a benefit includes any part of the benefit financed by a salary sacrifice contribution.	10 11
<i>no-TFN tax</i> means an amount equal to the difference between the amount of:	12 13
(a) income tax payable by STC under the <i>Income Tax Assessment Act 1997</i> of the Commonwealth on employer contributions to the Fund for a contributor if there is a failure by the contributor to provide information about his or her tax file number to STC, and	14 15 16 17 18
(b) income tax that would be so payable if the information about the tax file number was provided.	19 20
<i>SANCS benefit</i> means a benefit that accrues to or in respect of a contributor or former contributor who is an employee or former employee under the <i>State Authorities Non-contributory Superannuation Act 1987</i> .	21 22 23 24
<b>[5] Section 61RE Commutation of pensions for adjustment of benefits</b>	25
Omit “determination reducing a benefit that may be taken in the form of a pension is made under section 61RA” from section 61RE (1).	26 27
Insert instead “benefit that may be taken in the form of a pension is reduced under section 61RA or 61RC”.	28 29

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**[6] Schedule 25 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Superannuation Legislation Amendment Act 2010*

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