

# State Authorities Non-contributory Superannuation Act 1987 No 212

[1987-212]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Freight Rail Corporation \(Sale\) Act 2001 No 35](#), Sch 3.3 (not commenced)
  - [Coal Industry Act 2001 No 107](#) (not commenced)
- **See also**
  - [Landcom Corporation Bill 2001](#)

### Authorisation

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# State Authorities Non-contributory Superannuation Act 1987 No 212



New South Wales

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# State Authorities Non-contributory Superannuation Act 1987 No 212



New South Wales

An Act to establish a non-contributory superannuation scheme for certain employees in the public sector; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *State Authorities Non-contributory Superannuation Act 1987*.

### 2 Commencement

This Act shall commence on 1 April 1988.

### 3 Definitions

(1) In this Act:

**appointed day** means 1 April 1988.

**approved deposit fund** means an approved deposit fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

**attributed salary**, in relation to an employee at any time, means:

- (a) where the employee is a full-time employee at that time—the salary of the employee at that time, or
- (b) where the employee is a part-time employee at that time—the salary that would be payable to the employee at that time if employed as a full-time employee.

**basic benefit** means the basic benefit referred to in section 22.

**benefit** means a benefit payable under this Act.

**chief executive officer** means:

- (a) a chief executive officer within the meaning of the *Public Sector Management Act*

1988, or

- (b) an employee (not being an officer referred to in paragraph (a)) of an employer specified in Schedule 1, being an employee who holds an office designated by the Director-General of the Premier's Department as the office of a chief executive officer.

**Commonwealth taxation law** means a law of the Commonwealth that provides for the levying and collection of a tax.

**contribution period** means a named month or such other period as may be prescribed in relation to any class of persons or circumstances.

**de facto partner** of a deceased employee or deceased former employee means, if the employee or former employee was, at the time of his or her death, in a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with a person, that person.

**deferred annuity** means a deferred annuity within the meaning of Part 5 of the *Superannuation Industry (Supervision) Regulations* of the Commonwealth.

**employee** means a person who is employed by an employer, but does not include an excluded person referred to in Schedule 2.

**employer** means:

- (a) the Crown, the Government or a Minister of the Crown, or
- (b) an authority specified in Schedule 1,

and a reference to employment with an employer includes a reference to employment with successive employers.

**executive officer** means an employee who is:

- (a) a chief executive officer, or
- (b) a senior executive officer, or
- (c) a police executive officer, or
- (d) an office holder nominated for the purposes of section 11A of the *Statutory and Other Offices Remuneration Act 1975*.
- (e) (Repealed)

**exit date**, in relation to an employee, means the day on which the employee ceases employment with an employer, that cessation of employment being:

- (a) the only such cessation, or

(b) where there has been more than one such cessation of employment of the employee—the later or latest of those cessations of employment.

**First State Superannuation Fund** means the First State Superannuation Fund established under the [First State Superannuation Act 1992](#).

**full-time employee** means an employee whose salary ratio is 1.

**irregular employee** is an employee who is neither a full-time employee nor a part-time employee, and includes an employee who is deemed by section 7 to be an irregular employee.

**part-time employee** means an employee whose salary ratio is less than 1 but at least 0.1.

**police executive officer** means an executive officer within the meaning of Part 5 of the [Police Service Act 1990](#).

**relevant Commonwealth superannuation standard** means a standard that would be applicable under the [Superannuation Industry \(Supervision\) Act 1993](#) of the Commonwealth if the Fund was a regulated superannuation fund under that Act.

**resign**, in relation to an employee, means cease to be employed by an employer before reaching the age of 55 years, otherwise than on account of:

(a) death, or

(b) invalidity, where STC is satisfied:

- (i) that the ceasing to be employed was due, directly or indirectly to the permanent physical or mental incapacity of the employee (not caused by any act or default of the employee intended to produce that incapacity), and
- (ii) that the employee is permanently unable, by reason of that incapacity, to be engaged in, or to be employed in, any remunerative occupation in which, in the opinion of STC, it would otherwise be reasonable to expect the contributor to engage.

**retire** means cease (otherwise than by reason of death) in any manner to be employed by an employer on or after reaching the age of 55 years.

**retrenchment**, in relation to an employee, means the termination of the employment of the employee with an employer where the employment is expressed by the employer to be:

(a) compulsorily terminated by the employer on the ground that:

- (i) the employer no longer requires the employee's services and, on termination of the employee's employment, does not propose to fill the employee's



position, or

- (ii) the work that the employee was engaged to perform has been completed, or
  - (iii) the amount of work that the employer requires to be performed has diminished and, due to that fact, it has become necessary to reduce the number of employees employed by the employer, or
- (b) terminated as a result of the acceptance by the employee of an offer by the employer of terms of retrenchment made on a ground specified in paragraph (a).

**salary**, in relation to an employee, means salary of the employee, determined in accordance with section 4 or 4A and expressed as an annual rate.

**salary ratio**, in relation to an employee at any time during a contribution period, means the number ascertained by dividing the salary of the employee at the commencement of that contribution period by the attributed salary of the employee at that commencement.

**senior executive officer** means:

- (a) a senior executive officer within the meaning of the [Public Sector Management Act 1988](#), or
- (b) an employee (not being an officer referred to in paragraph (a)) of an authority specified in Schedule 1, being an employee who holds an office designated by the Director-General of the Premier's Department as the office of a senior executive officer.

**spouse** of a deceased employee or deceased former employee means the widow or widower, as the case may be, of the employee or former employee.

**STC** means the SAS Trustee Corporation continued under the [Superannuation Administration Act 1996](#).

**superannuation fund** has the same meaning as it has in the [Superannuation Industry \(Supervision\) Act 1993](#) of the Commonwealth.

**superannuation scheme** means a scheme, fund or arrangement (whether or not established by an Act) under which any superannuation or retirement benefits are provided by an employer.

- (2) A reference in this Act to an authority where used in or in connection with the definition of **employer** is a reference to an authority, organisation, corporation, person or other entity.
- (3) If the inclusion of an employer in Schedule 1 is expressed to be limited in any respect, this Act has effect in relation to the employer subject to the limitation.

#### 4 Salary

- (1) For the purposes of this Act, **salary**, in relation to an employee (other than an executive officer) means the sum of:
- (a) the remuneration, salary or wages payable in money to the employee in the employee's capacity as an employee, as reported to STC from time to time by the employee's employer, including:
    - (i) a loading in respect of any shift allowance, as determined in accordance with the regulations, and
    - (ii) other allowances payable in money that are of a kind included within the value of leave paid on termination of employment, and
    - (iii) weekly workers compensation paid to the employee as from a date determined by STC under subsection (1B),but not including the excluded amounts or allowances referred to in subsection (2), and
  - (b) if approved employment benefits are provided to the employee, the cost of providing the approved employment benefits, as determined by the Minister, with the concurrence of the Treasurer.
- (1A) The weekly workers compensation to be treated as salary for the purposes of this Act does not include any amount by which the aggregate of:
- (a) the weekly workers compensation paid to an injured employee, and
  - (b) the salary actually paid to the employee while partially incapacitated,
- exceeds the salary that the employee would probably have been earning but for the injury (assuming the employee had continued to be employed in the same or some comparable employment).
- (1B) STC may determine a date as from which weekly workers compensation paid to an employee is to be treated as salary for the purposes of this Act, being a date not earlier than:
- (a) 1 April 1988 (the date of commencement of this Act), or
  - (b) if the liability to pay weekly workers compensation in respect of the employee first arose on a date later than 1 April 1988—that later date.
- (2) The excluded amounts or allowances are:
- (a) an amount paid for overtime or as a bonus, or an allowance instead of overtime,
  - (b) except to the extent determined in accordance with the regulations, as referred to

- in subsection (1) (a)—an amount paid as shift allowance,
- (c) except to the extent that this section otherwise provides—a relieving allowance,
  - (d) an expense allowance or an allowance for travelling, subsistence or other expenses,
  - (e) an equipment allowance,
  - (f) an amount paid for rent or as a residence, housing or quarters allowance, and
  - (g) an amount of weekly workers compensation excluded by subsection (1A).
- (3) If an employee's employer, or a person authorised to do so on behalf of the employer, certifies in writing to STC that a relieving allowance to be, or being, paid to the employee in the employee's capacity as an employee is likely to be paid for a continuous period of 1 year (whether or not the period is partly before the date of the certificate), the allowance is, as from:
- (a) the date on which the certificate is lodged with STC, or
  - (b) the date from which the allowance becomes payable,
- whichever is the later, salary for the purposes of this Act.
- (4) If a relieving allowance has been paid to an employee in the employee's capacity as an employee for a continuous period of 1 year that ends after the appointed day and, during that period, the allowance has not been treated as part of the employee's salary in accordance with subsection (3), the allowance shall, as from the expiration of that period of 1 year, be treated as part of the employee's salary while its payment to the employee continues.
- (4A) For the purposes of subsection (4), a reference to a continuous period of 1 year in relation to a contributor who is employed in an educational institution is to be read as a reference to the academic year of the institution.
- (5) If an employee is on secondment to another employer, the salary of the employee for the purposes of this Act is the salary paid or payable to the employee by the other employer.
- (6) The Governor may, by order in writing, declare unconditionally, or subject to conditions, that subsection (7) applies:
- (a) to an employee specified in the order who is on secondment but not to another employer, and
  - (b) generally during the period of that secondment, or during such period as is specified in the order, being, in either case, a period commencing before, on or

after the date of the order.

(7) During the period in which this subsection is declared pursuant to subsection (6) to apply to an employee on secondment, the employee's salary shall, for the purposes of this Act, be that paid or payable in respect of the employment to which he or she is seconded.

(8) In this section:

**academic year**, in relation to an educational institution, means a continuous period commencing on the first day of any academic term of the institution and ending on the day before the first day of the corresponding academic term in the following calendar year.

**approved employment benefit** means a benefit provided to an employee at the cost of the employee's employer (being a benefit of a private nature) that is approved by the Minister, with the concurrence of the Treasurer, for the purposes of this section in relation to the employee or a class of employees of which the employee is a member.

**shift allowance** means an allowance paid to an employee in respect of shift work performed by the employee, and includes amounts paid as penalty rates.

**weekly workers compensation**, in relation to an employee, means weekly payments of compensation under the [Workers Compensation Act 1987](#) (or the provisions of the [Workers Compensation Act 1926](#) as applied by that Act) payable to the employee because the employee is partially incapacitated for work through injury.

#### 4A Salary of executive officers

(1) **Definition of salary** For the purposes of this Act, the **salary** of an executive officer is the salary as last nominated or changed in accordance with this section.

(2) **Nomination of salary on initial and subsequent appointments** An amount of salary for the purposes of this Act must be nominated to an executive officer's employer by the officer, on, or as soon as practicable after, being appointed as an executive officer. An amount may also be nominated to the employer by the officer on, or as soon as practicable after, being reappointed, or appointed to another position, as an executive officer.

(3) **Amount of salary** The amount nominated is to be not less than the monetary remuneration payable to the executive officer at the date of nomination and not more than the total value of the remuneration package paid to the officer (less the cost of providing employer's contributions to superannuation and any performance-related incentive payment).

(4) **Failure to nominate salary** If an executive officer fails to nominate an amount of salary

within 28 days of first being appointed as an executive officer or within such further period as STC may allow, the officer is taken to have nominated an amount of salary that is equal to the monetary remuneration payable to the officer at the end of the applicable period.

- (5) **Reduction in nominated salary** An executive officer may, from time to time, by notice to the officer's employer elect to reduce the amount of salary nominated under this section, but not so that the amount is less than the monetary remuneration payable to the officer at the date of the election.
- (6) **Increase in nominated salary** An executive officer may, from time to time, by notice to the officer's employer elect to increase the amount of salary nominated under this section, but not so as to increase the amount nominated by a percentage of that amount that is more than the percentage by which the remuneration package of the officer has increased since the amount of salary was last nominated or changed.
- (7) **Nominations and elections** An employer must notify STC of a nomination or election under this section. Any such nomination or election takes effect on the date of notification to STC or on such other date as STC may determine with the consent of the executive officer concerned.
- (8) **Effect of changes in packages** Nothing in this section requires the nominated amount of salary to be increased if, because of a variation in the remuneration package of an executive officer or in the proportions of the remuneration package comprising monetary remuneration and employment benefits of the officer, the amount of salary as last nominated or changed for the purposes of this section is less than the monetary remuneration of the officer.
- (9) **Transitional provision relating to nomination of salary by executive officers** An executive officer may, within 3 months after the commencement of this subsection, nominate a new amount of salary in accordance with this section if, immediately before the commencement of this subsection, the officer was an executive officer.
- (10) **Monetary remuneration** In this section, the **monetary remuneration** payable to an executive officer is:
  - (a) if the officer is a chief executive officer or senior executive officer, within the meaning of the [Public Sector Management Act 1988](#), or a police executive officer, the monetary remuneration payable in accordance with the [Public Sector Management Act 1988](#) or the [Police Service Act 1990](#), as the case requires, or
  - (b) if the officer is an office holder nominated for the purposes of section 11A of the [Statutory and Other Offices Remuneration Act 1975](#), the remuneration payable to the officer as reduced under that section by the cost of employment benefits provided to the officer, or

(c) in the case of any other executive officer, the monetary remuneration payable to the officer.

## **5 Employees of the Crown etc**

An employee of the Crown, the Government or a Minister of the Crown shall, for the purposes of this Act, be deemed to be employed by such person or organisation as may be prescribed.

## **6 Provisions respecting certain employees**

- (1) Members of the Police Service are, for the purposes of this Act, to be taken to be employed in the Police Service by the Crown.
- (2) A person appointed by the Coal Industry Tribunal to be a Local Coal Authority in the State shall, for the purposes of this Act, be deemed to be, while holding office as such an Authority, a person employed by the Joint Coal Board.

## **7 Irregular employees**

If an employer certifies in writing that the employer has reason to believe that an employee of the employer will not continue to be a full-time employee or part-time employee for at least 1 year from the date of the certificate, the employee shall, for the purposes of this Act, be deemed to be neither a full-time employee nor a part-time employee and to be an irregular employee.

## **8 Persons not subject to Act**

Schedule 2 has effect.

## **Part 2 Funds**

### **9 Funds etc**

- (1) STC may establish and maintain such funds, accounts and reserves as, in the opinion of STC, are necessary or convenient for the administration of this Act.
- (2) STC shall cause to be paid to any such fund:
  - (a) contributions made by employers,
  - (b) income derived from investment of the fund, and any profit made from realisation of any investment of the fund, and
  - (c) money borrowed for the purposes of the fund.
- (3) STC shall cause to be paid from any such fund:
  - (a) by transfer from the fund to the STC Administration Account maintained under the *Superannuation Administration Act 1996* administration costs incurred by STC,

- (b) such amounts as are necessary to satisfy any liability of the fund with respect to tax payable under any Commonwealth taxation law, and
  - (c) the benefits payable under this Act, and
  - (d) any other amount payable from any such Fund under this or any other Act.
- (4) If a loss is incurred in realising any investment forming part of the assets of a fund maintained under subsection (1), the fund is accordingly reduced by the amount of that loss.

## **10 Reserves for employers**

- (1) STC shall, in relation to each employer specified in Part 1 of Schedule 1, establish and maintain within a fund managed by STC a separate employer reserve for the purposes of this Act.
- (2) STC shall, in relation to each of Parts 2 and 3 of Schedule 1, establish and maintain within a fund managed by STC a separate employer reserve for the purposes of this Act.
- (3) There shall be credited to such an employer reserve the contributions made by the employer or employers to whom the reserve relates.
- (4) There shall be debited to such an employer reserve:
  - (a) the amount of any benefit paid to, or in relation to, an employee who, immediately before the benefit became payable, was an employee of the employer or an employer to whom the reserve relates, and
  - (b) administration costs incurred by STC under the *Superannuation Administration Act 1996* in relation to the employer or an employer to whom the reserve relates.
- (4A) Despite any other provision of this Act, there is to be debited to the Crown employer reserve such amount of the administration costs incurred by STC in respect of the transfer of a preserved benefit under Part 4B as is approved by the Treasurer.
- (5) If the amount standing to the credit of the employer reserve established for Part 3 of Schedule 1 is insufficient to meet the amounts payable from the reserve, the deficiency shall be recouped from the Consolidated Fund which is, to the necessary extent, appropriated accordingly.
- (6) STC may, with the concurrence of the Treasurer and after obtaining actuarial advice, adjust the amount credited to an employer reserve by crediting or debiting an amount, if it appears to STC appropriate to do so because of a change in the constitution or nature of an employer.
- (7) Subsection (6) does not apply to a change in the constitution or nature of an employer

because of a Government privatisation initiative.

#### **10A Additional payments by certain employers**

- (1) If the amount credited to an employer's reserve maintained for an employer specified in Part 1 of Schedule 1 is insufficient to meet the amounts payable from the reserve in respect of the employer, STC may require the employer to pay an amount into the fund that is equal to the deficiency.
- (2) Any amount that is not paid by an employer within 14 days of written notice of the requirement to pay the amount being given by STC to the employer is a debt owed to STC and may be recovered by STC accordingly.
- (3) This section does not apply to a change in the constitution or nature of an employer because of a Government privatisation initiative.

#### **11 Adjustment of accounts and reserves for interest etc**

STC shall, from time to time, adjust each of the accounts and reserves established under this Part at a rate fixed by STC, having regard to the income of the funds of which they form part and such other matters as STC considers relevant.

#### **11A Source of administration costs payments**

- (1) The administration costs payable in respect of the superannuation scheme established under this Act are to be paid from employer reserves established in accordance with this Act.
- (2) The administration costs payable in respect of preserved benefits are to be paid from employees' accounts established in accordance with this Act, except as provided by section 10 (4A).

#### **12 Funds, accounts and reserves generally**

- (1) There may be credited to any fund, account or reserve established by or under this Act any amount that is required or permitted by or under this or any other Act to be credited to it.
- (2) There may be debited to any fund, account or reserve established by or under this Act any amount that is required or permitted by or under this or any other Act to be debited to it.

#### **13 Actuarial investigation**

- (1) An investigation as to the state and sufficiency of any of the funds established under this Act shall, as at 30 June 1994 and at the end of each succeeding period of 3 years, be made by an actuary or actuaries appointed by STC.
- (2) Actuaries appointed under this section shall complete their investigation, and shall



report the result to STC, not later than 6 months after the date as at which the investigation is made.

(2A) The report referred to in subsection (2) must:

- (a) include a statement of the value of the assets of the funds established under section 9, and
- (b) include a statement of any liability for benefit payments that are not expected to be covered by:
  - (i) the assets of those funds, or
  - (ii) any future contributions to, or earnings of, those funds, or
  - (iii) any guarantee by the Government or by any of its agencies, or
  - (iv) an appropriation in respect of those funds.

(3) STC shall, not later than 1 month after it receives a report under this section, forward the report to the Minister with such comments as it thinks fit.

(4) The Minister may, in relation to a particular investigation, extend or further extend the period referred to in subsection (2) if the Minister considers that special circumstances exist to justify an extension or further extension.

(5) The Minister may, in relation to a particular investigation, extend or further extend the period referred to in subsection (3) if the Minister considers that special circumstances exist to justify an extension or further extension.

### **Part 3 Contributions by employers**

#### **14 Contributions by employer under Part 1 of Schedule 1 (The Crown and other employers)**

Where an employee is employed by an employer specified in Part 1 of Schedule 1, the employer shall pay to STC an amount equal to a percentage of the salary of the employee, being a percentage determined by STC, in relation to the employer, with the concurrence of the Treasurer.

#### **15 Contributions by employer under Part 2 of Schedule 1 (Local government and other authorities)**

- (1) If an employee is employed by an employer specified in Part 2 of Schedule 1, the employer must pay to a fund managed by STC contributions at a rate determined by STC.
- (2) The rate is to be determined by STC with the concurrence of the Treasurer and after obtaining actuarial advice.

- (3) In determining the contributions payable by an employer specified in Part 2 of Schedule 1, STC is to have regard to the amount required to meet the full costs of the liabilities under this Act of all employers specified in Part 2 of Schedule 1.
- (4) STC may, with the concurrence of the Treasurer, require any such employer to pay into the fund additional contributions for a specified period if it appears to STC that there is insufficient money in the reserve for employers specified in Part 2 of Schedule 1 to meet the employers' liabilities under this Act.

#### **16 Contributions by employer under Part 3 of Schedule 1 (Hospitals and other bodies)**

Where an employee is employed by an employer specified in Part 3 of Schedule 1, the employer shall pay to STC an amount equal to a percentage of the salary of the employee, being a percentage determined by STC, in relation to the employer, with the concurrence of the Treasurer.

#### **17 Contributions for irregular employees**

- (1) The regulations may make provision for or with respect to the contributions to be paid to STC in respect of irregular employees.
- (2) Any such regulations may have effect despite anything in section 14, 15 or 16.

#### **18 Basis and making of contributions**

- (1) Contributions under this Part shall be calculated on the basis of contribution periods, and the contributions payable in respect of a contribution period shall be paid to STC within 7 days after the last day of the contribution period to which they relate.
- (2) The regulations may make provision for or with respect to the determination of salary for the purposes of this Part, where part-time work, irregular employment, leave without pay, secondment or a break in employment is involved.

#### **18A Acceptance of contributions**

- (1) Despite any other provision of this Act, an employer is not required to make a contribution to the fund in respect of an employee during any period specified by STC for which STC determines that it must not accept contributions in respect of the employee.
- (2) STC may make such a determination only if it is of the opinion that it is necessary to do so in order to be consistent with a relevant Commonwealth superannuation standard.
- (3) A period in respect of which contributions may not be made to the fund in respect of an employee under this section is not included as eligible service for the purposes of calculating the basic benefit.

## **19 Transfer of employees**

- (1) This section applies where:
  - (a) an employee ceases to be employed by an employer,
  - (b) the employee commences to be employed by another employer within 2 months, and
  - (c) STC determines that, because of the nature and circumstances of the employment involved (for example, employment in different Departments in the Public Service), it would not be appropriate to regard the employee as having resigned or retired.
- (2) STC shall determine the value of the basic benefit at the date of cessation of employment with the former employer and shall:
  - (a) debit the employer reserve of the former employer with that value, and
  - (b) credit the employer reserve of the new employer with that value.

### **19A Variation of employer contributions**

- (1) Despite any other provision of this Part, STC may determine that the contributions payable by an employer specified in Part 1 of Schedule 1 in respect of an employee are to be determined, or are payable, on a basis other than that set out in this Part.
- (2) STC may make such a determination only with the concurrence of the Treasurer.

## **20 Application of payments**

Contributions and other amounts payable to STC under this Act shall be paid into such funds, accounts or reserves as STC determines, whether established under this Act or for the purposes of any other superannuation scheme administered by STC.

## **Part 4 Benefits**

### **20A Scheme closed for new employees**

- (1) On and from the commencement of the *First State Superannuation Act 1992* (8 December 1992) there is to be no benefit provided by this Act for an employee who ceases to be an employee on or after that commencement, unless the employee is within one of the following categories:
  - (a) non-contributing employees who commenced employment before 1 July 1992,
  - (b) employees who were contributing employees immediately before 8 December 1992,
  - (c) employees who elect to become, are taken to have elected or who become

contributing employees on or after 8 December 1992 by virtue of section 2A, 2B or 2C of the *State Authorities Superannuation Act 1987*,

(d) employees exercising a transfer option conferred under section 128A of the *Superannuation Administration Act 1996*.

- (2) The expressions **contributing employee** and **non-contributing employee** have the meanings given in Part 4A.
- (3) Any determination of STC under section 19 (Transfer of employees) is to be taken into account in determining for the purposes of this section whether an employee was employed on a particular date.
- (4) An irregular employee who commenced employment before 1 July 1992 is taken for the purposes of this Act to have been an employee on 30 June 1992. If the employee carries out any duties after that date, the employee is taken to have commenced to be an employee for the purposes of the *First State Superannuation Act 1992* on the first date on which those duties were carried out after 30 June 1992.

## 21 Definitions

(1) In this Part:

**final average salary**, in relation to an employee, means the average of the attributed salaries paid or payable to the employee at the rates applicable:

- (a) on the employee's exit date,
- (b) on 31 December (or such other date as STC may determine) last preceding the employee's exit date, and
- (c) on 31 December (or such other date as STC may determine) last preceding the date referred to in paragraph (b).

**final salary**, in relation to an employee, means the rate of attributed salary paid or payable to the employee on the employee's exit date.

- (2) Different dates may be determined by STC for the purposes of the definition of **final average salary** in subsection (1), so as to apply differently according to different classes of employees.

## 22 Basic benefit

- (1) The basic benefit provided by this Act for an employee is an amount equal to the amount calculated in accordance with the formula:

$$B = 0.03 \times F \times Y$$

where:

**B** represents the amount to be ascertained,

**F** represents:

- (a) in the case of the employee's death or retrenchment, or the employee ceasing to be employed because of physical or mental incapacity, before reaching the age of 55 years—the employee's final salary, or
- (b) in any other case—the employee's final average salary, and

**Y** represents the years of eligible service on a daily basis, commencing on or after the appointed day.

- (2) The regulations may make provision for or with respect to the determination of the basic benefit for irregular employees.
- (3) The regulations may make provision for or with respect to the determination of eligible service for the purposes of this Act, including the manner of determining the length of eligible service where part-time work, irregular employment, leave without pay, secondment or a break in employment is involved.
- (4) If STC makes a determination under section 26A in relation to a basic benefit to be provided by this section, the amount of that benefit is reduced by the amount specified in STC's determination.
- (5) For the purpose of determining the amount of a basic benefit provided by section 24 that becomes payable in respect of a person within 12 months after the person:
  - (a) has been appointed as a chief executive officer, senior executive officer or police executive officer, or
  - (b) has been nominated as an office holder for the purposes of section 11A of the *Statutory and Other Offices Remuneration Act 1975*,the person's salary is taken to be his or her salary as an employee immediately before the appointment or nomination took effect.

### **23 When benefits are payable**

- (1) The basic benefit (and any preserved basic benefit) in respect of a person is payable by STC to or in respect of a person:
  - (a) if the person dies, or
  - (b) if the person ceases to be employed in the circumstances in which a benefit is payable for the purpose of complying with the requirements of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth for a regulated superannuation fund, or

(c) in any other circumstances in which a benefit is payable to comply with any such requirements or may be paid in respect of a member of such a fund under any such requirements,

and is so payable in accordance with subsection (3).

(2) The whole or part of a benefit may be paid under subsection (1), if such a payment is permitted under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth in the same circumstances in respect of a regulated superannuation fund.

(2A) The whole or part of a benefit must be paid by STC under this section if it is required to be paid under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth in the same circumstances in respect of a regulated superannuation fund.

(3) The basic benefit in respect of a former employee is payable:

(a) unless the former employee has died—to the former employee, or

(b) if the former employee has died and is survived by a spouse or de facto partner—to the surviving spouse or de facto partner, or

(c) if the former employee has died and is not survived by a spouse or de facto partner—to the personal representatives of the former employee or, if appropriate, in accordance with section 31 (Payment without grant of probate etc).

(d) (Repealed)

(4) For the purposes of the payment under subsection (1) (c) of a benefit on compassionate grounds, STC may exercise any function that the Regulator (within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth) may exercise for the purpose of determining whether a benefit is payable.

(5) An amount of benefit released under subsection (1) (c) on the grounds of severe financial hardship or on compassionate grounds is not to exceed the amount of any accrued or preserved benefit under this Act that would be payable to the person if the person were eligible to be paid such a benefit.

(6) An amount of benefit released under subsection (1) (c) on the grounds of severe financial hardship or on compassionate grounds may not be paid unless any applicable requirements of any regulations made under section 23B have been complied with.

### **23A Benefit on attaining 65**

(1) A person who attains 65 years of age may elect to be paid the basic benefit to which

the person would be entitled on retirement at that age or may elect to preserve the whole of the benefit.

(2), (3) (Repealed)

(4) If an amount is preserved under this section, it is payable in the same way as a benefit under section 24.

(5) A person to whom this section applies is not entitled to any other benefit under this Act in respect of the same period of service, or to be paid or preserve a benefit under this section more than once.

### **23B Effect on other benefits**

(1) Regulations may be made for or with respect to the payment and calculation of benefits where part of a benefit has been released to a person under section 23 (1) (c) on the grounds of severe financial hardship or on compassionate grounds.

(2) Without limiting subsection (1), regulations may be made for or with respect to the following matters:

- (a) the adjustment by STC of a benefit that is paid to a person to whom such an amount has been previously released, including interest payable in respect of the amount released,
- (b) the obtaining of consent to any such adjustment,
- (c) the obtaining of actuarial advice by STC for the purpose of any such adjustment,
- (d) enabling the payment to STC of amounts to set-off the amounts released against benefits that would otherwise accrue,
- (e) any matter ancillary to or consequential on the matters set out in paragraphs (a)-(d).

### **24 Benefit to be preserved**

(1) The basic benefit in respect of a person must be preserved by STC if the benefit is not otherwise payable under this Act.

(2) The basic benefit must also be preserved by STC when:

- (a) an executive officer who is an optional member of the First State Superannuation Fund ceases to be a contributor to any other superannuation scheme established by or under an Act, or
- (b) an executive officer who is not a member of any other superannuation scheme established by or under an Act becomes a member of the First State Superannuation Fund, or

(c) an employee becomes eligible under another superannuation scheme for a benefit that is of the same kind as a benefit provided by this Act and STC has not been requested to pay the benefit to another superannuation scheme.

(3) (Repealed)

(4) When the basic benefit provided by this section is to be paid out by STC, it is payable:

(a) if the former employee has not died—to the former employee, or

(b) if the former employee has died and is survived by a spouse or de facto partner—to the former employee's spouse or de facto partner, or

(c) if the former employee has died and is not survived by a spouse or de facto partner—to the personal representatives of the former employee or, if appropriate, in accordance with section 31 (Payment without grant of probate etc).

(d) (Repealed)

(5) (Repealed)

#### **24A Preservation of benefit for employees aged 55 years and over in certain circumstances**

Schedule 3 has effect with respect to the preservation of the benefit of an employee of or above the age of 55 years in the circumstances specified in that Schedule.

#### **24B Competing claims for spouses' or de facto partners' benefits**

(1) This section applies to a benefit which is payable to the spouse or de facto partner of a deceased employee or deceased former employee.

(2) If a benefit would be payable to more than one person because a deceased employee or deceased former employee has left more than one spouse or de facto partner, then, despite any other provision of this Act:

(a) the benefit is payable in accordance with a determination made by STC, and not otherwise, and

(b) the total amount of benefit payable to those persons at any time is not to exceed the amount of benefit that would be payable if there were only one spouse or de facto partner.

(3) For the purposes of subsection (2) (a), STC may determine in relation to a benefit:

(a) that the benefit is not payable to such of the persons concerned as it specifies, or

(b) that the amount of the benefit is to be apportioned between the persons concerned in such manner as it specifies.



- (4) STC may withhold the payment of any part of a benefit:
- (a) until 30 days after the death of the employee or former employee in respect of which it is payable, or
  - (b) if an application has been made for the benefit by more than one person, until it is satisfied that only one of those persons is entitled to the benefit or until a determination is made in relation to the matter by STC under this section.
- (5) If, after 30 days from the death of an employee or former employee, the whole or part of a benefit is paid to a spouse or de facto partner of the deceased employee or deceased former employee:
- (a) a benefit is not payable to any other spouse or de facto partner of the deceased employee or deceased former employee if the whole of the benefit is paid, or
  - (b) so much of a benefit as is equal to the amount of the benefit so paid is not payable to any other spouse or de facto partner of the deceased employee or deceased former employee if part of the benefit is paid.
- (6) For the purposes of subsection (5), an amount paid in good faith by STC to a person purporting to be the spouse or de facto partner of a deceased employee or deceased former employee is taken to have been paid to the spouse or de facto partner of the employee or former employee.
- (7) If, after 30 days from the death of an employee or former employee, any amount is paid under this Act to the employee's personal representatives or to such other persons as STC may determine, any benefit which is payable to the spouse or de facto partner of the employee or former employee is to be reduced by the amount so paid.

## **25 Preservation of benefit**

- (1) Any amounts preserved by STC under this Act shall be preserved in such funds, accounts or reserves as STC determines, whether established under this Act or the [Superannuation Administration Act 1996](#) or for the purposes of any other superannuation scheme administered by STC.
- (2) Any such preserved amounts payable by STC under this Act shall be paid from the appropriate fund, account or reserve referred to in this section.

## **25A Power of STC to purchase annuities etc out of benefit payable under this Act**

Whenever a benefit becomes payable to or in respect of an employee under this Act, STC must, if requested to do so:

- (a) by the employee, or
- (b) where the employee has died, by the spouse or de facto partner or personal

representatives of the employee, as the case requires,

apply the benefit, or such part of it as is specified by the employee, spouse or de facto partner or personal representatives, in purchasing for the employee or, as the case may be, for the spouse or de facto partner or the beneficiaries of the employee's estate, a right to an annuity or other form of pension from a person nominated by the employee, spouse or de facto partner or personal representatives.

## **26 Interest**

STC may, when paying a benefit under this Act, pay interest at such rates, for such periods and in such circumstances as in its absolute discretion it thinks appropriate.

### **26A Power of STC to reduce benefits to offset certain tax liabilities of a fund maintained under section 9 (1)**

(1) Whenever:

- (a) a right to a benefit accrues to or in respect of an employee or former employee, and
- (b) STC has paid or is liable to pay income tax under a Commonwealth taxation law in respect of employers' contributions to a fund maintained under section 9 (1), and
- (c) a portion of that tax is referable to that benefit,

STC must, subject to subsection (2):

- (d) calculate the amount necessary to offset STC's liability to pay tax so far as it is referable to that benefit, and
- (e) accordingly make a determination reducing the benefit by the amount so calculated.

(2) Subsection (1) does not authorise the reduction of a benefit, unless:

- (a) the benefit is of a kind prescribed by the regulations for the purpose of this section, and
- (b) the method of calculating the reduction is so prescribed, and
- (c) the reduction is calculated according to that method.

(3) A benefit may also be reduced by STC in accordance with any of the following provisions (which allow STC to apply the benefit toward payment of a superannuation contributions surcharge):

- (a) section 14AA of the *Police Regulation (Superannuation) Act 1906*,
- (b) section 45A of the *State Authorities Superannuation Act 1987*,

(c) section 61RA of the *Superannuation Act 1916*.

**26B Benefits not payable if conversion election made**

- (1) This section applies to a person in respect of whom a conversion election has taken effect under Part 3B of the *Police Regulation (Superannuation) Act 1906*, section 3 (14) of the *Police Association Employees (Superannuation) Act 1969* or Part 3B of the *Superannuation Act 1916* and who was, before the election took effect, an employee.
- (2) A person to whom this section applies, and anyone else who would otherwise be a beneficiary under this Act through the contributor, is not eligible to be paid, or to defer or preserve, any benefit under this Act, despite any other provision of this Act.
- (3) As soon as practicable after being notified that a conversion election has taken effect in respect of a person who was a contributor under the *Police Regulation (Superannuation) Act 1906*, or a prescribed person within the meaning of section 3 of the *Police Association Employees (Superannuation) Act 1969*, STC must pay to the Fund under the *Police Regulation (Superannuation) Act 1906*:
  - (a) the amount of the benefit payable in respect of the person under section 5H (3) of the *Police Regulation (Superannuation) Act 1906*, or payable under that provision as applied by the *Police Association Employees (Superannuation) Act 1969*, and
  - (b) if section 5H (4) of the *Police Regulation (Superannuation) Act 1906* applies to the conversion benefit, an amount equal to the difference between the amount of the conversion benefit payable and the amount that would have been payable if that provision did not apply to the benefit.
- (4) As soon as practicable after being notified that a conversion election has taken effect in respect of a person who was a contributor under the *Superannuation Act 1916*, STC must pay to the reserve of the person's employer in the Fund under the *Superannuation Act 1916*:
  - (a) the amount of the benefit payable in respect of the person under section 20K (3) of the *Superannuation Act 1916*, and
  - (b) if section 20K (5) of the *Superannuation Act 1916* applies to the conversion benefit, an amount equal to the difference between the amount of the conversion benefit payable and the amount that would have been payable if that provision did not apply to the benefit.
- (5) Any amount payable under this section is to be paid in accordance with section 9 as if it were a benefit under this Act.

**26BA Effect of revocation of conversion election**

- (1) This section applies to a person in respect of whom a revocation election has taken effect under Part 6 of Schedule 6 to the *Police Regulation (Superannuation) Act 1906*

or Part 9 of Schedule 25 to the *Superannuation Act 1916*.

- (2) A person to whom this section applies is taken to have been an employee during the period a conversion election referred to in section 26B had effect in respect of the person.
- (3) Section 26B (2) does not apply to a person to whom this section applies, or any other person who, but for that section, would be eligible as a beneficiary of a person to whom this section applies to be paid, or to defer or preserve, a benefit under this Act.

## **Part 4A Special provisions for non-contributing employees**

### **26C Definitions**

In this Part:

**contributing employee** means an employee who:

- (a) is a contributor to an associated superannuation scheme (within the meaning of the *Superannuation Administration Act 1991* as in force immediately before the commencement of the *First State Superannuation Act 1992*), or
- (b) elects or is taken to have elected under section 2A, 2B or 2C of the *State Authorities Superannuation Act 1987* to contribute to the Fund under that Act.

**non-contributing employee** means an employee who is not a contributing employee.

### **26D Contributing employees not affected**

This Part does not apply to contributing employees.

### **26E Non-contributing employees to have deferred accrued benefit instead of basic benefit**

- (1) On and from the commencement of the *First State Superannuation Act 1992*, the basic benefit provided by this Act for a non-contributing employee is to be replaced with a deferred accrued benefit. This does not affect benefits that were payable or required to be preserved before that commencement.
- (2) The deferred accrued benefit is an amount calculated in accordance with Schedule 4.
- (3) Sections 23–26A apply to the deferred accrued benefit in the same way as they apply to a basic benefit.

### **26F Deferred accrued benefit to be preserved on transfer of employment**

- (1) A non-contributing employee is taken to have ceased to be an employee for the purposes of the application of section 23 (When benefits are payable) and section 24 (Benefit to be preserved) to the deferred accrued benefit provided by this Part when the employee leaves the employment of the employer who employed him or her on 30

June 1992.

- (2) Subsection (1) applies even when the employee becomes the employee of another employer after leaving but does not apply in the case of a change of employment occasioned merely by the operation of an administrative change.
- (3) This section applies even if the employee left the employment of the employer before the commencement of the *First State Superannuation Act 1992*.

#### **26G Increase in benefit for non-contributing employees who cease employment before start of FSS Scheme**

- (1) This section applies to a person who ceases to be an employee before the commencement of the *First State Superannuation Act 1992* and who was a non-contributing employee at the time he or she ceased to be an employee.
- (2) STC must, after obtaining actuarial advice, determine what the minimum basic benefit provided for the person would have to be to ensure that there is no superannuation guarantee shortfall.
- (3) The basic benefit provided by this Act for the person is, despite any other provision of this Act, not to be less than the minimum basic benefit determined under subsection (2). The basic benefit provided for the person is to be increased to the extent necessary for the purpose of complying with this section.
- (4) Subsection (3) applies to a benefit even if it has already been paid or preserved.
- (5) In this section:

***superannuation guarantee shortfall*** has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth.

#### **26H Transfers of contributions to FSS Scheme**

- (1) STC is to transfer any contribution made by an employer under this Act that STC determines is in respect of the salary of an employee for a period for which there is or will be no liability for a benefit under this Act.
- (2) STC is to consult with any employer who would be affected by a determination under this section before making the determination.
- (3) There is to be added to and transferred with any such contribution interest on the contribution (at a rate determined by STC) for the period from the date the contribution was made until its transfer under this section.
- (4) STC's determination of interest is to be based on the rate of return achieved in respect of the investment of the contribution while invested by STC during the period for which that interest is payable.

- (5) There is to be deducted from any funds to be transferred the costs of STC in managing those funds and in transferring them under this section.
- (6) Transfers under this section are to be made from the appropriate employer reserves and are to be paid into the appropriate accounts under the *First State Superannuation Act 1992*, as determined by STC.

#### **26I Preservation of deferred accrued benefits**

- (1) On and from 29 June 1997, each non-contributing employee is taken to have ceased to be an employee for the purposes of the application of section 23 (When benefits are payable) and section 24 (Benefit to be preserved) to the deferred accrued benefit provided by this Part.
- (2) STC must, on and from 30 June 1997, transfer the amount of the benefit preserved in respect of the person under subsection (1) to the person's account in the Fund established under the *First State Superannuation Act 1992*, if the person has such an account.
- (3) For the purposes of calculating the amount of the deferred accrued benefit to be preserved in respect of a non-contributing employee (other than an irregular employee) under this section, the employee's final average salary is taken to be the employee's salary as at 31 December 1996.

### **Part 4AA Provisions relating to privatisation of employers**

#### **27AA Preservation of benefit for contributors affected by privatisation**

- (1) The basic benefit in respect of a person must be preserved by STC under section 24 if, as a consequence of a Government privatisation initiative affecting the relevant employer:
  - (a) the person is transferred or elects to transfer to employment other than with an employer and the Minister certifies that the transfer is a consequence of a Government privatisation initiative affecting the employer, or
  - (b) the employer of the person ceases to be an employer under this Act and the Minister certifies that it is a consequence of a Government privatisation initiative affecting the employer.
- (2) (Repealed)

#### **27AB Adjustment of employer liability on privatisation**

- (1) STC must, on or before, or as soon as practicable after, an employer ceases to be an employer as a consequence of a Government privatisation initiative affecting the employer, determine the net liability of the employer in respect of employees of the employer who are affected by the initiative.

- (2) STC is to seek actuarial advice as to the net liability of the employer and is to consult with the Treasurer before determining the liability.
- (3) The amount of the net liability of the employer, as certified by STC, is a debt due for payment to STC by the employer or the employer's successor, on and from the date the initiative takes effect, as so certified.
- (4) STC may whenever it thinks fit, with the concurrence of the Treasurer, adjust the amount that is currently standing to the credit or debit of an employer's reserve in the Fund to reflect STC's determination of the net liability of the employer.
- (5) For the purposes of this section, the **net liability** of an employer is the total liability of the employer for present and future benefits (accrued as at the date at which the liability is determined), contributions and administrative costs and any other liability under this Act in respect of the employees concerned, less the amount determined by STC as being credited to the employer in the Fund.

#### **27AC Employer liabilities after privatisation**

- (1) On and from a transfer of employees that the Minister certifies under this Part is a consequence of a Government privatisation initiative affecting an employer, the employer's liability with respect to the employees for present and future benefits, contributions and administrative costs and any other liability under this Act vests in the Crown.
- (2) On and from the removal of an employer from Schedule 1 by virtue of an order under this Act as a consequence of a Government privatisation initiative, the employer's liability for present and future benefits, contributions and administrative costs and any other liability under this Act vests in the Crown.
- (3) Any surplus after meeting any liability vested in the Crown by this section is vested in the Crown.

### **Part 4B Transfer of certain preserved benefits**

#### **27AD Transfer of eligible preserved benefits**

- (1) In this section:

**eligible preserved benefit** means:

- (a) a benefit preserved under section 26I, or
- (b) any other benefit preserved under this Act on or before 9 December 2001 by or on behalf of a person who is not a contributor to, or who does not have a benefit preserved or deferred under, any other STC fund or scheme.

**FTC** means the FSS Trustee Corporation established under the Superannuation

Administration Act 1996.

**STC fund or scheme** has the same meaning as it has in the *Superannuation Administration Act 1996*.

- (2) STC must on 9 December 2001, or as soon as practicable after that day, transfer the amount of any eligible preserved benefit preserved in respect of a person to FTC for crediting to the First State Superannuation Fund.
- (3) On the transfer of an eligible preserved benefit, the person in respect of whom the benefit was preserved ceases to be entitled to payment of the benefit under this Act.

## **Part 5 Miscellaneous**

### **27 Employers and employees**

- (1) The Governor may, by order published in the Gazette, amend Schedule 1 or 2.
- (2) An order under subsection (1), and any other order revoking or varying such an order, may be made:
  - (a) to take effect on and from a day specified in the order, whether or not the day specified is earlier than the day of publication of the order, and
  - (b) to effect the amendment to which it relates with such limitations as are specified in the amendment, being limitations that do not operate to the prejudice of an existing employee.

### **28 Employer to provide information**

- (1) An employer shall submit to STC such information or evidence relating to employees of the employer as STC requires.
- (2) Where an employer fails to comply with subsection (1) in relation to an employee, STC may defer payment of a benefit to, or in relation to, an employee where the information sought is relevant to the right to receive the benefit.

### **29 Employee or claimant to provide information**

- (1) STC may require an employee or a claimant for payment of a benefit under this Act:
  - (a) to provide STC with specified information or evidence referred to in subsection (2),
  - (b) to provide STC with an authority to obtain from a third person any such information or evidence, or
  - (c) in the case of a claimant for a benefit arising in relation to permanent physical or mental incapacity—to undergo a medical examination.
- (2) A requirement under subsection (1) may be made only in relation to information,



evidence or a medical examination that is relevant to the assessment of an application made by the claimant for payment of the benefit.

(3) Where:

- (a) the employee or claimant to whom a requirement under subsection (1) relates fails to comply with the requirement or, in purported compliance with the requirement, makes or provides an untrue statement, or
- (b) a person referred to in subsection (1) (b) fails to provide information or evidence that STC has been authorised to obtain from the person or, in purported compliance with the request by STC for the information or evidence, makes or provides an untrue statement,

STC may take such action in relation to the benefit concerned as, in the opinion of STC, would place the claimant as nearly as possible in the same position as the claimant would be if the information or evidence had been provided or the medical examination made or if the statement had not been untrue.

(4) For the purposes of this section, **untrue**, in relation to a statement, includes:

- (a) misleading in the form and context in which the statement appears, and
- (b) misleading by reason of the omission from the statement of matter that is material.

### **30 Assignment etc of benefit**

- (1) A purported assignment of, or purported charge over, a benefit is void.
- (2) Where, but for this subsection, a benefit would pass by operation of law to a person other than a person to whom the benefit is payable under this Act, the benefit does not so pass.
- (3) A benefit payable on the death of an employee is not an asset in the employee's estate that is applicable in payment of the debts and liabilities of the deceased.
- (4) Nothing in this section prevents STC from making, at the request of a person to whom an amount by way of a benefit is payable, a payment of the whole or a part of the amount on behalf of the person.
- (5) Any payment made under subsection (4) shall be deemed to have been made to the person entitled to the benefit.

### **31 Payment without grant of probate etc**

- (1) Where an employee or former employee dies and:
  - (a) a benefit is or becomes payable under this Act in relation to the deceased,

- (b) production to STC of probate of the will, or letters of administration of the estate, of the deceased has not been arranged, and
- (c) STC has not, within the period of 3 months that next succeeds the death of the deceased, received a notice of intention to apply for a grant of probate of the will, or letters of administration of the estate, of the deceased,

STC may, if it so decides, make a payment of the whole or any part of the benefit in accordance with subsection (2), being a payment that does not exceed \$50,000 or, where some other amount is prescribed for the purposes of this section, that other amount.

- (2) Where STC makes a decision under subsection (1), STC may:
  - (a) pay the whole or any part of the amount of the benefit to an eligible person within the meaning of the *Family Provision Act 1982*,
  - (b) after paying the funeral expenses of the deceased or reimbursing a person who has paid those expenses—pay the whole or any part of the balance to any person referred to in paragraph (a), or
  - (c) in special circumstances, pay the whole or any part of the amount of the benefit, or the balance referred to in paragraph (b), to some other person.
- (3) Where an employee or former employee dies and STC is of the opinion that proceedings might be instituted under the *Family Provision Act 1982* in relation to the estate, or notional estate, of the deceased, STC may, despite any other provision of this Act, pay to the personal representatives of the deceased any benefit that, but for this subsection, would have been paid to some other person.

### **31A Restriction on manner of payment of benefit**

STC must not pay, in cash or by a cheque which authorises payment in cash on presentation, a benefit or part of a benefit payable under this Act.

### **32 Recovery of money owing to STC**

- (1) STC may recover any money owing to STC under this Act by an employee, employer or other person, together with interest thereon as provided by subsection (3):
  - (a) except in the case of unpaid contributions—as a debt in a court of competent jurisdiction,
  - (b) where any amount is, or becomes, payable under this Act to the employee, employer or other person—by deduction from that amount, or
  - (c) in the case of an employee—by deduction from the employee's salary in accordance with subsection (2) by such instalments and at such times as STC

determines.

- (2) An employer shall, at the written request of STC, make deductions from an employee's salary as referred to in subsection (1) (c) and pay the amount thereof to STC, and an amount so deducted and paid shall be deemed to have been paid to STC by the employee from whose salary the deduction was made.
- (3) Interest at a rate from time to time determined by STC is payable on any amount owing to STC calculated from the date on which the amount became due for payment until the date on which the amount is recovered under subsection (1) or is otherwise paid.

### **32A Payment where beneficiary is missing**

- (1) If STC is unable, after reasonable inquiry, to find a person to whom a benefit is payable, STC may pay the benefit to someone else to be applied wholly for the care, maintenance, benefit and support of any person wholly or partly dependent on the person who would otherwise be entitled to the benefit.
- (2) Any payment made under this section is taken to have been made to the person who, but for this section, would be entitled to the benefit.

### **33 Payment where beneficiary incapable**

- (1) Where a person to whom a benefit under this Act is payable is, in the opinion of STC, incapable of administering his or her own affairs by reason of illness, imprisonment or any other cause, STC may pay the benefit to some other person to be applied wholly for the care, maintenance, benefit and support of the person to whom, but for this section, the benefit would be payable, or of any person wholly or partly dependent on him or her.
- (2) Any payment made under this section shall be deemed to have been made to the person entitled to the benefit.

### **33A Information that must be disclosed to employees**

- (1) STC must from time to time give to an employee or other person such information as STC determines under this section.
- (2) STC must determine, having regard to the information required to be provided by the trustee of a regulated superannuation fund within the meaning of the [Superannuation Industry \(Supervision\) Act 1993](#) of the Commonwealth, the information to be provided by STC to employees and other persons and the circumstances in which information must or may be provided.

### **34 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect

to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) Regulations may not be made unless the recommendation to the Governor for their making includes a certificate by a Minister to the effect that, in the formulation of the regulations, regard has been had to any relevant rules or guidelines for the time being in force in relation to superannuation benefits of the kind provided by this Act.

### **35 Savings and transitional provisions**

Schedule 5 has effect.

## **Schedule 1 Employers**

(Sections 3, 27)

### **Part 1 The Crown and other employers**

A Government Department or Administrative Office  
Police Service  
Health Administration Corporation  
Water Administration Ministerial Corporation  
Sydney Water Corporation  
Hunter Water Corporation  
Upper Parramatta River Catchment Trust  
Western Lands Commissioner  
Australian Museum Trust  
Pacific Power  
The Corporation constituted under the [Superannuation Administration Authority Corporatisation Act 1999](#)  
FSS Trustee Corporation  
SAS Trustee Corporation  
New South Wales Treasury Corporation  
Judicial Commission of New South Wales  
Independent Commission Against Corruption  
Bathurst-Orange Development Corporation  
Clann Limited  
Greyhound Racing Authority (NSW)  
Harness Racing New South Wales  
Homebush Abattoir Corporation  
Hunter Valley Catchment Management Trust  
Justice and Police Museum Limited  
Waste Recycling and Processing Corporation  
New South Wales Film and Television Office  
State Rail Authority of New South Wales  
The Trustees of the Anzac Memorial Building  
The University of Sydney  
The University of New England  
University of New England, Armidale Union (limited to persons who were contributors to either the

State Superannuation Fund or the State Authorities Superannuation Fund immediately before becoming employed by the University of New England, Armidale Union)

The University of New South Wales

The Macquarie University

The University of Newcastle

The University of Wollongong

Australian College for Seniors Incorporated

Charles Sturt University

University of Technology, Sydney

University of Western Sydney

Southern Cross University

Children's Medical Research Foundation (limited to the employees whose names were specified in the Order made under the [Public Authorities Superannuation Act 1985](#) dated 16 April 1986 and published in Gazette No 64 dated 18 April 1986 at page 1694)

Garvan Institute of Medical Research (limited to those persons who were employees of that Institute immediately before 6 March 1998)

Hospitals of Australia Ltd. (limited to persons who were, immediately before 1 April 1989, contributors under a statutory superannuation scheme conducted by the Government of New South Wales)

St. Luke's Hospital (limited to persons who, immediately before the appointed day, were employees of the Hospital and also contributors within the meaning of the [Public Authorities Superannuation Act 1985](#))

The New South Wales Teachers' Federation

Public Service Association of New South Wales

Joint Coal Board

Murray-Darling Basin Commission (limited to persons who were contributors to the State Authorities Superannuation Scheme immediately before becoming officers of the Commission and in respect of whom the Commission makes provision for superannuation in accordance with this Act)

Australian Transport Officers Federation (New South Wales Division)

The Water and Sewerage Employees Union (Salaried Division and Wages Division)

Australian Railways Union

The Australian Tramway and Motor Omnibus Employees' Association

Australian Federated Union of Locomotive Enginemen

Construction Forestry Mining Energy Union (limited to the employee whose name was specified in the Order made under the [Public Authorities Superannuation Act 1985](#) dated 3 June 1987 and published in Gazette No 93 dated 5 June 1987 at page 2710)

The Police Association of New South Wales

Trustees of Arakoon State Recreation Area

Trustees of Bent's Basin State Recreation Area

Trustees of Burrendong State Recreation Area

Trustees of Burrinjuck State Recreation Area

Trustees of Copeton State Recreation Area

Trustees of Lake Glenbawn State Recreation Area

Trustees of Grabine State Recreation Area

Trustees of Killalea State Recreation Area

Trustees of Lake Keepit State Recreation Area

Trustees of Wyangala State Recreation Area

The Sydney Opera House Trust

Wentworth Park Trust

Zoological Parks Board of New South Wales  
The Roads and Traffic Authority of New South Wales  
The State Transit Authority of New South Wales  
Home Care Service of New South Wales  
The Hills Centre Limited  
Parramatta Park Reserve Trust  
Parramatta Stadium Trust  
Ambulance Service of New South Wales  
University of Wollongong Recreation and Sports Association  
The Trustees of the Roman Catholic Church of the Diocese of Lismore (limited to persons:

- (a) who were employees of St. Vincent's Hospital, Lismore, and contributors to the State Authorities Superannuation Scheme immediately before 31 October 1990, and
- (b) who continue after that date to be employees of the Hospital and contributors to that Scheme)

Australian Securities Commission (limited to those persons who:

- (a) immediately before 1 January 1991, were employed in the Government Department known as Business and Consumer Affairs, and
- (b) immediately before the date of assent to the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 1991](#), were employed in the service of the Commission, and
- (c) on being employed in that service, have elected to remain employees for the purposes of this Act)

New South Wales Lotteries Corporation  
TAFE Commission  
Wild Dog Destruction Board  
Auditor-General's Office  
Lord Howe Island Board  
New South Wales Casino Control Authority  
Internal Audit Bureau of New South Wales  
Australian Industrial Registry (limited to those persons:

- (a) who on 3 February 1993 were employed by the Joint Coal Board constituted under the [Coal Industry Act 1946](#) as officers of the Coal Industry Tribunal also constituted under that Act, and
- (b) who, before becoming employed in the Australian Industrial Registry, have not requested the Board to pay their basic benefits to another superannuation scheme)

Financial Institutions Commission (limited to the person who was appointed to the office of Chief Executive of the New South Wales Financial Institutions Commission on 1 July 1992)  
Independent Living Centre (limited to Concetta de Bonis, Ann Louise Gibson, Jocelyn Frances Sloane and Melba Wu)  
Government Pricing Tribunal of New South Wales  
Financial Institutions Commission (limited to those persons:

- (a) who, being employees for the purposes of this Act, were employed in the Registry of Co-operatives, Department of Local Government and Co-operatives, immediately before the transfer date specified in the order by which their employment was transferred to that Commission in

accordance with clause 3 of Schedule 3 to the *Financial Institutions Commission Act 1992*, and

- (b) who did not, before that transfer date, request the Board to pay their benefits to another superannuation scheme or did not, on that date, become eligible under another superannuation scheme for a benefit of the same kind as that provided by this Act)

Public Transport Union NSW Branch (limited to existing employees of the Public Transport Union NSW Branch who were employees within the meaning of this Act as at 1 March 1993, and employees who become employees of the Union on or after 1 March 1993 and who are employees within the meaning of this Act immediately before becoming employees of the Union)

Sydney Organising Committee for the Olympic Games

New South Wales Aboriginal Land Council

Hawkesbury-Nepean Catchment Management Trust

TransGrid

The Northcott Society (limited to:

- (a) persons in respect of any period during which they have been employees of the employer from and including 14 October 1988 (but only if they were employees of the employer and contributing employees within the meaning of section 26C on 18 December 1992), and
- (b) other persons (being contributing employees within the meaning of that section) in respect of any period during which they were employees of the employer from and including 14 October 1988 and before 18 December 1992,
- (c) other persons (being non-contributing employees within the meaning of that section) in respect of any period during which they were employees of the employer from and including 14 October 1988 and before 1 July 1992)

Newcastle Port Corporation

Port Kembla Port Corporation

Sydney Ports Corporation

Waterways Authority

Port Macquarie Base Hospital (limited to those persons:

- (a) who were, immediately before 2 November 1994:
  - (i) employees of Hastings District Hospital, Port Macquarie, and
  - (ii) employees for the purposes of the *State Authorities Non-contributory Superannuation Act 1987*, and
  - (iii) contributors to the State Superannuation Fund or the State Authorities Superannuation Fund, and
- (b) who, on that date:
  - (i) transferred their employment to Port Macquarie Base Hospital, and
  - (ii) did not cease to be employees for the purposes of that Act, and
  - (iii) did not cease to be contributors to the State Superannuation Fund or the State Authorities Superannuation Fund)

Sustainable Energy Development Authority

Energy South

Delta Electricity

Macquarie Generation

Advance Energy

Australian Inland Energy Water Infrastructure

EnergyAustralia

Integral Energy Australia

NorthPower

Freight Rail Corporation

Rail Infrastructure Corporation

Hawkesbury District Health Service Limited (limited to persons:

- (a) who were, immediately before 7 August 1996, employees of the Hawkesbury District Hospital, Windsor (within the meaning of the Act) and contributors to the State Authorities Superannuation Fund or the State Superannuation Fund, and
- (b) who, on that date, transferred their employment to Hawkesbury District Health Service Limited, but did not cease to be employees for the purposes of the Act and did not cease to be contributors to the relevant Fund)

Resource NSW

Murrumbidgee Irrigation Corporation

Benevolent Society of New South Wales (limited to Genoveva Almeida, Robyn Brooks, Adrian Ford, Caroline Lynn, Lynne Perl, Angela Plant, Elizabeth Sawtell, Beulah Warren, Pauline Wells, Barbara Wittig and Joan Lunz while continually employed by the Society)

Olympic Roads and Transport Authority

Australian Prudential Regulation Authority (limited to those persons:

- (a) who, being employees for the purposes of this Act, were employed by the New South Wales Financial Institutions Commission immediately before they became employees of the Authority under section 32 of the *Financial Sector Reform (New South Wales) Act 1999*, and
- (b) who did not, before they became employees of the Authority, request STC to pay their benefits to another superannuation scheme or did not, on that date, become eligible under another superannuation scheme for a benefit of the same kind as that provided by this Act)

Sydney Catchment Authority

Australian Red Cross Society (limited to those persons who are employed in the Australian Red Cross Blood Service and who were, immediately before 1 July 1999, employed in the NSW Blood Transfusion Service of the Society)

Eraring Energy

Murrumbidgee Irrigation Limited

Parramatta Rail Link Company Pty Limited

Catholic Health Care Services Limited (limited to those persons who were employed at the Bodington Hospital, Wentworth Falls, immediately before 1 September 2001)

Mercy Care Centre Young Limited (limited to those persons who were employed at the Mt St Joseph's Residential Care Facility, Young, immediately before 1 September 2001)

The Trustees of the Roman Catholic Church for the Diocese of Lismore (limited to those persons who were employed at the St Joseph's Nursing Home, Lismore, immediately before 1 September 2001)



## Part 2 Local government and other authorities

A body corporate constituted under the [Local Government Act 1993](#) as a council or a county council

A rural lands protection board constituted under the [Rural Lands Protection Act 1998](#)

The N.S.W. Local Government Industry Training Committee Incorporated

Local Government Association of New South Wales

Shires Association of New South Wales

Electricity Association of New South Wales

Health Services Association of New South Wales

Institute of Municipal Management

New South Wales Nurses' Association

State Sports Centre Trust

Sydney Cricket and Sports Ground Trust

limited to:

(a) persons in respect of any period during which they have been employees of the employer from and including 1 April 1988 (but only if they were employees of the employer and contributing employees within the meaning of section 26C on 18 December 1992), and

Australian Catholic University Limited  
Government Employees Health Club  
Little Company of Mary, Calvary Hospital,  
Wagga Wagga  
New South Wales State Cancer Council  
Sydney Credit Union



(b) other persons (being contributing employees within the meaning of that section) in respect of any period during which they were employees of the employer from and including 1 April 1988 and before 18 December 1992, and

(c) other persons (being non-contributing employees within the meaning of that section) in respect of any period during which they were employees of the employer from and including 1 April 1988 and before 1 July 1992)

Waverley-Woollahra Destruction Committee

Richmond-Tweed Regional Library

Richmond-Upper Clarence Regional Library

Northern Area Regional Organisation of Councils

Health and Research Employees' Association of New South Wales

Health and Building Surveyors Association of New South Wales

Federated Municipal and Shire Council Employees' Union of Australia, New South Wales Division

## Part 3 Public health organisations

A public health organisation within the meaning of the [Health Services Act 1997](#)

## Schedule 2 Excluded persons

(Sections 3, 8, 27)

For the purposes of the definition of **employee** in section 3 (1), a person is an excluded person:

- (a) if the person is a full-time employee (other than an employee who is an executive officer) who is eligible for a superannuation benefit of the kind provided by this Act under another superannuation scheme, or
- (b) if the person is a judge within the meaning of the *Judges' Pensions Act 1953*, a master within the meaning of the *Supreme Court Act 1970*, the Solicitor General or the Director of Public Prosecutions, or
- (c) in the case of a person who is a part-time or an irregular employee and who would, if not an excluded person, be eligible in respect of the same period of service for a benefit under this Act and a benefit of the same kind under another superannuation scheme—to the extent that the person would be eligible for a benefit under this Act in respect of that period of service, or
- (d) if the person is an executive officer who is an optional member of the First State Superannuation Fund and is not or ceases to be (otherwise than in the circumstances mentioned in section 23 (1)) a contributor to any other superannuation scheme established by or under an Act, or
- (e) if the person is a person in respect of whom a conversion election has taken effect under Part 3B of the *Police Regulation (Superannuation) Act 1906*, section 3 (14) of the *Police Association Employees (Superannuation) Act 1969* or Part 3B of the *Superannuation Act 1916*, other than a person in respect of whom a revocation election has taken effect under Part 6 of Schedule 6 to the *Police Regulation (Superannuation) Act 1906* or Part 9 of Schedule 25 to the *Superannuation Act 1916*.

### **Schedule 3 Voluntary deferral of benefit for employees aged 55 years and over in certain circumstances**

(Section 24A)

#### **1 Eligible employees**

- (1) This Schedule applies to an employee:
  - (a) who is of or above the age of 55 years, and
  - (b) who, as a result of a single reduction of salary, has undergone a reduction of 20% or more in attributed salary after reaching that age, and
  - (c) whose employer certifies the matters referred to in paragraphs (a) and (b).
- (2) The fact that a person undergoes more than one attributed salary reduction of 20% or more does not mean that the person ceases to be a person to whom this Schedule applies.

#### **2 Exit date**

In this Schedule, **exit date**, in relation to an employee to whom this Schedule applies, means the day immediately preceding the day of the reduction in attributed salary in relation to which the employee makes an election under clause 3.

### 3 Election to preserve benefit

- (1) An employee to whom this Schedule applies may elect to preserve his or her benefit under this Act in accordance with this Schedule.
- (2) An employee may make only one election under this clause but the election may relate to any single reduction in attributed salary of 20% or more that occurs after the employee reaches 55 years of age (not just the first reduction that occurs).

### 4 Date of preservation of benefit

The benefit is preserved from the exit date.

### 5 Calculation of value of preserved benefit

The value of a preserved benefit in respect of an employee to whom this Schedule applies is to be calculated in accordance with section 22 as if the employee had ceased employment.

### 6 When preserved benefit is payable

A benefit preserved under this Schedule may only be paid in accordance with section 24.

## Schedule 4 Calculation of deferred accrued benefit for non-contributing employees

(Section 26E)

The deferred accrued benefit provided by Part 4A for an employee is an amount calculated in accordance with whichever of the following provisions is appropriate in the particular case:

### Part 1 Employees other than irregular employees

The deferred benefit =  $0.03 \times FAS \times Y$ ,

where:

**FAS** = the employee's final average salary (as defined in section 21), and

**Y** = the years of eligible service on a daily basis, commencing on or after the appointed day and ending on 30 June 1992.

### Part 2 Irregular employees

The deferred benefit =  $B \times AWOTE \text{ factor}$ ,

where:

**B** = the basic benefit that would have been provided by section 22 if the employee had ceased to be

an employee by reason of resignation on 1 July 1992, and

**AWOTE factor**= the factor calculated as set out below (for the purpose of indexing the benefit (B) in line with movements in average weekly earnings between 30 June 1992 and the final payment/preservation date for the benefit).

The final payment/preservation date for the benefit is the date on which the benefit is payable under section 23 or on which it is required to be preserved under section 24, whichever happens first.

#### *Calculation of AWOTE factor*

The AWOTE factor is calculated by dividing the AWOTE applicable as at the final payment/preservation date for the benefit by the June 1992 AWOTE. If the AWOTE factor works out to be a number less than 1, it is instead to be taken to be 1.

The AWOTE applicable at the final payment/preservation date for the benefit is the dollar amount last published before that date by the Australian Statistician under the *Census and Statistics Act 1905* of the Commonwealth as the amount of average weekly ordinary time earnings.

The June 1992 AWOTE is the dollar amount last published before 30 June 1992 by the Australian Statistician under the *Census and Statistics Act 1905* of the Commonwealth as the amount of average weekly ordinary time earnings.

## **Schedule 5 Savings and transitional provisions**

(Section 35)

### **Part 1 Regulations**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Superannuation Legislation (Further Amendment) Act 1993*

*Superannuation Legislation Amendment Act 1997*

*Superannuation Legislation Further Amendment Act 1997*

*Superannuation Legislation Further Amendment Act 1999*

*Superannuation Legislation Amendment Act 2000*

*Superannuation Legislation Amendment (Same Sex Partners) Act 2000*

*Superannuation Legislation Amendment (Miscellaneous) Act 2001*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

- (3) To the extent to which any such provision takes effect from a date that is earlier than

the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Superannuation Legislation (Further Amendment) Act 1993**

### **2 Spouses' benefits**

The amendments made by the *Superannuation Legislation (Further Amendment) Act 1993*, do not entitle any spouse to benefits in respect of the death of an employee or former employee occurring before 1 January 1994.

## **Part 3 Superannuation Legislation Amendment Act 1997**

### **3 Irregular employees**

Any action done by or on behalf of the trustee before the commencement of this clause, that is consistent with the effect of section 20A (4) as amended by the *Superannuation Legislation Amendment Act 1997*, is validated.

## **Part 4 Superannuation Legislation Amendment (Same Sex Partners) Act 2000**

### **4 Spouse or de facto partner entitlements**

- (1) The definitions of **de facto partner** and **spouse** inserted by the *Superannuation Legislation Amendment (Same Sex Partners) Act 2000* apply only to or in respect of employees or former employees who die on or after the commencement of the amendment substituting the definition of **spouse**.
- (2) The definition of **spouse**, as in force before its substitution by that Act, applies to or in respect of employees or former employees who die before the commencement of the amendment substituting the definition of **spouse**.

## **Part 5 Superannuation Legislation Amendment (Miscellaneous) Act 2001**

### **5 Validation**

Anything:

- (a) that was done or omitted to be done for the purposes of Part 4B before the date of

assent to the Superannuation Legislation Amendment (Miscellaneous) Act 2001, and

(b) that would have been lawful if Part 4B had been in force when the thing was done or omitted to be done,

is as valid as it would have been had that Part been in force when the thing was done or omitted to be done.