

Aware Super Act 1992 No 100

[1992-100]



New South Wales

Status Information

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Provisions in force

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

Notes—

- **Previously named**
First State Superannuation Act 1992

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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Aware Super Act 1992 No 100



New South Wales

An Act to provide for employer contributions to superannuation for certain employees in the public sector; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Aware Super Act 1992*.

2 Commencement

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

3 Definitions

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

4 Meaning of “salary or wages”

(1) For the purposes of this Act, the **salary or wages** of an employee is—

(a) in the case of an employee who is not an executive officer, the total of—

(i) earnings in respect of ordinary hours of work, and

(ii) earnings consisting of over-award payments, shift-loading or commission, and

(iii) allowances and other payments of a kind prescribed by the regulations for the purposes of this subsection, and

(iv) if employment benefits of a kind prescribed by the regulations for the purposes of this subsection are provided to the employee, the cost of providing the employment benefits, or

(b) in the case of an employee who is an executive officer, the salary or wages as last nominated or changed in accordance with this section.

(1A) A regulation made for the purposes of subsection (1) (a) (iii) or (iv)—

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

or on such other date as the trustee may determine with the consent of the employee concerned.

(9) Nothing in this section requires the nominated amount of salary or wages to be increased if, because of a variation in the remuneration package of an employee or in the proportions of the remuneration package comprising monetary remuneration and employment benefits of the employee, the amount of salary or wages as last nominated or changed for the purposes of this section is less than the monetary remuneration of the employee.

(10) In this section—

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

trustee means the trustee of the superannuation scheme or approved deposit fund, or the provider of the retirement savings account, to which the compulsory employer superannuation contributions are payable.

5 Notes

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

Part 2 Compulsory employer superannuation contributions

6 Employers to whom Act applies

(1) The employers to whom this Act applies are—

- (a) the Crown, the Government or a Minister or other member of Parliament, and
- (b) the authorities specified in Schedule 1.

(2) Members of the NSW Police Force are, for the purposes of this Act, taken to be employed in the NSW Police Force by the Crown.

(3) An employee who is employed by the Crown, the Government or a Minister or other member of Parliament is, for the purposes of this Act, taken to be employed by the person or organisation prescribed by the regulations for the purposes of this section.

7 Employers may be changed

(1) The Governor may, by order published on the NSW legislation website, amend Schedule 1.

(2) An order under this section, and any order revoking or varying such an order, may be made—

- (a) to take effect on and from a day specified in the order, whether or not the day is

earlier than the day of publication of the order, and

- (b) to effect the amendment to which it relates with such limitations as are specified in the amendment.

8 Compulsory employer superannuation contributions

- (1) An employer must make, for each employee (other than an excluded employee), a superannuation contribution equivalent to the salary contribution percentage for the employee for each financial year, or part, for which the employee is an employee.
- (2) The salary contribution percentage for a person, in relation to a financial year referred to in Column 1 in the table to this subsection, is the percentage of the salary or wages of the person specified in Column 2 for that financial year.

Column 1 Year	Column 2 Percentage
Year starting on 1 July 2013	9.25
Year starting on 1 July 2014	9.5
Year starting on 1 July 2015	10
Year starting on 1 July 2016	10.5
Year starting on 1 July 2017	11
Year starting on 1 July 2018	11.5
Year starting on or after 1 July 2019	12

- (2A) The regulations may prescribe a period or a percentage to replace, or in addition to, any period or percentage in the table to subsection (2) to reflect any changes to the superannuation guarantee charge percentage prescribed by section 19 (2) of the relevant Commonwealth legislation.
- (2B) When a period or percentage is prescribed under subsection (2A), it applies for the purposes of subsection (2) in place of the period or percentage that it replaces or (if additional) as if it formed part of the table to that subsection.
- (3) An employer is not required to make a contribution in respect of an employee if, in order to be consistent with any relevant Commonwealth superannuation standard, a superannuation fund must not accept contributions in respect of the employee.
- (4) Nothing in this section prevents an employer from making superannuation contributions in addition to those required by this section in respect of employees.
- (5) Subsection (1) does not apply in relation to—

- (a) an employee to whom an employer pays a total salary or wages in any month, including any amount payable under subsection (6), that is less than the amount prescribed by section 27 (2) of the relevant Commonwealth legislation, or
- (b) an employee to whom section 27 (1) (a) of the relevant Commonwealth legislation applies,

in relation to employment of a kind prescribed by the regulations.

- (6) Where subsection (1) does not apply, the employer must pay to the employee an amount equivalent to the superannuation contribution that would have been payable but for the operation of subsection (5).
- (7) The amount payable under subsection (6) is in addition to any salary or wages payable to the employee.
- (8) In this section, **relevant Commonwealth legislation** means the [Superannuation Guarantee \(Administration\) Act 1992](#) of the Commonwealth.

Note—

The amount prescribed by section 27 (2) of the relevant Commonwealth legislation is \$450. Section 27 (1) (a) of the relevant Commonwealth legislation provides that the salary or wages of an employee who is aged 70 or over is to be excluded from the calculation of the superannuation guarantee shortfall under the relevant Commonwealth legislation.

9 Payment of compulsory employer superannuation contributions

- (1) An employer must pay the compulsory employer superannuation contribution for an employee to—
 - (a) the Fund, or
 - (b) if a nomination is in force under this section, the nominated complying superannuation fund, complying approved deposit fund or retirement savings account.
- (2) An employee may, by written notice to the employer, nominate a complying superannuation fund other than the Fund or a complying approved deposit fund or a retirement savings account as the fund or account to which the compulsory employer superannuation contribution is to be paid.
- (3) An employee may, by written notice to the employer, revoke or vary a nomination under this section at any time.

10 Excluded employees

- (1) The compulsory employer superannuation contribution is not payable for the following employees—

- (a) an employee who is a contributor to or a member of an STC scheme (within the meaning of the *Superannuation Administration Act 1996*) in respect of the same contract of employment,
 - (b) an employee who is a Judge within the meaning of the *Judges' Pensions Act 1953*, a master within the meaning of the *Supreme Court Act 1970*, the Solicitor General or the Director of Public Prosecutions,
 - (c) an employee who, while receiving salary or wages for work done outside Australia, is not treated as a resident of Australia for the purposes of the *Income Tax Assessment Act 1936* of the Commonwealth.
- (2) Subsection (1) (a) does not apply to an employee who has preserved a benefit in an STC scheme, or is entitled to a deferred accrued benefit under the *State Authorities Non-contributory Superannuation Act 1987*, and who is not otherwise a participant in any such scheme.

11 Certain employees may elect to have compulsory employer superannuation contributions cease where pension RBL exceeded

- (1) An employee may give his or her employer a written notice requiring the employer to cease to make the compulsory employer superannuation contribution in respect of the employee.
- (2) The notice may be given only if it is accompanied by the statements referred to in section 19 (4) (b) of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth.
- (3) A notice given under this section is irrevocable.
- (4) An employer who is given a notice under this section—
 - (a) must comply with it, and
 - (b) is not required to make the compulsory employer superannuation contribution in respect of the employee concerned.

12 Contributions for employees who fund their own superannuation

- (1) This section applies to an employee, other than an executive officer, who is employed under a contract under which contributions made by the employer to the employee's superannuation form part of the total remuneration package of the employee and are deducted from the monetary remuneration otherwise payable to the employee.
- (2) An employee to whom this section applies may give his or her employer a written notice requiring the employer to cease to make the compulsory employer superannuation contribution in respect of an amount of salary or wages of the employee that exceeds the maximum contribution base.

- (3) An employer who is given such a notice—
 - (a) must comply with it, and
 - (b) is not required to make the compulsory employer superannuation contribution in respect of that part of the salary or wages of the employee that exceeds the maximum contribution base, as applicable from time to time.
- (4) A notice given under this section may be revoked by the employee by further written notice given to the employer.
- (5) If the notice is revoked, the employer is required to resume making the compulsory employer superannuation contribution in respect of that part of the salary or wages of the employee that exceeds the maximum contribution base in the financial year that commences after the notice of revocation is given to the employer.

Part 3 Miscellaneous

13 Removal of employers from Act

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

14 Trust deed to continue previous firefighter disability arrangements

- (1) The trust deed or rules made under the trust deed must make provision for or with respect to the continuation of arrangements, in force immediately before the registration day for FTC, relating to the payment of amounts from the Fund in respect of death or incapacity benefits under the firefighters award, and the subsequent reduction or application of benefits, and other ancillary matters.
- (2) Provision made for the purposes of this section may be in general or particular terms and may be by means of special arrangements permitted to be entered into under the trust deed or rules under the trust deed.
- (3) Nothing in this section requires the continuation of any arrangement at any time after the relevant provisions of the firefighters award cease to have effect.
- (4) Nothing in this section requires the trust deed or rules under the trust deed to make provision for or with respect to a matter that is inconsistent with the [Superannuation Industry \(Supervision\) Act 1993](#) of the Commonwealth or any regulations or other instruments made under that Act.
- (5) In this section—

death or incapacity benefit means a benefit payable to or in respect of a firefighter

under the firefighters award if—

- (a) the firefighter dies, or
- (b) the firefighter suffers total and permanent incapacity or partial and permanent incapacity.

firefighter means—

- (a) a member of the permanent fire brigade, or
- (b) a member of a retained fire brigade,

under the *Fire and Rescue NSW Act 1989*.

firefighters award means the *Crown Employees (NSW Fire Brigades Firefighting Staff Death and Disability) Award 2003*.

registration day for FTC means the day on which FTC is taken to be registered as a proprietary company limited by shares for the purposes of section 5H of the *Corporations Act 2001* of the Commonwealth.

15 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) In particular, the regulations may make provision for or with respect to the manner in which notices under this Act are to be given.

16 Savings, transitional and other provisions

Schedule 3 has effect.

17 Review of Act

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

Schedule 1 Employers

(Sections 6 and 7)

A Public Service agency within the meaning of the *Government Sector Employment Act 2013*

NSW Police Force

Health Administration Corporation

Water Administration Ministerial Corporation

Sydney Water Corporation

Hunter Water Corporation

Australian Museum Trust

TransGrid (limited to those employees—

(a) who were, on 1 July 1997, employees referred to in clause 6 (2), (4) or (5) of the *Superannuation Administration (Electricity Superannuation Scheme Transitional Provisions) Regulation 1997*, or

(b) who became employees after 1 July 1997 and before the commencement of the *First State Superannuation (Local Government and Energy Employers) Order 2002*)

The Corporation constituted under the *Superannuation Administration Authority Corporatisation Act 1999*

FSS Trustee Corporation

SAS Trustee Corporation

New South Wales Treasury Corporation

Judicial Commission

Independent Commission Against Corruption

A corporation constituted under the *Growth Centres (Development Corporations) Act 1974*

Clann Limited

Homebush Bay Ministerial Corporation

Hunter Valley Catchment Management Trust

Justice and Police Museum Limited

Waste Recycling and Processing Corporation

New South Wales Film and Television Office

The Trustees of the Anzac Memorial Building

Garvan Institute of Medical Research (limited to those persons—

(a) who were employees of that Institute immediately before 6 March 1998, and

(b) who were members of the Fund immediately before that date)

The New South Wales Teachers' Federation

Public Service Association of New South Wales

Australian Transport Officers Federation (New South Wales Division)

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

Australian Railways Union

The Australian Tramway and Motor Omnibus Employees' Association

Australian Federated Union of Locomotive Enginemen

Police Association of New South Wales

Trustees of Arakoon State Conservation Area

Trustees of Bent's Basin State Conservation Area

Trustees of Burrendong State Conservation Area

Trustees of Burrinjuck State Conservation Area

Trustees of Copeton State Conservation Area

Trustees of Lake Glenbawn State Conservation Area

Trustees of Grabine State Conservation Area

Trustees of Killalea State Conservation Area

Trustees of Lake Keepit State Conservation Area

Trustees of Wyangala State Conservation Area

Sydney Opera House Trust

Wentworth Park Trust

Zoological Parks Board of New South Wales

Roads and Maritime Services

State Transit Authority

The Hills Centre Limited (limited to those employees—

(a) who were, on 1 July 1997, employees referred to in clause 6 (2), (4) or (5) of the [Superannuation](#)

Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997, or

(b) who became employees after 1 July 1997 and before the commencement of the *First State Superannuation (Local Government and Energy Employers) Order 2002)*

Parramatta Park Reserve Trust

Parramatta Stadium Trust

Ambulance Service of New South Wales

New South Wales Lotteries Corporation

Technical and Further Education Commission

The Wild Dog Destruction Board

Audit Office

Lord Howe Island Board

New South Wales Casino Control Authority

Burrendong Arboretum Trust

Government Pricing Tribunal of New South Wales

Financial Institutions Commission (limited to those persons—

(a) who, being members of the Fund, were employed in the Registry of Co-operatives, Department of Local Government and Co-operatives, immediately before the transfer date specified in the order by which their employment was transferred to that Commission in accordance with clause 3 of Schedule 3 to the *Financial Institutions Commission Act 1992*, and

(b) who did not cease to be members of the Fund by that date)

Public Transport Union NSW Branch (limited to—

(a) persons who were employed by the Public Transport Union NSW Branch and were members of the Fund on 1 March 1993, and

(b) persons who have become employed by that Branch after that date and who were members of the Fund immediately before they became so employed)

Sydney Organising Committee for the Olympic Games

New South Wales Aboriginal Land Council

Hawkesbury-Nepean Catchment Management Trust

Newcastle Port Corporation

Port Kembla Port Corporation

Sydney Ports Corporation

Maritime Authority of NSW

Port Macquarie Base Hospital (limited to those persons—

(a) who were, immediately before 2 November 1994—

(i) employees of Hastings District Hospital, Port Macquarie, and

(ii) full or optional members of the First State Superannuation Fund, and

(b) who, on that date—

(i) transferred their employment to Port Macquarie Base Hospital, and

(ii) did not cease to be members of that Fund)

Great Southern Energy (limited to those employees—

(a) who were, on 1 July 1997, employees referred to in clause 6 (2), (4) or (5) of the *Superannuation Administration (Electricity Superannuation Scheme Transitional Provisions) Regulation 1997*, or

(b) who became employees after 1 July 1997 and before the commencement of the *First State Superannuation (Local Government and Energy Employers) Order 2002*)

Delta Electricity

Macquarie Generation

Advance Energy (limited to those employees—

(a) who were, on 1 July 1997, employees referred to in clause 6 (2), (4) or (5) of the *Superannuation Administration (Electricity Superannuation Scheme Transitional Provisions) Regulation 1997*, or

(b) who became employees after 1 July 1997 and before the commencement of the *First State Superannuation (Local Government and Energy Employers) Order 2002*)

Australian Inland Energy Water Infrastructure (limited to those employees—

(a) who were, on 1 July 1997, employees referred to in clause 6 (2), (4) or (5) of the *Superannuation Administration (Electricity Superannuation Scheme Transitional Provisions) Regulation 1997*, or

(b) who became employees after 1 July 1997 and before the commencement of the *First State Superannuation (Local Government and Energy Employers) Order 2002*)

EnergyAustralia (limited to those employees—

(a) who were, on 1 July 1997, employees referred to in clause 6 (2), (4) or (5) of the *Superannuation Administration (Electricity Superannuation Scheme Transitional Provisions) Regulation 1997*, or

(b) who became employees after 1 July 1997 and before the commencement of the *First State Superannuation (Local Government and Energy Employers) Order 2002*)

Integral Energy Australia (limited to those employees—

- (a) who were, on 1 July 1997, employees referred to in clause 6 (2), (4) or (5) of the *Superannuation Administration (Electricity Superannuation Scheme Transitional Provisions) Regulation 1997*, or
- (b) who became employees after 1 July 1997 and before the commencement of the *First State Superannuation (Local Government and Energy Employers) Order 2002*)

NorthPower (limited to those employees—

- (a) who were, on 1 July 1997, employees referred to in clause 6 (2), (4) or (5) of the *Superannuation Administration (Electricity Superannuation Scheme Transitional Provisions) Regulation 1997*, or
- (b) who became employees after 1 July 1997 and before the commencement of the *First State Superannuation (Local Government and Energy Employers) Order 2002*)

Hawkesbury District Health Service Limited (limited to persons—

- (a) who were, immediately before 7 August 1996, employees of the Hawkesbury District Hospital, Windsor and full or optional members of the First State Superannuation Fund, and
- (b) who, on that date, transferred their employment to Hawkesbury District Health Service Limited and did not cease to be members of that Fund)

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

Olympic Roads and Transport Authority

Australian Prudential Regulation Authority (limited to those persons—

- (a) who, being members of the Fund or the State Authorities Superannuation Fund or the State Superannuation Fund, were employed by the Financial Institutions Commission immediately before they became employees of the Authority under section 32 of the *Financial Sector Reform (New South Wales) Act 1999*, and
- (b) who did not cease to be members of the State Authorities Superannuation Fund or the State Superannuation Fund before they became employees of the Authority)

Police Integrity Commission

Eraring Energy

New South Wales Institute of Sport

Parramatta Rail Link Company Pty Limited

Catholic Health Care Services Limited (limited to those persons—

- (a) who were employed at the Bodington Hospital, Wentworth Falls, immediately before 1 September 2001, or
- (b) who were employed at Lourdes Hospital and Community Health Service immediately before 9 August 2004 and who, on or after that date, transferred their employment to Holy Spirit Dubbo, or

- (c) who were employees of Mid Western Area Health Service immediately before 1 October 2004 and transferred their employment to Macquarie Care Centre, Bathurst, on that date)

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

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

Landcom

Pacific National (NSW) Pty Ltd (limited to those persons who were, immediately before 21 February 2002, employees of the Freight Rail Corporation)

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

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

- (a) who were employees referred to in clause 6 (2), (4) or (5) of the [Superannuation Administration \(Local Government Superannuation Scheme Transitional Provisions\) Regulation 1997](#), or
- (b) who became employees after 1 July 1997 and before the commencement of the [First State Superannuation \(Local Government and Energy Employers\) Order 2002](#), not being employees referred to in clause 11 of the [Superannuation Administration \(Local Government Superannuation Scheme Transitional Provisions\) Regulation 1997](#))

A livestock health and pest authority constituted under the [Rural Lands Protection Act 1998](#)

The NSW Local Government Industry Training Committee Incorporated

Local Government Association of New South Wales (limited to those employees—

- (a) who were employees referred to in clause 6 (2), (4) or (5) of the [Superannuation Administration \(Local Government Superannuation Scheme Transitional Provisions\) Regulation 1997](#), or
- (b) who became employees after 1 July 1997 and before the commencement of the [First State Superannuation \(Local Government and Energy Employers\) Order 2002](#), not being employees referred to in clause 11 of the [Superannuation Administration \(Local Government Superannuation Scheme Transitional Provisions\) Regulation 1997](#))

Shires Association of New South Wales (limited to those employees—

- (a) who were employees referred to in clause 6 (2), (4) or (5) of the [Superannuation Administration \(Local Government Superannuation Scheme Transitional Provisions\) Regulation 1997](#), or
- (b) who became employees after 1 July 1997 and before the commencement of the [First State Superannuation \(Local Government and Energy Employers\) Order 2002](#), not being employees referred to in clause 11 of the [Superannuation Administration \(Local Government Superannuation Scheme Transitional Provisions\) Regulation 1997](#))

Electricity Association of New South Wales (limited to those employees—

- (a) who were, on 1 July 1997, employees referred to in clause 6 (2), (4) or (5) of the *Superannuation Administration (Electricity Superannuation Scheme Transitional Provisions) Regulation 1997*, or
- (b) who became employees after 1 July 1997 and before the commencement of the *First State Superannuation (Local Government and Energy Employers) Order 2002*)

Health Services Association of New South Wales

Institute of Municipal Management (limited to those employees—

- (a) who were, on 1 July 1997, employees referred to in clause 6 (2), (4) or (5) of the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997*, or
- (b) who became employees after 1 July 1997 and before the commencement of the *First State Superannuation (Local Government and Energy Employers) Order 2002*)

New South Wales Nurses and Midwives' Association

State Sports Centre Trust

Venues NSW

Australian Health Management Group Pty Limited (formerly known as Government Employees Health Club, Government Employees Health Fund Limited and Australian Health Management Group Limited)
Keep Australia Beautiful
Sydney Credit Union



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

Waverley-Woollahra Destruction Committee (limited to those employees—

- (a) who were employees referred to in clause 6 (2), (4) or (5) of the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997*, or
- (b) who became employees after 1 July 1997 and before the commencement of the *First State Superannuation (Local Government and Energy Employers) Order 2002*, not being employees referred to in clause 11 of the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997*)

Richmond-Tweed Regional Library (limited to those employees—

- (a) who were employees referred to in clause 6 (2), (4) or (5) of the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997*, or
- (b) who became employees after 1 July 1997 and before the commencement of the *First State Superannuation (Local Government and Energy Employers) Order 2002*, not being employees referred to in clause 11 of the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997*)

Richmond-Upper Clarence Regional Library (limited to those employees—

- (a) who were employees referred to in clause 6 (2), (4) or (5) of the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997*, or
- (b) who became employees after 1 July 1997 and before the commencement of the *First State Superannuation (Local Government and Energy Employers) Order 2002*, not being employees referred to in clause 11 of the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997*)

Health Services Union, being the authority registered under that name on 1 October 2003 as a State industrial organisation of employees under Chapter 5 of the *Industrial Relations Act 1996*

Northern Area Regional Organisation of Councils (limited to those employees—

- (a) who were employees referred to in clause 6 (2), (4) or (5) of the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997*, or
- (b) who became employees after 1 July 1997 and before the commencement of the *First State Superannuation (Local Government and Energy Employers) Order 2002*, not being employees referred to in clause 11 of the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997*)

Health and Building Surveyors Association of New South Wales (limited to those employees—

- (a) who were employees referred to in clause 6 (2), (4) or (5) of the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997*, or
- (b) who became employees after 1 July 1997 and before the commencement of the *First State Superannuation (Local Government and Energy Employers) Order 2002*, not being employees referred to in clause 11 of the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997*)

Federated Municipal and Shire Council Employees' Union of Australia, New South Wales Division (limited to those employees—

- (a) who were employees referred to in clause 6 (2), (4) or (5) of the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997*, or
- (b) who became employees after 1 July 1997 and before the commencement of the *First State Superannuation (Local Government and Energy Employers) Order 2002*, not being employees referred to in clause 11 of the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997*)

Rural Lands Protection Boards' Association of New South Wales

A public health organisation within the meaning of the *Health Services Act 1997*.

Trustees of the Roman Catholic Church for the diocese of Maitland-Newcastle (limited to those employees who were employed at St Joseph's Home, Sandgate, immediately before 11 October 2002).

Western Sydney Buses

POWMRI Limited (limited to those employees who were employees of the University of New South Wales immediately before 21 July 2003)

Healthscope Limited (limited to those employees who are contributors to the State Authorities Superannuation Scheme under the *State Authorities Superannuation Act 1987*)

Jenolan Caves Reserve Trust

Rail Corporation New South Wales

Independent Transport Safety and Reliability Regulator

Sydney Ferries

Cancer Institute (NSW)

Natural Resources Commission

Australian Rail Track Corporation Ltd (limited to those persons who—

- (a) become employees of Australian Rail Track Corporation Ltd on or after 1 June 2004 and not later than 31 December 2008, and
- (b) cease to be employed by Rail Infrastructure Corporation, RailCorp or the State Rail Authority not more than 30 days before being so employed, and
- (c) do not elect to cease to be contributors to the Fund within 30 days of commencing employment with Australian Rail Track Corporation Ltd).

National Office Products Ltd (limited to those persons—

- (a) who were—
 - (i) employed in the Q Stores business unit of the Department of Commerce, and
 - (ii) members of the Fund,immediately before 1 February 2005, and
- (b) who, on that date, transferred their employment to National Office Products Ltd and did not cease to be members of the Fund)

Calvary Retirement Community Cessnock Limited (limited to those persons—

- (a) who were employees of Hunter Area Health Service immediately before 2 April 2003, and
- (b) who, on or after that date, transferred their employment from Hunter Area Health Service to Calvary Retirement Community Cessnock Limited and did not cease to be members of the Fund)

Forestry Corporation

Infrastructure NSW

Local Government and Shires Association of New South Wales (limited to those employees—

- (a) who were employees of the former Local Government Association of New South Wales or Shires Association of New South Wales referred to in clause 6 (2), (4) or (5) of the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997*, or
- (b) who became employees of the former Local Government Association of New South Wales or Shires Association of New South Wales after 1 July 1997 and before the commencement of the *First State Superannuation (Local Government and Energy Employers) Order 2002*, not being employees referred to in clause 11 of the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997*)

Port Botany Operations Pty Limited (as trustee of the Port Botany Unit Trust), limited to those employees whose employment is transferred from Sydney Ports Corporation to Port Botany Operations Pty Limited (as trustee of the Port Botany Unit Trust) by order under section 16 of the *Ports Assets (Authorised Transactions) Act 2012*

Port Kembla Operations Pty Limited (as trustee of the Port Kembla Unit Trust), limited to those employees whose employment is transferred from Port Kembla Port Corporation to Port Kembla Operations Pty Limited (as trustee of the Port Kembla Unit Trust) by order under section 16 of the *Ports Assets (Authorised Transactions) Act 2012*

NSW Trains

Sydney Trains

Transport Cleaning Services

Eraring Energy Services Pty Limited, limited to those employees whose employment is transferred from Eraring Energy to Eraring Energy Services Pty Limited by order under section 14 of the *Electricity Generator Assets (Authorised Transactions) Act 2012*

Green State Power Pty Ltd

EnergyAustralia NSW Pty Ltd, limited to those employees whose employment is transferred from Delta Electricity to EnergyAustralia NSW Pty Ltd pursuant to offers of employment made under the Sale and Purchase Agreement (Delta Western Assets) dated 25 July 2013 between the Crown in Right of the State of New South Wales, Delta Electricity, EnergyAustralia Pty Ltd and EnergyAustralia NSW Pty Ltd

AGL Macquarie Pty Limited, limited to those employees whose employment is transferred from Macquarie Generation to AGL Macquarie Pty Limited pursuant to offers of employment made under the Sale and Purchase Agreement dated 12 February 2014 between Macquarie Generation and AGL Macquarie Pty Limited

Water NSW

Snowy Hydro Limited, limited to those employees whose employment is transferred from Delta Electricity to Snowy Hydro Limited pursuant to offers of employment made under the Sale and Purchase Agreement (Colongra Assets) dated 29 December 2014 between the Crown in Right of the State of New South Wales, Delta Electricity and Snowy Hydro Limited

Insurance and Care NSW

Sunset Power International Pty Ltd, limited to those employees whose employment is transferred from Delta Electricity to Sunset Power International Pty Ltd pursuant to offers of employment made under the Sale and Purchase Agreement dated 19 November 2015 between Delta Electricity and Sunset Power International Pty Ltd

Australian Unity Home Care Service Pty Ltd, limited to those persons whose employment was transferred to Australian Unity Home Care Service Pty Ltd in accordance with the Implementation and Sale Agreement (dated 27 August 2015) between the Crown in Right of the State of New South Wales, Australian Unity Home Care Pty Ltd and Australian Unity Limited

Australian Nursing and Midwifery Federation New South Wales Branch

Schedule 2 (Repealed)

Schedule 3 Savings, transitional and other provisions

(Section 16)

Part 1 Preliminary

1 Regulations

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

this Act

Superannuation Legislation (Superannuation Guarantee Charge) Amendment Act 1992

State Authorities Superannuation (Scheme Closure) Amendment Act 1992

Superannuation Legislation (Further Amendment) Act 1993

Superannuation Legislation Amendment Act 1996

Superannuation Legislation Amendment Act 1997

Superannuation Legislation Further Amendment Act 1997

Superannuation Legislation Further Amendment Act 1998

Superannuation Legislation Further Amendment Act 1999

Superannuation Legislation Amendment Act 2000

Superannuation Legislation Amendment (Miscellaneous) Act 2001

Superannuation Legislation Amendment Act 2002

Superannuation Legislation Further Amendment Act 2002

First State Superannuation Legislation Amendment (Conversion) Act 2005

any other Act that amends this Act

- (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 Provisions consequent on pre-2005 Acts

2 Application of Scheme to certain employees from 1 July 1992

- (1) For the purpose of calculating a benefit payable to a member who, on or after 1 July 1992, was an employee under the *State Authorities Non-contributory Superannuation Act 1987*, the member is taken to have been a member since 1 July 1992 or any later date on which the member became such an employee and the benefit payable to the member is to be adjusted accordingly.
- (2) Regulations may be made for or with respect to the adjustment of the contributions on behalf of any such member or any person formerly such a member in respect of the period from 1 July 1992 to 8 December 1992 for the purpose of complying with applicable Commonwealth occupational superannuation standards.
- (3) A provision of a regulation made under subclause (2) may, if the regulation so provides, take effect from 1 July 1992 or a later day.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State or an employer), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State or an employer) in respect of anything done or omitted to be done before the date of its publication.

3 Basic death or invalidity premiums

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

4 Adjustment of accounts

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

5 Saving of rights and liabilities

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

6 Continuation of First State Superannuation Scheme

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

7 Continuation of First State Superannuation Fund

- (1) The Fund referred to in section 18, as inserted by the [Superannuation Legislation Further Amendment Act 1998](#), is a continuation of, and the same fund as, the Fund

established, maintained and administered by FTC pursuant to section 49 of this Act before its repeal by the *Superannuation Legislation Further Amendment Act 1998*.

- (2) Accordingly, a reference in any Act or in any instrument made under any Act or in any other instrument to the First State Superannuation Fund is a reference to the First State Superannuation Fund as so continued.

8 Savings of applications and elections

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

9 Repeal of rules

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

10 Executive officer taken to have nominated salary or wages

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

11 Validation

Anything—

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

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

Part 3 Provisions consequent on enactment of *First State*

Superannuation Legislation Amendment (Conversion) Act 2005

12 Definitions

In this Part—

existing rules means the rules made under the existing trust deed, as in force immediately before the repeal of section 13 by the amending Act.

existing trust deed means the trust deed entered into by the Premier and FTC pursuant to this Act, as in force immediately before the repeal of section 13 by the amending Act.

existing trust fund means the First State Superannuation Fund as maintained and administered under the existing trust deed immediately before the repeal of section 18 by the amending Act.

the amending Act means the *First State Superannuation Legislation Amendment (Conversion) Act 2005*.

13 Continuation of trust deed, rules of First State Superannuation Fund and trust fund

- (1) The existing trust deed and existing rules continue to have effect despite the repeal of Part 4 of this Act, or any other provision of this Act, by the amending Act.
- (2) The existing trust deed and existing rules may be varied or terminated in any way, and may be varied to contain any matters, permitted by or under the trust deed (as amended by the amending Act) or any Act or other law.
- (3) Nothing in the amending Act affects the validity or operation of the existing trust deed or existing rules, or the existing trust fund, except as provided by this Part.
- (4) Without limiting any other provision of this Part—
 - (a) the existing trust fund continues in force and is the same trust fund settlement as it was immediately before the repeal of sections 13 and 18 by the amending Act, and
 - (b) the amendment of the existing trust deed by Schedule 4 to the amending Act does not—
 - (i) create a new trust or otherwise affect the nature, existence or continuity of the trust fund settlement established under the existing trust deed, or
 - (ii) create any interest or vary any beneficial interest of any member, beneficiary or other person interested in the existing trust fund.

14 Existing members

A person who was a member of the Fund immediately before the commencement of this

clause continues to be a member of the Fund until the person ceases to be a member by operation of the governing rules of the Fund or any Act or other law.

15 Contributions of existing employees

- (1) An employer must continue to pay contributions for an employee to the Fund, if those contributions were payable to the Fund immediately before the repeal of section 12 by the amending Act.
- (2) A notification or an election having effect under section 10, as in force immediately before its repeal by the amending Act, continues to have effect and may be revoked or varied in accordance with this Act or the provisions of the trust deed as in force from time to time.
- (3) Nothing in this clause prevents an employee who was a member of the Fund immediately before the commencement of this clause from making an election in accordance with this Act to have compulsory employer superannuation contributions paid to another complying superannuation fund or a complying approved deposit fund or retirement savings account.

16 Existing disputes

A dispute relating to or in respect of FTC or a member or former member of the Fund, that arose before the commencement of this clause, is to continue to be dealt with under this Act and the [Superannuation Administration Act 1996](#), as in force before the commencement of this clause.

17 Superannuation appeals

Nothing in the amending Act affects—

- (a) an appeal made under section 40 of the [Superannuation Administration Act 1996](#) and not determined before the repeal of that section by the amending Act, or
- (b) a right to make an appeal in respect of a dispute or other matter that arose under that section before that commencement, or
- (c) the jurisdiction of the Industrial Relations Commission to determine any such appeal.

18 Existing investment management and custodial arrangements and other arrangements

- (1) An existing arrangement continues in force.
- (2) Any such existing arrangement may be varied or terminated in accordance with the terms of the arrangement or any other Act or law.
- (3) In this clause—

existing arrangement means—

- (a) a contract or an arrangement entered into by FTC under section 12 of the *Superannuation Administration Act 1996* and in force immediately before the commencement of clause 12 of Schedule 2A to that Act, or
- (b) a contract or an arrangement entered into by FTC under section 15, 16 or 20 of that Act and in force immediately before the repeal of those provisions by the amending Act.

19 Operation of amending Act

The operation of the amending Act and any amendments to the existing trust deed or existing rules consequential on that Act are not to be regarded—

- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the provision of services to or by FTC in connection with the Fund or its functions under the existing trust deed or existing rules, or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, or
- (d) as an event of default under any contract or other instrument.

Part 4 Provision consequent on enactment of *State Authorities Non-contributory Superannuation Amendment Act 2013*

20 Application of section 8

Section 8 (as amended by the *State Authorities Non-contributory Superannuation Amendment Act 2013*), in its application in relation to the financial year starting on 1 July 2013, is taken to apply on and from 1 July 2013.

Part 5 Provision consequent on enactment of *Treasury Legislation Amendment (Miscellaneous) Act 2022*

21 References to First State Superannuation

On and from the commencement of the *Treasury Legislation Amendment (Miscellaneous) Act 2022*, Schedule 2.1, a reference in an Act, instrument or other document to First State Superannuation or the *First State Superannuation Act 1992* is taken to include a reference to Aware Super or the *Aware Super Act 1992*, respectively.

Schedule 4 (Repealed)

Dictionary

(Section 3)

Note—

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

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.

compulsory employer superannuation contribution means the superannuation contribution payable by an employer under section 8.

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

employer means an employer referred to in section 6.

employment with an employer includes employment with successive employers.

excluded employee means an employee for whom the compulsory employer superannuation contribution is not payable.

executive officer means an employee who is—

- (a) a Public Service senior executive within the meaning of the *Government Sector Employment Act 2013*, or
- (b) an employee (not being a Public Service senior executive) of an employer specified in Schedule 1 and who holds an office designated by the Secretary of the Treasury as the office of an executive officer, or
- (c) a police executive officer within the meaning of the *Police Act 1990*, or
- (d) an office holder nominated for the purposes of section 11A of the *Statutory and Other Offices Remuneration Act 1975*.

FTC means the following companies, taken to be registered under the *Corporations Act 2001* of the Commonwealth by reason of the operation of the *Superannuation Administration Act 1996*, Schedule 2A, clause 3—

- (a) until 6 September 2020—the company called FSS Trustee Corporation,
- (b) from 7 September 2020—the company called Aware Super Pty Ltd.

Fund means the Aware Super Fund maintained and administered under the trust deed.

maximum contribution base has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth.

relevant Commonwealth superannuation standard means a standard that is applicable under the [Superannuation Industry \(Supervision\) Act 1993](#) of the Commonwealth to a regulated superannuation fund under that Act.

retirement savings account has the same meaning as in the [Retirement Savings Accounts Act 1997](#) of the Commonwealth.

salary or wages—see section 4.

trust deed means the trust deed entered into in pursuance of this Act between the Premier and FSS Trustee Corporation on 19 February 1999, as in force from time to time.