

First State Superannuation Act 1992 No 100

[1992-100]



New South Wales

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First State Superannuation Act 1992 No 100



New South Wales

An Act to establish a 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 *First State Superannuation Act 1992*.

2 Commencement

This Act commences on the date of assent to this Act.

Note—

This Act affects employees and employers in respect of periods before the Act commenced, as set out in Schedule 3 (Savings, transitional and other provisions).

3 Definitions

The Dictionary at the end of this Act contains definitions of words and expressions used in this Act.

3A Meaning of “salary or wages”

- (1) For the purposes of this Act, the **salary or wages** of a member is:
 - (a) in the case of a member who is not an executive officer, the total of:
 - (i) earnings in respect of ordinary hours of work, and
 - (ii) earnings consisting of over-award payments, shift-loading or commission, and
 - (iii) allowances and other payments of a kind prescribed by the regulations for the purposes of this subsection, and
 - (iv) if employment benefits of a kind prescribed by the regulations for the purposes of this subsection are provided to the member, the cost of providing the employment benefits, or
 - (b) in the case of a member who is an executive officer, the salary or wages as last

nominated or changed in accordance with this section.

- (1A) A regulation made for the purposes of subsection (1) (a) (iii) or (iv):
- (a) may only be made with the concurrence of the Treasurer, and
 - (b) may apply to all members who are not executive officers, or to specified members or classes of members who are not executive officers.
- (2) An amount of salary or wages for the purposes of this Act must be nominated to the employer of a member who is an executive officer by the member on, or as soon as practicable after, becoming a member or being appointed as an executive officer (whichever occurs first). An amount may also be nominated to the employer by the member on, or as soon as practicable after, being reappointed, or appointed to another position, as an employee.
- (3) The amount nominated is to be not less than:
- (a) the monetary remuneration payable to the member at the date of nomination, or
 - (b) the maximum contribution base, within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth, applicable at that time,
- whichever is the lower.
- (4) The amount nominated is to be not more than the total value of the remuneration package paid to the member (less the cost of providing employer's contributions to superannuation and any performance-related incentive payment), expressed as an annual rate.
- (5) If the member fails to nominate an amount of salary or wages within 28 days after first becoming a member or being appointed as an executive officer (whichever occurs first) or within such further period as FTC may allow, the member is taken to have nominated an amount of salary or wages that is equal to the monetary remuneration payable to the member at the end of the applicable period.
- (6) A member who is an executive officer may, from time to time, by notice to the member's employer elect to reduce the amount of salary or wages nominated under this section, but not so that the amount is less than the monetary remuneration payable to the member at the date of the election.
- (7) A member who is an executive officer may, from time to time, by notice to the member's employer elect to increase the amount of salary or wages 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 member has increased since the amount of the salary or wages was last nominated or

changed.

- (8) An employer must notify FTC of a nomination or election under this section. Any such nomination or election takes effect on the date of notification to FTC or on such other date as FTC may determine with the consent of the member concerned.
- (9) Nothing in this section requires the nominated amount of salary or wages to be increased if, because of a variation in the remuneration package of a member or in the proportions of the remuneration package comprising monetary remuneration and employment benefits of the member, the amount of salary or wages as last nominated or changed for the purposes of this section is less than the monetary remuneration of the member.
- (10) In this section:

employment benefit means a benefit provided to a member at the cost of the member's employer (being a benefit of a private nature).

4 Notes

Matter appearing under the heading "Note" does not form part of this Act.

Part 2 Members of the Scheme

Note—

This Part sets out the persons who are to be members of the Scheme. Persons who are made members of the Scheme by this Act are generally employees in the New South Wales public sector but categories of employees who are members may be changed by order of the Governor. The Scheme also allows other public sector employees covered by other pre-existing public sector superannuation schemes to make voluntary employee contributions to the Scheme and to become members, despite being members of other schemes.

5 Members of the Fund

- (1) An employee of an employer is a **full member** of the Fund, unless the employee is excluded from full membership under section 8 or elects to make other arrangements under section 10.
- (2) An employee of an employer who is not a full member may become an **optional member** of the Fund by making an election under the trust deed and, on making such an election, continues to be such a member while the election is in force.
- (2A) The spouse of an employee or a person who is a member of the Parliamentary superannuation scheme may become an optional member of the Fund if the employee or person makes an election under the trust deed to contribute to the Fund on behalf of his or her spouse and his or her spouse continues to be such a member while the election is in force.
- (3) (Repealed)

5A Employees eligible to contribute to trust deed superannuation schemes

- (1) Despite section 5 (1), an employee who is eligible to contribute to a superannuation scheme established under section 127 of the *Superannuation Administration Act 1996* is not a full member of the Fund unless the person notifies his or her employer that the person elects to be a full member.
- (2) Any such employee who so notifies his or her employer is a full member of the Fund.

6 Who is an employer?

- (1) The employers to which this Act applies are:
 - (a) the Crown, the Government or a Minister of the Crown, and
 - (b) the authorities specified in Schedule 1.
- (2) Members of the Police Service are, for the purposes of this Act, taken to be employed in the Police Service by the Crown.
- (3) (Repealed)
- (4) An employee who is employed by the Crown, the Government or a Minister of the Crown is, for the purposes of this Act, taken to be employed by the person or organisation prescribed by the regulations for the purposes of this section.

7 Employers may be changed

- (1) **Governor may amend Schedule of employers** The Governor may by order published in the Gazette amend Schedule 1.
- (2) **Provisions relating to orders** An order under this section, and any 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 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 member.

8 Employees who are excluded from being full members of Fund

- (1) **Employees who are not full members** The employees set out in Schedule 2 are not eligible to be full members of the Fund.
- (2) **Governor may amend Schedule 2** The Governor may by order published in the Gazette amend Schedule 2.
- (3) **Provisions relating to orders** An order under this section, and any 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 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 member.

Note—

The employees set out in Schedule 2 include employees who are members of other State Government superannuation schemes in respect of the same contract of employment and Judges, masters of the Supreme Court, the Solicitor General and the Director of Public Prosecutions.

9 Membership on making conversion election

- (1) An employee who makes a conversion election 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* is, on the election taking effect, a full member of the Fund.

Note—

Under section 5J of the *Police Regulation (Superannuation) Act 1906* and section 20M of the *Superannuation Act 1916*, the SAS Trustee Corporation must pay the conversion benefit to FTC as soon as practicable after the conversion election takes effect.

- (2) The salary or wages of an employee who is an executive officer and who becomes a member under this section is, despite any other provision of this Act, taken to be the salary nominated by the employee in the conversion election until another nomination is made under this Act.

10 Members may make other arrangements

- (1) A full member may notify the member's employer that the employer is to meet the employer's obligations in respect of the member under the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth by contributing to another complying superannuation fund. The member ceases to be a full member of the Fund on the date written notice is given to FTC by the employer of the contributions to that other fund, or on the date of commencement of those contributions, whichever is the later.
- (2) However, the member may elect to make contributions under the trust deed and is an optional member of the fund on any such election taking effect and while the election is in force.
- (3) An employer must give written notice to FTC if the employer ceases to meet the employer's obligations in respect of an employee under the *Superannuation Guarantee (Administration) Act 1992* in the manner referred to in subsection (1) and, on such notice being given, the employee is a full member of the Fund.

10A, 11 (Repealed)

Part 3 Contributions to the Scheme

12 Compulsory employer contributions

- (1) An employer must pay to FTC, for each full member employed by the employer, an amount equal to a percentage of the salary or wages of the employee, being the percentage specified below for the financial year (being the year commencing 1 July) in which the contributions are payable.

Year	Percentage
1992-93 (1 July 1992—31 December 1992)	4
1992-93 (1 January 1993—30 June 1993)	5
1993-94	5
1994-95	5
1995-96	6
1996-97	6
1997-98	6
1998-99	7
1999-2000	7
2000-01	8
2001-02	8
2002-03 and subsequent years	9

- (2) An employer's liability under this section to make contributions in respect of a full member commences when the member becomes a full member and ceases when the member ceases to be a full member.
- (3) An employer is not required to make a contribution in respect of an employee (despite this section), and an employee may not elect or continue to make contributions to the Fund, if in order to be consistent with any relevant Commonwealth superannuation standard a superannuation fund must not accept contributions from that employee.

12A Certain employees may elect to have employer contributions cease

- (1) An employee may give his or her employer a written notice requiring the employer to cease to make the contributions payable to FTC under section 12 in respect of the employee.

- (2) The notice may be given only if it is accompanied by the statements referred to in section 19 (4) (b) of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth.
- (3) A notice given under this section is irrevocable.
- (4) An employer who is given a notice under this section:
 - (a) must comply with it, and
 - (b) is not required to make the contributions referred to in section 12 in respect of the employee concerned.

12B Contributions for employees who fund their own superannuation

- (1) This section applies to an employee, other than an executive officer, who is employed under a contract under which contributions made by the employer to the employee's superannuation form part of the total remuneration package of the employee and are deducted from the monetary remuneration otherwise payable to the employee.
- (2) An employee to whom this section applies may give his or her employer a written notice requiring the employer to cease to make contributions payable to FTC under section 12 in respect of an amount of salary or wages of the employee that exceeds the maximum contribution base.
- (3) An employer who is given such a notice:
 - (a) must comply with it, and
 - (b) is not required to make the contributions referred to in section 12 in respect of that part of the salary or wages of the employee that exceeds the maximum contribution base, as applicable from time to time.
- (4) A notice given under this section may be revoked by the employee by further notice in writing given to the employer.
- (5) If the notice is revoked, the employer is required to resume making the contributions referred to in section 12 in respect of that part of the salary or wages of the employee that exceeds the maximum contribution base in the financial year that commences after the notice of revocation is given to the employer.
- (6) In this section:

maximum contribution base has the meaning given by the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth.

Part 4 First State Superannuation Trust Deed

13 Trust deed

- (1) The Minister and FTC are to enter into a trust deed that makes provision for or with respect to the workings of the superannuation scheme established by this Act, including the entitlements and obligations of members and the obligations of employers.
- (2) The trust deed is to include provision for the following:
 - (a) the benefits that are payable to members, and the payment of those benefits,
 - (b) the preservation of benefits under the Scheme,
 - (c) the procedures for claiming benefits and making other applications and elections under the Scheme,
 - (d) the contributions that may be paid by employees,
 - (e) the variation of employee contributions,
 - (f) insured benefits for members,
 - (g) the procedure for amendment of the trust deed,
 - (h) such other matters as are required to be included in the trust deed by the regulations.
- (3) The trust deed must include provisions to ensure that a right that a member had immediately before the deed takes effect is not abrogated or reduced. The trust deed may, however, confer additional rights on members.
- (4) The trust deed may not increase the liability of an employer to contribute under this Act.
- (5) The trust deed must not make provision for the appointment of another trustee of the Scheme.
- (6) The trust deed, together with any Scheme rules, forms part of the Scheme.
- (7) Members and employers are bound by the terms of the trust deed.

14 Other matters that may or may not be included in trust deed

- (1) Without limiting section 13, the trust deed may include provision for the following:
 - (a) payment of interest on overdue contributions by employers,
 - (b) requiring employers to provide information in connection with the Scheme and to pay costs associated with a failure to provide information,

- (c) requiring employees or claimants to provide any information or evidence, to provide FTC with an authority to obtain such information or evidence from a third person or to undergo a medical examination or examinations, but only if it is relevant to the assessment of an application for, or claim for payment of, a benefit that applies in the case of death, incapacity or invalidity,
- (d) providing benefit options for members who have ceased employment with an employer (such as by requiring FTC to purchase a right to an annuity or other form of pension at the request of a member or former member),
- (e) such other matters as are necessary or convenient for the workings of the Scheme.

(2) The regulations may specify matters that must not be included in the trust deed.

15 Trust deed to be consistent with State superannuation legislation

- (1) FTC must at all times ensure that the trust deed is consistent with this Act and the [Superannuation Administration Act 1996](#).
- (2) A provision of the trust deed is void to the extent that it is inconsistent with this Act, the regulations or the [Superannuation Administration Act 1996](#).

16 Trust to be consistent with other relevant legislation

FTC must at all times ensure that the trust deed is consistent with any relevant Commonwealth legislation.

17 Amendment of trust deed

- (1) The trust deed may be amended from time to time by FTC in accordance with the procedure for amendment set out in the trust deed.
- (2) The trust deed may be amended so that the amendment takes effect on a date that is earlier than the date the amendment is made, but only if the amendment does not operate to abrogate or reduce a right that a member had before the amendment.
- (3) Despite subsection (2), such an amendment may be made to ensure that the trust deed complies with any relevant Commonwealth legislation.

18 First State Superannuation Fund

- (1) FTC is required to maintain and administer the First State Superannuation Fund in accordance with this Act and the trust deed.
- (2) The trust deed is to make provision for payments into and out of the Fund.
- (3) Without limiting section 13, the trust deed may make provision for or with respect to:

- (a) the establishment, maintenance or adjustment of accounts and reserves in the Fund, and
- (b) the amounts that may be credited or debited from those accounts and reserves, and
- (c) the establishment and use of asset portfolios for the purposes of the investment of the Fund, and
- (d) the recovery from members or employers of the costs incurred by or on behalf of FTC in administering or managing the Fund, and
- (e) insurance of the Fund or any part of it.

(4) The Fund cannot be terminated or closed pursuant to the trust deed.

19 Trust deed not chargeable with duty

Duty under the *Duties Act 1997* is not payable in respect of the trust deed, or any amendment to the trust deed.

20 FTC may make rules

- (1) FTC may make rules, not inconsistent with this Act or the trust deed:
 - (a) for or with respect to any matter for which it is by this Act or the trust deed required or permitted to make rules, and
 - (b) for or with respect to any matter that is necessary or convenient for the purpose of giving effect to the trust deed.
- (2) In particular, FTC may make rules for or with respect to the following:
 - (a) the circumstances in which employees are taken to have ceased to be employed for the purposes of this Act,
 - (b) the calculation of salary and wages for the purpose of calculating any death or invalidity benefits,
 - (c) the payment of employee contributions (such as the periods for which contributions are to be made and the manner of payment),
 - (d) the payment and preservation of benefits,
 - (e) applications for payments of benefits,
 - (f) the provision of information to members and other persons,
 - (g) the provision of information to FTC from time to time by employers as to employees and contributions for employees,

- (h) the remittance and collection of contributions to the Fund,
 - (i) the operation of accounts in the Fund,
 - (j) agreements or arrangements with employers and employees as to optional contributions.
- (3) The rules must not be inconsistent with the relevant Commonwealth superannuation standards.
- (4) Except as may be otherwise permitted by this Act, FTC must not make a rule that abrogates or reduces the accrued rights of members under this Act or increases the liability of an employer to contribute under this Act.

Part 5 Transfer of Public Sector Executives Superannuation Fund members to First State Superannuation Fund

Division 1 Preliminary

21 Definitions

In this Part:

additional benefit means the additional benefit provided under the former Act.

former Act means the [Public Sector Executives Superannuation Act 1989](#).

former Scheme means the superannuation scheme established under the former Act.

insurance contract or arrangement means a contract or arrangement entered into by FTC under sections 12 and 20 of the [Superannuation Administration Act 1996](#) with another person (the **insurer**) for the insurance by that person or the arranging of insurance by that person (on an individual or a group basis) of persons for the purpose of coverage for additional benefits.

PSES Fund means the Public Sector Executives Superannuation Fund established under the former Act.

transfer day means 1 March 2000.

transferred member means a member of the former Scheme who is transferred to the Fund under this Part and includes a person referred to in section 23 (2).

22 Effect of Part

This Part has effect despite any other provision of this Act or the trust deed.

Division 2 Transfer to, and membership of, Fund

23 Transfer of members of former Scheme

- (1) A person who is a member of the former Scheme immediately before the transfer day is, on and from that day, transferred from the former Scheme to the superannuation scheme established under this Act and the trust deed.
- (2) A person who, immediately before the transfer day, had preserved a benefit in the PSES Fund is, on and from that day, transferred from the former Scheme to the superannuation scheme established under this Act and the trust deed.

24 Amalgamation of Funds

- (1) On and from the transfer day, the PSES Fund is taken to have been amalgamated with and to have become part of the Fund.
- (2) The balance standing to the credit of each account or reserve forming part of the PSES Fund is, on the transfer day, taken to be transferred to the corresponding account or reserve in the Fund.

25 Transferred members' accounts

- (1) FTC must, on the transfer day, establish in the Fund in accordance with the trust deed an account in respect of each person made a member by this Part.
- (2) The trust deed must provide for each account to have a balance at credit equal to the balance at credit immediately before the transfer day in the account established in the PSES Fund in respect of the person.
- (3) Despite any other provision of this section, if a transferred member was a member of the Fund immediately before the transfer day, the trust deed must provide for the member's account to be credited with an amount equal to the balance at credit immediately before the transfer day in the account established in the PSES Fund in respect of the person.
- (4) An amount credited to an account on the transfer to the Fund of a person under this Part is, for the purposes of this Act and the trust deed, to be treated as if it were contributed or preserved under this Act and the trust deed by or on behalf of the person, or the person's employer, as the case requires.

26 Salary or wages on transfer

- (1) The salary or wages of a transferred member who is a full member for the purposes of this Act and the trust deed is, despite any other provision of this Act, taken to be the salary or wages of the transferred member for the purposes of the former Scheme immediately before the transfer day until another nomination is made under this Act.
- (2) Subsection (1) does not apply to a transferred member who was, immediately before the transfer day, a full member of the Fund.

27 Matters to be dealt with by trust deed

Without limiting section 13, 14, 18 or 20, the trust deed and rules under the trust deed may make provision for or with respect to the following:

- (a) the category of membership of transferred members,
- (b) the establishment of accounts in respect of transferred members,
- (c) the crediting of amounts to accounts of transferred members,
- (d) the investment of amounts held in accounts of transferred members,
- (e) the treatment of additional contributions made by transferred members under the former Scheme during a period ending immediately before the transfer day.

Division 3 Additional benefit cover

28 Application of Division to other persons

- (1) A person who became a full member under section 10A, as in force before the transfer day, has the same rights and obligations under this Division as a transferred member.
- (2) For the purposes of subsection (1), a reference in this Division:
 - (a) to a transferred member includes a reference to a person referred to in that subsection, and
 - (b) to the transfer day includes a reference to the day on which the person concerned became a member.

29 Additional benefit cover

- (1) A former member who, immediately before the transfer day, was covered for the additional benefit under the former Scheme continues, on and from the transfer day, to be covered for the same amount of additional benefit and is liable for payment of the additional benefit premium.
- (2) A transferred member who, immediately before the transfer day, was not covered for the additional benefit under the former Scheme is, while a member of the Fund, entitled to apply to FTC to be covered, and to be covered (if otherwise eligible), for the additional benefit.
- (3) A transferred member who, immediately before the transfer day, had applied to be covered for the additional benefit but whose application had not been determined is taken to have applied under this Act and the trust deed to be covered for the additional benefit.

30 Insurance contracts and arrangements

- (1) Any insurance contract or arrangement in force immediately before the transfer day, and applicable to a transferred member, continues in force and applies to transferred members in the same way as it applied to members of the former Scheme immediately before the transfer day.
- (2) Any such contract or arrangement may be varied or terminated or renewed in the manner provided for by the contract or arrangement or in any other manner permitted by law.
- (3) However, the contract or arrangement may not be terminated solely because of the closure of the former Scheme and the transfer of members to the Fund.

31 Matters to be dealt with by trust deed

- (1) Without limiting section 13, 14, 18 or 20, the trust deed and rules under the trust deed may make provision for or with respect to the following:
 - (a) coverage of transferred members for the basic death or invalidity benefit or the additional death or disability benefit,
 - (b) applications for coverage for additional benefits,
 - (c) variation and revocation of cover for additional benefits (including cover continued by this Part),
 - (d) payment of additional benefits.
- (2) The trust deed may make provision for any matter referred to in subsection (1) by applying the provisions of the former Act relating to additional benefits.

Division 4 Miscellaneous

32 Recovery of money owing to PSES Fund

FTC may recover any money owed to the PSES Fund immediately before the transfer day as if any such money were owed to the Fund.

33 Disputes

Any dispute under the former Scheme is to be dealt with in accordance with the procedures applicable to disputes arising under this Act.

34 Rights, liabilities and other matters

- (1) Nothing in the [Superannuation Legislation Further Amendment Act 1999](#) affects the following:
 - (a) any rights, liabilities or obligations of the PSES Fund, or of FTC in respect of that

Fund or the former Scheme, in existence immediately before the transfer day,

- (b) any rights, liabilities or obligations of a transferred member arising under the former Act and in existence immediately before the transfer day,
- (c) any rights, liabilities or obligations of any person in respect of the provision of coverage for the additional benefit and in existence immediately before the transfer day.

- (2) A provision of the trust deed or a rule may not detrimentally affect any right, liability or obligation referred to in subsection (1) and is void to the extent to which it purports to.

35 Regulations

- (1) The regulations may make provision for or with respect to the rights, liabilities and obligations of transferred members.
- (2) A provision referred to in subsection (1) may not restrict or remove any rights a transferred member has as a member under this Act (other than this Part), but may confer additional rights, having regard to the rights and obligations of the transferred member under the former Scheme.
- (3) A provision referred to in subsection (1) may, if the regulations so provide, take effect from the transfer day or a later day.
- (4) 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.

36 Transactions and other matters not liable for duty

Duty under the *Duties Act 1997* is not payable in respect of any transaction or other document or matter resulting from the closure of the former Scheme and the operation of this Part.

Part 5A Preserved benefits transferred under *State Authorities Non-contributory Superannuation Act 1987* to First State Superannuation Fund

37 Definitions

In this Part:

eligible preserved benefit has the same meaning as it has in Part 4B of the *State Authorities Non-contributory Superannuation Act 1987*.

transfer day means the day on which the eligible preserved benefits are transferred by STC under Part 4B of the *State Authorities Non-contributory Superannuation Act 1987*.

transferred member means a person whose eligible preserved benefit is transferred under section 27AD of the *State Authorities Non-contributory Superannuation Act 1987*.

STC means the SAS Trustee Corporation.

38 Transfer to First State Superannuation Fund

- (1) On and from the transfer day, a person whose benefit is transferred to FTC for crediting to the Fund under section 27AD of the *State Authorities Non-contributory Superannuation Act 1987*, and who is not already a member of the superannuation scheme established under this Act and the trust deed, is transferred as an inactive member of the Fund.
- (2) FTC must establish in the Fund an account in respect of any such inactive member.
- (3) FTC must credit to the Fund the amount transferred to FTC under section 27AD of the *State Authorities Non-contributory Superannuation Act 1987*.
- (4) FTC must credit to the account of each transferred member an amount equal to the amount of the eligible preserved benefit of the transferred member immediately before the transfer day.
- (5) Any such amount is taken to have been credited to the account on the day following the transfer day.
- (6) An amount credited under this section to an account of a transferred member is, for the purposes of this Act and the trust deed, to be treated as if it were contributed or preserved under this Act and the trust deed by or on behalf of the transferred member.

39 Matters to be dealt with by trust deed

Without limiting section 13, 14, 18 or 20, the trust deed and the rules under the trust deed may make provision for or with respect to the following:

- (a) the establishment of accounts in respect of transferred members,
- (b) the crediting of amounts to accounts of transferred members,

- (c) the investment of amounts held in accounts of transferred members.

40 Rights, liabilities and other matters

- (1) Nothing in the *Superannuation Legislation Amendment (Miscellaneous) Act 2001* affects the following:
- (a) any rights, liabilities or obligations of STC relating to eligible preserved benefits under the *State Authorities Non-contributory Superannuation Act 1987* in existence immediately before the transfer day,
 - (b) any rights, liabilities or obligations of a transferred member arising under the *State Authorities Non-contributory Superannuation Act 1987* and in existence immediately before the transfer day.
- (2) A provision of the trust deed or a rule may not detrimentally affect any right, liability or obligation referred to in subsection (1) and is void to the extent to which it purports to do so.

41-62 (Repealed)

Part 6 Miscellaneous

63 Removal of employers from Act

- (1) This section applies where an employer is removed from Schedule 1.
- (2) On an employer being so removed, an employee of the employer is taken to have ceased to be employed by an employer for the purposes of this Act and the trust deed, and they apply accordingly.

64 Benefit not to be assigned, charged or treated as an asset in a member's estate

- (1) A purported assignment of, or purported charge over, a benefit is void.
- (2) If, 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 a member is not an asset in the member's estate that is applicable in payment of the debts and liabilities of the deceased.
- (4) Nothing in this section prevents FTC 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) is to be taken to have been made to the person entitled to the benefit.

65-72 (Repealed)

73 Recovery of money owing to Fund

- (1) **Recovery of money owing** FTC may recover any money owing to the Fund by a member, employer or other person, together with interest on that money as provided by subsection (2):
 - (a) where any amount is, or becomes, payable from the Fund to the member, employer or other person—by deduction from that amount, or
 - (b) in any other case—as a debt in a court of competent jurisdiction.
- (2) **Interest** Interest at a rate from time to time determined by FTC is payable on any amount owing to the Fund 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.

74 Restoration of lost right etc under Act or trust deed

- (1) If a person is entitled to exercise a right or enjoy a privilege or benefit under this Act or the trust deed and, without having exercised the right or enjoyed the privilege or benefit, the person ceases to be entitled to do so, the person may exercise the right or enjoy the privilege or benefit if:
 - (a) FTC, being satisfied that it is just and equitable that it should do so, gives its consent to the exercise by the person of the right or the enjoyment by the person of the privilege or benefit, and
 - (b) the person fulfils any conditions imposed, and complies with any requirements made, by FTC in giving its consent.
- (2) If under this section FTC consents to an election, or an application to FTC, being made after the time before which, but for that consent, it should have been made, FTC may, if it thinks fit, deal with the election or application as if it had been made before that time.

75 (Repealed)

76 Regulations

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.

77 Savings, transitional and other provisions

Schedule 3 has effect.

78 (Repealed)

79 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of this Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Employers

(Section 7)

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 Management Trust
Australian Museum Trust
Pacific Power
TransGrid
The Corporation constituted under the *Superannuation Administration Authority Corporatisation Act 1999*
FSS Trustee Corporation
SAS Trustee Corporation
New South Wales Treasury Corporation
Judicial Commission
Independent Commission Against Corruption
A corporation constituted under the *Growth Centres (Development Corporations) Act 1974*
Clann Limited
Greyhound Racing Authority (NSW)
Harness Racing New South Wales
Homebush Bay Ministerial 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
Garvan Institute of Medical Research (limited to those persons:

- (a) who were employees of that Institute immediately before 6 March 1998, and
- (b) who were members of the Fund immediately before that date)

The New South Wales Teachers' Federation
Public Service Association of New South Wales
Joint Coal Board
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
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
Sydney Opera House Trust
Wentworth Park Trust
Zoological Parks Board of New South Wales
Roads and Traffic Authority
State Transit Authority
Home Care Service of New South Wales
The Hills Centre Limited
Parramatta Park Reserve Trust
Parramatta Stadium Trust
Ambulance Service of New South Wales
New South Wales Lotteries Corporation
Technical and Further Education Commission
The Wild Dog Destruction Board
Auditor-General's Office
Lord Howe Island Board
New South Wales Casino Control Authority
Internal Audit Bureau
Burrendong Arboretum Trust
Government Pricing Tribunal of New South Wales
Financial Institutions Commission (limited to those persons:

- (a) who, being members of the Fund, 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 cease to be members of the Fund by that date)

Public Transport Union NSW Branch (limited to:

- (a) persons who were employed by the Public Transport Union NSW Branch and were members of the Fund on 1 March 1993, and
- (b) persons who have become employed by that Branch after that date and who were members of the Fund immediately before they became so employed)

Sydney Organising Committee for the Olympic Games

New South Wales Aboriginal Land Council

Hawkesbury-Nepean Catchment Management Trust

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) full or optional members of the First State Superannuation Fund, and
- (b) who, on that date:
 - (i) transferred their employment to Port Macquarie Base Hospital, and
 - (ii) did not cease to be members of that Fund)

Sustainable Energy Development Authority

Energy South

Delta Electricity

Macquarie Generation

Advance Energy

Australian Inland Energy Water Infrastructure

EnergyAustralia

Integral Energy Australia

NorthPower

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 and full or optional members of the First State Superannuation Fund, and
- (b) who, on that date, transferred their employment to Hawkesbury District Health Service Limited and did not cease to be members of that 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 members of the Fund or the State Authorities Superannuation Fund or the State Superannuation Fund, were employed by the 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 cease to be members of the State Authorities Superannuation Fund or the State Superannuation Fund before they became employees of the Authority)

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)

Police Integrity Commission

Eraring Energy

Murrumbidgee Irrigation Limited

New South Wales Institute of Sport

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)

Landcom

National Rail Consortium (SSL) Pty Limited (limited to those persons who were, immediately before 21 February 2002, employees of the Freight Rail Corporation)

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 NSW 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

Government Employees Health Club

Keep Australia Beautiful

Sydney Credit Union

Waverley-Woollahra Destruction Committee

Richmond-Tweed Regional Library



(limited to persons who were employees of the employer on 7 December 1992)

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
Rural Lands Protection Boards' Association of New South Wales

Part 3 Public health organisations

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

Schedule 2 Employees who are not full members of the Fund

(Section 8)

1 General provision

- (1) The following employees are not full members of the Fund:
 - (a) an employee who is a contributor to or a member of another FTC scheme or an STC scheme (within the meaning of the [Superannuation Administration Act 1996](#)) in respect of the same contract of employment,
 - (b) an employee who 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,
 - (c) an employee who has not contributed to the Fund, or whose employer has not contributed to the Fund in respect of the employee, and who is an employee in respect of whom FTC must not accept contributions under section 12,
 - (d) an employee who, while receiving salary or wages for work done outside Australia, is not a resident of Australia.
- (2) Subclause (1) does not apply to an employee who has preserved a benefit in an associated superannuation scheme, or is entitled to a deferred accrued benefit under the [State Authorities Non-contributory Superannuation Act 1987](#), and who is not otherwise a participant in any such scheme.
- (3) For the purposes of subclause (1) (d), an employee is not a resident of Australia unless he or she would be treated as a resident of Australia for the purposes of the [Income Tax Assessment Act 1936](#) of the Commonwealth.

Schedule 3 Savings, transitional and other provisions

(Section 77)

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent

on the enactment of the following Acts:

this Act

Superannuation Legislation (Superannuation Guarantee Charge) Amendment Act 1992

State Authorities Superannuation (Scheme Closure) Amendment Act 1992

Superannuation Legislation (Further Amendment) Act 1993

Superannuation Legislation Amendment Act 1996

Superannuation Legislation Amendment Act 1997

Superannuation Legislation Further Amendment Act 1997

Superannuation Legislation Further Amendment Act 1998

Superannuation Legislation Further Amendment Act 1999

Superannuation Legislation Amendment 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.

2 Application of Scheme to certain employees from 1 July 1992

- (1) For the purpose of calculating a benefit payable to a member who, on or after 1 July 1992, was an employee under the *State Authorities Non-contributory Superannuation Act 1987*, the member is taken to have been a member since 1 July 1992 or any later date on which the member became such an employee and the benefit payable to the member is to be adjusted accordingly.
- (2) Regulations may be made for or with respect to the adjustment of the contributions on behalf of any such member or any person formerly such a member in respect of the period from 1 July 1992 to 8 December 1992 for the purpose of complying with

applicable Commonwealth occupational superannuation standards.

- (3) A provision of a regulation made under subclause (2) may, if the regulation so provides, take effect from 1 July 1992 or a later day.
- (4) 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 or an employer), 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 or an employer) in respect of anything done or omitted to be done before the date of its publication.

3 Basic death or invalidity premiums

A person who, before the commencement of sections 13 and 14, as replaced by the [Superannuation Legislation Amendment Act 1996](#), was entitled to a zero amount of basic death or invalidity cover because of the balance of the person's account, is taken not to have been liable to pay basic death or invalidity premiums during any part of the period commencing on 1 March 1996 and ending on the date of assent to that Act.

4 Adjustment of accounts

Any adjustment made before the commencement of section 57A (as inserted by the [Superannuation Legislation Further Amendment Act 1997](#)) by FTC to an account or reserve established under Part 5 that is in accordance with the powers contained in that section is validated.

5 Saving of rights and liabilities

- (1) The repeal or amendment of any provision of this Act by the [Superannuation Legislation Further Amendment Act 1998](#) does not affect any right that a member of the Fund had immediately before the commencement of Part 4 of this Act (as inserted by that Act).
- (2) The repeal or amendment of any provision of this Act by the [Superannuation Legislation Further Amendment Act 1998](#) does not affect:
 - (a) the right or obligation of a person to contribute to the Fund, or
 - (b) any person's membership of the Fund, or
 - (c) any benefit payable to or in respect of a member of the Fund, or
 - (d) any other right or liability of an employer or member of the Fund.

6 Continuation of First State Superannuation Scheme

- (1) The superannuation scheme provided for by the trust deed and the Scheme rules is a continuation of, and the same scheme as, the superannuation scheme established and maintained under this Act before the commencement of Part 4 of this Act (as inserted by the *Superannuation Legislation Further Amendment Act 1998*).
- (2) Accordingly, a reference in any Act or in any instrument made under any Act or in any other instrument to the superannuation scheme established by this Act or to the First State Superannuation Scheme is a reference to the superannuation scheme as so continued.

7 Continuation of First State Superannuation Fund

- (1) The Fund referred to in section 18, as inserted by the *Superannuation Legislation Further Amendment Act 1998*, is a continuation of, and the same fund as, the Fund established, maintained and administered by FTC pursuant to section 49 of this Act before its repeal by the *Superannuation Legislation Further Amendment Act 1998*.
- (2) Accordingly, a reference in any Act or in any instrument made under any Act or in any other instrument to the First State Superannuation Fund is a reference to the First State Superannuation Fund as so continued.

8 Savings of applications and elections

An election or application made under a provision of this Act before the repeal of that provision by the *Superannuation Legislation Further Amendment Act 1998* has effect as an election or application under the trust deed.

9 Repeal of rules

A rule made by FTC pursuant to a provision of this Act that is repealed by the *Superannuation Legislation Further Amendment Act 1998* is repealed on the commencement of Part 4 of this Act (as inserted by the *Superannuation Legislation Further Amendment Act 1998*).

10 Executive officer taken to have nominated salary or wages

- (1) A member who, on the commencement of section 3A (as inserted by the *Superannuation Legislation Further Amendment Act 1999*), is an executive officer is taken, on that commencement, to have nominated under that section the amount of salary or wages on which contributions in respect of the executive officer are calculated as at that commencement.
- (2) Nothing in this clause prevents such an executive officer from reducing or increasing, in accordance with section 3A, the amount of salary or wages so nominated.

11 Validation

Anything:

- (a) that was done or omitted to be done for the purposes of Part 5A before the date of assent to the *Superannuation Legislation Amendment (Miscellaneous) Act 2001*, and
- (b) that would have been lawful if Part 5A 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.

Schedule 4 (Repealed)

Dictionary

(Section 3)

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.

complying superannuation fund means a complying superannuation fund for the purposes of section 45 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

employee means a person who is an employee within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth and who is employed, within the meaning of that Act, by an employer.

Note—

Employees who are to be members of the Scheme are set out in Part 2.

employer has the same meaning as in section 6.

employment with an employer includes employment with successive employers.

executive officer means a member who is:

- (a) a chief executive officer, or
- (b) a senior executive officer, or
- (b1) a police executive officer within the meaning of the *Police Service Act 1990*, or
- (c) an office holder nominated for the purposes of section 11A of the *Statutory and Other Offices Remuneration Act 1975*.

exercise of a function includes, if the function is a duty, the performance of the duty.

FTC means the FSS Trustee Corporation established under the [Superannuation Administration Act 1996](#).

full member means an employee who is, by virtue of section 5 or 5A or any other provision of this Act, a full member of the Fund.

function includes a power, authority and duty.

Fund means the First State Superannuation Fund maintained and administered under the trust deed.

inactive member means a person:

- (a) who has ceased to be a full member or an optional member of the Fund and who has a preserved benefit in the Fund, or
- (b) who is a full member or an optional member who is prevented by section 12 from contributing to the Fund, or
- (c) who becomes an inactive member by operation of Part 5A and who has a preserved benefit in the Fund.

member means a full member, an optional member or an inactive member.

optional member means:

- (a) an employee who is not a full member and who has made an election under the trust deed that is still in force to contribute to the Fund, or
- (b) the spouse of an employee or member of the Parliamentary superannuation scheme on whose behalf an election under the trust deed has been made that is still in force to contribute to the Fund.

Parliamentary superannuation scheme means the superannuation scheme established under the [Parliamentary Contributory Superannuation Act 1971](#).

preserved benefit means a benefit preserved under the Scheme.

relevant Commonwealth legislation means any of the following Acts of the Commonwealth:

[Income Tax Assessment Act 1936](#)

[Income Tax Assessment Act 1997](#)

[Superannuation Contributions Tax \(Assessment and Collection\) Act 1997](#)

[Superannuation Contributions Tax Imposition Act 1997](#)

[Superannuation Guarantee \(Administration\) Act 1992](#)

[Superannuation Guarantee Charge Act 1992](#)

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.

salary or wages has the same meaning as in section 3A.

Scheme means the First State Superannuation Scheme, being the superannuation scheme established by this Act and maintained and operated in accordance with this Act, the trust deed and any Scheme rules.

Scheme rules means any rules made by FTC pursuant to section 20.

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 person means:

- (a) the wife or husband, as the case may be, of the person, or
- (b) if the person is a man and is living with a woman as her husband on a bona fide domestic basis—the woman with whom he is so living, or
- (c) if the person is a woman and is living with a man as his wife on a bona fide domestic basis—the man with whom she is so living.

superannuation guarantee amount means the minimum amount payable to a superannuation fund or scheme in respect of a person that is sufficient to avoid an individual superannuation guarantee shortfall, within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth, in respect of the officer.

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.

the trust deed means the trust deed entered into by the Minister and FTC pursuant to section 13, as amended from time to time.