

# Police Regulation (Superannuation) Act 1906 No 28

[1906-28]



New South Wales

## Status Information

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

### Notes—

- **See also**  
[Miscellaneous Acts Amendment \(Marriages\) Bill 2018](#)

### Authorisation

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# Police Regulation (Superannuation) Act 1906 No 28



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# Police Regulation (Superannuation) Act 1906 No 28



New South Wales

An Act to amend the *Police Regulation Act 1899*.

## Part 1 Preliminary

### 1 Name of Act, commencement and definitions

(1) This Act may be cited as the *Police Regulation (Superannuation) Act 1906*.

(1A) This Act shall commence on 1 February 1907.

(2) In this Act, except to the extent that the context or subject-matter otherwise indicates or requires:

**approved employment benefit** means a benefit provided to a member of the NSW Police Force at the cost of the member'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 member or a class of employees of which the member is a member.

**attributed salary of office** of a contributor at any time means:

- (a) if the contributor is a full-time member of the police force at the time, the salary of office of the contributor at that time, or
- (b) if the contributor is a part-time member of the police force at the time, the salary of office that would be payable to the contributor at that time if employed as a full-time member of the police force.

**Board** means the State Authorities Superannuation Board referred to in section 4 of the *Superannuation Administration Act 1991*.

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

**contributor** means contributor to the Fund.



**equivalent full-time service** means the cumulative total of all periods worked by a contributor as a member of the police force (as a full-time member of the police force or a part-time member of the police force, or both) expressed as the nearest equivalent period of full-time service.

**equivalent service ratio** is defined in section 6.

**executive officer** means a member of the NSW Police Force who is:

- (a) a police executive officer, or
- (b) a member of the police force who is an office holder nominated for the purposes of section 11A of the [Statutory and Other Offices Remuneration Act 1975](#), or
- (c) a Public Service senior executive within the meaning of the [Government Sector Employment Act 2013](#).
- (d) (Repealed)

**family law superannuation legislation** has the same meaning as it has in Part 4A.

**family law superannuation payment** has the same meaning as it has in Part 4A.

**First State Superannuation Fund** has the same meaning as **Fund** has in the [First State Superannuation Act 1992](#).

**full-time member of the police force** means a member of the police force whose salary ratio is equal to 1.

**Fund** means the Police Superannuation Fund established by this Act.

**hurt on duty**, in relation to a member of the police force, means injured in such circumstances as would, if the member were a worker within the meaning of the [Workers Compensation Act 1987](#), entitle the member to compensation under that Act.

**member of the police force** means a police officer within the meaning of the [Police Act 1990](#) or a member of the NSW Police Force who was a contributor immediately before being transferred to an administrative office under section 67 of that Act.

**part-time member of the police force** means a member of the police force whose salary ratio is less than 1 but at least 0.1.

**penalty**, in relation to a Commonwealth taxation law, includes (but is not limited to):

- (a) a penalty rate of taxation under that law, and
- (b) the loss of a concessional rate of taxation under that law.

**police executive officer** means an executive officer within the meaning of Part 5 of

the *Police Act 1990*.

**police force** means that part of the NSW Police Force which consists of members of the police force within the meaning of this Act.

**Police Medical Board** means the Police Medical Board established under section 15A.

**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.

**remuneration** includes allowances and other benefits.

**salary of office**, in relation to a member of the NSW Police Force other than an executive officer, means the sum of:

- (a) the remuneration ordinarily received by the member as the ordinary pay of the member's rank and position, not including:
  - (i) an amount paid for overtime or as a bonus, or
  - (ii) a relieving allowance, or
  - (iii) an allowance paid instead of the supply of a uniform, or
  - (iv) an expense allowance or an allowance for travelling, subsistence or other similar expenses, or
  - (v) a climatic, disability or living allowance paid when stationed or residing at a particular place, or
  - (vi) an allowance for equipment, or
  - (vii) remuneration of a kind prescribed by the regulations as exempt for the purposes of this paragraph, or
  - (viii) in respect of any period during which the member takes extended leave (or leave in the nature of extended leave) otherwise than on full pay, such part of the remuneration received by the member as exceeds the salary of office (within the meaning of this definition) that he or she would have received had he or she taken leave on full pay,

unless the regulations otherwise provide, and

- (a1) if salary sacrifice contributions are made in respect of the member, the amounts payable for those contributions under section 5AD (3) (a) and (b), and
- (b) if approved employment benefits are provided to the member, the cost of

providing the approved employment benefits, as determined by the Minister, with the concurrence of the Treasurer,

expressed as an annual rate.

**salary of office**, in relation to an executive officer, has the meaning set out in section 1AA.

**salary ratio** of a contributor during a period means the number ascertained by dividing the salary of office of the contributor at the commencement of the period by the attributed salary of office of the contributor at that commencement.

**salary sacrifice contribution**—see section 5AD (2).

**spouse** of a member or former member of the police force who has died means the widow or widower, as the case may be, of the member or former member.

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

**superannuation contributions surcharge** means the superannuation contributions surcharge imposed under the [Superannuation Contributions Tax Imposition Act 1997](#) of the Commonwealth.

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

(3) Where:

- (a) the salary of office of a member of the police force is reduced by reason that the member ceases to be paid an allowance (otherwise than as a consequence of disciplinary proceedings),
- (b) the salary of office of the member at the date of the member's death, retirement, resignation or discharge is less than the salary of office of the member immediately before it was so reduced, and
- (c) the member died, retired, resigned or was discharged on or after the day appointed and notified under section 2 (2) of the [Police Regulation \(Superannuation\) Amendment Act 1984](#),

the salary of office of the member at the date of the member's death, retirement, resignation or discharge shall, for the purposes of this Act, be deemed to be the salary of office of the member immediately before it was so reduced.

(4) In this Act, a reference to:

- (a) a function includes a reference to a power, authority and duty, and

(b) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

- (5) In this Act, a reference to the salary of office of a member of the police force, other than an executive officer, who is a part-time member of the police force (including a member who fills a full-time position but is on part-time leave without pay) is a reference to the actual salary of office received by the officer while working as a part-time member of the police force.
- (6) In this Act, a reference to part-time service includes any period during which a member of the police force is employed as a part-time employee or takes part-time leave without pay and is required by this Act to contribute to the Fund.
- (7) Notes included in this Act do not form part of this Act.

### **1AA Salary of office: executive officers**

- (1) **Definition of salary** For the purposes of this Act, the **salary of office** 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 the Commissioner by an executive officer, on, or as soon as practicable after, being appointed as an executive officer. An amount may also be nominated to the Commissioner 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, other than salary sacrifice contributions, under this Act and the [State Authorities Non-contributory Superannuation Act 1987](#) and any performance-related incentive payment), expressed as an annual rate.
- (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 Commissioner 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 Commissioner 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.

- (6A) **Change of salary on change of work** The amount of salary nominated for the purposes of this Act is, on an executive officer becoming a full-time member of the police force after being a part-time member of the police force or becoming a part-time member of the police force after being a full-time member of the police force, changed so that it is an amount equal to the same percentage of the officer's remuneration package after the change in work as the amount previously nominated was of the remuneration package before the change. This subsection does not prevent an executive officer from making an election under subsection (5) or (6) at any time after the change in work.
- (7) **Nominations and elections** The Commissioner 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 Public Service senior executive, within the meaning of the [Government Sector Employment Act 2013](#), or a police executive officer, the monetary remuneration payable in accordance with the [Government Sector Employment Act 2013](#) or the [Police 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.

**1A Closure of Fund to police employed on or after 1 April 1988**

- (1) This Act does not apply to or in respect of a member of the police force who becomes such a member on or after 1 April 1988, except:
  - (a) a retired or discharged member of the police force who is in receipt of a superannuation allowance under this Act and who serves again in the police force under section 16 or otherwise,
  - (b) a former member of the police force who is a contributor to the Fund as an employee of the Police Association of New South Wales and who serves again in the police force, and
  - (c) a member of the police force of a class prescribed by the regulations.
- (2) This Act is taken to have applied to a member of the police force who is a member of a class prescribed for the purposes of subsection (1) (c), and who contributed to the Fund before the regulation prescribing the class commenced, on and from the date prescribed by the regulation.
- (3) The date that is prescribed by the regulation may be a date that is earlier than the date the regulation commenced.

**1B, 2 (Repealed)**

**Part 2**

**2A-2G (Repealed)**

**Part 2A Police Superannuation Advisory Committee**

**2H Constitution of Committee**

- (1) There is constituted by this Act a Police Superannuation Advisory Committee.
- (2) The Committee is to consist of 8 members appointed by the Minister, one of whom is to be a person appointed by the Minister to be the Chairperson of the Committee.
- (3) Of the members other than the Chairperson:
  - (a) 3 shall be persons nominated by the Police Association of New South Wales,
  - (b) 1 shall be a person nominated by the Commissioned Officers' Branch of the Public Service Association of New South Wales,
  - (c) 1 shall be a person nominated by STC,
  - (d) 1 shall be a person nominated by the State Insurance Regulatory Authority, and

(e) 1 shall be a person nominated by the Minister administering the *Police Act 1990*.

(4) Schedule 4 has effect with respect to the members and procedure of the Committee.

## **2I Functions of Committee**

The functions of the Police Superannuation Advisory Committee are:

- (a) to advise STC on such matters relating to the administration of this Act as are referred to it by STC, and
- (b) (Repealed)
- (c) such other functions relating to the administration of this Act as are delegated to it by STC.

## **2J Delegation to Committee**

STC may delegate to the Police Superannuation Advisory Committee any of its functions under this Act, other than this power of delegation.

# **Part 3 Police Superannuation Fund**

## **3 Police Superannuation Fund**

- (1) There is hereby established the "Police Superannuation Fund" which, subject to this Act, is under the control of STC.
- (2) The Fund consists of:
  - (a) the amount that, immediately before the constitution of STC, stood to the credit of the Police Superannuation and Reward Fund,
  - (b) the deductions made under section 5,
  - (b1) the payments or deductions made under section 5A or 20A,
  - (c) amounts appropriated from the Consolidated Fund under section 4, and
  - (c1) any fees paid to STC arising under the family law superannuation legislation or Part 4A, and
  - (d) any other money received by STC pursuant to this Act.
- (3) STC must pay out of the Fund:
  - (a) the benefits provided by this Act,
  - (b) such amounts as may be necessary to satisfy any liability of the Fund with respect to tax payable under a Commonwealth taxation law or an amount of superannuation contributions surcharge,

(c) the administration costs relating to the Fund referred to in section 85 of the *Superannuation Administration Act 1996*, and

(c1) any administration costs and other amounts payable by STC and arising under the family law superannuation legislation or Part 4A, and

(d) any other money properly payable from the Fund.

#### **4 Fund deficiencies charged against Consolidated Revenue**

If at any time the amount at credit of the Fund is insufficient to meet the superannuation allowances and other amounts (other than a conversion benefit, or interest, payable under Part 3B) payable under this Act, the amount of the deficiency is a charge against the Consolidated Revenue Fund.

#### **5 Contributions to Fund**

(1) Subject to subsection (2), there shall be deducted from the salary of office of each qualified person and paid to the Fund an amount equal to 6 per cent of that salary of office.

(2) Subsection (1), in its application to a qualified person who:

(a) immediately before the day appointed and notified under section 2 (2) of the *Police Regulation (Superannuation) Amendment Act 1981* was the Commissioner, the Deputy Commissioner, the Senior Assistant Commissioner or an Assistant Commissioner, and

(b) has on that day attained, or thereafter attains, the age of 60 years,

shall be construed as if the reference in subsection (1) to 6 per cent were a reference to 2 per cent.

(3) A member of the NSW Police Force who is a contributor, or an employee of the Police Association of New South Wales who is a contributor, is a qualified person for the purposes of this section if the member or employee is under 70 years of age.

#### **5AA Source of administration costs payments**

The administration costs payable in respect of the superannuation scheme established under this Act are to be paid from the Fund.

#### **5A Leave without pay**

(1) In this section:

***initial period***, in relation to a period of leave, means such period commencing with the first day of that leave as is prescribed as the initial period for the purposes of this section.



**leave without pay** means a period of leave requested by a member of the police force during which the member is not entitled to payment of the member's salary of office, being a period of leave which commences on or after the day appointed and notified under section 2 (2) of the [Police Regulation \(Superannuation\) Amendment Act 1984](#).

**special leave without pay** means any leave without pay which is:

- (a) sick leave,
  - (b) maternity leave or leave in respect of the adoption of a child,
  - (c) leave to undertake union duties for the Police Association of New South Wales or the Public Service Association of New South Wales, or
  - (d) leave declared by the regulations to be special leave without pay within the meaning of this section.
- (2) A member of the police force who takes leave without pay (not being special leave without pay) shall, in accordance with directions given by STC, pay to STC for credit to the Fund such amounts as would have been deducted from the salary of office of the member in accordance with section 5 if the member had continued to receive salary of office during the initial period of any such single period of leave at the rate payable to the member immediately before that initial period.
- (3) A member of the police force who takes special leave without pay must, in accordance with directions given by STC, pay to STC for credit to the Fund the amounts that would have been deducted from the salary of office of the member in accordance with section 5 if the member had continued, while on leave, to receive salary of office at the rate payable to the member immediately before the commencement of the period of leave.
- (3A) However, a contributor who takes a single period of special leave without pay that is sick leave, maternity leave or leave in respect of the adoption of a child is not liable to make payments to STC in respect of any part of the period of special leave occurring more than 2 years after the period of special leave commences.
- (3B) If a member of the police force takes part-time leave without pay (not being special leave without pay) and receives a salary of office for part-time service during the period of leave, subsection (2) does not apply and deductions from the member's salary of office under section 5 are to be made on the basis that:
- (a) the member is a full-time member of the police force during the initial period, and
  - (b) the member is a part-time member of the police force during any period of part-time leave without pay extending after the initial period.

- (3C) The initial period is, in respect of any member of the police force who takes part-time leave without pay (not being special leave without pay), to be treated under this Act as a period of full-time service.
- (3D) If a member of the police force takes part-time leave without pay that is special leave and receives a salary of office for part-time service during the period of leave, subsections (3) and (3A) do not apply and deductions from the member's salary of office under section 5 are to continue to be made for any period of part-time service that occurs during the period of special leave.
- (4) Any part of a single period of leave without pay taken by a member of the police force for which amounts are not payable under subsection (2) or (3A) is not a period of service for the purposes of this Act.
- (5) If a member of the police force fails to make any payment required by this section:
- (a) the amount unpaid shall be deducted from:
    - (i) the member's salary of office, or
    - (ii) any gratuity or allowance payable to the member under this Act,in such instalments and at such times as STC may determine, and
  - (b) the period of leave to which the payment relates is not, while it remains unpaid, a period of service for the purposes of this Act.
- (6) Any amount paid by a member of the police force pursuant to this section shall, for the purposes of this or any other Act, be deemed to have been deducted from the member's salary of office.

#### **5AB Acceptance of contributions**

- (1) Despite any other provision of this Act, amounts are not to be deducted from the salary of office of a contributor during any period specified by STC for which STC determines that it must not accept contributions from the contributor.
- (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) Any period for which contributions are not payable under this section is not a period of service for the purposes of this Act.

#### **5AC Other contributions by members of NSW Police Force**

- (1) A member of the NSW Police Force, or an employee of the Police Association of New South Wales, who is not required by this Act to contribute to the Fund under this Act merely because the person is on authorised leave without pay as such a member or

employee, is entitled to remain a contributor to the Fund even though the member or employee is not contributing to the Fund.

- (2) This section applies to a member or employee only if:
- (a) the leave is for the purposes of raising children of whom the member or employee is a parent, or for whom he or she has assumed the responsibility of a parent, and
  - (b) he or she has been on that leave for less than 7 years consecutively, and
  - (c) he or she has a statutory or contractual right to resume employment at the end of the leave.
- (3) Any period during which this section applies to a member or employee is not taken to be a period of service for the purposes of this Act.

- (4) In this section:

**authorised leave** means:

- (a) leave approved by the Commissioner of Police or the Police Association, as the case requires, or
- (b) leave authorised by an agreement certified, or an award made, by a tribunal or body having the authority to do so under a law of the State or the Commonwealth.

#### **5AD Salary sacrifice contributions**

- (1) The whole or part of an amount that is required to be deducted from the salary of office of a qualified person under section 5 may be paid by salary sacrifice contributions.
- (2) A **salary sacrifice contribution** is a contribution paid in accordance with an agreement between a qualified person and the Commissioner of Police under which the person is to forgo remuneration yet to be earned and the remuneration foregone is to be applied by the employer to the amount payable for the deductions under section 5.
- (3) The amount payable for a salary sacrifice contribution to meet the requirement for a deduction under section 5 is to include the following:
- (a) the amount necessary (taking into account any deductions not made on a salary sacrifice basis) to meet the required deduction under section 5 (the **deduction element**),
  - (b) the amount necessary to meet any tax payable under Commonwealth taxation law in respect of the amount paid under paragraph (a).
- (4) In this Act and the regulations, a reference (however expressed) to any of the

following is taken to include a reference to the deduction element of a salary sacrifice contribution in accordance with an agreement under this section:

- (a) a deduction from the salary of office for the purposes of section 5,
- (b) a contribution by a contributor.

(5) In this Act and the regulations, a reference (however expressed) to an employer contribution or an employer-financed benefit does not include a reference to a salary sacrifice contribution or any part of a benefit financed by a salary sacrifice contribution.

(6) This section has effect despite any other provision of this Act.

## **Part 3A Superannuation for police executives**

### **5B Contributor who is executive officer**

- (1) When a contributor becomes an executive officer, the contributor must:
  - (a) elect to continue to contribute to the Fund, or
  - (b) elect to make provision for a benefit provided by section 9B (6) or (6AA).
- (2) If a contributor fails to make an election under subsection (1) within 2 months of being required to make that election, the contributor is, for the purposes of this section, to be taken to have elected to continue to contribute to the Fund.
- (3) Nothing in this Act prevents a contributor who elects to continue to contribute to the Fund from also contributing to the First State Superannuation Fund or another superannuation scheme and such a contributor is entitled to benefits in accordance with this Act despite being a member of that Fund or another scheme.
- (4) If a contributor elects to continue to contribute to the Fund, the contributor may, at any time thereafter while being an executive officer, elect to make provision for a benefit provided by section 9B (6) or (6AA).
- (5) A contributor who elects, under this section, to make provision for a benefit provided by section 9B (6) or (6AA):
  - (a) may elect to make provision for the benefit even though he or she would not (but for this section) be entitled to make that election, and
  - (b) is not entitled to a benefit payable under any other provision of this Act, and
  - (c) is not entitled to elect to take the benefit provided by section 9B (9), and
  - (d) except as provided by subsection (6), is not entitled to be paid the benefit provided by section 9B (6) or (6AA) until on or after first ceasing to be employed in

the NSW Police Force after making the election and unless there exist the circumstances set out in section 9B (3), and

- (e) may elect at any time before the benefit is paid to have the benefit paid to the credit of the contributor in the First State Superannuation Fund or another complying superannuation fund, a complying approved deposit fund or a retirement savings account.
- (6) If a contributor makes an election under subsection (5) (e), STC must, as soon as practicable after the election is made, pay to the trustee or provider of the nominated fund or account the amount of the benefit provided by section 9B (6) or (6AA) to which the contributor is entitled under subsection (7) or (7A).
- (7) If the contributor referred to in subsection (6) has not attained the age of 55 years on making an election under subsection (5) (e), the benefit to which the contributor is entitled is the greater of the amounts calculated in accordance with the following formulae:

(a)

$$L = 2.5 \times B \times 0.97^{(55-A)}$$

(b)

$$L = \left[ E \times \frac{S}{S+P} \times 0.94^{(55-A)} \right] \times \text{ESR}$$

where:

**L** represents the amount to be calculated.

**B** represents the amount that would be payable under section 17 if, at the date of the election under subsection (5) (e), the contributor had resigned (but without interest as provided by that section).

**E** represents the lump sum that would have been payable if the contributor:

- (a) were to continue as a member of the police force until attaining the age of 55 years at the same attributed salary of office as at the date the contributor makes the election under this section, and
- (b) had always worked as a full-time member of the police force, and
- (c) were to commute the superannuation allowance otherwise payable to the contributor.

**S** represents the total number of months of both full-time and part-time service that has been completed by the contributor.

**P** represents the additional months of full-time service that the contributor would have completed if he or she were to continue as a full-time member of the police force until the age of 55 years.

**A** represents the age in years of the contributor (including fractions of a year on the basis of completed months) at the date on which the contributor becomes a member of the First State Superannuation Fund.

**ESR** represents the equivalent service ratio of the contributor as at the date of the contributor's election.

(7A) If the contributor referred to in subsection (6) has attained the age of 55 years on making an election under subsection (5) (e), the benefit to which the contributor is entitled is the lump sum benefit that would be payable if the contributor:

- (a) had become entitled to the allowance prescribed by section 7 (1) or section 7AA (2) (whichever is applicable), and
- (b) had elected to commute the whole of the allowance in accordance with section 14J (3).

(8) If a contributor makes an election under subsection (1) (b) or (4) within 12 months after being:

- (a) appointed as a police executive officer, or
- (b) nominated as an office holder for the purposes of section 11A of the *Statutory and Other Offices Remuneration Act 1975*,

the salary of the contributor, for the purpose of determining the amount of the benefit to which the election relates, is to be taken to be his or her salary immediately before that appointment or nomination took effect.

(9) In this section:

**complying approved deposit fund** means a complying approved deposit fund for the purposes of section 47 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

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

**retirement savings account** has the same meaning as in the *Retirement Savings Accounts Act 1997* of the Commonwealth.

## Part 3B Conversion of existing entitlements

### 5C Conversion notice

- (1) A conversion notice is a notification by the Treasurer to a contributor notifying the contributor of the right to make a conversion election under this Part.
- (2) The Treasurer must send to each contributor a conversion notice.
- (3) A conversion notice must be in writing in the form determined by the Treasurer and may consist of one or more documents.
- (4) A conversion notice is to be sent in the manner determined by the Treasurer.
- (5) Without limiting any other matters that may be included, a conversion notice must set out the following matters:
  - (a) a statement to the effect that on taking effect a conversion election will terminate the contributor's membership of the Fund and of the Fund under the *State Authorities Non-contributory Superannuation Act 1987* and terminate any right of the contributor to any benefit (other than a conversion benefit) from those Funds,
  - (b) the estimated benefits payable in respect of the contributor under this Part on making a conversion election and the estimated amount of benefits payable if the contributor does not make the election,
  - (c) details of any benefits forgone by the contributor, whether under this Act or the *State Authorities Non-contributory Superannuation Act 1987*, on a conversion election taking effect,
  - (d) the date on which a conversion election is to take effect (in this Part referred to as the **conversion date**) and the last date for making an election,
  - (e) a statement to the effect that on and from the conversion date a contributor who makes the conversion election is required to become a member of the First State Superannuation Fund,
  - (f) a statement to the effect that independent financial advice should be obtained before making a conversion election and particulars of persons who are available to provide that advice,
  - (g) a statement of the manner in which a conversion election is to be made,
  - (h) a statement of the manner in which a conversion election may be amended or revoked and the last date on which it may be amended or revoked.

### 5D Conversion election

- (1) A contributor may make a conversion election.
- (2) A conversion election is an election:

- (a) to make provision for the conversion benefit, and
  - (b) to cease to be a contributor and become a full member of the First State Superannuation Fund, and
  - (c) to pay the conversion benefit to the credit of the contributor in the First State Superannuation Fund.
- (3) If a contributor is an executive officer, the conversion election must nominate an amount of salary or wages of the officer for the purposes of the *First State Superannuation Act 1992*.
- (4) If a contributor fails to make a conversion election on or before the last date for making an election specified in the conversion notice sent to the contributor, or purports to make an election after that date, the contributor is taken to have elected not to make a conversion election.
- (5) A contributor who makes a conversion election, and anyone else who would otherwise be a beneficiary under this Act through the contributor, is not entitled to a benefit under any provision of this Act after the conversion election takes effect, other than a conversion benefit.
- (6) A conversion election made by a contributor takes effect on the conversion date specified in the conversion notice given to the contributor.
- (7) The employer of a contributor who makes a conversion election must, on being notified by a person or body authorised by the Treasurer for the purposes of this subsection that the contributor has made a conversion election, provide the person or body with particulars of the contributor's salary as at the conversion date within the period requested by the person or body.

#### **5E Making, amendment and revocation of conversion election**

- (1) A conversion election must be in writing in the form determined by the Treasurer.
- (2) A conversion election is not validly made, or amended or revoked, by a contributor unless it is made, amended or revoked as determined by the Treasurer and as specified in the conversion notice.
- (3) A conversion election may be amended or revoked by a contributor at any time on or before the last date for making a conversion election specified in the conversion notice for the contributor but may not be amended or revoked after that date.
- (4) The Treasurer, or a person or body authorised by the Treasurer for the purposes of this subsection, must notify STC when a conversion election takes effect in respect of a contributor.



**5F Circumstances in which a conversion election revoked or may not be made**

- (1) If a benefit is paid or becomes payable or is deferred or preserved in respect of a contributor under this Act before the conversion date for the contributor:
  - (a) the contributor is not eligible to make a conversion election, and
  - (b) if the contributor has made a conversion election, the election is taken to be revoked.
- (2) This section does not apply in respect of a gratuity paid or payable under section 12D to a contributor.

**5G Matters to be determined by Treasurer**

The Treasurer may, for the purposes of this Part, determine the following matters:

- (a) the form of the conversion notice and the conversion election,
- (b) the conversion date for a contributor, or class of contributors,
- (c) the information to be provided to contributors, employers and other persons in respect of the conversion benefit and related matters,
- (d) the period, or periods, within which a conversion notice is to be sent to a contributor or conversion notices are to be sent to classes of contributors,
- (e) the manner in which a conversion notice, or information about a conversion notice or the conversion benefit, is to be sent to a contributor or a class of contributors or any other persons,
- (f) the manner in which a conversion election is to be made, amended or revoked, the form of the conversion election and the period, or periods, within which a conversion election may be made, amended or revoked by a contributor or class of contributors.

**5H Conversion benefit**

- (1) The conversion benefit provided for a contributor under this Part is the amount that is equal to the sum of the benefits set out in subsections (2) and (3).
- (2) The benefit provided under this subsection is the amount of the lump sum benefit payable in respect of the contributor, calculated in accordance with section 9B (6) (b) as if the contributor retired on the conversion date for the contributor. However, if the contributor has reached the age of 55 years, the formula contained in section 9B (6) (b) is to be applied with the following modifications:
  - (a) item **P** equals zero,
  - (b) the reference in the definition of item **E** to 55 years is taken to be a reference to the age of the contributor when the conversion election takes effect,

(c) item **A** equals 55.

(3) The benefit provided under this subsection is an amount equal to the greater of the following amounts:

(a) the amount of the basic benefit provided to the contributor under the *State Authorities Non-contributory Superannuation Act 1987*, calculated as if the contributor had been retrenched on the conversion date for the contributor and the benefit was payable on that date, and reduced by the amount, if any, that it would have been reduced by under section 26A of that Act if it had been so payable,

(b) \$18,000.

(4) If the amount of the conversion benefit calculated under this section is less than the minimum benefit payable to the contributor, the amount of the conversion benefit is to be the amount of the minimum benefit.

(5) STC may make a determination under section 14AA only in respect of the amount of the conversion benefit that consists of the amount of the benefit provided under subsection (2).

(6) If STC has made a determination under section 14AA in relation to a conversion benefit, the amount of the benefit is reduced by the amount specified in the determination.

#### **5I Minimum benefit**

(1) For the purposes of section 5H, the minimum benefit payable to the contributor is the minimum benefit that would be payable to satisfy the requirements of section 15, as determined by STC.

(2) For the purposes of this section, STC may obtain actuarial advice.

#### **5J Payment of conversion benefit**

(1) If a person makes a conversion election in accordance with this Part, STC must, as soon as practicable after being notified that the conversion election has taken effect, pay the amount of the conversion benefit payable but not paid in respect of the person to FTC.

(2) STC is liable to pay interest, at a rate determined by the Treasurer, on any outstanding amount of a conversion benefit not paid to FTC on the conversion date for the contributor concerned.

(3) STC may meet the requirement to pay an amount under this section by transferring assets equivalent to the value of that amount or by paying part of the amount and transferring assets of the value of the remaining amount payable.

- (4) FTC must credit the amount of the conversion benefit, and any interest payable under this section, to an account to be established to the credit of the person in the First State Superannuation Fund established under the *First State Superannuation Act 1992*, or to any existing account of the person under that Act.
- (5) Duty under the *Duties Act 1997* is not payable in respect of the transfer of any assets by STC to FTC under this section.

**5K Information and assistance to be provided by STC**

STC must, at the request of the Treasurer, provide to the Treasurer such information and assistance as the Treasurer requires for the purposes of this Part.

**5L Liability for actions taken under Part**

- (1) A matter or thing done or omitted to be done by the Treasurer, or any person acting under the direction of the Treasurer, does not, if the matter or thing was done or omitted to be done in good faith:
  - (a) in connection with obtaining or making a conversion election, or
  - (b) in connection with the provision of information in relation to this Part, or
  - (c) for the purpose of executing this Part,subject the Treasurer, a person so acting, FTC, STC, the FTC Board, the STC Board, a member of either of those Boards, or any person acting under the direction of FTC, STC or either of those Boards, to any action, liability, claim or demand.
- (2) Without limiting subsection (1), the Treasurer, FTC, STC, the FTC Board, the STC Board, a member of either of those Boards, or any person acting under the direction of the Treasurer, FTC, STC or either of those Boards, is not liable for any action, liability, claim or demand relating to the duties of FTC or STC as a trustee in respect of anything done or omitted to be done by the Treasurer, or any person acting under the direction of the Treasurer, as referred to in that subsection.
- (3) A matter or thing done or omitted to be done by STC, the STC Board, a member of the Board or any person acting under the direction of STC or the Board, does not, if the matter or thing was done or omitted in good faith:
  - (a) in connection with obtaining or making a conversion election, or
  - (b) in connection with the provision of information in relation to this Part, or
  - (c) for the purpose of executing this Part,subject STC, a member of the Board or a person so acting, to any action, liability, claim or demand.

- (4) A matter or thing done or omitted to be done by FTC, the FTC Board, a member of the Board or any person acting under the direction of FTC or the Board, does not, if the matter or thing was done or omitted in good faith:
- (a) in connection with obtaining or making a conversion election, or
  - (b) in connection with the provision of information in relation to this Part, or
  - (c) for the purpose of executing this Part,
- subject FTC, a member of the Board or a person so acting, to any action, liability, claim or demand.
- (5) This section has effect despite the *Superannuation Administration Act 1996* or any other law.

## Part 4 Benefits

### Division 1 Superannuation allowances and gratuities

#### 6 Equivalent service ratio

In this Part and section 5B:

**actual contributory service** (or **ACS**) of a contributor or member of the police force is the sum of the figures obtained by multiplying each month during which the person has been a contributor whether as a full-time or part-time member of the police force (up to a maximum of 360 months of equivalent full-time service and not including any month that is not taken to be a period of service because of section 5A (4)) by the salary ratio of the person for that month.

**equivalent service ratio** (or **ESR**) of a contributor or member of the police force means:

$$\frac{\text{ACS}}{\text{PCS}}$$

**potential contributory service** (or **PCS**) of a contributor or member of the police force means the total number of months during which the person has been a contributor whether as a full-time or part-time member of the police force (up to a maximum of 360 months of equivalent full-time service and not including any month that is not taken to be a period of service because of section 5A (4)).

#### 7 Superannuation allowance except where member hurt on duty

- (1) The annual superannuation allowance for a member of the police force who has served 20 years or more of equivalent full-time service and retires on or after attaining the age of 60 years or, being under that age, is discharged after being certified under section 8 (1) to be incapable, from infirmity of body or mind, of personally exercising

the functions of a police officer referred to in section 14 (1) of the *Police Act 1990*, is an amount calculated in accordance with the following formula:

$$P = Y \times ESR$$

where:

**P** represents the amount of the annual superannuation allowance payable.

**Y** represents a percentage of the member's attributed salary of office at the date of the member's retirement or discharge equal to the sum of:

- (a) the percentage specified in the Second Column of the Table to this subsection opposite the total number of years of both full-time and part-time service specified in the First Column of that Table that has been completed by the member, and
- (b) in the case of a person who has completed less than 30 years of equivalent full-time service, one-twelfth of 2.425 per cent for each month of full-time or part-time service that has been completed by the member after the last completed year of service referred to in paragraph (a),

**ESR** represents the equivalent service ratio of the member as at the date of the member's retirement or discharge.

<b>First Column</b>	<b>Second Column</b>
<b>Completed years of both full-time and part-time service of member</b>	<b>Amount per centum</b>
20	48.500
21	50.925
22	53.350
23	55.775
24	58.200
25	60.625
26	63.050
27	65.475
28	67.900
29	70.325
30 or more	72.750

(2) An annual superannuation allowance under subsection (1) shall not be payable to a

member of the police force to whom an annual superannuation allowance is payable under section 10.

- (3) If STC has made a determination under section 14AA in relation to an annual superannuation allowance payable under subsection (1), the amount of the allowance is reduced by the amount specified in STC's determination.

### **7AA Superannuation allowance on early retirement**

- (1) (Repealed)

- (2) Subject to subsection (2B), the annual superannuation allowance for a member of the police force who retires on or after reaching the age of 55 years and before reaching the age of 60 years is the amount calculated in accordance with the following formula:

$$P = \frac{0.02425}{12} \times S \times V \times \left[ 1 - \frac{0.04}{12} \times (720 - A) \right] \times ESR$$

where:

**P** represents the annual superannuation allowance payable.

**S** represents the member's attributed salary of office at the date of retirement.

**V** represents the total number of months of both full-time and part-time service that has been completed by the member (subject to a maximum of 360 months of equivalent full-time service).

**A** represents the age of the member at the date of retirement (expressed in months).

**ESR** represents the equivalent service ratio of the member as at the date of the member's retirement.

- (2A) For the purposes of V in the formula in subsection (2), if the total number of months of both full-time and part-time service is not a whole number of months, any part of a month is to be disregarded.
- (2AA) For the purposes of A in the formula in subsection (2), a part of a month of age is to be disregarded.
- (2B) If STC has made a determination under section 14AA in relation to an annual superannuation allowance payable under subsection (2), the amount of the allowance is reduced by the amount specified in STC's determination.
- (3) An annual superannuation allowance under subsection (2) shall not be payable:
- (a) (Repealed)
- (b) to a member of the police force to whom an annual superannuation allowance is

payable under section 7 or 10.

## **7A Amount of certain pensions**

(1) In this section:

**Commonwealth pension** means:

- (a) service pension payable under Division 5 of Part III of the *Repatriation Act 1920* of the Parliament of the Commonwealth, as amended by subsequent Acts of that Parliament,
- (b) age or invalid pension payable under Part III of the *Social Services Consolidation Act 1947* of that Parliament, as so amended,
- (c) widow's pension payable under Part IV of the *Social Services Consolidation Act 1947* of that Parliament, as so amended, or
- (d) such other pension, or payment of a like nature, payable under a law of the Commonwealth, as may be prescribed.

**prescribed superannuation allowance:**

- (a) in relation to a married retired member of the police force referred to in subsection (3) (a) who has not attained the age of 70 years, means:
  - (i) the maximum total superannuation allowance that, if received by that member, would not, under subsection (3) (a) (iii) (A), disqualify that member as a member to whom this section applies, or
  - (ii) superannuation allowance of \$32 per fortnight,whichever is the lesser superannuation allowance,
- (b) in relation to a married retired member of the police force referred to in subsection (3) (a) who has attained the age of 70 years, means superannuation allowance of \$32 per fortnight,
- (c) in relation to spouses or de facto partners referred to in subsection (3) (b) who have not both attained the age of 70 years, means:
  - (i) the maximum total superannuation allowance that, if received by those spouses or de facto partners, would not, under subsection (3) (b) (iii), disqualify either of them as a member to whom this section applies, or
  - (ii) superannuation allowance of \$32 per fortnight,whichever is the lesser superannuation allowance,
- (d) in relation to spouses or de facto partners referred to in subsection (3) (b) who

have both attained the age of 70 years, means superannuation allowance of \$32 per fortnight,

(e) in relation to a retired member of the police force referred to in subsection (3) (c), or widow of a retired member of the police force referred to in subsection (3) (d), who has not attained the age of 70 years, means:

(i) the maximum superannuation allowance that, if received by that member or widow, would not, under subsection (3) (c) or (d), as the case may be, disqualify that member or widow as a member or widow to whom this section applies, or

(ii) superannuation allowance of \$20 per fortnight,

whichever is the lesser superannuation allowance, or

(f) in relation to a retired member of the police force referred to in subsection (3) (c), or widow of a retired member of the police force referred to in subsection (3) (d), who has attained the age of 70 years, means superannuation allowance of \$20 per fortnight.

**Note—**

“De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).

(2) For the purposes of this section a pension or Commonwealth pension payable in respect of a child shall be disregarded.

(3) This section applies to:

(a) a married retired member of the police force who is in receipt of an annual superannuation allowance granted pursuant to this Act, where:

(i) the spouse or de facto partner of that retired member is not in receipt of a superannuation allowance under this Act,

(ii) that retired member is in receipt of a superannuation allowance under this Act which is less than thirty-two dollars per fortnight, and

(iii) that retired member is:

(A) in the case of a retired member who has not attained the age of 70 years—in receipt of a class of Commonwealth pension that is the maximum amount of that class of Commonwealth pension that may be paid to that retired member, without any reduction on account of income or property or both pursuant to the law of the Commonwealth under which the Commonwealth pension is paid, or

(B) in the case of a retired member who has attained the age of 70 years—in



receipt of a Commonwealth pension,

- (b) a married retired member of the police force who is in receipt of an annual superannuation allowance granted pursuant to this Act where:
    - (i) the spouse or de facto partner of that retired member is in receipt of a superannuation allowance granted pursuant to this Act,
    - (ii) the total superannuation allowance payable to both spouses or de facto partners under this Act is less than thirty-two dollars per fortnight, and
    - (iii) paragraph (a) (iii) applies,
  - (c) a retired member of the police force who is not married, where:
    - (i) that retired member is in receipt of a superannuation allowance granted pursuant to this Act that is less than twenty dollars per fortnight, and
    - (ii) paragraph (a) (iii) applies, and
  - (d) a widow of a retired member of the police force where:
    - (i) that widow is in receipt of or is entitled to receive a superannuation allowance granted pursuant to section 11A that is less than twenty dollars per fortnight, and
    - (ii) paragraph (a) (iii) applies.
- (4) The superannuation allowance payable or granted under this Act to a person to whom this section applies is, subject to subsection (5), hereby increased:
- (a) in the case of a married retired member referred to in subsection (3) (a), to the prescribed superannuation allowance for that person,
  - (b) in the case of a married retired member referred to in subsection (3) (b), to an amount whereby the total produced by adding:
    - (i) the increased superannuation allowance payable to that retired member under this paragraph, and
    - (ii) any increased superannuation allowance payable to the spouse or de facto partner of that retired member under this paragraph,is the prescribed superannuation allowance for those spouses or de facto partners, and
  - (c) in the case of a retired member or widow of a retired member referred to in subsection (3) (c) or (d) to the prescribed superannuation allowance for that retired member or widow of a retired member, as the case may be.

(5) Payment of an increase under subsection (4) shall be made:

- (a) in the case of a retired member or widow of a retired member who, at the commencement of the *Police Regulation (Superannuation) Amendment Act 1970*, is eligible for an increase, as from the date the superannuation allowance becomes next payable after such commencement,
- (b) in the case of a widow of a retired member who becomes eligible for an increase after that commencement, on and from the day on which that widow becomes so eligible.

(6) Nothing in this section shall be construed as authorising or requiring any reduction in a superannuation allowance that has been increased under this section.

## **8 Determination of members medically unfit**

(1) A superannuation allowance or gratuity must not be granted or paid under section 7 or 14 to a member of the police force who:

- (a) is discharged after the commencement of the *Police Regulation (Superannuation and Appeals) Amendment Act 1973*, and
- (b) at the time of the member's discharge is under the age of 60 years,

unless STC (having regard to medical advice on the condition and fitness for employment of the member) has certified the member to be incapable, from infirmity of body or mind, of personally exercising the functions of a police officer referred to in section 14 (1) of the *Police Act 1990*.

### **Note—**

Section 14 (1) of the *Police Act 1990* provides that a police officer has the functions conferred or imposed on a constable by or under any other law (including the common law) of the State.

(2) For the purposes of determining a member's incapacity:

- (a) STC is not to have regard to the member's actual rank or position or functions (other than the functions referred to in subsection (1)), and
- (b) the capacity to exercise a function by delegation is not taken to be a capacity to personally exercise the function.

(2A) (Repealed)

(3) In this section:

**medical advice** means the advice of:

- (a) 2 members of the Police Medical Board, or
- (b) any one or more medical practitioners nominated by the STC.

### **8A Disengagement benefit for members aged between 45-55**

- (1) The Commissioner of Police may, if the Commissioner considers that it is in the interests of the police force to do so, offer a disengagement benefit under this section to any class of members of the police force (or any particular members of the police force).
- (2) A member of the police force is not eligible for a disengagement benefit under this section unless the member:
  - (a) is of or over 45 years of age but less than 55 years of age, and
  - (b) has served as a member of the police force for at least 20 years of equivalent full-time service.
- (3) A disengagement benefit under this section is payable as follows:
  - (a) the portion of the benefit that is equal to the amount of the employer-financed benefit that would be payable under section 15 is payable from the Fund,
  - (b) the portion of the benefit that is equal to the amount that would be payable if the member had resigned and was paid a benefit under section 17 is payable from the Fund,
  - (c) the remainder of the benefit is payable by the Commissioner of Police and is not payable from the Fund.
- (4) A member of the police force who accepts an offer of a disengagement benefit under this section shall be retired from the police force by the Commissioner of Police in accordance with the terms of the offer.
- (5) The disengagement benefit under this section is a gratuity calculated in accordance with the following formula:

$$L = \left[ E \times \frac{S}{S + P} \times 0.97^{(55 - A)} \right] \times \text{ESR}$$

where:

**L** represents the gratuity payable.

**E** represents the lump sum that would have been payable if the member had continued as a member of the police force until the age of 55 years at the same attributed salary of office, and had always worked as a full-time member of the police force and had wholly commuted the superannuation allowance otherwise payable to the member.

**S** represents the total number of months of both full-time and part-time service that has been completed by the member.

**P** represents the number of additional months of full-time service that the member would have completed if the member had continued as a full-time member of the police force until the age of 55 years.

**A** represents the age in years of the member (including fractions of a year on a completed months' basis) at the date of retirement.

**ESR** represents the equivalent service ratio of the member as at the date of the member's retirement.

- (6) For the purposes of S in the formula in subsection (5), if the total number of months of both full-time and part-time service is not a whole number of months, any part of a month is to be disregarded.
- (6A) For the purposes of P in the formula in subsection (5), a part of a month of full-time service is to be disregarded.
- (7) The acceptance of an offer under this section must be in writing in accordance with the terms of the offer.
- (8) This section does not apply to a contributor who is an executive officer (including the Commissioner of Police).
- (9) Nothing in this section prevents a member of the police force who is offered a disengagement benefit from electing instead to make provision for the benefit provided by section 9B (Preserved benefit).
- (10) If STC has made a determination under section 14AA in relation to a benefit under this section, the amount of the benefit is reduced by the amount specified in the determination.

## **9 (Repealed)**

### **9A Commencement of pension**

- (1) Where an annual superannuation allowance is granted under this Act to a member of the police force who retires, the allowance is payable as from the day that next succeeds the day on which the member retires.
- (2) (Repealed)
- (3) Where an annual superannuation allowance is granted under this Act in consequence of the death of a member, or a former member of the police force, the allowance is payable as from the day that next succeeds the day of his or her death.
- (4) An annual superannuation allowance granted under section 10 to a former member of the police force who resigned or retired is, subject to this Act, payable as from:
  - (a) the date the former member lodged the application for the allowance that was

determined by STC certifying the matters referred to in section 10B (2) (b), or

- (b) such earlier date as STC may determine if STC is satisfied that there are exceptional circumstances that merit STC doing so.

### **9B Preserved benefit**

- (1) A member of the police force who becomes entitled to a superannuation allowance under section 7 (Superannuation allowance except where member hurt on duty) or section 7AA (Superannuation allowance on early retirement) or a payment under section 17 (Refund of deductions) may elect to make provision instead for the benefit provided by this section.
- (1A) (Repealed)
- (2) Where any such election made by a member of the police force takes effect, the member is not entitled to any benefit under section 7 or 7AA or any payment under section 17.
- (3) The benefit provided by subsection (6), (6AA), (6AB) or (6AC), or by section 14M (1) (b), is payable by STC from the Fund:
- (a) when the former member:
- (i) has benefits preserved in the Fund under subsection (6), (6AA), (6AB) or (6AC) and has attained the age of 55 years, or
  - (ii) has benefits preserved in the Fund under section 14M (1) (b), and makes an application in writing for payment of the benefit, or
- (b) if the former member dies without making such an application, or
- (c) if it is a benefit provided by subsection (6), (6AA), (6AB) or (6AC)—on STC being satisfied that the former member is incapable, from an infirmity of body or mind, of being employed in any remunerative occupation in which, in the opinion of STC, it would otherwise be reasonable to expect the former member to engage, or
- (d) on STC being satisfied that the former member has attained the age of 65 years and is employed for less than 10 hours a week, or
- (e) on STC being satisfied that the former member has attained the age of 70 years and is employed for more than 10 but less than 30 hours a week, or
- (f) on STC being satisfied that the former member has retired from the work force.
- (3A) The benefit provided by subsection (6) or (6AA) is not payable under subsection (3) to a person who elected to provide for the benefit under section 5B unless the additional requirements of section 5B (5) (d) are satisfied.

- (4) Subject to subsection (3), the benefit provided by subsection (6), (6AA), (6AB) or (6AC) is payable:
- (a) except where the former member has died—to the former member,
  - (b) if the former member has died and is survived by a spouse or de facto partner—to the spouse or de facto partner, or
  - (c) if the former member has died but is not survived by a spouse or de facto partner—to the former member’s personal representatives or (if appropriate) in accordance with section 18B.
- (5) The benefit provided by subsection (9) is payable by STC from the Fund to the former member on the former member electing to take that benefit and the election taking effect:
- (a) after the election made under subsection (1) takes effect, and
  - (b) before the benefit provided by subsection (6), (6AA), (6AB) or (6AC) becomes payable to, or in relation to, the former member.
- (6) Subject to subsection (6A), the benefit provided by this subsection is a gratuity that is the greater of the following 2 amounts:
- (a) the amount calculated by multiplying by 2.5 the amount that would have been payable under section 17 (Refund of deductions) if interest were not payable under that section,
  - (b) the amount calculated in accordance with the following formula:

$$L = [E \times \frac{S}{S+P} \times 0.97^{(55-A)}] \times ESR$$

where:

**L** represents the gratuity payable.

**E** represents the lump sum that would have been payable if the former member had continued as a member of the police force until the age of 55 years at the same attributed salary of office, and had always worked as a full-time member of the police force and had wholly commuted the superannuation allowance otherwise payable to the former member.

**S** represents the total number of months of both full-time and part-time service that has been completed by the former member.

**P** represents the number of additional months of full-time service that the former member would have completed if the former member had continued as a full-time member of the police force until the age of 55 years.

**A** represents the age in years of the former member (including fractions of a year on a completed months' basis) at the date the former member ceased to be a member.

**ESR** represents the equivalent service ratio of the member as at the date the former member ceased to be a member.

(6AA) Subject to subsection (6A), the benefit provided by this subsection is, in the case of a former member of the police force who:

- (a) was an executive officer, and
- (b) elected to make provision for a benefit under this section in accordance with section 5B (1) (b), and
- (c) has attained the age of 55 years,

the lump sum benefit that would be payable if the former member:

- (d) had become entitled to the allowance prescribed by section 7 (1) or section 7AA (2) (whichever is applicable), and
- (e) had elected to commute the whole of the allowance in accordance with section 14J (3).

(6AB) Subject to subsection (6A), the benefit provided by this subsection is payable to a former contributor who was entitled to a superannuation allowance under section 7 and who elected to make provision for a benefit under this section. The benefit is the lump sum benefit that would be payable if the former contributor had elected to commute the whole of the allowance under section 14J, and is to be adjusted from time to time at the rate fixed by STC under section 16 (1) of the *State Authorities Superannuation Act 1987*.

(6AC) Subject to subsection (6A), the benefit provided by this subsection is payable to a former contributor who was entitled to a superannuation allowance under section 7AA and who elected to make provision for a benefit under this section. The benefit is the lump sum benefit that would be payable if the former contributor had elected to commute the whole of the allowance under section 14J, and is to be adjusted from time to time at the rate fixed by STC under section 16 (1) of the *State Authorities Superannuation Act 1987*.

(6A) If STC has made a determination under section 14AA in relation to a benefit provided by subsection (6), (6AA), (6AB) or (6AC), the amount of the benefit is reduced by the amount specified in STC's determination.

(7) When a benefit becomes payable under subsection (6) the amount of the gratuity as determined under that subsection shall be adjusted in accordance with the following

formula:

$$L2 = L1 \times \frac{A}{B}$$

where:

**L2** represents the amount of the gratuity as adjusted.

**L1** represents the amount of the gratuity before it is adjusted.

**A** represents the index number in the Consumer Price Index (All Groups Index) for Sydney last published by the Australian Statistician before the date the gratuity becomes payable.

**B** represents the index number in the Consumer Price Index (All Groups Index) for Sydney last published by the Australian Statistician before the date the election of the member under subsection (1) took effect.

- (7A) Despite subsection (7), if the Australian Statistician changes the reference base for the Consumer Price Index (All Groups Index) for Sydney, then, for the purposes of the application of this section after the change takes place, regard is to be had only to Index numbers expressed in terms of the new reference base.
- (8) For the purposes of S in the formula in subsection (6) (b), if the total number of months of both full-time and part-time service is not a whole number of months, any part of a month is to be disregarded.
- (8A) For the purposes of P in the formula in subsection (6) (b), a part of a month of full-time service is to be disregarded.
- (9) The benefit provided by this subsection is a gratuity that is equal to the sum of:
- (a) the amount of the payment under section 17 that would have been payable to the former member when he or she ceased to be a member if the former member had not made the election under subsection (1), and
  - (b) interest on the amount referred to in paragraph (a), from the date on which the former member ceased to be a member of the police force, at the rates fixed from time to time by STC under section 16 of the *State Authorities Superannuation Act 1987*.
- (10) An election under this section must be made in such form, and within such period, as may be specified by STC.
- (11) If the former member of the police force becomes entitled to a superannuation allowance under section 10:
- (a) before a gratuity is paid under this section—the gratuity ceases to be payable and



the member shall be paid the superannuation allowance under section 10, or

(b) after a gratuity is paid under this section—the amount of the gratuity shall be deducted from the superannuation allowance under section 10 in such instalments and at such times as STC may determine.

(12) If a person becomes entitled to a superannuation allowance under section 12 as a consequence of the death of the former member of the police force:

(a) before a gratuity becomes payable under this section—the gratuity ceases to be payable and the person shall be paid the superannuation allowance under section 12, or

(b) after a gratuity is paid under this section—the amount of the gratuity shall be deducted from the superannuation allowance under section 12 in such instalments and at such times as STC may determine.

(13) If, as a result of the invalidity of a former member of the police force, the former member becomes entitled to be paid a superannuation allowance under section 7, or a gratuity under section 14, before a gratuity is paid under this section, then:

(a) a gratuity under this section ceases to be payable, and

(b) STC must pay to or in respect of the former member such a superannuation allowance or, if the case requires, a gratuity under section 14.

(14) If, as a result of the invalidity of a former member of the police force, the former member becomes entitled to be paid:

(a) a superannuation allowance under section 7, or

(b) a gratuity under section 14,

after a gratuity has been paid under this section, STC must deduct the amount of the gratuity paid under this section from that allowance or, as the case may be, from the gratuity under section 14, in such instalments and at such times as it may determine.

### **9C Preservation of minimum benefits under superannuation guarantee legislation**

(1) **Benefit to be preserved** Despite any other provision of this Act, STC may, when a superannuation allowance or lump sum becomes payable under this Act, preserve all or part of so much of the allowance or lump sum as is employer-financed for the purpose of being consistent with a relevant Commonwealth superannuation standard. The amount of the allowance or lump sum to be preserved in respect of a former member of the police force for the purpose of this section is as determined by STC after obtaining actuarial advice.

(2) **Preservation in Fund** The amount is to be preserved in the Fund together with interest

from the member's exit date to the date of payment at a rate determined by STC.

- (3) **Benefit may be commuted** For the purpose of preserving a benefit under this section STC may commute to a lump sum so much of the superannuation allowance as is employer-financed, up to the amount determined by STC to be equal to the amount that is required to be preserved. The remainder of the superannuation allowance is to be dealt with as otherwise required or permitted by this Act.
- (4) **Payment of preserved benefit** A benefit preserved under this section is payable by STC on the death of the former member or in the circumstances in which it is specified in a relevant Commonwealth superannuation standard that a preserved benefit must or may be paid.
- (5) **Persons to whom benefit is payable** A benefit provided by subsection (4) is payable:
- (a) unless the former member has died—to the former member, or
  - (b) if the former member 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 member has died and is not survived by a spouse or de facto partner—to the personal representatives of the former member or, if appropriate, in accordance with section 18B (Payment without grant of probate etc).

## 10 Superannuation allowance where member hurt on duty

- (1) In this section:

**attributed salary of office** means:

- (a) in relation to a member of the police force who is discharged—the member's attributed salary of office at the date of the member's discharge, or
- (b) in relation to a former member of the police force who resigned or retired—the member's attributed salary of office at the date of the member's resignation or retirement.

**disabled member of the police force** means:

- (a) a member of the police force who is discharged after being certified, pursuant to section 10B (1), to be incapable, from a specified infirmity of body or mind, of personally exercising the functions of a police officer referred to in section 14 (1) of the [Police Act 1990](#), or
- (b) a former member of the police force who resigned or retired and who, according to a certificate given pursuant to section 10B (2) at any time after the member's resignation or retirement, was incapable, from an infirmity of body or mind, of personally exercising the functions of a police officer referred to in section 14 (1)

of the *Police Act 1990* at the time of the member's resignation or retirement, that infirmity being determined, pursuant to section 10B (3) or on appeal, to have been caused by the member being hurt on duty or the former member having been hurt on duty when he or she was a member of the police force, as the case may be.

**retired** includes discharged as referred to in section 7 or 14.

- (1A) Subject to this section, the annual superannuation allowance for a disabled member of the police force is:
- (a) an amount that is equal to 72.75 per cent of the member's attributed salary of office,
  - (b) except where paragraph (c) applies, an additional amount that is:
    - (i) not more than 12.25 per cent of the member's attributed salary of office, and
    - (ii) commensurate, in the opinion of STC, with the member's incapacity for work outside the police force, and
  - (c) if the disabled member is totally incapacitated for work outside the police force and, in the opinion of STC, the member was hurt on duty because the member was required to be exposed to risks to which members of the general workforce would normally not be required to be exposed in the course of their employment, an additional amount that is:
    - (i) not less than 12.25 per cent and not more than 27.25 per cent of the member's attributed salary of office, and
    - (ii) commensurate, in the opinion of STC, with the risks to which the member was so required to be exposed,
- multiplied by the equivalent service ratio of the member as at the date of the member's discharge, resignation or retirement.
- (1AA) If STC has made a determination under section 14AA in relation to an annual superannuation allowance payable under this section, the amount of the allowance is reduced by the amount specified in STC's determination.
- (1B) An annual superannuation allowance may be granted under this section to a disabled member of the police force whatever the member's length of service.
- (1BA) A superannuation allowance referred to in subsection (1A) or an additional amount of a superannuation allowance referred to in subsection (1D) is not payable to a disabled member of the police force unless an application for payment of the allowance or additional amount concerned is made:
- (a) before the member reaches the age of 60 years, or

(b) not later than 5 years after the member resigns or retires,  
whichever is the later.

(1C) Where a former member of the police force who resigned or retired is granted an annual superannuation allowance under this section, the allowance shall, at the time it first becomes payable, be increased or reduced, as the case may require, by the total amount (if any) that it would have been increased or reduced under Division 2 or any other provision of this Act if it had been granted when the former member resigned or retired.

(1D) STC may:

(a) make a determination at any time of an additional amount of a superannuation allowance under this section, and

(b) vary any such determination at any time,

and may direct that the determination or variation take effect from such date as STC considers appropriate.

(2) An annual superannuation allowance under this section shall not be payable to a former member of the police force who:

(a) wholly commuted under Division 3 a superannuation allowance that previously became payable to the former member under this Act, or

(b) has been paid a disengagement benefit under section 8A.

(3) If a superannuation allowance payable to a former member of the police force was partially commuted under Division 3, the allowance payable under subsection (1A) in respect of the member is to be reduced by the proportion that the commuted part of the superannuation allowance bears to the whole of the superannuation allowance.

(4)-(7) (Repealed)

#### **10A Injury management program**

(1) STC is not to commence to pay a benefit otherwise payable under section 10 in respect of a member of the police force if the Commissioner of Police decides that a reasonable direction given to the member in respect of the member's participation in an injury management program has, as at the time of the decision, not been complied with by the member.

(2) If the Commissioner makes such a decision, the Commissioner must give written notice of the decision to STC and to the member.

(3) The Commissioner must not so decide unless:

- (a) the injury management program was approved by the Commissioner as being no less beneficial to participants in the program than any comparable injury management program under the *Workplace Injury Management and Workers Compensation Act 1998* applicable to members of the police force, and
- (b) the member failed to comply with a reasonable direction given to the member in respect of the member's participation in the program, and
- (c) the member was given a reasonable opportunity to comply, and
- (d) the member was warned in writing that failure to comply might result in the member not receiving a benefit under this Act.

**10B Medical examination of disabled member and determination of whether hurt on duty**

- (1) An annual superannuation allowance or gratuity must not be granted under section 10 to a member of the police force who is discharged unless STC (having regard to medical advice on the condition and fitness for employment of the member) has certified the member to be incapable, from a specified infirmity of body or mind, of personally exercising the functions of a police officer referred to in section 14 (1) of the *Police Act 1990*.
- (2) An annual superannuation allowance or gratuity must not be granted under section 10 to a former member of the police force who resigned or retired unless:
  - (a) the former member notified the Commissioner of Police before the member's resignation or retirement and within 6 months of receiving the injury which has caused the member's infirmity of body or mind, of that injury, and
  - (b) if the regulations so require, the notification was in the prescribed form, and
  - (c) STC (having regard to medical advice on the condition and fitness for employment of the member) has certified that the former member was incapable, from that infirmity of body or mind, of personally exercising the functions of a police officer referred to in section 14 (1) of the *Police Act 1990* at the time of the member's resignation or retirement.
- (2A) For the purposes of determining a member's or former member's incapacity under this section:
  - (a) STC is not to have regard to the member's or former member's actual rank or position or any functions (other than the functions referred to in subsection (2) (c)) of the member or former member at the time to which the certification relates, and
  - (b) the capacity to exercise a function by delegation is not taken to be a capacity to personally exercise the function.

(2B), (2BA) (Repealed)

(2C) In this section:

**medical advice** means the advice of:

- (a) 2 members of the Police Medical Board, or
- (b) any one or more medical practitioners nominated by the STC.

(3) Where a member or former member of the police force is duly certified under subsection (1) or (2), the Commissioner of Police shall:

- (a) decide whether or not the infirmity to which the certificate relates was caused by the member being hurt on duty or the former member having been hurt on duty when he or she was a member of the police force, as the case may be, and the date or dates on which the member or former member was hurt on duty, and
- (b) give the member or former member written notification of the decision.

#### **10C Redemption of superannuation allowance granted to disabled member**

(1) In this section, **prescribed part**, in relation to an annual superannuation allowance granted under section 10 to a disabled member of the police force, means an amount, calculated on an annual basis, that, in the opinion of STC, would have been payable to the member:

- (a) in the case of a member of the police force who is discharged—at the date of the member's discharge, or
- (b) in the case of a former member of the police force who resigned or retired—at the date of the member's resignation or retirement,

by way of weekly payments of compensation under Division 2 of Part 3 of the *Workers Compensation Act 1987* if the disabled worker were a person entitled to compensation under that Division in respect of a period of total incapacity for work occurring after the first 26 weeks of incapacity.

(1A) This section applies in the following cases to a liability of the Fund in respect of the prescribed part of any annual superannuation allowance granted under section 10 to a disabled member of the police force:

- (a) in the case of an injury received before the commencement of the *Police Regulation (Superannuation) (Workers Compensation) Amendment Act 1987*,
- (b) in the case of a disabled member of the police force who has reached 55 years of age (but only in respect of 40 per cent of the prescribed part of the annual superannuation allowance payable for a period of 5 years),

- (c) in any case prescribed by the regulations and to the extent so prescribed,
  - (d) in the case of a particular disabled member of the police force approved by STC in special circumstances and to the extent so approved.
- (2) A liability of the Fund to which this section applies may, with the consent of the disabled member, be commuted (either in whole or in part) to a lump sum payment, determined by STC, having regard to:
- (a) the nature of the injury received by the disabled member,
  - (b) the age of the disabled member, and
  - (c) the diminished ability of the disabled member to compete in an open labour market.
- (3) This section does not apply to the whole or part of a superannuation allowance that has been commuted under Division 3.

**11 Grant of superannuation allowance to the surviving spouse or de facto partner of a former member of the police force who dies after the commencement of Schedule 1 (7) to the [Police Regulation \(Superannuation\) Amendment Act 1988](#)**

- (1) Subject to this section, if:
- (a) a former member of the police force to whom a superannuation allowance has been granted dies on or after the commencement of Schedule 1 (7) to the [Police Regulation \(Superannuation\) Amendment Act 1988](#), and
  - (b) that former member of the police force is survived by a person who was the spouse or de facto partner of that former member both at the time of the former member's death and at the time of the former member's retirement (whether by disablement or otherwise),

that spouse or de facto partner is entitled to receive a superannuation allowance equivalent to 62.5 per cent of the superannuation allowance that would have been payable to that former member from time to time if that former member had not died.

- (2) A superannuation allowance under subsection (1):
- (a) is not payable to the surviving spouse or de facto partner of a deceased former member of the police force if a superannuation allowance is payable to that spouse or de facto partner under section 12, or a gratuity is payable or has been paid to that spouse or de facto partner under section 12 (1A), and
  - (b) is not payable to the surviving spouse or de facto partner of a deceased former member of the police force who has wholly commuted a superannuation allowance under Division 3, and

(c) is subject to section 23.

- (3) If a superannuation allowance payable to a former member of the police force was partially commuted under Division 3, the allowance payable under subsection (1) in respect of the death of the member is to be reduced by the proportion that the commuted part of the superannuation allowance bears to the whole of the superannuation allowance.

**11AA Grant of superannuation allowance to the surviving spouse or de facto partner of a former member of the police force who dies after the commencement of Schedule 1.4 [10] to the [Superannuation Legislation Amendment Act 1997](#)**

- (1) If a former member of the police force to whom a superannuation allowance has been granted dies on or after the commencement of Schedule 1.4 [10] to the [Superannuation Legislation Amendment Act 1997](#), and that former member is survived by a person who:

- (a) was the spouse or de facto partner of that former member both at the time of the former member's death and at the time of the former member's retirement (whether by disablement or otherwise), or
- (b) in the case of a former member who retired because of disablement, was the spouse or de facto partner of that former member:
- (i) both at the time of the former member's death and for at least the preceding 3 years, and
- (ii) became the spouse or de facto partner of the former member before the former member attained the age of 60 years,

that spouse or de facto partner is entitled to receive a superannuation allowance equivalent to 62.5 per cent of the superannuation allowance that would have been payable to that former member from time to time if that former member had not died.

- (2) A superannuation allowance under subsection (1):
- (a) is not payable to the surviving spouse or de facto partner of a deceased former member of the police force, if a superannuation allowance is payable to that spouse or de facto partner under section 12 or a gratuity is payable or has been paid to that spouse or de facto partner under section 12 (1A), and
- (b) is not payable to the surviving spouse or de facto partner of a deceased former member of the police force who has wholly commuted a superannuation allowance under Division 3, and
- (c) is subject to section 23.
- (3) If a superannuation allowance payable to a former member of the police force was



partially commuted under Division 3, the allowance payable under subsection (1) in respect of the death of the member is to be reduced by the proportion that the commuted part of the superannuation allowance bears to the whole of the superannuation allowance.

**11A Grant of superannuation allowance to widow where the spouse died before the commencement of Schedule 1 (7) to the [Police Regulation \(Superannuation\) Amendment Act 1988](#)**

(1) Subject to subsection (2), where:

- (a) a male former member of the police force to whom a superannuation allowance has been granted dies after the commencement of the [Police Regulation \(Superannuation\) Further Amendment Act 1966](#) and before the commencement of Schedule 1 (7) to the [Police Regulation \(Superannuation\) Amendment Act 1988](#),
- (b) that former member was married at the date of his death, and
- (c) his widow was his wife at the date of his retirement (whether by disablement or otherwise),

that widow is entitled to receive a superannuation allowance equivalent to 62.5 per cent of the superannuation allowance that would have been payable to that member from time to time if he had not died.

(1A), (1B) (Repealed)

(2) A superannuation allowance under subsection (1):

- (a) shall not be payable to a widow to whom a superannuation allowance is payable under section 12 or to whom a gratuity is payable under section 12 (1A),
  - (a1) shall not be payable to the widow of a former member of the police force who commuted his superannuation allowance under Division 3, and
- (b) is subject to section 23.

**11B Grant of superannuation allowance to widows of former members dying before 12.4.1966**

(1) Subject to subsection (2), where:

- (a) a male former member of the police force to whom a superannuation allowance had been granted died before the commencement of the [Police Regulation \(Superannuation\) Further Amendment Act 1966](#),
- (b) that former member was married at the date of his death,
- (c) his widow was his wife at the date of his retirement (whether by disablement or

otherwise),

(d) his widow is not married, and

(e) his widow is:

- (i) in the case of a widow who has not attained the age of 70 years—in receipt of a class of Commonwealth pension (as defined in section 7A (1)) that is the maximum amount of that class of Commonwealth pension that may be paid to her, without any reduction on account of income or property or both pursuant to the law of the Commonwealth under which the Commonwealth pension is paid, or
- (ii) in the case of a widow who has attained the age of 70 years—in receipt of a Commonwealth pension (as so defined),

there may be paid to his widow upon her so making application the superannuation allowance hereinafter prescribed.

(2) For the purposes of this section, the prescribed superannuation allowance shall be:

(a) in the case of a widow who has not attained the age of 70 years:

- (i) the maximum superannuation allowance that if received by the widow would not affect her eligibility to continue to receive the maximum amount of the class of Commonwealth pension she is in receipt of as referred to in subsection (1) (e) (i), or

(ii) the appropriate amount per fortnight,

whichever is the lesser, or

(b) in the case of a widow who has attained the age of 70 years—the appropriate amount per fortnight.

(2A) For the purposes of this section, the appropriate amount is:

(a) for the period commencing on and including 20 September 1974 and ending on and including the day preceding the next adjustment date—\$25.72, or

(b) for any subsequent period commencing on and including the adjustment date for a year and ending on and including the day preceding the next adjustment date:

- (i) if there is no adjustment percentage for that year—the appropriate amount for the preceding period (as referred to in this subsection), or
- (ii) if there is an adjustment percentage for that year—the appropriate amount for the preceding period (as so referred to), adjusted by that percentage,

but the appropriate amount is:

- (c) for the period commencing on and including 29 September 1978 and ending on and including the day preceding the next adjustment date—\$42.53, and
- (d) for the period commencing on and including the first day of the superannuation allowance pay period that next succeeds the superannuation allowance pay period during which the day appointed and notified under section 2 (2) of the *Police Regulation (Superannuation) Amendment Act 1981* occurs, and ending on and including the day preceding the next adjustment date—\$64.77.

(2B) For the purposes of subsection (2A):

- (a) **adjustment date**, **adjustment percentage** and **year** have the meanings respectively ascribed thereto in section 14A (1),
- (b) section 14A (2) applies to and in respect of the adjustment of an amount referred to in subsection (2A) in the same way as it applies to and in respect of the adjustment of a superannuation allowance under Division 2 of Part 4, and
- (c) a reference in subsection (2A) to the appropriate amount for the preceding period is, where the preceding period includes the period referred to in subsection (2A)
  - (d), a reference to \$64.77.

(2C) Notwithstanding anything in this section, the superannuation allowance payable to a widow pursuant to this section shall not be reduced below the fortnightly amount that would, if Division 2 of Part 4 had not been enacted, have been payable to her.

(3) The superannuation allowance under subsection (2):

- (a) shall be payable to the applicant therefor as from the date application was made,
- (b) shall not be payable to a widow to whom an allowance is being paid under section 11 until such allowance ceases: Provided that a widow who is in receipt of an allowance under that section may elect to forfeit that allowance and to be paid in lieu a superannuation allowance in pursuance of subsection (1),
- (c) shall not be payable to a widow to whom a superannuation allowance is payable under section 11A or 12 or to whom a gratuity is payable under section 12 (1A), and
- (d) is subject to section 23.

### **11C Grant of superannuation allowance to widower whose spouse died before 20 March 1989**

(1) Subject to subsection (3), where:

- (a) a female former member of the police force to whom a superannuation allowance has been granted dies on or after the day appointed and notified under section 2

(2) of the *Police Regulation (Superannuation) Amendment Act 1984* and before the commencement of Schedule 1 (7) to the *Police Regulation (Superannuation) Amendment Act 1988*,

- (b) that former member was married at the date of her death, and
- (c) her widower was her husband at the date of her retirement (whether by disablement or otherwise),

that widower is entitled to receive a superannuation allowance equivalent to 62.5 per cent of the superannuation allowance that would have been payable to that member from time to time if she had not died.

(2) (Repealed)

(3) A superannuation allowance under this section:

- (a) is not payable to a widower to whom a superannuation allowance is payable under section 12 or to whom a gratuity is payable under section 12 (1A), and
- (b) is not payable to a widower of a member of the police force who commuted her superannuation allowance under Division 3, and
- (c) is subject to section 23.

(4)–(7) (Repealed)

**11D Grant of superannuation allowance to surviving spouse or de facto partner of certain former members**

- (1) If a former member of the police force to whom a superannuation allowance has been granted dies on or after the commencement of Schedule 5 [1] to the *Superannuation Legislation Amendment Act 2002*, an eligible spouse or de facto partner of the former member is entitled:
  - (a) if the former member and the eligible spouse or de facto partner had been married or living in the relationship for 3 years or more immediately before the death—to receive a superannuation allowance equivalent to 62.5% of the superannuation allowance that would have been payable to the former member from time to time if that former member had not died, or
  - (b) if the former member and the eligible spouse or de facto partner had been married or living in the relationship for less than 3 years immediately before the death—to receive a superannuation allowance equivalent to 62.5% of the superannuation allowance that would have been payable to the former member from time to time if that former member had not died, but reduced on a pro rata basis according to the proportion that the period of the marriage or relationship bears to 3 years.

(2) A superannuation allowance under subsection (1):

- (a) is not payable to the eligible spouse or de facto partner of a deceased former member of the police force, if a superannuation allowance is payable to that spouse or de facto partner under section 12 or a gratuity is payable or has been paid to that spouse or de facto partner under section 12 (1A), and
- (b) is not payable to the eligible spouse or de facto partner of a deceased former member of the police force who has wholly commuted a superannuation allowance under Division 3, and
- (c) is subject to section 23.

(2A) If a superannuation allowance payable to a former member of the police force was partially commuted under Division 3, the allowance payable under subsection (1) in respect of the death of the member is to be reduced by the proportion that the commuted part of the superannuation allowance bears to the whole of the superannuation allowance.

(3) In this section:

***eligible spouse or de facto partner*** of a former member of the police force means a person:

- (a) who became the spouse or de facto partner of the former member after the former member had been granted a superannuation allowance, and
- (b) who has or had in his or her marriage or relationship with the former member a child, being:
  - (i) a child of the eligible spouse or de facto partner and the former member who was, in the opinion of the trustees, wholly or substantially dependent on the former member at any time during the marriage or relationship, or
  - (ii) a child of the former member who was conceived before and born alive after the death of the former member.

## **12 Superannuation allowance where a member or former member dies as a result of being hurt on duty**

(1) Subject to this section, where:

- (a) a member of the police force dies, or
- (b) a former member of the police force dies,

and his or her death is determined, pursuant to section 12C or on appeal, to have been caused by the member being hurt on duty or by the former member having been hurt on duty when he or she was a member of the police force, as the case may be,

STC may authorise the payment to or on behalf of:

- (c) the spouse or de facto partner, father, mother or children of the member or former member, or
- (d) any other relatives (including dependants within the meaning of Division 1 of Part 3 of the *Workers Compensation Act 1987*) wholly or partly dependent upon the member or former member at the time of his or her death,

of an annual superannuation allowance of such amount as STC determines, not exceeding the rate prescribed by subsection (1AA).

(1AA) The prescribed rate for the purposes of subsection (1) is:

(a) in the case of the death of a member of the police force:

- (i) 55 per cent of the attributed salary of office of the deceased member at the time of death, and
- (ii) if, in the opinion of STC, the member was hurt on duty because the member was required to be exposed to risks to which members of the general workforce would normally not be required to be exposed in the course of their employment, an additional rate that is not more than 7.5 per cent of that attributed salary of office and that is, in the opinion of STC, commensurate with the risks to which the member was required to be exposed,

multiplied by the equivalent service ratio for the member as at the member's date of death, or

(b) in the case of the death of a former member of the police force, the greater of the following rates:

- (i) 55 per cent of the attributed salary of office of the deceased former member at the time of the former member's discharge, resignation or retirement, as increased or reduced pursuant to subsection (3A), multiplied by the equivalent service ratio for the member at that time,
- (ii) 62.5 per cent of the annual superannuation allowance received by, or payable to, the former member at the date of death.

(1A) A person who is granted an annual superannuation allowance under this section may elect, by notice in writing served on STC within the time specified by it, to be paid a gratuity equivalent to the gratuity prescribed by section 13 and, if the person so elects, the person shall be paid that gratuity instead of that allowance.

(1B) For the purposes of subsection (1A), a reference in section 13, in its application to a former member of the police force, to the rate of the member's attributed salary of office at the date of the member's death shall be construed as a reference to the rate

of attributed salary of office that the member would have received at the date of the member's death had the member continued in the police force without promotion.

- (1C) Where 2 or more persons are each granted part of an annual superannuation allowance under this section and some but not all of those persons make an election under subsection (1A), all or none of those persons shall be deemed to have made that election, whichever STC determines.
- (1D) An annual superannuation allowance under this section shall not be payable as a consequence of the death of a former member of the police force who:
- (a) wholly commuted under Division 3 a superannuation allowance that previously became payable to the former member under this Act, or
  - (b) has been paid a disengagement benefit under section 8A.
- (2) If a superannuation allowance payable to a member or former member of the police force was partially commuted under Division 3, the allowance payable under subsection (1) in respect of the death of the member or former member is to be reduced by the proportion that the commuted part of the superannuation allowance bears to the whole of the superannuation allowance.
- (3) (Repealed)
- (3A) For the purposes of subsection (1AA) (b) (i), where a person is granted an annual superannuation allowance under this section as a consequence of the death of a former member of the police force, the allowance shall, at the time it first becomes payable, be increased or reduced, as the case may require, by the total amount (if any) that it would have been increased or reduced under Division 2 or any other provision of this Act if it had been granted when the former member was discharged, or resigned or retired, from the police force.
- (3B) If STC has made a determination under section 14AA in relation to an annual superannuation allowance payable under this section, the amount of the allowance is reduced by the amount specified in STC's determination.
- (4) STC may authorise the payment of an annual superannuation allowance under this section upon such conditions, and for such time, as STC determines.
- (5) STC may adjust or discontinue an annual superannuation allowance granted under this section before or after the commencement of Part 4 of the *Police Regulation (Superannuation) Amendment Act 1974*.
- (6) Any annual superannuation allowance paid under this section to the spouse or de facto partner of a member, or former member, of the police force is subject to section 23.

## 12A Allowance in respect of certain children

(1) In this section:

**child** in relation to a member, or former member of the police force includes a step-child of the member or former member and any person to whom the member or former member stands in the place of a parent.

**student** means a person receiving full-time education at a school, college or university approved by the Board.

(2) Where, after the commencement of Part 4 of the *Police Regulation (Superannuation) Amendment Act 1974*, a member, or former member, of the police force dies under circumstances referred to in section 12, leaving a child, STC may, subject to this section, pay to the spouse or de facto partner of the member or former member or, if there is no such spouse or de facto partner, to the guardian of the child or, if there is no such spouse or de facto partner or guardian, to such person as STC may determine, an annual allowance in respect of the child equivalent to the amount of the weekly payment from time to time prescribed by Division 1 of Part 3 of the *Workers Compensation Act 1987* in respect of a dependent child of a worker under that Act.

(2A) An allowance under this section shall not be payable to a person to whom a gratuity is payable under section 12 (1A).

(2B) An allowance under this section shall not be payable as a consequence of the death of a former member of the police force who:

(a) wholly commuted under Division 3 a superannuation allowance that previously became payable to the former member under this Act, or

(b) has been paid a disengagement benefit under section 8A.

(3) Except as provided by subsections (4) and (4A), an allowance under subsection (2) is payable only in respect of a child under the age of eighteen years and ceases to be payable if the child dies under that age.

(4) Subject to any conditions (including conditions as to duration) imposed by STC, an allowance under subsection (2) may be continued in respect of a child who is a student at the time the child attains the age of eighteen years or commenced in respect of a child who was a student at the time of the death of the member or former member of the police force.

(4A) An allowance continued or commenced under subsection (4) is not payable in respect of any period after the child:

(a) dies, or

(b) ceases to be a student, or



(c) reaches 21 years.

- (5) STC may adjust or discontinue, or may vary the conditions applicable to, an annual allowance payable under this section.
- (6) An annual allowance in respect of a child that, immediately before the commencement of Part 4 of the *Police Regulation (Superannuation) Amendment Act 1974*, was being paid under section 12 (1) as enacted before that commencement shall be deemed to be an allowance payable under this section.

### **12B Gratuities where member dies as a result of being hurt on duty**

(1) In this section:

**dependant** has the same meaning as it has in Division 1 of Part 3 of the *Workers Compensation Act 1987*.

- (2) Where a member or former member of the police force dies under circumstances referred to in section 12 and the member or former member leaves dependants wholly or partly dependent on him or her, STC may pay to those dependants a gratuity of such amount as STC determines, not exceeding the amount that, in the opinion of STC, would have been payable under Division 1 of Part 3 of the *Workers Compensation Act 1987* (except an amount payable in respect of a dependent child) if the member were, or the former member had been, a worker for the purposes of that Act.
- (2A) A gratuity under subsection (2) shall not be payable to a person to whom a gratuity is payable under section 12 (1A).
- (3) Where a member or former member of the police force dies under circumstances referred to in section 12 and the member or former member does not leave any dependants wholly or partly dependent on him or her, STC may pay an amount to meet his or her funeral expenses that, in the opinion of STC, would have been payable under Division 1 of Part 3 of the *Workers Compensation Act 1987* if the member were, or the former member had been, a worker for the purposes of that Act.

### **12C Determination as to whether death resulted from being hurt on duty**

- (1) If a member of the police force dies, the Commissioner of Police is to decide whether or not the member's death was caused by the member having been hurt on duty and is to notify STC of the decision.
- (2) At the request of STC, the Commissioner of Police is to decide whether or not the death of a former member of the police force was caused by the former member having been hurt on duty while a member of the police force.
- (3) The Commissioner of Police is to give STC written notification of each decision made by the Commissioner under this section.

- (4) On being notified of a decision of the Commissioner under this section, STC:
- (a) is to give written notification of the decision to each person who, in the opinion of STC, would be benefited by a decision under this Act that the member or former member had been hurt on duty, and
  - (b) is to do so whether or not the decision of the Commissioner was that the member or former member had been hurt on duty.

**12D Gratuities to members hurt on duty in respect of loss of limbs, medical expenses etc**

- (1) STC may pay to a member of the police force who is hurt on duty or to a former member of the police force who was hurt on duty when he or she was a member of the police force a gratuity of such amount as STC determines, not exceeding the amount that, in the opinion of STC, would have been payable to the member or former member under Divisions 3, 4 and 5 of Part 3 of the *Workers Compensation Act 1987* if the member were, or the former member had been, a worker for the purposes of that Act.
- (2) STC may pay a gratuity to a member of the police force under this section notwithstanding that the member is not discharged from the police force as a result of being hurt on duty.
- (3) STC shall not grant a gratuity under this section to a member or former member of the police force unless:
- (a) an annual superannuation allowance is payable to the member or former member under section 10 in respect of an infirmity of body or mind arising out of the same injury to which the claim for the gratuity relates, or
  - (b) where an annual superannuation allowance is not so payable, the injury to which the claim for the gratuity relates is determined, pursuant to subsection (4) or on appeal, to have been caused by the member being hurt on duty or the former member having been hurt on duty when he or she was a member of the police force.
- (4) Where a member or former member of the police force claims a gratuity under this section (otherwise than in respect of an injury referred to in subsection (3) (a)), the Commissioner of Police must:
- (a) decide whether or not the injury to which the claim relates was caused by the member being hurt on duty or the former member having been hurt on duty when he or she was a member of the police force, and
  - (b) give written notice of the decision to STC and to the claimant.
- (5) Despite any other provision of this section or any other provision of this Act, a gratuity or part of a gratuity payable under this section may, with the approval of the Minister,

be paid by a person other than STC and from a source other than the Fund.

**12E Repayment to STC in certain cases**

- (1) Where a member of the police force is hurt on duty in circumstances creating a legal liability in some person to pay damages in respect thereof and those damages are recovered, a gratuity shall not be payable under section 12B or 12D to the person who recovered the damages or, if a gratuity under section 12B or 12D has already been paid to the person who recovered the damages, the person shall be liable to repay to STC out of those damages the amount of the gratuity so paid.
- (2) In subsection (1), **damages** does not include any sum ordered or directed to be paid pursuant to any provision of the *Victims Compensation Act 1996* by way of compensation for injury, but any such sum so paid to a person shall be deducted from any gratuity subsequently payable to the person under section 12B or 12D in respect of the injury.
- (3) If a gratuity is paid under section 12B or 12D to or in respect of a member of the police force who is hurt as referred to in subsection (1), STC is entitled to be indemnified by the person liable to pay the damages (being an indemnity limited to the amount of those damages).
- (4) If any payment is made under the indemnity and, when the payment is made, a judgment has not been obtained against the person paying under the indemnity, the payment is, to the extent of its amount, a defence to proceedings against that person for damages.
- (5) If any payment is made under the indemnity and, when the payment is made, judgment has been obtained for damages against the person paying under the indemnity (but judgment has not been satisfied), the payment, to the extent of its amount, satisfies the judgment.
- (6) For the purpose of applying this section to or in respect of a gratuity paid or payable under section 12B or 12D, STC may request the person to whom the gratuity is payable or has been paid to provide STC with an authority:
  - (a) to obtain from a third person any information or evidence that is relevant to the question of whether damages (as referred to in subsection (1)) have been recovered, and
  - (b) to advise any such person of any payment under this section.
- (7) If a person does not comply with a request to provide the authority, STC is not obliged to proceed to pay the gratuity concerned.
- (8) Nothing in this section limits the operation of section 68 of the *Superannuation Administration Act 1996*.

**12F Release of benefits on grounds of severe financial hardship**

- (1) STC may, on the election of a contributor, or a former contributor who has provided for a benefit under section 9B or had a benefit preserved under section 9C, release to the contributor or former contributor a benefit on the ground of the contributor or former contributor's severe financial hardship.
- (2) STC may release the benefit only if STC is satisfied that the circumstances are such that a benefit would be payable on the grounds of severe financial hardship if the contributor or former contributor were a member of a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.
- (3) The amount paid:
  - (a) is to be the amount payable for the purpose of complying with the requirements of that Act for payment of such a benefit from a regulated superannuation fund, and
  - (b) is not to exceed the amount of any accrued or preserved benefit that would be payable to the contributor or former contributor under this Act if the contributor or former contributor were eligible to be paid such a benefit.
- (4) A contributor or former contributor may, at any time before a benefit is released under this section, vary or revoke an election under this section.
- (5) An amount may not be paid under this section unless any applicable requirements of any regulations made under section 12H have been complied with.

**12G Release of benefit on compassionate grounds**

- (1) STC may, on the election of a contributor, or a former contributor who has provided for a benefit under section 9B or had a benefit preserved under section 9C, release to the contributor or former contributor a benefit on compassionate grounds.
- (2) STC may release the benefit only if STC is satisfied that the circumstances are such that the Regulator (within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth) would be entitled to determine that the amount could be released on compassionate grounds if the contributor or former contributor were a member or former member of a regulated superannuation fund within the meaning of that Act.
- (3) The amount paid:
  - (a) is to be the amount payable for the purpose of complying with the requirements of that Act for payment of such a benefit from a regulated superannuation fund, and
  - (b) is not to exceed the amount of any accrued or preserved benefit that would be payable to the contributor or former contributor under this Act if the contributor or

former contributor were eligible to be paid such a benefit.

- (4) A contributor or former contributor may, at any time before a benefit is released under this section, vary or revoke an election under this section.
- (5) An amount may not be paid under this section unless any applicable requirements of any regulations made under section 12H have been complied with.

### **12H Effect on 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 12F or 12G.
- (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 an amount has been previously released under section 12F or 12G, 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 amounts released under section 12F or 12G against benefits that would otherwise accrue,
  - (e) any matter ancillary to or consequential on the matters set out in paragraphs (a)–(d).

### **13 Gratuity where deceased member not hurt on duty**

- (1) Subject to subsection (2A), if a member of the police force dies otherwise than in the circumstances referred to in section 12, STC shall pay:
  - (a) if the deceased member is survived by a spouse or de facto partner—to the deceased member's spouse or de facto partner, or
  - (b) if the deceased member is not survived by a spouse or de facto partner—to the personal representatives of the deceased member or (if appropriate) in accordance with section 18B,

a gratuity calculated in accordance with the following formula:

$$G = 0.01 \times (AS + AS + PS) \times S \times ESR$$

where:

**G** represents the gratuity payable.

**AS** represents the total number of months of both full-time and part-time service that has been completed by the member (subject to a maximum of 360 months of equivalent full-time service).

**PS** represents (in the case of a member dying before the age of 55 years) the number of additional months of full-time service that the deceased member would have completed if the deceased member had reached the age of 55 years as a full-time member (subject to the maximum number necessary so that the total of AS + PS does not exceed 360 months of equivalent full-time service).

**S** represents the member's attributed salary of office at the date of death.

**ESR** represents the equivalent service ratio for the deceased member as at the member's date of death.

- (2) For the purposes of AS in the formula in subsection (1), if the total number of months of both full-time and part-time service is not a whole number of months, any part of a month is to be disregarded.
- (2AA) For the purposes of PS in the formula in subsection (1), a part of a month of full-time service is to be disregarded.
- (2A) If STC has made a determination under section 14AA in relation to a gratuity payable under subsection (1), the amount of the gratuity is reduced by the amount specified in STC's determination.
- (3) (Repealed)

### **13A Gratuity where deceased member hurt on duty but left no dependants etc**

If a member of the police force dies under circumstances referred to in section 12 but there is no person to whom a superannuation allowance may be paid under section 12, a gratuity shall be paid under section 13 to the personal representative of the deceased member or (if appropriate) in accordance with section 18B.

### **14 Gratuity for discharged members not hurt on duty**

- (1) Where a member of the police force:
  - (a) has served for a period less than 20 years of equivalent full-time service,
  - (b) is discharged after being certified, pursuant to section 8 (1) or on appeal, to be incapable, from an infirmity of body or mind, of personally exercising the functions of a police officer referred to in section 14 (1) of the *Police Act 1990*, and
  - (c) is not entitled to be granted an annual superannuation allowance under section 10,

STC shall, subject to subsection (3), pay to the member a gratuity of 24 months' pay

at the rate of the member's attributed salary of office at the date of the member's discharge.

- (2) Where a former member of the police force who, after the member's discharge, received the gratuity payable under subsection (1) is thereafter entitled to an annual superannuation allowance or a gratuity by reason of having been hurt on duty when he or she was a member of the police force, the amount of the gratuity paid under subsection (1) shall be deducted from the annual superannuation allowance or gratuity in such instalments and at such times as STC may determine.
- (3) If STC has made a determination under section 14AA in relation to a gratuity payable under subsection (1), the amount of the gratuity is reduced by the amount specified in STC's determination.

## **Division 1A Circumstances in which benefits may be reduced**

### **14AA Power of STC to reduce benefits to offset certain tax liabilities**

(1) Whenever:

- (a) a right to a benefit under this Act accrues to or in respect of a contributor or former contributor, and
- (b) STC is liable to pay income tax under a Commonwealth taxation law in respect of amounts appropriated from the Consolidated Fund under section 4, and
- (c) a portion of that tax is referable to the part of those amounts used to finance the 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 the part referred to in paragraph (c), and
- (e) accordingly make a determination reducing that part of the benefit by the amount calculated.

(1A) Whenever:

- (a) a right to a benefit under this Act accrues to or in respect of a contributor or former contributor, and
- (b) STC has paid or is liable to pay an amount of superannuation contributions surcharge in respect of the employer contributions paid to the Fund, or in respect of contributions made under the *State Authorities Non-contributory Superannuation Act 1987*, on behalf of the contributor or former contributor,

STC must determine in writing the surcharge deduction amount that, in the opinion of STC, it would be fair and reasonable to take into account in working out the amount of

the benefit and must make a determination reducing the benefit accordingly.

(1B) In determining the surcharge deduction amount in respect of a benefit payable to a contributor or former contributor, STC may have regard to any or all of the following matters:

- (a) the amount of superannuation contributions surcharge payable or paid by STC in respect of the contributor or former contributor,
- (b) the amount by which the contributor's or former contributor's surcharge debt account is in debit when the benefit emerges or commences to be paid,
- (c) the value of the employer-financed portion of the benefit,
- (d) the value of the benefits that, for the purpose of working out (under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth) the notional surchargeable contribution factors applicable to the contributor or former contributor, were assumed to be likely to be payable to the contributor or former contributor on his or her ceasing to be a member of the police force,
- (e) whether the contributor or former contributor has qualified for a benefit that includes an employer-financed component,
- (f) the amount of any payments under section 20A,
- (g) any other matter STC considers relevant.

(1C) The surcharge deduction amount determined by STC must not exceed:

- (a) an amount that is 15% of the employer-financed portion of that part of the benefit payable to the contributor or former contributor that accrued after 20 August 1996, or
- (b) such other amount of the employer-financed portion of a benefit as is prescribed by the regulations in relation to the period when the benefit payable to the contributor or former contributor accrued.

(1D) For the purpose of determining the surcharge deduction amount, STC may obtain actuarial advice or advice from any other persons, as STC thinks fit.

(1E) The balance of any additional amount payable by STC for superannuation contributions surcharge in respect of a contributor or former contributor, after payment of the balance of the relevant surcharge debt account, is to be paid by STC from the Fund under section 3 (3).

(2) Subsection (1) does not authorise the reduction of a benefit under this Act, 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.

(2A) Subsections (1) and (2) apply to benefits that accrued on, before or after 20 March 1989 (the date of commencement of this section) and that are still payable to the former member, or a spouse or de facto partner of the former member, on 1 July 2000.

(2B) For the purposes of the application of subsections (1) and (2) to a benefit that accrued before 1 July 1997, the regulations may provide for the reduction of the benefit on and from 1 July 2000 or a later date specified in the regulations.

(3) Subsection (1A) does not authorise the reduction of a benefit as a result of a liability for superannuation contributions surcharge unless the benefit is of a kind prescribed by the regulations for the purposes of this section.

(3A) If STC determines a surcharge deduction amount in respect of a contributor or former contributor under this section, STC may, on the application of the contributor or former contributor, apply the benefit that accrues to or in respect of the contributor or former contributor under the [State Authorities Non-contributory Superannuation Act 1987](#) toward payment of the surcharge deduction amount, and make a determination reducing the benefit payable under that Act accordingly. In such a case, STC may make a determination reducing the benefit payable under this Act to the extent necessary (if any) to pay the balance of the surcharge deduction amount.

(4) In this section:

**surcharge debt account**, in relation to a contributor or former contributor, means the surcharge debt account kept for the contributor or former contributor (while an employee) under section 16 of the [Superannuation Contributions Tax \(Assessment and Collection\) Act 1997](#) of the Commonwealth.

(5) Despite subsection (1A), the benefit of a former contributor who has commenced to be paid that benefit may be adjusted by STC in accordance with the regulations if the former contributor receives (before, on or after the commencement of this subsection) notice of an assessment of superannuation contributions surcharge under the [Superannuation Contributions Tax \(Assessment and Collection\) Act 1997](#) of the Commonwealth in respect of the employer contributions paid to the Fund on behalf of the former contributor.

(6) The regulations may make provision for or with respect to the following:

(a) the circumstances in which STC may or may not pay superannuation contributions surcharge on behalf of a former contributor,

(b) adjusting the amounts of benefits or paying amounts in relation to a surcharge deduction amount or an assessment of superannuation contributions surcharge received by a former contributor before, on or after the commencement of this subsection.

(7) Without limiting subsection (6), the regulations may make provision for the payment by STC of an amount of additional surcharge payable by a former contributor above the amount determined under subsection (1C).

**14AAA Restoration of death benefit previously reduced to offset contribution tax liabilities**

(1) STC may, for the purposes of obtaining a deduction from assessable income under section 295-485 of the *Income Tax Assessment Act 1997* of the Commonwealth, increase a benefit payable or paid under section 9B that has been previously reduced under section 14AA (1).

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

(3) (Repealed)

**14AB Power of STC to adjust benefits to comply with certain standards relating to superannuation**

(1) (Repealed)

(2) If:

(a) a contributor or former contributor becomes entitled to receive a superannuation allowance under this Act, other than a superannuation allowance under section 7 or 10 arising from the incapacity of the contributor or former contributor, and

(b) payment of the allowance to the contributor or former contributor would, but for this subsection, not be consistent with any relevant Commonwealth superannuation standards,

the contributor or former contributor may, by notice in writing given to STC before the allowance starts to be paid, elect to receive the allowance:

(c) in a form that complies with those standards, or

(d) in a form that is in accordance with this Act (apart from this section).

(3) Even after such a superannuation allowance has started to be paid in a form that is not consistent with any relevant Commonwealth superannuation standards, the contributor or former contributor concerned is, by notice in writing given to STC, entitled to make an election or a further election to receive payment of the allowance

in a form that is consistent with the relevant Commonwealth superannuation standards.

- (4) An election made and notified to STC in accordance with this section is sufficient authority for STC to pay a superannuation allowance in accordance with the election of the contributor or former contributor concerned.
- (5) An election under this section to receive a superannuation allowance in a form that is consistent with the relevant Commonwealth superannuation standards is irrevocable.
- (6) A contributor or former contributor who does not notify STC of the election of the contributor or former contributor under this section before the superannuation allowance concerned starts to be paid is, subject to subsection (3), to be regarded as having elected to receive payment of the allowance in the form provided by this Act (apart from this section).
- (7) If a contributor or former contributor makes an election under this section to receive a superannuation allowance in a form that is consistent with the relevant Commonwealth superannuation standards, STC must ensure that the allowance is varied only to the extent necessary to comply with those standards.
- (8) An election under this section to receive a superannuation allowance in a form that is consistent with the relevant Commonwealth superannuation standards is binding not only on the contributor or former contributor who made the election but also on any person claiming a benefit under this Act through that contributor or former contributor.
- (9) If an election is made under this section to receive a superannuation allowance in a form that is consistent with the relevant Commonwealth superannuation standards, the superannuation allowance is payable in that form despite any other provision of this Act to the contrary.
- (10) In this section:
  - (a) a reference to a benefit or superannuation allowance is a reference to a benefit or superannuation allowance after it has been reduced in accordance with section 14AA or 14AD if appropriate, and
  - (b) a reference to a superannuation scheme is a reference to a scheme, fund or arrangement (whether or not established by or under an Act) under or from which any superannuation or retirement benefits are provided.

(11) (Repealed)

#### **14AC Commutation of pensions for adjustment of benefits**

- (1) If a benefit that may be taken in the form of a pension is reduced under section 14AA or 14AD, STC may, at its discretion and with the consent of the contributor or former

contributor concerned, commute part of the pension to a lump sum for the purposes of payment to STC of the amount of the reduction.

- (2) Commutation of part of a pension under this section:
  - (a) does not affect any other right that the contributor or former contributor has to commute the pension under this Act, and
  - (b) is not to be taken into account for the purpose of determining whether, and to what extent, any such other right may be exercised, and
  - (c) is to be done on a basis determined by STC for the purposes of this section.
- (3) STC may obtain actuarial advice for the purpose of determining the basis on which part of a pension is to be commuted under this section.
- (4) This section has effect despite any other provision of this Act.

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

- (1) This section applies to a benefit if:
  - (a) a right to the benefit accrues under this Act to or in respect of a contributor or former contributor, and
  - (b) STC has paid or is liable to pay no-TFN tax in respect of employer contributions to the Fund, and
  - (c) a portion of that tax is referable to the employer-financed portion of that benefit, and
  - (d) the benefit is of a kind prescribed by the regulations for the purposes of this section.
- (2) The amount of the benefit is reduced by the amount necessary to offset STC's liability to pay no-TFN tax so far as it is referable to the employer-financed portion of that benefit.
- (3) The amount of the reduced benefit is to be determined by STC after obtaining actuarial advice.
- (4) A contributor or former contributor may elect to have his or her SANCS benefit reduced instead of the benefit to which this section applies if the SANCS benefit is payable to the contributor or former contributor. On an election being made, the SANCS benefit is reduced accordingly and the benefit to which this section applies is reduced only if it is necessary to do so to meet any shortfall in the amount of offset.
- (5) The regulations may provide for the establishment of debt accounts in respect of contributors or former contributors for the purposes of this section.

(6) In this section:

**employer contribution** includes a salary sacrifice contribution.

**employer-financed portion** of a benefit includes any part of the benefit financed by a salary sacrifice contribution.

**no-TFN tax** means an amount equal to the difference between the amount of:

- (a) income tax payable by STC under the [Income Tax Assessment Act 1997](#) of the Commonwealth on employer contributions to the Fund for a contributor if there is a failure by the contributor to provide information about his or her tax file number to STC, and
- (b) income tax that would be so payable if the information about the tax file number was provided.

**SANCS benefit** means a benefit that accrues to or in respect of a contributor or former contributor who is an employee or former employee under the [State Authorities Non-contributory Superannuation Act 1987](#).

## Division 2 Automatic adjustment of superannuation allowances

### 14A Definitions

(1) In this Division, except in so far as the context or subject-matter otherwise indicates or requires:

**adjustment date**, in relation to a year, means the first day of the superannuation allowance pay period that ends on the first superannuation allowance pay day in the October that next follows that year.

**adjustment percentage**, in relation to a year, means (subject to section 14B (2)) the percentage for that year, calculated in accordance with section 14B.

**Index number**, in relation to a June quarter, means the number for that June quarter appearing in the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician under the [Census and Statistics Act 1905](#) of the Parliament of the Commonwealth or that Act as amended from time to time or any Act of that Parliament passed in substitution therefor.

**June quarter**, in relation to a year, means the period commencing on and including 1 April in that year and ending on and including 30 June in that year.

**quarter**, in relation to a year, means:

- (a) the period commencing on and including 1 July in that year and ending on and including 30 September in that year,

- (b) the period commencing on and including 1 October in that year and ending on and including 31 December in that year,
- (c) the period commencing on and including 1 January in that year and ending on and including 31 March in that year, or
- (d) the period commencing on and including 1 April in that year and ending on and including 30 June in that year.

**year** means:

- (a) the period commencing on and including 1 July 1973 and ending on and including 30 June 1974, or
  - (b) a subsequent period commencing on and including 1 July and ending on and including 30 June next following.
- (2) Where a superannuation allowance is to be adjusted under this Division by reference to the adjustment percentage for a year, a reference (however expressed) in this Division to adjusting the allowance is a reference to:
- (a) where the adjustment percentage is calculated in accordance with the formula set out in section 14B (1) (a)—increasing the allowance, or
  - (b) where the adjustment percentage is calculated in accordance with the formula set out in section 14B (1) (b)—reducing the allowance.
- (3) A reference in this Division to:
- (a) a superannuation allowance payable under a section of this Act is, and shall be deemed always to have been, a reference to the allowance so payable, as varied by or under any of the provisions of this or any other Act,
  - (b) the retirement of a member of the police force includes, and shall be deemed always to have included, a reference to the discharge of such a member, as referred to in section 7 (1), and
  - (c) the discharge of a member of the police force includes a reference to the retirement or resignation of such a member, as referred to in section 10.

#### **14B Calculation of adjustment percentage**

- (1) For the purposes of the definition of **adjustment percentage** in section 14A (1), the percentage for a year shall be calculated:
- (a) if the Index number for the June quarter in that year is greater than the Index number for the immediately preceding June quarter—in accordance with the following formula:

$$P = \frac{100(C - L)}{L}$$

- (b) if the Index number for the June quarter in that year is less than the Index number for the immediately preceding June quarter—in accordance with the following formula:

$$P = \frac{100(L - C)}{L}$$

where:

**P** is the percentage to be obtained,

**C** is the Index number for the June quarter in that year, and

**L** is the Index number for the immediately preceding June quarter.

(2) If:

- (a) the percentage calculated for a year in accordance with subsection (1) (b) is less than 1.0 per centum, or
- (b) the Index number for the June quarter in a year is the same as the Index number for the immediately preceding June quarter,

there is deemed to be no adjustment percentage for that year.

(3) Where there is deemed to be no adjustment percentage for a year, then, for the purposes of calculating the percentage for the next year:

- (a) the Index number for the June quarter in the firstmentioned year shall be deemed not to have been published, and
- (b) the Index number for that quarter shall be deemed to be the same as the Index number for the June quarter in the last year for which there was an adjustment percentage.

(4) If at any time, whether before or after commencement of this Division, the Australian Statistician has published in respect of a particular June quarter an Index number in substitution for an Index number previously published by the Australian Statistician in respect of that quarter:

- (a) except as provided in paragraph (b)—the publication of the later Index number shall be disregarded, or
- (b) if the Minister so directs—regard shall, after the direction is given, be had to the later and not to the earlier Index number,

for the purposes of this Division.

- (5) Notwithstanding subsection (4), if at any time after the commencement of this Division the Australian Statistician changes the reference base for the Consumer Price Index (All Groups Index) for Sydney, then, for the purposes of the application of this Division after the change takes place, regard shall be had only to Index numbers published in terms of the new reference base.

#### **14C Adjustment of allowances: general cases**

- (1) Subject to this Division, where there is an adjustment percentage for a year, the superannuation allowance payable pursuant to section 7 or 7AA on the adjustment date for that year to a member of the police force who retired before 1 July in that year is hereby adjusted, on and from that adjustment date, by that percentage.
- (2) Subject to this Division, where there is an adjustment percentage for a year, the amount of the superannuation allowance payable pursuant to section 10 on the adjustment date for that year to a disabled member of the police force who was discharged before 1 July in that year is hereby adjusted, on and from that adjustment date, by a percentage equal to that adjustment percentage.
- (3) (Repealed)
- (4) Subject to this Division, where there is an adjustment percentage for a year, the sum of the amount of the superannuation allowance granted pursuant to section 12 consequent upon the death of:
  - (a) a member of the police force who died before 1 July in that year, or
  - (b) a former member of the police force who was discharged before that date,being in either case a superannuation allowance payable on the adjustment date for that year, is hereby adjusted, on and from that adjustment date, by an amount which is a percentage of the amount of that superannuation allowance, being a percentage equal to that adjustment percentage.

#### **14D Adjustment of allowances: partial adjustment**

- (1) Subject to this Division, where there is an adjustment percentage for a year (in subsection (5) referred to as ***the particular year***), the superannuation allowance payable pursuant to section 7 or 7AA on the adjustment date for that year to a member of the police force who retired on or after 1 July in that year but on or before 31 March in that year is hereby adjusted, on and from that adjustment date, by a percentage equal to the percentage calculated in accordance with the formula set out in subsection (5).
- (2) Subject to this Division, where there is an adjustment percentage for a year (in subsection (5) referred to as ***the particular year***), the amount of the superannuation



allowance payable pursuant to section 10 on the adjustment date for that year to a disabled member of the police force who was discharged on or after 1 July in that year but on or before 31 March in that year is hereby adjusted, on and from that adjustment date, by a percentage equal to the percentage calculated in accordance with the formula set out in subsection (5).

(3) (Repealed)

(4) Subject to this Division, where there is an adjustment percentage for a year (in subsection (5) referred to as **the particular year**), the sum of the amount of the superannuation allowance granted pursuant to section 12 consequent upon the death of:

(a) a member of the police force who died on or after 1 July in that year but on or before 31 March in that year, or

(b) a former member of the police force who was discharged on or after 1 July in that year but on or before 31 March in that year,

being in either case a superannuation allowance payable on the adjustment date for that year, is hereby adjusted, on and from that adjustment date, by an amount which is a percentage of the amount of that superannuation allowance, being a percentage equal to the percentage calculated in accordance with the formula set out in subsection (5).

(5) The formula referred to in subsections (1), (2), (3) and (4) is:

$$A = P \times \frac{Q}{4}$$

where:

**A** is the percentage by which the superannuation allowance is to be adjusted,

**P** is the adjustment percentage for the particular year, and

**Q** is the number of whole quarters of the particular year, being whole quarters after:

(a) in the case of a person referred to in subsection (1)—the person last retired,

(b) in the case of a person referred to in subsection (2) or (3)—the person was discharged,

(c) in the case of a member of the police force referred to in subsection (4)—the member's death, or

(d) in the case of a former member of the police force referred to in subsection (4)—the member was discharged.

**14E (Repealed)**

**14F Minimum amount to which allowances may be reduced**

Notwithstanding anything in this Division, a superannuation allowance shall not be reduced below the fortnightly amount that would, if this Division had not been enacted, have been payable.

**14G Certain increases under section 7A or 10**

Where an increase in superannuation allowance becomes payable to a person under section 7A or 10 after the date of commencement of this Division, then, as on and from the date on which the increase is payable, the rate at which it is payable shall be that at which it would be payable to the person had the person been in receipt of the increase at that commencement.

**14H Calculation of percentages**

Where a percentage that is to be calculated under this Division is or includes a fraction of one-tenth of one per centum:

- (a) if that fraction is less than one-half of one-tenth—that fraction shall be disregarded, and
- (b) if that fraction is not less than one-half of one-tenth—that fraction shall be treated as one-tenth.

**Division 3 Commutation of superannuation allowances to lump sum**

**14I Definitions**

In this Division:

***attributed salary of office*** means:

- (a) in relation to a member of the police force who commutes a superannuation allowance under section 7—the attributed salary of office of the member at the date of retirement or discharge, or
- (b) in relation to a member of the police force who commutes a superannuation allowance under section 7AA or 10—the attributed salary of office of the member within the meaning of that section.

***disabled member of the police force*** means a member of the police force who is discharged after being certified, pursuant to section 8 (1) or 10B (1), to be incapable, from an infirmity of mind or body, of personally exercising the functions of a police officer referred to in section 14 (1) of the [Police Act 1990](#).

**14J Commutation on normal or early retirement of member**

- (1) This section applies to a superannuation allowance payable:
  - (a) under section 7 (except where it is payable to a disabled member of the police force), or
  - (b) under section 7AA.
- (2) A person who becomes entitled to a superannuation allowance to which this section applies may, on becoming so entitled, commute the whole or part of that allowance.
- (2A) A person who is entitled to a superannuation allowance to which this section applies and who has not previously commuted the allowance under this section may commute the whole or part of that allowance on the day on which the person attains 60 years of age.
- (3) A person wishing to commute such a superannuation allowance under this section must lodge the election to do so with STC in the form and within the time required by STC.
- (3A) The date on which an election under subsection (2) is to take effect is to be the day after the date on which the person retires, irrespective of the date on which the election is made.
- (3B) The date on which an election under subsection (2A) is to take effect is to be the day the person making the election attains the age of 60, irrespective of the date on which the election is made.
- (4) If a person elects to commute a superannuation allowance under this section, the lump sum payable from the Fund to the person is to be calculated by multiplying the attributed salary of office of the person by the appropriate commutation factor listed in Schedule 3 and by the equivalent service ratio for the person as at the date the person retired and, in the case of a partial commutation, by the proportion that the commuted part of the allowance bears to the whole of the allowance.
- (5) If STC has made a determination under section 14AA in relation to a lump sum resulting from the commutation of a superannuation allowance to which this section applies, the lump sum is reduced by the amount specified in STC's determination.

**14K Commutation on discharge of disabled member**

- (1) This section applies to a superannuation allowance payable to a disabled member of the police force under:
  - (a) section 7, or
  - (b) section 10.

- (2) A person who is entitled to a superannuation allowance to which this section applies and who has not previously commuted the allowance under this section may commute the whole or part of that allowance on:
  - (a) the day on which the person attains 55 years of age, or
  - (b) the day on which the person becomes entitled to that allowance,whichever is the later.
- (3) The date on which an election under subsection (2) is to take effect is to be:
  - (a) the day on which the person attains 55 years of age, or
  - (b) the day on which the person became entitled to that allowance,whichever is the later.
- (4) A person who is entitled to a superannuation allowance to which this section applies and who has not previously commuted the allowance under this section may commute the whole or part of that allowance on the day on which the person attains 60 years of age.
- (5) The date on which an election under subsection (4) is to take effect is to be the day on which the person attains 60 years of age.
- (6) If a disabled member of the police force, having been paid a superannuation allowance under section 7 or a gratuity under section 14, is granted a hurt-on-duty allowance under section 10 after having attained the age of 60 years, the member may, as the case requires, commute to a lump sum:
  - (a) the difference (if any) between the allowance granted under section 10 (1A) (a) and the superannuation allowance paid to that member under section 7, or
  - (b) the balance (if any) of the allowance granted under section 10 (1A) (a) after an appropriate adjustment has been made for the repayment of the gratuity that has been paid to that member under section 14.
- (7) If a disabled member of the police force, having been granted an additional amount of allowance under section 10 (1A) (b) or (c), elects to commute to a lump sum an allowance under section 10 (1A) in accordance with subsection (6), the member must commute the additional amount to the extent that it has not already been commuted to a lump sum under section 10C.
- (8) If a disabled member of the police force makes no election to commute to a lump sum an allowance granted under section 10 (1A) because the member has already elected to commute an equivalent allowance payable under section 7, the member is, for the purposes of subsection (7), to be treated as having elected to commute the first-

mentioned allowance in accordance with subsection (6).

- (9) The date on which an election under subsection (6) takes effect is the date on which the election is made.
- (10) A person wishing to commute a superannuation allowance under subsection (2), (4) or (6) must lodge the election to do so with STC in the form and within the time required by STC.
- (11) If a person elects to commute a superannuation allowance under this section, the lump sum payable from the Fund to the person is to be calculated by multiplying the annual superannuation allowance payable at the time the election takes effect by the appropriate commutation factor listed in the Table to this subsection and, in the case of a partial commutation, by the proportion that the commuted part of the allowance (including any additional allowance amount commuted under subsection (7)) bears to the whole of the allowance.

<b>Age at time commutation election takes effect</b>	<b>Commutation factor</b>
55	11.82
56	11.64
57	11.46
58	11.28
59	11.10
60 or older	10.92

- (12) If STC has made a determination under section 14AA in relation to a lump sum resulting from the commutation of a superannuation allowance to which this section applies, the lump sum is reduced by the amount specified in STC's determination.

#### **14L Payment of lump sum to personal representatives**

If an election under this Division takes effect and the person who made the election dies before any lump sum payable pursuant to the election is paid to the person, STC shall pay the lump sum to the person's personal representatives or, if appropriate, in accordance with section 18B.

### **Division 4 Age termination benefit**

#### **14M Benefit on attaining age 65 or 70**

- (1) A contributor who attains the age of 70 years must be paid any pension or other benefit under this Act to which the contributor would be entitled on retirement on that age as if the contributor had ceased to be a contributor at that age but:

- (a) may elect under section 14J, in the case of a superannuation allowance, to commute to a lump sum all of the allowance, and
  - (b) if such an election is made, may also elect to preserve the whole of any lump sum benefit in the Fund.
- (2) Interest is payable, at the rate from time to time fixed by STC under section 16 (1) of the *State Authorities Superannuation Act 1987*, on an amount preserved in the Fund under this section.
- (3) The provisions of section 9B (3), (4), (6A), (6AA) and (10)–(14) apply to a lump sum benefit preserved under this section.
- (4) (Repealed)
- (4A) A contributor who has attained the age of 65 years may elect (at any time on or after attaining 65 years and before attaining 70 years) to be paid any superannuation allowance to which the contributor is entitled at the time under section 7 but:
- (a) may elect under section 14J to commute the whole of the allowance to a lump sum, and
  - (b) if such an election is made, may also elect to preserve the lump sum in the Fund, even though the contributor is not retired.
- (5) A contributor to whom this section applies is not entitled to any other benefit under this Act.

## **Part 4A Provisions relating to family law superannuation legislation**

### **14N Definitions**

In this Part:

***complying superannuation fund*** means:

- (a) a regulated superannuation fund under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth, or
- (b) the First State Superannuation Fund.

***contributor spouse***, in relation to a superannuation interest under this Act, means the spouse who has the superannuation interest.

***family law superannuation entitlement*** has the same meaning as it has in section 14P (2) (a).

***family law superannuation legislation*** means Part VIII B of the *Family Law Act 1975* of the Commonwealth and the *Family Law (Superannuation) Regulations 2001* of the

Commonwealth.

**family law superannuation payment** means an amount payable under this Part to or in respect of a non-contributor spouse.

**flag lifting agreement** has the same meaning as it has in Part VIII B of the *Family Law Act 1975* of the Commonwealth.

**non-contributor spouse**, in relation to a superannuation interest under this Act, means the spouse who is not the contributor spouse in relation to that interest.

**payment split** has the same meaning as it has in Part VIII B of the *Family Law Act 1975* of the Commonwealth.

**RSA** means a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997* of the Commonwealth.

**splitting order** has the same meaning as it has in Part VIII B of the *Family Law Act 1975* of the Commonwealth.

**spouse** of a person means a person who is or was married to that person.

**superannuation agreement** has the same meaning as it has in Part VIII B of the *Family Law Act 1975* of the Commonwealth.

**superannuation interest** means an interest that a contributor, former contributor or other person has as a contributor to or beneficiary of the superannuation scheme under this Act.

#### **14O Payment of benefits where superannuation interests affected by flagging order or payment split**

Nothing in this Act:

- (a) requires STC to pay a benefit or to make any other payment under this Act, to the extent that any such payment would contravene provisions of the family law superannuation legislation or any order or agreement made under that legislation, or
- (b) prevents STC from paying or reducing a benefit or making any other payment, to the extent that the payment or reduction is required to be made, or results from a requirement, under the family law superannuation legislation or any order or agreement made under that legislation.

#### **14P Payment splits**

- (1) The object of this section is to facilitate arrangements for payment splits under the family law superannuation legislation and to provide for family law superannuation payments to or in respect of non-contributor spouses for the purposes of satisfying the requirements of Division 2.2 of Part 2 of the *Family Law (Superannuation) Regulations*

2001 of the Commonwealth.

**Note—**

The effect of satisfying those requirements is that payments to the contributor spouse of a benefit under this Act will no longer be liable to be split for the purposes of the family law superannuation legislation.

- (2) A non-contributor spouse has a family law superannuation entitlement to which this section applies if:
  - (a) the non-contributor spouse has an entitlement, that is operative, to be paid an amount under a superannuation agreement, flag lifting agreement or splitting order in respect of the superannuation interest of a contributor spouse (a **family law superannuation entitlement**), and
  - (b) the family law superannuation entitlement has not been paid to the non-contributor spouse by the contributor spouse, or waived by the non-contributor spouse, in accordance with the family law superannuation legislation.
- (3) On written notice by a contributor spouse or a non-contributor spouse, or by any other person or court, of a family law superannuation entitlement of a non-contributor spouse to which this section applies, STC must take one of the following actions:
  - (a) pay or release to the non-contributor spouse an amount of the value of the family law superannuation entitlement (less any costs chargeable by STC),
  - (b) transfer or rollover to a complying superannuation fund or an RSA nominated by the non-contributor spouse an amount, of the value of the family law superannuation entitlement (less any costs chargeable by STC), to be held for the benefit of the non-contributor spouse.
- (4) STC may take the action set out in subsection (3) (a) only if the contributor spouse is in receipt of a pension under this Act or the non-contributor spouse has satisfied a condition for payment or release of a benefit of a kind that would entitle a contributor to payment of a benefit if the Fund were a complying superannuation fund.
- (5) STC must transfer a family law superannuation payment to FTC for crediting to the First State Superannuation Fund if:
  - (a) the payment is payable under subsection (3) (a) and the non-contributor spouse fails, within the period prescribed by the regulations, to provide details as to the required manner of payment of the family law superannuation payment, or
  - (b) the payment is not payable under subsection (3) (a) and the non-contributor spouse fails, within the period prescribed by the regulations, to make a nomination for the purposes of subsection (3) (b) or a nominated fund or RSA does not accept the nomination.
- (6) For the purposes of this section, the value of a family law superannuation entitlement



or family law superannuation payment of a non-contributor spouse is to be determined by STC in accordance with any applicable provisions of the regulations and the family law superannuation legislation.

- (7) STC must not pay a family law superannuation payment to or in respect of a non-contributor spouse under this section if the value of the payment that is or would be payable to or in respect of the non-contributor spouse at that time (taking into account any prior liability to pay a family law superannuation payment) is greater than the value of the contributor spouse's superannuation interest (as calculated in accordance with the regulations) at that time.
- (8) In this section:

**FTC** has the same meaning as it has in the *First State Superannuation Act 1992*.

#### **14Q Reduction of benefits of contributor spouses**

- (1) STC may reduce the amount of any benefit payable under this Act to or in respect of a contributor spouse (or a spouse or de facto partner of a contributor spouse) if a family law superannuation entitlement is paid or payable to or in respect of the non-contributor spouse under the family law superannuation legislation or this Part or the regulations.
- (2) A preserved or deferred benefit may be reduced under this section.
- (3) A pension may be reduced under this section even though payment of the pension first commenced before the payment of the amount to or in respect of the non-contributor spouse.
- (4) The benefit is to be reduced in accordance with the regulations and any applicable provisions of the family law superannuation legislation.

#### **14R Regulations**

Regulations may be made for or with respect to the following matters:

- (a) elections by non-contributor spouses for payment of family law superannuation entitlements,
- (b) the persons or bodies to whom a family law superannuation payment may be paid,
- (c) the composition of payments made for the purposes of the family law superannuation legislation or this Part, having regard to the composition of the contributor spouse's superannuation interest under this Act before the payment is paid,
- (d) the payment of fees for or with respect to family law superannuation payments,
- (e) notice of family law superannuation entitlements and payment splits,

- (f) the periods for payment of family law superannuation payments,
- (g) the calculation of payments and entitlements for the purposes of the family law superannuation legislation or this Part,
- (h) the calculation of the value of superannuation interests of contributor spouses for the purposes of the family law superannuation legislation or this Part,
- (i) the accrued benefit multiple for contributor spouses, or a class of contributor spouses, for the purposes of the family law superannuation legislation,
- (j) the reduction of benefits (including deferred or preserved benefits) payable to or in respect of contributor spouses, or spouses or de facto partners of contributor spouses, as a consequence of payments under the family law superannuation legislation or this Part,
- (k) without limiting paragraph (j), the commutation of pensions or parts of pensions for the purposes of the reduction of benefits as a consequence of payments under the family law superannuation legislation or this Part.

## Part 5 Miscellaneous

### 15 Compliance with superannuation guarantee legislation

- (1) **Minimum benefits** STC must, after obtaining actuarial advice, determine what the minimum **employer-financed benefit** would have to be to ensure that there is no **superannuation guarantee shortfall**.
- (2) **Increase in benefits** So much of a superannuation allowance or lump sum as is employer-financed is, despite any other provision of this or any other Act, not to be less than the minimum benefit determined under subsection (1). The allowance or lump sum that would otherwise be payable under this Act is increased to the extent necessary for the purpose of complying with this section.
- (3) **Increase in benefit to be paid from non-contributory scheme** The amount of any increase in benefit is to be debited by STC from the employer reserve of the employer concerned established under the [State Authorities Non-contributory Superannuation Act 1987](#).
- (4) **Definition** In this section, **employer-financed benefit** means the sum of so much of a superannuation allowance or lump sum as is employer-financed under this Act, any basic benefit under the [State Authorities Non-contributory Superannuation Act 1987](#) and any employer-financed benefit of a kind provided by the [State Authorities Non-contributory Superannuation Act 1987](#).

#### 15AA Application of section 15 to period from 1.7.1992

A benefit that is preserved under this Act after 1 July 1992 and before the commencement

of the *First State Superannuation Act 1992*, or that is paid after 1 July 1992 and before that commencement, is to be adjusted by STC in accordance with section 15.

### **15A Police Medical Board**

- (1) There shall be a Police Medical Board.
- (2) The Police Medical Board shall consist of such medical practitioners as are from time to time appointed by the Governor.
- (3) The regulations may make provision for or with respect to the Police Medical Board and, in particular, for or with respect to:
  - (a) the procedure of that Board, and
  - (b) the examination of members or former members of the police force for the purposes of this Act.

### **15B Discharge of members medically unfit**

- (1) This section applies to a member of the police force:
  - (a) who is on sick leave, and
  - (b) who, during the previous 18 months, has been on sick leave for a total period of at least 12 months, and
  - (c) whose health, in the opinion of a medical practitioner, is not likely to improve sufficiently to enable the member to return to duty, and
  - (d) who is to be discharged if STC certifies that the member is incapable, from infirmity of body or mind, of personally exercising the functions of a police officer referred to in section 14 (1) of the *Police Act 1990*.
- (2) On application by the Commissioner of Police, STC is to determine whether to issue such a certificate in relation to any infirmity to which the application relates.
- (3) Before STC considers an application under this section, the Commissioner of Police is to provide a copy of the application (and of all supporting information included in the application by the Commissioner) to the member of the police force to whom the application relates.
- (4) If a member of the police force has been on sick leave for a total period of at least 8 months during the previous 18 months, the Commissioner of Police may provide the copy of the application in anticipation of the member remaining on sick leave for a further 4 months and the member's health not improving sufficiently to enable the member to return to duty.
- (5) When providing the copy of the application, the Commissioner of Police is to give the

member 28 days in which to notify the Commissioner whether any other infirmities should be included in the application and whether a determination is sought that any infirmities of the member were caused by the member having been hurt on duty.

- (6) The Commissioner of Police is to include in the application under this section all relevant infirmities of which the Commissioner is aware (including any infirmities that the member duly notifies the Commissioner should be included in the application).
- (7) If the application under this section is changed after a copy is provided to the member, the Commissioner of Police is to provide a copy of the revised application to the member. Subsection (5) does not apply to the provision of the revised application.
- (8) A certificate for which an application is made under this section is to be issued under and in accordance with:
  - (a) section 10B if the infirmity to which the certificate relates has been determined (by the Commissioner of Police under section 10B (3) or on appeal) to be an infirmity caused by the member having been hurt on duty, or
  - (b) section 8 in any other case.
- (9) The certificate is to be issued under and in accordance with section 8 (and without regard to whether the infirmity was or was not caused by the member of the police force having been hurt on duty) if:
  - (a) the member did not seek a determination that the infirmity was so caused within the period referred to in subsection (5), or
  - (b) the Commissioner determined that the infirmity was not caused by the member having been hurt on duty.

However, if the infirmity to which the certificate relates is subsequently determined (by the Commissioner of Police under section 10B (3) or on appeal) to be an infirmity caused by the member having been hurt on duty, the certificate is taken to be a certificate under section 10B.

- (10) If a certificate is issued under section 8 and the member of the police force to whom it relates is duly discharged and a superannuation allowance granted under section 7, STC may (despite anything to the contrary in this Act) consider any application by the member for a superannuation allowance payable because the member's infirmity was caused by having been hurt on duty. A determination to grant such a superannuation allowance is to have effect on and from the member's discharge.
- (11) An application may be made under this section by the Commissioner of Police, and a superannuation allowance granted, with or without the consent of the member of the police force to whom the application relates.

- (12) The Commissioner of Police may provide to STC, to any medical practitioner nominated by STC or to any medical practitioner asked to provide an opinion referred to in subsection (1) (c), for use in determining whether to issue a certificate or whether to provide an opinion, any medical certificate or other information in the possession of the Commissioner that is relevant to that determination.
- (13) Any such information may be so provided and used, with or without the consent of the member of the police force concerned and despite the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.
- (14) If any such information contains medical advice of a medical practitioner nominated by STC, a determination as to whether to issue a certificate may be made by STC having regard to that advice if STC considers that further medical advice is not required.
- (15) Nothing in this section prevents a member of the police force from making an application to STC for a benefit under this Act or for the issue of a certificate under this Act relating to any infirmity of the member.
- (16) In this section, **sick leave** means sick leave, with or without pay, and whether before or after the commencement of this section.

#### **16 Return to duty of discharged member in receipt of allowance**

- (1) Notwithstanding the payment of any superannuation allowance or gratuity under this Act, STC may at any time require a former member of the police force who was discharged because of incapacity and who is in receipt of a superannuation allowance under section 7 or 10 to submit to a medical examination by 2 members of the Police Medical Board or other nominated medical practitioner or practitioners.
- (2) If STC is satisfied, having regard to the advice of the persons who conducted the medical examination on the condition and fitness for employment of the former member, that the incapacity of the former member of the police force has ceased (or no longer precludes the former member from serving again in the police force in some position in which it would be reasonable for the former member to serve) STC may, with the approval of the Commissioner of Police:
  - (a) cancel or suspend the superannuation allowance of the former member, and
  - (b) require the former member to serve again in the police force.
- (3) Unless the former member of the police force voluntarily agrees to serve again in the police force, the rank in which the former member is required to serve shall not be lower than the rank held by the former member before his or her discharge.
- (4) If the former member of the police force refuses to submit to a medical examination

under this section or to serve again in the police force, STC may cancel the superannuation allowance being paid to the former member.

#### **16A Late elections, applications and choices**

- (1) STC may accept an election, application or choice that is not made or received within the time required under this Act if it is satisfied that in all the circumstances of the case it is desirable to do so.
- (2) STC may impose conditions on the acceptance of the election, application or choice.
- (3) STC may deal with the election, application or choice accepted under this section as if it had been made or received within the required time.

#### **17 Refund of deductions**

- (1) Subject to this section, where a member of the police force resigns, or is dismissed, or a probationary member, not being entitled to be granted a gratuity or annual superannuation allowance under this Act, is discharged, there shall be paid to that member from the Fund a lump sum equal to the difference between:
  - (a) the total of all amounts deducted under this Act from that member's salary of office, with the addition of interest on those amounts:
    - (i) in the case of a member who resigned or was discharged (but not in the case of a member who was dismissed)—at the rate of 4.5 per cent per annum compounded on 30 June in each year of that member's service during the period beginning with 23 November 1984 and ending with 30 June 1990, and also compounded on the date of the member's resignation or discharge if it occurred during that period, and
    - (ii) in the case of all members—at the rate from time to time fixed by STC under section 16 of the *State Authorities Superannuation Act 1987*, compounded on 30 June in each year of the member's service from and including 1 July 1990, and also compounded on the date of that member's resignation, dismissal or discharge if it occurs on or after 1 July 1990, and
  - (b) any amount received by that member as superannuation allowance or gratuity before his or her resignation, dismissal or discharge.
- (1A) For the purposes of subsection (1) (a) (ii):
  - (a) interest shall not be paid in respect of any period before the day appointed and notified under section 2 (2) of the *Police Regulation (Superannuation) Amendment Act 1984*, and any amounts deducted from the salary of office of a member of the police force before that day shall be deemed to have been so deducted on that day, and

- (b) interest on amounts deducted at different times during the period in respect of which the interest is to be calculated shall, subject to subsection (1) (a) (ii), be calculated in a manner determined by STC.
- (2) The amount payable to a member or probationary member of the police force under subsection (1) shall be not less than the amount of deductions made from the member's salary of office after any amount was last received by the member under this Act as superannuation allowance or gratuity.
- (3) Where any member or probationary member of the police force who has resigned, or has been dismissed or discharged and has received the amount payable to the member under subsection (1), is thereafter re-appointed to the police force, the member shall not be entitled to claim any further benefit from the Fund in respect of the member's previous service in the police force unless that amount is repaid to the Fund before the expiration of the period of 6 months immediately after:
  - (a) the day appointed and notified under section 2 (2) of the *Police Regulation (Superannuation) Amendment Act 1984*, or
  - (b) the date of that re-appointment,whichever is the later.
- (4) If a former member of the police force who has resigned has received a lump sum under subsection (1) and subsequently there becomes payable to the former member:
  - (a) a superannuation allowance under section 10, or a commuted superannuation allowance under section 10C or 14K, as a result of having been hurt on duty while a member of the police force, or
  - (b) a superannuation allowance under section 7, or a gratuity under section 14, as a result of the former member having been discharged under section 8,the lump sum is to be deducted from that allowance, commuted allowance or gratuity in such instalments and at such times as STC determines.

#### **17A Competing claims for spouses' or de facto partners' benefits**

- (1) This section applies to a superannuation allowance or gratuity under this Act which is payable to the spouse or de facto partner of a member or former member of the police force who has died.
- (2) If a superannuation allowance or gratuity would be payable to more than one person because a member or former member of the police force, who has died, has left more than one spouse or de facto partner then, despite any other provision of this Act:
  - (a) the allowance or gratuity is payable in accordance with a determination made by STC, and not otherwise, and

- (b) the total amount of allowance or gratuity payable to those persons at any time is not to exceed the amount of allowance or gratuity 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 superannuation allowance or gratuity:
  - (a) that the allowance or gratuity is not payable to such of the persons concerned as it specifies, or
  - (b) that the amount of the allowance or gratuity is to be apportioned between the persons concerned in such manner as it specifies.
- (4) STC may withhold the payment of the whole or any part of a superannuation allowance or gratuity or, if any such allowance is commuted, withhold the payment of any part of the amount commuted:
  - (a) until 30 days after the death of the member or former member in respect of which the allowance or gratuity is payable, or
  - (b) if an application has been made for the allowance or gratuity by more than one person, until it is satisfied that only one of those persons is entitled to the allowance or gratuity 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 a member or former member, a superannuation allowance or gratuity is paid in respect of any period to a spouse or de facto partner of the member or former member, a superannuation allowance or gratuity is not payable to any other spouse or de facto partner of the member or former member in respect of that period.
- (6) If, after 30 days from the death of a member or former member, the whole or part of a superannuation allowance is commuted by a spouse or de facto partner of the member or former member:
  - (a) a superannuation allowance is not payable to any other spouse or de facto partner of the member or former member if the whole of the allowance is commuted, or
  - (b) so much of a superannuation allowance as is equal to the amount of the allowance so commuted is not payable to any other spouse or de facto partner of the member or former member if part of the allowance is commuted.
- (7) For the purposes of subsections (5) and (6), an amount paid in good faith by STC to a person purporting to be the spouse or de facto partner of a member or former member is taken to have been paid to the spouse or de facto partner of the member or former member.
- (8) If, after 30 days from the death of a member or former member, any amount is paid



under this Act to the member's personal representatives or to such other persons as STC may determine, any superannuation allowance or gratuity which is payable to the spouse or de facto partner of the member or former member is to be reduced by the amount so paid.

**18 Benefit payable not to include fraction of a cent**

Where there is payable to a person as a benefit or family law superannuation payment under this Act an amount that includes a fraction of a cent, the fraction shall be ignored and, where the fraction is one-half or more, the amount payable after ignoring the fraction shall be increased by one cent.

**18A Payment to person other than beneficiary**

- (1) Where STC is of the opinion that payment of a superannuation allowance or gratuity or family law superannuation payment under this Act should be made to a person other than the beneficiary and is satisfied that the payment will be used for the maintenance, care and support of the beneficiary or a person wholly or partly dependent on the beneficiary, STC may authorise payment of the superannuation allowance or gratuity or family law superannuation payment to that person.
- (2) Any payment made under subsection (1) shall be deemed to have been made to the person entitled to the superannuation allowance or gratuity or family law superannuation payment.

**18B Payment without grant of probate etc**

- (1) Where a person dies and:
  - (a) a gratuity is or becomes payable from the Fund 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 a part of the gratuity in accordance with subsection (2), being a payment that does not exceed \$50,000 or, where some other amount is prescribed by the regulations 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 gratuity to an eligible person within the meaning of Chapter 3 of the *Succession Act 2006*,

(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 a person referred to in paragraph (a), or

(c) in special circumstances, pay the whole or any part of the amount of the gratuity, or the balance referred to in paragraph (b), to some other person.

(3) Where a member or former member of the police force dies and STC is of the opinion that proceedings might be instituted under Chapter 3 of the *Succession Act 2006* 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 gratuity that, but for this subsection, would have been paid to some other person.

### **18C Interest on benefits**

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

### **18D 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.

### **19 Increases on certain allowances**

Schedule 1 has effect.

### **19A Gratuities payable by instalments**

A gratuity payable to a person under this Act may, with the concurrence of the person, be paid by instalments.

### **20 Suspension of part of allowance in certain circumstances**

(1) Notwithstanding anything in this Act, where a person entitled to receive a superannuation allowance payable under this Act (including any increase payable under this Act) would, in the opinion of STC, thereby be prejudicially affected in respect of any benefits otherwise receivable by that person, the amount of the allowance shall be such lesser amount than that provided for under this Act as STC determines.

(2) STC may, from time to time, vary or revoke any determination under subsection (1), and any such variation or revocation shall take effect on the day STC so varies or revokes the determination or on such earlier or later day as STC determines.

(3) Where STC, under this section, reduces the amount of an increase payable under this Act, the amount of the increase as determined by STC shall be payable in respect of

such periods or at such times by way of lump sum or otherwise as STC from time to time determines.

- (4) A part of a superannuation allowance that is not paid to a person because of a determination made by STC under this section shall, for the purposes of calculating any increase under this Act, be taken into account as if it had been payable.
- (5) A part of a superannuation allowance that is not paid to a person because of a determination made by STC under this section shall, for the purpose of calculating a superannuation allowance payable to the person's widow or widower in her or his capacity as such, be taken into account as if it had been payable.

#### **20A Payments to cover superannuation contributions surcharge**

- (1) A contributor may at any time lodge with STC a written election to pay amounts to the Fund in respect of the superannuation contributions surcharge payable in respect of the contributor.
- (2) Payments may be made on a periodic or a single payment basis.
- (3) An election is to specify the amounts to be paid and the manner in which the payments are to be made.
- (4) A contributor may, at any time, lodge with STC an election to vary or revoke an election under this section.
- (5) An election under this section is to be in a form approved by STC for the purposes of this section.
- (6) An election under this section remains in force until a subsequent election takes effect.

#### **20B Repayment of excess payments**

STC must refund to a contributor or former contributor any excess amount of payments made under section 20A remaining in the Fund after payment of the amount of debt (including accrued interest) owed for superannuation contributions surcharge in respect of the contributor or former contributor, together with interest on the excess amount at a rate determined by STC.

#### **21 Determination by District Court**

- (1) A person who considers himself or herself aggrieved by:
  - (a) a decision made by STC on a matter that arises under this Act by reason of a member of the police force being hurt on duty, or
  - (b) a decision made by the Commissioner of Police under section 10A (1), 10B (3) (a), 12C (1), 12C (2) or 12D (4) (a),

may, within the period of 6 months after the person is notified of that decision, apply to the District Court for a determination in relation to that decision.

- (2) Notification of a decision under subsection (1) is to be given in writing.
- (3) STC or the Commissioner of Police, as the case may be, is entitled to be represented at the hearing of an application under this section.
- (4) The District Court, after considering an application under this section, may make a determination that the decision of STC or the Commissioner of Police, as the case may be, in respect of which the application was made:
  - (a) be confirmed, or
  - (b) be set aside and replaced by a different decision made by the District Court.
- (5) The District Court shall not make a decision referred to in subsection (4) (b) unless STC or the Commissioner of Police, as the case may be, could pursuant to this Act make that decision.
- (6) Where the District Court makes a decision referred to in subsection (4) (b), that decision shall, for the purposes of this Act, be deemed to be made by STC or the Commissioner of Police, as the case may be, and shall be carried into effect.
- (7) (Repealed)
- (8) The District Court, after hearing an application under this section, may assess the costs of the successful party to the application (including costs of representation and witness expenses, if any) and order that the costs so assessed or any part of them be paid to the successful party by any other party within a time specified in the order.
- (9) The District Court shall not order the payment of costs under subsection (8) by the applicant for a determination under this section unless satisfied that the application was frivolous or vexatious or was made fraudulently or without proper justification.
- (10) Where costs assessed under subsection (8) are not paid within the time specified in the order made under that subsection in respect of them, the person in whose favour the order was made may recover the costs in a court of competent jurisdiction as a debt due to that person by the person against whom the order was made.

(11) In this section:

***District Court*** means the District Court of New South Wales established by the [District Court Act 1973](#).

## **22 Special provisions with respect to certain widows**

Schedule 2 has effect.

**22A Increases in certain allowances payable to or in respect of members hurt on duty before 31 December 1971**

Schedule 5 has effect.

**23 Spouse or de facto partner entitled to only one pension under this Act**

(1) If the spouse or de facto partner of a deceased member or deceased former member of the police force would, but for this section, become entitled:

(a) to more than one superannuation allowance under section 11, 11A, 11B, 11C or 12 or under two or more of those sections, or

(b) to a superannuation allowance in relation to the death of a person under section 11, 11A, 11B or 11C and a superannuation allowance in relation to the death of some other person under section 12,

that spouse or de facto partner is entitled to only one of those allowances, being, where they are not equal, the greater or greatest of them.

(2) In this section, a reference to a superannuation allowance includes a reference to a gratuity that has been paid to the spouse or de facto partner of a deceased member or deceased former member of the police force instead of that allowance.

(3) Regulations under this Act may be made for the purpose of enabling STC, in a case where the spouse or de facto partner of a deceased member or deceased former member of the police force is entitled to only one of two or more superannuation allowances by virtue of subsection (1), to determine which of those allowances is the greater or greatest.

(4) Where the widow or widower of a member or former member of the police force was not eligible to receive a superannuation allowance under section 11A, 11B, 11C or 12 because the allowance was suspended in accordance with subsection (1) of this section (as in force before the commencement of Schedule 1 (19) of the *Police Regulation (Superannuation) Amendment Act 1988*), that suspension ceases to have effect on and from that commencement, but that widow or widower is not eligible to receive such an allowance in respect of any period before the beginning of the first pension payment period occurring after that commencement.

**23A Information that must be disclosed to contributors**

(1) STC must from time to time give to a contributor 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 contributors and other persons and the circumstances in which information

must or may be provided.

### **23B Actuarial investigation**

- (1) An investigation as to the state and sufficiency of the Fund is, as at 30 June 1994, and at the end of each succeeding period of 3 years, to be made by an actuary or actuaries appointed by STC.
- (2) Actuaries appointed under this section must complete their investigation, and report the result to STC, not later than 6 months after the date as at which the investigation is made.
- (3) The report referred to in subsection (2) must:
  - (a) include a statement of the value of the assets of the Fund, and
  - (b) include a statement of any liability for benefit payments that are not expected to be covered by:
    - (i) the assets of the Fund, or
    - (ii) any future contributions to, or earnings of, the Fund, or
    - (iii) any guarantee by the Government or by any of its agencies, or
    - (iv) an appropriation in respect of the Fund.
- (4) STC must, not later than 1 month after it receives a report under subsection (2), forward the report to the Minister with such comments as it thinks fit.
- (5) 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.
- (6) The Minister may, in relation to a particular investigation, extend or further extend the period referred to in subsection (4) if the Minister considers that special circumstances exist to justify an extension or further extension.

### **23C Recovery of money owing to Fund**

- (1) If a contributor or former contributor owes money to the Fund, STC may recover the money, together with interest as provided by this section, by deducting it from amounts payable from the Fund:
  - (a) to the contributor or former contributor, or
  - (b) to the spouse or de facto partner of the contributor or former contributor, or
  - (c) to the personal representatives of the contributor or former contributor, or

- (d) in respect of the children of the contributor or former contributor or of his or her spouse or de facto partner.
- (2) If the spouse or de facto partner of a deceased contributor or former contributor owes money to the Fund, STC may recover the money, together with interest as provided by this section, by deducting it from amounts payable from the Fund:
  - (a) to the spouse or de facto partner, or
  - (b) to the personal representatives of the spouse or de facto partner, or
  - (c) in respect of the children of the spouse or de facto partner or the children of the deceased contributor or former contributor.
- (3) If money is payable from the Fund to or in respect of any other person who owes money to the Fund, STC may recover the money owed to the Fund by deducting it from the money payable to or in respect of the person from the Fund.
- (4) Interest on any amount owing under this section is payable to STC:
  - (a) from the date on which the amount became due for payment until the date on which the amount is paid or recovered, and
  - (b) at a rate determined by STC.

### **23D Nominating commencement date of superannuation allowance**

- (1) Despite any other provision of this Act, the payment period of a superannuation allowance under this Act to which a person is entitled to payment commences on:
  - (a) if a date is nominated in accordance with this section—the date so nominated, or
  - (b) in any other case—the default date.
- (2) A person who is, or is to be, entitled to be paid a superannuation allowance under this Act may, by notice in writing served on STC, nominate the date on which the payment period commences, if such a nomination is not inconsistent with a relevant Commonwealth superannuation standard.
- (3) A notice under this section must:
  - (a) nominate the date on which the payment period commences, and
  - (b) be in the form approved by STC, and
  - (c) be served on STC not later than the expiry date.
- (4) A notice under this section must not nominate a date earlier than the default date.
- (5) A notice under this section is irrevocable.

- (6) This section does not affect whether any person is entitled to a superannuation allowance or when any person becomes entitled to a superannuation allowance.
- (7) A person is not entitled to payment of a superannuation allowance under this Act in respect of any period earlier than the commencement of the payment period of the allowance.
- (8) In this section:

**default date** means, in respect of a superannuation allowance under this Act, the date on which the payment period of the allowance would, but for this section, commence.

**expiry date** means, in respect of a superannuation allowance under this Act, the date that is 3 months after the default date in respect of the allowance.

**payment period** means, in respect of a superannuation allowance under this Act, the period for which the allowance under this Act is to be paid.

### 23E Disputes

- (1) If STC makes a decision under this Act in relation to a contributor or other person, STC must give to the contributor or other person notice in writing of:
  - (a) the decision, and
  - (b) the right to dispute the decision, and
  - (c) the time within which notice of a dispute must be served on STC.
- (2) A contributor or other person who is aggrieved by a decision made by STC has a right to dispute that decision and to have the dispute determined under the [Superannuation Administration Act 1996](#).
- (3) Notice of the dispute must be served on STC within 2 years after the aggrieved person is notified in writing of the right to dispute that decision.
- (4) This section applies to a decision made before, on or after the commencement of this section, except a decision in respect of which a dispute has been notified to STC before the commencement of this section.
- (5) This section does not apply to a decision to which section 21 applies.

### 24 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) A regulation may impose a penalty not exceeding 5 penalty units for any contravention thereof.
- (3) A provision of a regulation may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
- or may do any combination of those things.
- (4) (Repealed)

## 25 Savings and transitional provisions

Schedule 6 has effect.

## Schedule 1 Increases in certain allowances

(Section 19)

### 1 Definitions

- (1) In this Schedule:

**Column** means a Column of the Table set out in clause 2.

**eligibility date**, in relation to a person to whom a superannuation allowance to which clause 3, 4, 5 or 6 applies is payable, means the first day of the period referred to in clause 3 (1), 4 (1), 5 (1) or 6 (1) (a) or (b), as the case may require, that relates to the person.

**relevant period**, in relation to a person, means the period (specified in Column 1) that includes the person's eligibility date.

**section 7A component**, in relation to a superannuation allowance, means the sum of:

- (a) the amount of any increase under section 7A included in the allowance, and
- (b) so much of any other increases in the allowance effected by or under this or any other Act as is referable to increases in the amount referred to in paragraph (a).

- (2) A reference in this Schedule to:

- (a) a superannuation allowance payable under a section of this Act is a reference to the allowance so payable, as varied by or under any of the provisions of this or

any other Act, and

(b) the retirement of a member of the police force includes a reference to the discharge of such a member, as referred to in section 7.

## 2 Table of percentages

For the purposes of this Schedule, the Table is as follows:

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>
<b>Date of emergence of allowance</b>	<b>Percentage increase payable on 31 March 1978</b>	<b>Percentage increase payable on 29 September 1978</b>	<b>Percentage increase payable on 22 June 1979</b>	<b>Percentage increase payable on 20 June 1980</b>
On or before 12 August 1948	33.6	...	...	...
13 August 1948 to 24 September 1948	31.8	...	...	...
25 September 1948 to 10 February 1949	22.6	...	...	...
11 February 1949 to 5 May 1949	22.1	...	...	...
6 May 1949 to 11 August 1949	20.7	...	...	...
12 August 1949 to 3 November 1949	19.3	...	...	...
4 November 1949 to 9 February 1950	18.5	...	...	...
10 February 1950 to 4 May 1950	17.2	...	...	...
5 May 1950 to 10 August 1950	15.9	...	...	...
11 August 1950 to 2 November 1950	14.3	...	...	...
3 November 1950 to 30 November 1950	12.6	...	...	...
1 December 1950 to 31 December 1950	5.1	...	...	...

1 January 1951 to 31 December 1963	...	5.1	...	...
1 January 1964 to 31 December 1970	...	1.7	1.7	1.6

### **3 Increases in sec 7 allowances**

- (1) This clause applies to a superannuation allowance payable under section 7 (whether or not the allowance includes a section 7A component) to a member of the police force that first became payable in respect of a period commencing on or before 31 December 1970, but does not apply to a superannuation allowance to which clause 4 applies.
- (2) Where:
  - (a) a superannuation allowance to which this clause applies is payable to a person on the date specified in Column 2, 3, 4 or 5, and
  - (b) a percentage is specified in that Column opposite the person's relevant period, the allowance is hereby increased, on and from that date, by that percentage.

### **4 Increases in sec 7 allowances—special cases**

- (1) This clause applies to a superannuation allowance payable under section 7 to a member of the police force who retired, being an allowance that:
  - (a) first became payable in respect of a period commencing on or before 30 November 1950, and
  - (b) includes a section 7A component.
- (2) Where a superannuation allowance to which this clause applies is payable to a person on 31 March 1978, the allowance is hereby increased, on and from that date, by:
  - (a) 5.1 per cent of the allowance, or
  - (b) a percentage of the allowance that would have been payable had section 7A not been enacted, being the percentage equal to that specified in Column 2 opposite the person's relevant period,whichever results in the greater allowance.

### **5 Increases in sec 10 allowances**

- (1) This clause applies to a superannuation allowance payable under section 10 to a disabled member of the police force that first became payable in respect of a period commencing on or before 31 December 1970.

(2) Where:

- (a) a superannuation allowance to which this clause applies is payable to a person on the date specified in Column 2, 3, 4 or 5,
- (b) a percentage is specified in that Column opposite the person's relevant period, and
- (c) an amount equal to the sum of:
  - (i) the amount of the allowance that, but for the operation of this clause, would be payable, reduced by the amount of any increase under section 10 (6) included therein, and
  - (ii) a percentage of the reduced amount referred to in subparagraph (i), being the percentage equal to that referred to in paragraph (b),is greater than the amount of the allowance,

the allowance is hereby increased, on and from that date, to that greater amount.

**6 Increases in sec 12 allowances**

(1) This clause applies to:

- (a) a superannuation allowance granted pursuant to section 12 consequent upon the death of a member of the police force that first became payable in respect of a period commencing on or before 31 December 1970, and
- (b) a superannuation allowance granted pursuant to section 12 consequent upon the death of an ex-member of the police force, where a superannuation allowance first became payable to the ex-member under this Act in respect of a period commencing on or before 31 December 1970.

(2) Where:

- (a) a superannuation allowance to which this clause applies is payable to a person on the date specified in Column 2, 3, 4 or 5, and
  - (b) a percentage is specified in that Column opposite the person's relevant period,
- the allowance is hereby increased, on and from that date, by that percentage.

- (3) In the application of this clause to the increase of a superannuation allowance on 20 June 1980, any additional annual amount payable pursuant to clause 2 of Schedule 2 shall not be deemed to be part of the superannuation allowance for the purposes of determining that increase.

## **7 (Repealed)**

## **8 Increases under this Schedule to be cumulative**

Where a superannuation allowance is to be increased pursuant to this Schedule on a date on which the allowance is adjusted pursuant to Division 2 of Part 4, the allowance to be so increased is the allowance as so adjusted.

## **Schedule 2 Special provisions with respect to certain widows**

(Section 22)

### **1 Validation of additional payments to certain widows**

The payment, in respect of the period between 7 January 1972 and 27 September 1979, of an additional annual amount of \$390 (and any increase thereof purporting to have been made under this Act or any Act amending this Act) with a superannuation allowance granted pursuant to section 12 to the widow of a member of the police force who died before 1 July 1971, is hereby validated.

### **2 Increase in additional payments to certain widows**

- (1) The additional annual amount payable with a superannuation allowance granted pursuant to section 12 to the widow of a member of the police force who died before 1 July 1971 shall, on and from 28 September 1979, be increased to \$1,092.
- (2) An additional annual amount referred to in subclause (1) shall, for the purposes of this Act, be deemed to be part of the annual superannuation allowance granted pursuant to section 12.

### **3 Conversion to lump sum of additional payments to certain widows**

- (1) The liability of the Fund in respect of any additional annual amount referred to in clause 2 may, if the widow to whom it is payable has so elected by notice in writing served on the Board before 1 April 1980, be redeemed either in whole or in part by the payment from the Fund of a lump sum calculated on the basis of \$250 for each \$26 per annum of the additional annual amount that the widow elects to redeem.
- (2) Subclause (1) does not apply to an additional annual amount that is payable to a widow whose husband died as a result of a motor vehicle accident and who recovered damages in respect of his death.
- (3) In the application of subclause (1) to a widow referred to in section 23 (3), the reference in that subclause to 1 April 1980 shall be construed as a reference to such date, after the commencement of section 23, as the Board may determine.

## **Schedule 3 Lump sum benefits for normal or early retirement—commutation factors (multiples of attributed final**

**salary of office)**

Age at date election takes effect	Age next birthday on entry												
		Yrs	Mths	25 & less	26	27	28	29	30	31	32	33	34
55	0	7.58	7.33	7.08	6.83	6.57	6.32	6.07	5.81	5.56	5.31	5.06	
55	1	7.59	7.34	7.09	6.83	6.58	6.33	6.07	5.82	5.57	5.32	5.06	
55	2	7.60	7.35	7.09	6.84	6.59	6.33	6.08	5.83	5.57	5.32	5.07	
55	3	7.61	7.36	7.10	6.85	6.59	6.34	6.09	5.83	5.58	5.33	5.07	
55	4	7.62	7.36	7.11	6.86	6.60	6.35	6.09	5.84	5.59	5.33	5.08	
55	5	7.63	7.37	7.12	6.86	6.61	6.35	6.10	5.85	5.59	5.34	5.08	
55	6	7.63	7.38	7.13	6.87	6.62	6.36	6.11	5.85	5.60	5.34	5.09	
55	7	7.64	7.39	7.13	6.88	6.62	6.37	6.11	5.86	5.60	5.35	5.09	
55	8	7.65	7.39	7.14	6.88	6.63	6.37	6.12	5.86	5.61	5.35	5.10	
55	9	7.66	7.40	7.15	6.89	6.64	6.38	6.13	5.87	5.62	5.36	5.11	
55	10	7.67	7.41	7.15	6.90	6.64	6.39	6.13	5.88	5.62	5.37	5.11	
55	11	7.67	7.42	7.16	6.91	6.65	6.39	6.14	5.88	5.63	5.37	5.12	
56	0	7.68	7.68	7.42	7.17	6.91	6.66	6.40	6.14	5.89	5.63	5.38	
56	1	7.69	7.69	7.43	7.18	6.92	6.66	6.41	6.15	5.89	5.64	5.38	
56	2	7.70	7.70	7.44	7.18	6.93	6.67	6.41	6.16	5.90	5.64	5.39	
56	3	7.70	7.70	7.45	7.19	6.93	6.68	6.42	6.16	5.91	5.65	5.39	
56	4	7.71	7.71	7.45	7.20	6.94	6.68	6.42	6.17	5.91	5.65	5.40	
56	5	7.72	7.72	7.46	7.20	6.95	6.69	6.43	6.17	5.92	5.66	5.40	
56	6	7.72	7.72	7.47	7.21	6.95	6.69	6.44	6.18	5.92	5.66	5.41	
56	7	7.73	7.73	7.47	7.22	6.96	6.70	6.44	6.18	5.93	5.67	5.41	
56	8	7.74	7.74	7.48	7.22	6.96	6.71	6.45	6.19	5.93	5.67	5.42	
56	9	7.74	7.74	7.49	7.23	6.97	6.71	6.45	6.20	5.94	5.68	5.42	
56	10	7.75	7.75	7.49	7.23	6.98	6.72	6.46	6.20	5.94	5.68	5.43	
56	11	7.76	7.76	7.50	7.24	6.98	6.72	6.47	6.21	5.95	5.69	5.43	
57	0	7.76	7.76	7.76	7.51	7.25	6.99	6.73	6.47	6.21	5.95	5.69	

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57	1	7.77	7.77	7.77	7.51	7.25	6.99	6.73	6.48	6.22	5.96	5.70
57	2	7.78	7.78	7.78	7.52	7.26	7.00	6.74	6.48	6.22	5.96	5.70
57	3	7.78	7.78	7.78	7.52	7.26	7.01	6.75	6.49	6.23	5.97	5.71
57	4	7.79	7.79	7.79	7.53	7.27	7.01	6.75	6.49	6.23	5.97	5.71
57	5	7.80	7.80	7.80	7.54	7.28	7.02	6.76	6.50	6.24	5.98	5.72
57	6	7.80	7.80	7.80	7.54	7.28	7.02	6.76	6.50	6.24	5.98	5.72
57	7	7.81	7.81	7.81	7.55	7.29	7.03	6.77	6.51	6.25	5.99	5.73
57	8	7.81	7.81	7.81	7.55	7.29	7.03	6.77	6.51	6.25	5.99	5.73
57	9	7.82	7.82	7.82	7.56	7.30	7.04	6.78	6.52	6.26	6.00	5.73
57	10	7.83	7.83	7.83	7.57	7.30	7.04	6.78	6.52	6.26	6.00	5.74
57	11	7.83	7.83	7.83	7.57	7.31	7.05	6.79	6.53	6.27	6.00	5.74
58	0	7.84	7.84	7.84	7.84	7.58	7.31	7.05	6.79	6.53	6.27	6.01
58	1	7.84	7.84	7.84	7.84	7.58	7.32	7.06	6.80	6.54	6.27	6.01
58	2	7.85	7.85	7.85	7.85	7.59	7.32	7.06	6.80	6.54	6.28	6.02
58	3	7.85	7.85	7.85	7.85	7.59	7.33	7.07	6.81	6.54	6.28	6.02
58	4	7.86	7.86	7.86	7.86	7.60	7.33	7.07	6.81	6.55	6.29	6.03
58	5	7.86	7.86	7.86	7.86	7.60	7.34	7.08	6.82	6.55	6.29	6.03
58	6	7.87	7.87	7.87	7.87	7.61	7.34	7.08	6.82	6.56	6.30	6.03
58	7	7.87	7.87	7.87	7.87	7.61	7.35	7.09	6.82	6.56	6.30	6.04
58	8	7.88	7.88	7.88	7.88	7.62	7.35	7.09	6.83	6.57	6.30	6.04
58	9	7.88	7.88	7.88	7.88	7.62	7.36	7.10	6.83	6.57	6.31	6.04
58	10	7.89	7.89	7.89	7.89	7.63	7.36	7.10	6.84	6.57	6.31	6.05
58	11	7.89	7.89	7.89	7.89	7.63	7.37	7.10	6.84	6.58	6.31	6.05
59	0	7.90	7.90	7.90	7.90	7.90	7.63	7.37	7.11	6.84	6.58	6.32
59	1	7.90	7.90	7.90	7.90	7.90	7.64	7.38	7.11	6.85	6.59	6.32
59	2	7.91	7.91	7.91	7.91	7.91	7.64	7.38	7.12	6.85	6.59	6.33
59	3	7.91	7.91	7.91	7.91	7.91	7.65	7.38	7.12	6.86	6.59	6.33
59	4	7.92	7.92	7.92	7.92	7.92	7.65	7.39	7.12	6.86	6.60	6.33
59	5	7.92	7.92	7.92	7.92	7.92	7.66	7.39	7.13	6.86	6.60	6.34
59	6	7.92	7.92	7.92	7.92	7.92	7.66	7.40	7.13	6.87	6.60	6.34
59	7	7.93	7.93	7.93	7.93	7.93	7.66	7.40	7.14	6.87	6.61	6.34

59	8	7.93	7.93	7.93	7.93	7.93	7.67	7.40	7.14	6.87	6.61	6.35
59	9	7.94	7.94	7.94	7.94	7.94	7.67	7.41	7.14	6.88	6.61	6.35
59	10	7.94	7.94	7.94	7.94	7.94	7.67	7.41	7.15	6.88	6.62	6.35
59	11	7.94	7.94	7.94	7.94	7.94	7.68	7.41	7.15	6.88	6.62	6.35
60												
and	0	7.95	7.95	7.95	7.95	7.95	7.95	7.68	7.42	7.15	6.89	6.62
over												

**1 Entry dates for the purposes of this Schedule—how determined**

- (1) For the purposes of this Schedule, the entry date of a member or former member of the police force to whom this Schedule applies:
- (a) is, if the service of that member or former member has been continuous (whether as a full-time or part-time member, or both), the actual date on which the member or former member became a member of the police force, and
  - (b) is, if:
    - (i) the service of that member or former member has not been continuous, and
    - (ii) on the occasion or occasions on which the member or former member was reappointed as a member of the police force the member or former member did not repay any benefit received in respect of previous service,

the date on which the member or former member last became a member of the police force,
  - (c) shall, if:
    - (i) the service of that member or former member has not been continuous, and
    - (ii) on the occasion or the occasions on which the member or former member was reappointed as a member of the police force the member or former member repaid any benefit received in respect of previous service,

be taken to be the date on which the member or former member would have been regarded as having entered the police force if:

    - (iii) the various periods of service of the member or former member had been continuous, and
    - (iv) that continuous service had ended on the last exit date of that member or former member, and
    - (v) no benefit had been paid in respect of that previous service.



- (2) For the purposes of subclause (1) (c), any previous period of service in respect of which a member or former member of the police force did not repay any benefit received for that service shall be disregarded.

## **Schedule 4 Provisions relating to members and procedure of the Police Superannuation Advisory Committee**

(Section 2H (4))

### **1 Definitions**

In this Schedule:

**Committee** means the Police Superannuation Advisory Committee.

**member** means a member of the Committee.

### **2 Age of appointed members**

A person of or above the age of 70 years is not eligible to be appointed as a member.

### **3 Terms of office of appointed members**

Subject to this Schedule, an appointed member holds office for such period, not exceeding 5 years, as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **4 Remuneration of appointed members**

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

### **5 Vacancy in office of appointed member**

(1) The office of an appointed member becomes vacant if the member:

- (a) dies,
- (b) completes a term of office and is not re-appointed,
- (c) resigns the office by instrument in writing addressed to the Minister,
- (d) is removed from office by the Minister under this clause,
- (e) reaches the age of 70 years,
- (f) becomes a mentally incapacitated person, or
- (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an

offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member from office at any time.

## **6 Filling of vacancy**

If the office of an appointed member becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

## **7 Effect of certain other Acts**

(1) The *Government Sector Employment Act 2013* does not apply to the appointment of an appointed member and an appointed member is not, as such a member, subject to that Act.

(2) If by or under any other Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## **8 Deputies for members**

(1) The Minister may, from time to time, appoint a person to be the deputy of a member.

(2) A deputy of a member may, in the absence of the member or during a vacancy in the office of the member, act in the office of the member and, while so acting, has all the functions of the member and shall be deemed to be a member.

## **9 General procedure**

The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by the Committee.

## **10 Quorum**

The quorum for a meeting of the Committee is 5 members.

## **11 Presiding member**

The Chairperson of the Committee or, in the absence of the Chairperson and the deputy of the Chairperson, another member elected to chair the meeting by the members present shall preside at a meeting of the Committee.

## **12 Voting**

A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present shall be the decision of the Committee.

## **13 Minutes**

The Committee must cause full and accurate minutes to be kept of the proceedings of each meeting of the Committee.

## **14 First meeting**

The Minister shall call the first meeting of the Committee.

# **Schedule 5 Increases in certain allowances payable to or in respect of members hurt on duty before 31 December 1971**

## **1 Increases in sec 10 allowances for disabled former members hurt on duty**

- (1) This clause applies to a superannuation allowance payable under section 10 to a disabled member of the police force that first became payable in respect of a period commencing before 31 December 1971.
- (2) Any such superannuation allowance is increased by the percentage specified in the Table to this Schedule, being the percentage shown in that Table opposite the period specified in the Table during which the allowance first became payable.
- (3) If the annual amount of any such superannuation allowance (as so increased) is less than \$15,500, the allowance is increased by such amount as is necessary to increase the annual amount of the allowance to \$15,500.

## **2 Increases in allowances for surviving spouses or de facto partners of disabled members hurt on duty**

- (1) This clause applies to a superannuation allowance payable under section 11, 11A, 11B or 11C to the spouse or de facto partner of a disabled former member of the police force as a consequence of the death of that member, being a former member who was (at the time of his or her death) in receipt of a superannuation allowance under section 10 that first became payable in respect of a period commencing before 31 December 1971.
- (2) Any such superannuation allowance is increased by the percentage specified in the Table to this Schedule, being the percentage shown in that Table opposite the period specified in that Table during which the allowance to the disabled former member first became payable.
- (3) If the annual amount of any such superannuation allowance (as so increased) is less than \$9,688, the allowance is increased by such amount as is necessary to increase

the annual amount of the allowance to \$9,688.

### **3 Commencement of payment of increases**

Any increase in a superannuation allowance under this Schedule is payable from the commencement of the first full pension pay period occurring in June 1990 (but is not payable in respect of any period before that commencement).

#### **Table Percentage increase in allowances**

<b>Period when allowance under sec 10 first became payable</b>	<b>Percentage increase</b>
Before 31 December 1950	30
On or after 31 December 1950 and before 31 December 1964	20
On or after 31 December 1964 and before 31 December 1968	15
On or after 31 December 1968 and before 31 December 1970	10
On or after 31 December 1970 and before 31 December 1971	5

## **Schedule 6 Savings and transitional provisions**

(Section 25)

### **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 Amendment Act 1998*

*Superannuation Legislation Amendment Act 1999*

*Superannuation Legislation Further Amendment Act 1999*

*Superannuation Legislation Amendment Act 2000*

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

*Superannuation Legislation Amendment Act 2002*

*Superannuation Legislation Further Amendment Act 2002*

*Superannuation Legislation Amendment (Family Law) Act 2003* (but only to the extent that it amends this Act)

*Superannuation Legislation Amendment Act 2005*, but only to the extent to which it amends this Act

*Public Sector Employment and Management Amendment (Extended Leave) Act 2005* (but only to the extent that it amends this Act)

*Superannuation Legislation Amendment Act 2006*, but only to the extent to which it amends this Act

*Police Superannuation Legislation Amendment Act 2007*

*Relationships Register Act 2010*

*Superannuation Legislation Amendment Act 2010*

- (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 1A Effect of repeal of certain Acts**

### **1A Repeal of Acts does not affect operation of savings, transitional and other provisions**

- (1) Despite the repeal of the Acts listed in Column 1 of the Table to this subclause, the provisions listed in Column 2 continue to have effect and are taken to have been transferred to this Act.

#### **Table**

<b>Column 1</b>	<b>Column 2</b>
<i>Police Regulation (Superannuation) Amendment Act 1974</i>	Section 4
<i>Police Regulation (Superannuation) Amendment Act 1981</i>	Section 5 (4)

(2) The provisions listed in Column 2 of the Table to subclause (1) are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

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

### **2 Leave without pay**

Section 5A, as amended by the *Superannuation Legislation (Further Amendment) Act 1993*, applies to a period of leave without pay commenced before 1 January 1994 and not completed immediately before that date.

### **3 Disengagement benefits**

Section 8A, as amended by the *Superannuation Legislation (Further Amendment) Act 1993*, does not apply to a person offered a disengagement benefit before the date of assent to the *Superannuation Legislation (Further Amendment) Act 1993*.

### **4 Children's allowances**

An allowance being paid or continued or commenced under section 12A, as in force before the date of assent to the *Superannuation Legislation (Further Amendment) Act 1993*, is not payable in respect of any period after the child reaches 18 years or 25 years (if the allowance is continued or commenced under section 12A (4)) or dies or ceases to be a student.

### **5 Indexation of pension increases**

Section 14G, as amended by the *Superannuation Legislation (Further Amendment) Act 1993*, is taken to have applied to any increase in a superannuation allowance under section 10 occurring after the commencement of Division 2 of Part 4.

### **6 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 a member or former member of the police force occurring before 1 January 1994.

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

### **7 Authorised leave**

A person who commenced a period of authorised leave before the commencement of section 5AC (as inserted by the *Superannuation Legislation Further Amendment Act 1997*) is entitled to the benefit of that section if the person was still on leave immediately before the commencement of that section.

## Part 4 Superannuation Legislation Amendment Act 1998

### 8 Part-time members of the police force

- (1) (Repealed)
- (2) For the purposes of this Act, any period before the commencement of this clause during which a contributor or a former member contributed to the Fund as if the contributor or former member were a full-time member of the police force is to be treated as a period of full-time service, whether or not the contributor or former member actually worked as a full-time member of the police force during that period.

### 9 Benefits

The amendment, by the *Superannuation Legislation Amendment Act 1998*, of a provision of this Act entitling a member or former member of the police force to a benefit does not affect the entitlement to any such benefit, or the amount of any such benefit, payable under that provision before the commencement of the amendment.

## Part 5 Superannuation Legislation Amendment Act 1999

### 10 Definitions

In this Part:

**conversion election** means an election made under Part 3B.

**workers compensation Acts** means the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*.

### 11 Workers compensation

- (1) For the purposes of the application of the workers compensation Acts to a person who makes a conversion election, the following provisions have effect:
  - (a) the workers compensation Acts apply in respect of an injury that was received while the person was a contributor, on or after 21 November 1979 and before the conversion election took effect, as if the person was a worker under those Acts when the injury was received,
  - (b) the workers compensation Acts apply whether or not the person has received a gratuity under section 12D in respect of the injury,
  - (c) the person, or any person claiming through the person, is not, except as provided by paragraph (d), entitled to compensation under the workers compensation Acts in respect of any such injury that would have become payable to the person before the conversion election took effect if the workers compensation Acts had applied to the person at that time,

- (d) nothing in paragraph (c) prevents the person from obtaining compensation under section 66 or 67 of the [Workers Compensation Act 1987](#) in respect of the injury, but only to the extent that compensation for the loss or pain and suffering has not been paid under this Act,
  - (e) any period of notice or for making a claim for compensation under the workers compensation Acts is taken to commence when the conversion election takes effect, or as required under the workers compensation Acts, whichever is the later date,
  - (f) the workers compensation Acts apply as referred to in this subclause with all necessary modifications and prescribed modifications.
- (2) The regulations may, for the purposes of the application of the workers compensation Acts in respect of an injury or person referred to in subclause (1):
- (a) make further provision with respect to the application of the workers compensation Acts in respect of any such injury or person or classes of injuries or persons, and
  - (b) prescribe modifications of the workers compensation Acts and subclause (1) for that purpose.

## **Part 6 Superannuation Legislation Amendment (Same Sex Partners) Act 2000**

### **12 Definitions**

In this Part:

**amending Act** means the [Superannuation Legislation Amendment \(Same Sex Partners\) Act 2000](#).

**conversion benefit** means the benefit provided under section 5H.

**conversion election** means an election under Part 3B.

**exercise** a function includes perform a duty.

**former contributor** means a member of the police force who has made a conversion election that has taken effect.

**function** includes a power, authority or duty.

**Police Superannuation Scheme** means the superannuation scheme established under this Act.

**revocation election**—see clause 16 (2).



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

### **13 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 members or former members who die on or after the commencement of the amendment substituting the definition of **spouse**.
- (2) The definition of **spouse**, as in force immediately before its substitution by that Act, applies to or in respect of members or former members who die before the commencement of the amendment substituting the definition of **spouse**.

### **14 Arrangements for revocation of conversion elections**

- (1) The Minister may enter into a written arrangement with STC, FTC, a trustee of a superannuation scheme or any other person, for or with respect to the revocation of a conversion election made by a former contributor, or class of former contributors, and the reinstatement of that former contributor, or class of former contributors, as a contributor or contributors under this Act.
- (2) An arrangement may be entered into by the Minister with one or more of the persons referred to in subclause (1).
- (3) For the purposes of this Part, STC, FTC, the trustee of a superannuation scheme or any other person may enter into an arrangement under this Part.
- (4) STC or FTC must, if required by the Minister, enter into an arrangement under this Part.
- (5) The Minister or any person with whom the Minister enters into an arrangement under this Part may not give effect to any such arrangement with respect to a former contributor except with the written consent of the former contributor affected by the arrangement.
- (6) A former contributor who makes a revocation election is taken to have given consent for the purposes of subclause (5).
- (7) An arrangement under this Part may be amended in the manner provided by the arrangement.

### **15 Matters to be covered by arrangement**

An arrangement under this Part may be made for or with respect to the following matters:

- (a) the notice, and information, to be given to a former contributor about the right to

- make a revocation election and the effect of making such an election,
- (b) the manner in which a revocation election may be made, amended or revoked,
  - (c) the period within which a revocation election is required to be made,
  - (d) the date on which a revocation election by a former contributor takes effect,
  - (e) the reinstatement of a former contributor as a contributor under this Act and as an employee under the *State Authorities Non-contributory Superannuation Act 1987* to the same position that the former contributor would have been in if the conversion election made by the former contributor had not taken effect,
  - (f) the rights and obligations of a reinstated contributor under the Police Superannuation Scheme and the *State Authorities Non-contributory Superannuation Act 1987*,
  - (g) the effect of reinstatement on the contributor's rights or obligations under, benefits under, or membership of, another superannuation scheme,
  - (h) the effect of reinstatement on the liability for payment of employer contributions or other amounts to the Police Superannuation Scheme or the superannuation scheme established under the *State Authorities Non-contributory Superannuation Act 1987* or any other superannuation scheme,
  - (i) the transfer of benefits, or other amounts, (whether or not currently payable) under another superannuation scheme by the trustee of that superannuation scheme to STC for payment in respect of the former contributor to the Police Superannuation Scheme or the superannuation scheme established under the *State Authorities Non-contributory Superannuation Act 1987*,
  - (j) the adjustment of reserves or funds of superannuation schemes for the purposes of the arrangement, whether the schemes are established by or under this or any other Act or in any other manner,
  - (k) the contributions, and other amounts, payable by a former contributor in respect of the period during which a conversion election had effect in respect of the former contributor,
  - (l) workers compensation benefits paid to, or payable in respect of, a former contributor during the period in which a conversion election had effect in respect of the former contributor,
  - (m) the adjustment or reduction of benefits payable to contributors under this Act or any other superannuation scheme,
  - (n) the payment of interest on outstanding amounts required to be paid under the arrangement,

- (o) the transfer of assets by a trustee of a superannuation scheme to meet a requirement to pay an amount under the arrangement,
- (p) the obtaining of actuarial advice by the Minister or a trustee of a superannuation scheme or other person for the purposes of the arrangement or a related matter,
- (q) the amendment of the arrangement,
- (r) any other matter that is ancillary to, or consequential on, a matter referred to in paragraphs (a)-(q),
- (s) any other matter prescribed by the regulations for the purposes of this clause.

#### **16 Right to revoke conversion election**

- (1) A former contributor who is covered by an arrangement under this Part may, in the manner specified by the arrangement, make a revocation election.
- (2) A **revocation election** is an election by a former contributor to give effect to an arrangement under this Part in relation to the former contributor.
- (3) If a former contributor fails to make a revocation election on or before the last date for making an election specified under the arrangement or purports to make an election after that date, the former contributor is taken to have elected not to make a revocation election.
- (4) A revocation election made by a former contributor takes effect on the date specified under the arrangement.
- (5) Despite subclause (3), an arrangement may provide for the acceptance of an election after the last date for making it in specified circumstances.

#### **17 Circumstances in which a revocation election may not be made or is revoked**

If a benefit is paid or becomes payable or is deferred or preserved in respect of a former contributor under the [First State Superannuation Act 1992](#) or another superannuation scheme before the date on which a revocation election made by the former contributor takes effect:

- (a) the former contributor is not eligible to make a revocation election, and
- (b) if the former contributor has made a revocation election, the election has no effect.

#### **18 Effect of arrangement**

- (1) An arrangement entered into by the Minister and the trustee of a superannuation scheme for the purposes of this Part has effect according to its tenor.
- (2) Despite subclause (1), any such arrangement does not have effect in respect of a

former contributor unless written consent is given as required by clause 14 (5).

- (3) The Minister, STC, FTC, a trustee of a superannuation scheme or any other person has, and may exercise, any function conferred by or under this Part or by or under an arrangement entered into under this Part.
- (4) This Part has effect despite any other provision of this Act or any other Act or regulation or other law or the rules of any superannuation scheme affected by an arrangement.
- (5) For the purposes of section 25 of the *Privacy and Personal Information Protection Act 1998*, STC and FTC are not required to comply with section 9, 10, 14, 17, 18 or 19 of that Act in respect of the provision of information for the purposes of an arrangement, or proposed arrangement, under this Part.
- (6) This Part, and any arrangement entered into under this Part, have effect so far as the legislative power of the Parliament of New South Wales permits.

## **19 Validation**

Any act, matter or thing done or omitted to be done by the Minister, STC, FTC or any trustee of a superannuation scheme or other person under or for the purposes of an arrangement under this Part before the arrangement takes effect, or takes effect in relation to a former contributor, that could have been done or omitted to be done if the arrangement had effect, or had effect in relation to the former contributor, is, if the arrangement takes effect, or takes effect in relation to the former contributor, validated.

## **20 Liability for actions taken under Part**

- (1) A matter or thing done or omitted to be done by STC, the STC Board, a member of the Board or any person acting under the direction of STC or the Board, does not, if the matter or thing was done or omitted to be done in good faith:
  - (a) in connection with obtaining or making a revocation election, or
  - (b) in connection with an arrangement, or proposed arrangement, under this Part, or
  - (c) in connection with the provision of information in relation to clauses 14–19 or an arrangement, or proposed arrangement, under this Part, or
  - (d) for the purpose of executing clauses 14–19,subject STC, a member of the Board or a person so acting to any action, liability, claim or demand.
- (2) A matter or thing done or omitted to be done by FTC, the FTC Board, a member of the Board or any person acting under the direction of FTC or the Board, does not, if the matter or thing was done or omitted to be done in good faith:

- (a) in connection with obtaining or making a revocation election, or
  - (b) in connection with an arrangement, or proposed arrangement, under this Part, or
  - (c) in connection with the provision of information in relation to clauses 14–19 or an arrangement, or proposed arrangement, under this Part, or
  - (d) for the purpose of executing clauses 14–19,
- subject FTC, a member of the Board or a person so acting to any action, liability, claim or demand.

## **Part 7 Superannuation Legislation Amendment Act 2000**

### **21 Definition**

In this Part:

**amending Act** means the *Superannuation Legislation Amendment Act 2000*.

### **22 Application of indemnities relating to damages recovered by recipients of hurt on duty gratuities**

- (1) This clause applies to a person to whom a gratuity under section 12B or 12D was paid before the date of assent to the amending Act.
- (2) Section 12E (3)–(5), (7) and (8), as inserted by the amending Act, do not apply to or in respect of any such gratuity.
- (3) Section 12E (6), as inserted by the amending Act, extends to any such gratuity.

### **23 Information about other possible payments to recipients of hurt on duty gratuities**

- (1) This clause applies to a member of the police force in respect of whom a gratuity was paid under section 12B or 12D before the date of assent to the amending Act.
- (2) STC may request information that is relevant to whether damages (as referred to in section 12E) have been paid or are payable to or in respect of the member of the police force, and the particulars of the damages, from the following persons and bodies:
  - (a) the Commissioner of Police,
  - (b) the Motor Accidents Authority,
  - (c) the Victims Compensation Tribunal,
  - (d) any other person liable to pay damages.
- (3) Despite the provisions of any other Act, a request may be made under subclause (2)

without the authority of the person to whom the gratuity was paid or without the authority or consent of any other person whose authority or consent would otherwise be required.

- (4) Despite the provisions of any other Act, a person or body to whom a request is made under subclause (2) must comply with the request.
- (5) In subclause (2), a reference to damages includes a reference to a sum ordered or directed to be paid under a provision of the *Victims Support and Rehabilitation Act 1996* by way of compensation for injury.

#### **24 Adjustment of superannuation allowances (section 14B)**

The amendment made to section 14B by the amending Act does not affect the calculation of an adjustment percentage for a year if the June quarter in that year ended before the commencement of that amendment.

#### **25 Late conversion elections**

- (1) This clause applies to a conversion election made before the commencement of this clause and after the time required under Part 3B for the making of the conversion election.
- (2) Section 16A, as inserted by the amending Act, extends to any such election and STC may deal with the election accordingly.
- (3) Any acceptance by STC, before the commencement of this clause, of a conversion election to which this clause applies is validated.

### **Part 8 Superannuation Legislation Amendment Act 2005**

#### **26 Hurt on duty benefits**

A gratuity granted under section 12D before the commencement of the amendments made to section 12D (4) by the *Superannuation Legislation Amendment Act 2005* is taken to have been validly granted whether or not the Commissioner of Police made the relevant decision under that subsection at the request of STC.

#### **27 Restoration of death benefit previously reduced**

- (1) Section 14AAA, as inserted by the *Superannuation Legislation Amendment Act 2005*, applies to a benefit reduced, but not paid, before the commencement of that section.
- (2) Section 14AAA, as inserted by the *Superannuation Legislation Amendment Act 2005*, does not apply to a benefit paid before the commencement of that section.

## Part 9 Superannuation Legislation Amendment Act 2006

### 28 Certification not invalid if in compliance with Act as amended

A certification given by STC under section 10B (2A) or (2B) is not invalid merely because of a failure to comply with this Act as in force before the commencement of an amendment made to this Act by the *Superannuation Legislation Amendment Act 2006*, if the certification was given before that commencement and would have been valid had it been given under this Act as in force after that commencement.

### 29 Commutation of allowance of disabled member already 55 or older

(1) A person who:

- (a) is entitled to a superannuation allowance to which section 14K applies, and
- (b) has not previously commuted the allowance under that section, and
- (c) had attained the age of 55 before the commencement of section 14K, as inserted by the *Superannuation Legislation Amendment Act 2006*, and
- (d) is not 60 years of age or older,

may commute the whole or part of that allowance, in accordance with section 14K, on that commencement.

(2) The date on which an election under subclause (1) is to take effect is to be the day of that commencement.

## Part 10 Police Superannuation Legislation Amendment Act 2007

### 30 Certification not invalid if in compliance with Act as amended

A certification given by STC under section 8 (1) or 10B (2A) or (2B) is not invalid merely because of a failure to comply with this Act as in force before the commencement of this clause, if the certification was given before that commencement and would have been valid had it been given under section 8 or 10B as in force after the commencement of Schedule 2 [13] or [17] to the *Police Superannuation Legislation Amendment Act 2007*.

## Part 11 Relationships Register Act 2010

### 31 De facto partner entitlements

- (1) The amendment to section 1 (2) made by the *Relationships Register Act 2010* applies only to or in respect of members or former members who die on or after the commencement of that amendment.
- (2) The definition of **de facto partner**, as in force immediately before that commencement, applies to or in respect of members or former members who die

before that commencement.