

# Superannuation Legislation Amendment Act 2002 No 110

[2002-110]



New South Wales

## Status Information

### Currency of version

Repealed version for 29 November 2002 to 21 July 2003 (accessed 22 November 2024 at 10:33)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Repeal**

The Act was repealed by the [Statute Law \(Miscellaneous Provisions\) Act 2003 No 40](#), Sch 3 with effect from 22.7.2003.

### 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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# Superannuation Legislation Amendment Act 2002 No 110



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# Superannuation Legislation Amendment Act 2002 No 110



New South Wales

An Act to amend various superannuation Acts with respect to the transfer of certain deferred or preserved benefits to the First State Superannuation Fund, the circumstances in which spouse or de facto partner benefits may be paid to a surviving spouse or de facto partner and the reduction of benefits to offset superannuation contributions surcharge liability; and for other purposes.

## 1 Name of Act

This Act is the *Superannuation Legislation Amendment Act 2002*.

## 2 Commencement

- (1) This Act commences on the date of assent, except as provided by subsection (2).
- (2) Schedule 1 [1], [2], [8] and [9] commence on the commencement of the *Family Law Legislation Amendment (Superannuation) Act 2001* of the Commonwealth.

## 3 Amendment of Acts

The Acts specified in Schedules 1–9 are amended as set out in those Schedules.

## 4 Explanatory notes

The matter appearing under the heading “Explanatory note” in any of the Schedules does not form part of this Act.

## Schedule 1 Amendment of *First State Superannuation Act 1992* No 100

(Section 3)

### [1] Part 4 First State Superannuation Trust Deed

Insert before section 13:  
Division 1 **General**

**[2] Part 4, Division 2**

Insert after section 20:

## **Division 2 Payment splits**

### **20A Definitions**

In this Division, **marriage, member spouse, non-member spouse, payment split, spouse** and **superannuation interest** have the same meanings as in Part VIIIB of the [Family Law Act 1975](#) of the Commonwealth.

### **20B Matters to be dealt with by trust deed and rules**

Without limiting sections 13, 14, 18 or 20, the trust deed and the rules under the trust deed may make provision for or with respect to matters arising from payment splits, including:

- (a) the debiting of amounts from the accounts of member spouses consistent with any relevant Commonwealth legislation, and
- (b) the establishment of accounts in the Fund for non-member spouses who are not members of the Fund, and
- (c) the classification of non-member spouses referred to in paragraph (b) as associate members of the Fund on the establishment of their accounts, and
- (d) the crediting of amounts to the accounts of non-member spouses, and
- (e) the transfer, payment or roll over from the Fund of an amount equal to the value of a non-member spouse's entitlement in the superannuation interest of a member spouse for the benefit of the non-member spouse, and
- (f) the payment to the legal personal representative of the non-member spouse of an amount referred to in paragraph (e) in the event of the death of the non-member spouse.

#### **Explanatory note**

The [Family Law Legislation Amendment \(Superannuation\) Act 2001](#) of the Commonwealth, which is expected to commence in late December 2002, inserts Part VIIIB (Superannuation interests) into the [Family Law Act 1975](#) to allow certain payments in respect of a superannuation interest to be allocated (by agreement or by court order) between the parties to a marriage in case of marriage breakdown.

At present, the Family Court may take into account the value of a party's superannuation benefit as a financial resource in a property settlement. There is, however, no capacity for a superannuation benefit to be actually divided so that the spouse of a scheme member becomes entitled to payment of part of the scheme member's benefit.

**Item [2]** inserts Division 2 into Part 4 of the [First State Superannuation Act 1992](#). Proposed Division 2 enables

the First State Superannuation Trust Deed and the rules under the Trust Deed to make provision in relation to the division of superannuation interests between spouses in case of a marriage breakdown, and thereby make them consistent with Part VIIIB of the *Family Law Act 1975*.

**Item [1]** is a consequential amendment.

**[3] Section 37 Definitions**

Omit “the day” from the definition of **transfer day**. Insert instead “a day”.

**[4] Section 38 Transfer to First State Superannuation Fund**

Omit “the transfer” from section 38 (1). Insert instead “a transfer”.

**[5] Section 40 Rights, liabilities and other matters**

Insert “or *Superannuation Legislation Amendment Act 2002*” after “2001” in section 40 (1).

**[6] Section 40 (1)**

Omit “the transfer” wherever occurring. Insert instead “a transfer”.

**[7] Schedule 3 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Superannuation Legislation Amendment Act 2002*

**Explanatory note**

The *Superannuation Legislation Amendment (Miscellaneous) Act 2001* contained amendments to the *First State Superannuation Act 1992* and the *State Authorities Non-contributory Superannuation Act 1987* that transferred to the First State Superannuation Scheme certain benefits in the State Authorities Non-contributory Superannuation Scheme that were deferred or preserved benefits as at 9 December 2001.

**Items [3]–[6]** require the further transfer to the First State Superannuation Scheme of benefits in the State Authorities Non-contributory Superannuation Scheme that are deferred or preserved after 9 December 2001.

**Item [7]** enables savings and transitional regulations to be made as a consequence of the proposed amendments.

**[8] Dictionary**

Insert in alphabetical order:

**associate member** means a person who has an account in the Fund arising from a payment split within the meaning of the Part VIIIB of the *Family Law Act 1975* of the Commonwealth and who has not subsequently become a full member or an optional member.

**[9] Dictionary, definition of “member”**

Insert “, an associate member” after “optional member”.

**Explanatory note**

**Item [8]** inserts a definition used in the proposed amendments.

**Item [9]** is a consequential amendment.

## **Schedule 2 Amendment of *State Authorities Non-contributory Superannuation Act 1987 No 212***

(Section 3)

**[1] Section 27AD Transfer of eligible preserved benefits**

Omit “on or before” from paragraph (b) of the definition of ***eligible preserved benefit*** in section 27AD (1).

Insert instead “before, on or after”.

**[2] Section 27AD (2)**

Omit “on 9 December 2001, or as soon as practicable after that day,”.

Insert instead “, on and after 9 December 2001,”.

**[3] Schedule 5 Savings and transitional provisions**

Insert at the end of clause 1 (1):

### *Superannuation Legislation Amendment Act 2002*

**Explanatory note**

The *Superannuation Legislation Amendment (Miscellaneous) Act 2001* contained amendments to the *First State Superannuation Act 1992* and the *State Authorities Non-contributory Superannuation Act 1987* that transferred to the First State Superannuation Scheme certain benefits in the State Authorities Non-contributory Superannuation Scheme that were deferred or preserved benefits as at 9 December 2001.

**Items [1] and [2]** require the further transfer to the First State Superannuation Scheme of benefits in the State Authorities Non-contributory Superannuation Scheme that are deferred or preserved after 9 December 2001.

**Item [3]** enables savings and transitional regulations to be made as a consequence of the proposed amendments.

## **Schedule 3 Amendment of *Judges’ Pensions Act 1953 No 41***

(Section 3)

**[1] Section 6 Pension for widow or widower of judge or retired judge**

Insert after section 6 (1):

(1A) If a retired judge dies leaving an eligible widow or widower on or after the commencement of this subsection, the eligible widow or widower is entitled, during the period commencing on the day after the retired judge's death and ending on the eligible widow's or widower's death:

- (a) if the retired judge and eligible widow or widower had been married for 3 years or more immediately before the death—to a pension at an annual rate that, at any time during that period, is a percentage, calculated as provided by subsection (4), of the notional judicial salary of the retired judge at that time, or
- (b) if the retired judge and eligible widow or widower had been married for less than 3 years immediately before the death—to a pension as referred to in paragraph (a), but reduced on a pro rata basis according to the proportion that the period of the marriage bears to 3 years.

(1B) For the purposes of subsection (1A):

**eligible widow or widower** of a retired judge means a person:

- (a) who became the spouse of the retired judge after the judge retired, and
- (b) who has or had in his or her marriage with the retired judge a child, being:
  - (i) a child of the widow or widower and the retired judge who was, in the opinion of the trustees, wholly or substantially dependent on the retired judge at any time during the marriage, or
  - (ii) a child of the retired judge who was conceived before and born alive after the death of the retired judge.

## [2] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

### *Superannuation Legislation Amendment Act 2002*

#### **Explanatory note**

To qualify for spouse benefits on the death of a retired judge, the surviving spouse must have been married to the judge at the time of the judge's retirement.

**Item [1]** enables a surviving spouse of a retired judge who married the judge after the judge's retirement to qualify for spouse benefits if the surviving spouse has or had in his or her marriage with the retired judge a child of the kind described in the proposed definition of **eligible widow or widower**.

**Item [2]** enables savings and transitional regulations to be made as a consequence of the proposed amendments.



**[3] Schedule 1, clause 3**

Insert after clause 2:

**3 Lump sum benefit payments to acting judges or retired judges**

The lump sum benefit payable under this Act is payable to or in respect of a former judge or former acting judge who would have qualified for the benefit if Schedule 7 to the *Courts Legislation Amendment Act 2000* had commenced on 1 July 1992 (the date of commencement of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth) instead of 26 October 2001.

**Explanatory note**

Schedule 7 to the *Courts Legislation Amendment Act 2000* contained amendments to the *Judges' Pensions Act 1953* to ensure that the NSW Government satisfies its obligations under the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth. The amendments included the payment of lump sum superannuation benefits to certain acting judges and permanent judges who are not eligible for pension under the *Judges' Pensions Act 1953*. The above provision makes the lump sum benefit available from 1 July 1992 (that is, from the day when the *Superannuation Guarantee (Administration) Act 1992* commenced). The amendments were commenced on 26 October 2001.

**Item [3]** corrects the anomaly and enables lump sum benefits to be paid to the former acting judges and judges described who ceased to be judges during the period commencing on 1 July 1992 and ending on 25 October 2001.

**Schedule 4 Amendment of Parliamentary Contributory  
Superannuation Act 1971 No 53**

(Section 3)

**[1] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

**general election** means a general election of Members of the Legislative Assembly.

**triennial actuarial investigation** means an actuarial investigation under section 10 (1).

**Explanatory note**

**Item [1]** inserts definitions of terms used in the proposed amendments.

**[2] Section 10 Actuarial investigations**

Omit "1 month" from section 10 (2C).

Insert instead "3 months (or such other period as is approved by the Minister)".

**Explanatory note**

**Item [2]** extends from 1 to 3 months (or such other period as is approved by the Minister) the time within which the trustees must forward a copy of a triennial report of an actuary to the Minister.

**[3] Section 10 (3)**

Omit “certify to the Treasurer”.

Insert instead “recommend to the trustees”.

**[4] Section 10 (3)**

Omit “25”. Insert instead “3”.

**Explanatory note**

**Items [3] and [4]** reduce from 25 to 3 the number of years in relation to which an actuary appointed under the Act is to make recommendations for annual contributions into the Parliamentary Contributory Superannuation Fund. The actuary’s recommendation for the 3 years is to be made to the trustees instead of being made directly to the Treasurer. Item [22] inserts clause 5 into Schedule 1 to the Act as a savings and transitional provision relating to the amendments in items [3] and [4].

**[5] Section 10 (3A) (b)**

Omit the paragraph. Insert instead:

- (b) that an actuary has recommended, under subsection (4), should be paid into the Fund.

**Explanatory note**

**Item [5]** is an amendment consequential on the amendment to section 10 (4).

**[6] Section 10 (3B) (a)**

Insert “and its liabilities” after “Fund”.

**[7] Section 10 (3B) (c)-(g)**

Insert after section 10 (3B) (b):

, and

- (c) state the number of members of the Parliamentary Contributory Superannuation Scheme, and
- (d) state the amount of benefit payments, investment earnings and administrative expenses since the last triennial actuarial investigation, and
- (e) summarise the major economic, demographic and legislative changes affecting the Fund since the last triennial actuarial investigation, and

- (f) include a statement on the impact of the matters referred to in paragraphs (b)–(e) on the assets and liabilities of the Fund, and
- (g) include such other matters as are referred to the actuary by the Minister or trustees.

**Explanatory note**

**Items [6] and [7]** set out additional matters that must be included in an actuary's triennial report in order to make the report consistent with standard actuarial practices.

**[8] Section 10 (4)**

Omit the subsection. Insert instead:

- (4) If the trustees are of the opinion that investments may have to be realised to pay current liabilities of the Fund before any of the annual amounts recommended or to be recommended in accordance with subsection (3) are paid, the trustees may at any time appoint an actuary to make recommendations in relation to amounts that may need to be paid into the Fund by way of interim advances.

**Explanatory note**

**Item [8]** replaces section 10 (4) to give to the trustees the power to appoint an actuary for the purposes of making recommendations in relation to interim advances that may need to be paid into the Fund. The actuary is to make the recommendations to the trustees who then must advise the Treasurer under proposed section 11 (1). Item [22] inserts clause 5 into Schedule 1 to the Act as a savings and transitional provision relating to the amendment in item [8].

**[9] Section 10A**

Insert after section 10:

**10A Interim actuarial investigation**

- (1) The Minister may appoint an actuary to make an interim actuarial investigation between triennial actuarial investigations.
- (2) The Minister must not appoint an actuary to make an interim actuarial investigation within a period of 3 months after the completion of an actuarial investigation or within a period of 6 months before the next triennial actuarial investigation.
- (3) The actuary must complete the investigation, and report the result to the Minister, not later than on the date appointed by the Minister or such later date or dates as the Minister may appoint if the Minister considers that special circumstances exist to justify an extension or further extension.

**Explanatory note**

**Item [9]** gives to the Minister the power to appoint an actuary to conduct interim actuarial investigations.

**[10] Section 11 Payments by Treasurer into the Fund**

Omit section 11 (1) and (2). Insert instead:

- (1) After considering any relevant recommendations of actuaries under section 10 (3) or (4), the trustees must give to the Treasurer advice in relation to the contributions and interim advances that may need to be paid into the Fund.
- (2) The Treasurer is to pay into the Fund annual contributions and interim advances as determined by the Treasurer after considering the advice of the trustees.

**Explanatory note**

In defined benefits schemes such as the NSW Parliamentary Contributory Superannuation Fund, employers do not make contributions in respect of a particular member. Contributions are instead paid into a contributions pool within the particular fund. **Item [10]** provides that the Treasurer is to determine the amount of annual contributions and interim advances to be paid into the Fund. The Treasurer must consider, but is not bound by, the advice of the trustees on the matter. Before giving advice to the Treasurer, the trustees must consider the recommendations of an actuary under section 10 (3) or (4).

**[11] Section 22C Benefits on attaining age 65 or 70**

Omit the section.

**Explanatory note**

At present, members of Parliament who reach the age of 70 years must be paid their pensions or other benefits under the Act, even if they are still serving members (and therefore receiving salaries). Members who reach the age of 65 years may elect to be paid their pensions or other benefits even while being paid their salaries.

**Item [11]** repeals section 22C to remove the right of members 65 years or over to be paid benefits under the Act while still serving as members of Parliament. Item [22] inserts clauses 6 and 7 as savings and transitional provisions arising from the repeal. Item [22] also inserts clause 8 to validate certain reductions made to benefits under section 22C before its repeal.

**[12] Section 23 Pension for spouses or de facto partners**

Insert after section 23 (1):

- (1A) On the death of a former member who, immediately before his or her death on or after the commencement of this subsection, was receiving or was entitled to receive a pension under this Part, 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 an annual pension calculated in accordance with subsection (1), 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 an annual pension calculated in accordance with subsection (1), but reduced on a pro rata basis according to the proportion that the period of the marriage or relationship bears to 3 years.

**[13] Section 23 (5)**

Insert after section 23 (4A):

- (5) For the purposes of subsection (1A):

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

- (a) who became the spouse or de facto partner of the former member after the former member became entitled to a pension, 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.

**Explanatory note**

To qualify for spouse or de facto partner benefits on the death of a former member, the surviving spouse or partner must have been married to, or in a de facto relationship with, the member at the time the member became entitled to a pension.

**Items [12] and [13]** enable a surviving spouse or de facto partner who married, or entered into the relationship with, the former member after the member was granted a pension to qualify for spouse or de facto partner benefits if the surviving spouse or de facto partner has or had in his or her marriage or relationship with the former member a child of the kind described in the proposed definition of ***eligible spouse or de facto partner***.

**[14] Section 26BA**

Insert after section 26B:

**26BA Other payments to Fund by former federal members**

- (1) This section applies to a member:
  - (a) whose combined years of actual service as a member and former federal member will be at least 7 years on the day for the taking of the poll at the

next general election following the date when the member became a member (the **general election day**), and

- (b) who, under section 26B, paid into the Fund an amount of lump sum benefit received by the member as a federal member, and
  - (c) whose period of service as a member for the purposes of this Act (including any additional period as referred to in section 26C (2)) as at the general election day is less than 7 years.
- (2) On the written application of a member to whom this section applies, the trustees must determine, after receiving actuarial advice, the additional amount that would be payable (the **additional amount**) in order to increase the aggregate period of service of the member as a member to 7 years on the general election day.
- (3) A member to whom this section applies may pay to the Fund an amount that is, or amounts that in total are, equal to the additional amount.
- (4) A payment under this section must be made:
- (a) if the member was a member on the commencement of this section—not later than 3 months after that commencement, or
  - (b) if the member was not a member on the commencement of this section—not later than 3 months after the date of becoming a member, or
  - (c) within such further period as the trustees may determine in respect of the member.

**[15] Section 26C Calculation of benefits for former federal members**

Insert “or 26BA” after “26B” in section 26C (1).

**[16] Section 26C (4)**

Insert “or 26BA” after “section 26B” wherever occurring.

**Explanatory note**

**Items [14] and [15]** allow members of the NSW Parliament:

- (a) who were former members of the Commonwealth Parliament but who did not qualify for a pension under the Commonwealth Parliamentary Superannuation Scheme, and
- (b) who will, at the next general election after they became members of the NSW Parliament, have at least 7 years combined service in the Commonwealth and NSW Parliaments,

to use money, in addition to their lump sum Commonwealth Parliamentary superannuation, to buy sufficient NSW service to entitle them to a NSW parliamentary pension at that time.

**Item [22]** inserts clause 9 into Schedule 1 to the Act as a transitional provision arising from the amendments

made by items [14] and [15].

**Item [16]** is a consequential amendment.

**[17] Section 26D Power of trustees to adjust benefits in relation to certain liabilities**

Omit section 26D (3). Insert instead:

- (3) The surcharge deduction amount determined by the trustees must not exceed:
- (a) an amount that is 15% of the employer-financed portion of that part of the benefit payable to the member or former member 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 member or former member accrued.

**[18] Section 26D (6)**

Omit “(3) or 26A”. Insert instead “(3), 26A or 27”.

**Explanatory note**

**Item [18]** allows benefits under section 27 to be reduced as a result of a liability for superannuation contributions surcharge. Item [22] inserts clause 8 to validate certain reductions made to benefits under section 27 before the commencement of item [18].

**[19] Section 26D (8)-(10)**

Insert after section 26D (7):

- (8) Despite subsection (1), the benefit of a former member who has commenced to be paid that benefit may be adjusted by the trustees in accordance with the regulations if the former member 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 member.
- (9) The regulations may make provision for or with respect to the following:
- (a) the circumstances in which the trustees may or may not pay superannuation contributions surcharge on behalf of a former member,
  - (b) adjusting the amounts of benefits that have commenced to be paid or paying amounts in relation to a surcharge deduction amount or an assessment of superannuation contributions surcharge received by a former member before, on or after the commencement of this subsection.

- (10) Without limiting subsection (9), the regulations may make provision for the payment by the trustees of an amount of additional surcharge payable by a former member above the amount determined under subsection (3).

**Explanatory note**

Before a benefit is paid, trustees are required to deduct from the benefit an amount to offset any superannuation contributions surcharge that may be payable by the trustees to the Australian Taxation Office in relation to the benefit. At present, the maximum amount (the **surcharge cap**) that may be deducted is 15% of the employer-financed benefit that accrued from 20 August 1996.

**Item [17]** allows another amount to be prescribed by regulations as the surcharge cap in relation to the period when the benefit payable accrued.

After a benefit is paid to a former member, it is possible for the Australian Taxation Office to issue a notice of assessment for superannuation contributions surcharge to the former member. **Item [19]** allows regulations to be made in order to deal with any liability that may arise from such an assessment, including regulations providing for payment by the trustees of additional superannuation contributions surcharge that exceeds the amount of the surcharge cap applicable to the former member.

**[20] Section 28E**

Insert after section 28D:

**28E Payment of benefit to members who have attained 65 years**

Despite any provision of this Act, the trustees must pay a member who has attained the age of 65 years the whole or part of the member's benefit under this Act if the trustees are of the opinion that it is necessary to do so in order to be consistent with a relevant Commonwealth superannuation standard.

**Explanatory note**

**Item [20]** inserts section 28E to require trustees to pay certain members who have attained the age of 65 years their benefits in order to be consistent with relevant Commonwealth superannuation standards.

**[21] Schedule 1 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Superannuation Legislation Amendment Act 2002*

**Explanatory note**

**Item [21]** enables savings and transitional regulations to be made as a consequence of the proposed amendments.

**[22] Schedule 1, clauses 5-9**

Insert after clause 4:



## **5 Payments by Treasurer into Fund of amounts certified by actuary**

The duty of the Treasurer under section 11 (1) to pay into the Fund the annual amounts from time to time last certified in accordance with section 10 (3) (as those sections were in force immediately before their amendment, respectively, by Schedules 4 [10] and 4 [4] to the [Superannuation Legislation Amendment Act 2002](#)) ceases on the day the trustees give to the Treasurer, under section 11 (1) as amended, the first recommendation in relation to contributions after the commencement of those amendments.

## **6 Benefits on attaining age 65 or 70**

- (1) A pension that was being paid under section 22C immediately before its repeal by Schedule 4 [11] to the [Superannuation Legislation Amendment Act 2002](#), being a pension that, but for the repeal, would have continued to be payable under this Act, continues to be payable as if section 22C had not been repealed.
- (2) An election made under section 22C before its repeal by Schedule 4 [11] to the [Superannuation Legislation Amendment Act 2002](#) continues to be valid, and a benefit preserved as a result of such an election is payable, as if section 22C had not been repealed.
- (3) This clause has effect subject to sections 25 and 26.

## **7 Further benefits or contributions not allowed**

- (1) A member who had been paid or who preserved a benefit under section 22C before its repeal by Schedule 4 [11] to the [Superannuation Legislation Amendment Act 2002](#) is not entitled to any further benefit under this Act or to contribute to the Fund.
- (2) This clause does not affect any requirement to contribute to the Fund in respect of the member to comply with section 30, or the payment of any benefit resulting from such a contribution.

## **8 Validation of certain reductions of benefits**

A reduction of a benefit under section 22C before its repeal by Schedule 4 [11] to the [Superannuation Legislation Amendment Act 2002](#) or of a benefit under section 27 before the commencement of that Schedule, being a reduction that was not authorised under section 26D in respect of a liability for superannuation contributions surcharge, is validated.

## **9 Other payments to Fund by former federal members**

Section 26C (1) (a) applies to a payment into the Fund of an amount, or so much of an amount, made by a member before the commencement of section 26BA that

would have been a payment under section 26BA (3) if the payment had been made on or after that commencement.

**Explanatory note**

**Item [22]** makes savings, transitional and validation provisions consequent on the proposed amendments.

## **Schedule 5 Amendment of [Police Regulation \(Superannuation\) Act 1906 No 28](#)**

(Section 3)

### **[1] Section 11D**

Insert after section 11C:

#### **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 commuted a superannuation allowance under Division 3, and

(c) is subject to section 23.

(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.

**Explanatory note**

To qualify for spouse or de facto partner benefits on the death of a former member of the police force, the surviving spouse or partner must have been married to, or in a de facto relationship with, the member at the time the member was granted a superannuation allowance.

**Item [1]** enables a surviving spouse or de facto partner who married, or entered into the relationship with, the former member after the member was granted a superannuation allowance to qualify for spouse or de facto partner benefits if the surviving spouse or de facto partner has or had in his or her marriage or relationship with the retired member a child of the kind described in the proposed definition of ***eligible spouse or de facto partner***.

**[2] Section 14AA Power of STC to reduce benefits to offset certain tax liabilities**

Omit section 14AA (1C). Insert instead:

(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.

### [3] Section 14AA (5)-(7)

Insert after section 14AA (4):

- (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).

#### **Explanatory note**

Before a benefit is paid, SAS Trustee Corporation (**STC**) is required to deduct from the benefit an amount to offset any superannuation contributions surcharge that may be payable by STC to the Australian Taxation Office in relation to the benefit. At present the maximum amount (the **surcharge cap**) that may be deducted is 15% of the employer-financed benefit that accrued from 20 August 1996.

**Item [2]** allows another amount to be prescribed by regulations as the surcharge cap in relation to the period when the benefit payable accrued.

After a benefit is paid to a former contributor, it is possible for the Australian Taxation Office to issue a notice of assessment for superannuation contributions surcharge to the former contributor. **Item [3]** allows regulations to be made in order to deal with any liability that may arise from such an assessment, including regulations providing for payment by STC of additional superannuation contributions surcharge that exceeds the amount of the surcharge cap applicable to the former contributor.

### [4] Schedule 6 Savings and transitional provisions

Insert at the end of clause 1 (1):

*Superannuation Legislation Amendment Act 2002*

#### **Explanatory note**

**Item [4]** enables savings and transitional regulations to be made as a consequence of the proposed amendments.

## **Schedule 6 Amendment of [State Authorities Superannuation Act 1987](#) No 211**

(Section 3)

### **[1] Section 45A Power of STC to reduce benefits to offset certain tax liabilities**

Omit section 45A (1C). Insert instead:

(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.

### **[2] Section 45A (5)-(7)**

Insert after section 45A (4):

- (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).

#### **Explanatory note**

Before a benefit is paid, SAS Trustee Corporation (**STC**) is required to deduct from the benefit an amount to offset any superannuation contributions surcharge that may be payable by STC to the Australian Taxation Office in relation to the benefit. At present the maximum amount (the **surcharge cap**) that may be deducted is 15% of the employer-financed benefit that accrued from 20 August 1996.

**Item [1]** allows another amount to be prescribed by regulations as the surcharge cap in relation to the period when the benefit payable accrued.

After a benefit is paid to a former contributor, it is possible for the Australian Taxation Office to issue a notice of assessment for superannuation contributions surcharge to the former contributor. **Item [2]** allows regulations to be made in order to deal with any liability that may arise from such an assessment, including regulations providing for payment by STC of additional superannuation contributions surcharge that exceeds the amount of the surcharge cap applicable to the former contributor.

### **[3] Schedule 6 Savings and transitional provisions**

Insert at the end of clause 1 (1):

#### *Superannuation Legislation Amendment Act 2002*

#### **Explanatory note**

**Item [3]** enables savings and transitional regulations to be made as a consequence of the proposed amendments.

## **Schedule 7 Amendment of *Superannuation Act 1916 No 28***

(Section 3)

### **[1] Section 47 Pensions for certain spouses or de facto partners and their children**

Insert at the end of the section:

- (2) Despite subsection (1), a pension is payable under section 31, on the death of a pensioner on or after the commencement of this subsection, to the spouse or de facto partner of the deceased pensioner if the spouse or de facto partner:
  - (a) became such a spouse or de facto partner after the deceased pensioner became entitled to a pension under this Act, and
  - (b) has or had in his or her marriage or relationship with the deceased pensioner a child, being:
    - (i) a child of the spouse or de facto partner and the deceased pensioner who was, in the opinion of the trustees, wholly or substantially dependent on the deceased pensioner at any time during the marriage or relationship, or
    - (ii) a child of the deceased pensioner who was conceived before and born alive after the death of the pensioner, and

(c) had been married to, or living in the relationship with, the pensioner for 3 years or more immediately before the death of the pensioner.

(3) Despite subsection (1), a pension reduced on a pro rata basis according to the proportion that the period of the marriage or relationship bears to 3 years is payable under section 31, on the death of a pensioner, to the spouse or de facto partner of the deceased pensioner if the spouse or de facto partner:

(a) satisfies the requirements of subsection (2) (a) and (b), and

(b) had been married to, or living in the relationship with, the pensioner for less than 3 years immediately before the death of the pensioner.

**Note—**

Section 31 provides for the rate of pension to be paid to the spouse or de facto partner on the death of a pensioner.

**Explanatory note**

To qualify for spouse or de facto partner benefits on the death of a pensioner, the surviving spouse or partner must have been married to, or in a de facto relationship with, the pensioner at the time the pensioner became entitled to a pension.

**Item [1]** enables a surviving spouse or de facto partner who married, or entered into the relationship with, the pensioner after the pensioner became entitled to a pension to qualify for spouse or de facto partner benefits if the surviving spouse or de facto partner has or had in his or her marriage or relationship with the pensioner a child of the kind described in proposed section 47 (2) (b).

**[2] Section 61RA Power of STC to reduce pensions and other benefits to offset certain tax liabilities**

Omit section 61RA (1C). Insert instead:

(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.

**[3] Section 61RA (5)–(7)**

Insert after section 61RA (4):

(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).

#### **Explanatory note**

Before a benefit is paid, SAS Trustee Corporation (**STC**) is required to deduct from the benefit an amount to offset any superannuation contributions surcharge that may be payable by STC to the Australian Taxation Office in relation to the benefit. At present the maximum amount (the **surcharge cap**) that may be deducted is 15% of the employer-financed benefit that accrued from 20 August 1996.

**Item [2]** allows another amount to be prescribed by regulations as the surcharge cap in relation to the period when the benefit payable accrued.

After a benefit is paid to a former contributor, it is possible for the Australian Taxation Office to issue a notice of assessment for superannuation contributions surcharge to the former contributor. **Item [3]** allows regulations to be made in order to deal with any liability that may arise from such an assessment, including regulations providing for payment by STC of additional superannuation contributions surcharge that exceeds the amount of the surcharge cap applicable to the former contributor.

#### **[4] Schedule 25 Savings and transitional provisions**

Insert at the end of clause 1 (1):

#### *Superannuation Legislation Amendment Act 2002*

#### **Explanatory note**

**Item [4]** enables savings and transitional regulations to be made as a consequence of the proposed amendments.

### **Schedule 8 Amendment of Local Government and Other Authorities**



## (Superannuation) Act 1927 No 35

(Section 3)

### [1] Section 15BO Pension payable to widow or widower of pensioner

Insert “, except if the widow or widower is an eligible widow or widower” after “such” in section 15BO (2).

### [2] Section 15BO (4) and (5)

Insert after section 15BO (3):

- (4) If a person who was a former contributor (the **pensioner**) marries after becoming entitled to a pension under section 15BF, 15BG or 15BH and dies leaving an eligible widow or widower on or after the commencement of this subsection, there is payable to the eligible widow or widower as such:
- (a) if the deceased pensioner and eligible widow or widower had been married for 3 years or more immediately before the death—a pension at the rate of 62.5% of the rate at which the deceased pensioner was receiving, or entitled to receive, a pension under section 15BF, 15BG or 15BH immediately before the death, or
  - (b) if the deceased pensioner and eligible widow or widower had been married for less than 3 years immediately before the death—a pension as referred to in paragraph (a), but reduced on a pro rata basis according to the proportion that the period of the marriage bears to 3 years.
- (5) In this section:
- eligible widow or widower** of a deceased pensioner means a widow or widower who has or had in her or his marriage with the deceased pensioner a child, being:
- (a) a child of the widow or widower and the deceased pensioner who was, in the opinion of the trustees, wholly or substantially dependent on the deceased pensioner at any time during the marriage, or
  - (b) a child of the deceased pensioner who was conceived before and born alive after the death of the pensioner.

#### Explanatory note

To qualify for spouse benefits on the death of a pensioner, the surviving spouse must have been married to the pensioner at the time the pensioner became entitled to a pension.

**Items [1] and [2]** enable a surviving spouse who married the pensioner after the pensioner became entitled to a pension to qualify for spouse benefits if the surviving spouse has or had in his or her marriage with the pensioner a child of the kind described in the proposed definition of **eligible widow or widower**.

### [3] Schedule H Savings and transitional provisions

Insert at the end of clause 1 (1):

#### *Superannuation Legislation Amendment Act 2002*

##### **Explanatory note**

**Item [3]** enables savings and transitional regulations to be made as a consequence of the proposed amendments.

## **Schedule 9 Amendment of New South Wales Retirement Benefits Act 1972 No 70**

(Section 3)

### **Section 27A**

Insert after section 27:

#### **27A Pension to be paid to eligible surviving spouse**

- (1) Despite section 26 (7) (c) or 27 (2) (c), a pension is payable, on the death of a former contributor on or after the commencement of this section, to a surviving spouse who became the spouse of the former contributor after the time the pension became payable to the former contributor if the surviving spouse is an eligible surviving spouse.
- (2) The amount of the pension to be paid is:
  - (a) if the former contributor and eligible surviving spouse had been married for 3 years or more immediately before the death—an amount equal to five-eighths of the pension payable to the former contributor immediately before the death of the former contributor, or
  - (b) if the former contributor and eligible surviving spouse had been married for less than 3 years immediately before the death—an amount as referred to in paragraph (a), but reduced on a pro rata basis according to the proportion that the period of the marriage bears to 3 years.
- (3) A pension under this section is to be paid to an eligible surviving spouse for life on and from the day following the death of the former contributor and is to be increased as provided in the case of a pension referred to in section 26 (7) (b) or 27 (2) (b).
- (4) In this section:

***eligible surviving spouse*** of a deceased former contributor means a person

who has or had in his or her marriage with the deceased former contributor a child, being:

- (a) a child of the surviving spouse and the deceased former contributor who was, in the opinion of the trustees, wholly or substantially dependent on the deceased former contributor at any time during the marriage, or
- (b) a child of the deceased former contributor who was conceived before and born alive after the death of the former contributor.

**Explanatory note**

To qualify for spouse benefits on the death of a former contributor, the surviving spouse must have been married to the former contributor at the time the pension became payable to the former contributor.

The amendment enables a surviving spouse who married the former contributor after the pension became payable to the former contributor to qualify for spouse benefits if the surviving spouse has or had in his or her marriage with the former contributor a child of the kind described in the proposed definition of ***eligible surviving spouse***.