

[Act 1997 No 149]



New South Wales

Superannuation Legislation Further Amendment Bill 1997

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 regulating public sector superannuation schemes for the following purposes:

- (a) to enable the schemes to conform with Commonwealth requirements applicable to private sector schemes that relate to the following matters:
 - (i) to benefits being able to be accessed at age 65 whether or not the contributor concerned has retired and to mandatory payments at age 70,
 - (ii) to contributions or continuing membership by persons who have been on leave for up to 7 years for the purposes of raising children,

* Amended in committee—see table at end of volume.

- (iii) to the payment of preserved benefits on the grounds of severe financial hardship or on compassionate grounds,
- (iv) to the acceptance of contributions on behalf of spouses of members,
- (b) to enable provision to be made for payment of the Commonwealth surcharge on superannuation contributions by contributors to those superannuation schemes that are defined benefit schemes (payment may be made without further amendment of the other schemes), and the subsequent adjustment of benefits under those schemes,
- (c) to enable employers to be removed from certain schemes, or remain subject to conditions, where other superannuation arrangements have been provided,
- (d) to make various amendments to the First State Superannuation Scheme, established under the *First State Superannuation Act 1992*, to provide for payment of pre-tax employer contributions for superannuation, a new temporary incapacity benefit and the adjustment of accounts and reserves in the First State Superannuation Fund,
- (e) to make other minor amendments.

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 assent and for amendments relating to payment of pre-tax contributions to be commenced on a day to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the Acts set out in Schedule 1.

Schedule 1 Amendment of Acts

Compliance with Commonwealth requirements

The *Superannuation Industry (Supervision) Act 1993* of the Commonwealth and the regulations under that Act set out the requirements and standards to be met by superannuation funds in order to gain complying status for taxation purposes. Under an agreement between the Heads of Government, New South Wales has agreed to apply similar requirements and standards to its

public sector superannuation schemes. In return the Commonwealth has exempted the New South Wales public sector superannuation schemes from the operation of its Act. The amendments relating to benefits at age 65, contributions on behalf of spouses, benefits on the ground of severe financial hardship or on compassionate grounds and contributions while on leave all arise out of Commonwealth requirements for regulated superannuation funds.

Benefits at age 65 and 70

The effect of the amendments is to enable, but not to require, a benefit to be taken at age 65 even though a contributor has not retired. The amendments also ensure that benefits must be paid at age 70, that contributions (other than compulsory employer contributions) may not be made after that age and that benefits may not accrue after that age. The following Acts are amended:

- (a) the *Parliamentary Contributory Superannuation Act 1971* to enable a benefit to be taken at or after age 65 and to require a benefit to be paid at age 70. A benefit taken at age 65 may be preserved in the Parliamentary Contributory Superannuation Fund. A person paid a benefit under the proposed section is not entitled to any further benefit under the Act or to contribute to the Fund, except in relation to certain compulsory employer contributions. (Schedule 1.2 [9] and [14])
- (b) the *Police Regulation (Superannuation) Act 1906* to enable a benefit to be taken at or after age 65 rather than making the benefit automatically payable at that age and to require a benefit to be paid at age 70. A benefit taken at age 65 may be preserved in the Police Superannuation Fund. A person paid a benefit is not entitled to any further benefit under the Act or to contribute to the Fund. The amendments also make it clear that the upper age limit for qualification to be a contributor is 70. (Schedule 1.3 [4], [10]–[12])
- (c) the *Public Sector Executives Superannuation Act 1989* to enable a benefit to be taken at or after age 65 and to require a benefit to be paid at age 70. A benefit taken at age 65 may be preserved in the Public Sector Executives Superannuation Fund. The amendments also make it clear that the upper age limit for qualification to be a contributor is 70. (Schedule 1.4 [7]–[10], [[12]–[14] and [16])
- (d) the *State Authorities Non-contributory Superannuation Act 1987* to enable a benefit to be taken at or after age 65 rather than making the benefit automatically payable at that age. (Schedule 1.5 [1], [3] and [4])

- (e) the *State Authorities Superannuation Act 1987* to enable a benefit to be taken at or after age 65 rather than making the benefit automatically payable at that age and to require a benefit to be paid at age 70. A benefit taken at age 65 may be preserved in the State Authorities Superannuation Fund. A person paid a benefit at or after age 65 is not entitled to any further benefit under the Act or to contribute to the Fund. The amendments also make it clear that the upper age limit for qualification to be a contributor is 70. Preserved benefits must also be paid to persons aged 70 even if they are working between 10 and 30 hours a week. (Schedule 1.6 [4], [5], [7]–[11])
- (f) the *Superannuation Act 1916* to enable a benefit to be taken at or after age 65 rather than making the benefit automatically payable at that age and to require a benefit (including preserved benefits) to be paid at age 70. A benefit taken at age 65 may be preserved in the State Superannuation Fund. A person paid a benefit at or after age 65 is not entitled to any further benefit under the Act or to contribute to the Fund. The amendments also make it clear that the upper age limit for qualification to be a contributor is 70. Preserved benefits must also be paid to persons aged 70 even if they are working between 10 and 30 hours a week. (Schedule 1.7 [4], [7]–[11])

Contributions by or on behalf of spouses

Under Commonwealth legislation contributions may be made on behalf of spouses of contributors to superannuation funds. Amendments to the *First State Superannuation Act 1992* will permit contributions to be made by or on behalf of spouses of employees who are eligible to be members of the First State Superannuation Scheme or on behalf of spouses of members of the Parliamentary Contributory Superannuation Scheme established by the *Parliamentary Contributory Superannuation Act 1971*. Spouses on whose behalf contributions are made are to be optional members of the scheme for that purpose. Benefits may be paid and preserved in the First State Superannuation Fund in the same way as they may be for members who are employees. Consequential amendments are also made to the Act. (Schedule 1.1 [1], [2], [5]–[9], [11], [25], [28]–[30], [32], [47] and [48])

Benefits on hardship and compassionate grounds

Under the Commonwealth legislation, members or former members of regulated superannuation funds are eligible for benefits under certain circumstances on the grounds of severe financial hardship or on

compassionate grounds even though they are not otherwise eligible for any benefit or to access any preserved benefit. Provision for these benefits is to be inserted in some of the State public sector superannuation schemes in cases where benefits have been preserved. In all cases, the amount of benefit that can be paid is limited and benefits subsequently payable are to be adjusted to take into account any such benefit previously paid. Specific provision is not made for the benefit in the *First State Superannuation Act 1992*, the *Public Sector Executives Superannuation Act 1989* or the *State Authorities Non-contributory Superannuation Act 1987* as the benefits are available under the general provision applying to benefits because they are benefits payable in relation to a regulated superannuation fund under the relevant Commonwealth legislation. The following Acts are amended:

- (a) the *First State Superannuation Act 1992* to confer certain powers to determine matters where a benefit is applied for on compassionate grounds and to limit the amount and kind of benefit that may be paid on those grounds or on financial hardship grounds. (Schedule 1.1 [26])
- (b) the *Parliamentary Contributory Superannuation Act 1971* to enable the benefits to be paid by the trustees in the form permitted for regulated superannuation funds under the Commonwealth legislation. A consequential amendment is also made to ensure that subsequent benefits may be adjusted to take account of earlier payments on hardship or compassionate grounds. (Schedule 1.2 [15])
- (c) the *Public Sector Executives Superannuation Act 1989* to confer certain powers to determine matters where a benefit is applied for on compassionate grounds and to limit the amount of benefit that may be paid on those grounds or on financial hardship grounds. (Schedule 1.4 [[14] and [15]])
- (d) the *State Authorities Non-contributory Superannuation Act 1987* to confer certain powers to determine matters where a benefit is applied for on compassionate grounds and to limit the amount and kind of benefit that may be paid on those grounds or on financial hardship grounds. (Schedule 1.5 [1] and [2])
- (e) the *State Authorities Superannuation Act 1987* to enable the benefits to be paid by the trustee (the SAS Trustee Corporation) in the form permitted for regulated superannuation funds under the Commonwealth legislation. Consequential amendments are also made to ensure that subsequent benefits may be adjusted to take account of earlier payments on hardship or compassionate grounds. (Schedule 1.6 [12]–[14])

Contributions and membership while on leave

Under the Commonwealth requirements for regulated superannuation funds, a person who has been on leave for child raising purposes for up to 7 years may continue to be a member and to contribute to the superannuation fund and accrue benefits. The amendments will amend various public sector superannuation schemes to enable such persons to retain their membership of the schemes and amend some schemes to enable contributions to be made. The following Acts are amended:

- (a) the *Police Regulation (Superannuation) Act 1906* to enable members on leave without pay for the purposes of raising children to retain membership of the superannuation scheme for up to 7 years even though no contributions are being made to the Police Superannuation Fund. Adjustments will be made to the period of service for the purpose of calculating benefits. (Schedule 1.3 [5])
- (b) the *Public Sector Executives Superannuation Act 1989* to enable members on leave without pay for the purposes of raising children to retain membership of the superannuation scheme for up to 7 years and to contribute while on leave. (Schedule 1.4 [113])
- (c) the *State Authorities Superannuation Act 1987* to enable members on leave without pay for the purposes of raising children to retain membership of the superannuation scheme for up to 7 years even though no contributions are being made to the State Authorities Superannuation Fund. Adjustments will be made to the period of service for the purpose of calculating benefits. (Schedule 1.6 [6])
- (d) the *Superannuation Act 1916* to enable members on leave without pay for the purposes of raising children to retain membership of the superannuation scheme for up to 7 years even though no contributions are being made to the State Superannuation Fund. Adjustments will be made to take into account the period during which contributions are not paid for the purpose of calculating benefits. (Schedule 1.7 [5])

Payment for superannuation contributions surcharge

Under the *Superannuation Contributions Tax Imposition Act 1997*, and associated legislation, of the Commonwealth, a surcharge is payable in respect of employer contributions to superannuation. The tax is collected and assessed differently, depending on whether the superannuation scheme concerned is an accumulation type scheme (where members receive as a benefit the contributions made to the relevant fund by them or on their

behalf) or a defined benefits type scheme (where members receive a benefit calculated using a formula based on factors such as salary or length of service irrespective of the contributions or earning rates of a fund). In the case of a defined benefits scheme the surcharge is imposed as a debt payable by the fund manager when the benefit is paid to the fund member. The amendments to the various public sector superannuation schemes will enable benefits to be reduced to take account of the particular surcharge debt (including any debt related to the basic benefit under the State Authorities Non-contributory Superannuation Scheme) and to enable fund members to make contributions towards the debt. Any excess payments are to be refunded to members with interest at a rate determined by the relevant trustee. The following Acts are amended:

- (a) the *Parliamentary Contributory Superannuation Act 1971* to enable the trustees of the Parliamentary Contributory Superannuation Fund to reduce benefits payable to a member or former member where a debt is owed in respect of the member or former member for the superannuation contributions surcharge and to enable members or former members to make single or periodic payments in advance to reduce the liability for the surcharge. Any excess payments made must be repaid with interest to the member or former member. Consequential amendments are also made. (Schedule 1.2 [2]–[8], [[10]–[12] and [16])
- (b) the *Police Regulation (Superannuation) Act 1906* to enable the SAS Trustee Corporation to reduce benefits payable to a contributor or former contributor where a debt is owed in respect of the contributor or former contributor for the superannuation contributions surcharge and to enable contributors or former contributors to make single or periodic payments in advance to reduce the liability for the surcharge. Any excess payments made must be repaid with interest to the contributor or former contributor. Consequential amendments are also made. (Schedule 1.3 [1]–[3], [7], [8] and [13])
- (c) the *Public Sector Executives Superannuation Act 1989* to enable the FSS Trustee Corporation to deduct liabilities for superannuation contributions surcharge from members' accounts. (Schedule 1.4 [1]–[6])
- (d) the *State Authorities Superannuation Act 1987* to enable the SAS Trustee Corporation to reduce benefits payable to a contributor or former contributor where a debt is owed in respect of the contributor or former contributor for the superannuation contributions surcharge and to enable contributors or former contributors to make single or periodic

payments in advance to reduce the liability for the surcharge. Any excess payments made must be repaid with interest to the contributor or former contributor. Consequential amendments are also made. (Schedule 1.6 [1]–[3], [15], [16] and [19])

- (e) the *Superannuation Act 1916* to enable the SAS Trustee Corporation to reduce benefits payable to a contributor or former contributor where a debt is owed in respect of the contributor or former contributor for the superannuation contributions surcharge and to enable Contributors or former contributors to make single or periodic payments in advance to reduce the liability for the surcharge. Any excess payments made must be repaid with interest to the contributor or former contributor. Consequential amendments are also made. (Schedule 1.7 [1]–[3], [12], [13] and [15])

Removal of employers from schemes

The amendments enable the Governor-in-Council to make orders removing employers from the operation of the State Authorities Superannuation Scheme under the *State Authorities Superannuation Act 1987* and the *State Superannuation Scheme under the Superannuation Act 1916* when employers no longer employ any employees who are contributors to the scheme concerned. This may occur where alternative superannuation schemes are provided for employees by employers or where all contributing employees are transferred to other organisations. An order may also be made inserting limitations on existing employers but such an order may not operate to the prejudice of an existing contributor. (Schedule 1.6 [17] and [18] and 1.7 [16] and [17])

Additional amendments to the First State Superannuation Scheme

The *First State Superannuation Act 1992* is also amended for the following purposes:

- (a) to make it clear that employees who are eligible to be members of schemes established by trust deed under the *Superannuation Administration Act 1996* are not automatically members of the First State Superannuation Scheme but must make an election to become members. If no election is made, they will remain members of the relevant trust deed scheme. Consequential amendments are also made. (Schedule 1.1 [3], [46] and [47])

- (b) to enable employees to make pre-tax employer contributions to the First State Superannuation Fund. (Schedule 1.1 [4])
- (c) to provide for a new temporary incapacity benefit for persons who are members under the First State Superannuation Scheme. Premiums will be paid and cover provided in the same way as for the additional death or disability benefit. Consequential amendments are also made. (Schedule 1.1 [10], [12]–[24], [27], [31], [33], [35]–[37], [39], [41]–[43] and [48])
- (d) to enable the FSS Trustee Corporation to adjust accounts and reserves in the First State Superannuation Fund to correct mistakes and to reflect changes in circumstances and in the law and to deduct amounts of superannuation contributions surcharge. (Schedule 1.1 [34], [38] and [40])

Other amendments

Amendments are made to the *Police (Regulation) Superannuation Act 1906* to enable the commutation of part of a pension as a way of paying to the SAS Trustee Corporation an amount due in respect of the reduction of a benefit by the Corporation under the Act because of tax or other liabilities. Commutation is to be on a basis determined by the Corporation. (Schedule 1.3 [9]) Amendments to the same effect are made to enable the Corporation to commute part of a pension under the Superannuation Act 1916 (Schedule 1.7 [14]) and the *Parliamentary Contributory Superannuation Act 1971* (Schedule 1.2 [15]).

Amendments are made to the *State Authorities Superannuation Act 1987* (Schedule 1.6 [20]) and the Superannuation Act 1916 (Schedule 1.7 [6]) to enable employees whose employers make additional contributions on a pre-tax basis to other superannuation schemes on their behalf to remain in the statutory schemes.

Amendments to repeal unnecessary provisions, and to remove a reference to a repealed provision, are also made to the *Parliamentary Contributory Superannuation Act 1971* (Schedule 1.2 [1] and [13]).

Savings and transitional provisions

Provision is made for savings and transitional regulations to be made as a consequence of the proposed Act. Savings and transitional provisions are made with respect to the application of amendments to persons currently on leave without pay and adjustments of accounts in the First State Superannuation Scheme are validated. (Schedule 1.1 [44] and [45], 1.2 [17] and [18], 1.3 [14] and [15], 1.4 [17] and [18], 1.5 [5], 1.6 [21] and [22] and 1.7 [18] and [19])