

Police Association Employees (Superannuation) Act 1969 No 33

[1969-33]



New South Wales

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Police Association Employees (Superannuation) Act 1969 No 33



New South Wales

An Act to provide for certain employees of the Police Association of New South Wales and certain other persons to receive payments out of the Police Superannuation Fund; for this purpose to amend the *Police Regulation Act 1899* and the *Police Regulation (Superannuation) Act 1906*; and for purposes connected therewith.

1 Name of Act

This Act may be cited as the *Police Association Employees (Superannuation) Act 1969*.

2 Definitions

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

Association means the Police Association of New South Wales.

executive officer means an employee of the Association whom the Association has appointed or designated as an executive officer of the Association.

Fund means the Police Superannuation Fund.

member of the police force means a member of the NSW Police Force other than the Commissioner of Police.

salary of office:

(a) in relation to an employee of the Association who is not an executive officer—has the meaning set out in section 1 (2) of the *Police Regulation (Superannuation) Act 1906*, or

(b) in relation to an executive officer—has the meaning set out in section 2B.

spouse of a prescribed person (within the meaning of section 3) who has died means the surviving spouse of the prescribed person.

STC means the SAS Trustee Corporation continued under the *Superannuation*

Administration Act 1996.

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

(2) (Repealed)

2A Act applies only to contributors to Police Superannuation Fund

This Act applies to and in respect of a member of the police force who transfers to the employment of the Association only if the member was a contributor to the Fund immediately before the transfer.

2B 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 Association by an executive officer, on, or as soon as practicable after, being appointed or designated as an executive officer. An amount may also be nominated to the Association 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 the executive officer fails to nominate an amount of salary within 28 days of first being appointed or designated 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 Association 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 Association elect to increase the amount of salary nominated under this section,

but not so as to increase the amount nominated by a percentage of that amount that is more than the percentage by which the remuneration package of the officer has increased since the amount of salary was last nominated or changed.

- (7) **Nominations and elections** The Association 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 to the Association a new amount of salary in accordance with this section if, immediately before the commencement of this subsection, the officer was an executive officer.

3 Employees of Association transferring from employment as police officers

(1)

- (a) Where, after the commencement of this Act, any person resigns his or her office as a member of the police force and:
- (i) transfers without break in service to the employment of the Association,
 - (ia) has not made provision for a benefit under section 9B of the *Police Regulation (Superannuation) Act 1906* (Preserved benefit), and
 - (ii) has, before he or she so resigns, requested the Minister by notice in writing that the provisions of section 17 (1) of the *Police Regulation (Superannuation) Act 1906* not apply to him or her,
- the provisions of this section shall have effect in respect of that person (who is in this section referred to as **the prescribed person**).
- (b) Without affecting the generality of paragraph (a), a person shall for the purposes of that paragraph be deemed to have transferred without break in service to the employment of the Association if, after the commencement of this Act, he or she resigns his or her office as a member of the police force and on the working day of the Association next following the date on which his or her resignation takes effect commences in the employment of the Association.
- (c) The provisions of section 17 (1) of the *Police Regulation (Superannuation) Act*

[1906](#) shall not apply to the prescribed person.

(2) STC may, subject to this section, approve the payment of:

(a) such annual superannuation allowance to the prescribed person, or

(b) such gratuity to the prescribed person, or to or on behalf of some other person,

(as the case requires) out of the Fund as would be payable to the prescribed person or to that other person under section 7, 7AA, 8A, 9B, 12F, 12G, 13 or 14 of the [Police Regulation \(Superannuation\) Act 1906](#) if the prescribed person had been a member of the police force and if the prescribed person or that other person had been eligible for that allowance or gratuity.

(2AA) The granting of approval under subsection (2) is subject to:

(a) the payment, in such manner as STC may direct, by the prescribed person into the Fund of sums equivalent to the deductions that would have been made from that person's salary of office under section 5 of the [Police Regulation \(Superannuation\) Act 1906](#) and the amounts that would have been required to be paid into the Fund under section 5A of that Act if that person had not resigned office as a member of the police force, and

(b) the payment, in such manner as STC directs, by the Association into the Fund of employer contributions in respect of that person, and

(c) in the case of a benefit of a kind payable under section 12F or 12G of that Act, compliance with any applicable requirements of any regulations made under section 12H of that Act.

(2AB) In subsection (2AA) (b), the reference to employer contributions is a reference to the amounts that STC, on actuarial advice, determines to be the Association's liability, for the period to which the payment relates, to contribute towards the provision of superannuation benefits for the prescribed person.

(2AC) Section 5AD of the [Police Regulation \(Superannuation\) Act 1906](#) applies, with any necessary modifications, in respect of an amount required to be paid under subsection (2AA) (a) by the prescribed person in the same way as it applies to an amount required to be deducted under section 5 of that Act.

(2A) Where the superannuation allowance of a retired member of the police force under section 7 or 7AA of the [Police Regulation \(Superannuation\) Act 1906](#) is increased or reduced, any superannuation allowance that would be payable under subsection (2) to the prescribed person had he or she been that member shall be increased or reduced, as the case may be, to the same extent.

(2B) For the purpose of the application of section 8A of the [Police Regulation](#)

(Superannuation) Act 1906 to the prescribed person:

- (a) STC may offer the prescribed person a disengagement benefit under that section if the prescribed person is retrenched (within the meaning of the *State Authorities Superannuation Act 1987*), and
- (b) subsections (2), (5), (6), (7) and (9) of that section apply, and the other provisions of that section do not apply, to the prescribed person.

(3) (Repealed)

(4) Subject to this section, service by the prescribed person as a member of the police force, as well as service by him or her as an employee of the Association, shall be taken into account for calculating any annual superannuation allowance or gratuity under subsection (2).

(5) Where the prescribed person resigns or is dismissed or discharged from the employment of the Association before he or she attains the age of sixty years and is not entitled to be granted a superannuation allowance or gratuity under this Act, there shall, irrespective of the cause of his or her resignation, dismissal or discharge, be paid to him or her from the Fund a lump sum equal to the difference between:

(a) the total amount of:

(i) the sums deducted under section 5, or deemed to have been deducted under section 5A, of the *Police Regulation (Superannuation) Act 1906* from the salary of office of the prescribed person before he or she resigned his or her office as a member of the police force, and

(ii) the sums (if any) paid by him or her under subsection (2AA) (a),

with the addition of interest on those amounts:

(iii) in the case of a prescribed person who resigned or was discharged (but not in the case of a prescribed person who was dismissed)—at the rate of 4.5 per cent per annum compounded on 30 June in each year of service of the prescribed person as an employee of the Association, and as a member of the police force, during the period beginning with 23 November 1984 and ending with 30 June 1990, and also compounded on the date of the resignation or discharge of the prescribed person from employment by the Association if it occurred during that period, and

(iv) in the case of all prescribed persons—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 service of the prescribed person as an employee of the Association, and as a member of the police force, from and including 1 July 1990, and also compounded on the date of the

resignation, dismissal or discharge of the prescribed person from employment by the Association if it occurred on or after 1 July 1990, and

- (b) any amount received by the prescribed person when he or she was a member of the police force or after he or she transferred to the employment of the Association as pension or gratuity before his or her resignation, dismissal or discharge from the Association.

The amount payable to the prescribed person under this subsection shall not be less than the total amount of sums so deducted or so paid since any amount was last received by him or her under the *Police Regulation (Superannuation) Act 1906*, or under this Act, as pension or gratuity.

(5A) For the purposes of subsection (5) (a) (iv):

- (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 sum referred to in subsection (5) (a) that was deducted or paid before that day shall be deemed to have been deducted or paid on that day, and
- (b) interest on sums deducted or paid at different times during the period in respect of which the interest is to be calculated shall, subject to subsection (5) (a) (iv), be calculated in a manner determined by STC.

(6) Where the prescribed person:

- (a) has resigned or retired, or has been dismissed or discharged, from the employment of the Association before he or she attained the age of sixty years,
- (b) has received any amount of payment under subsection (2) or (5), and
- (c) is thereafter re-employed by the Association,

he or she shall not be entitled by virtue of this Act to claim any further benefit from the Fund in respect of his or her previous service in the police force or employment by the Association unless that amount is repaid into the Fund before the expiration of the period of 6 months immediately after his or her re-employment by the Association.

(6A) Where the prescribed person dies:

- (a) on or after the day appointed and notified under section 2 (2) of the *Police Regulation (Superannuation) Amendment Act 1984*, and
- (b) before the prescribed person's employment by the Association ceases,

and there is no person to whom a superannuation allowance or gratuity is payable under this Act in respect of the death of the prescribed person, the prescribed person shall be deemed to have resigned from the employment of the Association

immediately before the prescribed person's death and the amount payable under subsection (5) shall be paid by STC to the prescribed person's personal representatives or, where the prescribed person has no personal representatives, to such persons as STC may determine.

- (7) Subject to subsection (4), section 9A of the *Police Regulation (Superannuation) Act 1906* applies to and in respect of the prescribed person in the same way as it applies to and in respect of a member of the police force.
- (7A) Section 9C of the *Police Regulation (Superannuation) Act 1906* applies to a benefit payable to or in respect of a prescribed person.
- (7B) Section 9B of the *Police Regulation (Superannuation) Act 1906* applies to a person who becomes entitled to a lump sum benefit under subsection (5) as if the person had been a member of the police force and:
- (a) in the case of a person who has reached the age of 55 years or more at the time of entitlement—as if the person had been entitled to a superannuation allowance under section 7AA of that Act, or
 - (b) in the case of a person under the age of 55 years at the time of entitlement—as if the person had been entitled to a payment under section 17 of that Act.
- (8)
- (a) No annual superannuation allowance that would be payable under section 7 of the *Police Regulation (Superannuation) Act 1906* shall be granted under subsection (2) to the prescribed person if he or she ceases to be employed by the Association while under the age of sixty years, unless STC (having regard to medical advice on the condition and fitness for employment of the prescribed person) has certified the prescribed person to be incapable, from infirmity of body or mind, to perform his or her duties as an employee of the Association.
 - (b) No gratuity shall be granted under subsection (2) to the prescribed person, unless he or she is certified by STC to be unfit for service as such an employee.
 - (c) In this subsection:
 - medical advice** means the advice of:
 - (i) 2 members of the Police Medical Board established under the *Police Regulation (Superannuation) Act 1906*, or
 - (ii) any one or more medical practitioners nominated by STC.
- (8A) A superannuation allowance granted to the prescribed person under subsection (2) may be commuted, in accordance with Division 3 of Part 4 of the *Police Regulation (Superannuation) Act 1906*, as if it were a superannuation allowance payable to a

member of the police force under that Act.

(9) If the prescribed person dies:

(a) after attaining the age of 60 years but before the person's employment by the Association ceases, or

(b) after the person's employment by the Association ceases but before an annual superannuation allowance is granted to the person under subsection (2),

an annual superannuation allowance equivalent to 62.5 per cent of the annual superannuation allowance which would have been payable to the person is payable to the person's surviving spouse or de facto partner.

Note—

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

(9A) A person's spouse or de facto partner is entitled to an allowance under subsection (9) only if he or she was the person's spouse or de facto partner when the person attained the age of 60 years or when the person died (whichever occurred first).

(10) If the prescribed person dies after an annual superannuation allowance has been granted to the person under subsection (2) and he or she is survived by a spouse or de facto partner who was his or her spouse or de facto partner at:

(a) the date when the allowance was granted if the allowance was granted to the prescribed person before he or she attained the age of 60 years, or

(b) the date when the prescribed person attained the age of 60 years if the allowance was granted to the prescribed person after he or she attained that age,

an annual superannuation allowance equivalent to 62.5 per cent of the annual superannuation allowance received by or payable to the prescribed person is payable to the surviving spouse or de facto partner.

(10AA) If a prescribed person to whom a superannuation allowance has been granted under subsection (2) dies on or after the commencement of Schedule 1.3 [1] to the [Superannuation Legislation Amendment Act 1997](#) and he or she is survived by a spouse or de facto partner:

(a) who was his or her spouse or de facto partner at the date when the allowance was granted, if the allowance was granted (whether because of disablement or otherwise) to the prescribed person before he or she attained the age of 60 years, or

(b) who was his or her spouse or de facto partner at the date when the prescribed person attained the age of 60 years, if the allowance was granted (whether because of disablement or otherwise) to the prescribed person after he or she

attained the age of 60 years, or

- (c) who had been the spouse or de facto partner of the prescribed person for at least the preceding 3 years and became the spouse or de facto partner of the prescribed person before he or she attained the age of 60 years, if the allowance was granted because of disablement,

an annual superannuation allowance equivalent to 62.5 per cent of the annual superannuation allowance received by or payable to the prescribed person is payable to the spouse or de facto partner.

- (10A) Where, but for the person's death, the superannuation allowance received by, or payable to, the prescribed person would have been increased or reduced, the superannuation allowance payable to the person's spouse or de facto partner pursuant to subsection (10) or (10AA) shall be increased or reduced, as the case may be, to an amount equivalent to 62.5 per cent of the superannuation allowance that would have been received by, or payable to, that prescribed person, had the person not died.

- (11) An annual superannuation allowance payable to a spouse or de facto partner under subsection (9) or (10) or (10AA) is suspended during any period he or she is married.

- (11A) Where an annual superannuation allowance which is suspended by reason of subsection (11) would have been increased or reduced, as the case may require, pursuant to this Act but for the enactment of subsection (11), the allowance shall be so increased or reduced, but nothing in this subsection operates so as to authorise or require the payment of the allowance or any part thereof during the period it is so suspended.

- (11B) Where, but for this subsection, a spouse or de facto partner would be entitled:

- (a) to more than 1 annual superannuation allowance under subsection (9) or (10) or (10AA), or
- (b) to an annual superannuation allowance under subsection (9) or (10) or (10AA) and to an annual superannuation allowance under section 11A or 12 of the *Police Regulation (Superannuation) Act 1906*,

the spouse or de facto partner shall be entitled to only 1 of those allowances, being (where they are not equal) the greater or greatest of them.

- (11C), (11D) (Repealed)

- (11E) An annual superannuation allowance is not payable under this section as the consequence of the death of the prescribed person if the prescribed person commuted under subsection (8A) a superannuation allowance payable to the prescribed person under this section.

- (12) Where the prescribed person has commenced to pay into the Fund the sums referred to in subsection (2) (a), the person shall not contribute to or be entitled to receive any benefit from any retirement gratuity or provident fund established by the Association and to which the Association is or is to be a contributor.
- (13) Section 18B of the *Police Regulation (Superannuation) Act 1906* applies to and in respect of a prescribed person in the same way as it applies to and in respect of a member of the police force.
- (14) Part 3B of the *Police Regulation (Superannuation) Act 1906* applies, with any necessary modifications, to a prescribed person in respect of whom the requirements of subsection (2AA) are met in the same way as it applies to a contributor under that Act and for that purpose the following provisions have effect:
- (a) a conversion benefit is payable, in accordance with that Part, in respect of a prescribed person who makes a conversion election under that Part as so applied (the **applied Part**),
 - (b) service by the prescribed person as a member of the police force, as well as service by the prescribed person as an employee of the Association, is to be taken into account for the purpose of calculating the conversion benefit payable under the applied Part,
 - (c) a prescribed person who makes a conversion election, or any one else who would otherwise be a beneficiary under this Act through the prescribed person, is not entitled to a benefit under any provision of this Act after the conversion election takes effect, other than a conversion benefit,
 - (d) the conversion benefit is to be paid in accordance with the applied Part,
 - (e) sections 5K and 5L of the *Police Regulation (Superannuation) Act 1906* apply in respect of the Treasurer, STC, FTC, the FTC Board, the STC Board and other persons referred to in those sections in relation to the applied Part, and anything done or omitted to be done under the applied Part.

3A Provisions relating to family law superannuation legislation

- (1) Part 4A of the *Police Regulation (Superannuation) Act 1906* and any regulations made under that Part apply, with any necessary modifications, to or in respect of a prescribed person or any other person receiving a benefit under this Act in the same way as they apply to or in respect of a contributor spouse within the meaning of that Part.
- (2) For the purposes of this section, the following provisions have effect:
- (a) a reference to a non-contributor spouse in that Part or those regulations includes a reference to a spouse (within the meaning of that Part) of a prescribed person or

other person receiving a benefit under this Act,

- (b) a reference to a superannuation interest of a contributor spouse in that Part or those regulations includes a reference to a superannuation interest of a person arising under this Act,
- (c) a reference to a condition for payment or release of a benefit in that Part or those regulations includes a reference to a condition for payment or release of a benefit that is applicable under this Act,
- (d) a reference in that Act to administration costs or fees arising under that Part in relation to a contributor spouse includes a reference to costs or fees arising in relation to a person to whom that Part applies because of this section.

4 Competing claims for spouses' or de facto partners' benefits

- (1) This section applies to a superannuation allowance under this Act which is payable to the spouse or de facto partner of a prescribed person (within the meaning of section 3) who has died.
- (2) If a superannuation allowance would be payable to more than one person because a prescribed person, who has died, has left more than one spouse or de facto partner, then, despite any other provision of this Act:
 - (a) the allowance is payable in accordance with a determination made by STC, and not otherwise, and
 - (b) the total amount of allowance 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:
 - (a) that the allowance is not payable to such of the persons concerned as it specifies, or
 - (b) that the amount of the allowance is to be apportioned between the persons concerned in such manner as it specifies.
- (4) STC may withhold the payment of any part of a superannuation allowance:
 - (a) until 30 days after the death of the prescribed person in respect of which the allowance is payable, or
 - (b) if an application has been made for the allowance by more than one person, until it is satisfied that only one of those persons is entitled to the allowance 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 prescribed person, a superannuation allowance is paid in respect of any period to the spouse or de facto partner of the prescribed person, a superannuation allowance is not payable to any other spouse or de facto partner of the prescribed person in respect of that period.
- (6) For the purposes of subsection (5), an amount paid in good faith by STC to a person purporting to be the spouse or de facto partner of a prescribed person is taken to have been paid to the spouse or de facto partner of the prescribed person.
- (7) If, after 30 days from the death of a prescribed person, any amount is paid under this Act to the person's personal representatives or to such other persons as STC may determine, any superannuation allowance which is payable to the spouse or de facto partner of the prescribed person is to be reduced by the amount so paid.

5 Savings and transitional provisions

Schedule 1 has effect.

Schedule 1 Savings and transitional provisions

(Section 5)

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 1999

Superannuation Legislation Further Amendment Act 1999

Superannuation Legislation Amendment Act 2000

Superannuation Legislation Amendment (Same Sex Partners) Act 2000

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

Relationships Register 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 2 Superannuation Legislation (Further Amendment) Act 1993

2 Spouses' benefits

The amendments made by the *Superannuation Legislation (Further Amendment) Act 1993* do not entitle any spouse to benefits in respect of the death of a prescribed person occurring before 1 January 1994.

Part 3 Superannuation Legislation Amendment (Same Sex Partners) Act 2000

3 Definitions

In this Part:

amending Act means the *Superannuation Legislation Amendment (Same Sex Partners) Act 2000*.

conversion election by a prescribed person means an election made under Part 3B of the *Police Regulation (Superannuation) Act 1906*, as applied by section 3 (14) of this Act.

prescribed person means a prescribed person within the meaning of section 3 in respect of whom the requirements of section 3 (2AA) are met.

4 Spouse or de facto partner entitlements

- (1) The definitions of **de facto partner** and **spouse** inserted by the *Superannuation Legislation Amendment (Same Sex Partners) Act 2000* apply only to or in respect of prescribed persons 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 prescribed persons who die before the commencement of the amendment substituting the definition of **spouse**.

5 Revocation of conversion elections

- (1) Clauses 12 and 14–18 of Schedule 6 to the *Police Regulation (Superannuation) Act*

1906, and any arrangement entered into under that Part, apply, with any necessary modifications, to or in relation to a person who has made a conversion election under this Act in the same way as they apply to or in relation to a former contributor who has made a conversion election under that Act.

- (2) Without limiting subclause (1), an arrangement entered into under that Part may contain provisions modifying the arrangement for the purpose of its application to a prescribed person.
- (3) Clauses 19 and 20 of that Schedule apply in respect of STC, FTC, the STC Board, the FTC Board and other persons referred to in those clauses in relation to the applied clauses of that Schedule, and anything done or omitted to be done under the applied clauses or an arrangement, or proposed arrangement, under the applied clauses, in the same way as they apply to STC, FTC, the STC Board, the FTC Board and other persons in respect of anything done or omitted to be done as referred to in clauses 19 and 20 of that Schedule.

Part 4 Relationships Register Act 2010

6 De facto partner entitlements

- (1) The amendment to section 2 (1) made by the *Relationships Register Act 2010* applies only to or in respect of prescribed persons 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 prescribed persons who die before that commencement.